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Records Nos. 5108, 5109

In the
Supreme Court of Appeals of Virginia
at Richmond

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA, ET AL.,
v.
STELLA MAHER

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, VIRGINIA
v.
STELLA MAHER

FROM THE CORPORATION COURT OF THE CITY OF WINCHESTER

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. 5108

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 25th day of November, 1959.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA, ET AL., Plaintiffs in Error,

against

STELLA MAHER, Defendant in Error.

From the Corporation Court of the City of Winchester

Upon the petition of The Commercial and Savings Bank of Winchester, Virginia, and Shenandoah Valley National Bank of Winchester, Virginia, a writ of error is awarded them to a judgment rendered by the Corporation Court of the City of Winchester on the 4th day of June, 1959, in a certain proceeding then therein depending wherein Stella Maher was plaintiff and Joseph B. Newlin, Trustee, and others were defendants upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of five hundred dollars, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5109

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 25th day of November, 1959.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, VIRGINIA, Plaintiff in Error,

against

STELLA MAHER, Defendant in Error.

From the Corporation Court of the City of Winchester

Upon the petition of Shenandoah Valley National Bank of Winchester, Virginia, a writ of error is awarded it to a judgment rendered by the Corporation Court of the City of Winchester on the 4th day of June, 1959, in a certain proceeding then therein depending wherein Stella Maher was plaintiff and Joseph B. Newlin, Trustee, and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

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BILL.

Complainant, Stella Maher, respectfully represents:

1.

That she is the owner in fee simple of those two certain lots of land with improvements thereupon situated, known and designated as Lots 104 and 105 of Block No. 16 of Harris Addition to the City of Winchester, Virginia, each of said lots having a frontage of 50 feet on the south side of Woodland Avenue and a depth of 180 feet, which said property was conveyed unto her by deed of Cressa E. Holliday, of record in the Office of the Clerk of the Corporation Court of the City of Winchester, in Deed Book No. 76 at page No. 600.

2.

That there is of record in the Office of the Clerk of the Corporation Court of the City of Winchester in Deed Book No. 82 at page No. 156, an instrument purporting to be a deed of trust whereby the above described property purports to be conveyed to defendant, Joseph B. Newlin, Trustee, to secure the payment of a certain "Bearer" bond of complainant in the amount of Six thousand ($6,000) Dollars, more particularly described in the said instrument; that the same is invalid for the reason hereinafter set forth, and con-
page 3 } stitutes a cloud upon the title to complainant's property.

3.

That complainant is informed that a certain bond, answering the description of that purporting to be secured by the above described deed of trust instrument is held by Thomas L. Perry defendant hereto, and that for alleged default in the payment of same, complainant's property, hereinabove described, is now being advertised for sale at public auction on August 3rd, 1957 by Joseph B. Newlin Trustee, defendant hereto.

4.

That complainant is likewise informed that the following described bonds are held by the parties indicated, who have also been made party defendant hereto, each of said bonds purporting to be secured by the deed of trust upon complainant's property herein described:

Mrs. Grace Crider	$6,000.00
Harold Cooper	$6,000.00
Minnie H. Taylor	$6,000.00
Shenandoah Valley National Bank	$6,000.00

5.

Complainant alleges that she did not sign her name to the above described deed of trust, nor the above described bonds, nor has she at any time acknowledged the signature to the said instruments, and she therefore avers that the signatures to all of the said writings are forgeries, and that the acknowledgment appended to the signature to the deed of trust was fraudulently obtained.

6.

Complainant therefore avers that the said deed of trust constitutes a cloud upon the title to her real property, and that if the property is sold as now advertised on August 3, 1957, irreparable injury will be caused her thereby.

page 4 } Wherefore, complainant prays that the deed of trust described herein be by the Court declared to be a nullity and ordered stricken from the record; that defendnt Joseph B. Newlin, Trustee, be forthwith restrained and enjoined temporarily and permanently from selling complainant's real property, described herein, and that the bonds described herein be likewise adjudicated to be of no force and effect as secured liens against complainant's real estate or as personal unsecured debts of hers.

STELLA MAHER, Complainant.

• • • • •

page 5 } Virginia:

City of Winchester.

Filed in the Clerk's Office of the Corporation Court the 26th day of July, 1957.

Teste:

P. J. MARSHALL, Clerk.

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* * * * *

ANSWER.

Now comes the defendant, Shenandoah Valley National Bank of Winchester, at Winchester, Virginia, a corporation organized and existing under the laws of the United States of America, and, for answer to the bill filed in this cause, or so much of it as it is advised it is required to answer, says:

1. This defendant admits that the complainant acquired by deed of Cressa E. Holliday, of record in the office of the Clerk of the Corporation Court for the City of Winchester, in Deed Book No. 76, at page 600, those two certain lots of land, with improvements thereupon situated, known and designated as Lots Numbers 104 and 105, of Block Number 16, of the Harris Addition, in the City of Winchester, Virginia, each of said lots having a frontage of 50 feet on the south side of Woodland Avenue and a depth of 130 feet.

2. This defendant admits that there is of record in the office of the Clerk of the Corporation Court for the City of Winchester, in Deed Book No. 82, at page No. 156, an instrument constituting a deed of trust whereby the above described property was conveyed to the defendant, Joseph B. Newlin, Trustee, to secure the payment of a certain "BEARER" bond of complainant, in the amount of $6,000, more particularly described in said instrument; and this defendant further alleges that said instrument contained the signature "Stella Maher," which signature was duly notarized before William H. Louthan, Jr., a Notary
page 16 } authorized to act in the premises; that said deed of trust, together with a bond, as described in said deed of trust and also bearing the signature "Stella Maher," was delivered to this defendant on the 3rd day of March, 1955, by Ansel B. Solenberger, who represented himself as acting as the agent of Stella Maher, and that this defendant delivered to the said Ansel B. Solenberger its check, in the amount of $6,000, payable to Stella Maher, in return for said bond, which check was thereafter honored upon its presentment for collection, and that this defendant caused the

said deed of trust to be placed on record in the office of the Clerk of the Corporation Court for the City of Winchester, Virginia, as aforesaid.

3. This defendant does not know whether the facts alleged in paragraphs 3 and 4 of said bill exist or are true, except that this defendant admits that it, as Trustee for the Estate of Mollie Evans Janney, does in fact hold a bond, in the amount of $6,000, said bond being secured by the deed of trust upon complainant's property, as aforesaid.

4. This defendant does not know whether the facts alleged in paragraph 5 of the bill exist or are true, and calls for strict proof of the same.

5. This defendant believes, and therefore alleges that said deed of trust constitutes a valid lien upon the property of the complainant hereinabove described and, therefore, denies that it constitutes a cloud upon the title to her real property, and this defendant believes, and therefore alleges that it is the sole holder of the bond validly issued and secured by said deed of trust and that if the property is sold, as now advertised, or should be sold at the direction of the defendant, Thomas L. Perry, or any of the defendants, other than this defendant, irreparable injury would be caused it thereby.

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Wherefore, this defendant prays that this Court determine the validity of the signatures of the complainant to the deed of trust and to the bond held by this defendant; that the said bond held by this defendant be adjudicated to be valid, and that it further be determined to be secured by the lien of the deed of trust hereinbefore described against complainant's real estate, and that the defendant, Joseph B. Newlin, Trustee, be permitted and authorized to sell complainant's real property in satisfaction of said obligation and lien, and that any moneys received by the said defendant, Joseph B. Newlin, Trustee, upon such sale be directed to be paid to this defendant in satisfaction of the obligation owed by the complainant to this defendant.

SHENANDOAH VALLEY
NATIONAL BANK OF WINCHESTER, AT WINCHESTER, VIRGINIA

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., August 8th 1957.

P. J. MARSHALL, Clerk.

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ORDER.

This cause came on to be heard this 16 day of December 1957 upon the motion of the complainant for leave to amend her bill and there being no objection thereto, leave is hereby granted to amend the same within ten days from the date hereof and it being represented to the Court that The Commercial and Savings Bank of Winchester, Winchester, Virginia should properly be a party defendant to this cause in order that the same may be completely adjudicated and it being further moved by the complainant that the said The Commercial and Savings Bank of Winchester, Virginia, be made party defendant hereto, to which said motion there is no objection, it is ordered that the said The Commercial and Savings Bank of Winchester be and it is hereby made a party defendant hereto and a copy of the amended bill served upon it.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., December 16, 1957.

