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Record No. 5239

In the
Supreme Court of Appeals of Virginia
at Richmond

HUGH H. HANSHAW, ET AL.

v.

CHARLES D. DAY

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5239

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 4th day of October, 1960.

HUGH H. HANSHAW, ET AL., Appellants,

against

CHARLES D. DAY, Appellee.

From the Court of Law and Chancery of the City of Norfolk

Upon the petition of Hugh H. Hanshaw, A. C. Mays, Ira C. Erwin, W. E. Allmond, C. H. Paul and F. E. Hudgins an appeal is awarded them from a decree entered by the Court of Law and Chancery of the City of Norfolk on the 31st day of March, 1960, in a certain chancery cause then therein depending wherein Charles D. Day was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

BILL OF COMPLAINT.

To the Honorable Judges of said Court:

Your complainant respectfully shows unto the Court the following:

1. That the East Ocean View-Little Creek Volunteer Fire Department, Incorporated, was issued a charter of incorporation by the State Corporation Commission on April 8, 1952, which certificate of incorporation was duly recorded in the Clerk's Office of the Circuit Court of Princess Anne County, on June 19, 1952, as evidenced by a copy of said Certificate of Incorporation attached hereto, and

2. According to the Certificate of Incorporation, the said East Ocean View-Little Creek Volunteer Fire Department, Incorporated, was formed for the promotion of the welfare and interest of the inhabitants of the County of Princess Anne, and the said corporation was chartered as a charitable and benevolent or literary corporation, and

3. Pursuant to the provisions of Section 13.1-290 of the Code of Virginia, the corporate existence of the said corporation automatically ceased on July 1, 1959, and

page 2 } an Order was entered by the State Corporation Commission on July 8, 1959, setting forth the dissolution of the said East Ocean View-Little Creek Volunteer Fire Department, Incorporated, a certified copy of said Order being attached hereto, and

4. The respondents named herein are all of those persons who were officers and trustees of the said East Ocean View-Little Creek Volunteer Fire Department, Incorporated at the time of the entry of the aforesaid Order of the State Corporation Commission, and

5. At the time of the entry of the aforesaid Order of the State Corporation Commission, the said corporation was seized of considerable property and assets, including an amount of money in excess of $12,000.00, which funds are now deposited to the name of said corporation in the Southern Bank of Norfolk, Norfolk, Virginia, and

6. On or about September 8, 1959, a meeting was held by those persons who were members of the said corporation at the time of its dissolution, at which meeting a motion was made and carried to divide the assets of the now defunct

corporation among those persons who were members of the said corporation at the time of its dissolution, and

7. The contemplated distribution of assets is to take place on October 6, 1959, and said distribution is and would be unlawful and violative of Section 13.1-249 (c) of the Code of Virginia, of 1950 as amended.

WHEREFORE, your complainants prays that a temporary injunction be issued against the said officers and trustees of the now defunct East Ocean View-Little Creek Volunteer Fire Department, Incorporated, enjoining and restraining them and each of them, from in anywise interfering with, disposing of or concealing the property and assets of the said defunct corporation, and your complainant further prays for the appointment of a receiver of all the property and assets of the said defunct corporation, and for an Order for the said receiver so appointed to take possession and charge of all the property and assets of the said defunct corporation and to administer and dispose of the same under the Orders of this Court, and for such other and further relief and orders as the situation may require and as to equity may seem meet.

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CHARLES D. DAY.

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page 4 }

* * * * *

H. G. H.
J. W. D.
R. T. C.

City of Richmond, July 8, 1959.

Pursuant to the provisions of §13.1-128 or §13.1-290 of the Code of Virginia, the corporate existence of the following corporations automatically ceased on July 1, 1959, for failure to file the required statement establishing a registered office and appointing a registered agent:

* * * * *

East Ocean View-Little Creek Volunteer Fire Department, Incorporated.

* * * * *

page 6 } COMMONWEALTH OF VIRGINIA
DEPARTMENT OF THE
STATE CORPORATION COMMISSION

I, N. W. Atkinson, Clerk of the State Corporation Commission, do hereby certfiy that the foregoing is a true copy of the Commission's Order of July 8, 1959, listing the domestic corporations whose corporate existence automatically ceased on July 1, 1959, for failure to file the required statement establishing a registered office and appointing a registered agent.

IN TESTIMONY WHEREOF I hereunto set my hand and affix the Official Seal of the State Corporation Commission at Richmond this 25th day of September, A. D. 1959.

N. W. ATKINSON
Seal Clerk of the Commission.

page 7 } CERTIFICATE OF INCORPORATION OF EAST OCEAN VIEW-LITTLE CREEK VOLUNTEER FIRE DEPARTMENT, INCORPORATED.

This is to certify that we, the undersigned, desire to and hereby do associate to incorporate a social club under the provisions and subject to the requirements of the law for such cases made and provided in Chapter 13, Title 13, of the Code of Virginia, 1950, and by this our Certificate of Incorporation set forth as follows:

(a) The name of the corporation is to be EAST OCEAN VIEW-LITTLE CREEK VOLUNTEER FIRE DEPARTMENT, INCORPORATED.

