

1677
78-447
Record No. 2342

In the
Supreme Court of Appeals of Virginia
at Richmond

WRENDO M. GODWIN, RECEIVER, ETC.,

v.

W. W. KERNS, M. D.

FROM THE CIRCUIT COURT OF ACCOMACK COUNTY.

RULE 14.

¶5. **NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL.** Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

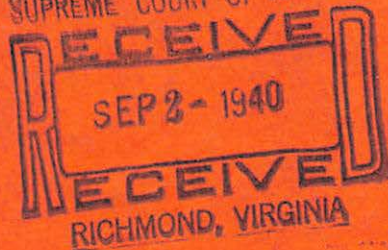
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178 VA. 447

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 2342

WRENDO M. GODWIN, RECEIVER FOR PEOPLES
BANK OF BLOXOM, INC., BLOXOM, VIRGINIA,
Plaintiff in Error,

versus

W. W. KERNS, M. D., Defendant in Error.

*To the Honorable Justices of the Supreme Court of Appeals
of Virginia:*

Your petitioner, Wrendo M. Godwin, Receiver for Peoples Bank of Bloxom, Inc., Bloxom, Virginia, respectfully represents that he is aggrieved by a final judgment entered by the Circuit Court of Accomack County, Virginia, on the 28th day of February, 1940, in a certain action pending in said Circuit Court by notice of motion for judgment, wherein your petitioner, Wrendo M. Godwin, Receiver for Peoples Bank of Bloxom, Inc., Bloxom, Virginia, was plaintiff, and W. W. Kerns, M. D., former President of said Peoples Bank of Bloxom, Virginia, was defendant. Said final judgment was in favor of said defendant, W. W. Kerns.

A transcript of the record of said suit is herewith presented along with the original Exhibits "A", "B", "E", "F" and "G", as a part of this petition, from which the errors complained of may be seen. From said final judgment, your petitioner prays a writ of error and *supersedeas*.

The judgment complained of resulted from a suit brought by your petitioner against the defendant on a certain note dated March 20, 1935, payable on demand, without interest,

Supreme Court of Appeals of Virginia

by said defendant to the Peoples Bank of Bloxom, Inc., Bloxom, Virginia, or order, in the principal sum of Three Hundred Seventy-five Dollars (\$375.00).

STATEMENT OF FACTS.

On, and for a considerable time prior to March 20, 1935, 2* the *Peoples Bank of Bloxom, Virginia, was a small Bank, operating on capital stock of Twenty-seven Thousand, Five Hundred Dollars (\$27,500.00), Fifteen Thousand Dollars (\$15,000.00) of which amount was preferred stock owned by the Reconstruction Finance Corporation. The remaining Twelve Thousand, Five Hundred Dollars (\$12,500.00) was common stock held by local people in Accomack County.

Upon examination of the affairs of said Bank, made on February 8, 1935, by the Federal Deposit Insurance Corporation and by the Banking Division of the Virginia State Corporation Commission, it developed that the capital stock of said Bank was at that time impaired in the amount of Three Thousand, Three Hundred Fifty-six & 29/100 Dollars (\$3,356.29). (See evidence of William R. Gardner, former State Bank Examiner, R., p. 139). This impairment was arrived at by deducting the Bank's surplus of Fourteen Thousand, Three Hundred Fifteen Dollars (\$14,315.00) from the "doubtful and loss" assets, which aggregated Seventeen Thousand, Six Hundred Seventy-one & 29/100 Dollars (\$17,671.29).

As a part of these "doubtful and loss" assets were loans and discounts made by the Bank aggregating Six Thousand, Seven Hundred Fifty-eight & 86/100 Dollars (\$6,758.86). The remainder of the loss was made up largely of depreciation in the value of the Bank's building, furniture and fixtures and other real estate. The last three items of depreciation aggregated Six Thousand Five Hundred Seventeen & 88/100 Dollars (\$6,517.88). (See plaintiff's original Exhibit "F", page 20 A filed with this petition, same being report of examination made by F. D. I. C. and Virginia Banking Department of the State Corporation Commission, as of February 8, 1935).

Below is an itemized statement of the loans and discounts aggregating \$6,758.86, referred to above, as "doubtful or loss":

Note of R. F. Bevans	\$ 428.40
Indirect obligation of W. L. Bloxom	4,447.09
Note of Roy P. Byrd and Susie Byrd	42.00

Note of Elmira Hall	1,000.00
Note of H. H. Killmon	90.89
Note of Isaac Nock	40.00
Note of Clyde B. Shreaves	125.00
Note of Bill Somers	387.40
Note of Viola M. Somers	8.00
Note of H. Chris Somers	150.00
Note of Samuel P. and H. E. White	40.00
Total	<hr/> \$6,758.86

3* *(See evidence of William R. Gardner, R., p. 136, and Exhibit "F" filed herewith, pages 6 to 6-7.)

A copy of the report of said examination of February 8, 1935, was mailed to the Directors of the defendant Bank, on March 2, 1935. (See evidence of W. W. Burke, State Bank Examiner, R., p. 183.)

On Sunday, March 17th, 1935, Mr. Logan R. Ritchie, at that time Examiner-in-Chief for the State Banking Department of the State of Virginia, and now Assistant Treasurer of the Federal Land Bank of Baltimore, along with Messrs. W. W. Burke, W. F. Baylor and William R. Gardner, all of whom were either Examiners or Assistant Examiners of the Banking Department of the State Corporation Commission of Virginia, came to Bloxom, Virginia, arriving at the Peoples Bank about 3:00 P. M., Sunday afternoon, March 17, 1935. Said Examiners immediately began an audit of the affairs of said Bank. This Sunday audit was prompted by the suspicion on the part of said Examiners that there were "some irregularities in the Bank", and the audit disclosed that their fears were well founded. (See evidence of W. W. Burke, R., p. 169.)

Upon arrival at Bloxom, Virginia, on Sunday afternoon, the Examiners immediately had a conference with the defendant, W. W. Kerns, President of said Peoples Bank, and had several further conferences with said Kerns between Sunday and the following Wednesday, March 20, 1935. Said Examiners had with them when they came to Bloxom a copy of Exhibit "F" filed herewith, same being a detailed, itemized report of the examination of February 8, 1935, and went over this entire report in detail with the defendant, Kerns. William R. Gardner, Bank Examiner, upon this point, testified as follows:

"Q. Mr. Gardner, reference has been made to a report of examination of the condition of said Bank, dated, as I recall, February 8, 1935. Did you have with you when you came to the Peoples Bank for this examination, which was begun you say on Sunday preceding March 20th, a copy of said report?

"A. Yes, sir.

"Q. I will ask you to refer to your books there and state if that is the copy you had with you, or if you had a copy of that report.

"A. This is the copy that we had.

4* "Q. Did you have a conference with any official of the Bank *between the time of your arrival on Sunday and the meeting of the Directors on the following Wednesday, March 20th?

"A. Several of them.

"Q. I will ask you to name what officials you had the conference with.

"A. I had several conferences with Dr. Kerns.

"Q. Do you recall when you first had a conference with him?

"A. Immediately on our arrival in Bloxom on Sunday afternoon.

"Q. Did you have any more conferences between that time and the meeting of the directors on Wednesday, the 20th?

"A. Quite a number.

"Q. In any of these conferences was any reference made, or any examination made, of this report you have there?

"A. Oh, yes, we went over it in detail with Dr. Kerns.

"Q. Did you go over that entire report with him?

"A. Yes, sir."

(See evidence of William R. Gardner, R., pp. 134 and 135).

The same witness further testified as follows:

"Q. Did you go over each and all of these items with Dr. Kerns prior to the Directors meeting of March 20, 1935?

"A. Yes, sir."

(See evidence of same witness, R., p. 136).

Upon the same point. Mr. Logan R. Ritchie, Chief Bank Examiner, testified as follows:

"Q. How many conferences do you think you had with

Dr. Kerns after your arrival on Sunday, between that time and the meeting which I think Mr. Gardner has testified he thought was on the following Wednesday?

"A. I couldn't testify to that definitely. I saw him several times.

"Q. Were you present when Mr. Gardner went over with him, or you went over with him the items that went to make up or to cause the impairment of the capital stock of that Bank?

"A. Yes, I was present. Mr. Gardner went over it with him.

5* "Q. Did he go over those items in detail?

"A. Yes, sir."

(See evidence of Logan R. Ritchie, R., p. 158.)

There was a special meeting of the Board of Directors of said Peoples Bank of Bloxom at the Banking House of said Bank on Wednesday, March 20, 1935. Present at this meeting were all of the Directors of said Bank, and Messrs. Logan R. Ritchie and William R. Gardner. W. W. Burke and W. F. Baylor, the remaining two Bank Examiners were in an adjoining room, where they "were scrutinizing very closely on transactions of the Cashier". (See evidence of W. W. Burke, R., p. 169.) At this Directors' meeting, believing that they could put the affairs of their Bank on a sound financial basis, and in order to prevent the closing of said Bank, seven of the Directors gave their notes payable to said Bank in the sum of Three Hundred Fifty Dollars (\$350.00) each; one of said Directors gave to said Bank an assignment of his savings account in the amount of Three Hundred Dollars (\$300.00); and Elmer W. Somers, another of said Directors and this defendant, W. W. Kerns, President of said Bank, gave their notes to said Bank in the sum of Three Hundred Seventy-five Dollars (\$375.00) each, making the total cash and notes given to said Bank, Thirty-five Hundred Dollars (\$3,500.00), as will be seen from the figures heretofore given. This amount a little more than offset the impairment of the capital disclosed by the examination and report of February 8, 1935.

It is this note of the defendant, W. W. Kerns, former President of said Bank that is the subject of the instant litigation. As will appear from agreement of Counsel, the question of liability as to each and all of the other Directors of said Bank is dependent upon the final outcome of the instant case. (See R., pages 8 and 9.)

Following the giving of the notes in question on March 20, 1935, the financial condition of the Peoples Bank of Bloxom instead of improving, gradually and continuously became worse, and on July 19, 1937, the plaintiff, Wrendo M. Godwin was duly appointed and qualified as Receiver of said Bank.

The defendant, W. W. Kerns was President of said Bank 6* continuously from the time he gave his *\$375.00 note on March 20, 1935, up to and including the appointment of the Receiver on July 19, 1937.

Following the appointment and qualification of said Receiver, all of the Directors' notes above referred to, including that of the defendant, Kerns, were turned over to said Godwin, Receiver. There had been no payments or credits of any kind on any of said notes. Demand for payment was made by said Receiver upon the various makers of the notes in question, including the defendant, Kerns. Payment was refused by each and all of said Directors, and notices of motion against each and all of said Directors were duly served and returned during September, 1938.

The instant case was tried in the Circuit Court of Accomack County before a Jury on February 26, 1940. The Jury referred in his behalf clearly showed, that when the notes in ment upon said verdict was entered by the Circuit Court of Accomack County on February 28, 1940. It is from this final judgment that this writ of error and *supersedeas* is prayed.

ISSUES AS TO FACTS.

It was your petitioner's contention, and the evidence offered in his behalf, clearly showed, that when the notes in question were given and delivered to the Bank, it was made perfectly plain to each and all the Directors, including the defendant, that said notes were valid, subsisting obligations against the various makers. One or more of the Directors asked the Bank Examiners if said notes would have to be paid, and all of the Directors were told that unless the assets listed as "doubtful and loss", said assets aggregating in value, Seventeen Thousand, Six Hundred Seventy-one & 29/100 Dollars (\$17,671.29), as aforesaid, were made good, the notes would all have to be paid. Upon this point, William R. Gardner testified upon direct examination as follows:

"Q. Please state what understanding, if any, was had by the Banking Department and the Directors at the time these notes were given.

"A. On the morning of March 20th, the day before I asked Dr. Kerns to have an entire meeting of his Board of Directors in order to discuss the situation of his Bank. We were meeting for the purpose of working out a plan to keep 7* the Bank open. I stated to *the Board when they met that morning that they had a capital impairment of approximately \$3,500.00, according to report of examination made on February 8th; that we had an investigation under way of the Bank which might show further impairment. I asked the Board of Directors to give a bond, or joint note of \$3,500.00 to take care of the impairment. There was considerable discussion about it and it was finally agreed that they would give separate notes. The question was asked me if they would have the notes to pay and my statement to the Board of Directors was that if and when the assets that were classified as loss and doubtful by the Examiners was made good the notes would be handed back to them.

"Q. Mr. Gardner, it has been testified to by Dr. Kerns and some of the others that it was agreed by you at that time, speaking in behalf of the Banking Department, that all collections on paper that was at that time considered by the Banking Department as worthless, or some of the Directors said paper considered doubtful, would be credited proportionately upon these various notes given by the Directors. Is that correct or not?

"A. That is not correct." (See evidence of William R. Gardner, R., pp. 137 and 138.)

The same witness, upon cross examination, testified as follows:

"Q. But, Mr. Gardner, wasn't it also true that they were to be protected in some way by collections on this paper that they thought some collections could be made out of?

"A. The only condition prescribed by us was when their Bank, the assets that had been set off as doubtful and loss, were proved to be of good value, the notes would be returned to them.

"Q. So that in substance the only difference between your position and that of the Directors would be the notes out of which the collections would be made? Is that it?

"A. No, sir.

"Q. What is the difference then? They have testified that when certain collections were made out of paper held by the Bank and which was classified by someone as worthless, collections either made in whole or in part to the extent of \$3,500.00, then their notes should be returned to them. Now

then, what paper do you say the collection should come from that would have enabled these men to get their notes back?

"A. Not only paper, Mr. Powell, the Bank building, furniture and fixtures and other real estate. Depreciation in those items brought about the capital impairment as much as the classification of the notes.

"Q. So far as the impairment of the capital that may be true, but you testified while ago that when certain collections were made—

"Mr. Mapp: He has never testified to that.

8* **"A. I testified that whenever the assets that were classified by the Examiners as doubtful and loss were proven to be of sound value the Directors' notes would be returned to them.

"Q. That when it should turn out that their banking house and fixtures should be worth as much as was carried at in the statement then their notes would be returned?

"A. Or sufficient earnings made from the Bank to depreciate them to the value as set off in the report."

(See evidence of William R. Gardner, R., pp. 145 and 146.)

Upon this same point, Mr. Logan R. Ritchie, Bank Examiner-in-Chief, testified on direct examination as follows:

"Q. Mr. Ritchie, were you present throughout all of the directors meeting that was held on March 20, 1935?

"A. I was.

"Q. I am going to ask you what understanding, if any, was had between you gentlemen representing the Banking Department of the State of Virginia and the Directors in connection with the giving of the various notes by the Directors of the Peoples Bank, including the \$375.00 note now in question of Dr. Kerns'.

"A. It was the understanding the Bank would be permitted to continue operations if they made good the impairment to the capital stock, and if the assets which had been classified as loss or doubtful was made good and no further impairment developed the notes would be turned back to the Directors.

"Q. Did it make any difference to the Banking Department, and to you representatives of the Banking Department, how the capital was put back in good shape, whether increase in real estate value or collections on doubtful or worthless paper, or how?

"A. No, just that the capital would be restored."

(See evidence of said witness, R., pp. 158 and 159.)

This same witness, upon cross examination, testified as follows:

"Q. Do you recall whether any understanding was given with the remainder of the Directors on that occasion that if they gave these notes aggregating \$3,500.00 these notes would be credited with collections out of paper then held by the Bank?

"A. No, sir, it would be made out of assets, if the assets were restored. We were not in a position to make a definite statement to Directors that they would not be called upon to pay these notes, we couldn't do that. We wouldn't have taken them if that had been the case.

"Q. Was that explained to these men?

9* "A. Yes, sir.

"Q. Then I understand you to say no assurance was given to any of them that the note would be credited in whole or in part with collections then held from the Bank?

"A. That is correct. No such assurance. Might I say you are speaking of notes and I am speaking of assets. If you will include assets we will come closer to a common foundation.

"Q. Mr. Ritchie, I understand that, but I say that no assurance was given that these notes should be taken care of in whole or in part to some extent by collections on notes to the Bank. You deny that, I understand.

"A. Yes, sir.

"Q. That never occurred?

"A. No, sir, that did not occur."

(See evidence of same witness, R., pp. 163 and 164.)

It was the positive evidence of the Bank Examiners that the only notes considered by them as "doubtful or loss", at the meeting with the Directors on March 20, 1935, were those which had been listed as "doubtful or loss" in the report of February 8, 1935. Upon this point, William R. Gardner, Bank Examiner, testified as follows:

"Q. Mr. Gardner, were any notes considered by you as worthless or doubtful except the notes you have detailed here as shown by that report at this meeting on March 20, 1935?

"A. In this meeting on March 20, 1935, the Directors in-

sisted on discussing the notes in question. In order to do that, with the report set up as it was, we arranged the notes alphabetically and discussed each note in the Bank. There were other notes in there I thought possibly there might be some loss in; but it could not be agreed upon by the Board and after our going over them Mr. Ritchie and I decided we would base the giving of the notes on this report of examination."

(See evidence of William R. Gardner, R., pp. 138 and 139.)

Logan R. Ritchie testified as follows:

"Q. Mr. Ritchie, in the discussion with the Board of Directors on March 20, 1935, and in determining and going over with them the items making up or causing the impairment of the capital, were any notes or bonds included in arriving at that impairment except those listed in this report, which has been introduced in evidence, as doubtful or worthless?

"A. No, sir.

10* "Q. Without asking separate questions for each one, in order to save time, according to that report was the bond of W. H. Hickman, Tabitha Lee Hickman, or the bond of Preston Northam and wife, or the note of H. J. Byrd, or bond of Z. S. Mears, or one or more notes of Clyde Shreaves, or note of Upshur Shreaves, father of Clyde Shreaves, were any of them considered in arriving at your figures that day, either doubtful or worthless except \$125.00 note of Clyde Shreaves?

"A. No, sir."

(See evidence of same witness, R., p. 160.)

The defendant had two contentions: First, that set forth in his grounds of defense; and second, an entirely different contention at the Trial Table.

In his grounds of defense, the defendant alleged (R., p. 2 (a)) that at the time the notes in question were given, nothing was discussed or considered except the Bank's so-called "worthless" notes, and that it was understood and agreed that if and when payments should be made on said worthless paper, that said payments should be credited *pro tanto* on the notes given by the various Directors. It was further contended by the defendant as shown by the said grounds of defense, " * * * that included in said alleged worthless paper was a bond of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, secured by deed of trust on real estate;

a bond or note of Preston Northam and wife; one bond or note executed by H. J. Byrd; one bond executed by Z. S. Mears; and one or more notes of Clyde Shreaves, former Cashier of the Bank; and Upshur Shreaves, his father, for several amounts * * * ". *By reference to the list of notes shown on page 2 of this petition, classified by the Banking Department's examination and report of February 8, 1935, as "doubtful and loss", it will be seen that the one and only note referred to in defendant's grounds of defense, which had been listed by the Banking Department as either doubtful or a loss, was that of Clyde B. Shreaves for \$125.00. In other words, even if everything stated in said defendant's grounds of defense is true, said defendant at most would be entitled to a pro tanto credit on the \$125.00, which was afterwards collected from Clyde B. Shreaves. Said pro tanto credit would amount to \$13.75.*

At the Trial Table, this defendant and the various
11* other Directors *(who are likewise defendants in other suits) testified that at the time the notes in question were given, the Bank Examiners disregarded the report and examination of February 8, 1935, reclassified the Bank's notes, and that out of the notes at that time classified as "doubtful or loss", a sufficient amount was later collected to pay the various notes given by the Directors aggregating \$3,500.00. As above set forth in the quoted testimony of said Bank Examiners, any such reclassification was most positively denied by the Bank Examiners.

It would make this petition entirely too long to enumerate in detail the evidence of the various Directors as to the notes that were classified by the Examiners as "doubtful or loss" at the meeting of March 20, 1935. Scarcely any two of said Directors testified that the same notes were classified as "doubtful or loss". The evidence of T. Lee Byrd, upon this point, is found at page 42 of the Record; the evidence of R. L. Somers, another Director, at page 54; Norman C. Davis, another Director, at page 60 of the Record; Elmer W. Somers, another Director, at page 80 of the Record; and Frank White, another Director, at page 96 of the Record. By a strange coincidence, about the only note which all of the Directors agreed upon as having been classified as "doubtful or loss" was that of W. H. Hickman, Sr., for \$5,000.00. By an equally strange coincidence, the credit claimed on this Hickman note was larger than all other credits claimed combined! As shown by the grounds of defense (R., p. 3) the Directors claimed a credit of \$2,000.00 on their obligations, less \$200.00, collection fee, leaving a net credit of \$1,800.00, which amount they claimed was collected on said Hickman

bond. Elmer W. Somers, one of the Directors, handled this collection, and his evidence in connection therewith is, to say the least, interesting. He testified that it was through him that the Hickman bond had been placed in the Bank, and that in order to strengthen same, he put up as collateral thereto the bond of a lady named Lottie Ailworth, in which he had a \$2,000.00 interest. He further testified that the Receiver only received \$800.00 in compromise settlement of said Ailworth bond (R., p. 82), but agreed to give said Somers and the other Directors credit for the full \$2,000.00 (R., p. 12* 75)!

*Most of the credits claimed were through collections made by Mr. Somers. It happens, however, that according to the positive, direct testimony of the Bank Examiners, the Hickman bond above referred to never was considered or classified as "doubtful or loss" either in the report of examination of February 8, 1935, or at the meeting of the Directors on March 20, 1935. *This applies to all other credits claimed by the defendant with the exception of \$125.00 collected from Clyde Shreaves.* Upon this point, William R. Gardner testified as follows:

"Q. Mr. Gardner, in arriving at this impairment of your capital at that time resulting in the giving of the note sued on and other notes, was any bond of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, considered or listed as either doubtful or worthless?

"A. No, sir. In the discussion of the notes I might say this, that I thought that that bond should be possibly classified as doubtful or loss and had quite an argument with the members of the Board, but Mr. Elmer W. Somers said he was standing behind it and we left it in the same classification as set up in February 8th report, which was as slow.

"Q. But it wasn't included in arriving at these figures?

"A. No, sir.

"Q. Was the bond of Preston Northam and wife considered either doubtful or worthless?

"A. No, sir.

"Q. Was the bond of H. J. Byrd considered either doubtful or worthless?

"A. No, sir.

"Q. Was the bond of Z. S. Mears considered either doubtful or worthless?

"A. No, sir.

"Q. It says here one or more notes of Clyde Shreaves. Were any of those notes of Clyde Shreaves' listed or considered as doubtful or worthless?

"A. \$125.00 single name note.

"Q. How was that classified?

"A. Loss.

"Q. Any note of Upshur Shreaves and father doubtful or worthless?

"A. No, sir."

(See evidence of William R. Gardner, R., pp. 140 and 141.)

13* *Mr. Logan R. Ritchie testified in substance to exactly the same thing. (See evidence already quoted, R., p. 160.)

COURT PROCEEDINGS IN THE CIRCUIT COURT.

The instant case was instituted by notice of motion for judgment. The defendant filed a plea of general issue and grounds of defense. The grounds of defense are found on pages 2 (a), 3 and 4 of the Record. Said grounds of defense, in substance, state that the defendant in this case, and the other Directors were advised by the Bank Examiners "that there was considerable paper in said Bank which they (the Bank Examiners) regarded as worthless, and that if they, the said Directors, desired the said Bank to continue to operate, they must make a note or notes aggregating \$3,500.00 * * * that included in said alleged worthless paper was a bond of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, secured by deed of trust on real estate; a bond or note of Preston Northam and wife; one bond or note executed by H. J. Byrd; one bond executed by Z. S. Mears; one or more notes of Clyde Shreaves, former Cashier of the Bank, and Upshur Shreaves, his father, for several amounts * * * ". Said grounds of defense then alleged that a sufficient amount "was collected on said worthless paper" to pay the notes given by the Directors.

The plaintiff filed a demurrer to said grounds of defense, and a motion to reject same, both said demurrer and motion to reject being "because said grounds of defense would be an attempt to vary by parol evidence the terms of the bond sued upon". Both the demurrer to said grounds of defense and the motion to reject same were overruled by the Court.

Throughout the subsequent trial before a Jury, the plaintiff objected and excepted to the admission of all evidence offered in behalf of the defendant, attempting to show the circumstances or conditions upon which the note sued upon was given.

When a verdict was returned by the Jury in favor of the defendant, the plaintiff, by counsel, moved the Court to set aside the verdict upon the following grounds:

- 14* *"1. Because of the Court's refusal to sustain Plaintiff's Demurrer to Defendant's Grounds of Defense.
 - "2. Because of the Court's refusal to sustain Plaintiff's motion to reject Defendant's Grounds of Defense.
 "3. Because of the admission by the Court of improper evidence in behalf of the Defendant.
 "4. Because of the exclusion of proper evidence by the Court in behalf of the Plaintiff.
 "5. Because of the Court's refusal to declare a mistrial as result of comments made by one of counsel for Defendant, and by the Court, in the presence of the Jury to the effect that The Peoples Bank of Bloxom, Inc., was insured by the Federal Deposit Insurance Corporation.
 "6. Because of the Court's refusal to grant Instruction No. 4 asked for by the Plaintiff.
 "7. Because of the giving by the Court of Instruction A asked for and given in behalf of the Plaintiff.
 "8. Because the Jury's verdict is contrary to the law and evidence in this case and without evidence to support same."

(See R., pp. 204 and 205.)

This motion was overruled by the Court, and to the action of the Court in so doing, your petitioner, by counsel, excepted (R., p. 7).

ERRORS ASSIGNED.

1st. The Court's refusal to sustain your petitioner's demurrer and motion to reject defendant's grounds of defense; the admission by the Court over your petitioner's objection and exception of evidence in behalf of the defendant, which varied by parol evidence the terms of the writing sued upon; the granting of defendant's Instruction A and the Court's refusal to set aside the verdict returned by the Jury.

2nd. Because of statements made by counsel for the defendant, and likewise by the Court in the presence of the Jury, to the effect that the Peoples Bank of Bloxom was insured by the Federal Deposit Insurance Corporation, and the Court's refusal to declare a mistrial by reason of said statements.

3rd. Because of the Court's refusal to admit in evidence

the minutes of the Directors' meeting of March 20, 1935.
 15* *4th. Because the Jury's verdict was contrary to the law and the evidence, and especially because the collections made between the giving of the notes by the Directors on March 20, 1935, and the appointment of your petitioner as Receiver on July 19, 1937, with the exception of \$125.00, were upon notes and bonds not considered either worthless or doubtful at the time said notes were given.

We will discuss these alleged errors in the order named:

The first error alleged is the admission by the Circuit Court of evidence which varied by parol evidence the terms of the note sued upon.

The record conclusively shows that on March 20, 1935, when the note in question was given, the capital stock of the Peoples Bank of Bloxom was impaired. This impairment had been clearly established by the report of the Bank's examination on February 8, 1935. With this report before the Banking Division of the State Corporation Commission, it became necessary for said Corporation Commission to adopt one of the several courses provided for by Section 4149 (52) of the Code of Virginia as amended. It adopted the fourth provision set forth in said section, that is, it required the impairment of the capital stock to be made good. *The Banking Division of the State Corporation Commission had not the slightest authority to make with the Directors any such contract as that alleged in defendant's grounds of defense, nor as that contended for by defendant in the evidence offered in his behalf.* It is to be remembered that the impairment in the capital stock was caused not only by "doubtful and loss" paper, but by depreciation in the value of the Bank's building, furniture, fixtures and other real estate. The difference between the two losses was only approximately \$200.00. It would have been contrary to both the meaning and plain language of Section 4149 (52) of the Code of Virginia as amended to permit the Directors to remedy one item of depreciation without regard to the other items. It is to be remembered, too, that on the Board of Directors were two Attorneys, Elmer W. Somers and D. Frank White, both of whom testified in this case.

16* *As has been said by this Court, in passing upon numerous suits brought on notes given by Directors of Banks, which later failed, the Directors "were desirous of continuing business, and so at their election they were permitted to do so, provided they were willing to pledge their personal credit. Of course they were not obliged to make

any such pledge, but there was no reason why they should not have been permitted to make it, and they did make it in furtherance of what they then believed was their own interest". (See *White v. Commonwealth*, 158 Va. 749, especially page 754.)

The note sued upon is plaintiff's Exhibit "A", the original of which is filed with this petition. An examination thereof will show that it is dated March 20, 1935; is on a regular collateral note form used by the Bank, and is the *unconditional* promise of the defendant to pay to the Peoples Bank of Bloxom the sum of \$375.00, on demand.

From the date said note was given, up to and including the appointment of a Receiver on July 19, 1937, said note was carried as a direct obligation of the defendant to the Bank of which he was President. Upon this point, Logan R. Ritchie, Bank Examiner in Chief, testified on cross examination as follows:

"Q. How are those notes designated in that report? What is that?

