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Record No. 4940

In the Supreme Court of Appeals of Virginia at Richmond

COLORED YOUNG MEN'S CHRISTIAN ASSOCIATION, ETC., ET AL.

v.

CENTRAL YOUNG MEN'S CHRISTIAN ASSOCIATION, ETC., ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4940

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 10th day of October, 1958.

COLORED YOUNG MEN'S CHRISTIAN ASSOCIATION, ETC., ET AL., Appellants,

against

CENTRAL YOUNG MEN'S CHRISTIAN ASSOCIATION, ETC., ET AL., Appellees.

From the Circuit Court of the City of Norfolk

Upon the petition of Colored Young Men's Christian Association, a corporation, and F. P. Wise, Eugene West, William O. McCoy, Robert D. Robertson, Winston Douglas, Walter R. Singleton, Alonzo A. Adams, James Simmons, Joseph H. Rose, Edward C. Webb, S. H. Bell, Joseph W. Coleman, W. W. Foreman, Melvin E. Diggs and E. C. Walton an appeal is awarded them from a decree entered by the Circuit Court of the City of Norfolk on the 1st day of April, 1958, in certain chancery causes then therein depending wherein the said petitioners were plaintiffs and Albert D. Dinkins, and others were defendants and Central Young Men's Christian Association of Norfolk, Virginia, and another were plaintiffs and A. A. Adams, and others, were defendants, upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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page 81 }

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FINAL DECREE.

These consolidated causes came again to be heard on the pleadings filed, the evidence heard *ore tenus* on March 21, 1958, the exhibits filed therein and the argument of counsel;

It appearing to the Court from the evidence as follows: That a Charter was granted to a charitable corporation in 1888 known as the Colored Young Men's Christian Association; that for a number of years said corporation has not operated or functioned, although its Charter has page 82 } never been revoked by the State; that in 1935 the former members of the Colored Young Men's Christian Association withdrew from and abandoned said Colored Young Men's Christian Association and became affiliated with, and members of, the Young Men's Christian Association of Norfolk, popularly known as the Central Young Men's Christian Association; that since 1935 the affiliated association has been known as the Hunton Branch of the Young Men's Christian Association, has collected all membership dues from Hunton Branch members, and has surrendered same to the Treasurer of the Central Young Men's Christian Association; that since that time the direction of said Branch's affairs have been under the control of the Committee of Management of the Hunton Branch and the Board of Directors of the Central Young Men's Christian Association, as provided in the By-Laws of said Hunton Branch; that from 1935 to 1958 the Branch's name has been the Hunton Branch of the Young Men's Christian Association, which name has appeared on the stationery and all membership cards have been issued in the name of the Hunton Branch of the Young Men's Christian Association;

WHEREFORE, the Court doth find that said Hunton Branch of the Young Men's Christian Association is not the popular name of the Colored Young Men's Christian Association, a corporation, but said Hunton Branch is a branch and integral part of the Central Young Men's Christian Association of Norfolk, a corporation.

The Court doth further find that the alleged membership

meetings of October 28, 1957 and December 10, 1957, whereby the complainants alleged that they were validly elected members of the Committee of Management, were unlawful meetings in that such meetings were contrary to the By-Laws of the Hunton Branch of the Young Men's Christian Association, were called without authority of By-Law and without proper notice, and in defiance of the authority vested in the Committee of Management of the Hunton Branch and in defiance of the ultimate authority vested in the Board of Directors of the Central Young Men's Christian Association of Norfolk.

WHEREFORE, the Court doth find that the complainants were neither validly elected members of the Committee of Management of the Hunton Branch of the Young page 83 } Men's Christian Association nor validly elected members of the Board of Directors of the Colored Young Men's Christian Association.

The Court doth further find as a fact as follows: That by deed dated October 21, 1942, the Colored Young Men's Christian Association conveyed all of its property, both real and personal, to five trustees, two white men and three Negroes, in trust for the purposes set out in said deed; that the real property then conveyed was known as the Brambleton Avenue property; that by deed dated February 8, 1952, the said trustees conveyed said Brambleton Avenue property to Norfolk Redevelopment & Housing Authority in exchange for the City of Norfolk agreeing to convey to the Hunton Branch of the Young Men's Christian Association the property on which was then located the Old Nurses' Home of the St. Vincent's Hospital; that the Ordinance of the Council of the City of Norfolk, approved September 11, 1951, by which the City of Norfolk was authorized to convey the Old Nurses' Home provided that said property should be vested in the "Hunton Branch of the Young Men's Christian Associaiton or someone for it," but the property was, in fact, erroneously conveyed to the Colored Young Men's Christian Association by deed of the City of Norfolk dated May 31, 1952, which conveyance was contrary to the express provisions of said Ordinance;

NOW, THEREFORE, in consideration of the foregoing, the Court doth find, ORDER, ADJUDGE and DECREE

1. That the operation, function and purpose of the Colored Young Men's Christian Association has been abandoned and defunct for many years;

2. That the Hunton Branch of the Young Men's Christian Association is, and has been since 1935, a branch and integral part of the Central Young Men's Christian Association of Norfolk, a Virginia corporation, and presently exists to carry on the work of the Young Men's Christian Association of Norfolk among the Negro young men and boys of Norfolk.

3. That the original complainants in the Bill of Complaint filed on December 18, 1957 were not elected to the Committee of Management of the Hunton Branch of the Young Men's Christian Association or to the Board of Directors
page 84 } of the Colored Young Men's Christian Association at the meetings held on October 28, 1957 and December 10, 1957, wherefore said original complainants, and each of them, are hereby permanently enjoined from exercising any authority or power by reason of said elections of October 28, 1957 and December 10, 1957 and from interferring with, or obstructing the work of the Committee of Management of the Hunton Branch of the Young Men's Christian Association or the Board of Directors of the Young Men's Christian Association in the operation of said Hunton Branch, and, further, that the bond posted by the Central Young Men's Christian Association be, and it hereby is, cancelled, and the principal and surety released;

4. That the said Horace G. Christopher be, and he hereby is, permanently enjoined from acting as or interferring with the office of Executive Secretary of the Hunton Branch of the Young Men's Christian Association, and from interferring with or obstructing the work of the Committee of Management of the Hunton Branch or Board of Directors of the Committee of Management of the Hunton Branch or Board of Directors of the Central Young Men's Christian Association;

5. That by reason of the abandonment of the Colored Young Men's Christian Association's operation, function and purpose, the trust provided in the deed of October 21, 1942 has failed as to the Colored Young Men's Christian Association;

6. That the deed of the City of Norfolk to the Colored Young Men's Christian Association dated May 31, 1952 and duly recorded in the Clerk's Office of the Corporation Court of the City of Norfolk in Deed Book 726 at page 585, is null and void as said conveyance is contrary to the express provisions of Ordinance No. 15459, adopted September 11, 1951;

7. That the City of Norfolk convey to the Young Men's Christian Association of Norfolk the property authorized to

be conveyed by Ordinance No. 15459, adopted by the City Council September 11, 1951, in trust, nevertheless, for the benefit of the Hunton Branch of the Young Men's Christian Association, a branch of the Young Men's Christian Association of Norfolk, said property and building to be used for the benefit of the Negro young men and boys of Norfolk, and in the event of the sale of said property, the proceeds derived from said sale shall be used for the benefit of the Negro young men and boys of Norfolk, Virginia;

page 85

8. That the Clerk of this Court be, and he hereby is, directed to record a certified copy of this Decree in the Corporation Court of the City of Norfolk in the same manner as deeds are recorded, and that fact of recordation of said Order shall be noted on the margin of deed dated May 31, 1952 and recorded in the Clerk's Office of the Corporation Court of the City of Norfolk in Deed Book 726, at page 585;

9. That the respondents, City of Norfolk and the Central Young Men's Christian Association of Norfolk, recover their costs from the complainants, all to which action of the Court the complainant except.

There being nothing further to be done, the Clerk is ORDERED to remove same from the pending docket and file all papers in this cause among the ended Chancery causes of this Court.

And it appearing to the Court that the following: Colored Young Men's Christian Association, a corporation, and F. P. Wise, Eugene West, William O. McCoy, Robert D. Robertson, Winston Douglas, Walter R. Singleton, Alonzo A. Adams, James Simmons, Joseph H. Rose, Edward C. Webb, S. H. Bell, Joseph W. Coleman, W. W. Foreman, Melvin E. Diggs, E. C. Walton, Rev. Walter L. Hamilton, Joseph A. Jordan, F. W. Lewis, W. T. Mason, Jr., Thomas J. Fountain and Horace G. Christopher in these consolidated causes, have signified their intention to appeal from this Decree to the Supreme Court of Appeals of Virginia, it is therefore ADJUDGED, ORDERED and DECREED that the execution of this Decree be and is suspended for a period of fifteen (15) days, provided their petition is lodged with the Court within said fifteen (15) days and if so lodged then thereafter until such time as the Supreme Court of Appeals of Virginia has acted on the petition for appeal, and also provided the parties herein, or someone for them, execute a bond in the penal sum of Two Thousand Five

page 86

Hundred Dollars ($2,500.00), with surety approved by the Clerk of this Court.

Enter April 1, '58.

C. H. J., Judge.

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page 87 }

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Filed 5-22-1958.

VIRGINIA MANNING, D. C.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Complainants, Colored Young Men's Christian Association, a corporation, and F. P. Wise, Eugene West, William O. McCoy, Robert D. Robertson, Winston Douglas, page 88 } Walter R. Singleton, Alonzo A. Adams, James Simmons, Joseph H. Rose, Edward C. Webb, S. H. Bell, Joseph W. Coleman, W. W. Foreman, Melvin E. Diggs and E. C. Walton, herewith file their notice of appeal from the final decree entered in this cause by the Circuit Court of the City of Norfolk, Virginia, on April 1, 1958.

ASSIGNMENTS OF ERROR.

1. The Court erred in dismissing the bill of complaint filed by these complainants.

2. The Court erred in striking the evidence of these complainants.

3. The Court erred in declaring that the deed of the City of Norfolk, Virginia to the Colored Young Men's Christian Association dated May 31, 1952 and duly recorded in the Clerk's Office of the Corporation Court of the City of Norfolk in Deed Book 726 at page 585 is null and void.

4. The Court erred in directing the City of Norfolk to convey to the Young Men's Christian Association of Norfolk the real estate described in deed dated May 31, 1952, in trust for the benefit of the Hunton Branch of the Young Men's Christian Association of Norfolk, Virginia.

5. The Court erred in holding that the operation, function and purpose of the Colored Young Men's Christian Associa-

tion had been abandoned and defunct for many
page 89 } years.

6. The Court erred in holding that the Hunton Branch of the Young Men's Christian Association has been a branch since 1935 of the Central Young Men's Christian Association of Norfolk.

7. The Court erred in restraining these complainants from exercising any authority or power by reason of the meetings of October 28, 1957 and December 10, 1957.

8. The Court erred in holding that the trust provided in the deed of October 21, 1942 has failed as to the Colored Young Men's Christian Association.

* * * * *

page 18 } EUGENE WEST,

called as a witnes on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. Will you please tell Judge Jacobs your full name, age, residence and occupation?

A. Eugene West, retired government employee.

Q. Retired?

A. Retired government employee, 825 A Avenue.

Q. And you have been a resident of the City of Norfolk for how long?

A. About 55 years.

Q. And you are a retired government employee?

A. Yes, sir.

Q. In what department?

A. United States Post Office.

Q. And I believe that you are one of the complainants?

A. That is right.

Q. In this action brought by the Colored "Y"?

A. That's right.

page 19 } Q. And yourself and other individuals in the Bill of Complaint filed on behalf of the Colored "Y" and others against Albert D. Dinkins?

A. That's right.

Q. How long have you been associated with the Colored "Y"?

Eugene West.

A. At least 40 years.
Q. And I hand you four documents and ask you if you are familiar with these records of conveyances and the charter of the Colored "Y"?
A. Yes, sir.

(Documents were handed to opposing counsel for examination.)

Q. The first one is dated October 21, 1942, between the Colored "Y" and B. Theodore Griffin. I would like to introduce that.

The Court: Marked by the Court "Complainants' Exhibit Number 1").

(Received and marked in evidence as Complainants' Exhibit 1).

By Mr. Fine:
Q. I hand you deed dated January 9, 1947.

The Court: Marked by the Court "Complainants' Exhibit 2".

(Received and marked in evidence as Complain-
page 20 } ants' Exhibit 2).

By Mr. Fine:
Q. And I hand you the most recent deed dated May 31, 1952, from the City of Norfolk to the Colored Young Men's Christian Association.

The Court: "Three"

(Received and marked in evidence as Complainants' Exhibit 3).

By Mr. Fine:
Q. And I hand you a certified copy of the charter granted by the Court on the 10th of November, 1888.

The Court: "Four."

(Received and marked in evidence as Complainants' Exhibit 4).

Eugene West.

By Mr. Fine:

Q. During your forty years' association with the Colored Young Men's Christian Association, what office have you held?

A. I have been on the board for a number of years; and the last—well, probably the last six, seven years, I have been a trustee.

Q. And have you or not been functioning under the Colored Young Men's Christian Association since you have been there with them?

A. That's right.

page 21 } Q. And where have you been located?

A. On Brambleton Avenue. We were on Brambleton Avenue, and now on Wood Street.

Q. Now, on the Brambleton Avenue property, the deeds marked "A" and "B" involved the property there, is that correct?

A. That's right.

Q. And was that property ever conveyed to anybody for the benefit of the Colored "Y"?

Mr. MacMillan: I object to that. He has got a perfect right to introduce any deed.

The Court: The best evidence is the deed. Objection sustained.

Mr. Fine: All right, sir.

By Mr. Fine:

Q. Do you know of any resolution at a meeting of the directorship at any time in your association with them in your connection as an officer or director that you ever abandoned or surrendered any of the rights of the Colored "Y"?

A. No, sir, not any.

Q. Now, I want to ask you how the name of "Hunton Branch" came about.

A. Well, at the time, the Hunton Branch came about because our first secretary was named Mr. Hunton

page 22 } and the branch was named after him.

Q. And since what year?

A. Ever since I can remember.

Q. You have alleged in your Bill—

Mr. MacMillan: I object to him leading the witness.

The Court: Objection sustained.

Eugene West.

Mr. MacMillan: He's got a right to ask questions and the witness can answer it.

Mr. Fine: All right, sir.

By Mr. Fine:

Q. Now, will you tell, please, whether or not you held a meeting on October 28, 1957?

A. Yes, sir.

Q. And at that meeting will you tell us, please, where it was held and who was present?

A. Well, at that meeting there were a large number of the membership present.

The Court: Was a record made by the secretary?

The Witness: Yes, sir.

The Court: The best evidence will be the minutes of the meeting.

Mr. Fine: Would I present that by the secre-
page 23 } tary or present it by him?

The Court: You can present it by him.

Mr. Fine: Thank you, sir. Well, I will not pursue that. Let the secretary do it, your Honor, so we will save time.

The Court: Very well.

By Mr. Fine:

Q. And you did have a meeting and you have records of that?

A. That's right.

Q. And at that meeting what was decided?

A. At that meeting it was decided at that time that we would —there was two meetings, Mr. Fine, which one are you referring to?

Q. One was held on October 28th; the other one was on the 10th day of December 1957?

A. Right. On the October 28th, that is the meeting where the membership voted to sever connections with the Central "Y" because of the agreement that was signed some years—I don't know whether it was signed or not—but the agreement was not satisfied. And I think, I might be mistaken, but as I recall, I think the vote was 116 for, and 18 against.

By the Court:

Q. What year was that?

page 24 } A. That was this October, '57.

Eugene West.

