

66-166 1052

Record No. 1635

In the
Supreme Court of Appeals of Virginia
at Richmond

**THE PLANTERS NATIONAL BANK OF
FREDERICKSBURG, VIRGINIA, A
CORPORATION,**

v.

E. G. HEFLIN COMPANY, INC.

FROM THE CORPORATION COURT OF THE CITY OF FREDERICKSBURG

“The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements.”

The foregoing is printed in small pica type for the information of counsel.

M. B. WATTS, Clerk.

166 Va 166

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 1635

THE PLANTERS NATIONAL BANK OF FREDERICKS-
BURG, VIRGINIA, A CORPORATION,

versus

E. G. HEFLIN COMPANY, INC.,

PETITION OF THE PLANTERS NATIONAL BANK OF
FREDERICKSBURG, VIRGINIA.

Your petitioner, The Planters National Bank of Fredericksburg, Virginia, a corporation (hereinafter referred to as the Bank), respectfully shows unto your Honors, that it is aggrieved by decree entered by the Corporation Court of the City of Fredericksburg, on the 11th day of December, 1934, in a certain chancery suit pending in said court, wherein E. G. Heflin Company, Inc., is plaintiff, and your petitioner is the chief and real defendant.

A transcript of the record of said suit, duly certified by the clerk of said court, is herewith presented, from which the error complained of by your petitioner, may be seen.

FACTS OF THE CASE.

The bank, by deed dated July 29, 1930, conveyed unto the E. G. Heflin Company, Inc. (hereinafter called the plaintiff), a certain lot, with buildings, in the City of Fredericksburg, Va., at the price of \$6,500.00. The transaction was not concluded, however, until October, 1930. Some months previous to the delivery of the deed in October, plaintiff had paid \$50.00 to A. B. Young, real estate agent, representing the Bank, and was to pay \$1,450.00 cash on delivery of the deed,

Supreme Court of Appeals of Virginia.

and to secure the balance by note and deed of trust. However, at the time of delivery, the bank accepted from plaintiff its unsecured note of \$1,450.00, in lieu of cash, which said note, with interest, was subsequently paid.

At the same time plaintiff executed deed of trust dated July 30, 1930, conveying the lot to Wm. K. Goolrick, Trustee, to secure note of \$5,000.00, with interest, said note being payable on or before three years from date.

The plaintiff not only paid the \$1,450.00 note, with interest, but paid two years interest, \$600.00, on the \$5,000.00 trust note. Subsequently, plaintiff addressed to the bank letter as follows:

“Fredericksburg, Va.
January 30, 1933.

“Mr. Wm. K. Goolrick, President,
Planters National Bank of Fredericksburg.

Dear Sir:

About two and a half years ago, I purchased from your Bank a piece of property on Sophia Street with the promise that within three years the Railroad Company would have a railroad siding and that this property was to have all the rights and privileges.

It seems to me that some evidence of the installation of this siding should be visible, and I would like to know if any steps have been taken along this line.

Very truly yours,

E. G. HEFLIN, INC.,
By E. G. HEFLIN, President.”

(See transcript, page 85.)

Plaintiff also addressed another letter to the Bank, as follows:

“February 3rd, 1933.

“Mr. Wm. K. Goolrick, President,
Planters National Bank of Fredericksburg,
Fredericksburg, Virginia.

Dear Sir:

On January 30, I wrote you in regards to the short length of time the Richmond, Fredericksburg & Potomac Railroad Company had to comply with its guarantee to build a spur track along the property your bank formerly owned on Sophia Street, Fredericksburg, Va., (as expressed in their let-

ter of September 6th), to which letter I have received no reply.

I notice that the deed from your bank to this Company and the trust securing the balance of the purchase price over and above the payment of the \$1,500.00 cash was placed on record in the Clerk's Office of the Corporation Court on January 31.

You will remember that the chief consideration of my purchase of the property set out in the deed, was that the Railroad Company would build a spur track above referred to, and did not sign the deeds until you had received from the Railroad Company a guarantee that they would build the track within the three years specified.

Please let me know at your early convenience what is the intention of the Railroad Company, since my actions and attitude will depend upon what the company expects to do.

Very truly yours,"

(Transcript, page 86.)

After some further correspondence, which appears in the record, plaintiff addressed another letter to the bank, as follows:

"Fredericksburg, Va.
July 28, 1933.

"Planters National Bank,
of Fredericksburg,
Wm. K. Goolrick, President,
Fredericksburg, Virginia.

Gentlemen:

By reason of the failure of the conditions upon which the canning factory property in Fredericksburg was purchased by E. G. Heflin Co., Inc., with which you are familiar, which failure makes the property worthless for uses of the Company, you are requested to return the consideration paid, an itemized statement of which is as follows:

Cash payment,	\$1,500.00
Interest three years,	270.00
Interest on \$5,000.00 note 2 yrs.	600.00
	<hr/>
	\$2,370.00

Return of \$5,000.00 note.

Very truly yours,

E. G. HEFLIN CO., INC.,
by E. G. HEFLIN, President."

(Transcript, page 88.)

The bank refused the demand made in this letter, plaintiff thereupon instituted suit, and the lower court rescinded the contract between the parties.

ALLEGATIONS OF THE BILL.

The bill, a voluminous one, in substance alleges that in the Spring of 1930, plaintiff's president, E. G. Heflin, was approached by A. B. Young, of the real estate firm of Allison & Young, with the object of selling to plaintiff the lot mentioned, Young acting for the bank; that Young knew plaintiff desired a lot for planing mill site, and that it should be adjacent to a spur track of the Richmond, Fredericksburg & Potomac Railroad; that he represented that the lot in question would constitute such a site, and told plaintiff that the Railroad Company had purchased from the Bank a certain lot adjoining the one he was trying to sell and had obligated itself to the bank to erect a spur track from its main line, over the strip which it had also purchased from the bank, along and in front of the lot which he, Young, wished plaintiff to buy, and thence to the lot of the Railroad Company, mentioned above.

In other words, the lot which plaintiff subsequently purchased from the Bank, was situate between the main line of the railroad and the lot sold by the bank to the Railroad Company, which the latter proposed to connect by a spur track, accessible to plaintiff's lot.

The bill further alleges that in the conversations between Young and Heflin, it was understood that the purchase of the property depended entirely upon the erection of the spur track and that its erection was the sole consideration of the purchase; that the actual agreement was that the trust note would be paid when the spur track was erected, if erected, in three years; that before plaintiff would execute deed of trust he advised Wm. K. Goolrick, president of the Bank that he desired positive assurance that the Railroad Company had obligated itself to build the track and that the bank would guarantee its construction; that thereupon the bank, at his request, secured a letter from the Railroad Company, setting out its obligation, which was read by plaintiff before executing contract. (See this letter *infra*.)

The bill, by inference, further alleges that the bank guaranteed the building of the track by the Railroad Company; that this guarantee was not carried out and prays for rescission of the contract.

DEFENDANT DENIES ALLEGATIONS.

Defendant, by answer, denied that Young gave, or had any authority to give, a guarantee on the part of the bank that the spur track would be constructed; denied that the bank or its officers made any guarantees, whatsoever, that the spur track would be built and alleged that plaintiff purchased the property with full knowledge of all the facts in connection therewith, being at the time the contract was executed, in possession of exactly the same information in reference to the plans of the Railroad Company, as was the Bank.

ACTION OF THE COURT.

After the taking of testimony, and filing of briefs, the court, on October 31, 1934, entered a decree reading in part, as follows, to-wit:

“On consideration whereof, the court doth adjudge, order and decree that an issue be made up and tried at the bar of this court to ascertain and determine,

“(1) Whether or not the deed of date July 29, 1930, under which the Planters National Bank of Fredericksburg, conveyed to the E. G. Heflin Company, Inc., a certain lot, was delivered to the said E. G. Heflin Company, Inc., absolutely, or upon a condition by the said Planters National Bank of Fredericksburg.

“(2) Whether or not the deed of trust of date July 29, 1930, in which E. G. Heflin Company, Inc., is the grantor and Wm. K. Goolrick is Trustee, was delivered absolutely, or conditionally to the said Wm. K. Goolrick, Trustee, by E. G. Heflin Company, Inc.”

(See transcript, page 66.)

The court entered this decree of its own motion, neither side having requested an issue, probably on authority of *Whitaker v. Lane*, 128 Va. 317.

On the same day plaintiff, adopting a novel method of procedure in a chancery cause, filed written exceptions to the decree, insisting, “that the deed and deed of trust in this cause, should be rescinded, regardless of the issue directed”, for reasons set out in said exceptions. (Transcript, page 67.)

An inspection of the exceptions will show that the plaintiff had then abandoned its contention that the contract was conditonal, and, therefore, executory, and was relying, in effect, on failure of consideration and on representations made to the plaintiff by the defendant. The court evidently accepted plaintiff's view of the case, since, on December 11, 1934, a final decree was entered, annulling its decree of October 31, 1934, and directing the bank to pay to the plaintiff the sum of \$1,500.00 with interest from July 29, 1930, also the sum of \$600.00, being interest paid by the plaintiff to the bank on the \$5,000.00 trust note, and further directing that the deed of July 29, 1930, from the bank to the plaintiff, and the deed of trust of July 30, 1930, from the plaintiff to Goolrick, Trustee, securing the \$5,000.00 note, be cancelled and annulled.

ASSIGNMENT OF ERROR.

(1) The court erred in revokng and annulling the deed of July 29, 1930, from the Planters National Bank of Fredericksburg, to E. G. Heflin Co., Inc.; in likewise cancelling and annulling the deed of trust of July 30, 1930, from E. G. Heflin Co., Inc., to Wm. K. Goolrick, Trustee, and in directing that the plaintiff recover of the defendant, the sums of money set out in the final decree of December 11, 1934, and in entering said decree.

(2) The court erred in not dismissing plaintiff's bill and entering final decree for defendant.

ARGUMENT.

Plaintiff's bill of complaint is very lengthy, and it is difficult to determine therefrom whether it seeks rescission of an executed contract of sale, or whether it seeks to establish a contract on condition subsequent, and the failure of the alleged condition. However, the gist of its complaint is that the bank made certain representations and guarantees to the plaintiff, which were either fraudulent in fact, or in law, but for which the plaintiff would not have purchased the lot referred to.

It appears that in the year 1929, the R., F. & P. Railroad had purchased from the bank a lot adjoining that subsequently purchased by the plaintiff; that a blueprint of this lot had been made by the Railroad Company, showing the line of a spur track to be built by it, from its main line, along and in front of the lot purchased by the plaintiff, and to the

lot purchased by the Railroad Company, which was shown plaintiff by Mr. Young.

It further appears that at the time of its purchase the Railroad Company had entered into a conditional verbal agreement with the bank, whereby, subject to said condition, it would construct the spur track. Plaintiff's bill, after alleging that it "would not have considered the purchase of the lot at any price or any circumstances other than that of the Railroad Company erecting the spur track", proceeds in a somewhat vague and nebulous manner to charge misrepresentation on the part of Mr. Young and the bank. The evidence discloses that there were no misrepresentations, but the facts are, whatever may have been the alleged representations (and the whole story is told in the testimony), that the plaintiff, at the time of the execution and delivery of the deed, trust and trust note, had exactly the same knowledge of the Railroad Company's obligation, as did the bank. Not satisfied with the information given it by Mr. Young and Mr. Wm. K. Goolrick, president of the bank, plaintiff demanded, before execution of the contract, written evidence of the Railroad Company's obligation, and this was secured in the form of a letter from the Railroad Company, which reads as follows:

"September 9, 1930.

"Mr. Wm. K. Goolrick, President
The Planters National Bank,
Fredericksburg, Va.

Dear Mr. Goolrick:

Replying to your favor of the 6th instant, this is to confirm understanding had between your bank and this Company, during the negotiations whereby this company purchased from your bank a piece of property in Fredericksburg, conveyed by deed bearing date the 14th of July, 1930, namely, that the Railroad Company, is obliged to build within three years from the date of the said conveyance a spur track connected with its industrial track and reaching the remainder of the property still owned by your company, just north of the property acquired by the Railroad Company, the location of the said track being substantially as shown on the print attached to the deed of conveyance.

The building of this track across the several city streets, will, of course, depend upon our ability to secure consent of the City of Fredericksburg, and the necessary authority therefor.

Will you kindly acknowledge receipt of this letter and oblige,

Yours very truly,

NORMAN CALL,
Vice-President."

(Transcript, page 76.)

This letter was secured by Mr. Goolrick at the suggestion of Mr. F. M. Chichester, attorney for the plaintiff, and was shown to both Chichester and to Hefin, at or about the time, but before the deeds were executed. In this connection, Mr. Goolrick's testimony is as follows:

"Q. Did that letter contain all facts about the obligation of the Railroad Company that the bank knew anything about?

"A. It contained all the facts that I knew anything about, or anybody connected with the Bank, so far as I am informed, knew anything about." (Transcript, page 146.)

The Railroad Company did not and has not constructed the spur track, and plaintiff relies on its failure to do so as grounds for rescission of its contract with the bank.

Adverting further to plaintiff's bill and attempting to analyse the grounds upon which it seeks relief, we find at least four such grounds, more or less definitely set out, which may be catalogued as follows:

(1) Fraudulent Representations.

(2) Verbal guarantee by the Bank that the spur track would be constructed.

(3) Failure of consideration.

(4) Conditional contract.

Of course #3 must of necessity rest upon the establishment of #2. The evidence fails to sustain any of the grounds relied on.

ACTUAL FRAUD.

The final argument of this case before the lower court found plaintiff's counsel stressing failure of consideration and little or no attention was given to the question of actual fraud. As a matter of fact, counsel stated that they did not intend to

“charge wilful fraud on the part of the president of the Planters National Bank, Mr. Goolrick”.

The bill itself does not directly charge that the defendant or its agent made any false or fraudulent representations, the only reference to such representations being found on page 8 and reads as follows:

“The representations as made were either false or, if not then * * * the Bank has failed and refused in its representations to your complainant that said spur track would be built in three years, and in its guarantee to your complainant that said track would be built on or before July 14, 1933.” (Transcript, page 47.)

The rule governing both allegation and proof of fraud admits of no controversy. It is set out briefly in the opinion in the recent case of *Bank v. Ferimeri*, 161 Va. 37, as follows:

“Fraud is in the nature of a crime and while it does not require proof beyond reasonable doubt, it is the established doctrine in this State, that it must be distinctly charged and proven by clear and satisfactory evidence. Doubt as to the preponderance of the evidence will not suffice to avoid a transaction on the ground of fraud. The law presumes innocence rather than guilt, and fraud will not be presumed on doubtful evidence or circumstances of mere suspicion.”

Measure by the rule laid down plaintiff's case, so far as it rests on alleged fraud, or false representation, falls to the ground because there is neither sufficient allegation of fraud in the bill nor satisfactory evidence of it in the record. Even if it be admitted, for the purpose of argument, that Mr. Young made any false or misleading statements to the plaintiff, about the obligation of the Railroad Company to construct the spur track, it is sufficient to point out that the plaintiff did not rely on such statements but advised the Bank, as set out in the bill, that plaintiff “desired positive assurance from it that the Railroad Company had obligated itself to build a spur track”. It is admitted both in the bill and by Heflin that the letter of September 9, 1930 (*supra*), from the Railroad Company to the Bank was in consequence obtained and exhibited to him before the contract was executed. In other words, at the time of its execution, he had exactly the same information as to the obligation of the Railroad Company, as did the Bank.

As was recently said by Justice Campbell, in the case of

American Surety Company v. Hannah, 143 Va. 291, quoting from 2 Pom. Eq., Section 890:

“Unless an untrue statement is believed and acted upon, it can occasion no legal injury. It is essential, therefore, that the party addressed should trust the representation, and be so thoroughly induced by it that judging from the ordinary experience of mankind, in the absence of it, he would not, in all reasonable probability, have entered into the contract or other transaction.”

While the defendant denies that Mr. Young a member of the oldest and one of the most reliable real estate firms in Fredericksburg, made any false or misleading representations to Hefin, yet, if he did, they were not acted upon by Hefin, who later made his own personal investigation under advice of his attorney. As a matter of fact the testimony shows beyond a doubt, that nothing said by Young to Hefin, even accepting the latter's version of it, could possibly have misled or prejudiced plaintiff to the slightest extent.

THE ALLEGED GUARANTEE.

It may be admitted that if the bank or any authorized agent, guaranteed to plaintiff that the track would be built and this agreement was not carried out, plaintiff would be damaged to the extent that the value of his purchase was depreciated by such failure, when and if shown by proper evidence. First, however, plaintiff must establish by a preponderance of the evidence that this guarantee was given. Hefin asserts it and is met by the square denial of both Young and Goolrick. The former testified that he had no authority to give any such guarantee, and aside from this, that he gave none. Mr. Goolrick testified that he had but one conversation with Hefin, which was after he had obtained the letter from the Railroad Company, and that he gave him no guarantee whatever, simply showed him the letter of September 9, from the Railroad Company to the bank.

Let us examine the testimony as to the alleged guarantee.

Hefin first refers to it in his direct testimony. Testifying as to a conversation with Young, he quotes the latter as follows:

“He said (referring to Young) that the Bank had a guarantee from the Railroad Company to install a side track within the period of three years, but his personal opinion was that

it would be built within twelve months." (Transcript, page 75.)

Again, still referring to his conversation with Mr. Young, he said:

"I agreed to purchase the property upon the delivery of satisfactory deed, with the guarantee that the side track would be put in."

Immediately after making this statement, we find questions and answers, as follows:

"Q. Was that guarantee made to you by any one other than Mr. Young?"

"A. Not at that time, no, sir.

"Q. Well, at any time later?"

"A. When Mr. Goolrick gave us a letter from the Railroad Company, acknowledging the obligation, he told me that he would see that they carried out that obligation." (Transcript, page 76.)

The above testimony is all that occurs in the direct examination of Mr. Hefin in support of his contention of a guarantee. In his cross examination, testifying as to his conversation with Mr. Young, we find the following questions and answers:

"Q. What did he say exactly?"

"A. Mr. Young said that the Railroad Company had purchased this piece of property from the Planters National Bank and in that purchase they guaranteed the installation of a side track to the property and that they guaranteed it to be done within three years."

"Q. Is that all?"

"A. He said I could purchase the property if I paid \$1,500.00 down and gave a note for \$5,000.00 to be paid three years from date, and that the Bank would see that the Railroad Company carried out their obligation.

"Q. That the Bank would carry out its obligation?"

"A. Yes, sir." (Transcript, pages 92-93.)

We also find the following questions and answers:

"Q. If Mr. Young had given you this so-called guarantee in February, 1930, why did you wish anything else?"

"A. I wished something else shownig that they had this

agreement with the Railroad Company, the guarantee from the Bank.

"Q. Was the letter of September 9, 1930, acquired in order to show you?

"A. Yes, sir.

"Q. You acted on that letter?

"A. Yes, and on the guarantee of the Bank that they would see that the obligation would be carried out.

"Q. You were familiar with the contents of the letter long before you concluded the deal and signed the deed of trust?

"A. No, sir. The letter was given to me the date the deed was signed.

"Q. You read it before you signed it?

"A. Yes, sir." (Transcript, page 94.)

He was also asked this question:

"Q. Did Mr. Goolrick make any representations to you?

"A. He said the Bank had received that letter and would see that it was carried out." (Transcript, page 95.)

In subsequent testimony, Heflin again refers to conversation with Young and Goolrick, and we direct attention to the following questions and answers:

"Q. But you were not satisfied with the verbal obligation from Mr. Young and Mr. Goolrick until he acquired the letter from the Railroad Company?

"A. Yes, sir.

"Q. And it was that letter that caused you to close the deal?

"A. Yes, sir" (Transcript, page 101.)

Now, taking the testimony of Young and Goolrick the former was asked these questions:

"Q. In your dealing with Mr. Heflin, did you have any authority from the Planters National Bank to give any assurance or guarantee with regard to this particular piece of property and the spur track?

"A. No sir.

"Q. Did you give Mr. Heflin any guarantee or assurance of any kind, that the Railroad Company would build a spur track there, or that the Planters Bank would see that it was built?

"A. No, I did not. I told him I could not give him any guarantee; he would have to make the investigation himself,

when I showed him the property." (Transcript, pages 153, 154.)

Without quoting further from Mr. Young's testimony, it is sufficient to say that he positively and repeatedly denied that he had given Heflin any guarantee on the part of the Bank that this track would be built and he stated further that he had no authority to give such guarantee.

We have already referred to the fact that before the deal was closed, Mr. Goolrick had but one conversation with Heflin and that when he showed him the letter of September 9, received by him from the Railroad Company, at the specific request of Mr Heflin's attorney, Mr. Chichester.

Questioned as to the allegation of the bill, that he had guaranteed that the track would be built, Mr. Goolrick says:

"It is not true, so far as I am concerned. He never had any conversation with me about it, and I never gave him any assurance of any possible kind." (Transcript, page 147.)

To the same effect is his entire testimony, as disclosed by the record. Thus, Heflin's vague assertions in his attempt to repudiate his contract, are met with repeated and emphatic denials from both Messrs. Young and Goolrick.

Taking Heflin's own testimony, as a whole, it is obvious that in closing the deal he relied on the letter of September 9, and not on any alleged assurances of Young and Goolrick. He alleges that Young gave him some kind of a guarantee in the Spring of 1930, but it is significant that he delayed executing the trust deed and note until after reading that letter. Actions speak louder than words.

The burden of proof rested on plaintiff to establish the alleged guarantee, and this we believe it absolutely failed to do. There is no proof of any such guarantee, except the unsupported word of Mr. Heflin, and a careful inspection of his entire testimony will disclose the fact that in purchasing the property from the bank, he relied not on the alleged guarantee but on his belief that the Railroad Company intended to build a spur track.