(b) The principal office in this State is to be located at East Ocean View, Princess Anne County, Virginia, and its postoffice address is Norfolk 3, Virginia.

(c) The purpose for which it is formed is for the promotion of the welfare and interest of the inhabitants of the County of Princess Anne and to afford volunteer fire protection to persons and property in said County; to erect, purchase, buy, own, rent, build, maintain, operate, and supply volunteer fire stations, houses and departments with all kinds of fire preventive and fire fighting equipment, and supplies; to acquire real and personal property and equipment by gift, devise and otherwise, and to promote the general welfare

of the community, all of which purposes are to be carried out not for profit and without issuing shares of stock, but to promote the moral, social and educational welfare of its members and such other persons as the company may determine to assist.

* * * * *

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(on back)

DEPARTMENT OF THE STATE CORPORATION COMMISSION.

City of Richmond, 8th day of April, 1952

The accompanying certificate for incorporation of an association stated by the applicants to be for charitable or benevolent or literary purposes, on which no charter fee is required by law, having been presented to the State Corporation Commission by Herman Gillis, Roy Seely, A. Rudischauser and W. E. Allmond and the Hon. F. E. Kellam Judge of the Circuit Court of Princess Anne County having certified that the said persons signing said certificate are of good moral character and suitable and proper persons to be incorporated for the purposes therein set forth, and that the said certificate has been signed and acknowledged by said applicants in accordance with law, the State Corporation Commission having examined said certificate, now declares that the said applicants have complied with the requirements of law, and have entitled themselves to a charter, and it is therefore ordered that the said Herman Gillis, Roy Seely, A. Rudischauser and W. E. Allmond and their associates and successors be, and they are hereby, made and created a body politic and corporate under and by the name of East Ocean View-Little Creek Volunteer Fire Department, Incorporated upon the terms and conditions, and for the purposes set forth in said certificate, with all the powers and privileges conferred upon charitable and benevolent or literary corporations and subject to all the conditions and restrictions imposed by law.

And said certificate, with this order, is hereby ordered to be admitted to record.

H. LESTER HOOKER, Chairman.

Attest:

N. W. ATKINSON
Clerk of the Commission.

Commonwealth of Virginia,
Office of State Corporation Commission:

In the CITY OF RICHMOND, the 8th day of April, 1952. The foregoing charter of East Ocean View-Little Creek Volunteer Fire Department, Incorporated was this day received and duly admitted to record in this office and is hereby certified to the Clerk of the Circuit Court of Princess Anne County according to law.

STATE CORPORATION
COMMISSION,
By H. LESTER HOOKER
Chairman.

Attest:

N. W. ATKINSON
Clerk of the Commission.

Virginia:

In the Clerk's Office of the Circuit Court of Princess Anne Co. the 19th day of June, 1952.

The foregoing charter and certificate of the State Corporation Commission thereon was received, duly admitted to record, duly spread, and is now certified to the Clerk of the State Corporation Commission.

Teste:

JOHN V. FENTRESS, Clerk
By MARY E. COOPER, D. C.

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DEMURRER.

The defendants, Hugh H. Hanshaw, A. C. Mays, Ira C. Erwin, W. E. Allmond, C. H. Paul and F. E. Hudgins, by their attorneys, come and say that the Bill of Complaint in this cause is not sufficient in law for the following reason:

1. The Bill filed herein does not show that the complainant has an interest in the subject matter of this suit that would entitle him to the relief prayed for in the said Bill of Complaint.

HUGH H. HANSHAW, A. C. MAYS, IRA C. ERWIN, W. E. ALLMOND, C. H. PAUL, F. E. HUDGINS,
By .....
Of Counsel
and
B. A. BANKS
Of Counsel.

Filed 10-14-59.

H. L. STOVALL, D. C.

* * * * *

page 15 }

* * * * *

SUPPLEMENTAL BILL OF COMPLAINT.

Pursuant to an Order heretofore entered in this matter on the day of October, 1959, your complainant, Charles D. Day, respectfully represents:

1. That he is a citizen of the City of Norfolk, State of Virginia, residing at 1607 East Ocean View Avenue, Norfolk 3, Virginia, and that he is the fee simple owner of real estate located in the area of the City of Norfolk known as "East Ocean View."

WHEREFORE, your complainant prays that he may have such relief as is prayed for in the original Bill of Complaint heretofore filed in this matter.

CHARLES D. DAY
By REID M. SPENCER
Of Counsel.

Filed 10-15-59.

H. L. STOVALL, D. C.

* * * * *

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ORDER.

For good cause shown, complainant is this day granted leave to file a Supplemental Bill of Complaint in order to show that the said complainant, Charles D. Day, is a resident of the City of Norfolk, and is the owner of real estate located in the area of the City of Norfolk known as East Ocean View, and it is further ordered and decreed that the respondents shall have 21 days from the date of the filing of such Supplemental Bill of Complaint in which to make answer to the Bill of Complaint as supplemented.