"A. It purports to be a report of examination of the Peoples Bank of Bloxom as of the close of business January 14, 1937, made by the F. D. I. C.

"Q. How are those notes classified? For instance take the T. Lee Byrd note of \$350.00.

"A. As a direct obligation. \$350.00 direct obligation.

"Q. What is this?

"A. Director's guarantee note.

"Q. That a direct obligation?

"A. According to this report." (See evidence of said witness, R., p. 165.)

The same witness, on re-direct examination, testified as follows:

"Q. Mr. Ritchie, Mr. Powell asked you about this examination you didn't make. Does this same report he asked you about of January 14, 1937, show the note of Dr. W. W. Kerns also listed as a direct obligation of the Bank? He asked 17* you about T. Lee Byrd, *but we are trying Dr. Kerns' case.

"A. Shown as a direct obligation." (See evidence of said witness, R., p. 167.)

Upon this same point, W. W. Burke, Bank Examiner, testified as follows:

"Q. Did you bring with you, pursuant to subpoena *duces tecum*, a record showing all conditions of the Bank following March 20, 1935, up to the closing of the Bank July 19, 1937?

"A. Yes, sir.

"Q. Mr. Burke, are you familiar with them?

"A. Yes, sir.

"Q. Mr. Burke, was there any time between March 20, 1935, and July 19, 1937, that the capital stock of the Peoples Bank was not impaired, unless you have counted in and used these notes aggregating \$3,500.00?

"A. No, sir.

"Q. How were these notes carried by the Bank continuously from the time they were given up to and including the closing of the Bank July 19, 1937?

"A. They were carried on the books as direct obligations, like any other note.

"Q. How many examinations of the Bank were made between March 20, 1935, and July 19, 1937, by the Banking Department?

"A. I could refer to a list I brought over with me. I couldn't tell you from memory.

"Q. Look at your list.

"A. Now both the F. D. I. C. and the State or the State only?

"Q. Can you testify about the F. D. I. C.?

"A. Yes, sir, we get copies.

"Q. Both then.

"A. Five examinations.

"Q. Were reports of each and all of those examinations, results of those examinations, forwarded by the Banking Department of the State of Virginia to the Peoples Bank at Bloxom?

"A. Yes, sir, all except the work papers and all that I 18* *prepared when I was over there conducting the audit.

In other words, when I was left in the Bank for the seven-week period my principal duty was to assist the Cashier in operating the Bank and to verify accounts with customers so all of those work papers never did go back to the Bank.

"Q. I understand about that, but the reports of the five examinations did go back to the Bank?

"A. Yes, sir.

"Q. About how soon after each examination would those reports go back?

"A. Well, that sometimes varies. It could be within three weeks and it might be as long as six weeks, and maybe as long as two months.

"Q. Have you any record showing the dates the various reports went back?

"A. I could tell by referring to the reports.

"Q. I am going to ask you to refer to the reports and give the Court the different dates these various reports were mailed back to the Peoples Bank from March 20, 1935, to July 19, 1937.

"A. Can I refer to them over there? They are over on the other side.

"Q. Yes, sir.

"A. The report made on April 7, 1936, was transmitted to the Peoples Bank of Bloxom May 22, 1936; October 2, 1935, transmitted to the Peoples Bank 11/13/36 transmitted Peoples Bank 9/16/36; 1/14/37 transmitted Peoples Bank April 15, 1937; 7/12/37 transmitted Peoples Bank 7/20/37.

"Q. Mr. Burke, either Mr. Gardner or Mr. Ritchie testified that the report of February 8, 1935, had been mailed to the Peoples Bank prior to your coming over with them just before March 20th. I will ask you to refer to that report, please, and tell us when that report of February 8, 1935, was mailed to the Peoples Bank.

"A. March 2, 1935.

"Q. Following the mailing of these various reports, five I think you have testified, to the Bank showing the examinations between March 20, 1935, and the closing of the Bank July 19, 1937, did the Banking Department receive any complaints from Dr. Kerns or from any of the Directors as to the way these Directors' notes were carried on said report, that is as direct obligation of the makers? Was any complaint received by the Banking Department?

"A. No, sir." (See evidence of said witness, R., pp. 181, 182 and 183.)

19* *The case of *Crafts v. Broadway Bank*, 142 Va. 702, is strikingly in point in the instant case. In that case as in this, the note sued upon was the usual collateral note used by the Bank. The maker of the note assigned therewith certain collateral. The defendant, as in this case, was the President of the Company which executed the note as maker. Said President had personally endorsed the note. The note in question was, as in the instant case, an unconditional promise by the maker and endorser to pay the plaintiff Bank. Suit was brought by the Bank against the endorser of said note. The endorser offered to show that at the time of his endorsement, there was a contemporaneous parol agreement between him and the President of the plain-

tiff Bank, that so long as the monthly collections on the collateral were paid to the Bank, the note would not be called. The Circuit Court refused to admit this evidence. In passing upon this question, this Court, speaking through Mr. Justice McLemore, said:

“The question to be determined is whether or not a contemporaneous verbal agreement can be introduced to vary or contradict a written contract between the parties, where the rights of no third party are involved.

“The courts of the many jurisdictions in this country are by no means in harmony on this branch of the law. The authorities seem reasonably well agreed that when a note is delivered to the payee with an agreement that it is not to become effective until the happening of a certain event, i. e., obtaining signature of an additional endorser, as in *Blair v. Security Bank*, 103 Va. 763, 50 S. E. 262, and *Hodge v. Smith*, 130 Wis. 326, 110 N. W. 192, the terms of delivery and conditions agreed upon may be proved by parol evidence. So also where the conditions upon which the note was to become operative never occurred, as in *Catt v. Olivier*, 98 Va. 580, 583-4, 36 S. E. 980.

“In this class of cases it will be observed that the notes never became effective because of the failure to comply with a condition precedent. In the case before us the note was admittedly to become binding and effective upon delivery, and was upon its face in all respects regular.

“The attempts of the defendant to prove an agreement, made at the time of the execution and delivery of the note, that it was not to be enforced against the endorsers until the collateral piano contracts had been collected and the proceeds applied to the payment thereof, was objected to by plaintiff's counsel, because it set up a contract by parol differing from the terms of the collateral note. The court sustained the objection and excluded all evidence tending to set up the parol contract.

“This brings us to the real issue in the case, for if the ruling of the trial court was without error in holding that no evidence could be introduced upon the trial that tended to alter the terms of the note, or to set up conditions contracting or expanding its terms as written, then no verdict could have been rendered by the jury and the judgment of the trial court should be affirmed.

“It will be observed that the note sued on was regular on its face and complete in its terms. It was admittedly delivered to the bank for discount and by the bank so handled.

The defense offered in opposition to its collections is based upon an agreement alleged to have been entered into between the president of the bank and Crafts, whereby the note, which was an unconditional promise to pay at maturity, was in fact only an evidence of debt, with the right to demand payment indefinitely postponed.

"This is a clear case of attempting, by a contemporaneous oral agreement, to alter and change the terms of a perfectly plain, clear and explicit written contract. We are of the opinion that whatever may be the holdings of some of the courts of this country, the question is not an open one in this jurisdiction."

And again, in the same opinion, the Court said:

"For reasons founded on wisdom, and to prevent frauds and perjuries, the rule of the common law excludes such oral testimony of the alleged agreement; * * * It cannot be assumed that the written contract was designed as an imperfect expression of the parties' agreement, from the mere fact that the written memorial contains nothing on the subject to which the parol evidence is directed. On that assumption the rule which excludes parol proof as a means of adding to the written contract would be entirely abrogated. And to permit parties to lay a foundation for adding to the contract by oral testimony that they agreed that part only of their contract should be reduced to writing would open the door to the very evil the rule was designed to avoid."

(See *Crafts v. Broadway Bank*, 142 Va. 705-708.)

It would be difficult to find a case which better illustrates the reason for the rule so clearly stated by Mr. Justice Mc-Lemore than the instant case. The grounds of defense filed in the instant case specifies the notes, collections on which were to be credited on defendant's note. It develops at the trial that according to the Bank's official records and the positive evidence of the Bank Examiners, only one of the notes so specified had been or was considered "loss or doubtful". The Directors then testified that the Bank Examiners disregarded their official records and reclassified all of the notes. The various Directors then testified as to the notes which the Bank claimed were "loss and doubtful". No two of said Directors agree as to the notes falling in the "loss and doubtful" column under this reclassification. In the language of

Mr. Justice McLemore, above quoted, "to permit parties to lay a foundation for adding to the contract by oral testimony that they agreed that part only *of their contract should be reduced to writing would open the door to the very evil the rule was designed to avoid."

In the recent case of *Barrett v. Vaughan & Co., Bankers*, 163 Va. 811, suit was brought by the Bank against the endorser of the note. Mr. Justice Hudgins, speaking for this Court, said:

"Appellant objected to the action of the court in denying him the right to introduce oral evidence for the purpose of proving that when he signed the instrument the payee assured him that no responsibility of any kind would attach to him unless and until all rights and remedies against the makers had been exhausted.

"If this allegation had been established it would have varied the terms and conditions of the written contract. The general rule is that where the language of a contract is uncertain or ambiguous, extraneous evidence is admissible to prove the true intention of the parties; otherwise, such evidence is rejected.

"The identical question was decided by the Special Court of Appeals in an opinion delivered by Judge McLemore in *Crafts v. Broadway Bank*, 142 Va. 702, 128 S. E. 364, 367, where the authorities were reviewed and this conclusion reached:

" 'It may be confidently affirmed, as the settled law of this state, that where a negotiable note or other unconditional promise to pay at a stipulated time is regular upon its face, and is delivered to the payee as a valid and binding obligation for ever so short a time, no contemporaneous parol agreement can be set up to show that payment was not to be demanded at maturity, or until attached collateral had been exhausted, or upon the happening of any other subsequent event not mentioned in the note itself. All such efforts have as their end to change or vary the terms of the written contract, which we think is contrary to the great weight of authority, and is clearly in conflict with the previous decisions of this court.' " (*Barrett v. Vaughan & Co., Bankers*, 163 Va. 818.)

In the still more recent case of *Nottingham, et al., v. Farmers & Merchants Trust Bank*, 170 Va. 291, one of the defenses

was that the makers of the paper sued upon, who were Directors of the plaintiff Bank, were assured by the Cashier of said Bank at the time they executed their bonds, that said Bank was solvent. Mr. Justice Eggleston, in speaking for this Court, reviewed numerous authorities, including *Crafts v. Broadway National Bank*, *supra*, and affirms the doctrine herein contended for that parol evidence is inadmissible to vary the terms of a perfectly plain written obligation.

We respectfully submit that a review of the evidence in the instant case, in the light of the above authorities, will necessarily convince the Court that to sustain the action of 22* the Circuit Court in the instant case would *make it possible for the Directors of any Bank to avoid obligations given by them in good faith and accepted by the Banking Division of the State Corporation Commission in like good faith.

The second error assigned is based upon statements made by one of Counsel for the defendant and likewise by the Court in the presence of the Jury to the effect that the depositors of the Peoples Bank of Bloxom were insured.

During the examination of the defendant himself, he was asked by Counsel for your petitioner how much money he had on deposit at the time he gave the note in question. Mr. B. T. Gunter, Jr., one of Counsel for the defendant, stated to the Court, "If your Honor please, the evidence shows the deposits were insured" (R., p. 131). As a matter of fact, Mr. Gunter was mistaken as to this as there was not the slightest evidence in the record showing that any of the deposits were insured. When Mr. Gunter, one of Counsel for the defendant, made the above statement, the Court said:

"If he had over \$5,000.00, I will let you show it" (R., p. 131). Counsel for your petitioner excepted. The above occurred practically at the close of the first day's evidence. On the following day, Counsel for your petitioner moved the Court for a mistrial because of the above statements, both by Counsel for the defendant and by the Court (R., p. 132). This motion was overruled. The same objection was again brought to the Court's attention in the motion for a new trial.

We respectfully submit that this case falls clearly under the doctrine laid down in *Rinehart & Dennis Co. v. Brown*, 137 Va. 670, *except that the instant case is much stronger in that the Circuit Court impliedly told the Jury that unless the loss to a depositor was over \$5,000.00, no one would suffer except the Federal Deposit Insurance Corporation. It is un-*

necessary to point out the damaging effect of this upon a local Jury, and we respectfully submit that the Circuit Court committed error first, in permitting Counsel for the defendant to make the statement Counsel did make; second, in adding the weight of the Court's statement thereto; and third, in refusing to set aside the Jury's verdict by reason thereof.

The third error assigned in behalf of your petitioner 23* is the *Circuit Court's refusal to admit in evidence the minutes of the meeting of the Board of Directors of March 20, 1935. Said minutes are plaintiff's original Exhibit "G". These minutes were in the Minute Book that was turned over to your petitioner after his appointment as Receiver. (See your petitioner's evidence, R., p. 189.)

As is disclosed by the Record, the one big conflict in the evidence offered in behalf of your petitioner and in the evidence offered in behalf of defendant, was as to the understanding had between the Bank Examiners and the Directors at the Directors' meeting of March 20, 1935, when the note sued on was given. It was the positive, direct evidence of the Bank Examiners that said notes were given to cover the impairment of the capital stock that then existed in said Bank, and that each and all of said notes were to be paid unless the impairment of said capital was removed. The Directors each and all testified that this was not the understanding, but that the understanding was that the notes given by the Directors were to be credited with all collections made on said notes payable to the Bank.

In corroboration of the evidence offered in behalf of your petitioner, your petitioner offered the Minutes in question. As will be seen upon an examination of Exhibit "G", the Minutes, after citing the giving of the Directors' notes, say as follows:

"The above notes are all dated March 20, 1935, payable on demand without interest.

"The above notes and assignment of saving account aggregate \$3,500.00, and are to be used to create a reserve for contingencies in order to relieve against a threatened impairment of the capital of this bank as shown by examiner's report of February 8, 1935, a copy of which, is in the files of the bank."

As will be seen from the above quoted part of said Minutes, same furnish the strongest corroboration possible to your petitioner as to every material issue of fact raised in this case.

The Judge of the Trial Court refused to permit said Min-

utes to go before the Jury on the ground that they were not signed and were not physically attached to the Minute Book. In so doing, we respectfully submit that the *Circuit Court plainly erred. W. W. Burke, Bank Examiner, upon this point, testified as follows:

"Q. I hand you here paper purporting to be the minutes of that meeting of March 20, 1935, in which there is a pencil notation at the end of the first paragraph, pencil memorandum reading 'End A. L. Bunting will be satisfactory'. I will ask you in whose handwriting that is.

"A. Mine.

"Q. Do you recall who made those minutes right there, or who typed them?

"A. I can't recall who made them, but I am quite sure I must have typed them.

"Q. Were those minutes read at the meeting of the Board of Directors following the meeting of March 20, 1935?

"A. My answer would be yes, but I would like to explain why I answer." (See evidence of said witness, R., p. 171.)

The same witness, in the absence of the Jury, testified as follows:

"Q. Are you positive that this paper, whether it be memorandum or minutes, was read at the meeting of the Directors following the meeting of March 20, 1935?

"A. Yes, I am. May I explain one thing. You ask me about the resolution being sent to the corresponding bank. The Cashier had been relieved of his authority. A new Cashier had come in. Nothing else seems to indicate that a new Cashier has been elected other than this so-called memorandum."

(See evidence of same witness, R., p. 174.)

The same witness further testified as follows:

"Q. Mr. Burke, the point that the Judge is asking you. If I understand you correctly there is no qualification as to your answer that you read these minutes in the meeting following March 20, 1935. Your qualification, if I understand you correctly, is that the pencil notation shows that at the meeting following March 20, 1935, you were authorized by the Board of Directors to state in reference to the Bundick & Littleton note that the endorsement of A. L. Bunting would be satisfactory?

"A. Yes, sir.

"Q. You notified those creditors just as soon as you typed that paper, didn't you?

"A. Yes, sir." (See evidence of same witness, R., pp. 176-177.)

While it is true that the Minutes were not actually 25* signed, and *while the Judge referred to same as "memoranda" rather than Minutes, we respectfully submit that regardless of what they are called, same plainly should have been admitted before the Jury. It was the positive, true evidence of Mr. Burke that this paper, Exhibit "G", whether Minutes or memoranda, was read at the Directors' meeting, which immediately following the meeting of March 20, 1935, and that there was no objection whatsoever to anything therein stated by any Director, except the pencil notation at the end of the first paragraph. It is to be remembered, too, that the Directors, in substance, admitted that practically every other statement except the material one relied upon in behalf of this petitioner was correct.

Every objection made by Counsel for defendant to the introduction of these Minutes or memoranda should have gone to the weight rather than to the admissibility of same.

The fourth and last error assigned is that the Jury's verdict was contrary to the law and the evidence. This error has already been covered in discussing the three previous assignments of error. It is only necessary to again call the Court's attention to the fact that the only collection made upon the paper listed as "loss or doubtful" in the report of the examination of February 8, 1935, was the note of Clyde Shreaves, amounting to \$125.00. The defendant's proportionate part of this collection would amount to only \$13.75.

For the foregoing reasons, as well as for others appearing on the face of the record, your petitioner prays that a writ of error from, and a *supersedeas* to, the judgment complained of, may be awarded him; and that this Court may reverse said judgment, and enter up final judgment in favor of this petitioner, or that this case be remanded to the Circuit Court of the County of Accomack, Virginia, and that this Court will afford your petitioner such further relief in the premises as may be proper.

Your petitioner respectfully asks that this petition may be considered as his brief, with the right to file an additional or supplemental brief if he so desires.

Petitioner also desires to present orally his reasons
26* for *reversing said judgment and for entering final judgment in his behalf or granting him a new trial, and further states that a copy of this petition has on this the 22nd day of June, 1940, been delivered to Stewart K. Powell, one of Counsel for the above named W. W. Kerns, M. D., defendant.

Respectfully submitted,

WRENDO M. GODWIN,
Receiver for Peoples Bank of Bloxom, Inc.,
Bloxom, Va., Plaintiff in Error.
By GEORGE L. DOUGHTY,
J. BROOKS MAPP,
Attorneys for Wendro M. Godwin, Receiver
for Peoples Bank of Bloxom, Inc., Bloxom,
Va.

We, George L. Doughty and J. Brooks Mapp, Attorneys practicing in the Supreme Court of Appeals of Virginia, do certify that in our opinion, it is proper that said Court should review and reverse the judgment complained of in the foregoing petition.

GEORGE L. DOUGHTY,
J. BROOKS MAPP,
Attorneys practicing in the Supreme Court
of Appeals of Virginia.

Received July 3, 1940.

C. V. S.

Writ of error granted. Bond \$300.00.

July 19, 1940.

C. V. S.

Received July 19, 1940.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Circuit Court for the County of Accomack, on the 28th day of February, A. D. 1940.

Be It Remembered that heretofore, to-wit:

In the Clerk's Office of the Circuit Court for the County of Accomack, on the 17th day of September, 1938, the following notice was returned:

To W. W. Kerns, M. D.

Please take notice that the undersigned will move the Circuit Court for the County of Accomack, Virginia, on Monday, the 3rd day of October, 1938, same being the first day of the October term thereof, at 10 o'clock A. M., or as soon thereafter as the matter may be heard, for a judgment against you in the principal sum of \$375.00 and cost. Said amount of \$375.00 and cost being originally due to Peoples Bank of Bloxom, Inc., Bloxom, Virginia, under and by virtue of the terms of a certain note, dated March 20, 1935, in the principal sum of \$375.00, payable on demand, without interest, and signed and executed by you.

The undersigned is the holder of said note by virtue of his qualification as Receiver of the said Peoples Bank of Bloxom, Inc., Bloxom, Virginia.

Given under my hand this the 13th day of September, A. D. 1938.

WRENDO M. GODWIN,
Receiver for Peoples Bank of Bloxom,
Inc., Bloxom, Va.
By GEORGE L. DOUGHTY,
His Attorney.

GEORGE L. DOUGHTY, Counsel.

page 2 } And at another day, to-wit:

Virginia:

At a Circuit Court of the County of Accomack, at the Courthouse of said County, in said County, on Monday, the 3rd day of October, in the year of our Lord, One Thousand

Nine Hundred and Thirty-eight, and in the One Hundred and Sixty-third year of our Commonwealth.

Wrendo M. Godwin, Receiver for Peoples Bank of Bloxom,
Inc., Bloxom, Va.,

v.

W. W. Kerns.

On motion of the defendant, by his attorney, leave is granted him to file his plea of general issue, and grounds of defense, and the same are filed accordingly.

PLEA OF GENERAL ISSUE FILED OCTOBER 3RD,
1938.

Virginia:

In the Circuit Court of Accomack County.

Wrendo M. Godwin, Receiver, etc.,

v.

W. W. Kerns.

NOTICE OF MOTION FOR JUDGMENT.

PLEA OF GENERAL ISSUE.

The said defendant, by his Attorneys, comes and says he did not undertake or promise in any manner or form as the plaintiff hath in this notice of motion complained. And of this the said defendant puts himself upon the country.

page 2(a) }

W. W. KERNS.

Subscribed and sworn to before me this 1st day of Oct.,
1938.

W. S. MESSICK, JR.,
Notary Public.

GROUND OF DEFENSE FILED OCTOBER 3RD, 1938.

Virginia:

In the Circuit Court of Accomack County.

Wrendo M. Godwin, Receiver, etc.,

v.

W. W. Kerns.

NOTICE OF MOTION FOR JUDGMENT.

GROUNDS OF DEFENSE.

The defendant says that in the spring of 1935 the Peoples Bank of Bloxom, Inc., was examined by Messrs. Gardner and Burke, representatives of the Department of Banking and Insurance of Virginia, and the Board of Directors of said Bank were advised by the said Bank Examiners that there was considerable paper in said Bank which they regarded as worthless, and that if they, the said Directors, desired the said Bank to continue to operate, they must make a note or notes aggregating \$3,500.00, which said note or notes must be payable to the Peoples Bank of Bloxom, Inc., Bloxom, Virginia, and would be held by the Bank as collateral security for the payment of the notes above referred to as worthless, and if and when payments should be made on the aforesaid alleged worthless paper, then that such payments should be credited, *pro tanto*, on all of said notes executed, by the direction of Messrs. Gardner and Burke, by the directors of said Bank and made payable to said Bank; that in-

cluded in said alleged worthless paper was a bond page 3 } of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, secured by a deed of trust on real estate; a bond or note of Preston Northam and wife; one bond or note executed by H. J. Byrd; one bond executed by Z. S. Mears; and one or more notes of Clyde Shrieves, former cashier of the Bank, and Upshur Shrieves, his father, for several amounts;

That pursuant to said collateral and conditional agreement, each director of said Bank, except this defendant and Elmer W. Somers executed their individual notes, payable to the Peoples Bank of Bloxom, Inc., of Bloxom, Va., for the principal sum of \$350.00 each, and this defendant and Elmer W. Somers, two other directors, executed their individual notes for the sum of \$375.00 each, payable, as aforesaid, to said Peoples Bank of Bloxom, Inc., all of said notes aggregating \$3,500.00, all of which said notes were executed and delivered to said Bank as collateral security for the payment of said alleged worthless notes, and if and when said notes were collected, or any part thereof, then the amounts so collected should be applied in satisfaction, or *pro tanto* satisfaction, of the notes executed and delivered by said directors to said Bank.

Further, this defendant here states that there was collected on said worthless paper the following amounts: on the W. H. Hickman and wife second deed of trust bond, above

set out, \$2,000.00, of which amount \$200.00 was paid to the Bank's Attorney for collection, leaving a balance of \$1,800.00 collected on the Hickman bond; all of the Preston Northam bond was collected; the Shrieves notes were collected; the H. J. Byrd note was collected; and the Z. S. Mears note was collected; these collections, and no part thereof, has been applied to the payment of the aforesaid notes executed by the aforesaid directors, one of which is the note herein sued on, and executed by this defendant. The exact amount of these notes, and the exact amount of the collections on the alleged worthless notes due to the Bank, all this information is in the books and papers of the Bank, now in the possession of the plaintiff in this case, the Receiver of the Bank, Wrendo M. Godwin.

That for the reasons above stated, the said plaintiff is not entitled to recover the amount herein sued on.

W. W. KERNS, M. D.

And at another day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Monday, the 26th day of February, in the year of our Lord, Nineteen Hundred and Forty.

Wrendo M. Godwin, Receiver, etc.,

v.

W. W. Kerns.

On motion of Wrendo M. Godwin, plaintiff, by counsel, leave is granted said plaintiff to file his demurrer and motion to reject the grounds of defense herein filed in behalf of the defendant, and same are accordingly ordered filed.

And the Court reserves, etc.

DEMURRER FILED FEBRUARY 26TH, 1940.

Virginia:

In the Circuit Court for the County of Accomack.

Wrendo M. Godwin, Receiver, etc.,

v.

W. W. Kerns.

page 5 } DEMURRER TO GROUNDS OF DEFENSE.

Wrendo M. Godwin, Receiver, etc., plaintiff, by Counsel, demurs to the grounds of defense filed in behalf of the defendant and states the grounds of demurrer relied upon to be as follows:

Because said defense would be an attempt to vary by parol evidence the terms of the bond sued upon.

GEORGE L. DOUGHTY, p. q.
J. BROOKS MAPP.

MOTION TO REJECT GROUNDS OF DEFENSE FILED
FEBRUARY 26TH, 1940.

Virginia:

In the Circuit Court for the County of Accomack.

Wrendo M. Godwin, Receiver, etc.,

v.
W. W. Kerns.

MOTION TO REJECT GROUNDS OF DEFENSE.

Wrendo M. Godwin, Receiver, etc., plaintiff, by Counsel, moves to reject the grounds of defense filed in this cause on the ground that said grounds of defense are an attempt to vary by parol evidence the terms of the writing sued upon.

GEORGE L. DOUGHTY, p. q.
J. BROOKS MAPP.

And on this same day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Monday, the 26th day of February, in the year of our Lord, Nineteen Hundred and Forty.

Wrendo M. Godwin, Receiver for Peoples Bank of Bloxom, Inc., Bloxom, Va., Pltff.,

against
W. W. Kerns, Deft.

MOTION FOR JUDGMENT.

This day came the parties in their proper persons and by their Attorneys. Whereupon, came a jury, to-wit:
 page 6 } W. H. McKay, Elwood Furniss, Henry W. Derby,
 W. Harry Martin, Geo. B. Hope, Mitchell Ailworth
 and Lester H. Bunting, who were summoned, elected, tried
 and sworn well and truly, to try the issue joined between
 the parties and having partly heard the evidence but there
 not being sufficient time within which to complete the trial
 of this cause were adjourned until tomorrow morning at 10
 o'clock.

And at another day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Tuesday, the
 27th day of February, in the year of our Lord, Nineteen
 Hundred and Forty.

Wrendo M. Godwin, Receiver for Peoples Bank of Bloxom,
 Inc., Bloxom, Va., Pltff.,
against
 W. W. Kerns, Deft.

MOTION FOR JUDGMENT.

This day came again the parties in their proper persons
 and by their attorneys. Thereupon, the Jury, sworn on yes-
 terday for the trial of this cause, appeared according to their
 adjournment and having fully heard the evidence and argu-
 ments of counsel were sent out of Court to consult of their
 verdict, and after sometime returning into Court returned
 the following verdict: "We, the Jury, find for the defend-
 ant." Ordered that this cause be continued until a subse-
 quent day of this term.

And at another day, to-wit:

Virginia:

Circuit Court of the County of Accomack, on Wednesday,
 the 28th day of February, in the year of our Lord, Nineteen
 Hundred and Forty.

page 7 } Wrendo M. Godwin, Receiver for Peoples Bank of
Bloxom, Inc., Bloxom, Va., Pltff.,
against
W. W. Kerns, Deft.

MOTION FOR JUDGMENT.

This day came again the parties by their attorneys. Thereupon, said plaintiff, by his attorneys, moved the Court to set aside the verdict returned by the Jury on yesterday, and to enter final judgment in favor of said plaintiff, or to grant said plaintiff a new trial upon the grounds this day filed in writing, which motion being thereupon fully argued the same is overruled, to which ruling of the Court said plaintiff, by his attorneys, excepted. Therefore, it is considered by the Court that the plaintiff take nothing by his notice but for his false clamor be in mercy, &c., and that the said defendant recover against said plaintiff his costs by him about his defense in this behalf expended. And the said plaintiff, by his attorneys, stating that he thinks himself aggrieved by the entering of the judgment aforesaid and is desirous of applying to the Supreme Court of Appeals of this State for a writ of error and *supersedeas* to the said judgment, it is ordered that the execution of the said judgment be suspended for a period of sixty days from the rising of this Court for such purpose, provided that the said plaintiff, or someone for him, shall enter into bond before this Court, or the Clerk thereof in his office, in the penalty of Two Hundred and Fifty Dollars (\$250.00), with surety deemed sufficient by this Court, or its Clerk, made payable to the Commonwealth of Virginia, and conditioned according to law.

page 8 } Virginia:

In the Circuit Court for the County of Accomack.