P. J. MARSHALL, Clerk.

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AMENDED BILL.

Complainant, Stella Maher, respectfully represents:

1.

That she is the owner in fee simple of those two certain lots of land with improvements thereupon situated, known and designated as Lots 104 and 105 of Block No. 16 of Harris Addition to the City of Winchester, Virginia, each of said lots having a frontage of 50 feet on the south side of Woodland Avenue and a depth of 180 feet, which said property was conveyed unto her by deed of Cressa E. Holliday, of record in the Office of the Clerk of the Corporation Court of the City of Winchester, in Deed Book No. 76 at page 600.

2.

That there is of record in the Office of the Clerk of the Corporation Court of the City of Winchester in Deed Book No. 82 at page 156, an instrument purporting to be a deed of trust whereby the above described property purports to be conveyed to defendant, Joseph B. Newlin, Trustee, to secure the payment of a certain "Bearer" bond of complainant in the amount of Six thousand ($6,000) Dollars, more page 34 } particularly described in the said instrument; that the same is invalid for the reason hereinafter set forth, and constitutes a cloud upon the title to complainant's property.

3.

That complainant is informed that a certain bond, answering the description of that purporting to be secured by the above described deed of trust instrument is held by Thomas L. Perry, defendant hereto, and that for alleged default in the payment of same, complainant's property, hereinabove described, was advertised for sale at public auction on August 3rd, 1957 by Joseph B. Newlin, Trustee, defendant hereto.

4.

That complainant is likewise informed that the following described bonds are held by the parties indicated, who have also been made party defendant hereto, each of said bonds purporting to be secured by the deed of trust upon complainant's property herein described:

Mrs. Grace Crider	$6,000.00
Harold Cooper	$6,000.00
Minnie H. Taylor	$6,000.00
Shenandoah Valley National Bank	$6,000.00

5.

Complainant alleges that she did not sign her name to the above described deed of trust, nor the above described bonds, nor has she at any time acknowledged the signature to the said instruments, and she therefore avers that the signatures to all of the said writings are forgeries, and that the acknowledgment appended to the signature to the deed of trust was fraudulently obtained.

6.

Complainant therefore avers that the said deed of trust constitutes a cloud upon the title to her real property, and that had the property been sold as advertised on August 3, 1957, irreparable injury would have been caused page 35 } thereby to complainant.

7.

That though the above described check bore the restrictive endorsement "Deposit to credit of Stella Maher" the proceeds from the said check were negligently, carelessly, and improperly, though accepted for deposit by the defendant, The Commercial and Savings Bank, used for other purposes than as directed by said restrictive endorsement thereby resulting in the loss to complainant of a sum equal to the face amount of the said check with interest, and

8.

That though the said check, when presented for payment to the Shenandoah Valley National Bank of Winchester, bore the restrictive endorsement "Deposit to credit of Stella Maher" and a further subsequent endorsement by rubber stamp with no name signed thereto "For Deposit Only Shawnee Building and Loan Association Inc." the sole endorsements upon the reverse side of the said check, the same was negligently, carelessly, wrongfully and improperly paid by the said defendant, Shenandoah Valley National Bank of Winchester thereby resulting in a loss to complainant of a sum equal to the face amount of the said check with interest.

Wherefore, complainant prays that the deed of trust described herein be by the Court declared to be a nullity and ordered stricken from the record; that the bonds described herein be likewise adjudicated to be of no force and effect as secured liens against complainant's real estate or as personal unsecured debts of hers; that the injunction heretofore granted herein be continued until the further order of the Court; that should it be by the Court ascertained that any of the foregoing described bonds are binding obligations of complainant, that judgment may be entered in favor of complainant against the defendants, The Commercial and Savings Bank and Shenandoah Valley National Bank of page 36 } Winchester, jointly and severally for the sum of $6,000.00 with interest and costs and for such

further and other relief in the premises as the nature of her case may require and to equity may seem meet.

STELLA MAHER.

* * * * *

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., December 16th 1957.

P. J. MARSHALL, Clerk.

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ANSWER TO AMENDED BILL.

Now comes the defendant, Shenandoah Valley National Bank of Winchester, at Winchester, Virginia, a corporation organized and existing under the laws of the United States of America, and, for answer to the amended bill filed in this cause, or so much thereof as it is advised it is required to answer, says:

1. This defendant admits that the complainant acquired by deed of Cressa E. Holliday, of record in the office of the Clerk of the Corporation Court for the City of Winchester, in Deed Book No. 76, at page 600, those two certain lots of land, with improvements thereupon situated, known and designated as Lots Number 104 and 105, of Block Number 16, of the Harris Addition, in the City of Winchester, Virginia, each of said lots having a frontage of 50 feet on the south side of Woodland Avenue and a depth of 130 feet.

2. This defendant admits that there is of record in the office of the Clerk of the Corporation Court for the City of Winchester, Virginia, in Deed Book No. 82, at page 156, a deed of trust wherein the above described property was conveyed to Joseph B. Newlin, Trustee, to secure the payment of a certain "BEARER" bond executed by complainant, in the amount of $6,000, more particularly described in said instrument. This defendant denies the allegations of paragraph 2 of said bill that the same is invalid, but this defend-

ant alleges that the same is valid and an outstand-
page 43 } ing lien upon the above described property. And
this defendant further alleges that the said deed of trust is signed by Stella Maher, which signature was duly notarized before William H. Louthan, Jr., a Notary authorized to act in the premises; that the said deed of trust, together with a bond, as described in said deed of trust and also bearing the signature "Stella Maher," was delivered to this defendant on the 3rd day of March, 1955, by Ansel B. Solenberger, who represented himself as acting as the agent of Stella Maher, and that this defendant delivered to the said Ansel B. Solenberger its check, in the amount of $6,000, payable to Stella Maher, in return for said bond, which check was thereafter honored upon its presentment for collection, and that this defendant caused the said deed of trust to be placed on record in the office of the Clerk of the Corporation Court for the City of Winchester, Virginia, as aforesaid.

3. This defendant does not know whether the facts alleged in paragraph 3 of the amended bill are true; but avers that the bond described in and secured by the aforesaid deed of trust is now in the possession of this defendant, having been received by it in the manner previously stated in paragraph 2 hereof.

4. This defendant does not know whether the allegations of paragraph 4 of the amended bill, with respect to bonds held by other parties made defendant to this cause are true; but alleges that, as aforesaid, it is in fact the holder of the bond secured by the deed of trust upon complainant's property herein described, the said bond having been executed by the complainant and having come into the possession of this defendant as a holder in due course for value received, as previously stated in paragraph 2 hereof.

5. This defendant denies the allegations contained in para-
graph 5 of said amended bill; and, on the contrary,
page 44 } alleges that the complainant, Stella Maher, did sign
her name to said deed of trust and the bond held by this defendant and did acknowledge her signature to said trust.

6. For answer to paragraph 6 of the amended bill of complaint, this defendant avers that the said deed of trust constitutes a valid lien upon the property of the complainant, hereinabove described, and avers that the complainant voluntarily encumbered said property to secure the bond presently held by this defendant, wherefore, this defendant is entitled to the continued security of said deed of trust in the event that the said bond now held by it is not paid in accordance with its terms by the complainant.

7. This defendant does not know whether the facts alleged in paragraph 7 of the amended bill are true and calls for strict proof of the same.

8. This defendant denies the allegations of paragraph 8 of the amended bill of complaint that the sole endorsements upon the reverse side of said check were those set out in paragraph 8 thereof, there being also thereon the unrestricted endorsement of The Commercial and Savings Bank, and further denies that the said check was negligently, carelessly, wrongfully and improperly paid by this defendant, thereby resulting in a loss to complainant of a sum equal to the fact amount of the said check with interest; but, on the contrary, this defendant alleges that the said check having been accepted for deposit in accordance with its terms by Shawnee Building and Loan Association, Incorporated, and by The Commercial and Savings Bank, there was no duty upon this defendant to look to the proper application of the funds by the prior endorsers, but its sole duty was to pay over to the holder of the said check the amount represented by the said check in accordance with the terms of the contract created thereby, and, further, that the said check, page 45 } having been endorsed with the restrictive endorsement, "Deposit to credit of Stella Maher," the validity of which endorsement is not contested by complainant, the said Stella Maher has in fact ratified the transaction for which the said check was issued and this defendant is accordingly the holder of a bond, in the amount of $6,000, secured by the aforesaid deed of trust, the validity of which the complainant should not in equity and good conscience be permitted to deny.

