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Record No. 5268

In the Supreme Court of Appeals of Virginia at Richmond

T. FRANK FLIPPO, ET AL., PARTNERS T/A, ETC.

v.

MILDRED C. BROOME, ET AL.

FROM THE CIRCUIT COURT OF HANOVER COUNTY

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5268

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 25th day of November, 1960.

T. FRANK FLIPPO, ET AL.,
PARTNERS t/a, etc., Appellants,

against

MILDRED C. BROOME, ET AL., Appellees.

From the Circuit Court of Hanover County

Upon the petition of T. Frank Flippo, F. Carter Flippo, and Arthur P. Flippo, partners trading as T. Frank Flippo & Sons, an appeal is awarded them from a degree entered by the Circuit Court of Hanover County on the 29th day of April, 1960, in a certain proceeding then therein depending wherein the said petitioners were plaintiffs and Mildred C. Broome was defendant; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

BILL OF COMPLAINT.

TO: The Honorable Leon M. Bazile
Judge of the Circuit Court of Hanover County

Humbly complaining showeth unto Your Honor your complainant, T. Frank Flippo & Sons, a partnership composed of T. Frank Flippo, H. Carter Flippo, and Arthur P. Flippo, the following case:

1. That the plaintiff is a partnership, engaged in the lumber business at Doswell, in Hanover County, Virginia;

2. That the defendant, Mildred C. Broome, is a resident of England and is a non-resident of the State of Virginia, and is the owner of four (4) tracts of land situated in Hanover County, Virginia, on which said lands there is a considerable amount of timber and which lands are described as follows:

TRACT A: All that certain piece or parcel containing 125 acres, more or less, bounded on the east by the Blount's Bridge road running from Blount's *Brdige* by Independence Church to State Highway No. 51; on the south by the lands now or formerly of George Smeeman; on the west by the South Anna River; and on the north by the lands formerly owned by Evelina Perkins and the lands formerly owned by Joseph D. Hendricks.

page 2 } TRACT B: All that certain piece or parcel on the Chesapeake and Ohio Railroad at Verdon Station containing 123 acres, more or less, bounded on the northwest and west by the said railroad and the road leading from New Market to Oxford; and on the northeast and east by the lands now or formerly owned by Montgomery.

TRACT C: All that certain piece or parcel containing 100 acres, more or less, near Horse Shoe Bridge, bounded on the north by land now or formerly owned by P. G. Butler (formerly W. T. Butler), and the land now or formerly owned by the Old Dominion Excelsior Company (formerly D. N. Harmon); on the east by the South Anna River; on the south by the land now or formerly owned by Virginia J. Bumpass; and on the west by the public road leading northward from Horse Shoe Bridge.

TRACT D: All that certain piece or parcel containing 79.36 acres, more or less, adjoining the lands formerly owned by T. A. Stone, James B. Kimbrough's Estate and others, and being about one mile north from Horse Shoe Bridge on the South Anna River.

BEING in all respects the same four tracts of land conveyed to the said Mildred C. Broome in and by that certain Deed of Partition of the Campbell lands, dated August 28, 1937, and recorded in the Clerk's Office of the Circuit Court of Hanover County, Virginia, in Deed Book 185, page 180.

3. That on or about the .. day of October, 1959, Mr. Harris, of the Real Estate Office of L. W. McVeigh & Company, at the direction of State Planters Bank of Commerce and Trusts, Agent for Mildred C. Broome, the owner of the above-described lands, procured a cruise of the timber on said lands for the purpose of a sale thereof. A cruise having been obtained showing a valuation of $18,000.00, the said Harris offered the timber for sale to the plaintiff at the price of $18,000.00. Whereupon, the plaintiff asked time to have a cruise made of said property. In the meantime, the Bank had secured authority from Mildred C. Broome to sell said timber at $18,000.00, and thereafter the plaintiff accepted said offer to purchase said timber and did purchase said timber by agreement with the agent of Mildred page 3 } C. Broome whereby it was verbally agreed that the plaintiff was purchasing all of the merchantable hardwood timber on said lands and all of the pine timber thereon which would measure 8″ and over in diameter at 8″ above the ground at the price of $18,000.00 to be paid in cash. Thereupon, the State Planters Bank of Commerce and Trusts, as Agent of Mildred C. Broome, sent to her for her execution a deed conveying said timber to the plaintiff, which she declined to execute, and the plaintiff is informed that she is now attempting to make sale thereof to another party at $18,001.00.

4. The plaintiff asserts and charges that it entered into a valid verbal agreement for the aforesaid timber with the said Mildred C. Broome as aforesaid, and that said agreement is binding upon the said Mildred C. Broome because of the fact that the aforesaid timber which is being sold for immediate cutting and without any provision being made for its remaining on the land for future growth was a sale of personal property and is properly binding upon the defendant even though the same is not in writing.

5. The plaintiff has always since the verbal agreement for the purchase of said timber was made been ready and

able and willing to perform its part of the agreement and to pay for said timber and does now offer to pay therefor and does tender into Court the sum of $18,000.00, the purchase price thereof.

6. The plaintiff further asserts and charges that it is informed that it is entitled to a specific performance of its above contract of purchase of said timber and that it has no adequate remedy in law should the defendant page 4 } persist in her refusal to allow settlement to be made for said timber.

IN TENDER CONSIDERATION WHEREOF, and forasmuch as your complainant is without remedy save in a Court of equity where matters of this sort are alone cognizable and relievable, it prays:

1. That it may be allowed to file this, its Bill and that proper process shall issue against the defendant;
2. That by reason of the fact that the defendant is a non-resident of Virginia and is a resident of England, that Order of Publication be issued against her as a non-resident;
3. That the agreement of sale aforesaid whereby the plaintiff purchased the timber above described upon the lands of the defendant be specifically enforced and that the defendant be required to deliver the said timber to the plaintiff upon the payment of the sum of $18,000.00, which the plaintiff hereby tenders;
4. That an attachment in accordance with the petition herewith filed may be levied upon the lands of the defendant aforesaid by reason of the fact that she is a non-resident, and that your complainant may have all such further and more general relief as a Court of Equity and the necessity of this case shall require.

And it will ever pray, etc.

T. FRANK FLIPPO & SONS

By ARTHUR P. FLIPPO

HAW & HAW
Attorneys at Law
700 Travelers Building, Richmond, Va.

Filed in the Clerk's Office the 11th day of December, 1959.

Teste:

F. A. TAYLOR, Clerk
By VIRGINIA W. JOHNSON, D.C.

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MEMORANDUM OF THE COURT.

T. Frank Flippo & Sons, a partnership, plaintiff, brought suit against Mildred C. Broome, defendant, for specific performance of a contract for the sale of growing timber which the plaintiff claimed to have purchased from the defendant.

J. E. Jones filed an intervening petition alleging that he was the purchaser of the same timber and praying for specific performance of his alleged contract with Mrs. Broome.

The evidence was reported and therefore it is not necessary to advert to it in detail in this memorandum.

The case raised many interesting points of law, including the application of the statute of frauds, the distinction between special and general agents and their respective authority and the conduct and duties of brokers, which were ably briefed and argued by counsel for all the parties. The court, however, deems it unnecessary to enter upon an extended discussion of the points of law involved, because in the opinion of the court the case turns upon proof of the facts relating to the existence of a contract as presented by conflicting testimony.

page 64 } Flippo contended that the State-Planters Bank of Commerce & Trust as agent for Mrs. Broome entered into a contract with the partnership for the sale of the timber. In support of this position the plaintiff relied primarily upon the letters that passed between the Bank and Mrs. Broome and the testimony of two of the plaintiff's partners to the effect that the Bank as agent had entered into a contract of sale with the partnership.

On the other hand, Mr. William J. Spiller, an officer of the Bank, testified to the effect that the Bank neither had, nor assumed, nor exercised authority to sell the timber, but simply acted as agent to secure an offer and transmit it to Mrs. Broome. On November 10, 1959, Mr. Spiller wrote a letter (Ex. 8) to Mrs. Broome transmitting a draft of a timber deed. In this letter, although he mentions that sale of the timber had been made, he goes on to say: "Will you and Mr. Broome please sign and acknowledge * * * and return at your earliest convenience so that the purchaser will know that his offer has been accepted."

At the time this letter was written members of the plaintiff's partnership, and Frank T. Harris, a real estate broker engaged by the Bank on Mrs. Broome's behalf, and Mr. Spiller at the Bank all knew that Mrs. Broome might decline to sell to the plaintiff. When Mrs. Broome received the draft of the deed disclosing for the first time that the plaintiff was the purchaser she declined to sign it.

The Court is of the opinion that the plaintiff has failed to prove that Mrs. Broome, through a duly authorized agent, entered into a contract for the sale of the timber entitling the plaintiff to specific performance.

page 65 } The next matter for consideration is Mr. Jones' claim. After Mrs. Broome rejected the plaintiffs' offer, she wrote to Mr. Jones offering the timber to him. He accepted and the Bank sent Mrs. Broome another draft of the timber deed. She and her husband executed it and returned it to the Bank. Before it was delivered, Flippo notified the Bank of its intention to insist upon its alleged contract of purchase. For this reason only the deed was not delivered. Under well settled principles of law, the court is of the opinion that Jones is entitled to specific performance.

Jones, however, will be required to bear a portion of the costs as provided in the order allowing him to intervene.

JOHN D. BUTZNER, JR., Judge

Filed April 12, 1960.

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DECREE.

This cause came on this day to be heard upon the papers formerly read, the evidence heard *ore tenus* by the Court, the exhibits filed herein, and was argued by counsel.

It appearing to the Court as evidenced by its memorandum opinion filed in this cause on April 12, 1960, that the relief sought by the plaintiffs, T. FRANK FLIPPO, H. CARTER FLIPPO, and ARTHUR P. FLIPPO, trading as T. FRANK FLIPPO & SONS, set forth in their Bill of Complaint filed herein, should be dismissed and that the attachment and *Lis pendens* of the timber situated on the real estate described in the Bill of Complaint should be released, it is ADJUDGED, ORDERED and DECREED that the plaintiffs' Bill of Complaint be and the same is hereby dismissed, and that the attachment of the aforesaid timber and *Lis Pendens* be and the same are hereby released.