By Mr. Fine:

Q. October 28th, 1957?

A. '57.

Q. Now, on the 10th day of December, 1957, you had a special meeting?

A. That is correct.

Q. Tell us about that.

A. Well, this special meeting was called, your Honor, because we never could get the people who said they were the management to ever agree to a meeting of the membership. That is why we are here today. We never have been able to get them under no circumstances, I don't care which way you go, they say, "No, you can't have it, we are going to run it." And that is all we could hear. So, this first meeting was called and after that first meeting we withdrew and set out on our own account. But because they came back and said, "No, let's wait," then we agreed. So, then they tried again and they were to go back—

By the Court:

Q. Who do you mean by "them?"

A. I mean the present people who is the committee on management.

By Mr. Fine:

Q. That's the board of directors?

page 25 } A. That's right.

Q. Now, who were the people that you know of your own knowledge that asked the board of directors—

A. Mr. Dougles—

Mr. MacMillan: I object to the testimony until he produces the By-Laws that show the authority to call such a meeting.

He is now testifying that they were anxious to have a meeting but has shown no by-laws by which that process could be used to call a meeting.

Mr. Fine: We will introduce the By-Laws. Do you want to do it now?

By the Court:

Q. Was that meeting held and called in accordance with the By-Laws?

A. Well, your Honor, so far as we know the meeting was held. We continued to ask where are the by-laws? How can you

Eugene West.

have a meeting? And every answer we get is that "You can't have a meeting until we give authority."

Q. You didn't have any by-laws?

A. No, but here is what we done to be sure. We got a petition signed by 35 bona fide members asking that this meeting be called and that it be certified here by the secre-
page 26 } tary, so we can settle this thing one way or the other. That's why the meeting was called.

By the Court:

Q. Did you request anyone to give you the by-laws so that you might prepare the meeting?

A. The committee on management.

By Mr. Fine:

Q. Did you do it?

A. I did, Mr. Douglas did.

Q. Who were there, that's what the Judge wants to know.

A. The principal ones were Mr. Thomas Young, Lyman Brooks, Mr. Dinkins, Mr. Chessom and Mr. Greene. Now, there are others but they were the principal ones who every time you asked for a meeting of the membership they would say, "No, there is no need for a meeting, we are going to run this thing." And so, we said by what authority—what way can we call a membership meeting, and then we made an appeal to the Central "Y". In other words we tried every honest way, your Honor, to get relief by calling the meeting the way they wanted it called but they never would agree to it, and I think you can also get witnesses here who appealed to Mr. Ober and other members of the Central "Y" and asked them how could we call a meeting. On one occasion one night, Mr. Douglas begged the committee—

page 27 } By the Court:

Q. Well, what was the dissatisfaction that arose that you all wanted to have this meeting?

A. Dissatisfaction arose because of certain things that had happened and we were dissatisfied, and we decided that we wanted to settle them.

Q. For instance what was going on that you did not like?

A. Well, one thing we didn't like, your Honor, first was when we voted 9 to 6 to ask for Mr. Christopher's resignation, and the committee of management came back 11 to 5, and we all said they acted a little hastily, we are going to ask for him to be reinstated. This was rejected by the Central "Y". And

Eugene West.

that because we felt that if anybody didn't have any more Christianity than that and no more consideration than that we don't want to work with them any longer. That's the thing that caused it.

Q. That caused the excitement?

A. That caused the excitement when we went down there and appeared before them, your Honor, and asked them. And by the way that night we stayed until after twelve and asked them that we were anxious to vote right and we are going to stay all night. Then we came back the next week and voted 11 to 5 to reinstate, and the only honest thing to do page 28 } was to present it to the Central "Y".

Q. And if they didn't have any difficulty with Mr. Christopher you all won't be here at all, is that true?

A. No, sir, that's right.

Mr. Fine: Your witness.

CROSS EXAMINATION.

By Mr. Ashe:

Q. Mr. West, you mentioned that the Committee of Management refused to do certain things?

A. That's right.

Q. I don't think I heard you state, maybe I had better ask you: You were chairman of the Committee of Management?

A. That's right.

Q. And how long have you been a chairman of the Committee of Management?

A. One year.

Q. And you were present at all these meetings?

A. That's right.

Q. You presided?

A. That's right.

Q. You presided at all these meetings?

page 29 } A. Not all of them but most of them.

Q. Most of them?

A. That's right.

Q. Were you appointed to preside?

A. That's right.

Q. I think you stated that you voted 11 to 5 to reinstate Mr. Christopher?

A. To ask that he be reinstated.

Q. To ask that he be reinstated. And then you stated, I be-

Eugene West.

lieve, that you went to the Central "Y" and asked that the reinstatement be fixed?

A. That's right.

Q. Why did you go to the Central "Y"?

A. Because they had informed us that they had the sole supervision of the secretary. That's why we went to them.

Well, we had that information, that they were to have supervision over the executive secretary. And so, then we conceded that if they were to have supervision over him then we have to go to them for him to be reinstated.

Q. Did you as chairman of the board inquire what rights they had to have any control or supervision?

A. No, I did not.

Q. And you have been a member of the "Y" for forty years?

page 30 } A. That's right.

Q. Were you then in 1935?

A. I was

Q. Were you there at the time that agreement was worked out?

A. I was, but I have never seen the agreement.

Q. Were you there?

A. Yes, I was.

Q. Did you object to that agreement?

A. I did not.

Q. You concurred in the agreement?

A. Very likely, if I know what it is. I don't know anything about it.

Q. Were you there when it was discussed?

A. That's right.

Q. What did you understand about that agreement?

Mr. Fine: I object. The agreement is the best evidence and I would like for it to be introduced.

Mr. Ashe: Well, it isn't a signed agreement, your Honor.

Mr. Fine: Well, I object to the question unless there is an agreement.

The Court: If it's signed by this party who was there it would be proper.

page 31 } By Mr. Ashe:

Q. Was there a written agreement?

A. Not that I know of.

The Court: Then he may say what it was.

Eugene West.

By Mr. Ashe:

Q. What was it, then?

A. A verbal agreement as I understood it.

Q. Well, what did you understand the verbal agreement entailed?

A. Simply to have a working relationship. One of the National officers came from the National office, I forgot what his name is, and he encouraged us at one of our meetings that it would be better if we had a working agreement with the Central association, and said they have that in many cities, and so we said, "Well, all right, we don't have any objection after he explained to us that it would be just a working agreement.

Q. That was in '35?

A. That's right.

Q. And what were you known as prior to 1935?

A. The Hunton Branch. We called it the Hunton Branch because, as I explained to the Judge, that was the name of our first secretary.

page 32 } Q. Were you carried substantially in the name of the Hunton Branch in 1935, or was it in the name of the Colored "Y"?

A. Well, I think it was in the name of the Hunton Branch, as far as I recollect.

Q. In the Hunton Branch. All right. That was in 1935.

A. That's right.

Q. After '35, were there any change in your form of officers?

A. What do you mean by "form?"

Q. Was the president changed, or was any board changes made or was any change made?

A. Oh, yes, changes were made at certain intervals when they would elect members to the board. I guess that's what you mean.

Q. What was the name of the chairman at that time?

A. (Pause) As far as I understand it was always that.

By the Court:

Q. You were chairman, were you not?

A. No, I was chairman one year. That was way back in '35.

By Mr. Ashe:

Q. Well, now, you had a board of directors before the agreement?

page 33 } A. That's right.

Q. After the agreement what did you have then?

Eugene West.

A. Well, it has been known as the Committee of Management then, I suppose.
Q. And that has been known as the Committee of Management up until the present time?
A. That's right.
Q. You were present in 1935 when this meeting was held?
A. Um-huh.

(Document handed to opposing counsel for examination).

By Mr. Ashe:
Q. After the agreement of 1935 was there any mention or talk of the Colored "Y"?
A. Oh, yes, it always was spoken of, certainly.
Q. Did you have any meetings of the Colored "Y"?
A. We had meetings of the Hunton Branch, which was the same thing; there wasn't any difference between the two.
Q. Did you have any stationery printed?
A. No, I don't think we had any stationery printed.
Q. Did you have any reports filed of anything?
A. Not that I know of.

(Document handed to opposing counsel for examination).

page 34 } Mr. Ashe: We ask for those to be introduced.

By Mr. Ashe:
Q. We have here a photostated copy of the minutes of January the 28th, 1935, and I would like for you to examine this particular one.

(Handed to the witness for examination).

A. All right; that's right.

Mr. Ashe: All right.

The Court: Marked by the Court Defendants' Exhibit 1.

(Received and marked in evidence as Defendants' Exhibit 1).

By Mr. Ashe:
Q. I would like for you to examine this one of February 13, 1935, and—

Eugene West.

(Handed to the witnes for examination).

A. That's right.
Q. And March the 13th, 1935.

(Handed to the witnes for examination).

A. That's right.

The Court: Defendants' Exhibit 2; Defendants' Exhibit 3).

(Received and marked in evidence as Defendants' Exhibits 2 and 3).

page 35 } (A document was thereupon handed to the witness for examination).

The Court: Defendants' Exhibit 4.

(Received and marked in evidence as Defendants' Exhibit 4).

Mr. Ashe: If your Honor please, I wanted to read certain parts of these minutes, if your Honor wants to hear them now.
The Court: Yes.
Mr. Ashe: I am reading from January 28, 1935: "The Board of Directors assembled in special session to hear Mr. R. W. Bullock, member of the national council. After prayer by Mr. Jackson, vice chairman Taylor presented Secretary Anderson who introduced Mr. Bullock.

"Mr. Bullock stated that until we decided how we should conduct our Y he would not attempt to work out any program for our work. He also stated that he believed we could accomplish more by becoming a part of the Central Y and that the Central Y was willing to cooperate with us.

"Chairman Taylor stated that a committee would page 36 } be appointed at our membership meeting January 20th to confer with the Board of the Central Y. Meeting dismissed by Mr. Bagnall * * *"

"February 13, 1935." At this meeting there was a report that the "Committee to confer with Central Y reported that

the Central Y was ready for Branch affiliation. *Notion* was passed that the Board approve branch relationship provided satisfactory arrangements can be made."

A. That's right, that is, "satisfactory arrangements," that's right.

Mr. Ashe: Reading from March 13, 1935: "The committee on Branch relationship reported that satisfactory arrangements had been made concerning Branch affiliation. Two trustees from the Hunton Branch and one from the Central Association would make up the Board of Trustees * * *"

A. That's right.

Mr. Ashe: Reading from March 14th, 1935—

The Court: Isn't that what you just read was approved?

The Witness: Yes, sir, your Honor, that was

page 37 } approved.

Mr. Ashe: Yes, sir, your Honor.

Mr. Fine: I would like to get that in the record.

Mr. Ashe: My reading from March 13, 1935, excerpts from the minutes signed by Eugene West, the secretary.

The Witness: That's right.

By Mr. Ashe:

Q. And the statement, that is correct?

A. That's right.

Q. And that was aproved?

A. That's right.

(Document was thereupon handed to opposing counsel for examination).

Mr. Ashe: Reading from March the 14th, 1935: "The Board of Directors assembled on March 14, to further consider Mr. Bullock's report. After prayer by Mr. Diggs Mr. Bullock again gave a very helpful talk on Y work, and commended what he felt was the best thing to do with our building. By motion Mr. T. S. Bagnall was elected Trustee to serve with

Trustee Jackson. Motion also passed that the Ex-

page 38 } ecutive Secretary should write Mr. Chapman a

letter of thanks for service he rendered without cost to the Y * * *."

Eugene West.

(The document was handed to opposing counsel and in turn handed to the witness for examination).

The Witness: Um-huh.

Mr. Fine: If your Honor please, I would like to preserve this one point for your Honor's consideration throughout without interruption:

Now, your Honor will note, sir, that the meeting—the minutes of the meeting are by members of the Board of Directors.

Our position, sir, is that under no tangent or any view of the evidence in this case is there any merger but purely one of affiliation, and secondly, if your Honor please, that in order to have destroyed the entity of the Colored "Y" the only way the Board of Directors could have done it, sir, would have been by a special meeting had by the membership instructing the Board of Directors in that connection.

page 39 } The Court: Very well, let the record show it.

The Court: Additional exhibits marked by the Court as 5, 6 and 7, Defendants'.

(Received and marked in evidence as Defendants' Exhibits 5, 6 and 7).

Mr. Ashe: Reading from the minutes of July 17, 1935: "Motion passed that the Board arrange final details as to the Branch affiliation with the Central Association * * *."

The Witness: Right.

Mr. Ashe: (Continuing) "* * * The Board being of the opinion that property agreement was O. K. Mr. Chesson voted against this motion and asked to have the following statement recorded: 'I approve of Branch relationship in principle but under the proposed plan I do not see sufficient assurance of benefits to be derived from the plan proposed to justify giving the Central Association joint or complete control or ownership of the property now owned by the Hunton Branch now known as Colored YMCA. Signed P. J. Chessom,' "

The Witness: We never did that.

page 40 } Mr. Ashe: "This opinion of Mr. Chessom was not concurred in by the Board.

"The secretary was asked to notify the Central Association of the action taken by the Board. Also to state that there would be three colored Trustees and two white."

(Handed to Mr. Fine for examination).

Eugene West.

Mr. Ashe: Reading from the minutes of November 13, 1935: "Mr. Wharton, Secretary of the Central Association was present and urged all Board Members to give their full cooperation to the Y. Chairman Douglas also asked the Board to keep good will and Fellowship in the Board if we expect success. Secretary Wharton asked that a new system of bookkeeping be installed. Also the accounts to be audited. By motion both requests were granted."

(Handed to Mr. Fine for examination).

Mr. Ashe: Reading from the minutes of December the 18th, 1935: "The Executive Secretary submitted his report for November. By motion same was approved. M. Chessom, chairman of the House Committee, reported that page 41 } permission had been given the officers of Union University to make certain changes on the 3rd floor. By motion the action taken by Mr. Chessom was approved.

"A resolution from the Central Association was read and approved and by motion the Trustees were given authority to sign the Deed of Trust."

(Handed to Mr. Fine for examination).

Mr. Ashe: You have seen this?
Mr. Fine: (Nodded head).

By Mr. Ashe:
Q. Mr. West, I show you here a resolution signed by you.

(Handed to the witness for examination).

A. That's right.
Q. In this resolution which was dated October the 28th, 1957, and signed by you, Eugene West, as chairman of the Committee of Management, Hunton Branch YMCA of Norfolk, Virginia, and by Reverend E. C. Walton, Secretary of the Hunton Branch of the YMCA of Norfolk, Virginia: "Therefore, be it resolved, that the Hunton Branch YMCA henceforth discontinue its affiliation with the Central YMCA, of Norfolk, Virginia, effective immediately; and, that any and all ultimate authority heretofore delegated to the said Central YMCA, or its Board of Directors or its Committee page 42 } of Management be forthwith withdrawn and discontinued, and be it further resolved that the Board

of Directors of Central YMCA be requested to officially notify its trustees representing its Board along with Hunton Branch Trustees under the previous working relation agreement of the two Associations, that he or they are now relieved of said responsibility."

These are the last two paragraphs on the fourth page of the resolution dated October 28, 1957. Mr. West, what previous working relationship agreement did you refer to?

A. The verbal agreement. I haven't seen anything else. It was verbal.

Q. Did you call a meeting on October the 28th, 1957?

A. I did.

Q. By what authority did you call that meeting?

A. On the authority of the 38 members who signed a petition asking me to call the meeting. The secretary can verify that.

Q. Were you on the Board of Management on October 21, 1957?

A. Yes.

Q. Were you presiding?

A. Yes, sir.

Q. And this controversy that happened was raised, was it not?

page 43 } A. That's right.