Wherefore this defendant prays that the prayer of said amended bill be denied and that, instead, this Court determine that the said bond held by this defendant be adjudicated to be valid, that the complainant be determined to be indebted to this defendant in the sum of Six Thousand Dollars ($6,000), with interest, that said debt further be determined to be secured by the lien of the deed of trust hereinbefore described against complainant's real estate, that the defendant, Joseph B. Newlin, Trustee, be authorized to sell complainant's real estate in satisfaction of the bond held by this defendant, and that the proceeds be paid this defendant in satisfaction of the said obligation.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, AT WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., December 24th 1957.

P. J. MARSHALL, Clerk.

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DEMURRER.

Comes now The Commercial and Savings Bank of Winchester, Virginia, and demurs to the bill of complaint filed against it by Stella Maher for the reason that the said bill of complaint is insufficient in law on the following grounds:

(1) That the allegations of the said bill of complaint are insufficient to, and do not assert any claim of the said Stella Maher against your demurrant; and

(2) That the said bill of complaint does not set forth sufficient allegations asserting a claim of the said Stella Maher against your demurrant, so that your demurrant is unable fully to answer the claim of the said Stella Maher; and

(3) That the said bill of complaint is defective because of multifariousness; and

(4) That there is a fully adequate and complete remedy at law which the said complainant, Stella Maher, should pursue against your demurrant.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

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Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 2rd 1958.

P. J. MARSHALL, Clerk.

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SECOND AMENDED BILL.

Complainant, Stella Maher, respectfully represents:

1.

That she is the owner in fee simple of those two certain lots of land with improvements thereupon situated, known and designated as Lots 104 and 105 of Block No. 16 of Harris Addition to the City of Winchester, Virginia, each of said lots having a frontage of 50 feet on the south side of Woodland Avenue and a depth of 180 feet, which said property was conveyed unto her by deed of Cressa E. Holliday, of record in the Office of the Clerk of the Corporation Court of the City of Winchester, in Deed Book No. 76 at page 600.

2.

That there is of record in the Office of the Clerk of the Corporation Court of the City of Winchester in Deed Book No. 82 at page 156, an instrument purporting to be a deed of trust whereby the above described property purports to be conveyed to defendant, Joseph B. Newlin, Trustee, to secure the payment of a certain "Bearer" bond of complainant in the amount of Six thousand ($6,000.00) Dollars, more particularly described in the said instrument; that the same is invalid for the reason hereinafter set forth, and constitutes a cloud upon the title to complainant's property.

page 59 } Six thousand ($6,000.00) Dollars, made payable to the order of Stella Maher upon the delivery to it by Ansel Solenberger of the said bond purporting to be executed by Stella Maher, which said check is exhibited herewith and asked to be made a part hereof marked Plaintiff's Exhibit "A"; that though the above described check bore the restrictive endorsement "Deposit to the credit of Stella Maher" and was accepted for deposit by defendant, Commercial and Savings Bank, said defendant, Commercial and Savings Bank, negligently, carelessly, wrongfully and improperly failed to deposit the said check to the credit of Stella Maher, complainant, but deposited said check to the

credit of Shawnee Building and Loan Association, Inc.; that by reason of, and on account of the said failure of the defendant, Commercial and Savings Bank, to regard the said restrictive endorsement, complainant suffered a loss of a sum equal to the face amount of the check with interest.

8.

That subsequent to the two aforesaid endorsements, The Commercial and Savings Bank placed upon the reverse side of the check its endorsement, the legible portion of which is as follows: "Pay to the order of Any Bank or Trust Company. All Prior Endorsements Guaranteed March 4, 1955. The Commercial and Savings Bank, Winchester, Virginia."

9.

That thereafter the check was in due course presented for payment to the defendant, Shenandoah Valley National Bank which negligently, wrongfully and carelessly paid the same in disregard of the said restrictive endorsement and after having been put on notice by the endorsements on the reverse side of the said check that complainant, Stella Maher, the payee on the face of the check, had not been credited with the proceeds therefrom, but that the same had, without authority of the payee, been deposited to the credit of Shawnee Building and Loan Association Inc.; that by reason of said defendant's, Shenandoah Valley National Bank of

page 60 } Winchester, said

3.

That complainant is informed that a certain bond, answering the description of that purporting to be secured by the above described deed of trust instrument is held bv Thomas L. Perry, defendant hereto, and that for alleged default in the payment of same, complainant's property, hereinabove described was advertised for sale at public auction on August 3rd, 1957 by Joseph B. Newlin, Trustee, defendant hereto.

4.

That complainant is likewise informed that the following described bonds are held by the parties indicated, who have also been made party defendant hereto, each of said bonds

purporting to be secured by the deed of trust upon complainant's property herein described:

Mrs. Grace Crider	$6,000.00
Harold Cooper	$6,000.00
Minnie H. Taylor	$6,000.00
Shenandoah Valley National Bank	$6,000.00

5.

Complainant alleges that she did not sign her name to the above described deed of trust, nor the above described bonds, nor has she at any time acknowledged the signature to the said instruments, and she therefore avers that the signatures to all of the said writings are forgeries, and that the acknowledgment appended to the signature to the deed of trust was fraudulently obtained.

6.

Complainant therefore avers that the said deed of trust constitutes a cloud upon the title to her real property, and that had the property been sold as advertised on August 3rd, 1957, irreparable injury would have been caused thereby to complainant.

7.

That complainant is further advised and so avers that defendant, Shenandoah Valley National Bank, issued
page 61 } to one Ansel Solenberger, its check in the amount
of carelessness, and negligence in paying said check as aforesaid, the complainant, Stella Maher, suffered the loss of the principal amount of the said check with interest.

Wherefore, complainant prays that the deed of trust described herein be by the Court declared to be a nullity and ordered stricken from the records; that the bonds described herein be likewise adjudicated to be of no force and effect as secured liens against complainant's real estate or as personal unsecured debts of hers; that the injunction heretofore granted herein be continued until the further order of the Court; that should it be by the Court ascertained that any of the foregoing described bonds are binding obligations of complainant, that judgment may be entered in favor of complainant against the defendants, The Commercial and Savings Bank and Shenandoah Valley National Bank of Winchester,

jointly, and severally, for the sum of Six thousand ($6,000.00) Dollars, with interest and costs and for such further and other relief in the premises as the nature of her case may require and to equity may seem meet.

STELLA MAHER.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 17th 1958.

P. J. MARSHALL, Clerk.

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DECREE.

This cause came on to be heard the 13th day of January, 1958, upon the demurrer filed on behalf of The Commercial and Savings Bank of Winchester, Virginia, to the bill of complaint, the complainant appearing by counsel and The Commercial and Savings Bank of Winchester, Virginia, appearing by counsel, and the cause was argued by counsel.

It appearing to the Court that the allegations of the said bill of complaint against the defendant, The Commercial and Savings Bank of Winchester, Virginia, are insufficient and do not assert any claim of the said Stella Maher against the demurrant.

It is, therefore, adjudged, ordered and decreed that the demurrer on behalf of The Commercial and Savings Bank of Winchester, Virginia, be and the same is hereby sustained upon the ground that the allegations of said bill are insufficient and do not assert any claim against the said defendant, and that the other grounds of the said demurrer be and the same are hereby overruled.

It is further adjudged, ordered and decreed that the complainant is hereby granted leave to file an amended bill of complaint as to The Commercial and Savings Bank of Winchester, Virginia, on or before the 17th day of January, 1958, and upon the filing of such amended bill of complaint the said defendant is hereby granted eight (8) days from the date of the filing of the amended bill of complaint in which to answer same.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 20th 1958.

P. J. MARSHALL, Clerk.

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DEMURRER.