It appears from the testimony of Young that when he first approached Heflin, the latter knew that the Railroad Company had bought the lower end of the Bank's property and that he asked for a plat of the whole property, which had been made by the Railroad Company:

"He knew (referring to Heflin) that the Railroad Company had bought it and I carried him down there and showed it to

him, and he asked me about the plat and I got the plat and showed it to him, and told him to make his own investigation." (Transcript, page 161.)

Later, it appears from Young's testimony, that Heflin told him he had been to Richmond and that he was satisfied that the Railroad Company was going to develop the property and that he was going to take it:

"Q. When did you last appear in this transaction, Mr. Young?

"A. I could not tell you the exact time; but it was when Mr. Heflin told me he had been to Richmond and that he was satisfied that the Railroad Company was going to develop that end of it, and he was going to take the property, and I notified Mr. Goolrick." (Transcript, page 165.)

Before that he told Young that it was his purpose to see Mr. Taylor and others connected with the Railroad Company:

"He told me it was his purpose in a day or two, to go to see Mr. Taylor and others; he knew them all. I told Mr. Goolrick Mr. Heflin thought he could handle the property; that he was going to see the Railroad officials." (Transcript, page 161.)

All of this was in the Spring of 1930.

On direct examination, Heflin was asked the reason for his delay in executing the deed of trust, after it had been prepared (delay from July to October). He replied as follows:

"Because there was nothing in the deed with regard to the guarantee of the side track." (Transcript, page 77.)

He was, of course, referring to the deed from the bank to the plaintiff. It is a curious coincidence that he refused to close the deal because of this fact and yet was satisfied to do so shortly after he and his attorney had read the letter from the Railroad Company to the bank. It is perfectly clear that Heflin, in closing the deal, did so because of this letter and not by reason of any guarantees and that plaintiff assumed the risk of non-construction of the spur track by the Railroad Company.

Concluding this branch of the case, counsel submits that all of the evidence introduced by plaintiff in regard to this

alleged guarantee could only have been for the purpose of showing the contract to be conditional since it was inadmissible for any other purpose. It could not have been received to add to or vary the written contract between the parties on the authority of *Harvey v. R., F. & P. R. R. Co.*, 162 Va. 49, and it should be limited accordingly to determination of whether the contract was on condition subsequent.

FAILURE OF CONSIDERATION

At the outset of argument under this head, it may be well to point out that what plaintiff considers failure of consideration, to-wit, "failure of the Railroad Company to construct the spur track", is no failure at all, so far as the Bank is concerned, until the plaintiff establishes by adequate proof, the fact that the bank guaranteed this construction. The evidence on this point is confined to the statements of three witnesses, to-wit, Heflin, Young and Goolrick. The first asserts that he was given a verbal guarantee and the last two absolutely deny this statement. At the time the contract was executed, Heflin knew and they knew, that the obligation of the Railroad Company was conditional, and it strains ones credulity to be asked to believe that two competent business men, such as Messrs. Young and Goolrick, the latter an experienced lawyer, would have obligated the bank to see that such conditional obligation was performed. Again, it is curious that the so-called guarantee of the bank was not required by the plaintiff to be inserted in his deed. At this point, the language of Judge Burks, in the case of *Charles v. Charles*, 127 Va. 604, seems pertinent. He says:

"When parties reduce their contracts or agreements to writing, acknowledging them before an officer, and cause or permit them to be spread on the public records, in the absence of any evidence of fraud, there is a very strong presumption that they correctly set forth the understanding and agreement of the parties thereto. Courts of equity will not lightly set them aside."

As a matter of fact there has been no failure of consideration in this case. The actual consideration for the money paid and secured to be paid by the plaintiff to the bank, is the real estate which the latter deeded to it.

No witness was called by the plaintiff to testify as to the value of this real estate at the time of the institution of this suit, and there is no evidence in the record which shows that it is worth less now than it was when purchased by the plain-

tiff. True, plaintiff states in its bill that the property is worth now no more than \$500.00, but there is no testimony which supports this allegation or any other allegation of like nature, as to the value of the property.

Courts are hesitant and cautious in dealing with executed contracts as may be seen by the following citation, to-wit:

AUTHORITIES.

In *Atlantic Delaine Company v. James*, U. S. Supreme Court, 24 Law. Ed. 207, plaintiff instituted a chancery suit to cancel an executed contract for reasons therein stated. In the course of his opinion, reversing a decree for the plaintiff, and ordering his bill dismissed, Justice Strong said:

“Cancelling an executed contract is an exertion of the most extraordinary power of a court of equity. The power ought not to be exercised except in a clear case and never for an alleged fraud, unless the fraud be made clearly to appear; never for alleged false representations unless the falsity is properly proved, and unless the complainant has been deceived and injured by them.”

The same language appears in *Fulton v. Cox*, 117 Va. 669.

An examination of the authorities, including Virginia, will convince the Court that there can be no rescission of such a contract unless there is *either actual or constructive fraud*.

In 4th R. C. L., Section 14, page 500, there is set out a statement which seems peculiarly applicable to this case, as follows:

“Mere failure of consideration, whether partial or total in character, when unmingled with fraud or *mala fides*, is not sufficient in equity to obtain the rescission of an executed contract. Moreover, in the absence of fraud, a deed or lease of real estate will not be set aside as for a failure of consideration, on the sole ground that the promises and agreements which entered into its execution and were to be performed in future have not been performed. Equity will not interfere where a grantor has seen fit to accept a verbal promise on the part of his grantee for the performance of certain acts without specifically providing that failure to perform should be a condition of forfeiture or in any way affect the validity of the deed or entitle him to a reconveyance.”

To the same effect is the old Virginia case of *Thompson v. Jackson*, 3rd Rand., page 685. In that opinion Judge Carr said:

"When the application is to rescind an executed contract for land, the English books lay it down as a general rule (admitting of but few exceptions), that to justify such decree, fraud must appear; and this fraud must be distinctly put in issue by the pleadings. If the charge be a mere failure of consideration, arising from the sale of a defective legal title, unmingled with fraud or *mala fides* of any kind, it is generally laid down, that the vendee will be left to the covenants and warranty in his deed."

Where Judge Carr speaks of exception to the general rule, he refers to cases of mistake the exception not being applicable to the instant case.

The rule laid down by Judge Carr is supported by the recent case of *Broadbush v. Broadbush*, 144 Va. 727, where Judge Christian, reversing the Chancery Court of Richmond, in a suit to rescind an executed contract, said:

"Although the actual cases in which a contract or conveyance had been cancelled on account of gross inadequacy merely without other inequitable incidents are very few, yet the doctrine is settled by a concensus of decisions and dicta, that, even in the absence of all other circumstances, when the inadequacy of price is so gross that it shocks the conscience, and furnishes satisfactory and decisive evidence of fraud, it will be a sufficient ground for cancelling a conveyance or contract, whether executed or executory. *Even then fraud, and not inadequacy of price, is the true and only cause for interposition of equity and the granting relief.*" 2 Pom. Eq. Jur. (2nd Ed., Sec. 928).

The Court will note from the above quotation that fraud is essential to recovery.

While on the subject of consideration it may be well to refer briefly to "inadequate consideration", since, in the argument before the lower court, failure and inadequacy were both touched on by counsel for the plaintiff. If inadequacy is relied on the Court's attention is directed to the language contained in 4 R. C. L., section 15, page 501, as follows:

"Mere inadequacy of consideration is not sufficient in itself to warrant equity assuming jurisdiction for the purpose of cancelling an instrument, for chancery lacks the power to relieve a party from the effects of an injudicious bargain. The principle is well established, that where a party has made a disadvantageous contract from carelessness and inattention, so long as there has been no mistake of fact or fraud, such

party cannot be relieved from the contract in equity; for courts of equity as well as courts of law, must act on the ground that every person, who is not under some legal disability, may dispose of his property in such manner and on such terms as he sees fit; and whether his bargains are discreet or not, profitable or unprofitable, are considerations, not for courts of justice, but for the party himself."

To the same effect as the text, are numerous Virginia cases. These causes uniformly lay down the following rule:

"To induce a court of equity to annul a deed or contract on account of inadequacy of consideration, it must be so gross that upon the first blush it shocks the conscience and produces an exclamation of surprise and reprobation in different persons. *Deem v. Phillips*, 5 W. Va. 168; *Lowe v. Trundle*, 78 Va. 65; *Jones v. Degge*, 84 Va. 685, 5 S. E. Rep. 799."

See also note on rescission, 6 Munf., page 724.

In *Eyre v. Potter*, U. S. Supreme Court, 14 Law Ed., page 592, where consideration for the deed was attacked as grossly inadequate, rescission was refused. In the course of the opinion Justice Daniel said:

"Mere inadequacy of price, or any other inequity in a bargain, we are told, is not to be understood as constituting *per se* a ground to avoid a bargain in equity, for courts of equity, as well as courts of law, act upon the ground that every person who is not, from his peculiar condition or circumstances, under disability, is entitled to dispose of his property in such manner and upon such terms as he chooses; and whether his bargains are wise or discreet or otherwise, or profitable or unprofitable, are considerations not for courts of justice, but for the party himself to deliberate upon. Vide Story's Equity, Sec. 244, citing the case of *Griffiths v. Spratley*, 1 Cox 383; *Copis v. Middleton*, 2 Maddox 409, and various other cases.

"Again, it is ruled that inadequacy of consideration is not of itself a distinct principle of equity. The common law knows no such principle. The consideration, be it more or less, supports the contract. Common sense knows no such principle. The value of a thing is what it will produce, and it admits of no precise standard. One man, in the disposal of his property may sell it for less than another would. If courts of equity were to unravel all these transactions, they would throw everything into confusion, and set afloat the

contracts of mankind. Such a consequence would of itself be sufficient to show the injustice and impracticability of adopting the doctrine, that mere inadequacy of consideration should form a distinct ground for relief. Still, there may be such an unconscionableness or inadequacy in a bargain, as to demonstrate some gross imposition or some undue influence; and in such cases courts of equity ought to interfere, upon satisfactory ground of fraud; but then, such unconscionableness or such inadequacy should be made out as would, to use an expressive phrase, shock the conscience, and amount in itself to conclusive and decisive evidence of fraud, Vide Story's Equity, Secs. 245, 246, and 9 Ves. 246; 10 *Id.* 219; and other cases there cited."

CONDITIONAL CONTRACT.

I have previously shown that the plaintiff practically abandoned the contention originally made in its bill, that the contract was conditional or executory, and has treated it as an executed contract. I have also shown that the court accepted this view, otherwise this particular question would doubtless have gone to a jury under the decree of October 31, 1934, on the authority of *Whitaker v. Lane*, 128 Va. 317, in spite of the fact that neither plaintiff or defendant asked for such jury. In view of this situation it seems useless to devote space to a further discussion of this particular question and I advert to it only because it appears in the bill and because the witness, Heflin, made some attempt to establish a conditional contract. If counsel for the plaintiff still relies on this allegation of its bill, the question will be further discussed in a reply brief to be filed for the defendant.

CONCLUSION.

The able and learned judge of the lower court, contrary to his usual custom in cases of importance, such as this, filed no opinion but contented himself with a statement in the final decree that, "the law as set forth by the Supreme Court of Appeals of Virginia in the case of *Garrett v. Finch*, 107 Va. 26, and *Rorer Iron Co. v. Trout*, 83 Va. 397, controls here".

The Court does not point out how or in what respect these cases control, and it is impossible to gather from the final decree upon what ground or grounds the decree rests.

With all possible respect it is confidently submitted that the court's view is entirely erroneous. To show this it will be necessary to briefly analyze two cases upon which it is based.

Taking up first, *Rorer Iron Co. v. Trout*, a careful reading of the lengthy statement of facts and the opinion of Judge Richardson, discloses a suit to annul a deed of lease, executed by Trout, grounds for such annulment being certain false representations which were material, and which were relied on by Trout as true and which induced him to make the lease.

The bill further alleged, and the proof sustained its allegations, "that the representations were that certain things existed, the existence whereof was a matter peculiarly within the lessees knowledge". The particular representations made to Trout, which proved to be false and material, and of which he had no knowledge, are disclosed in the statements of facts. The court naturally rescinded the lease on the ground of fraud.

There is no possible analogy between this case and the instant one. In the latter, the charge of fraud against the bank was practically abandoned, and whether this be conceded or not, it cannot be denied that when the plaintiff corporation completed its contract with the bank, its president, Hefin, had exactly the same knowledge as did the bank of the terms of the obligation of the R. R. Co., to construct the spur track. In other words, whatever may have passed between himself and Young he knew at the time the contract was executed that the obligation of the Railroad Company was purely conditional and he took the risk of its future action concerning the spur track. He evidently thought that the track would be constructed, but such belief on his part is not material to this case.

The case of *Garrett v. Finch* (*supra*) is equally inapplicable. This case was dismissed by the lower court on a demurrer to the bill and the only question before the Supreme Court was this action of the lower court. The case was reversed and remanded for further proceedings.

A careful reading of the case will show that it does not change the Virginia rule requiring that actual or constructive fraud must be established before an executed contract will be rescinded. It but emphasized this rule. The bill, in the case, charges actual fraud and makes this charge the basis of the prayer for rescission of the contract of lease. It sets out in detail certain false and material representations made to the lessor, Garrett, by the lessees, upon which he relied, the truth or falsity of same not being known to him when the lease was executed.

Among other things the demurrer alleged that the plaintiff's remedy was at law. As to this, the Supreme Court said, "the prime object of this suit was to have rescinded a con-

tract alleged to have been procured by fraud. The plaintiff had a right to elect to rescind, upon discovery of the fraud, and to invoke the aid of a court of equity for that purpose”.

It is also alleged, “that the allegations of the bill, if true, set up mere expressions of opinion and not representations of fact”. As to this the Supreme Court said, in part: “The Court is further of the opinion that the allegations of the bill are not confined to mere expression of opinion but that representations of fact are sufficiently alleged to entitle the plaintiff to relief, if such representations are shown to have been made.”

It is obvious that there is no similarity whatsoever between this case and the instant case.

In closing, it may be said that even had the plaintiff proved, as it has not, a guarantee from the Bank to see that the spur track was constructed and this had not been complied with, it would, on the proof in this case, have constituted a partial failure of consideration only, not entitling plaintiff to rescission of the contract, but, perchance, permitting him to institute an action at law for damages for breach of the guarantee.

It is respectfully submitted that the action of the lower court should be reversed and final judgment entered in this court for the defendant bank.

Defendant prays for an appeal and *supersedeas* from said decree.

Counsel, adopting this petition as his brief, desires to state orally the reasons for reviewing the decision complained of, certifies that a copy hereof was delivered to S. Bernard Coleman, attorney for the plaintiff, on the 31st day of January, 1935.

Respectfully,

PLANTERS NATIONAL BANK OF
FREDERICKSBURG, VIRGINIA.

By C. O'CONOR GOOLRICK,
Its Attorney.

I, C. O'Conor Goolrick, an attorney at law, practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in my opinion the decree complained of in the foregoing petition should be reviewed and reversed by the Supreme Court of Appeals of Virginia.

C. O'CONOR GOOLRICK.

The undersigned counsel for the appellee in the trial court do hereby accept legal and reasonable service of the foregoing petition by receiving a copy thereof.

S. B. COLEMAN,
Of Counsel for Appellee.

Appeal allowed and *supersedeas* awarded. Bond \$3,000.00.

2-22-35.

GEORGE L. BROWNING.

Received February 22, 1935.

M. B. WATTS, Clerk.

RECORD

page 39 } VIRGINIA:

In the Clerk's Office of the Corporation Court of Fredericksburg.

Be it remembered that heretofore, to-wit, on Oct. 2, 1933, came E. G. Hefin Company, Inc., and filed its bill and exhibits against The Planters National Bank of Fredericksburg, The Planters National Bank in Fredericksburg, and William K. Goolrick, Trustee, which bill and exhibits are as follows:

Your complainant, E. G. Hefin Company, Incorporated, and existing under the laws of the State of Virginia, with its principal office in the City of Fredericksburg, Virginia, would respectfully show unto the Court as follows:

That the said complainant is a corporation as aforesaid and is engaged in the contracting and building business in and about the City of Fredericksburg, Virginia, and that E. G. Hefin is the President of said corporation.

That in the early summer of 1930, The Planters National Bank of Fredericksburg, Virginia, said bank having been chartered and existing under the laws of United States of America as a National Bank was the owner of a certain lot or parcel of land, in the City of Fredericksburg, Virginia, described as follows:

Beginning at a point on the east side of Sophia or Water Street, 15 ft. So. of the northerly boundary line of Frederick

Street extended and running So. with Sophia or Water Street to a point in said street line 318.8 ft. from the northerly line of Princess Elizabeth Street extended; thence in a southerly direction on a curve whose radius is 309.94 ft., minus 86.5 ft. to a point; thence parallel to the easterly line of Water or Sophia Street, and So. 22 deg. 48 min. east, 101 ft. to a point; thence at right angles with said line north 67 deg. 12 min. east, 125 ft. to a point on the shore line of the
 page 40 } Rappahannock River; thence along the shore line to the Rappahannock River in a northerly direction to a corner with A. F. Embrey lot; thence in a straight line with A. F. Embrey lot to the point of beginning on Water or Sophia Street.

That during the early part of the year of 1930, A. B. Young, who is one of the partners of Allison & Young, Real Estate Agents, approached E. G. Heflin, the President and Agent of your Complainant, and advised him that he was the Agent of the Planters National Bank of Fredericksburg, Virginia, and that said bank desired to sell the lot as hereinbefore described; and your complainant here would show unto the Court that the said A. B. Young knew that your complainant was desirous of obtaining a site on which to erect a planing and woodworking mill, but that said site so desired should be adjacent to a spur track of the Richmond, Fredericksburg and Potomac Railroad Company in order that lumber purchased by your complainant in and about its business might be unloaded or loaded at the mill. And the said A. B. Young then and there represented to your complainant, through its President and Agent, E. G. Heflin, that the lot in question would constitute such a site and advised your complainant at the times aforesaid that the Richmond, Fredericksburg and Potomac Railroad Company had purchased from The Planters National Bank of Fredericksburg, Virginia, a strip along the front of said lots adjacent to Sophia or Water Street for the purpose of erecting thereon a spur track connected with its main line, and that said Richmond, Fredericksburg and Potomac Railroad Company had obligated itself to The Planters National Bank of Fredericksburg, Virginia, to erect a
 spur track connected with its main line on the strip
 page 41 } purchased from The Planters National Bank of Fredericksburg, Virginia, adjacent to the lot described hereinabove and being a part of the lot subsequently sold your complainant, and that therefore the lot in question would meet the requirements demanded by your complainant in such a lot. That the portion of the lot then owned by the Planters Bank, which was purchased by the Richmond-

Fredericksburg and Potomac Railroad Company, was bought for the sole purpose of building a spur track thereon as will be seen by the plat attached to the deed; and your complainant here tells the Court that the said A. B. Young sought E. G. Heflin, President of your complainant and its Agent, on several occasions during the months aforesaid, and assured him that there was no question but what the Richmond-Fredericksburg and Potomac Railroad Company had obligated itself to build a spur track and even obtained and presented to your complainant a plat showing exactly where the spur track would be built under the agreement of the Richmond-Fredericksburg and Potomac Railroad Company with The Planters National Bank of Fredericksburg, Virginia, and your complainant files herewith a copy of the deed dated July 14, 1930, marked "Exhibit A", and also a copy of a plat, marked "Exhibit B", recorded with said deed from The Planters National Bank of Fredericksburg, Virginia, to the Richmond-Fredericksburg and Potomac Railroad Company, conveying unto said Company the strip as set forth on said plat, and your complainant asks that a copy of said deed and plat be read as a part of this bill.

Your complainant would further show unto the Court that E. G. Heflin, its President and Agent, at the times aforesaid, advised A. B. Young, Agent for The Planters Na-
page 42 } tional Bank of Fredericksburg, Virginia, that the property would be practically worthless to the Company if this track was not built, and that the Company would not consider purchase of the lot at any price, or under any circumstances, other than that of the Richmond-Fredericksburg and Potomac Railroad Company erecting the spur track as represented. Through all the conversations between E. G. Heflin, President of your complainant corporation, and A. B. Young, Agent for The Planters National Bank of Fredericksburg, Virginia, it was understood that the purchase of the porperty by your complainant depended entirely upon the erection of the spur track as aforesaid, and that the erection of said spur track was the sole consideration of the purchase.

Your complainant would further show unto the Court that in consideration of the representation made, to-wit: That the Richmond-Fredericksburg and Potomac Railroad Company had obligated itself to The Planters National Bank of Fredericksburg, Virginia, to erect a spur track on the property purchased by said Railroad Company and adjacent to the lot in question, your complainant agreed to purchase the property at a price of \$6,500.00, \$1,500.00 to be paid, or considered paid, at the date of delivery of the deed, and \$5,000.00 to be

secured by a deed of trust on said property securing the payment of a note of even date therewith, made by your complainant on or before three years after date, and here your complainant would further show unto the Court that the actual agreement between itself and The Planters National Bank of Fredericksburg, Virginia, was that said note would be paid when said spur track was erected, if erected during page 43 } the three year period; and your complainant was ready and willing during all this time to carry out its part of said agreement and discharge said note when said spur track should have been completed.

