

178-378 1647
Record No. 2413

In the
Supreme Court of Appeals of Virginia
at Richmond

WM. W. OLD, JR., EXECUTOR, ETC.,

v.

CITY OF NORFOLK.

FROM THE LAW AND CHANCERY COURT OF THE CITY OF NORFOLK

RULE 14.

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M. B. WATTS, Clerk.

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 2413

WM. W. OLD, JR., EXECUTOR OF THE ESTATE OF
LIZZIE V. RIDDICK, DECEASED, JOHN R. RIDDICK,
JACOB RIDDICK, WALTER H. RIDDICK, ELIZA-
BETH RIDDICK, WM. G. MAUPIN, ADMINISTRATOR
D. B. N., C. T. A. OF ESTATE OF ROBERT W. TOM-
LIN, DECEASED, WHO WAS TRUSTEE, AND CORE
REALTY CORPORATION, Appellants,

versus

CITY OF NORFOLK, A MUNICIPAL CORPORATION,
Appellee.

PETITION FOR AN APPEAL.

*To the Honorable Chief Justice and Justices of the Supreme
Court of Appeals of Virginia:*

Your petitioners, Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased, John R. Riddick, Jacob Riddick, Walter H. Riddick, Elizabeth Riddick, Wm. G. Maupin, Administrator d. b. n., c. t. a., of the estate of Robert W. Tomlin, deceased, who was Trustee, and Core Realty Corporation, respectfully represent that they are aggrieved by a final decree entered by the Court of Law and Chancery of the City of Norfolk, Virginia, on the 17th day of August, 1940. in the cause therein pending in which the said Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased, was plaintiff, and John R. Riddick, Jacob Riddick, Walter H. Riddick, Elizabeth Riddick, City of Norfolk, a Municipal corporation, Wm. G. Maupin, Administrator d. b. n., c. t. a., of

the estate of Robert W. Tomlin, deceased, who was Trustee, and Core Realty Corporation were defendants.

The transcript of the original record, with the original exhibits, is herewith presented.

2* *STATEMENT OF PROCEEDINGS IN LOWER COURT.

Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased, filed at the first March Rules, 1940, in the Court of Law and Chancery of the City of Norfolk, Virginia, his Bill in Chancery against John R. Riddick, Jacob Riddick, Walter H. Riddick, Elizabeth Riddick, Wm. G. Maupin, Administrator d. b. n., c. t. a., of the estate of Robert W. Tomlin, deceased, who was Trustee, City of Norfolk, a Municipal Corporation, and Core Realty Corporation for the purpose of having declared null and void as erroneous, improper and without due authority of law, certain assessments for taxation in the name of John R. Riddick by the City of Norfolk, Virginia, for the years 1922 to 1936, both inclusive, on the following properties located in said City: 741-743 Avenue B, 775-777 Avenue B, 859-861 Avenue A and 899 Fremont Street; of having said assessments stricken from the land-books of the City of Norfolk for said years, and the said properties and the estate of Lizzie V. Riddick, deceased, relieved from the payment of the taxes on the said properties for the years aforesaid; also for the advice and instruction of the Court in all matters pertaining to the estate of said Lizzie V. Riddick, deceased, if any questions should arise (M. R., pp. 2 to 8, both inclusive).

The said John R. Riddick, Jacob Riddick, Walter H. Riddick and Elizabeth Riddick were made parties defendant to said Bill due to the fact that said properties were assessed for taxation during said years in the name of John R. Riddick (Exhibit "F", with the Bill of Complaint, certified as the original exhibit), and the said Jacob Riddick, Walter H. Riddick and Elizabeth Riddick are residuary legatees under the will of Lizzie V. Riddick, deceased (Exhibit "A" with the Bill of Complaint, certified as the original exhibit).

3* *None of the last mentioned parties filed answers, but were represented at the hearing by Mr. L. B. Cox, Attorney.

The said Core Realty Corporation was made a party defendant to said Bill due to the fact that it is the owner of the two notes set out in the will of Lizzie V. Riddick, deceased, hereinbefore mentioned. Said Corporation filed its answer averring that it is the owner of said notes (M. R., p. 11).

Wm. G. Maupin, Administrator d. b. n., c. t. a., of the estate of Robert W. Tomlin, deceased, who was Trustee, was made a party defendant due to the fact that Robert W. Tomlin was the Trustee named in the deed from John R. Riddick and Lizzie V. Riddick, his wife, dated April 1st, 1921 (Exhibit "C" with the Bill of Complaint, certified as the original exhibit). The said Wm. G. Maupin, Administrator as aforesaid, filed his answer (M. R., pp. 10-11).

On May 25th, 1940, The City of Norfolk filed its answer claiming that the assessments for taxation of the above mentioned properties in the name of John R. Riddick for the years 1922 to 1936, both inclusive, were valid, were made with authority of law and constituted a lien on said properties and every interest therein, superior to any other lien; also that the sales of said properties for non-payment of taxes for said years were legal and valid (M. R., pp. 12, 13 and 14).

On August 17th, 1940, the cause came on to be heard upon the Bill of Complaint, upon the answers above mentioned, and upon the replication of the plaintiff to each of said answers, the said Bill having been taken for confessed as to John R. Riddick, Jacob Riddick, Walter H. Riddick and Elizabeth Riddick, upon whom process was duly served. The Court decided, as shown by its decree entered on August 17th, 4* 1940, that John R. Riddick *had such an interest in the

above mentioned properties as to make the assessments in his name during the years 1922 to 1930, valid and proper; but that the assessments in the name of John R. Riddick of the above mentioned properties for the years 1931 to 1936, were invalid, that the sale thereof for the non-payment of taxes was unlawful, and that said assessments and sale for the non-payment thereof constituted a cloud on the title of said properties.

Counsel for the complainant indicated his intention to apply to the Supreme Court of Appeals of Virginia for an appeal from so much of said decree as sustained the assessments for the years 1922 to 1930 in the name of John R. Riddick, and Counsel for the City of Norfolk indicated their intention to apply for an appeal from so much of said decree as declared the assessments for the years 1931 to 1936 in the name of John R. Riddick, invalid (M. R., pp. 15 and 16).

ASSIGNMENT OF ERROR.

The assignment of error is that the Trial Court erred in deciding by its decree of August 17th, 1940, that John R. Riddick had such an interest in said properties, 741-743 Avenue B, 775-777 Avenue B, 859-861 Avenue A and 899 Fremont

Street as to make the assessments in his name during the years 1922 to 1930, valid and proper, thereby sustaining said assessments. This is the only question involved in the appeal on behalf of the appellants.

STATEMENT OF FACTS.

I. By deed dated April 1st, 1921, recorded on April 8th, 1921, in the Clerk's Office of the Corporation Court of 5* the City of Norfolk, *Virginia, (Exhibit "C" with the Bill of Complaint, certified as the original exhibit), John R. Riddick and Lizzie V. Riddick, his wife, conveyed to Robert W. Tomlin, Trustee, four certain pieces of land in the City of Norfolk, Virginia, as follows:

(1). Easterly ten feet of Lot No. 65 and the whole of Lot No. 66 on the plat of Hinton and Reynolds, with the buildings thereon, hereinafter identified and known as 741-743 Avenue B;

(2). Lot No. 74 on the plat of Hinton and Reynolds, with the buildings thereon, hereinafter known and identified as 775-777 Avenue B;

(3). Lot No. 113 on the plat of Huntersville, with the buildings thereon, hereinafter identified and known as 859-861 Avenue A;

(4). Western twenty feet of lot No. 164 on map entitled "Plan of a part of Huntersville", with buildings thereon, hereinafter identified and known as 899 Fremont Street;

IN TRUST for the benefit of the said Lizzie V. Riddick upon the following uses and trusts, unless the estate should be forfeited under the 5th Paragraph of said deed, hereinafter set out in full:

(1). The net revenue from said properties to be paid by the said Trustee and his successor in title to said Lizzie V. Riddick, that is, total revenue, after payment of costs of collection, insurance, repairs and taxes.

(2). The property or properties to be conveyed by deed or deeds to be signed by the said Trustee and Lizzie V. Riddick, and proceeds of such sales to be re-invested by said Trustee in other income yielding real estate.

(3). The profits and accretions to the trust fund to be re-invested by the Trustee.

(4). Power given to said Lizzie V. Riddick to dispose 6* of whole *trust estate by her will, duly proved and executed.