Wrendo M. Godwin, Receiver of Peoples Bank of Bloxom,
Inc., Plaintiff,

v.

W. W. Kerns, M. D., Defendant.

RECORD.

Stenographic report of the testimony and other incidents of the trial of the above-entitled cause before Honorable John E. Nottingham, and Jury, which trial began in the Circuit

Wrendo M. Godwin.

Court of Accomack County, Virginia, on February 26, 1940, and ended on February 27, 1940.

Present: Messrs. J. Brooks Mapp and George L. Doughty, Attorneys for the Plaintiff; and Messrs. Stewart K. Powell and B. T. Gunter, Jr., Attorneys for the Defendant.

Note: There are six other cases now on the docket set for trial involving the same question as in the above-entitled cause; therefore, it is stipulated between counsel for Plaintiff and Defendant that under these circumstances the result of the trial of the above case shall control in all the other cases, it being understood that either side may be entitled to appeal and the ultimate decision in the above case on appeal shall be the controlling decision in the other six cases. It is further stipulated that in the event final judgment is entered by the Circuit Court in favor of the Plaintiff in this case that judgment is likewise to be entered at this term page 9 } of Court against the remaining six defendants, which judgments in the event of an appeal and reversal by the Defendant Kerns and final judgment in favor of Kerns are to be cancelled and marked satisfied by the Plaintiff or his counsel.

WRENDO M. GODWIN,
the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Mapp:

Q. Mr. Godwin, what official connection have you and have you for sometime had with the Peoples Bank of Bloxom?

A. Receiver.

Q. When were you appointed Receiver of said Bank?

A. July 19, 1937.

Q. And by what Court were you appointed?

A. Circuit Court for the County of Accomack, Judge Nottingham.

Q. At the time of or shortly following your appointment as Receiver were all of the Bank's assets turned over to you for collection?

A. Yes.

Q. Included in those assets—I hand you a note dated March 20, 1935, for \$375.00, payable on demand, without interest to the Peoples Bank of Bloxom, Incorporated, Bloxom, Vir-

Wrendo M. Godwin.

ginia, and signed by W. W. Kerns, M. D. Was that one of the assets of said Bank turned over to you for collection?

A. Yes, sir, it was.

Q. Are there any credits of any kind whatsoever page 10 } ever on that?

A. No, sir.

Q. As Receiver did you make demand upon Dr. Kerns to pay that note?

A. I did.

Q. Has Dr. Kerns ever paid all or any part of same?

A. No, sir.

Mr. Mapp: You gentlemen take the witness.

CROSS EXAMINATION.

By Mr. Powell:

Q. Mr. Godwin, Mr. Mapp stated that the date of the note is March 20, 1935. What is the amount of that note?

A. \$375.00.

Q. What are the words following that on the note? Of course it will be introduced.

A. On demand without interest.

Mr. Powell: That is all.

Mr. Mapp: We offer this note in evidence, if your Honor Please, as Plaintiff's Exhibit A, as follows:

“\$375.00

BLOXOM, Va. March 20, 1935.

On Demand Without Interest days after date the undersigned jointly and severally, promise to pay to PEOPLES BANK OF BLOXOM, Inc., BLOXOM, VA., or order, negotiable and payable without offset, at said Bank Three hundred seventy five00/100 Dollars, for value received; having deposited with said bank, as collateral security for the payment of this note, or any note given in extension of renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Bank, due or to become due, whether now existing or hereafter arising the following property, namely:

.....

Wrendo M. Godwin.

of a market value estimated by the undersigned
page 11 } at \$.; and the undersigned promise to
deliver to the said Bank on demand additional col-
laterals as may from time to time be required by the Presi-
dent or Cashier of said Bank, and if such additional col-
laterals be not given when demanded, or be not given in case
of a decline in the market value of such collaterals, with or
without notice that such additional collaterals are required,
then this note, and all other liabilities of the undersigned, or
any of them, to be due and payable without demand of no-
tice, and rebate of interest shall be allowed on payment prior
to maturity. Full power and authority is hereby given to
said Bank, its President or Cashier, to sell and assign and
deliver the whole or any part of said collaterals or any sub-
stitutes therefor, or any additions thereto, or any other prop-
erty of the said undersigned in possession of said Bank, at
public or private sale, at the option of said Bank or its Presi-
dent or Cashier or either of them, on the non-performance
of the above promises or any of them, or at any time there-
after, and without advertising or giving to the undersigned
any notice or making any demand of payment; or if any of
the said collaterals above mentioned, shall consist of what is
usually called commercial paper, the said Bank may at its
option either sell the same as above provided, or may in-
stead of selling the same collect it with or without suit, or
make such compromise, with all or any of the parties thereto,
on account of the same, as it may deem best, and may extend
the time or payment of any such paper, without thereby ex-
tending the time of payment of the indebtedness or liability
of the undersigned. And in the event of a sale, the said
Bank may itself purchase the whole or any part of the prop-
erty sold, free from any right of redemption on the part of
the undersigned, which right is hereby waived and released.
And in case of any sale, or collections from commercial paper,
the said Bank may apply the net proceeds thereof to any one
or more or all of the liabilities of the undersigned to the said
Bank, as it or its President or Cashier shall deem proper,
whether then due or not due, making proper rebate for in-
terest on any liability not then due.

The said Bank is hereby authorized and empowered by the
undersigned upon the non-performance of any of the prom-
ises or agreements herein contained, to appropriate to the
payment and extinguishment of this note or of any other
liability of the undersigned to said Bank, whether now exist-

W. W. Kerns.

ing or hereafter arising, any and all property or moneys of the said undersigned in the possession of said Bank, on deposit or otherwise, whether this note or said other liability be then due or not due. If said collaterals or any of them, be exchanged for others, such others shall be held by said Bank on the terms above set forth.

W. W. KERNS, M. D."

Mr. Mapp: It is stipulated between Counsel that Wrendo M. Godwin was duly appointed and duly qualified as Receiver on July 19, 1937.

Mr. Mapp: The Plaintiff rests, if your Honor please.

page 12 } W. W. KERNS,
The Defendant, being first duly sworn, testified
as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Dr. Kerns, you are the defendant in this case?

A. I am.

Q. And you have heard the testimony of Mr. Godwin as to the note that has been offered in evidence?

A. Yes, sir.

Q. You heard what Mr. Godwin had to say about same?

A. Yes, sir.

Q. The note bears date March 20, 1935. Did you have any official connection with the Peoples Bank of Bloxom, at Bloxom, Va., at that time?

A. I was President of the Bank, yes, sir.

Q. At that time?

A. Yes, sir.

Q. How long had you been President?

A. I guess about two years. A year and a half to two years. I went in after Dick Bloxom resigned.

Q. I notice in this note it is for \$375.00, payable on demand without interest.

A. Yes, sir.

Q. Was this note given for any money loaned to you?

A. It wasn't, no, sir.

W. W. Kerns.

Mr. Mapp: We object, if your Honor please.

The Court: Overrule your objection.

page 13 } Mr. Mapp: We except, if your Honor please.

Q. Will you state to the Jury if it wasn't for a loan what was this note for.

Mr. Mapp: We object.

The Court: Overrule your objection.

Mr. Mapp: Exception noted.

A. Well, this note was given,—Could I read this paper to explain what it is for?

The Court: No, sir, you will have to testify. You can refresh your memory, but you can't read a statement.

Q. You can't read that as a statement to the Jury. When did you make this memorandum?

A. The night after we had this meeting.

Q. Are you able to state it contains the truth?

A. Yes, sir, I am.

Mr. Mapp: If your Honor please, we have an authority we would like to show the Court right on this point, if the Jury will retire.

The Court: On what point?

Mr. Mapp: On the question that no evidence is proper that in any way changes the agreement of that note, no parole evidence of any kind.

The Court: All right, I will hear you.

Note: Jury withdrawn to the Jury room and the question was fully argued to the Court.

The Court: I am going to permit the testimony.

Note: The Jury returned to the Court Room and the following testimony taken in their hearing.

page 14 } Q. Dr. Kerns, since I asked you that question
while ago have you refreshed your memory by the
paper you prepared?

A. I looked it over.

W. W. Kerns.

Q. Does it refresh your memory so you can now testify independently of what occurred?

A. I will do the best I can.

Q. I believe this note bears date March 20, 1935. Will you state to the Jury what were the circumstances of the giving of that note by you?

Mr. Mapp: We object, if your Honor please.

The Court: Objection overruled.

Mr. Mapp: We except.

A. In March 1935 after they had thoroughly audited the Bank, that is after we had that trouble with our Cashier, Mr. Gardner who was the Chief Examiner, told the Directors that he would prefer that we merge with some other bank and that they preferred the Metompkin Bank & Trust Company that we merge with, and with that understanding we had a meeting with a committee of the Metompkin Bank & Trust Company and the Peoples Bank and they went over our assets and liabilities and the next day they informed me through Mr. Gardner that they would take us over provided the stockholders lost their stock, which amounted to \$25,000, but two days after that Mr. Gardner came to my office and says "Doctor, the Metompkin Bank & Trust Company has had another meeting and they demand that you directors put up an \$8,000 bond if they take you over." I very promptly told Mr. Gardner that I would not sign an \$8,000 bond, that they could close the Bank. He then said "I don't blame
page 15 } you a bit, but I just had a conference with Mr. Bristow at Cape Charles and he authorized me to come back and have a talk with you. That he was very much provoked with the way the Metompkin Bank & Trust Company treated us and if you directors would put up a note of \$3,500.00 against the bad paper they have—

The Court: Now I am going to strike out all that testimony so far. It has nothing to do with it. Gentlemen of the Jury don't consider any of that testimony about the Metompkin Bank & Trust Company. Now start with the \$3,500.00 note.

Q. Dr. Kerns, who was Mr. Bristow?

A. He was the Chief of the Banking Department at Richmond.

W. W. Kerns.

Q. What was stated about the giving of a note for \$3,500.?

A. After he had this talk with me we had a meeting of the Board of Directors and he stated that if we would give a note of \$3,500.00 that he would see that the Bank continued to run and we would be the only bank in town. Then I cited to him the Horsey Bank. I said "Mr. Gardner, you are not going to treat us like you did the Horsey Bank people. You are not going to get our note and close us up." He said "No, this is a different case entirely. They gave the note to secure their depositors. You have insurance to insure your depositors and this note is given to straighten your assets. In other words, to secure some of the notes that are uncollectible in your Bank, and if you all will give this \$3,500.00 note without interest I will see your bank continues to run and you will be the only bank in this town", and with that understanding we gave our notes of \$375.00 each, which amounted to \$3,500.00.

page 16 } Mr. Mapp: We move to strike out the last answer.

The Court: Motion overruled.

Mr. Mapp: Exception noted.

Q. State, Dr. Kerns, what if anything was said about the amounts realized from the supposed worthless paper of your bank. What became of the amounts collected from the supposed worthless paper?

Mr. Mapp: We object.

The Court: Exception overruled.

Mr. Mapp: Exception.

A. Most of it was collected after the Bank was closed, and I don't know what became of it.

Q. Was there any agreement that the proceeds of the worthless paper collected should be applied to the note?

Mr. Mapp: Objection.

The Court: Sustained.

Q. I will change the question. At the time you had this understanding was it with Mr. Gardner, as representing Mr. Bristow?

A. Yes, sir.

W. W. Kerns.

Q. Did any part of that conversation relate to collections of supposed worthless paper?

Mr. Mapp: We object to that on the grounds it is leading and witness should be asked what was said.

The Court: Sustain your objection.

Q. Now, Dr. Kerns, trying to get at it, state as nearly as you can what was the entire understanding and agreement at that time.

Mr. Mapp: Objection.
page 17 } The Court: Overruled.

A. The understanding was if we gave this note of \$3,500.00 that these notes that were supposedly uncollectible should be credited to this \$3,500.00 we gave. That was the understanding of the directors.

Mr. Mapp: Motion to strike out answer.

The Court: Overruled..

Mr. Mapp: Exception.

Q. Who was present at the time?

A. I think nearly all of the directors were present. Mr. Lee Byrd, Elmer W. Somers, Frank White, Roland Somers and Charlie Mears I think was present, and Mr. Sam Marshall and Mr. Sam Mears.

Q. Where did this meeting take place?

A. In the Bank building in the Directors room.

Q. Do I understand all these directors other than yourself were present?

A. Yes, sir.

Q. Did they sign the same or similar notes?

A. Some signed for \$350.00, and some for \$375.00.

Q. I realize there was a difference of \$25.00 in two notes.

Mr. Powell: Take the witness.

CROSS EXAMINATION.

By Mr. Mapp:

Q. Doctor, you were President of the Bank at the time, were you not?

W. W. Kerns.

A. Supposed to be, yes, sir.

Q. I understood you to tell Mr. Powell that the page 18 } Bank Examiner, Mr. Burke, referred to some worthless paper in the Bank. Is that correct?

A. Yes, sir.

Q. Did he also call attention to a depreciation in other assets of the Bank, the value at which you were carrying your real estate and other assets?

A. He didn't say anything about it.

Q. Your Bank had been examined a short time prior to that?

A. Yes, sir.

Q. Did you as president of the Bank receive a report of the examination of February 8, 1935?

A. I don't remember it.

Q. The Banking Department sent you copies of all Bank examinations, didn't it?

A. I don't remember. They might have sent them to the Bank, but not to me personally.

Q. Did you have a copy of that examination before you?

A. I never saw it.

Q. How many years were you president?

A. Two years.

Q. When did you go in as president, Doctor?

A. I went in in 1935. That would have been 1934.

Q. In order to refresh your memory, didn't you shortly after the examination get a copy of the report showing the condition of the Bank?

A. I think they did.

Q. Did you go over that with your directors?
page 19 } A. I have forgotten whether we did or not.

Q. Coming to this meeting of March 20th, I believe it was, 1935, I am going to read you this and ask you if this is or isn't the minutes that were passed at that meeting at which these notes were given: "Minutes of Meeting of the Board of Directors of Peoples Bank of Bloxom, Inc., held March 20, 1935, present: Elmer W. Somers, T. L. Byrd, S. W. Marshall, S. G. Mears, N. C. Davis, R. L. Somers, C. L. Mears, L. T. Mears, D. F. White, L. B. Groton, and W. W. Kerns. Motion made and passed unanimously that the proposition of merger made by the Metompkin Bank & Trust Company be rejected. Bunting & Littleton note for \$2,000.00 must be called or adequately secured at once. End of A. L. Bunting will be satisfactory.

W. W. Kerns.

Mr. N. J. Godwin was unanimously elected cashier of the Peoples Bank of Bloxom, Inc., to serve at the pleasure of the Board of Directors of said bank, at a monthly salary of \$60.00 per month. A finance Committee was duly appointed composed of the following members: S. G. Mears, S. W. Marshall, N. C. Davis, W. W. Kerns, and T. L. Byrd. An advisory Committee was duly appointed composed of the following members: R. L. Somers, C. L. Mears, and W. W. Kerns; Said Committee to meet each Tuesday and Friday at 3 P. M.

The resignations of Clyde D. Shrieves, Cashier, and John E. Somers, Asst. Cashier, of said Bank were received in writing and accepted by the Board of Directors.

The following obligations were today executed and delivered to the Bank. \$300.00 assignment saving account of L. T. Mears. \$375.00 note of E. W. Somers; \$375.00 note of W. W. Kerns; \$350.00 note of S. G. Mears; page 20 } \$350.00 note of Norman C. Davis; \$350.00 note of S. W. Marshall; \$350.00 note of T. Lee Byrd; \$350.00 note of C. L. Mears; \$350.00 note of D. Frank White; \$350.00 note of R. L. Somers.

The above notes are all dated March 20, 1935, payable on demand without interest.

The above notes and assignment of savings account aggregate \$3,500.00, and are to be used to create a reserve for contingencies in order to relieve against a threatened impairment of the capital of this bank as shown by the examiner's report of February 8, 1935, a copy of which is in the files of the bank." And so on. Is that or not a correct statement of the meeting, or of the minutes entered at that meeting?

A. I couldn't tell you to save my life.

Q. You were present?

A. Yes, sir.

Q. You were President of the Board?

A. Yes, sir. Did I sign that?

Q. No, sir. Are you able to say there is one thing stated in those minutes that did not occur?

Mr. Powell: Who signed that?

Mr. Mapp: No one. We will identify the minutes for you.

Mr. Powell: Without desiring to split hairs, the proper way to have done that would have been to have proven the minutes of that bank. That hasn't been done. With much determination we object to the introduction of a minute rec-

W. W. Kerns.

ord not signed by anybody at all. That may or may not be the minute book of the Peoples Bank of Bloxom, page 21 } but the evidence thus far doesn't show that. Therefore, we ask the Court to strike out the question and answer in reply to that until such time as these minutes have been properly authenticated. They haven't even been offered to us to look at.

The Court: Suppose you let them look at them and if they are not properly authenticated we will strike that evidence out.

Mr. Mapp: We will offer them as cross examination.

Mr. Powell: By asking the President of the Bank are they true: Is there a single statement in those minutes that isn't true, and they haven't been introduced.

The Court: I am going to allow the question with the understanding that if they aren't shown to be the minutes I will strike the question out.

Q. Doctor Kerns, can you tell the Court and Jury that there is one thing in the paper I read to you that isn't correct?

A. No, sir.

Q. You can't contradict anything?

A. The only thing is the terms under which the notes were given.

Q. Is there anything stated in here that you can tell the Court or Jury that does not correctly state what happened that day?

A. Except the terms the note were given. They weren't given to straighten our capital stock but the bad notes.

Q. That part of it you say is wrong?

A. Yes, sir.

page 22 } Q. After meetings of your Bank you are accustomed to read the minutes?

A. Sometimes I do or do not. Very seldom read them after a meeting, but at the next meeting I have them read.

Q. How many meetings did you have after this March 20, 1935 meeting?

A. I couldn't tell you.

Q. Can you tell the Court and Jury that at the very next meeting these minutes weren't read to your Board?

A. I couldn't say.

Q. If they were read was any objection made to them by you or any other member of the Board?

W. W. Kerns.

A. I couldn't tell you.

Q. Doctor, I am going to ask you to state what was said by you or any member of your Board in your presence to Mr. Burke or any of the Bank Examiners at this meeting, the very meeting you gentlemen gave those notes. Just state what was said.

Mr. Powell: By whom?

Q. By any member of the Board of Directors or Mr. Burke or Mr. Gardner.

Mr. Powell: You expect Doctor Kerns to remember everything that was said by everybody?

Mr. Mapp: No I don't, but I have asked him several things and I am asking him on cross examination to state anything that was said about these notes.

A. I can't remember what the other directors page 23 } said, except I remember that one or two of them asked the personal question if the money was collected on these bad notes could that be applied to these notes we gave, which Mr. Gardner told them it could and that was the understanding that we gave the notes.

Q. I understood you to tell Mr. Powell on direct examination that this note is given to strengthen your assets, that Mr. Burke made that statement to you.

A. Yes, sir.

Q. I understood you to tell him further Mr. Burke said if \$3,500.00 in notes was given your bank would go on operating and you would be the only bank in town.

The Court: Did he say Mr. Burke or Mr. Gardner?

A. Mr. Gardner.

Q. Doctor, the list of directors as named as having been present were all present at that time, were they not?

A. I think they were, yes, sir.

Q. As a matter of fact, you have spoken about the question of some of your bad paper. Didn't the examination of February 8, 1935 show a very large depreciation in some of your assets in addition to your paper?

A. It might have. I don't know.

Q. What was your surplus at that time?

A. I don't know.

W. W. Kerns.

Q. It was approximately \$15,000, wasn't it?

A. I couldn't tell you.

Q. Didn't your slow and doubtful paper and the depreciation in your assets at that time more than wipe out all of your surplus?

page 24 } A. I couldn't tell you now.

Q. As a matter of fact wasn't there only about \$6,000 or \$7,000 doubtful paper in your bank at that time? Wasn't your biggest loss depreciation in your assets?

A. No, sir, our biggest loss was in our bad notes.

Q. This paper states a copy of that examination of February 8, 1935 was in the Bank?

A. Yes.

Q. Do you know whether it was there or not?

A. I don't know. I judge it was.

Q. Didn't Mr. Burke or Mr. Gardner go over that report with your Board?

A. I think he did.

Q. Before these notes were signed?

A. That was sometime before the paper was signed.

Q. You were thoroughly familiar with the condition of the Bank?

A. Yes, sir.

Q. Did he point out to you when he went over it what the trouble was?

A. Well, I think he pointed out several troubles we had.

Q. Having pointed out several can you understand why it was he should have taken a note where a bank has several troubles to take a note to remedy one of them?

A. Because we would only give them on the condition that should be credited on the notes.

Q. If your bank was in bad shape anything else
page 25 } would close the bank up.

A. All of us were agreeable for the Metompkin Bank & Trust to take it over or close it. I asked him to close it and he insisted we open under these conditions.

Q. Being willing to do that you gave this note?

A. I certainly did.

Q. All of them gave them?

A. All of them gave them separately. We wouldn't give them jointly. I very much would have preferred us closing up or merging with another bank, but he didn't want it done.

Q. Doctor, in the event not a sufficient amount was collected from what you refer to as worthless paper to take care

W. W. Kerns.

of these notes were you gentlemen to pay the balance due on the notes?

A. We expected to.

Q. That was your agreement, wasn't it?

A. That was our agreement.

Q. That unless you could collect enough worthless paper the balance due was to be collected on these notes?

A. Absolutely.

Q. Doctor, the Bank examiners, either Mr. Burke or Mr. Gardner, made it perfectly plain to you that whatever wasn't collected on this doubtful or slow paper you would have to pay?

A. That is right.

Q. I will ask you if that letter is in your handwriting? If you wrote that letter, please sir?

A. Are you going to read this before the Jury?

Q. Did you write that letter?

page 26 } A. Yes, sir. Are you going to read it before the Jury?

Q. Yes, sir.

Mr. Mapp: Your Honor, we offer this letter in evidence as Plaintiff's Exhibit B, as follows:

DR. W. W. KERNS

Bloxom, Virginia.

Sept. 19th, 1936.

Mr. M. E. Bristow,
Richmond, Virginia.

My dear Mr. Bristow:

Your letter of criticism of our Bank duly received. I note that you said the notes amounting to \$3,500.00 must be paid at once. Now Mr. Bristow when these notes were given without interest we were assured by your representative Mr. Gardner that we would never have these notes to pay. We were also assured that if we would do this and get our bank started there would be only one bank in this town. You know as well as I do how the other bank treated us. I have always been anxious to connect with the Parksley Nat. Bank. But none of our stockholders will agree to go over to the Metompkin Bank & Trust Co. As you know the same people run that as did

W. W. Kerns.

the Accomack Banking Company and if any Bank in the U. S. has failed and treated their depositors any worse than the Accomack Banking Company I have failed to see it. We have been trying our best to collect some of this over due paper. I believe at least 80% of it can be collected if we can only have a couple of good years. This last storm has hit us hard. Hundreds of acres of beans and snaps have been destroyed, corn laying flat on the ground, fruit, tomatoes all blown off.

The only thing I can see for you to do is to close page 27 } us up. Of course you have the power to do this.

We are trying to do the best we can. Your last letter sure did hurt. I shall have a meeting of directors in a few days and present your letter to them.

Yours truly,

W. W. KERNS."

Q. I understood you to say, Doctor, that the Bank Examiners did tell you whatever wasn't collected on the worthless paper you would have to pay. In this letter you state to Mr. Bristow "We were advised by your representative Mr. Gardner that we would never have these notes to pay". Did Mr. Gardner tell you you would never have to pay them?

A. Yes, because he thought we could collect enough money out of those notes to pay them.

Q. But in your letter to Mr. Bristow, who is Chief Bank Examiner, you didn't make any mention of that.

A. No, sir.

Q. You say the principal trouble at that time, the only thing you all considered in giving the notes was the loss in bad paper. Is that correct?

A. Yes.

Q. At that time on February 8, 1935, the time of that examination, isn't it a fact you were carrying on your bank building and lot at \$10,537.50?

A. That is what you say, yes, sir.

Q. I am asking you.

A. I don't know, sir, what we were carrying it at.

Q. Isn't it a fact you were carrying your furniture and fixtures at \$2,419.44?

A. I guess we were.

Q. Were you not carrying your other real estate at \$6,860.94?

W. W. Kerns.

A. I don't know, sir.

Q. Were you carrying your other securities at \$500.00?

A. I don't know.

Q. Your loans and discounts \$58,133.51?

A. I don't know.

Q. According to the Bank report of February 8, 1935, which I am reading from which will be introduced in evidence, shows that in estimating your losses at the time the notes were given that the estimated loss in loans and discounts was \$6,758.86; That your overdrafts \$628.38; a protest fee of \$1.00; that your bank lot and buildings was estimated loss on that of \$4,537.50; estimated loss on furniture \$1,119.44; on your other real estate of \$860.94; on your cash items of \$290.84; by way of shortage \$698.34; an accumulated dividend of Preferred stock R. F. C. \$300.00 and operating deficit of \$395.67, making a total estimated loss \$15,590.97. Is that correct or not?

A. I couldn't tell you.

Q. Have you any reason to think that isn't correct?

A. I don't know.

Mr. Powell: I don't think that is fair questioning of Dr. Kerns. In the first place he doesn't know what book you are reading from.

Mr. Doughty: He told him he was reading from page 29 } the Bank Examiners report.

Note: Question read back to witness.

A. I don't know.

Q. Doctor, is it or not a fact that continuously from the time these notes were given up until the appointment of a Receiver in July, 1937, that the Bank was insolvent?

A. I shouldn't say it was.

Q. I will ask you to name any period between the giving of these notes and the closing of the Bank that it wasn't insolvent.

A. If it had been closed up it might have been insolvent, but we thought we were getting along better than we ever had.

Q. Did you as President and the Directors at any time think that the Bank was solvent?

A. We thought so.

Q. Why didn't you demand of the Corporation Commission Banking Department that these notes be returned to you?

W. W. Kerns.

A. Because we hadn't collected enough out of the notes that were not collectible to have them returned.

Q. But if the Bank was solvent it didn't need these notes there.

A. No, I judge not, still they were put there and I didn't think they could be collected until we collected the money they were put there for.

Q. Doctor, do you recall what the banking house and lot that was carried on the report I read to you at that time at \$10,537.50, do you recall what that brought when Mr. Godwin as Receiver sold it?

A. I think it brought twenty some hundred dollar page 30 } lars.

Q. And that was sold at public auction under the Court's order?

A. Yes, sir.

Q. Do you recall what the furniture and fixtures brought,

A. No, I wasn't there.

Q. Do you recall what the real estate brought?

A. No, sir.

Q. Now you were Bank President several years and you know it to be a fact, do you not, that the notes in the Bank the Banking Department classed in four general classes, good, slow, doubtful and paper that is worthless. You knew that to be a fact, didn't you?

A. I don't know exactly what kind of paper they had.

Q. The question is you knew that to be a fact that the Banking Department when they made examination of a Bank divided your notes up as good, others good and slow, others doubtful and others worthless.

A. I thought good and bad, either good or not good.

Q. Didn't all of the reports they sent to your Bank show the different qualifications, whether good, slow, doubtful or worthless?

A. I guess they do.

Q. And you read those reports?

A. Yes, sir, some. I was no banker and didn't know anything about the banking business. I was a fool for ever going into it.

Q. I understand that. Not criticising you at all. And you had read those papers before that. You knew how page 31 } they divided them up?

A. No, I didn't know that.

Q. I have understood you to testify that it was your understanding with the Bank Examiner, Mr. Gardner, at the time

W. W. Kerns.

these notes were given that you and the other directors were to get credit on any worthless paper that was collected?

A. Yes, sir.

Q. And the only paper,—they told you at that time that there was a lot of worthless paper in there?

A. Yes, sir.

Q. And the money that was collected on that paper that they talked to you about you were to get credit for?

A. That was our security.

Q. And you were to get no credit from anything except what they considered at that time worthless?

A. Uncollectible, yes.

Q. Now, Doctor, in your Grounds of Defense you state that you are entitled to certain credits because among this worthless paper was a bond of W. H. Hickman, Sr., a bond of Preston Northam and wife, a bond of H. J. Byrd, a bond executed by Z. S. Mears and one or more notes of Clyde Shrieves and Upshur Shrieves, his father. They are the ones you state are worthless.

