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FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5013

In the Supreme Court of Appeals of Virginia at Richmond

A. M. PHIPPS, ADMINISTRATOR, ETC., ET AL.

v.

S. H. SUTHERLAND

FROM THE CIRCUIT COURT OF DICKENSON 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. 5013

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 17th day of March, 1959.

A. M. PHIPPS, ADMINISTRATOR, ETC., ET AL., Appellants,

against

S. H. SUTHERLAND, Appellee.

From the Circuit Court of Dickenson County

Upon the petition of A. M. Phipps, Administrator of the Estate of Columbus Phipps, deceased; A. M. Phipps, Trustee; Burl Compton, Administrator of the Estate of W. E. Compton, deceased; Earl Speer; A. W. Powers and A. M. Phipps an appeal and *supersedeas* is awarded them from a decree entered by the Circuit Court of Dickenson County on the 23rd day of December, 1958, in a certain chancery cause then therein depending wherein the said petitioners were plaintiffs and S. H. Sutherland was defendant; 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

* * * * *

Filed in the Clerk's Office the 18 day of April, 1958.

Teste:

C. P. MULLINS, Clerk
HERBERT RASNICK, D. C.

ORIGINAL BILL.

To the Honorable Circuit Court of the County of Dickenson, Virginia:

Your complainants, A. M. Phipps, administrator of the estate of Columbus Phipps, deceased; A. M. Phipps, Trustee for the joint purchasers of the assets of The Clintwood Bank Incorporated; Earl Speer; Berry Compton, administrator of the estate of W. E. Compton, deceased; A. W. Powers, and A. M. Phipps in his own right, would most respectfully represent:

(1) That on the 11th day of June, 1932, H. S. Sutherland and J. C. Sutherland confessed judgment upon a note waiving the benefit of the homestead exemption, and in favor of The Clintwood Bank, Incorporated, a corporation, in the amount of the sum of $7,650.00, and also for ten per centum attorney's fee, with interest on $350.00, a part thereof from July 30, 1928; with interest on $4,000.00, another part thereof from August 13th, 1928; and with interest on $3,300.00, the remainder thereof from September 21st, 1928, and $12.25 adjudged costs, which said judgment was duly docketed in the Judgment Lien Docket regularly kept in the Office of the Clerk of the Circuit Court of the County of Dickenson, Virginia, and being Lien Book 12 page 22 thereof, as will more fully appear from an abstract of the said judgment page 2 } herewith filed, marked, "Exhibit Abstract No. 1," and prayed to be read along with and treated as a part hereof.

(2) That on the 11th day of June, 1932, a writ of *fieri facias* was duly issued upon the said judgment, and placed in

the hands of the Sheriff of Dickenson County, Virginia, and which said writ of *fieri facias* was duly returned by the said Sheriff, with the following return endorsed thereon, to-wit:

"Returned no property found. This Sept. 5, 1932.

D. R. CRABTREE, D. S."

All of which will more fully appear from a certified copy of the said writ of *fieri facias,* and the return endorsed thereon, which are herewith filed marked, "Execution No. 1" and prayed to be read along with and treated as a part hereof;

(3) That on the 7th day of September, 1932, another writ of *fieri facias* was duly issued upon the said judgment, and directed to and placed in the hands of the Sheriff of Wise County, Virginia, and which said writ of *fieri facias* was duly returned with the following endorsement thereon, to-wit:

"Returned no property found. This Nov. 21, 1932. R. S. Hubbard, D. S. for J. P. Adams SW Co."

All of which will more fully appear from a certified copy of the said writ of *fieri facias,* and the return endorsed thereon, which are herewith filed, marked, "Exhibit No. 2," and prayed to be read along with and treated as a part hereof;

(4) That on the 28th day of November, 1942, another writ of *fieri facias* was duly issued upon the said judgment, and placed in the hands of the Sheriff of Dickenson County, Virginia; that another writ of *fieri facias* was duly issued upon the said judgment on the 6th day of March, 1952, and placed in the hands of the Sheriff of Dickenson County, Virginia, and which said writ of *fieri facias* was duly returned with the following return thereon, to-
page 3 } wit:

"Search made and no property found to make this execution. This March 10, 1952.

"Caudle Colley D. S. for John C. Rose, Sheriff Dickenson County, Virginia."

(5) That on the 17th day of June, 1932, The First National Bank of Bluefield, a corporation, recovered a judgment in the Circuit Court of the County of Dickenson, Virginia, against S. H. Sutherland and others, for the sum of $89,078.54, with

interest from June 17th, 1932, and the costs thereof, subject to the following credits, to-wit:

October 20th, 1928,	$3,221.34
October 24, 1928,	750.00
November 15, 1928,	1,800.00
November 19, 1928,	5,000.00
November 22, 1928,	2,577.50
December 6, 1928,	1,000.00
January 25, 1929,	3,160.95
February 13, 1929,	2,784.24
July 24, 1929,	1,000.00
August 6, 1929,	1,000.00
December 18, 1929,	1,000.00
January 8, 1930,	1,000.00
January 24, 1930,	1,350.00
January, 25, 1930,	1,000.00
May 23, 1930,	4,900.60
May 24, 1930,	2,450.00
May 27, 1930,	4,866.67
September 4, 1929,	1,400.00
September 4, 1930,	241.00
October 18, 1930,	1,000.00
November 14, 1930,	1,000.00
December 19, 1930,	500.00
May 18, 1931,	500.00
February 4, 1932,	500.00
June 11, 1932,	300.00

And on said mentioned date and in said proceeding, the said First National Bank of Bluefield, recovered an additional $1,500.00 as attorney's fee, which said judgment was duly docketed in the Judgment Lien Docket regularly kept *regularly kept* in the Office of the Clerk of the Circuit Court of the County of Buchanan, Virginia, in Lien Book No. 12 page 43 thereof, as will more fully appear from an abstract of the said judgment herewith filed, marked, "Exhibit Abstract No. 2," and prayed to be read along with and treated as a part hereof;

page 4 } (6) That on the .... day of ..... 19 ...., and within ten years from the said 17th day of June, 1932. execution was duly issued on said judgment and placed in the hands of the Sheriff of Dickenson County, Virginia for enforcement of the collection thereof; and additional executions were thereafter issued upon the said judgment within ten years from the issuance of the first mentioned

execution, and within ten years prior to June 29th, 1948 an execution was duly issued upon the said judgment and placed in the hands of the Sheriff of Dickenson County Virginia;