Enter Oct. 15, 1959.

J. H. T.

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* * * * *

ORDER OVERRULING DEMURRER.

This day came the complainant, by his attorney, and came also the respondents, by their attorneys, and thereupon the complainant joined in the Demurrer filed by the respondents on the 14th day of October, 1959, and said Demurrer was argued by Counsel; and the Court, having considered of its judgment upon said Demurrer, is of the opinion too, and doth overrule said Demurrer.

Enter Oct. 15, 1959.

J. H. T.

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DEFENDANTS' RESPONSE.

Now come the defendants, and for their answer to a Bill of Complainant exhibited against them in the Court of Law and Chancery of the City of Norfolk, Virginia, or to so much

thereof as they are advised it is material for them to answer, and reserving unto themselves all just exceptions, answer and say:

1. They admit the allegations contained in paragraphs one, two, three, four, and five of the Bill of Complaint.
2. They deny the allegations contained in paragraphs six and seven of the said Bill of Complaint and call for strict proof thereof.

* * * * *

page 22 }

* * * * *

Filed 10-20-59.

L. M. CALVERT, D. C.

* * * * *

page 26 } March 22, 1960.

Mr. Reid M. Spencer
James, Wahab, Murphy & Spencer
Board of Trade Building
Norfolk, Virginia

Mr. B. A. Banks
Board of Trade Building
Norfolk, Virginia

Mr. Sidney Sacks
Board of Trade Building
Norfolk, Virginia

Re: Day *v.* Hanshaw, et al.

Dear Sirs:

In the above case I do not believe from the evidence that I have heard that there is any real need or necessity, or even any remote need, for the equipment which the East Ocean View and Little Creek Auxiliary Firemen and Civil Defense Workers, Incorporated wish to purchase. The present members of this corporation apparently were of this opinion prior to the institution of this chancery cause. Otherwise they

would not have disposed of their equipment, including life saving apparatus; nor would they have voted to divide the funds remaining in the hands of the treasurer of the East Ocean View—Little Creek Volunteer Fire Department, Inc. among the members thereof, to be donated by the member to a charity of his choice, after the reason for the last named corporation's formation had ceased to exist.

I am of the opinion that counsel for the parties should be reasonably compensated for the services rendered. In this connection I would like to confer with counsel.

The remaining funds should be divided as follows: 10% to the East Ocean View Chamber of Commerce, 10% to the Board of Deacons of the East Ocean View Presbyterian Church to be used in the scouting activities (boys and girls) sponsored by that church, and the remaining 80% to the East Ocean View Youth Recreational Association, Inc.

Very truly yours,

J. HUME TAYLOR, Judge.

JHT:meg

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* * * * *

This cause came on this day to be heard upon the pleadings heretofore made, the exhibits filed and the evidence presented in support thereof and was argued by counsel, and the Court being of the opinion that the prayer of the Bill of Complaint should be granted, it is therefore

ADJUDGED, ORDERED AND DECREED that Reid M. Spencer be and is hereby appointed Receiver to take possession and charge of all the property and assets of the now defunct East Ocean View-Little Creek Volunteer Fire Department, Inc., not heretofore disposed of by gift or indefinite loan, which said prior gifts and loans are adopted and approved by the Court, and shall administer and dispose of the said property and assets as hereinafter directed and said Receiver shall give bond with corporate surety in the amount of $15,000.00, for the proper performance of his duties, and

It is further ORDERED that the Respondents herein to-wit; Hugh H. Hanshaw, A. C. Mays, Ira C. Erwin, W. E. Allmond, C. H. Paul and F. E. Hudgins shall forthwith give over and deliver to the said Receiver any and all such prop-

erty and assets of the said defunct East Ocean View-Little Creek Volunteer Fire Department, Inc., which are held by them or which are under or in their possession, custody or control, and

It is further ORDERED that the said Receiver shall liquidate and reduce to cash all such property and assets of the said East Ocean View-Little Creek Volunteer Fire Department, Inc., and thereafter the said Receiver shall first pay all of the costs and proper expenses incident to this proceeding, including the sum of $750.00 to counsel for the
page 28 } Complainant herein and the sum of $600.00 to counsel for the Respondents herein as fee for their professional services rendered in this cause, and the whole of the residue of said funds shall be divided and paid as follows:

Eighty Percentum (80%) to the East Ocean View Youth Recreational Association, Inc. to be used in furtherance of its corporate purposes; and

Ten Percentum (10%) to the Board of Deacons of the East Ocean View Presbyterian Church to be used in furtherance of the scout programs of said church; and

Ten Percentum (10%) to the Trustees of the East Ocean View Chamber of Commerce, Inc. to be used for the repair and maintenance of the existing improvements on the real property of the said corporation;

And the Receiver hereinabove named shall report to the Court his administration and disbursement of the funds received pursuant to this order; and a copy of this Order shall be directed to Hugh H. Hanshaw, A. C. Mays, Ira C. Erwin, W. E. Allmond, C. H. Paul and F. E. Hudgins, and to R. E. Drumwright, President of the East Ocean View Youth Recreational Association, Inc., and to J. H. Blanchard, Chairman of the Board of Deacons of the East Ocean View Presbyterian Church, and to W. E. Allmond, Treasurer of the East Ocean View Chamber of Commerce, Inc.