(5). Covenant by said Lizzie V. Riddick with said John R. Riddick as follows:

"That at and after the date of this deed, and so long as she shall remain the wife of John R. Riddick, she will at his request promptly unite with him in deeds of bargain and sale and deeds of trust or mortgage, the same to be done by signing, sealing and acknowledging such deeds for record, conveying real estate now owned and real estate to be acquired by said John R. Riddick, for the purpose of releasing her inchoate right of dower or any other interest or claim she may have in and to such real estate; and she further covenants that failure or refusal on her part to keep this covenant shall *ipso facto* work a forfeiture of the trust estate hereby created; and upon such failure or refusal on her part, the said trustee and his successor in title shall upon request of the said John R. Riddick immediately convey to the said John R. Riddick, or to such person or persons as he shall designate, the whole of the trust property existing at the time of such forfeiture by good and sufficient deed containing a special warranty of title on the part of the said trustee. But no such conveyance shall be made until the trustee shall have tendered to said Lizzie V. Riddick the deed or deeds which the said John R. Riddick shall have requested her to execute and acknowledge, and she shall upon such tender fail or refuse to execute the same as above provided. Should the said Lizzie V. Riddick remove from the City of Norfolk, she shall give the address of her new residence or place of sojourn to the said trustee and a tender made to her at such

7* *address by such agent or representative as the trustee may select shall be a sufficient tender hereunder. And if the said Lizzie V. Riddick shall remove from the City of Norfolk and fail to inform the trustee of her new address and keep him informed of any change of address, and such failure on her part shall continue for thirty (30) days, said act on her part shall also be treated as a forfeiture of the trust estate in all respects as if she had failed or refused to execute a deed as above set forth."

(6). Covenant by Lizzie V. Riddick that the settlement is intended and agreed to by John R. Riddick, her husband, and herself to supply an income sufficient for the support and maintenance of herself and three children of said Lizzie V. Riddick and John R. Riddick, in addition to the conveyance to her of the property 768 Avenue B.

II. By deed dated June 4th, 1930, duly recorded in the

Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, on August 2nd, 1930, (Exhibit "D" with Bill of Complaint, certified as the original exhibit), John R. Riddick released, granted and quit-claimed unto said Lizzie V. Riddick all rights which by virtue of the terms of said deed, dated April 1st, 1921, to Robert W. Tomlin, Trustee, would accrue to him by way of forfeiture.

III. Lizzie V. Riddick died testate in the City of Norfolk, Virginia, on September 15th, 1935, and, by her last will and testament, dated June 4th, 1930, duly admitted to probate in the Court of Law and Chancery of the City of Norfolk, Virginia, on October 4th, 1935, she appointed Wm. W. Old, Jr., Executor of her estate, who duly qualified as such on October 4th, 1935. (Exhibit "A" and Exhibit "B" with Bill of Complaint, certified as the original exhibits.)

8* *By her last will and testament she empowered and authorized her said executor to sell the said four pieces of property, and after paying two notes aggregating the sum of \$3,500.00, with interest, to pay the balance of the proceeds received therefrom to her three children, Jacob Riddick, Walter H. Riddick and Elizabeth Riddick.

IV. On June 4th, 1931 (Exhibit "E" filed with the Bill of Complaint, certified as the original exhibit), Wm. G. Maupin qualified in the Circuit Court of the City of Norfolk, Virginia, as Administrator d. b. n., c. t. a. of the estate of Robert W. Tomlin, deceased, who was the trustee in the above mentioned deed of April 1st, 1921, from John R. Riddick and Lizzie V. Riddick, his wife.

V. The said properties (Exhibit "F" with the Bill of Complaint, certified as the original exhibit), were assessed for taxation by the City of Norfolk, Virginia, as shown by the assessment books of colored property in the City of Norfolk, Virginia, *in the name of John R. Riddick* for the following years:

741-743 Avenue B: 1922 to 1936, both inclusive;
775-777 Avenue B: 1922 to 1936, both inclusive;
859-861 Avenue A: 1922 to 1936, both inclusive;
899 Fremont Street: 1922 to 1936, both inclusive.

The unpaid taxes on said properties are much more than the jurisdictional amount required by Statute. (Answer of City of Norfolk, M. R., p. 13).

9*

*ARGUMENT.

The Statutory requirements in Virginia for valid assessments of land for the years 1922 to 1936, both inclusive, were as follows:

Act of the General Assembly of Virginia of 1920, Chapter 109, page 89, approved February 28th, 1920, amending Section 2274 of the Code of Virginia of 1919:

“Sec. 2274, Clerks to make out annually list of deeds; what lists to contain.—The clerk of every Court in which deeds are admitted to record, shall annually, before the fifteenth of February, make out a list of all deeds for the partition and conveyance of land, other than deeds of trust and mortgages, made to secure the payment of debts, which have been admitted to record in the clerk's office of such Court within the year ending on the thirty-first day of January next preceding, which list shall state the date of the deed, when admitted to record, the name of grantor and grantee, whether the grantee is white or colored, if known, the quantity of land conveyed, the specified value thereof, and a description of the same. This list shall on or before the fifteenth day of February be delivered by the clerk to the commissioner for his county or city; or, if there be more commissioners than one, the clerk shall deliver to each a copy, or at least so much thereof as relates to lands within his district; and the clerk shall also forward a copy of said list to the auditor of public accounts; and the said clerk shall also make out, on a separate sheet, a list of all deeds of trust and mortgages on land, as well as deeds of trust on personal property made to secure the payment of debts, which have been admitted to record in the clerk's office of such court within the year ending on the thirty-first day of January next preceding and such list 10* shall state the date of the deed of trust or mortgage, when admitted to record, the name of the grantor, the name of the creditors, where the name of such creditors are disclosed, and set forth in the deed of trust or mortgage, and the amount of the debt to each creditor secured by the deed of trust or to the mortgagee in the mortgage, and the amount of debt secured thereby and the property conveyed in such deed of trust or mortgage. Copies of this last mentioned list shall be furnished by said Clerk on or before the fifteenth day of February to commissioners of the revenue for his county or city, and to the Auditor of public accounts.”

By an Act of the General Assembly of Virginia, approved

February 21, 1928 (Acts 1928, page 35), the general tax and revenue statutes of the Commonwealth were revised, simplified, arranged and consolidated into one Act, constituting and designated as "The Tax Code of Virginia".

Whenever and wherever the Tax Code of Virginia is hereinafter referred to, the reference is to the said Act of the General Assembly of Virginia, Acts 1928, page 35.

Section 2274 of the Code of 1919, as amended by Acts 1920, Chapter 109, page 89, is designated in said Tax Code of Virginia as Section 267. Said Section 267 is similar to said Section 2274 of the Code of 1919 as amended, in so far as it affects the question in issue, save that the 15th of January and 31st of December are substituted for the 15th of February and 31st of January.

The amendment of said Section 267 of the said Tax Code of Virginia, by an Act of the General Assembly of Virginia, Acts 1930, page 858, is immaterial; so is the amendment of said Section by an Act of the General Assembly of Virginia, Acts 1932, page 410.

11* **Section 2284 of the Code of Virginia of 1919.*

"The lands and standing timber appearing on the lists or statements mentioned in Sections twenty-two hundred and seventy-four, twenty-two hundred and seventy-five and twenty-two hundred and seventy-seven shall be transferred accordingly on the land book and charged to the person to whom the transfer is made or the grant issued."

Section 273 of the Tax Code of Virginia:

"The lands and standing timber appearing on the lists or statements mentioned in the six preceding sections shall be transferred accordingly on the land book charged to the person to whom the transfer is made or the grant has issued."

Said Section 273, as amended by Acts of General Assembly of Virginia, 1930, page 869, contains the same provisions.

It is to be noted that Section 2274 of the Code of 1919, mentioned in said Section 2284 of said Code, and the "Six preceding sections" mentioned in Section 273 of the Virginia Tax Code, which includes Section 267 of said Tax Code, are fully commented upon, *supra*.

Section 2270 of the Code of Virginia of 1919.

“The commissioner for each district in the several counties, and the Commissioner for each City, shall commence annually on the first day of February, or at such time as the auditor shall designate, and *proceed without delay to 12* ascertain all the real estate in his county, district or city, as the case may be, and the person to whom same is chargeable with taxes on that day. The beginning of the tax year for the assessment on real estate shall be February the first, and the owner of real estate on that day shall be assessed for the taxes for the year next ensuing.”

There is no material change in Section 252 of the said Tax Code of Virginia, save that January the first is substituted for February the first.

Section 2280 of the Code of Virginia of 1919.

