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Supreme Court of Appeals
Richmond, Va.

Record No. 4991

In the Supreme Court of Appeals of Virginia at Richmond

VINCENT W. BRADLEY, TRUSTEE, ET AL.

v.

MILTON E. CANTER, ET AL.

FROM THE CIRCUIT COURT OF NORTHUMBERLAND COUNTY

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. 4991

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 23rd day of January, 1959.

VINCENT W. BRADLEY, TRUSTEE, ET AL., Appellants,

against

MILTON E. CANTER, ET AL., Appellees.

From the Circuit Court of Northumberland County

Upon the petition of Vincent W. Bradley, Trustee, Lloyd E. Turner, Trustee, and Lloyd R. Turner an appeal is awarded them from a decree entered by the Circuit Court of Northumberland County on the 25th day of August, 1958, in a certain chancery cause then therein depending wherein Milton E. Canter, and another were plaintiffs and the petitioners 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 one thousand dollars, with condition as the law directs.

RECORD

* * * * *

page 2 }

* * * * *

Filed in the Clerk's Office the 28 day of January, 1958.

Teste:

EMELINE A. HALL, Clerk.

BILL OF COMPLAINT.

To the Honorable Daniel Weymouth, Judge of said Court:

Your complainants, Milton E. Canter and Louis Urow, respectfully represent unto this Honorable Court as follows:

(1) That the defendants, Lloyd E. Turner and Vincent W. Bradley, are trustees in a certain deed of trust dated September 28, 1951, given by Blundon Investment Corporation on property known as Burgess Farm to secure the payment of a certain note of even date, and payable to Anna Howard in the amount of $5,000.00. Said deed of trust is recorded in the Clerk's Office of Northumberland County, Virginia, in Deed Book 93 at page 30, a copy of which is filed in the court papers of this cause and marked Exhibit "A."

(2) That the defendant, Lloyd R. Turner, is the present holder of the said Anna Howard note for $5,000.00, dated September 28, 1951.

(3) That your complainants, Milton E. Canter and Louis Urow, are the beneficiaries under a certain deed of trust dated March 29, 1954, given by the Blundon Investment Corporation to Ralph A. Cusick and John James Bernard,
page 3 } Trustees, on the said property known as Burgess Farm, to secure the payment of a certain note of even date in the amount of $15,000.00 payable to your complainants, Milton E. Canter and Louis Urow, said deed of trust is recorded in the Clerk's Office of Northumberland County, Virginia, in Deed Book 99 at page 191, a copy of which is filed in the Court papers of this cause and marked Exhibit "B."

(4) That your complainants have had the said $15,000.00 note reduced to judgment, recorded in the Clerk's Office of

missal of action," in the amount of $2,500.00, are unwarranted and unlawful.

f. Attorneys' fees "on a receivership suit" in the United States District Court for the District of Columbia, in the amount of $2,000.00, are unwarranted and unlawful.

g. The trustees' commission of $1,250.00 on the foreclosure sale was improperly and unlawfully computed. The commission of 5% was figured on the entire purchase price of $25,000.00.

(10) That the aforementioned excessive, unwarranted, and unlawful proposed disbursements would serve to diminish the credit to which your complainants are entitled to-
page 5 } ward satisfaction of the obligation secured by their second trust upon said property, which obligation the proceeds of the aforementioned sale are insufficient to meet in its entirety.

(11) That if settlement is made on January 29, 1958, as proposed in the said accounting by the said trustees, Lloyd E. Turner and Vincent W. Bradley, it is believed by your complainants that the said trustees would make immediate disbursement in accordance with the proposed accounting.

(12) That your complainants are willing to pay into Court $13,041.14, which, with the deposit of $1,250.00, will total $14,-291.14, to cover the full amount demanded by the said trustees.

(13) That your complainants are without an adequate remedy at law, inasmuch as many suits would be required to recover any disbursements later found to be excessive, unwarranted or unlawful and it is believed that, in many cases, if judgments were rendered against the distributees for the excessive, unwarranted or unlawful disbursements, the said judgments would be uncollectable, and thus your complainants would suffer irremediable loss.

Wherefore, your complainants pray that the defendants, Lloyd E. Turner and Vincent W. Bradley, Trustees, and Lloyd R. Turner, be required to make a complete accounting and to justify all claims made by them in connection with the said foreclosure in connection with the said $5,000.00 note; that an injunction *pendente lite* issue enjoining the settlement of the aforesaid foreclosure sale and enjoining any further sale under the said deed of trust dated September 28, 1951, that your complainants be allowed reasonable attorneys fees and costs in connection with this cause; and that your complainants may have a complete and final determination by this Court of the proper and lawful claims in connection with the said $5,000.00 note and trust deed, and further that this Court

Northumberland County, Virginia, in Judgment Book 3 at page 359. Said judgment is in favor of Milton E. Canter and Louis Urow against Blundon Investment Corporation and S. Louise Blundon, in the amount of $15,000.00 with interest at 6%, plus costs of $1,500.00 with interest at 6%.

(5) That the said property, known as Burgess Farm, which was conveyed to secure the aforesaid deeds of trust, is situated in Northumberland County, Virginia, and said property and trusts are under the jurisdiction of this Court.

(6) That on Saturday, December 14, 1957, the defendants, Lloyd E. Turner and Vincent W. Bradley, trustees in the said first deed of trust, dated September 28, 1951, did sell at public auction the said land known as Burgess Farm, and at the said sale your complainants, Milton E. Canter and Louis Urow, were the high bidders and did purchase the said property known as Burgess Farm for the sum of $25,000.00, with a deposit of $1,250.00 being given by your complainants at the time of sale.

(7) That the defendants, Lloyd E. Turner and Vincent W. Bradley, Trustees, are demanding settlement on January 29, 1958, of the aforesaid sale.

(8) That a proposed accounting for the settlement of the claim of the note holder and the trustees has been submitted to your complainants, Milton E. Canter and Louis
page 4 } Urow, by the defendants, Lloyd E. Turner and Vincent W. Bradley, Trustees, a copy of which is filed with the papers of this cause and marked Exhibit "C."

9. That the said proposed accounting is improper and excessive as follows:

a. The said trustees have neglected to credit the debtor, Blundon Investment Corporation with two substantial payments on the said $5,000.00 note, one of $1,500.00 paid at the time the note was given, and the other for $600.00, paid by Ben Lindas, for a total of $2,100.00.

b. After the first year the interest rate was unlawfully increased from 5% to 6%, and said interest was improperly compounded annually.

c. The proposed assessments of one-half trustees fees for each of two advertised foreclosures which the trustees were temporarily restrained from conducting, in the amounts of $125.00 and $165.70, respectively, are excessive, unwarranted and unlawful.

d. Attorneys' fees in connection with each of the three advertised foreclosures in the amount of $300.00 each, for a total of $900.00, are excessive and unwarranted.

e. Attorneys' fees "on a foreclosure suit culminating in dis-

DECREE.

This day came the complainants, Milton E. Canter and Louis Urow, by counsel and filed their bill of complaint against Vincent W. Bradley, Trustee, Lloyd E. Turner, Trustee, and Lloyd R. Turner, present beneficiary, defendants, and moved the Court for an injunction *pendente lite* restraining and enjoining said trustees, who are trustees under a deed of trust dated September 28, 1951, given by Blundon Investment Corporation to said trustees and wherein Lloyd R. Turner is the beneficiary as the present owner of the debt mentioned in said deed of trust, conveying 163 acres, more or less, of land known as "Burgess Farm" situated and lying in Fairfields Magisterial District, Northumberland County, Virginia, of record in the Clerk's Office of this Court in Deed Book 93 at Page 30, from making any settlement or distribution of the purchase price or any part thereof, as a result of the trustees sale had under said deed of trust in the said County of Northumberland, Virginia, on the 14th day of December, 1957, until the further order of this Court; and said counsel for the complainants having moved this page 8 } Court to amend said bill of complaint by adding in the prayer of said bill a prayer "enjoining any further sale under the said deed of trust dated September 28, 1951," which said leave to so amend is hereby granted and it appearing to the Court from said bill of complaint as amended, duly sworn to, that the complainants by reason of their ownership of a second deed of trust against said property dated the 29th day of March, 1954, from Blundon Investment Corporation to Ralph A. Cusick and John James Bernard, Trustees, of record in said Clerk's Office in Deed Book 99 at page 191, will suffer serious and irreparable loss, unless such injunction issue and it appearing to the Court that the complainants have delivered to this Court certified checks payable to the order of this Court in the amount of $13,041.14; that $1,250.00 is now being held by the defendant trustees as a deposit by the complainants on the purchase price of said Burgess Farm, they being the purchasers thereof at said sale on the 14th day of December, 1957, which said sum aggregate the amount claimed by said trustees under said sale as necessary to settle their accounts as trustees under such sale; and it appearing to the Court that the sale price of said property was $25,000.00 and as aforesaid the said Canter and Urow deed of trust is a second lien thereon; and it appearing to the Court, under the circumstances, that to require an injunction bond would be improper; now

pay out to the proper persons all moneys under its control in this matter; and that your complainants may have
page 6 } all such other further and general relief as their case may require or as to equity may seem meet and just.

And your complainants will ever pray.

MILTON E. CANTER
LOUIS UROW
By Counsel.

LAWRENCE M. TRAYLOR, p. q.
Heathsville, Virginia.

District of Columbia,
City of Washington, to-wit:

Milton E. Canter and Louis Urow, the complainants named in the foregoing bill, being duly sworn, say that the facts and allegations therein contained are true, except as far as they are therein stated to be on information, and that so far as they are therein stated to be on information, they believe them to be true.

MILTON E. CANTER
LOUIS UROW

Taken, sworn to, and subscribed before me, Benjamin F. Rossner, a Notary Public in and for the City of Washington, District of Columbia, this 27th day of January, 1958.