It further appearing to the Court that the relief prayed for by J. E. JONES in his Petition of Intervention should be granted, it is ADJUDGED, ORDERED and DECREED that upon the payment of the sum of EIGHTEEN THOUSAND ONE AND 00/100 DOLLARS ($18,001) by J. E. JONES to MILDRED C. BROOME, or her attorney and the delivery of a receipt for said sum signed by the said MILDRED C. BROOME or her attorney to the Clerk of this Court, the Clerk of this Court shall deliver to the said J. E. JONES, on behalf of the said MILDRED C. BROOME, the timber deed filed herein as Intervener's Exhibit 1, which delivery shall constitute a good and sufficient conveyance of said timber to the said J. E. JONES; and the clerk shall file a copy of said exhibit with the papers in this cause.

page 69 } And it is ORDERED that T. FRANK FLIPPO & SONS and J. E. JONES each pay one-half of the cost incurred by the plaintiff herein up to and including January 25, 1960, at which time the said J. E. JONES intervened in this suit, that T. FRANK FLIPPO & SONS pay any court cost incurred by the defendant in defending the plaintiffs' bill herein and that the defendant, MILDRED C. BROOME, pay any and all other costs incurred on her behalf or on behalf of J. E. JONES in her defense of the JONES claim.

Enter: April 29, 1960.

JOHN D. BUTZNER, JR., Judge

We ask for this:

CAMPBELL AND ELLIS
Attorneys at Law
Ashland, Virginia

By ANDREW J. ELLIS, JR.

Seen and objected to with respect to relief granted to J. E. Jones.

HUNTON, WILLIAMS, GAY, POWELL
AND GIBSON
Attorneys at Law
1003 Electric Building
Richmond, Virginia

By LAWRENCE E. BLANCHARD, JR.
Counsel for the defendant Mildred C. Broome

We have seen this decree and object to and except to its entry:

HAW and HAW
Attorneys at Law
700 Travelers Building
Richmond, Virginia

By GEO. HAW of Haw & Haw
Counsel for the plaintiffs, T. Frank Flippo, et al.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

TO: FRANCES A. TAYLOR, Clerk of said Court.

The plaintiff, T. Frank Flippo & Sons, who are appealing, by counsel hereby gives notice pursuant to provisions of §4 of Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia of their intention to appeal from a certain final decree and judgment entered in this proceeding on the 29th day of April, 1960 and for that purpose assigns the following

errors to the action of the court in the trial of said case and the entry of the aforesaid decree.

Assignment No. 1: The court erred in finding that there was no contract of sale between Mildred C. Broome and T. Frank Flippo & Sons covering the timber upon the lands of the said Mildred C. Broome.

Assignment No. 2: The court erred in refusing to decree a performance of the contract of sale between Mildred C. Broome and T. Frank Flippo & Sons for the timber on the land of Mildred C. Broome.

Assignment No. 3: The court erred in decreeing that the said Mildred C. Broome should make delivery of a
page 71 } deed to the timber which is the subject matter of this suit to J. E. Jones.

Assignment No. 4: The court erred in dismissing the bill of complaint of the plaintiff and in decreeing a performance on behalf of the intervener.

T. FRANK FLIPPO & SONS

By GEO HAW of Haw & Haw
Of Counsel

* * * * *

Filed June 13, 1960.

Teste:

F. A. TAYLOR, Clerk

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page 4 } NOTE: On request of Mr. Haw the Court indicates it will grant a fifteen minute recess for counsel to look at information they have secured by subpoena duces tecum and states as follows:

The Court: The Court will grant you a recess for fifteen minutes, but before we take that recess, is there anything else preliminary in nature? Are counsel ready to proceed?

Mr. Ellis: Yes, Your Honor.

Mr. Blanchard: Yes, if Your Honor please. The only thing I know of preliminary in nature really goes to the same letters. The letters he is talking about is the complete file between State-Planters Bank and the defendant Mrs. Broome which we have produced, or that State-Planters has produced. They were actually in my possession. I have turned them

over to Mr. Haw. These are of course all more or less material in the litigation, and we of course have intended all along to put them all in evidence. We have handed to him the entire file. It is not a lot. It is perhaps maybe ten letters.

I would suggest as simplifying the procedure, so that the record will show my response to the subpoena duces tecum, that we have turned over certain specified letters, and perhaps at the time we could simply introduce that

page 5} whole group of letters in evidence, marking each letter as we put them in, that would be perfectly all right, or call them one exhibit just so they will serve two things, one we would have a record of what was turned over to you; secondly, all of those letters will then be in evidence.

The Court: I think we can take that up after Mr. Haw has seen the letters. Anything else? Are you ready to proceed?

Mr. Blanchard: Yes, Your Honor.

The Court: Do I understand there is no question about the pleadings in the case?

Mr. Haw: I take it these letters have been shown to other counsel. Do you want to see them before we do? I do not know why they let them see them, but would not let me.

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page 11}

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Mr. Haw: May it please the Court, the case is this:

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page 14}

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And then it was developed about what had happened. It was then that we got in touch with Mr. Spiller and advised him that he seemed to think that because it wasn't a written contract that it couldn't be enforced, and advised him that the sale of the timber to be cut immediately at a reasonable time was a sale of personal property and it would have to be in writing, we had an offer and acceptance and we demanded delivery of the timber. Therefore the suit was brought.

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WILLIAM J. SPILLER,
called as an adverse witness by Mr. Haw, counsel for the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Haw:

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* * * * *

Q. Mr. Spiller, in conformity with Mrs. Broome's authority to you in those letters that we have read, did you employ Mr. Frank Harris to make sale of this timber?
A. I requested him to get an offer.
Q. To get an offer?
A. Yes, sir.
Q. From whom did he get the offer?
A. From the Flippos, which one I do not know, but he said—
Q. That offer was for $18,000.00, the price at which she authorized you to sell the timber, isn't that right?
A. Yes, sir.

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CROSS EXAMINATION.

By Mr. Blanchard:

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William J. Spiller.

Q. Mr. Spiller, what instructions have you given Mr. Harris as to what he was supposed to do with respect to selling any timber for Mrs. Broome?

A. To get an offer. I never mentioned to him anything about the authority to sell. I merely asked him to get an offer.

Q. When did you tell him that?

A. Probably one or two days after that letter was received. I have forgotten the date of it now. Her letter was October 24 (Looking in file). It would probably be a day or two after that.

Q. That was the one that said she wanted to sell the timber?

A. Yes, sir.

Q. Did you ever show that letter to Mr. Harris?

A. No, sir.

page 37 } Q. Has Mr. Harris worked for State-Planters Bank as a real estate agent before?

A. Well, he has sold some properties for us, but he has done a lot of cruising for us.

Q. Did you tell Mr. Harris what you intended to do if he did get an offer?

A. Yes, sir.

Q. What was that?

Mr. Haw: I object to that question, if Your Honor please.

Mr. Blanchard: Is there any particular ground for the objection, or just an objection?

Mr. Haw: I object. Hearsay evidence. We were not present and don't know anything about it.

Mr. Blanchard: I am asking him what he told Mr. Harris.

The Court: The objection is overruled.

A. To submit it to Mrs. Broome.

Q. Did you tell him in what form you proposed to submit it?

A. I think my recollection is that I made the suggestion when he came in and gave me the details of it, was that we would save time rather than drawing a contract of sale and sending it to London and having that come back and then draw a timber deed later I made a suggestion

page 38 } we draw the timber deed to begin with and then that would serve the dual purpose, and which was done and forwarded to her.

Q. When Mr. Harris came back to you, did there come a

time when Mr. Harris went out to see the Flippos and reported back to you as to whether they had made an offer?

A. That is right.

Q. Did he give you the details on what ought to go into the deed?

A. As to the stumpage size? Yes, sir.

Q. Did you take that to a lawyer to have a deed drawn?

A. Yes, sir.

Q. Who did you take that to?

A. Mr. A. B. Scott.

Q. And the deed he drew is the one you sent to Mrs. Broome?

A. Yes. My recollection is I sent her an original and carbon of it.

Mr. Blanchard: That is all.

Mr. Ellis: If Your Honor please, I would like to question the witness at this time.

The Court: You may proceed.

Mr. Ellis: If Your Honor please, we had a subpoena duces tecum issued on the timber deed which Mr. Spiller had in his possession. We would like for him to pro-
page 39 } duce it at this time, the one between Mrs. Broome and Mr. Jones.

A. All right, sir.

NOTE: Paper writing is handed to Mr. Ellis.

Mr. Ellis: I will ask the Court for a few moments indulgence. I hadn't seen this.

NOTE: Following a few minutes, Mr. Ellis states as follows:

Mr. Ellis: I would like to hand this to Mr. Spiller.

NOTE: Paper writing handed to the witness.

CROSS EXAMINATON.

By Mr. Ellis:

Q. I hand you a timber deed between Mrs. Broome and her husband to Mr. J. E. Jones, and ask you if you can identify that deed.

William J. Spiller.

A. This is the deed, rewritten deed that Mr. Scott prepared after Mr. Jones came in, and I mailed it over to London.

Q. And when did you receive it from Mrs. Broome.

A. I received it from Mrs. Broome on December 4, 1959.

Q. Is that the envelope in which the deed arrived?

A. Yes, sir.

Mr. Ellis: If Your Honor please, I would like page 40 } to introduce the deed in evidence as Intervenor Exhibit 1, and the envelope as Intervenor Exhibit 2.

NOTE: These two documents above referred to are marked and filed as *Intervenor Exhibit 1* and *Intervenor Exhibit* 2.

Q. Mr. Spiller, I direct your attention to on or about November 11, 1959, and ask you did you have occasion on that date to meet with Mr. J. E. Jones?

A. I met with Mr. Jones. I do not recall the exact date. It was sometime prior to December 4, because the deed was prepared and then sent over to London.

Q. On the day that you met with Mr. Jones did you prepare the timber deed?

A. I had it prepared. Got Mr. Scott to prepare it.

Q. You had the deed prepared on the day you met with Mr. Jones?

A. I cannot say it was written the day that I talked to him, but it was either the day or the next one, let's put it that way.

Q. Didn't Mr. Jones come down and discuss with you the terms of the sale in the morning, and he left and in that afternoon he came back and you had the timber deed prepared and you gave him a copy of it, isn't that approximately what happened?

A. I remember giving him a copy. Whether it page 41 } was that day or the next day I am not certain in my own mind.

Q. On the day that you prepared the timber deed, did you mail it with Defendant Exhibit B to Mrs. Broome in London?

A. Yes, sir.

Q. Approximately when did you receive that deed, which is Intervenor Exhibit 1?

A. December 4.

William J. Spiller.

Q. When you received that deed did you have a telephone conversation with Mr. J. E. Jones on that morning?

A. No, sir.

Q. Did you have—

A. I do not recall any.

Q. As a matter of fact, on that morning or on that next morning didn't you tell Mr. Jones that you had received the duly executed deed from Mrs. Broome and that Mr. Harris would be on his way to deliver the deed to him sometime that day?