A. And W. L. Bloxom.

Q. You signed that paper didn't you, that is your signature, isn't it?

A. Yes, sir.

Q. I will read this to you: "That included in said alleged worthless paper was a bond of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, secured by a deed of page 32 } trust on real estate; a bond or note of Preston Northam and wife; one bond or note executed by H. J. Byrd; one bond executed by Z. S. Mears; and one or more notes of Clyde Shrieves, former cashier of the Bank, and Upshur Shrieves, his father, for several amounts". That is a list of them. That is what you signed at that time when you were preparing your defense and giving information to your lawyer?

A. Yes, sir.

Q. If it turns out that not a single one of the pieces of paper referred to by you there were at that time listed or considered by the Banking Department as worthless you are entitled to no credit at all.

A. That depends whether any other notes were considered worthless at the time. I don't know what notes were considered worthless because I can't keep them in my mind.

Q. The Bank Examiners come and tell you you have worthless paper and tell you what paper that is?

A. Yes.

W. W. Kerns.

Q. And anything collected on that worthless paper you get credit for?

A. Yes.

Q. Anything collected on paper you thought was good you got no credit for?

A. That is right.

Q. So you were only entitled to credit on paper that at that time was considered worthless?

A. Yes, sir.

Q. If it turns out that none of that paper was page 33 } considered worthless at that time by the Banking Department you are not entitled to any credit?

A. It depends whether any of the paper besides that was considered worthless or not. I don't think that is all that was considered worthless.

Q. In your Grounds of Defense you claim there has been collected on these papers,—now if none of them were considered worthless at that time you are entitled to no credit are you?

A. I don't know, sir. I don't know what you are trying to get at.

Q. I am trying to get at this: That if the Bank didn't consider this paper you have here worthless, not a piece of it, and if the report they had there before you at that time shows not a piece of that paper was considered worthless, you are entitled to no credit because it wasn't worthless.

A. I consider that paper was worthless.

Q. You considered a lot of paper good they considered bad.

A. And some they considered bad I thought good.

Q. And they told you you had to make good this worthless paper?

A. Paper they considered uncollectible at that time.

Q. All you had to make good was paper they considered could not be collected.

A. It might have happened afterwards that the paper could be collected.

Q. But what you were making good was paper they considered on March 20, 1935, could not be collected?

A. As doubtful paper.

page 34 } Q. Now you add doubtful to the word worthless?

A. Yes.

Q. If it turns out that the only paper referred to in here listed by you with your name signed to it that the bank at

W. W. Kerns.

that time considered either doubtful or worthless was one \$125.00 note all the credit you are entitled to is \$125.00?

A. I have no idea how much has been collected.

Q. I am not asking you what they collected. I am asking you if it wasn't considered worthless or doubtful at that time you are not entitled to any credit on it, are you?

A. If it was doubtful or worthless I am entitled to credit on anything they collected.

Q. That is what I am asking you. Unless it was doubtful or worthless at that time. That is all Doctor.

RE-DIRECT EXAMINATION.

By Mr. Powell:

Q. Doctor, the Grounds of Defense which you signed states "That included in said alleged worthless paper was a bond of Hickman and wife, Northam and wife and others. You didn't intend did you to enumerate in your Grounds of Defense every bond that was included—

Mr. Mapp: We object to what he intended to do.

The Court: I think he can explain his language. Objection overruled.

Mr. Mapp: We except.

A. No, sir, I didn't intend to include all of the bonds that were supposed to be worthless or uncollectible.
page 35 } Q. These that are named here you did know
were among the bonds that were considered at that time by Mr. Gardner as either doubtful or worthless?

A. Yes, sir.

Q. These that you have named here?

A. That is what I understood, yes, sir.

Q. That is what you intended in your Grounds of Defense, isn't it?

A. Yes, sir.

Q. You are not prepared to draw legal papers and have them just to answer the criticism of an experienced lawyer like Mr. Mapp?

A. Certainly not.

Q. You put in here to the best of your knowledge what should have been included as paper out of which you expected the Bank to make enough collections to relieve you in whole or in part?

A. Yes, sir.

W. W. Kerns.

Q. Can you tell the Jury about what part of this paper has been collected by the Bank, or the proceeds of which was paid to the Bank? I don't know whether you know that or not. Do you?

A. No, sir, I do not. Only by hearsay. I understand—

Mr. Mapp: We object to hearsay.

Q. Doctor, they will be bristling with objections. You just answer my question. You didn't keep the books?

A. No, sir.

Q. You didn't make collections?

A. No, sir.

Q. So can you tell the Jury that any part of it has been collected?

page 36 } A. I understand that—

Mr. Mapp: We object to your understanding.

A. The only thing I can say is what I have been told by Mr. Godwin and others that collected the money.

Mr. Mapp: We object to that.

Q. Who was Mr. Godwin, what was his position?

A. He had charge of the Bank. He was appointed Receiver of the Bank.

Q. Did the man who made a payment to Mr. Godwin make payment to the right party?

A. Yes, sir, because he was Receiver of the Bank.

Q. Now then can you tell the Jury what amounts or names Mr. Godwin has told you. He is the man that is suing you?

A. Yes, sir.

Q. What amounts had been paid by anybody?

A. A certain amount by the Hickman estate, I think \$2,000; the W. L. Bloxom estate there has been \$700.00 collected on it; the Harold Byrd I think was some fifty odd dollars collected from him; and one or two others that I have forgotten. There is a copy of the amount that has been collected. Altogether I think about \$3,600.00 has been collected on that doubtful paper.

Q. Now did Mr. Wrendo Godwin tell you that, give you that information?

A. He told me about Mr. Hickman because he said that was a certain amount of money got in the bank that was placed

W. W. Kerns.

to that credit and placed to the account of Mr. Hickman or Elmer Somers' account.

page 37 } Q. Do you have a list of these notes that were supposed to be applicable to this \$3,500.00?

A. No, sir, I do not.

Q. You haven't that information yourself?

A. No, sir.

Q. That is all of them?

A. No, sir, I haven't all of them. I think there is some of them that has got it but I haven't got it.

Q. That information may be with somebody else, but not with you?

A. No, sir.

Q. I should ask you this. Doctor, did you have anything to do whatever with the collection of any of this paper, the proceeds of which were to be applied to these notes?

A. I did not, no, sir.

Q. When the bank closed all transactions so far as you were concerned were taken over by Mr. Godwin?

A. Yes, sir.

Q. Now do you know whether any collections were made between March, 1935, and the time of the closing of the bank on this paper that we have been talking about?

A. I think there was maybe a hundred and some dollars. I have forgotten now who it was really from, but I think it was a little collected between that time. I couldn't tell you how much or who paid it.

Q. Let me ask you this question. Were these several gentlemen in the several suits, were all of the directors present at the time of this meeting so far as you know?

page 38 } A. Yes, sir, every one of them were present at this meeting.

Mr. Powell: That is all.

RE-CROSS EXAMINATION.

By Mr. Mapp:

Q. Doctor, in this paper that is referred to by Mr. Powell you state in here that included in said alleged worthless paper was a bond of W. H. Hickman and wife?

A. Yes, sir.

Q. If it develops that the bond of W. H. Hickman was at that time considered by the Banking Department to be neither

T. Lee Byrd.

worthless nor doubtful and if they show that you are not entitled to any amount collected on it, are you?

A. I don't know, sir, because I don't know whether it is considered that way or not.

Q. If they considered it and told you at the time that that was part of the worthless paper you were making good and if you simply got wrong in your paper you are not entitled to any credit, are you?

A. I don't think I am wrong in my paper.

Q. But if you are wrong you are entitled to no credit?

A. I don't think if we were entirely wrong.

Q. And the same applies to each paper you have mentioned there?

A. I judge it is.

Q. Who prepared this paper for you?

A. I couldn't tell you.

Q. Didn't one of your lawyers prepare it?

page 39 } Mr. Powell: I think the firm of Gunter & Gunter prepared it.

T. LEE BYRD,

a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Byrd, where do you live, and have lived for several years?

A. Mears, Accomack County, Virginia.

Q. What connection did you have with the Peoples Bank of Bloxom in March, 1935?

A. I was director, one of them.

Q. How long had you been a director?

A. I think ever since the bank organized.

Q. Continued to be until it closed?

A. Yes.

Q. Have you been in the Court Room this morning and heard the testimony of Dr. Kerns?

A. Yes, sir.

Q. Is there pending against you, Mr. Byrd, a suit like this one pending against Dr. Kerns?

T. Lee Byrd.

A. Yes, sir.

Q. And several other directors at that time?

A. Yes, sir.

Q. I will ask you to tell what position you hold in the County of Accomack at this time.

page 40 } A. County Treasurer.

Q. Do you recall the meeting held at the Banking House of the Peoples Bank of Bloxom on or about March 20, 1935, when several notes now sued on were made?

A. Yes, sir.

Q. Were you present at that meeting?

A. Yes, sir.

Q. Can you tell the Jury what other gentlemen were present at that time, or as many as you can recall?

A. Norman Davis, Elmer Somers, Frank White, Sam Marshall, Sam Mears, Charlie Mears, Tom Mears. I don't know, probably may have been others. Dr. Kerns was there.

Q. Those you can recall?

A. Yes, sir.

Q. Did you make at that time a note that you have been sued on here?

A. Yes, sir.

Q. Do you recall the amount of it?

A. \$350.00.

Q. Will you tell the Jury the circumstances under which you made and delivered that note?

A. Yes, sir.

Mr. Mapp: We object to this question.

The Court: Overrule your objection.

Mr. Mapp: We note an exception.

Q. Mr. Byrd, Dr. Kerns' note carried no interest. Did your note carry interest?

page 41 } A. No, sir.

Q. Now you can state to the Jury the circumstances.

A. Gentlemen, on this particular morning the President asked for the Board of Directors to meet at the Bank, and the Bank had been in a little trouble on account of the Cashier. These auditors had been through the Bank from bottom to top. My understanding was that morning Mr. Gardner said to make the bank solvent we had to put up obligations of \$3,500.00. He said that, I think, I know that I asked him because we were all hesitant in signing the note and I asked

T. Lee Byrd.

him for what purpose we had to put it up and he says we have been over your notes and all that is good we put over here and all the bad notes we consider worthless or doubtful we put over here. And he says the Banking law is you have to have a certain per cent of assets to offset what deposits you have and to do that, to make what we considered good assets we will have to have \$3,500.00 put up. And like I say, we were hesitatnt and I asked Mr. Gardner, I said Mr. Gardner we are only putting this obligation up against this worthless or doubtful paper. He says yes. I said how about if any of this worthless or doubtful paper is collected do we get the benefit of it or credit and he said positively. He said when that amount is collected you will get your papers back. That was before we signed any papers and that was the understanding we had in signing, because under no conditions would I sign any paper any other way.

Q. And was that the understanding shared by all there?

A. Yes, sir.

Mr. Mapp: We move to strike out both of the above answers.

page 42 } The Court: Overrule your objection.

Mr. Mapp: Exception noted.

Q. Mr. Byrd, did you have any knowledge that day of what was included in this paper put not in the good collateral but in the other collateral? Did you know part of what it was?

Mr. Mapp: Same objection.

The Court: Overruled.

Mr. Mapp: Exception.

A. Yes, sir. I know they said they had a \$5,000 Hickman note. I didn't see the note; and all of W. L. Bloxom's paper, all the maker and all he endorsed they put one side. They said they consdered that doubtful or worthless; and a Harold L. Byrd note; and I remember Walter Northam's note I think it was, and others I don't recall because I didn't look at any of them.

Mr. Mapp: Motion to strike out answer.

The Court: Overruled.

Mr. Mapp: Exception.

T. Lee Byrd.

Q. They were called out that day and then you remember them?

A. Yes. We said that day we didn't think those papers were worthless. We thought we could collect something and that is the reason we signed those papers. If I hadn't thought we could have collected some of what they considered worthless under no circumstances would I have signed it.

Q. You couldn't have expected any collection from ultimately worthless paper.

A. That is what they considered it, but we didn't page 43 } consider it.

Q. You were willing to take the risk?

A. Yes, sir.

Q. Do you remember who called off the list of the doubtful or then uncollectible paper?

A. No, sir, I do not.

Q. Who was present as the representative of the Bank from the Banking Department?

A. I know Mr. Gardner and I think Mr. Burke and another gentleman.

Q. From that time on did you have anything to do with such collections as were made out of this doubtful paper?

A. No, sir.

Q. Was it brought to your knowledge in any way what had been collected?

A. Yes, sir, I had made inquiries at different times.

Q. I am going to ask you. From whom did you get this information, any bank official?

A. No, sir.

Q. You didn't talk with Mr. Wrendo Godwin, the Receiver?

A. No, sir.

Q. Nor with anybody else who had the authority to make collections?

A. No, sir.

Mr. Powell: Take the witness.

CROSS EXAMINATION.

By Mr. Doughty:

Q. Mr. Byrd, this meeting was held March 20, page 44 } 1935. The notes show that date.

A. That is the date if the notes were dated that day.

T. Lee Byrd.

Q. They are dated that day. Was Mr. Elmer W. Somers present at that meeting?

A. I think so. I wouldn't say for sure whether he was or not.

Q. S. W. Marshall?

A. Yes, sir.

Q. S. G. Mears?

A. Yes.

Q. N. C. Davis?

A. Yes.

Q. R. L. Somers?

A. Yes.

Q. C. L. Mears?

A. Yes.

Q. L. T. Mears?

A. Yes.

Q. D. Frank White?

A. Yes.

Q. L. B. Groton?

A. I think he was.

Q. W. W. Kerns?

A. Yes.

Q. Can you recall whether the question of the merger of the Metompink Bank & Trust Company came up that day or not?

Mr. Powell: Your Honor ruled that out.

page 45 } The Court: We are only interested in what effects this case.

Mr. Doughty: The question is coming up as to these particular papers that were found in the minutes of the Bank and as to whether they were the minutes of what went on at that meeting, and I am trying to find out if certain things went on which are in here. I just want to show by these men what went on. If they are the minutes we want to introduce them. I want to know if he can recall anything else that went on in that meeting.

Mr. Powell: My reply to that is that the Court ruled, and I think justly and fully, that what led up to the giving of these notes in the way of merging or not merging had nothing to do with the case and we have not mentioend it since. I don't mean to tell these gentlemen how to develop their case, but after the minutes are proven if they want to make Mr. Byrd their witness that is all right.

T. Lee Byrd.

The Court: I will permit him to answer the question only for the purpose of testing his veracity and recollection.

Mr. Doughty: We will make him our witness for this.

Note: Question read back to witness.

A. At that time we met in the Directors Room and really I don't remember it was, but I know it was brought up by some of the directors before we were in the conference.

Q. Was it rejected that day?

Mr. Powell: The Court hasn't ruled on that.
page 46 } You have asked the question to test his recollection.

The Court: I will sustain your objection as to the other.

Mr. Doughty: We note an exception.

Q. Was the question of a note of Bunting & Littleton for \$2,000 called in question that day?

A. I don't remember it. It had been called the time before that.

Q. You can't say whether it was or wasn't?

A. I don't think it was. I don't remember it. I know it was in a meeting previous to that, but really that day all we talked about was giving these notes.

Q. Was Mr. N. J. Godwin elected Cashier that day?

A. I think he was.

Q. And at the salary of \$60.00 per month?

A. I think so, yes, sir.

Q. Was there a finance committee appointed that day?

A. I don't remember that either.

Q. Would you say it was or wasn't composed of S. G. Mears, S. W. Marshall, N. C. Davis, W. W. Kerns and T. L. Byrd.

A. I don't remember.

Q. Did such a Committee operate after that?

A. I operated once on a finance committee.

Q. After that meeting?

A. I wouldn't say.

Q. Was an advisory committee appointed composed of R. L. Somers, C. L. Mears and W. W. Kerns?

A. I don't remember.

page 47 } Q. Would you say it was or was not?

A. I wouldn't say positive, but I don't remember of them being elected or appointed that day.

T. Lee Byrd.

Q. Was the resignation of Clyde Shrieves as Cashier and John E. Somers, Assistant Cashier, received in writing and accepted by the Board that day?

A. I don't remember that.

Q. Would you say it was or wasn't?

A. I wouldn't say.

Q. Was a resolution passed that Norman J. Godwin be the authorized person to sign drafts, certified checks, certificates of deposit, cashier's checks, etc., necessary to the operation of the bank?

A. I don't remember that.

Q. Would you say it did or did not pass such a resolution?

A. I wouldn't say.

Q. Was there a resolution passed thanking W. R. Gardner, L. R. Ritchie, W. W. Burke and W. F. Baylor for the unselfish interest and patriotic services rendered by them to this bank in assisting the Board of Directors in re-establishing this bank on a firm basis?

A. Don't remember that either.

Q. Was a resolution passed at that meeting to this effect "The above notes"—referring to the notes you gentlemen had given—

A. Read what the notes were for.

Q. I am getting to that. Were the following obligations given that day: \$300.00 assignment savings account L. T. Mears.

A. We all signed those.

page 48 } Q. Take them one by one. Was that taken that day?

A. Yes.

Q. \$375.00 note of Elmer W. Somers given that day?

A. I don't remember.

Q. Was \$375.00 note of W. W. Kerns that day?

A. I think so.

Q. \$375.00 note of S. G. Mears that day?

A. I don't recall.

Q. \$350.00 note of Norman C. Davis given that day?

A. I think so.

Q. Was \$350.00 note of S. W. Marshall given that day?

A. Yes.

Q. Was \$350.00,—you have testified you gave one.

A. Yes, I gave one.

Q. \$350.00 note of C. L. Mears given that day?

A. I think he did.

Q. \$350.00 note of D. Frank White?

T. Lee Byrd.

A. I just don't remember whether Frank gave his note that day or not.

Q. \$350.00 note of R. L. Somers given that day?

A. I think he did.

Q. At that meeting was this a part of the minutes?

The Court: Are you asking him to prove the minutes?

Mr. Doughty: No, sir. Here is a witness who says I can recall definitely as to what notes were to be considered doubtful and worthless—

The Court: No, he didn't say that. He was very page 49 } indefinite.

Mr. Doughty: He said the classification. What I want to know is, and I think it is certainly proper for the Jury to know, that if he can recall one particular item but isn't sure about anything else. He can't say now whether any of this went on, yet he served on a Finance Committee either before or after.

The Court: If there is no objection I am not going to object.

Q. What was agreed on that day, the above notes referring to the notes I have just referred to?

A. You haven't read all of it, have you?

Q. I am coming to that now. Was this agreement that day referring to the notes I have just called off to you: "The above notes and assignment of saving account aggregate \$3,500.00, and are to be used to create a reserve for contingencies in order to relieve against a threatened impairment of the capital of this bank as shown by examiners' report of February 8, 1935, a copy of which is in the files of the bank."

A. No, sir, I didn't give my note under any such condition.

Q. Did you have at the time you gave your note a copy of the Examiners Report of February 8, 1935?

A. If the Bank officials had it I didn't see it.

Q. Did either Mr. Burke or Mr. Gardner read off from a report what the Banking Department considered doubtful and worthless?

A. I don't remember. I remember I asked this question. I remember he told us all the notes he considered page 50 } good and all doubtful or worthless he put in different piles.

Q. Which did he put aside as worthless?

T. Lee Byrd.

A. I told you a few minutes ago the ones I could remember.

Q. Which ones were they?

A. I gave it in evidence. I said the \$5,000 note of W. H. Hickman and I know all the obligations of W. L. Bloxom as maker and endorser too, and also a Harold Byrd note and Walter Northam and others I just don't recall. I remember I asked on what condition they wanted these notes and I can tell that again, but I told it once.

Mr. Powell: Tell it again if you want to.

A. Mr. Gardner said the banking laws was you had to have a certain per cent of good assets to offset what deposits the bank had and to do this somebody had to put up \$3,500.00 obligations and that was after taking these notes out, the ones that they called worthless or doubtful, and I asked Mr. Gardner as we collect these notes will we get credit on notes we are to give. We hadn't signed them, and he said yes, you will get credit and that is what we put these notes up for, against those doubtful notes.

Q. And you put them up for the doubtful and worthless notes?

A. Yes, sir.

Q. Was there any other reason for putting it up?

A. No, sir.

Q. Mr. Byrd, you had been a director of this bank for some-time?

A. That is right.

Q. Had you gone over any report previous to February 8, 1935?

A. No, sir.

page 51 } Q. Had you heard it called off before?

A. Yes, sir.

Q. Did you know that as late as February 8, 1935, that your Bank was carrying the banking building and lot at \$10,-537.50?

A. I don't remember. If the records say that it is so.

Q. Did you consider it worth that at the time?

A. I don't know.

Q. You are a director, Mr. Byrd, and a business man. Your Board was carrying this banking house at \$10,537.50.

A. Possibly the Board thought it was worth it.

Q. Did you think so?

A. I don't know whether I do or not.

T. Lee Byrd.

Q. Was that house in your opinion worth \$10,537 on February 8, 1935?

A. If this Bank was going to continue business I think it was.

Q. What did it finally bring?

A. That was after foreclosure of the bank. I don't know.

Q. Was anything discussed by Gardner and Burke as to that value?

A. I don't know whether it was or not.

Q. Did you know your books were carrying the value of the fixtures at about \$2,300?

A. Again I don't know.

Q. Was that question discussed with your directors?

A. It may have been.

Q. Do you know what your surplus was at that time?

A. No, sir, I don't know.

page 52 } Q. Can you say as to whether at the next meeting after you gave these notes a report was gone over with the directors by any one, a report from the Banking Commission's office?

A. I don't remember.

Q. Was any gone over any time after that?

A. I don't remember.

Q. Weren't you interested?

A. Yes, I was very much interested, but I had other business and I just don't remember. Possibly they did, but I don't remember.

Q. Was there any note that was classified by Messrs. Burke and Gardner as doubtful or worthless collected by your bank from March 20, 1935, until it closed in July, 1937?

A. I heard it was.

Q. I don't mean after Mr. Godwin took it.

A. I heard it was. My understanding it was, but I don't know what note it was or how much.

Q. But you were right there attending every meeting?

A. I attended most of them, yes.

Q. There would be a list read over to you as to what was done?

A. It could have been read and I have forgotten.

Q. But still you can't tell this Jury whether any single note classified as doubtful or worthless on March, 1935, was collected?

A. I think it was.

Q. Which one?

A. The Harold Byrd note, I think.

R. L. Somers.

- page 53 } Q. Was that the only one?
A. I think it was more, but I don't remember.
Q. But you knew they had your bond for \$350.00
and that was security to that?
A. That is right.
Q. And you never had enough interest in it to know what
was collected?
A. I am telling you what I recollect.

Mr. Doughty: I have no further questions.

R. L. SOMERS,

a witness on behalf of the Deefndant, being first duly sworn,
testified as follows:

- Q. Mr. Somers, what connection, if any, did you have with
the Peoples Bank of Bloxom before it closed?
A. Director.
Q. How long were you a director?
A. Ten years, I guess.
Q. Were you a director in March, 1935?
A. Yes, sir.
Q. You have heard the evidence in this case, have you not?
A. Most of it, yes, sir.
Q. Did you sign a note similar to that signed by Dr. Kerns
in March, 1935?
A. Yes, sir.
Q. And is there a suit pending against you on that?
A. Yes, sir.
Q. State why you signed that note.

- page 54 } Mr. Mapp: Question objected to.
The Court: Overruled.
Mr. Mapp: Exception noted.

A. We had a meeting and—

The Court: Mr. Gunter, I would change that question. I
would ask him what the circumstances were; under what cir-
cumstances it was signed.

Q. Under what circumstances did you sign it?

Mr. Mapp: Same objection.

R. L. Somers.

The Court: Overrule your objection.

Mr. Mapp: Exception noted.

A. Mr. Gardner had appointed himself as Cashier and Mr. Burke Secretary. They had Dr. Kerns call a meeting and what they called it for, the most I remember, was to ask the Board to put up notes to the amount of \$3,500.00. And with that understanding it was asked by Mr. T. Lee Byrd what would we have that we could get anything out of to pay this \$3,500.00 back and he pointed out the doubtful notes. If they were collected that would be given us as credit on our \$3,500.00.

Q. I am going to ask you to name any of those worthless notes you remember.

A. They didn't call them worthless, they were doubtful and worthless. I can recall the Hickman bond of \$5,000, W. L. Bloxom. I think he had maybe \$3,200 or \$3,300 worth in there; and Wright Barnes I think had one was doubtful in there; and Elton C. Bundick; Preston Northam; Pauline Northam; and I think some of Mr. Walter Mapp's was counted doubtful or worthless at that time.

Q. What collections, if any, have been made on any of those notes you have named, to your own knowledge?
page 55 } A. I don't know. Only Mr. Wrendo Godwin sold me the insurance policy which was up as collateral for Mr. W. L. Bloxom's notes for \$726.33. That should be credited on W. L. Bloxom's bonds.

Mr. Gunter: Take the witness.

CROSS EXAMINATION.

By Mr. Mapp:

Q. Mr. Somers, Mr. Gardner was the one doing the talking to the directors, was he not?

A. Yes, he done a lot of talking.

Q. But he was representing the Banking Department?

A. Yes, sir.

Q. Mr. Somers, in referring to these notes, the worthless or doubtful ones, did he get the notes out or read from a paper he had?

A. I don't remember that.

Q. You have been a bank director how long before this?

A. I think ever since the bank started.

Q. After each examination by a bank examiner you get

R. L. Somers.

from the Banking Department a copy of their report with comments on it?

A. The Cashier does.

Q. And that is taken up at the next meeting of your Board?

A. Yes, most of the time I think it is.

Q. And on that report is listed the slow, doubtful and worthless paper, isn't it?

A. I don't remember that. The bank is the one gets that. Directors don't get a copy.

Q. But it comes up at your next meeting of di-
page 56 } rectors, doesn't it?

A. Usually does, but a lot of times I don't attend all meetings.

Q. You say Mr. Gardner didn't get out the notes?

A. No, I didn't say that.

Q. Did he get out the notes?

A. I don't remember.

Q. Did you have before you the report of an examination that had been made about February 8, 1935?

A. I am sure we had the notes or the paper.

Q. You had one or the other?

A. Yes.

Q. As a matter of fact, aren't you sure you had the report?

A. No. I don't think so, because I don't think he had ever been back to the Banking Department to make report. He had been there thirty days. He appointed himself Cashier. He is the one made those records there about that resolution about him doing such a big job. That was made by Mr. Burke and wasn't made by us. It never was made on a typewriter in the bank. We didn't have a typewriter in that room and some of that I have never heard in my life, and I don't think we made such a resolution as that.

Q. It was something said there as to what happened that day.

A. I suppose it was. If it is a regular meeting it does, but special meetings we don't always.

Q. That day you had no Cashier?

page 57 } A. Yes, the Examiner was Cashier.

Q. That was the only Cashier you had that day?

A. Yes.

Q. And he jotted down—

A. Mr. Burke.

Q. And Burke wrote down right there—

R. L. Somers.

A. Yes, he wrote down different things, and what I have heard you read I have never heard before.

Q. This part I am going to read: "The above notes and assignment of saving account aggregate \$3,500.00, and are to be used to create a reserve for contingencies in order to relieve against a threatened impairment of the capital of this bank as shown by examiners report of February 8, 1935, a copy of which is in the files of the bank." Do you deny that that happened?

A. I don't deny it, but I don't remember it.

Q. You say he had not been to Richmond in the month. Isn't it a fact that whether he had been back or not you had gotten a copy of the report of February 8th., and you had it before this meeting at the time of the meeting?

A. I should doubt we got that, because sometimes it was two or three months before we got a report back. I don't know what they classed as good, bad or indifferent. I don't think we had that back in about twenty-eight days.

Q. Are you able to say you didn't have it back?

A. No, sir.

Q. You say Mr. Gardner here had the notes or was reading from a paper?

A. I didn't say that. I am sure he had to have something.

Q. Right.

page 58 } A. I don't think he was reading from the palm of his hand.

Q. If he didn't have the notes what was he reading from?

A. I would say from the notes or the paper one. The report would have been the same as the notes. They made up their report and the notes was made, but the paper really made the notes.

Q. If he was reading from a report that was the report showing the examination of the bank?

A. Yes, sir.

Q. And it was Mr. Gardner who was passing on paper, whether it was good, slow, bad or worthless?

A. Yes, he was one of them. He was the one really did pass on it all.

Q. And you and the other directors according to your understanding were to only get credit on paper which at that time was considered by the Banking Department as doubtful or worthless?

A. We weren't expecting the good, but what he called worthless or doubtful we didn't call worthless or doubtful. I am not very smart, but I am not going to take \$350.00 out of my

Norman C. Davis.

pocket and give to somebody didn't effect me. I have paid my debts and don't owe them anything and I wouldn't pull \$350.00 out of my pocket and give to nobody.

Q. Your idea of signing these notes was because you disagreed with Mr. Gardner and you thought you could collect out of some of them and that is why you signed the note?

