210 VA 555

Record No. 7030

In the Supreme Court of Appeals of Virginia at Richmond

RUBY PARKER BAILEY

v.

PIONEER FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF HOPEWELL

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 7030

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 8th day of October, 1968.

RUBY PARKER BAILEY, Appellant,

against

PIONEER FEDERAL SAVINGS & LOAN ASSOCIATION; FIRST & MERCHANTS NATIONAL BANK, ADMINISTRATOR OF THE ESTATE OF T. E. BARNETT, DECEASED; DOROTHY T. COLONA, EXECUTRIX OF THE ESTATE OF F. W. COLONA, DECEASED; HAROLD BUTTERWORTH AND JOHN HARLAN, PARTNERS, TRADING AS HARLAN & BUTTERWORTH; BERNICE PARKER DeLANE; CLEVELAND PARKER; HERMAN PARKER; AND BERNARD PARKER, JR., AN INFANT, Appellees.

From the Circuit Court of the City of Hopewell
Ligon Jones, Judge

Upon the petition of Ruby Parker Bailey an appeal is awarded her from a decree entered by the Circuit Court of the City of Hopewell on the 7th day of December, 1967, in a certain chancery cause then therein depending, wherein the said petitioner was plaintiff and Herman Parker and others were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

* * * * *

page 1 }

* * * * *

BILL

To the Honorable Judge of said court:

Your plaintiff, Ruby Parker Bailey, an infant, 20 years of age, who sues by Melvin Parker, her uncle and next friend, respectfully represents:

1. That she is the daughter and one of the heirs of Bernard Parker, deceased, who died on the 5th day of April, 1954.

2. That the other heirs of the said Bernard Parker, at the time of his death were, his widow, Loretta Parker; his sons, Herman Parker, Cleveland Parker, and Bernard Parker, Jr., an infant, now 15 years of age; his daughters, Bernice Parker Delane, an infant, 18 years of age, and Ruby Parker Bailey, an infant, 20 years of age.

3. That the said Loretta Parker, widow of the deceased, died in December, 1954.

4. That the said Bernard Parker died intestate, possessed of the following real estate: Lots 9 thru 12, Block 9; Lots 1 thru 5, and 9 feet of Lot 6, Block 17; Lots 7 thru 19, Block 17; Lots 22 thru 24, Block 17; and part of Lot 26, Block 17, Virginia Heights Subdivision; Lots 1 thru 13, Block 1, Oak Hill Subdivision, all in the city of Hopewell, Virginia; and a 202¾ acre farm in Templeton Magisterial District, Prince George County, Virginia.

page 1-A } 5. That the real estate described above has been under the exclusive possession and control of the defendant, Herman Parker; that since the 6th day of January, 1955, said Herman Parker has acted as a trustee or receiver without authority and has received all the income from said property, which up until October 29, 1962, consisted of rents from 16 apartments on Lots 1 thru 13, Block 1, Oak Hill Subdivision, Hopewell, Virginia, and rents from five houses on Block 17, Virginia Heights Subdivision, Hopewell, Virginia, which he is still receiving without authority, and refuses to account to plaintiff for any of the rents and profits of said real estate.

6. In a partition suit brought by Cleveland Parker, one of the heirs of Bernard Parker, deceased, in the Circuit Court of Prince George County, Virginia, the 202¾ acre farm was sold by order of the Judge of said court on May 26, 1956, and the proceeds were divided equally among the heirs.

7. That on September 11, 1962, the Pioneer Federal Savings and Loan Corporation of Hopewell, Virginia, a note holder in the sum of $3200, secured by a deed of trust on the above 16 apartments located on Lots 1 thru 13, Block 1, Oak Hill Subdivision, ordered the trustee to sell the property for default in payment of said note. Said property was sold on October 9, 1962, by F. W. Colona, Trustee.

8. That the plaintiff's interests and the interests of the defendants is being jeopardized by the defendant, Herman Parker, that he is acting as trustee or receiver and collecting the rents and profits without authority; that a receiver is necessary in this action in order to preserve and protect the interests of the plaintiff and the other defendants in said real estate.

Wherefore your plaintiff prays that Cleveland Parker, Bernice Parker Delane, and Bernard Parker, Jr., be required to answer this bill; that proper process issue; that a guardian *ad litem* be appointed for Bernice Parker Delane and Bernard Parker, Jr., infants, and that said guardian *ad litem* be required to answer this bill on behalf of said infants; that said defendant, Herman Parker, be required to set forth a true account of all the funds and effects received by him, and also an account of his application thereof; page 1-B } and that the said Herman Parker be decreed to pay what shall appear to be due from him upon such account; that a receiver be appointed to take charge of and manage said real estate and collect the rents and profits thereof in accordance with the statute governing receivers; and to enjoin and restrain the said Herman Parker from anywise interfering with the property and assets of the estate of the said Bernard Parker, deceased.

Ruby Parker Bailey, an infant,
who sues by Melvin Parker, her
next friend, by counsel.

Harold Freeman, Counsel
255 Broadway
Hopewell, Virginia

* * * * *

Filed in the Clerk's Office the 11 day of December, 1963

Teste:

J. Hamilton Hening, Clerk

By Bessie M. Wilkinson, D. C.

* * * * *

page 11 }

* * * * *

AMENDED BILL

To the Honorable Judge of said court:

Your plaintiff, Ruby Parker Bailey, respectfully represents:

(1) That on the 11th day of December, 1963, she filed in this court her original bill of complaint against Herman Parker, Cleveland Parker, Bernice Parker Delane, and Bernard Parker, Jr., wherein she set forth that she is the daughter and one of the heirs of Bernard Parker, deceased, who died on the 5th day of April, 1954. (2) That the other heirs of the said Bernard Parker, at the time of his death were, his widow, Rosetta Parker; his sons, Herman Parker, Cleveland Parker, and Bernard Parker, Jr., an infant, now 16 years of age; his daughters, Bernice Parker Delane, an infant, 18 years of age, and Ruby Parker Bailey, an infant, 20 years of age. (3) That the said Rosetta Parker, widow of the deceased, died in December, 1954. (4)

page 11-A } That the said Bernard Parker died intestate, possessed of the following real estate: Lots 9 thru 12, Block 9; Lots 1 thru 5, and 9 feet of Lot 6, Block 17; Lots 7 thru 19, Block 17; Lots 22 thru 24, Block 17; and part of Lot 26, Block 17, Virginia Heights Subdivision; Lots 1 thru 13, Block 1, Oak Hill Subdivision, all in the city of Hopewell, Virginia; and a 202¾ acre farm in Templeton Magisterial District, Prince George County, Virginia. (5) That the real estate described above has been under the exclusive possession and control of the defendant, Herman Parker; and since the 6th day of January, 1955, said Herman

Parker has acted as trustee or receiver without authority and has received all the income of said property, which up until October 29, 1962, consisted of rents from 16 apartments on Lots 1 thru 13, Block 1, Oak Hill Subdivision, Hopewell, Virginia, and rents from 5 houses on Block 17, Virginia Heights Subdivision, Hopewell, Virginia, which he is still receiving without authority, and refused to account to plaintiff for any of the rents and profits of said real estate. (6) In a partition suit brought by Cleveland Parker, one of the heirs of Bernard Parker, deceased, in the Circuit Court of Prince George County, Virginia, the 202¾ acre farm was sold by order of the Judge of said court on May 26, 1956, and the proceeds were divided equally among the heirs. (7) That on September 11, 1962, the Pioneer Federal Savings & Loan Association of Hopewell, Virginia, a note holder in the sum of $3200, secured by a deed of trust on the above 16 apartments located on Lots 1 thru 13, Block 1, Oak Hill Subdivision, ordered the trustee to sell the property for default in payment of said note. Said property was sold on October 9, 1962, by F. W. Colona, Trustee. (8) That the plaintiff's interests and the interests of the defendants is being jeopardized by the defendant, Herman Parker, that he is acting as trustee or receiver and collecting the rents and profits without authority; that a receiver is necessary in this action in order to *perserve* and protect the interest of the plaintiff and the other heirs in said real estate; and thereupon she prayed that Cleveland Parker, Bernice Parker Delane, and Bernard Parker, Jr., be required to answer this bill; that proper process issue; that a guardian *ad litem* be appointed

page 11-B } for Bernice Parker Delane and Bernard Parker, Jr., infants, and that said guardian *ad litem* be required to answer this bill on behalf of said infants; that said defendant, Herman Parker, be required to set forth a true account of all the funds and effects received by him, and also an account of his application thereof; and that the said Herman Parker be decreed to pay what shall appear to be due from him upon such account; that a receiver be appointed to take charge of and manage said real estate and collect the rents and profits thereof in accordance with the statute governing receivers; and to enjoin and restrain the said Herman Parker from anywise interfering with the property and assets of the estate of the said Bernard Parker, deceased. That on the 11th day of December, 1963, upon motion of plaintiff, by counsel, a decree was entered ordering the appointment of Walter W. Turner as a special

receiver to take charge of the real estate for a period of 30 days; and that James E. Cuddihy, a discreet and competent attorney at law was appointed guardian *ad litem* for the infant defendants, Bernice Parker Delane and Bernard Parker, Jr. That Walter W. Turner qualified as special receiver and that James E. Cuddihy, guardian *ad litem* filed answers on behalf of said infant defendants. It was further adjudged, ordered, and decreed, in said decree, that Herman Parker file an account and set forth all funds and effects received by him and an account of the application thereof. That by decree entered on the 10th day of January, 1964, it was ordered that Walter W. Turner continue as Special Receiver of the real estate mentioned in this cause; and it was further ordered that the defendant, Herman Parker, appear before the court on the 22nd day of January, 1964, at 10:00 a.m., to show cause, if any he can, why he has failed to comply with the order in the former decree to file an account of all his funds and effects received by him, and an account of his application thereof. That on the 22nd day of January, 1964, this cause was continued until the 11th day of February, 1964, for further hearing. That on the 11th day of February, 1964, by order of this court, with the consent of counsel for the plaintiff, the defendant, Herman Parker, filed his answer to the Bill in this cause; that paragraph no. 2 of said answer alleged that the 16 apartments on Lots 1 thru 13, Block 1, Oak Hill Subdivision, Hopewell, Virginia, were under the possession and control of the Pioneer Federal Savings & Loan Association, which possession and control was wrongfully assumed without proper authority on March 8, 1955.

page 11-C

II.

And now, by leave of court, plaintiff brings this amended bill into your Honor's Court and respectfully represents:

That Bernard Parker, Sr., in his lifetime executed and delivered his deed of trust on Lots 1 thru 13, Block 1, Oak Hill Subdivision, with the improvements thereon, in Hopewell, Virginia, to secure the payment of one certain note due to the Pioneer Federal Savings & Loan Association successor to or formerly known as First Federal Savings & Loan Association—note holder, for the sum of $9000, and that Frank Colona and T. E. Barnett were the trustees in said deed of trust, which said deed of trust was duly recorded in the Circuit Court of the City of Hopewell, Virginia, on the 3rd

day of June, 1953, in Deed Book 55, page 560, and a copy of said deed of trust is herewith filed as "Exhibit A".

III.

The plaintiff on information and belief alleges that the Pioneer Federal Savings & Loan Association, upon default in the payment of installments of the above indebtedness, but in violation of the terms of the said deed of trust, took wrongful possession of the 16 apartments on Lots 1 thru 13, Block 1, Oak Hill Subdivision, Hopewell, Virginia, and without right, collected and wrongfully applied the rents and profits therefrom in the sum of $21,140.52.

IV.

While not admitting that the assumption of possession alleged in paragraph 3 above was a rightful assumption but expressly denying same, the plaintiff alleges in the alternative that on the 7th day of September, 1955, the said indebtedness above mentioned was no longer in default, whereupon it became the duty of the Pioneer Federal Savings & Loan Association and the above mentioned trustees to return possession of said property to the rightful owners, which duty they failed to perform and that they continued in wrongful possession.

page 11-D

V.

That during continuance of such wrongful possession, the Pioneer Federal Savings & Loan Association committed permissive waste by failing to take proper care of the premises, and that the said property was condemned by the City of Hopewell, Virginia, to the damage of the plaintiff and other owners of said property in the sum of $12,500. That the Pioneer Federal Savings & Loan Association has committed wanton waste and by virtue of §55-214, Code of Virginia, is liable to the plaintiff and other owners of said property for double damages in the amount of $25,000.

VI.

That while in possession of the said property the Pioneer Federal Savings & Loan Association by neglect and mismanagement failed to collect the rents in arrears due from

the several tenants of the property, to the damage of the plaintiff and other owners of said property in the sum of $4,100.

VII.

That plaintiff on information and belief alleges that under the terms of the said deed of trust the right to possession of said property upon default in the payments was reserved to the trustees, T. E. Barnett, now deceased, and F. W. Colona; that said trustees violated their trust by surrendering control or by allowing Pioneer Federal Savings & Loan Association to wrongfully assume or retain control of the property and are jointly liable with the Pioneer Federal Savings & Loan Association for the wanton waste committed to the property, the loss of rents and profits therefrom, and for the wrongful application of said rents and profits in as much as they, the trustees, knew or should have known of the acts committed.

Wherefore your plaintiff prays that she may have such relief as is prayed for in the original bill and that the Pioneer Federal Savings & Loan Association, F. W. Colona, and the First & Merchants National Bank, Administrator of the estate of T. E. Barnett, deceased, be made

page 11-E } party defendants in this cause; that they be required to answer the original and this amended bill; that proper service issue; that the said Pioneer Federal Savings & Loan Association be required to render an accounting of all the funds and effects received by them, and also an account of the application thereof; and that the said defendants, Herman Parker, Pioneer Federal Savings & Loan Association, F. W. Colona, and The First & Merchants National Bank, Administrator of the estate of T. E. Barnett, jointly and severally be decreed to pay what shall be due from them to the plaintiff and other owners of said property, including interest and attorney's fees, and for cost of suit, and for such other and further relief general and special in law and equity, as it may show she is justly entitled to receive.

Ruby Parker Bailey

By Counsel

Harold Freeman, Counsel
255 Broadway
Hopewell, Virginia

* * * * *

Filed in Clerk's Office 15 day May 1964

J. Hamilton Hening, Clerk

By Marie W. Roeder, D. C.

* * * * *

page 12 } EXHIBIT "A"

#542 Tax $13.50 Deed B. 55 Pg. 560

Bernard Parker, *et ux,*
TO: TRUST
F. W. Colona, *et al,* Trs.,

THIS DEED OF TRUST, Made this the 28th day of May, 1953, by and between Bernard Parker and Rosetta Parker, his wife, parties of the first part and F. W. Colona and T. E. Barnett, Trustees, parties of the second part.

WITNESSETH: That for and in consideration of the sum of Five Dollars ($5.00) cash in hand paid, the receipt whereof is hereby acknowledged the said parties of the first part do hereby grant and convey unto the said parties of the second part, with General Warranty, the following described property:

All those certain lots or parcels of land with improvements thereon, lying and being in the Bland Magisterial District, City of Hopewell, Virginia, and being known, numbered and designated as Lots One (1), to Thirteen (13), both inclusive, in Block One (1), Oakhill, a plat of which is duly recorded in the Clerk's Office of the Circuit Court of Prince George County in Plat Book 6, Page 16.

Being a part of the same property conveyed to T. E. Barnett by deeds recorded in the Clerk's Office of the Circuit Court of Prince George County, Virginia, in Deed Book 103, Page 176, Deed Book 111, Page 230 and Deed Book 111, Page 143.

IN TRUST to secure to the holder or holders of the hereinafter described note, payment of the sum of Nine Thousand and No/100 Dollars ($9000.00) and interest thereon at the rate of 6% per annum, as evidenced by one certain, negotiable note of even date herewith, drawn by the said parties of the

first part for the sum of Nine Thousand and No/100 Dollars ($9000.00) and interest thereon at the rate of 6% per annum payable to the order of the First Federal Savings and Loan Association of Hopewell, at its offices in Hopewell, Virginia, in monthly installments of the sum of Eighty Seven and 83/100 Dollars ($87.83) on the 1st day of each calendar month thereafter until under the terms of the said note, the indebtedness evidenced thereby is completely paid, and also $10.17 estimated for taxes and insurance each month, totaling $98.00.

THIS DEED OF TRUST is executed and is to be construed in conformity to all provisions of Section 55-59 and 55-60 of the Code of Virginia and acts amendatory thereof.

page 12-A } Identified by the trustee's signatures or either of them.

Exemptions waived.

Renewal or extension permitted.

Right of anticipation reserved, except that when the amount prepaid, equals or exceeds 20% of the original principal amount of the loan, not more than 90 days interest on the amount prepaid may be charged.

Subject to all upon default.

Fire insurance, extended coverage and war risk insurance required in the sum of $9000.00.

In addition to the remedies provided for above, the trustee, in the event of default hereunder, shall have the right to take immediate possession of the said premises, and until a sale is made hereunder, to rent out the same to such persons and at such rentals as they may deem proper; to make such expenditures for maintenance and repairs as they may deem advisable, and after deducting the cost thereof and a commission of five per cent (5%) to themselves upon the gross amounts of the rents collected, then to apply the residue to the fulfillment of the obligations of the parties of the first part on the herein-described note.

All power and discretion vested in the trustees by this deed may be exercised by either trustee, the surviving trustee, or any substituted trustee. Pursuant to Section 26-49 of the Code of Virginia 1950, and acts amendatory thereof, the said parties of the first part grant to the beneficiary or beneficiaries the right and power to appoint a substitute trustee or trustees in the event of the resignation, death, incapacity, removal or absence from the State of the trustee or trustees.

WITNESS the following signatures and seals:

Bernard Parker (Seal)
Rosetta Parker (Seal)

State of Virginia
City of Hopewell, to-wit:—

I, M. F. Beckwith, a Notary Public in and for the City aforesaid in the State of Virginia, do certify that Bernard Parker and Rosetta Parker, his wife whose page 12-B } names are signed to the foregoing writing bearing date on the 28th day of May, 1953, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 2nd day of June 1953.

My Commission expires: June 7, 1954.

M. F. Beckwith, Notary Public.

VIRGINIA:

In the Clerk's Office of the Circuit Court of the City of Hopewell, on the 3 day of June 1953 at 9:15 A.M.

This deed was this day received and, upon the certificate of acknowledgment thereto annexed, admitted to record.

Teste: J. Hamilton Hening Clerk

By Nancy B. Scott D.C.

Examined by B E & NBS 6-18-53
and delivered to Mrs. Giliam?
7/7/53

A COPY,

Teste: J. Hamilton Hening Clerk

By Bessie M. Wilkerson D.C.

* * * * *

page 14 }

* * * * *

ANSWER

* * * * *

The joint and separate answer of the defendants, Pioneer Federal Savings and Loan Association, F. W. Colona, and First and Merchants National Bank, Executor of the Estate of T. E. Barnett, to an amended bill of complaint filed against the said defendants and others in the Circuit Court of the City of Hopewell, Virginia, by Ruby Parker Bailey, who sues by Melvin Parker, her uncle and next friend.

These respondents, for answer to the said amended bill of complaint, or to so much thereof it is material they should answer, answer and say:

1. These respondents admit the allegation contained in *paragrach* II of the said amended bill of complaint, but say that the trustees in the deed of trust therein described are F. W. Colona and T. E. Barnett, Trustees.

2. These respondents deny the allegations set forth in paragraph III of the said amended bill of complaint and call for strict proof thereof.

3. These respondents deny the allegations set forth in paragraph IV of the said amended bill of complaint and call for strict proof thereof.

4. These respondents deny the allegations set forth in paragraph V of the said amended bill of complaint and call for strict proof thereof.

5. These respondents deny the allegations set forth in paragraph VI of the said amended bill of complaint and call for strict proof thereof.

6. These respondents admit that under the terms of the aforesaid deed of trust, as alleged in paragraph VII of the said amended bill of complaint, the said F. W. Colona and T. E. Barnett, Trustees, had the right to take immediate possession of the real estate therein described and conveyed, upon default in the payment of the indebtedness therein described; that the said trustees, in execution of the said terms of said deed of trust, took possession of said real estate; rented the same to such persons and at

page 14-A } such rentals as they deemed proper; made such expenditures for maintenance and repairs to

said property as they deemed advisable; and after deducting the cost thereof and a commission to themselves upon the gross amounts of the rents collected, applied the residue of the funds collected to the fulfillment of the obligations of the grantors in said deed of trust on the note therein described until a sale of said real estate was made in execution of the terms of said deed of trust, all in strict compliance with the terms of said deed of trust; that the said real estate was sold by F. W. Colona, Sole Acting Trustee, in execution of the terms of said deed of trust on October 9, 1962, and purchased by Pioneer Federal Savings and Loan Association at its bid of $2500.00, all in strict compliance with the terms of said deed of trust; that the said real estate was conveyed by F. W. Colona, Sole Acting Trustee, to Pioneer Federal Savings and Loan Association by deed dated October 9, 1962, and recorded in the clerk's office of the Circuit Court of the City of Hopewell, Virginia, in Deed Book 84, page 101, a copy thereof being hereto attached marked Exhibit 1 and made a part of this answer; that an account of the sale of said real estate was filed by F. W. Colona, Trustee, with the Commissioner of Accounts of the Circuit Court of the City of Hopewell on November 6, 1962, and recorded in said clerk's office on January 8, 1963, a copy thereof being hereto attached marked Exhibit 2 and made a part of this answer; that these respondents deny the remaining allegations contained in paragraph VII of the said amended bill of complaint and call for strict proof thereof.

7. Your respondent, First and Merchants National Bank, says that T. E. Barnett, also known as Thomas Everett Barnett, died testate and by his will dated October 12, 1960, probated in the clerk's office of the Circuit Court of the City of Hopewell, Virginia, on January 22, 1964, and recorded in Will Book 5, page 127, reference to which is hereby made, appointed First and Merchants National Bank as executor of said will, and your respondent, First and Merchants National Bank, qualified in said clerk's office as executor of the estate of Thomas Everett Barnett.

8. These respondents further say that they, and each of them, faithfully and lawfully performed the duties and obligations imposed upon them by the terms of the aforesaid deed of trust from Bernard Parker and Rosetta Parker, his wife, to F. W. Colona and T. E. Barnett, Trus-
page 14-B } tees, dated May 28, 1953, and recorded in the clerk's office of the Circuit Court of the City

of Hopewell, Virginia, in Deed Book 55, page 560, a copy thereof being attached to the said amended bill of complaint marked Exhibit "A", and these respondents jointly and severally specifically deny that they are liable to the said complainant in any manner or in any amount whatsoever.

And now having fully answered the said amended bill of complaint, these respondents pray to be hence dismissed with their costs by them in this behalf expended.

Pioneer Federal Savings & Loan Association
F. W. Colona
First & Merchants National Bank, Executor of the Estate of T. E. Barnett

F. L. Wyche p.d.
Prince George, Virginia

* * * * *

Filed in Clerk's Office 3 day June 1964

J.H.H., Clerk

page 14-C } EXHIBIT 1

#898 Tax $1.25 D. p. 84 Pg. 101

F. W. Colona, Sole Acting Trs.,
TO: B & S
Pioneer Federal Savings and Loan Assoc.,

THIS TRUSTEE'S DEED, Made this 9th day of October, 1962, by and between F. W. Colona, Sole Acting Trustee, party of the first part, and Pioneer Federal Savings and Loan Association of Hopewell, Virginia, party of the second part,

WITNESSETH: That, Whereas, Bernard Parker and Rosetta Parker, his wife, by certain Trust Deed dated May 28th, 1953, and duly recorded in the Clerk's Office of the Circuit Court of the City of Hopewell, Virginia, in Deed Book 55, page 560, did grant and convey unto the said party of the first part the real estate hereinafter described, in trust to secure the principal sum of $9,000.00, and

WHEREAS, by the said Trustee Deed the said Trustee was empowered on the failure of the payment of the said debt

when as the same became due and payable to sell the said real estate, and

WHEREAS, there was default in the payment of the said debt, and

WHEREAS, the said F. W. Colona, Sole Acting Trustee, having been requested so to do by the beneficiary of the said Deed of Trust in execution of the trust therein declared, did advertise the sale of the said property in accordance with the terms of the said Deed of Trust, and

WHEREAS, in accordance with the said advertisement, the said F. W. Colona, Trustee, did on the 9th day of October, 1962, at 11:00 A.M., Eastern Standard Time, on said date, expose to sale the said real estate hereinafter described at Public Auction in front of the Courthouse in Hopewell, Virginia, to the highest bidder for cash according to the terms of the said Deed of Trust, at which sale Pioneer Federal Savings and Loan Association of Hopewell, Virginia, became the purchaser at the price of $2500.00, and

NOW, THEREFORE, in consideration of the premises and the sum of $2500.00, which said sum is to be appropriated and applied as by the said Deed of Trust is directed, the said party of the first part doth grant and convey unto the said party of the second part, with Special Warranty, the following described property:

All those certain lots or parcels of land with improvements thereon, lying and being in Bland Magisterial
page 14-D } District, City of *of* Hopewell, Virginia, and being known, numbered and designated as Lots One (1) to Thirteen (13), both inclusive, in Block One (1), Oakhill, a plat of which is duly recorded in the Clerk's Office of the Circuit Court of the County of Prince George, Virginia, in Plat Book 6, page 16.