My commission expires Aug. 14, 1962.

BENJAMIN F. ROSSNER
Seal Notary Public, D. C.

DANIEL WEYMOUTH, Judge.

* * * * *

page 7 }

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Therefore, the Court doth Adjudge, Order and Decree as follows:

I.

That the Clerk of this Court endorse and deposit said checks in a special checking account in Bank of Northumberland, Inc., Heathsville, Virginia, styled as follows: "Circuit Court of Northumberland County, Virginia, in cause of Canter, et al. *v.* Bradley, et als.", and set same upon the Bank Ledger of this Court.

page 9 }

II.

That the said Vincent W. Bradley, Trustee, and Lloyd E. Turner, Trustee, be and they hereby are restrained and enjoined for a period of sixty days from this date from (a) making any settlement on January 29, 1958, or any other date, of their accounts as trustees under said sale and (b) from making any further sale under said deed of trust.

III.

That an attested copy of this decree be served on the resident defendant, Vincent W. Bradley, at 800 South Washington Street, Alexandria, Virginia, or at his residence; and that attested copies hereof be mailed by registered mail with return card to the other two defendants.

I ask for this:

LAWRENCE M. TRAYLOR, p. q.
Heathsville, Virginia.

Enter—Chancery January 28, 1958.

DANIEL WEYMOUTH, Judge.

* * * * *

page 19 }

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PLEA IN ABATEMENT.

The defendants, Vincent W. Bradley, Lloyd E. Turner, and Lloyd R. Turner, for special plea, come and say that:

1. Title 8, Section 38 of the Code of Virginia, expressly provides for venue of various types of actions at law or in equity.

2. The Bill of Complaint filed herein indicates that the defendants Turner are non-residents of the State of Virginia, and the defendant Bradley is a resident of the City of Alexandria, Virginia.

3. Sub-section (1) of the aforementioned provision states an action may be brought "Wherein any of the defendants may reside."

4. There are no grounds stated in the Bill giving this Court venue pursuant to any of the provisions of said statute.

WHEREFORE, these defendants, by counsel, pray that the Bill be dismissed with costs assessed against the Complainants.

VINCENT W. BRADLEY
LLOYD E. TURNER
LLOYD R. TURNER
By Counsel.

JAMES C. GREGG
Attorney for Defendants
Court House Square
Arlington 1, Virginia
Ex. 3-3390

page 20 } District of Columbia, ss:

James C. Gregg, being first duly sworn, on oath deposes and says that he is attorney for the defendants herein; that the facts and matters contained in the aforegoing Plea are true and correct to the best of his knowledge and belief; and that this Plea is timely filed.

JAMES C. GREGG.

Subscribed and sworn to before me this 14th day of February, 1958.

Thanking you, I remain,

Very truly yours,

JAMES C. TOOMEY.

JCT:ak
Enclosures

Filed March 19, 1958.

DANIEL WEYMOUTH, Judge.

* * * * *

page 25 }

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DECREE.

THIS CAUSE came on this day to be again heard upon the papers formerly read, upon proof of service of process in person upon the defendant Vincent W. Bradley, Trustee; upon proof of personal service of process upon the defendants Lloyd E. Turner, Trustee, and Lloyd R. Turner in the District of Columbia pursuant to Section 8-74 of the Code of Virginia of 1950, as amended, more than twenty one days prior to this date; upon a plea in abatement filed as provided by law by all of said defendants by their attorney James C. Gregg, Arlington, Virginia, alleging:

"The defendants, Vincent W. Bradley, Lloyd E. Turner, and Lloyd R. Turner, for special plea come and say that:

"1. Title 8, Section 38 of the Code of Virginia, expressly provides for venue of various types of actions at law or in equity.

"2. The Bill of Complaint filed herein indicates that the defendants Turner are non residents of the State of Virginia, and the defendant Bradley is a resident of the City of Alexandria, Virginia.

"3. Sub-section (1) of the aforementioned provision states an action may be brought "Wherein any of the defendants may reside."

"4. There are no grounds stated in the Bill giving this

ZOLANDA J. DE MARCO
Seal Notary Public.

My Commission Expires January 31, 1963.

CERTIFICATE OF SERVICE.

I hereby certify that a copy of the foregoing Plea was mailed, postage prepaid, to Lawrence M. Traylor, Esquire, Attorney for Complainants, Heathsville, Virginia, this 14th day of February, 1958.

JAMES C. GREGG.

Filed in Clerk's Office Feb. 17, 1958.

Teste:

EMELINE A. HALL, Clerk.

DANIEL WEYMOUTH, Judge.

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page 23 }

* * * * *

BARR BUILDING
910 Seventeenth Street, N. W.
WASHINGTON 6, D. C.

February 28, 1958.

James C. Gregg, Esquire
Commonwealth Building
1625 K Street, N. W.
Washington, D. C.

Dear Mr. Gregg:

Enclosed herewith are copies of the two orders in connection with the forfeiture sale of Blundon Investment Corporation.

I would appreciate it if you would notify me as to any action that has been taken in this matter.

II.

That the said Alexander W. Neal, Jr., Mutual Building, Richmond, Virginia, be, and he hereby is, made a party defendant to this bill or cause, the Court being of the opinion that full justice cannot be done or the whole controversy ended without the presence of the said Alexander W. Neal, Jr. in this cause; and the Clerk of this Court is directed to issue process against him.

III.

That the said Vincent W. Bradley, Trustee and Lloyd E. Turner, Trustee be, and they hereby are, restrained and enjoined, for a period of one hundred days from this date, from (a) Making any settlement of their accounts as trustees under the sale mentioned and set forth in these proceedings, (b) From executing any deeds in connection therewith, and, (c) From making any further sale under said deed of trust.

page 27 }

IV.

That the said F. V. Watkins, Commissioner of Accounts of Northumberland County, Virginia, be, and he hereby is, restrained and enjoined for a period of one hundred days from this date from taking any actions in the settlement of the accounts of said Trustees pursuant to Section 26-15 of the Code of Virginia of 1950.

V.

That the Court doth reserve its decision or ruling on said Plea in Abatement for the time being.

VI.

That four attested copies of this decree shall be mailed to James C. Gregg, Attorney for the defendants, Court House Square, Arlington 1, Virginia; that one attested copy shall be mailed to Alexander W. Neal, Jr., Mutual Building, Richmond, Virginia; that one attested copy shall be mailed to Lloyd E. Turner, Trustee, 623 F Street, Northwest, Washington, D. C.; that one attested copy shall be mailed to Llovd R. Turner, 623 F Street, Northwest, Washington, D. C.; and

Court venue pursuant to any of the provisions of said statute.

"WHEREFORE, these defendants, by counsel, pray that the Bill be dismissed with costs assessed against the Complainants."

upon a motion made in open Court by L. M. Traylor, counsel for the complainants that the injunction heretofore issued and entered in this cause on the 28th day of January be extended at least one hundred days from this date and that when and if F. V. Watkins, Commissioner of Accounts for Northumberland County, Virginia is made a party defendant to these proceedings that he, too, be restrained and enjoined from taking any action in the subject matter of this suit pursuant to Section 26-15 of the Code of Virginia of 1950; that this Court is advised that the United States District Court for the District of Columbia (Civil Action No. 543-54) has ordered the trustees named herein to pay to James C. Toomey as Receiver for the Blundon Investment Corporation the sum of $2,910.00 for services rendered and $214.34 for expenses out of the proceeds of any sales of lands of the Blundon Investment Corporation (uncertified copies of said orders are filed with the papers in this cause); that it appears to the Court that Alexander W. Neal, Jr. of the law firm of Bremner, Parker, Neal, Harris and Williams, Mutual Building, Richmond, Virginia, is asserting an attorneys' lien against whatever sums shall become due and payable to the complainants in this cause; that it appears to the Court that the said F. V. Watkins, Commissioner of Accounts for Northumberland County, Virginia, and a resident of the said County of Northumberland is a necessary party to these proceedings; therefore, after hearing oral argument by counsel for all parties to the cause on said Plea in Abatement, the Court doth ADJUDGE, ORDER and DECREE as follows:

page 26

I.

That the said F. V. Watkins, Commissioner of Accounts of Northumberland County, Virginia be, and he hereby is, made a party defendant to this cause, the Court being of the opinion that full justice cannot be done or the whole controversy ended without his presence in this suit; and the Clerk of this Court is directed to issue process against him.

this cause and therefore your undersigned Commissioner of Accounts respectfully asks that this honorable Court, after convening all *necessicary* parties and hearing evidence, specifically direct the undersigned as Commissioner of Accounts as to what charges, fees and commissions shall be allowed by the undersigned as Commissioner of Accounts when the final accounting is filed with him by the Trustees in
page 32 } connection with the foreclosure under the trust deed given by Blundon Investment Corporation, and which foreclosure is the subject matter of this cause.

F. V. WATKINS
Commissioner of Accounts for the Circuit Court of Northumberland County, Virginia.

I certify that a copy of this answer was mailed to James C. Gregg, Attorney at Law, Commonwealth Building, 1625 "K" Street, N. W., Washington 6, D. C., and that a copy was delivered to Lawrence M. Traylor, Attorney at Law, Heathsville, Virginia, on April 7, 1958.

F. V. WATKINS
Commissioner of Accounts for the Circuit Court of Northumberland County, Virginia.

Filed in Clerk's Office April 7, 1958.

Teste:

EMELINE A. HALL, Clerk.

DANIEL WEYMOUTH, Judge.

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page 41 }

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DECREE.

After due consideration, the Court doth Adjudge, Order and Decree that the Plea in Abatement filed by the defendants Vincent W. Bradley, Lloyd E. Turner and Lloyd R. Turner be, and the same hereby is, overruled.

VII.