“In the table of town or city lots the commissioner of revenue shall enter separately each lot, and shall set forth in as many separate columns as may be necessary the name of the person, his residence and estate, as in the table of the tracts of land. The commissioner shall set forth in other columns the number of each lot in the town or city, with the name of the town or city, if not previously placed in the caption or heading of the table, a description where the person does not own the whole lot, of the part which he owns, the value of the buildings on the lot, the value of the lot, including buildings, the amount of tax at the legal rate, and like notice of the source of title and explanation of alteration as in the table of tracts of land.”

Section 254 of the said Tax Code of Virginia contains similar provisions.

13* *The charter of the City of Norfolk, Acts of the General Assembly of Virginia, 1918, page 31, approved February 7th, 1918, prescribes the duties of its Treasurer with respect to delinquent lands, as follows:

“Sec. 90. The City Treasurer shall make a report to the Council at one of its sessions in May of each year of all real estate in the City delinquent for City taxes assessed thereon for two years from the date when said taxes became a lien on said real estate, and the said Council shall approve, or amend and approve, the said list and give the Treasurer due credit for the amount of delinquent taxes on the list as approved;

and thereupon the Council shall direct the Treasurer to sell the said several parcels of real estate so returned and approved delinquent or so much thereof as may be necessary for the taxes assessed thereon with interest thereon and such percentage as it may prescribe for charges; and unless the same shall be previously paid, said Treasurer shall make such sale to the highest bidder for cash at the front door of the courthouse of said City, on the first Tuesday in September thence next ensuing, unless otherwise specifically directed by the Council, after having published at least once not less than ten days nor more than twenty days previous to such sale in one or more of the daily newspapers published in said City a list of the several parcels of real estate to be sold, *describing therein each parcel of said real estate as it is described on the assessment rolls of the year for which it is delinquent, together with the name of the person to whom each parcel is assessed and the amount of the tax or assessment thereon*, interest and charges, to which list shall be appended a notice of the time and place of the sale of the several parcels of real estate mentioned therein. Provided, however, that such real estate as may already *have been sold at any 14* delinquent tax sale theretofore made and purchased at such sale by the City, shall not be sold at such sale. Such sale may be adjourned from day to day until completed.” (Italics ours.)

The foregoing statutes are parts of the revenue raising machinery of the State and its political subdivisions. Hence they are to be construed most strongly against the governing power and all doubts resolved in favor of the citizen.

Combined Saw and Planer Co. v. Flournoy, Secy., 88 Va. 1029;

Supervisors v. Tallant, 96 Va. 723, 726;

Watts v. Commonwealth, 106 Va. 851, 853;

Elliotts Knob Iron, etc., Co. v. State Corporation Commission, 123 Va. 63, 82.

Commonwealth of Virginia v. Stringfellow, 173 Va. 284.

The rule is thus stated in *Combined Saw and Planer Co. v. Flournoy*, *supra*, at page 1034:

“Statutes levying duties or taxes upon subjects or citizens are to be construed most strongly against the Government and in favor of their subjects or citizens, and their provisions are not to be extended, by implication, beyond the clear import of the language used. Revenue laws are neither remedial

statutes nor laws founded upon any permanent public policy, and are not, therefore, to be liberally construed. *Hence, whenever there is a just doubt, that doubt should absolve the taxpayer from his burden.*" (Italics ours.)

With particular reference to assessments the following principle is stated by Judge Sims in *Elliotts Knob Iron, etc., v. State Corporation Commission, supra*, at page 83:

"The whole proceeding is statutory and where the legislature has prescribed a method or system of taxation which includes the requirement *of an assessment, *all steps in* 15* *the procedure of the assessment required by a statute must be taken before the tax can be considered as having been imposed and as having become due and payable.*—The material question on the subject is—what does the statute, which prescribed the method or system of taxation, provide shall be done by some governmental agency as a part of the procedure of assessment? *Whatever is so required is a preliminary step—a condition precedent—to the imposition of the tax, and until such step is taken the tax has not been imposed and has not become due and payable.* (Italics ours.)

37 Cyclopedia of Law and Procedure, page 1139.

"In order that a tax may attach as a lien upon particular property it is necessary that there shall have been a valid assessment of it, *complete in all essentials, and certain and definite in respect to describing the property, the owner, and the amount of the tax.*" (Italics ours.)

The revenue system of the State must be considered as a whole and the various sections of the Statutes which are *in pari materia* must be read together in order to ascertain their true meaning and intent.

Tiller, Treasurer, v. Excelsior Coal and Lumber Corporation, 110 Va. 151.

It is clear, therefore, that the taxing power must comply strictly with statutory requirements before a tax is due or a lien therefor created.

16* *Attention is invited to some of the specific cases where assessments in erroneous names have been void or ineffective to support liens.

In *Town of Hamden v. City of New Haven*, 91 Conn. 589, 101 Atlantic 11, 3 A. L. R. 1435, the plaintiff sued to recover

certain taxes. One tract owned by the "City of New Haven" was assessed to "Town of New Haven," a distinct municipality. *Held*: The assessment was void and taxes not recoverable. The opinion states:

"Real estate must be set by the assessors in the list of the party in whose name the title thereof stood on the land records. The assessment against the Town of New Haven of land owned by the City of New Haven was void."

In *State v. Sloss* (Ala.), 6 So. 309, an assessment in the name of American Mortgage Company was held insufficient to support a judgment based thereon from American Mortgage Company of Scotland.

The Sections of the Code of 1919 of Virginia and sections of the Tax Code of Virginia hereinbefore mentioned cover the period of assessments for the years 1922 to 1936, both inclusive.

The duties of the Commissioner of Revenue are well defined in the Sections of the Code of Virginia of 1919 and of the Tax Code of Virginia:

(1). To commence annually on the first of February (changed by Section 252 of the Tax Code of Virginia, *supra*, to the first day of January) and proceed without delay to ascertain all the real estate in the City and the person to whom same was chargeable with taxes on that day, the owner to be assessed with the taxes for the year next ensuing. Section 2270 of the Code of Virginia of 1919 *and Section 252 17* of the Tax Code of Virginia, *supra*.

(2). In the table of city lots, to enter separately each lot, the name of the person (owner), his residence and estate; also notice of the source of title and explanation of alteration. Section 2280 of the Code of Virginia of 1919 and Section 254 of the Tax Code of Virginia, *supra*.

(3). To transfer on the land book and charge to the person to whom the transfer is made (Section 2284 of the Code of Virginia and Section 273 of the Tax Code of Virginia, *supra*) all lots furnished to him by the Clerk of the Court, stating thereon the date of the deed, when admitted to record, *the name of the grantor and grantee*, whether the grantee is white or colored, if known, the quantity of land conveyed, the specified value thereof, and a description of the same. Section

2274 of the Code of 1919 of Virginia as amended, and Section 267 of the Tax Code of Virginia as amended, *supra*. (Italics ours.)

There is no doubt but that the deed from John R. Riddick and Lizzie B. Riddick, his wife, to Robert W. Tomlin, Trustee, dated April 1st, 1921, recorded on April 8th, 1921 (Exhibit "C" with Bill of Complaint, *supra*), conveying the four pieces of property, 741-743 Avenue B, 775-777 Avenue B, 859-861 Avenue A and 899 Fremont Street, was a deed of bargain and sale. There was an absolute conveyance of said properties to the said Trustee, subject only to a right of forfeiture upon certain terms and conditions therein contained. If there had been such a forfeiture, the Trustee and his successor in title were empowered, upon request of said John R. Riddick, to immediately convey to him, or to such person or persons as he might designate, the properties existing at the time of such forfeiture.

18* *The said John R. Riddick, by deed dated June 4th, 1930, recorded on August 2nd, 1930 (Exhibit "D", with Bill of complaint, *supra*), in which deed the four pieces of property and Paragraph 5 of the said deed from John R. Riddick and Lizzie V. Riddick, his wife, to Robert W. Tomlin, Trustee (Exhibit "C" with Bill of Complaint, *supra*), were set out in full, released, granted and quit-claimed unto said Lizzie V. Riddick any and all rights which, by virtue of the terms of said deed, would accrue to him by way of forfeiture. There could have been no forfeiture prior to the date of said deed; the wording of the deed itself precluded any such forfeiture.

The Commissioner of the Revenue, although the deed above mentioned to Robert W. Tomlin, Trustee, was recorded in accordance with law on April 8th, 1921, *did not*, in accordance with the law and Statutes in Virginia in such cases made and provided, and as hereinbefore set out, *assess said properties in the name of the grantee for the years 1922 to 1936, both inclusive, but assessed them in the name of John R. Riddick, who, with his wife, were the grantors in said deed.* (Exhibit "F", with Bill of Complaint, *supra*.)