A. That is my recollection, but now what day it was—

Q. Approximately that is what happened?

A. Substantially.

Q. Shortly after you informed Mr. Jones that Mr. Harris was on the way with the deed, didn't the Flippos come in to you?

page 42 } A. Yes, sir.

Q. And threaten this Court action which occasioned your cablegram?

A. Yes, sir.

Q. To Mrs. Broome?

A. Yes, sir.

Q. Is the only reason that you failed to deliver that deed to Mr. Jones because this threatened Court action?

A. Well, number one and number two there, there were no instructions in the envelope, just a naked deed was in the envelope.

Q. Didn't you tell Mr. Jones after you received the naked deed in the naked envelope that you were going to deliver the deed to him or Mr. Harris was going to deliver it to him, and the only thing that prevented you from that delivery was this threatened Court action?

A. Yes, sir.

Q. So, in other words, you were not comtemplating any instructions other than receiving the duly executed timber deed, isn't that correct?

A. Yes, sir.

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page 43 } CROSS EXAMINATION.

By Mr. Haw:

Q. Mr. Spiller, on October 24, 1959, by letter, which was filed as Exhibit 7, Mrs. Broome wrote you as follows:

William J. Spiller.

"Dear Mr. Spiller: Thank you for sending me a copy of Mr. Frank T. Harris' appraisal of the merchantable timber on my four parcels of land in Hanover County. I would like Mr. Harris to sell the timber if possible at the quoted price, and I am willing to pay him 10% commissions on the sale."

You got that letter, didn't you?

A. Yes, sir.

Q. And didn't you tell Mr. Harris that Mrs. Broome had authorized a sale of the property, of the timber, at $18,000.00, and that if he got a sale at $18,000.00 he would be paid 10% commission?

A. Absolutely not, sir.

Q. What did you tell him?

A. I testified earlier that I asked him to get an offer.

Q. Didn't you tell him that you had authority?

A. No, sir.

Q. Didn't you have authority?

A. I do not know. That is a legal point of view. But in selling timber or real estate the only time I consider I have authority is when the other man has signed the deed, sir.

page 44 } Q. In other words, you didn't know the timber could be sold without a written contract, did you?

A. Well, oral contract takes two parties, though.

Q. There are two parties to an oral contract.

A. Yes, sir.

Q. There is no question about that. She said "I would like Mr. Harris to sell the timber if possible at the quoted price and I am willing to pay him 10% commission of the sale."

You mean to say you had authority from her to employ Mr. Harris to sell it at that price and you didn't tell him he could sell it at that price?

A. No, sir, I asked him to get an offer.

Q. He brought you the offer, didn't he?

A. Yes, sir.

Q. From the Flippos?

A. Yes, sir.

Q. The offer was $18,000.00?

A. Yes, sir.

Q. And you had him go to see Flippo and to get the names of the Flippos and the terms on which they wanted to buy it and all those things?

A. They were all worked out.

Q. And you went ahead and had that deed prepared pursuant to that sale?

page 45 } A. That is correct, sir.

William J. Spiller.

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CROSS EXAMINATION.

By Mr. Blanchard:

* * * * *

Q. Have you ever authorized Mr. Harris to sell the timber of Mrs. Broome?

A. No, sir.

page 46 } Q. Have you ever sold timber for any person connected with State-Planters Bank on an oral contract?

A. No.

Q. Did you know prior to the letter you got from Mr. George Haw that you could make an oral contract for the sale of timber in Virginia?

A. I have heard that debated pro and con, but I have never had any fixed opinion on it.

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Q. Mr. Spiller, let me first ask you this: Have you ever had any direct conversations with the Flippos about the terms that ought to be included in any deed submitted to Mrs. Broome?

A. No, sir. I never met the Flippos until the morning of December 4 when they came in the bank.

Q. Where did you get the information to give to Mr. Scott to prepare the deed that you were going to submit to Mrs. Broome?

A. That came from Mr. Harris, a portion of it. The size and the time of removing, and then I gave Mr. Scott the other part about line trees etc. and forestry. Seed tree law, etc.

Q. Then some of the terms that were embodied

page 48 } in the deed that eventually went to Mrs. Broome were suggested to you by Mr. Harris, and some were suggested by yourself?

A. Yes, sir.

Q. When you instructed Mr. Scott to draw up the deed?

A. That is correct, sir.

William J. Spiller.

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The Court: I would like you to further inquire whether he had any authority from Mrs. Broome to set these terms.

Q. Did you have any authority from Mrs. Broome to set these terms?

A. As to sizes? No.

Q. As to any of these provisions in there?

A. No, sir.

Q. These were simply your idea as to what you were going to suggest to Mrs. Broome, is that correct?

A. Yes. Basically the whole set-up is this, purely a matter of accommodation, helping out, to help Mrs. Broome out. She was in England, you understand, and I was trying to give her the best advice at my comand.

Q. Why didn't you make up a contract to send her? Isn't that the normal way to make up a written contract of sale for real estate or timber?

A. It would be here in Virginia, but with the page 50 } time element of sending a contract across the Atlantic and then back and then the deed across, I thought that I was doing the practical thing to have the timber deed drawn and have it all wrapped up in one package.

Q. Did you ever discuss any of these terms that you included in the deed to go to Mrs. Broome? Did you ever discuss those with any of the Flippos?

A. No.

Q. Prior to the time you sent it over, or at any time?

A. No. We did send them a copy of the deed which either they or their attorney approved. I do not know who approved it. I gave Mr. Harris a copy as I recall to take to them.

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page 51 } By Mr. Ellis:

Q. You stated, Mr. Spiller, in response to several more questions by Mr. Blanchard, that you didn't receive any written instructions from Mrs. Broome concerning the delivery of the deed to Mr. Jones, and for that reason you cabled for her instructions, is that correct?

William J. Spiller.

A. Well, it was a dual reason: Two of the Messrs. Flippo said they were going to take action if the deed was delivered. So I embodied both of them in the cablegram.

Q. Is it not a fact, Mr. Spiller, that you considered receipt of the deed duly executed by Mrs. Broome sufficient instructions to deliver it to Mr. Jones?

A. Well, may I answer around another way?

Q. I would prefer you to answer it yes or no.

A. (Pause)

Mr. Blanchard: Read the question back to him, Mr. Edwards.

Q. (The foregoing question is read to the witness).

A. It would be very unusual to do it.

Q. Didn't you call Mr. Jones when you received it and tell him you were going to deliver it to him?

A. Yes, sir.

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page 52 } By Mr. Haw:

Q. Mr. Spiller, is it not a fact that after Mr. Harris had advised you that the Flippos would buy the property at $18,000.00, the figure at which Mrs. Broome had authorized the sale in her letter of October 24, in which she said "I would like Mr. Harris to sell the timber if possible at the quoted price, and I am willing to pay him 10% commission", after you told him to get the offer, as you said, the Flippos agreed that they would pay $18,000.00, and Mr. Harris so informed you, didn't he?

A. That they had offered $18,000.00.

Q. And then you sent Mr. Harris back to the Flippos to get information as to how the deed was to be made, isn't that right. Isn't that correct?

A. I—

Q. You had to have the information, didn't you?

A. Yes, sir.

Q. Didn't you send him back to the Flippos to get that information?

A. Mr. Haw, I cannot answer that question. My recollection fails me on that. I do not remember whether he brought the information on the first trip back to me or whether he went back to him and got it.

Q. You know that he wouldn't have gotten the information

William J. Spiller.

before you said it was all right to go ahead and get
page 53 } the information?

A. Well, that would be embodied in an offer.

Q. Not necessarily. You said that you didn't authorize him to sell it.

A. That is correct.

Q. At $18,000.00, but told him to get an offer?

A. Yes, sir.

Q. He wrote you a letter and gave you his offer, didn't he?

A. No.

Q. Gave it to you verbally?

A. Verbally.

Q. Then didn't you tell him to go to Flippos and get the information on how to make the deed?

A. Mr. Haw, whether there was one or two trips, now, I cannot answer that. Mr. Harris may have brought all of the information on the first time he came back to me.

Q. If he did go back a second time, it was at your direction?

A. If he did it would be my direction to get the data for the contract, for the offer.

Q. The information that he brought you was T. Frank Flippo and Sons, giving the names of the men, three?

A. Yes, sir.

Q. Pine 8 inches above the ground, all merchant-
page 54 } able hardwood, seed tree laws to be taken care of?

A. Yes, sir.

Q. And other things? Now, then it was a provision in there that timber was not to be cut on the place but the sawmill would be located somewhere else. Who put that in there, did you? It isn't in this memorandum.

A. That—

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page 55 }

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Q. Then did Mrs. Broome ever object to the form of the deed, or the terms of the deed?

A. Well. I have never met Mrs. Broome, never met her until two days ago.

Q. Did Mrs. Broome ever object to anything except the Flippos?

A. That is the way I construe her letter.

Arthur Flippo.

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page 56 }

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Q. Mr. Spiller, did Mrs. Broome ever make any objection to the form of the deed, or to the sale of the property at the price of $18,000.00, or anything except she didn't like the Flippos? Isn't that right?

A. That is the way I construe that letter, sir.

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page 57 }

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ARTHUR FLIPPO.

one of the plaintiffs, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Haw, Jr.:

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page 60 }

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A. Mr. Harris contacted Edward L. Campbell of Doswell, and arranged for Campbell to show the boundry lines on four tracts of timber owned by his sister Mrs. Mildred C. Broome in Hanover County.

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page 62 }

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A. I may be repeating myself, I don't know where I stopped. Harris informed Campbell that State-Planters Bank as agent for Mrs. Broome had employed him to make an appraisal of

Arthur Flippo.

the timber on the four tracts, and to secure some party who would say the appraisal price.

Campbell pointed out the boundry lines to Harris. Campbell further told Harris that T. Frank Flippo & Sons, his associates, will be interested in buying the timber.

Q. Do you know anymore of the transactions between Harris and Campbell on that particular time?

page 63 } A. No more than Campbell secured one of his former employees to help him with the line.

Q. Was that the only meeting between the two of them prior to October 16?

A. That is the only one I know of.

Q. What was the next contact you had with Mr. Harris, when was it?

A. October 16.

Q. What occurred at that time?

A. Mr. Harris, representing the State-Planters Bank, came to my office in Doswell, and he had Mr. Campbell with him.

Mr. Campbell introduced me to Mr. Harris, and Harris informed me that he had been retained by the State-Planters Bank to make an appraisal of the four tracts of timber owned by Mrs. Broome in Hanover County, and to secure someone to make an offer.

He said both his appraisal and the offer from a prospective buyer would be turned over to the Bank who in turn would forward same to Mrs. Broome with their recommendations.