WITNESS the following signatures and seal.

F. W. Colona, Sole Acting Trustee (Seal)

F. W. Colona, Sole Acting Trustee

U. S. Doc. Stamps $2.75
State of Virginia
City of Hopewell, to-wit,

I, M. F. Beckwith, a Notary Public in and for the City and State aforesaid, do hereby certify that F. W. Colona, Sole Acting Trustee, whose name is signed to the foregoing writing bearing date on the 9th day of October, 1962, has

acknowledged the same before me in my City and State aforesaid.

Given under my hand this 10th day of October, 1962.

My commission expires June 14, 1966.

M. F. Beckwith, Notary Public.

VIRGINIA:

In the Clerk's Office of the Circuit Court of the City of Hopewell, on the 10th day of October 1962 at 9:45 A.M.

This deed was this day received and, upon the certificate of acknowledgment thereto annexed, admitted to record.

Teste: J. Hamilton Hening Clerk

By Marie W. Roeder D.C.

A Copy,

Teste: J. Hamilton Hening Clerk

By Bessie M. Wilkerson D.C.

page 14-E } EXHIBIT 2

TRUSTEE'S ACCOUNT OF SALE.

Lots 1 to 13, Block 1, Oakhill, Hopewell, Virginia, described in Deed of Trust recorded in Deed Book 55, page 560, H. C. C. From Bernard Parker and Rosetta Parker, his wife, to F. W. Colona, Trustee, sold on October 9th, 1962, and purchased by Pioneer Federal Savings and Loan Association of Hopewell, Va., at $2500.00.

Advertising	$24.50
Trustee's Deed	11.00
Account of Sale	18.00
Stamp	3.85
	57.05
Trustees Commission	125.00
	182.05
Credit on Note	2,317.95
	2,500.00

Sale on October 9th, 1962, at 11:00 A.M., in Hopewell, Virginia.

F. W. Colona
Sole Acting Trustee

Office of Commissioner of Accounts
Circuit Court, Hopewell, Virginia.

This account of trustee's sale was this 6th day of November, 1962, received, examined, stated and approved. The vouchers returned to said trustee after seeing proper credit on note.

Respectfully submitted:

James E. Cuddihy

November 6, 1962 lodged with Clerk for recording

James E. Cuddihy
Commissioner of Accounts
Circuit Court
Hopewell, Virginia

Filed in Clerk's Office
6 day Nov. 1962
J. Hamilton Hening, Clerk

By Bessie M. Wilkerson, D.C.

VIRGINIA:

page 14-F } Clerk's Office of the Circuit Court of the City of Hopewell on the 8th day of January, 1963.

The foregoing account which has been filed in the office for more than thirty days and to which there are no exceptions, is here entered of record under the provisions of Section 64-41 of the Code of Virginia.

J. Hamilton Hening Clerk

By Marie W. Roeder D.C.

A Copy,

Teste: J. Hamilton Hening Clerk

By Marie W. Roeder D.C.

Filed in Clerk's Office 3 day June 1964

..... Clerk

* * * * *

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* * * * *

PETITION

Your petitioner, plaintiff in the above entitled cause, respectfully represents:

1. That the depositions, copies of which are filed with the papers in this cause, of Dorsey Ford, President of the Pioneer Federal Savings & Loan Association, and others, taken before V. R. Stevens, a notary public in the state of Virginia at large, on October 21, 1964, and November 16, 1964, indicate that the said Pioneer Federal Savings & Loan Association and its trustee, F. W. Colona, by fraud and collusion, committed a devastavit by a conversion and sale of the property belonging to petitioner and the other heirs of the said Bernard Parker, deceased.

page 16-A } 2. That the conversion and illegal sale of the said property was unknown to your petitioner at the time of the institution of this suit or prior to the time of the taking of the said depositions.

3. That the Pioneer Federal Savings & Loan Association and its trustee, F. W. Colona, illegally, and in breach of said deed of trust and contrary to the terms and directions of said deed of trust, advertised said property for sale under said deed of trust, by advertisement in "The Hopewell News", a newspaper published in the city of Hopewell, Virginia, which advertisement was for the required length of time, but did not comply with the said deed of trust in that the Pioneer Federal Savings & Loan Association and its trustee, F. W. Colona, knew, that under the terms of the said deed of trust, the payments on the note were not in default at the time of sale.

4. That proceeding under said illegal advertisement and pretending to act by virtue of said deed of trust, said trustee had an auction of said property on the 9th day of October, 1962, and knocked said property down to the said Pioneer Federal Savings & Loan Association at said auction at the

price of Two thousand five hundred dollars ($2500.00) cash, and forthwith made a deed to said Pioneer Federal Savings & Loan Association dated the 9th day of October, 1962, a copy of which has been filed in the papers in this cause as defendant's "Exhibit 1", which has been recorded in the Clerk's office of the Circuit Court of the City of Hopewell, Virginia. That the said deed to the Pioneer Federal Savings & Loan Association is null and void, but constitutes a cloud upon the title of plaintiff and the other owners and should be canceled and declared void by this court.

5. That the Pioneer Federal Savings & Loan Association conveyed the property to Harold A. Butterworth and John W. Harlan, by deed dated February 3, 1963, for the sum of Three thousand one hundred fifty dollars ($3150.00) a copy of which deed is hereto attached, marked "Exhibit B", and which has been recorded in the Clerk's office of the Circuit Court of the City of Hopewell, Virginia, and which deed is null and void, but constitutes a cloud upon the title of plaintiff and other owners, and ought to be canceled and adjudged void.

page 16-B } 6. That on August 9, 1963, John W. Harlan and Harold A. Butterworth borrowed from the Pioneer Federal Savings & Loan Association the sum of Twelve thousand dollars ($12,000) and made a deed of trust upon Lots 8, 9, 10, 11, 12, and 13, in Block 1, Oak Hill, and the adjoining parts of Lots 6 and 7 lying South of a dividing line in the middle of a 6.3 foot strip extending from the Eastern line of Maryville Street to the rear line of Lot 7 in accordance with plat thereof made by Pritchard and Legat, Engineers and Surveyors, dated August 5, 1963, to F. W. Colona and D. B. Ford, trustees, securing said Association for said loan, a copy of which deed of trust is hereto attached and marked "Exhibit C", which has been recorded in the Clerk's office of the Circuit Court of the City of Hopewell, Virginia, and which deed of trust is null and void, but constitutes a cloud upon the title of the plaintiff and other owners, and ought to be canceled and adjudged void.

7. That on January 14, 1964, John W. Harlan and Harold A. Butterworth borrowed from the Pioneer Federal Savings & Loan Association an additional sum of Twelve thousand dollars ($12,000), and made a deed of trust upon Lots 1, 2, 3, 4, and 5, in Block 1, Oak Hill, and the adjoining parts of Lots 6 and 7, lying North of a dividing line in the middle of a 6.3 foot strip extending from the Eastern line of Maryville Street to the rear line of Lot 7 in accordance with plat

thereof made by Pritchard and Legat, Engineers and Surveyors, dated August 5, 1963, and duly recorded, to F. W. Colona and D. B. Ford, trustees, securing said Association for said loan, a copy of which deed of trust is hereto attached and marked "Exhibit D", which has been recorded in the Clerk's office of the Circuit Court of the City of Hopewell, Virginia, and which deed of trust is null and void, but constitutes a cloud upon the title of the plaintiff and other owners, and ought to be canceled and adjudged void.

8. That the plaintiff and other owners of the said property have always been and still are ready, willing, anxious and able to do anything which she, or they, should do and to do all things which in equity should be done. That the said defendants Pioneer Federal Savings & Loan Association, F. W. Colona, trustee, and T. E. Barnett, deceased, trustee, knew said auction was not in compliance with the terms of the said deed of trust marked "Exhibit 1".

page 16-C

9. That Harold A. Butterworth and John W. Harlan are necessary parties in this cause in order that full justice be done and the whole controversy be ended.

10. That your petitioner and the other owners of said property are entitled to a judgment against the defendants liable therefore, for the clear annual value of the premises during the time the Pioneer Federal Savings & Loan Association and Harold A. Butterworth and John W. Harlan were in possession there of and also the damages for waste or other injury to the premises while in their possession.

Forasmuch, therefore, as the matters above set forth are contrary to equity and good conscience, plaintiff prays: that this petition be treated as an amended or supplemental bill in that Harold A. Butterworth and John W. Harlan may be made parties defendant in this cause and that all the defendants be required to answer this petition, but answer under oath is waived as to each and all said defendants; that said deed from F. W. Colona, trustee, to Pioneer Federal Savings & Loan Association and the said deed from Pioneer Federal Savings & Loan Association to John W. Harlan and Harold A. Butterworth to F. W. Colona, and D. B. Ford, trustees, shall be canceled, adjudged null and void and held for naught; that the cloud upon plaintiff's, and the other owners, title may be removed; that the court refer this cause to a commissioner in chancery for the purpose of examining the back records and vouchers of the Pioneer Federal Savings & Loan Association to determine the accountability of the

defendants to the plaintiff and other owners of the said property; and to such other and further relief, as prayed for in the original and amended bills in this cause, be granted as may be adapted to the nature of her case.

Ruby Parker Bailey, an infant,
who sues by Melvin Parker, her
uncle and next friend

By Counsel

Harold Freeman, Counsel
255 Broadway
Hopewell, Virginia

page 16-D }

* * * * *

Filed by leave of Court 12/29/64

JHH

* * * * *

page 20 }

* * * * *

ANSWER

Your respondents, Harold A. Butterworth and John W. Harlan, for answer to the petition exhibited against them in the above styled cause, answers and say:

1. That your respondents know nothing of the allegations contained in Paragraphs 1, 2, 3 and 4 of the Plaintiff's Petition and call for strict proof thereof.

2. That your respondents admit that they purchased the property as alleged in Paragraph 5, but deny the said deed is null and void. They were a bona fide purchaser for value and had no notice, actual or constructive, that there may be any cloud upon their title to said property and expressly deny that there is any cloud on the title to said property.

3. That your respondents admit that they borrowed the money from Pioneer Federal Savings and Loan Association as set forth in Item 6 and 7 of the Petition, but expressly deny that the deeds of trust securing same are null and void.

4. Your respondents know nothing of the allegations contained in Paragraph 8 of the Plaintiff's petition and call for strict proof thereof.

And now having fully answered Plaintiff's Petition, your respondents further answer and say that they page 20-A } are a bona fide purchaser for value of the land and premises described in the Plaintiff's Petition; that they had no notice, either actual or constructive, that the Plaintiff had any right, title, interest, equity or claim to said property and that the Plaintiff, if she has such claim, is estopped to assert same as she stood idly by while your respondent expended in excess of Forty Thousand Dollars ($40,000.00) to improve the buildings situate upon the land as described in the Plaintiff's Petition; and that should it be found that the Plaintiff has some interest in said properties that your respondents should be reimbursed for the purchase price of said properties and for the cost of the improvements made thereon, plus interest expended and closing fees incurred for the loans made upon said premises.

WHEREFORE, your respondents pray that the Plaintiff's Petition be dismissed as to them and a decree be entered establishing and quieting title in your respondent, and your respondents reserve the right to file such further Grounds of Defense as they see fit.

Harold A. Butterworth
By Counsel

John W. Harlan
By Counsel

Torsten E. Peterson, p. q.
State-Planters Bank Building
Hopewell, Virginia
Attorney for Respondents

* * * * *

Filed in Clerk's Office 19 day Jan 1965

J. Hamilton Hening Clerk
Bessie M. Wilkerson D.C.

page 20-B }

* * * * *

The joint and separate answer of the defendants, Pioneer Federal Savings and Loan Association, Frank Colona and First and Merchants National Bank, Executor of the estate of T. E. Barnett, to a petition referred to as an amended or supplemental bill, filed against them and others in the Circuit Court of the City of Hopewell, Virginia, by Ruby Parker Bailey, Complainant, on the 29th day of December, 1964, upon which process was issued against these respondents on March 8, 1965.

These respondents, for answer to the said petition, or to so much thereof it is material they should answer, answer and say:

1. These respondents deny the allegations contained in paragraphs one to eight, inclusive, of the said petition and call for strict proof thereof.

2. These respondents neither affirm nor deny the allegations contained in paragraph nine of the said petition and call for strict proof thereof.

3. These respondents deny the allegations contained in paragraph ten of the said petition and call for strict proof thereof.

4. These respondents adopt as a part of their answer to the allegations contained in the said petition the answer of these respondents heretofore filed in this proceeding to the original and amended bill of complaint heretofore filed herein;

And now having fully answered, these respondents pray to be hence dismissed with their costs by them in this behalf expended.

Pioneer Federal Savings & Loan Assoc.
Frank (FW) Colona
First & Merchants National Bank,
Exec (Adm.) Estate of T. E. Barnett

By counsel

F. L. Wyche p.d.
Prince George, Virginia

page 20-C } I hereby certify that I have this day mailed to Harold Freeman, Esquire, Counsel for the complainant, Perry Building, Hopewell, Virginia, a copy of the foregoing answer.

Given under my hand this 22 day of March, 1965.

F. L. Wyche
Attorney for Pioneer Federal Savings and Loan Association, Frank Colona, and First and Merchants National Bank, Administrator of the Estate of T. E. Barnett.

Filed in Clerk's Office 24 day March 1965

J. H. H. Clerk

* * * * *

page 24 }

* * * * *

DECREE

This cause which has been regularly matured, docketed and set for hearing, came on this day to be heard upon the bill of complaint; the amended bill of complaint and upon the petition to be treated as an amended or supplemental bill; upon the separate answer of Herman Parker, upon the answer of James E. Cuddihy, guardian-*ad-litem* for the infant defendants, Bernard Parker, Jr. and Bernice Parker Delane; upon the answer of Pioneer Federal Savings & Loan Association, F. W. Colona, Cleveland Parker, and First & Merchants National Bank, Administrator of the Estate of T. E. Barnett; upon the separate answer of Harold A. Butterworth and John W. Harlan; upon the depositions on behalf of the plaintiff and the exhibits taken and filed in this cause; and was argued by counsel.

Upon consideration whereof, this cause is referred to J. Hamilton Henning, one of the Commissioners in Chancery of this Court, who will inquire and report as follows:

(1) Ascertain and report what the records in the Clerk's Office of this Court disclose as to Lots 1 thru 13, Block 1, Oak Hill Subdivision, Hopewell, Virginia, of which Bernard Parker died seized and possessed.

(2) Whether a list of heirs of said Bernard Parker was filed in the Clerk's Office of this Court, and if so, when and by whom, and the names and ages of said heirs at the time of Bernard Parker's death.

page 24-A } (3) To ascertain and report whether all

parties in interest are properly before the Court.

(4) Whether any person, firm or corporation, subsequent to the death of Bernard Parker, took or retained wrongful possession of said property, under the terms of the deed of trust by Bernard Parker and wife, to T. E. Barnett and Frank Colona, Trustees, dated May 28, 1953, and recorded in Deed Book 55, page 560, and if so, state their names, the date and the periods of time so retained.

(5) An account of the transactions of all persons, firms or corporations having possession of said property subsequent to the death of said Bernard Parker whether rightful or wrongful.

(6) Whether any person, firm or corporation, while the property was in their possession subsequent to the death of Bernard Parker, committed waste on said property, and if so, the amount and extent thereof.

(7) Whether any person, firm or corporation, while in the possession of said property subsequent to the death of Bernard Parker, failed to collect the rents in arrears from the several tenants, and if so, the amount thereof.

(8) Ascertain and report whether any payment or payments on said property was in default under the terms of the deed of trust during the time it was *advertisied* for sale and at the time it was sold by F. W. Colona, Trustee, to Pioneer Federal Savings & Loan Association, on October 9, 1962.

(9) Whether or not the defendants, or any of them, are liable to any parties to this proceeding, and if so, the amount and extent thereof.

(10) Ascertain and report whether any person, firm or corporation while in possession of said property, subsequent to the death of Bernard Parker, disbursed the rents and profits therefrom in violation of the terms of
page 24-B } the said deed of trust and if so, state their names, the amount and extent thereof.

(11) Ascertain and report if any person, firm or corporation, while in possession of said property subsequent to the death of Bernard Parker, wrongfully collected and disbursed the funds therefrom belonging to the infant owners of said property, and if so, state their names, the amount and the extent thereof.

(12) Ascertain and report what rights, title and interest the parties to this proceeding have in the said property.

(13) What would be a proper fee to be allowed counsel for plaintiff, if any, and to report the costs of Court to this proceeding.

(14) To report all the matters deemed pertinent by said Commissioner and such matters concerning which he is requested to report by any party in interest, if the same be pertinent to the issues in this cause which said inquiry the Commissioner shall make after first giving notice of the time and place for said hearing as required by law.

Enter: 6/23/65

Ligon Jones, Judge

I Ask For This:
Harold Freeman, Counsel for Plaintiff

I Have Seen This:
F. L. Wyche, Atty for
Pioneer Federal Sav. & Loan Asso.
F. W. Colona Jr. & First & Merchants
Nat'l Bk Executors estate T. E. Barnett
and as such Trustee.

* * * * *

page 32 }

* * * * *

Your undersigned Commissioner in Chancery would respectfully report that, acting in pursuance and obedience to the decree of this court entered in this cause on the 23rd day of June, 1965, after giving notice to all parties concerned, he proceeded on several days thereafter, pursuant to adjournment from time to time, at the place and between the hours designated in the notice, a copy of which is attached to the depositions or this report, to take, state, inquire into and report as follows:

1. Ascertain and report what the records in the Clerk's Office of this court disclose as to Lots 1 thru 13, Block 1, Oak Hill Subdivision, Hopewell, Virginia, of which Bernard Parker died seized and possessed.

2. Whether a list of heirs of said Bernard Parker was filed in the Clerk's Office of this court, and if so, when and by whom, and the names and ages of said heirs at the time of Bernard Parker's death.

3. To ascertain and report whether all parties
page 32-A } in interest are properly before the court.

4. Whether any person, firm, or corporation, subsequent to the death of Bernard Parker, took or retained wrongful possession of said property, under the terms of the deed of trust by Bernard Parker and wife to T. E. Barnett and Frank Colona, Trustees, dated May 28, 1953 and recorded in Deed Book 55, page 560, and if so, state their names, the date and the periods of time so retained.

5. An account of the transactions of all persons, firms, or corporations having possession of said property subsequent to the death of Bernard Parker, whether rightful or wrongful.

6. Whether any person, firm or corporation, while the property was in their possession subsequent to the death of Bernard Parker, committed waste on said property, and if so, the amount and extent thereof.

7. Whether any person, firm or corporation, while in possession of said property subsequent to the death of Bernard Parker, failed to collect the rents in arrears from the several tenants, and if so, the amounts thereof.

8. Ascertain and report whether any payment or payments on said property was in default under the terms of the deed of trust during the time it was advertised for sale and at the time it was sold by F. W. Colona, Trustee, to Pioneer Federal Savings & Loan Association on October 9, 1962.

9. Whether or not the defendants, or any of them, are liable to any parties to this proceeding, and if so, the amount and extent thereof.

10. Ascertain and report whether any person, firm or corporation while in possession of said property subsequent
to the death of Bernard Parker, disbursed the
page 32-B } rents and profits therefrom in violation of the
terms of the said deed of trust, and if so, state their names, the amount and the extent thereof.

11. Ascertain and report if any person, firm or corporation, while in possession of said property subsequent to the death of Bernard Parker, wrongfully collected and disbursed the funds therefrom belonging to the infant owners of said property, and if so, state their names, the amount and extent thereof.

12. Ascertain and report what rights, title and interest the parties to this proceeding have in the said property.

13. What would be a proper fee to be allowed counsel for plaintiff, if any, and to report the costs of court in this proceeding.

14. To report all the matters deemed pertinent by said Commissioner and such matters concerning which he is requested to report by any party in interest, if the same be pertinent to the issues in this cause, which said inquiry the Commissioner shall make after first giving notice of the time and place for said hearing as required by law.

Bernard Parker during his lifetime acquired title to the property in question: Lots numbered One (1) thru Thirteen (13), Block One (1), Oak Hill Subdivision, a subdivision situated within the corporate limits of the City of Hopewell, Virginia. This property was improved property, and the improvements consisted of multiple dwelling units, that is, Eight (8) two-family dwelling units of frame construction.

In May, 1953, Bernard Parker and wife conveyed this property to F. W. Colona and T. E. Barnett, Trus-
page 32-C } tees, to secure the payment *payment* of Nine Thousand Dollars ($9,000.00), represented by one note for said amount payable to First Federal Savings & Loan Association of Hopewell, now Pioneer Federal Savings & Loan Association, in monthly installments in the sum of Ninety Eight Dollars ($98.00) which included principal, interest and an amount *extimated* for taxes and insurance.

This deed of trust was executed in conformity to, and was to be construed with, the provisions of Sections 55-59 and 55-60 of the Code of Virginia but, in addition to the provisions of these two Sections of the Code, contained additional provisions in standard use by the Loan Association at the time, one of which is:

"In addition to the remedies provided for above, the trustee, in the event of default hereunder, shall have the right to take immediate possession of the said premises, and until a sale is made hereunder, to rent out the same to such persons and at such rentals as they may deem proper; to make such expenditures for maintenance and repairs as they may deem advisable, and after deducting the costs thereof and a commission of five per cent (5%) to themselves upon the gross amount of the rents collected, then to apply the residue to the fulfillment of the obligations of the parties of the first part on the herein-described note."

page 32-D } Bernard Parker died intestate on the 5th day of April, 1954 leaving surviving him his widow, Rosetta, and five children, namely: Herman Parker,

an adult; Cleveland Parker, Bernice Parker Delane, Bernard Parker, Jr., and Ruby Parker Bailey, all infants at the time of his death.

Rosetta Parker, his widow, died in December, 1954.

Herman Parker, the only adult child, qualified in the Clerk's Office of this court on the 6th day of January, 1955, as Administrator of the estate of Bernard Parker, deceased, and gave bond deemed sufficient at that time, and filed a list of heirs according to law. (See Will Book 2, page 395).

Although the Administrator had no authority over the real estate he assumed control over the same, collecting the rents, making repairs, etc., until either from mismanagement, lack of proper management or absence of management, the loan secured by said trust became in serious default.

It is to be noted here that the dwelling units of this property are what is known as 'low-type', and difficulty could well be expected in the collection of the rents on this type of tenancy.

The trustee, T. E. Barnett, acting solely and which he has a right to so act under the provisions of the trust, on the 1st day of July, 1955 took possession of the property declaring the note in default and due and payable, all at the instance of the noteholder Association, of which he was
page 32-E } President, and all as is provided by the terms of the said trust, and his possession at this time cannot be said to be wrongful. He proceeded to, and did, take over the property collecting the rents, paying the taxes, making certain repairs, etc., and did employ certain persons to see that the rents were paid, prevent waste by the tenants, making of repairs, etc.

The possession of this property by the trustee Barnett lasted from the 1st day of July, 1955 to October 1962, a period of over seven years.

As President of the lending institution the Trustee used the facilities and personnel of his institution to handle the records of his dealing with and handling the property for this period.

The several questions raised presents first the query: Was the possession by the trustee Barnett of the property rightful, wrongful or, if rightful at the time of taking possession, become wrongful during the period July 1955 to October 1962?

On July 1, 1955 the property was in default, there was no rightful management if there was any management at all, and the taking over of the property by the trustee, under the

provisions of the trust, cannot be said to be wrongful at this time. Had he not done so the property, known to be of rapid depreciation, would become worthless in short order, and he had this right conferred both by the provisions of the trust and the laws of Virginia.

Under the provisions of Paragraph 6 of Sec-
page 32-F } tion 55-59 of the Code of Virginia in effect at the time of the execution, acceptance and recording of the trust (Acts 1952, page 664) which is here set forth verbatim:

"(6) In the event of default in the payment of the debt secured, or any part thereof, at maturity, or in the payment of interest when due, or of the breach of any of the covenants entered into or imposed upon the grantor, then at the request of any beneficiary the trustee shall forthwith declare all the debts and obligations secured by the deed of trust at once due and payable and shall take possession of the property and proceed to sell the same at auction at the premises or at such other place as the trustee may select upon such terms and conditions as the trustee may deem best, after first advertising the time, place and terms of sale in such manner as the deed may provide, or, if none be provided, after first advertising the time, place and terms of sale once a week for four successive weeks in a newspaper published or having general circulation in the county or if the provisions of para-
graph (7) of this section be applicable as there-
page 32-G } in provided, it not being intended, however, to declare that other and different advertisement may not in any case be deemed reasonable, nor to prevent the trustee from giving the sale such additional advertisement as he deems advisable. No notice to the grantor or his successor in title shall be required unless required by the deed of trust."