Q. Was it not the majority vote of the Committee of Management at that time to have a thirty-day cooling period?

A. Oh, yes, they wanted a cooling period. They said they wanted to pray.

Q. Thirty days. That was on October 21, 1957?

A. Yes.

Q. And you presided?

A. That's right.

Q. Yet on October the 28th—

A. That's right.

Q. You called a meeting?

A. I certainly did; and I gave you my authority for calling it.

Q. Well, have you resigned as chairman of the Committee?

A. No, I had not.

Q. By what authority were you operating as the Committee of Management?

A. What do you mean by what authority?

Q. Well, by what authority as chairman?

A, Well, we had election by the membership.

Eugene West.

Q. And did you have any constitution or by-laws in which you were operating under?

A. You mean for the Committee of Management?

page 44 } Q. For the Committee.

A. Not that I know of. Now, they said they had some kind of by-laws. To tell you the truth we were just on a working agreement. And it was just here recently that I learned that they had some by-laws.

Q. This was recently? This was in December?

A. That's what I was told.

Q. And October and November, you knew about it then?

A. That's right, yes. No, I didn't know. Now, wait a minute, let me—I did not know about it until the night Mr. Young said there was supposed to be by-laws that we were working under.

Q. Did you read it?

A. I did not.

Q. Did you object to it?

A. Well, I will tell you why. Because all the time, you see, my predecessors had been there for seven years and I never heard of it until this thing got going hot here. No, I didn't read it.

Q. Did you follow the by-laws?

A. Well, I followed it as best of my knowledge. I thought I was within my rights when I called a meeting signed by 35 members to show that—

page 45 } Mr. Fine: Now, if your Honor, I want to object to this unless they can prove that this has been adopted by both of the parties and duly scheduled meetings in accordance with parliamentary law. I don't think they have ever done that, and I ask you to produce the record to show they ever had any by-laws passed on by both membership. I ask for the record.

By Mr. Ashe:

Q. Have you ever seen this, Mr. West?

(Document handed to the witness for examination).

A. No, this was—this is the same. It looks like the copy of the same document that Mr. Young brought up there one night and said this was the by-laws. No, I have never seen it and I have never known it to be passed by any meeting.

Eugene West.

The Court: Do you want to put that in evidence with the understanding you will connect it by some other witness?
Mr. Ashe: Yes, sir.
Mr. Fine: Very well, your Honor.
The Court: Rejected unless they are identified.
Mr. Ashe: I understand.
page 46 } The Court: That will be Defendants' Exhibit 8.

(Received and marked in evidence as Defendants' Exhibit 8).

By Mr. Ashe:
Q. Mr. West, when you called your meeting of October the 28th—
A. Yes.
Q. —were you questioned about this meeting by any other member of the Committee of Management, as to why you called it?
A. You mean—I didn't get your question. You mean when I called it? You mean before or after I was questioned; after?
Q. All right.
A. They said I shouldn't have.
Q. No one had a chance to question you before?
A. Yes, they had, they did. They had a chance but they didn't. But after the meeting was called they said they didn't think I had a right to call it. That's when I presented this statement signed by 38 members showing that I had authority.
Q. Is that the only authority that you gave the Committee of Management.
A. That's right.
page 47 } Q. Did you not tell Mr. Young, a member of the Committee of Management that you relied on the by-laws pertaining to calling of meeting?
A. Well, I told him that I figured that any by-law that did not allow the membership to call a meeting that there was something wrong. Now, I couldn't tell you anything about the by-laws. I didn't know anything about it.
Q. Did you tell him, Mr. West, that you relied on a section of the by-laws—
A. No, I didn't tell him no such thing.
Q. May I continue?
A. You may continue, but I didn't tell him any such thing.
Q. Let me—
A. No, sir.

Eugene West.

Mr. Fine: Let him ask you and then you answer it.
The Witness: That's right.

By Mr. Ashe:

Q. Did you not tell him that you relied on the section of the by-laws pertaining to membership where a certain number of the membership could call—request the chairman to call a meeting?

A. Oh, yes; yes, sir, but later on—let me clarify that. Later on this same Mr. Young told me that did not apply page 48 } to the membership. It applied only to the Committee of Management.

Q. Did you read it when he showed it to you?

A. No, I didn't read it.

Q. Now, what by-laws were you relying on when you told him that?

A. He was referring to the by-laws that he said the by-laws could call a membership meeting of the Committee but it didn't give you any authority to call a meeting of the membership.

Q. That's what Mr. Young said. What did you tell him regarding your authority by virtue of the by-laws to call this meeting?

A. I didn't tell him nothing about the by-laws.

Q. I think I understood—

A. Well, no, you didn't understand right.

The Court: The record will show what he said.

By Mr. Ashe:

Q. Why did you have to petition the Central Y to reinstate Mr. Christopher?

A. Because after the fact was brought out and it was repeatedly stated that the Central Y had authority over the secretary, so that's why after we found out that they had their authority, and of course that had been stated to us page 49 } repeatedly that they were in charge of it, and that is why we petitioned them.

Q. Did you know that before that time?

A. No, I didn't.

Q. You did not?

A. I knew—now, wait a minute. I knew we had a working agreement but I will be frank with you. I never knew before that they had complete authority over the executive secretary.

Q. You did not know the Central Y had complete authority?

Eugene West.

A. No, sir.
Q. And you have been there for 40 years?
A. Yes, but in a working agreement, Mr. Ashe, I haven't seen the agreement yet.
Q. You have been an active member for 40 years?
A. I have been an active member for 40 years, that's right.

Mr. Fine: If your Honor please, I object to that as argumentative. If they have a working agrement in writing I would like to ask for it to be introduced.
Mr. Ashe: Well, I am not questioning him about the working agreement. I am questioning him about his
page 50 } knowledge of the relationship.
The Court: He is on cross examination. You may continue.

By Mr. Ashe:
Q. Did you have any knowledge as to the finances of the Hunton Branch YMCA?
A. What do you mean, in regards—
Q. How the money came?
A. Why, certainly.
Q. Who handled the money?
A. The money was—what do you mean, prior to the time before we had a working agreement or after we had a working agreement?
Q. That was in '35?
A. At that time the money was handled by the—the money that came through the Hunton Branch, all of it was paid out by the Central Y.
Q. And you knew that?
A. Yes, I knew that, certainly.

Mr. Fine: We object to that as immaterial to the issue here, your Honor.
Mr. Ashe: I don't think—
The Court: I think it is very material. You are setting up here an entity or corporation that never, appar-
page 51 } ently, from the evidence so far, ever functioned from the day that a charter was granted. They functioned, certainly, since 1935, as the Hunton Branch under this evidence so far.
Mr. Fine: But we have never surrendered our entity.
The Court: And it is very material to show how the operation took place. They collected money and turned it over to

Eugene West.

their principal or the Central Y, and that would have some significance, of course. Go ahead, continue.

Mr. Fine: We note an exception.

The Court: Exception noted.

By Mr. Ashe:

Q. What name was the stationery in of the—

The Court: He has already testified to that; that the stationery was in the name of the Hunton Branch.

By Mr. Ashe:

Q. The Hunton Branch. You stated that you agreed to withdraw?

A. Um-huh.

Q. What were you withdrawing from?

A. The Central Y, from their controlling the
page 52 } money, paying it out and so forth. That's what we were doing under this working agreement, whatever it was. I haven't heard what it was.

Q. Did you know how to withdraw?

A. I know I thought we went about it the right way.

Q. Did you know how?

A. Not according to any rules.

Q. You have never been told?

A. No.

Q. Did you inquire as to how?

A. No, no.

Q. Then you only took your next best guess and used—

A. That's right, that's right.

Mr. Ashe: I would like to introduce this.

The Court: Numbered Defendants' Exhibit Number 9.

(Received and marked in evidence as Defendants' Exhibit Number 9).

Mr. Ashe: That is all.

The Court: Any other questions, Mr. Fine?

Mr. Fine: No, sir, I don't want—

Mr. Ashe: Just one more question.

page 53 } The Court; All right.

Eugene West.

By Mr. Ashe:
Q. Mr. West, did you call a meeting on December the 10th, '57?
A. Nope.
Q. Did—were you present at that meeting?
A. Yes.
Q. Who presided at that meeting?
A. I think Reverend Hamilton, I believe.

(Document shown to opposing counsel for examination).

Q. Are you familiar with this, Mr. West?

(Handed to the witness for examination).

A. Yes, yes, sir, I am familiar with it.

Mr. Ashe: I would like to introduce that as an exhibit.
The Court: Defendants' ten.

(Received and marked in evidence as Defendants' Exhibit Number 10).

By Mr. Ashe:
Q. I think you said you did not preside at the meeting of December 10th?
A. No.
Q. Who presided?
A. I think Reverend—I'm not quite sure, but I
page 54 } think it was Reverend Hamilton presided; I think.
Q. You saw the notice?
A. Yes.
Q. Saw the name on the notice?
A. Yes.
Q. Who were those men who signed that notice?
A. I can't quote them from memory.

The Court: This was the notice sent out to the membership of the Hunton Branch?
Mr. Ashe: Yes, sir.

(Handed to the witness).

A. These were the name: Reverend Hamilton—

Eugene West.

Q. And this was the fourth meeting of the Hunton Branch Y?

A. That's right.

Q. Do you know the official capacity of these men?

A. They were men who have an interest in the membership and who went to the Committee of Management to call the meeting, so I told them they wouldn't allow it, so they decided to call it.

Q. I noticed on the bottom of this: "Please bring membership card." Membership card to what?

A. To the Y.

Q. What Y?

A. The Hunton Branch Y.

page 55 } Q. The Hunton Branch Y of Norfolk, Virginia?

A. That's right.

Q. I see. Did the fee for these membership cards go to the Central YMCA?

A. The fee for the membership cards?

Q. Yes.

A. No, it went to the Hunton Branch.

Q. The fee for the membership?

A. The fee for the membership went to the Hunton Branch Y, then it was deposited in the bank and they paid it out to the Central Y. The Central Y done all the paying out, but the fee came to the Hunton Branch.

Q. Then, my question was: Did the money go to the Central Y?

A. They did not collect, but they always paid out.

Q. After you collected it?

A. They paid it out.

Q. After you took it in. Who deposited it?

A. We put it in the bank.

Q. Then who did it finally go

A. It didn't go to anybody. It went to the bank but they finally paid it out.

Q. Who had control over it?

A. They had control over it.

Q. Who is "they?"

page 56 } A. The Central Y.

The Court: Stand down. Who do you have next?

Mr. Fine: Call the secretary.

Ernie C. Walton.

ERNIE C. WALTON,
called as a witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:
Q. Will you please state your full name?
A. Ernie C. Walton.
Q. Your age, your residence and occupation?
A. I am 49, 10 Barney Street, Norfolk, Virginia.
Q. Barney Street?
page 57 } A. That's right.
Q. And your occupation?
A. I am a minister.
Q. Reverend, did you act as secretary for the Board of Management?
A. Yes.
Q. And when did you first perform those duties?
A. I first performed the duties as acting secretary for the Board of Management after—

Mr. MacMillan: I object—

A. (Continuing)—December 10th, 19—

Mr. MacMillan: I object. Unless Reverend Walton was elected secretary I don't think he should testify as secretary, of the Hunton Branch.
Mr. Fine: Well, I am asking him.
Mr. MacMillan: I think you ought to point out—
Mr. Fine: —the date. He just said December 10th.
The Court: You may continue.
Mr. Fine: Yes, sir.

By Mr. Fine:
Q. And your first performance of duty was on
page 58 } what date?
A. I was elected as of December 10, 1957.
Q. And did you keep a memorandum of the minutes from there on?
A. Yes.
Q. And do you have those minutes with you?
A. Yes.

Ernie C. Walton.

Mr. Fine: Let me have them, please.

(Handed to counsel).

Mr. Fine: That is the minutes.

By the Court:
Q. By whom were you elected?
A. I was elected by the membership at a meeting as of that date, December 10.

By Mr. Fine:
Q. And what date was that?
A. That was on December 10, 1957.
Q. Do you have a copy of their—
A. These are other membership meetings.

Mr. Fine: Subsequent to that, all right. Let me have those.

(Handed to counsel).

By the Court:
Q. What was the name of the organization to which you were elected secretary?
page 59 } A. The Hunton Branch of the YMCA; the name to be used.

Mr. MacMillan: May it please the Court, Mr. Fine has presented us the minutes. We have no objection that they are the minutes which were kept by Reverend Walton, and I assume he will so testify; but we object to them on the grounds that it was not minutes of a duly constituted meeting nor a meeting called by authority of the Constitution and By-laws and that they are self-serving statements. But other than that, they are the minutes that were kept at that meeting which we say was not a lawful meeting.
Mr. Fine: October the 7th and October the 28th?
Mr. McMillan: I make the same objection of all minutes.
The Court: Objection overruled, and I note your exception. Let me mark them. He says that he was elected secretary of the Hunton Branch, and it is so indicated on the minutes. Plaintiffs' 5, 6 and 7.

page 60 } (Received and marked in evidence as Plaintiffs' Exhibits 5, 6 and 7).

Ernie C. Walton.

Mr. Fine: Now, the minutes of October the 7th, if your Honor please, are as follows:

(Reading) "The Hunton Branch YMCA met on the above date at the Branch at 8:00 P.M. o'clock in response to notices sent out dated October 3, 1957, stating, 'Our Institution, In Which We Take Just Pride, Faces Problems Vital To Its Life, Welfare and Usefulness. These Problems Will Be Considered. Be Sure To Come!'

"This meeting had as its objective: to look into and to consider the resignation of our executive secretary, Mr. Horace Christopher, which was so requested by the board of management of said Hunton Branch.

"At the appointed time Dr. W. L. Hamilton, Pastor of the Shilch Baptist Church, called the meeting to order. Prayer was offered by Rev. E. C. Walton. Dr. Hamilton then asked that a chairman be selected. A motion prevailed that Dr. Hamilton be chosen chairman of this meeting. Another mo-
page 61 } tion prevailed that Rev. E. C. Walton serve as secretary.

"The chairman asked for an agenda, suggesting that we might (1) have a statement from Mr. Horace Christopher, our executive secretary; (2) a statement from the board of management; (3) an opportunity for any rebuttal statements; that in this way we might arrive at some things to do.

"Dr. J. H. Owens pointed out that we ought to have a statement from the board of management first. Mr. S. H. Bell concurred with this opinion, pointing out that we ought to have the report of the auditor, the report of the board, and then a statement from Mr. Christopher.

"Mr. Henry McJimpsey moved that this would be the order on our agenda, which was seconded by Mr. Louis Harrison and so carried.

"Mr. S. H. Williamson moved that a sergeant-at-arms be appointed to go out to seek the reports of the auditor and board of management. This motion was so carried. And the chairman so designated Mr. Williamson to do this
page 62 } job. Mr. Williamson stayed a considerable length of time. Many questions were raised in his absence: Have these reports been made public? Who constitutes the board of management? Why aren't they here? If we don't have the reports, how can we have a trial? Mr. Williamson returned at this time, saying that reports were not available.

"Mr. Alonzo Adams moved that we, the membership, demand these reports from the management, substantiating

charges against Mr. Christopher. Mr. S. H. Bell objected on the ground that, until we hear the report of the auditor and the board of management, we cannot proceed logically or intelligently.

"Mr. Melvin Diggs pointed out that the board of management had adjourned, and that most of them had gone home. Fortunately, however, the chairman, Mr. Eugene West came in this meeting, and was asked to make a statement upon which we might proceed. Mr. West stated that there were no charges against Mr. Christopher. That this action taken was based on a committee report, four or five months ago.

page 63 } "Mr. William Craig asked, if this report makes charges on which the board acted or not?

"Mr. West very reluctantly answered these questions. And after much insistence agreed to read the report of the board of management.

"Many things were mentioned as irregularities in this report. Of said things mentioned, we note the following: (1) Lack of internal control on the part of the administration of the Hunton Branch. (2) Not properly accounting for funds. (3) Some question of checks and balances (4) Disregard of accounting procedures (5) Disbursements not authenticated.