Comes now The Commercial and Savings Bank of Winchester, Virginia, and demurs to the amended bill of complaint filed against it by Stella Maher for the reason that the said amended bill of complaint is insufficient in law on the following grounds:

(1) That the said amended bill of complaint is defective because of multifariousness in that the said amended bill of complaint sets forth a cause of complaint in chancery in which your demurrant has no interest whatsoever, and a cause of action at law against your demurrant; and

(2) That there is a fully adequate and complete remedy at law which the said complainant, Stella Maher, should pursue against your demurrant.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 23rd 1958.

P. J. MARSHALL, Clerk.

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DECREE.

This cause came on to be heard this 27th day of January, 1958, upon the papers formerly filed and read herein, upon

the demurrer of The Commercial and Savings Bank of Winchester, Virginia, to the second amended bill of complaint filed against it by the complainant, Stella Maher, the said defendant and complainant, respectively, appearing by counsel, and the cause was argued by counsel.

It appearing to the Court that the demurrer to the second amended bill of complaint should be sustained as to The Commercial and Savings Bank of Winchester, Virginia, upon the ground of multifariousness and for the reason that the complainant has a fully complete and adequate remedy at law against the said defendant, The Commercial and Savings Bank of Winchester, Virginia.

It is, therefore, adjudged, ordered and decreed that the demurrer filed on behalf of The Commercial and Savings Bank of Winchester, Virginia, to the second amended bill of complaint filed against it by the complainant, Stella Maher, be and the same is hereby sustained, to which ruling of the Court the complainant, Stella Maher, by counsel, did note her exception.

The said Stella Maher is hereby granted leave to amend said bill of complaint within ten days.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 27th 1958.

P. J. MARSHALL, Clerk.

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* * * * *

DECREE.

This cause came on to be heard this 27 day of January, 1958, upon the notice filed on behalf of the Shenandoah Valley National Bank of Winchester, the complainant appearing by counsel, and the defendants, The Commercial and Savings Bank of Winchester, Virginia, and the Shenandoah Valley National Bank of Winchester appearing by counsel, and the Shenandoah Valley National Bank of Winchester thereupon moved the Court for leave to file an answer to the complainant's second amended bill of complaint and to file a cross-bill in this cause against The Commercial and Savings Bank, and the matter was argued by counsel.

It appearing to the Court that leave should be granted the

Shenandoah Valley National Bank of Winchester to file its answer to the second amended bill of complaint, it is, therefore, adjudged, ordered and decreed that the Shenandoah Valley National Bank of Winchester is hereby granted leave to file an answer to the second amended bill of complaint filed by the complainant in this cause, and the right to file a cross-bill against the defendant, The Commercial and Savings Bank of Winchester, is refused.

Enter:

ELLIOTT MARSHALL, Judge.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 27th 1959.

P. J. MARSHALL, Clerk.

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ANSWER TO SECOND AMENDED BILL.

Now comes the defendant, Shenandoah Valley National Bank of Winchester, at Winchester, Virginia, a corporation organized and existing under the laws of the United States of America, and, for answer to the second amended bill filed in this cause, or so much thereof as it is advised it is required to answer, says:

1. This defendant admits that the Complainant acquired by deed of Cressa E. Holliday, of record in the office of the Clerk of the Corporation Court for the City of Winchester, in Deed Book No. 76, at page 600, those two certain lots of land, with improvements thereupon situated, known and designated as Lots Number 104 and 105, of Block Number 16, of the Harris Addition, in the City of Winchester, Virginia, each of said lots having a frontage of 50 feet on the south side of Woodland Avenue and a depth of 180 feet.

2. This defendant admits that there is of record in the office of the Clerk of the Corporation Court for the City of Winchester, Virginia, in Deed Book No. 82, at page 156, a deed of trust wherein the above described property was conveyed to Joseph B. Newlin, Trustee, to secure the payment of a

certain "BEARER" bond executed by complainant, in the amount of $6,000, more particularly described in said instrument. This defendant denies the allegations of paragraph 2 of said bill that the same is invalid, but this defendant alleges that the same is valid and an outstand-
page 79 } ing lien upon the above described property. And this defendant further alleges that the said deed of trust is signed by Stella Maher, which signature was duly notarized before William H. Louthan, Jr., a Notary authorized to act in the premises; that the said deed of trust, together with a bond, as described in said deed of trust and also bearing the signature "Stella Maher," was delivered to this defendant on the 3rd day of March, 1955, by Ansel B. Solenberger, who represented himself as acting as the agent of Stella Maher, that said bond is in fact signed by Stella Maher, the complainant, and that this defendant delivered to the said Ansel B. Solenberger its check, in the amount of $6,000, payable to Stella Maher, in return for said bond, which check was thereafter honored upon its presentment for collection, and that this defendant caused the said deed of trust to be placed on record in the office of the Clerk of the Corporation Court for the City of Winchester, Virginia, as aforesaid.

3. This defendant does not know whether the facts alleged in paragraph 3 of the amended bill are true; but avers that the bond described in and secured by the aforesaid deed of trust is now in the possession of this defendant, having been received by it in the manner previously stated in paragraph 2 hereof.

4. This defendant does not know whether the allegations of paragraph 4 of the amended bill, with respect to bonds held by other parties made defendant to this cause are true; but alleges that, as aforesaid, it is in fact the holder of the bond secured by the deed of trust upon complainant's property herein described, the said bond having been executed by the complainant and having come into the possession of this defendant as a holder in due course for value received, as previously stated in paragraph 2 hereof.

5. This defendant denies the allegations contained in paragraph 5 of said amended bill, and, on the contrary,
page 80 } alleges that the complainant, Stella Maher, did sign her name to said deed of trust and the bond held by this defendant and did acknowledge her signature to said trust, and denies that either the signatures of the complainant or her acknowledgment to the deed of trust were fraudulently obtained.

6. For answer to paragraph 6 of the amended bill of complaint, this defendant avers that the said deed of trust constitutes a valid lien upon the property of the complainant, hereinabove described, and avers that the complainant voluntarily encumbered said property to secure the bond presently held by this defendant, wherefore, this defendant is entitled to the continued security of said deed of trust in the event that the said bond now held by it is not paid in accordance with its terms by the complainant.

7. This defendant admits that it issued to Ansel B. Solenberger its check, in the amount of $6,000, made payable to the order of Stella Maher, upon delivery to it by Ansel B. Solenberger of the said bond executed by Stella Maher and the delivery to it at the same time of the deed of trust heretofore referred to and executed by Stella Maher, which check is exhibited as Plaintiff's Exhibit A; and further admits that at the time the said check was received by the defendant, The Commercial and Savings Bank, it bore the restricted indorsement "Deposit to credit of Stella Maher," and this defendant alleges that it bore the further indorsement "FOR DEPOSIT ONLY Shawnee Building & Loan Association Inc.", but this defendant does not know whether the said check was accepted for deposit by the defendant, The Commercial and Savings Bank.

8. This defendant admits the allegations of paragraph 8 of the bill of complaint.

9. This defendant admits that when the check was in due course presented for payment to the Shenandoah Valley National Bank of Winchester by The Commercial
page 81 } and Savings Bank, upon the aforesaid indorsement of The Commercial and Savings Bank, the same was paid in accordance with the tenor of said indorsement; but this defendant denies that the said payment was negligent, wrongful or careless and in disregard of the prior restrictive indorsements, denies that it was put upon notice by said indorsements on the reverse side of said check, that the said Stella Maher, the payee on the face of the check, had not been credited with the proceeds therefrom, or that the same had, without authority of the payee, been deposited to the credit of the Shawnee Building and Loan Association, Incorporated; or that this defendant was guilty of negligence or carelessness in paying said check by which complainant suffered the loss of the principal amount of said check, with interest, or any other amount; and this defendant affirmatively alleges that, inasmuch as said check, at the time it was presented to this defendant, bore the unrestricted indorsement of The Commercial and Savings Bank of Winchester

and the further statement on the part of The Commercial and Savings Bank of Winchester, "All Prior Indorsements Guaranteed," this defendant was under no duty to assure proper payment in accordance with the restrictive indorsements prior to that of The Commercial and Savings Bank, but was legally obligated to pay the check in accordance with its tenor and with the last indorsement thereto.