(7) That on the .... day of ..... 19 ...., and subsequent to the recovery of the first mentioned judgment, being the judgment as shown by "Exhibit Abstract No. 1," the said Clintwood Bank, Incorporated, a corporation, was by court proceedings regularly had in the Circuit Court of the County of Dickenson, Virginia, placed in the hands of a Receiver, and the assets thereof ordered to be liquidated and disbursed among the parties entitled to share therein;

(8) That by proceedings regularly had in the said cause, in the said Circuit Court of the County of Dickenson, Virginia, it was on the 30th day of March, 1934, adjudged, ordered and decreed that each and all of the remainder of the assets of the said Clintwood Bank, Incorporated, which had not then been collected by the Receiver of the said mentioned bank, which included the said mentioned judgment against S. H. Sutherland and J. C. Sutherland, and in the amount of $7,650.00, with interest and attorney's fee, and also included, the said judgment taken as aforesaid on the 17th day of June, 1932, in the amount of $89,078.54 and subject only to the credits as noted thereon, and as herein mentioned and described, be sold and assigned to A. M. Phipps, as Trustee for certain purchasers, for the consideration of the page 5 } sum of $33,000.00 cash in hand, as will more fully appear from a certified copy of the said decree herewith filed, marked, "Exhibit Decree" and prayed to be read along with and treated as a part hereof;

(9) That the said mentioned sum of $33,000.00, was paid by the said A. M. Phipps, Trustee into the hands of the said Receiver of the said mentioned bank, and the said assets were duly assigned in writing to the said A. M. Phipps, Trustee for the purchaser of said assets;

(10) That the said A. M. Phipps, Trustee, was acting on behalf of himself, Columbus Phipps, M. F. Rose, W. E. Compton, and A. W. Powers, in the purchase of the said mentioned assets of the said Clintwood Bank, Incorporated:

(11) That the said Columbus Phipps is now dead, and A. M. Phipps was duly appointed and qualified as the Administrator of his estate:

(12) That the said W. E. Compton is now dead, and Berry Compton was duly appointed and qualified as the Administrator of his estate;

(13) That the said M. F. Rose is now dead, and that he by his last will which has been duly probated in the County of

Dickenson, Virginia, devised and bequeathed all of his properties and effects to Earl Speer, as will more fully appear from a certified copy of the said will herewith filed, marked, "Exhibit M. F. Rose Will," and prayed to be read along with and treated as a part hereof.

(14) That subsequent to the entry and the docketing of the said mentioned judgments in said Lien Docket, the said S. H. Sutherland has become and still is the owner page 6 } of certain lands lying and being in the County of Dickenson, Virginia, as will more fully appear from a certain deed of conveyance from Jasper Sutherland and wife bearing date on the 6th day of June, 1923, and of record in the Clerk's Office of Dickenson County, Virginia, in Deed Book No. 51 page 171, herewith filed, marked, "Exhibit S. H. Sutherland Deed," and prayed to be read along with and treated as a part hereof;

(15) That your complainants are not advised as to whether or not the said S. H. Sutherland or other judgment debtors are the owners of any other or additional lands situate in the County of Dickenson, Virginia;

(16) Your complainants further allege that the said judgments remain unpaid, and are due and payable as herein alleged;

(17) Your complainants are advised and believe and here allege that there are other lien creditors appearing to hold liens upon the said lands, and that they therefore institute this suit on behalf of themselves, and all other lien creditors of the said S. H. Sutherland, who will join herein and pay their prorata part of the costs of this proceeding;

(18) Your complainants further allege that the said lands will not rent for a sum sufficient in five years to discharge the liens against the same;

(19) Your complainants further allege that the said indebtedness while held by the said Clintwood Bank, Incorporated, and while held by the Receiver of the said mentioned bank, and the part thereof while held by The First National Bank of Bluefield, constituted a part of the capital employed in the business of the said Clintwood Bank, Incorporated, and was taxed as such, and in the event there are any additional taxes due to be assessed thereon, these complainants page 7 } are willing that same be paid out of the recovery had hereunder;

WHEREFORE, your complainants pray that S. H. Sutherland be made a party defendant hereto, and required but not

under oath to answer this bill of complaint; that all proper orders and decrees be entered, inquiries directed, and accounts taken; that the said real estate be decreed to be sold to satisfy the liens against the same; and that your complainants have all such other, further, and general relief in the premises as the nature of their case may require, or to equity shall see meet. And they will ever pray &c.

A. M. PHIPPS,
Administrator of the Estate of
Columbus Phipps.

BERRY COMPTON,
Administrator of the Estate of
W. C. Compton.

A. M. PHIPPS, Trustee.
EARL SPEER,
A. W. POWERS,
A. M. PHIPPS.
By Counsel.

A. T. GRIFFITH
Lebanon Va. Counsel.

BRANTLEY B. GRIFFITH
Lebanon Va. Counsel.

W. M. PHIPPS
Clintwood, Va. Counsel.

page 8 } "EXHIBIT NO. 1."

The Commonwealth of Virginia,

To the Sheriff of Dickenson County, Greeting:

WE COMMAND YOU, that of the goods and chattels of S. H. Sutherland and J. C. Sutherland Partners, trading and doing business as Sutherland Brothers in your bailiwick, you cause to be made ($7,650.00) and 10% attorneys fee with interest on $350.00 a part thereof from July 30, 1928; Interest on $4,000.00 a part thereof from Aug. 13, 1928, and interest on $3,300.00 at the rate of six per cent per annum, the remainder thereof from Sept. 21, 1928 until paid, which The

Clintwood Bank late in our Circuit Court of the County of Dickenson has recovered against the said S. H. Sutherland and J. C. Sutherland, partners, trading and doing business as Sutherland Brothers as well as for a debt as interest thereon on an instrument, waiving homestead exemption; also $10.75 dollars and ..... cents which to the said The Clintwood Bank in the same Court were adjudged for its cost by it about its suit in that behalf expended, whereof the said S. H. Sutherland and J. C. Sutherland partners, trading and doing business as Sutherland Brothers convict as appears to us of record. And how you shall have executed this writ make known at the rules to be holden in the Clerk's Office of our said Circuit Court on the 1st Monday in Sept. 1932 next. And have then there this writ.

WITNESS Lee Stanley Clerk of our said Court, at the court house the 11th day of June, 1932, and in the 156 year of the Commonwealth.

LEE STANLEY, Clerk.

(on back)

The Clintwood Bank,

v.

Sutherland Brothers et als., W. B. Phipps p. q.

F. Fa. in Debt

Came to hand June 13, 1932, at 8:40 o'clock A. M.

D. R. CRABTREE.

To 1st Mon. in Sept. 1932.

Dickenson County Circuit Court

J. L. D. No. 12 P 22
L. O. B. No. ..... P ....

Returned no property found.
This Sept. 5, 1932.