A. Yes, sir.

Q. And you expected to get it back only out of what he thought was doubtful and worthless paper.
page 59 } A. Yes, sir.

Mr. Mapp: That is all.

NORMAN C. DAVIS,

a witness on behalf of the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION.

By Mr. Gunter:

Q. Mr. Davis, what connection, if any, did you have with the Peoples Bank of Bloxom in March 1935?

A. I was one of the directors.

Q. Did you sign one of these notes?

A. Yes, sir.

Q. And is a similar suit pending against you on that note?

A. Yes, sir.

Q. State under what circumstances you signed that note.

Mr. Mapp: Same objection.

The Court: Objection overruled.

Mr. Mapp: Exception noted.

A. Well, Mr. Gardner and Mr. Burke had some notes out on the table they considered was slow and we taken the notes over and looked at them and talked about these people. They were good, honest, hard workers and we felt they would pay if they made it and he asked would we give our note for \$3,500.00 to back this up. I don't know who it was now, but somebody asked Mr. Gardner if them people makes this money as they pay it back in will it be taken off these notes and give us credit for it. Yes, it will be done. We further asked him this. He said if this bank closes up on your
page 60 } account (director's account) you will have to pay
what hasn't been collected. If we close this bank

Norman C. Davis.

up on our account you will not lose anything as directors and I signed the note that night. I wasn't signing anything like that. (Indicating minutes referred to.)

Q. Mr. Davis, state if you can what notes on that day were considered worthless or doubtful that he wanted you to put up these \$3,500.00 notes as collateral to.

A. I don't know if I can remember all of them, but I do know W. H. Hickman note, I think an Ailworth note; Preston Northam; Walter Northam; Harold Byrd; Elton Bundick; and Shrieves and his father I believe. I think the Hickman note was \$5,000; I believe the Ailworth note \$2,000; H. J. Byrd a hundred and some. I believe Bundick's was a hundred and some. I just forget what Shrieves' was.

Q. Do you know of your own knowledge whether anything has been collected on any of those notes?

A. No, only what they say. Mr. Godwin was collecting them as Cashier at the time the bank was running.

Q. Did you ever have any talked with Mr. Wrendo Godwin, Receiver, about collections on these notes?

A. No, sir, I did not.

Mr. Gunter: Take the witness.

CROSS EXAMINATION.

By Mr. Doughty:

Q. Mr. Davis, were there any minutes taken of that meeting right there at the time?

A. The time we signed those notes?

page 61 } Q. Yes.

A. I think Mr. Gardner or Mr. Burke were dotting with some kind of pencil,—Chinese stuff.

Q. Were those minutes ever looked over after that?

A. I imagine they were. We would look over papers and talk things over.

Q. Did you after that see the minutes of that particular meeting as written up?

A. I don't think we did.

Q. Can you recall whether the statement of the Banking Commissioner as of February 8, 1935, was before your meeting that day?

A. Maybe it was.

Q. Do you recall after that when any reports of the Banking Department was gone over with your Board?

Norman C. Davis.

A. I don't remember.

Q. You mean you can't recall?

A. No.

Q. And you say your understanding of the agreement at the time this note was signed by you and others was what?

A. Before we done any penning we had it out with Mr. Gardner. We looked over those notes on the table and talked them over. We knew all those people. They were hard working people, poor the same as I am, we felt that if those people could make it they would pay this money. We wanted the bank to run and we signed those notes to keep the bank running and we asked Mr. Gardner as they make this money if it is paid in will it be credited on our notes and he said yes, sir, by all means, and he further says if this bank closes up on your director's account in any way, shape or form you page 62 } will lose the difference that has not been collected. If we close up on our account we lose it.

Q. Mr. Davis, who was passing on the classification of these notes? As to whether they were slow, doubtful or worthless.

A. Mr. Burke and Mr. Gardner had them out on the table.

Q. They were the ones passing on them.

A. Looked like it.

Q. What class of paper were you to get credit for when collected?

A. What do you mean?

Q. I think they classified good, slow, doubtful and worthless.

A. They didn't think much of these notes I just named over. They didn't know these people, but we felt like they were working people and we were taking a shot on them.

Q. Were you to get credit for the slow notes?

A. The notes that were laying on the table they weren't satisfied with.

Q. What notes were they?

A. I don't know about that. Just the notes on the table they weren't satisfied with and we tried to make them satisfied.

Q. Mr. Davis, did you sign that as the Grounds of Defense to your suit?

A. I guess I did.

Q. And you gave the information to your counsel who drew this, did you not?

A. Yes.

Norman C. Davis.

page 63 } Q. And did you tell them anything about you
were to have credit for any paper that was not
regarded as worthless paper?

Mr. Powell: That was Mr. Gunter and his father.

A. Did I tell them we were supposed to have a credit?

Q. For any paper except that as classified as worthless?

A. We were to get credit for all the notes and bonds laid out on the table and we all looked over it.

Q. And were they classified as worthless, doubtful, or slow?

A. I don't know. We wouldn't have signed if we hadn't thought they were all right.

Q. You have said "there was considerable paper in said bank which they regarded as worthless and that if the said directors desired the bank to continue to operate they must make a note or notes aggregating \$3,500.00." So it was worthless paper.

A. If I thought it was worthless I would never have signed.

Q. Did you sign that Grounds of Defense and say that was your agreement?

A. I did not.

Q. You read that and see.

A. Maybe I overlooked the word worthless.

Q. Was the agreement as set forth in your Grounds of Defense as you have testified to?

A. I don't know.

Mr. Mapp: I have no further questions.

Mr. Doughty: We offer in evidence the copy of the Grounds of Defense which was introduced in that case as a part of the record:

page 64 } "Virginia:

In the Circuit Court of Accomack County.

Wrendo M. Godwin, Receiver, etc.

v.

Norman Davis

NOTICE OF MOTION FOR JUDGMENT.

GROUND OF DEFENSE.

The defendant says that in the spring of 1935 the Peoples Bank of Bloxom, Inc., was examined by Messrs. Gardner and

Burke, representatives of the Department of Banking and Insurance of Virginia, and the Board of Directors of said Bank were advised by the said Bank Examiners that there was considerable paper in said Bank which they regarded as worthless, and that if they, the said Directors, desired the said Bank to continue to operate, they must make a note or notes aggregating \$3,500.00, which said note or notes must be payable to the Peoples Bank of Bloxom, Inc., Bloxom, Virginia and would be held by the Bank as collateral security for the payment of the notes above referred to as worthless, and if and when payments should be made on the aforesaid alleged worthless paper, then that such payments should be credited, *pro tanto*, on all of said notes executed, by the direction of Messrs. Gardner and Burke, by the directors of said Bank and made payable to said Bank; that included in said alleged worthless paper was a bond of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, secured by a deed of trust on real estate; a bond or note of Preston Northam and wife; one bond or note executed by H. J. Byrd; one bond executed by Z. S. Mears; and one or more notes of Clyde

Shrieves, former cashier of the Bank and Upshur.
page 65 } Shrieves, his father, for several amounts;

That pursuant to said collateral and conditional agreement, each director of said Bank, except Elmer W. Somers and W. W. Kerns, executed their individual notes, payable to the Peoples Bank of Bloxom, Inc., of Bloxom, Virginia, for the principal sum of \$350.00 each, (this defendant being one of said directors), and Elmer W. Somers and W. W. Kerns, two other directors, executed their individual notes for the sum of \$375.00 each, payable as aforesaid, to said Peoples Bank of Bloxom, Inc., all of said notes aggregating \$3,500.00, all of which said notes were executed and delivered to said Bank as collateral security for the payment of said alleged worthless notes, and if and when said notes were collected, or any part thereof, then the amounts so collected should be applied in satisfaction, or *pro tanto* satisfaction, of the notes executed and delivered by said directors to said Bank.

Further this defendant states that there was collected on said worthless paper the following amounts: on the W. H. Hickman and wife second deed of trust bond, above set out, \$2,000.00, of which amount \$200.00 was paid to the Bank's Attorney for collection, leaving a balance of \$1,800.00 collected on the Hickman bond; all of the Preston Northam bond was collected; the Shrieves notes were collected; the H. J. Byrd note was collected; and the Z. S. Mears note was

C. L. Mears.

collected; these collections, and no part thereof, has been applied to the payment of the aforesaid notes executed by the aforesaid directors, one of which is the note herein sued on, and executed by this defendant. The exact amount of these notes, and the exact amount of the collections on the alleged worthless notes due to the Bank, all this information is in the books and papers of the Bank, now in the possession of the plaintiff in this case, the Receiver of the Bank, Wrendo M. Godwin.

That for the reasons above stated, the said Plaintiff is not entitled to recover the amount herein sued on.

N. C. DAVIS."

C. L. MEARS,
a witness on behalf of the defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Mears, where do you live?

A. Nelsonia.

Q. What official position, if any, did you have in the Peoples Bank of Bloxom while it was in existence?

A. Director.

Q. How long had you held that?

A. Two to three years.

Q. Before it closed?

A. Yes.

Q. Are you one of the parties defendant in the several suits?

A. Yes, sir.

Q. On account of a note that you had signed?

A. Yes, sir.

Q. What was the amount of that?

A. Yes, sir, \$350.00.

Q. Did you get any money for that?

A. No, sir.

page 67 } Q. State to the Jury what were the circumstances under which you put your name to that note.

Mr. Mapp: Same objection.

C. L. Mears.

The Court: Overruled.

Mr. Mapp: Exception.

A. The notes were *culled* over and classified as no good, doubtful or good and there was \$3,500.00 worth of notes they claimed wasn't any good and they got us to sign notes for this and with the understanding we were to get all money collected on those notes up to \$3,500.00.

Q. Do you recall who was present that day?

A. Well, I think all of the directors were there and Mr. Burke and Mr. Gardner and another gentleman from the Banking Department.

Q. This meeting was in the bank?

A. Yes, sir.

Q. Did you hear the testimony of Dr. Kerns and these other gentlemen?

A. Yes.

Q. Do you identify this as the same occasion they spoke of?

A. Yes, sir.

Q. All signed that day?

A. Yes, sir, to the best of my knowledge.

Q. Do you recall, Mr. Mears, at this time any of the names to the paper out of which you were to be reimbursed when and if collections were made?

page 68 } A. Yes, sir.

Q. State those to the Jury.

A. I can state part of them. Ailsworth and E. C. Bundick, Northam, Clyde Shrieves and his father and also Harold Byrd. Those are ones I remember now. May have been a few more.

Q. Those you remember yourself?

A. Yes, sir.

Q. As coming from the batch of notes as to which you had signed these \$3,500.00 notes?

A. Yes, sir.

Q. Your note likewise carried no interest?

A. Yes, sir.

Q. Do you know of any collections that have been made of your own knowledge,—of your own knowledge do you know what has been collected out of these notes and other notes?

A. I only know what they have shown me on paper. There has been some collected.

Q. But you don't know that yourself?

C. L. Mears.

A. No, sir.

Q. Have you ever had any conversation with any officers of the Bank since it has been in the Receiver's hands, or before, from which you learned what had been collected?

A. No, only through somebody.

Mr. Powell: Take the witness.

CROSS EXAMINATION.

By Mr. Mapp:

Q. Mr. Mears, you say Mr. Gardner and Mr. page 69 } Burke called over the notes. Which was that?

A. I don't remember, but I think Mr. Gardner.

Q. You say he called over the notes and classified them?

A. Yes, sir.

Q. What did he call that from? Did he have the notes themselves?

A. He had the notes themselves.

Q. And he called them over and classified them and laid out \$3,500.00 that was bad?

A. Yes, sir.

Q. Did he call out any other trouble with the bank?

A. No, sir.

Q. Didn't call attention to the fact you were carrying the banking house at \$10,000?

A. No, sir.

Q. Did he call attention to \$600.00 overdraft?

A. He may have.

Q. Did he call attention to the fact you were carrying your fixtures at over \$2,000?

A. No.

Q. None of that but simply \$3,500.00?

A. I guess he did. Most Bank Examiners say you are carrying too much.

Q. After each examination they write back a letter and try to point out everything wrong with you?

A. Yes.

Q. And you take those reports and go over them page 70 } at the next meeting of directors?

A. Yes, sir.

Q. They had an examination about a month before you gave the notes?

A. Yes.

Elmer W. Somers.

Q. And that examination was the reason that caused you to give these notes?

A. I think so.

Q. Did you have in your bank a copy of that report showing that examination in February, about a month before that?

A. It should have been in there.

Q. That usually comes in shortly after the examination?

A. Yes.

Q. And would it refresh your mind to try to remember how long it had been there before you had this meeting of March 20th?

A. It has been too long ago.

Q. At that meeting on March 20th Mr. Gardner and Mr. Burke went over the bank's affairs generally with you?

A. Yes, sir.

Q. And they thought paper was worthless that you all thought you would get something out of?

A. Yes, sir.

Q. And you would only get credit on paper that the Bank considered worthless?

A. Yes, sir.

Q. I think you have already answered. What did you say the worthless bonds amounted to at that time that they pointed out to you at that time?

page 71 } A. \$3,500.00.

Mr. Mapp: That is all.

ELMER W. SOMERS,

a witness on behalf of the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Somers, what connection, if any, did you have with the Peoples Bank of Bloxom at the time referred to in this testimony, namely March 1935?

A. I was a member of the Board of Directors.

Q. How long had you been a member of the Board of Directors?

A. From the beginning of the Bank in 1923.

Q. Did you occupy any other position at that time?

A. No, sir.

Elmer W. Somers.

Q. Who was attorney at that time?

A. Mr. Walter Mapp had been and Mr. Herbert Barnes was then.

Q. Have you heard the testimony of the witnesses who preceded you on the stand in this case today?

A. I have.

Q. Do you recall the meeting in the bank of Bloxom on the 20th of March, 1935?

A. Yes, sir.

Q. Do you recall who was present?

A. Yes, Mr. Gardner, Mr. Burke of the Banking Division, and I don't recall whether Mr. Ritchie was on hand then or not, but in the room I remember Mr. Gardner and Mr. Burke.

Then of the Board of Directors there was Lee
page 72 } Byrd, Sam Marshall, Norman, Davis, Lester Grotton, Herbert Barnes had been there but he left when we were talking about signing the notes. Tom Mears, Sam Mears, Charlie Mears, R. L. Somers, Dr. Kerns and myself.

Q. Are you a defendant in one of these suits now?

A. Yes, I signed a note for \$375.00.

Q. State to the Jury the circumstances under which you signed that paper.

Mr. Mapp: Same objection.

The Court: Overruled.

Mr. Mapp: Exception noted.

A. Mr. Gardner and Mr. Burke had been there for some days checking the bank and at that time they had not, as I understood, made any written report to the Banking Division, and they checked up with the Board and those interested in the Bank from time to time and they made their own summary as to what notes were considered good and what bad. They had nothing at all to do with the report of February 8, 1935. Some notes which were in that report which were considered good or bad they classified different and they made a personal check on the notes, a check on the man and lined up everything they could and then reached their own determination, and that day they said we had to have \$3,500.00 worth of good paper or cash to offset what they considered a deficiency of \$3,500.00 in order that we might take care of what they called \$3,500.00 worth of bad paper. Nobody wanted to sign any note, because we weren't going to get anything for

Elmer W. Somers.

it and yet we wanted to keep the bank going and also make some money there and after discussing the matter pro and con,

he was chief spokesman, it was finally agreed that
page 73 } we put up separate notes of \$350.00 each. Mr. Tom

Mears I believe gave a \$300.00 check and maybe somebody else \$300.00, which left two men to give \$375.00, so Dr. Kerns and I made ours \$375.00. I remember Lee Byrd said he was up against enough and he didn't feel like putting up anything that would be any probability of a loss and wanted to know if these notes they considered no good, but which we considered as worth something, if and when we collected on those notes we would be given credit on the \$3,500.00 and when we finally collected \$3,500.00 would we get our notes back and Mr. Gardner said yes, and it was with that express agreement that we signed. Immediately after that I, along with Mr. Norman Godwin, Cashier, took charge of collecting on these so called bad papers and we collected a large part of them.

Q. Can you recall now some, or a greater part of the paper that was classified as doubtful or slow or worthless?

A. Yes. Of the paper that Mr. W. L. Bloxom had put in the Bank, both that which he himself owed directly and also that which he put up as collateral, and in the collateral was a note of Pauline Northam and Preston Northam for around \$200.00. There was a Roland Barnes overdraft of \$500.00. Elton Bundick an overdraft of about \$250.00; Harold Byrd a note for something over \$150.00; Clyde Shrieves as Cashier had made loans to his father and to himself on notes there amounting to approximately \$300.00; there was a W. H. Hickman, Sr., and wife, deed of trust bond secured by second deed of trust on the farms near Wattsville of \$5,000. Originally the deed was \$10,000, but the Bank had assigned this over to two different parties \$5,000 worth of paper. They contended it wasn't worth a cent and I said it was worth every cent and he finally said it wasn't worth over
page 74 } \$3,000. That was one of the papers which he considered as partly valueless.

Q. Did you know most, if not all, of the note makers in that list of doubtful or bad paper?

A. I knew all of them personally.

Q. What would you say was the amount in that pile of the paper that was considered worthless?

A. Well if you had taken the whole face value it would have been probably \$8,000.

Elmer W. Somers.

Q. I thought it was a mistake while ago in the statement.

A. But when he finally agreed the Hickman bond was worth something that would have reduced that to about \$6,000.

Q. The face value of the paper in that doubtful list was in excess of \$3,500.00?

A. Yes, the face value was. Mr. Dick Bloxom had \$3,200.00. It was probably \$10,000.

Q. Did you consider there was as much as \$3,500.00 salvage value in it?

A. Absolutely. I thought so and I finally found my thoughts were correct by the collections made.

Q. Will you tell the Jury, Mr. Somers, what collection you personally have handled on that paper.

A. As I stated, Mr. Norman Godwin and I got busy at the request of the Board. Mr. Herbert Barnes got off the Board and after that I was made Attorney for the Bank. I got busy along with Mr. Norman Godwin to work on this so-called bad paper. Some of the Board said you put the \$5,000 Hickman bond in here and you should help make that
page 75 } good, and I jumped in there and put up a note of Lottie Ailworth assigned to me.

Q. Is that the Ailworth paper referred to before?

A. Yes, sir, I put that up as collateral to the W. H. Hickman bond. As a matter of fact, I gave my own note for it and then put up this \$3,000 Lottie Ailworth bond in which I had a \$2,000 interest by virtue of an endorsement she made on a John Roache bond. That was put up as collateral and finally collected.

Q. Mr. Somers, how much of the collected proceeds went to the Bank as a credit on this \$3,500.00?

A. Of the Lottie Ailworth bond?

Q. Yes.

A. You will find in Chancery Order Book '36,-'38 the decree in the suit, interpleader suit, in which the full amount was directed to be paid over to the Bank and that was a little in excess of \$2,000, and it was good for the amount of it. Later on I understood that the Receiver compromised with Miss Ailworth on \$1,000, but gave credit to me and of course on that bond for \$2,000. I wouldn't agree to any compromise unless they gave credit for the \$2,000 so they agreed to loose \$1,000, but we got credit for the \$2,000.

Q. Were there any collection charges out of that?

A. \$200.00 to Gunter & Gunter, yes, sir, left \$1,800.00 which

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went over. But the Bank agreed to pay the collection charges, and \$2,000 credit was given.

Q. There was a net credit on this paper of how much?

A. \$2,000.

Q. What other collection, Mr. Somers, do you know of personally?

page 76 } A. I collected the Clyde Shrieves and Upshur Shrieves notes and remitted to them. I have my copies of remittance letters which I will be glad to file here. Clyde Shrieves and Upshur Shrieves notes on July 6, 1937, and the total amount remitted to the Bank was \$238.54. I have here copy of remittance letter on that to file with you people. I collected on the C. Elton Bundick overdraft. I got him to give a note and then we worked that out with Mr. G. Walter Mapp on the basis of a royalty on gasoline of a cent a gallon being paid direct to the American Oil Company being paid direct to the Bank and that was finally paid in full. That was \$260.00 I have here my letter to the bank on that.

Mr. Mapp: When was that.

A. That was August 20, 1936. I have here copy of letter to Mr. Bundick on that. The original note was given to the Bank and the royalty payments made to the Bank until the full amount was closed out. On September 30, 1936, I settled with Pauline Northam and Preston Northam for half of the amount of the note which the Bank held. I finally got a deed of trust on personal property and they agreed to pay half later. At that time I remitted to the Bank \$102.01. That was September 30, 1936. That was for half due and the balance was paid later through the Bank. I have here copy of my remittance dated September 30, 1936, for that. On August 11, 1937—that was shortly after the bank had closed—I remitted to Wrendo M. Godwin, receiver, on the Harold J. Byrd collection \$140.25. That was a net collection on that. That made a total of \$785.27 collected and remitted to Peoples Bank of Bloxom on C. E. Bundick, Pauline Northam and husband, Clyde Shrieves and father, H. J. Byrd
page 77 } and then a small note of Clarence Godwin put up by Upshur Shrieves of \$44.47. I remitted on that on August 12, 1937. I have here the remittance letters dated August 11th and August 12th respectively on the H. J. Byrd and U. D. Shrieves remittances mentioned above.

Q. Mr. Somers, including the \$2,000 amount credited on this amount what was the grand total?

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A. That would be \$2,783.27. But in addition to that Mr. Godwin, the Cashier, can testify about the balance of the Pauline and Preston Northam note being paid, which was something over \$100.00, because it was \$101.01 plus interest which was collected the following year. In addition to that is one hundred and some odd on the Preston Northam, and \$726.33 Roland Somers paid on the Dick Bloxom proposition

Q. Do you know anything about that?

A. All I know is Mr. Roland Somers paid it to the Receiver. I knew about it at the time it was done. I didn't handle the transaction. There were some other payments made on these overdrafts and so-called worthless notes, but they were paid direct to the Cashier and that would show on the collection book.

Q. Mr. Somers, you state that the grand total of the amounts you know about would be \$2,783.27.

A. Yes, sir. I know the Pauline and Preston Northam balance on that bond was paid of a hundred and some dollars. I only collected half of it.

Q. How much was it you know was paid?

A. A little over \$100.00.

Q. Now with the amount that was paid on the page 78 } Dick Bloxom insurance, how much was paid on that?

A. Something over \$700.00.

Q. Have you made a statement so you can tell the Jury what the amount was?

Mr. Mapp: Did you handle that collection?

A. I know it was paid, but I didn't handle that collection myself.

Q. There wasn't any question about that was there?

Mr. Mapp: I don't think this witness should testify if he doesn't know of his own knowledge.

A. I knew before it was paid while it was being discussed, and after the matter was closed out.

Q. Just make a statement there, Mr. Somers.

A. The Dick Bloxom was \$726. and some cents, I think. \$3,614.40 that I know of.

Elmer W. Somers.

Mr. Powell: Take the witness.

CROSS EXAMINATION.

By Mr. Mapp:

Q. Mr. Somers, at this meeting at the time these notes were given you say the only thing discussed at that meeting was the worthless and doubtful paper?

A. That was the only thing discussed while I was there.

Q. You were there during the entire meeting?

A. I don't know whether I was late or not.

Q. You were there how long?

A. I was there some time. I know we were giving these notes pro and con.

page 79 } Q. How long before the notes were given did you arrive?

A. Oh, some minutes.

Q. While you say the face of the notes at that time was probably \$6,000 to \$10,000 that the Bank Examiners, Mr. Gardner and Mr. Burke, counted the loss on those notes at only \$3,500.00?

A. I didn't say that.

Q. What did you say?

A. I was talking about the Hickman note.

Q. I am talking about your answer to Mr. Powell, the face of all of the notes.

Q. They considered the Hickman note not worth a cent, the Harold Byrd note and Upshur Shrieves and Clyde Shrieves not worth a cent. The Elton Bundick note not worth anything; there was an overdraft of Melvin Shrieves about \$100.00 that wasn't worth anything. The Roland Bundick of about \$500.00 they said wasn't worth anything; Pauline and Preston Northam wasn't worth anything and they didn't consider Mr. Dick Bloxom's worth 25c. We considered them worth something. I considered the Hickman note—interest had always been paid—I considered that was worth the face value and they probably agreed it was worth \$2,000, but if we put up \$3,000 that would take care of what we had to take care of to meet the requirements of the Banking Division. We had, as I recall, about \$15,000 surplus on the book.

Q. Mr. Somers, the names of these different notes doesn't mean anything to the Jury because they don't know the amounts of the notes. Just tell the Jury about how much

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the Bank Examiners that day told you all your loss on notes was going to be, approximately?

A. They contended we were going to loose every page 80 } cent of the face of those notes.

Q. How much would they amount to?

A. Hickman note \$5,000; Dick Bloxom a little over \$3,000. Maybe \$3,200.00 or \$3,500.00. I don't recall exactly; Roland Bevans overdraft over \$500.00; Harold Byrd note about \$150.00; Elton Bundick's was a note covering overdraft of about \$250.00 or \$260.00; Clyde Shrieves and his father had a bunch of small notes in there that amounted altogether to about \$325.00; Melvin Shrieves overdraft for \$135.00 or \$140.00; there was this Pauline Northam and Preston Northam. That was handled as part of the Dick Bloxom collateral. I remember those. Now there may have been a lot of others I don't recall.

Q. So instead of the face of the notes they considered to be \$6,000 to \$10,000 it was over \$1,350.00?

A. I don't remember the exact amounts, but they finally agreed with me after discussing the Hickman property that probably we would get \$2,000 to \$3,000 out of that.

Q. That would cut it to approximately \$11,000. That was the only thing pointed out to the directors as being a loss?

A. That was the only thing they discussed that day. We discussed the other affairs before.

Q. What other affairs?

A. There had been a shortage by the Cashier which was made good.

Q. You say this report of February 8th, you haven't seen that report?

A. I don't remember the exact date, but I remember seeing a report of the previous bank examination.

Q. You mean the examination previous to the day you all gave these notes?

A. No, it may have been made up in December or November.

Q. Can you say it wasn't made in February?

A. I don't recall any special examination being made on February 8th, because I think these gentlemen were in charge since the last of January.

Q. Do you say there wasn't an examination in February 1935?

A. I don't recall.

Elmer W. Somers.

Q. When did you see that report?

A. I don't remember any report dated February 8th, but naturally as a report came in we would look it over in the meeting. Of course we didn't have a Cashier then.

Q. About when would you say the last report was made before you gentlemen gave these notes?

A. I don't recall.

Q. Was it before this meeting, before the time you gave the notes, that day or after, and if so how long after?

A. I don't recall when the last report was made prior to this. We had no report that day. If he had a report he didn't show it, because he took these notes and thumbed over them.

Q. There wasn't any criticism at the fact you were carrying your banking house at \$10,000?

A. It wasn't mentioned that day. As I recall Mr. Gardner discussed with us shortly after he came over about that.

Q. So that had been discussed before?

page 82 } A. Yes.

Q. Did he say how much too high?

A. I don't recall at all.

Q. Now all of the directors were to get credit on everything collected on any of this worthless paper?

A. On this stuff I have mentioned here.

Q. Did you get a list of that stuff that day?

A. I made *made* a written memorandum of it, like I generally do, and I went to work on it as soon as I could.

Q. You were anxious enough to get to work because you got credit on your notes?

A. Yes, and I got a collection fee too.

Q. When was the proceeds of the Ailworth bond turned over?

A. I put that up myself.

Q. You have been through that. I am asking you when did the Bank get the money on it. Refer to your files.

A. If you will send to the Clerk's Office you will find a decree of the Court entered in the 1936-1938 Chancery Order Book.

Q. Who paid the money over?

A. Ames Drummond.

Q. Was it turned over before the appointment of the Receiver?

A. Afterwards.

Q. As a matter of fact, the bank only got \$800.00.

A. That is right. I kicked on it when I understood from

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George Doughty they were going to do this. I said I will never agree to that because the note is worth the money and I remember either calling Judge Nottingham and asking him not to enter such an order without me seeing it, and page 83 } they finally agreed to give credit for the \$2,000, and I said if you give it for \$2,000 I will be glad for you to do it, the little girl needs all she can get.

Q. But the Bank was to pay the collection fee and all?

A. That was my understanding.

Q. If Dr. Kerns in the Grounds of Defense signed by him says there was to be a credit of \$2,000, less collection fees, he is mistaken?

A. I can only say he wasn't as familiar with the transaction as I was.

Q. To get at \$3,614.40 you counted the Ailworth Bond \$2,000 while the Bank got \$800.00.

A. There are several hundred dollars which the Cashier collected and if you will show the cash collection book that will show the collection on these other things.

Q. Mr. Powell asked you to name over the total and you said \$3,614.40. When was the Clyde and Upshur Shrieves note paid?