It would seem that the law contemplates a taking of possession followed by an action on the part of the trustee, both at the instance of the holder of the note secured thereunder, to advertise same for sale by foreclosure. Both events to take place in reasonable sequence, one following the other, and the advertisement and sale not to be prolonged over an extended period.

If this paragraph (6) was the only provision effecting the trustee's and Beneficiaries' rights, privileges and obligations the query would follow: Did the trustee's possession where no

sale was advertised or made within a reasonable period, become wrongful at the end of said period? Or did the excessive period evidence on the part of the trustee an act of waiver of the default and maturity of the note? Or did his actions constitute a waiver of default and treating the obligation, method and manner of payments as being continuing and not as having been declared due and payable by acceleration of the maturity?

And these queries would have to be answered or determined were it not for the provisions in the deed of trust itself as hereinabove stated.

page 32-H } Paragraph 6 of Section 55-59 of the Code does not contemplate any rental of the property but to preserve it from waste until a sale is advertised and had within a reasonable time following the taking of possession by the trustee.

However, we have a different situation under the provisions expressed in the trust itself as heretofore set forth, and they are in *addition* to the provisions of paragraph 6 of 55-59. This provision contemplates a rental of the premises and a subsequent sale by foreclosure of said premises. And if the provisions in the trust itself contemplated an immediate sale as does paragraph 6, it could serve little purpose to rent the premises for so short a period of time and possibly tie up by the tenancies the immediate delivery of possession to the purchaser at the foreclosure sale, so your Commissioner feels that some period of time for the rental of the premises was contemplated. Whether seven years was too excessive and not in contemplation of the provisions of the trust and the contract between the parties, no question has been raised, offered or suggested.

The fact that there was no management of the premises on July 1, 1955, or inadequate management, and the holders of the equitable title young and inexperienced, resulting in a serious default, and knowledge on the part of the trustee Barnett and the noteholder, the Loan Association, of this condition, and the further fact that the taking over of the possession by the trustee would lend credence to the declaration of

page 32-I } default and maturity of the note secured by the trust, at the instance of the beneficiary.

A different situation might well have arisen if the entire indebtedness had not been matured by the acceleration exercised by the beneficiary thru the trustee under the terms of the trust and Section 55-59, and the contention of the complainant would have merit as to whether there was a

waiver by the beneficiary of the acceleration provision and declaration of maturity of the note.

It appears that the law of the case as studied and examined by your Commissioner makes a distinction between where the taking of possession without accelerating the maturity of the note on the one hand, and the taking of possession and calling the note for maturity on the other. Here, your Commissioner finds that at the time of the taking of the possession by the trustee and the acceleration of the indebtedness, both at the instance of the noteholder, the whole debt immediately became due and payable forthwith.

The complainant alleges, charges and complains that the advertisement of sale by foreclosure was defective in that the first insertion in The Hopewell News, a newspaper published and having general circulation in the City of Hopewell, and which was used for the advertisement of the sale, left out or omitted the name of the place of sale. This omission was taken care of in all subsequent advertisements in the newspaper of the notice of sale. The property was located in the City of Hopewell and the only 'Municipal Building' page 32-J } within the vicinity of the property was in Hopewell, Virginia. Any doubt could be easily resolved by a phone call to the trustee Colona, or the newspaper itself. Your Commissioner feels that a substantial compliance under the law was had and finds no great merit in this contention.

A list of heirs was filed by the Administrator of the estate of Bernard Parker, deceased, by the administrator, Herman Parker (See Will Book 2, page 395), and at the time of his qualification, and shows the ages of his five children to be as follows:

Herman Parker,	age 24
Cleveland Parker,	age 20
Ruby L. Parker, (Bailey)	age 11
Bernice Parker (Delane)	age 10
Bernard Parker, Jr	age 6

T. E. Barnett, Trustee, died testate January 15, 1964, and this cause has been revived in the name of his executor and trustee under his last will and testament.

F. W. Colona died recently in the State of Maryland, but this cause has not been revived as to his heir or personal representative.

The defendant child Bernice Parker Delane and the com-

plainant Ruby Parker Bailey, are both adults and this cause has not been revived as to them.

All during these proceedings James E. Cuddihy was the duly appointed guardian *ad litem* for the infant children, and he was present at every hearing of this cause in which exhibits were offered and evidence taken down.

page 32-K } After an examination and study of the evidence and exhibits, which were rather voluminous and oftimes *repititious,* your Commissioner finds, and so reports:

(a) That at the time the trustee *Bartnett* took possession of the property the note was in default. There was no management, or at best poor and unauthorized management of the property, and the note and obligations secured thereunder declared at the instance of the noteholder, due and payable forthwith;

(b) That the trustee Barnett had a right to rent out the property;

(c) That repairs and maintenance of the premises in keeping with the revenues received therefrom were in keeping with good business practices;

(d) That the taxes and insurance was kept up by the trustee;

(e) That due efforts were made by the trustee to collect the rents, current and in default;

(f) That under the express provisions in the trust itself the trustee was not limited to any stipulated period in which he could rent out the premises;

(g) That the trust was foreclosed;

page 32-L } (h) That there was a balance due on the said note at the time of foreclosure, and at all other times in which the trustee had possession;

(i) That the trustee making the sale substantially complied with the provisions of law in advertising the property and the terms and place of same;

(j) That no fraud or collusion was practiced by the trustee or his agents in handling the property, nor was any disclosed by the evidence;

(k) That the trustee Barnett, on the whole, acted in good faith, prevented waste as far as he could, and made full accounting with the exceptions of a few minor credit errors which, if made or corrected, would not pay out the indebtedness but decrease the amount of the deficiency from the price realized from the sale and the balance due under the trust;

(l) That no revival of the cause has been made in respect to the deceased F. W. Colona, nor the two former infant children who are now adults;

(m) That Pioneer Federal Savings & Loan Association received a good title from F. W. Colona, Trustee, thru the foreclosure sale;

(n) That the defendants Harlan & Butter-
page 32-M } worth received a good title to said property by purchase from Pioneer Federal, and should be dismissed as parties to this cause;

(o) That the only liability your Commissioner finds due to the complainant would be the wrongful taking possession and handling of the property by her brother, Herman Parker, and he having filed no settlement of his accounts as administrator, nor inventory of said estate, I am unable to determine the extent of his liability, nor the damages, if any, sustained or suffered by his sister, the complainant in this cause; and from the brief filed by counsel for complainant they seem to have abandoned any claim for damages against him;

(p) That all proper parties are before the court;

(q) That the interests of the children of Bernard Parker, deceased, have been extinguished, and they no longer have any interest, equitable or otherwise in the same;

(r) That the complainant is now an adult and any fee her counsel desires to make can be settled with her.

And your Commissioner having now made report on all matters required or requested of him to be so made, inquired into, stated and reported upon, do certify that
page 32-N } he did on the 27th day of April, 1967, deliver or mail to the attorneys of record for all parties concerned and who are entitled to notice, a copy of the within report, and the fact that it was filed on this 27th day of April, 1967, in the Clerk's Office of this court.

Respectfully submitted this 27th day of April, 1967.

Commissioner fee $500.00
Guardian *ad Litem* fee $150.00

J. Hamilton Hening
Commissioner in Chancery

Filed in Clerk's Office 27 day April 1967

J. H. Hening Clerk

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* * * * *

EXCEPTIONS TO COMMISSIONER'S REPORT

Exceptions taken by Ruby Parker Bailey, the plaintiff, in the above styled suit, to the report of the commissioner, J. Hamilton Hening, to whom this cause was referred by the decree made herein on the 23rd day of June, 1965, and which report bears date on the 27th day of April, 1967.

First Exception: That the commissioner failed to report on inquiries numbers five, seven, eight, ten and eleven, as directed by the decree of this court entered on June 23, 1965.

Second Exception: That the commissioner erred in holding that there was no waiver of default by the Loan Association in that under the law in Virginia the collection and acceptance by the creditor of past due payments on a note secured by a deed of trust is a waiver of the default.

Third Exception: That the commissioner erred in failing to consider the evidence and that the accountings filed in this proceeding by the Loan Association discloses as follows:

(a). That the default was cured on September 16, 1955, and that there was no default under the terms of the deed of trust subsequent to that time.

(b). That there was no default in the payments at the time the beneficiary requested the trustee to sell the property on October 9, 1962 for an alleged default.

(c). That the Loan Association wrongfully held and used funds in their own banking business, belonging to the plaintiff and the funds belonging to the infant and other owners of the property.

(d). That the trustee and/or his agent, the Pioneer, was in wrongful possession of the property subsequent to September 16, 1955.

page 33-A } (e). That the Loan Association collected interest both on the debt and on the security of the debt in violation of law.

Fourth Exception: The commissioner erred in holding that the advertisement of the sale of the property on October 9, 1962, was in substantial compliance with the law in that the evidence discloses as follows:

(a). The place of sale was not advertised for four succes-

sive weeks as required by the terms of the deed of trust and section 55-59 of the 1950 Code of Virginia.

(b). The trustee advertised that a bidder's deposit of $200.00 may be required before his bid is received in violation of section 55-59 of the 1950 Code of Virginia.

(c). The names of the grantors in the deed of trust was omitted from the advertisement as required by section 55-62 of the 1950 Code of Virginia.

Fifth Exception: The commissioner erred in holding that the repairs and maintenance of the premises were in keeping with good business practices in that the evidence discloses the trustee or his agent while in possession of the property failed to make any repairs in 1959 and made only minimal repairs in 1960, 1961 and 1962.

Sixth Exception: The commissioner erred in holding that due efforts were made by the trustee to collect the rents current and in default in that the trustee made no efforts to collect any rents, and the evidence discloses his agent, the Pioneer, who was also the creditor, failed to collect rents in default due to negligence and lack of diligence.

Seventh Exception: The commissioner erred in holding that under the express provisions of the trust itself the trustee was not limited to any stipulated period in which he could rent out the premises in that he failed to take into consideration that under the law in Virginia when the default was cured his right to retain possession and rent out the property terminated.

Eight Exception: The commissioner erred in holding there was a balance due on the note at the time of foreclosure in that the commissioner failed to take into consideration the wrongful acts of the trustee and the accounting filed by the creditor.

page 33-B

Ninth Exception: The commissioner erred in holding that there was no fraud by the trustee or his agents in handling the property in that the evidence discloses that the trustee and/or the Loan Association held the property by fraud and deceit after the default was cured on September 16, 1955.

Tenth Exception: The commissioner erred in holding that there was no waste by the trustee or his agent, the Pioneer, in that the evidence discloses that due to their failure to make necessary repairs they committed waste in the years 1959, 1960, 1961 and 1962.

Eleventh Exception: The commissioner erred in holding that the Pioneer Federal Savings & Loan Association re-

ceived good title from F. W. Colona, trustee, in the foreclosure sale in that the evidence discloses that the Loan Association knew that the payments were not in default at the time of sale and the note was completely paid in full at that time.

Twelfth Exception: The commissioner erred in holding that the defendants Harlan and Butterworth received a good title to said property from the Pioneer Federal in that the Pioneer Federal under the law only had such title as was vested in the trustee at the time of sale.

Thirteenth Exception: The commissioner erred in holding that the interests of the children of Bernard Parker, deceased, have been extinguished in that the trustee and the Pioneer, his agent, wrongfully detained the property from September 16, 1955, to February 3, 1963, and the children are entitled to damages and mesne profits subsequent to the time the default was cured.

Fourteenth Exception: That the commissioner has adopted an erroneous theory in the making of his report and has not considered the facts and the laws applicable thereto as disclosed by the evidence.

Fifteenth Exception: That the said commissioners report is contrary to the evidence and in disregard of the
page 33-C } principles laid down by the Supreme Court of Appeals of Virginia in recent decisions.

WHEREFORE, Ruby Parker Bailey, plaintiff, moves as follows:

(1). That the report of the commissioner in the instant proceeding be overruled and set aside.

(2). That a new commissioner be appointed by this Honorable Court to take, state, inquire, and report on the inquiries mentioned in the decree entered on the 23rd day of June, 1965, in accordance with proper instructions.

(3). That the court order such further relief in the premises as seems just and equitable, together with costs of this motion and of these proceedings.

Ruby Parker Bailey

By Harold Freeman
Counsel

Harold Freman
Attorney for plaintiff
Perry Building
Hopewell, Virginia

* * * * *

Filed in Clerk's Office 5th day May 1967

J, Hamilton Hening Clerk

By Marie W. Roeder D.C.

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* * * * *

October 9, 1967

Harold Freeeman, Esquire
Attorney at Law
Perry Building
Hopewell, Virginia

Re: Bailey v. Parkers, *et als*

Dear Mr. Freeman:

The court has examined the pleadings, read the testimony, read the report of the Commissioner in Chancery, examined the exceptions to the commissioner's report and briefs submitted by all counsel in the above styled matter. The court is of the opinion and doth find that the report of the Commissioner in Chancery is plainly right and that the exceptions to said report are herewith overruled. The court will not attempt to express an opinion as to why the exceptions to the report are overruled other than by stating that the finding of law submitted by the commissioner in the report is a correct finding and need not be elaborated upon.

If the complainant wishes to pursue her claim against Herman Parker, the court will resubmit the matter to the commissioner for that purpose alone.

Counsel for the principal respondents, F. L. Wyche, Esquire, will prepare a decree sustaining the finding of the commissioner and overruling the exceptions thereto with costs to be borne by the complainant, and submit same to counsel for the complainant and counsels for the other respondents for approval as to form. Counsel for the complainant is given ten days to declare his intention to proceed

further against Herman Parker by notifying Mr. Wyche by letter within the time allotted.

Very truly yours,

Ligon L. Jones

LLJ/tw

cc: F. L. Wyche, Esquire, Attorney at Law
Honorable C. Hardaway Marks, Attorney at Law
James E. Cuddihy, Esquire, Attorney at Law
T. E. Peterson, Esquire, Attorney at Law
Mr. J. Hamilton Hening, Clerk Circuit Court
City of Hopewell, Va.

Filed 12/1/67

JHH

* * * * *

page 36 }

* * * * *

This cause came on this day again to be heard upon the papers formerly read; and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that J. Hamilton Hening, Commissioner in Chancery appointed by a decree entered herein on the 23rd day of June, 1965, with direction to make certain inquiries as contained in said decree and report to court, filed his report herein on the 27th day of April, 1967; that the complainant, by counsel, filed exceptions to the report of J. Hamilton Hening, Commissioner in Chancery; that on the 14th day of June, 1967, the Court heard argument of counsel on the said exceptions, at which time the Court advised counsel for the parties hereto that this proceeding would be taken under advisement by the Court for the purpose of examining the pleadings, the evidence and exhibits, the report of the commissioner in chancery and the exceptions thereto, and the briefs submitted by counsel; and the Court having reached an opinion on the matters at issue between the parties hereto, doth, accordingly, ADJUDGE, ORDER and DECREE that the exceptions filed by the complainant to the report of J. Hamilton Hening, Commissioner in Chancery, are hereby

overruled, and the report of J. Hamilton Hening, Commissioner in Chancery heretofore filed herein on the 27th day of April, 1967, is hereby affirmed and sustained, with leave, however, to the complainant to present to the Court within ten days from October 9, 1967, a motion or decree resubmitting this matter to the said Commissioner in Chancery for the sole purpose of pursuing her claim against the defendant, Herman Parker; to which action of the Court the complainant, by counsel, excepted.

And the Court doth further ADJUDGE, ORDER and DECREE that the costs of this proceeding to this date, including a fee of Five Hundred Dollars to J. Hamilton Hening, Commissioner in Chancery, and a fee of One Hundred and Fifty Dollars to James E. Cuddihy, guardian *ad litem* for the infant defendants, Bernice Parker, Jr., be assessed against the complainant.

page 36-A

And the Court doth reserve, etc.

We ask for this:
F. L. Wyche
Attorney for Pioneer Federal Savings
and Loan Association, F. W. Colona,
Trustee, and First and Merchants
Nataional Bank, Executor of the Estate
of T. E. Barnett, deceased, and as
such Trustee.

C. C. Connelly, Jr.
Attorney for the defendant, Herman Parker

Torsten E. Peterson
Attorney for the defendants, Harold A.
Butterworth and John W. Harlan

I have seen this:
Harold Freeman
Attorney for the complainant, Ruby
Parker Bailey, etc.

James E. Cuddihy
Guardian for the infant defendants
Bernice Parker Delane and Bernard
Parker, Jr.

Enter
Ligon Jones, Judge
10/16/67

page 37 }

* * * * *

This cause came on this day again to be heard upon the papers formerly read; and was argued by counsel.

UPON CONSIDERATION WHEREOF, It being represented to the Court that Ruby Parker Bailey and Bernice Parker Delane, parties complainant and defendant herein, are now adults, the Court doth, accordingly ADJUDGE, ORDER and DECREE that this cause henceforth proceed in the name of Ruby Parker Bailey, as complainant, and as to the defendant, Bernice Parker Delane, as an adult.

And it being further represented unto the Court that the defendant, F. W. Colona, Trustee, is now deceased, and that Dorothy T. Colona, whose address is Governors Bridge Road, Davidson, Maryland, has qualified as Executrix of the last will and testament of F. W. Colona, deceased, the Court doth, accordingly, ADJUDGE, ORDER and DECREE that this cause be, and the same is hereby, revived against the personal representative of the said decedent, and that Clerk of this Court do forthwith forward a certified copy of this decree to the said Dorothy T. Colona, Executrix of the last will and testament of F. W. Colona, deceased.

And it further appearing to the Court that by a decree entered herein on the 16th day of October, 1967, the Court overruled the exceptions filed by the complainant to the report of J. Hamilton Hening, Commissioner in Chancery, and affirmed and sustained the said report, the Court, being of opinion that the complainant has failed to prove the allegations contained in the original and supplemental

page 37-A } bills of complaint heretofore filed herein against the defendants, Pioneer Federal Savings and Loan Association, F. W. Colona, Trustee, and First and Merchants National Bank, Administrator of the estate of T. E. Barnett, and as such trustee, DOTH SO DECIDE.

And the Court doth further ADJUDGE, ORDER and DECREE that this cause be, and the same is hereby dismissed as to the defendants, Pioneer Federal Savings and Loan Association, F. W. Colona, Trustee and First and Merchants National Bank, Administrator of the estate of T. E. Barnett, and as such trustee; to all of which actions of the Court the complainant, by counsel, excepted.

I ask for this:
F. L. Wyche
Attorney for Pioneer Federal Savings and
Loan Association, F. W. Colona, Trustee,
and First and Merchants National Bank, etc.

I have seen this:

.....

Attorney for the defendant, Herman Parker

Torsten Peterson
Attorney for the defendants, Harold A. Butterworth
and John W. Harlan

Harold Freeman, seen and objected to
Attorney for the complainant, Ruby Parker Bailey.

James E. Cuddihy
Guardian *ad litem* for the infant defendants,
Bernice Parker Delane and Bernard Parker,
Jr.

Enter This:
Ligon Jones Judge
12/7/67

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NOTICE OF APPEAL

The complainant hereby appeals to the Supreme Court of Appeals of Virginia from a decree entered by the Circuit Court of the City of Hopewell in the above-styled equity suit on December 7, 1967, and the complainant hereby gives notice of appeal to the Supreme Court of Appeals of Virginia from said decree entered on said December 7, 1967.

ASSIGNMENTS OF ERROR

The complainant assigns as error the following actions of the Court:

1. The Court erred in overruling, by a decree entered on October 16, 1967, the exceptions made by the complainant to the report of J. Hamilton Hening, Commissioner in Chancery, filed on the 27th day of April, 1967.

2. The Court erred in affirming and sustaining, by a decree entered on October 16, 1967, the report of J. Hamilton Hening, Commissioner in Chancery, filed on the 27th day of April, 1967.

page 39-A } 3. The Court erred in adjudicating that the complainant failed to prove the allegations contained in the original and supplemental bills of the complaint filed against the defendants, Pioneer Federal Savings and Loan Association, F. W. Colona, Trustee, and First and Merchants National Bank, Administrator of the Estate of T. E. Barnett.

4. The Court erred in adjudicating that the cause be dismissed as to the defendants, Pioneer Federal Savings and Loan Association, F. W. Colona, Trustee, and First and Merchants National Bank, Administrator of the Estate of T. E. Barnett.

5. The Court erred in affirming and sustaining the report of and the holdings and findings of the Commissioner in Chancery that:

a. The whole debt continued in default throughout the entire period the property was held by the Trustee, T. E. Barnett.

b. The deed of trust did not limit the Trustee, T. E. Barnett, to any stipulated period to which he could rent out the property.

c. There was a balance due on the note at the time of foreclosure and at all other times that the Trustee, T. E. Barnett, had possession of the property.

d. There was no fraud or collusion by the Trustee, T. E. Barnett, or his agents, in handling the property.

e. The application of the proceeds received by the Trustee, T. E. Barnett, from the rents on the property were properly applied by the said Trustee and his agent, Pio-
page 39-B } neer Federal Savings and Loan Association, in the payment of the principal indebtedness and interest on the note, taxes, insurance, and repairs, and all expenditures made by the said Trustee and his said agent were proper and in accordance with the deed of trust and statutes applicable thereto, and that his said agent maintained the property properly and without waste.

f. Due efforts were made by the Trustee, T. E. Barnett, and his agent, Pioneer Federal Savings and Loan Association, to collect the rents, current and in default, from the property.

g. The Trustee, F. W. Colona, in making the sale of the property advertised the said property for sale properly and in accordance with the provisions of law.

h. Pioneer Federal Savings and Loan Association received good title to the property from F. W. Colona, Trustee, upon the foreclosure of the property.

i. John W. Harlan and Harold Butterworth, partners trading under the name of Harlan & Butterworth, received a good title to the property by purchase from Pioneer Federal Savings and Loan Association.

j. The legal and equitable interests of Herman Parker, Cleveland Parker, Bernice Parker DeLane, Ruby Parker Bailey, and Bernard Parker, Jr. were extinguished by the foreclosure of the property by the Trustee, F. W. Colona, and that said parties have no legal or equitable
page 39-C } interests in said property.

6. The actions of the Court in affirming and sustaining the report of the Commissioner in Chancery and in adjudicating that the complainant failed to prove the allegations contained in the original and supplemental bills of the complaint were contrary to the law and the evidence, and the Court erred therein.

Ruby Parker Bailey

By Counsel

Harold Freeeman
Perry Building
Hopewell, Virginia

Emanuel Emroch
Emroch, Cowan & Emroch
1119 Central National Bank Building
Richmond, Virginia 23219

Counsel for the Complainant

CERTIFICATE

I hereby certify that a true copy of the foregoing Notice

of Appeal and Assignments of Error was mailed to Frank L. Wyche, Esquire, Prince George County, Virginia, Attorney for Pioneer Federal Savings and Loan Association and First and Merchants National Bank, Administrator of the Estate of T. E. Barnett, deceased; Dorothy T. Colona, Governors Bridge Road, Davidson, Maryland, Executrix of the Last Will and Testament of F. W. Colona, deceased; Torsten E. Peterson, Esquire, State Planters Bank Building, Hopewell, Virginia, Attorney for Harold Butterworth and John Harlan, partners trading as Harlan & Butter-
page 39-D } worth; James Cuddihy, Esquire, State Planters Bank Building, Hopewell, Virginia, Guardian *ad litem* for the infant Bernard Parker, Jr.; C. Hardaway Marks, Esquire, Perry Building, Hopewell, Virginia, Attorney for Cleveland Parker and Herman Parker; and to Bernice Parker DeLane, 2210 Boston Street, Hopewell, Virginia.

Harold Freeman

Filed in Clerk's Office 15 day Dec 1967

J. H. Hening Clerk

* * * * *

Dep.
1964
page 2 }

* * * * *

A transcript of the depositions of L. L. Parker, Sr., and others, taken before V. R. Stevens, a Notary Public in and for the State of Virginia at Large, pursuant to Notice, on the 21st day of October, 1964, at the offices of the Pioneer Savings & Loan Association, Hopewell, Virginia, beginning at 2:00 o'clock P. M.; said depositions being taken in the above-entitled cause now pending and undetermined between the parties.

APPEARANCES:

Mr. Harold Freeman, counsel for the Complainant;

Mr. C. C Connelly, Jr., counsel for Herman Parker;

Mr. F. L. Wyche, counsel for Pioneer Savings & Loan Association, F. W. Colona, Trustee, and First and Merchants National Bank, Admr. of the Estate of T. E. Barnett, and, as such, Trustee;

Mr. James E. Cuddihy, guardian *ad litem* for Bernard Parker, Jr., and Bernice Delane.