Your complainant would further show unto the Court that the deed from The Planters National Bank of Fredericksburg, Virginia, to E. G. Heflin, Incorporated, was prepared but before your complainant would execute the deed of trust he advised The Planters National Bank of Fredericksburg, Virginia, through its President, Mr. William K. Goolrick, that he desired positive assurance from said bank or its duly authorized officers and agents, that the Richmond-Fredericksburg and Potomac Railroad Company had obligated itself to build the spur track as aforesaid, and that said bank would guarantee that said track be built and to confirm the understanding with regard to spur track. In accordance therewith, sometime subsequent to September, 1930, your complainant received from The Planters National Bank of Fredericksburg, Virginia, through its President, Mr. William K. Goolrick, a purported copy of a letter from Norman Call, Vice-President of the Richmond-Fredericksburg and Potomac Railroad Company, in response to one written by the bank and at complainant's request, in which said letter of date Sept. 9, 1930, said Railroad Company obligated itself to The Planters National Bank of Fredericksburg, Virginia, to build within three years from the date of this deed a spur track connected with its industrial track, the location of which was to have been substantially as shown on the plat attached to the deed of conveyance, a copy of which said letter is filed page 44 } herewith, marked "Exhibit C", and prayed to be read as a part of this bill.

Your complainant would further show unto the Court that acting on the representations as hereinbefore set forth, and the assurance of the building of the spur track, and believing that said representations were true and that said Railroad Company would build the spur track as alleged, and that the said Planters National Bank of Fredericksburg, Virginia, would carry out its agreement with your complainant to guarantee said track would be built, accepted a deed conveying said lot to your complainant, signed the same as evidence of ac-

cepting certain stipulations therein, signed and acknowledged the deed of trust securing a note of \$5,000.00, and paid unto The Planters National Bank of Fredericksburg, Virginia, the sum of \$1,500.00, William K. Goolrick being named as Trustee in said deed of trust.

Your complainant would further show unto the Court at the time of executing the deed and deed of trust, your complainant, through its President and Agent, E. G. Heffin, agreed with The Planters National Bank of Fredericksburg, Virginia, through its President and Agent, William K. Goolrick, and also William K. Goolrick as Trustee, that the deed and deed of trust should not be recorded until the spur track had been completed, a copy of said deed and deed of trust being filed herewith, marked "Exhibit D & E", and prayed to be read as a part of this bill.

Your complainant would further show unto the Court that it has paid to The Planters National Bank of Fredericksburg, Virginia, interest on the \$5,000.00 note from July
page 45 } 30, 1930, to July 30, 1932, aggregating \$600.00. That
it also paid unto the Planters National Bank of
Fredericksburg, Virginia, the cash payment of \$1,500.00.

Your complainant would further show unto the Court that it waited patiently until January 30, 1933, at which time The Richmond-Fredericksburg and Potomac Railroad Company had made no move to erect a spur track as represented to your complainant, and that inasmuch as in accordance with the representations of The Planters National Bank of Fredericksburg, Virginia, to your complainant, said spur track should have been completed on or before July 14, 1933, your complainant, through its President and Agent, wrote to William K. Goolrick, President of The Planters National Bank of Fredericksburg, Virginia, bringing to said bank's attention the failure of said Company to erect a spur track as aforesaid, and requesting that the bank take action in regard to compelling the Railroad Company to erect said tract. Your complainant would further show unto the Court that this letter remained unanswered and that on January 31, 1933, at 10:15 o'clock A. M. the deed and deed of trust were presented to the Clerk of the Corporation Court of the City of Fredericksburg, Virginia, for recordation, and were recorded, although the said bank, through its Agent and President, expressly agreed with your complainant that said deed and deed of trust were not to be recorded until said track was completed, and that thereafter your complainant at various times brought to the attention of said bank that the track was not being built, but that so far as your complainant is advised, no steps were taken, either by The Planters National

Bank of Fredericksburg, Virginia, or the Richmond-Fredericksburg and Potomac Railroad Company, to build a track as agreed, nor has said bank answered any of the repeated demands on the part of your complainant for information or action in regard to the erection of this track.

Your complainant would further show unto the Court that being unable to obtain information from or action on the part of said bank, it did, through its President, on the 28th day of July, 1933, the time limit for the guarantee to build said track having expired on July 14, 1933, demand of said bank that the entire transaction be cancelled, and that your complainant be paid the sum of \$2,370.00, which it had paid to said bank as follows:

Cash payment,	\$1,500.00
Interest three years,	270.00
Interest on \$5,000.00 note, two years,	600.00

but that this demand was entirely ignored by said bank.

Your complainant would further show unto the Court that the entire consideration for this purchase of said property from said bank was that the Richmond-Fredericksburg and Potomac Railroad Company had obligated itself to build, and would build within three years from the date of its deed, a spur track connected with its main line adjacent to said property as set forth on the plat filed herewith, and which was shown to your complainant through its President and Agent for the purpose of inducing it to purchase said property, and that your complainant would never have agreed to purchase the property except for the representations as aforesaid, and that said property is entirely worthless to your complainant without said track, and your complainant would further show unto the Court that the representations as made were either false, or, if not, then The Planters National Bank of Fredericksburg, Virginia, has failed and refused in its representations to your complainant that said spur track would be built in three years, and in its guarantee to your complainant that said track would be built on or before July 14, 1933.

Your complainant would therefore show unto the Court that the consideration for this agreement has failed entirely by reason of the failure of The Planters National Bank of Fredericksburg, Virginia, to carry out its part of said agreement, or to make good the representations in regard to the spur track as hereinbefore set forth, which said agreement was the sole inducement for the purchase by complainant.

Your complainant would further show unto the Court that in the year 1932 there was organized a bank known as The Planters National Bank in Fredericksburg, Virginia, which said bank superseded The Planters National Bank of Fredericksburg, Virginia, and whether the note of your complainant was acquired in this transaction it is not advised, but your complainant here shows unto the Court that the officers of The Planters National Bank in Fredericksburg, Virginia, are the same as those of The Planters National Bank of Fredericksburg, Virginia, and that therefore if The Planters National Bank in Fredericksburg, Virginia, acquired a note for \$5,000.00 of your complainant from The Planters National Bank of Fredericksburg, Virginia, then it did so
 page 48 } with full knowledge of the entire transaction as set forth hereinabove in this bill.

Your complainant therefore charges and alleges that the building of the spur track by the Richmond-Fredericksburg and Potomac Railroad Company was a condition on which the completion of the sale of the property involved was dependent, and that this condition was thoroughly understood and agreed upon by both your complainant and The Planters National Bank of Fredericksburg, Virginia, through its Agent and Officer, William K. Goolrick; and further that the building of the said spur track was the sole condition for the purchase of said property. Your complainant therefore charges that inasmuch as the spur track was not built on or before July 14, 1933, the consideration for this transaction has failed, and the condition on which said transaction was dependent has not been complied with by the Planters National Bank of Fredericksburg, Virginia, and that said bank should therefore have returned to your complainant the money paid to said bank and also its note in the amount of \$5,000.00 and deed of trust securing said note, but this the said bank has failed and refused to do. Your complainant further charges that to compel it to accept the said property when the consideration of the said transaction has failed and the condition on which it was dependent has not been complied with, would be subjecting your complainant to a gross injustice, and would in substance mean the taking from your complainant the sum of \$6,500.00 in return for a piece of property which is practically worthless, certainly not of the value of more than \$500.00.

The object of this suit therefore it to have rescission and cancellation of the deed from The Planters National Bank of Fredericksburg, Virginia, to your complainant, and the deed of trust from your complainant to William K. Goolrick, Trustee, and to have returned to your

complainant its note in the amount of \$5,000.00, secured by said deed of trust, and to recover from the Planters National Bank of Fredericksburg, Virginia, the amounts expended as hereinabove set forth, which were paid by your complainant to the Planters National Bank of Fredericksburg, Virginia, all of which your complainant says that it is rightly and justly entitled to have done, and in furtherance of which your complainant files herewith a release deed properly executed releasing whatever interest it may have in and to said lot.

Wherefore, your complainant prays that it be permitted to file this its bill of complaint; that The Planters National Bank of Fredericksburg, Virginia, The Planters National Bank in Fredericksburg, Virginia, and William K. Goolrick, Trustee, be made parties defendant to this bill and required to answer the same, but not on oath, answer on oath being expressly waived as to this bill; that the deed from The Planters National Bank of Fredericksburg, Virginia, to E. G. Heflin Company, Inc., dated July 29, 1930, be cancelled and rescinded; that the deed of trust from E. G. Heflin, Inc., to William K. Goolrick, Trustee, dated July 30, 1930, securing a note evidencing a debt of \$5,000.00 be rescinded and marked satisfied; that said note be marked satisfied and returned to your complainant, and that it recover of the Planters National Bank of Fredericksburg, Virginia, the sum of \$1,-
 page 50 } 500.00 with interest from July 30, 1930, until paid,
 and \$600.00 interest paid, with interest thereon
 from the 30th day of July, 1932, until paid, and for such
 other and further relief, both general and special, as to
 equity may seem meet and the nature of the case may require,
 and your complainant will ever pray, etc.

E. G. HEFLIN CO. INC.,
 By E. G. HEFLIN Pres.

S. B. COLEMAN, p. q.

EXHIBIT "A".

WHEREAS, by a resolution of the Board of Directors of the Planters National Bank of Fredericksburg, Va., a corporation organized and chartered by and under the laws of the United States, duly passed on March 4, 1930, and made a part of the minutes of said bank, Wm. K. Goolrick, Pres.,

and Paul Karsten, Jr., Cashier or Carl T. Hill, Asst. Cashier, of the Planters National Bank of Fredericksburg, Va., were authorized and empowered to execute, sign, seal and deliver deed for the hereinafter described real estate unto the Richmond, Fredericksburg and Potomac Railroad Company, a corporation chartered by and under the laws of the State of Virginia.

NOW THEREFORE THIS DEED, Made and entered into this 4th day of July, 1930, by and between the Planters National Bank in Fredericksburg, Va., party of the page 51 } first part and the R. F. & P. R. R. Co., party of the second part.

WITNESSETH: That for the payment of the sum of \$1,000.00 cash in hand paid and other valuable consideration, receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey with general warranty unto the said party of the second part, the following real estate with buildings and appurtenances, lying and being on the east side of Sophia or Water Street, between Frederick and Princess Elizabeth Streets in the City of Fredericksburg, Va., consisting of two parcels more particularly described as follows, to-wit:

Parcel No. 1.

Beginning at an iron pipe in the easterly line of Water St., said pipe being 37.5 ft. s. e. of the south line Princess Elizabeth St. extended; thence N. 22 deg. 48 min. 210.0 ft. to a point in the easterly line of Water St.; thence N. 67 deg. 12 min. E. 127.0 ft. to a point on the shore line of the Rappahannock River; thence along shore line in a southeasterly direction 214.0 ft., plus or minus, to a point; thence S. 67 deg. 56 min. W. 120.0 ft. to the point of beginning, containing .58 of an acre

Parcel No. 2.

Beginning at a point in the easterly line of Water St. 132.5 ft. from the intersection of the northerly line of Princess Elizabeth St. extended; thence N. 22 deg. 48 min. W. 186.3 ft.

to a point in the easterly line of Water St.; thence in a southerly direction on a curve, whose radius is 309.94 ft.—86.5 ft. to a point; thence parallel to the easterly line of Water St. S. 22 deg. 48 min. E. 101.0 ft. to a point; thence at right angles S. 67 deg. 12 min. W. 12 ft. to the point of beginning, containing .043 of an acre.

The aforesaid real estate being particularly described in map dated Jan. 28, 1930, and marked "11-H-5" and recorded with this deed; and the plats herein contained be-
page 52, } ing designated on said map as No. 1 and No. 2.

And the parcel from which right-of-way is reserved over the said parcel No. 2 to Sophia or Water Street being designated on said map as No. 3.

The said parties to this deed mutually covenant and agree that the said party of the first part shall have a perpetual right-of-way, or right of ingress and egress from lot immediately north of the first parcel herein conveyed as "Parcel No. 1", and described on the aforesaid map recorded with this deed as "Parcel No. 3" over the parcel of real estate herein conveyed described as "Parcel No. 2" at some point to be mutually agreed upon between the party of the first part or its grantees and the party of the second part or its grantees, the said right of way to be not less than 15 ft. in width and to be designated at some point mutually agreed on between the aforesaid parties or their grantees, from Lot No. 3, on aforesaid plat across plat known on the aforesaid map as No. 2 to Water or Sophia St.

It is mutually covenanted and agreed by and between the parties to this deed that the said party of the first part, or its grantees, shall have the right to remove, within three months from the date of written notice from the grantees herein, the brick buildings from that portion of the aforesaid real estate conveyed unto the said party of the second part, known as Parcel No. 2, and that the brick and material in said buildings shall belong to the said party of the first part.

The said party of the first part covenants that he has the right to convey the said land to the grantee; that it has
page 53 } done no act to encumber the said land; that the grantee shall have quiet possession of the land, free from all encumbrances, and that it, the said party of the first part, will execute such further assurance of the said land as may be requisite.

Witness our hands and respective seals of the aforesaid corporation this 14th day of July, 1930.

PLANTERS NATIONAL BANK OF
FREDERICKSBURG, VA.

By WM. K. GOOLRICK, Pres.

R. F. & P. R. R. CO.

By EPPA HUNTON, Jr., Pres.

CARL T. HILL,
Asst. Cashier

NORMAN CALL, Secty.
Acknowledged July 14, 15, 1930.

PR
HARBOR ST

FRICK ST

WATER ST

FRICK 1000 ACRES

EMERY

AMER BANK

PLANT BANK

RAFFAEL WOOD RIVER

page 55 }

EXHIBIT "C".

(COPY)

September 9, 1930.

Mr. Wm. K. Goolrick, President,
The Planters National Bank,
Fredericksburg, Va.

Dear Mr. Goolrick:

Replying to your favor of the 6th instant, this is to confirm understanding had between your Bank and this Company during the negotiations whereby this Company purchased from your Bank a piece of property in Fredericksburg conveyed by deed bearing date the 14th day of July, 1930, namely, that the Railroad Company is obliged to build within three years from the date of the said conveyance a spur track connected with its industrial track and reaching the remainder of the property still owned by your company just north of the property acquired by the Railroad Company, the location of the said track being substantially as shown on the print attached to the deed of conveyance.

The building of this track across the several city streets will, of course, depend upon our ability to secure consent of the City of Fredericksburg and the necessary authority therefor.

Will you kindly acknowledge receipt of this letter and oblige?

Yours very truly,

NORMAN CALL, Vice-President.

page 56 }

EXHIBIT "D".

WHEREAS, by a resolution of the board of directors of the Planters National Bank of Fredericksburg, Va., a corporation organized and chartered by and under the laws of the United States, duly passed March 4, 1930, and made a part of the minutes of the said bank, Wm. K. Goolrick, President and Paul Karsten, Jr., Cashier or Carl T. Hill, Assistant Cashier, of the Planters National Bank of Fredericksburg, Va., were authorized and empowered to execute, sign, seal and deliver deed for the hereinafter described real estate unto the E. G. Heflin Company, Inc., a corporation chartered by and under the laws of the State of Va.

NOW, THEREFORE, THIS DEED, Made and entered into 29th day of July, 1930, by and between the Planters

National Bank of Fredericksburg, Va., party of the first part, and the E. G. Hefin Company, Inc., party of the second part,

WITNESSETH: That for the payment of the sum of \$1,500.00 cash in hand paid and other valuable considerations, receipt whereof is hereby acknowledged, the said party of the first part does hereby grant and convey unto the said party of the second part with general warranty the following real estate with buildings and appurtenances, lying and being on the east side of Sophia or Water Street, between Frederick and Princess Elizabeth Streets, in the City of Fredericksburg, Va., and particularly described as follows, to-wit:

Beginning at a point on the east side of Sophia or Water Street 15 ft. south of the northerly boundary line of Frederick Street extended, and running south with Sophia or Water Street to a point in said street line 318.8 ft, from the northerly line of Princess Elizabeth Street extended; thence in a southerly direction on a curve, whose radius is 309.94 ft.—86.5 ft. to a point; thence parallel to the easterly line of Water or Sophia Street S. 22 deg. 48 min. E. 101.0 ft. to a point; thence at right angles with said last line N. 67 deg. 12 min E. page 57! 125 ft. to a point on the shore line of the Rappahannock River; thence along the shore line of the Rappahannock River in a northerly direction to a corner with A. F. Embrey lot and thence in a straight line with A. F. Embrey lot to the point of beginning on Water or Sophia Street.

The aforesaid real estate being particularly described in a plat dated January 28, 1930, and marked "11-H-5" and recorded with a deed from the Planters National Bank of Fredericksburg, Va., to the Richmond, Fredericksburg and Potomac Railroad Company, Inc., by deed dated July 14, 1930, and recorded in the Clerk's Office of the Corporation Court of Fredericksburg, Va., in Deed Book 64, page 225.

The said party of the first part hereby grants, conveys and assigns unto the said party of the second part its perpetual right of way of ingress and egress from the lot herein conveyed over the parcel of real estate described in the aforesaid plat as lot No. 2 and conveyed unto the R. F. & P. R. Co., Inc., by deed dated July 14, 1930, and recorded in the aforesaid Clerk's Office in Deed Book 64, at page 225, at some point to be mutually agreed upon between the party of the second part and the R. F. & P. R. Co., Inc., the said ignited at some point to be mutually agreed upon between

the said party of the second part and the said R. F. & P. R. R. Co., Inc., from lot No. 3 on the aforesaid plat across the lot known on the aforesaid plat as Lot No. 2 to Water or Sophia Street.

It is mutually covenanted and agreed by and between the said party of the first part and the said party of the page 58 } second part to this deed that the said party of the second part will remove, within three months from the date of written notice from the R. F. & P. R. R. Co., Inc., the brick building from that portion of the aforesaid real estate known as Lot No. 2 conveyed unto the said R. F. & P. R. R. Co., Inc., in the aforesaid deed dated Jly. 14, 1930 and that all material in said building shall belong to the said party of the second part to this deed.

Covenants of Title.

Witness our hands and the respective seals of the aforesaid corporation this 29th day of July, 1930.

PLANTER NATIONAL BANK OF FBG. VA.
By WM. K. GOOLRICK, President.
E. G. HEFLIN COMPANY, INC.,
By E. G. HEFLIN, President.

PAUL KARSTEN, Jr., Cashier,

(Seal of Bank)

BESSIE HEFLIN, Secty.

(Seal of Co.)

Acknowledged October 18, 1930.

Recorded January 31, 1933, at 10:15 o'clock.

EXHIBIT "E".

THIS DEED, Made this 30th day of July, 1930, between E. G. Heflin, Incorporated, party of the first part, and Wm. K. Goolrick, Trustee, party of the second part.

WITNESSETH: That said parties of the first part does grant, with general warranty, unto the said party of the second part, the following property, to-wit:

That certain lot, with buildings and appurtenances, lying

and being in the City of Fredericksburg, Va., and particularly described as follows, to-wit:

Beginning at a point on the east side of Sophia or Water St. 15 ft. south of the northerly boundary line of page 59 } Frederick Street extended, and running south with Sophia or Water St. to point in said street line 318.8 ft. from the northerly line of Princess Elizabeth Street extended; thence in a southerly direction on a curve, whose radius is 309.94 ft.—86.5 ft. to a point; thence parallel to the easterly line of Water or Sophia St. S. 22 deg. 48 min. E. 101.0 ft to a point; thence at right angles with said last line N. 67 deg 12 min. E. 125 ft. to point on shore line of Rappahannock River in a northerly direction to corner with A. F. Embrey lot and thence in a straight line with A. F. Embrey lot to point of beginning on Water or Sophia St. Being the same real estate conveyed unto the E. G. Heffin Company, Incorporated, by the Planters National Bank of Fredericksburg, Va., by deed dated July 20, 1930, and duly recorded in the Clerk's Office of the Corporation Court of the City of Fredericksburg, Virginia.

IN TRUST, to secure to the holder of the hereinafter described note the payment of the sum of Five Thousand Dollars, as follows, to-wit: One note of even date with this deed for the sum of five thousand dollars (\$5,000.00) made by the E. G. Heffin Company, Incorporated, payable to the Planters National Bank, of Fredericksburg, Va., on or before three years from date, with interest at 6% per annum, payable semi-annually and waiving homestead exemption.

IN THE EVENT THAT DEFAULT shall be made in the payment of the note hereinbefore mentioned, or any installment of taxes or levies on said real estate, when and as the same, or any of them, shall become due and payable (and such taxes and levies are to be construed as due and payable on the day preceding that on which any penalty is by law added thereto), then the Trustee on being required so to do by the holder of the said note, shall sell the property hereby conveyed.

And it is covenanted and agreed, between the parties aforesaid that in case of a *seal*, the same shall be made at public auction, in front of the city hall, or at such other place as may be determined by the Trustee, after first advertising the time, place and terms of sale for two consecutive weeks page 60 } in Fredericksburg, Virginia, newspaper, and upon the following terms, to-wit: For cash as to so much

of the proceeds as may be necessary to defray the expenses of executing this trust, including a Trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said note and if there be any residue of said purchase money, the same shall be made payable at such time and secured in such manner as the said party of the first part, its executors, administrators or assigns shall prescribe or direct, or in case of its failure to give such direction, at such time and in such manner as the said Trustee shall think fit.

The said party of the first part covenants to pay all taxes, levies, dues and charges upon the said property hereby conveyed, so long as the debt hereby secured remains unpaid, under this deed, then all such taxes and levies are to be recoverable by all the remedies at law or in equity, by which the debt aforesaid may be recoverable; and the party of the first part hereby waives the benefit of its homestead exemption as to the debt secured by this deed and any expenditure for taxes, or levies by the holders of said notes in pursuance of this deed.

IF NO DEFAULT SHALL BE MADE in the payment of the above mentioned note then, upon the request of the party of the first part, a good and sufficient deed of release shall be executed to it at its own proper costs and charges.