All steps, in fact, the preliminary step—a condition precedent to the imposition of the tax, were not taken as provided by law; therefore, the taxes for the years mentioned, could not have been imposed and could not have become due and payable.

Elliotts Knob Iron, etc., Co. v. State Corporation Commission, supra.

19* *By Section 90 of the Charter of the City of Norfolk, Acts 1918, page 31, *supra*, the Treasurer of the City was directed by the City Council to sell certain pieces of property returned by him as delinquent, after publication for ten days in a daily newspaper, describing therein each parcel of real estate as it was described on the assessment rolls of the year for which it was delinquent, *together with the name of the person to whom each parcel was assessed*, etc. (Italics ours.)

The property was assessed for the years 1922 to 1936, both inclusive, *in the name of John R. Riddick*, and returned delinquent in his name; therefore, in the published list of such delinquent property, the name of John R. Riddick appeared in the advertisement as the owner of the property, and not the name of the true owner; the true owner was not given notice of the sale.

If such sales of the property in the name of John R. Riddick should be declared valid, this would be in violation of the Fourteenth Amendment of the Federal Constitution, providing that "no State shall deprive any person of life, liberty or property without due process of law"

In *Minor on Real Property*, Ribble, Second Edition, Section 1262, page 1706, the doctrine is well stated:

With respect to *taxation*, it is settled that "due process of law" demands (1) that the property to be taxed be properly and accurately listed for taxation in books, kept for the purpose and open to the public, in such manner as to inform persons interested of the property to be taxed, *its owner*, and the amount of the tax, etc., * * * "

These are the fundamental and jurisdictional steps in "due process of law", as applied to taxation, and no State law can dispense with any of them without violating the federal constitution, though the *manner of performing them* is in 20* the discretion of the legislature.

Furthermore, supposing these steps complied with, and the land delinquent because of the non-payment of the tax due, another and a distinct case arises for the operation of "due process of law"—when the land delinquent is put up for sale at the tax sale—at least in those states whose policy calls for a *lien* upon land for unpaid taxes, rather than for a forfeiture of the land itself. Here, too, due process of law demands that the owner shall be given an opportunity to protect himself against an unjust or illegal *taking* of his

property, and to that end demands (1) that he shall continue to be liable for the tax at the time of the sale, (2) that he shall have notice of the tax sale, etc.

Crawford v. Floyd, 112 Va. 701.

Dennis v. Robertson, 123 Va. 456.

PRAYER.

For the reasons and upon the Statutes and authorities above set forth, your petitioners pray that this Court will grant them an appeal from the aforesaid final decree of August 17th, 1940, in so far as the Trial Court decided that John R. Riddick had such an interest in the four pieces of property in these proceedings mentioned as to make the assessments for said properties in his name for the years 1922 to 1930, both inclusive, valid and proper; will reverse and set aside so much of said decree in the above respect; and will grant the relief prayed for in the Bill of Complaint.

Your petitioners adopt this petition as their opening brief, and desire to state orally the reasons for reviewing the decree complained of.

21* *A copy of this petition was delivered to Messrs.

Alfred Anderson and Jonathan W. Old, Jr., opposing counsel in the trial Court, on December 16th, 1940, in the City of Norfolk, Va.

This petition is being presented to Mr. Justice J. W. Eggleston.

WM. W. OLD, JR., Executor of the estate of
Lizzie V. Riddick, deceased, and WM. G.
MAUPIN, Administrator, d. b. n., c. t. a. of
the estate of Robert W. Tomlin, deceased,
who was Trustee,

By WM. W. OLD, JR., Attorney.
JOHN R. RIDDICK, JACOB RIDDICK,
WALTER H. RIDDICK,
ELIZABETH RIDDICK and
CORE REALTY CORPORATION,

By L. B. COX, Attorney.

WM. W. OLD, JR.,
L. B. COX,

Attorneys for petitioners.
Norfolk, Virginia.

We, Wm. W. Old, Jr., and L. B. Cox, attorneys at law, practicing in the Supreme Court of Appeals of Virginia, do certify that, in our opinion, it is proper that the decree complained of in the foregoing petition ought to be reviewed by said Court.

WM. W. OLD, JR.,
L. B. COX.

Received Dec. 16, 1940.

J. W. E.

January 8, 1941. Appeal awarded by the court. No bond required.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Court of Law and Chancery of the City of Norfolk, at the courthouse of said city, on Saturday, the 30th day of November, 1940.

Be It Remembered, that heretofore, to-wit: At Rules held in the Clerk's Office of said court, on the First Monday in March, 1940, came Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased, complainant, by counsel, and filed in the said clerk's office, his Bill in Equity against John R. Riddick, Jacob Riddick, Walter H. Riddick, Elizabeth Riddick, City of Norfolk, a municipal corporation, Wm. G. Maupin, administrator d. b. n. c. t. a. of the estate of Robert W. Tomlin, deceased, who was Trustee, and Core Realty Corporation, defendants, in the words and figures following:

page 2 }

BILL OF COMPLAINT.

Virginia,

In the Court of Law and Chancery of the City of Norfolk.

Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased, Plaintiff.

v.

John R. Riddick, Jacob Riddick, Walter H. Riddick, Elizabeth Riddick, City of Norfolk, a municipal Corporation, Wm. G. Maupin, Administrator d. b. n., c. t. a., of estate of Robert W. Tomlin, deceased, who was Trustee, and Core Realty Corporation, Defendants.

IN CHANCERY.

To the Hon. O. L. Shackelford, Judge of the Court of Law and Chancery of the City of Norfolk, Virginia:

Humbly complaining, sheweth unto this Honorable Court your complainant, Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased, the following case:

page 3 } I. That Lizzie V. Riddick died testate in the City of Norfolk, Virginia, on September 15th, 1935, leaving surviving her as her only heirs at law, John R. Riddick, her husband, and the following children: Jacob Riddick, now aged 35 years; Walter H. Riddick, now aged 28 years, and Elizabeth Riddick, now aged 23 years.

II. That the will of the said Lizzie V. Riddick, dated June 4th, 1930, was duly admitted to probate in the Court of Law and Chancery of the City of Norfolk, Virginia, on the 4th day of October, 1935; and that, on said date, Wm. W. Old, Jr., duly qualified as Executor of said estate. An office copy of said will (a certified copy thereof will be filed if required by this Honorable Court) and a certified copy of the qualification of your complainant as Executor, are herewith filed with this bill and to be taken as a part thereof, marked "Exhibit A" and "Exhibit B", respectively.

III. That, by her last will and testament the said Lizzie V. Riddick authorized and directed your complainant to sell the following properties, at such prices and upon such terms as he might deem best, and from the proceeds thereof pay two certain negotiable notes, one for the sum of \$1,000.00 and the other for the sum of \$2,500.00, dated November 22nd, 1924, secured by deed of trust of that date from Theodore S. Garnett, Trustee, John R. Riddick and Lizzie V. Riddick to Wm. W. Old, Jr., and H. H. Pegues, Trustees, recorded in D. B. 284-D, page 220, together with all interest that might be due on said notes at the time of such payment: said notes being owned by Core Realty Corporation.

(1). The easterly ten feet of Lot No. 65 and the whole of Lot No. 66 on the plat of Hinton and Reynolds, duly page 4 } of record in the Clerk's Office of the Circuit Court of Norfolk County, Va., in Map Book 1, page 39; the property being numbered 741-3 Avenue B, Norfolk, Virginia.

(2). Lot No. 74 on the Plat of Hinton and Reynolds above mentioned, the property being numbered 775-7 Avenue B, Norfolk, Virginia;

(3). Lot No. 113 on the Plat of Huntersville, recorded in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book 1, page 31, the property being numbered 859-861 Avenue A, Norfolk, Virginia;

(4). Western 20 feet of Lot No. 164 on a map entitled "Plan of a part of Huntersville", duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book, 1, page 31; the property being numbered 899 Fremont Street, Norfolk, Virginia.

The balance of the proceeds to be realized from the sale of said properties the said Lizzie V. Riddick gave and bequeathed to her three children, Jacob Riddick, Walter H. Riddick and Elizabeth Riddick in equal shares.

By her said will she also devised to her said children the property No. 768 Avenue B and 765 Washington Avenue, Norfolk, Virginia, subject to the balance of \$5,500.00, secured by deed of trust thereon, after the payment of the \$3,500.00 above mentioned; also the balance of all of her property. Reference is hereby made to said will for any further particulars.