That one attested copy of this decree shall be either served on the said F. V. Watkins, Commissioner of Accounts for Northumberland County, Virginia by the Sheriff or he may accept service of same.

VIII.

That one attested copy of this order shall be served by the City Sergeant of the City of Alexandria, Virginia on the said Vincent W. Bradley, Trustee.

IX.

That in the event the Clerk of this Court does not have in hand sufficient advanced court costs the complainants are ordered to pay same before this order is spread upon the records.

Enter—Chancery March 28, 1958.

DANIEL WEYMOUTH, Judge.

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page 31 }

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ANSWER OF F. V. WATKINS, COMMISSIONER OF ACCOUNTS.

This respondent for answer to the decree of this Court entered as of March 28, 1958, making him a party defendant in this cause, answers and says:

That an attested copy of the decree of March 28, 1958, was delivered to him and that he accepted service of same.

That no final accounting by the Trustees has been filed before your undersigned Commissioner of Accounts for the Circuit Court of Northumberland County, Virginia.

That your undersigned Commissioner of Accounts will not accept any accounting from the Trustees as long as the injunction order of this Court is in force and effect.

That your undersigned is advised, and in fact knows, that there are a number of controversial questions involved in

defendants or any of them would be uncollectible and that therefore the complainants would suffer irremediable loss.

WHEREFORE, these defendants join in the prayer of the defendant, Alexander W. Neal, that the complainants be required to deposit an additional sum in the registery of this Court to satisfy their lien and further that the complainants be required to deposit with the Court an amount sufficient to pay James C. Toomey, Receiver in Civil Action No. 543-54, in the United States District Court for the District of Columbia, and these defendants further pray that the Bill of Complaint be dismissed with costs and reasonable attorney's fees assessed against the Complainants.

JAMES C. GREGG
Attorney for Defendants,
Vincent W. Bradley, Lloyd E.
Turner, and Lloyd R. Turner
Court House Square
Arlington 1, Virginia.

A copy of the foregoing Answer of Defendants was mailed, postage prepaid, this 9th day of June, 1958, to Lawrence M. Traylor, Esq., Heathsville, Virginia, F. Virginius Watkins, Esq. Heathsville, Virginia, and Alexander W. Neal, Jr., Esq. 905 Mutual Building, Richmond, Virginia.

JAMES C. GREGG.

Filed in Clerk's Office June 10, 1958.

Teste:

EMELINE A. HALL, Clerk.

DANIEL WEYMOUTH, Judge.

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page 44 }

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Enter—Chancery May 14, 1958.

DANIEL WEYMOUTH, Judge.

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page 42 }

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ANSWER OF DEFENDANTS, VINCENT W. BRADLEY, LLOYD E. TURNER, AND LLOYD R. TURNER.

Comes now the defendants, Vincent W. Bradley, Lloyd E. Turner, and Lloyd R. Turner, by their attorney and without prejudice and subject to their Plea in Abatement filed herein, for answer to the Bill of Complaint filed herein represent to the Court as follows:

1. The Bill of Complaint does not state a cause of action upon which equitable relief can be based.
2. These defendants admit the allegations contained in Paragraphs Nos. 1, 2, 3, 4, 5, 6, 7, and 8.
3. As to Paragraph No. 9 of the Complaint, these defendants deny that the proposed accounting was improper and excessive as alleged, these defendants further allege that no payments were made on the note held by the defendant, Lloyd R. Turner, that the complainants knew that no payments have been made and have falsely alleged same. They further allege that the charges complained of in sub-paragraph *b, c, d, e, f,* and *g* are correct, proper, and reasonable.
4. The defendants deny the allegation contained in Paragraph 10.
5. The complainants fraudulently, intentionally, and wilfully alleged in Paragraph 11 that "it is believed by your complainants that the said trustee would make immediate disbursement" after having been assured that disbursement would not be made until approval of the final account by the Court.

page 43 } 6. These defendants allege that the complainants would have had an adequate remedy at law had settlement been made in accordance with the terms of their bid, and in Paragraph 13 of their Complaint they have wilfully, intentionally, and fraudulently with the intent to mislead the Court into entertaining injunctive relief alleged knowing that same was false that judgments against these

became merged in the judgment, and "*functus officio,*" and no action arising out of the note can be maintained.

5. Said defendant would not have a lien upon said note in any event, since said note was removed from the files of the United States District Court for the Eastern District of Virginia at Richmond, where it had been introduced as an exhibit, without the authorization of complainants, and further, since the unliquidated claim asserted by said defendant is unfounded.

6. Even if said defendant had a valid lien upon said note, the lien would, at most, be a retaining lien, which cannot be enforced in this proceeding, or in any other proceeding at law or in equity.

Wherefore, complainants pray that the answer of defendant Alexander W. Neal, Jr., Esq. be stricken and pray the judgment of the Court whether they should be compelled to make other or further reply to said answer.

MILTON E. CANTER
LOUIS UROW
By Counsel.

LAWRENCE M. TRAYLOR, p. q.
Heathsville, Virginia.

page 46 } I certify that on the 3rd day of July, 1958, I mailed or delivered a true copy of this pleading to Alexander W. Neal, Jr., Esq., 905 Mutual Building, Richmond, Virginia, James C. Gregg, Esq., Court house Square, Arlington 1, Virginia, and F. V. Watkins, Esq., Heathsville, Virginia.

LAWRENCE M. TRAYLOR.

Filed in Clerk's Office July 3, 1958.

EMELINE A. HALL, Clerk.

DANIEL WEYMOUTH, Judge.

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page 54 }

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MOTION TO STRIKE ANSWER OF DEFENDANT ALEXANDER W. NEAL, JR.

The complainants, Milton E. Canter and Louis Urow, move the Court to strike the answer of defendant Alexander W. Neal, Jr., and as grounds therefor say:

1. Said answer is not responsive to their bill of complaint.
2. It is beyond the jurisdiction of this Court to determine the sole issue raised by said answer against complainants; to-wit, an alleged claim against them for attorneys fees, inasmuch as said issue states a transitory cause of action, which cannot be brought against these non-resident complainants in this state without their consent. Complainants respectfully decline to submit to this Court for the adjudication of said claim.
3. Said defendant has no standing in this proceeding, since:

(a) The trust upon which said defendant seeks to found a claim, to-wit, complainants' second trust, is not involved in this proceeding, said proceeding being concerned only with the execution of the first trust by defendant trustees.

(b) Said defendant is not a necessary party to this cause. Full justice can be done between the original parties without his participation.

(c) Said defendant has no interest either in the subject matter or in the object of this suit.

page 45 } (d) Said answer sets up no defense to any of the allegations of complainants' bill of complaint, which relate only to the proposed accounting by defendant trustees.

(e) Said answer contains no allegations warranting equitable relief. Said defendant has a plain, adequate and complete remedy at law, which he has not exhausted.

4. Even if complainants' trust were involved in this cause, said defendant would have no standing in this proceeding, since:

(a) Neither said defendant nor his associates are beneficiaries under complainants' trust, either by designation in the trust instrument or by operation of law.

(b) Said answer specifically admits the allegation in the bill of complaint that the note, upon which defendant asserts a lien, has been reduced to judgment. Said note thereupon

IV.

That the Trustees be allowed their commissions of 5% on the purchase price of the land or 5% of $25,000.00.

V.

That pursuant to the terms of said deed of trust dated September 28, 1951 wherein Blundon Investment Corporation was the grantor and Vincent W. Bradley and Lloyd E. Turner, Trustees were the grantees, of record in the Clerk's Office of the Circuit Court of Northumberland County, Virginia in Deed Book 93 page 30, the said trustees, after advertising the said land in accordance with the terms of said deed of trust and pursuant to the laws of the State of Virginia, did at public auction for cash sell the land conveyed in said deed of trust to Milton E. Canter and Louis Urow for the sum of $25,000.00—they being the highest bidders for the same.

VI.

That a deed with special warranty of title be executed by said trustees unto said purchasers and delivered to this Court for delivery to said purchasers.

VII.

That the said trustees be allowed their commissions of 5% of the sale price of said land or the sum of $1,250.00.

page 56 } VIII.

That the taxes on the real estate conveyed in said Lloyd R. Turner deed of trust (deed Book 93 page 30) be paid down through August 1, 1958 pursuant to law.

IX.

That it was stipulated by all parties to this cause or their counsel that the office copies of the orders of the United States District Court for the District of Columbia with reference to the fees of special Receiver James C. Toomey, filed with the papers in this cause, are authentic copies.

X.

That one half of said Receiver's fee, which one half amounts

DECREE.

THIS CAUSE came on this day to be again heard on the bill of complaint, the exhibits filed therewith; the amended bill of complaint; upon the answer of F. V. Watkins, Com missioner of Accounts; the answer of Alexander W. Neal; the answer of Vincent W. Bradley, Lloyd E. Turner and Lloyd R. Turner; the motion of the complainants to strike the answer of Alexander W. Neal; and upon all papers formerly read; upon evidence *ore tenus* taken in open court after notice and all parties being present in person or by counsel; and was argued by counsel.

UPON CONSIDERATION of which the Court doth Adjudge, Order and Decree as follows:

I.

That the motion of the complainants to strike the answer of Alexander W. Neal be, and the same hereby is, overruled; and that Alexander W. Neal do recover of the complainants as and for the balance of attorneys' fees due him, his firm and former associates as claimed in his answer the sum of $1,681.90 which said sum has now been paid as evidenced by a writing signed by the said Alexander W. Neal filed with the papers in this cause and the liability for said fee is discharged in full.

II.

That the original indebtedness incurred and due Lloyd R. Turner under his deed of trust was in fact $3,-
page 55 } 500.00 instead of $5,000.00—the said Lloyd R. Turner not being a *bona fide* purchaser of said note for value in that the consideration therefor was paid directly to the makers of the note and grantor in the deed of trust; that the said Lloyd R. Turner is due the said $3,-500.00 with interest thereon at 5% per annum but all subject to credits of $125.00 on March 28, 1952; $125.00 on September 28, 1952; $125.00 on November 27, 1953; and $600.00 on August 24, 1954; making a total due as of this date of $3,480.62.