Harris said he had completed his appraisal and set a value of $18,000.00 for the timber on the four tracts of land.

Q. $18,000.00 is the only figure that he gave you?

A. Yes.

Q. Did he ever mention $17,000.00?

page 64 } A. He did not. He said he thought the timber was worth $18,000.00.

Q. What did he say he was going to do then, or what did you tell him you would do.

Mr. Campbell: Objection to the question as leading the witness.

The Court: Overruled. Proceed.

Q. What occurred after that?

A. Harris wanted to know if my firm, T. Frank Flippo & Sons, would offer $18,000.00 for the timber. I told him that he would have to make a cruise of the timber before I could make him an offer.

Q. Did you tell him this on the 16th?

Arthur Flippo.

A. October 16. Mr. Harris was in my office.

Q. Did you do anything further concerning the timber?

A. I told Mr. Harris that it would take us—that happened to be on a Friday—would take us certainly next following Monday to make the complete cruise. It was 420-some odd acres of land to walk over.

He told me that he felt that he should make his report to the State-Planters Bank no later than Tuesday of the following week, which would be Ocober 20.

I told him that I would give him my offer on the timber no later than the night of October 19.

Q. What did you next do?

page 65 } A. During the time between October 16 and the night of October 19 I had our timbermen, our cruisers, and we secured a competent man who knew the lines, and Mr. Campbell, and we cruised the timber.

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page 66 }

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Q. What occurred after that, Mr. Flippo, after you determined who was representing the bank?

Mr. Blanchard: Does it appear on the record he did find out it was Mr. Spiller?

The Court: I do not think he answered.

By the Court:

page 67 } Q. Who did you find out was representing—

A. Mr. Spiller was handling the matter for the State-Planters Bank, and I was advised—

By Mr. Haw, Jr.:

Q. Don't tell what Mr. Oliver said. What occurred after that. When did you next talk with any of the parties concerned?

A. On November 2, Mr. Frank T. Harris came to my office, on Monday morning, and he said that he wanted to talk to us about the Broome timber.

I took him into the office of my brother, F. Carter Flippo, and we discussed the sale of the timber. He told us that Mrs. Broome had agreed to sell the timber for $18,000.00, and authorized the bank to sell it.

Arthur Flippo.

Then he wanted to know if our offer still stood. We told him it did, and we would take the timber for $18,000.00.

Then he wanted to know whose name the timber deed should be drawn in. I told him my brother and I, be drawn in the name of our partnership, named the three partners, T. Frank Flippo, F. Carter Flippo and Arthur P. Flippo.

Q. Did you feel at that time—

A. We discussed the provisions of the contract, of the timber deed, as we had already discussed when I made my first offer about the diameter limit on the pine timber.

We discussed the entire length of time the con-
page 68 } tract should run, which was two years.

We discussed the usual milling rights, and the right to enter upon the premises and take off the timber.

Q. Have you read the deed that was sent to Mrs. Broome?

A. Yes.

Q. Does that cover your agreement?

A. Yes.

Q. Between you and Harris?

A. Yes.

Q. What occurred after that, Mr. Flippo?

A. Mr. Harris told us that the State-Planters Bank would have a timber deed drawn in accordance with the terms we had agreed on there in my office on November 2, and would have the deed forwarded to Mrs. Broome for her signature, and that he would bring the deed, signed deed back to our office for settlement.

Q. Then what was the next you heard after that?

Before you go into that, was any discussion had as to settlement?

A. Yes. He told us Mrs. Broome didn't desire to receive her money for the sale of the timber until after the first of the year, in the first of 1960.

We told him that the money could be put in escrow, or in anyway he wanted it to be done.

page 69 } Q. You were agreeable to that?

A. Yes.

Q. What occurred after that?

A. Mr. Harris told us he would notify us when the bank was ready to settle.

Q. Then what was the next step?

A. On November 20, approximately 12:45 P.M., after not hearing anything for over three weeks from either the bank or Mr. Harris, I made a person to person telephone call to Mr. Spiller, MI 4-3451, which is the State-Planters Bank of Commerce and Trusts telephone number.

Arthur Flippo.

I myself talked to Mr. Spiller. I asked Mr. Spiller why he had not had his man or someone in the bank or Mr. Harris bring us the signed timber deed for settlement for the Broome timber, to present for settlement.

He said that Mrs. Broome had refused to sign the timber deed. Of course, I inquired why, and he replied very reluctantly that Mrs. Brome after agreeing to sell the timber and giving the bank authority to sell it, had refused.

Mr. Blanchard: I object to that, if Your Honor please. It is obviously hearsay. It is not supported by anything in the record as to the extent of the agency of Mr. Spiller.

Mr. Haw, Jr.: Mr. Spiller has certainly admitted and it is also in testimony admitted, the agency between
page 70 } Mrs. Broome and Mr. Spiller. All he is testifying to is what Mrs. Broome told Mr. Spiller, and what Spiller told him she said. It is certainly admissible.

Mr. Blanchard: We have no objection to it if it merely goes to show what Spiller told the Flippos, but we object to it for any purpose of attempting to show what the extent of the agency of Spiller in fact was.

The Court: This is a declaration by the agent Spiller as to his agency?

Mr. Blanchard: That is right.

The Court: Objection sustained.

Q. Please continue.

A. Mrs. Broome had refused to sign the timber deed to Flippo because she didn't like the Flippos.

Q. You mean the timber deed?

A. The timber deed. I told Mr. Spiller that that was the first time that I had ever known that Mrs. Broome had any animosity toward any firm, any member of my firm, or any of the partners in the firm.

Mr. Spiller said that he had just the day before, the 19th, written to Mrs. Broome urging her to sign immediately, since the timber had been sold and she must deliver title as her banker agent had agreed to do in her behalf.

He further told me that he thought she would sign, and that the executed timber deed would be ready for de-
page 71 } livery very shortly.

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page 72 }

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Arthur Flippo.

Q. What was your next contact with Spiller, if there was one?

A. On December 4, after not having heard anything further from Mr. Spiller after my telephone conversation with him on November 20, my father and myself visited Mr. Spiller at his office in the State-Planters Bank.

Mr. Spiller at that time had Mr. Harris in his office with him. Mr. Spiller informed my father and myself of an attempt by Mrs. Broome to sell the timber which they had already sold to us, the same timber—

Q. Did he say that?

A. Yes. To J. E. Jones of Montpelier, Virginia, for $18,-001.00. He said that Mrs. Broome did this unbeknowing to he or the bank.

He said he had strongly urged Mrs. Broome to deliver executed deed to Flippo, since the bank as her agent had accepted Flippos offer for $18,000.00.

Q. Spiller actually told you that?

A. He told me that. Spiller said Mrs. Broome had made the bank an executed timber deed drawn to Jones for consideration of $18,001.00, and he had it in his possession.

I told Mr. Spiller that I would not, I thought it would be wise for him not to deliver this deed to Mr. Jones page 73 } since the property had already been sold prior to this date of this timber deed. He said he would hold up on his delivery.

Q. Mr. Flippo, are you in a position to settle for this timber at this moment?

A. Yes.

Q. Do you formally tender $18,000.00 for the timber at this time?

A. Yes, I will do it.

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CROSS EXAMINATION.

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Arthur Flippo.

By Mr. Blanchard:

Q. Let me ask you this. Do you have a bookkeeper named Mrs. Myers?
A. We have an employee named Mrs. Myers, yes.
Q. She is not a bookkeeper?
A. She is not a bookkeeper by training, no.
Q. But she is—
A. She does some work with our books. She doesn't keep all of our books, no.
Q. Here where she sits in your office, is that within earshot of what goes on in your office?
A. No, sir.
Q. She does not sit close to your office?
A. What do you mean by close?
Q. Close enough to hear what goes on in your office.
A. Through a wall?
Q. Through a wall or otherwise.
A. My office is private, Mr. Blanchard. No one can hear what I am saying in there.

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page 85 }

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Q. Has Mr. Harris ever discussed with you at any time the fact that Mrs. Broome would probably not be willing to sell this timber to any of the Flippos?
A. Mr. Harris when he came to my office on the second time, I believe the date is November 2, and he told us Mrs. Broome had authorized the bank to sell the timber and he was accepting our offer, the bank was accepting our offer, and when he discussed with us whose name should be drawn he said he was wondering should it be drawn in someone else's name.
We inquired why. My brother and I did. He said because somebody had told him that Mrs. Broome had some hard feelings toward us.
We told him we knew of none, we knew of no reason for her to have any hard feelings. We never had any negotiations with her.
I have not seen her for ten or fifteen fifteen or
page 86 } twenty years, and we told him that if we couldn't buy timber, and whatever we were trying to buy

Arthur Flippo.

in our own name, then we would not try to buy it in someone else's name.

Q. He suggested you take it in the name of somebody else. did he?

A. He didn't suggest. He mentioned it.

Q. So when you said a while ago that when you went to Mr. Spiller's office he told you that Mrs. Broome had said that she didn't want to sell to the Flippos, you said that was the first time you had ever heard any mention of Mrs. Broome not being willing to sell to a Flippo, isn't that correct?

A. That is the first that—

Q. Isn't that what the statement says right here?

A. That is the first time I have ever heard anyone say particularly Mrs. Broome had any animosity toward the Flippos. Mr. Harris was talking from hearsay, what you all have been talking about so much here a while ago.

Q. But you had heard the fact mentioned she might not be willing to sell to the Flippos, isn't that a correct statement?

A. Mr. Harris menioned it.

Q. Mr. Harris mentioned it. Do you know where he got the information?

A. I have no idea.

Q. He didn't tell you that?

page 87 } A. No, sir

Q. But he mentioned to you the possibility of why don't you take it in the name of a nominee, didn't he?

A. He didn't ask me why don't I do it. He said would you all want to do it.

Q. What did you say to that?

A. I don't remember what I said.

Q. Didn't you tell him that you didn't know in whose name you would take it?

A. I told him that if we couldn't buy it in our own name, we were not interested.

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Q. Mr. Flippo, the very first time that you ever let Mr. Harris in the anteroom of your office in Doswell Virginia, didn't Mr. Harris say to you at that time "But what about this point of Mr. Campbell's that Mrs. Broome will never sell to a Flippo?"

Do you deny he told you that in the vestibule or entranceway of your office the very first time?

A. Mr. Blanchard, I never heard him tell that in the vestibule of my office, no.

Arthur Flippo.

Q. Do you deny that on this occasion you said "Let's don't talk about this in here, because that lady sitting
page 88 } over there knows Mrs. Broome. Come on back in my private office to talk about it."

Do you deny you told Mr. Harris that?