Your complainant has been informed, and, therefore, believes that the property No. 768 Avenue B. was sold under a prior deed of trust to the deed of trust above mentioned.

page 5 } IV. That, by deed dated April 1st, 1921, recorded on April 8th, 1921, in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in D. B. 259-B, page 128, John R. Riddick and Lizzie V. Riddick, his wife, conveyed to Robert W. Tomlin, Trustee, the four pieces of property firstly above mentioned and described, a copy of which deed is herewith filed with this bill as a part thereof, marked "Exhibit C" (a certified copy thereof will be filed if required by this Honorable Court) to which deed reference is made for a fuller description of said properties;

To be held by said Robert W. Tomlin, Trustee, upon the uses and trusts hereinafter set out in brief, reference being made to said deed for such uses and trusts in detail:

(1). To pay the net revenue received from said properties to Lizzie V. Riddick.

(2). To sell and convey said properties by deed or deeds to be signed by the said Trustee and Lizzie V. Riddick; the proceeds of such sales to be re-invested by said Trustee in other income yielding real estate.

(3). To re-invest any profits and accretions to the said trust fund.

V. That, by the terms of said deed, the said Lizzie V. Riddick was given the power, unless the estate had been forfeited for reasons set out in the 5th paragraph of said deed, to dispose of the whole trust estate by her will duly executed and proved, with authority to said Trustee and his successor in title, upon the death of said Lizzie V. Riddick, testate, to convey the whole of the trust estate to the person page 6 } or persons to whom she shall have devised the same; and, upon her death intestate, to convey the same to the heirs at law of said Lizzie V. Riddick.

VI. That the said Lizzie V. Riddick complied with all the terms of said paragraph 5 of said deed; besides by deed dated June 4th, 1930, recorded in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in D. B. 316-C, page 170, said John R. Riddick released, granted and quit-claimed to said Lizzie V. Riddick any and all rights, which, by the terms of said deed, would have accrued to him by way of forfeiture. A certified copy of this deed is herewith filed, marked "Exhibit D."

VII. That no one has been substituted as Trustee in the place and stead of Robert W. Tomlin, Trustee, who died in 1927, but that, on June 4th, 1931, Wm. G. Maupin duly qualified in the Circuit Court of the City of Norfolk, Virginia, as Administrator d. b. n., c. t. a., of the estate of Robert W. Tomlin, Trustee, a certified copy of said qualification being herewith filed, marked "Exhibit E."

VIII. That, even though the said properties were conveyed by said deed of April 1st, 1921, to said Robert W. Tomlin, Trustee, for the benefit of said Lizzie V. Riddick, yet that the said properties were erroneously, improperly and without due authority of law, and contrary to Statutes in such cases made and provided, assessed by the City of Norfolk, Virginia, for taxation to John R. Riddick for the years 1922 to 1936, both inclusive, instead of to Robert W. Tomlin, Trustee for Lizzie V. Riddick, who held the legal title to said properties during each and all of the years above mentioned, as shown by the assessment books of colored property in the

Office of the Commissioner of Revenue for said City,
page 7 } a statement of such assessments being filed with
this bill as a part thereof, marked "Exhibit F."

IX. Your complainant avers and alleges that, as the assessments by the said City of Norfolk, for the years 1922 to 1936, both inclusive, were erroneous, improper and without due authority of law, and contrary to Statutes in such cases made and provided, neither the said properties, nor the estate of said Lizzie V. Riddick, deceased, are liable for taxes for the said years 1922 to 1936, both inclusive.

X. Your complainant avers and alleges that the said properties, which were so assessed as set out in Paragraphs VIII and IX above, were sold to the said City of Norfolk for the years 1922 to 1936, both inclusive, for the non-payment of taxes alleged to be due thereon in accordance with the Charter of the City of Norfolk, Virginia, and Statutes in such cases made and provided; that said sales are and were unlawful for the reasons aforesaid; that the taxes for the said years have not been paid.

XI. Your complainant further avers and alleges that the erroneous and improper assessments as aforesaid do not constitute a lien on said properties, but your complainant is advised and believes that said assessments, alleged delinquent taxes and aforesaid sales constitute a cloud upon the titles to said properties.

XII. Your complainant further alleges and avers that there are certain matters contained in the will of said Lizzie V. Riddick, deceased, which might require a construction by this Honorable Court; or, upon which your complainant might ask for the advice and instructions of this Honorable Court; also that certain judgments have been obtained against said

Lizzie V. Riddick since the deed to said Robert W.
page 8 } Tomlin, Trustee, which, as your complainant avers
and alleges do not constitute a lien on said prop-
erties, nor upon the proceeds to be received from the sale
thereof; a list of said judgments being herewith filed, marked
"Exhibit G".

FORASMUCH, Then, as your complainant is remediless in the premises save in a Court of Equity, where such matters are cognizable and alone relievable, your complainant prays as follows:

1. That the said John R. Riddick, Elizabeth Riddick, Jacob Riddick, Walter H. Riddick, the City of Norfolk, a Municipal Corporation, Wm. G. Maupin, Administrator d. b. n., c. t. a.,

of estate of Robert W. Tomlin, deceased, who was Trustee, and Core Realty Corporation, may be made parties defendant to this bill, and be required to answer the same, answers under oath being hereby waived.

2. That this Honorable Court may determine whether the taxes levied under the assessments hereinabove described constitute a lien upon said properties, and whether the estate of Lizzie V. Riddick is liable therefor; that, if this Honorable Court should determine that the said taxes do not constitute a lien on said properties, and that the estate of said Lizzie V. Riddick, deceased, is not liable therefor, it shall order and decree that the assessments above described and alleged as Erronous and improper shall be stricken from the Land Books of the City of Norfolk, and from the list of delinquent lands sold; and that the estate of said Lizzie V. Riddick, deceased, be relieved from the payment of said taxes for the years aforesaid.

3. That your complainant may have the advice and instruction of this Honorable Court in all matters pertaining to the estate of said Lizzie V. Riddick, deceased, in case any questions should arise as to the construction of her said page 9 } will; or as to any matters therein contained.

4. That the Attorney for your complainant may be allowed by this Court a reasonable fee for his services in instituting and conducting this suit.

5. That your complainant may have such other and general relief as the nature of his case may require, and which to Equity shall seem meet and proper.

And your complainant will ever pray, etc.

WM. W. OLD, JR.,
Executor of the estate of Lizzie V.
Riddick, deceased.

WM. W. OLD, JR.,
Attorney for complainant.

Whereupon, the defendants, being duly summoned and failing to appear, a decree *nisi* was entered against the said defendants.

page 10 } And afterwards: In the Clerk's Office of said court, on the 11th day of March, 1940, came Wm. G. Maupin, Administrator d. b. n. e. t. a. of the estate of Robert W. Tomlin, deceased, and Core Realty Corporation

and filed their separate answers in the following words and figures:

ANSWER OF WM. G. MAUPIN, ADMINISTRATOR D.
B. N. C. T. A. OF THE ESTATE OF ROBERT
W. TOMLIN, DECEASED.

In answer to the bill of complaint exhibited against him and others by Wm. W. Old, Jr., Executor of the Estate of Lizzie V. Riddick, deceased, or to so much thereof as it is necessary and expedient for him to answer, this respondent, Wm. G. Maupin, Administrator d. b. n. c. t. a. of the Estate of Robert W. Tomlin, deceased, answering, says:

1. That he believes that the allegations of paragraph IV are true.
2. That he believes that the allegations of paragraph V are true.
3. That he believes that the allegations of paragraph VII are true.
4. As to each and every one of the other allegations in said bill contained this respondent is without information and, therefore, neither admits nor denies the same but, so far as he may be affected thereby, he calls for strict proof thereof.

page 11 } And now, having fully answered, this respondent
prays to be hence dismissed with his reasonable
costs in this behalf expended.

WM. G. MAUPIN,
WM. G. MAUPIN,
Administrator, d. b. n. c. t. a.
of the Estate of Robert W.
Tomlin, deceased.

ANSWER OF CORE REALTY CORPORATION.

The answer of Core Realty Corporation to the Bill of Complaint exhibited against it and others, by Wm. W. Old, Jr., Executor of Estate of Lizzie V. Riddick, deceased, on so much thereof as it is necessary and expedient for it to answer, answering, says:

- (1) That it believes that the allegations in Paragraphs I, II, III, IV and V are correct.

(2) That this respondent is the owner of the two notes set out in Paragraph III of said Bill; and that interest is due thereon from May 22nd, 1931; and claims that said notes should be paid to it in accordance with the terms of the said will of Lizzie V. Riddick, deceased.

And now having fully answered, this respondent prays to be hence dismissed with his reasonable costs in this behalf expended.