III.

That the said Lloyd R. Turner be allowed as and for his attorneys' fees, as a part of his claim, the sum of $800.00.

to $1,562.17 be at this time paid to James C. Toomey, Receiver, out of the above amounts due Lloyd R. Turner as ordered by said United States Court.

XI.

That the other one half of said Receiver's fee ordered by said United States Court be held by this Court out of the share of Milton E. Canter and Louis Urow until the further order of this Court.

XII.

That F. V. Watkins be, and he hereby is, appointed a special commissioner in this cause for the purpose of drawing the following checks on a checking account in Bank of Northumberland, Inc., Heathsville, Virginia in the amount of $13,041.14 styled "Circuit Court of Northumberland County, Va. in cause of Canter et al. *v.* Bradley et als."

To Milton E. Canter and Louis Urow for court costs advanced in this cause by them	$ 21.09
To Northumberland Echo, advertising costs	171.64
To Lloyd E. Turner and Vincent W. Bradley, Trustees, advanced for postage	13.60
page 57 } To Lloyd E. Turner and Vincent W. Bradley, Trustees Commissions of 5% of the purchase price	1,250.00
To Emeline A. Hall, Clerk, court costs for handling court account on Bank Ledger of Court etc.	8.00
To F. V. Watkins, advanced for U. S. Stamps on Deed	27.50
To F. V. Watkins, fee as Commissioner of Accounts and as Special Commissioner	250.00
To Elsa B. Rowe, Treasurer of Northumberland County, land taxes to August 1, 1958	160.68
To James C. Toomey, Receiver	1,562.17
To Lloyd R. Turner, beneficiary under first deed of trust	2,718.45
Total	$6,183.13

XIII.

That the said Lloyd E. Turner and Vincent W. Bradley, Trustees, forthwith pay over to "Circuit Court of North-

umberland County, Virginia'' the $1,250.00 deposit on the purchase price of said land held by them.

XIV.

That after the payment of the aforesaid total sum of $6,-183.13, and after the deposit of the aforesaid $1,250.00 by the Clerk of this Court in the aforesaid account there will be a balance of $8,108.01, all of which will be due and payable to Milton E. Canter and Louis Urow (their deed of trust having due thereon a sum now far in excess of $15,000.00 in fact in excess of $19,000.00) subject, however to the Receiver's fee hereinabove referred to; and which last mentioned deed of trust is recorded among the records in the Clerk's Office of this Court in Deed Book 99 page 191.

XV.

That this Court has been advised that Milton E.
page 58 } Canter and Louis Urow have appealed from the decision of the United States District Court for the District of Columbia with reference to the payment of their share of said Receiver's fee and that said appeal is now pending.

XVI.

That the sum of $1,562.17 be held by this Court in said account awaiting the outcome of said appeal.

XVII.

That said special commissioner draw a check on said account for $6,545.84 payable to Milton E. Canter and Louis Urow payment on their said deed of trust.

XVIII.

That said special commissioner report his doings hereunder to this Court.

Enter—Chancery August 25, 1958.

DANIEL WEYMOUTH, Judge.

9 A. M.

* * * * *

TWELFTH JUDICIAL CIRCUIT
Daniel Weymouth
Judge
HEATHSVILLE, VIRGINIA

August 23, 1958.

Mr. James C. Gregg
Macleay, Lynch & Macdonald
Commonwealth Building
1625 K Street, N. W.
Washington 6, D. C.

Re: Canter, et al. *v.* Bradley, et al. Circuit Court of Northumberland County, Va.

Dear Mr. Gregg:

Decree and your letter received. Of course, no checks will be drawn pending the actual filing of an appeal.

Very truly yours,

DANIEL WEYMOUTH.

DW/d

* * * * *

page 61 }

* * * * *

Law Offices
MACLEAY, LYNCH & MACDONALD
Commonwealth Building
1625 K Street, N. W.
Washington 6, D. C.

August 21, 1958.

The Honorable Daniel Weymouth
Judge, Circuit Court of Northumberland County
Heathsville, Virginia

Re: Canter, et al. *v.* Bradley, et al.

page 59 }

* * * * *

DECREE.

It appearing to the Court that the defendants in this cause contemplate appealing from the decision of this case entered on this date to the Supreme Court of Appeals for Virginia; now

IT IS ADJUDGED, ORDERED AND DECREED as follows:

I.

That F. V. Watkins, special commissioner appointed by this Court in this cause on this date refrain from drawing any checks mentioned in said decree in this cause until the further order of this Court.

II.

That attested copies of this decree be furnished the said F. V. Watkins and Bank of Northumberland, Inc., Heathsville, Virginia.

Enter—Chancery 9:30 A. M. August 25, 1958.

DANIEL WEYMOUTH, Judge.

* * * * *

page 60 }

* * * * *

page 63 } September 10, 1958.

Mr. Louis Urow
Canter and Urow
Barr Building
Washington 6, D. C.

Re: Canter et al. *v.* Bradley et al.

Dear Mr. Urow:

Mr. F. V. Watkins, Commissioner of Accounts for the Circuit Court of Northumberland County, Va., has passed on to me your letter of September 2, 1958 addressed to him. It is my understanding that you, in this letter, are requesting that "the instutution of such an appeal, will not delay the refund to us of that portion of our deposit which exceeds the total of the distributions which the Court allowed or held in abeyance." I also note from your letter what you have to say about the payment of your part of receiver's fees.

Mr. Traylor was in this morning and discussed these matters with me quite at length. I am sure that he will get in touch with you.

I do not believe that the Court would be justified in refunding any of this money at this time. I do not at the moment know the exact day that the final decree was entered, but the Supreme Court rules provide that the Clerk of the Circuit Court of Northumberland County will have to be formally notified, in strict accordance with said rules, of the filing of an appeal to the Supreme Court of Appeals of Virginia within sixty days. Mr. Traylor says this sixty day period is up on October 25, 1958. When they note the appeal then it will be in order for them to take all of the necessary steps incidental to such appeal. I do not believe at the moment any official appeal has been taken.

I think we will just have to wait and see whether or not an official appeal is taken in the case.

Very truly yours,

DANIEL WEYMOUTH.

DW:lmd

cc—Mr. James Gregg.

Filed Sept. 25, 1958.

D. W., Judge.

Dear Sir:

Receipt is acknowledged of your letter of August 9, 1958, with enclosures.

I herewith return the original decree executed by me and advise that our clients plan to note an appeal as promptly as same can be processed.

Very truly yours,

JAMES C. GREGG.

JCG/cd

Enclosure

* * * * *

page 62 }

* * * * *

August 9, 1958.

Mr. James C. Gregg
Attorney at Law
Court House Square
Arlington 1, Va.

Dear Mr. Gregg:

I am inclosing original decree to be signed by you and returned to me. You may retain the copy. Please have trustees execute the inclosed deed and also send $1,250.00 check in accordance with decree.

All checks have been made out ready to be signed. You will have to write me stating that you people are not going to appeal. The checks for your clients will be mailed directly to you—if you do not appeal.

Please take care and see that N. P. properly fills in certificates.

With best wishes, I am

Very truly yours,

DANIEL WEYMOUTH.

DW/d

* * * * *

make the payment of the fee of its receiver an expense of the sale, payable by the trustees, clearly violates the
page 65 } powers of the trustees, as set forth in the deed of trust and the applicable statute (Code, sec. 55-59).
Under the decided cases we do not think it would be proper for the Commissioner of Accounts, or for the Court, to approve such a payment, if our contention is sound, since neither you nor the Court are required, or should adhere to an erroneous ruling of a federal court in another circuit. In this connection we refer to *In Re: American Fuel & Power Co.,* 151 Fed. 2nd 470, 481, affirmed *Variston Bondholders Protective Committee v. Green,* 329 U. S. 156; *Marshall* v. *New York,* 254 U. S. 380, 385.

If, in the present posture of the case, you are not in a position to rule upon the foregoing request, we would greatly appreciate your submitting it to Judge Weymouth.

Yours very sincerely,

LOUIS UROW.

LU/jd

Filed Sept. 26, 1958.

D. W., Judge.

* * * * *

page 66 }

F. VIRGINIUS WATKINS
Attorney and Counselor at Law
Heathsville, Virginia

HUdson 2-3410

September 4, 1958.

Hon. Daniel Weymouth,
Heathsville, Virginia

Dear Judge:

I am enclosing, herewith, letter which I received from Canter and Urow in connection with the suit of Canter, et al. *v.* Bradley, et al. This is the letter which I mentioned to you yesterday.

I have advised Mr. Urow by letter that since the matter is

page 64 }

* * * * *

Law Offices
Canter and Urow

BARR BUILDING
WASHINGTON 6, D. C.

September 2, 1958.

F. Virginius Watkins, Esq.
Commissioner of Accounts
Haislip Building
Heathsville, Virginia

Re: Canter et al. *v.* Bradley et al.

Dear Mr. Watkins:

We have been advised that the defendant trustees in the above cause are contemplating an appeal from the decree of Judge Weymouth. We trust that the possibility, or even the institution of such an appeal, will not delay the refund to us of that portion of our deposit which exceeds the total of the distributions which the Court allowed or held in abeyance.

Your attention is respectfully invited to the fact that the injunction which our deposit was given to secure has expired. Accordingly, it seems to us, the deposit need no longer be maintained, except, of course, as to those payments therefrom which the Court has already decreed. As you know, the amount of the deposit, which the inordinate demand of the trustees made necessary, is in excess of $14,000, and the Court made no allowance for the substantial loss of interest which we incurred, and are continuing to incur.