"Some policies recommended in said report are (1) Central bookkeeping system (2) Part time bookkeeper (3) All income reported promptly (4) All receipts deposited daily (5) All duplicates sent following day to Central Y (6) All bills paid by check (7) Small bills not over $5.00 paid out of petty cash. (8) Petty cash fund $100.00. (9) Purchases made in

page 64 } triplicate. (10) Dormitories checked daily. (11) All guests in dormitories accounted for.

"Following the reading of the report by Mr. West, Mr. Christopher was asked to speak. He explained in detail in a written report also, the items mentioned in the report, to the complete satisfaction of everyone present, there being, approximately 300 members present at this meeting.

"Mr. William Craig asked, what courses of action are open to this body?

"Mr. R. D. Robertson moved that this body rescind the action of the board of management. This motion was seconded by Mr. Joseph Dickson, Sr., and so carried.

"Mr. W. T. Mason moved that a committee be appointed to present the findings of this meeting to the board of the Central Y and the board of management of the Hunton Branch, which was seconded by Mr. William Craig and so carried.

"Mr. Purvis Chessom pointed out that this resolution

Ernie C. Walton.

should be drawn up asking for reconsideration instead of other demanding action, in an effort to help.

page 65 } "Reverend J. C. Chambers made the observation that we wish to retain Mr. Christopher by following logical steps.

"Mr. Lee stated that this is a Christian association and that all persons should remember this as such in our dealings one with another.

"The chairman, Dr. Hamilton, stated that this matter will be dealt with on the basis of a resolution. A committee was appointed to handle same, as follows: Attorney W. W. Foreman, chairman. Messrs. S. H. Bell, R. D. Robertson, Thomas Fountain, Sr., David Alston, W. T. Mason, and Rev. J. C. Chambers.

"The findings of this body are: In the light of the explanations given by our executive secretary, Mr. Horace Christopher, regarding said items or discrepancies mentioned in the auditor's report and the report of the finance committee to the board of management, this body goes on record (1) to disapprove the report of the board of management, (2) to urge that Mr. Horace Christopher be continued in his position as executive secretary of the Hunton Branch, YMCA.

page 66 } "Mr. Charles Griffin, general secretary of the Central Y was given an opportunity to speak.

"A motion prevailed that the meeting would adjourn.

"The benediction was given by Dr. F. P. Wise.

"Respectfully submitted, W. L. Hamilton, Sr., Chairman; E. C. Walton, Secretary."

October 28, 1957, this we mentioned in our Bill of Complaint: The Hunton Branch YMCA met on the above date at the Branch, in the auditorium at 8:00 P.M. Signed by 39 members, which I will now read, your Honor:

(Reading) "The minutes of the previous meeting, October 7, 1957, were called for, read and adopted.

"At this point Mr. T. W. Young, member of the board of management, raised a point of order. He stated, that this meeting is premature; that the board of management had voted that nothing be done within a period of 30 days.

page 67 } "Mr. West answered Mr. Young; stating that this meeting is called by virtue of a petition of 38 bona fide members and that the membership has the final authority.

"Mr. Young appealed from the decision of the chair. The house voted to sustain the chair.

"Mr. Young then asked that we hear a resolution from the

Committee of Management. The resolution was not heard on the ground that the house had sustained the ruling of the chair.

"Mr. Young then asked that he be permitted to leave the resolution with the chair which was so granted.

"Though the resolution was not read, the record is as follows:

"WHEREAS the Committee of Management of the Hunton Branch of the Young Men's Christian Association at its regular meeting on Monday, October 21, 1957, received, discussed and considered at great length a Resolution proposing the severance of the Branch relationship entered into with the Central Young Men's Christian Association in 1935, page 68 } and

"WHEREAS when the question came on for a decision, a motion was made, seconded, and passed that any action in this matter be postponed for thirty days, during which time the members of the Committee of Management would, by prayer and meditation, seek the divine guidance of the Heavenly Father in this serious matter, and

"WHEREAS the first responsibility and authority in such matters are, by virtue of our by-laws, delegated to the Committee of Management, and

"WHEREAS the period of prayer and meditation on this grave question has not yet expired, and

"WHEREAS we, the members of the Hunton Branch YMCA, share with the members of the Committee of Management implicit faith and confidence in the wisdom and guidance of Almighty God, and

"WHEREAS the Chairman of the Committee of Management has caused notices to be sent to all of the members of the Hunton Branch YMCA calling a meeting of said page 69 } members to consider and decide the important question of maintaining or severing relations with the Central YMCA, now, therefore

"BE IT RESOLVED that the members of the Hunton Branch of the Young Men's Christian Association, assembled in response to that notice this 28th day of October, 1957, disapproved of the calling of this meeting in violation of both the letter and the spirit of the decision heretofore made by the

Committee of Management to seek, through prayer, the wise counsel and guidance of Almighty God, and

"BE IT FURTHER RESOLVED that the members here assembled show their respect for orderly and legally made decisions and actions of their representatives on the Committee of Management be declaring that this meeting is prematurely called, and should be, and hereby is, adjourned until such time as it shall be reconvened by appropriate action of the Committee of Management.

"SPONSORED BY:

page 70 } Thomas W. Young, Lyman B. Brooks, P. J. Chesson, Alfred C. Fentress, Walter H. Riddick, Herbert A. Marshall, C. J. Green, A. D. Dinkins, Alvin T. Richter.

"Mr. William Bright moved that the agenda of this meeting be followed.

"The report of the committee of fundings was called for, which was masterfully given by its chairman, Atty. W. W. Foreman who made it clear that our original charter is dated November 10, 1888, that we have a constitution and by-laws and that the deed of our property is dated 5/31/52 and is registered between the city of Norfolk and the Colored YMCA of Norfolk, Va. The full report is as follows:

"Resolution
"To: The Board of Directors
Central Young Men's Association
Norfolk, Virginia

'Whereas, The Hunton Branch, Young Men's Christian Association of Norfolk, Virginia (Corporate title—Colored Young Men's Christian Association of Norfolk, Virginia) was organized in 1888 as an independent Organization; and,

page 71 } "Whereas, the charter of this Association was entered into the records in the Clerk's Office of the Corporation Court of the City of Norfolk, and the State of Virginia on the 10th day of November, 1888 in Charter Book One (1) page 260; and

"Whereas the Constitution and By-Laws of the National Council of the Young Men's Christian Associations of the United States of America, provides in Item 2-a, Section 6 of

Ernie C. Walton.

Article 5, that any Association organized prior to 1891 may operate as a branch or independently as it may by proper vote deem advisable; and

"Whereas, Hunton Branch YMCA was chartered "Prior to 1891" and is therefore granted the right of independent operation by said Constitution and By-Laws; and

"Whereas, during the year 1935, the Committee of Management of Hunton Branch YMCA voted to become jointly associated with the Central YMCA conditioned upon satisfactory working relations being maintained between the two said Associations and thereupon became affiliated; and,

page 72 } "Whereas, the Membership of Hunton Branch YMCA has found that satisfactory working relations with Central YMCA no longer exist; now,

"Therefore be it resolved, that the Hunton Branch YMCA henceforth discontinue its affiliation with the Central YMCA, of Norfolk, Virginia, effective immediately; and, that any and all ultimate authority heretofore delegated to the said Central YMCA, or its Board of Directors or its Committee of Management be forthwith withdrawn and discontinued, and

"Be it further resolved that the Board of Directors of Central YMCA be requested to officially notify its trustees representing its Board along with Hunton Branch Trustees under the previous working relation agreement of the two Associations, that he or they are now relieved of said responsibility.

"Be it further resolved that the Central YMCA be requested to turn over all records and material in its possession that belong to Hunton Branch YMCA as promptly as possible.

page 73 } "This resolution adopted by the Committee of Management, Hunton Branch Young Men's Christian Association the 28th day of October 1957 and is signed by its chairman and Secretary by order of same.

"Respectfully submitted, signed, Chairman, Committee of Management, Hunton Branch, Young Men's Christian Association of Norfolk, Virginia.

"October 28, 1957.

"The Rev. F. P. Wise moved adoption of this report which was so carried.

"Following this report a number of questions were raised.

"Mr. Cook asked cost of auditors report. The figure given was $1,500 * * *" and etc.

Mr. Fine: Now, there is one more, if your Honor please. This is Exhibit 7:

Ernie C. Walton.

(Reading) "Hunton Branch, YMCA, Norfolk, Virginia, December 10, 1957.

"The Hunton Branch YMCA met on the above date at the Branch, in the auditorium at 8:00 P.M.

"The meting was called to order by Rev. W. L.
page 74 } Hamilton, Prayer was offered by Rev. F. P. Wise.

Reverend Hamilton read a statement to the effect that this meeting is called to act inasmuch as the desires of this Body had not been carried out by the Committee of Management as requested in a meeting, October 28, 1957.

"The minutes of the previous meeting were read and adopted.

"Mr. Horace Christopher asked to make a statement. He requested that this body relieve itself of further consideration of him as executive secretary. That the area supervisor desires to consider him for one of three positions in other places.

"Mr. S. H. Bell made a statement that the Committee of Membership had accepted the request of Mr. Horace Christopher, and moved that this Body go on record to do likewise. Several statements of unreadiness were made.

"Substitute motion prevailed that this matter of consideration of Mr. Christopher as executive secretary be left to him.

"A suggestion was made that some form of commendation
be given Mr. Christopher in case he does go.

page 75 } "Mr. P. J. Chessom made a statement regarding
the resolution adopted by the Committee of Management at a meeting, November 12, 1957, which presented irregularities concerning the dismissal of the executive secretary. These he sought to explain.

"Attorney Foreman gave steps that we might take now to get ourselves out of this present situation. He pointed out that it calls for a complete reorganization, including a new constitution. Mr. Foreman read the new constitution, pointing out that an annual meeting of the members be held each year in February. He recommended the adoption of the constitution as read. After several statements of unreadiness were expressed, the new constitution was finally adopted by a vote of 58 to 7.

"A motion was made that a copy of the new constitution be sent to each member. The question of cost arose. There was no final action.

"A motion prevailed that a Nomination Commit-
page 76 } tee be appointed to provide for a Committee of
Management, as follows. Messrs. David Alston, Lorenzo Woodhouse, Reverend H. C. Hill.

Ernie C. Walton.

"A motion prevailed that the present Committee of Management be dissolved as of this date, December 10, 1957.

"A motion prevailed that the report of the Nominating Committee be approved.

"A motion prevailed that a unanimous vote be cast for the 25 persons elected.

"A constitution committee for further study was appointed as follows: W. W. Foreman, J. C. Chambers, W. T. Mason, Jr., Dr. S. F. Coppage, Joseph Rose, Creecy, and J. A. Jordan.

"A motion prevailed that one-third of the Board would serve 1, 2, 3 years, respectively. This would be determined by drawing, three groups of eight slips, plus one, marked 1, 2, 2, indicating the years each would serve.

"The Committee of Management was asked to wait over to do some other necessary things along with appointing a Committee on Finance.

"A public offering, $49.18 was raised.

page 77 } "Benediction, Reverend H. C. Hill.

"Respectfully submitted,

"W. L. Hamilton, Acting Chairman

"E. C. Walton, Acting Secretary.

"December 10, 1957.

"In an after meeting of the Board of Management, Reverend W. L. Hamilton was elected Chairman, R. D. Robertson, Vice, Reverend E. C. Walton, Secretary, Joseph Rose, Assistant Secretary, T. J. Fountain, Treasurer.

"The Finance Committee: T. J. Fountain, W. T. Mason, Sr., Fencham, Alonzo Adams, F. W. Thornton.

"A motion prevailed that the New Board notify Central Y, that we are severing connection as of December 31, 1957, and that the Old Board is dissolved as of this date, December 10, 1957. Copies of this information are to be sent to the Chairman of Central Y, the Secretary, Mr. Griffin, and to the Southern Area Council. Letters are to be registered with return receipt.

"Mr. Winston Douglas was appointed Chairman

page 78 } of the Personnel Committee, with Reverend F. P. Wise, and Attorney J. A. Jordan.

"Mr. M. E. Diggs was appointed Chairman of the House Committee, with Messrs. James Simmons and Joseph Coleman.

"The Executive Committee would compose the heads of the other committees. Messrs. M. E. Diggs and Winston Douglas were named at this time.

Ernie C. Walton.

"Every member of the Old Board is to be notified that a New Board is elected, that the Old Board is dissolved.

"Reverend W. L. Hamilton, Chairman

"E. C. Walton, Secretary.

"Note: In a meeting of the Board of Management, December 16, 1957, letters of decline were read from Mr. F. W. Thornton and Reverend J. J. Freeman. In this same meeting, Reverend W. L. Hamilton asked to be relieved of the position, Chairman of the Board of Management. A motion prevailed that Mr. M. E. Diggs be Chairman of the Board.

"E. C. Walton, Secretary."

By Mr. Fine:

Q. And these were recorded by you?

page 79 } A. That's right.

By Mr. Fine: All right, your witness.

May it please the Court, would you mind adjourning for just a few minutes for a short recess?

The Court: The Court will adjourn until 2:00 o'clock to pray. Come back at 2:00 o'clock.

(The Court recessed for lunch at 12:00 noon. At 2:00 P.M., the Court reconvened and the trial continued as follows:)

AFTERNOON SESSION

The Court: Proceed, sir.

page 80 } ERNIE C. WALTON,

recalled as a witness for continuation of direct-examination, resumed the witness stand and testified as follows:

DIRECT EXAMINATION (Continued)

By Mr. Fine:

Q. I do want to ask you one more question before counsel examines you. To your knowledge, how long have you been associated with the Colored YMCA?

A. I have been a member, but actively associated since this controversy has begun.

Q. Well, now, there has been some working agreement introduced in the evidence, apparently between the Colored

Ernie C. Walton.

YMCA and the Central YMCA. Were you associated with them at that time?
A. No.

Mr. Fine: All right.

CROSS EXAMINATION.

By Mr. Ashe:
Q. Reverend Walton, how long have you been a member of the Hunton Branch, YMCA?
page 81 } A. Oh, I have been a member for probably 15 or more years, I suppose.
Q. You would say you joined it about '37 or '38?
A. Yes.
Q. And at that time what did you join?
A. Well, the YMCA.
Q. At that time did you know anything about the Colored YMCA?
A. Just as such. The Colored YMCA and the Hunton Branch are all in the same thing.
Q. You said that you were elected as secretary. Is that what I understood you to say?
A. That is correct.
Q. Were you elected in January of '57?
A. December 10th.
Q. December the 10th, 1957. Did you send out notices as secretary prior to the meeting of December the 10th?
A. I sent out membership notices on December 5th.
Q. How did you sign your name?
A. "Secretary."
Q. Of what?
A. Of the Hunton Branch, YMCA.
Q. Who was secretary prior to your being appointed or elected.
A. For the membership?
page 82 } Q. For either.
A. I think Mr. Thornton was secretary for the Board.
Q. For the Committee of Management?
A. Yes, sir.
Q. And who was secretary for the membership?
A. Nobody that I know of.
Q. Your secretaryship was recreated then, is that right, at that time, prior to December the 10th?

Ernie C. Walton.

A. Yes.
Q. At the time that you were elected on December the 10th, 1957, as secretary, were any minutes turned over to you?
A. No, no.
Q. You were then elected as secretary of what was considered a Board of Management?
A. That's right.
Q. And you received no minutes?
A. That's right.
Q. Did you receive any books or documents of any kind?
A. No.
Q. Did you request any as a newly elected secretary?
A. They have been requested.
Q. Did you request any at the time you were elected?

page 83 } A. The Committee of Management in the resolution have requested the records.

Q. My question was: Did you as the elected secretary request any minutes.
A. As an individual?
Q. As the elected secretary.
A. No.
Q. I believe that you stated you were only recently actively associated with the "Y" since this controversy, is that right?
A. That's right.
Q. Prior to that time you knew this association as a Colored "Y" but commonly known as what?
A. The Hunton Branch.
Q. And your knowledge of what went on prior to 1957 as to the internal operation, you knew nothing about?
A. That's right.