D. R. CRABTREE, D. S.

A Copy—Teste:

HERBERT RASNICK, Deputy Clerk.

page 9 } "EXHIBIT NO. 2."

The Commonwealth of Virginia,

To the Sheriff of Wise County, Greeting:

WE COMMAND YOU, that of the goods and chattels of S. H. Sutherland, J. C. Sutherland Partners, trading and doing business as Sutherland Brothers in your baliwick, you cause to be made ($7,650.00) and 10% attorney fee with interest on $350.00 a part thereof from July 30, 1928. Interest on $4,000.00 a part thereof from Aug. 13, 1928 and interest on $3,300.00 the remainder thereof from Sept. 21, 1928 with interest at the rate of six per cent annum, from the ..... day of ....., 19 .... until paid, which The Clintwood Bank late in our Circuit Court of the County of Dickenson ha.... recovered against the said S. H. Sutherland, J. C. Sutherland, partners trading and doing business as Sutherland Brothers as well as for a debt as interest thereon on an instrument, waiving not waiving homestead exemption; also $10.75 dollars and ..... cents which to the said The Clintwood Bank in the same Court were adjudged for their cost by them about their suit in that behalf expended, whereof the said S. H. Sutherland, J. C. Sutherland partners trading and doing business as Sutherland Brothers convict as appears to us of record. And how you shall have executed this writ make known at the rules to be holden in the Clerk's Office of our said Circuit Court on the 3rd Monday in Nov. 1932 next. And have then there this writ.

WITNESS Lee Stanley, Clerk of our said Court, at the Court House the 7th day of Sept., 1932, and in the 157 year of the Commonwealth.

LEE STANLEY, Clerk
By K. E. FULLER, D. C.

(on back)

The Clintwood Bank,

v.

S. H. Sutherland, et al.
p.q.

F. Fa. in Debt

Came to hand Sept. 8, 1932, at 11 o'clock A. M.

R. S. HUBBARD.

To 3rd Mon. in Nov., 1932.

Dickenson County Circuit Court

J. L. D. No. 12 P 22
L. O. B. No. ..... P .....

Returned. No property found. This Nov. 21, 1932.

R. S. HUBBARD, D. S.

for J. P. Adams S W Co.

A Copy—Teste:

HERBERT RASNICK, Deputy Clerk.

page 10 }

"EXHIBIT ABSTRACT NO. 1"

ABSTRACT OF JUDGMENT

Virginia: In the Circuit Court for the County of Dickenson:

Plaintiff The Clintwood Bank Attorney, P. Q. W. B. Phipps

Defendants S. H. Sutherland and J. C. Sutherland, Partners Trading & doing business as Sutherland Brothers.

AMOUNT OF JUDGMENT AND DATE FROM WHICH IT BEARS INTEREST OR ALTERNATIVE VALUE OF ANY SPECIFIC PROPERTY RECOVERED

$7650.00 and 10% Atty fee, with interest on $350.00 a part thereof from July 30, 1928; Interest on $4,000.00 a part thereof from Aug. 13th 1928 and Interest on $3,300.00 the remainder thereof from Sept. 21, 1928

DATE OF JUDGMENT	DATE OF DOCKETING	TIME OF DOCKETING	CAN HOMESTEAD BE CLAIMED	COURT IN WHICH RENDERED	AMOUNT OF COSTS RECOVERED
June 11, 1932 At 7 P. M.	June 11, 1932	9: P. M.		Confessed Judgment Dickenson County Clerk's Office L.O.B.11 P.543 C. B. 9 P. 10	$10.75

CREDITS DATE	CREDITS AMOUNT	EXECUTIONS DATE	NATURE	TO WHOM DIRECTED	RETURN DATE	NATURE OF RETURN	ADDITIONAL COSTS	DATE OF PAYMENT OR DISCHARGE IN WHOLE OR IN PART (OTHER THAN BY OFFICER'S RETURN) AND BY WHOM MADE
		6/11/32	Fi Fa	S.D.C.	1st Mon. Sept. 32	Search made and no property found to make this execution. This March 10, 1952 Caudle Colley, D. S. for John C. Rose, Sheriff Dickenson County, Va.		
		9/7/32	Fi Fa	S.W.C.	3rd Mon. Sept. 32		.50	
		1/24/33	Fi Fa	S.D.C.	1st Mon. Apr. 33		.50	
		8/7/33	Fi Fa	S.D.C.	3rd Mon. Oct. 33		.50	
		11/28/42	Fi Fa	S.D.C.	1st Mon. Feb. 43		.50	
		3/6/52	Fi Fa	S.D.C.	1st Mon. June 52		.50	
		4/2/58	Fi Fa	S.D.C.	3rd Mon. July 58		.75	

The foregoing is a true abstract of a judgment duly docketed in the Clerk's office of the Circuit Court for the County of Dickenson on the 16th day of April, 1958, in Judgment Lien Docket No. 12 Page 22.

Teste:

HERBERT RASNICK, Deputy Clerk.

"EXHIBIT ABSTRACT NO. 2"

ABSTRACT OF JUDGMENT

Virginia: In the Circuit Court for the County of Dickenson:
Plaintiff The First National Bank of Bluefield Attorney, P. Q. McCoy & Rose
Defendants Clintwood Bank, Inc., W. H. McCoy, A. W. Powers, W. E. Compton, M. F. Rose, Columbus Phipps, W. B. Phipps, H. C. Buchanan, J.C. Sutherland, S. H. Sutherland, Jasper Sutherland and G. F. Kiser, Admr. of the estate of Marion Mullins, deceased.

AMOUNT OF JUDGMENT AND DATE FROM WHICH IT BEARS INTEREST OR ALTERNATIVE VALUE OF ANY SPECIFIC PROPERTY RECOVERED

$89,078.54 with interest from 4th day of Oct. 1928 and $1500.00 attorneys fee subject to credits as follows: (See attached sheet)

DATE OF JUDGMENT	DATE OF DOCKETING	TIME OF DOCKETING	CAN HOMESTEAD BE CLAIMED	COURT IN WHICH RENDERED	AMOUNT OF COSTS RECOVERED
June 17, 1932	July 8, 1932	11:30 A. M.		Dickenson Circuit Court L.O.B. 11.P.582 C. B. 9, P. 82	$29.50

CREDITS DATE	CREDITS AMOUNT	EXECUTIONS DATE	NATURE	TO WHOM DIRECTED	RETURN DATE	NATURE OF RETURN	ADDITIONAL COSTS	DATE OF PAYMENT OR DISCHARGE IN WHOLE OR IN PART (OTHER THAN BY OFFICER'S RETURN) AND BY WHOM MADE
		12/31/32	Fi Fa	S.D.C.	3rd Mon. Mar. 32			
		4/9/34	Abst.				.50	
		4/25/45	Fi Fa	S.D.C.	3rd Mon. July 45		.75	

For assignments (See attached sheet)

The foregoing is a true abstract of a judgment duly docketed in the Clerk's office of the Cicruit Court for the County of Dickenson on the 16th day of April, 1958, in Judgment Lien Docket No. 12 Page 43.