A. Mr. Blanchard, I never talk business in public to anyone.

Q. Do you deny that you told Mr. Harris what I just said?

A. I had Mr. Harris to come into my office to talk to me.

Q. Do you deny that you told him that the reason you wanted to go back in your office was because it was a lady sitting right in that room that knows Mrs. Broome "and I do not want to discuss this in front of her"?

A. I have Mr. Harris—

Q. Do you deny that or not?

A. (Pause) I deny what you say in its entirety, yes.

Q. Then will you state what you did say to him?

A. I said "You come on, let's go into my office and I will talk with you further, because I know people here are interested in the business and I don't want to have any eavesdropping".

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Q. Mr. Flippo, you are not in any way changing what you told me before lunch, that Mr. Harris suggested to you that she might not be willing to sell it?

A. Yes, Mr. Harris didn't tell me that she wouldn't sell to me.

Q. He just suggested it?

A. Yes.

Q. It was all hearsay on his part. You knew he had never seen Mrs. Broome, didn't you?

A. I didn't know whether he had ever seen her
page 97 } before or not. I had no reason to know whether he had ever seen her or not.

Q. You didn't know whether it was any basis for his statement or not that she wouldn't sell?

A. I wasn't prepared to pass judgment on his statement one way or the other, whether it was based on anything or not.

Q. But you weren't willing to accede to his mention of tak-

ing it in the name of a nominee, you didn't think that was right, did you?

A. As I told you before lunch, we were in this position we wanted it in our name. We didn't want any under the table transactions, we wanted it on top.

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Q. Mr. Flippo, how long have you been engaged in the lumber business with your brother and father?

A. Since 1944.

Q. Since 1944?

A. Yes, sir.

Q. And since you began and during those years you all made a number of timber purchases?

A. Yes, sir.

page 98 } Q. How many timber purchases involving the amount of $18,000.00 have you ever made on oral contract?

A. We have made a number of them on oral contract prior to securing a timber deed. Executed the timber deed, I cannot tell you how many, however, but we have made a good deal of them, Mr. Ellis.

Q. You have always secured an instrument in writing, though, have you not, involving $18,000.00 or more, isn't that correct?

A. I have had agreements, oral agreements to buy timber with an agreement we would have a settlement date when they would produce the executed deed and I would pay them.

Q. But always when they would furnish the executed deed you would pay them?

A. When they would produce the executed deed, yes, I paid. If the deed was for cash.

Q. You anticipated the deed, didn't you?

A. Sir?

Q. You anticipated the deed throughout in this case, didn't you?

A. Yes, I anticipated an executed deed, and I was to pay them cash when they delivered it.

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page 99 } F. CARTER FLIPPO,

a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

F. Carter Flippo.

DIRECT EXAMINATION.

By Mr. Haw, Jr.:

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A. T. Frank Flippo & Sons made an offer on the timber.
Q. How much was the offer?
A. $18,000.00.
Q. To whom was it submitted?
A. Mr. Harris.

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page 102 }

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A. He came and saw my brother Arthur first. Arthur brought him immediately into my office, said Mr. Harris was ready to execute the timber transaction, and Mr. Harris stated to the two of us that the bank was accepting our offer, and the conversation that followed was in the form of a question by Mr. Harris as to how we wanted the timber deed drawn.

I told him that we wanted it drawn in the name of T. Frank Flippo, Arthur P. Flippo and F. Carter Flippo, trading as T. Frank Flippo & Sons.

Q. Was anything else said after that?

A. At that time Mr. Harris made some mention of the fact that possibly there might be some hitch if we, or some trouble if we put it in our name, and I suggested that well I couldn't see why that would make any difference.

And I said I wanted to deal on top of the table and not under the table. And I thought it should be put in our own name, and he took that and went on with it.

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F. Carter Flippo.

CROSS EXAMINATION.

By Mr. Blanchard:

Q. Mr. Flippo, what did Mr. Harris say about why he wanted or suggested you take it in the name of someone else?

A. Well, he had heard something to the effect that maybe Mrs. Broome was not wholeheartedly in favor of dealing in our name.

Q. So he was suggesting that maybe you ought to take it in the name of somebody else so she wouldn't know who was getting it when she signed the deed, is that what you undertook to say?

A. I assume that was his idea.

Q. You told him that, though, we want it in the name of the Flippos, we want to do it that way, we are not willing to deal under the table about it?

A. I didn't say I wasn't willing. I said I preferred to have it that way, and I didn't agree to do it the other way.

Q. Did you tell him that you really didn't know off hand who you would be able to get to take it in the name of?

A. No.

Q. You just told him you didn't want to take it in the name of a nominee?

A. That is right. I couldn't see any reason for that.

page 104 } Q. I thought you said the reason for it was because he thought that she might object to selling it to the Flippos because of some reason?

A. I certainly did.

Q. You couldn't understand?

A. I couldn't understand his reason.

Q. You couldn't understand why Mrs. Broome would object to selling it to the Flippos?

A. I could not know, didn't know why.

Q. That is the only time you ever met with Mr. Harris, wasn't it?

A. That is right.

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page 106 }

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Q. You understood of course the deed had to be submitted back to Mrs. Broome and signed by Mrs. Broome and her husband. I assume?

F. Carter Flippo.

A. Yes. I knew the property belonged to Mrs. Broome. Naturally she would have to sign. However, I certainly was under the impression the bank had the authority to sell and negotiate a deal.

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page 107 }

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Q. But didn't Mr. Harris tell you that the reason he was concerned about it was because rightly or wrongly here was the lady saying she didn't want to sell to the Flippos. Maybe she was all wrong, but wasn't he saying that he page 108 } was still raising the point she was not willing to sell it to you all, isn't that what he was telling you?

A. I do not think he made that emphatic statement.

Q. He just said he was worried for fear she might not want to sell?

A. Some mention was made of it.

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page 109 }

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CROSS EXAMINATION.

By Mr. Campbell:

Q. I take it then that you take the position, Mr. Flippo, that your firm purchased the timber on November 2?

Mr. Haw, Jr.: I think he is asking a legal question of the witness, Your Honor.

The Court: Objection overruled.

Q. Would you answer the question?

A. I considered it an acceptance of our offer on that date, yes.

Q. Then your offer, under your testimony, was accepted prior to the establishment of the terms, is that correct?

F. Carter Flippo.

A. No.

page 110 } Q. Wasn't this your testimony just a moment ago?

A. I told you also in my testimony that the terms had been discussed with my brother in some of the initial conversations that he had with Mr. Harris.

Q. But, Mr. Flippo, you weren't present at that time, on your own statement. Now, you were present on November 2?

A. Yes.

Q. You just testified certain terms were entered into, or discussed, at that time, and agreed upon between you, your brother and Harris. Is that correct?

A. That is right.

Q. And then you said that the matter was mentioned, Mr. Harris announced to you that your offer was accepted the first thing when he came into the room?

A. That is right.

Q. How many acres of timber is there in these tracts, total?

Mr. Haw: Acres of land?

A. I do not think I could tell you offhand.

Q. Can you tell the Court this: Is that timber widely disbursed over this land, or is that timber pretty consolidated?

A. I have never seen it.

Q. What act of ownership did you exercise over

page 111 } that timber between November 2 until your attorney filed an attachment against it?

A. Would you mind restating that question? What act of ownership?

Q. Ownership, yes, sir. What act of ownership did you or your firm exercise over that timber between November 2 and the time the attachment was filed against it?

A. I do not know that I can exactly answer that question. I can tell you in my own words. Maybe you can get something out of that. I felt that we had bought the timber on November 2. We waited, we were told that a timber deed would be prepared, sent for signing and returned to us. At which time we would be called on to pay for it, and during that interim I considered that we owned the timber, we were just waiting for the deed.

Q. You took no act of ownership as to that timber between the date of November 2, then, and the time you were informed that the timber deed was not forthcoming?

A. What act of ownership could have been taken at that time?

Edward L. Campbell.

Q. You had two years to cut some 400 acres of timber, didn't you?

A. I couldn't cut it, I certainly wouldn't cut it until I paid for it. Until I had a deed to it.

Q. I thought you took the position you already

page 112 } owned it?

A. Well, I think I owned it as much as anybody would in a situation of that kind. If I had verbally agreed to buy something and a person had accepted my offer.

Q. I understand your feeling, but my question is: What if any act did your firm do in a possessory manner concerning the timber after November 2, other than this attachment?

Mr. Haw: I object to the question as being immaterial, and taking up time for nothing.

The Court: The objection is overruled.

A. I cannot answer that question.

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page 113 } EDWARD L. CAMPBELL,

a witness introduced in behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Haw:

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Q. Tell the Court what transpired between you and Mr. Harris.

A. It was last Fall Mr. Harris came out there, told me that Mrs. Broome—came out to the office of the Old Dominion Fiber Corporation and told me that Mrs. Broome wanted to sell her timber, and he didn't know where the timber was.

So I went and showed him the four different pieces of land, and the lines.

And I think I asked him at that time, told him I was associated with the Flippos. Told him if she wanted to sell would like to have a chance to buy it.

Edward L. Campbell.

So after I showed him the timber several weeks after that he came up and told me that he had a price of $18,000.00 for the timber. To sell the timber.

So I told him let's go over and see Arthur Flippo, which did all of the buying of the timber for T. Frank
page 115 } Flippo, which I am associated with.

I went over and introduced Mr. Harris to Arthur Flippo, and that was on Friday, I think it was, and then I turned it over to Arthur Flippo, from there on.

Shall I go ahead?

Q. Go ahead and tell everything you know about it.

A. Went into the office with Arthur Flippo, and Mr. Harris said he would have to know whether he would accept the offer by the following Monday night.

So Saturday morning we looked at the timber and the following Monday got the foreman who used to be with us at the Old Dominion Excelsior Company, showed him the balance of the timber, and I think he went and called Mr. Harris that night and accepted the offer.

He told him he would pay the $18,000.00 price for the timber, and I think it was several weeks after that Mr. Harris came up to see the Flippos and talked to the Flippos in the office.

He came over to the Old Dominion to see me. He told me she would sell the timber, but she didn't want any money until after the first of the year.

So that is about all the facts that I know.

Q. On November 2 when he came out there and told you that—

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page 116 } Mr. Haw: November 2, I think he said it was.
Mr. Blanchard: He didn't say any date.

Q. Well, the last time he came back he said that she was selling the timber?

A. Said she would sell the timber. Had just been over talking about it in the Flippo office.

Q. Did any transaction take place about any money being borrowed or anything of that sort that made any impression upon you?

A. Several weeks before that Mr. Harris came out and said he had changed his clothes that morning and didn't have any money in his pocket. Said here, take this dollar. You might want to buy some lunch.