WITNESS the following signatures and seals:

(Seal) E. G. HEFLIN, President
BESSIE HEFLIN, Secretary

State of Virginia,

City of Fredericksburg, to-wit: I, Rose Y. McCarty, a Notary Public in and for the City aforesaid, in the page 61 } State of Virginia, do certify that E. G. Heflin and Bessie Heflin, whose names are signed to the foregoing writing, bearing date on the 30th day of July, 1930, as President and Secretary respectively of the Heflin Co., Inc., have acknowledged the same before me in my city aforesaid. Given under my hand this 18th day of October, 1930.

My commission expires on the 10th day of October, 1932.

ROSE Y. McCARTY, N. P.

State of Virginia,
City of Fredericksburg.

In the office of the Clerk of the Corporation Court of the City of Fredericksburg, the 31st day of January, 1933, this deed was presented and, with the certificate annexed to record at 10:15 o'clock a. m. and indexed.

Teste: J. W. ADAMS, Clerk.
By A. B. GIBSON, Deputy.

And on another day to wit, on February 17, 1934, the Court entered decree as follows:

ON MOTION, the Planters National Bank of Fredericksburg, a corporation, by counsel, leave is granted said bank to file its separate answer to the bill in this cause, which is accordingly done.

Whereupon, on the same day the Planters National Bank of Fredericksburg filed its answer as follows:

In answer to said bill or to so much thereof, as it is advised it is necessary and material to answer, Respondent, after reserving all just exceptions to the many inaccuracies contained therein, answers and says:

page 62 } It is true, as alleged in the bill, that respondent sold unto the plaintiff the real estate described therein at the price of \$6,500.00, of which \$1,500.00 was paid upon delivery of the deed and balance secured by deed of trust as alleged.

A. B. Young, referred to in the said bill as the agent of respondent, is a general real estate agent in Fredericksburg, and as such, buys and sells real estate for his clients; in this capacity only, he acted for respondent in the sale of said real estate to the plaintiff; but respondent denies that the said A. B. Young offered in the sale to the plaintiff, any guarantee that the Richmond-Fredericksburg & Potomac Railroad Company, would construct a spur track as set out in the bill and, in addition, alleges that the said Young had no authority from said Bank to offer any such guarantee, and respondent further denies that the said E. G. Heflin told the said Young that the real estate, "would be practically worthless to the Company if this track was not built, and that the Company would not consider purchasing it at any price or under any conditions other than that of the R. F. & P. Railroad Company erecting the spur track, as represented".

Respondent denies the alleged conversation between the said E. G. Heflin and Wm. K. Goolrick, president of said

Bank, as set out in the bill, and denies that the said Goolrick, or any other authorized officer of the Bank made any representations whatever to the said Heflin or to his Company.

Respondent shows unto the Court that prior to the sale of the said real estate it had sold an adjoining lot to the said R. F. & P. Railroad Company, and it was under-
page 63 } stood at the time though such understanding was not incorporated in the deed to the Railroad Company, that the latter would obligate itself to build a spur track to and over the remaining property of the Bank (subsequently sold to plaintiff), to the lot sold to the Railroad Company. At the time, this understanding was not in writing but during the course of the negotiations with the plaintiff the matter came up and respondent proceeded, at the request of the said A. B. Young, to secure from the R. F. & P. Railroad Company, the letter of September 9, 1930, filed as exhibit "C" with the bill. This letter was subsequently exhibited to E. G. Heflin, president of the plaintiff company, by the said A. B. Young this being prior to the conclusion of the sale to the plaintiff and before payment of the purchase price or delivery of the deed and deed of trust.

Respondent alleges that this letter speaks for itself and that the said Heflin was in possession of exactly the same information as to the purposes of the Railroad Company, as was respondent; not only this, but respondent further alleges that prior to the conclusion of the sale, the said Heflin, in person, acting for the plaintiff, went to Richmond, visited the offices of the Railroad Company and there informed himself as to the plans of the said company in reference to said spur track; said respondent had nothing to do with this visit nor with any assurance which may have been then given to the said Heflin by the Railroad Company, but it alleges that he acted on these assurances and not on anything represented to him or guaranteed to him by respondent-
page 64 } ent or by the said Young. In other words, respondent shows unto the Court that at the time of the conclusion of the sale and delivery of the papers, the said Heflin was in possession of exactly the same information in reference to the plans of the Railroad Company as was possessed by respondent.

Respondent, in conclusion, denies that it made any false or misleading representations to the said Heflin or his company; denies that it made any guarantee whatsoever that said spur track would be built and alleges that he purchased the property with full knowledge of all the facts in connection therewith.

Plaintiff's bill, among other things, contains the following allegation:

"That at the time of executing the deed and deed of trust, Complainant, through its president and agent, E. G. Heflin, agreed with the Planters National Bank of Fredericksburg, Virginia, through its president and agent, Wm. K. Goolrick, and also Wm. K. Goolrick, as Trustee, that the deed and deed of trust should not be recorded until the spur track had been completed."

Respondent absolutely denies the above allegation and shows unto the Court that the real facts, are as follows:

Upon execution of the deed and deed of trust, the same were immediately delivered by Wm. K. Goolrick, its president, to the Clerk of the Corporation Court of Fredericksburg, for recordation; that on the day of their delivery, or the next day, the said Heflin requested the Clerk not to record said deed until he could see the Bank, and the Clerk agreed to withhold same from recordation; that the said
page 65 } Heflin thereupon approached the said Goolrick and asked him to withhold said deeds, giving as his reason for the request the fact that he did not wish it to appear from the records that he had incurred *an* additional obligations, since he already had a great many such; that acting on the said Heflin's specific request and purely as a matter of accommodation, the said Goolrick agreed to withhold said deeds from the Clerk's Office which was done, but they were subsequently recorded, as set out in the bill, because it was then apparent to respondent that the said Heflin intended to repudiate his contract if he could find an excuse for doing so.

Respondent, in conclusion, denies specifically, and generally, all allegations of said bill not herein admitted to be true, and calls for strict proof of same, and now having fully answered, prays to be hence dismissed, with its reasonable costs in this behalf expended.

Respectfully,

THE PLANTERS NATIONAL BANK,

Fredericksburg, Va.

By WM. K. GOOLRICK, President.

(Seal of the Bank)

PAUL KARSTEN, JR., Cashier.

And on another day to-wit on March 2, 1934, the Court entered decree as follows:

This day came the plaintiff, by counsel, and asked leave to file its replication in the above styled cause, which leave being granted said replication is accordingly filed.

page 66 } Whereupon upon the same day plaintiff filed its replication as follows:

For replication to said answer heretofore filed in this proceeding by the defendants, the plaintiff, by counsel, says that the matters and things in said answer alleged as defenses to the plaintiff's bill, are incorrect and untrue.

E. G. HEFLIN, INC.,
By Counsel.

And on another day to-wit, on October 31, 1934, the Court entered decree as follows:

This cause came on this day to be heard upon the complainant's bill and exhibits filed therewith; the respondent's answer to said bill; the complainant's replication to said answer and the testimony taken *ore tenus* and reduced to writing and filed herein on behalf of the complainant and the respondent.

And was argued by counsel;

On consideration whereof the Court doth adjudge, order and decree that an issue be made up and tried at the Bar of this Court to ascertain and determine—

(1) Whether or not the deed of date July 29, 1930, under which the Planters National Bank of Fredericksburg conveyed to E. G. Heflin Co. Inc., a certain lot, was delivered to the said E. G. Heflin Co. Inc., absolutely or upon a condition by said Planters National Bank of Fredericksburg.

(2) Whether or not the deed of trust of date July 29, 1930, in which E. G. Heflin Co. Inc., is the grantor and Wm. K. Goolrick is Trustee was delivered absolutely or
page 67 } conditionally to the said Wm. K. Goolrick, Trustee, by E. G. Heflin Co. Inc.

And it is ordered that on the trial of said issue the said complainant shall maintain the affirmative and the respondent shall maintain the negative, and that both the complainant and respondent have permission to summon such witnesses on the trial of said issue as they may deem necessary, and the

trial of said issue is hereby fixed for Wednesday, December 5th, 1934, at ten A. M.

And on the same day plaintiff, by leave of Court, filed exceptions to the entering of said decree as follows:

The Complainant here excepts to the entering of the decree in this cause on the thirty-first day of October, 1934 directing an issue to be submitted to a jury as to whether or not the deed of July 29, 1930 was delivered absolutely or conditionally and whether or not the deed of trust of July 29, 1930, was delivered absolutely or conditionally on the following grounds namely:

One: That the plat exhibited to Heflin by the Bank contained a description of the proposed spur track and that it was well known by the defendant for what purpose the complainant desired the property and that therefore the consideration for the purchase of the property has totally failed.

Two: That the erection of the spur track was the inducing cause to the contract and that the complainant was induced to enter into the contract through the representations on the part of the defendant through its agents that a spur track would be erected within three years, the defendant well knowing at the time for what purpose the complainant desired property and that the erection of a spur track was essential to the consummation of the sale.

page 68 } Third: That the sale was induced by the belief on the part of the complainant that there was a valid binding obligation on the part of the Railroad Company with the defendant to erect a spur track as alleged and that said defendant would enforce said obligation: And that this belief was brought about by representations made to the Complainant by the Defendant and were made with full knowledge of all the facts, and for the purpose of inducing the Complainant to enter into the contract.

Fourth: That the defendant having induced the complainant to enter into the contract by representing that it held a binding contract with the Railroad Company to erect a spur track adjacent to the property and having failed to enforce said alleged contract when called upon by the defendant is guilty of such conduct for which the contract should be rescinded.

Fifth: That the deed and deed of trust in this cause should be rescinded regardless of the issue directed for the reasons set out hereinbefore.

And on another day, to-wit, on December 11, 1934, the Court entered final decree as follows:

Subpoena having been duly issued, served and returned executed on the respondents, and the complainant having regularly filed its bill of complaint with exhibits at Rules and the respondents having filed their answer and the complainant having filed its replication thereto and the Court having heard the testimony of witnesses for both the complainant and respondents *ore tenus* before the Court. And was argued by counsel:

Upon consideration whereof it appearing to the court that the respondent, the Planters National Bank of Fredericksburg, a corporation, attempted by a deed dated July 29, 1930, and duly recorded in the Clerk's Office of this Court page 69 } in Deed Book 67, page 128, to convey unto the complainant, the E. G. Heflin Co., a corporation, a certain lot situate in the city of Fredericksburg with all buildings thereon for the consideration of \$6,500.00 and that \$1,500.00 thereof was paid in cash to the respondent, the Planters National Bank of Fredericksburg, a corporation, by the complainant at the time of the delivery of said deed, to-wit, July 29, 1930, and that \$5,000.00 thereof was evidenced by a negotiable note made by the complainant dated July 30, 1930, payable to the respondent, the Planters National Bank of Fredericksburg, a corporation, on or before three years from date and secured by a deed of trust executed by the complainant conveying unto Wm. K. Goolrick, Trustee (said deed being dated July 30, 1930) and recorded in the Clerk's Office of this Court in Deed Book 67, page 130) the lot and buildings set forth and described in the said deed of date July 29, 1930, above referred to, and it appearing to the court that the said complainant, E. G. Heflin Company, Inc., has paid two years' interest on the said \$5,000.00 note amounting \$600.00, and it further appearing to the court that the complainant has established the allegation in its said bill of complaint and that the law as set forth by the Supreme Court of Appeals of Virginia in the case of *Garrett v. Finch*, 107 Va. 26, and *Rorer Iron Co. v. Trout and wife*, 83 Va. 397, controls here, it is therefore adjudged, ordered and decreed as follows:

1. That the deed of date July 29, 1930, from the Planters National Bank of Fredericksburg, a corporation, to E. G. Heflin Company, a corporation, be and the same is hereby revoked, rescinded and set aside.

2. That the deed of trust of date July 30, 1930, from the

E. G. Heflin Co., a corporation, to Wm. K. Gool-
 page 70 } rick, Trustee, be and the same is hereby revoked,
 annulled and rescinded, and the \$5,000.00 note se-
 cured thereunder is likewise cancelled and annulled.

3. That the complainant, E. G. Heflin Co., a corporation recover of and from the respondent, the Planters National Bank of Fredericksburg, a corporation, the sum of \$1,500.00 with interest thereon at six per cent per annum from July 29, 1930, until paid, and further recover of and from the respondent, the Planters National Bank of Fredericksburg, the sum of \$600.00, the interest paid by the said E. G. Heflin Company unto the said Planters National Bank of Fredericksburg on the note of \$5,000.00.

4. That the decree entered herein on October 31st, 1934, directing issue out of chancery to be tried at the bar of this court be and the same is hereby revoked and annulled.

5. That the Clerk of this court do forthwith enter on the margin of the deed book wherein said deed and the deed of trust above referred to are recorded, a suitable reference to this decree setting forth the number of the Chancery Order Book and the page wherein this decree is recorded.

6. That the complainant recover of the respondent, the Planters National Bank of Fredericksburg, a corporation, its costs expended in this behalf.

7. That execution of this decree be suspended for a period of sixty days to enable the respondent to apply for an appeal herefrom if they may be so advised, provided they shall on or before the 25th day of December, 1934, file a suspending bond before the Clerk of this Court in the sum of \$1,000.00 with approved security conditioned as the law directs.

And on another day, to-wit, on April 23, 1934, depositions
 were taken *ore tenus* before the Court by both
 page 71 } plaintiff and defendant, as follows:

page 72 } The depositions of E. G. Heflin and others taken
ora tinis before Honorable Frederick W. Coleman, Judge of the Corporation Court of the City of Fredericksburg, Va., on the 23rd day of April, 1934, between the hours of 10 A. M. and 5 P. M., at the courthouse of said court in the City of Fredericksburg, Va., to be read as evidence in behalf of the plaintiff as well as of the defendant in the above styled suit of E. G. Heflin Company, Inc., v. The Planters National Bank of Fredericksburg, Va., et als.

Present: Mr. S. B. Coleman, Counsel for the Plaintiff;
Mr. C. O'Connor Goolrick, Counsel for the Defendant.

page 73 } E. G. HEFLIN,
being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Coleman:

Q. Will you state your name, age, residence and occupation?

A. E. G. *Haden*, 213 Main Street, Fredericksburg, Va.; occupation, architect and builder.

Q. How long have you lived in the City of Fredericksburg?

A. All my life.

Q. What is your connection, if any, with the Corporation, E. G. Heflin, Incorporated, the complainant in this suit?

A. President and Treasurer of the Company.

Q. Mr. Heflin, will you please state, if you know, how the transaction between the Planters National Bank and E. G. Heflin came about?

A. In February, 1930, the Fredericksburg Homes, Incorporated, had a piece of land out here in the Culpeper County highway. They wanted to get some dirt and do some cutting and filling there. There was excess dirt on a piece of property, I, myself, owned and Mr. Winterpeck owned a piece of property just across the street and we agreed—

page 74 } By Counsel for Defendant: Don't say what you and he agreed.

A. I had a contract with Mr. Winterpeck for filling in the property that we owned. There was not enough excess dirt on the Fredericksburg Homes' land to fill in and we had to secure other dirt in order to fill this contract.

By Counsel for Defendant: What connection has this?

By Counsel for Plaintiff: It has this connection I want to find out whether he approached the bank, or the agent of the bank approached him.

By Counsel for Defendant: All right.

(Witness continues)—I located what I thought was enough dirt to fill the place in on land belonging to Hanover Heights Company and was told by Mr. Frank Chichester to see A. B. Young, to get the excess dirt they have—

By the Court: What bearing has that?

By Counsel for Plaintiff: It has this connection. I want to put in the record just how this transaction had its inception. It is charged in the bill that Mr. Young was the agent of the bank.

By the Court: If you show any conversation between the agent and these people while in the scope of authority it is all right.

page 75 } (Witness continues:) I visited the Hanover Heights property with Mr. Young and he agreed—

By Counsel for Plaintiff: Leave out what you agreed to about the dirt and go ahead with the transaction.

(Witness continues:) After viewing this property, Mr. Young went back to my mill on the lot we were filling in, and stated my mill would be objectionable in selling the lots, and I told him I wanted to move the mill away and would like to get on a railroad siding. He then told me he had a piece of property which had been placed in his hands that would have a side track built, and described the property to me, and I told him if the side track was put in, I would be interested in it, otherwise I would not. He stated that the Bank had a guarantee from the Railroad Company to install this side track within a period of three years, but his personal opinion was that it would be built within twelve months.

Q. This property that you speak of was owned by whom at that time?

A. Planters National Bank of Fredericksburg.

Q. That was, you say, some time in February?

A. In February.

Q. Mr. Heflin, what did you do after this conversation with Mr. Young in reference to the property?

page 76 } A. I agreed to purchase the property upon delivery of a satisfactory deed, with the guarantee that the side track would be put in.

Q. Was that guarantee made to you by any one other than Mr. Young?

A. Not at that time, no, sir.

Q. Well, at any time later?

A. When Mr. Goolrick gave us a letter from the Railroad Company acknowledging their obligation, he told me that he would see that they carried out that obligation.

Q. You spoke of a letter being delivered to you by Mr. Goolrick from the Railroad Company, is that (indicating) a copy of the letter?

A. That is the letter that Mr. Goolrick gave to me.

Note.—The copy of letter referred to is filed, marked “Ex. R. F. & P. letter, dated September 9, 1930”, and reads as follows:

“September 9, 1930.

“Mr. Wm. K. Goolrick, President,
The Planters National Bank,
Fredericksburg, Va.

Dear Mr. Goolrick:

Replying to your favor of the 6th instant, this is to confirm understanding had between your Bank and this Company during the negotiations whereby this company purchased from your Bank a piece of property in Fredericksburg conveyed by deed bearing date the 14th day of July, 1930, page 77 } namely, that the Railroad Company is obliged to build within three years from the date of the said conveyance a spur track connected with its industrial track and reaching the remainder of the property still owned by your Company just north of the property acquired by the Railroad Company, the location of the said track being substantially as shown on the print attached to the deed of conveyance.

The building of this track across the several city streets will, of course, depend upon our ability to secure consent of the City of Fredericksburg and the necessary authority therefor.

Will you kindly acknowledge receipt of this letter and oblige?

Yours very truly,

NORMAN CALL, Vice-President.”

Q. Mr. Heflin, this deed from the Bank to the Heflin Corporation is dated July 29, 1930, and is acknowledged October 18, 1930. What was the reason, if there was a reason, for the delay in executing the deed after it had been drawn?

A. Because there was nothing said in the deed with regard to the guarantee of the side track.

Q. Then, as I understand, the execution of the deed was held up until you had something positive that this track would be built?

A. When the deeds were presented to me, I carried them to

Mr. Frank Chichester and asked him if I should sign those deeds and told him the agreement of purchase and he said, no.

By Counsel for Defendant: I object to what he said.

By the Court: What Mr. Chichester said is not proper testimony.

(Witness continues:) We refused to sign the deed because there was no guarantee in the deed that the side track would be put in and later Mr. Goolrick gave us a letter in which it was stated that the Bank would carry out that obligation.

By the Court:

Q. Is that the letter just filed?

A. Yes, sir.

By Counsel for Plaintiff:

Q. Are you a member of the City Council of the City of Fredericksburg, Mr. Heflin?

A. Yes, sir.

Q. How long have you been such?

A. I think, probably, about twelve years.

Q. Since this letter was written has the Railroad Company applied to the Council of the City of Fredericksburg for permission to build this track across the street down there?

A. Not to my knowledge. I am chairman of the Street Committee.

Q. You are chairman of the Street Committee?

A. Yes, sir.

Q. Was there exhibited to you during these negotiations a plat of any description, showing where this side track would be built?

A. Yes, sir.

Q. As a matter of fact, the plat is recorded with page 79 } the deed from the Bank to the Railroad Company, is it not?

A. Yes, sir.

Q. Is that the plat, or a copy of the plat, that was shown to you?

A. Yes, sir.

Note.—The plat is filed, marked “Ex. R. F. & P. No. 2”.

Q. Then, in accordance with this plat, the Richmond, Fredericksburg & Potomac Railroad Company has a right of

way extending the entire length of these lots is that right?

A. Practically, yes, sir.

Q. Was there any agreement as to a right of way across the track?

A. Yes, sir.

Q. That is included in the deed, is it?

A. Yes, sir.

Q. Mr. Heflin, what buildings, if any, are on this lot?

A. There are two old brick buildings on that lot and a small shed.

Q. What is the condition of those buildings?

A. Very dilapidated.

Q. You are an architect and builder, are you not?

A. Yes, sir.

Q. What, in your opinion, is the value of those buildings on this lot?

A. The buildings could hardly be utilized for page 80 } anything without being torn down and rebuilt.

I don't know how you would get at the value of the materials in them. It would practically cost as much to tear them down as the value of them.

Q. With reference to the topography of that lot, is it a level lot, or not?

A. There is a tremendous drop in it from Water Street to the river.

Q. This drop extends from the street down to the river?

A. Yes, sir.

Q. In the deed from the Planters National Bank to E. G. Heflin, Incorporated, there is a covenant which reads as follows: "It is mutually covenanted and agreed by and between the said parties of the first part and the said parties of the second part to this deed that the said party of the second part will remove within three months from the date of written notice from the Richmond, Fredericksburg & Potomac Railroad Company the brick building from that portion of the said real estate known as Lot No. 2, conveyed to the said Richmond, Fredericksburg & Potomac Railroad Company in the aforesaid deed, dated July 14, 1930, and that all materials in said building shall belong to the said party of the second part to this deed". Is that right of way owned by the Railroad Company there under a portion of the page 81 } building, itself?

A. Yes, sir.

Q. What was the object, if there was one, of the covenant in that deed?

A. The object of that was that I would remove the front portion of that building from the property that had been

purchased by the Richmond, Fredericksburg & Potomac Railroad Company to enable them to put a side track there.

By the Court: Don't the deed speak for itself? Is there any ambiguity there?