Teste:

HERBERT RASNICK, Deputy Clerk.

page 12 } CREDITS.

Oct. 20, 1928	$3,221.34
Oct. 24, 1928	750.00
Nov. 15, 1928	1,800.00
Nov. 19, 1928	5,000.00
Nov. 22, 1928	2,577.50
Dec. 6, 1928	1,000.00
Jan. 25, 1929	3,160.95
Feb. 13, 1929	2,784.24
July 24, 1929	1,000.00
Aug. 6, 1929	1,000.00
Dec. 18, 1929	1,000.00
Jan. 8, 1930	1,000.00
Jan. 24, 1930	1,350.00
Jan. 25, 1930	1,000.00
May 23, 1930	4,900.60
May 24, 1930	2,450.00
May 27, 1930	4,866.67
Sept. 4, 1930	1,400.00
Sept. 4, 1930	241.00
Oct. 18, 1930	1,000.00
Nov. 14, 1930	1,000.00
Dec. 19, 1930	500.00
May 18, 1931	500.00
Feb. 4, 1932	500.00
June 11, 1932	300.00

page 13 } For value received this judgment is hereby assigned to A. M. Phipps, Trustee of Clintwood Bank.

This Aug. 6, 1934

Cumberland Bank and Trust Co., Receivers, Dickenson County Bank, Inc.,

By R. S. Sutherland, V-Pres.

TESTE: Lee Stanley, Clerk

For value received this judgment is hereby assigned to R. S. Sutherland, Trustee for Cumberland Bank & Trust Company.

This Aug. 6, 1934.

A. M. Phipps, Trustee

Teste: Lee Stanley, Clerk

In consideration of the transfer of this judgment lien against F. L. Wells property sold M. F. Rose and Sarah

Rose one half interest being conveyed to M. F. Rose, this judgment lien is hereby released as to the 1/2 interest of M. F. Rose to lots #152, 153, 154 and 155 in Block No. 16, Grandview addition to Town of Clintwood also 1.78 acres known as Farm No. 35 of Grandview addition. This Nov. 3, 1938.

R. S. Sutherland, Trustee

Atteste: K. E. Fuller, Dep. Clerk.

For value received the lien of this judgment is hereby released as to the tract of 44.37 acres conveyed by A. M. Phipps W. B. Phipps to Odell Mullins by deed dated 4-25-38, and recorded in D. B. 71 P. 577. This 9-30-38.

R. S. Sutherland, Trustee

For value received this judgment is released as to 1/2 interest of W. C. Compton in 26½ acres conveyed by J. M. Vanover to W. E. Compton by deed dated July 25, 1921 and recorded in Deed Book 47, Page 144 This Dec. 27, 1939.

Clintwood Bank

By A. M. Phipps, Atty.

page 14 } For value received this judgment is hereby assigned to A. M. Phipps, Trustee of Clintwood Bank without recourse.

This July 29, 1941.

Cumberland Bank & Trust Co.,

By N. E. Hughes, Assistant Cashier.

The lien of this judgment for value received is hereby released as to Lots 4 & 5 in Holly Creek addition sold to Fern Short et als.

This Nov. 24, 1941.

A. M. Phipps, Trustee.

State of Virginia,

County of Dickenson, to-wit:

I, C. P. Mullins, Clerk of the Circuit Court of Dickenson County in the State of Virginia, and as such clerk, having the care and custody of the records of the Circuit Court of said County, do hereby certify that the foregoing is a true and correct abstract of a judgment duly docketed in the Clerk's Office of the Circuit Court for the County of Dickenson on the 8th day of July, 1932, in Judgment Lien Docket No. 12 Page 43, as the same appears of *re-* record in my office in Clintwood, Virginia.

In Testimony Whereof, I have hereunto set my hand and

affixed the seal of said Circuit Court of Dickenson County, Virginia, this April 16, 1958.

Seal HERBERT RASNICK, Deputy for C. P. Mullins, Clerk Circuit Court, Dickenson County, Virginia.

page 15 } "EXHIBIT DECREE."

Circuit Court for Dickenson County, Virginia, on Friday, the 30th day of March, in the year of our Lord One Thousand Nine Hundred thirty-four:

The Honorable, A. G. Lively, Judge, Presiding.

State Corporation Commission, Complainant,

v.

Dickenson County Bank, Inc., Defendant.

DECREE.

This cause came on this day to be heard upon the papers formerly read herein, and upon the petition of the Cumberland Bank and Trust Company, Receiver for the Dickenson County Bank, Incorporated, and The First National Bank of Bluefield, filed herein on March 27, 1934, which petition was duly sworn to and is accompanied by the offer of A. M. Phipps, Trustee, dated March 26, 1934, to purchase the judgment in the name of *The First National Bank of Bluefield v. the Clintwood Bank, Incorporated, et als.*, dated the 17th day of June, 1932, and other notes, judgment and other collateral and property derived through and by means of said collateral assigned by the Clintwood Bank, Incorporated, to the Dickenson County Bank, Incorporated, on the 5th day of October, 1928, and was argued by counsel.

Upon consideration whereof, the court is of the opinion that it is the best interest of all creditors of the Dickenson County Bank, Incorporated, to accept said offer, it is therefore adjudged, ordered and decreed that the said offer of A. M. Phipps, Trustee, which is in the following words and figures:

"Clintwood, Virginia
March 26, 1934.

page 16 } The First National Bank of Bluefield
Bluefield, West Virginia

Cumberland Bank and Trust Company Receiver
for Dickenson County Bank, Inc. Clintwood,
Virginia

Gentlemen:

I offer you the sum of $33,000.00 cash and the following deposits now in the Dickenson County Bank, Incorporated:

Columbus Phipps $4,569.97 and the Clintwood Bank $172.14, for the judgment obtained in the Circuit Court of Dickenson County, Virginia, dated June 17, 1932, in Law Order Book No. 11, page 582, in the name of The First National Bank of Bluefield against the Clintwood Bank, Incorporated, S. H. Sutherland, J. C. Sutherland, Jasper Sutherland, W. B. Phipps, Columbus Phipps, Marion Mullins, W. H. McCoy, A. W. Powers, Henry Buchanan and M. F. Rose for the sum of $89,078.54 and all collateral transferred and assigned by the Clintwood Bank, Incorporated, to the Dickenson County Bank, Incorporated, dated the 5th day of October, 1928, and any right or interest acquired in any property by and through the property or proceeds thereof transferred as collateral and all notes and judgments derived by reason of said assignment to said note.