Dep.
1964 L. L. PARKER, SR., a witness called on behalf
page 3 } of the Complainant, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Freeman:

Q. Mr. Parker, will you state your name and occupation?

A. L. L. Parker, real estate and insurance in Hopewell.

Q. Do you do any appraising in Hopewell?

A. Yes.

Q. How long have you been an appraiser in the City of Hopewell?

A. Since 1931.

Q. Did you have occasion to appraise a piece of property which at that time was the First Federal Savings and Loan Corporation for a loan to Mr. Bernard Parker?

A. Yes, I did.

Q. What was the appraisal you made at that time on this property and also will you give a description of the property?

A. Well, there was 13 lots, 1 to 13, Block 1, Oak Hill Subdivision, in the City of Hopewell, and there was 8 buildings on the 13 lots, which is called double tenements.
Dep. Each building had two tenements three rooms each
1964 and no bath, only a commode.
page 4 } Q. Did you appraise it?

A. Yes.

Q. What was the appraisal?

A. The appraisal on the land was $1,800. The appraisal on the buildings was $13,200, the 8 buildings.

Q. So the land and the buildings were appraised at $15,000?

A. $15,000.

Q. Mr. Parker, if those buildings had been kept in good

condition or in repair and they were approximately the same condition now as they were then, what would the appraised value be at this time?

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Dep.
1964
page 5 }

* * * * *

A. Well, I don't think I am capable of answering that question as to what it would be worth today because it would depend on certain repairs, what the repairs and how they had been kept up since the time I originally appraised them.

Q. I say assume they were in approximately the same condition as they were at the time you first appraised them, what would the value of the property be?

Mr. Wyche: I make the same objection to this question and any similar question that is asked requiring the witness to place a present value on this property as compared to its value when he first appraised it.

A. Well, may I say this? Since I appraised the properties I have not been in them, and I appraised the properties in May, 1953 and at that time the properties needed some repairs.

Q. But that was a proper appraisal you made at the time?

A. That was the appraisal put on the property at that time, depending upon the location and the condition of the properties.

Dep.
1964
page 6 }

Q. Well, you appraised the land at that time at $1,800?

A. Yes, sir.

Q. For how many lots did you say?

A. There was 13.

Q. 13 lots? What would you say the value of those lots are today?

Mr. Wyche: I object to the question as not being material to the issues involved in this case.

Q. Go ahead and answer, Mr. Parker?

A. Well, your lots 20 feet front by 100 feet deep, and I would say that those lots, based on the advance of values of properties in other sections of Hopewell, as well as in that section, would be approximately $250.00 a lot.

Q. And there were 13 lots?

A. 13 lots and that would make a total of $3,250.00 for the land, and I would like to state also that between the time I appraised it and this time the sewer system has been changed and the street in front of these lots has been graveled, which was not the condition at the time I appraised them.

Q. So that would be the reason you say that it increased in value?

A. That is the reason, with the general increase and with the conditions surrounding the property having been improved, that is the land, not the buildings. I am not speaking of the buildings.

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Dep.
1964
page 8 }

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CROSS EXAMINATION

* * * * *

Dep.
1964
page 9 }

* * * * *

By Mr. Wyche:

Q. Mr. Parker, I hand you an appraisal dated May 26, 1953, apparently signed by you and apparently an appraisal of the property Mr. Freeman has questioned you about and ask you if you can identify that appraisal?

A. Yes, this is my appraisal.

Q. Is that the appraisal you made and delivered to First

Federal Savings and Loan Association, now Pioneer Federal Savings and Loan Association, of the property Mr. Freeman has questioned you about?

A. That is the original copy.

Q. Is there an attachment of any kind to that appraisal?

A. Yes, a photo showing one of the properties and a part of two others.

Q. Does that photograph indicate the appearance of the properties shown on the photograph at the time of the appraisal?

A. It does.

Mr. Freeman: I object to that for the reason that Mr. Parker did not take this picture. He does not know who took the picture and he does not recall, as he said before, what the apartments looked like at the time.

Dep. 1964 page 10

Q. Mr. Parker, can you identify that picture?

A. Yes, that is the property; that is a part of the properties.

Q. Was that photograph attached to the appraisal when you delivered it to First Federal Savings and Loan Association?

A. Yes.

Q. Do you usually attach photographs of properties with your appraisal?

A. Yeah, in recent years.

Q. What is the second attachment to the appraisal?

A. That is just practically the same view of the property.

Q. Now, Mr. Parker, it appears that these photographs attached to the appraisal, one includes a full view of one house and also it is a partial view of two other houses, and the same applies to the second photograph. Will you state whether or not those photographs indicate the general appearance of the properties, the improvements upon Lots 1 to 13, Block 1, Oak Hill Subdivision, at the time you made the appraisal?

A. It does. The properties were all just alike. The only difference probably—I don't recall that—would have been the color they were painted, but the construction, the arrangement and the size were the same.

Dep. 1964 page 11

Q. It appears that these buildings then were frame buildings; is that correct?

A. That's right.

Q. Do you recall the type of roof material?

A. I have go it here. Let me find it. They were frame. Each building had six rooms and one commode. They were heated by space heaters and they had cement piers, wood siding, old style type windows and composition shingle roofs.

Q. Let me ask you this question: Would you state whether or not this type of construction is subject to rapid deterioration?

A. It is.

Q. Did you so state in your appraisal?

A. You want me to read what I did state?

Q. Just answer the question yes or no.

A. Yes, they are. These are properties, unless repaired when needed, can deteriorate very rapidly.

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Dep.
1964
page 12 }

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REDIRECT EXAMINATION

By Mr. Freeman:

Q. Mr. Parker, you stated in your appraisal there that those houses would depreciate quickly if the repairs had not been made on them as they needed?

A. No, if the repairs were not made as needed.

Dep.
1964
page 13 }

Q. That they would depreciate?

A. Yeah.

Q. In other words, then if repairs had been made as needed, they would not depreciate?

A. Well, that is true. It is true of any property.

* * * * *

HERMAN PARKER, one of the defendants, first being duly sworn, deposes and states as follows:

Herman Parker

DIRECT EXAMINATION

By Mr. Freeman:

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Dep.
1964
page 14 }

* * * * *

Q. Do you recall what date your father died now?
A. No, sir, I can't. I mean I know it was in that year, but what date I don't know.

Dep.
1964
page 15 }

Mr. Wyche: Mr. Freeman, could we stipulate that the date is April 5, 1954?
Mr. Freeman: Yes.

* * * * *

Dep.
1964
page 16 }

* * * * *

Q. Your mother died in December of 1954?
A. Yes, sir.
Q. And you took over in January?
A. I became administrator of her estate.
Q. Did you collect the rents on the property?
A. Yes, sir.
Q. Did you collect the rents on the property involved in this suit?

Dep.
1964
page 17 }

A. The one now?
Q. Yes, sir.

* * * * *

Q. Do you recall when Mr. Ford took the property away from you?

Herman Parker

A. I don't exactly recall because I wasn't here. I was away and my wife was making the payments, and they asked Mr. Frank Derski about collecting the rents.

Q. Did someone else collect the rents before Mr. Derski collected them?

A. Mr. Derski and Reverend Perry are the only two.

* * * * *

Dep.
1964
page 18 }

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Q. Did you ask him for the property back?

A. Yes, sir, I asked Mr. Ford and I asked the other lady downstairs for it back, and my wife also checked with her, and she always told my wife that it won't no chance of me getting it back. Mr. Ford can tell you I came in twice—

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Dep.
1964
page 19 }

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CROSS EXAMINATION

By Mr. Wyche:

Q. Herman, you say your father died on April 5, 1954 and your mother died in December, 1954. Did I understand you to say that you qualified as administrator of your mother's estate?

A. I say I qualified as my father's estate.

* * * * *

Dep.
1964 Q. Did money or property come into your hands
page 20 } as administrator?

Herman Parker

A. 16 houses that we are renting now and 27 lots, that was all.

Q. You didn't answer my question. I am not concerned with what real estate your father died seized and possessed of. I am asking you what funds, what money did you have as administrator of your father's estate to pay the debts of your father's estate?

A. I had no money; I used the money.

Q. Whose money?

A. I used the money, the rent money, to pay the bills off.

Q. So that the only funds that you had as administrator of your father's estate were rents collected from real estate; is that right?

A. That's right.

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Dep.
1964
page 25 }

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REDIRECT EXAMINATION

By Mr. Freemen:

Q. Herman, when Mr. Barnett took over did he tell you he was taking over or what did he say to you about taking over?

A. When payments got behind I got a letter in the mail.

Q. Do you have that letter?

A. No, sir, I don't have it.

Q. Did he tell you he was taking over as Trustee or President of the Bank?

A. No, well, I tell you the whole thing. I was not at home and they took—my wife sent me the letter and somebody else was going to collect the rent, I reckon. Didn't they send you—

Dep.
1964
page 26 }

Q. Then you don't know who took over, whether it was as Trustee or as the Bank?

A. No.

Q. All you know it was turned over and he ordered somebody to collect the rents?

A. That's right.

Mary Beckwith

By Mr. Connelly:
Q. At this time where were you, Herman?
A. On the State Farm.

RECROSS EXAMINATION

By Mr. Wyche:
Q. Do you mean that you were serving a sentence for a criminal violation?
A. Something like that, yeah.

By Mr. Freeman:
Q. And you never received a statement of—
A. No, not myself.
Q. —income or disbursements on the estate from Mr. Barnett as Trustee?

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Dep.
1964
page 27 }

* * * * *

MARY BECKWITH, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Freeman:
Q. State your name and occupation.
A. Mary Beckwith, Secretary and Treasurer of Pioneer Savings and Loan Association.
Q. Are you familiar with this deed of trust and the note in this case?
A. Yes, I am.
Q. Do you recall when this note became in default?
A. Yes.
Q. The payments became in default?
A. Yes.
Q. Do you know the dates?

Mary Beckwith

A. I don't know the exact dates. We have all of the information in the file.

Dep. 1964 page 28

Q. Well, look at the file and see what date it was in default.

A. (Examining file) The first payment was applied on October, 1953. Another payment was applied in March, 1954.

Q. You didn't do anything at that time about taking possession of the property, or Mr. Barnett didn't do anything at that time about taking possession?

A. I don't know the exact time the property was taken over.

Q. When did Mr. Barnett or any of the employees of the Bank employ someone to collect the rents on the Parker property in question?

Mr. Wyche: I object to the question as being a leading question. It calls for a yes or no answer. It is not apparent that the witness even knows the answer.

Q. I will ask you this question: Do you know whether or not that someone was employed to collect the rents on the Parker property in question here today?

A. Yes,

Q. Who was employed to collect the rents?

A. Reverend S. L. Perry.

Q. Did Reverend Perry bring in the rents to the Bank?

A. Yes, he did.

Dep. 1964 page 29

Q. Did you give Reverend Perry receipts for these rents?

A. Yes.

Q. Did you make breakdowns on these receipts?

A. Yes, I did.

Q. Do you have copies of those receipts?

A. We have.

Q. Will you let me see those receipts?

A. We have those receipts in a number of receipt books. Reverend Perry has copies of all of the receipts that were issued.

Mr. Freeman: Let me see those receipts, Reverend Perry.

Note: At this point paper writings are tendered Mr. Freeman.

Mary Beckwith

By Mr. Freeman: (Continuing)

Q. I notice that on these receipts that you signed the receipts as Secretary and Treasurer of the First Federal Savings and Loan Association. Do you recall signing them as Treasurer?

A. Yes.

Q. Then Mr. Barnett had you collect these for the bank, these rents?

Mr. Wyche: I object to the question. It calls for a yes or no answer. Let him rephrase the question if he wants to ask the question properly.

Dep. 1964 page 30 } Q. Did you receive these rents from Reverend Perry for the Bank?

A. Yes.

Q. Did Mr. Barnett ever say anything to you as holding this property as Trustee?

A. That was understood.

Q. Well, did he ever tell you that?

A. He told me at the time that he was going to take over under terms of the deed of trust. There was no one handling the property. Mr. Parker was not here.

Q. But you didn't give receipts for him as Trustee under the property?

Mr. Wyche: I object to that type of question. This witness is called as the complainant's witness. She is not subject to cross examination and I object to the type of question that is being asked as being a leading question and as being in the nature of cross examination.

Mr. Freeman: This witness is an employee and agent of the Pioneer Federal Savings and Loan Association.

Mr. Wyche: I don't care who she is.

Mr. Freeman: And I now state to the Court that I now want to question her as an adverse witness, as an adverse party to this proceeding, as well as all of the other employees of the Pioneer Federal Savings and Loan Association.

Dep. 1964 page 31 }

By Mr. Freeman: (Continuing)

Q. But in none of these receipts did you sign them as Trustee for Mr. Barnett? They were all for the First Federal Savings and Loan, or Pioneer?

A. That's right.
Q. Do you recall when this loan was no longer in default?

Mr. Wyche: I object to the question as being immaterial to the issues involved in this proceeding and contrary to the terms of the contract between the parties as contained in the deed of trust itself.

Q. Answer the question.
A. Well, the deed of trust itself was brought up to date several times. Noted on the cards it was brought up to date in September, 1955, again in October.
Q. Miss Beckwith, I noticed in some of these receipts you have made a breakdown as to how much was collected, how much commission was paid and how much you set aside for reserve for repairs. Under whose direction did you make this breakdown?

Dep. 1964 page 32

A. Well, there was a due a commission to Reverend Perry. I deducted that from the rents.
Q. Yes.
A. I made the payments that were due on the deed of trust and credited the rest to a reserve for repairs.
Q. Who decided the amount of money that was to be set aside for repairs as a reserve?
A. We set aside all monies that were left over after making the payments on the loan.
Q. You mean you did that in every instance?
A. I think so.
Q. When you first started making out receipts for rent to Reverend Perry up until September 6, 1955, you didn't set anything aside for reserve?
A. We were trying to bring the loan up to date first.
Q. And then after that on September 16 you set aside $52.15 for reserve. That is on September 16?
A. If that is what the receipt says.
Q. Who decided what amount should be set aside for reserve?
A. Well, Mr. Barnett as Trustee told me to pay Reverend Perry's commission, to make the payments on the loan until it was brought up to date, and any excess was to go into a reserve for repairs.

Mary Beckwith

Q. But you didn't follow those instructions all of the time, did you?

Dep. 1964 page 33 }

A. Well, I believe a time or two a payment was made on the other Bernard Parker property, which was all within the estate and it was delinquent also.

Q. Did you have authority to make payment on the other property from the rents you collected from this property?

A. Well, I don't know what you mean by authority. We had the same authority under that as we had under the other deed of trust. It was in the estate of Bernard Parker, and if one loan was delinquent and we had excess funds, it was applied to that loan.

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Q. So you just took out any figure that you saw fit for reserve?

A. No, Mr. Freeman, the excess as I told you over the rents and the commission was all credited to a reserve for repairs.

Q. Did you have authority to do that?

A. Yes, I had authority.

Q. From whom?

A. From Mr. Barnett as Trustee.

Q. You don't know that he was acting as Trustee, do you?

A. As I recall, he told me he was.

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Dep.

Q. After Mr. Barnett became inactive in the Bank who took charge then of the property?

Mary Beckwith

1964 page 37 } A. Well, I don't know that anyone in particular was in charge. Reverend Perry was still bringing in the rents and we were handling them as I had been directed to before.

Q. Nobody gave you any instructions as to how the thing was to be applied, how the monies were to be applied?

A. There was no change from the original instructions.

Q. There was no change from the original instructions?

A. No.

Q. Did Mr. Colona take over after Mr. Barnett became inactive?

A. I don't understand what you mean, take over in what respect?

Q. Did he act as Trustee? Did he tell you what to do with the rents or did he make up any statements or anything? Was he active at all?

A. No.

Q. When did Mr. Barnett become inactive?

A. Do you remember when Mr. Barnett resigned?

Mr. Ford: I have a note here. I think it was February, 1957.

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By Mr. Freeman:

Q. Miss Beckwith, who handled the funds after Mr. Barnett became inactive?

A. I handled the funds.

Q. Did you handle them for the Bank?

A. Yes.

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Q. You say this deed of trust or note was no longer in default on September 16, 1955, I believe?

Dep. A. It was brought up to date October 7, 1955.

1964 page 39 } Q. Wasn't there a payment in September that brought it up to date?

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Q. So at that time, if the payments had been regularly made, it would no longer be in default?

A. Not as far as payments are concerned, but Mr. Barnett as Trustee felt that the property was depreciating so rapidly that he needed to accumulate some money to protect the Association.

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Dep. 1964 page 42 } REVEREND S. L. PERRY, called as a witness on behalf of the plaintiff, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Freeman:

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Dep. 1964 page 43 }

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Q. Reverend Perry, did you ever get a letter of authorization to collect these rents?

A. Yes, Mr. Barnett, when he first started I think he went with me once or twice, and then he fixed a letter and give me the letter and this book to hold these receipts.

Q. Do you have that letter with you?

A. I think I have a copy of it.

Q. How about the original? You showed me the original sometime ago. Don't you have the original?

Dep. 1964 A. I think I have got it all here. This is the First Federal Savings and Loan Association. This the letter:

page 44 } (Reading) "This is your authority to collect rents from the Bernard Parker estate located in Block 17, including all of the houses thereon belonging to the deceased Parker estate. These collections will be handled on the same basis as on prior collections made by you.

The collections thereon will eventually bring their account to date, but the object will be to create a sinking fund to assist in the repair of the houses located on Oak Street and known as the 'White Line'. Yours very truly (Signed) T. E. Barnett, President."

Q. He does sign that as President?

A. President.

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Dep.
1964
page 46 } FRANCIS DERSKI, a witness introduced on behalf of the complainant, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Freeman:

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1964
page 48 }

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Q. Do you recall whether you ever asked them to see about the delinquent accounts on the rentals of this property?

A. Well, I would just tell them when I went down there, you know, tell them about certain ones not paying and I did my best to collect what I possibly could.

Q. And you called it to their attention?

A. Yes, sir.

Q. Do you recognize this book here?

A. Yes, sir.

Q. Is that the ledger you used in the collection of your rents?

Francis Derski

A. Yes, sir, I would take and post these as they paid and naturally give them a receipt out of my book at home.

Dep. 1964 page 49 }

Q. Do you have what was not collected from the tenants in these houses?

A. I think there is some balance on some of these sheets that could have been collected—I guess you would say sheets, or I guess a balance on some of the tenants that was due. I guess that would be in order.

In other words, some of these sheets here the balance that the people would actually owe that I figure, you know, could be collected. I kept more or less a record of those of some who did not have a regular job, but I did not keep a regular balance due.

Q. Do you mean by that that the money could have been—

A. Some could have been collected by garnishee, yes, sir.

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Dep. 1964 page 50 }

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Q. Look at Apartment 2.

A. That is Jim Hill. It looks like that was all paid to Reverend Perry.

Q. Is there somebody else who lived in No. 2?

A. Yes, Neal Washington, the balance when he moved out $52.00.

Q. Did you know him?

A. Yes, sir, I know him.

Q. Could that have been collected?

A. I would say so because he worked for Allied Chemical.

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Dep. 1964 page 52 }

Q. Apartment No. 7, Walter Ramsay?

A. I have Apartment 7 here as Melvin Hayes.

Q. What was his balance?

A. $510.00.

Q. Was he working?

Francis Derski

A. Yes, sir.
Q. Could that have been collected?
A. I would say that could be collected unless he went bankrupt, yes, sir.
Q. That balance was due on what date, the last date you have there?
A. January 1962.

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1964
page 53 }

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Q. All right, Apartment No. 10?
A. It must be, it is James Rains.
Q. What was his balance?
A. $83.30. I had wrote him several letters at the Hercules Powder Company, but I never did garnishee him.
Q. It could have been collected?
A. Yes, sir.

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1964
page 54 }

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Q. Apartment No. 13, James Adkins?
A. That is $125.00.
Q. Could that have been collected?
A. That could have been collected I would say, working at Fort Lee with the Sanitation Department there.
Q. Apartment No. 14?
A. Edward Andrews, $416.00.
Q. Could that have been collected?
A. Yes, sir, working Nitrogen Division.

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Francis Derski

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1964
page 55 }

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Q. Also in Apartment No. 16 there was an Otis Henry?
A. That is correct, $395.00; he worked at Hercules Powder Company.
Q. Then that could have been collected?
A. I would say so, yes, sir.

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1964
page 57 }

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Q. Did you ever make any propositions to the bank as far as making repairs to the houses?
A. I believe that they more or less let me use my own authority there and I tried to be just as reasonable as I possibly could, which we did. You can probably tell by our ledger we did not charge very much for our repairs there for the amount of work done. I only paid the men a $1.00 an hour.
Q. Did you suggest to them that more repairs should be made?
A. I did, especially so, near the time where it was condemned. Of course, when it was condemned there was a major repair due then to all bath rooms and I would say to floors and walls also.

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1964
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CROSS EXAMINATION

By Mr. Wyche:

Q. Mr. Derski, while you were collecting rents on the properties in question did you use your best efforts to *collects* these things?

A. I sure did, yes, sir, the best I knew how.

Q. You have made statements pertaining to balances of rents due on various and sundry of these apartments. Are those balances the balances that were in the book at the time that you took over or did those balances accrue while you were collecting the rents?

A. Some were due then, yes, sir; it did not accrue all of the time I had it.

Q. You have stated that some of these rents could have been collected?

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1964
page 60 }

A. Yes, sir.

Q. And some could not have been collected and you don't know whether some could have been collected or not?

A. That is true.

Q. You state that some of these people were working at a particular place that might have been garnisheed?

A. Yes, sir.

Q. Do you know what defenses they might have made to a garnishment proceeding and what exceptions they may have been able to establish and things of that kind in order to say what might have been collected or not?

A. No, sir, I don't. I believe on several different occasions I told Mr. Ford that we could probably maybe collect some of these rents, but we never did go to no regular legal decision to do it. Maybe that is my fault; maybe I should have made the decision to do that.

Q. You do know that some warrants were issued in an effort to collect these back rents?

A. I do know some move was made to try to get some of them to move, but I don't remember issuing any warrants to

people who worked at the plants. That is the ones we should have done.

Q. But you don't know the results of any court proceeding?

A. No, sir, I would not, no, sir.

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Dep.
1964
page 63 } DORSEY FORD, called as a witness by Mr. Freeman, first being duly sworn, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Freeman:

Q. State your name and occupation and age please?

A. Dorsey Ford, age 47, President of Pioneer Federal Savings and Loan Association.

Q. Mr. Ford, are you familiar with the deed of trust and the terms thereunder of Bernard Parker?

A. Yes, sir, this is our standard deed of trust which was used on all mortgages at that time.

Q. And you had a right under the terms of the deed of trust in case of default, that is the trustee had the right, to take possession and collect the rents and make repairs and so forth on the property?

A. Yes, sir, I believe that has been brought out.

Q. Did you know that there were infant heirs to Mr. Parker after his death?

A. Yes, yes.

Q. In fact, they have accounts here under their names by order of the Court of some kind, don't they?

A. I believe there is another account.

Dep.
1964
page 64 } Q. And you knew that they were the children of this Bernard Parker, deceased, about the property we are talking about today?

A. Yes.

Q. Do you recall when the payments on this note became in default approximately?

A. Yes.

Q. When?

A. The delinquency became serious in 1955.

Dorsey Ford

Q. Did you have a board meeting or was this matter brought up at a board meeting at that time?

A. Not to my knowledge.

Q. Do you know who made the decision to take possession of the property?

A. As far as I know it was Mr. Barnett because I was not aware of the action that had been taken until some time later.

Q. Were you on the Board of Directors at that time?

A. No, sir.

Q. When were you on the Board of Directors?

A. It was either 1957 or 1958; 1957 I guess.

Q. Had you been working for the bank prior to that?

A. Yes.

Q. When were you first employed by the bank?

A. 1948.

Dep. 1964 page 65

Q. Were you familiar with the people involved in this loan at the time it was made?

A. No, sir.

Q. You don't know what happened when the property was taken over, whether there was a board meeting or upon whose authority it was taken over, if anyone's?

A. I was not aware of the action that was taken until sometime later.

Q. Do you recall when this property was no longer in default after it was taken over by the bank or Trustee?

A. Yes, sir, in checking the records of delinquent loans this was a part of my job at the time: To know which accounts were delinquent and which ones were up to date.

Q. Well, what date was it that this laon was no longer in default?

A. According to the Association records it was September 16, 1955 that the account was brought up to date after having been delinquent for a year or more.