By Counsel for the Plaintiff: No.

By the Court: Then, he cannot give his opinion.

Q. Mr. Heflin, what was your intended use of that property?

By Counsel for Defendant: I object to that, standing alone.

A. I was going to put a mill there. I intended to move the mill down there and open up a retail building supply yard?

Q. Was that information conveyed to Mr. Young?

A. It was conveyed to him. I don't know whether he conveyed it to the bank.

Q. Then, Mr. Young knew why you wanted the property?

A. Absolutely.

page 82 } Q. What kind of mill was this you expected to place on the property?

A. A wood working plant.

Q. You stated that you told Mr. Young that you expected to place a mill down there and would not consider purchasing the property unless the side track was built. Why were you insisting that a side track on the R. F. & P. railroad be built?

A. Because it would be worthless to me unless it was there.

Q. Why?

A. On account of the expense of building down there, one thing, and it would be further away from the railroad and we could get another location.

Q. Then, your purpose was to be able to load and unload lumber at the mill?

A. Yes, sir.

Q. Was there any other purpose in purchasing the property?

By Counsel for Defendant: I object to that, what his purpose was. We are not concerned with that, except to the extent he communicated it to Mr. Young on the question of the guarantee.

By Counsel for Plaintiff: This bill alleges that this property was bought for one purpose and that the knowledge was conveyed to the defendant through its agent.

page 83 } By the Court: Anything he said to Mr. Young leading up to the purchase of the property is ad-

missible, but not his individual view as to what purpose he would put the property to which he did not convey to the Bank, or Mr. Young.

Q. Did you advise Mr. Young, or was there anything said, in purchasing this piece of property, to Mr. Young, other than that it would be used for a mill?

A. That is the only thing I told him it would be used for?

Q. Have you exercised any control over this property since 1930?

A. None whatever.

Q. Do you know whether anybody is occupying the property at this time?

A. I think Charlie Thompson's family lives in there.

Q. How long have they been living in it?

A. They have been living in it several years.

By Counsel for Defendant: I can't understand what that has to do with the case.

By Counsel for Plaintiff: They attempted to deliver a deed on the representations made, and they are charging that the deed was consummated and the man took the property at that time. Is it not competent to show he is not exercising any control over it? Does it not go to show there page 84 } was never a consummation of the deed?

By the Court: Go ahead. I will let it go in. There is no jury here and I will hear it.

By Counsel for Plaintiff:

Q. Were these people living there when this deal was made.

A. Yes, sir.

Q. Have you collected any rent from it?

A. No, sir.

Q. Mr. Heflin, the deed and deed of trust were executed on October 18, 1930, was there any understanding between you and any agent of the bank in reference to recording this deed and deed of trust?

A. The understanding was with Mr. Young that nothing would go on record unless the Railroad Company started the installation of the side track. If nothing was done in three years then the deal was off.

Q. The deed of trust was given to secure the sum of \$5,000.00, evidenced by a note payable on or before three years after date, was it not?

A. Yes, sir.

Q. Did you communicate with the Bank with reference to the side track after October, 1930?

A. Yes, I wrote them in January, 1933, I think.

Q. Is that a copy of the letter (indicating)?
page 85 } A. Yes, sir.

Q. This letter reads as follows:

“Fredericksburg, Va.
“January 30th, 1933.

“Mr. Wm. K. Goolrick, President,
Planters National Bank of Fredericksburg,

Dear Sir:

About two and a half years ago I purchased from your Bank a piece of property on Sophia Street with the promise that within three years the Railroad Company would have a railroad siding and that this property was to have all the rights and privileges.

It seems to me that some evidence of the installation of this siding should be visible, and I would like to know if any steps have been taken along this line.

Yours truly,

E. G. HEFLIN CO., INC.,
By E. G. HEFLIN, President.”

That is the letter?

A. Yes, sir.

Note.—The copy of letter is filed, marked “Plaintiff’s Ex. 3”.

Q. Did you receive any reply to this letter?

A. No, sir.

Q. Did you thereafter write to the Bank again?

A. Yes, sir.

Q. Is this a copy of the letter you wrote them then?

A. Yes, sir.

Q. This letter reads as follows:

page 86 }

“February 3rd, 1933.

“Mr. Wm. K. Goolrick, President,
Planters National Bank of Fredericksburg,
Fredericksburg, Va.

Dear Sir:

On January 30th I wrote you in regards to the short

length of time the Richmond, Fredericksburg & Potomac Railroad Company had to comply with its guarantee to build a spur track along the property your Bank formerly owned on Sophia Street, Fredericksburg, Va. (as expressed in their letter of September 6th, 1930) to which letter I have received no reply.

I notice that the deed from your bank to this company and the trust securing the balance of the purchase price over and above the payment of the \$1,500.00 cash was placed on record in the Clerk's Office of the Corporation Court on January 31st.

You will remember that the chief consideration of my purchase of the property set out in the deed was that the Railroad Company would build the spur track above referred to and did not sign the deeds until you had received from the Railroad Company a guarantee that they would build the track within the three years specified.

Please let me know at your early convenience what is the intention of the Railroad Company, since my actions and attitude will depend upon what the company expects to do.

Very truly yours,"

Note.—The copy of letter is filed, marked "Plaintiff's Ex. 4".

Q. Did you receive any reply to that letter?

A. I did not.

Q. When was the first time you had any communication from the Bank with reference to this transaction?

A. Some weeks later, when I got a notice from them that the interest was due on the \$5,000 note.

Q. I hand you a letter, dated June 7th, 1933, from the Cashier of the Planters National Bank. Did you receive that letter?

A. Yes, sir.

Q. That letter reads as follows:

"The Planters National Bank,
Fredericksburg, Va.,
June 7th, 1933.

"Mr. E. G. Heflin Co. Inc.
City.

Dear Mr. Heflin:

At the meeting of the board of directors last night I was instructed to advise you that the interest on the \$5,000.00 note,

which was due Jany. 30, 1933, amounting to \$150.00 must be paid at once.

Very truly yours,

PAUL KARSTEN, JR.,
Cashier."

You received that letter?

A. Yes, sir.

Note.—The letter is filed, marked "Plaintiff's Ex. 5".

Q. Did you answer that letter?

A. I don't remember whether I answered that letter, or not.

Q. I hand you a letter, dated June 27th, 1933, from the Cashier of the Planters National Bank, did you receive that letter?

A. Yes, sir.

Q. That letter reads as follows:

page 88 } "The Planters National Bank,

Fredericksburg, Va.,
June 27th, 1933.

"E. G. Heflin Co. Inc.,
City.

Gentlemen:

Under date of June 7th, I wrote you in regard to the past due interest on your note for \$5,000.00, which interest amounts to \$150.00.

I have heard nothing from you and unless this interest is paid by July 3rd. our board will take such steps as they deem proper.

Very truly yours,

PAUL KARSTEN, JR., Cashier."

You received that letter?

A. Yes, sir.

Note.—The letter is filed, marked "Plaintiff's Ex. No. 6".

Q. Did you answer that letter?

A. Yes, sir.

Q. I hand you copy of letter to the Planters National Bank,

dated June 28th, did you write the letter of which this is a copy?

A. Yes, sir.

Q. That letter reads as follows:

“Fredericksburg, Va.,
June 28th, 1933.

“Mr. Paul Karsten, Cashier,
Planters National Bank,
Fredericksburg, Va.

Dear Sir:

When you answer my letter to you dated Janu-
page 89 } ary 30th, and February 3rd, I will then answer your
of the June 27th, 1933.

Yours truly,

E. G. HEFLIN.”

Q. Did you receive a reply to that letter.”

A. No, sir.

Note.—The letter is filed, marked “Plaintiff’s Ex. 7”.

Q. Did you pay this interest?

A. No, sir.

Q. Were any other steps taken by the Bank to collect the interest, that you know of?

A. Not that I know of.

Q. Did you communicate with the Bank at any time after the letter I have just read to you?

A. Yes, sir.

Q. I hand you copy of letter, dated July 28th, 1933. Did you write that letter?

A. Yes, sir.

Q. I read you said letter, as follows:

“Fredericksburg, Va.,
July 28th, 1933.

“Planters National Bank of Fredericksburg,
Wm. K. Goolrick, President,
Fredericksburg, Virginia.

Gentlemen:

By reason of the failure of the conditions upon which the

canning factory property in Fredericksburg was
 page 90 } purchased by E. G. Heflin Co. Inc. with which you
 are familiar, which failure makes the property
 worthless for the uses of the Company, you are requested to
 return the consideration paid, an itemized statement of which
 is as follows:

Cash payment	\$1,500.00
Interest three years	270.00
Interest on \$5,000.00 note 2 years	600.00
	<hr/>
	\$2,370.00

Return of \$5,000.00 note.

Very truly yours,

E. G. HEFLIN CO. INC.,
 By E. G. HEFLIN, President."

Did you receive any reply to that letter?

A. No, sir.

Note.—The copy of letter is filed, marked "Plaintiff's Ex. 8".

Q. Mr. Heflin, when did the three years' period expire for the building of this side track?

A. The three years' period expired, I think, on July 14, 1933.

Q. This letter then, was written some ten days or two weeks after the expiration of the three years' period?

A. Yes, sir.

Q. Mr. Heflin, if the negotiation for the purchase of this property was begun in February, 1930, what held it up until July, 1930, that is when the deed was dated?

A. I don't know what held it up for that time,
 page 91 } without it was to close the deal with the Railroad
 Company.

Q. There has been no construction work by the Railroad Company as yet, has there?

A. None at all.

Q. You state that you purchased this property to use it as a woodworking mill, are you using it as a building site?

A. No, sir.

Q. Why not?

A. Because I never did consider it was my property without the side track was in there.

Q. Aside from the two letters of the Bank, written by Mr. Karsten, about the interest, have you had any other communication from the Bank, either in reference to the loan, or the building of the track?

A. None at all.

CROSS EXAMINATION.

By Mr. Goolrick:

Q. Mr. Hefin, your bill alleges that you began the negotiations for this purchase in the early part of the year 1930, I believe?

A. Yes, sir.

Q. With Mr. Young?

A. Yes, sir.

Q. And you say that Mr. Young represented to page 92 } you that the Richmond, Fredericksburg & Potomac Railroad Company had obligated itself to build a side track?

A. Yes, sir.

Q. That turned out to be true on certain conditions set out in the Railroad Company's letter to the Bank, did it not?

A. That is what I learned when Mr. Goolrick gave me that letter.

Q. You go further, I believe, and say that Mr. Young not only represented that the Railroad Company had obligated itself, but that he, representing the Bank, obligated the Bank to see that this track was built within three years, otherwise your deal with them was to be void?

A. Yes, sir.

Q. When did Mr. Young do that and in what language did he do it?

A. I could not tell you the date.

Q. What did he say, exactly?

A. Mr. Young said that the Railroad Company had purchased this piece of property from the Planters National Bank and in that purchase they guaranteed the installation of a side track to the property, and that they guaranteed it to be done within three years.

Q. Is that all he said?

page 93 } A. He said I could purchase the property if I paid \$1,500 down and gave a note for \$5,000, to be paid three years from date, and that the Bank would see that the Railroad Company carried out their obligation.

Q. That the Bank would carry out its obligation?

A. Yes, sir.

Q. Mr. Young told you that?

A. Yes, sir.

Q. When was that, in the summer, spring, fall or winter?

A. In February.

Q. Did you have any further talk with Mr. Young after that?

A. I don't think so.

Q. Is that the only thing he told you?

A. I think that is the only thing he told me about it.

Q. As a matter of fact, did not Mr. Young, himself, show you this letter of September 9th, 1930, from the Railroad Company to Mr. Goolrick?

A. No, sir.

Q. Who showed it to you?

A. Mr. Goolrick gave it to me.

Q. Where were you then?

A. I don't remember whether we were in Mr. Goolrick's office, or in Mr. Frank Chichester's office.

Q. Did Mr. Young ever show you that letter?

page 94 } A. No, sir.

Q. If Mr. Young had given you this so-called guarantee in February, 1930, why did you wish anything else?

A. I wished something else showing that they had this agreement with the Railroad Company, the guarantee from the Bank.

Q. Was the letter of September 9, 1930, acquired in order to show you?

A. Yes, sir.

Q. You acted on that letter?

A. Yes, and the guarantee of the Bank that they would see that the obligation would be carried out.

Q. You were familiar with the contents of the letter long before you concluded the deal and signed the deed of trust?

A. No, sir. The letter was given to me the date the deed was signed.

Q. You read it before you signed it?

A. Yes, sir.

Q. You never saw the letter of September 9, 1930, until the day you executed the deed on October 18, 1930?

A. That is right.

Q. Where were you when you read it?

A. As I stated, I don't know whether in Mr. Goolrick's office or in Mr. Frank Chichester's office.

page 95 } Q. Did Mr. Goolrick make any representations to you?

A. He said the Bank had received that letter and would see that it was carried out.

Q. Was Mr. Chichester present when he made that statement?

A. I don't remember.

Q. Do you propose to put Mr. Frank Chichester on the stand to testify to that fact?

A. I don't know what Mr. Coleman proposes to do.

Q. Can you state positively that any such statement was made in Mr. Frank Chichester's presence by Mr. Goolrick?

A. I don't know whether Mr. Frank Chichester was present or not.

Q. In whose office was it?

A. I don't know whether in Mr. Goolrick's office or Mr. Chichester's office. We were dickering back and forth.

Q. You saw and read, of course, at the end of that letter the condition the Railroad Company put to its undertaking to build this switch, did you not?

A. Yes, sir.

Q. You knew its obligation was a conditional one, did you not?

A. Yes, sir.

Q. And, you acted on that letter?

A. Yes, sir, and the guarantee of Mr. Goolrick.
page 96 } Q. And the guarantee of Mr. Goolrick?

A. Yes. Mr. Young had guaranteed it before, but not since we got that letter.

Q. Then, there was only one alleged guarantee on the part of Mr. Young, you say in February, 1930?

A. Yes, sir.

Q. And, nothing else took place between you and Mr. Young subsequent to that?

A. I don't think so.

Q. You say in your bill, on page 3, that "A. B. Young sought E. G. Heflin, President of your complainant and its agent, on several occasions during the months aforesaid, and assured him that there was no question but what the Richmond-Fredericksburg and Potomac Railroad Company had obligated itself to build a spur track". What about that?

A. That was during the month of February.

Q. But, you say you only talked to Mr. Young once and had one conversation with him, at which he made the statement previously alluded to, and you had no further conversation with him. You just testified to that and your bill states you had several conversations with him during the months aforesaid?

A. We talked to Mr. Young first and told him we were not interested. Mr. Young came back and had a plat
page 97 } showing how the side track would be installed.

Q. What did he tell you?

A. He told me, first the Railroad Company had contracted

with the Bank to install the side track and he came back another time with a plat showing how the side track would be installed.

Q. Is the statement in your bill correct?

A. Mr. Young approached me twice, I know.

Q. Is the statement in your bill correct, or not?

A. Read it again, so I may get it.

Q. "A. B. Young sought E. G. Heflin, President of your complainant and its Agent, on several occasions during the months aforesaid, and assured him that there was no question but what the Richmond-Fredericksburg and Potomac Railroad Company had obligated itself to build a spur track", etc. Is that true?

A. Yes, he did approach me several times.

Q. Why did you say you only had one conversation with him?

A. I did not say we only had the one conversation. I said we only had the one agreement.

Q. Why did he approach you after that?

A. Because, the first time I would not entertain the proposition at all.

Q. You did not entertain the proposition, then, when he made this obligation?

page 98 } A. When he made the obligation he showed me a plat showing how the side track would be installed.

Q. You said in February, 1930, Mr. Young came to you and obligated the Bank if you would purchase the property the side track would be built?

A. Yes, sir.

Q. And, that was the only time he ever made that representation to you—you said that?

A. He made the representation to me on the second time he came to me.

Q. Did you not say he only made one obligation?

A. That was the second time he approached me.

Q. Did he have any other obligation with you?

A. I had the obligation with him when I paid the \$50, and I turned it down and he came to me two or three days later with the plat, showing how the track would be installed.

Q. He did not make any obligation for the Bank at that time?

A. Said the Railroad Company had guaranteed to put the side track in.

Q. But he did not obligate the Bank at that time?

A. He said the Bank would obligate itself to see that the contract was carried out.

Q. Did he obligate the Bank on one occasion or two occasions?

page 99 } A. He obligated it on one occasion, when I agreed to purchase the property.

Q. What did he do on the occasion when you rejected his offer to sell the property?

A. He told me the Bank had this contract with the Railroad Company and I said I would not entertain it, because I did not see how they would get a side track in to make the property adjacent to the side track.

Q. Did he guarantee the side track to be built?

A. It was not necessary to guarantee it then because he had not sold the property then.

Q. Now, Mr. Young not only advised you that the Railroad Company had obligated itself to build this spur track, but he obligated the Bank to see that that track was built?

A. He stated that the Bank would see that that obligation was carried out.

Q. Mr. Young told you that?

A. Yes, sir.

Q. And, that was on one occasion?

A. Yes, may have been on two occasions.

Q. Was it two occasions?

A. May have been.

Q. You seem rather hazy?

A. No, I know the obligation was made. He may page 100 } have told me about the obligation the first time he approached me about the property.

Q. Telling you about the thing and obligating are two separate things, you recognize that?

A. Yes, sir.

Q. Whom did he obligate?

A. He obligated the Bank.

Q. When was that?

A. That was before the first of March, I know.

Q. What happened with regard to the transaction, any money paid, or anything?

A. The agreement was that I was to pay \$50 down and \$1,450.

Q. On delivery of deed and satisfactory guarantee?

A. Yes, sir.

Q. Did you pay the \$50 down?

A. Yes, sir.

Q. When was that?

A. In February.

Q. But, you did not receive any guarantee, did you?

A. Not a written guarantee from Mr. Young, no.

Q. You never did receive any written guarantee, did you?

A. Never received any written guarantee except the letter from the Railroad Company and the verbal guarantee from the Bank that the Bank would see that the obligation was carried out.

page 101 } Q. That verbal agreement came from Mr. W. K. Goolrick?

A. Yes, sir.

Q. Or Mr. Young?

A. Yes, before this letter.

Q. But, you were not satisfied with the verbal obligation from Mr. Young and Mr. Goolrick, until he acquired the letter from the Railroad Company?

A. Yes, sir.

Q. And, it was that letter that caused you to close the deal?

A. Yes, sir.

Q. Before you closed that deal did you go to Richmond and make inquiry from the officials of the Railroad Company as to that matter?

A. No, I did not.

Q. Did you ever make any in Fredericksburg?

A. No, I did not.

Q. Did you ever discuss the matter with Mr. Call, Mr. Mordecai, Mr. Taylor, or Mr. Duke, before you closed this deal?

A. No, I did not.

Q. You wrote, apparently, in January and February, 1933, two letters to Mr. Goolrick, President of the Bank, which have been introduced here. Did you ever at any time go to Mr. Goolrick, or go to Mr. Karsten, the Cashier of the Bank, to discuss this question?

page 102 } A. No, sir.

Q. Why not?

A. Because they had three years to do this and had had ample time to have done it.

Q. Did you go to the Bank after receiving the letters in June, 1933, requesting you to call and satisfy the interest on the \$5,000 note?

A. No, sir.

Q. Why not?

A. Because I saw no necessity for it.

Q. You wrote the letter of Jany. 30th, 1933, with the view of fixing a basis for a suit, did you not?

A. No, I wrote it with the view of having a side track installed.

Q. You still had an idea of having a side track there?

A. Yes, sir.

Q. Mr. Heflin, after the deed of the Bank to you and the deed of trust from you to the Bank had been delivered and your note delivered to the Bank, and, in turn, later on the deeds had been delivered to Mr. Adams, Clerk of the Corporation Court, for recordation, why did you ask Mr. Adams to suspend the recordation of the deeds?

A. I did not ask him to suspend the recordation.

Q. Whom did you say anything to about it?

A. I did not say anything to anybody about it.

page 103 } Q. You did not speak to Mr. Goolrick about it?

A. No, sir.

Q. You did not see Mr. Goolrick and ask him to suspend the recordation because you did not want the \$5,000 recorded against you?

A. No, E. G. Heflin & Company owed nobody anything.

Q. You owned practically all of the stock in that Company?

A. Yes, sir.

Q. Who owned the rest?

A. My nephew owned one share and my sister one share.

Q. You had no conversation with Mr. Goolrick about the recordation of these deeds?

A. No, sir.

Q. What was the understanding with Mr. Young?

A. That they would not be recorded until the side track was installed.

Q. When was that?

A. In February, 1930.

Q. Nothing further was said about it?

A. No, sir.

Q. Nothing more was said about the recordation of the deeds?

A. Nothing more said about recording the deeds that I know of.

Q. Did you know they had not been recorded?

page 104 } A. I had never seen any notice in the paper that they had recorded and I did not suppose they had been recorded.

Q. You never had any conversation with Mr. Adams about it at all?

A. None whatever.

Q. Did you have any conversation with any deputy in the Clerk's office in regard to them?

A. No, I did not.

Q. Nothing at all?

A. No, sir.

Q. When you read the letter from the Railroad Company

you recognized that there was a condition attached to it, did you not?

A. Yes, sir.

Q. And you read that condition?

A. Yes, sir.

Q. You had no conversation with any of its officials about anything connected with this matter?

A. No, not before the signing of this deed in 1930.

Q. Did you ever inquire before the institution of this suit of the Railroad Company about its purpose in acquiring this property?

A. No, sir.

Q. Why not?

A. Because I understood from Mr. Young the Railroad Company would install this side track.

page 105 } Q. Why did you not make inquiry of the Richmond, Fredericksburg and Potomac Railroad Company?