To all of which action of the Court, the Respondents, by Counsel, object and except, and this cause shall remain on the docket of the Court pending the report of the Receiver.

Enter March 31, 1960.

J. H. T.

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Pursuant to agreement of counsel for all parties, the objections and exceptions of counsel for the respondents to the order heretofore entered in this matter on the 31st day of March, 1960, are modified to the extent that the Receiver appointed in the aforesaid order shall take possession and charge of all monies of the now defunct East Ocean View-Little Creek Volunteer Fire Department, Inc., and shall immediately pay and reimburse all parties for costs and proper expenses incurred and fees allowed to counsel for the respective parties; but the respondents, by counsel, keep and save their objections and exceptions to all other action of the Court as set forth in the aforementioned order of March 31, 1960.

Enter 4/4/60.

W. S. PAGE, Judge.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

To W. L. Prieur, Jr., Clerk of the Court of Law and Chancery of the City of Norfolk:

The respondents, Hugh H. Hanshaw, A. C. Mays, Ira C. Erwin, W. E. Allmond, C. H. Paul, and F. E. Hudgins, hereby give notice of appeal in this cause and that they will apply for a writ of error and *supersedeas* and assign the following errors committed in the trial of this case:

1. The trial court erred in overruling the demurrer filed by the respondents.
2. The trial court erred in holding that Section 13.1-257, Sub-Section E of Michie's Code was constitutional.

HUGH H. HANSHAW, ET ALS.
By SIDNEY SACKS
Counsel.

Filed 5-10-60 Court of Law and Chancery.

By L. M. CALVERT, D. C.

* * * * *

page 5 } IRA C. ERWIN,

one of the respondents, having been first duly sworn, testified as follows:

Examined by Mr. Spencer:

Q. What is your name?

A. Ira C. Erwin.

Q. Mr. Erwin, were you secretary of the East Ocean View-Little Creek Volunteer Fire Department, Incorporated?

A. I was.

Q. As such did you take the minutes of the meetings of that organization?

A. I did.

Q. After the annexation of the Little Creek-Ocean View area by the City of Norfolk did you continue to take the minutes of such meetings as were held by the organization?

A. That is right.

Q. I have here a book which purports to be the minute book of that organization. Will you look at it, sir, and tell me if that is correct

A. That is our book.

Q. Are those the minutes taken by you, sir?

A. That is right.

Mr. Spencer: I would like to offer this as Exhibit 1.

The Court: Specifically what are you interested page 6 } in?

Mr. Spencer: The minutes of September 8, 1959, at this point.

The Court: You wish to introduce this in evidence?

Mr. Spencer: Yes, sir.

The Court: I will mark it "Complainant's Exhibit 1."

By Mr. Spencer:

Q. Calling your attention to the portion of this book which is succeeded by "9/8/59," I ask you if these are the minutes of the September 8, 1959 meeting of that organization?

A. As far as I know, that is the same one.

Q. Is that in your handwriting?

A. That is my handwriting.

By the Court:

Q. Don't you know that those are the minutes?

A. They are all of the minutes.

Q. I am talking about the minutes of September 8, 1959?

A. They are all in my handwriting.

Ira C. Erwin.

Q. Are those the minutes of the meeting of September 8, 1959, is all I am asking?

A. Yes, sir.

page 7 } By Mr. Spencer:

Q. On the second page of those minutes near the bottom there is recorded: "Motion by C. Paul that as soon as the books of this organization have been audited that the treasurer issue a check for each member in good standing as of 12/31/58 or a prorated basis based on length of service in this organization; these checks to be issued at the next meeting to each member, and that the members be instructed to donate his share to the charity of his choice. This will insure each member that his share will go to the charity of his choice. And three members be appointed by the president to work up the amount due each member and present same to Mr. Allmond within the next ten days. Seconded by Fleming. Carried."

Is that a correct statement of the motion, sir?

A. That is the way I wrote it down. The only thing I left out was that they were supposed to name their charity so the treasurer could make it out on the check, itself. I think I left that part out.

Q. You state that, sir, as a fact?

A. In other words, each man was supposed to make it out to his own charity—have it made out.

Q. And they were supposed to name them so that Mr. Allmond could state that on the checks?

A. That is right.

page 8 } Q. That was a part of the motion?

A. That is right.

Q. Why didn't you record that as a part of the motion?

A. I am not exactly a professional secretary, and I cannot write as fast as he talks.

By the Court:

Q. To whom were the checks to be made payable?

A. Sir?

Q. To whom were the checks to be made payable? Who was going to be the payee?

A. Whatever charitable organization they desired to send it to, I guess. That is the way I understood it. Each man was to have his own say-so.

Q. The check was not to be made payable to Mr. Erwin,

but was to be made payable to the organization that was—
A. —named.