A. July 6, 1937.

Q. You collected some in August, Elton Bundick \$260.00. You sent that to the Bank?

A. August 20, 1936, I didn't actually collect that money.

Q. But she was collected and went into the bank?

A. Yes, sir.

Q. Did you collect it or not?

A. I could have collected the money by selling his stuff. I had a levy on it. Mr. Walter Mapp came to me, he was then interested in the Bank. He wasn't attorney then. page 84 } He wanted Elton Bundick to sell American Oil Products. Elton put in the American Oil on a commission basis, so much a gallon, 1c or 2c. He agreed that the American Oil Company would pay not to Elton Bundick his commission, but would pay direct to the bank if he would fix up a deed of trust on all his stuff and they would pay to the bank this money, which would be credited until the whole amount was paid out.

Q. Can you tell the Jury when this \$260.00 went into the Bank?

A. They got the note of \$260.00 and security on August 30, 1936.

Q. They got a note for \$260.00?

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A. Yes, sir, bearing interest.

Q. Do you know whether or not that has been paid?

A. Yes, sir, it has been paid.

Q. To whom was it paid?

A. Direct to the Bank.

Q. Before or after the Receivership?

A. I don't know.

Q. You say Preston and Pauline Northam was paid September 30, 1936?

A. Half then and the rest the next year.

Q. You sent check for that by letter, didn't you?

A. Yes, sir.

Q. You attended the meetings right along?

A. Yes, sir.

Q. About how much would you say had been collected prior to the appointment of Mr. Wrendo Godwin as Receiver on this worthless paper?

page 85 } A. All this I have here was collected.

Q. I am asking you to give the total.

A. The \$787.00 was collected prior to Wrendo Godwin being Receiver.

Q. About what do you think was collected?

A. This hundred and some dollars of Pauline Northam.

Q. Just a total. You can figure it there.

A. Well, as to what was paid on these other notes I don't know.

Q. Do you know \$1,000 had been paid prior to Wrendo Godwin's appointment?

A. The \$787.37 which I have listed here was collected prior to Wrendo Godwin's appointment, because after he went in I closed out the other two.

Q. Would you say \$1,000 was collected prior to his appointment?

A. Yes, sir.

Q. And you knew about it?

A. I knew the Cashier was collecting some money, yes.

Q. And Dr. Kerns and the other directors knew about it?

A. The Cashier, Mr. Norman Godwin, knew about it.

Q. Do you think Dr. Kerns, President of the Bank, knew about it or not?

A. Do you mean in detail?

Q. I don't care whether in detail or bulk.

A. I knew they made inquiry at the meetings as to how we were coming on.

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page 86 } Q. And you told them?

A. Yes.

Q. With \$1,000 collected on a \$3,500.00 obligation did you ever get your notes credited for that much?

A. As a matter of fact the intentions was as soon as we collected the whole amount then take down the notes.

Q. Mr. Somers, Dr. Kerns may not know much besides medicine, but you a good business man, don't you know when you make a payment on a note that it is credited on the note right then? You don't wait to credit the whole note.

A. As a matter of fact, I don't credit it always then. I credit it on my books and credit it later.

Q. You mean if you owe a bank \$350.00 and you make four payments of \$50.00 each you expect the bank to wait to credit that?

A. If they give me a receipt I don't care when they credit it.

Q. Will you show any receipt in this file of yours that you have from the bank for any payment made on this \$3,500.00 note?

A. I didn't ask for any receipt until we collected this thing up and took the thing down.

Q. You didn't expect to get credit?

A. So far as the records are concerned sure.

Q. Did you ever ask the Cashier to credit this up on it?

A. No.

Q. Did you ever call it to the attention of the Banking Department?

A. I don't recall his ever mentioning the Banking Department.

Q. Didn't you get statements back from the
page 87 } Banking Department from March 1935 up until

Mr. Godwin was appointed Receiver? Didn't you get back statements following every examination of that bank?

A. I guess we did.

Q. Weren't they taken up with your Board of Directors?

A. I am sure anything in particular was taken up, but they wouldn't go over the whole thing.

Q. Those statements were sent back and left in the Bank?

A. Yes, sir.

Q. Didn't every one of those statements show on there the full amount of \$3,500.00 due by you and the other directors?

A. The only one I ever saw showed it was carried as Director's guarantee notes.

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Q. About when did you see that statement?

A. I don't recall.

Q. Was it after you gave the notes?

A. They never were carried as assets of the Bank, just guarantee notes.

Q. This statement you saw was after you gave the notes?

A. Of course.

Q. Did you or Dr. Kerns, or any member of the Board, call the attention of the Banking Department to the fact that you were entitled to credits on those notes?

A. I don't know what they did. I didn't. I knew when I finished collecting \$3,500.00 we would get our notes back.

Q. And in the meantime you expected no credit for them?

A. I put up \$7,000 in the New Church Bank and it was handled in the same way and lose a cent.

page 88 } Q. Mr. Somers, these items you collected and sent in to the Bank that you say are credits on these, one is a check August 12, 1937 for \$44.47 to Wrendo Godwin. That is credit on the Upshur Shrieves note?

A. Yes, sir.

Q. Had Mr. Godwin been appointed Receiver then?

A. Yes, sir, in July.

Q. Your check covering this collection on this, this was drawn on the Peoples Bank of Bloxom.

A. Yes, sir, and had funds there to meet it.

Q. But aren't you too good a lawyer, or don't you necessarily know that Mr. Godwin couldn't charge this up against your account while the Receiver was being appointed?

A. He could certainly give me credit for any collection I made for them. I had the money to meet that check.

Q. And that is counted in these figures you have there?

A. Yes, sir.

Q. Here is another August 11, 1937, for \$140.25, likewise drawn on the Peoples Bank.

A. Yes, sir, had the money to meet that too.

Q. Here is another August 9, 1937, drawn on Peoples Bank of Bloxom by you for \$354.40.

A. Whose is that?

Q. Z. S. Mears.

A. That isn't in this list. I had the money to meet that too.

Q. What I am getting at, didn't you know Mr. Godwin without an order from the Court couldn't take that money he had as Receiver and honor your checks?

A. I don't know it and I don't think so. I don't

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mean if I had drawn a check to you, but if it was a collection for the Bank it didn't make any difference whether I went and got the money and paid cash or drew that check.

Q. But these people you made these collections from, they didn't have any money deposited there.

A. I had money deposited.

Q. But that wasn't your debt.

Q. Then it was my debt, because I collected from them and deposited it in the Peoples Bank.

Q. In other words, you could keep on drawing on your account even though a Receiver had been appointed?

A. I don't see why I couldn't because you get one hundred cents on the dollar guaranteed by the Federal Deposit Insurance Corporation.

Mr. Mapp: That is all.

Mr. Powell: We desire to offer in evidence these copies of remittance letters referred to by Mr. Somers in his testimony, and will make same Defendant's Exhibit 1:

"July 6th, 1937.

Peoples Bank of Bloxom, Inc.,
Bloxom, Virginia.

Re: Peoples Bank of Bloxom, Inc. v. Clyde D. Shreaves maker, and Upshur D. Shreaves, endorser—Judgment.

Dear Sirs:

I beg to advise that Mr. Upshur D. Shreaves called at my office this afternoon and effected settlement on the page 90 } two judgments held by the Peoples Bank of Bloxom against Clyde D. Shreaves, maker, and Upshur D. Shreaves, endorses, dated May 11th, 1935, and June 2nd, 1935, respectively.

I herewith remit to you on same as follows:

Judgment May 11th, 1935:

Principal	\$115.00
Interest from April 10th, 1935.....	15.40

\$130.40

Supreme Court of Appeals of Virginia

Elmer W. Somers.

Judgment June 2nd, 1935:

Principal \$125.00

Interest from April 30th, 1935. 15.00

140.00

Total \$270.40

One-half collection charges collected. 12.00

Total collected \$282.40

Less amount paid Clerk for releasing two judgments50

Less amount paid Sheriff for returning two executions 1.00

Less 15% commissions charged. 42.36

Total 43.86

Less check enclosed herewith to you. 238.54 282.40

Balance 000.00

Please find check enclosed for the amount stated above.

I have done considerable work on these items and we are really fortunate in being able to make collection. I deducted a part of the attorney's fees from debtor in order to effect settlement with him, and marked the judgment satisfied as soon as payment was made by Mr. Shreaves.

Peo. Bank of Bloxom —2— July 6th, 1937.

I believe these two items were marked off by the Bank Examiners as worthless; therefore, to the extent of \$282.40 the same should be reinstated as good.

Very truly yours,

ELMER W. SOMERS.

EWS:P

Enc.

Elmer W. Somers.

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"August 11th, 1937.

Wrendo M. Godwin, Esquire,
Receiver
Peoples Bank of Bloxom
Bloxom, Virginia

Re: Peoples Bank of Bloxom v. Harold J. Byrd

Dear Wrendo:

As I advised you on yesterday over the telephone we have collected a part of the above judgment, and we have been trying to collect the balance for sometime past, but without results.

I herewith remit to you, however, on the amount in hand as follows:

Total amount collected		\$180.00
Less costs paid on judgment by me	\$ 5.00	
Less amount paid for abstract	.25	
Less fee charged (15% commissions plus \$7.50 suit fee)	34.50	39.75
	<hr/>	<hr/>
Check enclosed herewith to you		\$140.25

Please advise me if you wish me to try to collect the balance from debtor, or if you prefer to collect it direct.

Very sincerely yours,

ELMER W. SOMERS

EWS:P
Enc.

"August 12, 1937

Wrendo M. Godwin, Esquire
Receiver
Peoples Bank of Bloxom
Bloxom, Virginia

Re: Peoples Bank of Bloxom v. Upshur D. Shreaves

Dear Wrendo:

I collected the two judgments held by the Peoples Bank of Bloxom against Upshur D. Shreaves some weeks ago and re-

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mitted to the Peoples Bank of Bloxom direct on same.

I collected a small part of the amount due by
page 92 } him on his collateral note of July 17th, 1933, and
I herewith remit to you on same as follows:

Amount collected from C. H. Godwin on collateral note	\$53.50
Less commissions of 15%	8.03

Less check enclosed herewith to you.	\$44.47
--------------------------------------	---------

I have ample funds on deposit at the Peoples Bank of Bloxom to take care of same and tender check drawn on the Peoples Bank of Bloxom as an offset to same.

I am also returning herewith the Upshur D. Shreaves collateral note of July 17th, 1933, with note of S. T. Russell, dated January 7th, 1933, payable on demand, to Upshur D. Shreaves, for \$300.00. I have never been able to locate S. T. Russell, nor make any collection on same.

I am returning herewith note of C. S. Custis, payable to Peoples Bank of Bloxom, dated August 15th, 1935, for \$20.00. I have never been able to collect on said item.

Very sincerely yours,

ELMER W. SOMERS

EWS:P

Enc.

"September 30, 1936.

Peoples Bank of Bloxom
Bloxom, Virginia.

*Re: Peoples Bank of Bloxom, Inc., v. Mrs. Pauline
Northam and Preston Northam—Deed of trust*

Dear Sirs:

I am pleased to be able to report collection of one-half of the above item from Preston Northam and herewith remit to you on same, as follows:

Amount collected	\$113.34
Less 10% attorney's fees collected from debtor	11.33
Balance in hand due you	\$102.01

Elmer W. Somers.

Please find check drawn on my Trustee's account enclosed herewith for same.
page 93 } Debtors were given until August 1st, 1937, to pay the balance due on this bond, but no part of the property covered by the deed of trust has been released.

Very truly yours,

ELMER W. SOMERS

EWS:P
Enc.:'

RE-DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Somers, these collections you made as attorney for the Bank, where were the proceeds of these collections deposited?

A. Peoples Bank of Bloxom.

Q. Now you are clear about that?

A. No question about that.

Q. Every dollar you have collected has been deposited in the bank?

A. Yes, sir.

Q. Now these checks you have given to the bank or assignments, whose name was that deposited in?

A. My name.

Q. Money is still there?

A. Yes, sir.

Q. And these checks you have drawn are set off against those deposits?

A. Yes, sir. You see I didn't collect them all at one time. You take Upshur Shreaves, I collected \$20.00 a month.

Q. But you didn't deposit as you collected these small amounts?

A. Oh, no, I did not.

page 94 } Q. And these checks cover the amounts you collected?

A. Correct, collection less my fees.

Q. These are all made payable to Wrendo Godwin, Receiver.

A. Yes.

Q. Now I want to ask you this. Opposing counsel have gone considerably into the supposed losses of the bank and its then condition, their banking house, fixtures and other

Elmer W. Somers.

things. Tell the Jury whether or not any higher or greater amount was suggested to be put up in the note form as you and the other gentlemen did than \$3,500.00.

A. No, sir, that is all that was asked and that is what we put up.

Q. Neither Mr. Burke nor Mr. Gardner, nor anybody else representing the Bank, at that time asked for more money than that, or for more paper than that?

A. They said that would take care of the situation.

Q. Can you think of any reason why they shouldn't have asked for \$6,000 or \$7,000 if it had been required?

A. No, sir, that is what they asked for.

Mr. Powell: That is all.

RE-CROSS EXAMINATION.

By Mr. Mapp:

Q. You say these payments to the bank Mr. Powell just asked you about,—was there any indebtedness due by you as endorser or in any way to the bank other than these amounts?

A. You mean the times those were drawn?

Q. Yes.

page 95 } A. I had nothing that was matured. I had some there I had collateral for, but none due and owing then.

By Mr. Powell:

Q. Don't these checks shown just what they covered, each and every one of them?

A. Yes, sir.

Q. Read them out to the Jury, please sir.

A. Z. S. Mears. That has nothing to do with this.

The Court: What do you want that for?

Mr. Gunter: We didn't put it in.

A. H. J. Byrd \$140.25, and the notation made by the young lady at the bottom shows what it was for, and the other one \$44.47 was Peoples Bank of Bloxom against Upshur D. Shreaves. That shows on the memorandum on the book what that was for.

Mr. Powell: That is all.

D. FRANK WHITE,

a witness on behalf of the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION.

By Mr. Gunter:

Q. Mr. White, what connection, if any, did you have with the Peoples Bank of Bloxom in March 1935?

A. Director.

Q. Did you sign one of these notes?

A. Yes, sir.

Q. And have you been sued along with the others?

A. Yes, sir.

Q. State under what circumstances you signed page 96 } one of these notes.

Mr. Mapp: Question objected to.

The Court: Overruled.

Mr. Mapp: Exception.

A. Well, there was a directors meeting called and while the directors were there and the State Banking Division officials, which included Mr. Burke and Mr. Gardner, and as I recall we were told that there were certain notes in there that were questionable or worthless or doubtful, or some such term, and we were asked to put up notes to the amount of \$3,500.00 to take care of these notes I just spoke of.

Q. Do you remember what those notes were?

A. Whose they were?

Q. Yes.

A. Why some of them, I don't know that I remember all. I remember the Hickman note and Northam note, and I believe a Bundick note. I don't know whether it was a note or overdraft. And the Byrd note.

Q. What was to happen from any collections made on these notes, if any?

A. As collections were made on them credits were to be given on the notes put up by the directors.

Q. Do you know of your own knowledge whether or not anything has been collected on those notes?

A. Well, I never saw any of them collected. I only know through Mr. Roland Somers, one of the directors.

Mr. Doughty: We object to hearsay.

page 97 } Mr. Gunter: Take the witness.

D. Frank White.

CROSS EXAMINATION.

By Mr. Doughty:

Q. Mr. White, do you recall whether you had a report of the previous examination before you that day?

A. I don't recall of that happening. Mr. Gardner and Mr. Burke impressed me as being very fluent speakers in the banking business and I couldn't keep up with them, although I tried hard, and I finally got out of it, as I told you while ago, that if we put up these notes that they considered bad or worthless we would get credit on them.

Q. Do you recall having a statement of the bank examination of the previous meeting before you that day?

A. No, sir, I do not.

Q. You will not say whether you did or did not?

A. No, sir.

Q. Who was classifying the paper that day, the Banking Commission representatives or the directors?

A. I don't know. I presume the Banking Department representatives.

Q. And what classification as made by them were you to get credit on your notes when you collected?

A. All those notes I mentioned and possibly some I didn't mention.

Q. What classification were they?

A. They did their own classifying.

Q. Did they classify them as worthless?

A. It was sort of an interchangeable term there.
page 98 } I don't know whether it was doubtful, slow, worthless. It was sort of an interchangeable term used by the different ones.

Q. Now then, you are an attorney at law, aren't you?

A. Yes, sir.

Q. Did you sign that grounds of defense?

A. Yes, sir.

Q. And that Grounds of Defense was prepared by counsel, Messrs. Gunter & Gunter, wasn't it?

A. Yes, sir.

Q. On the information given them by you?

A. Yes, sir.

Q. And was this Grounds of Defense correct when you signed it?

A. I thought so.

Q. Anything in there about any questionable classification?

S. W. Marshall.

You say in here the Board of Directors were advised by the Bank Examiners that there was considerable paper in the that they regarded as worthless. You said here worthless. Is that correct?

A. I think the word worthless was used and I think questionable was used.

Q. Why didn't you put that in your Grounds of Defense?

A. I think by an interchangeable term I didn't make the distinction.

Q. What is this interchangeable term?

A. Sometimes the word doubtful and sometimes worthless and sometimes questionable.

Q. But when you filed your Grounds of Defense page 99 } you filed it on the grounds it was worthless paper?

A. Yes, sir.

Mr. Doughty: I have no further questions.

S. W. MARSHALL,

a witness on behalf of the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Marshall, were you a director of the Peoples Bank of Bloxom?

A. Yes, sir.

Q. From the beginning?

A. Yes, sir.

Q. To the end?

A. To the end.

Q. Have you heard the testimony that has been introduced about the meeting held in the bank on March 30, 1935?

A. Yes.

Q. Were you present?

A. I was.

Q. Will you tell the Jury who else of the directors were there.

A. I think we were all there.

Q. Every director of the bank was present?

A. Yes, sir.

Q. Did you sign a note that day?

S. W. Marshall.

page 100 } A. I did, yes, sir.
Q. What were the circumstances under which
you signed it?

Mr. Mapp: Same objection.

The Court: Overruled.

Mr. Mapp: Exception.

A. Well, the Bank Examiners come over there and went through our papers and sorted them out and this pile here were determined as worthless and they asked us to put up a note of \$3,500.00, but we didn't determine them as worthless or I would never have signed any note. I thought the notes could be collected in due time.

Q. What was the understanding between the Banking authorities and you and the other note makers about what should be done with these notes you put up? How were they to be taken care of?

A. Well, we were to try to collect them if we could.

Q. I don't mean the notes they held, but the notes that you and the others signed that were put up.

A. They were laid aside as collateral for these notes they claimed were worthless.

Q. Right there I want to ask you. There has been a considerable amount of testimony dealing with the term worthless. Who used that term, your directors or the banking people?

A. I can't say that. We didn't think they were worthless. I didn't or I wouldn't have signed any note.

Q. Did you directors regard them as worthless?

A. No, sir, we didn't regard them as worthless.

Q. Was anything said there that day about anybody any amount greater than \$3,500.00 that was to be taken care of?

page 101 } A. I don't remember any amount.

Q. You are likely to remember it if it was said, are you not?

A. I think so.

Q. Now do you know of your own knowledge anything about any collections made on this paper that was described as worthless or otherwise?

A. Not of my own knowledge, no, sir.

Q. All that you know is what you have been told?

A. Told by some one else what amount collected.

S. W. Marshall.

Q. This paper that was signed carried no interest, did it?

A. That is right.

Q. Was there any time limit imposed within which it should be collected?

A. No, sir.

Q. Or any collection should be made on the worthless paper?

A. No, sir, there was no time set.

Q. Suppose enough had been collected out of the so-called worthless paper to pay the \$3,500.00 in full, then what was to become of the notes?

A. We were to get them back.

Q. Suppose there had been a shortage so there would have been a gap between the \$3,500.00 and what was collected, what then?

A. I am not able to answer that. We had the bank insured. I think the insurance company should take care of it.

Mr. Powell: That is all.

page 102 } CROSS EXAMINATION.

By Mr. Mapp:

Q. Mr. Marshall, you were there during the entire meeting?

A. Yes, sir.

Q. And the only thing pointed out to you gentlemen by the banking officials was that you had some bad paper in there, worthless paper?

A. That is what they claimed.

Q. And they are the ones called it worthless?

A. Yes, sir.

Q. How much worthless did they tell you you had to take care of and make good?

A. \$3,500.00.

Q. And that is all you had to make good?

A. That is the way I understood it.

Q. And you had been a director since the bank began?

A. Yes, sir.

Q. Right then you had undivided profit of \$14,315.

A. I think that is right.

Q. If you had an undivided profit of over \$14,000 your capital would not have been impaired if you only had \$3,500.00 in worthless paper.

A. Yes.

S. W. Marshall.

Q. Why should you gentlemen have given any notes if you still had over \$10,000?

A. Because they required it, I suppose, and another thing why should they take a \$3,500.00 note if we were that much in the red?

page 103 } Q. As I understand you they told you that you had \$3,500.00 worth of bad paper?

A. Yes.

Q. And that is all they required you to put up?

A. The way I understood it.

Q. If that was the only thing wrong with your bank and you had over \$14,000 surplus why did you directors give your note for anything? You still had over \$10,000 left after you cut off the \$3,500.00 bad paper. Why did you give a note?

A. Because they claimed that would put our bank in good standing and good shape and we could do business.

Q. In other words, they claimed that rather than you only had \$3,500.00 bad paper?

A. We might have had more bad paper, but they didn't term it that way.

Q. What they actually told you, Mr. Mears, was it needed \$3,500.00 to put your bank in good shape?

A. That is the way I understood it.

Q. Where did you live then?

A. Mears.

Q. You were familiar with values then?

A. Yes.

Q. I imagine you attended probably all the meetings?

A. Practically all.

Q. They were carrying the banking house and lot at \$10,000, you knew that didn't you?

A. Yes, sir.

Q. And did you or not know that was more than it would bring?

page 104 } A. Well, yes, I knew it and I am still carrying insurance on property for more than it is worth.

Q. But you knew that was way out of proportion?

A. That wasn't discussed at this meeting. We had talked this before. The directors had talked it over before.

Q. Who talked it over before, Mr. Gardner and the Banking Department?

A. No, the Board.

Q. And you knew that was one of the things that was eating into your surplus?

S. W. Marshall.

A. I guess it was.

Q. And when you all met there that day, if I understood you while ago, the Banking authorities told you it would take \$3,500.00 to put your bank in good shape?

A. That is the way I understood it.

Q. This examination made in February, a little over a month before you all gave these notes,—do you examine *thos* reports when they come in?

A. No, sir.

Q. Are they brought to the attention of your Board?

A. Not at that time.

Q. Were they brought to the attention of your Board afterwards?

A. I don't recall.

Q. Did Dr. Kerns, as President of the Bank, require them to be brought to the attention of the Board?

A. I wouldn't like to say.

Q. Mr. Marshall, was there ever a time after page 105 } these notes were given that that bank was solvent?

A. I think so.

Q. If the Bank was solvent and they told you you needed \$3,500.00 to make it solvent did you ask for your note back?

A. When they taken my money I asked for it, yes, sir.

Q. When was that?

A. I had between \$1,000 and \$1,100.00 when the bank closed and I couldn't get a cent of it until that note was paid off.

Q. That was when the bank closed?

A. Yes.

Q. You knew it wasn't solvent then. I understood you to say there was a time between March 1935 and July 1937 you thought she was solvent.

A. Yes, I thought she was all right.

Q. Did you go to the Cashier or Dr. Kerns or the Banking Department and tell them we gave a note to put the bank in good shape and now we want the note back?

A. No.

Q. Was it ever taken up in a Board of Directors meeting that collections on this worthless paper should be credited on these notes?

A. No, sir.

Q. Never a word of that?

A. No, sir.

S. G. Mears.

Mr. Mapp: That is all.

RE-DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Marshall, it was perfectly understood page 106 } that the \$3,500.00 collections, if they could be made, had to be applied to these notes before you could get anything back, wasn't it?

A. That was absolutely true. Whatever was collected was to be credited on these notes.

Q. When you reached a point where it was sure nothing more would be collected then you and the other gentlemen would have to make that up?

A. That is how I understood it.

Q. But if the time came when it was all paid every one of these notes came back to you?

A. Yes, sir.

By Mr. Mapp:

Q. And as each collection was made it was to be credited on your note?

A. That is the way I understood it.

Q. Did you ever see if any payment was credited on yours?

A. No.

Mr. Mapp: That is all.

S. G. MEARS,

a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Gunter:

Q. Mr. Mears, what connection, if any, did you have with the Peoples Bank of Bloxom in March 1935?

A. Director.

Q. Were you present at the meeting when these notes were signed?

page 107 } A. Yes, sir.

Q. What was your understanding of the agreement that was made at that time?

S. G. Mears.

Mr. Doughty: Same objection.

The Court: Objection overruled.

Mr. Doughty: Exception noted.

A. You mean about the note I signed.

Q. Yes, sir.

A. What they were for?

Q. Yes, sir.

A. To back up \$3,500.00. They asked for a joint note and I refused. I told them I would give a personal note, but I wasn't going to sign no joint note, and then they agreed that they would take ten, and it was for \$3,500.00 and as we collected we got it back.

Q. How were you to collect it?

A. It was up to the Cashier and attorney, I suppose.

Q. From what source?

A. From some bad notes they laid aside, but I don't know whose notes they were because I didn't pay any attention to whose notes they were.

Mr. Gunter: Take the witness.

CROSS EXAMINATION.

By Mr. Mapp:

Q. Mr. Mears, what was the only trouble pointed out to you all by the Bank Examiners, that you had \$3,500.00 worth of bad paper?

A. It might have been more than that. They asked would I sign a note for \$350.00 and I agreed to do that.
page 108 } Q. But you wanted to know what reason you did that?

A. Yes.

Q. What reason did they give you for wanting it?

A. No good notes. They may not have said no good.

Q. How much did they tell you the no good or worthless notes amounted to?

A. I never heard any definite price except that \$3,500.00. I don't know whether it was more or less.

Q. Before you signed did you want to know how much they were talking about?

A. It didn't make any difference.

Q. Suppose they only had \$2,000 worth of bad notes, you wouldn't want to give notes for \$3,500.00.

L. T. Mears.

A. I took for granted it was \$3,500.00.

Q. Who told you it was for \$3,500.00?

A. It might have been known, but we were asked to back up \$3,500.00.

Q. And no damage to your bank or any trouble except these bad notes?

A. No, sir.

Q. And you were to get credit from nothing except notes that Mr. Gardner and Mr. Burke considered worthless?

A. That was my understanding.

Mr. Mapp: That is all.

page 109 }

L. T. MEARS,

a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Mears, what connection, if any, did you have with the Peoples Bank of Bloxom in March 1935?

A. Director.

Q. Where do you live?

A. On the road from Nelsonia to Modestown.

Q. How long were you a director?

A. From the start.

Q. To the end?

A. I wasn't on the last. I think this meeting they cut out some directors.

Q. Were you present at the meeting on March 20, 1935, when these notes were given?

A. Yes, sir, I was present.

Q. And you gave a note too, did you?

A. No, sir, I gave a check.

Q. You had some money in bank?

A. Yes, sir, I had a little money and I gave a check.

Q. Under what circumstances did you give the check, with what understanding?

Mr. Mapp: Same objection.

The Court: Overruled.

Mr. Mapp: Exception.

L. T. Mears.

A. What is that?
 page 110 } Q. Several of these gentlemen have testified
 they gave their notes. You have heard their tes-
 timony?

A. Yes, sir.

Q. You have also heard them testifying how they expected to be paid back, in whole or in part. Was that your understanding too?

A. Yes, sir.

Q. And instead of giving a note you gave a check?

A. Yes, sir.

Q. Did you expect the same consideration from the collections they did?

A. Yes, sir.

Q. Where was this money to come from to pay you back and pay them back?

A. They said they had some notes there wasn't any good. I looked them over and thought some of them was collectible. I wasn't giving away \$300.00. That wasn't my intention when I signed the check.

Q. What was your understanding with them about using your check?

A. Some of the Bank officials, State officials, fixed out the check in a time deposit check, but they wrote on there what it was for and they gave me the understanding,—I objected being into it at all at first, but they gave me to understand it was pretty safe and that was when I agreed. You know I thought I might die and I thought my wife would be better to receive a check than pay a note, so I paid it off myself.

Q. That was your personal choice, to give a
 page 111 } check instead of a note.

A. They said it was O. K.

Q. You say they put on the check what it was for?

A. I don't think I have ever gotten that check back. It was some mix up in the bank and I don't think I ever got all my checks back. This check was requested when I went to get my other money out of the bank and they wouldn't give me that back. I asked for it back, but they wouldn't give it back. They said it would be on file and was O. K. if I needed it.