We respectfully request that the proposed disbursement to the Washington receiver of a portion of the proceeds of the trust which are payable to us, upon which the Court deferred ruling, be now disallowed. The U. S. District Court for the District of Columbia ordered that half the receiver's fee be deducted from our share of the proceeds, and that the other half be deducted from the share payable to the beneficiary of the first trust, but that the entire fee be an expense of the sale by the trustees, and that it should not be a personal obligation of the respective beneficiaries.

We believe that the attempt of the local federal court to

2. In over-ruling these defendants' plea in abatement;
3. In bringing in F. V. Watkins, Commissioner of Accounts of Northumberland County, as a party;
4. In calling the witness, Louis Urow, as a court witness;
5. In holding that the defendants should put on evidence when the complainants had not sustained the alle-
page 69 } gations of the bill of complaint by proof;
6. In refusing to dismiss the bill after the witness, Urow, had testified;
7. In refusing to permit the defendants to cross examine the witness, Urow as to the allegations of the bill that judgments against the defendants would be uncollectible and the complainants would suffer irremediable loss;
8. In permitting the introduction of testimony with respect to Exhibit "A" filed with the bill in the cause of *Blundon* v. *Blundon Investment Corporation,* and others; and,
9. In refusing to dismiss the bill at the conclusion of the evidence, holding that Lloyd R. Turner was not a *bona fide* purchaser of the note here in controversy, refusing to allow the defendants' claims for attorneys' fees and expenses and entering up the judgment set forth in the decree of August 25th.

VINCENT W. BRADLEY, Trustee,
LLOYD E. TURNER, Trustee and
LLOYD R. TURNER
By Counsel.

DABNEY OVERTON
Warsaw, Virginia
Attorney for Defendants.

I hereby certify that a true copy of the foregoing notice of appeal and assignments of error was mailed to Lawrence M. Traylor at Heathsville, Virginia, F. V. Watkins, Heathsville, Virginia and James C. Gregg, 1625 K Street, N. W., Washington, D. C., on the 22nd day of October, 1958.

DABNEY OVERTON.

Filed in the Clerk's Office the 23 day of October, 1958.

Teste:

EMELINE A. HALL, Clerk.

• • • • •

pending in Court and the defendant Trustees are contemplating an appeal from the last decree, I am not in a position to rule on the request contained in the letter. I also advised Mr. Urow that I was submitting his letter and request contained therein to you.

With kind regards, I am,

Very sincerely yours,

F. VIRGINIUS WATKINS.

FVW:g

Filed 9-26-58.

D. W., Judge.

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page 68 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE OF APPEAL.

To: Emeline A. Hall, Clerk
Circuit Court of Northumberland County
Heathsville, Virginia

The defendants, Vincent W. Bradley, Trustee, Lloyd E. Turner, Trustee and Lloyd R. Turner, hereby give notice of their appeal in this case, and that they will apply to the Supreme Court of Appeals of Virginia for an appeal and *supersedeas.*

ASSIGNMENTS OF ERROR.

The said defendants, Vincent W. Bradley, Trustee, Lloyd E. Turner, Trustee and Lloyd R. Turner, assign as error the action of the court in the following:

1. In entertaining the bill of complaint in this cause, since the court was without jurisdiction in that the bill stated no cause for equitable relief, and that the complainants had a plain, adequate and complete remedy at law;

Milton E. Canter, et al.

v.

Vincent W. Bradley, Tr., et als.

Given under my hand this 1st day of November, 1958.

EMELINE A. HALL, Clerk.

page 73 }

* * * * *

ASSIGNMENT OF CROSS-ERROR.

The complainants, Milton E. Canter and Louis Urow, respectfully assign as cross-error the action of the Court in the following:

1. In overruling complainants' motion for the return to them of an amount equivalent to one-half of the fees and expenses awarded a foreign receiver of the Blundon Investment Corporation by the appointing United States District Court of the District of Columbia.

2. In awarding to defendant, Lloyd R. Turner, $800.00 for counsel fees, since none of the alleged legal services which Defendant Trustees proposed to pay for out of the proceeds of the sale could properly be charged against those proceeds.

3. In allowing Defendant Trustees full compensation of $1,250.00 in view of the grave and manifest derelictious in the performance of their fiduciary obligations.

4. In refusing to allow the defense of usury against the $5,000.00 note.

MILTON E. CANTER
LOUIS UROW
By Counsel.

LAWRENCE M. TRAYLOR
Attorney for Complainants
Heathsville, Virginia.

I hereby certify that a true copy of the foregoing assignment of cross-error was mailed to Dabney Overton, Warsaw, Virginia, F. V. Watkins, Heathsville, Virginia and James C.

page 70 }

* * * * *

DECREE.

This day came the complainants by counsel and moved the Court for a refund of the one-half receiver's fee out of funds deposited by them in this cause, on the grounds that the United States District Court for the District of Columbia was without jurisdiction to order trustees under a deed of trust upon Virginia land, owned by a Delaware corporation, to pay as an expense of a sale under said deed of trust, and in preference to payment to the beneficiaries of deeds of trust which had vested prior to the appointment of the receiver, compensation which said Court had awarded a temporary receiver of the corporation; that said orders of United States District Court of the District of Columbia were derogation of the terms of said deeds of trust, of Section 55-59 of the Code of Virginia, and of the applicable cases; and that said orders infringed upon the sovereign powers of this state, duly exercised in said statute, violated the public policy of this state, and exceeded the jurisdiction of said Court, and that said orders were not entitled to, and should not be given, full faith and credit; and was argued by

page 71 } counsel.

Upon consideration of all of which the Court doth adjudge order and decree that said motion is overruled, and said one-half receiver's fee be held by this Court for the further order of this Court; and Canter and Urow duly excepted to the ruling of the Court.

Enter—Chcy. Oct. 23, 1958.

DANIEL WEYMOUTH, Judge.

* * * * *

page 72 } Virginia:

Clerk's Office of the Circuit Court of Northumberland County.

I, Emeline A. Hall, Clerk of the Circuit Court of said County, certify that the attached are all of the original records filed in my office, except the exhibits and transcripts which are certified to separately, in the case of

requirement that the trustees justify their proposed accounting.

The Court stated that since it had taken jurisdiction of the matter of the accounting by the trustees, it would determine the matter fully in this proceeding, and that the primary obligation of the trustees to justify their proposed disposition of the proceeds of sale was independent of the adversary position of these complainants, and would obtain even if complainants withdrew from the cause. Complainants stated they would be willing to go forward, nevertheless, if they could call the defendants to testify at the outset, since all pertinent evidence was peculiarly within their knowledge. The Court then asked counsel for the defendants whether any of the defendants were present. Said counsel replied in the negative, stating that since the trial had been allotted two days, he had not expected that the testimony of defendants would be required on the first day.

The Court then called the complainant Louis Urow as its witness. Mr. Urow testified that he was thoroughly familiar with the subject matter of the complainant; that he had participated in drafting it; that he had signed and sworn to it; and that all of the allegations therein contained were true to the best of his knowledge and belief.

Counsel for the defendants thereupon undertook to cross examine the witness, Urow, with respect to his personal knowledge as to the allegations of the bill of complaint regarding the lack of financial responsibility of the defendants and the resultant "irreparable harm" that the complainants would have sustained had they settled with the defendants on the basis of the proposed account (Exhibit C) and the matter had been thereafter handled in the usual manner. Complainants objected. The court ruled that such testimony was immaterial, that the court was satisfied that it had the equitable jurisdiction to entertain the complaint and that an injunction had long since been granted based upon the allegations in the bill of complaint. Defendants excepted.

page 76

On cross examination, Mr. Gregg, who, together with Joseph Schneider, (admitted *ad hoc*) served as counsel for the defendants, asked the witness for the basis of the allegation that complainants had no adequate remedy at law. The witness stated there were many bases: that he had been informed by Joseph Schneider, chief counsel for the defendants, that the proceeds of the sale of the property would be distributed promptly after their receipt, so that it would be impossible, or extremely difficult, for any of it to be recovered in subsequent litigation. That prior to the commencement of

Gregg, 1625 K Street, N. W., Washington, D. C., on the 6th day of November, 1958.

LAURENCE M. TRAYLOR.

Filed—Chcy. Nov. 6, 1958.

DANIEL WEYMOUTH, Judge.

Filed in Clerk's Office of North'st Co. Nov. 6, 1958.

EMELINE A. HALL, Clerk.

page 74 }

* * * * *

NARRATIVE STATEMENT OF TESTIMONY AND OTHER INCIDENTS OF TRIAL.

Prior to the commencement of the taking of testimony there was submitted to the Court the question as to which side should go forward with the evidence. Defendants contended that the burden was upon the complainants. Complainants contended that it was the obligation of defendant trustees to justify their proposed distribution of the proceeds of the sale, particularly since the propriety of said proposed distribution had been questioned by the Commissioner of Accounts, whom the Court had made a party herein; that since the complainants had challenged the legality of some of the proposed distributions, and the extent of the remaining proposed distributions, and since the respective amounts of the remaining proposed distributions were greatly in excess of those normally made by trustees upon sale after foreclosure, and the bases therefor, if any, were solely within the ken of defendant trustees, it was the obligation of the trustees to produce evidence to support them. Complainants further contended that it was incumbent upon the Court under the statute and under controlling principles of equity to protect the interests of all creditors of the maker of the
page 75 } note in the proceeds of the sale of the security; that the trust *res* was subject to liens other than those in favor of the parties to this cause; that these interests would be prejudiced by exorbitant charges by defendant trustees; that since these creditors were not represented in this proceeding, their interests could be safe-guarded only by a

this litigation he had asked Mr. Gregg whether, if complainants paid over the entire purchase price to defendant trustees, complainants would be given written assurance that no distributions would be made until the Commissioner of Accounts had passed upon their propriety, and that Mr. Gregg had replied that no such assurance would be given. That the proposed accounting failed to name the attorneys to whom $5,400.00 in legal fees would be paid, and that consequently complainants had no knowledge of the identity and whereabouts of persons against whom they might have recourse, were any portion of these fees disallowed. That should the proposed accounting have been substantially disallowed by the Commissioner of Accounts, as, in the opinion of page 77 } the witness, appeared quite probable, complainants would have been burdened with the inconvenience and expense of bringing a multiplicity of actions in various jurisdictions. And that the witness doubted the ability of defendant trustees to respond to a substantial judgment.