Mr. Spencer: Judge, I would like at this point to point out that that is not responsive to my question. Since I have called this gentleman, I do not want to be bound by that answer. I have called him only to establish the minutes.

The Court: I have never felt that you were
page 9 } bound by a statement of a witness other than the plaintiff. Go ahead.

By Mr. Spencer:
Q. How many meetings were held by this organization following the annexation by the City of Norfolk?
A. We still have monthly meetings, the first Tuesday of every month.
Q. Do you take minutes at those meetings?
A. That is correct.
Q. Would the minutes not have been recorded in this book?
A. It was supposed to be turned over to the court, I understand.
Q. That was in October.
A. We have never gotten the book back since then, either.
Q. I understand that. There are no minutes between February and September?

The Court: When was the annexation effective?
The Spencer: January 1, 1959.

By the Court:
Q. You said that you have monthly meetings. Where are the minutes for January through September 1959? You had the books then, didn't you?
A. They are sitting right there by my wife.

Q. You had this book until October 2, 1959, didn't
page 10 } you?

A. Whatever the date is on it.
Q. That is the date that the injunction was made effective?
A. What is the last date in the book?

By Mr. Spencer:
Q. 10/9/59. Now, sir, there are minutes recorded here, six lines for January 1959, and then the minutes of the meeting of February 23, '59, and then the next minutes for September of '59. Where are the minutes that were taken at these

monthly meetings you mentioned for March, April, May, June, July and August—six months?

A. Some of those meetings I could not attend. I wasn't there.

Q. Were no minutes taken, sir, to your knowledge?

A. I don't think there was.

Q. But meetings were held?

A. Meetings were held, but I wasn't present.

Q. They were full membership meetings?

A. I would say yes, that the majority of them were there.

By the Court:

Q. What was a quorum at your meetings? How many people had to be there in order to constitute a quorum and do business?

page 11 } A. I don't know the exact number, but it is stated in the constitution and by-laws. I think it is somewhere between seven and ten, but I am not sure.

Mr. Spencer: Your witness.

Mr. Sacks: We will put him on later, if Your Honor please.

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CHARLES D. DAY,

the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Spencer:

Q. You are Charles D. Day, the complainant in this action?

A. Yes, sir.

Q. Where do you live?

A. My office is 3826, and my home is 1607 East Ocean View Avenue.

page 13 } Q. Are both of those addresses in the City of Norfolk?

A. Yes, sir.

Q. Your office address, is that in the area known as East Ocean View which was recently annexed by the city from Princess Anne County?

Charles D. Day.

A. That is right.
Q. Do you own real estate in that area?
A. Yes, sir.
Q. Have you conducted your business enterprises in that area for a period of time?
A. Twelve years.

By the Court:
Q. You also live in that area, I gather?
A. Yes, sir.

By Mr. Spencer:
Q. You live three blocks inside the city on East Ocean View Avenue?
A. That is right.
Q. Were you originally one of the interested persons in connection with the formation of this East Ocean View-Little Creek Volunteer Fire Department?
A. Yes, sir.
Q. For what period of time were you a member?
A. About four years. I could not say exactly, page 14 } but I think it was four years.
Q. Prior to the incorporation of the organization was there a considerable period of time during which you and others were attempting to organize a volunteer fire department in that neighborhood?
A. Yes, sir.
Q. Did that go on for a period of years?
A. I would not want to say exactly, but I would say it was well over a year.
Q. When did the organization obtain its first fire engine?
A. I don't know. I can't tell you that, but it was in April. A lot of the members met it outside and rode on it. It was in April, I think, of '54 or '55. I would not want to make a statement on that, sir.
Q. I have here a clipping from the Norfolk Virginian-Pilot, dated Monday, January 12, 1953, which I will ask you to look at, sir, and tell me if you can identify the contents of that clipping?
A. Yes, sir. There is the fire engine.

By the Court:
Q. What is the date of that clipping?
A. January 12, 1953.

Charles D. Day.

By Mr. Spencer:

Q. Is that a picture of the first fire engine?

page 15 } A. Yes, sir, that is a picture of the first fire engine.

Q. And the first members of this volunteer fire department, or some of them at least?

A. Yes, sir. It is kind of dim and my eyesight is not too good, but I recognize most of them.

Mr. Spencer: I would like to offer this.

The Court: Complainant's Exhibit 2.

By Mr. Spencer:

Q. Mr. Day, did you participate in the efforts to raise the funds to purchase and pay for this original fire equipment?

A. Yes, sir.

Q. Is that the same fire engine which the department had when the area was annexed by the City of Norfolk?

A. It is the only fire engine they have ever had.

Mr. Spencer: Your witness, Gentlemen.

CROSS EXAMINATION.

By Mr. Banks:

Q. Mr. Day, when you filed this suit on October 2nd were you a member of the East Ocean View-Little Creek Fire Department, Incorporated?

A. No, sir.

page 16 } Q. Or of that organization?