A. Because the Richmond, Fredericksburg & Potomac Railroad Company had three years to put it in.

Q. Did you ever make any inquiry of them?

A. We made inquiry of Mr. Mordecai in 1931 when he would put the side track in.

Q. How did you do that?

A. By word of mouth.

Q. Why did you say you never made any inquiry of them?

A. I said in 1930.

Q. You had this conversation with Mr. Mordecai?

A. Yes, I went to see Mr. Mordecai about another proposition and asked him when he would put the side track in.

Q. You knew Mr. Duke and Mr. Call did you not?

A. Yes, sir.

Q. Mr. Young, you say, told you that the Railroad Company had obligated itself to build a track in three years, but in his own opinion it would be built in twelve months?

A. Yes, sir.

Q. That was in this February conversation?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Coleman:

Q. Mr. Hefin, Mr. William K. Goolrick was trustee in this deed of trust, was he not?

A. Yes, sir.

Q. Did you authorize him to record the deed of trust?

A. No, I did not.

Q. Who paid the recordation fees?

A. I don't know. I know I have not. The bill has never been sent to me.

Q. When they were recorded was the deed to this property delivered to you?

A. No, sir.

Q. When was the last you have seen of the deed to this property?

A. Until I saw it on the desk here, the day I signed it was the last time I saw it.

Q. Who took charge of the deed and deed of trust when they were executed?

A. Mr. William K. Goolrick.

Q. Did you receive any notice from Mr. Goolrick that the deeds were to be recorded, or that they had been recorded?

A. No, sir.

Q. How did you learn that they had been recorded?

A. I learned it through the newspaper, I think.

RE-CROSS EXAMINATION.

By Counsel for Defendant:

Q. Mr. Hefin, you have testified that this purchase page 107 } chase by you was a conditional purchase?

A. Yes, sir.

Q. That is the way you understood it?

A. Yes, sir.

Q. You have also testified that you paid \$50 to Mr. Young, I believe?

A. Yes, sir.

Q. Then, you paid \$450 to the Bank at the time the deeds were executed and delivered?

A. \$1,450, I think.

Q. Did you not give a note for part of that?

A. Gave a note for \$1,450, I think.

Q. How long after date was that payable?

A. I don't know whether that was payable at a certain time, or on demand. I know it has been paid, but I never got it from the Bank.

Q. How long after you gave that note in October, 1930, did you pay it?

A. I did not have any record of it, because I did not get the note back.

Q. It was some time later on, though?

A. Yes, sir.

Q. You not only paid that note, which represented a part of the purchase price, but also the semi-annual instalments

of interest on the \$5,000 note as they became due—
page 108 } you paid that up to July 1, 1932, \$150 each pay-
ment?

A. We did.

Q. The first time you failed to meet your interest on this \$5,000 note was the payment due on January 1, 1933?

A. January 30, 1933, I think it was.

Q. Yes, January 30, 1933?

A. That is right.

RE-DIRECT EXAMINATION.

By Mr. Coleman:

Q. Mr. Heflin, you stated you paid the interest up to January, 1933?

A. Just paid the interest to July 30, 1932.

Q. Had you any information up to that time that this guarantee or condition in regard to the building of this track would not be fulfilled?

A. No, I thought it was going to be built. They had ample time to do it before the three years expired.

RE-CROSS EXAMINATION.

By Counsel for Defendant:

Q. Mr. Heflin, do you still state, in view of what appears on the Clerk's memorandum book with regard to the delivery of these deeds to this office for recordation that you never requested Mr. Adams, or his deputy, to hold up the recordation and that you never mentioned the matter to
page 109 } Mr. Goolrick?

A. I absolutely state I did not. It would have been impossible for me to know when the deeds were down here.

Q. Why would it be impossible for you to know the deeds were down here?

A. Mr. Goolrick or nobody else notified me they were here.

Q. Can you not examine the record, like anybody else?

A. Yes, sir.

Q. It is not an impossibility on the part of anybody to walk down here and find out what is going on, is it?

A. You cannot come down here every day.

Q. It would not be impossible to come every day if a man was not ill or in bed?

A. Yes, but you cannot come here every day. It was impossible for me to know they were here for recordation.

Q. Why was it impossible for you to know it?

A. Did I have access to the books?

Q. Did you ever come to the Clerk's office to make inquiry whether these deeds were here?

A. No, I did not.

Q. If you had made inquiry could you have found out?

A. Yes, sir.

Q. Why did you say, then, it was impossible for you to know it?

A. Because I did not make inquiry and did not know it.

(The witness was excused.)

page 110 } FRANK M. CHICHESTER,
a witness introduced on behalf of the plaintiff,
being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Coleman:

Q. You are Mr. F. M. Chichester, a lawyer in the City of Fredericksburg?

A. Yes, sir.

Q. Mr. Chichester, will you please state whether you were consulted in reference to this transaction between the Planters National Bank and E. G. Hefin Company, Incorporated, and, if so, by whom and for what purpose?

A. (Will you hand me the deed and the deed of trust and the letter?) I knew nothing of the transaction up to the time (the date I don't exactly remember) Mr. Hefin came in my office, with these two unexecuted papers, the deed to a portion of the property on Sophia Street owned by the Planters Bank and the deed of trust securing a note for \$5,000. I was asked to look over these papers and see if it was all right for Mr. Hefin to sign the same, it being necessary under the deed and deed of trust that he, as President of the E. G. Hefin Company, sign both papers. I examined them and I said, "I see—

page 111 } By Counsel for Defendant (interposing): I
object.

By the Court:

Q. Was Mr. Goolrick present?

A. No, sir.

By the Court: Then, it is not competent.

A. I examined them and from what I understood—

By Counsel for Defendant: I object to that.

By Counsel for Plaintiff:

Q. Did Mr. Heflin advise you as to any conditions or representations in reference to this transaction which did not appear on the face of the deed?

By Counsel for Defendant: I object to that. He is trying to bring out what occurred between Mr. Heflin and himself.

By the Court: No conversation which took place between Mr. Chichester and Mr. Heflin can be admitted in this case, it being purely hearsay.

By Counsel for Plaintiff: Here is my reason for wishing to bring out the statement. Here is the deed and deed of trust, which were drawn some two or three months before they were executed. In the meantime there was a copy of a letter delivered to Mr. Heflin. Now, what I want to prove by Mr. Chichester, if he knows, is the reason for the delay in that period at the time he represented Mr. page 112 } Heflin, or had been consulted by Mr. Heflin.

By the Court: He could testify to that from information he had acquired of and from his client, Mr. Heflin, or if it was so acquired in the presence of Mr. Young, or the President or some agent of the Bank, then that representation can be used, otherwise it cannot be.

By Counsel for Plaintiff:

Q. Mr. Chichester, did you ever see a copy of this letter?

A. Yes, a copy of this letter, dated September 9, 1930, from the Richmond, Fredericksburg & Potomac Railroad Company, was shown to me by Mr. William K. Goolrick.

Q. That was delivered to you by Mr. Goolrick?

A. Yes, sir.

Q. Were you present when the deeds were finally executed?

A. No, I don't think I was. I would like to explain this situation, exactly how I operated in it.

By Counsel for Defendant: I don't want you to explain it. That would bring in a whole lot of hearsay.

(Witness continues:) I went to Mr. Goolrick's office with these deeds and suggested or stated to him that there was nothing in either one of the deeds which gave any guarantee that there would be a spur track built. I could state why I did that, but I realize that is probably hearsay. At my so-

licitation Mr. Goolrick wrote to the Richmond,
page 113 } Fredericksburg and Potomac Railroad Company
and this is a copy of the letter he received from
the Railroad Company, which was handed to me, and when
I received it, probably the same day or a few days afterwards,
my advice to Mr. Hefin was—

By Counsel for Defendant (interposing): I object.
By the Court: You can't tell what you advised him.

(Witness continues:) I returned the letter, the deed and
the deed of trust to Mr. Hefin, and I feel reasonably sure
that the papers were not executed in my office. My impres-
sion is that Mr. Hefin went over to Mr. Goolrick's office and
executed them, and one reason that that idea is confirmed is
because it was acknowledged before his stenographer. Had
they been acknowledged in my office they would have been be-
fore my stenographer. What occurred between Mr. Goolrick
and Mr. Hefin about the execution of these papers after he
received that letter I know nothing of.

(The witness was excused.)

page 114 } WILLIAM K. GOOLRICK,
being called as an adverse witness by Counsel for
Plaintiff, subject to the rules of cross examination, being first
duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Counsel for Plaintiff:

Q. Mr. Goolrick, you are Mr. William K. Goolrick, Presi-
dent of the Peoples National Bank of Fredericksburg?

A. Yes, sir.

Q. That Bank has now been more or less embraced in an-
other bank?

A. Yes, the Planters National Bank of Fredericksburg is
liquidating and the Planters National Bank in Fredericksburg
is acting as liquidating agent.

Q. This transaction was between what we knew as the Old
Planters Bank and Hefin, Incorporated?

A. Yes, sir.

Q. The new Bank has no connection with it?

A. None whatever.

Q. You were President of the Planters National Bank of
Fredericksburg, Va., during the entire year of 1930?

A. Yes, I was.

Q. Mr. Goolrick, you handled the transaction between the Richmond, Fredericksburg and Potomac Railroad Company and the Planters National Bank of Fredericksburg, Va., in reference to a sale of a strip of land on Sophia Street, the deed having been dated July 14, 1930?

A. Yes, sir.

Q. Was this property at this time in the hands of the real estate agency for sale?

A. Yes, sir. Mr. A. B. Young, of the real estate firm of Allison & Young, informed me in 1929, I think in the fall of 1929, that the Richmond, Fredericksburg and Potomac Railroad Company was interested in the purchase of the lot and had written my predecessor, Mr. Ford, in regard to the matter. I then took the question of the sale up with the Richmond, Fredericksburg and Potomac Railroad Company, through Mr. John B. Mordecai, who is one of the officials of that Company, and they offered us \$6,000 for the property, the lower end of the property, which the directors accepted and authorized me to execute the deed for. The matter was delayed for a considerable period, owing to the fact that in looking up the title to the portion of the lot sold to the Railroad Company Mr. Butzner, their attorney, found that on one of the old city maps in the Clerk's office a street was drawn through the property from Water Street to the river, and the Railroad Company required the Planters Bank to clear this matter up before they would accept the title to the property.

Q. That was the reason the deed was not executed in July?

A. That was the reason it was not executed from the fall of 1929 until July, 1930.

Q. Mr. Goolrick, when did your Bank place this property in the hands of Allison & Young, in which Mr. A. B. Young is a partner, for sale?

A. I think it was in Mr. Young's hands for sale when I was elected President of the Planters Bank in the spring of 1929, immediately after Mr. Ford's death.

Q. Then, Mr. Young was more or less instrumental in the sale of the property to the Richmond, Fredericksburg and Potomac Railroad Company, was he not?

A. Yes, I think he was.

Q. And, on March 4, 1930, the Bank passed the necessary resolution authorizing the sale to the Railroad Company?

A. Yes, sir.

Q. You knew at that time that Mr. Hefin had been approached by Mr. Young in reference to the purchase of the remaining property, did you not?

A. Yes, I did. Mr. Young told me that, of course.

Q. And that resolution authorizing the sale to Hefin, Incorporated, was passed March 4th, 1930, was it not?

A. Yes, it was, and the reason of that was that Mr. Young reported to me a short time prior to that that Mr. page 117 } Hefin would buy the property. That was the reason the resolution was passed on March 4th.

Q. Did not Mr. Young tell you Mr. Hefin would buy this property provided this spur track was placed there?

A. No, he did not.

Q. Then, why was it insisted upon in the deal with the Railroad Company that they obligate themselves to the Bank to build that track within three years from the date of the deed?

A. The reason that was done was when I called upon Mr. Mordecai at the Richmond, Fredericksburg and Potomac Railroad's headquarters in Richmond, he stated to me that the Company was buying the lower portion of the property for the purpose of erecting a grain elevator, and that the Richmond, Fredericksburg and Potomac Railroad Company was expecting to build a switch from their main line to the property, provided the City Council gave them the right to do so.

Q. If you knew, as you say you did, that Mr. Hefin was interested in the purchase of this property, and you gained that information from Mr. Young, and Mr. Young was acting for the Bank in the sale of the property, what was the necessity for the insistence on the part of the Planter National Bank of the Richmond, Fredericksburg and Potomac Railroad Company obligating itself to build this page 118 } track within three years, if Mr. Hefin had made no such demand?

A. Well, I gave Mr. Hefin all the information I had in regard to the matter. I furnished him with this letter that the Richmond, Fredericksburg and Potomac Railroad Company wrote me after Mr. Young had reported to me that Mr. Hefin desired to know exactly what the Company was going to do.

Q. You misunderstood my question, Mr. Goolrick. My question is this: if there had been no demand communicated to the Bank or to you, on the part of Mr. Hefin that this track must be built before he would take that property, why was it necessary to have the Richmond, Fredericksburg and Potomac Railroad Company obligate itself to build the track?

A. It was not conveyed to me in the nature of an obligation. It was conveyed to me that Mr. Hefin wanted written information in regard to what the Richmond, Fredericksburg and Potomac Railroad Company was going to do.

Q. Did the Richmond, Fredericksburg and Potomac Railroad Company officials obligate the Company to build that track within three years?

A. My understanding was they obligated themselves conditionally; that is, they would build the railroad
page 119 } track provided the City Council granted them
leave to do so. In other words, I understood it was a conditional matter with them.

Q. Let us take it as a conditional matter, was the Richmond, Fredericksburg and Potomac Railroad Company, provided the City Council granted them the permit, obligated at any time to build the track?

A. According to my understanding, the only obligation, or agreement, or understanding, between the Richmond, Fredericksburg and Potomac Railroad Company and me, as President of the Planters National Bank was that the track would be built if the City Council granted the Railroad Company the permit to do it. Entirely conditional, as understood by me.

Q. When was that agreement made?

A. That agreement was first stated to me verbally when I had a conference with Mr. John B. Mordecai, in the office of the Richmond, Fredericksburg and Potomac Railroad Company, I think in the fall of 1929.

Q. Did you ever consider that there was such an obligation on the part of the Railroad Company to build this spur track as could have been enforced by the Bank?

A. That was a matter, Mr. Coleman, which I have never looked up legally. I could not state as to whether that is a legal certainty or not, for the very simple reason
page 120 } that the Railroad Company was a considerable
time in buying the property from us and did not buy it until July 14, 1930. Mr. Young communicated to me in February, I think, of 1930, that Mr. Heflin would buy the property, I had the directors of the Planters Bank to pass the necessary resolution of sale and it was later communicated to me by Mr. Young that Mr. Heflin desired to investigate in regard to the obligation to build the track by the Railroad Company.

Q. You wrote to Mr. Call, President of the Railroad Company, did you not?

A. Yes, sir.

Q. The letter of September 9, 1930, is his answer to you, is it not?

A. Yes, this is a copy of his letter to me.

Q. There was nothing said about his obligation in the deed

from the Planters Bank to the Richmond, Fredericksburg and Potomac Railroad Company, was there?

A. No, nothing.

Q. Mr. Goolrick, what was the consideration for that obligation?

A. Well, it was, on their part, I always considered, a conditional obligation, and the consideration was the money paid for the property. That was part of that consideration, I should judge, the \$6,000 they paid for the lot.

page 121 } Q. In addition to the \$6,000, was part of the consideration to build the track?

A. I thought you meant what was the consideration by the Bank.

Q. No, I mean what was the consideration for the obligation on the Richmond, Fredericksburg and Potomac Railroad Company to build the track?

A. The consideration was they would build the track if the City Council granted them the leave to do so.

Q. It would be necessary, would it not, for the Richmond, Fredericksburg and Potomac Railroad Company to apply for a permit and that permit would have to be denied—

By the Court: That is a legal question.

Q. Was there anything ever placed in writing with reference to this obligation other than that letter?

A. No, sir.

Q. Then, you are not prepared to say that letter is a legal obligation on the Richmond, Fredericksburg and Potomac Railroad Company?

By the Court: That is a question of law.

By the Court:

Q. Mr. Goolrick, in addition to this deed was there any other arrangement that took place between the Planters National Bank and the Railroad Company at the time they conveyed the Railroad Company that part of this lot, page 122 } do you recall any other writing or any other arrangement between the Planters National Bank and the Railroad Company as to the building of this spur track?

A. No, I don't recall any other writing, or any other arrangement of any kind.

By Counsel for Plaintiff:

Q. Did you notify Mr. Hefin you would place the deeds on record?

A. No, sir.

Q. Why did you not?

A. I did not notify him for this reason: after the deed and deed of trust were executed they were left at the Planters National Bank, and it was some little while before I was advised of that fact and immediately upon being informed (I am not exactly certain what length of time after the deeds were executed on October 18, 1930, but I should say several months had elapsed) I took the deed and deed of trust and brought them to Clerk's office and delivered them to Mr. Adams, with the request that he should record them and send the bill for recordation to Mr. Heffin. I come to the Clerk's office frequently and the Clerk, Mr. Adams, stated to me—

By Counsel for Plaintiff (interposing): I object to that.

By the Court: That would be hearsay. You can't go into it.

page 123 } By the Court:

Q. Mr. Goolrick, you say you gave those deeds to Mr. Adams for recording, are you in position to say whether or not they were recorded at the time you gave them to him?

A. I would state that I thought they were recorded. I believed they had been recorded.

By Counsel for Plaintiff:

Q. Did I understand you to say that some months had elapsed before you knew the deeds had not been recorded and had not been delivered to the Clerk's office?

A. Yes, some time had elapsed.

Q. The deeds were signed and executed in your office, were they not?

A. My stenographer took the acknowledgments, but my recollection is she went down and took somebody's acknowledgment. I don't think they were taken in my office. I am not at all certain about it, though.

Q. You mean to say that you did not know that they had been executed?

A. No, I did not. The deeds were left at the Bank for a considerable time. My other information in regard to it is hearsay.

By the Court: Don't go into hearsay.

Q. Then, this answer filed by the Bank, and signed by you

as President, wherein you state "Upon the execution of the deed and deed of trust the same was immediately delivered by William K. Goolrick, its President, to the Clerk of the Corporation Court of Fredericksburg for recordation" is in error?

A. Yes, I would not say they were immediately delivered. I would say they were delivered to the Clerk of the Court in a short time. My opinion is that probably two or three months had elapsed—two months probably.

Q. Then, that answer is in error, is it not?

A. Yes; that answer is not an accurate statement.

Q. When you found the deed and deed of trust in the Planters Bank, then you did take them down to the Clerk's Office?

A. Yes; I certainly did.

Q. That was some two or three months afterwards.

A. I would say it was approximately two months afterwards. I am not absolutely certain as to the time; some little time elapsed.

Q. After the transaction you treated it as closed. You did not see Mr. Heflin any more in reference to this transaction until he saw you about not having the deed recorded, did you?

A. No, that is right.

Q. How did Mr. Heflin know when you delivered this deed and deed of trust for recordation?

A. I can only give you hearsay.

page 125 } By the Court: Don't go into that.

Q. It is a fact, is it not, that you did not deliver the deed and deed of trust to the Clerk's office for some months after the execution of these papers?

A. No.

By Counsel for Defendant: I object to that, because he has stated it four or five times.

By the Court: He has stated it several times.

Q. You did not advise Mr. Heflin when you found the deed and deed of trust in the Planters Bank that you were going to have them recorded, did you?

A. No, I did not inform Mr. Heflin, because my information and dealings with Mr. Young was that it was an absolute sale, and as soon as I learned the deeds had been signed and acknowledged, or a very short time afterwards, I brought them to the Clerk's office to be recorded. I did not consider it was necessary to notify Mr. Heflin. I did not know he

had the slightest possible objection to them being recorded.

Q. You did know some days afterwards that he did object to their being recorded, did you not?

A. Yes, some days after I left them here for recordation I learned that he objected to them being recorded.

Q. Did he request you not to record them?

A. At his request, I came to the Clerk's office page 126 } and withdrew the deeds. Mr. Heflin met me and stated that I had left the deeds to be recorded; that he did not want them to be recorded. That he owed a lot of money, and he did not want the \$5,000 additional to show up on his financial record and I told him I would be glad to withdraw them and I came down here and got them.

Q. Where did that conversation occur?

A. In front of my office, on Princess Anne Street, right at the steps that come out the Bradford building.

Q. When this interest was not paid, Mr. Goolrick, in January, 1933, why were not steps taken to collect it from Mr. Heflin?

A. In January, 1933, steps were taken to collect it.

Q. What steps were taken?

A. It was brought up before the board of directors of the Planters Bank and their instructions were to write Mr. Heflin and to ask him to pay it, and my information is Mr. Karsten did that; but that is hearsay as far as I am concerned.

Q. You do know no interest has been paid up this time?

A. I know one of the later interest payments was not made; but I am advised he made four interest payments.

Q. I mean the interest since January, 1930—no interest has been paid since then?

A. That is my information.

Q. But, he has made none since he received on page 127 } reply to his letter of January 30th, 1933?

A. That is my information, but my knowledge of that is meager. Mr. Karsten would know.

Q. Mr. Goolrick, to go back to this obligation, you knew that Mr. Heflin did not want that property unless that spur track was going to be built; did you not?

A. No, not absolutely. I knew Mr. Heflin had a piece of property just as far as this one that has no spur track; but, while I believed he wanted one built, I did not know it was necessary and essential to his plant.

Q. Why was it, then, that Mr. Chichester came over to see you and you wrote this letter of the Railroad Company about the spur track?

A. My judgment is Mr. Chichester came to me as Mr. Heflin's attorney, and I wrote the letter to the Railroad Com-

pany in order that Mr. Heflin might have just as much information in regard to the matter as I had.