Mr. Fine: Are you through with him?

By Mr. Ashe:
Q. Just one more question: You stated you were actively—rather you were elected secretary of the Hunton Branch; is that correct?
A. The Hunton Branch, YMCA.
Q. The Hunton Branch of the YMCA?
A. YMCA.

The Court: Is that all?

page 84 } Mr. Ashe: That is all, sir.

The Court: Stand down. Who do you have next?

Horace G. Christopher.

Mr. Fine: Mr. Christopher.

HORACE G. CHRISTOPHER,
called as a witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. Will you state your full name, age, residence and occupation?

A. Horace G. Christopher, age 52, occupation,
page 85 } secretary of the YMCA.

Q. And your address?

A. 2712 Beachmont Avenue.

Q. Now, Mr. Christopher, when did you first have employment with the Young Men's Christian Association, the Colored YMCA?

A. May first, 1940.

Q. 1940?

A. Yes, sir.

Q. And at that time were you with them in connection with a working agreement with the Central "Y"?

A. Yes, sir.

Q. The arrangement was in process of being consumated at that time, is that right?

A. That's right.

Q. And during your tenure of office, tell the Court, please, whether or not you have ever seen any by-laws of the Central "Y" and the Colored YMCA in connection with the operation of the Colored YMCA?

A. I am trying to get your question.

Q. In other words, there was an arrangement, the testimony is. I don't think there is any dispute about that. That they said they would work together?

A. That's right.

Q. Have you ever known any by-laws by the Cen-
page 86 } tral YMCA or the Colored YMCA in connection
with the operation. Had it ever been passed on by the membership, by either the Central "Y" or the Colored YMCA?

A. I have seen no by-laws that I know that has been passed upon.

Q. And you have been connected with them from 1940 to 1957?

Horace G. Christopher.

A. That's right.

Q. All right. Now, in connection with the Colored YMCA, does that have another name or not?

A. Well, we have what you call a "nick name", yes. It's the Hunton Branch.

Q. That is the common name, the Hunton Branch?

A. That's right.

Q. And are you familiar with how that name came about?

A. Oh, yes. Dr. William Hunton was our first Negro secretary of the YWCA anywhere in the United States. He came to Norfolk in 1888, the first employed man we ever had in the YMCA. He left in 1890 and went on the International Committee, and by his popularity and being the first man ever to become the secretary the Hunton Branch where he first started in Norfolk honored him by taking the name.

We not only have a Hunton Branch here; we have got about seven Hunton Branches.

page 87 } Q. Called the Hunton Branch?

A. Throughout the country in honor of Dr. Hunton.

Q. Now, I refer you to Plaintiff's Exhibit 9, the third paragraph which states the following: "The Constitution and By-Laws of the National Council of the Young Men's Christian Associations of the United States—" and I ask you to take my pencil and put a circle around there, please, showing that you did exactly what you could do—"of America, provides in Item 2-a, Section 6 of Article 5, that any Association organized prior to 1891 may operate as a branch or independently as it may by proper vote deem advisable * * *" I hand you the Constitution and By-Laws of the National Council of the YMCA; that is Item 2-a, Section 6 of Article 5. Will you refer to it?

A. You said put what, now?

Q. Item 2-a.

A. Put a circle around it?

Q. Yes, put a circle around it so the Judge will have it.

A. (The witness complied) Is that right?

Q. Prior to 1891, I would—

(To the Court) I would like to introduce that.

The Court: It hasn't been introduced before?

page 88 } Mr. Fine: It has not, no, sir.

The Court: Mark it Plaintiffs' Exhibit 8; the entire booklet?

Horace G. Christopher.

Mr. Fine: Yes, sir, if your Honor please. And specifically referring, sir to Item 2-a, Section 6 of Article 5.
The Court: All right.

(Received and marked in evidence As Plaintiffs' Exhibit 8).

By Mr. Fine:
Q. Now, some mention has been made this morning about your popularity, and this has never come about; but for the differences that has occurred there we are not interested in trying your matter and his Honor would stop me, I'm sure. I am not going into that. Are you interested in the present controversy or do you have another position?

Mr. MacMillan: Your Honor, I object.
Mr. Fine: Well, I want to—
Mr. MacMillan: This is inadmissible, it hasn't any relevancy to the issues here.
Mr. Fine: Well, now, your Honor, I would like to show, sir—
The Court: Objection sustained. It is immate-
page 89 } rial and has no possible relation to the issues.
Mr. Fine: Very well, sir, we save the point, if your Honor please.
The Court: Exception noted.

By Mr. Fine:
Q. Now, I want to bring you up to the time in connection with the property that was involved in this case. You were with them at that time, were you not?
A. That's right, sir.
Q. Now, will you tell Judge Jacob, please, the facts and circumstances with regard to the conveyances of the real property that you know of, to your knowledge?
A. The present property?
Q. The present property and what it was exchanged for and how it came about.

Mr. MacMillan: We object to that. The deeds are in evidence.They are the best records, unless there is some relationship behind the deed.
The Court: Can you add anything to the deed as to how they acquired the property, some evidence; and what he might say would be secondary.

Horace G. Christopher.

Mr. Fine: I think not, except this, sir: We want
page 90 } to show by him that the Central Y has never contributed one cent. They charged six per cent interest in this case, sir. They haven't—

The Court: Would that be material to the issues here, whether they contributed or did not contribute? There is no claim of interest by virtue of contributions.

Mr. Fine: That's all right, your Honor, I agree with you, sir.

By Mr. Fine:

Q. Now, I want to ask you this: Have you ever known of the Colored YMCA having any by-laws or Constitution when you first came to work for them in 1940? Have you ever seen any?

A. I haven't seen any.

Q. Have you ever seen any by-laws or Constitution of a working arrangement with the Colored YMCA or the Hunton Branch?

A. Well, I have seen the minutes and—

Q. I know. I am talking about by-laws and Constitutions with regard to a working arrangement that has been approved by the membership of the Hunton Branch Y?

A. Well, I haven't seen any that have been approved by the membership that I noticed it, but I have seen some
page 91 } by-laws and Constitutions, I believe, from the Central YMCA.

Q. Put out by the Central YMCA?

A. That's right.

Q. Have you known whether or not it had ever been approved by the trustees or directors or anybody by the other corporation?

A. I do not know, sir.

Mr. Fine: All right, sir, answer these gentlemen.

CROSS EXAMINATION

By Mr. MacMillan:

Q. Mr. Christopher, were you with the Central Y in 1935. I mean with the Hunton Branch, the Colored YMCA?

A. No, sir.

Q. So the event that occurred in '35 or before you know nothing personally about?

A. Nothing personally.

Q. And so if there was relationship between the two that

came up in '35 as has been alleged you can't help us with that?

A. No, not personal knowledge.

Q. Not by personal knowledge?

page 92 } A. That's right.

Q. Mr. Fine asked you whether you had seen any by-laws or any documents relating to the control or operation of the Hunton Branch and you stated you never seen—

Mr. Fine: Excuse me, I asked if it had ever been approved by the Colored YMCA; that is the point in the case.

By Mr. Macmillan:

Q. Have you ever seen any by-laws?

A. Yes, sir.

Q. What by-laws have you seen?

Mr. Fine: We object to it, if your Honor please, until they can make a representation that the membership or the so-called stockholders of a charitable organization approved the by-laws.

The Court: The witness is on cross examination. He is being cross-examined on matters that you have brought out.

Go ahead.

Mr. Fine: I note an exception.

By Mr. MacMillan:

Q. Have you ever seen that document?

(Handed to the witness for examination).

A. Yes, I have seen this.

page 93 } Q. And in what connection did you see it?

A. I saw this in the file when I first came to Norfolk, which I stated then that it was antiquated.

Q. That file was antiquated?

A. No, that is.

Q. This is; and why do you say that is antiquated? You mean that it's old?

A. No, antiquated because it spells out some committees that never existed.

Q. "Never?" You mean it never existed when you got there?

A. That's right.:

Q. You don't know what happened before?

Horace G. Christopher.

A. That's right.:

Q. The truth of the matter is you gave this document to Mr. Young when he became president of the Branch, did you not?

A. I don't recall that. It's possible.

Q. It is possible. If he were to testify that you gave him this document and told him it was the by-laws of the Branch, would you deny it?

A. I wouldn't deny that if he could state—if he could state in addition to that that I felt then and still feel that it is antiquated.

page 94 } Q. You felt it was antiquated but in any event when he became president of the Hunton Branch and came to you as president and you as the executive secretary and said where are the by-laws by which this Branch operates you gave him this document; you don't deny that?

A. It is difficult to recall. I don't—

The Court: He said—he added to it that it was antiquated.

By Mr. MacMillan:

Q. All right. Now, let me ask you this: Have you ever seen this document that was sent out on January 10, 1952, to all the members of the Committee of Management dealing with one of the clauses of these by-laws?

(Handed to the witness for examination).

Q. (Continuing) And ask you what that clause meant as to the operation of the Branch.

A. Yes, I have seen this.

Q. And so at that time there were by-laws which were being discused by the Committee of Management as to how they were to operate, were there not, and although they were antiquated they were nevertheless deemed at that time to have been the by-laws of the Branch?

A. So far as I know; but I have never known, also, of the by-laws being accepted by the membership.

Q. I understood you don't know whether that was. It might have been done before 1935?

page 95 } A. That's right, but this came up in 1952 on something else.

Q. 1952?

A. That's right.

Horace G. Christopher.

Q. Of course, the by-laws at that time continued to be the by-laws, didn't they?

A. They continued to be the by-laws with the exception of the fact that in order to change the by-laws or make an altera-- tion in the by-laws it was necessary to consult the membership.

Q. Is that what the by-laws provide?

A. I think that is what the charter provides.

Mr. MacMillan: I was looking for that last document.

Mr. Fine: Is this what you are looking for?

(Handed to counsel).

Mr. MacMillan: Let's see what it says about changing the by-laws.

Mr. Fine: If your Honor please, I object to that until they—

The Court: It speaks for itself. There is no need to argue about it with the witness.

Mr. MacMillan: All right, sir.

page 96 } Mr. Fine: We object to it, if your Honor please. It has been formerly shown that these are the by-laws and that they are—

The Court: Well, he is the official secretary, and he has testified that this paper contains the by-laws and were the by-laws when he first was affiliated with them.

Mr. Fine: I understood him—

The Court: He gave them to the president as such. So, if you cannot identify the by-laws by the secretary, by whom can you identify them?

Mr. Fine: I understood—

The Court: That is what he testified to. Do you offer this in evidence?

Mr. MacMillan: Yes, sir.

The Court: This is Defendants' Exhibit 11.

(Received and marked in evidence as Defendants' Exhibit 11).

Mr. MacMillan: We also offer—

The Court: "12."

Mr. MacMillan: We also offer this document

page 97 } dated January 10, 1952, which he identified.

(Shown to opposing counsel for examination).

Winston Douglas.

The Court: Defendants' 12, the next one.

(Received and marked in evidence as Defendants' Exhibit 12).

The Court: Do you have any other questions,
Mr. MacMillan: No, no other questions.
The Court: You may stand down. Who do you have next, Mr. Fine?
Mr. Fine: Mr. Douglas.
The Court: Let me mark that green paper, Mr. Fine.
Mr. Fine: Yes, sir.

(Handed to the Court).

page 98 } WINSTON DOUGLAS,
called as a witness on behalf of complainants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:
Q. Would you state your full name, please?
A. Winston Douglas.
Q. And your age, your residence and occupation?
A. 62 years old, 860 Rugby Street, and I am the principal of the Booker T. Washington High School.
Q. And Mr. Douglas, how long have you been connected with the Colored YMCA?
A. Well, since it was reorganized in 1928; that is about 30 years.
Q. Then, I take it that you were definitely a member and also a member of the board of directors in 1935, according to the records of this organization?
A. Yes, sir, that's right.
Q. And in 1935, specifically what was your official connection with the Colored YMCA?
A. I was chairman of the board, chairman of the Committee of Management, or whatever you call it.

page 99 } Mr. MacMillan: Your Honor, I cannot hear the witness.
The Court: He said he was chairman of the Board of Management.

Winston Douglas.

The Witness: The Committee of Management. I get mixed up sometimes.

The Court: Well, that's good enough.

By Mr. Fine:

Q. Well, now, professor, when you were with that organization, then, would you tell us, please, whether or not any contracts had ever been executed by the Central Y and the Colored YMCA?

A. Not to my knowledge, sir.

Q. And when you—

Mr. MacMillan: Your Honor, may I make a statement? There has been no contest of a written contract, and we haven't alleged it.

The Court: I think the evidence before the Court now, however, is that at a regular meeting and after full discussion they adopted the plan of the Central organization in that the Central organization would name some trustees, and—

Mr. Fine: No, sir, let me get you clear on
page 100 } that.

The Court: I think it's in the evidence.

Mr. MacMillan: I am clear on it as far as the defendant is concerned.

Mr. Fine: You would hope that that is the way.

The Court: It was.

Mr. Fine: I will vouch my case on this, your Honor.

The record indicates, sir, that the Board of Directors had held a meeting and had a committee arrangement with the Central Y, but they had never been submitted, your Honor, to the membership for ratification, confirmation or approval. The Board of Directors are merely agents of that—and we have some authority. We are sure of that, your Honor, and the record indicate—

The Court: Continue the examination.

Mr. Fine: Thank you, sir.

By Mr. Fine:

Q. Now, have that ever been, so far as you know, ever been submitted to the membership at large of any working arrangement that you would all have—

The Court: Counsel for the other side does
page 101 } not contest that it was.

Mr. Fine: Well, your Honor, this in neces-

sary for me to show affirmatively that the stockholders or members never authorized the Board of Directors to have any working arrangement.

The Court: I thought there was a stipulation that no such authorization was ever given. Why do you have to put on that evidence?

Mr. Fine: Very well, sir.

By Mr. Fine:

Q. Now, did they ever define or has there ever been any definition or any jurisdiction set up about what this working arrangement with the Central Y in 1935?

A. Not written. There was a general understanding that it was to be a cooperative affair but nothing was spelled out to my knowledge.

Q. Nothing spelled out to your knowledge.

The Court: Just a minute, Mr. Fine. If there was nothing spelled out as such, what mode of operation was used without spelling it out? There is testimony here that the funds collected were put in the bank and checked out page 102 } by the parent association. There is evidence here as to what the percentage of the Board was appointed.

Now, what did they actually do if it wasn't written down by way of a contract. There is no testimony. You must have had a relationship. You must have done certain things and the parent organization did certain things. What were those certain things?

The Witness: Those relationship were not worked out between the chairmen of the Committees. Whatever was done was perhaps done with some understanding between the secretaries.

The Court: Not how it was organized, but what was actually done in conformity with something. You did something, isn't that true, that the collections were put in the bank to the credit of the Central Y and it paid out the bills; the bills were paid out by the Central organization?

The Witness: Yes, that was—

By Mr. Fine:

Q. And what other control did they exercise?

A. They kept the books; they kept the records.

Winston Douglas.

Q. Was all that done with the consent of the
page 103 } membership?
A. Not the membership. I am sure that that never—
Q. The membership never concerned themselves but the Board operated on that basis with their consent?
A. Right.
Q. As a matter of fact, with regard the conveyances here set in, the Board of Directors meeting says that there shall be two colored and one white for trustees in connetion with any conveyances and then subsequently says there shall be three colored and two white. Do you know whether there has been any conformity as to that in connection with any conveyances of property as to whether there have been three colored and two white?

The Court: He said there has never been conveyances of property.
Mr. Fine: Well, there is the deed. The deed shows there has been, insofar as the conveyances of property.