Q. But the bank or the Trustee continued it in possession after that?

A. Yes.

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Dorsey Ford

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Q. But that didn't change the terms of the deed of trust. The terms of the deed of trust in 1956 as shown here is $98.00 per month. Did you have any agreement with anyone or did you speak with anyone to change the terms of the contract?

A. I did not. Mr. Barnett was handling this as the Trustee.

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Q. Did you make any inquiries as to how much it would cost to repair the plumbing?

A. I don't recall.

Q. If you did, you would be the one to know, would you not?

A. Yes, I think that is right.

Q. In handling this property, you handled it for the heirs as well as for the bank, were you not?

A. Yes, that is the reason that Mr. Derski was asked to take care of repairs.

Q. Yes, but you got notice that the city was going to condemn it. Did you do anything about it?

A. I don't remember. It would be in the file if we had any formal written notice.

Q. All right, Mr. Ford, let's go back to 1957 and look at your repairs reserve account. How much did you put in reserves for the year of 1957?

A. $1,734.90 was credited to the repairs account in 1957.

Q. How much did you spend for repairs in the year 1957?

A. $1,116.70.

Q. As of that time you had a little over $600.00 in the reserve account in 1957, did you not?

Dep.

Dorsey Ford

1964 page 78 } A. That's right.
Q. In 1958 how much had you set aside for reserves for the repairs?
A. $1,044.65 was credited to the repairs account.
Q. How much did you spend for repairs?
A. $1,057.15 spent for repairs.
Q. So at the end of 1958 you still had a little over $600.00 in the reserve account?
A. That is correct.
Q. And you had had that for practically two years, had you not?
A. It had accumulated over a two-year period.
Q. But that a little over $600.00 had accumulated for two years?
A. Not for the full two years; the $600.00 balance was there for a year, but for the beginning of 1957 the $600.00 had been accumulated during the year.
Q. But it was well over a year that you had the over $600.00 in reserve?
A. That is correct.
Q. Let's go back to 1955. How much did you spend for repairs in the year 1955?
A. The initial repair was a $500.00 item which was done and paid for in 1955.

Dep. 1964 page 79 } Q. In 1956 how much did you spend for repairs?
A. $2,468.50.
Q. In 1957 I think we mentioned that you spent $1,116.70; is that right?
A. Right.
Q. In 1958 how much did you spend for repairs?
A. $1,057.15.
Q. In 1959 did you spend anything for repairs?
A. No.
Q. In 1960 what was spent for repairs?
A. $143.33 charged to the account and $102.79 spent in cash.
Q. So how much is that total that you spent in 1960 for repairs?
A. $246.12.
Q. In 1961 did you spend anything for repairs?
A. $165.48.
Q. So from 1959 through 1961 your repairs were under $500.00, the amount spent for repairs that is?

Dorsey Ford

A. That's right.

Q. For the four years prior to that you spent close to $5,000?

A. That is correct.

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Q. So at the end of 1957 you had a little over $600.00 in the reserve repairs account, I mean held in reserve?

A. That's right.

Q. And that was also held in 1958, that $600.00 and some odd dollars?

A. Approximately.

Q. And you had an excess in 1958 of a little over $1,000 over and above the payments that were due according to the deed of trust?

A. I believe that is what we said a while back.

Q. Did you use these funds or were these funds put in with the bank's funds? These reserves and these excess payments, naturally, the bank held this money, did they not, or applied it to some of the total mortgage loan, these advances?

A. That's right, the money was put in an account to be held for the estate by the—the account was where the money was handled, rather than through a checking account or cash held aside.

Q. You didn't pay any interest on these funds that you held, these reserve funds, did you?

A. No, no.

Q. The bank used them, I mean as their funds in the meantime?

A. I guess you would say that. This is a theoretical matter. It could have been in the checking account and no return on it

Dep. 1964 page 81

or something of that sort, because repair bills were coming in fairly regularly through all of 1957 and 1958.

Q. But you did have this excess over and above in the reserve account that you didn't use for repairs in the year and a half or two?

A. That's right, it was not needed at that time.

Q. And the bank used it as their money or kept it in their account?

A. Yes.

Q. Do you have the total amount of payments from September of 1955, when the default was caught up, to January of 1962 when it was condemned, up to the last payment made?

A. What is that figure?

Q. From the three months of 1955, when the mortgage was no longer in default, when you say you collected $389.55 I believe, from that time, including that $389.55 to January of 1962, when the last payment was made after the condemnation, how much was that amount?

A. It looks like, including the transfer from the reserve account, repairs account that is, of $322.39, there were rent monies credited to this account of $12,420.72.

Q. I have a figure of $12,325.41, but that doesn't make too much difference there. Now can you tell me at the rate of $98.00 per month, plus the water bills, what the total amount would have been from September of 1955 through January of 1962 would have been?

Dep. 1964 page 82

A. Not without some figuring.

Q. All right.

A. Starting in October—

Q. Start in October. Well, let's do it this way and maybe it will be faster—

A. I have a figure here beginning with July 1st of 1955 when we collected our first rents—

Q. But it was brought up to date in September, so that is the date I am interested in, from that date on.

Let's do it this way, Mr. Ford: The amount due at $98.00 a month for the months of October, November and December, 1955, would be $294.00, plus the water bill of $118.91, or what ever the water bill was. I think you said it was more than that. What was the water bill for that year?

A. $140.44.

Q. Add that to the $294.00 and that will be the amount due with the water bill for those three months.

A. You want just those three months?

Q. Yes, just those at this time.

A. $294.00 plus $140.44 is $434.44.

Q. All right, let's take the year 1956. You know at $98.00 a month what the 12 months would be, plus the water bill. By the way, Mr. Ford, keep these figures aside so you can total them after we get through.

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Note: After an off the record discussion at the request of counsel the taking of the depositions as follows:

Dorsey Ford

By Mr. Freeman: (Continuing)

Q. Mr. Ford, what were the total amounts due under the terms of the deed of trust at $98.00 a month, plus the water bill, from October 1st, 1955 through January of 1962?

A. Total payments at $98.00 per month is $7,448.00. Water bills during this period were paid in the amount of $3,212.76, making a total of $10,660.76. This would not take into account the fact that the taxes increased during this period.

Q. Yes, but I am not asking you that. I will let Mr. Wyche ask you that question.

Since you mentioned taxes, out of these payments you took care of the taxes?

A. That is correct, and the fire insurance premium also.

Q. That's right. Did we ever get the amount that was applied to the mortgage from the time just specified?

A. We had a figure there, yes, $12,420.72.

Q. Less the figure of $10,660.76 I think is the total figure. How much does that leave as an overpayment according to these figures?

A. It looks like $1,759.94.

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page 91 }

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Q. In what capacity did you act after Mr. Barnett became inactive regarding this property?

A. Mr. Barnett had those of us who worked here accept the money for him and apply it to these accounts. When he became inactive I was acting in his behalf. I also had a responsibility in my office with the Association. These arrangements had all been made by him and they simply continued.

Q. You didn't look into it any further than that except what Mr. Barnett had done you continued to do?

A. That is correct.

Q. Did you know as to what status it was, whether you had to make any fiduciary statements or make any accounting to anyone with reference to these monies that were collected?

A. No, sir, no, sir.

Dorsey Ford

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Dep.
1964
page 93 } Q. Did the bank get their money out of this note on the deed of trust?

A. At the time of the foreclosure sale where we bought the property in there was a deficiency of $635.51. We did recover that when the property was sold in February of 1963.

Q. Are those figures based on the rents under the terms of the deed of trust or based on other figures?

A. Figures based on the balance of the account at the time of the sale and the proceeds from that sale.

Q. Were the figures based on a payment of $98.00 a month?

A. Figures were based on actual payments. This is the actual payments together with the charges, interest, taxes, insurance, water; they are the things that determine the balance of the account.

Q. Didn't we say at the end of 1962 that there was an overpayment, or in January, 1962? I will correct myself on that.

A. Yes, there was an overpayment at that time, but there were no payments made from then—there were no further payments made and payments due accrued as long as the property was in the name of the Parker estate.

Dep.
1964
page 94 } Q. How much was their overpayment that we just figured up to the time of the last payment in January, 1962?

A. I think the record shows there $1,759.94.

Q. And according to the records the property was sold in October—

A. That is correct.

Q. —of 1962?

A. That's right.

Q. So at $98.00 a month, according to the deed of trust, in nine months it would be $882.00 due, wouldn't it?

A. That is mathematically correct, yes.

Q. So at that time in 1962 there was no longer bringing any revenue, the property?

A. That's right.

Q. Under the terms of the deed of trust the payments would have been taken care of by the advance, would it not?

A. The amount of payments due for the taxes, the interest, the water and the principal and interest show a total due on the first of August of $15,212.00.

Dorsey Ford

Q. I am not asking you that, Mr. Ford. What was due from February 1st to the date of sale by the Trustee according to the terms of the deed of trust?

A. According to the terms of the deed of trust, as you stated, it would be 10 payments at $98.00 apiece.

Q. But January, 1962 had been paid for.

Dep. 1964 page 95

A. Nine payments would be right, $882.00.

Q. What were the other expenses that you were supposed to pay up until that time?

A. You mean during that period?

Q. During that period from February 1st until the date it was sold?

A. There was a tax bill of $278.93.

Q. Were the taxes reduced that year when the buildings were condemned?

A. No, we protested to the Commissioner of Revenue and they had already been assessed in January and they would not change them.

Q. All right, what other expenses did you have for that year?

A. We had interest accruals for eight months.

Q. How much was that?

A. $109.84.

Q. Were there any other expenses?

A. We had $1.02 late charge in August.

Q. You charged them a late charge even though they had paid in advance?

A. They were not in advance according to our records at this point.

Q. So what is the total of those figures? I get $1,271.78. Is that what you get?

Dep. 1964 page 96

A. $1,271.79, that is what I get.

Q. So if you take that away from the overpayment, according to the deed of trust, that would leave a balance of overpayment of $487.75, would it not?

A. According to those figures, yes.

Q. In that event, if the property was sold when it was not in default, that is so according to those figures?

A. According to those figures that is correct, but we adjusted our payments based on the changes in the taxes and the water bills.

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Dep.
1964
page 97 } November 16, 1964

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Note: The further taking of depositions in the matter as set out in the caption page hereto is now continued on the above date and time, pursuant to agreement of counsel, at the offices of the Pioneer Savings and Loan Association, Hopewell, Virginia.

APPEARANCES

Mr. Harold Freeman, counsel for the Complainant;

Mr. C. C. Connelly, Jr., counsel for Herman Parker;

Mr. F. L. Wyche, counsel for Pioneer Savings and Loan Association, F. W. Colona, Trustee, and First and Merchants National Bank, Administrator of the Estate of T. E. Barnett, and, as such, Trustee;

Mr. James E. Cuddihy, guardian *ad litem* for Bernard Parker, Jr., and Bernice Delane, (marked present).

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DORSEY FORD, having previously been duly sworn, recalled for further examination, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Freeman:

Q. Mr. Ford, I guess you realize you are still under oath?

A. Yes.

Q. Mr. Ford, is the Pioneer Federal and Savings Loan

Dorsey Ford

Association a successor to the First Federal Savings and Loan Association?

A. How do we state that? It was the same association with a change of name, yes.

Dep. 1964 page 99 } Q. Then the Pioneer Federal Savings and Loan Association received all of the assets and assumed all of the liabilities of the First Federal Savings and Loan Association?

A. That's right. There was no change of the organization or successor, but simply a change in the name of the organization by charter amendment.

Q. If you will recall, Mr. Ford, I asked you how much Harlan and Butterworth paid the Pioneer Federal Savings and Loan Association for this property. Do you have that figure at this time?

A. It looks like $3,115.20.

Q. What are the full names of Mr. Butterworth and Mr. Harlan, the purchasers of this property?

A. John W. Harlan and Harold A. Butterworth.

Q. Do you have the date on which this property was purchased by them?

A. The deed is dated the 13th of February, 1963.

Q. Mr. Ford, the Trustees named in the deed of trust are F. W. Colona and T. E. Barnett. What position did Mr. Barnett hold with the Association?

A. At the time that this loan was made when he became a trustee on the property, he was the President of the Association.

Dep. 1964 page 100 } Q. What position did Mr. Colona hold with the Association?

A. He was an attorney for the Association.

Q. Is he still the attorney for the Association?

A. Yes.

Q. You say then Mr. Colona is still employed by the Association?

A. That is correct.

Q. Are there any records in the minutes whereby the Board of Directors directed Mr. Barnett to take possession of this property as trustee?

A. I believe not. This would be a management decision in connection with an account that needed some supervision or attention or where there was delinquency involved.

Q. Did Mr. Barnett as far as you know make the decision

to take possession of this property and collect the rents on the property when it became in default in 1955?

A. Yes, so far as I know.

Q. Did Mr. Barnett set up a separate account as trustee and deposit and disburse the monies collected on this property in this or any other bank?

A. Not to my knowledge, except as in this repairs account as set up with the Association, which we referred to earlier you will remember.

Q. Yes, I recall, but that was set up with the bank in the Association's bank account, was it not?

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A. It was set up on the records of the Association, yes, money being designated for this purpose.

Q. And the monies were deposited to the account of the Pioneer or the First Federal Savings and Loan Association?

A. In that the receipts by the Association were deposited to its account, yes.

Q. As far as you know did Mr. Barnett file income tax returns with the state and federal government as trustee and as required by law while he had possession of this property?

A. I have no knowledge of this.

Q. If he had, you would have known it, wouldn't you?

A. Not necessarily.

Q. There is no record of any other payments on a bank of any kind or collectors of deposits on any other bank, are there?

A. I don't understand your question exactly. There was an administrator of the property, and what other accounts or records the administrator of the estate may have had, I would have no knowledge of it.

Q. No, I am talking about Mr. Barnett himself. You would have knowledge of any accounts, any separate accounts, he would have had for this particular property, would you not?

A. I would have been, yes, I guess I would have been informed on this.

Dep. 1964 page 102

Q. And there was nothing that—

A. Not to my knowledge.

Q. —of record. Mr. Ford, you stated that Mr. Barnett retired as President of the Association in February of 1957. Was he inactive in the Association after that date?

A. He was a Director for a year or more after that.

Q. But was he inactive so far as this property was concerned?

A. No, he was not in the office daily and active in that sense.

Q. Is Mr. Barnett still living?

A. No, he is not.

Q. When did he die?

A. He died January this year, wasn't it? January, 1964, is when he died, that is correct.

Q. Did you state that after Mr. Barnett became inactive you acted in his behalf and that you and those who worked for the Association accepted the money for him and applied it to these accounts?

A. Yes, we continued the arrangement that he had set up.

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Q. That is all I want. Did the Board of Directors of the Association request Mr. Colona as a co-trustee to act in this matter?

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page 105 }

A. They did.

Q. In what respect?

A. At its Board meeting of August 13, 1962, the Board reviewed the delinquent loans, as was customary, and instructed that this property be advertised for sale by foreclosure unless satisfactory arrangements had been made for curing the delinquency by the end of the month of August.

Q. Prior to that time had the Board of Directors requested Mr. Colona to act in this matter?

A. It had not. It had not authorized or directed foreclosure prior to this time.

Q. I didn't ask you that question, Mr. Ford. I asked you if they had directed Mr. Colona to act in any capacity prior to this time?

Dorsey Ford

A. He had not had any special instructions in connecton with this property.

Q. And he did not so act, did he?

A. With no instructions, no, he had not to my knowledge acted.

Q. In other words, after Mr. Barnett became inactive, he didn't act at all in this matter up until the time he was directed to sell the property?

A. Not to my knowledge.

Q. You would be the one who would know?

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Q. Mr. Ford, under the terms of the deed of trust I notice that the payments were $87.83 per month, plus $10.17 estimated for taxes and insurance, totaling $98.00. Did that mean the bank would pay the taxes and insurance and that any monies advanced on these items would be made a part of the debt secured by the deed of trust?

A. Yes.

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page 112 }

Q. Mr. Ford, going back to January, 1962, you stated that according to the terms of the deed of trust and based on the payments of $98.00 per month, the overpayments amounted to $1,759.94 at that time; is that correct?

A. I don't recall now.

Q. Will you check your figures? You testified to that previously.

Mr. Wyche: If it is already in the record, Mr. Freeman, as you have indicated, I object to asking the question again.

Q. Look at these questions and answers at the bottom of page 83 in your previous deposition—

Mr. Wyche: What is the question?

Dorsey Ford

Q. Mr. Ford, going back to January, 1962, you stated that according to the terms of the deed of trust and based on the payments of $98.00 a month the overpayments amount to $1,759.92 at that time?

A. Yes, that was the answer.

Q. You have also stated that $12,420.72 of the rents collected had been applied to the note since September 16, 1955; is that correct?

A. Yes.

Q. Didn't you also inform me that some of the rents collected were not applied to this note or the note under this deed of trust, but to another loan?

A. That is correct.

Dep. 1964 page 113 } Q. Did you have the authority to apply rents collected on this property to another loan?

A. Those credits to the other account, other debts rather of the Parker estate, were made in error.

Q. They were made in error?

A. Yes.

Q. Did you ever correct that error?

A. Apparently no correcting entries were made.

Q. So you allowed those payments to stand on the other loan?

A. That's right.

Q. When did you find out about this error?

A. I don't recall. One of them I discovered in making the recap preparatory to these depositions. The other one was discovered at or near that time.

Q. What was the amount of these payments credited to the other loan?

A. $241.45.

Q. That was the net amount, wasn't it?

A. These were the amounts credited in error.

Q. How much did you collect at that time?

A. On August 30, 1960, when the $143.20 was credited to the wrong account, the gross collection was $182.00, from which the commission of $27.30 was paid and $11.50 had been expended for warrants against tenants who had not paid their rents.

Dep. 1964 page 114 } Q. What was the other total?

A. The other amount was $98.25.

Q. That was the gross amount?

Dorsey Ford

A. That was the amount that was credited in error. I was trying to figure what the collection was at that time. January 31, 1957 the amount of $312.00 was collected. From that commissions of $31.20 were made. $54.55 were credited to the repairs account. $128.00 was credited to this mortgage account and $98.25 was credited to the other Parker rental account, other Parker loan, making this total I just gave you previously.

Q. So that particular credit to the other loan was not done in error, was it?

A. Well, it should have been credited I would say to the repairs account. For some reason or other it was not. Why, I don't know.

Q. You don't know who made the decision to credit to the other loan?

A. No.

Q. These gross collections here of $312.00 and $182.00, was that included in the amount that you gave me for the total amount collected on the property since September 16, 1955?

A. Yes, those were included in the total.

Dep. 1964 page 115

Q. They were included in the total?

A. Yes.

Q. Of course, you didn't have the authority or anyone in the Association did not have the authority to apply the collections of rents on this property to another loan, did they?

A. No. As far as I know it was done in error, and why a correcting entry was not made, I do not know.

Q. Mr. Ford, you also paid out of your reserve for repairs account at the request of you say for the attorney for the administrator to the Internal Revenue Service for income tax levies against Ruby Parker, Bernice Parker and Bernard Parker, Jr., and that these were paid by separate checks in the amount of $31.78, $31.77, $31.78, which totaled $95.33; is that correct?

A. That is correct.

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* * * * *

Q. Mr. Ford, did you offer to return possession of the property to the owners after it was condemned in January of 1962?

A. The owners came in to see what they had to do to rehabilitate the property, to have the condemnation removed, and Mrs. Parker went to the City Engineer's office to determine what these amounts were.

Q. Which Mrs. Parker is that?

A. Mrs. Herman Parker, the administrator's wife.

Q. She was not one of the owners of the property?

A. She had an interest as his wife, I presume, and was going to do something about it, but nothing ever happened.

Q. Did you offer to return the property to them at that time?

A. I don't recall our conversation.

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page 119 }

Q. Did you offer to reimburse the owners for the amount of money in advance up to that time?

A. Our record did not show the account to be in advance.

Q. But you did say they were in advance in January, 1962?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. But they were not in advance October 9, 1962; is that correct?

A. That's right, we didn't offer to return any monies because there was still a debt owing on it in January.

Q. But it was paid in advance that you agreed upon at that time, that is in January, 1962?

A. That's right.

Q. There was a payment in advance? Mr. Ford, you also knew that the Circuit Court of Prince George County had an account in this Association for the infant owners of this property with enough in it to pay the loan in full or to make the necessary repairs at the time it was sold?

Dorsey Ford

A. I knew that there was an account for the infant owners. I did not check the amount of it.

Q. Did you make any attempt to have the Court apply these funds to the payment of the note or to make the necessary repairs on this property?

A. No.

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* * * * *

Q. But after it was no longer in default you felt the same way, that Herman Parker wasn't capable of collecting the rents. You felt that way even then, didn't you?

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1964
page 125

A. Well, Mr. Barnett as trustee took the property over. It was brought up to date and he apparently had no reason to turn it back to him at that time, and so we continued what Mr. Barnett had arranged on.

Q. Did you ever discuss this with Cleveland Parker, the other heir?

A. I don't know Cleveland.

Q. The other adult heir?

A. I don't know him.

Q. You never talked to him about it? Did you discuss it with any of the infant owners? Do you think they were capable of collecting the rents or making the payments on the loan?

A. No, I have never met them.

Q. Mr. Ford, was Mr. Barnett or the Association in possession of this property from early 1955, when it first became in default, until it was bought in by the Pioneer at the trustees' sale?

A. Yes.

Q. Did you make any attempt to repair the property or make it tenantable prior to the time it was condemned?

A. Yes.

Q. You did?

A. Yes.

Q. What did you do?

A. Well, Mr. Derski was making repairs and

Dorsey Ford

Dep. 1964 page 126

Mr. Barnett had overseen repairs prior to that. We spent—I don't know how much it was—we had over $5,000 we spent on repairs.

Q. Yes, but just prior to the condemnation I am talking about.

A. No, this came, you know, this came as a surprise, the condemnation.

Q. You didn't know anything about it?

A. Until it happened.

Q. But you had testified previously that you had notice of it, Mr. Ford.

A. I was notified of the condemnation.

Q. But you told me you had notice that they were going to condemn it prior to that time. You testified to that?

A. Well, it may have been immediately prior to the time. There was no lapse of time in there to speak of.

Q. Did you make any attempt to repair this property or make it tenantable after it was condemned?

A. No—I just don't remember what happened at that time.

Q. But, nevertheless, it was not repaired by the Association or you?

A. No, there were no funds to do it with.

Q. But didn't you say there was an advance payment at the end of January of 1962?

Dep. 1964 page 127

A. Yes.

Q. Couldn't you have used those funds to make some repairs?

A. That wouldn't have put in new windows hardly. That was a very minor amount in comparison to what would have been required to rehabilitate the property.

Q. Did you know how much it would cost to make repairs on this job?

A. No.

Q. Then you don't know whether you had enough to make those repairs or not, do you?

A. No precise estimate was made of it, but with the property being condemned it was obvious it was going to take a substantial sum to rehabilitate it.

Q. But you didn't know how much?

A. No.

Q. Did you know how much had been paid in advance at that time?

A. Yes, we had a record on our ledger card.

Frank W. Colona

Q. Mr. Ford, you were aware that unless repairs were made as needed this property would deteriorate rapidly, weren't you?

A. Yes.

Q. That was brought out by Mr. L. L. Parker, Sr.?

A. Yes.

Dep. 1964 page 128 } Q. Now if the appraised value of this property was $15,000 in May of 1953 and the Association or Pioneer bought it in October, 1962 for $2,500, then it had depreciated $12,500.00, would you say?

Mr. Wyche: I object to that question. It is impossible for any witness to answer that question yes or no. Various factors would enter into what a piece of property brings at a public auction sale, not necessarily depreciation.

Q. Well, let's put it this way, Mr. Ford: The property was sold for $12,500.00 less than it was appraised for in May of 1953, October 9, 1963?

A. You mean 1962?

Q. 1962, I am sorry. That is so, isn't it?

A. Yes.

Q. Didn't the property depreciate in value while in possession of Mr. Barnett or the Association?

A. Yes, the appraisal and auction figures would so indicate, yes.

Q. While Mr. Barnett or the Association retained possession of this property the owners had no way of using the rents and properties to repair this property, did they?

A. No.

Q. That was wholely within the power of the Association. Isn't that so?

A. The Association and/or the trustee, yes.

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Dep. 1964 page 131 } FRANK W. COLONA, first being duly sworn, deposes and states as follows:

Frank W. Colona

DIRECT EXAMINATION

By Mr. Freeman:

Q. State your name and occupation?

A. Frank W. Colona, attorney at bar.

Q. Are you employed by Pioneer Savings and Loan as the attorney for the bank?

A. I am.

Q. How long have you held that position?

A. Since the Association started I believe in 1934.

Q. Do you draft the deeds of trust for the Association?

A. I do.

Q. Did you draft the deed of trust that was made by the First Federal Savings and Loan Association as between you and Mr. Barnett, as trustees, for a loan made to Bernard Parker and his wife?