Q. Don't you know, as a matter of fact, that the selling point in that property was the fact that Heflin believed that this track was going to be built and that the Railroad Company had obligated itself to build that track?

A. No, I don't know that of my own knowledge and information.

Q. If that was not the selling point for the rest of the property down there, why was it the Planters Bank wanted the Railroad Company to obligate themselves to build that track?

A. The only reason was Heflin came to the Bank and I wrote the letter at Mr. Heflin's solicitation so as to give him all the information I had.

Q. The question I asked you was if the obligation on the part of the Railroad Company to build the spur track was not the selling point for this sale, why was it the Planters Bank insisted on the Railroad Company building the track?

A. The Bank did not want it built. I would say it did not want it. It did not bring it up in the original transaction. Mr. Mordecai, one of the officers of the R. F. & P. Railroad brought the matter up, himself. I did not know anything about it.

Q. The obligation on the part of the Railroad Company to build the track,—what benefit could there have been to the Railroad Company to obligate itself to the Bank to build the track?

A. The only benefit I see—my understanding was they bought the property for the purpose of building a grain elevator and it would be connected to the main line by a spur track provided the City Council of Fredericksburg would allow them to build the track across the street.

page 129 } Q. What benefit could the Railroad Company gain for itself in obligating itself to build this track?

A. I considered it was a conditional obligation they made, and when we conveyed the property to Mr. Heflin we conveyed it conditionally and all rights went with it.

Q. Why did the Richmond, Fredericksburg and Potomac Railroad Company obligate itself to the Planters Bank to build the track?

A. I would say why they obligated themselves was of their own volition. That is my answer.

Q. Then, there was no demand on the part of the Planters Bank that the Richmond, Fredericksburg and Potomac Railroad Company obligate itself to build this track?

A. Not until they stated they would furnish this letter, which they did furnish.

Q. Then, up to the time this letter was written the Bank had never demanded that the Richmond, Fredericksburg and Potomac Railroad Company obligate itself to build this track there?

A. Not in writing. It had never been reduced to writing up to that time.

Q. Had the Bank demanded that?

A. Not up to September 6th in writing; not in writing.

Q. Had the Bank prior to that time, through its agents, demanded that the Richmond, Fredericksburg and Potomac Railroad Company obligate itself to build the track?

A. Mr. Mordecai had agreed with me that the Richmond, Fredericksburg and Potomac Railroad Company would obligate itself to build the track provided the City Council would grant them a permit to build it across the street there and he would furnish me a letter to that effect, and upon the request of Mr. Chichester I made the demand on them, and they wrote me that letter.

Q. Did you ever demand of the Richmond, Fredericksburg and Potomac Railroad Company that they build the track?

A. The Richmond, Fredericksburg and Potomac Railroad Company never got any deed from us until July 14, 1930, and I wrote them in September. That was the first time I wrote them.

Q. Mr. Goolrick, Mr. Young had all the information in regard to the building of the track and the sale to the Richmond Fredericksburg and Potomac Railroad Company that you had, did he not?

A. Yes, he did.

Q. You furnished him, did you not, with a plat showing where the track was to be built?

A. Yes, I furnished Mr. Young with either the plat filed here, or a copy of it, which was made by one of the Railroad engineers.

Q. You furnished him with that plat?

page 131 } A. Yes, sir.

Q. You knew at the time that he was negotiating with Mr. Hefin, did you not?

A. Yes, Mr. Young told me that.

Q. Did Mr. Young tell you why he wanted that plat?

A. He told me he wanted to show Mr. Hefin the plat of the property and where the track ran along the front and that there were certain rights of ingress and egress. I think that had to be explained to Mr. Hefin.

Q. Did he tell you at that time what Mr. Heflin wanted with the property?

A. I am not certain whether he did, or not. I understood, and Mr. Young probably did tell me, that Mr. Heflin wanted to locate a mill on it.

Q. Did he not tell you, also, that he wanted to locate his mill on the spur track?

A. Not as a necessity, no, he did not. He told me Mr. Heflin wanted it built in there.

Q. He told you Mr. Heflin wanted the track built in there?

A. Yes, sir.

Q. And you stated, I believe, that you never communicated with the Railroad Company in reference to the building of this track after this letter of September 9th?

A. I communicated with them September 6th.

Q. That is the last time you communicated with page 132 } them?

A. Yes, that is the last time I communicated with them.

Q. Did you draft the deed from The Planters Bank to Mr. Heflin?

A. I think so, yes. My recollection is I did. I think it is on my paper.

Q. As a matter of fact, this strip of land sold to the Richmond, Fredericksburg and Potomac Railroad Company leaves no street frontage for the property sold Mr. Heflin, does it?

A. It leaves no street front, but contains an agreement or covenant that the said party of the first part, that is the Planters Bank, hereby grants, conveys and assigns unto the said party of the second part its perpetual right of way of ingress and egress from the lot herein conveyed over the parcel of real estate described in the aforesaid plat as Lot No. 2 and conveyed unto the Richmond, Fredericksburg and Potomac Railroad Co., Inc., by deed dated July 14, 1930.

Q. Then, as I understand, when this deed and deed of trust were executed, in so far as you were concerned, you considered the deal closed.

A. Yes, sir.

Q. There was no other contract between the Bank and Heflin in regard to this property, was there?

A. No, sir.

Q. You state in your answer, "The said Gool-
page 133 } rick agreed to withhold said deeds from the
Clerk's Office, which was done, but they were subsequently recorded, as set out in the bill, because it was then

apparent to respondent that the said Heflin intended to repudiate his contract, if he could find an excuse to do so". If that was a closed deal, what was there to repudiate?

A. After I left the deeds here to be recorded, I withdrew them, after he made the statement as set forth in my evidence, and I took them to the Planters Bank and left them there, with instructions that they were to be recorded at the beginning of the next year.

Q. Did I understand you to say that after this talk with Mr. Heflin, you took this deed and deed of trust to the Planters Bank, and left them there, with instructions that they be recorded at the beginning of the next year?

A. Yes, sir.

Q. When was that?

A. That would have been early in 1932.

Q. When they were to be recorded?

A. Yes, sir.

Q. Whom did you instruct to record them?

A. I requested Mr. Karsten to have them recorded in January, 1932. He asked me to hold them off the record in 1931.

Q. Why were they not recorded in 1932?

page 134 } A. I could not say, except on information,
which is of no real value.

Q. The note that this deed of trust secures, Mr. Goolrick, was made payable on or before three years from date, was it not?

A. Yes, sir.

Q. Is it not a fact that that note was drawn or made with the understanding that when that track was built Heflin would take that note up?

A. No, that is not a fact.

Q. Why was it made on or before three years?

A. At Mr. Heflin's request, with the understanding that he could pay it at any time he desired, or any part of it.

Q. And, there was no understanding that when the track was built that Heflin should take the note up?

A. No, not on my part; positively no.

Q. Was there any reason for making the deed of trust on or before three years?

A. None other than he requested it be on or before three years. I would have been glad to make it any time he wanted, almost.

Q. In fact, the obligation of the Railroad Company was for three years, was it not?

A. Yes, sir.

Q. Mr. Heflin had nothing whatever to do with page 135 } the time limit set between the Bank and the Railroad Company as to when the track should be built?

A. I don't think so, no.

Q. Then, the mere fact that the track was supposed to have been built within three years and the lien securing the note was on or before three years was merely a coincidence?

A. The note was made payable three years after date purely at Mr. Heflin's request. Whether he knew, or it had been communicated to him, the time limit at the time the note was originally drawn, I could not say.

Q. You wrote the deed of trust and note, too, did you not?

A. Yes, sir.

Q. You say that was written at Mr. Heflin's request?

A. Yes, it was written as an agreement with and between Mr. Heflin, of course.

Q. Mr. Goolrick, it is a fact, is it not, that without any assurance on the part of the Railroad Company to the Bank that this track would be built, it would have been almost impossible to have sold the remainder of that property, would it not?

A. No, it is not a fact. I could have sold that property between the time Mr. Heflin first negotiated for it and the time he actually purchased it.

Q. With the Railroad Company owning the en- page 136 } tire front of the property and owning part of the property on which the road is built?

A. Yes, sir.

Q. Without any assurance that the Railroad Company would build the track?

A. Yes, sir.

Q. How could a person get in and out of that property unless they crossed the right of way of the Railroad Company?

A. They would get in and out of the property over the right of way which was reserved in the deed from the Bank to the Railroad Company and was given in the deed to Mr. Heflin or his Company.

Q. It is a fifteen foot right of way?

A. Yes, sir.

Q. That is quite a long lot running down on that street, is it not?

A. Yes; I think the description is given in the plat here. It is quite a long lot.

Q. It would be necessary to remove part of the building before it could be used, would it not?

A. Yes, I think so.

Q. The river is right on the other side, is it not?

A. Yes, sir.

Q. In other words, on the east side of this lot page 137 } is the Rappahannock River?

A. Yes; the party who saw me wanted it because it was on the Rappahannock River.

Q. It is on a very steep incline, is it not?

A. Part of it is, but part of it has wharfage rights. Part of it is very steep, runs down in shelves to the river.

Q. Mr. Young, I believe you stated, was acting as general real estate agent for the Bank at the time of this transaction?

A. Yes, sir.

Q. And he communicated to you, as President of the Bank, the fact that Mr. Heflin would take the property, but he wanted this track built, did he not?

A. Mr. Young first reported to me that Mr. Heflin would buy the property, and I stated to Mr. Young that the Company expected to build this track in there, if they got the consent of the City Council.

Q. Do you know whether Mr. Young ever saw this letter of September 9, 1930, or not?

A. Yes, Mr. Young saw it. I gave either the letter, or a copy of the letter to Mr. Young.

Q. Why did you give it to him?

A. He wanted to show it to Mr. Heflin, his statement was.

Q. That is the letter that states that the Richmond, Fredericksburg and Potomac Railroad Company page 138 } obligated itself to build the track within three years?

A. Yes, dependent on the fact that the City Council granted the permit to do so.

Q. You gave that to Mr. Young, who was handling the property, for the purpose of showing it to Mr. Heflin?

A. Yes, Mr. Chichester had requested me to do that and I gave a copy of the letter to Mr. Young.

Q. That letter set out just what Mr. Heflin testified Mr. Young told him in February, that the Richmond, Fredericksburg and Potomac Railroad Company would build the track?

By Counsel for Defendant: I object to that.

By the Court: He can testify what he knows and I will pass on it.

Q. Mr. Goolrick, I have asked you several times and I have never obtained what I consider a complete answer to this

question, and I will propound it once more, and it is this: if this obligation on the part of the Railroad Company was not to be used as the selling point to this property, why was it that the Bank insisted that there be an obligation to build that track?

A. The Bank never did insist on any obligation to build the track. Mr. Mordecai stated to me in the original conversation that they would build the track if the City Council gave them the right to do it.

page 139 } Q. Was there ever a contract between the Railroad Company and the Bank to build the track?

A. The only contract was the agreement of Mr. Mordecai that the Railroad Company would build the track provided the City Council gave them permission to do it. He stated that in the original conversation to me. Then, I wrote him on September 6, 1930, and he wrote the letter of September 9, 1930, repeating that statement.

Q. Why did he make that obligation to build the track?

A. Made it in his negotiations leading up to the settlement of the matter in the first interview, that they would be willing to buy the property and pay the price for it; that they expected to build the switch and would do it, provided the City Council allowed them to do it.

Q. Then, there was never any agreement between the Bank and the Railroad Company to build the switch was there?

A. There was the oral agreement I have set out in my answer to your previous question.

Q. In return for obligating itself to build the switch what was the Bank to do?

A. The Bank was to do nothing except to convey them the property and receive \$6,000 for it.

Q. If you knew, Mr. Goolrick, that the only agreement the Bank had with the Railroad Company was that
page 140 } Mr. Mordecai had advised you that they expected to build this track within three years why did you permit Mr. Young to use a letter which states as follows: that the Railroad Company is obligated to build within three years from the date of said conveyance a spur track connected with its industrial track and reaching the remainder of the property still owned by your Bank?

A. I consider that the Railroad Company was obligated to build the track conditionally, as I have stated before.

Q. You know that the deed and deed of trust were not executed until this letter had been shown to Mr. Heffin, don't you?

A. Yes, I think that is true.

Q. You have stated in practically every answer that this was conditioned upon the ability to secure the consent of the City Council of Fredericksburg for the building of the track, do you know whether or not the Railroad Company has ever attempted to secure the consent to build that track?

A. No, I do not.

Q. The time has expired, has it not?

A. Yes, the three year period is up.

Q. You say you do not know whether they ever attempted to secure the consent of the City Council to build it?

A. No, I do not know whether they have or page 141 } not. It would be mere hearsay on my part.

Q. Do you know why Mr. Heflin's deed was not drawn until after the deed to the Railroad Company?

A. Yes, my understanding was that Mr. Heflin wanted to know first that the Railroad Company had bought and he also wanted to know in regard to the building of the switch down there. That is my understanding why it was not drawn until afterwards.

Q. It was your understanding, then, that if the Railroad Company had not bought and he had not understood the switch would be built, he would not have bought the property?

A. No.

Q. What was your understanding?

A. My undersanding was Mr. Heflin was influenced by the fact that the Railroad Company had bought; but I never understood that Mr. Heflin's purchase of the property was absolutely conditioned on the fact that the switch was to be built there.

Q. Do you know why the deeds were not executed in July, when they were drawn?

A. I would say they were not executed because Mr. Heflin had not satisfied himself of the fact I have stated.

Q. Why did you write to the Railroad Company to get this letter to show Mr. Heflin? page 142 }

A. I wrote at Mr. Chichester's request and when the letter came I gave it to Mr. Young. Mr. Heflin also got it and Mr. Chichester got a copy of it.

Q. Did not Mr. Heflin refuse to sign the deed until this letter was received?

A. I don't know that he refused to sign. I know he did not sign until October 18th, which was afterwards.

Note.—At this point is was agreed between counsel that if Mrs. Virginia Adams Dare were called as a witness that she would testify that on Tuesday, January 6, 1931, she was

deputy clerk of the Corporation Court of Fredericksburg, Virginia; that a daily memoradnum book of transactions in the Clerk's Office was kept in the office, and that on that day she entered on that book a memorandum showing the delivery to her of a deed from The Planters National Bank to E. G. Hefin Company, Incorporated, and a deed from E. G. Hefin Company, Incorporated, to William K. Goolrick, trustee, together with the transfer fee tax, etc.

page 143 } By Counsel for Plaintiff:

Q. Mr. Goolrick, why was it that the Bank, through its agents, took no other steps than to write Mr. Hefin and call his attention to the fact that the interest on this note had not been paid, when the same has been due since January, 1933?

A. Well, I would say, Mr. Coleman, that I don't attend directly to matters of that kind. That is in the hands of the Cashier, or Mr. Karsten. What they did, I don't know.

Q. You are a member of the board of directors, are you not?

A. Yes, I am.

Q. The letter that has been introduced in the record here of Mr. Krasten to Mr. Hefin, to the effect that this matter had been brought to the attention of the board of directors, was there any other action taken by the board of directors with regard to this interest?

A. No, none, I don't think.

page 144 } Q. Can you give any reason why this trust was not foreclosed, or some steps taken to collect the amount?

A. All I can state is the matter was brought to the attention of the board of directors and Mr. Karsten was directed to write to Mr. Hefin, with the idea that Mr. Hefin would pay the interest. That was June 27th. Nothing was done by the directors after that time, and I am certain no steps were taken by them up to that time.

Q. That is true, even though you had come to the conclusion on January 30, 1933, that Hefin had intended to repudiate the contract?

A. Yes, that is true. I hope to avoid any trouble in regard to it.

Q. Do you know why the letter of June 28th of Mr. Hefin to the Bank was not answered?

A. In which he made this demand for payment?

Q. No, in which he stated he would answer the letters of June 7th and June 27th when the Bank answered his letters of January 3rd and 30th?

A. There is but one answer they could have made, and he

knew their position, and that was that Mr. Karsten was making demand for the interest.

Q. Do you know where this deed and deed of trust were executed, that is signed and acknowledged?

A. No, I do not. I don't recall where they were page 145 } signed and acknowledged. I have an impression of it—I won't state positively, but I think they were left at the Bank. I believe you will find a letter to that effect from Mr. Karsten to Mr. Chichester.

CROSS EXAMINATION.

By Counsel for Defendant:

Q. Mr. Goolrick, it has been shown by the Clerk's Memorandum Book that the deed from the Bank to Mr. Heflin and the deed of trust from Mr. Heflin to you as trustee were received in the Clerk's office of this Court on January 6th, 1931, did you deliver those deeds in person to the Clerk for recordation?

A. I did. I delivered them to Mr. Adams for recordation.

Q. You have already testified you agreed to withdraw the deeds from the Clerk's office shortly thereafter, or, perhaps, the next day, at the specific request of Mr. Heflin and for the reasons heretofore assigned by you?

A. Yes, I did.

Q. Then, when the deeds were withdrawn where were they lodged?

A. I took them to the Planters Bank and left them.

Q. And they stayed there until they were again brought to the Clerk's office and recorded in January, 1933?

A. That is right.

page 146 } Q. Did you, acting for the Bank, give Mr. Heflin any assurance or guarantee that the Railroad Company would build a railroad track in front of that property?

A. I never did. I never did at any time do it.

Q. Did you ever represent to him, for the purpose of inducing him to purchase this property, that the Railroad Company had obligated itself to build that track, any further than the letter of the Railroad Company, itself?

A. I did not.

Q. When you received the letter of September 9, 1930, from the Railroad Company, which you obtained at the request of Mr. Chichester, that letter, was, I believe exhibited to Mr. Heflin by some one, either you, Mr. Young, or Mr. Chichester?

A. Yes, sir.

Q. Did that letter contain all the facts about the obligation of the Railroad Company that the Bank knew anything about?

A. It contained all the facts that I knew anything about, or anybody connected with the Bank, so far as I am informed, knew anything about.

Q. As a matter of fact, did Mr. Heflin, himself, prior to the execution of these deeds or delivery, discuss the matter with you, or request any assurance?

A. No, he never did. I left the matter - en-
page 147 } tirely in Mr. Young's hands. Mr. Chichester was
the only man who said anything to me about it,
other than Mr. Young. Mr. Chichester came to my office and
I wrote that letter of September 6th.

Q. The bill alleges that "he (Heflin) advised The Planters National Bank of Fredericksburg, Virginia, through its President, Mr. William K. Goolrick, that he desired positive assurance from said bank or its duly authorized officers and agents, that the Richmond-Fredericksburg and Potomac Railroad Company had obligated itself to build the spur track as aforesaid, and that said bank would guarantee that said track be built and to confirm the understanding with regard to said spur track". Is that true, or not?

A. It is not true, so far as I am concerned. He never had any conversation with me about it and I never gave him any assurance of any possible kind.

Q. You obtained the letter of September 9, 1930, at the request of Mr. Chichester, acting for Mr. Heflin, I believe?

A. Yes, I did.

Q. Did that letter correctly set out the prior transaction which had taken place between the Bank and the Railroad Company?

A. Yes, it did.

page 148 } Q. The bill alleges, on page 6, at the top,
that "at the time of executing the deed and deed
of trust, your complainant, through its President and agent,
E. G. Heflin, agreed with The Planters National Bank of
Fredericksburg, Virginia, through its President and Agent
William K. Goolrick, and also William K. Goolrick as
Trustee, that the deed and deed of trust, should not be re-
corded until the spur track had been completed". Did you
or the Bank ever enter into any such agreement as that?

A. Never did at any time.

Q. And, I understand that the first time you ever agreed that you would withhold the deeds from recordation was when Mr. Heflin met you immediately after he had lodged them in the Clerk's office of the Corporation Court here on Jan-

uary 6, 1931, and requested you as a favor to him to hold them in the Bank, rather than record them?

A. Yes, sir.

Q. And you agreed to that on the conditions as previously stated by you?

A. Yes, sir.

Q. Mr. Coleman asked you if the Bank at the time of the Heflin purchase could have disposed of that property to any other party or parties except on the guarantee that the track would be built. You stated, I believe, that you page 149 } could have sold it?

A. Yes, that I think I could. I won't state that as an absolute certainty.

Q. Were you approached by other parties desiring to purchase?

A. Yes, I had one or two inquiries and one of them was from a Norfolk concern that seemed very much interested in it.

Q. Was that from an oil concern?

A. Yes, sir.

Q. This property abuts on the Rappahannock River and has wharfage rights there, I believe?

A. Yes, sir.

Q. You stated you are under the belief you could have sold it, regardless of the track, to this other company?

A. Yes, that is my opinion.

RE-DIRECT EXAMINATION.

By Counsel for Plaintiff:

Q. You did not sell it?

A. No, I did not attempt to sell it to anyone else.

Q. Mr. Heflin, did not make any request of you at the time these instruments were executed not to record them, did he?

A. No, he did not.

Q. He did not tell you then he did not want page 150 } them recorded because he had other obligations?

A. No, he did not. He did not say anything about recording it, or not recording it.

Q. And, you did not notify him on the 5th or 6th of January, 1931, that you were going to record them, did you?

A. No, I did not think it was necessary. I understood they were to be recorded immediately, or in a short time, and I took them down to record them.

Q. And you did not notify him at the time you actually did record them, did you?

A. No, I did not notify him then, and I did not notify him

the other time; but I asked Mr. Adams to send him a bill for recording them when he recorded them.

Q. I believe I asked you if Mr. Heflin did not come to see you and you stated you had no conversation or agreement with him in reference to this spur track before you gave him this letter; is that correct?

A. Yes, I think so.

Q. As a matter of fact, Mr. Chichester did come to see you?

A. The only time I recall Mr. Chichester coming to see me was when he came to see me regarding this letter.

Q. Mr. Chichester at that time came to see you for the purpose of talking to you about this obligation on the part of the Railroad Company to the Planters Bank, did page 151 } he not?