This offer is made upon the condition that the Reconstruction Finance Corporation takes over the remaining assets of the Dickenson County Bank, Incorporated, and makes a loan on said assets acceptable to he Receiver and *and* confirmed by the court.

This March 26, 1934.

A. M. PHIPPS, Trustee."

be and the same is hereby accepted upon the condition named therein, and the Cumberland Bank and Trust Company, Receiver for the Dickenson County Bank, Incorporated, is hereby authorized and empowered to make such assignment and conveyance of such property and rights mentioned in the offer of A. M. Phipps, Trustee, as will secure to him good and perfect title thereto, when the conditioned mentioned therein is complied with.

page 17 } Upon further consideration whereof and it appearing to the court that it is to the best interest of the creditors of the Dickenson County Bank to accept the

offer of A. K. Morison and R. A. Morison to pay their note and judgment of $2,336.40 for $2,100.00 and cost be and same is hereby accepted.

A. G. LIVELY
Judge 27th Judicial Circuit.

A Copy—Teste:

HERBERT RASNICK, Deputy Clerk.

page 18 } "EXHIBIT M. F. ROSE WILL."

This May 7th, 1936
Clintwood, Va.
Dickenson Co.

This is my last will. I *here by* will and *bequethe* everything, I possess at my *deth* to Earl Speer a Nephew of mine all *nots* bonds land money house and household and *ever* thing that I possess or may possess in this State or *eny* other State only I do request of Earl Speer to be good to Sarah my wife and not let her suffer and be good and kind to her

MILLARD F. ROSE

I am sure this is M. F. Roses Signature

W. H. McCOY
SARAH A. ROSE

Virginia:

In Dickenson County Clerk's Office:

The foregoing writing was this day probated, admitted to record and recorded as and for the true last will and testament of Millard F. Rose, in Will Book No. 4 page 209.
Given under my hand this the 22nd day of Jan. 1954.

Teste;

C. P. MULLINS, Clerk
By /s/ LEE MULLINS, D. C.

A Copy—Teste:

HERBERT RASNICK, Deputy Clerk.

page 19 } "EXHIBIT S. H. SUTHERLAND DEED.

THIS DEED, made this the 6th day of June, in the year, 1923, by and between, Jasper Sutherland, and Louisa Sutherland, his wife, parties of the first part, and S. H. Sutherland, party of the second part, all of Dickenson County, Virginia.

WITNESSETH: That for and in consideration of the sum of Five Dollars, and for the love and affection the parties of the first part have for their son, the said parties of the first part, do hereby grant, give, and convey unto the said party of the second part, all the following described tract or parcel of land, lying and being in Dickenson County, and a part of the Home Tract on which the said first parties now live, and bounded and described as follows, to-wit:

BEGINNING at a chestnut on the ridge, between Hatchet Branch and Cabin Fork of Lick Creek, and a corner to another lot or parcel of the Home Tract this day conveyed to Geo. C. Sutherland and Nancy Belle Sutherland, and with a line of said parcel down the ridge, S 78 55 W 253.8 feet, to a chestnut on the ridge, N 50 10 W 200 feet to a chestnut on the ridge; N 60 05 W 401 feet to a chestnut oak; N 27 45 W 311.4 feet to a double chestnut; S 80 45 W 340.5 feet to a chestnut a corner to the lands of the Clinchfield Coal Corporation, and leaving the lines of tract No. 1, and with the lines of the Company, S 6 31 E 2032.1 feet to a hickory and black gum on a hillside facing the south; S 49 30 E 899.6 feet to two hemlocks on the north bank of Hatchet Branch, and up the same, S 89 50 E 777.4 feet to a birch and spruce pine stump, at the forks of Hatchet Branch; leaving the Branch and up the spur as it meanders, S 84 30 E 242 feet to a stake; S 80 E 100 feet to a stake; S 75 15 E 84 feet to a stake; N 86 15 E 190 feet to a stake; N 87 30 E 128 feet to a stake; N 71 30 E 115 feet to a stake; N 52 E 116 feet to a stake; N 49 E 84 page 20 } feet to a stake; N 75 45 E 163 feet to a stake; N 80 30 E 77 feet to a stake; N 84 E 38 feet to a stake; S 79 E 288 feet to a stake; N 57 45 E 173.6 feet to a stake; N 70 15 E 229 feet to a stake; N 29 15 E 121 feet to a stake; N 11 30 E 93 feet to a stake; N 45 45 E 164 feet to a stake; N 65 E 231 feet to a stake; N 87 E 82 feet to two hickories, on top of the ridge, N 48 45 E 122 feet to a stake; N 33 30 E 177 feet to a chestnut; N 24 W 866 feet to a lynn and beech; N 39 E 355.5 feet to a large rock; S 72 45 714 feet to a small chestnut on the ridge; N 22 E 123 feet to a stake N 49 E 233 feet to a stake; N 44 30 E 187 feet to two

hickories, corner to tract No. 8, this day conveyed to M. L. Sutherland N 58 50 E 150 feet to a stake; N 33 56 E 270.7 feet to a stake; N 31 25 E 208.6 feet to a stake; N 23 20 E 283.3 feet to a stake; N 29 30 W 239.6 feet to a stake; S 83 25 W 338.2 feet to a stake; N 71 05 W 75.7 feet to a stake; S 76 45 W 125.7 feet to a stake; N 39 30 W 336.2 feet to a stake; N 2 E 509.6 feet to a stake; N 62 20 W 294.5 feet; to a stake; corner to tract No. 1, and with lines of same; N 38 35 W 542 feet to a stake in the bend of Hatchet Branch; S 35 30 W 279 feet to a stake in the road; S 21 W 273 feet to a stake in the road; S 14 E 240 feet to a hickory on the bank of the road; S 85 15 W 1865 to two small sassafrass; S 20 30 W 506 feet to a small chestnut; S 45 22 W 180.3 feet to a small chestnut; S 82 W 270 feet to the BEGINNING, containing 266.66 acres, more or less, and being tract No. 2 in the division of the said Jasper Sutherland's Home Tract.

Witness the following signatures and seals, this the day and year first above written.

his
Jasper x Sutherland (Seal)
mark

her
Louise x Sutherland (Seal)
mark

Witness:
GEO. C. SUTHERLAND.

page 21 } Dickenson County, to-wit:

I, Geo. C. Sutherland, a Commissioner in Chancery for the Circuit Court for Dickenson County, in the State of Virginia, do certify that Jasper Sutherland, and Louise Sutherland, whose names are signed to the writing above bearing date on the 6th day of June, 1923, this day acknowledged the same before me in my county aforesaid.