Mr. Gregg asked the witness the basis of the allegation that the defendant had neglected to credit the maker with two substantial payments on the note, one of $1,500.00 paid at the time the note was given, and the other for $600.00 paid by Ben Lindas, as President of the maker. The witness stated that paragraph 8 of the complaint in *S. Louise Blundon* v. *Blundon Investment Corp., Ben Lindas, Lloyd R. Turner, Vincent W. Bradley, Lloyd E. Turner, et al.,* filed in this court, alleged that the consideration for the note passed directly from defendant note-holder Lloyd R. Turner to maker corporation, and that the nominal payee, Anna Howard, was a mere straw, the daughter of defendant, Ben Lindas, who was then President of the corporation, and who negotiated the loan; that incorporated in the complaint by reference as "Exhibit 'A'" was an attached statement by Lindas of his conduct of the affairs of the corporation; that the statement sets forth that the amount received from the "Turner loan" was $3,500.00 and that interest in the amount of $600.00 had been paid thereon. The witness stated that the answer of defendant note-holder Lloyd R. Turner did not deny that he had advanced the money directly to the corporation, or that the amount he actually gave the corporation on the $5,000.00 note was only $3,500.00, or that he had received $600.00 on account as interest; that these allegations had not been denied by defendant trustees or Lindas; that the admissions of Lindas that he had issued a $5,000.00 note of the corporation for $3,500.00 to his old friend and client Lloyd R. Turner, secured by a first trust on unencumbered real estate, which

was thereafter sold for $25,000.00, was a declara-
page 78 } tion against interest, and, in view of the charges of fraud and *mismangement,* which the corporation was making against Lindas at the time the statement was made, highly credible; that while witness was counsel for the corporation, he had occasion to examine its book and records, that said "Turner loan" could have referred only to the note involved in this cause. Defendants moved to strike that portion of the testimony that relied upon the record in *S. Louise Blundon* v. *Bloundon Investment Corporation, et al.,* on the ground that it was hearsay; the court over-ruled this motion and defendants excepted.

Counsel for defendants asked the witness for the basis of the allegation that the proposed distribution of attorneys fees in the amount of $900.00 for three advertised foreclosures of the property, two of which were enjoined, were unwarranted and excessive. The witness replied that he had been in formed and believed that defendant trustees Vincent W. Bradley, and Lloyd E. Turner were highly experienced trustees; that they had been nominated trustees on many deeds of trust given to secure loans made by defendant note-holder Lloyd R. Turner, who was in the business of making such loans; that defendant trustee, Vincent W. Bradley has for many years been a member of the Bar of Virginia and the District of Columbia, and presumably familiar with the method of advertising a foreclosure under a deed of trust; that such advertisement was a normal function of trustees, and did not warrant the employment of counsel; that if the trustees actually did not know how to proceed, they could have readily found out, or, in the alternative, could have resigned; that under the facts and the law defendant trustees were not warranted in employing counsel simply to compose a standard notice of public sale and to mail it to the county newspaper; and that a legal fee of $900.00 for such service was unconscionable, under any circumstances.

page 79 } Counsel for the defendants asked the witness for the basis of the allegation that the proposed assessment of one-half trustee's fee for each of two advertised foreclosures which the trustees were temporarily restrained from conducting were excessive, unwarranted and unlawful. The witness replied that after extensive research he had come to the conclusion that such fees were not allowed where the injunction was not at the behest of the debtor; that there was a United States Circuit Court of Appeals case precisely in point, the citation for which he would be pleased to give counsel.

Counsel for defendants asked the witness for the basis

that a fee of $2,500.00, from any source, for filing an answer was unconscionable.

Thereupon, complainants rested, and defendants moved that the case be dismissed for failure of complainants to establish a *prima facie* case. The motion was denied, and defendants noted an exception. At the close of Mr. Urow's
page 81 } testimony, the Court stated that it appeared to the Court that Mr. Lloyd R. Turner was not a holder in due course; that only $3,500.00 was originally paid for the said note; that $600.00 had been paid on the note; that Anna Howard was only a "strawman"; and that if these facts were not true, Mr. Gregg should present some evidence to the Court to refute the testimony of Mr. Urow. Mr. Gregg stated that he was going back to Washington that evening and would present such evidence the next day.

The hearing was resumed the following morning, and the defendants called their chief counsel, Joseph Schneider, as their first and only witness. The witness testified that he had represented defendant note-holder Lloyd R. Turner for about twenty years; that the note in question was turned over to him in the latter part of 1952 for collection, and that it had been in his custody since that time; that he had believed, as the proposed accounting indicated, that no payments of principal or interest had ever been made on the note, but that he had just discovered that two payments of $125.00 each were recorded on the note.

The witness stated that defendant trustees had attempted to foreclose on the deed of trust, but that they had been restrained in an action filed in the Circuit Court of Northumberland County in which they, defendant note-holders, and others, were defendants; that he had engaged attorneys who had thereupon filed appropriate pleas on behalf of all the defendants, and who had caused the action to be dismissed with prejudice. That the District of Columbia action was brought by a stockholder of the maker corporation; that none of the defendants were made parties, or had any special interest therein; that when a temporary receiver appointed therein caused an advertised foreclosure by defendant trustees to be restrained, he appeared and opposed the issuance of a preliminary injunction, which neverthe-
page 82 } less issued, and that thereupon he moved that the injunction be dissolved; that these complainants also opposed the injunction and urged its dissolution: that the injunction was dissolved pursuant to these motions, and defendant trustees thereupon foreclosed upon the property.

The witness testified that in his opinion the proposed legal fees of $2,500.00 for services in connection with the North-

of the allegation that an attorney's fee of $2,000.00 "on a receivership suit" in the United States District Court of the District of Columbia was unwarranted and unlawful. The witness replied that he was quite familiar with that suit, styled *Harris* v. *Blundon Investment Corp., Lindas, et al.;* that it was an action by an alleged preferred stockholder of the corporation, alleging mismanagement, and seeking the appointment of a receiver to conserve its assets; that none of the present defendants were made parties to the suit, or had any interest therein; that the defendants' note and deed of trust were not challenged; that a temporary receiver was appointed, who thereupon caused to be enjoined an advertised foreclosure by defendant trustees, upon the allegation that he could secure a better price by a negotiated sale; that when it subsequently developed that the receiver was not able to negotiate a sale, the injunction was dissolved, and defendant trustees permitted to foreclose; that the corporation did not seek the injunction or the receivership; that defendants did not, and could not, suffer any loss as a result of the litigation, and that they were not justified in employing counsel in the matter at the expense of the debtor page 80 } corporation; that the activities of defendants' counsel were restricted to objecting to the issuance of said injunction, and subsequently seeking its dissolution; that complainants independently, and far more vigorously, took similar steps; that under the law and the deed of trust no part of the fees for these activities could properly be charged against the trust res; that a fee of $2,000.00, essentially for filing two motions, was unconscionable.

Counsel for defendants asked the witness for the basis of the allegation that the proposed attorneys fee of $2,500.00 "on a foreclosure suit culminating in dismissal of action" was unwarranted. The witness replied that his examination of the records in said suit, *S. Louise Blaundon* v. *Blundon Investment Corp., et als.,* in the Circuit Court for Northumberland County, showed the sole action on behalf of any of these defendants to have been an answer filed on behalf of defendant note-holder, Lloyd R. Turner, by a local attorney who shortly thereafter withdrew from the case; that no answer was ever filed on behalf of defendant trustees; that the case was voluntarily dismissed by the complainant therein, and not as a result of any action by counsel for defendants; that shortly before said dismissal Mr. Gregg had entered an appearance for all the defendants, but did nothing else; that any fee for these activities at the expense of the corporation, whose position, again, was not adverse to that of the defendants, was unwarranted under the law and the deed of trust;

The witness was asked whether the statement therein that defendant note-holder had expended $3,000.00 in costs and fees in efforts to collect upon the note was correct. He stated that it was not correct in the sense that he had actually been paid $3,000.00. The witness was further asked whether the statement therein that nothing had been paid on the note, either for interest or toward principal, was correct. The witness stated that it was not correct.

The witness was asked whether either of the defendant trustees or the defendant note-holder would appear to give testimony. The witness replied that none of them would appear. The witness was asked whether, on his return to Washington the previous evening, he had communicated with any of the defendants. The witness replied that he had communicated only with defendant note-holder Lloyd R. Turner. The witness was asked whether he had discussed with him the testimony given on behalf of the complainants that defendant note-holder was not a holder in due course, and that payments of $1,500.00 and $600.00, respectively, had not been credited. The witness replied that he had not discussed it with Lloyd R. Turner.

page 84

The witness was asked whether, as the attorney retained to collect the note, he could explain why the trustees had not deducted the $600.00 and $1,500.00 items shown in the statement of Lindas, attached to the complaint in *S. Louise Blundon* v. *Blundon Investment Corp., et al.,* The witness answered that maker corporation was indebted to the note-holder under another note, secured by a trust on property in the District of Columbia, upon which said note-holder had also subsequently foreclosed, and that the $600.00 payment possibly had been made on that obligation. The note-holder was then shown a book setting forth payments of interest and principal upon said obligation. After examining this book the witness admitted that the $600.00 payment obviously had not been made on that obligation; and he admitted, further, that there had been no other obligation of the maker corporation to the defendant note-holder, except the instant one, that he knew of. As for the $1,500.00 item, the witness stated that it did not matter how much defendant note-holder had paid for the note, that said note-holder was a holder in due course. He admitted that the named payee, Anna Howard, was a housewife, the daughter of Ben Lindas, and that she was neither a business woman nor a money lender.