Q. Mr. Mears, did you have then, or have you now any idea of the face value, not good or half way good, but any notion of the face value of all of those notes that have been described as worthless?

L. T. Mears.

A. No, sir. Lots of meetings I didn't attend and I don't know much about the banking business no way.

Q. Did they ask you and the other gentlemen present for any further paper than \$3,500.00 in amount?

A. That was all.

Q. Now you are clear on that?

A. Yes, sir.

Q. Regardless of the condition of the bank that is what they asked you for?

A. Yes, sir.

Q. And you contributed your part of it?

A. I contributed the \$300.00.

Q. Was there anything said about the time within which collections would be made from this worthless paper?

A. Well, I presume they were going to collect page 112 } them as soon as they could.

Q. But there was no time limit put on?

A. No, sir.

Q. What was the understanding about the Bank's going on if these notes were made?

A. That was my understanding. I looked over possibly some of the notes and I thought they were collectible and I thought if I could put up \$300.00 and help the bank go on they could collect it and I wouldn't loose anything.

Mr. Powell: That is all.

CROSS EXAMINATION.

By Mr. Mapp:

Q. Mr. Mears, you say you decided that day you would rather have your wife to get a check than pay a note?

A. I thought it would be easier. Keep out of the law.

Q. Mr. Mears, was anything discussed by the Bank officials except the bad paper?

A. Well, not that I know of. I don't know.

Q. Are you prepared to say, or do you recall whether anything was discussed about the valuation on your real estate, your banking house and lot?

A. Not that I know of.

Q. Do you mean you don't think it was or you don't remember?

A. It may have been or may not have been.

Q. Did you understand you were putting up \$300.00 for bad paper, or put the bank in good shape?

L. T. Mears.

A. I thought it was this paper. When it was collected I thought I was going to get mine back. I didn't
page 113 } want to give away \$300.00.

Q. Are you prepared to say whether you gave the \$300.00 with the understanding you were putting the bank in good shape, or you were making good bad paper and nothing else?

A. I thought it worked both ways. I thought maybe when they collected it would help the bank to continue to run, and they could collect the paper and it would help all around.

Q. Did you know of anything wrong with the bank, over valuation of your real estate or anything? Did you know what it was valued at?

A. I guess I have heard. I judge they valued it what it cost and they have never changed the valuation.

Q. \$10,000 for the banking house?

A. I guess that is what that cost.

Q. As a matter of fact, living there you know the banking house and lot wasn't worth that in 1935.

A. I guess it depreciated in value like everything else.

Q. Mr. Somers has testified that between the time these notes were given and the appointment of Wrendo Godwin Receiver, that approximately \$1,000 was collected in the so-called worthless paper and turned into the bank. Did you know about that?

A. No, sir, I didn't. I don't think I was a director. They didn't have as many directors on the last of it as they did earlier, and I wasn't a director the last.

Q. Did you learn any collections had been made and turned into the Bank?

A. Possibly I had heard it.

page 114 } Q. You didn't give any note. Every collection, according to your understanding, you were entitled to a credit on.

A. I thought if these notes were collected I thought I was going to get mine back.

Q. And if half of them were collected you would get half of yours back?

A. Yes, sir.

Q. You were entitled to a credit as each one went on?

A. I don't know how they worked that.

Q. Did you ask the Bank if they had been collected to give you a credit and a refund?

A. I thought that possibly had to be collected as a whole.

L. T. Mears.

They couldn't tell, collecting maybe a little this week and a little more next month.

Q. You mean you thought unless they collected the whole \$3,500.00 you would not get your \$350.00 back?

A. I didn't know what was going to happen. I was in it and I had to do as the rest did.

Q. Mr. Mears, shortly after the Receiver was appointed did you make a statement to some bank official in the presence of Mr. Godwin, who was Receiver at that time, you gave the \$300.00. You knew the bank was in bad shape and you decided to give the \$300.00 and get clear of it?

A. No, sir, I don't think I did that.

Q. You neither remember nor deny?

A. No, sir, I don't remember that.

Q. And you state you have never made any de-
page 115 } mand on the Bank for any refund on your \$300.00?

A. No, sir.

Q. You kissed that goodbye?

A. I don't know, I guess I might have to. I am not particular about doing it until I have to.

Mr. Powell: If your Honor please, we had an understanding with these gentlemen before the trial that any of the records they had we called for they would be glad to have here today. One of the books we want is the Journal showing the cash collections from 1935 on and the minutes for the year 1935 and the report made by the F. D. I. C. Examiner in 1937, just before the Bank closed.

Mr. Doughty: The only thing we have is the F. D. I. C. report. I have offered these gentlemen all the minutes we have. I have also the only Journal I have ever seen and this was in another case and went to the Supreme Court and has been sent back.

Mr. Gunter: That only went to 1929.

Mr. Doughty: That is the only one I have ever seen.

Mr. Gunter: Do you have any minutes for the year 1935

Mr. Doughty: Everything that has been turned over to me is there except what is in the Supreme Court in the Frank White case.

Mr. Doughty: I am not sure whether we introduced the Grounds of Defense in the Frank White case.

The Court: You didn't do it.

Mr. Doughty: May we introduce it now with the right to withdraw it, as Plaintiff's Exhibit D, as follows:

L. T. Mears.

page 116 } "Virginia:

In the Circuit Court of Accomack County.

Wrendo M. Godwin, Receiver, etc.

v.

D. Frank White

NOTICE OF MOTION FOR JUDGMENT.

GROUND'S OF DEFENSE.

The defendants says that in the spring of 1935 the Peoples Bank of Bloxom, Inc., was examined by Messrs. Gardner and Burke, representatives of the Department of Banking and Insurance of Virginia, and the Board of Directors of said Bank were advised by the said Bank Examiners that there was considerable paper in said Bank which they regarded as worthless, and that if they, the said Directors, desired the said Bank to continue to operate, they must make a note or notes aggregating \$3,500.00, which said note or notes must be payable to the Peoples Bank of Bloxom, Inc., Bloxom, Virginia, and would be held by the Bank as collateral security for the payment of the notes above referred to as worthless, and if and when payments should be made on the aforesaid alleged worthless paper, then that such payments should be credited, *pro tanto*, on all of said notes executed, by the direction of Messrs. Gardner and Burke, by the directors of said bank and made payable to said Bank; that included in said alleged worthless paper was a bond of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, secured by a deed of trust on real estate; a bond or note of Preston Northam and wife; one bond or note executed by H. J. Byrd; one bond executed by Z. S. Mears; and one or more notes of Clyde Shreaves, former cashier of the Bank, and Upshur Shreaves, his father, for several amounts;

page 117 } That pursuant to said collateral and conditional agreement, each director of said Bank, except Elmer W. Somers and W. W. Kerns, executed their individual notes, payable to the Peoples Bank of Bloxom, Inc., of Bloxom, Virginia, for the principal sum of \$350.00 each, (this defendant being one of said directors), and Elmer W. Somers and W. W. Kerns, two other directors, executed their individual notes for the sum of \$375.00 each, payable as aforesaid, to

Norman J. Godwin.

said Peoples Bank of Bloxom, Inc., all of said notes aggregating \$3,500.00, all of which said notes were executed and delivered to said Bank as collateral security for the payment of said alleged worthless notes, and if and when said notes were collected, or any part thereof, then the amounts so collected should be applied in satisfaction, or *pro tanto* satisfaction, of the notes executed and delivered by said directors to said Bank.

Further this defendant states that there was collected on said worthless paper the following amounts: On the W. H. Hickman and wife second deed of trust bond, above set out, \$2,000.00, of which amount \$200.00 was paid to the Bank's Attorney for collection, leaving a balance of \$1,800.00 collected on the Hickman bond; all of the Preston Northam bond was collected; the Shreaves notes were collected; the H. J. Byrd note was collected; and the Z. S. Mears note was collected; these collections, and no part thereof, has been applied to the payment of the aforesaid notes executed by the aforesaid directors, one of which is the note herein sued on, and executed by this defendant. The exact amount of these notes, and the exact amount of the collections on the alleged worthless notes due to the Bank, all of this information is in the books and papers of the Bank, now in the possession of the Plaintiff in this case, the Receiver of the page 118 } Bank, Wrendo M. Godwin.

That for the reasons above stated, the said Plaintiff is not entitled to recover the amount herein sued on.

D. FRANK WHITE."

NORMAN J. GODWIN,

a witness on behalf of the Defendant, being first duly sworn.
testified as follows:

DIRECT EXAMINATION.

By Mr. Powell:

Q. Mr. Godwin what is your full name?

A. Norman J. Godwin.

Q. And what position did you occupy with the Peoples Bank of Bloxom?

A. Since March 20, 1935, Cashier.

Q. Did you have any connection with it prior to that time?

A. No, sir.

Norman J. Godwin.

Q. You continued to be Cashier up until when?

A. Up until July 19, 1937.

Q. That was shortly before the Bank closed, wasn't it?

A. That was up until the time the Bank closed.

Q. As Cashier of the Bank you had custody of all of the books and records of the Bank up until it was closed?

A. Yes, sir.

Q. What became of the records?

A. They were turned over to Mr. Wrendo Godwin, Receiver.

Q. Do you know anything about the whereabouts of any of those records, where they were kept after they page 119 } were turned over to him?

A. They were kept in the Peoples Bank.

Q. Some of them were kept in the Bank and some were outside, weren't they?

Mr. Mapp: Mr. Powell, ask the witness the question.

A. They were kept in the Bank until the bank was sold and then they were kept in the storehouse run by the Godwin Grocery Company.

Q. The Bank building of the Peoples Bank of Bloxom was later on sold?

A. That is right.

Q. Records stayed there until that sale and then they were moved out?

A. So far as I know they stayed there.

Q. I will ask you to look at that record and tell the Jury what that is.

A. This is a report of the examination of the Peoples Bank of Bloxom, Bloxom, Accomack County, Virginia, Examiner in Charge is H. W. Ward, Jr., examination close of business January 14, 1937, for the Examiner in charge D. E. Neblett.

Q. What Department of the Government made it?

A. This was made by the F. D. I. C.

Q. This was made at the close of business January 14, 1937?

A. That is right.

Q. Turned over to you?

A. Yes, sir.

Mr. Powell: We want to introduce page 11 of page 120 } that F. D. I. C. REPORT, same being marked Exhibit E.

Norman J. Godwin.

Note: It is agreed between counsel that the original report of the F. D. I. C. made at the close of business January 14, 1937, is to be made a part of this record.

Q. Was Mr. L. T. Mears a depositor in this bank?

A. Yes, sir.

Q. You remember that he was?

A. Yes, sir.

Q. Of course, Mr. Godwin, he had a pass book?

A. Yes, sir.

Q. Do you remember anything about that pass book? Do you remember any entry made on that with regard to a payment of \$300.00 that he made?

A. I can't say about the pass book, because the entry wasn't made on the pass book by me, but on his savings account sheet there was an entry made on that of this \$300.00 should be reserved to pay off this note in case it had to be paid.

Q. Now do you know what became of that, the savings account book?

A. The examiners requested that to be turned in from all depositors as they settled with them. In other words, if you had some money on account and you had a note they taken this note and it was credited from your deposits.

Q. Who did that, the F. D. I. C. people?

A. Yes, sir.

Q. Was that pass book of Mr. Mears' turned in that way so far as you know?

A. So far as I know it was.

page 121 } Q. When did you cease to be Cashier?

A. On July 19, 1937.

Q. Do you know what became of this pass book of Mr. Mears' after that time?

A. No, sir, I do not.

Q. About what time did you turn that in?

A. Well, you see this was turned in to Mr. Godwin, the Receiver, July 19, 1937, and this was turned in to Mr. Godwin and the examiners. The F. D. I. C. people were there three or four days.

Q. Did they wind up as quickly as that, Mr. Godwin?

A. I said about four days, something like that, but they were there for a while anyway.

Q. They were taking care of the depositors?

A. That is right.

Norman J. Godwin.

Q. Did they have any need of this savings account?

A. They are the ones requested the pass books when they gave them check for the amount of their deposit. The deposit book was receipt for the money they deposited and they required that when they gave them the money.

Q. Do you know what became of it afterwards?

A. All the deposit books that were turned in were put in a little box.

Q. What was this savings account notation made on?

A. On their ledger sheet.

Q. Did it appear on the savings account book too?

A. I don't know.

Q. What became of that ledger sheet?

page 122 } A. That was in with the bank records that were there when I left.

Q. Who was in charge then?

A. Mr. Wrendo Godwin.

Q. The Receiver?

A. Yes, sir.

Q. You had a record that was a Cash Book, did you not?

A. Yes, sir.

Q. Showing collections made from time to time?

A. We entered all our collections on the journal, which from our journal was carried to our ledger. The Cash Book we only used mostly as transactions of the cash.

Q. That showed all collections?

A. Yes, sir.

Q. All collections in 1934, 1935, 1936 and 1937?

A. Yes, sir.

Q. Do you know what became of that?

A. No, sir, I asked for that today and Mr. Godwin told me it got burned up in the recent fire.

Q. Were these books in the house that burned down?

A. I don't know whether they were there at the time of the fire or not, but they were put in a portion of the house that did burn down first. I don't know what became of them after that.

Q. There are apparently some records here today. Do you know where they came from? Were they in Mr. Wrendo Godwin's control?

A. So far as I know.

Q. They would be in Mr. Godwin's control or his attorney's?

Norman J. Godwin.

page 123 } A. That is right.

Q. Now did you keep records of all the directors meetings in the year 1935 after you became Cashier?

A. Not for the first month or two, probably two months. Mr. Burke, the examiner, was more in charge for the first month than I was, because I had never been Cashier of a bank, in fact I had never done any banking, and they were there maybe five weeks after I was elected Cashier and he made a record of the meetings.

Q. As a matter of fact, one of them had been there a little while before you went in?

A. I think so.

Q. What became of that minute book, do you know?

A. No, sir.

Q. Have you seen it here?

A. So far as I know they might have it,—that is the binder of it anyway. Whether the minutes are there I can't say.

Q. Did you have more than one minute book?

A. No, sir.

Q. After the first month or two as these meetings were held you made the entry of the minutes?

A. After the examiners left.

Q. You can't throw any further light on any records that are missing other than what you said?

A. No, sir, I don't know anything about the records. They were left in the Bank until the bank was sold and then stored in a building and how long they stayed there I can't say. I only went in there once after some information. I think it was when this trial was to come up before, and
page 124 } I went in there for something, but I didn't find any journal when I looked in there.

Q. So far as you know there is no book available showing the cash collections. What did you say you called that, a Journal?

A. Yes, sir.

Q. Do you remember that any collections were made on the paper of Pauline Northam and Preston Northam?

A. It seems to me we collected around \$100.00. I will not say just how much.

Q. Would you be able to tell the Jury how that collection was actually made,—I mean the way it was handled.

A. That was handled through Mr. Somers.

Q. Do you know what proportion of it Mr. Somers col-

Norman J. Godwin.

lected? Or put it this way: Was any further amount paid by the makers after the collection by Mr. Somers?

A. I am unable to say. If I had the Journal I could tell you in a few minutes, but you say they haven't got it.

Q. Now in the absence of the Journal would you feel safe in telling the Jury of any collections?

A. I would rather not to.

Mr. Powell: Take the witness.

CROSS EXAMINATION.

By Mr. Mapp:

Q. Mr. Godwin, You were not present at the meeting on March 20, 1935, when these notes were given?

A. No, sir.

Q. That was the meeting they elected you Cashier?

A. I wasn't present at the time they gave the page 125 } notes.

Q. When you went in I imagine you went in shortly following that meeting?

A. Yes, sir, the next day to the best of my knowledge.

Q. Was the minute book turned over to you?

A. It was after the Examiners left.

Q. When it was turned over to you were those two sheets in the minute book?

A. I think so.

Q. Do you know who made those minutes?

A. No, sir, I do not.

Q. Did they remain in the minute book from the time you took over as Cashier up until the appointment of the Receiver?

A. Yes, sir.

Q. They were never actually copied in and signed, but they were in this book?

A. So far as I know.

Q. Have you any reason to think they were not?

A. No, sir.

Q. All collections made by you on any paper made for the Bank were credited by you on the paper, were they not?

A. Yes, sir.

Q. Were you ever requested by any of the Directors to make any credits on these \$350.00 notes?

A. No, sir.

Norman J. Godwin.

Q. Any time up to the appointment of Mr. Godwin as Receiver?

A. No, sir.

page 126 } Q. About how often a year would you be examined from the time you went in up until the time the Bank closed?

A. About every six months.

Q. Following those examinations would a report of those examinations be sent to the Bank?

A. Yes, sir.

Q. Would they be gone over at the next Board meeting?

A. They would be read by me.

Q. Did all of those reports show that these notes aggregating approximately \$3,500.00 were carried as a part of the bank's assets?

A. Yes, sir.

Q. Was there any objection to that by any of the Directors until the time Mr. Godwin went in?

A. No, sir.

Q. Mr. Powell asked you I think especially about a note due the Bank of Pauline and Preston Northam's dated February 2, 1931. All of the payments made on that note, are they credited by you from the time you went in up until the time Mr. Godwin took over as Receiver?

A. Yes, sir, I think so.

Q. Every one of them that is on there?

A. I think so.

Q. I will ask you to state how much was paid on that between March 20, 1935, and July 19, 1937, the date you went out?

A. That would be \$107.95.

Mr. Mapp: That is all.

page 127 } The Court: Was that Savings Account Ledger destroyed in the fire?

A. Yes, sir.

By the Court:

Q. Do you know what notation was made on the Savings Account leaf on Mr. Mears' account about the \$300.00?

A. No, sir, I am afraid to say. I know there was a notation about that check being left there to protect his note, and so far as I know it wasn't to be used for any other purpose

Norman J. Godwin.

but to cover that note of \$300.00. Something like that. Mr. Mears had his note in there for \$300.00, and this check was to take care of that.

Q. You say Mr. Mears' note was in there?

A. His note was carried there along with the \$3,500.00 and this check was to take care of that.

Q. He says he didn't give a note.

A. I might be mistaken, but I think his note was there.

Q. If it was there for an ordinary note there would not be any notation on the savings account.

A. I think we can find that by the record here the Examiners have. This check, my understanding, wasn't to be used unless it had to be paid off.

Q. His note or somebody else's note?

A. I think it was his note. In other words, this check wasn't used. It was put there as a reserve. If the check had to be used then that would pay off his note.

Mr. Mapp: I think this may help him. Is there anything on there about a note of Mr. L. T. Mears?

A. No, it isn't. I can be mistaken on that.

page 128 } The Court: Do you know who that notation
was made on there by?

A. Mr. Burke.

Mr. Mapp: We offer in evidence the entire Report of the Federal Deposit Insurance Corporation, dated January 14, 1937, one part of which has already been introduced in evidence, same to be marked as Plaintiff's Exhibit E, the original of same to be made a part of this record.

RE-DIRECT EXAMINATION.

By Mr. Powell:

Q. You were Cashier of the Bank in September of 1936, weren't you?

A. Yes, sir.

Q. Now it has been testified,—of course the Jury have a right to believe or not believe,—that a credit was made of \$102.01 at that time on this note of Pauline Northam and Preston Northam, and it doesn't appear here. The only entry in

Wrendo M. Godwin.

1936 is October 2nd, December 2nd, again October 2nd \$29.24.

A. How about on the face of the note. Isn't it \$72.77 there?

Q. Yes, sir. I guess that is right.

A. That was a credit.

Q. The credit too of \$102.00 Mr. Somers testified to I guess is all right. Do you understand? The two credits amount to the very same thing. Part of your credits, Mr. Godwin, were put on the back of the note and some on the face of the note, as very frequently is done by Cashiers.

page 129 } A. That is right.

Mr. Powell: That is all.

Mr. Powell: We would like to find out what records of the Bank were burned.

The Court: You can put him on the stand as your witness, or the Court's witness.

Mr. Powell: Will the Court do that then and make him his witness?

WRENDON M. GODWIN.

Receiver:

By the Court:

Q. Will you please state to the counsel and gentlemen of the Jury as to what records of the Peoples Bank were destroyed by the recent fire, if any?

A. Well, sir, when I sold the Bank—

Q. Don't go into detail. Just tell what has been destroyed.

A. Every single record has been destroyed that the Bank possessed that was turned over to me at the time I qualified as Receiver, with the exception of what is here and one in the Supreme Court.

Q. Can you name what was destroyed?

A. No, sir, I couldn't do that because I am not familiar with them enough to know the various names of them.

The Court: If you want any special book ask him.

By Mr. Powell:

Q. Was the record showing the collection of cash on any paper, was that destroyed?

A. I presume it was. Yes, sir, it was if I had such a rec-

W. W. Kerns.

ord. As I said a moment ago, I wasn't familiar
page 130 } with the various records because I am not fa-
 miliar with banking and if you would designate
a certain book I couldn't tell.

Q. Did you make any list of those?

A. You mean of the various kinds of records?

Q. Yes.

A. No, sir. When I sold the Bank I placed these in the Jack Somers building for safe keeping, but I might state that before the fire occurred, way back in August or before I placed these books in a sort of a storage house in the back of the store and it was locked, but some young boys around town went in through the windows and got all these books and destroyed them and actually took what they wanted, if they wanted anything, and from then on I never could tell anything.

Q. Do you remember having seen the Savings Account sheet of Mr. Tom Mears'?

A. No, sir, If I saw it I don't recall.

The Court: Stand aside, Mr. Godwin.

Mr. Powell: So far as we know now that is our case.

W. W. KERNS,
the Defendant, being recalled, testified as follows:

REBUTTAL EXAMINATION.

By Mr. Mapp:

Q. Doctor, of course you were a depositor in the Peoples Bank of Bloxom?

A. Yes, sir.

Q. How much, as near as you can recall, did you have on deposit the day you gave your \$375.00 note?
page 131 } A. I couldn't tell you to save my life.

Mr. Powell: What has that to do with it?

The Court: What is the purpose of it?

Mr. Mapp: It shows one reason for giving the note. If the Bank closed that day he would have lost a part of his account. That was one of the motives to give the note.

Mr. Gunter: If your Honor please, the evidence shows the deposits were insured.

The Court: If he had over \$5,000.00 I will let you show it.

A. I never did have that much.

William R. Gardner.

The Court: Objection sustained.

Mr. Mapp: If your Honor please, we save the point.

Q. Were you a stockholder of the Bank?

A. I was.

Q. How many shares of stock did you have at that time?

A. 22.

Q. What was the par value per share?

Mr. Powell: What bearing has that, if your Honor please.

The Court: I think that is a little far fetched.

Mr. Mapp: We except, if your Honor please.

Mr. Mapp: That is all.

SECOND DAY.

Note: Met pursuant to adjournment; same parties present as heretofore noted.

page 132 } Mr. Mapp: On yesterday just before the case closed for the day Mr. Gunter made this statement in front of the Jury in addressing your Honor: "If your Honor please, the evidence shows the depositors were insured". We desire to make the motion for a mistrial on the ground that the evidence was prejudiced; and on the further ground that there was a reference made by the Court to this effect: "If he had over \$5,000 I will let you show it".

The Court: I am going to overrule both motions.

Mr. Mapp: We make a motion to strike out all of the Defendant's evidence for the grounds stated in the Grounds of Defense and in the Motion to Reject the Grounds of Defense.

The Court: Motion overruled.

Mr. Mapp: Exception noted.

Mr. Powell: We rest.

WILLIAM R. GARDNER,

a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Mapp:

Q. Mr. Gardner, please state your full name.

William R. Gardner.

A. William R. Gardner.

Q. What connection, if any, did you have with the Banking Division of the State Corporation Commission of Virginia on March 20, 1935?

page 133 } A. I was an examiner.

Q. How long had you been a State Bank Examiner prior to that time?

A. Five years.

Q. You are no longer with the Department, are you?

A. No, sir.

Q. Have you any interest whatever in this case?

A. None.

Q. Mr. Gardner, were you at the Peoples Bank of Bloxom, in this County, when the note now sued on was given by Dr. W. W. Kerns?

A. Yes, sir.

Q. Had you examined the bank prior to that time?

A. No, sir.

Q. This note was dated March 20, 1935. Do you happen to recall what day of the week that was on?

A. I think it was on Wednesday.

Q. When did you come to the Eastern Shore?

A. On Sunday.

Q. Preceding the Wednesday the note was given?

A. Yes, sir.

Q. And you came from what place?

A. Richmond.

Q. Did any of the Banking officials come with you on Sunday from Richmond?

A. Yes, sir.

Q. Who was other official?

page 134 } A. Mr. Logan Ritchie, Chief Examiner, W. W. Burke and W. F. Baylor, Examiners.

Q. What time did you arrive?

A. We arrived at the Bank around three o'clock on Sunday afternoon.

Q. When did you begin your examination of said Bank?

A. Immediately on our arrival.

Q. Mr. Gardner, reference has been made to a report of examination of the condition of said Bank, dated, as I recall, February 8, 1935. Did you have with you when you came to the Peoples Bank for this examination, which was begun you say on Sunday preceeding March 20th, a copy of said report?

William R. Gardner.

A. Yes, sir.

Q. I will ask you to refer to your books there and state if that is the copy you had with you, or if you had a copy of that report.

A. This is the copy that we had.

Q. Did you have a conference with any official of the Bank between the time of your arrival on Sunday and the meeting of the Directors on the following Wednesday, March 20th?

A. Several of them.

Q. I will ask you to name what officials you had the conference with.

A. I had several conferences with Dr. Kerns.

Q. Do you recall when you first had a conference with him?

A. Immediately on our arrival in Bloxom on Sunday afternoon.

Q. Did you have any more conferences between that time and the meeting of the directors on Wednesday, the 20th?

A. Quite a number.

page 135 } Q. In any of these conferences was any reference made, or any examination made, of this report you have there?

A. Oh, yes, we went over it in detail with Dr. Kerns.

Q. Did you go over that entire report with him?

A. Yes, sir.

Q. I am going to ask you to turn, Mr. Gardner, to the items as shown by the report which impaired the capital stock of that bank.

Mr. Powell: Where is the original of the report? You refer to a copy.

A. This is an original so far as our office is concerned.

Mr. Powell: You referred to a copy while ago. Do you mean that that is the original you have before you now?

A. Yes, sir. I might answer you, Mr. Powell, by stating this. When the State Department and the F. D. I. C. made an examination together, the F. D. I. C. prepared a reportive examination which was signed by the examiners from both departments. The F. D. I. C. made up the reports. They keep the original and send the State Banking Department two copies, one copy of which was transmitted to the Bank, the other copy kept as a permanent record in the State Banking files.

William R. Gardner.

Q. Mr. Gardner, on what page of said report is there an itemized statement of the items which impaired the capital stock of the Bank?

A. On page 20A.

Q. What is the aggregate of those items?

A. Total loss \$15,590.97.

page 136 } Q. I am going to ask you to read to the Court and Jury the various items making up that total of a little over \$15,000.

A. Loans and discounts \$6,758.86; Overdrafts \$628.38; Protest fee \$1.00; Depreciation Bank premises \$4,537.50; furniture and fixtures \$1,119.44; Other real estate \$360.94; Cash Items \$290.84; Shortages \$698.34; Accumulated Dividend Preferred Stock of R. F. C. \$300.00; Operating Deficit \$395.67, making a total of \$15,590.97.

Q. Did you go over each and all of those items with Dr. Kerns prior to the Directors meeting of March 20, 1935?

A. Yes, sir.

Q. I am going to ask you please to give the items making up the first loss there, loans and discounts making up \$6,758.86. I am going to ask you to make a list giving those items, please sir.

A. Note of R. F. Bevans \$428.40; notes endorsed by W. L. Bloxom; T. W. Barnes \$189.91.

Q. I am going to ask you if you haven't added already what is referred to as the W. L. Bloxom line?

A. No, sir, I haven't.

Q. Look at your report.

A. It has been added. This is the indirect obligation of W. L. Bloxom totalling \$4,447.09. Note of Roy P. and Susie Byrd \$42; note of Elmer R. Hall \$3,500.00, \$1,000 classified as loss; H. H. Killmon \$90.89; Isaac Nock \$40.00; Clyde B. Shreaves \$125.00; Bill Somers \$387.48; Viola M. Somers \$8.00; H. Chris Somers \$150.00; Samuel P. and H. E. White \$40.00.

Q. And those items total?

A. \$6,758.86.

page 137 } Q. Did you go over that itemized list with Dr. Kerns prior to the Directors meeting on March 20th?

A. Yes, sir.

Q. Mr. Gardner, I am going to ask you to please look at the report and state the notes that were at that time considered by the Banking Department as doubtful. Give an itemized statement of them, please, sir.

William R. Gardner.