A. No, sir.

Q. When did you drop out of the organization?

A. I don't know. It was awhile after Mr. Hanshaw became president. I was supposed to pay my dues—

By the Court:

Q. Mr. Day, I haven't the slightest idea when Mr. Hanshaw became president.

By Mr. Banks:

Q. How many years ago?

A. I would say it was '54 or '55. It was either '54 or '55. I was president for three years.

Charles D. Day.

By Mr. Spencer:

Q. Did you say that you were president for three years?

A. Yes, sir.

By Mr. Banks:

Q. You had severed your connection with the organization some four years prior to filing this suit?

A. Three years, I thought it was, that I wasn't a member.

Q. When you were a member of this organization, what sort of work did the organization perform?

A. They did fine work.

page 17 } Q. Will you enlighten the court as to the nature of the services which the men in the organization rendered?

A. I will be glad to as far as I can go, sir. While I was president Mr. Stroud back there was chief, and he worked hard. He was assistant chief and then he became chief. As to all of the men connected with the Fire Department, some would be here for a year and would go, and then new ones would come in. As to all of them at all times I had no complaint. They did a wonderful job.

Q. These same men that you refer to were members of the organization when you filed this suit in October of last year, were they not?

A. As far as I know, yes, sir.

Q. And they have carried on continuously since then, have they not?

A. The Fire Department has carried on continuously, up until the annexation took it over.

Q. I hand you two cards, one Auxiliary Fireman and one Virginia State Firemen's Association. When you were a member of the organization did you hold certificates in the nature of those which I just handed you?

A. Yes, sir. I held a card showing that I was President of the Fire Department.

By the Court:

page 18 } Q. He is asking you if you had cards showing your membership in those two particular organizations?

A. No, sir, I don't think so. All I had was showing that I was President of the East Ocean View-Little Creek Volunteer Fire Department. I wasn't a member of those.

Charles D. Day.

By Mr. Banks:

Q. When you filed this suit you were under the impression, as alleged in the bill of complaint, that the money was to be distributed and divided among the individuals, were you not?

A. Well, I did not know just what was going to be done. That was the whisper and talk. I filed the suit for this reason—if I am ahead of you, I will be glad to slow down. This money was raised by the East Ocean View people, and the county helped as to the greatest part of it. The money that the county donated came from the Kempsville District, out of the taxes of the Kempsville District, which I understand was $15,800.00. The taxpayers in the Kempsville District, it came from them. They had midget races. They gave automobiles, selling chances, and boats. They raised the money in various ways.

Q. Had you known that the money was to be given to designated charities of the individual's choosing, would you have filed this suit?

A. Yes, sir.

page 19 } Q. You would have been opposed to the distribution of the money to any other designated charity?

A. No, I would not say that, sir.

Q. Then you misunderstood my first question.

The Court: I don't believe you are exactly right there. You asked him one question and he answered that. Then you asked him another question and you said, "That makes you opposed to the charities?"

Mr. Banks: I would like to clarify the two questions, if Your Honor please.

By Mr. Banks:

Q. Had you known that on September 8, 1959, the resolution of the association read that the money was to be distributed to charities designated by the individual members in proportion to the amount which would come to each member, would you have filed this suit?

A. Yes, sir.

Q. You would still have filed this suit?

A. I would still have filed this suit.

Q. Do you know Milton E. Paul?

A. Milton E. Paul?

Q. Yes, sir.

Charles D. Day.

A. I don't know whether I do or not. I know a lot of people. If he is here and he stands up, I might recognize him.

page 20 } Mr. Banks: Mr. Paul, will you stand up, please? (Does)

A. Yes, sir, I know him as Earl Paul.
Q. Do you know Melvin Pickins?
A. Yes, sir.
Q. Do you know L. S. McDaniel?
A. Yes.
Q. Do you know M. L. Vickers?
A. Yes, I know Mr. Vickers.
Q. Do you know Charles McAtammey?
A. No, I don't know him.

Mr. Banks: Mr. McAtammey, will you stand up? (Does)

A. I don't know him.

By Mr. Banks:
Q. Do you know Mr. L. H. Seely?
A. Yes, sir, very well. He is a fine man.
Q. Do you know Arthur Mister?
A. Yes, sir.
Q. Do you know A. C. Mays?
A. Yes, sir.
Q. Do you know Ira C. Erwin?
A. Yes, sir.
Q. Do you know W. E. Allmond?
A. Yes, sir.
page 21 } Q. Do you know C. H. Paul?
A. Yes, sir.
Q. Do you know F. E. Hudgins?
A. Yes, sir.
Q. Do you know Hugh H. Hanshaw?
A. "Handy" I know him as.
Q. Will you say whether or not these men are reputable and substantial citizens of the East Ocean View area?

Mr. Spencer: I object.
The Court: I sustain the objection unless there is some basis laid for the question. All I know is that you asked him did he know quite a number of gentlemen.

Walter E. Allmond.

By Mr. Banks:
Q. Do you know these men to be members of this organization?