CORE REALTY CORP.
By H. H. PEGUES, Pres.

page 12 } And afterwards: At Rules held in the said clerk's office, on the Second Monday in March, 1940, came again the complainant, by counsel, and the defendants, John R. Riddick, Jacob Riddick, Walter H. Riddick, Elizabeth Riddick and the City of Norfolk still failing to appear, the Bill was taken for confessed against these defendants, and said cause set for hearing.

And afterwards: In the Court of Law and Chancery of the City of Norfolk, on the 25th day of May, 1940.

On motion of the City of Norfolk, leave is hereby granted it to file its answer herein, and the said answer is accordingly filed.

The following is the answer of the City of Norfolk.

ANSWER OF THE CITY OF NORFOLK.

The answer of the City of Norfolk to the bill of complaint filed against John R. Riddick, the City of Norfolk, and others, in the Court of Law and Chancery of the City of Norfolk, by Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased.

This respondent, for answer to said bill, or to so much thereof as it is advised it is material that it should answer, answering, says:

1. That it believes the allegations contained in the first, second, third, fourth, fifth and seventh paragraphs
page 13 } of said bill of complaint to be true.

2. That as to the allegations contained in the sixth paragraph of said bill of complaint it is not advised and calls for proof thereof.

3. That as to the allegations contained in the eighth paragraph of said bill of complaint, this respondent avers that the assessments of City taxes against said properties are valid, and that said taxes, including only the first Quarter of 1940, with interest and penalties thereon to May 1, 1940, amount to the following:

(a) 741-743 Avenue B	\$1,601.97
(b) 775-777 Avenue B	1,358.44
(c) 859-861 Avenue A	1,644.58
(d) 899 Fremont Street	699.97

That said taxes, with interest and penalties thereon, constitute a lien on said real estate and on each and every interest therein, superior to and ahead of any other lien or encumbrance thereon.

4. That as to the allegations contained in the ninth paragraph of said bill of complaint, this respondent avers that said assessments of said taxes for the years 1922 to 1936, both inclusive, were valid, made with authority of law, and constitute a lien on said real estate superior to and ahead of any other lien or encumbrance thereon.

5. That as to the allegations contained in the tenth paragraph of said bill of complaint, this respondent avers that said sales of said property for the non-payment of said taxes are legal and valid.

page 14 } 6. That as to the allegations contained in the eleventh paragraph of said bill of complaint, this respondent avers that said taxes, with interest and penalties thereon, do constitute a valid lien on said properties, and on each and every interest therein, superior to and ahead of any other lien or encumbrance thereon.

7. That this respondent is not advised as to the allegations of the twelfth paragraph of said bill of complaint.

8. This respondent further avers that the assessments of said property set forth in said bill of complaint were the only assessments made upon said property for the years mentioned, and that it was the duty of the owners of said property to see that the said lands were assessed for taxes, and that said owners knew that said lands were assessed in the names alleged in the bill of complaint, and that the parties interested therein knew that the taxes were properly chargeable thereon, and that the public records in the offices of the City Treasurer and Delinquent Tax Collector showed that they had not been paid.

And having fully answered, this respondent prays to be hence dismissed with its reasonable costs in this behalf expended.

CITY OF NORFOLK
By Counsel.

ALFRED ANDERSON,
City Attorney
JONATHAN W. OLD, JR.,
Asst. City Attorney

page 15 } And afterwards: In said court, on the 17th day
of August, 1940.

THIS CAUSE came on to be heard upon the bill of complaint, with exhibits, duly filed by said complainant, upon the separate answers of City of Norfolk, Core Realty Corporation and Wm. G. Maupin, Administrator d. b. n. c. t. a. of the Estate of Robert W. Tomlin, deceased, and upon the replication of said complainant to each of said answers, the said bill having been taken for confessed as to John R. Riddick, Jacob Riddick, Walter H. Riddick and Elizabeth Riddick, upon whom process has been duly served in accordance with law, and was argued by Counsel.

Upon consideration whereof the Court, being of the opinion that John R. Riddick had such an interest in the following real estate during the years 1922 to 1930, inclusive, as to make said assessments for said years valid and proper, doth ADJUDGE. ORDER AND DECREE that the assessments for City taxes in the name of John R. Riddick for the years 1922 to 1930, inclusive, on the real estate described in the bill of complaint as Nos. 741-743 Avenue B, 775-777 Avenue B, 859-861¹ Avenue A, and 899 Freemont Street, be and the same are hereby sustained.

The Court, being further of the opinion that the assessments for City taxes against said real estate in the name of John R. Riddick for the years 1931 to 1936, inclusive, are invalid, and that the sale thereof for the non-payment of said taxes was unlawful, and that said assessments and
page 16 } sale for the non-payment thereof constitute a cloud
on the title to said real estate, doth so decide, and doth ADJUDGE. ORDER and DECREE that the owners of the said real estate shall hold the same free and clear of any and all liens for said City taxes, with interest and penalties thereon, assessed in the name of John R. Riddick for the

years 1931 to 1936, inclusive, and that any sale of said properties heretofore made for the non-payment of the said taxes be and the same is hereby annulled and set aside.

Counsel for complainant having indicated his intention to apply to the Supreme Court of Appeals of Virginia for an appeal from so much of this decree as sustains said assessments for the years 1922 to 1930, inclusive, and counsel for the City of Norfolk having indicated his intention to apply to said Court for an appeal from so much of said decree as declares said assessments for the years 1931 to 1936, inclusive, invalid, the Court doth suspend the execution hereof for a period of ninety (90) days pending said applications.

Exhibits "A, B, C, D, E, F, and G" were before the Court for consideration in the trial of this cause and are duly authenticated by the Judge of said Court and made a part of the record for the purpose of applying for an appeal, and are under separate cover.

page 17 } Virginia:

In the Clerk's Office of the Court of Law and Chancery of the City of Norfolk.

I, W. L. Prieur, Jr., Clerk of the Court of Law and Chancery of the City of Norfolk, do hereby certify that the foregoing and annexed is a true transcript of the record in the suit of Wm. W. Old, Jr., Executor of the estate of Lizzie V. Riddick, deceased, plaintiff *v.* John R. Riddick, et als., defendants, lately pending in said Court.

I further certify that the said copy was not made up and completed until the defendants had had due notice of the making of the same and the intention of the plaintiff to take an appeal therein.

Given under my hand this 4th day of December, 1940.

W. L. PRIEUR, JR., Clerk.

Fee for this record \$11.10.

"EXHIBIT C"

page 1 }

WITH BILL IN CHANCERY.

THIS DEED, Made this 1st day of April, in the year 1921, between John R. Riddick and Lizzie V. Riddick, his wife, both of the City of Norfolk, State of Virginia, parties of the first part, and Robert W. Tomlin, as TRUSTEE for the uses and purposes hereinafter set out, party of the second part,

WITNESSETH: That the said John R. Riddick and Lizzie V. Riddick, his wife, do hereby grant and convey, with general warranty, unto the said Robert W. Tomlin, TRUSTEE, the following property, all situate in the City of Norfolk, State of Virginia, towit:

First: All that certain lot, piece or parcel of land, together with the buildings and improvements thereon and the appurtenances thereunto belonging, lying and situate on the south side of Avenue "B", in the said City and State, and bounded and described as follows, towit:

BEGINNING at a point on the south side of said Avenue "B" distant in an easterly direction Three Hundred and Fifteen (315) feet from the southeast intersection of Avenue "B" and Church Street, and from such point of beginning running Eastwardly along the south side of Avenue "B" a distance of Forty (40) feet; thence southwardly, and parallel with Church Street, One Hundred and Five (105) feet; thence westwardly, and parallel with Avenue "B", Forty (40) feet; and thence northwardly, and parallel with Church Street, One Hundred and Five (105) feet to the point of beginning: it being the easterly ten (10) feet of Lot Number Sixty-Five (65) and the whole of Lot Numbered Sixty-Six (66) on the plat of Hinton and Reynolds, duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book 1, page 39:

Being a part of the same property which was conveyed to the said John R. Riddick by Jennie F. Lee et al., by deed dated September 6th, 1910, and duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Deed Book 358, page 325.