By Mr. Fine:
Q. Do you know of any trustees that held any property for these two people—I am talking about "trustees", not directors. The minutes indicate that there shall be two trustees who are colored and one who is white. Do you know of any conveyances to them?
A. Was Mr. Bagnall one of those trustees at
page 104 } one time?
Q. Yes, he was.
A. And there was another one.

By the Court:
Q. All right, you are speaking of conveyances to be made by them, not the conveyances to them?
A. Mr. Bagnall, I think, I don't recall. I understood there were two colored.

By Mr. Fine:
Q. Now, I hand you this deed and ask if you are not one of the trustees mentioned there: B. Theodore Griffin, W. Frank Roper, M. R. Jackson, M. E. Diggs and Winston Douglas. Now, how many white and how many colored are on there?

Winston Douglas.

(Handed to the witness for examination).

A. I see three colored and two white.

Q. All right. Has there ever been any conveyance or scratch of the pen between the parties except for the conveyance of this property that you know of in connection with the management?

A. No.

Q. Do you know of any by-laws that was made for the operation of the Hunton Branch of the Colored YMCA by joint operation of the trustees or the members of the Board of Directors of both institutions?

page 105 } A. No, I do not.

Q. You shake your head. I want to get your answer.

A. No.

Q. All right. And when you had the property conveyed to you as one of the trustees in 1947, was it not for the benefit of the Colored YMCA as provided in that deed?

A. Yes.

Q. If it was not for the benefit of the Colored YMCA would you all have agreed to it in any other way?

Mr. MacMillan: Your Honor, I object to what they might have done.

The Court: Objection sustained. It is what the facts are, not what they might have been.

By Mr. Fine:

Q. Now, since you have been with this organization so long will you tell—of course his Honor has already ruled whether they contributed anything or did not make any contribution—

The Court: There is no contention as to that. It's not in issue.

Mr. Fine: All right, very well, sir. All right.

By Mr. Fine:

page 106 } Q. Then, as I understand your testimony—if I am in error correct me—that the Board of Directors had this meeting but the stockholders never ratified it, confirmed it or approved it, or the member—

The Court: There are no stockholders.

Winston Douglas.

Mr. Fine: Well, I mean the members of that.

By Mr. Fine:
Q. Is that correct?
A. No, I am positive the members never did that.
Q. Well, now, in connection with this conveyance that was made by the Colored YMCA to the trustees, will you tell us, please, whether or not the members had ever authorized the directors to make this conveyance or the officers of this corporation to make this conveyance to the trustees to your knowledge?
A. Not to my knowledge.

Mr. Fine: Excuse me, your Honor.

Your witness.

The Court: Any questions, Mr. MacMillan?
Any questions?
Mr. MacMillan: Yes, sir, just one or two.

page 107 } CROSS EXAMINATION.

By Mr. MacMillan:
Q. You have stated. I think, that you have been related in some way to the Hunton Branch of the Colored YMCA since 1928, is that correct?
A. Well, that is correct so far as I can remember. The date, I think it was reactivated, in 1928.
Q. What was your first contact with the Y?
A. The first—? I am not sure I understand your question.
Q. Well, let me be specific: You were employed for a time by the Hunton Branch, were you not?
A. No, sir.
Q. You never were?
A. Uh-uh.
Q. Permit me to read you a portion of the minutes of the Central Y for October 18, 1928, and ask you whether or not the statements therein contained relate to you or not: ,'The general secretary submitted a report for the work among the colored people. Mr. Fine made favorable comment upon this work stating that he felt we have been fortunate in securing Mr. J. Anderson, colored, for said work.'' Do you remember Mr. Anderson?

Winston Douglas.

A. Um-huh.
page 108 } Q. What did he do?
A. He was secretary.

Q. "He asked for confirmation for the appointment of Mr. Winston Douglas to be associated among the colored people. On motion carried the appointment was confirmed." Does that relate to you?

A. Whose minutes are those?

Q. The Central YMCA.

A. I don't know the source of those minutes. I never heard of that last part. I know Mr. Anderson was secretary but as far as my being connected as an employee—

The Court: Mr. Anderson wanted permission to get his help.

By Mr. MacMillan:

Q. Did you help Mr. Anderson in anyway in 1928?

A. Yes, he was secretary, and I think when it was reorganized I was chairman and I helped him as a layman helped.

Q. So that this minute of October 28, 1928 in which the Central Y Board was confirming your appointment related to you for what assignments you were given by Mr. Anderson?

A. I imagine so.

Q. I understand that you had never seen this
page 109 } minute?
A. No.

Mr. Fine: We object and move to strike it out as self-serving. He is not a party to the minutes; he has never seen the minutes and knows nothing about it and purely self-serving.

The Court: It is probably for the purpose of showing his activity that's all.

Mr. MacMillan: We are merely asking for the facts and he has confirmed them, your Honor.

By Mr. MacMillan:

Q. So, as far back as 1928 there was a relationship between the Central Y and the Hunton Branch as to matters relating to finances, weren't there?

A. As far as 1928?

Q. '28; or do you recall?

A. It doesn't matter what I think.

Q. You don't remember, you mean?

A. I don't remember whether there was. I know it came into effect around 1935 when he started talking about it, when Mr. Bullock, who was the regional or national secretary at that time, he held some such position. He came down and recommended our affiliation with the Central

page 110 } Y. That was several years, though, after we had gone along but I don't recall that there was any definite either working relationship or any relation prior to that time.

Q. I understand. I realize that is a long time, but fortunately we have this document that will help to establish that. So that you state that the reason for the arrangements that were made in '35 was the fact that Mr. Butrick from the National YMCA—is that correct, am I recounting—

A. Ralph Bullock.

Q. Mr. Bullock?

A. "B-U-L-L-O-C-K."

Q. Mr. Bullock recommended that in order to carry on the Y work it would be advisable for you all to become affiliated or become a branch of the Central Y; is that correct?

A. I don't know whether he had said it exactly as a "branch." I imagine so; I imagine he did go that far. He thought it would be very good for us.

Mr. MacMillan: To have a branch relationship. No other questions.

The Court: You may stand down.

Who do you have next?

Mr. Fine: Mr. Diggs.

page 111 } MELVIN E. DIGGS,

called as a witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. You are Mr. Melvin E. Diggs?

A. Yes, sir.

Q. How old are you?

A. 78 years old.

Q. And your residence?

A. 725 Avenue B.

Melvin E. Diggs

Q. And your occupation?
A. I am a retired postal employee.
Q. And when were you first connected with the Colored YMCA?
A. Around about 1906 or 7.
Q. And has the Colored YMCA had any other name than that?
A. No, sir. The Hunton Branch and the Colored YMCA are one and the same.
Q. Well, now, let's go back to 1906. What name did it have in 1906?
A. The Colored YMCA.
page 112 } Q. And was it known by any other name?
A. Not to my knowledge.
Q. Well, how about the Hunton Branch?
A. That is what it was called as a kind of honorary mention of the first secretary.
Q. When did that come in, that is what I want to know.
A. I don't know when that came in at all.
Q. Can you estimate—

Mr. MacMillan: Your Honor, the witness has said he doesn't know, and now he wants him to guess.

By Mr. Fine.
Q. Give us your best judgment, please, as to what date it was.

By the Court:
Q. What year. Would you remember the year?
A. I don't.

The Court: No, he doesn't know.

By Mr. Fine:
Q. All right, sir. Now, I refer you to the year 1935. Was it known before then or after that as the Hunton Branch?
A. After that as the Hunton Branch.
Q. What's that?
page 113 } A. After.
Q. It was known as the Hunton Branch after 1935?
A. So far as I can remember.
Q. All right, sir. Now, will you tell the Court, please,

Melvin E. Diggs

whether or not you were on the board of directors of the Colored YMCA in 1935.

A. I was. I have been on the board of directors ever since I joined the YMCA after I came to Norfolk as a member and as president of the Colored YMCA.

Q. You have heard read here today before Judge Jacob the minutes of 1935 of the Board of Directors meeting, have you not?

A. Yes, sir.

Q. Have you heard them?

A. Yes, sir.

Q. I know you may not be good of hearing, but did you hear them?

A. I did.

Q. All right. I ask you whether or not there has ever been any meeting of the general membership authorizing the Board of Directors at any time to do business or have contractural relationship with the Central Y.

A. No, sir.

Q. At this particular meeting in which the attempt to have satisfactory working arrangements, and referring page 114 } specifically to Defendants' Exhibit 2, dated February 13, 1935, I ask you if at any time there ever was any writing other than in the minutes: "Committee to confer with Central Y reported that the Central Y was ready for Branch affiliation. Motion passed that the Board approve of branch relationship provided satisfactory arrangement can be made." Was anything ever spelled out what the satisfactory arrangements that were made?

A. No, sir.

Q. Then, the only thing you know about that, after that the Central Y and the Colored YMCA did business together in the interest of economy or whatever it was?

A. In the interest of economy and also to avoid some many different drives for funds in the City of Norfolk. We wanted to cooperate with the Community Fund.

Q. Did you ever, you being on the Board of Directors, ever surrender your sovereignty?

A. No, sir.

Q. Did you ever agree to irrevocably sign up and say you can't separate from us?

A. No, sir, we had not.

Mr. MacMillan: It is calling for a conclusion. He can ask him what he did, your Honor.

Melvin E. Diggs

By Mr. Fine:

page 115 } Q. Did you ever—I am reforming my question: Did you ever make any agreement with them that you would never ask for your independence?

A. No, sir, never did. We never surrendered our independence.

By the Court:

Q. What went on from 1935 until just recently in your transactions with the Central Y was satisfactory to you and the rest of the Board?

A. Yes, we didn't have any trouble.

Q. Whatever you all were doing you were satisfied with it up until lately?

A. We worked together like Christians and after that we stopped working like Christians.

By Mr. Fine:

Q. Now, I want to ask you this: Have you ever known of any by-laws that was promulgated and approved by the membership of the Colored YMCA or the Hunton Branch as to the method of operation?

A. No, sir, not until after this dispute came up. We have a set of by-laws, now.

Q. Now, I hand you Defendants' Exhibit 11 to which we have objected, and ask you if you have ever known anything at all about these papers here and whether they have ever been acted on or had any such minutes or amendments

page 116 } ever been had to this undated memorandum?

(Handed to the witness for examination.)

The Court: He has already covered that with a previous answer.

A. No, sir.

The Court: He has never known anything about it.

A. They have never been ratified by our membership, and never been submitted to them.

By Mr. Fine:

Q. Now, as probably the oldest living member of this organization now, you are asking in your prayer to this Court

Melvin E. Diggs

that this Court permit you to have an election by the membership as to whether or not you should remain with the Central Y, is that what you want this Court to do?

A. Well, first let me explain this.

Q. Go right ahead.

A. I would like to explain this. At first we do not recognize that we are a part of the Central Y. The meeting of the membership held by the majority have already given us the mandate to separate from that working agreement, and—will you repeat the rest of that question?

Q. I asked you whether you wanted his Honor to permit—

page 117 } Mr. MacMillan: I object to that. He is leading. He could ask him what he wants and he could tell him.

Mr. Fine: Well, we still have no jury. The Chancellor knows what we are talking about.

By Mr. Fine:

Q. Do you want the Court to give you the opportunity for the membership, whether they want to stay in the present arrangement or act independently?

A. The members has already decided that.

Q. Well, we appreciate that. We have asserted that in our bill and we take that position, but if the Court doesn't agree that you already have a majority, you ask for an election under the auspices of the Court; is that correct?

A. Yes, sir.

Q. And if the majority wants to continue with the Central Y you are perfectly willing to abide by that decision, is that correct?

A. Yes, I will abide by it.

Q. Well, of course you will; and that is all you want, is that right?

A. That's right. We want the right to elect our own people.

Q. All right. One other thing. Have you ever tried to let the Central Y to permit you to have a meeting of the

page 118 } members of the Colored YMCA or the Hunton Branch?

A. I joined in a petition and sent it in by a committee to the Central Y.

Q. And have you ever gotten any replies as to whether you could hold a meeting of the membership in connection with this matter?

A. A reply came back that we did not have authority. We couldn't hold a meeting.

Melvin E. Diggs

Q. Who said that; that's what the Judge is interested in. Tell us.

A. I think the Committee consisted of Mr. Young and Dr. Brooks, and Mr. Dinkins and one or two others came back with that kind of report.

Q. Who told you that?

A. That Committee consisted of Mr. Young, Dr.—

Q. Did you hear Mr. Young tell you that?

A. Yes.

Q. All right, and who else?

A. Dr. Brooks.

Q. Who?

A. Dr. Brooks of the Virginia State College.

Q. All right.

A. And Albert Dinkins.

Q. Conveyed that you could not have a meeting?

A. Yes, that we did not have authority and that page 119 } we couldn't have them.

Q. All right. Now, prior to 1935, do you know of any by-laws that the Colored YMCA had or acted on?

A. No, sir.

Q. Did you have the regulations of Roberts' Parliamentary Rules of Procedure applied to your meeting?

Mr. MacMillan: We want proof of that, your Honor. We are calling for the adoption of that or the approval.

Mr. Fine: I am going to prove it.

By Mr. Fine:

Q. Now, you have been a member since 1906?

A. Somewhere along there.

Q. Somewhere along that time. And how often did you attend meetings since 1906 to 1935? I don't mean exactly, but approximately how often?

A. I attended, I suppose, about 80 per cent of the meetings except during the times I was working in the Post Office.

Q. And during your presence at these meetings were you an officer of this association?

A. Yes.

Q. What office or offices did you hold?

A. I held office of president, chairman of the finance committee, and also chairman of the religious com- page 120 } mittee.

Q. And I ask you to tell Judge Jacob, please, under what rules or procedure, if any, did you conduct your meetings.

Melvin E. Diggs

A. Just the ordinary Roberts' Rule of Order.

Q. Is there any question about it that you had any other procedure other than Roberts' Rule of Order?

A. No, sir.

Q. And to your knowledge, from 1906 to 1935—

A. Yes, sir.

By the Court:

Q. Did you ever have any in your possession or have anything to do with any by-laws from 1906 to—until now?

A. No, sir.

Q. Then your group has never adopted any?

A. We didn't need any.

By Mr. Fine:

Q. You conformed to Roberts' Rule of Order as to that?

A. And our best knowledge of YMCA practices.

Q. And that is as prescribed by the National Council that has been introduced and marked by his Honor?

A. Yes, sir.

Mr. Fine: Your witness.

page 121 } CROSS EXAMINATION.

By Mr. MacMillan:

Q. Mr. Diggs, Mr. Fine was asking you about the minutes of February 13 where it stated the Committee to confer with Central Y reported that the Central Y was ready for Branch affiliation, and you stated that to your knowledge that was never satisfactorily worked out?

A. Yes, sir.

Q. You can examine this document. You did not attend that meeting so that what occurred at that meeting would have been beyond your knowledge.

(Handed to the witness for examination).

Mr. Fine: Let me see that, Mr.—

(Shown to opposing counsel for examination).

A. What did you ask me?

Melvin E. Diggs

By Mr. MacMillan:
Q. I say, you were not at that meeting?
A. It says I am not there.
Q. That's right. I say the minutes do not disclose that you were there; and, of course, you are not going to tell the Court whether you remember you were there or not some 28 years ago—23 years ago.

page 122 } Mr. Fine: I object to that, if your Honor please, because the witness has not contradicted the statement. He says there never has been anything spelled out on the satisfactory arrangement and there is no written evidence of it and I submit that the question is not proper.
The Court: He was examining the witness about whether he was there or not.

By Mr. MacMillan:
Q. Now, as to the Colored YMCA, let's think about that for a minute. Have you ever seen any constitutional by-laws of that body or can you provide it?
A. What, of—
Q. The Colored YMCA?

The Court: The original organization.