The witness was asked whether he had a break-down either of the hours consumed or of the services rendered in any of

umberland County action, of $2,000.00 for services in connection with the District of Columbia action, and $900.00 for services in connection with three advertised foreclosures, were reasonable compensation for the services rendered.

Upon cross examination, the witness stated that until recently he had practiced law in the District of Columbia with one Ben Lindas; that Lindas had resigned, as President of Blundon Investment Corporation, the maker of the note; that Lindas had known defendant note-holder Lloyd R. Turner, for about forty years, and from time to time had served as his attorney during that period; that Lindas had now retired from the practice of law; that after the witness and Lindas became associated, some twenty years ago, they both represented said defendant from time to time, and that the witness continued to represent defendant note-holder; that the offices of the partnership, and the office of the witness after its dissolution, had been in a building owned by the note-holder in southwest Washington, D. C.

The witness testified that defendant trustee Lloyd E. Turner was the son, and an employee, of defendant note-holder Lloyd R. Turner; he admitted that defendant trustee Vincent W. Bradley has been listed on his law office stationery, and that the current District of Columbia Register and the current District of Columbia telephone directory indicate that they now occupy the same offices and have the same telephone number, but denied they were associates. The witness admitted that defendant note-holder had

page 83 } named defendant trustees as the trustees in other deeds of trust obtained by him to secure loans, and that they were both experienced trustees.

The witness stated that he was chief counsel for all the defendants; that he had himself represented the defendants in the District of Columbia proceeding, and that he has retained Messrs. Martin and Gregg to represent them in the Virginia proceeding; that the total fee of $5,400.00 which defendant trustees proposed to pay him, which would include payment for the services of Messrs. Martin and Gregg, were extremely reasonable. The witness stated that he had received no fees whatever from the note-holder or from defendant trustees. He also stated that he believed that the proposed disbursements by defendant trustees of $14,391.14, were proper and justified under the deed of trust securing the $5,000.00 note, except that two payments, totalling $250.00, should have been credited. The witness was shown a copy of an affidavit of defendant note-holder filed in the District of Columbia proceeding. He admitted that the affidavit had been drawn by him, and subscribed and sworn to by defendant note-holder.

the bill of complaint in *Blundon* v. *Blundon Investment Corp., et als.*

The witness was asked whether he had not, within a few months of the foreclosure, indicated to the complainants, or to the receiver, or to the District of Columbia court, that substantially less than $14,391.14 would satisfy the claim under the deed of trust. He answered that he was certain that he had never done so. There was then read to the witness a certified transcript of colloquy between Mr. Toomey, temporary receiver of the corporation, and the Court, at a hearing in *Harris* v. *Blundon Investment Corp., et al.,* in the United States District Court for the District of Columbia, as follows:

"Mr. Toomey: The first trust, which is Mr. Schneider's client's trust, was in the original amount of $5,000.00. I am told by Mr. Schneider that costs, interest and so on have increased it to somewhere near $8,500.00.

"The Court: Do you propose to pay it off?

"Mr. Toomey: I propose to pay it off."

The witness admitted that both he and one of the complainants had participated in, and were present at, page 87 } the hearing when the quoted colloquy took place. He further admitted that he did not then or thereafter indicate to the Court, or to the receiver, or to complainants, that approximately $8,500.00 would not satisfy the trust, until after defendant trustees had submitted the proposed accounting involving payments totalling $14,391.14.

Defendants rested and renewed their motions, including a motion for a finding for the defendants. These motions were over-ruled, and defendants excepted.

There were introduced as exhibits for the defendants the note and deed of trust, and copies of two decrees relating to the compensation of the receiver in *Harris* v. *Blundon Investment Corp., et al.,* in the United States District Court for the District of Columbia. There were introduced as exhibits for the complainants a copy of an affidavit by defendant noteholder Lloyd R. Turner, filed in the last-mentioned case on October 19, 1956, and a transcript of a portion of a hearing in that cause, covering colloquy between the temporary receiver and the Court. There were also introduced as exhibits for the complainants paragraph 8 and a part of paragraph 9 of the complaint in *Blundon* v. *Blundon Investment Corp., et als.,* in the Circuit Court for Northumberland County, Exhibit "A" attached thereof and made a part thereof, and the answer of Lloyd R. Turner to said complaint,

the matters for which the trustees proposed to
page 85 award him a fee of $5,400.00. He replied that he
did not, but that he estimated that a total of 300 hours had been consumed. The witness was shown the complete court file in *S. Louise Blundon* v. *Blundon Investment Corp., et al.,* and asked to point out all pleadings filed by him or his colleagues on behalf of the defendants and any indications of interrogatories, depositions, arguments or any other legal services rendered. After examining the file, the witness admitted that the only such pleading was an answer filed on behalf of defendant note-holder by a local attorney named Martin, who shortly thereafter withdrew from the case; that no answer was filed on behalf of defendant trustees; that shortly before the case was dismissed, Mr. Gregg filed his appearance on behalf of all the defendants, but that Mr. Gregg had filed no pleadings; and that the case was dismissed with prejudice upon motion of the complainant.

The witness was invited to consult any files or records that he had with him pertaining to the District of Columbia action, and thereupon to testify as to his activities therein. The witness replied that he had not brought all his files with him, but had some with him. He added the bulk of the time for which he was seeking compensation would not be reflected by the files, since it was spent in conferring with the defendants.

Mr. Schneider testified that he appeared in court on a number of occasions, to resist the injunctions. He stated that, in connection with the two suits, he had expended at least 300 hours; that he normally charges $20.00 per hour for his time, which is considered reasonable in the District of Columbia; and that, therefore, he considered a total of fees for services in both of these suits of $4,500.00 entirely reason-
able. On cross examination he admitted that he
page 86 kept no record of the time expended and was un-
able to explain in detail the various items upon which he had expended the 300 hours. Also, he admitted that the two files he exhibited contained matter pertaining to other business he has handled for Turner, the noteholder, but stated that this would not constitute a very substantial portion of the files.

Mr. Schneider produced the note secured by the deed of trust and it was marked by the court. He stated he had no knowledge, except that shown by the note itself as to the amount paid by Turner for this note, or of any payments on it, either of principal or interest. He knew nothing concerning the figures set forth in the "Exhibit 'A'" filed with

consideration received by the corporation, or the payments made on the note.

Counsel for complainant contended that no legal fees could properly be charged against the trust *res* for services in the District of Columbia proceeding, and that if there were any justifiable fee in the Northumberland County proceeding, it was only confined to a modest fee for filing the answer of the note-holder to the complaint. The Court commented that "reasonable attorney's fee" in a deed of trust meant, among other things, that the fee must be reasonable in amount with reference to the amount of the obligation secured, which in this case was $3,500.00.

Counsel for complainant further argued that defendant trustees should receive no part of the $1,250.00 trustee's fee, to which they would normally be entitled under the deed of trust, or that such fee should be substantially reduced, on the ground that their proposed accounting manifested an utter disregard of their fiduciary obligation to the maker of the note and to junior secured creditors. Their misconduct included: (1) seeking to recover the face amount of the note together with interest, when they knew or should have known that the face amount of the note did not represent the consideration paid by the note-holder, and that substantial payments on account of interest had been made; (2) unlawfully increasing the amount of interest charged from 5% to 6% after the first year; (3) unlawfully compounding the interest assessed; (4) attempting to exact unconscionable legal fees; (5) failing to minimize legal fees chargeable to the trust *res* by neglecting to proceed against the bonds posted to secure the respective injunctions in Northumberland County and in the District of Columbia upon the dissolution of these injunctions; (6) permitting the fact that one of them, Lloyd E. Turner, was the son and employee of Lloyd R. Turner, the note-holder, and that the other, Vincent W. Bradley was associated in the practice of law with Joseph Schneider, chief counsel for all the defendants, to influence them to attempt to make grossly excessive and unjustified payments to said note-holder and lawyer.

page 90

Counsel for complainants further urged that the Court should order defendants to make them whole for their loss of interest from December 14, 1957, upon the $1,250.00, which complainants had posted with defendant trustees, and from January 28, 1958, upon the additional $13,041.14, which complainants had paid into this Court. Complainants further argued that they should be awarded reasonable compensation for fees, costs and expenses which they were compelled to

copies of which are hereto attached, to all of which defendants objected, and also the payment book on the first trust of property at 608 7th Street, N. W. Washington, D. C., formerly held by Lloyd R. Turner on property owned by Blundon Investment Corporation.