Given under my hand, this the 16th day of June, 1923.

GEO C. SUTHERLAND,
Commissioner in Chancery.

Virginia:

In Dickenson County Clerk's Office.

The foregoing writing bearing date on the 6th day of June, 1923, from Jasper Sutherland and wife to S. H. Sutherland, admitted to record the 24th day of December, 1923, at 10: A. M., and together with the certificate of acknowledgment thereto annexed, recorded and properly indexed 24th day of December, 1923, in Deed Book No. 51, page 171.

State tax $0.10
Transfer fee 1.00
Clerk's fee 1.50

2.60

Teste:

W. E. RASNICK, Clerk
By /s/ N. E. HUGHES, D. C.

A Copy—Teste:

HERBERT RASNICK, Deputy Clerk.

* * * * *

page 24 }

* * * * *

Received and filed, this the 1st day of May, 1958.

HERBERT RASNICK, Dep. Clerk.

DEMURRER AND ANSWER.

DEMURRER.

This defendant comes and says the bill filed is not sufficient in law; and assigns the following as grounds therefor:

ONE. The bill is barred by laches;

TWO. The bill shows on its face if complainant ever had a cause against him it is barred by the statute of limitations.

ANSWER.

For answer to said bill, or so much thereof as he is advised it is material he should answer, answers and says:

1. He is not fully advised as to the matters set forth in paragraph (1) of the bill; as will more fully appear below. He states that about the year 1932, at the request of W. B. Phipps, this respondent along with his partner and brother, J. C. Sutherland, did confess judgment on three notes, which was or had been a part of the assets of the defendant, Clintwood Bank, but he does not recall the exact amount of said notes, and for this case only, is willing to accept the allegations of the bill as the correct amount; but it was this respondent's information that so far as any liability on him, if any, the matter was later settled and discharged and he so believes yet; and if not, it is barred both by laches and the statute of limitations.

2, 3 & 4. This respondent had not heard of the matters stated in paragraphs (2), (3) and (4) until the reading of the bill in this case, and makes no denial thereof, but he relies on both laches and the statute of limitations as a de-
page 25 } fense thereto.

5. This respondent admits the allegations contained in paragraph (5) of the bill; and in addition to laches and the statute of limitations, this respondent relies on the defense set forth below in paragraph 20.

6. This defendant does not know whether the facts exist, that are set forth in paragraph (6) of the bill; and as a further defense thereto relies on the defense set forth below in paragraph 20, and laches and the statute of limitations.

7. This respondent had never heard of the matters set out in paragraph (7) of the bill until he read it in the copy thereof served on him, and does not know that such facts exist: but if they should be true, in addition to *res adjudicata* he relies on laches as a defense thereto.

8. This respondent does not know whether the facts exist, as set out in paragraph (8) of the bill of complaint.

9 & 10. This respondent is not informed and does not know whether the facts exist or existed that are set forth in paragraphs (9) and (10) of the bill; but if such transaction was had it was not a purchase, but a payment.

11, 12 & 13. This respondent admits the allegations contained in paragraphs (11), (12) and (13) of the bill.

14. This respondent denies that he became the owner of

the tract of land described in paragraph (14) of the bill subsequent to the date of the alleged judgment; but he is the owner of said tract of land, subject to easements he has conveyed to Appalachian Electric Power Company, since he obtained same.

16, 17, 18 & 19. This respondent denies the allegations contained in paragraphs (16), (17) and (18) of the bill of complaint, and is not informed and does not know whether the facts exist or are true that is set out in paragraph (19) of the bill.

20. As appears above this respondent is not fully advised as to many of the things contained in the bill, and he believes it is but fair to the parties that he state the facts concerning all of them as he understood them at the time, and as he is now informed.

page 26 } (a) In the fall of 1928, he was a small stockholder, but not an officer or director, in the Clintwood Bank, a banking institution with its building and banking house on the south side of Main Street in the town of Clintwood, Virginia, in the same division or block of land and within about one hundred feet of The Dickenson County Bank, Inc., another banking institution which was then located and doing business.

(b) He had heard, that by reason of some irregularities of a former cashier, the assets of the Clintwood Bank *was* threatened by the State Banking Commissioner of being placed in the hands of a receiver, if its assets were not strengthened, and he was requested by some one interested in said Bank to meet the officers, directors and perhaps the stockholders in the bank at a certain time already fixed; and by reason of this request he attended.

(c) At this meeting, attended by a great many, including W. B. Phipps, the former information was verified, and he was told The Dickenson County Bank, Inc., would take over all assets and liabilities of the Clintwood Bank, if certain of the stockholders, including himself, would sign a note or give security that all the assets held by the Clintwood Bank was genuine. To this respondent replied that he was reliably informed The Dickenson County Bank, Inc., was in just about as bad a fix as they, and it would in a short time, perhaps in a week, use our suretyship and go to The First National Bank of Bluefield and gets funds to tide itself over its difficulties, and that respondent would not sign a note as surety for these unless the entire agreement was attached to it. Some expressed doubts of this proposition being acceptable. Respondent notified those present he would not sign on

any other terms. Respondent then asked of those present the amount of money that would satisfy the Banking Commissioner to allow us to continue and was informed that $25,000.00 would probably suffice, and not more than $30,000.00 at most. To which he replied if certain of those present, including Columbus Phipps, W. E. Compton, A. W. Powers, M. F. Rose and Eivens Tiller, would sign a note he would borrow the money and give it to the Clintwood Bank with the understanding that the amount so given with its interest was paid out first to us, before any dividends were paid; but this was not agreed to.

page 27 } (d) In a few days respondent was notified by someone interested that The Dickenson County Bank, Inc., would accept his proposition, and a time was fixed when the stockholders and officers of the Clintwood Bank would meet the representatives of The Dickenson County Bank, Inc., at its directors' room.

(e) At the time arranged, certain of those interested in the Clintwood Bank met the representatives of The Dickenson County Bank, Inc., at the pre-arranged place. When respondent arrived he found a negotiable note made out for our signatures. Respondent asked where the condition was which was to be attached, and informed all present, including the cashier of The Dickenson County Bank, Inc., and some whom was known by him to be directors of The Dickenson County Bank, Inc., what the condition was, and told them that was the only condition on which he would sign, for himself and his father, Jasper Sutherland.