A. I did.

Mr. Wyche: Mr. Freeman, are you referring to the deed of trust, a copy of which is filed in evidence as Defendant's Exhibit No. 2?

Mr. Freeman: That's right.

Dep. 1964 page 132 } By Mr. Freeman: (Continuing)

Q. Mr. Colona, do you recall that this deed of trust or note was ever in default?

A. I don't keep track of the records in the Association. I am not the bookkeeper.

Q. Do they inform you when the note is in default if they wish to take over property to rent out and collect the rents or make repairs and so forth?

A. As far as I am concerned, this was the only one we have ever had to take over.

Q. This is the only loan they have ever taken over?

A. That is my understanding, and collected rents.

Q. Are you aware that Mr. Barnett took possession of this property in 1955?

A. Yes.

Q. What happened at that time? I mean how did he take possession? What did he do?

A. I don't know.

Q. I beg pardon?

A. I don't know.

Frank W. Colona

Q. You were co-trustee?
A. Yes, either one could act.
Q. And he never informed you how he acted?
A. He may have. I don't recall specifically now. I understood he was going to have it rented out.

Dep. 1964 page 133

Q. I beg your pardon?
A. I understood he was going to have it rented out and the rents collected by rental collection agents.
Q. Do you know anything about when the property was no longer in default in September, 1955?
A. I do not.
Q. Do you recall when Mr. Barnett became inactive in the affairs of the bank?
A. Yes, I remember that.
Q. Did he inform you as to this particular note or deed of trust when he became inactive?
A. Not specifically.
Q. Did he request you to take over as trustee?
A. No, he did not.
Q. Who took over after Mr. Barnett became inactive? It's in the record. I just want you to so state.
A. It's my understanding that he turned it over to the Association, the rents that were collected, but I don't know myself.
Q. So you had nothing to do with this property until you were requested to sell it at public auction by the Association?
A. That's right.
Q. Did you check into the figures so as to see what amount was due, if any?

Dep. 1964 page 134

A. I did not.
Q. The Association directed you to sell it because it was in default and you just went ahead and sold it?
A. They did.
Q. Wasn't it your duty as co-trustee to take care of this property after Mr. Barnett became inactive?
A. If it was being handled by the Association, I thought it was in capable hands.
Q. Didn't you know that the trustees could not delegate their authority to the Association?
A. I had no reason—

Frank W. Colona

Mr. Wyche: I object to that question. It calls for a legal conclusion.

Mr. Freeman: Well, Mr. Colona was one of the trustees and as an attorney he should know whether or not it was done correctly or whether the trustee could have delegated their power to the Association to collect these rents.

I am asking him a simple question.

Mr. Wyche: You are asking him a simple question which calls for an interpretation of the deed of trust and all of the legal questions involved in this proceeding. That is a matter for the Court to decide and not for Mr. Colona.

I object to that type of question.

Dep. 1964 page 135 } By Mr. Freeman: (Continuing)

Q. Mr. Colona, you can go ahead and answer that question.

A. What is the question?

Q. Didn't you know that the trustees could not delegate their power to the Association for the collection of rents and the disbursement of funds on this account?

A. I did not know it was so delegated.

Q. You knew Mr. Barnett was no longer active?

A. Yes.

Q. And you knew that the Association was collecting the rents and making disbursements?

A. That's right.

Mr. Wyche: I want the record to show that I object to this type of question that refers to Mr. Barnett being inactive. Mr. Barnett was trustee under this deed of trust until the day he died, regardless of what his activity or inactivity might have been insofar as this Association is concerned.

Q. (Question read).

A. I have no reason to change his arrangements.

Q. So you didn't have any interest whatsoever in this property until it was sold?

A. That's right.

Dep. 1964 page 136 }

Q. And you knew that the Association was handling it, whether it handled it for themselves or Mr. Barnett?

A. That's right.

Frank W. Colona

Q. And you don't even know whether the loan was in default or not when you sold it?

A. I was informed that it was and when the Board of Directors authorized me to foreclose it because it was in default.

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page 1 }

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Transcript of the depositions of Lillian Belcher and others, when heard on January 14, 1966, before Honorable J. Hamilton Hening, Commissioner in Chancery of the Circuit Court of Hopewell, Virginia, pursuant to Decree of Reference entered herein on the 23rd day of June, 1965, beginning at 10:00 o'clock A. M., in the Law Library of the Circuit Court of Hopewell, Hopewell, Virginia, same being continued to February 7, 1966.

APPEARANCES:

Mr. Harold Freeman, Hopewell, Virginia, Counsel for the Complainant;

Mr. James E. Cuddihy, Hopewell, Virginia, Guardian *ad litem* for Bernice Parker Delane and Bernard Parker, Jr., infants;

Mr. Frank L. Wyche, Prince George, Virginia, Counsel for Defendants Pioneer Federal Savings & Loan Association, F. W. Colona, and First & Merchants National Bank;

Mr. Crawley C. Connelly, Jr., Petersburg, Virginia, Counsel for Herman Parker, a defendant;

Mr. T. E. Peterson, Petersburg, Virginia, Counsel for Defendants Harold A. Butterworth and John W. Harlan.

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1/14/66 .
page 3 }

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LILLIAN BELCHER a witness, called on behalf of the complainant, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Freeman:

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page 6 }

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Q. Do you have copies of the advertisements of that particular property that was put up for sale?
A. Yes, sir.
Q. Do you have typewritten copies?
A. Yes, sir.

Dep.
1/14/66 Mr. Freeman: Before we ask that those be filed
page 7 } in evidence as exhibits, would you like to read the copies of the advertisements, Mr. Wyche?
Mr. Wyche: Yes.

Note: At this point, the above-mentioned copies of the advertisements are handed to Mr. Wyche.

Q. What was the date of the first publication?
A. September 11, 1962.

The Commissioner: Do you have a copy there?
Mr. Freeman: Yes, sir.
The Commissioner: Let me see the copy, please.

Dorsey B. Ford

Note: At this point, copies of the advertisements are handed to the Commissioner.

The Commissioner: State the date of the paper, Mr. Freeman, and read it.

Mr. Freeman: This is a publication of the Hopewell News, on September 11, 1962, headed, "Trustees Sale."

"Pursuant to the provisions of a certain Deed of Trust dated on the 28th day of May, 1953, recorded in Deed Book 55, Page 560, Hopewell Circuit Court, default having occurred in the payment of the indebtedness thereby secured and in the performance of the covenants therein contained, and being required by the Noteholder so to do, the undersigned Trustee will offer for sale at Public Auction, in front of the Courthouse, Virginia, Tuesday, October 9th, 1962, at 11:00 A. M. Eastern Standard Time, the following described property: 'All those certain lots or parcels of land with improvements thereon and appurtenances thereto pertaining, lying and being in the City of Hopewell, Virginia, and being known, numbered and designated as Lots 1 to 13, both inclusive, in Block 1, Oakhill, a plat of which is duly recorded in the Clerk's Office of the Circuit Court of the County of Prince George, Virginia, in Plat Book 6, Page 16.' Reference is hereby made to the above Deed of Trust for a more particular description of the said property. Terms: cash. Bidders' deposit of $200.00 may be required. F. W. Colona, Trustee."

Dep. 1/14/66 page 8

Before we go ahead with the reading of the other publications on this advertisement, I would like to ask the witness this question:

Q. Was the place or city left out of that particular publication?

A. The city was left out of that particular one.

Q. And how about the three following publications?

A. It was corrected. The City of Hopewell was stated in there.

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DORSEY B. FORD, a witness, called by the complainant, first being duly sworn, testified as follows:

Francis Derski

DIRECT EXAMINATION

By Mr. Freeman:

Q. Mr. Ford, do you have a record of when the first rents on the property involved in this case were collected by the bank?

A. Yes, sir.

Q. When was it?

A. The first rents that were collected by the trustee were turned over to the association and credited to the account on July 7, 1955.

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FRANCIS DERSKI, a witness, called by Mr. Wyche for further cross examination, first being duly sworn, testified as follows:

CROSS EXAMINATION

By Mr. Wyche:

Q. You are Mr. Francis Derski?

A. Yes, sir.

Q. Mr. Derski, you testified as a witness for the complainant in this case on October 21, 1964, do you recall that?

A. Yes, sir.

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page 54 }

Q. Mr. Derski, how old are you?

A. Forty-eight.

Q. Where do you live?

A. 1202 Arlington Road, Hopewell, Virginia.

Q. Is the area in which you live generally known as Arlington Heights area?

A. Yes, sir.

Q. That area was formerly in Prince George County and is now within the city limits of Hopewell, is that correct?

A. Yes, sir.

Q. Had you lived there practically all your life?

Francis Derski

A. Yes, sir.

Q. I believe your mother and father lived there many years and operated a store, is that correct?

A. Yes, sir.

Q. Mr. Derski, what experience have you and your family had over the years in owning, building, repairing, collecting rents and so forth, in connection with Negro rental property in that area? Just what experience have you and your family had over the years in connection with Negro rental property in the Arlington Heights area?

A. You mean collecting rents on buildings?

Q. By owning property and—

A. We own a gang of houses there.

Q. How many?

A. Possibly eighty.

Dep. 1/14/66 page 56 } Q. Mr. Derski, did you know the Bernard Parker property consisting of Lots 1 to 13, Block 1, Oakhill Subdivision, generally known according to this testimony as the white line?

A. Yes, sir.

Q. Did you know this property when Bernard Parker owned it, when he was living?

A. Yes, sir.

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Q. How would you classify this property with reference to good, medium and poor?

A. I would classify that as poor rental property.

Q. I would like to ask you this question: If it was in your opinion poor rental property, what type of tenants would it attract?

Dep. 1/14/66 page 58 } A. Well, I don't want to make anybody feel bad, but it would attract what you may call a lower class of people.

Q. I will ask you this question: From your experience that you have related, what in your opinion would

be the normal percentage of rents that might be expected to be collected from that class of property occupied by the class of tenants that you have described?

A. I would guess, as a rough estimate, maybe eighty per cent, something like that. Maybe eighty per cent collectable, if you'd get that much. You would never get one hundred per cent from the type of people that live there.

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REDIRECT EXAMINATION

By Mr. Freeman:

* * * * *

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* * * * *

Q. In 1956, what was the condition of the houses?

A. I cannot give it to you year by year. Like I said a few minutes ago, they were gradually deteriorating after Mr. Parker died. The houses gradually went down.

Q. Did you make an inspection?

A. I did not no more than by looking at them. That is all. Anyway, the way the houses were with the plumbing facilities and all, you could see that it was impossible to keep them from going to pieces.

* * * * *

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page 62 }

* * * * *

By the Commissioner:

Q. Let me ask you one question, Mr. Derski, that I am as Commissioner interested in. I know of your experience and

your family's experience in this property, and I know you know the valuation and so forth. It appears from the record that in October of 1962, this property was advertised for foreclosure on a deed of trust.

Dep. 1/14/66 page 63 }

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir, I remember it.

Q. What I would like to know, and the Court would like to know, what was the condition of that property in October of 1962?

A. It was in such a condition that I would not even give what it brought, I think it was $3,400.00, I believe. That is all. That was the condition right there, because if I thought it was worth that, I would have bought it myself.

* * * * *

Dep. 1/14/66 page 66 }

DORSEY B. FORD, a witness, called by the complainant, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Freeman:

* * * * *

Dep. 1/14/66 page 75 }

* * * * *

Q. The deed of trust on record here in the Court House shows that the property was purchased from Mr. T. E. Barnett. It does not say what date, but Mr. T. E. Barnett was the prior owner of this property. Did you know that?

A. Yes.

* * * * *

Dep.
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page 1 }

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FURTHER DEPOSITIONS ON BEHALF OF COMPLAINANTS

Further depositions on behalf of complainants taken pursuant to agreement of counsel and as also reflected in the transcript of the previous taking, before Honorable J. Hamilton Hening, Commissioner in Chancery of the Circuit Court of the City of Hopewell, Virginia, beginning at 2:00 o'clock p. m. on February 7, 1966, in the Law Library of the Circuit Court of said Circuit Court; said depositions taken to be read as further evidence on behalf of complainants herein.

Counsel for the Complainants:
Harold Freeman, Esquire
255 Broadway
Hopewell, Virginia.

Dep.
2/7/66
page 2 } Counsel for Defendants Harold A. Butterworth and John W. Harlan:
T. E. Peterson, Esquire
Hopewell, Virginia.

Counsel for Pioneer Federal Savings & Loan Association and F. W. Colona, Trustee, and
First & Merchants National Bank
Frank L. Wyche, Esquire,
Prince George, Virginia.

Guardian *Ad Litem* for Bernard Parker, Jr., and Bernice Delane:
James E. Cuddihy, Esquire
Hopewell, Virginia.

Dep.
2/7/66
page 4 } DORSEY B. FORD, having been previously duly sworn by the Commissioner, called for a continuation of examination by counsel for the complainants, testified further as follows:

Dorsey B. Ford

DIRECT EXAMINATION

By Mr. Freeman:

* * * * *

Dep.
2/7/66
page 8 }

* * * * *

Q. Mr. Ford, in Defendant Exhibit 8, the same one I am talking about now again, in the statement of rents collected and disbursements, January 1 to December 1, 1962, it is stated that on October 9, 1962, the Deed of Trust note was delinquent $364.70. Is that correct?

Dep.
2/7/66
page 9 }

A. You mean—

Q. Do you see that on there, Mr. Ford?

A. I do not know what you are talking about.

Q. The statement that you filed.

Mr. Wyche: Give him the whole account, the whole exhibit.

Q. Is that correct?

A. (Looking at paper writing). That is correct.

Q. Is that delinquency based on the payments increased by Pioneer on its own volition on October 1, 1955, to one twenty eight per month, and October 1, 1957, to $160.00 per month?

A. No, that is based on the computation made from an amortization table of the number of payments that should have been made against what were actually made in the original note. It called for a payment of $87.83 for principal and interest, this is the basis of that.

Q. Do you mean it is based on $98.00 a month?

A. No, on the principal and interest portion, regardless of whether the miscellaneous charge itself was changed or was enough or not enough.

Q. I notice on October 1, 1955, you have a notation on that same page there that we are talking about—no, I beg your pardon. That is on enclosure two of the same exhibit, that you have effective October 1,

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2/7/66

page 10 } 1955, monthly payment increased to $128.00 to provide $40.00 a month for increased real estate taxes, fire insurance, and to enable Pioneer to pay water bills.

And then again in column number four, monthly payments increased to $160.00 effective October 1, 1957, due to increase in real estate taxes and water bills.

Did you change those payments again after you had increased the payments those two times?

A. No. During the course of this loan when we were collecting rents and from this repairs and monthly payments and so forth were being made, we attempted to keep up with the changes in the taxes and fire insurance and water bill requirements.

However, in 1962 when the payments stopped being made because no more rents were being collected, in order to ascertain an accurate account of what the balance should be, we referred then to a standard amortization table which uses the principal and interest only, and based on this type of calculation where you are using the principal-interest portion of the payment only times the number of payments that should now have been made, the payment shows you what the balance should now be, and when the account became more than three months delinquent, became delinquent in roughly July of '62—we based our calculation of the status of the account on this type of calculation which I believe would hold up in any instance, because we have eliminated any estimates of taxes and insurance. We have reverted to a fewer principal and interest calculation.

Dep. 2/7/66 page 11 }

Q. You mean by that you changed from the $98.00 a month, and changed from the $128.00 a month and you changed from $160.00 a month back to another way of calculation?

A. We went back to the original principal and interest requirement as set up in the Deed of Trust.

Q. What time did you start this new calculation, or the calculation which you based the figures on?

A. This was done in 1962.

Q. When did this calculation commence, this new calculation that you are speaking about?

A. This goes back to the original date of the loan.

Q. From 1953?

A. 1963 when the loan—

Q. Don't you mean 1953?

Dorsey B. Ford

A. 1953, yes. When the loan was originally made.

Q. Then you changed the terms of the Deed of Trust completely?

A. No, sir, no, sir.

Dep. 2/7/66 page 12 } Q. You did not?

A. No, sir. We referred back to the original terms of the Deed of Trust in the principal and interest requirement, which is set up in those documents.

Q. But it wasn't set up on the Deed of Trust?

A. Yes.

Q. You mean that calculation was set up in the Deed of Trust?

A. That payment requirement for principal and interest is set up in the Deed of Trust.

If you will refer to the exhibit, I think you will find it.

Q. Please refer to the exhibits and show me where there is a change, or any change could be made in the terms of the Deed of Trust.

Mr. Wyche: I object to that question, Mr. Commissioner. The Deed of Trust speaks for itself. The witness now has testified as to this. He has testified that the Deed of Trust requires, or sets forth, a payment of X-dollars per month, including principal and interest on an amortized basis, and that when the rent account terminated in 1962 so that there were no payments to be made from the rent account back to repairs, taxes, insurance and things of that kind, they figure on an amortized basis the amount remaining due on the note at that time on the basis of the note and the Deed of Trust itself.

Dep. 2/7/66 page 13 } He hasn't changed anything, according to his testimony, and the Deed of Trust speaks for itself.

The account filed showing the distribution of the rent account funds is in evidence.

The account, or the credit to the note, is in evidence, and there is no conflict between the several accounts and the deed of trust itself.

Now, I do object to this type of questioning when the record speaks for itself.

The Commissioner: Sustained.

Mr. Freeman: I don't agree the record speaks for itself.

Dorsey B. Ford

Q. If Pioneer had applied the payments after September 16, 1955, and agreed upon in the Deed of Trust, would there have been any delinquency on October 9, 1962?

A. Impossible to say, because the rentals would not have continued to come in if repairs had not been made under the direction of the Trustee.

Q. But you paid for all of the repairs out of the money you collected, didn't you?

A. Yes.

* * * * *

Dep.
2/7/66
page 21 }

* * * * *

Q. This Exhibit 8, the same exhibit which we have been speaking about before, the statement from January 1 to December 31, 1962:

Dep. 2/7/66 page 22 } You have added $1,079.36 Trustee's commission to the so-called total deficiency.

Has any demand been made, or has Pioneer paid this money to the Trustee or his estate?

A. No, no demand was made, has been made of that.

Q. Why do you add it to the total deficiency?

A. If the Trustee had charged the allowable five percent commission on rents collected, the monies available from rents for payments would have been less than they were substantially, thus increasing making a larger delinquency.

Q. Who put this in the exhibit, who is the one that said $1,070.38 should go into the exhibit?

Mr. Wyche: Mr. Commissioner, that statement on there is apparently in the nature of a memo. It is not reflected in the account, and it is simply a statement that if the Trustee had charged these commissions, which the Trustee apparently did not do, the delinquency would have been greater than it actually was.

That is all the statement amounts to.

Dorsey B. Ford

By the Commissioner:
Q. Did the Trustee charge these commissions?
A. No, did not charge any commission.

Dep.
2/7/66 The Commissioner: All right.
page 23 } The Witness: Even though it was allowable.

By Mr. Freeman: (Continued)
Q. As a matter of fact, this $1,070.38 added to the so-called total deficiency was just filed prior to or on January 14, 1965?
A. As of the preparation of this exhibit.
Q. In the same statement that we have been talking about I notice you have charged $278.93 taxes for the year 1962, and the property was in the name of the Pioneer from October 10 to December 31, 1962.
Who should pay for that period of time taxes?
A. When the tax bill was recieved I guess it was in June of 1962, it was assessed as of January 1.
We protested to the Commissioner of Revenue being billed for that amount of taxes on this property.
In the meantime it had been condemned, and we thought that wasn't right.
The Commissioner said, the Commissioner of Account said, Commissioner of Revenue, I mean, said she was powerless to change it as of January 31, as of that assessment. The tax was paid when the property was in the name of the Parker estate.

By the Commissioner:
Q. Is that a full year's statement, payment?
Dep. A. Yes, sir.
2/7/66 Q. Was any credit given for the balance of the
page 24 } year?
A. No. This was less than they show, less than the third of the year remaining at that time.

By Mr. Freeman: (Continued)
Q. So that was an overcharge as far as this exhibit was concerned?
A. In a normal transfer in October there would have been a proration of taxes between the buyer and the seller.

Dorsey B. Ford

Q. Wasn't this a normal transfer?

A. No.

Q. It wasn't a normal transfer?

A. No.

Q. What was wrong with this transfer?

A. It wasn't anything wrong with it. It wasn't a normal buy-sell transaction.

Q. What kind of transaction was it?

A. Foreclosure sale.

Q. Isn't this a buyer—

A. Yes, but—

Q. Isn't this a buyer-seller transaction?

Dep. 2/7/66 page 25

A. Yes, it is, but it is—(Pause)—the Trustee didn't prorate any taxes. I think it was an oversight perhaps at that time.

Q. That was an error then. They should have been credited with that portion of the taxes?

A. I do not know.

Q. Mr. Ford, when you were elected president of Pioneer Federal in February of 1957, you stated that Mr. Barnette became inactive and that Pioneer acted in his behalf in the management for this property, is that correct?

A. He wasn't any longer active daily in the office. He was in and out of the office from time to time for some time after that.

Q. Did you or anybody else in the bank consult him with reference to this property?

A. Yes, from time to time.

Q. Did he leave you any orders or make any directions with reference to this property?

A. No specific direction changing the orders or anything of that sort.

Q. So the employees and yourself, really, managed the property after that, when you became president of the bank in 1957, isn't that so?

A. In effect continued his instructions.

Q. Yes. You were acting for him?

A. That is right.

* * * * *

Dorsey B. Ford

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page 33 }

* * * * *

A. The account was in advance at the end of several of those years. However, after the property was condemned, you go back to the original terms of the Deed of Trust, and the principal and interest requirement, and we then figure it by the amortization table, the schedule of payments due caught up with the amounts and exceeded the amounts paid in June of 1962.

Q. You substituted this schedule for the payments in the Deed of Trust?

A. That is simply a means of computing, and we use the table that shows this amount of principal and interest due and what should have been paid.

Q. And by that—

A. And thus taking out our computation any estimate for taxes and fire insurance or for water bills, or for repairs.

Dep.
2/7/66
page 34 }

This excludes those from the computation, coming back to the original basis, principal and interest requirement.

By the Commissioner:

Q. You say in June of 1962 you had a surplus?

A. No. At the end of several years there was, the account was in advance at the end of 1956, 57, 58, 59, 60 and 61. But if you remember from the evidence the last collection of rent was paid in I believe January of 1962, but a payment still came due every month.

So that the advance got canceled out by the additional payments falling due.

* * * * *

Dep.
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page 58 }

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HAROLD A. BUTTERWORTH, a witness of lawful age, being called as a witness by counsel for the complainants, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Freeman:

Q. Are you one of the owners, title owners of lots 1 through 13, block 1, Oakhill Subdivision in Hopewell, Virginia?

A. If this is commonly referred to as "White Line", I don't have the legal description, but I believe that is right.

Q. You mean by that you wouldn't know it by legal description?

A. I would have to check. I don't recall.

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page 59 }

Q. If you saw that title in the paper, lots 1 through 13, would you, without a name to it, or any names to it, you wouldn't know what property it was, would you?

A. That is a fair assumption.

Q. Is it the property involved in this suit which Pioneer states that they sold to you, it belonged to the Parker estate previous to you.

Do you recall that transaction?

Mr. Peterson: Let's complete the question. Previous to what?

Q. That you bought from Pioneer in February of 1962?

A. I don't have the dates with me. Maybe Mr. Harlan does.

Q. This property consists of eight duplex houses, sixteen apartments, and it is in the record that you purchased it from Pioneer on February 13, 1963, I believe?

A. Yes.

Q. Do you recall that purchase?

A. Yes, sir.

Q. Did you have an attorney examine the title records on this property?

A. Mr. Freeman, not to be evasive at all with you, but Mr. Harlan dealt with this more than I did. Perhaps he could better answer that question than I. I don't recall.

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Dep.
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page 66 }

* * * * *

JOHN W. HARLAN, a witness of lawful age, called by counsel for the complainant, first being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Freeman:

Q. Were you the one that did the negotiating with Pioneer on this property for you and Mr. Butterworth?

A. As I recall I was.

Q. Did you ask him about the property or did he ask you about it, buying the property, do you recall?

A. I do not remember.

Q. You don't know whether he approached you or you approached him?

A. No, I don't recall how I learned it, disposition of it for sale.

Q. Did he ask you a price for it?

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page 67 }

A. That I don't recall, either. I know what I paid for it, but I don't know how I arrived at the figure, whether I offered him that much or whether he offered it to me at that price, I just don't know.