A. Yes, I think so; that is what I understood.

Q. Then, Mr. Heflin did get in contact with you through his attorney about that matter before you got this letter?

A. Yes; but you asked if Mr. Heflin came to see me personally.

(By Counsel for Defendant: I asked you that.)

Q. And, it was on Mr. Chichester's demand or requests that you got this letter, was it not?

A. Yes, on his request, I would say not demand.

Q. But as a matter of fact, Mr. Heflin had not executed the deed or deed of trust up to that time, and did not do so until after you had obtained this letter and conveyed it to him?

A. Yes, that is true.

RE-CROSS EXAMINATION.

By Counsel for Defendant:

Q. I failed to ask you, did you ever give any assurance or guarantee to Mr. Chichester, acting for Mr. Heflin, that the Bank would see that this track was built there?

A. I never did. I never gave Mr. Chichester any assurance or guarantee at all. I wrote the letter of September 6th, at his request, and got the answer of September 9th.

Q. The only thing you did was to show Mr. Chichester the letter you got of September 9, 1930?

A. Yes.

(The witness was excused.)

page 152 }

A. B. YOUNG,

a witness introduced on behalf of the Defendant,
being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Counsel for Defendant:

Q. Mr. Young, are you a member of the firm of Allison & Young, general real estate agents, in Fredericksburg?

A. Yes, sir.

Q. How long have you been a member of that firm?

A. Since May 1, 1928.

Q. Do you know Mr. E. G. Heflin and Mr. William K. Goolrick?

A. Yes, sir.

Q. In the early part of 1930 were you handling the sale of this property which is involved in this suit with the Planters Bank of Fredericksburg?

A. Yes, sir.

Q. In what capacity?

A. I was working for Mr. Ford before he died.

Q. I mean, were you handling it in your capacity as a general real estate agent?

A. Yes, sir.

Q. Did you approach Mr. Heflin in regard to it, or did he approach you, or were you told he was interested in it?

page 153 } A. After the Richmond, Fredericksburg and Potomac Railroad Company had bought the lower end of it, I had in mind that Mr. Heflin wanted to move his shop. It was reported he wanted to move. I went in to see Mr. Goolrick and asked him if he wanted to sell the upper end. I am not positive about this, but am rather inclined to think Mr. Goolrick stated Mr. Heflin had already asked him the price of it.

By Counsel for Plaintiff: State what you know, not what some one else stated.

(Witness continues:) Any way, I went to see Mr. Heflin and suggested that this would be a good location for his shop and he seemed to agree with me, and he asked me the price and I gave him the price, and, either that day or the next day, or soon after that, we went down and inspected the property, and he knew that Richmond, Fredericksburg and Potomac Railroad Company had bought this lower end. He asked for a plat; so I got the plat from Mr. Goolrick and we went down there and looked at it, and he thought the price was reason-

able, and he said he thought he would take the property, but he would let me know in a few days.

Q. In your dealing with Mr. Heflin did you have any authority from the Planters National Bank to give any assurance or guarantee with regard to this particular page 154 } piece of property and the spur track?

A. No, sir.

Q. Did you give Mr. Heflin any guarantee or assurance of any kind that the Richmond, Fredericksburg and Potomac Railroad Company would build a spur track there, or that the Planters Bank would see that it was built?

A. No, I did not. On the contrary, I told him I could not give him any guarantee; he would have to make the investigation, himself, when I showed him the property.

Q. On page 2 of the bill, near the bottom, he alleges that you told him that the Railroad Company had obligated itself to the Bank to erect a new track connected with its main line on the strip purchased from the Bank and that, therefore, the lot in question (the one he was negotiating for) would meet the requirements demanded by his Company for such a lot. Did you ever tell him that?

A. No, I did not. I merely exhibited the plat when we went down to inspect the property.

Q. Further, on page 3, he alleges that on several occasions during the months aforesaid you sought him and assured him that there was no question but what the Richmond, Fredericksburg and Potomac Railroad Company had obligated itself to build the spur track. Is that correct?

A. No, sir.

Q. Did you do that?

page 155 } A. No, I did not. I did not make any promises.
Q. On page 3 of this bill, at the bottom, he further alleges that he advised you that the property would be practically worthless to the Company if this track was not built, and that the Company would not consider purchasing the lot at any price, or under any circumstances other than that of the Railroad Company erecting the spur track as represented. Did he make any such statement to you?

A. No, he did not.

Q. He further alleges, at the top of page 4 of the bill, that through all the conversations between he and you, as agent of the Bank, that it was understood that the purchase of the property by the Company depended entirely upon the erection of the spur track as aforesaid, and that the erection of said spur track was the sole consideration of the purchase.

Was there any such understanding on your part, or did you impart to him any such understanding?

A. No, I did not.

Q. Did you have any authority to make any such assurances as are here outlined?

A. I had no authority and so conveyed that to him.

Q. Did you see the letter of September 9, 1930, from the Railroad Company to the Bank, or Mr. Goolrick?

A. Yes, I saw that letter.

page 156 } Q. Did you have any information in regard to this property other than that the Railroad Company had acquired a part of it, had reserved a right of way, and had obligated itself to build a track conditioned as set out in this letter of September 9th?

A. I had no other information about it. I knew the Railroad Company had bought this property and reserved the right of way. I did not know there was any guarantee about the switch there at all. I merely showed Mr. Heflin the property and talked with him and showed him the plat.

Q. Did you make any agreement, acting for the Bank, with Mr. Heflin that his \$5,000 trust note would be paid when the said spur track was erected, if erected during the three year period?

A. No, I never discussed that with him at all.

Q. Mr. Heflin testified this morning that he had an agreement with you, acting for the Bank, that the deeds representing the transfer and mortgage of this property should not be recorded until the Railroad Company erected a spur track there. Did you have any such agreement with him?

A. I never had any conversation with Mr. Heflin about the deed or deed of trust. I merely mentioned to him we would give him terms. He asked me and I told him \$1,-
page 157 } 500 and the balance on time.

Q. You made no representations to him?

A. Absolutely none. That was not my business. My business was to negotiate the sale, which I did, and I did not have a whole lot of trouble.

Q. Did you make any representations to Mr. Heflin as to the Railroad Company, or what it might or might not do in regard to this property?

A. I did not make any. We simply discussed the Railroad Company having bought this property, and my statement to Mr. Heflin was, "You know the Railroad Company as well as I do", and that is all.

Q. Mr. Young, do you recall whether before the deeds were actually executed, Mr. Heflin told you that he had been to Richmond—

By Counsel for Plaintiff (interposing): I object to that question.

By the Court: Lay your proper foundation.

CROSS EXAMINATION.

By Counsel for Plaintiff:

Q. Mr. Young, you do admit, however, that you went to see Mr. Heflin about this matter, don't you?

A. Yes. I just stated I went to see him.

Q. You went to see him for the purpose of selling him this piece of property, did you not?

A. Yes, sir.

Q. You deny that you told him this was a lot that would meet all his requirements for his shop?

A. I told him about the lot and showed it to him and he said it would be all right.

Q. Did you not testify that you told him it was a lot that would meet all his requirements?

A. I was to find out whether or not it was suitable for his purposes.

Q. In reply to the very first question Mr. Goolrick asked you, did you not state you went to Mr. Heflin and told him it would be a good location for his shop?

A. I probably did. He told me he wanted to move his shop.

Q. You conveyed that information to Mr. Goolrick?

A. I told Mr. Goolrick that I understood he wanted to move his shop.

Q. You knew what kind of business he was in?

A. I knew he was in the contracting business.

Q. You knew his shop?

A. Yes, sir.

Q. Will you please state why this lot down here without any track is a good location for a shop such as Mr. Heflin wanted to move?

A. I had in mind that he was looking for a location and I was suggesting this to him.

Q. What is there about this particular location that would meet his requirements?

A. That was up to him.

Q. What was there about that property that made you suggest to him it would be a good location for him?

A. Because I had it for sale.

Q. What is there about that lot down here, aside from the railroad track in front of it, that would make it a good location for Mr. Heflin's shop?

By Counsel for Defendant: Where is the propriety of that question?

Q. If you did not know anything about whether the Railroad Company was going to build a track there, what was there about that lot that suggested to you it would be a good location for a wood-working plant?

A. I don't know anything, except to show it to Mr. Hefin and leave it to his judgment. If I don't offer property I won't sell it.

Q. I want to know why you suggested to him that this was a good location—what was there about this property that made you suggest to him that it was a good location for his plant?

A. I know of no special reason why I should suggest it.

Q. You did suggest it?

page 160 } A. Yes, sir.

Q. You stated, I believe, that you knew nothing about this obligation on the part of the Railroad Company to build this track within three years?

A. All the information I had I got from Mr. Goolrick.

Q. When did you get that information?

A. Before I went to see him, after the Richmond, Fredericksburg and Potomac Railroad Company bought it.

Q. Was that after July?

A. I could not recall the time.

Q. But it was after the deed had been executed between the Bank and the Railroad Company, or before?

A. I don't know how long before the deed was executed. I knew the Railroad Company had bought the lower end.

Q. Was it prior to the time Mr. Goolrick gave you this letter of September 9, 1930?

A. Yes, sir.

Q. You knew the Railroad Company had obligated itself to build the track in three years?

A. That was the information Mr. Goolrick gave me.

Q. You mean to say that in selling that lot to Mr. Hefin you did not tell him that?

A. I certainly told him. I was not able to tell him anything more than the information I had. He could do his own investigating. He told me it was his purpose in a day or two to go to see Mr. Taylor and others; he knew them all. I told Mr. Goolrick Mr. Hefin thought he could handle the property; that he was going to see the Railroad officials.

Q. Mr. Young, I understood you to state, if I am in error correct me—did I understand you to state that this property was placed in your hands for sale; that the Railroad Com-

pany purchased this right of way, and that then you went to Mr. Heflin and suggested to him that the balance of the property would make a good location for his shop and that was all you told him?

A. He knew the Railroad Company had bought it, and I carried him down there and showed it to him, and he asked me about the plat and I got the plat and showed it to him and told him to make his own investigation.

Q. Why did he ask for the plat?

A. He wanted to know the size of the lot, &c.

Q. So far as you know, there never was any demand or request on his part as between you two that this Railroad Company was actually going to build a spur track?

A. He asked me what evidence I had they would do it. I told him I had none, personally, but I would ask Mr. Goolrick and he could see Mr. Goolrick and ask him, if he wanted to.

Q. You did use the railroad spur track as one of page 162 } the inducements in the deal, did you not?

A. No, I did not; I told him to make his own investigation.

Q. How long have you been in the real estate business?

A. Since May 1, 1926.

Q. In the City of Fredericksburg?

A. Yes, sir.

Q. You knew this property and had been knowing it for some time, had you not?

A. Yes, sir.

Q. Did you handle the negotiations, or in any way appear in the negotiations between the Bank and the Railroad Company?

A. No; I told Mr. Goolrick, after Mr. Ford died, that Mr. Ford was discussing selling the lower end of it, or a portion of it, rather, to the Railroad Company, and I asked Mr. Goolrick if he had ever seen the plat; that Mr. Ford and I had gone over it; that Mr. Ford had talked to the Railroad Company about it, himself, and he stated that he would write to the Railroad Company and ask about it, which he did.

Q. Did you receive a commission on the deal between the Bank and *and* the Railroad Company?

A. I received a commission on the entire tract.

Q. Including that sold to the Railroad Company?

A. The Railroad Company and Mr. Heflin.

page 163 } Q. Then, you were the agency that procured the sale from the Bank to the Railroad Company?

A. No; I notified Mr. Goolrick and he wrote to the Railroad Company.

Q. You were paid for something you did not do?

A. I had been working on matter and produced it, and I was paid a flat commission. We were trying to sell the property as a whole.

Q. Are you a stockholder in the Planters Bank?

A. No; I never have been.

Q. Did you suggest to Mr. Goolrick, or to any of the directors of this bank, that there should be an obligation on the part of the Railroad Company to build the track within three years?

A. No, I did not.

Q. When did you first know of that obligation?

A. I did not know anything about it, except Mr. Goolrick got that letter and showed it to me.

Q. Is that the first time you knew anything about it?

A. I heard it discussed if the Railroad Company improved down there that there would be a right of way down there.

Q. I am not asking you about the right of way. I am asking you when did you first find out the Railroad Company had obligated itself to build the track within three years, if there was such an obligation?

page 164 } A. If there was such an obligation, all I knew about it was that letter shown here this morning.

Q. That is the first you knew about it?

A. Yes, sir.

Q. You had not told Mr. Heflin there was such an obligation?

A. No, I had not. Mr. Heflin told me he knew the Railroad people and he was satisfied the Railroad Company would not buy that lot unless they were going to develop it.

Q. I am talking of the specific obligation to build the track within three years. Do you know anything about that?

A. No, I do not, and I told Mr. Heflin so.

Q. If you told him you knew nothing about the obligation, how did you come to tell him that, if you knew nothing about it?

A. He asked me about the switch. I told him I was in no position to obligate the switch; to ask Mr. Goolrick.

Q. I am asking you about the obligation on the part of the Railroad Company to build the switch within three years?

A. I knew nothing about that, except what Mr. Goolrick said.

Q. You knew nothing about that until he gave you the letter?

A. So far as I remember, I knew nothing about it, until he showed me the letter. Mr. Heflin made his own investigation.

Q. When did you last appear in this transaction Mr. Young?

A. I could not tell you the exact time; but it was when Mr. Hefin told me he had been to Richmond and that he was satisfied that the Railroad Company was going to develop that end of it, and he was going to take the property, and I notified Mr. Goolrick.

Q. You stated awhile ago that he stated to you he was going to Richmond. I note that you say now he had been to Richmond?

A. He told me first he was going to Richmond, and later he told me he had been to Richmond, and stated he would take the property.

Q. Where did he make that statement?

A. I could not state that.

Q. What month?

A. I don't know.

Q. Do you know it was in the City of Fredericksburg?

A. Yes, in the City of Fredericksburg, and I went to Mr. Goolrick and told him, and it was out of my hands after that.

Q. You don't know what month that was?

A. No, I do not.

Q. Did you not have some other lots in the City of Fredericksburg listed at that time in your agency?

A. Yes, I always have plenty of lots listed.

Q. Plenty of them?

A. Generally.

Q. Why was it that this lot on Sophia Street suggested itself to be the lot for Mr. Hefin to locate his plant on, rather than some other lot?

A. I don't know any special reason for it; but it was large enough for him, I thought, and in a section of the town which I thought he would be probably more interested in than going out in this other section. He told me he wanted to move his shop because he wanted to sell his lots.

Q. Did he not tell you he wanted to move his shop because he wanted to be down on a railroad siding?

A. I would not say that.

Q. You don't deny that he said that?

A. I would not say that he said that; I am not positive. But he did not buy it on any switch being built being guaranteed on my part.

Q. Did you know that the Planters Bank, through its directors, had passed a resolution on March 4th to sell this property to Hefin and the Railroad Company?

A. I had nothing to do with it.

Q. I asked did you know it?

A. No, I did not know any proceedings. I told Mr. Goolrick he would take the property, and that was up to him after that.

page 167 } Q. When did you make that report?

A. I could not tell you. It was after the Railroad Company had bought the lower end.

Q. Do you know why this deal was held up from March 4th to October, 1930?

A. No, I could not give you any reason.

Q. You don't know why it was held up?

A. No, I don't know anything about why it was held up, because I had nothing to do with it after I reported it to Mr. Goolrick.

Q. When did Mr. Goolrick give you a copy of the letter of September 9, 1930?

A. He showed it to me.

Q. Why did he show it to you, do you know?

A. I know of no special reason for it. He said something about it to Mr. Chichester, and Mr. Chichester said something to me about it, as attorney for Mr. Heflin.

Q. Why did he want to show you a copy of the letter of September 9th?

A. I don't know.

Q. You knew the deal had been closed?

A. Only what Mr. Goolrick said. Mr. Heflin said he was going to close the deal.

Q. When was that?

A. When I reported the deal.

page 168 } Q. Was it in February?

A. I don't know. It was after the Railroad Company had bought.

Q. If the Bank authorized the sale on March 4th, it must have been before that you reported the sale?

A. I don't know. I cannot remember the month.

Q. Did you have any conversation with Mr. Heflin after that about this matter?

A. No; it was a closed matter to me after I reported it to Mr. Goolrick. I had nothing to do with it after that.

Q. You made no suggestion to any of the Bank officers in regard to having the Richmond, Fredericksburg and Potomac Railroad Company to obligate itself to build this track within a specified time?

A. No, I did not.

Q. Was anything said about the Railroad Company building this track within the three years during the negotiations?

A. Not on my part. There might have been at the Bank

with the Bank officials; but I told Mr. Heflin there was no obligation so far as I knew.

Q. Why are you so eager to set out that you are under no obligation. Nobody has stated you were under any obligation?

A. I meant obligating the Bank, or anyone else to build a switch; but it was stated here by somebody that page 169 } I had guaranteed to build the switch.

Q. Mr. Young, where did you get the plat to show Mr. Heflin?

A. I got it from Mr. Goolrick. I think Mr. Goolrick gave it to me.

Q. Everything that was done between you and Mr. Heflin was conveyed to Mr. Goolrick by you, was it not?

A. Yes, sir.

Q. The entire transaction?

A. Yes, sir.

Q. All of the transaction between you and Mr. Heflin was approved by Mr. Goolrick, was it not?

A. It certainly was, because all the report to him was that Mr. Heflin said he would take the property, and it was up to him then. In fact, there was no other conversation between me and Mr. Heflin. It was a very easy piece of property to sell, because Mr. Heflin seemed to want to buy the property.

Q. Mr. Young, if you did not tell Mr. Heflin that the Richmond, Fredericksburg and Potomac Railroad Company had obligated itself to build this track within three years, and Mr. Goolrick testified he did not tell him, do you know how he got it?

A. No; I told him the Railroad Company had bought it and he seemed to know as much about it as I did. page 170 } He said he knew it.

Q. When were you paid your commission?

A. I was paid my commission, as well as I remember, after the deed and deed of trust were executed some time in the fall.

Q. In October?

A. Some time along there, I think. I know before Christmas.

Q. How much were you paid, Allison & Young?

A. We were paid \$500.

Q. That covered both transactions?

A. All my work in connection with it. I had been doing a lot of work prior to that.

Q. But you say you don't know why the transaction was not closed before October?

A. No, I do not, because I paid no more attention to it, after I reported the sale to Mr. Goolrick.

Q. What kind of mill is this that Mr. Heflin owns?

A. I don't really know the kind. He makes frames.

Q. Lumber and wood-working mill, is it not?

A. Yes, lumber. He makes frames. I reckon you call it a wood-working plant, I don't know. He makes frames for houses and homes that he builds.

(The witness was excused.)

page 171 } By Counsel for Defendant: If your Honor
please, I would like for the record to show that
Mr. Adams, the Clerk, is not called as a witness on account
of the fact that he is very ill, and is not in physical condition to testify.

PRINCESS
ELIZABETH ST.

FREDERICK ST.

FRANE BLDG

BRICK BLDG

WATER ST.

132.5
N 22° 48' W - 210.0

567°12'W-12.0

N 22° 48' W - 1863

AREA 0.43 ACRES (10)
522-48E 101.0
BRICK BL

BRICK BLDG.

SNEP

FRAME
DWL.

A. F. EMBURY

See D.B. 54 A 75

R.F. & P.R. CO

$$AREA = \frac{58}{100} \text{ ACRE}$$

THE PLANTERS NATIONAL BANK

THE PLANTERS NATIONAL BANK

$$\frac{N 67^{\circ} 12' E}{1370'}$$
 $214.0 \pm$

RAPPAHANNOCK RIVER

Ebb ←

ST...

STANDARD OIL CO

952 P.P. Ca

PLAT SHOWING LAND
TO BE ACQUIRED AT
FEDERICKSBURG VA
Scale 1:50 Jan 28/1930

Capt. W. C. Massey

page 173 } Clerk's Office, Corporation Court, Fredericks-
burg, Virginia.

On the 28th day of January, 1935.

I, J. W. Adams, Clerk of the Corporation Court of Fredericksburg, Va., do hereby certify that the foregoing is a true copy of the entire record in the chancery cause pending in this Court, under the style:

E. G. Heflin, Incorporated, a corporation, Plaintiff,

v.

The Planters National Bank of Fredericksburg, Virginia, a corporation; The Planters National Bank in Fredericksburg, Virginia, a corporation; Wm. K. Goolrick, Trustee, Defendant.

I also certify that the notice required by Section 6339 of the Code of Virginia was duly given in the manner required thereby.

J. W. ADAMS, Clerk.

Clerk's fee \$17.00.

I hereby certify that the above charge for the transcript is correct.

J. W. ADAMS, Clerk.

A Copy—Teste:

M. B. WATTS, C. C.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

and the other two are in the same position as the first.

INDEX

	Page
Petition for Appeal	1
Record	22
Bill of Complaint	22
Exhibit A with Bill	29
Exhibit B with Bill—Blueprint	33
Exhibit C with Bill—Letter Call to Goolrick	35
Exhibit D with Bill—Deed Planters National Bank of Fredericksburg to E. G. Heflin Co., Inc.	35
Exhibit E with Bill—Deed E. G. Heflin, Inc., to Wm. K. Goolrick, Trustee	37
Answer of Planters National Bank of Fredericksburg	40
Replication of Plaintiff to Answer	43
Decree, October 31, 1934	43
Complainant's Exceptions to Decree of October 31, 1934 . .	44
Depositions	46
E. G. Heflin	47
Frank M. Chichester	69
William K. Goolrick	71
A. B. Young	92
Clerk's Certificate	105