Edward L. Campbell.

So when Mr. Harris came back he paid me the one dollar. And that was the time he told me that she would sell the timber.

Q. So when he came back to pay the one dollar back is when he told you she had sold the timber?

A. Yes.

CROSS EXAMINATION.

By Mr. Blanchard:

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Q. What? You own stock in the Old Dominion Fiber Corporation?

A. Yes, sir.

Q. You are Manager of the Old Dominion?

A. Yes.

Q. Old Dominion Fiber Corporation?

A. Yes, sir.

Q. Don't you know that there has been personal difficulties between you because of the contention she has, rightfully or wrongfully, that her interests were sold out to the Flippos but she didn't keep any interest in it?

A. Well, my whole family settled the estate. Had to sell the Old Dominion Excelsior Company, it was bought at that time. Do you want me to state some facts about that, why I can tell you?

Q. No, I am not asking you about anything ex-
page 118 } cept what is pertaining to this case. I am assuming she may be right or she may be wrong. I am just asking you the question whether she had any hard feelings about that transaction, not whether or not she was justified. She may not have been, I don't know.

A. She must have hard feelings toward my whole family, my sisters and all, because the way she acted.

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Edward L. Campbell.

Q. So when he got through his cruise he came back to see you, didn't he?
A. Yes.
Q. And you went over with him and you introduced him to Mr. Arthur Flippo?
A. Yes.
Q. You took him in the office to introduce him to Mr. Arthur Flippo because he was the man you thought might be interested. You remember that occasion?
A. Yes, sir.
Q. Where was Mr. Arthur Flippo when you went in?
A. He was in the office.
Q. Back in his office or up in the entrance hall?
A. He was in the entrance hall.
Q. He was standing there when you all walked
page 121 } in?
A. That is right.
Q. Do you remember that you all started to talk to him up there in the entranceway about this problem?
A. Yes.
Q. Then what happened, did you later move back to Mr. Arthur Flippo's office?
A. Well, we did.
Q. From there?
A. We wanted to talk in private, so we went back in Mr. Arthur Flippo's office.
Q. Do you remember Mr. Arthur Flippo saying anything about why he wanted to go back to his office instead of talking about it up front?
A. Well, I always thought it would be better. Didn't want the whole office force to hear our conversation.
Q. Do you remember him referring to one specific person he didn't want to hear what was being said?
A. Well—
Q. Who was that one lady?
A. It was a lady in the office there.
Q. Who was that one lady, Mr. Campbell?
A. Mrs. Myers.
Q. Mrs. Myers?
A. That is right.

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J. E. JONES,
the Intervenor, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Ellis:
Q. State to the Court, Mr. Jones, your name, your address and your occupation
A. J. E. Jones, occupation wholesale lumber business.
Q. Your address?
A. Beaverdam. I live in Montpelier, but Bea-
page 129 } verdam is my post office address.
Q. Mr. Jones, I direct your attention to the latter part of November of this year, and I hand you a letter purportedly signed by Mildred Campbell Broome, and ask you if you can identify that letter as to the time you received it approximately?
A. What time I received the letter?
Q. Approximately what time.
A. I think it was the latter part of November.
Q. 1959?
A. That is right.
Q. That is the letter from Mrs. Broome?
A. That is right.

Mr. Ellis: I wil ask this letter be marked for identification as Intervenor Exhibit 3. I will tender it at this time to Mr. Haw if they would like to examine it.

NOTE: Mr. Haw now looks at said letter. Following which it is marked and filed as *Intervenor Exhibit 3.*

Q. Mr. Jones, after you received that letter what action did you take with reference to Mrs. Broome's timber, if any?
A. Well, in this letter Mrs. Broome stated that Mr. Frank Harris, you see, would show me the timber. So my brother,
Mr. Jones and myself, cruised this timber, and
page 130 } then we went down to see Mr. W. J. Spiller at the
State-Planters Bank.
Q. Did Mr. Harris accompany you on this cruise?
A. Yes.
Q. What occurred? How long after the cruise was it that you went to State-Planters Bank?
A. We cruised that one afternoon. Were down there the next day.
Q. What occurred at the bank?
A. Well, I just went down to see Mr. W. J. Spiller and told him I received this letter from Mrs. Broome and he told me

J. E. Jones.

to come back that afternoon about one-thirty, they would have the contract ready to mail.

Q. Did you at that time state whether or not you were willing to buy the timber?

A. Yes, I told Mr. Spiller that I was interested and would buy the timber at that price.

Q. Did he make any offer?

A. Mrs. Broome had already stated the price. In her letter to me.

Q. What if anything did you offer to pay for the timber?

A. $18,001.00. That was the price that she was offering it.

Q. Did you go back to the bank that afternoon?

A. Yes, sir, I went back.

page 131 } Q. And was anything said between you and Mr. Spiller at that time?

A. Well, he told me to come back I think it was at one-thirty. I had to wait for him awhile, and it wasn't long before he came in his office and he had the contract ready to mail.

Q. Did he give you a copy of it at that time?

A. Yes, he gave me a copy of it.

Q. Did you agree to the terms of the contract after you read the contract?

A. I read it after I got back home. Probably didn't read it at that time.

Q. Now, after you went back home did you heard anything else from Mrs. Broome.

A. Well, yes. I have forgotten now what date it was. I think it must have been around the first of December.

Mr. Ellis: I would like to have this letter marked and filed as Intervenor Exhibit 4.

NOTE: This letter above referred to is marked and filed as *Intervenor Exhibit 4.*

Q. What is the date of that letter?

A. 30th day of November.

Q. Approximately when if you can recall did you receive that letter?

A. I imagine it was around December 2 or 3. As

page 132 } well as I can remember it wasn't so long.

Q. Is that letter signed by Mrs. Broome?

A. That is right.

Q. Would you read that letter to the Court, please?

A. Yes, sir.

J. E. Jones.

NOTE: Witness now reads Interevnor Exhibit 4.

The Court: Did you have him read the first letter, Intervenor Exhibit 3?
Mr. Ellis: No sir, I did not. I will have him do it.

Q. Would you read that letter?
A. All right.

NOTE: Witness now reads letter Intervenor Exhibit 3.

Q. Mr. Jones, after you got this letter, this last letter, did you again contact Mr. Spiller?
A. I called Mr. Spiller that morning, also called Mr. Harris.
Q. On the morning you got that letter?
A. That is right.
Q. What was your conversation with Mr. Spiller on that morning?
A Mr. Spiller talked like he got the contract back signed by her, Mr. and Mrs. Broome, and that he was going to send it up to my place, by Mr. Frank Harris.
page 133 } Q. Did he tell you when he was going to send it up to your place?
A. That was I think around between ten o'clock that morning. Talked like he was soon coming up there.
Q. Did you expect him that day?
A. I expected him that day, but about three or four o'clock that afternoon he called and said he wasn't coming.
Q. For what reason did he give you that he wasn't going to send it up?
A. I was talking to Mr. Frank Harris, I believe it was, and he talked to Mr. Arthur Flippo and Mr. Frank Flippo had been down there and looked like it would have to be held up for a while.
Q. Mr. Jones, do you stand ready to pay the sum of $18,-001.00 to Mrs. Broome for this timber?
A. Yes, sir. I have a blank check I can pay today if necessary
Q. You are willing to pay for it today?
A. Yes, sir.
Q. Have you at all times been willing to pay for this timber since the transaction started?
A. Yes, sir.

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CROSS EXAMINATION.

By Mr. Haw:

Q. You spoke about buying. You said that you after you had bought a piece of timber, made a deal to buy it, the price agreed on and the timber agreed on—

A. Yes, sir.

Q. Sometimes would write a contract and sometimes did not, write a written contract. You have bought many pieces of timber just on a verbal understanding?

A. Well, not too much, no.

Q. You have bought some of it?

A. I generally write a little something to state what the cost is. Sometimes I pay five or ten dollars for a lawyer to work on it.

Q. But very often you and the man get together on the price, the terms and everything, and later on you may have a written agreement, but you have bought it before that time, haven't you, before you have the written agreement? Is that your understanding?

A. I make a deal, but we always have a written contract. Always have to have something in writing, large or small.

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page 141 } FRANK T. HARRIS.

a witness introduced in behalf of the defendant, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Blanchard:

* * * * *

A. Yes, sir.

Q. Mr. Harris, there came a time in about September of 1959, as we understand it, that you were requested by Mr. Spiller to take some action with respect to some timberlands of a Mrs. Broome in Hanover County, Virginia.

Frank T. Harris.

Would you state what you were asked to do and by whom, and what you in fact did in this connection?

A. Yes. I was asked by Mr. Spiller of the bank page 142 } to go out and look at the timber, cruise it, and appraise it.

Q. By "the timber" what do you mean?

A. Timber that you are talking about that Mrs. Broome owned in Hanover County. I didn't know where the timber was to begin with. Didn't have any description much of it. I drove through the community looking for somebody who knew where it was.

I ran across Mr. Gilman, and he told me that Mrs. Broome had a brother down here at Flippo's place, and he would be able to tell me where the timber was, and probably show me the timber.

I went down to see Mr. Campbell, who was her brother. He said that he would show it to me. He did not show it to me that day because it was late in the day and I was busy on something else at the time. I came back, do not know exactly, week probably or two weeks, and he did show it to me from the road. We were driving around on the road, and I didn't look at the timber for the purpose of appraising it that day.

But I came back later and looked at the timber.

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Q. Then, as I understand it, we are at the point where you had finished your appraisal and you went by to see Edward Campbell, and the two of you agreed to go up to see the Flippos?

A. That is right, he took me up there.

Q. He took you up to the office?

A. That is right.

Mr. Haw, Jr.: I think Mr. Blanchard is leading his witness right much.

Q. Will you describe exactly what happened? Who said what, from the time you entered the Flippos office that day right on up.

A. Well, I think he had already told Mr. Flippo that I was

coming up there, and he introduced me and told him I was the one looking at the timber.

Q. That is what Flippo?

page 145 } A. Mr. Arthur Flippo, I think was his name.

Q. Was he the man you saw?

A. Yes. He is the man I saw, he and Mr. Campbell, all three there together.

Q. Where was that? Where were they?

A. To begin with Mr. Flippo was out in the outer office. We were talking at kind of a counter there.

Q. All right, sir. What did you say and what did he say?

A. I do not know exactly what we said. Except that he would like to have the timber, he said. He said he would look at it over the weekend.

Q. Did you know of any reason why you couldn't sell him the timber?

A. Well, yes, Mr. Campbell had inferred she probably wouldn't want to sell it to them.

Q. Was that point ever mentioned to the Flippos?

A. Yes, sir. I mentioned it up there that day when we first went in there.

Q. What did he say to that?

A. He didn't seem to think it would be any trouble getting it. But Mr. Campbell said he thought it would be trouble getting it, because they had had some trouble with Mrs. Broome in the settlement of her father's estate.