Q. Did he explain to you what property it was, how they happened to have it?

A. No. He didn't tell me that. They just said they had it.

Q. Didn't tell you any of the details?

A. No.

Q. How much did you pay for it.

A. (Producing paper writing). $3,158.36.

Q. And you don't know how you arrived at that particular odd figure?

John W. Harlan

A. No, not at this time, I don't.

Q. Wasn't there some discussion at the time you purchased it to get this figure?

A. I am sure that there was. I just don't remember that far back.

Q. I was just wondering about that, $3,158.36 is a very odd price to pay for a piece of property.

There must have been some discussion in order to get to that price. It usually would be $3,500.00, or $3,250.00. I was just wondering if you recall any incidents which created the price of $3,158.30?

A. No, I cannot at this time. I do not know how it was arrived at.

Dep. 2/7/66 page 68 } Q. You knew it was a piece of property that Pioneer had foreclosed on, did you not?

A. No, I didn't know that they had foreclosed on it. I knew I was buying it from Pioneer, but I didn't know how they came into possession of it.

Q. You didn't know how they acquired the property?

A. No.

Q. Did you have an attorney check the title to this property before you purchased it?

A. As I recall we did not.

Q. You bought it from Pioneer without checking the title?

A. As I recall that is right.

* * * * *

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Mr. Wyche: Have you closed your evidence now?

Mr. Freeman: My case is closed, unless I have some rebuttal.

And further this deponent saith not.

SIGNATURE WAIVED BY AGREEMENT OF COUNSEL.

Dep.
2/7/66
page 72 } Mr. Peterson: If Your Honor please, I would like to make a motion that the evidence as to Mr. Butterworth and Mr. Harlan be struck. There is nothing that they have introduced that has been introduced on behalf of complainants to show it was not a *bona fide* purchase provided.

The Commissioner: Anything to connect it up with, Mr. Freeman?

Mr. Freeman: In answer to that objection, the record itself will indicate that even though they may have been purchasers of value, it doesn't mean that the title remained with Messrs. Butterworth and Harlan, if there was gross negligence, fraud or deceit on the part of the Trustee, or the Pioneer, then they could not sell or convey good title, and Messrs. Butterworth and Harlan only received that title that was in the Trustee, and Pioneer, at the time of purchase by them.

Mr. Peterson: If Your Honor please, there has been no showing of fraud and deceit from the evidence that I have heard here, that has been presented to this Court.

I renew my motion that evidence as to Harlan and Butterworth be stricken.

* * * * *

Dep.
5/20/66
page 2 }

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A transcript of the deposition of D. B. Ford, taken before Honorable J. Hamilton Hening, a Commissioner in Chancery, pursuant to agreement of counsel, on the 20th day of May, 1966, at the Municipal Building, Hopewell, Virginia, beginning at 10:00 o'clock A. M.; said deposition to be read as evidence in the above-entitled cause now pending and undetermined between the parties.

APPEARANCES:

Mr. Harold Freeman, counsel for the Complainant;

Mr. F. L. Wyche, counsel for Pioneer Federal Savings & Loan Association, F. W. Colona, Trustee, and First and Merchants National Bank;

Mr. James E. Cuddihy, guardian *ad litem* for Bernard Parker, Jr., and Bernice Parker Delane.

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page 21 }

* * * * *

DORSEY B. FORD, having previously been duly sworn, a witness of lawful age, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Wyche:

Q. Will you please state your name?

A. Dorsey B. Ford.

Q. Mr. Ford, I believe you have testified as an adverse witness in this proceeding on several occasions before?

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5/20/66
page 22 }

A. Yes.

Q. And you have been sworn before?

A. That is correct.

Q. Mr. Ford, what is your present occupation or position?

A. I am President of the Pioneer Federal Savings and Loan Association of Hopewell.

Q. How long have you been President?

A. Since 1957 I believe.

Q. How long have you been employed in any capacity by Pioneer Federal or its predecessor in name, First Federal Savings and Loan Association?

A. I first went to work at Pioneer Federal in March of 1948, which would be 18 years plus.

Q. In what capacity have you worked at Pioneer Federal, or First Federal in the beginning?

A. I came in initially to understudy Mr. Barnett in that the Association was attempting to provide management succession. I worked under him and was then named Executive Vice President, and Mr. Barnett retired as President and I was named that position.

Dorsey B. Ford

Q. You have been continuously employed by this Association by these number of years?

Dep. 5/20/66 page 23

A. That is correct, except for approximately one year when I was recalled to military duty, but I was still technically in the employ of the Association in military leave.

Q. In your employment what has been the nature of your supervision of loans and accounts, of delinquent accounts and things of that kind?

A. Well, at various times I have taken loan applications. At one time I was in charge of the delinquent loan accounts. More recently others have had these duties and my responsibility has been more of a supervisory nature.

Q. I hand you a certified copy of the Bernard Parker Deed of Trust which has been filed in evidence as Defendant's Exhibit No. 2 and which has been frequently referred to in the depositions of the complainant and ask you if at the time of the execution of this Deed of Trust you were familiar with the fact that a loan was made to Bernard Parker, secured by this Deed of Trust conveying Lots 1 to 13, Block 1, Oakhill Subdivision?

A. Yes, I was with the Association at that time and was familiar with the fact.

Q. Now the evidence in this proceeding, Mr. Ford, on numerous occasions has indicated that this loan became in default in 1955. Is that a fact or not?

Dep. 5/20/66 page 24

A. Yes, the records of the Association, I believe the loan account which is filed as Exhibit, which I do not know the number, show that the account was in default at that time.

Q. It further appears from the evidence in this proceeding that Bernard Parker died on April 5, 1954, which was about eleven months after this Deed of Trust was executed and that Herman Parker qualified as administrator of his estate. Are you familiar with these facts?

A. This is my understanding, yes.

Q. It further appears from the testimony in this case that Bernard Parker died intestate, leaving his wife surviving him, who died in the same year, I believe in December, and five children, the complainant, Ruby Parker Bailey, and the defendants, Herman Parker, Cleveland Parker, Bernice Parker Delane and Bernard Parker, Jr., that is his wife and five children. Are you familiar with that situation?

Dorsey B. Ford

A. Yes, sir.

Q. Mr. Ford, were any payments made by Herman Parker as the administrator of his father's estate on this Deed of Trust note?

A. Yes, regular payments were made after Bernard Parker's death, reasonably regular, during 1954 and then no payment was made in January, February—this is shown on the exhibit. A payment of more than one scheduled payment was made in March, not quite two, however, to catch up. No payments were made in April, May or June.

Dep.
5/20/66 By the Commissioner:
page 25 } Q. Is this in 1955?
A. Yes, this is in 1955.

By Mr. Wyche: (Continuing)

Q. The evidence in this case is to the effect that the delinquency on this note became serious along about April, May or June of 1965. Is that correct?

A. That is correct, yes.

Q. Will you state to the Commissioner what, if anything, was done by either of the Trustees named in the Deed of Trust when the delinquency on this Bernard Parker Deed of Trust note became serious, as the evidence indicated?

A. Well, in May of 1955 the account was more than three months delinquent and no payment was made that month and no payment was made in June either. This is getting pretty serious, and Mr. Barnett as Trustee under the Deed of Trust, at the request of the Association, declared the note in default and he took possession by taking over the collection of rents.

I believe our previous testimony shows that he employed Reverend Perry and took him around to all of the properties to show him who to collect from and so on, so that he would know who to collect from and the amounts and so on.

By the Commissioner:
Dep. Q. Do your records disclose when this was that
5/20/66 the note was declared to be in default and pos-
page 26 } session was taken over of the property?
A. I don't have any writing of that except that Mr. Barnett gave Reverend Perry a letter instructing him and authorizing him to collect the rents. I believe he had that when he testified.

Q. That letter was filed, wasn't it?
A. Yes, I think so.

Mr. Wyche: The evidence discloses, if it please the Court, that it was on or about July 1st of 1955.

A. (Continuing) Our records show that all of the collections of rent beginning July 1st were made by Reverend Perry.

By Mr. Wyche: (Continuing)
Q. This was subsequently followed by employment of Mr. Francis Derski for this purpose I believe?
A. This was sometime later.
Q. Now you have been questioned extensively by Mr. Freeman as an adverse witness in this matter, Mr. Ford, for the apparent purpose of indicating from you that this property was taken over, possession of it, by Pioneer Federal Savings and Loan Association rather than T. E. Barnett, Trustee. Will you state to the Court whether or not Pioneer Federal took possession of this property or T. E. Barnett took possession, as you have stated, as Trustee?

Dep. 5/20/66 page 27

A. Mr. Barnett took possession as Trustee of the property.
Q. Then in what capacity did the employees or people working in the office of Pioneer Federal act in this matter?
A. Well, Mr. Barnett did not handle the monies, as such, but he gave instructions so that when Reverend Perry brought his money in, somebody could give him a receipt for it, and primarily Mrs. Beckwith was receiving those monies and giving Perry a receipt and disbursing, distributing them in accordance with Mr. Barnett's instructions.
Q. I believe the evidence discloses that at that time Mr. Barnett was President of Pioneer Federal?
A. That's right.
Q. And he continued as President until his retirement several years later; is that correct?
A. That is correct.
Q. I believe he died in January of 1964, is that right?
A. 1964, yes, sir. Actually he continued on the Board of Directors until his death.
Q. Now, Mr. Ford, you received a letter from Mr. Hening, the Commissioner in Chancery in this matter,

Dorsey B. Ford

Dep. 5/20/66 page 28 } asking you to give certain information, and you also had served upon you a subpoena *duces tecum* requiring you to file an account of all of the transactions, collections and disbursements of funds in connection with the Bernard Parker account; is that correct?

A. That is correct.

Q. And I believe that the response that you made to the Commissioner's letter and the account prepared in accordance with the directions of the subpoena *duces tecum* were filed in evidence as Exhibit No. 8, that is Defendant's Exhibit No. 8. The letter you have filed as a part of Defendant's Exhibit No. 8 is addressed to Mr. J. Hamilton Hening, Special Commissioner—it should have been Commissioner in Chancery, of course—under date of December 14, 1965 and has a reference at the top "Bailey versus Parker, et als, Lots 1 to 13, Block 1, Oakhill Subdivision." This letter reads as follows: "In response to your letter of September 3, 1965, the following information is furnished herewith as requested: (1) Mr. T. E. Barnett took possession of the subject property as Trustee under the Deed of Trust on or about July 1, 1955 and began collecting the rents.

(2) As of July 1, 1955, $619.00, representing in excess of six monthly payments were due and unpaid. No payment whatever was made in the months of January, February, April, May and June, 1955.

Dep. 5/20/66 page 29 } (3) An account of the rents collected and disbursed from July 1, 1955 through September 16, 1955 is attached hereto as Enclosure I.

(4) An accounting of the rents collected and the disbursements made from September 17, 1955 through December 31, 1955 is attached as an Enclosure II and II-a. An annual collecting of the rents from January 1, 1956 through December 31, 1961 is attached as Enclosures III through VIII-a. Very truly yours, Dorsey B. Ford, President."

You wrote that letter I assume?

A. Yes, sir.

Q. Now this exhibit further states, "The Trustee made no rent collections and expended no funds on the subject property between March 1, 1955 and June 30, 1955, since the property was then in the possession of the owners. Mr. T. E. Barnett, Trustee under the Deed of Trust, took possession of the property on or about July 1, 1955."

Dorsey B. Ford

Then the next page of the exhibit, I is entitled "Rents collected and disbursed July 1, 1955 through September 16, 1955." This enclosure I indicates a total of $963.50 rents collected July 1 to September 16; $96.35 paid S. L. Perry, commissions on collections; $815.00 credited to M. L. -3357. What is M. L. -3357?

Dep. 5/20/66 page 30

A. That is the mortgage account number for this particular Deed of Trust.

Q. The Bernard Parker Deed of Trust note?

A. Yes.

Q. Then repairs account $52.15. Enclosure No. II covers a period of rents collected and disbursed from October 3, 1955 through December 30, 1955?

A. That is correct, since the heading is September 17, but there were no collections between that—

Q. Until October 3?

A. Yes, sir.

Q. This shows rents collected in the amount of $1,070.00, commissions to Perry $107.00, credits to mortgage loan account M. L. -3357 in the amount of $389.55, repairs account $473.45.

Now without going into detail as to each of these enclosures and each total for the years 1956 through 1961, I will ask you this question, and you have been examined on this exhibit before: Does this account set forth in complete detail the rents collected and the disbursements made from the rents collected for this period of years to commissions, repairs, credits to mortgage loan account and so forth? Is it a complete record of the transactions of the rents received and disbursed?

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A. No, I left out the other charges to the mortgage loan account, which was set up in the Deed of Trust for taxes and fire insurance, but all of the rents are accounted for and the distribution of those rents to commissions, credits to the mortgage loan and credits to the repairs account or the direct payment of repairs.

Q. In other words—

A. I did not analyze the mortgage loan account. This actually is covered with this exhibit of the ledger cards.

Q. So that the account is complete except for the fact it doesn't give a breakdown of the disbrusements made from the credits in the mortgage loan account; is that correct?

A. That's right, other than water bills.

Q. You have filed in evidence as Defendant's Exhibit No. 9 receipts, or supporting vouchers as you described them in your testimony, for all of the disbursements made from the collection of rents in the Bernard Parker note matter; is that correct?

A. There were several bills missing, but all of the bills or receipts, vouchers that we were able to find in the old file were included in that exhibit.

Q. And that is including the disbursements from the mortgage loan account also?

A. It includes the taxes and insurance bills also.

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Q. I believe you pointed out in your previous testimony as an adverse witness that there were several of these bills or receipts that you could not find; is that correct?

A. Yes.

Q. I believe one of them was a repair bill that was made some company?

A. There was a group of four or five repair bills that ran right together. The payee on those is shown on the repairs account which is filed and these were items which follow along with the previous ones and subsequent ones that we actually had bills on.

Q. Now, Mr. Ford, for what length of time did this collection of rents and disbursement of funds continue?

A. Let me see.

Q. When did you begin it?

A. It looks like it was just about seven years even, from the 1st in July, 1955 until past July 1 in 1962, seven years plus.

Q. The property in question was actually sold by F. W. Colona, Trustee, on October 9, 1962, was it not?

A. That is correct.

Q. So that this accounting period must necessarily extend from July 1, 1955 approximately to October 9, 1962?

A. That's right.

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Q. And then includes the application of the proceeds of the sale under the Deed of Trust; is that correct?

A. That is correct.

Q. In your testimony as an adverse witness four items were called to your attention by Mr. Freeman, attorney for the complainant, as being erroneous or improper disburse-

ments. The first one according to the record was a 1950 tax bill I believe in the amount of $91.00 assessed in the name of Bernard Parker upon Lots 1 to 13, Block 1, Oakhill Subdivision, and it was indicated that this tax bill should not have been paid because the property was not owned by Bernard Parker at the time. Have you ascertained that fact as to whether or not it was?

A. Yes, it was. I have a note here dated September 1, 1949, signed by the Parkers, which was given at the time that they purchased the property originally and this is the note that was paid when we made the loan to them in 1953, so this would indicate that the Parkers were the owners of the property beginning September 1 or before. This is at the time that they borrowed money from Mr. Barnett, which was subsequently refinanced by our loan and this refinancing was motivated by the need for repairs at that time.

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Q. Now this tax bill was paid some several years later I believe?

A. Yes, sir.

Q. Why did you pay it?

A. Well, it would have been a lien on the property if we hadn't paid it.

Q. The next item of errors brought to your attention by Mr. Freeman consisted of three Federal income tax liens against three of the Parker children in the amount of $31.77 each I believe in the year 1959. Will you state whether or not you paid these liens and, if so, why?

A. Yes, we paid them out of the repair account funds. The bill was presented to us and we conferred with the attorney who we thought represented the administrator of the estate and he requested that we pay this tax bill; if we didn't, that it likewise would be a lien against the property.

Q. Now refer to Exhibit 8 and in the year 1957 in which you apparently credited $98.25 from the Bernard Parker rents to mortgage loan account No. 765 and state whether or not that was an error

A. This was an error. The loan No. 765 was in another Parker estate loan account which Herman was collecting rents on and making the payments, and through an error in the office that was credited to the wrong account.

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Q. There is no question about the fact that that was an error?

A. That was an error, yes.

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page 35 } Q. In this six or seven years—

A. The money went to the same people, but it was an error. It was the wrong account.

Q. Now I believe the same thing occurred on August 30, 1960, when you credited $143.20 in error to mortgage loan No. 765; is that correct?

A. That is correct, that likewise was an error.

Q. Are these two errors the only two that were called to your attention as you recall?

A. So far as I know those are the only errors in the account.

Q. Refer to the last page of Exhibit No. 8, but before doing so what was the total amount of these two errors of credits to mortgage loan account No. 765?

A. $241.45.

Q. Now referring to the last page of Exhibit No. 8, would you state to the Court what the balance on the Bernard Parker note, mortgage loan No. 3357, was on October 9, 1962, at the time of the sale by F. W. Colona, Trustee?

A. $2,953.46.

Q. After the sale of the property and the credits made from the proceeds of sale what was the balance due on this note, unpaid on it?

Dep. 5/20/66 A. The unpaid portion, the deficiency after the sale was $635.51.

page 36 } Q. Now if these two errors had been properly credited to mortgage loan account No. 3357, would this still have been a deficiency?

A. Yes, there would still have been a deficiency of approximately $400.00.

Q. Mr. Ford, numerous exhibits have been filed by you in this proceeding. I would like to ask you now whether or not you have filed all of the accounts requested by the Commissioner and whether or not you have filed copies of all of the records that appear in your office pertaining to this Bernard Parker account, such as copies of the repairs account, the account cards, ledger cards and so on?

A. So far as I know everything requested has been filed.

Q. Not only requested, but have you filed copies of every account and record that you have in the office pertaining to this account?

A. I believe that everything is on file that we have, a copy of it.

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Q. Now you have referred to the fact that in your Exhibit No. 8 you did not give a breakdown of the disbursements made from the credits to the mortgage loan account No. 3357, that is payments made from that fund for taxes, insurance and water bills. Have you prepared a statement for the benefit of the Commissioner and the Court of the disbursements from the mortgage loan account?

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A. Yes, I have a statement—

Q. Is that the statement?

A. Yes, yes, this is the statement. It shows the credits on the loan account, the pay-outs for water, taxes, insurance, in annual totals and one repair account item which is the transfer, and the interest charges.

* * * * *

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Mr. Ford, this account begins with the date of 6/30/55, showing a balance on the right side of this page of $8,667.19. What is that figure?

A. This is the balance on June 30 when the property was declared in default and possession was taken by the Trustee.

Q. Now does this statement reflect correctly according to your records the disbursements beginning June 30, 1955 through apparently October 10, 1962 of the amounts credited as indicated on Exhibit No. 8 to the mortgage loan account No. 3357?

A. Yes, those credits are identical.

Q. Will you refer to Exhibit No. 8, Enclosure I please? It appears that at the end of that period of July 1 to September 16 that $815.00 was credited to the mortgage loan account.

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A. That is correct.

Q. Does that show on Exhibit 13?

A. Those figures are the same, yes, $815.00.

Q. What disbursements were made from the mortgage loan account according to Exhibit 13?

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A. The only disbursements there were interest for—

Q. For the first period?

A. For the first period were for interest for two months and 16 days. $109.77 was the interest, leaving $705.23 for a credit to principal.

Q. It appears after the credits were made that the principal balance was then $7,961.94. Will you refer to Enclosure II of Exhibit 8 and state what amount was credited to mortgage loan account No. 3357 for the period ending December 30, 1955?

A. $389.55.

Q. Is that the amount shown on Exhibit 13?

A. Yes.

Q. What disbursements were made from that amount?

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A. During that period we had interest for three months and fourteen days amounting to $138.02, water bills totaling $140.94 and $4.45 was transferred or charged the mortgage loan account as a credit to the repairs account in order to pay the then outstanding repair bill.

Q. Why was the $4.45 transferred to the repairs account at this time?

A. The Community Home Improvement Company had installed new roofs on several houses and they had been paid a portion of their bill, and the work having been completed there was at that time accumulated $395.55 in the repairs account and the balance of their bill was $400.00. so in order to pay them in full, $4.45 shown here was transferred to that repairs account in order to complete settlement for this repair bill.

Q. Now that left a balance for that accounting of what?

A. That left only $106.64 for credit to the principal, thus leaving a balance of $7,855.30.

Q. Will you turn to Enclosure III of Exhibit 8 and state what amount was credited to the mortgage loan account during that period of January 6 to December 28, 1956?

A. $1,538.25 was credited to the loan account.

Q. Is that amount appearing on Exhibit No. 13?

A. Yes.

Q. Will you state to the Commissioner what disbursements were made from that fund?

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A. From those receipts we paid interest for the year of $471.32, water bills totaling $191.72,

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page 41 } $215.11 real estate taxes and $100.00 for fire insurance premium.

Q. Did you make any credit to the principal?

A. This left a balance of $560.10 to credit of principal, brought the balance down to $7,295.20.

Q. Will you refer to Enclosure IV of Exhibit 8 please and state the amount credited to the mortgage loan account for the period January 31 to December 2, 1957 as shown on that exhibit?

A. During 1957 that shows $1,767.30 credited to principal.

Q. Does that appear on Exhibit 13?

A. Which is the amount shown on Exhibit 13.

Q. Will you state what disbrusements were made from that fund?

A. Interest for the year amounted to $437.71, water bills in the amount of $527.48 were paid. Again there was a $215.11 real estate tax and the $91.00 delinquent real estate tax for 1950 which was paid. This left $496.00 to credit to principal, reducing the balance to $6,799.20.

Q. Will you refer to Enclosure V of Exhibit 8 and state what amount credited during that period January 3 to December 2, 1958 to the mortgage loan account?

A. In 1958 it was $2,415.40.

Dep. Q. Does that amount appear on Exhibit No. 13?

5/20/66 A. Yes.

page 42 } Q. For a similar period?

A. Yes.

Q. Will you state to the Commissioner what disbursements were made from that fund?

A. Just on that balance for the year was $407.95 interest, $215.11 real estate taxes which were paid and $212.82 in water bills. This left a principal credit of $1,579.52, which reduces our balance to $5,219.68.

Q. Will you refer to Enclosure VI of Exhibit 8 and state to the Commissioner what amount was credited during that period of January 5 to December 7, 1959 to the mortgage loan account?

A. 1959 the credits to the mortgage loan were $2,617.88.

Q. Does that amount appear on Exhibit 13 for the similar period?

A. Yes.

Q. What disbursements were made from that fund?

A. Interest charges were $113.18—

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The Commissioner: How much?

Q. Read the interest charge figure again?

A. $313.18.

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Q. What other disbursements?

A. $568.49 for water bills, $278.93 real estate taxes and $97.80 fire insurance premium. This left a balance of $1,359.48 to credit to principal, reducing the balance on the account to $3,860.20.

Q. Will you refer to Enclosure VII of Exhibit 8 covering the period January 11 to December 20, 1960 and state what amount was credited to the mortgage loan account in question.

A. Credits to the mortgage loan account totaled $1,680.04.

Q. Does that amount appear on Exhibit 13 for the same period?

A. Yes.

Q. What disbursements were made from this fund?

A. $231.61 for interest, $726.14 for water bills and $278.93 real estate tax, which left a balance of $443.36 to credit to principal, reducing that balance on the account to $3,416.84.

Q. Will you please refer to Enclosure VIII of Exhibit 8 and what amount was credited to the mortgage loan account in question for the period January 25 to November 8, 1961.

A. $1,705.19 was credited to principal during 1961—no, 1960, that is the next figure.

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Q. Does this amount appear on Exhibit 13 for the similar period ending December, 1961?

A. Yes.

Q. Will you state to the Commissioner what disbursements were made from this fund?

A. Interest charges of $205.00, water bills of $721.69, real estate tax of $278.93, leaving $499.57 to credit to principal, which reduced the balance on the account to $2,917.47.

Q. Will you refer to the last page of Exhibit 8 and state what amount was credited to the mortgage loan account at that time, January 23 and ending August 3?

A. $211.80 was credited to the mortgage loan account.

Q. Does that appear on Exhibit 13*?

A. Yes.

Q. What disbursements were made from that fund?

A. Interest charges were $87.57 and this is for 6 months only. Do you want just the 6 months or do you want the whole year?

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Q. Well, just state according to your statement what disbursements were made?

A. $87.57 was the interest charges for the period January through June, $27.52 water bill and $278.93 real estate tax. These disbursements exceeded the credits by $182.22.

Dep. 5/ 0/66 page 45 } Q. What balance did that leave then on the Deed of Trust note?

A. So the balance on the account was $3,099.49.

Q. Now you have on this account on June 30, 1962, apparently a charge of interest for three months and ten days, late charge. Will you explain that please?

A. Well, the association charges a 2 percent late charge. No payment was made in July and there was no charge after that since the foreclosure proceedings started in August.