The counsel for defendants stated that the decrees entered by the United States District Court for the District of Columbia in *Harris* v. *Blundon Investment Corp. et als.*, copies of which he had introduced in evidence, directed that out of the proceeds of the sale under this deed of trust, and as an expense of this sale, there should be paid to James page 88 } C. Toomey, the temporary receiver appointed in that cause, the sum of $2,910.00 for services and $214.34 for expenses, prior to any distribution to secured creditors, and that the incidence of this payment should fall equally upon defendant note-holder and upon these complainants. Counsel for the defendants stated that said note-holder was willing that his one-half of said compensation be paid out of his share of the proceeds of sale, and asked the Court to decree payment of the one-half charged to complainants out of the money payable to them.. Counsel for the complainants objected, stating that these decrees violated the statutes and public policy of Virginia, that they were beyond the power of the District of Columbia Court, and they were not entitled to full faith and credit. Counsel for complainants asked that monies representing the one-half of the receiver's fee chargeable to them be not distributed until they had had an opportunity to file a motion seeking the payment of these monies to the complainants. The court granted the request,

During final argument, complainants contended that the note transaction was usurious under the laws of the District of Columbia, where the note was made, and that the note-holder, under said laws, must be deemed to have forfeited all interest. The Court stated that it was not convinced that the defense of usury could be used by these complainants, but that it was convinced that said note-holder was not a holder in due course; that Anna Howard was not a holder in due course; that Anna Howard was a straw; that only $3,500.00 had been given for the note, and that it had passed directly from defendant note-holder to the corporation; that $600.00 had been paid on the note in addition to the payments recorded thereon. The Court commented that an inference adverse to defendant note-holder could be drawn from the fact that he had not appeared, nor had anyone from his office page 89 } with appropriate books and records appeared, to attempt to rebut the testimony relative to the

by the false and fraudulent representations of the defendant Ben Lindas and Carrie P. Lindas) unlawfully and wrongfully conspired together for the purpose of defrauding your complainant and the defendant corporation of the properties above mentioned and to that end represented to your complainant that it was necessary and proper to borrow the sum of Five Thousand Dollars ($5,000.00) secured by a deed of trust upon the tract above mentioned known as "Burgess Farm," representing that the said $5,000.00 was needed and would be used for defraying the expenses of making surveys and plats of the said tract and of the other real estate above mentioned for the purpose of subdividing and selling the same, well knowing at the time of the making thereof that said representations were false and that any moneys derived from such loan would not be used for the proper or legitimate purposes of the corporation but would be appropriated to the purposes of the said defendants which were to have obtained both said money and all the property of your complainant or the proceeds thereof without paying therefor. Acting in reliance on the aforesaid misrepresentations of the defendants your complainant, as Secretary of the defendant corporation, joined in the execution of a deed of trust and note payable to the order of Anna Howard (said Anna Howard being a member of the family of Ben Lindas), said deed of trust conveying the "Burgess Farm" to the defendants
page 93 } Vicent W. Bradley and Lloyd E. Turner in trust to secure the payment of said note in the principal sum of Five Thousand Dollars ($5,000.00) payable one year after date with interest at five per centum (5%), said deed of trust being recorded in the Clerk's Office of this Court in Deed Book 93, at Page 30. Your complainant is advised that in fact any moneys realized from said loan by any person (if any moneys were in fact realized therefrom) were advanced by the defendant Lloyd R. Turner and not by the defendant Anna Howard. From this deed of trust and note the defendant corporation received nothing, and the defendants Ben Lindas, Carrie P. Lindas, Lloyd R. Turner and Anna Howard wrongfully withheld from the corporation proceeds of said loan if any such proceeds there were.

DANIEL WEYMOUTH, Judge.

page 94 } (COPY).

incur as a result of the grossly inflated accounting proposed by defendant trustees.

The Court then made the findings which are set forth in its order of August 25, 1958, and the hearing was concluded.

Thereafter, on October 23, 1958, complainants moved the Court for the return of the monies being held in abeyance pending a determination as to whether one-half of the receiver's fee awarded in the District of Columbia proceeding should be made payable out of the proceeds of the sale under the deed of trust to which complainants were entitled. The motion was over-ruled, and complainants excepted.

The complainants, by counsel, moved the Judge to reject the narrative statement submitted by the defendants on the grounds that counsel tendering the narrative statement did not give opposing counsel a reasonable opportunity to examine the original or a true copy of it as required by Rule 5:1 (F); whereas a rough draft of said narrative statement was presented to Lawrence M. Traylor, opposing counsel, on Monday, October 20, 1958, and suggestions were made by Mr. Traylor on corrections to be made, but a true copy page 18 } of said narrative statement submitted by Dabney Overton was not delivered to Lawrence M. Traylor until October 22, 1958.

Said motion was over-ruled and the complainants excepted.

Tendered: October 24, 1958.
Signed: November 1, 1958.

DANIEL WEYMOUTH, Judge.

page 92 } (COPY).

Circuit Court of Northumberland County, Virginia.

S. Louise Blundon

v.

Blundon Investment Corporation, et al.

Paragraph (8) of Bill of Complaint.

(8) In September of the year 1951 the defendants Ben Lindas, Carrie P. Lindas, Vincent W. Bradley, Lloyd E. Turner, Lloyd R. Turner, Anna Howard, together with the defendant T. D. Harris, (although it is your complainant's belief that the defendant T. D. Harris was thereto induced

ANSWER.

To the Honorable E. Hugh Smith, Judge of said Court:

The separate answer of Lloyd R. Turner one of the defendants to a Bill of Complaint filed against him and others in the Circuit Court of Northumberland by S. Louise Blundon, complainant.

This defendant reserving to himself the benefit of all just exceptions to the said Bill of Complaint, for answer thereto, or so much as he is advised that is material he should answer, answers and says:

1. He neither admits nor denies any of the allegations in paragraphs 1, 2, 3, 4, 5, 6, and 7 of the Bill of Complaint filed herein, and says he has no knowledge of said transactions as alleged therein.

2. He denies that he unlawfully and wrongfully conspired with anyone to defraud the complainant or the defendant corporation of their properties, or made any representations to your complainant or the defendant corporation relative to the purpose of said loan or used the proceeds there from as alleged in paragraph 8 of the Bill of Complaint filed herein. He admits that he purchased said negotiable promissory note and paid value to said defendant corporation before the said note was due and payable, and that he had no knowledge actual or constructive of any attempt by anyone to defraud and that he purchased said note in good faith. He denies that he has withheld any money from the said complainant or defendant corporation as alleged in paragraph 8 of the Bill of Complaint filed herein.

3. The defendant denies paragraph 9, sub-paragraph xviii and avers that said defendant corporation is in-
page 97 } debted to him.

4. Your defendant neither admits nor denies any of the allegations in paragraphs 10, 11, 12, 13, and avers that he has no knowledge of the transactions as alleged therein.

5. Allegations of paragraphs 14 and 15 are denied.

And having fully answered, defendant prays to be hence dismissed with his reasonable costs in this behalf expended, that he be allowed a reasonable attorney's fee as provided by the deed of trust as alleged in paragraph 8 of the plaintiff's Bill of Complaint, that the injunction *pendants lite* enjoining the sale of said deed of trust be dismissed or dissolved and

S. Louise Blundon

v.

Blundon Investment Coporation, et al.

Paragraph (9) of Bill of Complaint.

* * * * *

Regarding the aforesaid transactions, matters and things, there is attached hereto, marked Exhibit "A," and prayed to be read as a part of this bill of complaint, a statement of receipts and disbursements furnished by the defendant Ben Lindas, as to which your complainant states as follows:

i. As to item 1 your complainant states that the so-called Turner loan is, in fact, the loan mentioned in paragraph 8 hereof and your complainant requests an accounting as to the $5,000.00 represented by the note and deed of trust involved in said loan.

page 95 } xviii. As to Item 18 your complainant denies that the defendant corporation or your complainant owed any money to the defendant Lloyd R. Turner in connection with any loan. She states that it is her belief that the alleged Turner loan is the same as that mentioned in subparagraph i. hereof and demands an accounting as to any such payments.

* * * * *

page 96 } (COPY).

Virginia:

In the Circuit Court of Northumberland County.

S. Louise Blundon, Complainant,

v.

Lloyd R. Turner, et al., Defendants.

IN CHANCERY.

that the bond executed be held to defray the costs of this preceeding and other fees expended by your defendant.

LLOYD R. TURNER
By /s/ MARSHALL A. MARTIN, JR.
His Counsel.

/s/ MARSHALL A. MARTIN, JR.
Herndon, Virginia
Counsel for the Defendant.

CERTIFICATE.

I certify that a true copy of the foregoing pleading has been served on the Complainant by mailing a copy thereof, postage prepaid, to her counsel of record, Dunto, Dawe and McLeod, c/o William B. McLeod, Esq., White Stone, Virginia, this 7th. day of October, 1954.

/s/ MARSHALL A. MARTIN, JR.

Filed October 7, 1954.

H. M. WALKER, Clerk.

DANIEL WEYMOUTH, Judge.

page 98 } BLUNDON INVESTMENT COMPANY
REPORT.

As Submitted by Defendant Ben Lindas

RECEIPTS.

1. Net amount from Turner loan	$3,500.00

* * * * *

DISBURSEMENTS.

* * * * *

page 99 }

* * * * *

18. Two years interest paid on Turner loan at 6% 600.00

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded	1
Record	2
Bill of Complaint	2
Decree—January 28, 1958	6
Plea in Abatement	8
Letter from James C. Toomey to James C. Gregg, dated February 28, 1958	9
Decree—March 28, 1958	10
Answer of Commissioner of Accounts	13
Decree—May 14, 1958	14
Answer of Defendants Vincent W. Bradley, et al.	15
Motion to Strike Answer of Defendant Alexander W. Neal, Jr.	17
Decree—August 25, 1958	19
Decree—August 25, 1958	23
Letter from Judge Daniel Weymouth to James C. Gregg, dated August 23, 1958	24
Letter from James C. Gregg to Judge Daniel Weymouth, dated August 21, 1958	24
Letter from Judge Daniel Weymouth to James C. Gregg, dated August 9, 1958	25
Letter from Judge Daniel Weymouth to Louis Urow, dated September 10, 1958	26
Letter from Louis Urow to F. Virginius Watkins, dated September 2, 1958	27
Letter from F. Virginius Watkins to Judge Daniel Weymouth, dated September 4, 1958	28
Notice of Appeal and Assignments of Error	29
Decree—October 23, 1958	31
Assignment of Cross-Error	32
Narrative Statement of Testimony and Other Incidents of Trial with pleading, etc., attached from case of *Blundon* v. *Blundon Investment Corp., et al.*	33

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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SUPREME COURT OF APPEALS
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