Second: All that certain lot, piece or parcel of land, to-

gether with the buildings and improvements thereon and the appurtenances thereto belonging, lying and situate in the said City and State, and bounded and described as follows, to wit:

BEGINNING in the southern line of "B" Avenue at a point distant, in a westerly direction along said line, Twenty-Eight (28) feet, more or less, from the western line of O'Keefe Street, and running thence southerly and parallel with O'Keefe Street, One Hundred and Five (105) feet; thence westerly and parallel with "B" Avenue Thirty (30) feet; thence northerly and parallel with O'Keefe Street One Hundred and Five (105) feet to "B" Avenue; and thence easterly along the southern line of "B" Avenue Thirty (30) feet to the point of beginning; it being Lot Number Seventy-Four (74) on the plat of Hinton and Reynolds aforesaid:

Being the same property which was conveyed to the said John R. Riddick by Rosanna Wisher et al., by deed dated June 1st, 1918, and duly of record in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in Deed Book 233-B, page 72.

page 2 } *Third:* All that certain lot, piece or parcel of land, together with the buildings and improvements thereon and the appurtenances thereto belonging, lying and situate in the said City and State, and known, numbered, and designated as Lot Number One Hundred and Thirteen (113) on the plat of Huntersville, recorded in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book 1, page 31, the said lot fronting Thirty (30) feet on the southern side of "A" Avenue, and running back between parallel lines One Hundred and Five (105) feet, more or less, the western line of said lot being One Hundred and Twenty (120) feet, more or less, east of Hunter Street:

It being the same property which was conveyed to the said John R. Riddick by Harry Denny et ux., by deed dated September 11, 1916, and duly of record in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in Deed Book 220-A, page 429.

Fourth: All that certain lot, piece or parcel of land, together with the buildings and improvements thereon and the appurtenances thereto belonging, lying and situate in the said City and State, and bounded and described as follows, to wit:

BEGINNING at a point in the southern line of Freemont (formerly North) Street, distant in an easterly direction Seven Hundred and eight (708) feet from the southeast intersection of Freemont and O'Keefe Streets, and from such point of beginning running eastwardly along the south side of Freemont Street Twenty (20) feet; thence southwardly Ninety-Four (94) feet, more or less; thence westwardly in a line nearly parallel with Freemont Street Twenty (20) feet; and thence northwardly Ninety-Four (94) feet to the south side of Freemont Street, the point of beginning:

It being the western twenty (20) feet of Lot Number One Hundred and Sixty-Four (164) on a map entitled "Plan of a Part of Huntersville", duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book 1, page 31, and being a part of the same property which was conveyed to the said John R. Riddick by Caroline Riddick by deed dated March 27th, 1900, and duly of record in the clerk's Office of the Circuit Court of Norfolk County, Virginia, in Deed Book 234, page 454.

IN TRUST, for the benefit of the said Lizzie V. Riddick, and upon the following uses and trusts and none other, to-wit:

(1) That unless and until the said Lizzie V. Riddick shall forfeit the estate hereby created for her benefit, the said trustee and his successor in title shall cause to be collected the annual or other periodical rent, revenue and income from the trust property conveyed by this deed, and after the costs of collection of such revenue and of the insurance and repairs of the trust property and the taxes thereon shall have been paid shall cause the net balance of such revenue to be paid to the said Lizzie V. Riddick.

(2) That unless and until the said Lizzie V. Riddick shall forfeit the estate hereby created for her benefit, the said trustee at her request may sell and convey the said trust property hereby created or any portion thereof by deed or deeds to be executed and acknowledged for record by the said trustee and Lizzie V. Riddick for such prices and upon such terms as

the trustee may approve, and shall re-invest the
 page 3 } net proceeds of such sale or sales in other income
 yielding real estate, provided the trustee deems
 such reinvestment wise, prudent and to the best interest of
 the trust estate; the property so purchased to be in all respects
 handles, controlled, and disposed of upon the trusts

hereinabove and hereinafter declared touching the property hereby conveyed.

(3) That any profits and accretions to the trust property that may arise from sales and reinvestments thereof shall be added to and become part of the trust estate, be reinvested in income yielding real estate, as above set forth, and in all respects be treated as part and parcel of the property hereby conveyed.

(4) That unless and until the said Lizzie V. Riddick shall forfeit the estate hereby created for her benefit, as herein-after set out, she shall have power to dispose of the whole trust estate by her will duly executed and proved, and the trustee and his successor in title shall upon the death testate of said Lizzie V. Riddick convey the whole of the trust estate to the person or persons to whom she shall have devised the same, and upon her death intestate shall convey the same to such person or persons as shall answer the description of Lizzie V. Riddick's heirs-at-law.

(5) The said Lizzie V. Riddick hereby covenants to and with the said John R. Riddick that at and after the date of this deed, and so long as she shall remain the wife of John R. Riddick, she will at his request promptly unite with him in deeds of bargain and sale and deeds of trust or mortgage, the same to be done by signing, sealing and acknowledging such deeds for record, conveying real estate now owned and real estate hereafter to be acquired by said John R. Riddick, for the purpose of releasing her inchoate right of dower or any other interest or claim she may have in and to such real estate: and she further covenants that failure or refusal on her part to keep this covenant shall *ipso facto* work a forfeiture of the trust estate hereby created; and upon such failure or refusal on her part, the said trustee and his successor in title shall upon request of the said John R. Riddick immediately convey to the said John R. Riddick, or to such person or persons as he shall designate, the whole of the trust property existing at the time of such forfeiture by good and sufficient deed containing a special warranty of title on the part of the said trustee. But no such conveyance shall be made until the trustee shall have tendered to said Lizzie V. Riddick the deed or deeds which the said John R. Riddick shall have requested her to execute and acknowledge, and she shall upon such tender fail or refuse to execute the same as above provided. Should the said Lizzie V. Riddick remove from the City of Norfolk, she shall give the address of her new residence or place of sojourn to the said trustee and a tender made to her at such address by such agent or

representative as the trustee may select shall be a sufficient tender hereunder. And if the said Lizzie V. Riddick shall remove from the City of Norfolk and fail to inform the trustee of her new address and keep him informed of any change of address, and such failure on her part shall also be treated as a forfeiture of the trust estate in all respects as if she had failed or refused to execute a deed as above set forth.

(6) The said Lizzie V. Riddick further covenants, page 4 } that notwithstanding she is the sole beneficiary mentioned herein, this settlement is intended and agreed by her and the said John R. Riddick, her husband, to supply for her an income sufficient for the support and maintenance of herself and the three children of the said Lizzie V. Riddick and John R. Riddick; the said income herein provided being in addition to the conveyance, heretofore made by the said John R. Riddick to the said Lizzie V. Riddick, of certain real estate in the City of Norfolk, Virginia, the same being the property at present Numbered 768, Avenue "B", and being now occupied by the said Lizzie V. Riddick as her home, and the said Lizzie V. Riddick covenants and agrees that the three children aforesaid shall reside with her and that she hereby assumes their support and maintenance.

(7) The said Lizzie V. Riddick further covenants, that she will not at any time hereafter contract any debts for which the said John R. Riddick may be held liable and be required to pay, and upon breach of this covenant it is hereby agreed that the said trustee and his successor in title shall out of the rents and profits of the trust estate refund to the said John R. Riddick any sum or sums of money he shall have been required to pay by reason of the breach of this covenant.

(8) It is further agreed by and between all the parties to this instrument, that inasmuch as the trustee is to perform any service that may be required of him hereunder without compensation he shall be held to no liability or responsibility touching the trust property arising out of the exercise of the discretion hereby entrusted to him, and shall be liable only for an actual violation of his duty as defined in this deed.

Witness the following signatures and seals:

JOHN R. RIDDICK (Seal)

LIZZIE V. RIDDICK (Seal)

ROBERT W. TOMLIN, (Seal)

Trustee.

State of Virginia,

Corporation of the City of Norfolk, Towit:

I, Blanche H. Russ, a Notary Public for the Corporation aforesaid, in the said State, whose commission expires on the 15th day of January, 1924, do hereby certify that John R. Riddick and Lizzie V. Riddick, his wife, and Robert W. Tomlin, Trustee, whose names are signed to the writing above, bearing date on the 1st day of April, 1921, have acknowledged the same before me in my corporation aforesaid.

Given under my hand this 6th day of April, 1921.

(Signed) BLANCHE H. RUSS,
Notary Public.

Virginia:

In the Clerk's Office of the Corporation Court of the City of Norfolk on the 8th day of April, 1921.

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

Teste:

JAMES V. TREHY, Clerk,
By F. L. ROBERT, D. C.

(On back)

In Court of Law and Chancery of City of Norfolk:

Wm. W. Old, Jr., Executor, &c.

v.

John R. Riddick, et als.

IN CHANCERY.

EXHIBIT "C" WITH BILL.

Virginia:

In the Court of Law and Chancery of the City of Norfolk.