Mr. Spencer: Which organization?
Mr. Banks: The organization that was dissolved—the East Ocean View-Little Creek Fire Department, Incorporated?

A. I could not say who are members and who are not members.

By Mr. Banks:
Q. You know some of them are members?
page 22 } A. I think some of them are members.
Q. How long have you known these people?
A. I have known some of them ten years.
Q. Are they substantial people?

Mr. Spencer: I object.
The Court: I sustain the objection for several reasons. I don't know what you mean by "substantial people." That means different things to different people.
Mr. Banks: I withdraw the question.

By Mr. Banks:
Q. Mr. Day, did you leave the organization voluntarily, or were you dropped from the membership roll?
A. I thought I was in good standing, and I was informed that I wasn't. I sent my money up there, which was $3.00 a year, and it was sent back. I came out as president and I had not paid my dues, and I was informed that I had been dropped after they sent my money back. $3.00 I sent, and three gentlemen or three men brought the money back.
Q. Did you know that the organization paid dues for the members to the state organization when you were a member?
A. I don't know.

* * * * *

page 23 } WALTER E. ALLMOND,
one of the respondents, having been first duly sworn, testified as follows:

Examined by Mr. Spencer:
Q. What is your name, please, sir?

Walter E. Allmond.

A. Walter E. Allmond.

Q. Mr. Allmond, were you a member of the East Ocean View-Little Creek Volunteer Fire Department from the time of its inception until the time of the annexation by the City of Norfolk?

A. Yes, sir.

Q. During that period of time did you hold office in the organization?

A. Yes, sir.

Q. What office did you hold?

A. Treasurer.

Q. Were you treasurer for the entire period of time?

A. Yes, sir.

Q. I have here some books. Are these a portion of the records that you kept as treasurer, sir?

A. Yes, that is correct.

Q. Here is a box containing bank statements and canceled checks. Are these all of the financial records of the organization?

A. Everything we have.

page 24 } Mr. Spencer: I would like to offer these records in evidence—I suppose the whole thing.

The Court: Put everything in the box. I will mark the box as "Complainant's Exhibit 3."

By Mr. Spencer:

Q. Mr. Allmond, when did the movement commence for the formation of a volunteer fire department in this area, so far as you can recollect?

A. '52, I believe. I remember the first meeting very well.

Q. Prior to that, sir, was there discussion among the citizens in the area of the need for fire protection?

A. I don't recall.

Q. When did the organization get its first fire engine? Do you know?

A. '53, I believe.

Q. January of 1953?

A. Yes. It had been promised to us since around August or September, I believe, but they kept delaying the delivery of it. I think it came around January 1st, around that time.

Q. Where did the money come from to pay for this fire engine?

A. The first money that we raised or got was given to us

Walter E. Allmond.

by Princess Anne County—$1,000.00. With that
page 25 } $1,000.00 we started out to canvass the neighbor-
hood on donations. Practically all of it was paid for by raffles.

Q. Practically all of it was paid for by raffles?

A. Yes.

Q. Was a raffle held every year during which this Fire Department existed?

A. That is correct.

Q. That is '53, '54, '55, '56, '57 and '58. Is that correct, sir?

A. No. We had five raffles. We did not have but five.

Q. You had five? Do your records reflect the amounts of the proceeds of those raffles?

A. Yes, sir.

Q. Without taking the time to go into the records, can you tell us the approximate amounts that were realized from these raffles?

A. I cannot, but if you will give me this book I will give you the last one. That would be easy to pick up, I think. (Handed book.) $3,932.00.

Q. That was the net proceeds?

A. That is right; 1956.

Q. Let me ask you if these figures sound approximately correct to you. A raffle is entered on September 6, 1955—
$5,692.50—
page 26 } A. $5,767.00, I believe.
Q. A raffle on 8/2/54—$3,059.00?

A. I don't have that record.

Q. All right, sir, I won't go into that further. But, these raffles realized substantial sums of money, did they not?

A. That is correct.

Q. In addition to that what other source did you have from which you received substantial sums of money on a regular basis?

A. Princess Anne County.

Q. I believe that for the first two years of operation you received $200.00 a month?

A. That is right.

Q. Thereafter you received—

A. —$250.00.

Q. $250.00 a month, or $3,000.00 a year from that?

A. Yes.

Walter E. Allmond.

Q. Were those appropriations, so far as you are aware, from the general tax funds of Princess Anne County which had been collected from the Kempsville Magisterial District?

A. I don't know.

Q. Was East Ocean View a portion of Kempsville?

A. Yes.

page 27 } Q. That is the Kempsville Magisterial District?

A. That is right.

Q. Over and above that, sir, will you tell the court generally where the funds that were used to operate, maintain and acquire equipment, where those funds came from?

A. They came from the money given to us by Princess Anne County, plus the money left over from the raffles, and the dues.