10. This defendant further affirmatively alleges that the said check having been indorsed with the restrictive indorsement, "Deposit to credit of Stella Maher," the validity of which indorsement is not contested by the complainant, but, in fact, affirmed as her restrictive indorsement in the said bill of complaint, and the sole allegations of the complainant with regard thereto being that the funds received upon the acceptance of the said check and its restrictive indorsement by subsequent indorsers and prior to its presentment to this defendant for collection were not properly deposited
page 82 } to her account in accordance with the tenor of the restrictive indorsement, instead said complainant, Stella Maher, has in fact ratified the transaction for which the said check was issued and this defendant is accordingly the holder of a bond, in the amount of $6,000, secured by the aforesaid deed of trust, the validity of which bond and deed of trust the complainant should not in equity and good conscience be permitted to deny.

Wherefore this defendant prays that the prayer of said second amended bill be denied and that, instead, this Court determine that the said bond held by this defendant be adjudicated to be valid, that the complainant be determined to be indebted to this defendant in the sum of Six Thousand Dollars ($6,000), with interest, that said debt further be determined to be secured by the lien of the deed of trust hereinbefore described against complainant's real estate, that the defendant, Joseph B. Newlin, Trustee, be authorized to sell complainant's real estate in satisfaction of the bond held by this defendant, and that the proceeds be paid this defendant in satisfaction of the said obligation.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, AT WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 31st 1958.

P. J. MARSHALL, Clerk.

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DECREE.

This cause came on to be heard the 12th day of June, 1958, upon the petition of Stella Maher for a Bill of Review of a decree entered herein on the 27th day of January, 1958, sustaining the demurrer filed on behalf of The Commercial and Savings Bank to an Amended Bill of Complaint filed against it by the said Stella Maher, the said petitioner, the Shenandoah Valley National Bank of Winchester, Virginia, and The Commercial and Savings Bank of Winchester, Virginia, appearing by counsel pursuant to agreement of counsel as to waiver of notice of the hearing upon the filing of the petition for a Bill of Review, and the cause was argued by counsel.

It appearing to the Court that The Commercial and Savings Bank of Winchester, Virginia, by counsel, opposes the filing of the said petition for a Bill of Review, and that said petition for a Bill of Review to the said decree entered herein on the 27th day of January, 1958, sustaining the aforementioned demurrer does not allege sufficient cause for the granting of said Bill of Review.

It is, therefore, adjudged, ordered and decreed that leave to the petitioner, Stella Maher, to file her petition for a Bill of Review of the decree previously entered herein on the 27th day of January, 1958, sustaining the demurrer filed on behalf of The Commercial and Savings Bank to an Amended Bill of Complaint filed against the said Bank by the said Stella Maher, be and such leave to file the petition for said Bill of Review is hereby denied, to which ruling

page 89 } of the Court the said petitioner, by counsel, notes her exception.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., June 17th 1958.

P. J. MARSHALL, Clerk.

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Trust Department

66-137
514

SHENANDOAH VALLEY NATIONAL BANK

Winchester, Va. March 3, 1955 No. 34009

Pay to
the order of Stella Maher $6,000.00 Shenandoah Valley Nat. Bk. $6000 and 00 cts Dollars

Shenandoah Valley National Bank
Winchester, Virginia

HOWARD A. HOLLAND, Trust Officer

ESTATE

Sub-Trustee u/w
Mollie Evans Janney

Deposit to credit of Stella Maher.

FOR DEPOSIT ONLY Shawnee Building & Loan Association Inc.

Pay to the order of any Bank, Banker or Trust Co.
All prior Endorsements Guaranteed
Mar. 4, 1955:

The ..... ? ? ?

10/27/58.
Plaintiff's A—

s/ ELLIOTT MARSHALL, Judge.

Filed in Clerk's Office of Corporation Court for the City of Winchester, Va., October 20th 1958.

P. J. MARSHALL, Clerk.

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SUPPLEMENTAL AND THIRD AMENDED BILL OF COMPLAINT.

Complainant, Stella Maher, respectfully represents:

1. That she is the owner in fee simple of those two certain lots of land with improvements thereupon situated, known and designated as Lots 104 and 105 Block No. 16 of Harris Addition to the City of Winchester, Virginia, each of said lots having a frontage of 50 feet on the south side of Woodland Avenue and a depth of 180 feet, which said property was conveyed unto her by deed of Cressa H. Holliday, of record in the Office of the Clerk of the Corporation Court of the City of Winchester, in Deed Book No. 76, at page 600.

2. That there is of record in the Office of the Clerk of the Corporation Court of the City of Winchester in Deed Book No. 82, at page 156, and instrument purporting to be a deed of trust whereby the above described property purports to be conveyed to Joseph B. Newlin, Trustee, to secure the payment of a certain "Bearer" bond of Complainant in the amount of $6,000.00, more particularly described in the said instrument.

page 99 } 3. That a certain bond, answering the description of that purporting to be secured by the above described deed of trust is held by the Shenandoah Valley National Bank, Defendant hereto.

4. That Complainant is advised and so avers that the De-Shenandoah Valley Naitonal Bank, which bank negligently, check made payable to Complainant, Stella Maher, in the amount of $6,000.00 in payment for and upon delivery to it by A. B. Solenberger of the above described bond; that A. B. Solenberger forged the following endorsement upon the said check "Deposit to the credit of Stella Maher"; that the said check was deposited in the Commercial and Savings Bank of Winchester, Va., Defendant herein, to the credit of Shawnee Building and Loan Association, Inc.; that the said Commercial and Savings Bank of Winchester, Va., Defendant herein, negligently, carelessly, improperly and wrongfully disregarded the said restrictive endorsement on the check and negligently, carelessly, improperly and wrongfully honored by payment the said forged endorsement and negotiated the check to the Shenandoah Valley National Bank of Winchester, Va., thereby causing, by its carelessness, negligence and wrongful conduct, the loss to Stella Maher, Complainant, of the sum of $6,000.00 with interest to date.

5. That thereafter the said check was presented to the Shenandoah Valley National Bank, which bank negligently,

wrongfully and carelessly paid the same in disregard of the said restrictive endorsement and of the said forged endorsement thereon and that by reason of said negligence, carelessness and wrongful conduct on the part of the Defendant, the Shenandoah Valley National Bank, the Complainant, Stella Maher, has suffered a loss of the sum of $6,000.00 with interest to date.

Wherefore Complainant prays that judgment may be entered in her favor against the Commercial and Savings Bank of Winchester, Virginia, and the Shenandoah Valley National Bank, Defendants, jointly and severally, for the sum of $6,000.00 with interest and costs, or against whichsoever one of the Defendants may be found by the Court to be ultimately responsible to her for her loss, and for such further and other relief in the premises as the nature of her case page 100 } may require and to equity may seem meet.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., November 4th 1958.

P. J. MARSHALL, Clerk.

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ORDER.

This cause came on to be further heard this 28th day of October, 1958, upon the papers formerly read, the proceedings heretofore had herein, and was argued by Counsel.

Whereupon Counsel for Complainant advised the Court that Complainant could not prove, as alleged in her bill of complaint, the forgery of the deed of trust and bond of the Shenandoah Valley National Bank, but that Complainant would rely upon the restrictive endorsement of the check and upon proof of forgery of the endorsement of Stella Maher upon the check. Whereupon, the Court held that the said deed of trust and bond of Shenandoah Valley National Bank were valid.