Q. In other words, you had no fund to make any credits on the mortgage loan account? Is that the reason for the late charge and—

A. Well, the late charges is where no payment is made during the month and the account is in arrears.

Q. Now you have here on October 10, 1962 a balance due on this note. What was that balance?

A. $3,149.08.

Q. Was that at the time of the foreclosure?

A. Yes, sir.

Q. I call your attention to the fact that the foreclosure was on October 9 instead of 10. Should that be corrected to October 9th?

A. Yes.

Dep. 5/20/66 page 46 } Q. Now, Mr. Ford, if you will refer to the last page of Exhibit No. 8, you show a balance due there on the Bernard Parker Deed of Trust note as of October 10, 1962.

A. Yes.

Q. This balance is $2,953.46. On Exhibit No. 13, which are the credits and disbursements from the mortgage loan account which you have testified, the balance is shown as $3,149.08, which is a difference in excess of Exhibit No. 8 of $195.62. Can you explain that?

A. Yes, in the original accounting on the ledger cards the interest was figured each month on the unpaid balance at the end of the preceding month. On this Exhibit 13 accounting I have computed the interest for the indicated periods on the

balance at the beginning of that period, so that we had in effect on most of these periods set up an interest charge for one year on the beginning of the year balance.

Q. I believe you testified before as an adverse witness that in computing these balances shown on Exhibit 8 you used the amortized method; is that correct?

A. I am not sure just what exhibit that is.

Q. That is computing the balance, Exhibit 8?

A. No, those balances were—how is that? What was that question again?

Dep. 5/20/66 page 47 } Q. I said I believe you testified in your former testimony that this final balance on the Bernard Parker note of $2,953.46 was arrived at on the basis of the amortized payments on this note?

A. Yes, yes, that is correct.

Q. Would there be a difference in the interest between using the amortized method and the credits annually as this account shows?

A. Yes, normally the amortized interest would be less.

Q. Now your Exhibit No. 8 indicates the application of the proceeds of the sale of the property in question as the evidence discloses by F. W. Colona, Trustee, of $2,500.00. The account of the Trustee has been filed in evidence as Plaintiff's Exhibit No. 13 and which shows a balance after payment of advertising, trustee's deed, account of sale, revenue stamps, trustee's commission of $2,317.00 as a credit to this note. Is that what you credited to the note from the proceeds of the trustee's sale?

A. Yes.

Q. There is an apparent error in the trustee's account of the revenue stamp on the deed of $3.85, which should have been from the sale price of $2,500.00, $2.75. Did you have anything to do with that error?

Dep. 5/20/66 page 48 } A. No.

Q. Now I believe you have testified that you attended the sale of the property conducted by F. W. Colona, Trustee, and bid this property in for the sum of $2,500.00 for Pioneer Federal; is that correct?

A. That is correct.

Q. Now after the sale of the property by F. W. Colona, Trustee, and the credit of the balance of the proceeds of the sale to the Deed of Trust note, would there have been a deficiency on the Deed of Trust note by either the Exhibit No. 8

or Exhibit No. 13?

A. Yes.

Q. Would there still be money due on the note?

A. Oh, yes, yes, indeed.

Q. Have you made any attempt to reduce this deficiency to judgment or—

A. No.

Q. —collect it from the Parker children?

A. No, no deficiency judgment or any action was taken to collect this deficiency.

Q. Now getting back, Mr. Ford, to the possession of this property in question, the record indicates that possession extended over quite a period of time, from about July 1, 1955 to the time the property was sold on October 9, 1962, and the record also discloses that for that last year, 1962, that apparently there were little, if any, rents collected on the property; is that correct?

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A. That's right, there was a collection made in January and none after that.

Q. Will you state to the Commissioner why no rents were collected?

A. The condemnation by the city had, shall I say, given the tenants an excuse not to pay any rent, so we were unable to collect any after that. They subsequently moved out.

Q. What do you mean by condemnation?

A. Well, the city officials had declared that the property was no longer habitable, safe for people to live in, safe or healthy, and the owner was given, told that repairs must be made or the property would be razed.

Q. Were you generally familiar during the course of this Bernard Parker loan on this property with the property itself?

A. Yes, I had visited it several times.

Q. What was the general nature of this property?

A. Well, this was about the lowest class of Negro rental property in the city I expect. The buildings were on piers with no foundation walls which caused the plumbing to freeze, and the tenants generally took very poor care of the properties. All of this is clearly shown by the repairs that had to be made from time to time. The original loan we made to Bernard Parker was in order to enable him to do repairs, about $2,500.00 worth, and he had owned the property then roughly three

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or four years—no, I don't know how long he had owned it, but it needed repair then and constantly.

Q. Were you familiar with the general nature and characteristics of the tenants who occupied this property during this period of time?

A. I don't believe I knew any of them personally, but Reverend Perry stated on several occasions that—

Mr. Freeman: Mr. Commissioner, I object to this type of testimony.

The Commissioner: Yes, it is hearsay.

Q. You didn't have any personal knowledge of it?

A. No.

Q. There is an allegation in the Bill of Complaint that the Trustee failed to collect through this period of seven years the total amount of rents due on this property, the deficiency being something in the neighborhood of $4,000.00 or something of that kind. Will you state what efforts were made, if any, to collect the delinquent rent accounts from these tenants?

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A. Well, our records show where several unlawful detainers or warrants were obtained. I had numerous conversations, first with Reverend Perry, and primarily with Derski later about his efforts to collect back rents. Generally speaking, it seemed best to collect current rents rather than to move the people out, in which case you would get no rents back or current. I believe that the previous testimony that the ratio of the rents collected on this type property from Mr. Derski from his experience—

Q. Mr. Ford, this property was bought in at the Trustee's sale by Pioneer Federal, as you have testified on both occasions. It further appears that the property remained in ownership by Pioneer Federal for sometime and was later sold to Messrs. Harlan and Butterworth; is that correct?

A. Yes, sir.

Q. Mr. Ford, is there anything further you have to inform the Commissioner about in this matter so far as you know?

A. I don't believe I know of anything. I think the record tends to speak for itself in that all funds were accounted for. Every effort was made to make proper disbursements. First Mr. Barnett and Herman approved repair bills. Later I approved those that Derski had made.

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Now in what capacity did you as an employee of the bank act in this matter?

A. I was simply carrying out Mr. Barnett's instructions. He as the Trustee had set this arrangement up. Although he was not in the office, he was still around and I continued his arrangement as far as the collecting, receipting for money and disbursing, allocating the funds and attempted to exercise my best judgment when it came to getting someone else to collect the rents. In fact, I believe I conferred with the attorney, the attorney I thought was the attorney for the Parker estate, the administrator, before actually employing Derski; so this was the action, actions that were taken under Mr. Barnett's behalf, simply administering what he had set up as Trustee.

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Q. Mr. Barnett actually retired as President of Pioneer Federal Savings and Loan Association during this period, did he not?

A. That's right, 1957.

Q. And died in January—

A. 1964.

Q. Did he ever resign as Trustee under this Deed of Trust?

A. Not to my knowledge.

Q. Your association of which you were President was the holder of this note?

A. Yes, sir.

Q. And if there had been a resignation, would you have known about it?

A. Yes, I certainly would have known.

Q. Did you exercise your right under this Deed of Trust to appoint someone else in place of Mr. Barnett?

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A. It's right hard to appoint a new Trustee unless the original one resigns, isn't it? No, nothing was done in that respect.

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Q. So far as you know did Mr. Colona as Trustee under the Deed of Trust have anything to do with this entire transaction other than to foreclose under the Deed of Trust?

A. No. Mr. Barnett conferred with him in the early stages, but he was the one who acted as far as the taking possession and making the arrangements for collecting the rents and all.

* * * * *

CROSS EXAMINATION

By Mr. Freeman:

Q. Mr. Ford, before it slips my mind, you say Mr. Barnett was the Trustee?

A. Yes.

Q. And he was Trustee in 1962 also when the property was sold?

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A. Yes.

Q. But he had possession of the property as Trustee in 1962?

A. Yes.

Q. Then why did you suddenly or why did the Pioneer Federal suddenly change Trustees at that time and direct Mr. Colona as Trustee to sell this property instead of Mr. Barnett, if he was still active?

Mr. Wyche: Just before you answer the question, I don't think I have any serious objection to it, but I do want to object on the grounds that the Deed of Trust conferred the right upon either Trustee to act.

Q. Yes, that is very true, but was there any reason that you directed Mr. Colona to sell the property instead of Mr. Barnett at the time, since Mr. Barnett was the acting Trustee?

A. Mr. Colona handled all of our foreclosure sales. Even though the other Trustee may have acted in some capacity prior to that time, but Mr. Colona handled all of the foreclosure sales.

Q. So that was the reason because he handled all of the foreclosures and you directed him to sell it instead of Mr. Barnett who had been active?

A. This is a legal procedure and as a lawyer he would handle all the foreclosures.

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* * * * *

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page 57 } Now when Reverend Perry and Mr. Derski brought these rents into the Pioneer Federal and paid them over to Mrs. Beckwith, is that right?

A. Or to me, yes.

Q. Or to you, how did you handle those funds? What did you do with them?

A. Well, this is not true in every case, but normally the agent's commission was deducted, showing the amount on the receipt and the rents collected, less commission, was credited to the mortgage loan account or split between the mortgage loan account and the repairs account.

Q. What did you do with the funds themselves, I mean the money that was brought in? Did you deposit them to the Pioneer account?

A. Yes, they were turned over to a teller and became a part of the association's funds.

Q. And they would deposit it in State-Planters Bank where you have your account?

A. Yes.

Q. The total amount which you received from these collections less the commissions?

A. Yes, this is normal.

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page 58 } Q. And they were deposited in the Pioneer account at State-Planters?

A. Yes.

Q. And did Pioneer or you or Miss Beckwith or whoever made out the checks, make disbrusements on checks drawn on the State Planters Bank for the expenditures on the Parker property?

A. Yes, drew an association check to pay the various bills, whether they be repairs or taxes or what have you.

Q. So that was just the one account that you used for this particular purpose?

A. All of our receipts and disbursements were handled through that bank account.

Q. Through that bank account?

A. Yes, sir.

Q. Exhibit 8 that you filed to indicate that for a good many years after September 16, 1956 that the association, Pioneer

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Federal, had excess money belonging to the owners of the property that was held in their account at the State-Planters Bank. Is that so?

A. Well, on the basis of the original terms of the Deed of Trust the account would have been paid ahead and there were funds from time to time in the repairs account.

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Q. But the repairs account, that money was also in your account, in the Pioneer's account at the State-Planters Bank?

A. That is right.

Q. It was all lumped together in one sum? The repairs account was only an account that you sat up in your files that you credited it to?

A. That's right.

Q. It had nothing to do with your bank account?

A. We didn't set up a separate bank account for this particular account.

Q. Then why was it necessary, Mr. Ford, to set up a reserve for repairs account if all the money and deposits were made to the State-Planters Bank and all of the checks drawn on the State-Planters Bank? What was the idea of the reserve account?

A. We expected to have numerous repairs to be made on these properties and the accounting was set up in that fashion rather than handling everything on the loan account.

Q. But everything was handled through the loan account? I mean the deposits and disbursements were handled through your account in the State-Planters Bank, wasn't it?

A. Yes, but you have got to keep an accounting of the various individual accounts that you are dealing with, and this was the purpose of the repairs account: to set the money aside for these expected repairs.

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Q. But, of course, there was no provision in the Deed of Trust for that, was there?

A. Yes, I think it does to make necessary repairs.

Q. To set aside certain funds for repairs?

A. I don't think that is specifically spelled out in so many words.

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Q. Then, Mr. Ford, you have not stated in your direct testimony when these payments were in default after September 16, 1955?

A. The account was behind in October, November of 1957 and then in July and August, 1962.

Note: At 12:00 o'clock noon there is a recess for lunch and at 1:00 o'clock the further taking of depositions continues as follows:

By Mr. Freeman: (Continuing)

Q. Mr. Ford, what were the payments in 1957 at that time? What was the amount of payment?

A. You mean how much was paid in 1957?

Q. No, how much were they supposed to pay, were you requiring of the estate at that time as payment?

A. Of course, now this is a memorandum record that we have and shows that they were changed from $128.00 the first part of the year to $160.00 at the end of the year, but you will recall this whole thing was in default and due and payable, when the Trustee took over—

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Q. That is how you feel about it, but that isn't absolutely true that it was in default all the time. How much were the payments at that time? How much did you consider the payment to be due at that time in 1957?

A. We had set the payment at $128.00 in order to cover the water bills. From that time in August it was increased to $160.00 for the same reason.

Q. Were they behind because of the $160.00 payment or the $128.00 payment or the $98.00 payment?

A. That is almost impossible to answer, Mr. Freeman. The memorandum record we kept on the basis of those changes had it behind in October, and at that time it was $160.00.

Q. Mr. Ford, you stated to me a few minutes ago that the loan was in default in October and November of 1957?

A. And also in July of 1955.

Dorsey B. Ford

Q. 1955, is that right? Now in October and November 1957 on what payment basis was this in default? You should know. You keep the records.

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By Mr. Freeman:

Q. Well, go ahead and answer the question, Mr. Ford.

A. We were attempting to continue the principal and interest payment on the loan, and due to the water bills which were now being paid in order to keep the property rented and the increase in taxes, the amounts for those items were the basis for increasing the payment, first in 1955 and then in 1957, and it was on the basis of those increased payments that the memorandum of how the account stood on the basis of the original principal and interest requirement that the memorandum in advance or behind or what have you was kept.

Q. Mr. Ford, didn't you always have enough money or collect enough money on the rents of this property to pay all these expenses without paying them out of Pioneer Federal's funds?

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A. No.

Q. You didn't?

A. No.

Q. You didn't have enough in 1957 to pay all expenses?

A. This Exhibit 13 that we had a while ago indicates that the association advanced one hundred eighty some dollars to pay expenses on the account.

Q. What year?

A. Last year, about $182.00.

Q. Exhibit 13?

A. Yes.

Q. But up until that time you had ample funds to pay all these expenses plus the payment as required by the Deed of Trust since September 16, 1955?

A. I am not sure, but it is probably correct.

Dorsey B. Ford

Q. Now in your Exhibit 13, and this doesn't show what monies you held as reserve for repairs, does it?

A. No, that shows the tax and insurance items and so forth in connection with the mortgage loan account. Exhibit 8 has the details on the repairs account.

Q. In other words, in September of 1955 you credited loan with $389.75?

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A. That is from September through the end of the year 1955.

Q. And you paid out $140.94 water?

A. Yes.

Q. Did you pay that out of the bank's funds?

A. Mr. Freeman, typically, when you have a loan account of any kind, loan account or any other account, the receipts go into the general account and expenses come out, and the various ledger cards keep account of where they came from and when they went to.

Q. But didn't the Deed of Trust state that you were to collect the rents, pay all of the expenses and apply the residue to the loan?

A. Yes, this is true.

Q. But you didn't do that in this case?

A. Well, after the property was taken over by the Trustee the water bills were paid and the other expenses were paid, which are not provided in any Deed of Trust payment.

Q. That's right, but that was supposed to have been taken out of the rents collected, wasn't it?

A. Yes.

Q. But you didn't do that, did you?

A. Yes, certainly we did.

Q. Then why did you charge the loan account with the water?

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A. Because we didn't want to take those receipts and hold them in escrow until such time as we received a bill. In other words, these funds would have been set aside in a separate bank account unless we were going to hold the cash until a bill came in to be paid out of those funds.

Q. So you decided to hold the cash and—

A. No, so you could mingle the receipts with all of your other receipts and you pay the bills when you are paying your other bills and charge them to the proper account. This is, in effect, you see a subsidiary account to a general ledger.

Dorsey B. Ford

Q. Yes, I understand perfectly, but you had credited the account at the end of 1955 with $389.55?

A. That's right.

Q. And you had in reserve at that time $130.00 and some odd cents?

A. I don't remember the figure. That's right.

Q. So you had collected at that time $1,070.00 on the account?

A. Yes, in that—

Q. During that period?

A. —September to December period.

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Q. That's right, and you paid commissions of $107.00 as is stated here in Exhibit 8, Enclosure II, is that correct?

A. Yes.

Q. This Exhibit 13 doesn't indicate at this time whether the payments were in default or not. They were not as I understand you to say?

A. They are in default on the first line there, July 1st.

Q. July 1st, what year?

A. 1955, when the Trustee took over, took possession and started collecting the rents.

Q. How much were they in default at that time?

A. July 1st there was $619.00 monthly payments due and unpaid.

Q. I have $531.00 due and unpaid. Is that correct or—

A. That is through June?

Q. June 30?

A. June 30, right.

Q. And from July 1, 1955 to September 16, 1955, that was caught up, the $531.00, plus the three months, from July to September 16 of that year?

A. Based on that original schedule of payment, yes.

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Q. These credits in Exhibit 13 such as on September 16, 1955 there is $106.64, December 1st the figure of $560.10 and so on down the line, those credits do not show the true account as you had it in the bank or at the association?

A. No, this shows the amount left over for credit to the debt after deducting these payments from the credits to the mortgage loan account with the interest figured on the simple interest basis for the period covered.

Q. So that has nothing to do with the payment? That only

Dorsey B. Ford

indicates what credit the Parker loan had at that time?

A. That indicates the excess to credit to this indebtedness after payment of these charges.

Q. And after you charged the water and taxes and insurance?

A. After paying those items, yes.

Q. But those taxes and insurance were not due at that time, were they, I mean when you charged them to the account, as indicated in Exhibit 13?

A. Yes, yes.

Q. Were they due to be payable by the Parker loan at that time?

A. They were charges against the account, against the real estate, the taxes were, and the buildings were there, so they had to be covered by fire insurance.

Dep. 5/20/66 page 75 } Q. That is very true, but wasn't there an agreement in the Deed of Trust whereby the bank or the association would pay the taxes and insurance and that—

A. This is the mortgage loan account from which they were paid.

Q. Yes, I understand that, but they weren't due to be paid by the rents that you collected from the property at that time, at the time they were collected, I mean these charges?

A. I don't know what you mean. The tax bills are payable each year.

Q. Hadn't you agreed with Mr. Parker that he would pay $10.17 a month on these taxes and insurance?

A. This was the content of the original Deed of Trust.

Q. Yes, that $10.17 was to be paid each month?

A. He pays that in as a credit on the loan and the association paid the taxes and insurance when they become due.

Q. And the excess that is to be paid would be charged to the loan?

A. Well, it says that that amount was an estimate of the taxes and insurance. We couldn't take part of the taxes.

Dep. 5/20/66 page 76 } Q. You agreed to pay the taxes, didn't you, or didn't the Pioneer Federal agree to pay the taxes?

A. This is contained in the Deed of Trust, yes.

Q. And that the payment on those taxes and insurance would be $10.17 a month?

A. That is true while the Deed of Trust was in effect and prior to default.

Dorsey B. Ford

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By Mr. Freeman:

Q. Mr. Ford, when this property was advertised for sale September 11, 1962, the Pioneer Federal was in possession and control, were they not?

A. The Trustee was still in possession and control.

Q. Which Trustee?

A. Mr. Barnett.

Q. Who took possession on September 11, 1962?

A. The Trustee was already in possession.

Q. Which Trustee, Mr. Barnett?

A. Mr. Barnett.

Q. Well, Mr. Colona advertised it for sale?

A. That's right.

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Q. But Mr. Barnett still had possession?

A. There is nothing to show that he didn't have possession. He took possession as Trustee in 1955 and still had it as far as I am concerned.

Q. And he had it on September 18?

A. The association ordered foreclosure. He still had possession until the foreclosure took place.

Q. Colona didn't have possession from September 18 until October 9 when it was sold, or the 10th?

A. I don't know whether he had possession or not, but I don't think he did though.

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REDIRECT EXAMINATION

By Mr. Wyche:

Q. Mr. Ford, you have been carried through a rather ex-

tensive cross examination by Mr. Freeman on the application of the rents received from the Bernard Parker property, and in the light of your testimony on direct examination that the Trustee had declared this note to be in default had taken possession of the property under the terms of the Deed of Trust and the applicable statutes. Will you state to the Commissioner whether the exhibit numbers 8 and 13 correctly disclose the complete record of the transactions of the receipt of rents and the disbursements from that fund during the period of time first beginning I believe in June, 1955, through the Trustee's sale of this property in October, 1962?

A. Yes, I believe those two exhibits cover the accurate accounting of the receipts and disbursements.

Q. Is it a fact or not, and I believe you have testified to this fact, that when funds come into the bank as payment on notes or receipts come into the bank, that they are set up on ledger cards to the proper account, that the fund is deposited in the association's general fund account at State-Planters Bank of Commerce and Trusts in the City of Hopewell, and that disbursements applicable to the various accounts are made from that general fund account; is that correct?

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A. Yes.

Q. Was that done in this case?

A. Yes.

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TRANSCRIPT of the deposition of Dorsey B. Ford, taken before Honorable J. Hamilton Hening, a Commissioner in Chancery, pursuant to agreement of counsel, on the 21st day of November, 1966, in the library of the Circuit Court of the City of Hopewell, Municipal Building, Hopewell, Virginia, beginning at 10:00 o'clock A. M.; said deposition being taken to be read as further evidence on behalf of complainants herein.

APPEARANCES

Harold Freeman, Esquire, counsel for Complainant;

Frank L. Wyche, Esquire, counsel for Pioneer Federal Savings and Loan Association, F. W. Colona, Trustee, and First & Merchants National Bank;

James E. Cuddihy, Esquire, guardian *ad litem* for Bernard Parker, Jr. and Bernice Parker Delane.

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page 8 } DORSEY B. FORD, having been previously duly sworn by the Commissioner, called for a continuation of examination by counsel for the complainant, deposes and states as follows:

DIRECT EXAMINATION

By Mr. Freeman:

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Q. Didn't you state that the loan was in advance in 1962, that is on page 34 of the transcript of February 7, 1966?

A. Based on the status that we were keeping on the account it was in advance on January of 1962.

Q. Please tell the Court what monthly payment was required when you calculated the Parker loan to be in advance?

A. At this time we were using one hundred sixty dollars a month.

Q. You stated that in June of 1962 the advance got canceled out by additional payments falling due. Is that true?

A. Yes.

Dorsey B. Ford

Q. You also testified that in view of the fact that the property had been condemned you computed the payments in accordance with the principal and interest requirement and substituted this schedule for the payment in the Deed of Trust. Is that true?

A. I am not clear on that question. I think that figuring principal and interest only, the account was still in arrears.

Q. At what time?

Dep. A. At this time.

11/21/66 Q. At which time?

page 11 } A. June of 1962. This calculation would be made on the basis of an amortization table which considers only principal and interest.

Q. When you say "only principal and interest," what do you mean by that? You figure $87.83—

A. Yes.

Q. —per month plus the expenditures?

A. An amortization table figures principal and interest only and does not take into account any taxes, insurance or any other expenditures. It's as if everything, principal and interest, were handled in a different account, and also on that basis the accounts were in arrears.

Q. Do you mean by that that after you paid the taxes and the insurance and all the other expenditures and then figured the $87.83 per month, that the loan was in default in June of 1962?

A. The question isn't clear, but it was in default on any basis that you would want to figure it.

Q. You mean it was in default on the $98.00 per month basis or the amortization basis?

A. It was in default on the amortization basis. It was also in default on the basis of the adjustments we had

Dep. made due to water bills and increases in taxes and

11/21/66 insurance.

page 12 } Q. You haven't filed any exhibits or any figures in this case showing how you applied the payments after you went to the principal and interest requirement, as you call it, have you?

A. No, the application of payments, exhibits that we have filed are based on the actual receipts and disbursements.

Q. Then we don't know how much is required each month under your principal and interest requirement by the exhibits you have filed. Is that so?

Dorsey B. Ford

A. I don't know what you mean. The principal and interest schedule was $87.83 originally, and, if you figure it all the way through on that basis, principal and interest only, any other items were handled through a separate account, such as an escrow account, then the account would have been in default on that basis.

Q. At what time? June of 1962 you are still talking about?

A. June, 1962 as well as July, 1955.

Q. Did you inform the Trustee in June of 1962 that you had gone back to the interest and principal method of calculation and that under that calculation the loan was in default?

A. I don't recall specifically, but I think so.

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Q. Did you inform the owners of the property of the change in the computation by the principal and interest method in June of 1962?

A. Mr. Freeman, this was not a change in the method of computation. I do not think though that we specifically informed them that based on an amortization table the account was still in default.

Q. You did not inform them of that fact, did you?

A. No, I did not.

Q. So at that time the owners didn't know under what calculation the loan that you claim was in default on?

A. I insist this is not a new method of calculation. This is simply a method of verifying the method that we had been using all the while and this just proved it.

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A Copy—Teste:

Howard G. Turner, Clerk.

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