I, O. L. Shackelford, Judge of the Court of Law and Chan-

cery of the City of Norfolk, do certify that Exhibit "C" was before me for consolidation, in the trial of the cause of:

Wm. W. Old, Jr., etc., Complainant,
against
John R. Riddick, et als., Defendants,

And I do hereby authenticate the said Exhibit and the same shall be deemed a part of the record in said cause.

Given under my hand this 3rd day of December 1940.

O. L. SHACKLEFORD, Judge.

EXHIBIT D

WHEREAS, by deed dated April 1st. 1921, duly of record in the Corporation Court of the City of Norfolk, in deed book 259 B, page 128, John R. Riddick and Lizzie V. Riddick did grant, to Robert W. Tomlin, Trustee, the following property, all situate in the city of Norfolk, State of Virginia, to-wit:

First: All that certain lot, piece or parcel of land together with the buildings and improvements thereon and the appurtenances thereunto belonging, lying, and situate on the south side of Avenue B, in the said City and State and bounded and described as follows, to-wit:

Beginning at a point on the south side of said Avenue B. distant in an easterly direction three hundred and fifteen (315) feet, from the southeast intersection of Avenue B, and Church Street, and from such point of beginning running eastwardly along the south side of Avenue B. a distance of forty (40) feet, thence southwardly and parallel with Church Street, one hundred and five (105) feet, thence westwardly and parallel with Avenue B. forty (40) feet, and thence northwardly and parallel with Church Street, one hundred and five (105) feet, to the point of beginning.

It being the easterly ten (10) feet of lot number sixty-five (65) and the whole of lot numbered sixty-six (66) on the plat of Hinton and Reynolds, duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in map book 1, page 39.

Being a part of the same property which was conveyed to the said John R. Riddick by Jennie F. Lee, et al., by deed dated September 6th. 1910, and duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in deed book 358, page 325.

Second: All that certain lot, piece or parcel of land, together with the buildings and improvements there-
page 2 } on, and the appurtenances thereto belonging, lying
and situate in the said city and state, and bounded
and described as follows, to-wit:

Beginning in the southern line of B. Avenue, at a point distant in a westerly direction along said line, twenty-eight (28) feet, more or less from the western line of O'Keefe

Street, and running thence southerly and parallel with O'Keefe Street, one hundred and five (105) feet, thence westerly and parallel with B. Avenue, thirty (30) feet, thence northerly and parallel with O'Keefe Street, one hundred and five (105) feet to B. Avenue, and then easterly along the southern line of B. Avenue, thirty (30) feet, to the point of beginning; it being lot number seventy-four (74) on the plat of Hinton and Reynolds aforesaid.

Being the same property which was conveyed to the said John R. Riddick, by Rosanna Wisher, et al., by deed dated June 1st. 1918, and duly of record in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in deed book 233 B, page 72.

Third: All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, and the appurtenances thereto belonging, lying, and situate in the said city and state, and known, numbered and designated as lot number one hundred and thirteen (113) on the plat of Huntersville recorded in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book 1, page 31, the said lot fronting thirty (30) feet, on the southern side of A. Avenue, and running back between parallel lines one hundred and five (105) feet, more or less the western line of said lot being one hundred and twenty (120) feet, more or less, east of Hunter Street.

It being the same property which was conveyed to the said John R. Riddick, by Harry Denny, et ux, by deed dated September 11, 1916, and duly of record in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in deed book 220-A, page 429.

page 3 } Fourth: All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, and the appurtenances thereto belonging, lying, and situate in the said city and state and bounded and described as follows, to-wit:

Beginning at a point in the southern line of Freemont (formerly North) Street, distant in an easterly direction seven hundred and eight (708) feet, from the southeast intersection of Freemont and O'Keefe Streets, and from such point of beginning running eastwardly along the south side of Freemont Street, twenty (20) feet, thence southwardly ninety-four (94) feet, more or less thence westwardly in a line nearly parallel with Freemont Street, twenty (20) feet,

and thence northwardly ninety-four (94) feet to the south side of Freemont Street, the point of beginning.

It being the western twenty (20) feet, of lot number one hundred sixty-four (164) on a map entitled Plan of a Part of Huntersville, duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book 1, page 31, and being a part of the same property which was conveyed to the said John R. Riddick, by Carolina Riddick by deed dated March 27th, 1900, and duly of record in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in deed book 234, page 454.

And Whereas, it is provided in said deed as follows:

"The said Lizzie V. Riddick hereby covenants to and with the said John R. Riddick that at and after the date of this deed and so long as she shall remain the wife of John R. Riddick, she will at his request promptly unite with him in deeds of bargain and sale and deeds of trust or mortgage, the same to be done by signing, sealing and acknowledging such deeds for record, conveying real estate, now owned and real estate hereafter to be acquired by said John R. Riddick, for the purpose of releasing her inchoate right of dower or any other interest or claim she may have in and to such real estate;

And she further covenants, that failure or refusal on her part to keep this covenant shall *ipso facto* work a forfeiture of the trust estate hereby created, and upon such page 4 } failure or refusal on her part, the said trustee and his successor in title shall upon request of the said John R. Riddick, immediately convey to the said John R. Riddick or to such person or persons, as he shall designate, the whole of the trust property existing at the time of such forfeiture, by good and sufficient deed containing a special warranty of title on the part of the said Trustee.

But no such conveyance shall be made until the trustee shall have tendered to said Lizzie V. Riddick the deed or deeds which the said John R. Riddick shall have requested her to execute and acknowledge, and she shall upon such tender fail or refuse to execute the same as above provided.

Should the said Lizzie V. Riddick remove from the City of Norfolk, she shall give the address of her new residence or place of sojourn to the said Trustee, and a tender made to her at such address by such agent, or representative as the trustee may select, shall be a sufficient tender hereunder.

And if the said Lizzie V. Riddick, shall remove from the

City of Norfolk, and fail to inform the trustee of her new address and keep him informed of any change of address, and such failure on her part shall continue for thirty (30) days, said act on her part shall also be treated as a forfeiture of the trust estate in all respect, as if she had failed or refused to execute a deed as above set forth.

The said Lizzie V. Riddick further covenants that she will not at any time hereafter contract any debts for which the said John R. Riddick may be held liable and be required to pay, and upon breach of this covenant it is hereby agreed, that the said Trustee and his successor in title shall out of the rents and profits of the trust estate refund to the said John R. Riddick any sum or sums of money he shall have been required to pay by reason of the breach of this covenant.

Now, therefore, the said John R. Riddick, in consideration of the sum of \$10.00, and other considerations, doth hereby release, grant, and quit claim unto the said Lizzie V. Riddick, any and all rights which by virtue of the terms of said deed would accrue to him by way of forfeiture. Dated the 4th. day of June 1930.

Witness the following signature and seals:

JOHN R. RIDDICK (Seal)

Witness as to
John R. Riddick,

EDWARD BROCKEMBROUGH,

State of Virginia,
City of Norfolk, to-wit:

I, Wm. W. Old, Jr., a Notary Public in and for the City aforesaid, in the State of Virginia, whose term of office expires on the 16th. day of February 1934, do hereby certify that John R. Riddick, whose name is signed to the writing above, bearing date on the 4th. day of June 1930, has acknowledged the same before me in my city aforesaid.

Given under my hand this 4th. day of June 1930.

WM. W. OLD, JR.,
Notary Public.

Virginia:

In the Clerk's Office of the Corporation Court of the City of Norfolk, on the 2nd. day of August 1930, at 12:50 P. M.

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

Teste:

W. L. PRIEUR, JR., Clerk,
By L. B. ROBERTS, D. C.

A Copy Teste:

W. L. PRIEUR, JR., Clerk,
By JNO. T. RILEY, JR., Deputy Clerk.

Deed Book
316C.

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COPY.

Court of Law & Chancery.

Wm. W. Old, Jr., Executor
v. In Chan.

John R. Riddick, & als.

John R. Riddick
Lizzie V. Riddick.

EXHIBIT D—WITH BILL.

Virginia:

In the Court of Law and Chancery of the City of Norfolk.

I, O. L. Shackleford, Judge of the Court of Law and Chancery of the City of Norfolk, do certify that Exhibit "D" was before me for consolidation in the trial of the cause of:

Wm. W. Old, Jr., etc., Complainant,

against
John R. Riddick, et als., Defendants,

And I do hereby authenticate the said Exhibit and the same shall be deemed a part of the record in said cause.

Given under my hand this 3rd. day of December 1940.

O. L. SHACKLEFORD, Judge.

A Copy—Teste:

M. B. WATTS, C. C.

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