The $6,000.00 check of the Shenandoah Valley National Bank, payable to the order of Stella Maher, Complainant, was then offered in evidence, marked Exhibit "A," as were the duly taken depositions of A. B. Solenberger and Harry

Evans Cassidy, marked Defendants' Exhibits 6 and 7, respectively, with sample of handwriting photographs made by Harry Evans Cassidy, marked Complainant's Exhibit "E," "F" and "G," writings of A. B. Solenberger, marked Complainant's Exhibits "B," "C," and "D," $6,000.00 bond held by the Shenandoah Valley National Bank, recorded deed of trust of Stella Maher to Joseph B. Newlin, Jr., Trustee, $6,000.00 bond held by Crider, Defendant, $6,000.00 bond held by Perry, Defendant, and $6,000.00 bond held by Cooper, Defendant, marked Defendants' Exhibits 1, 2, 3, 4 and 5, respectively, and Counsel for Defendant, Shenandoah Valley National Bank, conceded that the endorsements upon the check, Complainant's Exhibit "A," were not in the handwriting of Stella Maher, and the Court so held.

page 102 } Upon consideration of the said Exhibits, the Court being of the opinion from the evidence of the handwriting expert that the bonds evidenced by Defendants' Exhibits 3, 4 and 5 of Crider, Perry and Cooper, respectively, are forgeries, doth order the same to be of no force and effect and not binding upon Stella Maher, as well as that certain bond of Minnie H. Taylor, she having failed to appear or answer and the bill having been taken for confessed as to her, and

The Court being further of the opinion that the pleadings do not charge forgery of the endorsement of the check of the Shenandoah Valley National Bank and that evidence of forgery of the endorsement is not properly admissable herein, upon motion of the Court by Counsel leave is granted Complainant to amend her bill of complaint on or before November 1, 1958, and

It further being made to appear to the Court that the Commercial and Savings Bank of Winchester, Va., having been the depository of the check of the Shenandoah Valley National Bank prior to payment thereof by the Shenandoah Valley National Bank and the Commercial and Savings Bank of Winchester, Va., having, by its endorsement thereon, guaranteed all prior endorsements which would include the forged endorsement, should properly be a party defendant to this proceeding, it is ordered that the Commercial and Savings Bank of Winchester, Va., be hereby made a party defendant hereto and be served with a copy hereof and given leave to file its answer within twenty-one days from the date of receipt by it of the said amended bill; and

It appearing to the Court that the injunction heretofore granted by this Court enjoining the sale of the property of Complainant for default in the payment of the bond of Thomas L. Perry is right and proper, the said bond having

been determined hereby to be a forgery and of no force and effect, the said injunction is hereby made permanent and the cash bond of $200.00 deposited by Complainant in lieu of surety on her injunction bond is ordered to be returned to Edward McC. Williams, of Counsel for Complainant.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., November 5th 1958.

P. J. MARSHALL, Clerk.

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PLEA IN BAR.

Comes now The Commercial and Savings Bank of Winchester, Virginia, by counsel, and pleads in bar to the complainant's Supplemental and Third Amended Bill of Complaint filed against it upon the following grounds:

That this Court has previously sustained a Demurrer filed on behalf of The Commercial and Savings Bank of Winchester, Virginia, to the Second Amended Bill of Complaint filed against it, and that the complainant did not subsequently file an amended bill of complaint against your defendant within the time allowed by the decree sustaining the said Demurrer.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., November 18th 1958.

P. J. MARSHALL, Clerk.

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DEMURRER.

Comes now The Commercial and Savings Bank of Winchester, Virginia, and demurs to the Supplemental and Third Amended Bill of Complaint filed against it by Stella Maher for the reason that the said Bill is insufficient in law on the following grounds:

(1) That this Court has previously sustained a Demurrer filed on behalf of The Commercial and Savings Bank of Winchester, Virginia, to the Second Amended Bill of Complaint filed against it, and that the complainant did not subsequently file an amended bill of complaint against your defendant within the time allowed by the decree sustaining the said Demurrer; and

(2) That the said Bill of Complaint is defective because of multifariousness; and

(3) That the said Bill does not seek any equitable relief against The Commercial and Savings Bank of Winchester, Virginia, but merely a judgment for money based upon an action at law; and

(4) That there is a fully adequate and complete remedy at law which the complainant may pursue.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., November 18th 1958.

P. J. MARSHALL, Clerk.

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DEMURRER.

Now comes the Shenandoah Valley National Bank, defendant in the above case, and demurs to the Supplemental and Third Amended Bill of Complaint filed against it by Stella Maher for the reason that the said bill is insufficient in law, in that:

1. Said bill of complaint is defective because of multifariousness;

2. Said bill of complaint does not seek any equitable relief, all equitable matters having been determined heretofore by the Court, but seeks merely a judgment for money based upon an action of law; and

3. There is a fully adequate and complete remedy at law which complainant may pursue.

SHENANDOAH VALLEY NATIONAL BANK.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., November 19th 1958.

P. J. MARSHALL, Clerk.

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ORDER.

This cause came on to be further heard this 26th day of January, 1959, upon Complainant's Supplemental and Third Amended Bill of Complaint, upon the plea in bar of the Commercial & Savings Bank of Winchester, Va., the demurrer of the Commercial & Savings Bank of Winchester, Va., and the demurrer of the Shenandoah Valley National Bank, in this cause duly filed, and was argued by Counsel.

Whereupon the Court, after due consideration, doth overrule the plea in bar of the Commercial & Savings Bank of Winchester, Va., doth likewise overrule the demurrer of the Commercial & Savings Bank of Winchester, Va., as to the grounds assigned and enumerated therein as #1, #2, and #3, and the demurrer of the Shenandoah Valley National Bank as to the grounds assigned and enumerated therein as #1 and #2, but the Court doth sustain the demurrer of the Commercial & Savings Bank of Winchester, Va., as to the grounds assigned and enumerated therein as #4, and doth likewise sustain the demurrer of the Shenandoah Valley National Bank as to the grounds assigned and enumerated therein as #3, the Court being of the opinion that there is a full, adequate and complete remedy at law.

Whereupon, on motion of the Complainant, this
page 108 } cause is hereby transferred to the law side of the
Court and the Clerk of the Corporation Court of the City of Winchester, Virginia, is hereby directed to docket the same in accordance herewith upon the payment of the applicable writ tax by the Complainant, and leave is granted to the Defendants to file such pleadings thereto as they are advised within twenty-one days from the date of notice to them of the payment of the writ tax by the Complainant.

The Defendants, The Commercial and Savings Bank and Shenandoah Valley National Bank, note their exceptions, respectively, to the ruling of the Court against them, and to the ruling of the Court transferring this case to the law docket.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 26th 1959.

P. J. MARSHALL, Clerk.

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GROUNDS OF DEFENSE.

Now comes the defendant, Shenandoah Valley National Bank, and for grounds of defense to the supplemental and third amended bill of complaint heretofore filed in this cause by the plaintiff, Stella Maher, or so much thereof as it is advised it is necessary to answer, answers and says:

1. Defendant, Shenandoah Valley National Bank, admits the allegations of paragraphs 1, 2 and 3 of the said supplemental and third amended bill of complaint.

2. Defendant, Shenandoah Valley National Bank, admits that it issued a certain check made payable to complainant, Stella Maher, in the amount of $6,000, in payment for and upon delivery to it by A. B. Solenberger of the above described bond, and admits that the said check was deposited in The Commercial and Savings Bank of Winchester, Virginia, and further admits that the said check was negotiated to the Shenandoah Valley National Bank of Winchester, Virginia. Defendant, Shenandoah Valley National Bank,

does not know whether the allegation that the check when deposited in The Commercial and Savings Bank of Winchester, Virginia, was deposited to the credit of the Shawnee Building and Loan Association, Incorporated, is true, does not know whether the said Commercial and Savings Bank of Winchester, Virginia, negligently, carelessly, improperly and wrongfully disregarded the said restrictive endorsement on the said check and negligently, carelessly, improperly and wrongfully honored by payment to said forged

page 111 } endorsement, nor does it know whether by its carelessness, negligence and wrongful conduct, the said Commercial and Savings Bank of Winchester, Virginia, caused a loss to Stella Maher, complainant, of the sum of $6,000, with interest to date, and therefore calls for strict proof of the same. The defendant, Shenandoah Valley National Bank, denies that A. B. Solenberger forged the following endorsement upon the said check, "Deposit to the credit of Stella Maher."

3. The defendant, Shenandoah Valley National Bank, denies that it negligently, wrongfully and carelessly paid the said check in disregard of the said restrictive endorsement and of the said forged endorsement thereon and that by reason of said negligence, carelessness and wrongful conduct on the part of the defendant, Shenandoah Valley National Bank, the complainant, Stella Maher, has suffered a loss of the sum of $6,000, with interest to date, as alleged in paragraph 5 of the supplemental and third amended bill of complaint.

4. The defendant, Shenandoah Valley National Bank, denies that the complainant is entitled to judgment against it in her favor, either jointly or severally for the sum of $6,000, with interest and costs, or for any other amount.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, AT WINCHESTER, VIRGINIA.

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Filed in Clerk's Office of Corporation Court for City of Winchester, Va., February 16th 1959.