By Mr. MacMillan:
Q. The Colored YMCA.
A. That was operating when I came to Norfolk?
Q. In other words you have never seen any by-laws?

The Court: He has already said he has never seen any.
Mr. Mac Millan: He doesn't know.

A. I understood—wait a minute. I understand the Colored YMCA is a corporate body chartered by the State of—

page 123 } Q. No doubt about that; there is no doubt about that. Do you recall the Colored YMCA prior to 1935 making any annual report to the State of Virginia or paying any taxes required by the State?

Mr. Fine: We object. There is no taxes under the laws of Virginia for charitable institutions.
The Court: But I think you have to make a report to name your officers or whether they are stock or non-stockholders.

Melvin E. Diggs

By Mr. MacMillan:
Q. Do you know of any such—?
A. Do you belong to the Central Y?
Q. I ask the questions, Mr. Diggs.

The Court: No, you can't do that.

By Mr. MacMillan:
Q. You have to answer the questions.
A. That part of the work of the YMCA wasn't in my jurisdiction.

The Court: All right, you don't know anything about it.

By Mr. MacMillan:
Q. You don't know anything about that. Do you recall any meeting of the membership of the Colored YMCA as a corporate entity since 1935? And where they met
page 124 } as a Colored YMCA, and elected to vote for officers and certified to the State that those officers had been elected?

Mr. Fine: If your Honor please, we object to it on the grounds it is self-evident in this case. Since 1952, the City of Norfolk conveyed to the corporation this property—
Mr. MacMillan: Mr. Fine, I asked him if he can tell me when such a meeting was held.
Mr. Fine: All right, I will withdraw my objection.
The Court: He has definitely made it clear to the Court—I don't know whether he has made it clear to you—but he doesn't know anything about any by-laws of any corporation except he said that legal entity was granted by the State of Virginia. That's the end of it.
Mr. MacMillan: All right, sir, I will depart from that.

By Mr. MacMillan:
Q. Now, Mr. Diggs, let's talk about these by-laws. You said that you did not know whether they were adopted. Have you ever seen them before?

(Shown to the witness for examination).

A. I don't think I have ever seen them before.
Q. Have you ever taken the position in the meetings that

those by-laws govern? Do you recall a certain meeting on December 10th—

Mr. Fine: Excuse me, December 12th. Won't you identify it when you speak of the "by-laws" to his Honor as Defendants' Exhibit?

Mr. MacMillan: I certainly will.

By Mr. MacMillan:

Q. You say you have never seen that before; you never heard of that before?

A. I don't remember.

Q. You don't remember a thing about it?

A. Uh-huh.

Q. Never heard it discussed?

A. I just don't remember.

Q. I ask you whether or not on December 12th, 1957 you didn't take the position that Mr. Christopher had been illegally discharged by less than two-thirds vote, as required?

A. That is the first time I saw that.

Q. I say, you argued that those by-laws prevailed and that Mr. Christopher was wrongfully discharged.

A. Yes, sir, I did.

page 126 } Mr. MacMillan: Yes, sir. All right, sir, come down.

The Court: You may step down. Who do you have, Mr. Fine?

Mr. Fine: Mr. Foreman.

W. W. FOREMAN,

called as a witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:

Q. You are Mr. W. W. Foreman?

A. That is correct.

Q. And how old are you?

page 127 } A. I am 73 years old.

Q. And where do you live?

A. 1323 Anne Street, Norfolk, Virginia.

Q. And you are a member of the Virginia bar?

A. That's right.

W. W. Foreman.

Q. And practicing attorney in the City of Norfolk?
A. (Witness nodded head).
Q. How long have you been a member of the Virginia bar?
A. About 38 years.
Q. And how long have you been connected with the Colored YMCA?
A. 46 years last March; this month. March.
Q. That would put it in 1912?
A. 1912.
Q. Is that right; and since 1912, have you been actively connected with the Colored YMCA?
A. I have.
Q. And what office have you held with that organization prior to 1935?
A. None whatever prior to 1935.
Q. And during 1935, did you attend many of the meetings?
A. I attended pretty regularly ever since I have been a member.

page 128 } Q. And state whether or not to your knowledge there have ever been any by-laws of the Colored YMCA?
A. No, no, I don't know of any by-laws.
Q. State whether or not you know of any parliamentary rules that were observed there.
A. We usually followed the Roberts' Rule of Order.
Q. Do you know of it to be a fact?
A. Actually, on several meetings where we would have debates we would always produce it.
Q. To settle it?
A. Yes, sir.
Q. Do you have a book of Roberts' Rules of Order handy for that purpose?
A. That's right. He was the secretary when I went in.
Q. Now, subsequent to 1935 have you been active with the organization?
A. I have.
Q. After that?
A. Yes.
Q. Have you held office since that time?
A. I was active in '35 but I worked in the office.
Q. When was the first time that you were on the committee of the organization?
A. Oh, about 15 years ago, I suppose.

page 129 } Q. And are you familiar with the transactions in connection with the arrangements with the Central Y?

W. W. Foreman.

A. No more than what I have seen of the minutes.

Q. And are you familiar with the minutes; have you examined them?

A. I have examined them very carefully.

Q. Have you examined your minutes as well as the minutes that were able to be present by the Central Y?

A. Yes.

Q. Tell the Court, please, as an attorney and also as a member, whether or not there has ever been any arrangement spelled out in writing as to what is shown in the minutes of February the 13th?

The Court: That is all unnecessary. No one has contended at all that these are signed; agreed on or signed.

Mr. Fine: That's right, Judge.

By Mr. Fine:

Q. All right, sir. Now, during that period of time now will you tell us, please, how the operation were had between the Central Y and the Hunton Branch, Colored YMCA?

A. Through our Committee of Management; the membership had been ignored practically altogether. I might say this: Of course, this incident regarding Mr. Christopher—

Q. I am not interested in that.

page 130 } A. But I am trying to explain what you just asked me. I am trying to say this: That that simply brought forth what had been an undercurrent for many years; complaints about the membership, about no participation in the affairs. They were called on once a year to renew their membership and subscription but they never could sort out as to who they represented.

By the Court:

Q. Were you one of the managers at one time?

A. No, I never was.

Q. How were the colored members' managers appointed?

A. They appointed themselves. They mailed out ballots to a few.

Q. They were elected by the membership

A. That is what they said but the membership was not satisfied, and therefore they asked for regular meetings so that they could express their will freely on that point, but they were never given that opportunity. We did all we could do. We complained and asked for a meeting until finally this thing burst and they decided to have a meeting. The members got together and had it.

W. W. Foreman.

By Mr. Fine:

Q. You mean to tell Judge Jacob that you never did have an open ballot at a meeting but it was done only by mail?

page 131 } A. That's right.

Q. Never had a balloting in the place at all?

By the Court:

Q. Who handled the ballots that came in, the secretary?

A. The Committee of Management, year after year.

Q. Well, it came to the building and the secretary received, them didn't he?

A. Nope, they went—

Q. Who would get them?

A. It went to the Committee of Management.

Q. You mailed your ballots to the Committee of Management? How did you address it?

A. It was addressed to the Committee.

Q. To the Committee?

A. No, ours came separate. I don't recall just how they were—

Q. All they did was put in the envelope and drop it in the mailbox?

By Mr. Fine:

Q. It was put in a self-addressed envelope?

A. Yes, sir.

Q. Do you know who the tellers were that were checking up on the votes?

A. Nope; nope.

page 132 } Q. Do you know of any by-laws or rules permitting them to have that, such regulations as that?

A. I do not.

Q. Have you ever seen any by-laws permitting that or any kind of that sort?

A. Nope.

Q. Have you ever known the Committee of Management to have by-laws approved by the Hunton Branch or the Colored YMCA?

A. I do not know that.

Q. Well, now, you say you don't. I mean what I am asking you is have you seen or looked?

A. I would have seen them, yes, sir.

Q. Are there any?

W. W. Foreman.

A. No.
Q. Have you diligently looked for them?
A. I looked very carefully.
Q. Now, I want to ask you, please, to tell the Court whether or not the request has been made for a meeting of the Central Y over the Committee of Management by the membership, and what their reply was.
A. They told us they went—

By the Court:
Q. Who are "they?"
A. The Committee of Management.

page 133 } By Mr. Fine:
Q. I know, but tell us who they were.
A. Mr. Young, and Dr. Brooks, and several of them, about 35. I can't—but there were several of them who are here; Mr. Dinkins—
Q. And are they the members that you named as defendants on the Bill of Complaint?
A. That's right.
Q. And you are one of the parties that signed the Bill of Complaint in this case?
A. I am; that's right.
Q. And they refused to let you all have a membership meeting?
A. Yes, they said what we were doing was illegal. So, I called on Mr. Ober to advise me.
Q. Did you ask Mr. Ober, the president of the Central Y, about it? This gentleman here (indicating)?
A. Yes, I did.
Q. All right, tell us what he told you.
A. Mr. Ober told me that there was some complicated method that you have to do it by: but he would always make us go back to the Committee of Management; that we have to go through the Committee of Management to get the meeting, and we just went round and round in a circle, so the members became indignant and decided they were going to have a meeting and turned out a petition, and
page 134 } after we got 35 or 40 names, why, they called a meeting on the strength of that.
Q. Now, as a member of the *bard* and as a member of this Association, will you tell his Honor what relief you want in this thing if he will grant it to you.

W. W. Foreman.

Mr. MacMillan: I object to it. They filed a sworn petition of what they want.

The Court: You can't enlarge on your Bill by testimony.

Mr. Fine: Yes, sir.

The Court: Your Bill stands for itself and he is a party to it.

Mr. Fine: Very well. It is not necessary.

The Court: He asked for all he can get, according to this Bill.

Mr. Fine: Very well.

The Court: So, you can't add anything to it.

Mr. Fine: Very well, sir.

By Mr. Fine:

Q. I hand you Defendants' Exhibit 11, and ask you in your membership and association with the Colored YMCA and the examination of the corporate records, have you ever found anything like that in there?

page 135 } (Shown to the witness for examination).

A. Not that I recall, no, never.

Q. And how long and how often have you searched for by-laws there?

A. Oh. I have diligently searched for the last six months, when this thing broke. I was amazed to find they did not have any constitution or by laws, and, of course, I found this charter. But I never did find any by-laws or constitution and all. They said they had been following Roberts' Rule of Order but there was nothing written out as a rule or guide of the organization.

Q. Now, as a lawyer and as a member, I refer you to Defendants' Exhibit 2, but the Court, I think, has already been satisfied there was no spelling out of a working agreement. I will not pursue that. Your witness.

CROSS EXAMINATION.

By Mr. MacMillan:

Q. Mr. Foreman, you stated that you examined the records of the Hunton Branch of the YMCA to see if those minutes had ever been adopted; is that correct?

A. That's right.

Q. Did you find any minutes from '36 to '54?

page 136 } A. Yes, I—'54?

Q. Yes, sir.

A. I don't know about '54. I found something in '35 and '36.

Q. Did you find any from '35 to '54?

A. To be frank, I was interested to find out about this '38. That was the thing since I was told it happened in '35, I examined the records from there up to several years and I found no others other than that they operated with the Central Y as long as satisfactory working arrangements were maintained.

Q. Where did you find that statement?

A. In those minutes.

Q. The same ones that have been presented here this morning?

A. Yes.

Q. Of course, they do not contain that statement, you understand, Mr. Foreman?

A. No, but that is what they said, to affiliate if satisfactory arrangement could be arrived at.

Q. All right, sir. I will ask my question again: Did you find any minutes for the period from 1936 to 1954?

A. (Pause) Find what?

Q. Of the Hunton Branch YMCA?

A. I don't know if I have gone as far as '54.

page 137 } Q. Did you peruse as far as '37?

A. I may have; maybe so. Yes, I am sure I did.

Q. Did you peruse as far as '38?

A. Maybe so.

Q. Peruse as far as '40?

A. I doubt it.

Q. But you did go from '37 to '38; you definitely remember that?

A. I sought for something that was spelled out just what the relationship was to be and after going so far I did not go any further because I found—

Q. We have established that those minutes were in 1935 and the first three months of '36; and I just finished asking you year by year and you said that you did.

A. Well, I found this—

Q. Wait a second, Mr. Foreman, let me ask the question. Now, it is very simple: Did you find any minutes for the years 1936 to 1954?

A. I tell you, I don't think I went as far as 1954. I will tell you what I did find—

Q. Wait a second, I am not asking you what you found. I am asking what—

W. W. Foreman.

A. Well, I am speaking of what I found in '35.
Q. Wait, I am asking for the year '36; all of '36.
A. I don't remember exactly.
page 138 } Q. Did you find any for the year '37?
A. I found for '35 and '36.
Q. Did you find any for '37?
A. Maybe so. I didn't care too much about it.
Q. So, you don't know whether there were any or not?
A. I was looking for certain information. I wasn't concerned so much about the year but I did find in '35, as my based to begin because that is when the affiliation was made, and if you want me to, I will tell you what I found.
Q. I am not interested in what you found just yet. Did you examine all the documents but those two?
A. I don't think so.
Q. That's all? You didn't examine any but those two?
A. I don't think so.
Q. Well, the reason I mention that is because these minutes that are in these two volumes cover the period from March '36; they skip from March '36, to 1954. You didn't examine from '36 to '54, the minutes?
A. I examined the minutes for '35, and I found—
Q. I am not asking you what you found, Mr. Foreman. You did examine for those years because no one could find those minutes, isn't that correct?
A. That's right.
page 139 } Q. Do you know where those minutes are?
A. I do not.
Q. Now, we had a proceeding in pre-trial to find those minutes, and they have not been found, isn't that correct? But you are not familiar with that.
A. No.
Q. Do you know of anyone that's got these minutes, other than these two sets of minutes?
A. I do not.
Q. And so, if there are no other minutes and you have never seen any other minutes; you only examined those years?
A. That's right.
Q. So there is a period from '37 to '54 when these by-laws could have been adopted and you wouldn't have known whether they had been or not, based on your examination of the minutes?
A. That's right.

W. W. Foreman.

Mr. MacMillan: No other questions.

The Court: All right, do you want someone to help him? Who do you have, Mr. Fine?

Mr. Fine: Mr—

Mr. MacMillan: I beg your pardon, I did have
page 140 } one question. He can stand right there and answer it.

By Mr. MacMillan:

Q. Mr. Foreman, in the minutes that Mr. Fine read this morning for October 28, 1957, it states: "The report of the committee of fundings was called for, which was masterfully given by its chairman, Attorney W. W. Foreman who made it clear that our original charter is dated November 10, 1888, and that we have a constitution and by-laws and that the deed of our property is dated 5/31/52 * * *" Where is the constitution and by-laws that is referred to here in the minutes?

A. Read that again.

Q. (Reading) It reads that the charter was granted on November 10, 1888 and that we have a constitution and by-laws. Where is that constitution and by-laws?

A. It's in the exhibit there. It is an exhibit in our pleadings there.

Q. In the pleadings?

A. Yes.

Q. You mean that was adopted in December?

A. That's right.

Q. You understand that was October 28 meeting, so how could you have had a constitution and by-laws that you did not adopt till December?

A. Read that again.

page 141 } The Court: That speaks for itself.

By Mr. MacMillan:

Q. In other words you don't know of any constitution or by-laws other than the one of December?

A. I told you I sought for it in vain and I couldn't find any.

Q. But the minutes recite that you announced that you had them?

The Court: That speaks for itself.

S. H. Bell.

By Mr. MacMillan:
Q. You don't recall any constitution or by-laws other than the one adopted in December, 1957?
A. That is the only one I know.

The Court: Who do you have?
Mr. MacMillan: All right.