Q. What were the dues?

A. $3.00 a year.

Q. $3.00 a year?

A. Yes.

Q. What was the largest number of members the organization ever had?

A. I can't answer that; in the neighborhood of 60.

Q. Say between 60 and 90?

A. Yes, something like that.

Q. What about house-to-house canvasses?

A. I don't know of any house-to-house canvass, other than house-to-house selling these raffle tickets.

Q. On 12/2/53 there is an entry in your records: "House-to-house canvass—$1,096.00," preceded by an entry "Canvass of business houses, in the amount of $669.16." Do

page 28 } you recall that now?

A. Yes.

Q. Did you not also receive a number of rather substantial cash donations from the Ladies Auxiliary of this organization, from the East Ocean View Garden Club?

A. That I can't tell. I would have to look at the records.

Q. Well, sir, just to point out one—"September 28, 1954—$150.00 from the East Ocean View Garden Club." Which book would that be in, sir?

A. What was that date?

Q. September 28, 1954. Would that be in this one?

A. That is correct.

Q. Over and above that, sir, various individual, private citizens from time to time contributed $5.00, $10.00, $25.00,

and sometimes perhaps even as much as $50.00, did they not?

A. That is correct.

Q. Mr. Allmond, in connection with the motion made on September 8, 1959, dealing with the distribution of these funds, were you directed to make out the checks to the various persons entitled to them?

A. No, sir.

Q. To whom were you directed to make the checks payable?

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A. I have never been directed.

Q. You were never directed?

A. No, sir.

Q. To your recollection was anything ever said to you, sir, about making any of these checks payable to any particular charities?

A. No.

Q. Were you present at the meeting on September 8, 1959?

A. That is correct.

Q. Do you remember any such thing being said at that meeting?

A. I am confused now.

By the Court:

Q. In what respect are you confused?

A. I have never been instructed to draw checks to anyone. Go ahead and read the minutes.

By Mr. Spencer:

Q. If I may, sir, I will withdraw that question and rephrase it. "Motion by C. Paul that as soon as the books of this organization have been audited that the treasurer issue a check for each member in good standing as of 12/31/58 or a prorated basis based on length of service in this organization; these checks to be issued at the next meeting to each member, and that the members be instructed to donate his share to the charity of his choice. This will insure each member that his share will go to the charity of his choice. And three members be appointed by the president to work up the amount due each member and present same to Mr. Allmond within the next ten days. Seconded by Fleming. Carried. Mr. Allmond and Mr. Mays opposed. Special meeting for October 6, 1959. E. Paul, F. Hudgins, I. Erwin were appointed to carry out the job of establishing the members and shares. By Mr. Hanshaw motion to adjourn. Carried."

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Walter E. Allmond.

In connection with the first motion stated, to divide the money into shares and issue checks, do you recollect anything being said at that time, sir, about making these checks payable to anyone other than the members, themselves?

A. No.

Q. Was a report ever made to you by the committee made up of Mr. Hudgins, Mr. Hanshaw and Mr. Paul as to the number of persons who would be entitled to participate?

A. No.

Q. Do you know how many members there were as of December 31, 1958?

A. Either twenty-eight or twenty-nine. I am not quite sure.

Mr. Spencer: For the benefit of the court and
page 31 } myself—

By Mr. Spencer:

Q. In finding the number of shares, was it based on the years of service?

A. I could not say. I don't know.

Q. I have here the financial report of the East Ocean View-Little Creek Fire Department, at the close of business on October 7, 1959, which I believe is your report, sir, and on that there are some pen and ink notations. Are those your notations, Mr. Allmond?

A. Yes.

Q. Mr. Allmond, that report shows a balance on hand as of that time of $12,184 and some cents?

A. 82 cents.

Q. And that sum is divided by 114.

By the Court:

Q. What is the amount again?

A. $12,184.82.

Q. Is that the amount that you still have?

A. Yes, sir.

Q. That is the exact amount that you do have?

A. That is correct.

By Mr. Spencer:

Q. Mr. Allmond, that figure is divided by the
page 32 } number 114. Is that number 114 the number of shares which were involved?

A. I could not tell you, sir.

C. H. Paul.

Q. Do you know of any other reason why that 114 would be there?
A. No, sir.
Q. Did you put it there? Is it in your writing?
A. No, sir.
Q. You did not?
A. No, sir.

Mr. Spencer: Your witness.

* * * * *

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* * * * *

C. H. PAUL,
one of the respondents, having been first duly sworn, testified as follows:

* * * * *

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* * * * *

By Mr. Banks:
Q. Answer the question specifically. Why do you say that these checks were to be payable to a charity and not to the individual?
A. The motion did not say so. The motion said—

By the Court:
Q. I have heard the motion read three or four times. I know exactly what the motion said. I am asking you this one question. You said that the checks would have been made directly payable to the charitable organization designated by the member. I asked you on what basis do you make that statement. I can't make myself clearer.
A. If Your Honor please, I think I made that statement on my own assumption. I was assuming that if any member wanted his check payable to a charitable organization, he would tell Mr. Allmond to make it; or, if he wanted it made

to himself so he could present it to the charitable organization, he would. I think it was flexible. I have no guarantee that the checks would not have been made to each individual, but I think that the individual and Mr. Allmond would have settled that between themselves.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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