(f) The representatives of The Dickenson County Bank, Inc., replied by way of argument addressed to respondent, that such conditions would render the paper non-negotiable and they did not think the Virginia Banking Department would approve of it; to which respondent replied that it was no part of their assets but only a guaranty of the genuineness of the property taken over, and his guarantee was not intended to be negotiable. He *futher* told those present including the representatives of The Dickenson County Bank, Inc., that was his reason for refusing to sign the note; and further said the note as prepared would, if executed by him, enable The Dickenson County Bank, Inc., to take the note to The First National Bank of Bluefield and get money on it, and in addition keep the assets of the Clintwood Bank for like amount. To this the representative of The Dickenson County Bank, Inc., replied that they would not and had no intention of doing so; and the negotiations continued for nearly an hour, and the representatives of The Dickenson County Bank, Inc., seemed willing to contact the State Banking Commis-

sioner to that effect, but as respondent had an engagement, elsewhere, he could not remain longer; and he then and there let it be known why he had to leave, and he would place his and his father's names to the note and leave it with W. B. Phipps and H. E. McCoy to be delieved only on the condition he had outlined which must be written out and page 28 } attached to the note, and he left with that understanding.

(f) When respondent returned, he asked Mr. W. B. Phipps what was done, and he said The Dickenson County Bank, Inc., accepted respondent's terms and took the note. Respondent received not a penny nor any of the assets for doing this, and was never requested nor signed any renewal although the note was payable on demand; and he heard no more of it, and believed the guaranty was being carried out till the summons was delivered to him commencing the action for judgment on the note by The First National Bank of Bluefield.

(g) When this summons was served respondent at once contacted Mr. W. B. Phipps and asked him how the Bluefield Bank could obtain the note without the condition, as he signed and left the note with him, to be delivered only with the condition he demanded was attached. Mr. Phipps then admitted this had not been done; and respondent then reminded him of the condition, and that it was to be attached to the note as a condition precedent to its delivery. To this he replied that the representatives of The Dickenson County Bank, Inc., had agreed to respondent's condition and made a proposition in writing which included all that this respondent asked, except that it did not want it attached to the note, as by doing so it would require much longer time to wind the matter up, but without it the matter could be wound up in a short time, perhaps within ninety days, certainly not more than six months, and then the note would be returned and it would never be out of the bank so he delivered the note believing respondent would never know but he had strictly abided the authority conferred.

(h) Upon being told this respondent prepared his defense to the note. He was busy about night and day on matters involving about $100,000.00 in the State of Kentucky concerning which he alone was familiar, and left the preparation for trial largely to others, and the court at the June term refused a continuance, and held the Bluefield Bank was a holder in due course and rendered judgment for the Bluefield Bank.

(i) Respondent, at once began to prepare for a writ of error; he prepared bills of exceptions and gave opposing

counsel notice when they would be presented to the Judge for his signature. The Judge's Office was then in the court house in Lebanon, and respondent went to the Judge's page 29 } Office at the time he had fixed in his notice to opposing counsel, but when respondent arrived at the office it was locked. Respondent then went into the Clerk's office which was in the front of the court house and inquired for the Judge and was informed by one of the deputy clerks, a reliable upright man, that the Judge had just left town for a vacation of ten days to two weeks in West Virginia. Respondent then, after informing this deputy clerk of the purpose of his presence and of its importance, asked of this deputy clerk if he would deliver the bills of exceptions to the Judge as soon as he returned, and being assured that he would, left them with this deputy, again stating the importance of them. After the lapse of two weeks or more, respondent again, and before the time was up for presenting bill of exceptions, sought the Judge in his home town, and discussed with him what he understood was some objections to the exceptions concerning the instructions. At that time he had no idea the deputy clerk had not kept his promise and delivered the exceptions to the Judge, and the Judge's conversation also led respondent to believe the exceptions had been delivered to him, and respondent left believing that was the case.

(j) A few days after the last mentioned conversation with the Judge, and after the time for presenting same had expired, respondent learned the deputy clerk had not delivered the exceptions to the Clerk until two or three days too late, consequently the bills of exception were not signed and the case was never presented to the Supreme Court; but respondent can remember only one effort to enforce this judgment which will be set forth below.

(k) When respondent began the practice of law some fifty odd years ago it was the custom in Dickenson, and so far as he remembers in the adjoining counties, to require all attorneys to be present, and to call the Chancery Docket on the morning of the first day of the term, usually immediately after formal motions, and sometimes after the empanneling the grand jury for that term, and attorneys would indicate the disposition of the case desired or expected at the term, which was ascertained by calling the cases indicated the last day of the term. This custom prevailed for at least twenty-five years, but for some reason which respondent page 30 } has never been informed, it has been omitted, and he cannot recall a calling of the Chancery Docket in this county for more than twenty-five years, and since the

discontinuance of this practice it has been the custom for attorneys to notify opposing counsel or have them called when matters in which they are interested was to be presented.

(l) Respondent's law office the latter part of the nineteen and twenties and throughout the nineteen thirties was in the courthouse, and a few years after the custom of calling the Chancery Docket on the first day of the term ceased, on entering the courtroom, as respondent remembers, early on March 27th, 1931, he was informed that The Dickenson County Bank, Inc., had just been placed in the *hads* of a receiver and its attorneys and some of its officers and representatives were present and A. P. Hilton, who had for some time been acting as cashier or assistant cashier, was qualifying as temporary receiver thereof.

(m) This displaced all business in the county, as the business of The Dickenson County Bank, Inc., affected most all of the families and business therein, and caused suffering and hardships the like of which this respondent has not seen before or since; however, as he was busily engaged in a business venture in Kentucky which required almost all of his time, he at no time for and more than the next decade, gave the business of The Dickenson County Bank, Inc., any more concern than that of a citizen, unless requested by some business associate, or perhaps sometimes to appear in court for a client interested, which only required his attention to the particular matter; and during the entire pendency of the receivership of The Dickenson County Bank, Inc., lasting nearly twenty years, he never heard this receivership case called on the docket.

(n) Respondent understood that W. B. Phipps, either by employment or otherwise, would and did assist in reducing the assets of the Clintwood Bank to cash, and in so doing he on several occasions mentioned his progress: on one occasion Mr. Phipps consulted respondent about collecting from W. M. Ritter Lumber Company, for cutting timber after its time had expired from a tract of land which Mr. page 31 } Phipps had purchased for the Bank, as respondent understood, at a sale of H. C. Buchanan's property for debts due the Clintwood Bank, and after respondent and Mr. W. B. Phipps agreed on a method of procedure to make said lumber company pay, Mr. Phipps followed the plan and afterwards informed respondent he collected from the lumber company more than $3,000.00 and Mr. Phipps mentioned his progress in collecting the assets of the Clintwood Bank many times, but never at any time made any claim on respondent.