Q. Do you remember where this point was dis-

page 146 } cussed in the office of Mr. Flippo?

A. Discussed in the outer office, to begin with, and they took me back in the back office. Told me not to talk too much there, or something like that, it was a lady sitting over by the door, so they took me back in the back office and we finished our discussion.

Q. Did they tell you anything about why they didn't want this lady to hear what they were saying?

A. I asked them why. What was the matter. Said something about her living across the road from somebody, I didn't catch it exactly.

Q. Then as I understand it you went back in Mr. Arthur Flippo's office?

A. I took it to be his office, yes, sir.

Q. What did you discuss back there.

A. The same thing. He said he was going to look at the timber, said he would look at it, look it over the weekend and let me know Monday whether he would be interested in it or not.

Frank T. Harris.

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Q. So what did he tell you in that telephone conversation?
A. He told me he would be interested in it.
Q. What did you tell him?
A. I told him I will do the best that I could to get it for him, but we had also talked about the fact that I had no authority whatsoever in awarding it to anybody.
Q. What had you told him you had authority to do?
A. Just to get an offer.
Q. That was on a Monday night?
A. That he called me on the telephone, yes.

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Q. What did you tell Mr. Spiller when you went back and reported to him following your call from Mr. Flippo the night before and you gave him that appraisal?
A. I told him that Mr. Flippo would be interested in it. I told him I said Mr. Flippo would be he told me interested in it, at that price.
Q. What was the next thing you heard then from Mr. Spiller or from anyone, for that matter, about this whole subject of the Broome property?
A. Well, the next thing we heard Mr. Spiller did all the correspondence with her, I didn't do any, but she came back and wanted to know if we couldn't find somebody else to buy it other than the Flippos.

page 149 } Q. Did Mr. Spiller ask you to do anything else?
A. No.

Q. Has Mr. Spiller ever since that day asked you to do anything else about it?
A. No, I do not know of anything he asked me to do, except that I went out to—he asked me to go out and see them, yes.
Q. That is what I mean.
A. Yes.
Q. What did he tell you to do?
A. To get the particulars so we could write up a deed, how

Frank T. Harris.

large, what size, you know, to cut, etc. Just what goes in a regular timber deed. How long you should have to cut it off, etc.

Q. So you went out then to see the Flippos?

A. That is right.

Q. What happened when you got out to the yard, got out there, who did you see?

A. I went in the office and some boy was in there, some young fellow, and he told me Mr. Arthur was out on the yard. So I went out there to see Mr. Arthur, and Mr. Arthur said "Does she want to sell?" I said "Yes, she says she does want to sell it, but I do not know whether she wants to sell it to you or not." He asked me if wanted a contract on it, I told him no, I thought we would just write a deed and send it page 150 } to save time; they were anxious to get in there and get started, and I got the information and went on back to Richmond.

Q. Who did you talk to out there this time when you got the information?

A. I talked to Mr. Arthur, then he took me back in Mr. Carter's private office. I took it to be his. We all talked together about it.

Q. Did you mention anything to them at that time as to whether you might not be able to—

A. Yes, I did.

Q. Who did you talk to, and what did you say?

A. I suggested to them that they get somebody else to buy it for them, as long as they didn't know whether they could buy it, or whether I could sell it to them or not.

Q. Why did you suggest that to them?

A. Well to be sure that they would get it. It seemed to be some doubt that they would get it in their own name, and I suggested that they get somebody to buy it for them.

Q. What did they think of that?

A. Said they didn't know who they could get, and then decided that they would let it go on as it was.

Q. Did you advise them that you didn't know whether they would be able to get it in their own name or not?

A. I certainly did. I certainly did. I told them when I first saw them I didn't know whether she would sell it page 151 } to them or not. I didn't know how bad the riff was between them or anything of the kind, you know, but as long as it was a doubt there, and I wanted to see them get it, I just suggested that they get somebody to buy it for them.

Q. What did you do when you left that meeting?

Frank T. Harris.

A. That is when I went back to Richmond and gave the data to Mr. Spiller, and he and I went up to Mr. Dolly Scott's office and he drew up a deed, sent it over to her.

Q. And you told the Flippos when you were out there that you accepted their offer?

A. No, sir, definitely not.

Q. What did you tell them on that subject.

A. I told them I couldn't accept anybody's offer that I had no authority at all to award it to anybody, but I would do the best that I could to get it for them.

Q. What did you tell them the best you could do was? What did you tell them you would do?

A. I told them that I couldn't do anything, but if I did have any influence at all I would use it in their favor, but I didn't have any influence in anything.

Q. What did you tell them was the next set-up? What was the next step? What was going to happen from now on out?

A. We were going to send a deed over to Mrs. Broome, and if she accepted it why it would have been a
page 152 } deal, otherwise I didn't promise them a thing.

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Q. Mr. Harris, both Mr. Arthur and Mr. Carter Flippo have testified that you told them that you accepted their offer to buy the timber.

A. No sir, I certainly did not. I discussed with them the fact that I have no right whatever to award it to anybody.

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Q. Have you ever told Mr. Flippo that you or State-Planters Bank accepted any offer for the purchase of Mrs. Broome's timber?

A. I certainly have not. I certainly have not. That is untrue.

Mr. Harris, have you ever told any Flippo that Mrs. Broome had accepted this offer?

A. No indeed. No. I should say not.

Frank T. Harris.

CROSS EXAMINATION.

By Mr. Haw:

Q. Mr. Harris, didn't Mr. Spiller tell you that he had received a letter from Mrs. Broome dated October 24, 1959, which reads as follows:

"I should like Mr. Harris to sell the timber if possible at the quoted price, and I am willing to pay him 10% commission."

page 161 } Did Mr. Spiller tell you that she had authorized the sale at $18,000.00, and she was going to pay you 10% commission?

A. I understood she would take that for it.

Q. And you would get a 10% commission if you sold it?

A. That is right.

Q. Then, Mr. Spiller did tell you that she would, was willing to take $18,000.00 for your appraised price?

A. That is right.

Q. And that you were authorized to sell it?

A. No, they never told me I was authorized to sell it.

Q. Did he tell you, and if possible at the quoted price? Didn't he tell you that?

A. He didn't authorize me to sell it. I did not see the correspondence.

Q. Didn't he tell you that he had a letter from her?

A. Yes.

Q. Didn't he tell you that she was willing to take $18,000.00?

A. That is right.

Q. Authorized you to go out and get an offer?

A. No; to get an offer, yes.

Q. That is what you did?

page 162 } A. That is right.

Q. So you did what any real estate agent would have done under the circumstances?

A. I think so.

Q. In other words, Mr. Spiller was representing the seller, he was her agent, and he told you that she would sell for $18,000.00?

A. Yes, sir.

Q. And authorized him to say so. He wanted you to go out and get an offer of $18,000.00?

A. Yes, sir.

Q. You got the offer of $18,000.00?

A. Yes, sir.

Frank T. Harris.

Q. You earned your commission, didn't you?
A. Well, I think so.
Q. In other words, you are familiar with the fact that if a purchaser arbitrarily refuses to go through with the deal after it has been made, that you are entitled to your commission?
A. You are entitled to the—

Mr. Blanchard: If Your Honor please, whether he is entitled to a commission is certainly immaterial in this case. I object to it.
The Court: Objection sustained.

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Q. When Mr. Spiller told you that she had authorized him to sell it for $18,000.00, you didn't question it, did you?
A. No, but this wasn't State-Planters' business.
Q. I understand. But didn't make any difference, he told you he was authorized?
A. Yes, he said that is what she wanted.
Q. You didn't question the propriety of it?
A. No, sir.
Q. Flippo gave you his offer of $18,000.00 the night of the 19th, didn't he?
A. I am not sure of the date.
Q. Didn't he telephone you?
A. Yes, Monday night.
Q. Didn't you submit your offer to the bank on the 20th?
A. No.
Q. Didn't you submit your appraisal on the 20th of October?
A. I think you are right.
Q. You submitted the appraisal?
A. Yes, sir.
Q. Didn't you tell Mr. Spiller on that day that Flippo would pay the $18,000.00?
A. I told him they were interested in it, thought
page 164 } they were.
Q. You told him they would pay the $18,000.00?
A. I thought they would.
Q. They told you they would?

Frank T. Harris.

A. That is right, but a lot of people tell me they are going to do something and they don't do it.

Q. You had cruised the property, and they had?

A. I think they were supposed to have.

Q. Flippos told you $18,000.00, and you told them you would submit the offer?

A. Yes, I told them I would try to get it.

Q. Why didn't you submit the offer?

A. I didn't have any offer except a verbal offer.

Q. That is all the offer you need, isn't it?

A. I did submit it.

Q. Did you submit it on the day you gave the appraisal on the 20th?

A. This offer?

Q. Yes.

A. I didn't have any offer except what they told me over the telephone.

Q. The day you gave the appraisal didn't you tell Mr. Spiller that you had the offer of $18,000.00?

A. What I told you a while ago.

page 165 } Q. When he wrote this letter on the 20th to Mrs. Broome you had the offer of $18,000.00 from the Flippos?

A. That is right.

Q. So then on October 20, 1959, Mr. Spiller wrote a letter to Mrs. Broome, which said: "Included is a copy of Mr. Frank Harris' appraisal of the merchantable timber on the four parcels of real estate which you own in Hanover County. If you will observe he places a value of $18,000.00 on it. Mr. Harris is quite certain that he can obtain a buyer at this figure, once he is authorized to quote on a firm basis."

Well, now, that was on the 20th, you see, and then on the 24th she cames back and authorizes him to sell at the $18,000.00 and he tells you to go and get an offer?

A. That is right.

Q. And you got an offer?

A. Yes.

Mr. Haw: Al right, that is all.

By the Court:

Q. Did you tell Mr. Spiller the Flippos were interested in the property at $18,000.00?

A. Yes, sir.

Q. Did you also tell them that possibly she wouldn't sell to the Flippos?

Frank T. Harris.

A. Yes
Q. You discussed that?
A. Yes, sir, we did.

page 166 } By Mr. Blanchard:

Q. At what stage did you tell him about that, that you thought there was a possibility that Mrs. Broome might not sell to the Flippos? Do you remember now when you told him about that?
A. Well, I think I told him when I turned in my offer.
Q. You did?
A. Yes.

By the Court:
Q. Was there any discussion about not telling Mrs. Broome immediately who the people were?
A. No. No discussion at all. We wanted to get her approval.
Q. But you didn't submit to her the—
A. Until she came back and said she would.
Q. That is the only purchaser you had in mind?
A. At that time.