S. H. BELL,
page 142 } called as a witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fine:
Q. You are Mr. S. H. Bell?
A. Yes, sir.
Q. Would you state your age, residence and occupation?
A. 53 years old, 94 Mapole Avenue, Norfolk, Virginia, insurance executive.
Q And what is your connection with the Southern Aide Life Insurance Company, here?
A. I am district manager and member of the board of directors.
Q. And how long have you been affiliated with the Colored YMCA?
A. I think about 22 years.
Q. Then that would put you out of the '35 class, would it or would it not?
A. It would be within the '35 class because I remember trying to get this relationship between the two organizations.
page 143 } Q. I ask you whether or not these meetings of February 13, 1935, and the other meetings, whether they were meetings of the Board of Directors; do you know?
A. Meetings of the Board of Directors?
Q. Yes.

(Handed to the witness for examination).

A. Oh, yes, I was looking at the names so I could recognize it. Yes, they were. I was a member at that time, and also on the board.

S. H. Bell.

Q. All right. Now, I ask you, and of course there was no spelling out of just what those "satisfactory arrangements" would be?

A. I have always understood that after much discussion about the relationship with the institutions that we agreed to go along with the promise as long as they remained satisfactory.

Q. Did you ever have any understanding with them that you could not withdraw?

A. We never did have an understanding to that effect.

Q. All right, sir. Now, I ask you whether or not you had made or whether or not they had made a request to hold a general membership meeting?

A. Yes, we did make a request.

Q. I am speaking in 1957.

A. We made a request through our committee.

page 144 } Q. You did.

A. To Mr. West, to hold a general membership meeting.

Q. And was that denied?

A. In both instances it was denied.

Mr. Fine: Your witness.

CROSS EXAMINATION.

By Mr. Ashe:

Q. Now, Mr. Bell, how long did you serve on the Committee of Management?

A. Approximately 22 years or more. I came to the City of Norfolk in 1928. Shortly thereafter I was elected a member of the Committee of Management.

Q. You said you understood the working arrangement was—

A. Satisfactory as long as it was agreeable between the two groups.

Q. And this was in '35?

A. This was in '35.

Q. Did you attend the meeting that was held to agree or disagree on this arrangement?

A. I can't remember that, Mr. Ashe, but I can

page 145 } say this: that there were those among us who bitterly agreed to the arrangement, and it was always brought out that the property belonged to the Colored YMCA and that we would not convey the property at that

S. H. Bell.

time. We wanted the property to always remain in the name of the Colored YMCA.

Now, that was the general talk among the members.

Q. And I think you said you never had an understanding of withdrawal?

A. I beg your pardon?

Q. You never had an understanding of withdrawal from the Central Y?

A. In the original proposition, when we did agree. it was agreed upon we would go along with the working arrangement as long as they remained agreeable.

Q. Who were to remain agreeable?

A. The trustees.

Q. The trustees?

A. The trustees of the two organizations.

Q. And the trustees were appointed by whom?

A. Appointed by whom?

Q. Yes?

A. Appointed by the Board of Directors.

Q. You mean the Committee of Management?

A. Well, at that time, I think we were referred
page 146 } to as the Board of Directors until after we co-
operated with the Central Y, and then we were termed the Committee of Management, not the Board of Directors.

Q. Well, did you have a president?

A. Yes, we had a president.

Q. After your agreement?

A. We called him the chairman.

Q. And what were you known as after that time?

A. The Committee of Management.

Q. Was the organization known as the Colored YMCA?

A. It was known as the Hunton Branch of the Colored YMCA.

Q. Did the Colored YMCA have any meetings or make any reports to the State Corporation Commission during the time you were there?

A. As far as I know, no.

Q. And you were there prior to this agreement?

A. Yes, sir.

Q. And had there been any made since the agreement?

A. None as I know of.

Q. You have stated that you asked for a membership meeting and you were refused.

Frank Perry Wise.

A. That's right.

Q. Who refused you?

page 147 } A. The president at that time; the president of the Board of Management.

Q. The president of the Board of Management?

A. At that time Mr. West was chairman.

Q. Have you ever had, during your time associated with the Hunton Branch, ever had a membership meeting?

A. Have we ever had a membership meeting?

Q. Yes, have you ever had a membership meeting?

A. Not to my knowledge, other than to raise funds.

Q. Did you ever have an annual meeting?

A. No, other than to raise funds, there were no other meetings of the immediate membership.

Q. By the membership?

A. No.

Q. And were you a member of the Board of Management?

A. Yes, sir.

Q. During that time?

A. Yes, sir.

Q. Were any provisions made to call a membership meeting?

A. Not that I know of. There was no way to call a membership meeting other than to raise funds.

Q. There was no way to call a membership meeting while you were a member of the Board of Management?

A. No, sir; there was no way.

page 148 } Q. Did you do anything to help change that?

A. It wasn't necessary for me to do anything to change it.

Q. You were a member of the board of directors; then the Board of Management, and operated in '57 the same way they operated when you were on the Board of Management, did they not?

A. Yes, sir, they did.

Mr. Ashe: I think that is all.

The Court: Stand down.

Mr. Fine: Reverend Wise.

FRANK PERRY WISE,

called as a witness on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

Frank Perry Wise.

page 149 } DIRECT EXAMINATION.

By Mr. Fine:

Q. State your full name, Reverend.

A. Frank Perry Wise.

Q. Your age, your residence and occupation.

A. 42.

Q. And where do you live?

A. 2716 Virginia Beach Boulevard.

Q. And you are a pastor in charge of what denomination?

A. The Baptist church.

Q. And how long have you been ordained?

A. 25 years.

Q. And what school are you a graduate?

A. Virginia Union University.

Q. Now, Reverend, state whether or not to your knowledge request has been made from time to time beginning as late as 1957 of a membership meeting of the Board of Management or the Committee of Management. Do you know whether they have been requested of that?

A. Yes, there was.

Q. And were you ever able to have a general membership meeting?

A. They had one. They were able to have one.

page 150 } Q. When was that?

A. In 1950—

Q. You mean the one that has just been held?

A. Yes, sir.

Q. But prior to that have you ever been able to hold a general membership meeting?

A. No.

Mr. Fine: That's all.

CROSS EXAMINATION.

By Mr. Ashe:

Q. Reverend Wise, how long have you been associated with the YMCA?

A. About 19½ years.

Q. Is that the Hunton Branch of the YMCA?

A. The Hunton Branch; yes, that is what they called it.

Q. That is what your card said, didn't it?

A. Yes, sir.

Q. Did you ever request a meeting prior to 1956?

Frank Perry Wise.

A. Request a meeting prior—
Q. Of the membership?
A. No, not to my knowledge.
page 151 } Q. Well, now, how do you know whether you could or you couldn't have had it?
A. Well, now, I don't know that.
Q. You don't know, but I believe you stated you have been denied a meeting in '57?
A. Yes, 1957.
Q. Who denied that membership meeting?
A. Well, it was denied by the Committee of Management.
Q. Were you a member of the Committee of Management?
A. No.
Q. What were you a member of?
A. Of the YMCA.
Q. Were you a member of any group at that time within the YMCA membership?
A. Prior to which date now?
Q. Say between September and December of '57?
A. No.
Q. Did you ask for a meeting?
A. In '57?
Q. Yes.
A. Yes.
Q. Why?
A. Well, because the membership felt that they should have a meeting and therefore they requested it.
page 152 } Q. Why did they request a meeting?
A. Why did they request it?
Q. Yes?
A. Well, because there were certain privileges that had been denied them, no doubt, and they wanted to meet.
Q. Were you a membr of any group that petitioned the Central Y to have a meeting?
A. Other than just the YMCA at that time.
Q. No, my question was: were you a member of any group that petitioned the Central YMCA to hold a membership meeting.
A. I was a member of the YMCA proper at that time.
Q. Were you a member of the group within the Y then that petitioned the Central Y for a meeting?
A. I was a member of the YMCA at that time when they petitioned the membership as a member of the Y.
Q. Well, now, did you petition the Central Y to call—

Frank Perry Wise.

A. Well, I was a part of this membership and I petitioned along with them.

Q. That's what I wanted to know. I had a long time getting it out of you. Why did you not petition the Committee of Management?

A. The Committee of Management was peti-
page 153 } tioned. They were asked.

Q. And did your membership group have any knowledge of the Committee of Management declaring that they desired to have a thirty-day cooling off period.

A. That was brought in to the membership meeting.

Q. It was brought in?

A. Yes, sir.

Q. Is this the same Committee of Management that was petitioned?

A. Yes.

Q. And what happened to that resolution that stated that they wanted to remain in a cooling off period for thirty days?

A. I beg your pardon?

Q. What happened to the resolution that was drafted by the Committee of Management which stated that they wanted a thirty-day cooling off period?

A. Oh, what happened?

Q. When it came into the membership, the so-called membership meeting?

A. Oh, it was brought to the membership meetng; it was brought there.

Q. Was it ignored or rejected or accepted?

A. No, no, it was put into the records of that membership meeting.

page 154 } Q. But did the membership reject or accept it?

A. They accepted as it was read. I mean there was an attempt to have it read but they did not accept the reading of it, but it was placed in the records of that meeting that night.

Q. And this was the recognized Committee of Management that sent it in?

A. The recognized—?

Q. The one that was elected?

A. Yes, no doubt.

Q. Well, then, after that resolution was read and accepted and put into the minutes what did the so-called membership—

Frank Perry Wise.

A. Now, understand I didn't say that it was read in that meeting. It wasn't read, it was accepted.

Q. Why wasn't it read in the meeting?

A. Hum?

Q. Why was it not read in the meeting?

A. Well, they felt that it was out of order, no doubt.

Q. You were there?

A. Yes.

Q. What happened to it?

A. Well, because the chair was sustained in its ruling, according to the membership, they felt like that page 155 } one time they invited the Committee of Management to meet with them and they refused them, and at this time, when this resolution came in it was only put into the record and it wasn't brought up again in that meeting.

Q. Now, did you know what was in that resolution?

A. Oh, no, no.

Q. Did anybody?

A. I don't know who knew.

Q. In other words that meeting completely ignored whatever the Committee of Management had to offer?

A. No, they didn't ignore them because they accepted the resolution as it was brought in. They accepted it and put it into the record.

Q. Well, we won't pull hairs, but you know what I mean. It was brought in and presented and put on the table and made note that it was accepted; is that what you mean?

A. It was brought in.

Q. At the time this resolution was brought in did the people at the meeting know what was brought into the meeting?

A. Did they know?

Q. Yes?

A. No, they didn't know except when Mr. Young said he had a resolution that he would like to read.

page 156 } Q. Yes?

A. And it was left with the membership, no *dobut,* to know whether or not they wanted to accept it or wanted to hear it.

By the Court:

Q. The membership approved it, is that right?

A. They approved it.

Q. The resolution?

Frank Perry Wise.

A. No, the membership did not approve it.

By Mr. Ashe:

Q. Then they did not know what was in it because it wasn't read?

A. No, it was not read.

The Court: Stand down. Who do you have next?

Mr. Fine: We rest, may it please the Court.

The Court: Recess for five minutes.

(The Court recessed at 3:30 P. M. At 3:35, the Court resumed the trial and the following occurred):

page 157 } Mr. MacMillan: Under the evidence that has been developed that the complainant has failed to sustain his complaint wherein he alleges that the complainants are the lawful board.

At best the evidence merely discloses that there was a resolution without authority to attempt to break the relationship that existed by way of a branch relationship.

Their own evidence, your Honor, establishes the relationship. The by-laws are here which I will read briefly to show your Honor what evidence governs the existence of that relationship:

It says that "the name of the Branch Association shall be the 'Hunton Branch of the Young Men's Christian Association of Norfolk, Virginia.'

"This Branch is established to carry out the objects of the Association for colored men and boys.

"The management and work of this Branch shall be in conformity to the Constitution and By-laws of the Central Association and to the General Rules of the

page 158 } Branch.

"The Committee of Management of this Branch, appointed in accordance with the By-laws of the Association, shall be responsible for the program and administration of the Branch, subject to the Board of Directors and to the general policies and rules of the Association." That is the Board of Directors of the Central YMCA, your Honor, and to the "general policies and rules of the Association."

And so that it goes on to provide means by which a person can become a member and provide means by which meetings can be held by the Committee of Management. And pro-

vides how the Committee of Management shall set up and elect, and says what their authority is from the standpoint of the management of the Branch.

It states that: "All moneys received for the account of this Branch shall be paid over to the Treasurer of the Central Association as prescribed by the Board of Directors. No moneys shall be expended except as drawn

page 159 } through the Treasurer of the Central Association by the Chairman of the Finance Committee of the Branch, or the official designated by that Committee or the Committee of Management."

The next articles provide for what the Committee shall set up to operate the Branch.

The Court: What does it provide as to how a branch could leave the parent association, if possible?

Mr. MacMillan: The Constitution of the Central Association provides that the Central Y shall recreate and dissolve branches. A membership cannot of its own motion dissolve.

I think, your Honor, that probably closer to this situation is that the evidence is clear that a minority among the branch members desired to change the by-laws in order that they could have a meeting that they said they wanted.

The Court: You may suspend.

All right, Mr. Fine.

Mr. Fine: If your Honor please, based on my friend's motion, all the evidence in this case, sir, discloses that there were no by-laws. There wasn't any *confimration*

page 160 } of the Board of Directors in it, and we move you, sir, to strike out of the allegations of the Bill of Complaint filed by the Complainants in this case as a matter of law, sir; and based on this: (Citing *Miller* v. *Union of United Brewery,* 187 Va. 889; *Colonial Investment Company against Cherrydale Cement Block Company,* 194 Va. 454; *Jones* v. *Rhea,* 130 Va. 345; *Elliott's Knob Iron, Steel and Coal Company* v. *State Corporation Commission,* 123 Va., 63.)

So, they cannot have a merger as contended here by a working agreement.

Mr. MacMillan: Your Honor, I can't sit here and not say we have not contended that.

The Court: All this argument has no place at this point.

Mr. Fine: On this point, if your Honor please, I submit to you, sir, that I am asking for the Court to strike out their Bill of Complaint.

The Court: The Court's view of the case is simply this:

page 161 } That in 1935, an organization prior to that date had obtained a charter in the name of the Colored YMCA.

Subsequently, in 1935, it became known as the Hunton Branch, YMCA. So, the original organization ceased to exist in 1935, because the testimony here, or the evidence here, documentary evidence, shows that the management met with the Central Y and petitioned to become a child of that parent. That's all.

Now, for 23 years they operated as the Hunton Branch, YMCA with such rights as members might acquire by their membership card each year, but they certainly acquisced for 23 years, a quarter of a century, in the branch business, and the Court holds now that it is still a branch of the Central Y and for that reason the relief asked for in the Bill of Complaint is denied.

The City's petition here, intervening petition for the correction of the deed, the City ordinance that is set out here in the petition did not authorize the City of Nor-
page 162 } folk or through its officers to execute any deed to any property to the Colored YMCA. It cannot rise before the ordinance. The ordinance was necessary before a deed could be executed and delivered.

And the ordinance the Court reads, and if I am in error I will be corrected, directed and authorized the conveyance to the Hunton Branch of the YMCA or someone designated. No one was designated, therefore, the Hunton Branch, that the trustees for the Hunton Branch shall have the deed to this property, and to that extent the Court directs the City to execute a deed in accordance with its ordinance.

These causes have been consolidated and I take it that one decree will be sufficient to take care of both cases.

The Court is adjourned.

Mr. Fine: We note an exception, if your Honor please.

The Court: That is not necessary in a chancery suit but let the record show it.

(The Court adjourned at 3:55 o'clock P. M).

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded	1
Record	2
Final Decree—April 1, 1958	2
Notice of Appeal and Assignments of Error	6
Witnesses:	
Eugene West	7
Ernie C. Walton	29
Horace G. Christopher	42
Winston Douglas	49
Melvin E. Diggs	56
W. W. Foreman	65
S. H. Bell	74
Frank Perry Wise	77
Proceedings	82

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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