P. J. MARSHALL, Clerk.

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DEMURRER.

Now comes the defendant, Shenandoah Valley National Bank of Winchester, Virginia, and demurs to the supplemental and third amended bill of complaint heretofore filed in this action by the complainant for the reasons that:

1. The same fails to state a cause of action against this defendant;
2. The same is defective because of multifariousness.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, AT WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., February 16th 1959.

P. J. MARSHALL, Clerk.

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DEMURRER.

Now comes the defendant, The Commercial and Savings Bank of Winchester, Virginia, and demurs to the supplemental and third amended bill of complaint heretofore filed in this action by the complainant for the reasons that:

(1) The same fails to state a cause of action against this defendant; and
(2) The same is defective because of multifariousness.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., February 20th 1959.

P. J. MARSHALL, Clerk.

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GROUNDS OF DEFENSE.

The defendant, The Commercial and Savings Bank of Winchester, Virginia, for grounds of defense to the action instituted against it by the said Stella Maher, states and says:

(1) That it neither admits nor denies the allegations set forth in Paragraphs 1, 2 and 3 of the plaintiff's motion for judgment inasmuch as it is not advised of the truth or falsity of said allegations; and

(2) That it admits that the Shenandoah Valley National Bank issued a certain check made payable to Stella Maher in the sum of Six Thousand Dollars ($6,000.00), as alleged in Paragraph 4 of the plaintiff's motion for judgment, but that it is not advised as to the truth or falsity of the plaintiff's allegations of said Paragraph 4 that such check was issued in payment for and upon delivery to it of the described bond by A. B. Solenberger; that it denies that the said A. B. Solenberger forged the endorsement reading "Deposit to the credit of Stella Maher" upon said check; that it admits the said check was deposited with it to the credit of Shawnee Building and Loan Association, Incorporated; and that it denies the allegations set forth in Paragraph 4 that it negligently, carelessly, improperly and wrongfully disregarded the said endorsement; and it denies that it negligently, carelessly, improperly and wrongfully honored payment of the said check; and that it denies that it was at all page 119 } careless, negligent, wrongful or improper in the handling of said check, and that it denies that it is liable to the said plaintiff, Stella Maher, in any sum whatsoever: and

(3) That inasmuch as the allegations set forth in Paragraph 5 of the plaintiff's motion for judgment do not pertain to this defendant, it neither admits nor denies such allegations; and

(4) That the said Shawnee Building and Loan Association was an institution organized under the laws of the Commonwealth of Virginia; that the said Association engaged in the business of accepting money on deposit for investment and of accepting money on deposit for the repayment of loans made by it; that said Association was engaged in the business of

making loans, evidenced by negotiable bonds and notes of its borrowers secured by deeds of trust upon real estate; that A. B. Solenberger, being the same as Ansel B. Solenberger, was Secretary-Treasurer and Manager of the business of the said Association; that the said Stella Maher had an account or accounts with the said Shawnee Building and Loan Association; that the check of the Shenandoah Valley National Bank made payable to Stella Maher in the sum of Six Thousand Dollars ($6,000.00) and endorsed "Deposit to the credit of Stella Maher" was accepted by the said Association for deposit therein and thereafter was duly endorsed by said Association for collection and deposit to its credit in The Commercial and Savings Bank, your defendant, a depository of the said Association; that the said check was properly accepted by your defendant for collection and deposit to the credit of the said Association, one of its depositors; and that your defendant was not negligent, careless and wrongful in so accepting said check for collection and deposit to the credit of the said Association, itself a depository for the moneys of its members and customers; and

page 120 } (5) That your defendant alleges that the said Stella Maher had knowledge of the position of the said A. B. Solenberger as Secretary-Treasurer of Shawnee Building and Loan Association, and that he was Manager of its business; that the said A. B. Solenberger or Shawnee Building and Loan Association, or both, were the agent of the said Stella Maher, authorized to obtain Six Thousand Dollars ($6,000.00) on behalf of and for the benefit of the said Stella Maher; and that pursuant to such authority and in the course of such authority as such agent of the said Stella Maher, the said A. B. Solenberger accepted the said check of the Shenandoah Valley National Bank for deposit in Shawnee Building and Loan Association to the credit of the said Stella Maher and thereafter the said check was endorsed by the said Association for collection and deposit to its credit in The Commercial and Savings Bank, one of its depositories; and

(6) That the said Stella Maher, by her conduct, accepted and raitfied the acts of the said A. B. Solenberger in the handling of the said check drawn to her order upon the Shenandoah Valley National Bank in the sum of Six Thousand Dollars ($6,000.00).

THE COMMERCIAL AND SAVINGS
BANK OF WINCHESTER,
VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., February 20th 1959.

P. J. MARSHALL, Clerk.

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PLEA.

That The Commercial and Savings Bank alleges that the said Stella Maher was careless and negligent in her dealings with the said A. B. Solenberger in the transaction out of which the check was drawn upon the Shenandoah Valley National Bank of Winchester, Virginia, payable to the order of Stella Maher in the sum of Six Thousand Dollars ($6,000.00), and that such negligence and carelessness on the part of the said Stella Maher contributed to any loss, if any, she may have suffered.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., February 20th 1959.

P. J. MARSHALL, Clerk.

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PLEA OF CONTRIBUTORY NEGLIGENCE.

Now comes the defendant, Shenandoah Valley National Bank, and as a defense to the motion for judgment filed against it in this cause further answers and says that recovery by the plaintiff, Stella Maher, should be denied because the said Stella Maher was guilty of *carlessness* and negligence in her dealings with A. B. Solenberger in the transactions as a result of which the check drawn upon the

Shenandoah Valley National Bank of Winchester, Virginia, payable to the order of Stella Maher in the sum of $6,000 was delivered to the said A. B. Solenberger, and that such negligence and carelessness on the part of the said Stella Maher contributed to the loss, if any, which she may have suffered.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, AT WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., March 6th 1959.

P. J. MARSHALL, Clerk.

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ADDITIONAL GROUNDS OF DEFENSE.

As an additional grounds of defense, the defendant, Shenandoah Valley National Bank of Winchester, Virginia, answers and says that the plaintiff in this action should not have any recovery inasmuch as she is estopped from denying the agency and authority of Ansel B. Solenberger to deal with the check alleged in her motion for judgment in the manner set forth therein, inasmuch as by her dealings with respect to the said Ansel B. Solenberger she made possible the acts on his part of which she complains.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, AT WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., March 6th 1959.

P. J. MARSHALL, Clerk.

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ORDER.

On the 23rd day of March, 1959, came the parties hereto by counsel upon pretrial conference.

Whereupon, The Commercial and Savings Bank of Winchester, Virginia, by counsel, moved the Court for leave to file a special plea of the statute of limitations against the plaintiff, Stella Maher, to which motion there were no objections; and the Shenandoah Valley National Bank of Winchester, Virginia, moved the Court for leave to file the plea of contributory negligence and additional grounds of defense against the plaintiff, Stella Maher, to which motion there were no objections; and

Thereupon, the Court doth adjudge and order that The Commercial and Savings Bank of Winchester, Virginia, is hereby granted leave to file a plea of the statute of limitations against the plaintiff, Stella Maher, and the Shenandoah Valley National Bank of Winchester, Virginia, is hereby granted leave to file a plea of contributory negligence and additional grounds of defense against the plaintiff, Stella Maher; and

Whereupon, the plaintiff, Stella Maher, did move the Court for leave to file in writing her motion to strike the special plea of the statute of limitations filed against her by The Commercial and Savings Bank of Winchester, Virginia, and the pleas of contributory negligence filed against her by The Commercial and Savings Bank of Winchester, Virginia, and the Shenandoah Valley National Bank of Winchester, Virginia, and the additional grounds of defense filed against her by the Shenandoah Valley National Bank, to which motion there was no objection; and

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Thereupon, it is adjudged and ordered that the plaintiff, Stella Maher, is hereby granted leave to file in writing her motion to strike the pleas contained in said motion; and

Whereupon, the Court did hear argument upon the several pleas filed herein, and upon consideration whereof,

It is adjudged and ordered:

(1) That the plea of the statute of limitations filed against Stella Maher by The Commercial and Savings Bank of Winchester, Virginia, upon the ground that the cause of action of the said Stella Maher did not accrue against The Commercial and Savings Bank within one (1) year or within three (3) years from the date of the filing of the motion for judgment against The Commercial and Savings Bank by Stella Maher, be and the same is hereby overruled and the said plea

of the statute of limitations filed by The Commercial and Savings Bank is stricken, to which ruling of the Court The Commercial and Savings Bank, by counsel, did note its exception; and

(2) That the motion of the said Stella Maher to strike the plea of contributory negligence filed against her by the Shenandoah Valley National Bank of Winchester, Virginia, and The Commercial and Savings Bank of Winchester, Virginia, be and the same is hereby overruled and denied, to which ruling of the Court the plaintiff, by counsel, did note her exception; and

(3) That the motion to strike the additional grounds of defense filed against Stella Maher by the Shenandoah Valley National Bank of Winchester, Virginia, be and the same is hereby overruled and denied, to which ruling of the Court the plaintiff, by counsel, did note her exception; and

(4) That the demurrer filed by The Commercial and Savings Bank and the demurrer filed by the Shenan-
page 132 } doah Valley National Bank to the motion for judgment, be and each of them is hereby overruled and denied, to which ruling of the Court each of the defendants, by counsel, did note its exception; and

(5) That the special plea of the statute of limitations filed by The Commercial and Savings Bank of Winchester, Virginia, against the cross-claim of the Shenandoah Valley National Bank of Winchester, Virginia, upon the ground that such cause of action, as alleged in said cross-claim, did not arise or accrue within one (1) year prior to the filing of such cross-claim, is hereby overruled and denied, and such plea of the statute of limitations is hereby stricken, to which ruling of the Court The Commercial and Savings Bank, by counsel, did note its exception; and

(6) That the demurrer of The Commercial and Savings Bank of Winchester, Virginia, to the cross-claim filed against it by the Shenandoah Valley National Bank of Winchester, Virginia, be and the same is hereby overruled, to which ruling of the Court The Commercial and Savings Bank, by counsel, did note its exception, but leave is granted The Commercial and Savings Bank to delay filing its grounds of defense upon the disposition of the motion for judgment of Stella Maher against the Shenandoah Valley National Bank and The Commercial and Savings Bank of Winchester, Virginia, to which ruling of the Court the Shenandoah Valley National Bank of Winchester, Virginia, by counsel, did note its exception, and the Court doth further hold that the said Commercial and Savings Bank and Shenandoah Valley National Bank of Winchester shall as to this proceedings be deemed adverse parties

and the issue of forgery to be heard herein shall be as to them deemed *res adjudicata;* and

(7) That the issue to be tried is whether the endorsement "Deposit to the credit of Stella Maher" upon the
page 133 } back of the check dated the 3rd day of March, 1955, payable to Stella Maher in the sum of Six Thousand Dollars ($6,000.00) is a forgery; and

(8) That this case is set at ten o'clock (10:00) a. m., on the 12th day of May, 1950, before civil venire of thirteen.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., April 27th 1959.

P. J. MARSHALL, Clerk.

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ORDER.

The 12th day of May, 1959, came the Plaintiff, Stella Maher, in person and by Counsel, and likewise came the Defendants, by Counsel.

Whereupon both the Plaintiff and Defendants, having waived trial of the issue herein by jury and electing and requesting that all matters of law and fact be submitted to the Court for hearing and determination without the intervention of a jury, the Court, having fully heard the evidence and arguments of Counsel, being of the opinion that the endorsement on the check of the Shenandoah Valley National Bank, made payable to the order of Stella Maher, "Deposit to the Credit of Stella Maher," was not authorized by the Plaintiff, that the same is a forgery, and said act has not been ratified by the Plaintiff; that the conduct of the Plaintiff through the course of the transaction resulting in the endorsement of said check does not estop her denial that such endorsement was authorized, nor was such conduct negligence on her part and did not contribute to any loss she suffered, that thereby Plaintiff has suffered damages as claimed in her supplemental and third bill of complaint, doth find for the Plaintiff in the sum of $6,000.00, with interest from February 26, 1955, until paid, together with her costs in this behalf expended, against the Defendants, Shenandoah Valley National Bank of Winchester, Virginia, and The Commercial and Savings Bank of Winchester, Virginia, to all of which the Defendants

page 145 } excepted, which exceptions were by the Court duly noted, and on motion of Defendant, The Commercial and Savings Bank of Winchester, Virginia, by Counsel, ten (10) days time is hereby allotted it to file its grounds of defense or other pleadings to the cross claim of the Shenandoah Valley National Bank of Winchester, Virginia.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., June 4th 1959.

P. J. MARSHALL, Clerk.

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NOTICE OF APPEAL.

This is notice that The Commercial and Savings Bank of Winchester, Virginia, one of the defendants in the above styled action, will appeal to the Supreme Court of Appeals of Virginia, or to one of the Justices of the said Supreme Court of Appeals, for a Writ of Error to the final judgment in this action.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., August 3rd 1959.

P. J. MARSHALL, Clerk.

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NOTICE OF APPEAL.

This is notice that the Shenandoah Valley National Bank of Winchester, Virginia, one of the defendants in the above styled action, will appeal to the Supreme Court of Appeals of Virginia, or to one of the Justices of the said Supreme

Court of Appeals, for a Writ of Error to the final judgment in this action.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., August 3rd 1959.

P. J. MARSHALL, Clerk.

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ASSIGNMENT OF ERROR.

1. The lower Court erred in overruling the Demurrers of The Commercial and Savings Bank and the Shenandoah Valley National Bank to the Supplemental and Third Amended Bill of Complaint, herein treated as the Motion for Judgment.

2. The lower Court erred in ruling that the endorsement "Deposit to credit of Stella Maher" written upon the check dated March 3, 1955, payable to the order of Stella Maher in the sum of Six Thousand Dollars ($6,000.00), was susceptible of being a forgery, and that the determination of whether such endorsement was a forgery or not was one of fact and not of law.

3. The lower Court erred in ruling that the said endorsement upon said check was a forgery.

4. The judgment of the Court, hearing the case without the intervention of a jury, is contrary to the evidence.

SHENANDOAH VALLEY NATIONAL BANK OF WINCHESTER, VIRGINIA
By THOMAS V. MONAHAN
Counsel.

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THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

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Filed in Clerk's Office of Corporation Court for City of Winchester, Va., August 3rd 1959.

P. J. MARSHALL, Clerk.

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ADDITIONAL ASSIGNMENT OF ERROR.

An Assignment of Error on behalf of The Commercial and Savings Bank in addition to the joint Assignment of Error is as follows:

The lower Court erred in overruling the Plea in Abatement filed on behalf of The Commercial and Savings Bank of Winchester, Virginia.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., August 3rd 1959.

P. J. MARSHALL, Clerk.

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ORDER.

On the 5th day of August, 1959, came the defendant, The Commercial and Savings Bank of Winchester, Virginia, by counsel, upon written Motion for leave to amend its Additional Assignment of Error previously filed herein, Notice of the tendering of this order having been delivered to Counsel of Record for Stella Maher and the Shenandoah Valley National Bank of Winchester, Virginia.

It is hereby adjudged and ordered that The Commercial and Savings Bank of Winchester, Virginia, is hereby granted leave to amend its Additional Assignment of Error to read:

"The lower Court erred in overruling the Plea in Bar filed on behalf of The Commercial and Savings Bank of Winchester, Virginia"

instead of

"The lower Court erred in overruling the Plea in Abatement filed on behalf of The Commercial and Savings Bank of Winchester, Virginia,"

and the said defendant is hereby granted leave to file an Amended Additional Assignment of Error, to this extent.

Complainant excepted.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., August 5th 1959.

P. J. MARSHALL, Clerk.

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ADDITIONAL ASSIGNMENT OF ERROR—AMENDED.

An Assignment of Error on behalf of The Commercial and Savings Bank in addition to the joint Assignment of Error is as follows:

The lower Court erred in overruling the Plea in Bar filed on behalf of The Commercial and Savings Bank of Winchester, Virginia.

THE COMMERCIAL AND SAVINGS BANK OF WINCHESTER, VIRGINIA.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., August 5th 1959.

P. J. MARSHALL, Clerk.

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A Copy—Teste:

H. G. TURNER, Clerk.

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