CROSS EXAMINATION.

By Mr. Ellis:

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Q. Let me clear this up. Who told you there was some difficulty or hard feelings between Mrs. Broome and the Flippos?
A. Mr. Campbell.
Q. Mr. Campbell is Mrs. Broome's brother?
A. I understand so.
Q. In other words, you would have no other reason to know about it unless Mr. Campbell told you?
A. That is right.
Q. When you had this conversation with the two Mr. Flippos: Did you mention to them at that time that they should put it in somebody else's name?
A. That is right. I asked them if they didn't want to do it. I didn't know how bad it was between them.
Q. You felt from what Mr. Campbell had told you that the

deal might not go through if they didn't put it in somebody else's name?

A. That is right. I made it plain to them.

Q. And either Mr. Carter Flippo or Mr. Arthur Flippo told you at that time if Mrs. Broome is not willing to sell to us in our own name we don't want the timber, didn't they?

A. No, I do not think so. They didn't make any such statement.

Q. Did they say we don't know.

page 168 } A. He just mentioned that he didn't know who he could get to buy it, you see. I thought that was a pretty shallow statement. I said well, I thought maybe some of the sawmill men that cut timber for you, but they threw it aside.

Q. You made it clear to them?

A. Absolutely.

Q. That there was a possibility that Mrs. Broome might turn them down simply because of the difference in feelings between her and the rest of her family and the Flippos?

A. Yes, I didn't know it definitely, but from the way they had talked, what Mr. Campbell had said I thought that it was, definitely thought so, and Mr. Campbell thought so, too.

Q. In your discussion with Mr. Spiller, did you make it as clear that the deal might not go through as you did in your discussion with the Flippos?

A. I think I did. I didn't say it won't go through, but I told them what Mr. Campbell had said, you know. He seemed to doubt it going through, it wasn't me.

Q. You were very interested in seeing it go through?

A. I certainly was.

Q. The Flippos had been nice to you and you wanted to see them get the timber?

A. That is right.

* * * * *

page 171 } MILDRED C. BROOME,

the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Blanchard:

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Mildred C. Broome.

Q. You, as we understand it, had advised the bank that you wanted to sell your timber and that you were willing to sell it at $18.000.00.

When was the first time that you knew the name of the person to whom the bank was suggesting you sell it?

A. The first time that I knew that was when I received the deed with the name on it.

Q. What did you do? Did you then correspond
page 173 } with the bank on the subject of whether you were
willing to sell to this person or not?

A. I corresponded with Mr. Spiller and told him that I would not sign the deed. I would like for the agent to find another prospective buyer.

Q. Why were you unwilling to sell to the Flippos?

A. I didn't want any business dealings with anyone that was involved in my settlement of my father's estate, because there were so many things I did not understand about it and there was a little feeling that I wasn't treated quite fairly.

In fact, my brother told me that I wasn't treated quite fairly about it. But he said I could do nothing about it, it was quite all right, but I had a feeling I didn't want to sell my timber to my family or anyone connected with the settlement of my estate.

Q. Have you in my office since you have been in Richmond this week reviewed all of the correspondence that I have advised you was to be produced in court today pursuant to the *subpoena duces tecum?*

A. Yes, I think I have.

Q. To the best of your knowledge does that group of letters between you and the bank back and forth, do they so far as you know include every piece of correspondence that you had
with the bank, or the bank had with you, during
page 174 } anytime that has any connection with this suit?
A. It does so far as I know.

Q. Have you ever had any correspondence by telephone with anyone at the bank or with Mr. Harris on the subject?

A. No, I have not.

Q. Have you ever met Mr. Spiller or Mr. Harris until you came over here to appear at this trial?

A. I have never met them before.

Q. So all negotiations between you and the bank, or the Flippos, or Mr. Harris are embodied in the documents that were produced this morning pursuant to the *subpoena duces tecum,* is that correct?

A. That is correct.

William J. Spiller.

* * * * *

CROSS EXAMINATION.

By Mr. Ellis:

Q. I hand you Intervenor Exhibit 1, which is a timber deed between you and your husband and Mr. J. E. Jones, and ask you if you and your husband executed that deed before an officer authorized to take acknowledgments?

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A. We did.

Q. After you had signed that deed you sent it, did you not, to Mr. William J. Spiller of the State-Planters Bank in Richmond?

A. Yes. I sent it by air mail.

Q. At the time that you sent that deed to Mr. Spiller you intended for Mr. Spiller to deliver it to Mr. J. E. Jones did you not?

A. I was prevented from delivering the deed because of the litigation. I was notified by the time this reached Mr. Spiller, I was notified that there was a suit, T. Frank Flippo & Sons were suing me claiming they had bought the timber from the agent. It was in litigation.

Q. But at the time you placed that in the mail to Mr. Spiller, you had not received notice that there was a pending suit?

A. That is right.

Q. Now at the time that you placed this in the mail to Mr. Spiller you intended for Mr. Spiller to deliver it to Mr. J. E. Jones, did you not?

A. Yes.

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WILLIAM J. SPILLER,

being recalled by Mr. Blanchard, testified further as follows:

DIRECT EXAMINATION.

By Mr. Blanchard:

Q. Mr. Spiller, Mr. Edwards will now read two excerpts from the testimony of Arthur Flippo.

William J. Spiller.

NOTE: The court reporter reads back from the testimony as above indicated, as follows: "Mr. Spiller said that he had just, the day before, the 19th, written to Mrs. Broome urging her to sign immediately, since the timber had been sold and she must deliver title as her banker agent had agreed to do in her behalf."

page 179 } Q. Mr. Spiller, have you heard what has just been read?

A. Yes, sir.

Q. Do you admit or deny that that is a correct statement?

A. In *toto* I absolutely deny it.

Q. Had you on this phone call, which was on November 20, had you in fact written to Mrs. Broome on November 17, Defendant Exhibit A, advising Mrs. Broome that you thought the offer was a good offer? Excuse me, let me show this letter first.

Mr. Blanchard: I wanted to show him obviously the letter he is referring to written two days prior to that, which was a letter which he did in fact tell her in he thought she ought to go ahead and accept it, but not for the reasons he is talking about there at all.

Q. I hand you a letter of November 17, 1959, identified as Defendant Exhibit A, and ask you if you wrote that letter on or about the date it bears, and whether you recall referring to that letter when you talked to Mr. Flippo?

A. I was referring to this letter, but no mention was ever made about any binding contracts or anything else.

* * * * *

NOTE: The reporter now reads the next ex-
page 180 } cerpt from the testimony of the same witness as the one above, as follows:

"On December 4, after not having heard anything further from Mr. Spiller after my telephone conversation with him on November 20, my father and myself visited Mr. Spiller at his office in the State-Planters Bank. Mr. Spiller at that time had Mr. Harris in his office with him. Mr. Spiller informed my father and myself of an attempt by Mrs. Broome to sell the timber which they had already sold to us, same timber—Q. Did

he say that? A. Yes, to J. E. Jones, of Montpelier, for $18,-001.00. He said that Mrs. Broome did this unbeknowing to he or the bank. Said he had strongly urged Mrs. Broome to deliver executed deed to Flippo, since the bank as her agent had accepted Flippos offer for $18,000.00."

Q. Did you ever advise any member of the Flippos that you had told Mrs. Broome that you had in fact sold her timber to the Flippos?

A. No, sir, absolutely not.

Q. Or did you ever tell them that you had told her that it had already been sold and therefore you were urging her to sign the deed because it had already been sold?

A. Well, may I answer it this way: I told them that they had offered what she was asking for it, but that no

page 181 } sale could be made. I brought out the point very emphatically that no sound minded person or think she is sound minded, would try to sell $18,000.00 worth of timber in Virginia on a letter written from London, and I told them, repeated to them, that I had done all that I could to get Mrs. Broome to accept their deed, their offer.

Q. And there you were referring to Defendant Exhibit that I just showed you, the letter of November 17?

A. Yes, sir.

Q. That you had written urging her to go ahead and settle?

A. That is right.

Q. Mr. Spiller, do you recall offhand at what stage Mr. Harris ever intimated to you that it might be that Mrs. Broome would not be willing to sell to the Flippos?

A. That was possibly at the time when that yellow sheet that I exhibited here, when the contract was drawn.

Q. What was your view on that subject at that stage?

A. Well, my view on it was this, that Mrs. Broome had made no mention of not wanting to sell to anyone, and I took for granted that one man's money was as good as another, and that she wanted $18,000.00 and there it was, I just didn't see any need of going into detail, furthermore the name of the buyer was in the deed that I was sending her, and so I figured that she could speak for herself.

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William J. Spiller.

CROSS EXAMINATION.

By Mr. Haw:

Q. Mr. Spiller, referring to that statement you made about selling to somebody who lives in London, didn't you have a letter from her dated October 24, 1959, in which she wrote "I should like to sell the timber if possible at the quoted price, and am willing to pay 10% commission of the sale." You have that letter?

A. Yes, sir.

Q. She had authorized you to have Mr. Harris sell it at $18,000.00?

A. Yes, sir.

Q. In that letter?

A. Yes, sir.

Q. And didn't you testify when you were on the stand before that you didn't ever convey that information to Mr. Harris?

A. That is correct.

Q. Why didn't you?

A. For the reason I answered, that I would not attempt to sell $18,000.00 worth of timber in Virginia on a letter from London. Too many things can happen.

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Q. After you received the letter from Mrs. Broome authorizing you to have Mr. Harris sell her property for $18,000.00, did you not tell Mr. Harris at the time you told him to get an offer for the property that she was willing to take $18,000.00 for the property, his appraised price?

A. I do not recall telling him that, sir, no, sir.

Q. Do you deny you told him that?

A. Yes, I do, at that time. I might have said so later, but at that time I absolutely did not, I told him to get an offer.

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ARTHUR FLIPPO,
being recalled, testified further as follows:

DIRECT EXAMINATION.

By Mr. Haw, Jr.:

Q. Let me ask you this question: Are you or any of the Flippos connected with T. Frank Flippo and Sons related to Mrs. Broome?

A. No, sir.

Q. Did any of the three of you have anything to do with the settlement of her father's estate?

A. No.

page 187 } CROSS EXAMINATION.

Q. One more question; Didn't you buy the largest asset in the estate, the stock of the Old Dominion Excelsior Corporation?

A. That is not the largest asset in the estate.

Q. What was the largest?

A. Timberland.

Q. What was the next largest?

A. I think the only assets they had was timberland and a mill.

Q. What did you buy?

A. My firm bought the plant.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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