(o) As stated above respondent was busy in a partnership matter of his and his brother, J. C. Sutherland, in the State of Kentucky which was entirely in his hands, and which finally resulted in the partnership receiving more than $90,000.00 in 1932; but before that was wound up Mr. W. B. Phipps suggested it might aid the receiver of The Dickenson County Bank, Inc., for respondent and his brother to confess judgment on their notes held by The Dickenson County Bank, Inc., which they had executed to the Clintwood Bank, and on that suggestion respondent and his brother confessed the judgment set forth in paragraph (1) of complainants' bill, and at the same time confessed judgment for about half that amount in favor of the Bank of Haysi; and later in that month The First National Bank of Bluefield obtained the judgment set forth in paragraph (5) of complainants' bill on the note which was given The Dickenson County Bank, Inc., for the same matter, as set forth above in paragraph (h) and respondent was informed was carried by the last mentioned bank as assets and turned over to the receiver of The Dickenson County Bank as such, and he never heard anything to the contrary until a little more than a year ago, as will be set out in paragraph (s) below.

(p) That during the receivership of The Dickenson County Bank, Inc., numerous decrees were entered of which respondent knew nothing, payments were made, accounts adjusted, and the matter progressed till about the first of the year 1948, when there was some public aggitation to sell the remaining assets of said bank, and as there was *embarassments* and so much uncertainty in business, at a sale thereof by the receivers, pursuant to a decree of the court, respondent and two of his brothers, E. D. Sutherland and George C. Sutherland, along with H. C. Buchanan, through their page 32 } agent W. M. McFall, purchased same for the sum of $6,400.00, and after collecting a part of that amount, respondent and his associates have for the benefit of the community forgot and forgiven the remainder, and respondent had thought he and his associates had purchased all outstanding claims and assets, which they thought included the claims sued on, if they had not been already liquidated.

q) In the early nineteen thirties there *was* some suits pending in the Circuit Court of Dickenson County against Jasper Sutherland and others, and The Cumberland Bank and Trust Company, which had been appointed by the Circuit Court of Dickenson County and was acting as the receiver of The Dickenson County Bank, Inc., as such receiver and in accordance with its trust as such receiver intervened and filed its petition in said pending suits, and also impleaded this

respondent as a defendant, asserting among other things the purported judgment of The First National Bank of Bluefield, to which this defendant replied setting forth the facts as above set forth thereto and also his intention to try to enjoin same when he could get process served in this state. In those suits, various proceedings were had, payments and adjustments made and the case finally went off the docket in a manner your respondent is not informed; but after his answer no further effort was ever made to enforce said judgment against him.

(r) There was, while the receivership of The Dickenson County Bank, Inc., was pending, especially in the nineteen thirties, payments and adjustments made of which this respondent is not advised, including the settlement of the estate of his partner and brother, J. C. Sutherland, was wound up and any liabilities against W. H. McCoy was released; and during that time respondent was advised all matters effecting him or his property was settled and adjusted and if there was any assets of the Clintwood Bank unsettled he understood he and his associates purchased them at the receiver's sale when the assets of The Dickenson County Bank, Inc., were sold and he so believes they were sold to this respondent and associate, and never heard or suspected anything to the contrary until a little more than a

page 33 } year ago.

(s) When sometime more than a year ago respondent learned of the claim now made, he at once contacted Mr. A. M. Phipps, and was informed by him of the claim that he had as trustee purchased the purported judgment of The First National Bank of Bluefield. Respondent told Mr. Phipps that the matter had been wound up as above set forth; and stated that as the matter was so stale, while insisting it was wound up, he would rather make some adjustment; and requested Mr. Phipps to state what he claimed, but got no definite reply; and on several occasions renewed the request, and he had heard nothing more about it for a year or more until served with a copy of the bill filed in this suit. So respondent in addition to settlement relies on laches, and the statute of limittions, and prays that the bill may be dismissed. And respondent will ever pray, etc.

S. H. SUTHERLAND.

* * * * *

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* * * * *

FINAL DECREE.

This cause came on this day to be heard upon the bill of complaint filed herein; the demurrer of the defendant, in which demurrer the complainants joined; and upon the arguments and briefs of counsel.

On consideration whereof the court is of opinion the bill of complaint is not sufficient in law: the court therefore doth adjudge, order and decree that the demurrer of the defendant be and the same is hereby sustained, but leave is hereby given complainants to amend their bill within twenty-one (21) days from this date if they so desire; and counsel for complainants having announced that they do not desire to amend, it is, therefore, further adjudged, ordered and decreed that this cause is to stand dismissed, and the same is ordered to be stricken from the docket; and that the defendant do recover his costs in his behalf expended. To the action of the court in sustaining defendant's demurrer, complainants except.

This 23rd day of December, 1958.

R. J. BOYD, Judge.

Received and filed, this the 24 day of Dec., 1958.

A. P. MULLINS, Clerk.

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Notice is hereby given under and in pursuance to Rule 5:1, section 4 of the Rules of the Supreme Court of Appeals of Virginia, that the complainants, A. M. Phipps, Administrator of the estate of Columbus Phipps, deceased, A. M. Phipps, Trustee, Earl Speer, Berry Compton, Berry Compton, Administrator of the estate of W. E. Compton, deceased, A. W. Powers and A. M. Phipps, will apply to the Supreme Court of Appeals of Virginia, for an appeal and *supersedeas* from the decree entered in the above styled cause on the 23rd day of December, 1958, and that the following assignments of error will be relied upon, to-wit:

(1) That it was error of the Court to hold that the provisions of section 8-396 of the Code (1950) of Virginia, operated to reduce the time for the enforcement of the judgments sued upon in this cause, and deprive the complainants of the extended period of time which had been obtained under their compliance with the provisions of section 6477 of the Code (1942) of Virginia;

(2) That it was error of the Court to hold that the raising of the execution on November 28th, 1942, and the placing of the same in the hands of the Sheriff of Dickenson County, Virginia, did not operate to extend the time for the enforcement of the judgment rendered on June 11th, 1932, and in the amount of $7,650.00, and interest and costs, for a period of ten years from the return date of any execution which was issued thereon within ten years from the return date of the said execution issued on the 28th day of November, 1942; and

(3) That it was error of the Court in sustaining the demurrer and in dismissing the Complainants' bill of complaint.

A. T. GRIFFITH
Counsel for Appellants.

Received and filed, this the 6 day of Jan., 1959.

HERBERT RASNICK, Dep. Clerk.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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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.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
AUG 7 1959
RECEIVED
RICHMOND, VIRGINIA