A. Sam Ames note \$200.00; W. L. Bloxom \$1,000; Elizabeth Bloxom and W. L. Bloxom \$200.00; J. Frank Calloway \$175.00; Annanias Rogers \$300.00; J. E. Stran \$198.58, a total of \$2,073.58.

Q. Were any of the doubtful notes you have read included in your worthless notes?

A. All of them were in figuring the impairment of the capital.

Q. Mr. Gardner, were you present throughout all of the meetings of the Directors of the Peoples Bank on March 20th, 1935?

A. Yes, sir.

Q. Were you present when the note was given by Dr. Kerns and the other notes given by the other Directors?

A. Yes, sir.

Q. Please state what understanding, if any, was had by the Banking Department and the Directors at the time these notes were given.

A. On the morning of March 20th, the day before I asked Dr. Kerns to have an entire meeting of his Board of Directors in order to discuss the situation of his Bank. We were meeting for the purpose of working out a plan to keep the Bank open. I stated to the Board when they met that morning that they had a capital impairment of approximately \$3,500.00, according to report of examination made on February 8th; that we had an investigation under way of the Bank which might show further impairment. I asked the Board of Directors to give a bond, or joint note of \$3,500.00 to take care of the impairment. There was considerable discussion about it and it was finally agreed that they would give separate notes. The question was asked me if they would have the notes to pay and my statement to the Board of Directors was that if and when the assets that were classified as loss and doubtful by the Examiners was made good the notes would be handed back to them.

Q. Mr. Gardner, it has been testified to by Dr. Kerns and some of the others that it was agreed by you at that time, speaking in behalf of the Banking Department, that all collections on paper that was at that time considered by the Banking Department as worthless, or some of the Directors said paper considered doubtful, would be credited proportionately upon these various notes given by the Directors. Is that correct or not?

William R. Gardner.

A. That is not correct.

Q. Mr. Gardner, were any notes considered by you as worthless or doubtful except the notes you have detailed here as shown by that report at this meeting on March 20, 1935?

A. In this meeting on March 20, 1935, the Directors insisted on discussing the notes in question. In order to do that, with the report set up as it was, we arranged the notes alphabetically and discussed each note in the Bank. There were other notes in there I thought possibly there might be some loss in, but it could not be agreed upon by the Board and after our going over them Mr. Ritchie and page 139 } I decided we would base the giving of the notes on this report of examination.

Q. You say you and Mr. Ritchie decided that. Was that decided by you and Mr. Ritchie in the presence of all of the Directors before all of the notes were given?

A. Well, I can't say about that.

Q. I am going to ask you to state to the Jury just how you arrived at the impairment of the capital of approximately \$3,500.00.

A. The total doubtful and loss, as shown by the Examiners Report of February 8, 1935, was \$17,671.29. To take care of that before impairing the Capital the Bank had a surplus of \$14,315.00, showing a net impairment of \$3,356.29.

Q. And that was the figure you had in arriving at approximately \$3,500.00 impairment?

A. That is correct.

Q. Had your examination been completed at that time?

A. No, sir.

Q. Do you know whether your examination then in progress showed further impairment still?

A. No, sir, I do not.

Q. You have an item in that of \$800.00 loss on other real estate. Are you able to state from your report how that was arrived at?

A. The other real estate was made up of a 60-acre improved farm near Accomac taken from J. H. West.

Q. And on which you anticipated a loss of \$800.00?

A. That is right.

page 140 } Q. Mr. Gardner, in arriving at this impairment of your capital at that time resulting in the giving of the note sued on and other notes, was any bond of W. H. Hickman, Sr., and Tabitha Lee Hickman, his wife, considered or listed as either doubtful or worthless?

William R. Gardner.

A. No, sir. In the discussion of the notes I might say this, that I thought that that bond should be possibly classified as doubtful or loss and had quite an argument with the members of the Board, but Mr. Elmer W. Somers said he was standing behind it and we left it in the same classification as set up in February 8th report, which was as slow.

Q. But it wasn't included in arriving at these figures?

A. No, sir.

Q. Was the bond of Preston Northam and wife considered either doubtful or worthless?

A. No, sir.

Q. Was the bond of H. J. Byrd considered either doubtful or worthless?

A. No, sir.

Q. Was the bond of Z. S. Mears considered either doubtful or worthless?

A. No, sir.

Q. It says here one or more notes of Clyde Shreaves. Were any of those notes of Clyde Shreaves' listed or considered as doubtful or worthless?

A. \$125.00 single name note.

Q. How was that classified?

A. Loss.

page 141 } Q. Any note of Upshur Shreaves and father
doubtful or worthless?

A. No, sir.

Q. After you completed that examination did you make any further examination?

A. No, sir.

Q. About how long did it take you to complete that examination after that meeting?

A. I left immediately after the meeting. We left Mr. Burke and I think he was there six or seven weeks.

Mr. Mapp: You gentlemen take the witness.

CROSS EXAMINATION.

By Mr. Powell:

Q. Mr. Gardner, state again who it was that came over with you on the Sunday before this Wednesday, March 20th.

A. Mr. Logan R. Ritchie, Chief Examiner, W. W. Burke and W. F. Baylor, Examiners.

Q. All State officials?

A. Yes, sir.

William R. Gardner.

Q. Four of you?

A. That is right.

Mr. Mapp: If your Honor please, we offer this report in evidence, marked as Plaintiff's Exhibit F, and ask the Court's permission to file a copy of it so the original Corporation records can be returned, said report to be made a part of this record.

Q. What previous report of the bank's conditions, if any, did you have with you and what was the date of page 142 } that?

A. The only report I had with me, Mr. Powell, was the report of examination of February 8, 1935.

Q. Made by whom?

A. Made by the F. D. I. C. and the State Banking Department, its representatives.

Q. Examination made jointly, was it?

A. Yes, sir.

Q. That was a little over a month before you came over?

A. Correct.

Q. And you had that at the time?

A. Yes, sir.

Q. And what did that show as to the Bank's condition,—I don't mean to go into detail. What did it show as to the bank's solvency?

A. It showed the Bank had a capital impairment of \$3,356.29.

Q. Now break that down into plain English. What does capital impairment of \$3,500.00 mean as to that Bank? Just what does it mean, what is the effect of the Bank's condition?

A. The Bank had a capital set up at the time of the examination of \$27,500 capital stock. \$15,000 of it was preferred stock owned by the R. F. D., which is an agency of the Federal government. \$12,500 of it was made up of common stock held by local people. After taking into consideration \$17,671.29 in losses and giving credit for the Bank's surplus fund as shown by its books, which was \$14,315.00, the \$12,500 common capital was impaired by the amount of \$3,356.29.

Q. Was the Bank then solvent or insolvent? page 143 }

A. It was not solvent.

Q. It was not solvent when you came over here on this trip you are referring to?

A. That is right.

Q. The Bank then should have been closed, should it not?

A. We came over to correct the condition.

Q. To correct the condition?

A. That is right.

Q. Now what does that mean?

A. That was the reason we asked the Directors to put up satisfactory security to take care of the \$3,356.29, to bring back the common capital to \$12,500.

Q. Was there any proposition made about going into any other banking institution?

A. It was discussed, yes, sir.

Q. By whom?

A. By Dr. Kerns and myself.

Q. And what was the institution?

A. The Metompink Bank & Trust Company?

Q. Did you advise going in with that?

A. If it could be worked out.

Q. Did you consider that preferable to closing the doors of the Peoples Bank?

A. Yes, sir.

Q. That was not accomplished?

A. No, sir.

Q. The condition of the Peoples Bank, was that an element in the failure to be taken over?

A. The main element that stopped the negotiations between the Metompink Bank & Trust Company and the Peoples Bank of Bloxom was that our audit was in progress which discovered certain irregularities. We didn't know how far reaching those irregularities would be, therefore we could not recommend to any bank to take over the Peoples Bank of Bloxom.

Q. That was on account of the condition of the Peoples Bank?

A. Yes, sir.

Q. Now you say correcting the condition that was there. As a matter of fact, according to the condition about which you knew from the previous examination, the law prescribes one course, does it not, Mr. Gardner?

Mr. Mapp: We object to that, if your Honor please. The Supreme Court has held it doesn't necessarily imply one course. I don't think it is fair to ask that question.

Q. I will withdraw the question and put it in this form. When you came over and found the condition of the Peoples Bank such as you did find it, what did that call for on the part of the Banking Department of the State?

William R. Gardner.

A. Either to have the condition corrected, or close the Bank.

Q. Now the condition that had to be corrected had to be cured by making an insolvent bank solvent. Is that right?

A. That is right.

Q. And you state now that these gentlemen who are directors allowed, if not led, to put up their notes
page 145 } for \$350.00 to cure the insolvent condition of that bank and that alone. Now that is what they were called upon to do.

A. The Directors didn't agree to the classification. They thought possibly the notes as set up by the examiners would prove to be of value. That is the reason they were willing to give their notes.

Q. But, Mr. Gardner, wasn't it also true that they were to be protected in some way by collections on this paper that they thought some collections could be made out of?

A. The only condition prescribed by us was when their Bank, the assets that had been set off as doubtful and loss, were proven to be of good value, the notes would be returned to them.

Q. So that in substance the only difference between your position and that of the Directors would be the notes out of which the collections would be made? Is that it?

A. No, sir.

Q. What is the difference then? They have testified that when certain collections were made out of paper held by the Bank and which was classified by someone as worthless, collections either made in whole or in part to the extent of \$3,500.00, then their notes should be returned to them. Now then, what paper do you say the collections should come from that would have enabled these men to get their notes back?

A. Not only paper, Mr. Powell, the Bank building, furniture and fixtures and other real estate. Depreciation in those items brought about the capital impairment as much as the classification of the notes.

page 146 } Q. So far as the impairment of the capital that may be true, but you testified while ago that when certain collections were made—

Mr. Mapp: He has never testified to that.

A. I testified that whenever the assets that were classified by the Examiners as doubtful and loss were proven to be

William R. Gardner.

of sound value the Directors' notes would be returned to them.

Q. That when it should turn out that their banking house and fixtures should be worth as much as was carried at in the statement then their notes would be returned?

A. Or sufficient earnings made from the Bank to depreciate them to the value as set off in the report.

Q. You know something about the value of real estate in certain parts of the State, do you not?

A. Yes, sir.

Q. And you had some idea of the values obtaining right there in Bloxom. Did you have any idea how long it would take for that banking house to regain enough of its loss value to relieve these note-givers?

A. No, that would be governed by conditions under which the Bank would operate, whether it would have flourishing conditions or otherwise.

Q. Now was anything said to those gentlemen that day about collections from any paper whatsoever that would relieve them?

A. No, sir.

Q. Not a word said?

A. Not that I remember.

page 147 } Q. You were spokesman, were you not?

A. I was in the discussion. Mr. Ritchie, my superior officer, was there.

Q. The whole situation was canvassed very carefully and thoughtfully, was it not?

A. We thought so.

Q. And that was your business there?

A. That is right.

Q. And you tell the Jury that throughout that whole interview not a word was said to these Directors, or to any one of them, about the collection that might be realized from certain papers of the Bank, whether classified as worthless or otherwise, that would ultimately enable them to get their notes back? Did you get that question clearly? I want an answer to that yes or *not*.

Mr. Mapp: I don't think you can tie the witness down to yes or no.

Mr. Powell: That is for the Court to say.

Note: Question read back to the witness.

William R. Gardner.

Q. Was anything said to them on that one specific point?

A. The directors asked me the question and my answer to their question was whenever your assets that have been classified have proven to be of sound value your notes will be returned, but so far as any credits on the notes they gave, that wasn't discussed.

Q. None said anything to you about that?

A. Not that I remember.

Q. The effect of that was, from the description you give of the meeting, that these directors were just allowed, I will say, not asked but allowed to put up their paper to restore the impaired capital of the bank then in an insolvent condition. Have I made that clear?

A. They were required to correct the condition that then existed.

Q. So they were not permitted but were requested to put their money up to save what turned out to be a sinking ship, weren't they?

A. Yes, sir.

Q. Mr. Gardner, do you know this gentleman?

A. Yes, sir.

Q. As one of the directors?

A. Yes, sir.

Q. And you know him as T. Lee Byrd?

A. Yes, sir.

Q. Was he present there that day?

A. Yes, sir.

Q. Did he or did he not ask you the specific question that day whether or not upon the giving of these notes by these gentlemen, if certain collections were realized from the paper of the bank then before these gentlemen in the form of notes, that they would be credited on their notes accordingly?

A. No, sir.

Q. No such question asked you?

A. No, sir, not that I remember.

Q. Is there any reason why you shouldn't remember that?

A. Mr. Byrd asked the same question that the other Directors asked when his note would be returned to him or would he have to pay it, the same answer was given Mr. Byrd that whenever the assets that were classified as doubtful or loss were realized on them the notes would be returned to the directors.

Q. Wasn't each and every one of those directors solicitous about the return of those notes?

A. Yes, sir.

William R. Gardner.

Q. And were reluctant to give those notes without some assurance that they would not be called upon to pay? Isn't that true?

A. They were all interested in saving the Bank, that is the reason they gave the notes, and as stated previously they asked would they have to pay the notes and if the assets proved to be of value as they thought they were that had been classified as doubtful or loss their notes would be returned to them, otherwise they would have to be paid.

Q. Isn't it true that as the result of the interview that day and what was done these men executed these notes and turned them over to the Bank, with some assurance that in some way they might be relieved of the payment of the notes?

Mr. Mapp: He has answered that three times.

The Court: I think he has answered it, Mr. Powell.

Q. Where were the notes of the Bank that day?

A. They were on the table before the Directors.

Q. In what shape or form? Were they in separate bundles?

A. No, sir.

Q. Was there separate classification of them?

A. We arranged the notes in alphabetical order
page 150 { that morning so as to be able to check them by
this report. That was the only bundles they were
arranged in.

Q. Did you have more than one bundle of these notes?

A. Not that I know of.

Q. I don't mean give the names of all of them, but what were considered to be the good notes? Were there any good notes?

A. Yes, sir.

Q. To what extent, what amount?

A. I think around \$3,200.00. I would have to refer to the report. \$32,474.03 were classified as good but slow.

Q. Was all that good paper considered slow?

A. So considered in this report, yes, sir.

Q. The best that you had there was considered slow?

A. There was approximately \$18,000 of the notes which weren't classified at all in the report. You arrive at that by your total loans and discounts totalling \$58,133.51. \$32,474.03 was classified as slow, \$27,358.00 as doubtful, \$6,758.86 as loss. The slow, doubtful and loss would total approximately \$40,000, leaving \$18,000 which wasn't classified, but was considered good and collectible.

William R. Gardner.

Q. It was only the paper there was some doubt about that was classified. Is that it?

A. Yes, sir.

Q. Does your report there show,—take the Hickman note. What class did that fall in?

A. Slow.

Q. What is the lowest class of all? How do page 151 } you describe that?

A. Loss.

Q. How long was it after this that the Bank was permitted to continue to run?

A. As I remember the Bank was closed in July, 1937.

Q. Was anything else done besides the giving of these notes to cure the condition in the bank?

A. Not while I was there. I left immediately after the Directors' meeting for Richmond.

Q. Did the condition of the Bank improve thereafter, as shown by the report?

A. No, sir.

Q. Did it not steadily decline?

A. I never examined the Bank after that time.

Q. Have you anything before you to indicate to the contrary?

A. No, sir, I have not.

Q. I just want to ask you, Mr. Gardner to make sure, at the risk of tedious repetition, that neither Mr. Byrd or any one else of these Directors made any statement to you about relief from collection—

Mr. Mapp: That has been gone over and has been answered.

The Court: I think he has answered that.

Q. At the time that the Bank closed what did it owe?

A. You mean July, 1937?

Q. Yes, sir.

A. I don't know. I didn't handle it.

Q. Have you anything before you to indicate? page 152 } A. No, sir.

Mr. Powell: That is all.

Roland L. Somers.

RE-DIRECT EXAMINATION.

By Mr. Mapp:

Q. Mr. Gardner, Mr. Powell asked you if you had anything before you to indicate the Bank's condition. Have you all of the reports from that time up to the closing of the Bank?

A. I have them here, not before me.

Q. Are you familiar enough to state that steadily got worse?

A. No, sir, I am not familiar enough.

Q. So far as your bills and notes go, in arriving at depreciation of capital do you consider or did you consider in this instance anything except worthless and doubtful paper?

A. You mean so far as the loans and discounts are concerned?

Q. That is right.

A. No, sir.

Q. Just one other thing. Did it make any difference to the Banking Department whether this depreciation was cured by collections or worthless or slow paper or an increase in real estate value, just so it was cured?

A. No, sir.

Mr. Mapp: That is all.

ROLAND L. SOMERS,

put on the stand by the Defendant, and at the consent of the Judge, testified as follows:

By Mr. Powell:

Q. Tell the Jury when you made, if you did page 153 } make it, an effort to locate some of the books of this Bank.

A. It was sometime in the late summer I come to Mr. Doughty's office. I think Mr. Godwin was there too. I was trying to locate the Minute Book, which you have a part of it here, but the minutes I wanted I couldn't find. Mr. Doughty said he didn't know where they were. I looked through the books and as you see now are missing. It seemed like the minutes I wanted were gone.

Q. Where did you go then? Were you told where you could possibly find them?

A. No, sir, Mr. Doughty said that was all had been handed over to him.

Q. You were making this investigation as an interested party?

Roland L. Somers.

A. Yes, sir, I certainly was.

Q. Did you find anything at all?

A. Yes, sir, I found the minutes I was looking for was gone.

Q. What else did you find you were looking for?

A. That was the main thing I was looking for, the minutes of each meeting. That was really what I was looking for.

Q. Do you know anything about the destruction of these books?

A. No, sir. I bought some files in the Bank at the sale and they stayed in the Bank quite a while, so when the Bank was sold Mr. Godwin put them in an old building which had the window lights out and no lock on the door and spread all over the floor. I looked and got my folders and put every letter and everything out of those folders in a big page 154 } square box. It was just an old out house. Nobody used it for anything. I don't know if anything could have happened, but it was no ledgers in that building.

Q. You knew there was some Bank records in that book?

A. Old records, but no books in there. The Journal or nothing like that wasn't in that building. I had seen them often enough to know what they were. Wasn't anything I found would have been any use to the Bank. I was really getting my files out, but it was nothing but old correspondence and things like that was all left in there that I could find. Nothing that would have been of any use to the Bank. I had a couple of notes I put up as collateral when I borrowed money, one about \$1,200.00 and one \$1,300.00, and I went to Mr. Godwin sometime ago and asked him where they were and he said he didn't know and he hadn't kept them. The notes were perfectly good and he said he didn't know where they were.

Q. Were you entitled to those notes?

A. Yes, sir, when I paid the note off where they were up as collateral I was supposed to get them back and didn't get them. When the Bank closed I paid my indebtedness off in a few days, every cent I owed them.

Mr. Powell: That is all, thank you.

By Mr. Doughty:

Q. Do you recall when you came to my office, whether it was before or after the bank building was sold?

A. I don't know. If I knew when the Bank building was sold.

Logan R. Ritchie.

Q. I don't know either. When you came to my office you were given the opportunity to look over anything I had there?

A. Yes, sir. That should take care of the minute book. From the day that Bank started the Minute Book should be in the hands of Mr. Godwin and no other man, because he taken charge of every book of that Bank and they were put under his name.

Q. What I am trying to get to the Jury is I offered to show you everything I had.

A. You offered to show me that book. I told you that day the minutes were not all in that book. It is nothing in here.

Q. You have no reason to think I didn't show you what I had there?

A. You showed me that book, but I don't know whether you showed me what you had.

Q. I will state I did show you what I had.

A. But I will state you didn't show me all the minutes that should have been in that Bank.

Q. Can you state I didn't show you all the minutes that were turned over to me?

A. I didn't know you were even interested until a long time after he was appointed Receiver. He hired you.

Q. You knew I was interested and came to my office to see them. Have you any reason to think I didn't offer you all the papers turned over to me?

A. I have no reason to think one way or the other. You didn't deliver what I asked for. You are one of the Receivers.

Q. I am not one of the Receivers.

A. Why did you have that in your possession?

Q. I am Attorney for the Receiver.

The Court: That is enough.

page 156 } LOGAN R. RITCHIE,
a witness on behalf of the Plaintiff, being first
duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Mapp:

Q. Please state your full name.

A. Logan R. Ritchie.

Q. And what is your present home?

Logan R. Ritchie.

A. Reicester Town, Md.

Q. By whom are you employed?

A. Federal Land Bank of Baltimore.

Q. What is your position with the Federal Land Bank of Baltimore?

A. Assistant Treasurer.

Q. Mr. Ritchie, at the time this note of Dr. Kerns' was given, March 20, 1935, with whom were you at that time connected?

A. State Banking Department of the State of Virginia.

Q. And what was your official position with the State Banking Department?

A. Examiner in Chief.

Q. How long after March 20th did you remain Chief Examiner of the State Banking Department?

A. Until September 15th, the same year.

Q. And at that time you severed your connection with the State Banking Department and have been with the Federal Land Bank ever since?

A. Correct.

Q. Did you make the examination of the Peoples Bank covered by that report of February 8, 1935?
page 157 }

A. No, sir.

Q. Were you present when that examination was made?

A. No, sir.

Q. Did the Corporation Commission, the Banking Division thereof, receive from the F. D. I. C. a copy of that report?

A. It did.

Q. Are you able to state when that copy was received by the Corporation Commission of Virginia?

A. No, I cannot give the exact date. I would say shortly after the examination.

Q. Mr. Gardner, who has just testified, testified that he and you and Mr. Burke and some other gentleman whose name I don't recall, came to the Eastern Shore on a Sunday preceding March 20, 1935, and had that report with you. Is that correct?

A. That is correct.

Q. Did you and the other officials have a conference with Dr. Kerns following your arrival on the Eastern Shore?

A. Yes, sir, we did.

Q. Did you show him a copy of that report you had with you?

Logan R. Ritchie.

A. Prior to that time a copy of it had been mailed to the Bank.

Q. When they are mailed are they mailed to the President of the Bank?

A. To the Board of Directors.

Q. Dr. Kerns as President of the Bank was, of course, one of the Board of Directors?

A. That is correct, but it is addressed to the page 158 } Board of Directors.

Q. How many conferences do you think you had with Dr. Kerns after your arrival on Sunday, between that time and the meeting which I think Mr. Gardner has testified he thought was on the following Wednesday?

A. I couldn't testify to that definitely. I saw him several times.

Q. Were you present when Mr. Gardner went over with him, or you went over with him the items that went to make up or to cause the impairment of the capital stock of that Bank?

A. Yes, I was present. Mr. Gardner went over it with him.

Q. Did he go over those items in detail?

A. Yes, sir.

Q. Mr. Ritchie, were you present throughout all of the directors' meeting that was held on March 30, 1935?

A. I was.

Q. I am going to ask you what understanding, if any, was had between you gentlemen representing the Banking Department of the State of Virginia and the Directors in connection with the giving of the various notes by the Directors of the Peoples Bank, including the \$375.00 note now in question of Dr. Kerns'.

A. It was the understanding the Bank would be permitted to continue operations if they made good the impairment to the capital stock, and if the assets which had been classified as loss or doubtful was made good and no further impairment developed the notes would be turned back to the Directors.

Q. Did it make any difference to the Banking Department, and to you representatives of the Banking Department, how the capital was put back in good shape, whether increase in real estate value or collections on doubtful or worthless paper, or how?

A. No, just that the capital would be restored.

Q. In arriving at the impairment of your capital, so far as the bills and notes went, it amounted to \$6,000 and something.

Logan R. Ritchie.

Did you take into consideration anything except so-called worthless and doubtful paper?

A. No, sir. I beg your pardon just a minute. I think maybe we did take in any overdrafts or cash items. I would have to refresh my memory.

Q. You didn't include in that good paper or slow paper?

A. That is correct.

Q. Had the examination of the Bank been completed at that time, Mr. Ritchie, at the time of this meeting?

A. The examination we were then conducting?

Q. Yes.

A. No.

Q. Do you know how long that examination continued?

A. No, I don't recall. It was sometime after that before it was completed.

Q. I believe you stated you left the Department the following September.

A. Yes.

Q. Have you any interest whatever in this case?

A. None whatsoever.

Q. How long were you connected with the Banking Department of the State of Virginia?

A. Approximately 15 years.

page 160 } Q. How long were you Chief Examiner of the State of Virginia?

A. Approximately 5 years.

Q. For the five years preceding your leaving?

A. Yes, but not continuously. I had a leave of absence and served with another institution temporarily.

Q. Mr. Ritchie, in the discussion with the Board of Directors on March 20, 1935, and in determining and going over with them the items making up or causing the impairment of the capital, were any notes or bonds included in arriving at that impairment except those listed in this report, which has been introduced in evidence, as doubtful or worthless?

A. No, sir.

Q. Without asking separate questions for each one, in order to save time, according to that report was the bond of W. H. Hickman, Tabitha Lee Hickman, or the bond of Preston Northam and wife, or the note of H. J. Byrd, or bond of Z. S. Mears, or one or more notes of Clyde Shreaves, or note of Upshur Shreaves, father of Clyde Shreaves, were any of them considered in arriving at your figures that day, either doubtful or worthless except \$125.00 note of Clyde Shreaves?

A. No, sir.

Logan R. Ritchie.

Mr. Mapp: You gentlemen take the witness.

CROSS EXAMINATION.

By Mr. Powell:

Q. You are no longer with the Virginia Banking Department?

A. No, sir.

Q. And you are no longer a resident of the page 161 } State of Virginia?

A. No, sir.

Mr. Mapp: Mr. Powell, will you pardon me *on* question.

Q. Mr. Ritchie, upon suggestion of Senior counsel, is there or not a difference in a bank between insolvency and impairment of capital?

A. Yes, sir, there is a difference. Insolvency, in my definition, is that condition existing when the capital, surplus, undivided profits and reserves have been wiped out, whereas capital impairment exists when the capital is not fully intact.

Mr. Mapp: That is all.

Mr. Powell:

Q. I understand then that you differ somewhat from the views of your colleague Mr. Gardner, who stated that the impairment of capital was subsequently insolvency of the bank.

Mr. Mapp: We object to that. That isn't his testimony.

Mr. Gunter: He testified it was insolvent.

The Court: He testified it was insolvent.

Q. Mr. Ritchie, on the occasion of the 20th of March, when these gentlemen were there, was there not considerable discussion between you Bank people and them as to what was to be done to correct this situation? Wasn't that carefully discussed at length?

A. It was discussed at length, but I wouldn't say there was any marked difference of opinion. There is always a reasonable amount of difference of opinion existing between the examiners and the Directors as to classification of assets, but in this particular case I wouldn't say it was unusual.

Logan R. Ritchie.

Q. That is especially true when Directors are called upon to put up their own paper, is it not? Have I made my question clear?

page 162 } A. Yes, sir. I would like to have time to think of the answer I am going to give. Well, it varies. In some institutions there is a great deal of contention, and others it is not so great.

Q. What was the condition here in this particular case?

A. There was no great amount of dissension as to classification.

Q. Did you see a gentleman while ago who stood up here, Mr. Byrd? Do you remember Mr. Byrd, one of the directors?

A. Yes, sir.

Q. Did or did he not at that time inquire of you gentlemen who were representing the Banking Department whether or not these notes as given would be paid back out of the collection of certain paper?

A. I can't recall specifically that question.

Q. Now, Mr. Ritchie, you were the leading official there on that occasion, were you not?

A. That is correct.

Q. And the responsibility of doing what could be done rested more largely upon your shoulders than anybody else's. Isn't that true?

A. Yes, sir.

Q. Wouldn't you be apt to know about, a thing of that sort if it happened?

A. I would say this, that this was one of many institutions in which I have had similar contact and it is impossible for me to remember all of the details, especially after a period of five years.

Q. I understand what you mean by that, but page 163 } this is the only suit these men are concerned with and it is a matter of considerable consequence on them, so I ask you to remember, if you can, whether Mr. Byrd made any such statement as that. I would be grateful if you would tell the Jury your best recollection.

A. I have so told the Jury that I do not recall any specific question by Mr. Byrd.

Q. Do you recall whether any understanding was given with the remainder of the Directors on that occasion that if they gave these notes aggregating \$3,500.00 these notes would be credited with collections out of paper then held by the Bank?

A. No, sir, it would be made out of assets, if the assets

Logan R. Ritchie.

were restored. We were not in a position to make a definite statement to Directors that they would not be called upon to pay these notes, we couldn't do that. We wouldn't have taken them if that had been the case.

Q. Was that explained to these men?

A. Yes, sir.

Q. Then I understand you to say no assurance was given to any of them that the note would be credited in whole or in part with collections then held from the Bank?

A. That is correct. No such assurance. Might I say you are speaking of notes and I am speaking of assets. If you will include assets we will come closer to a common foundation.

Q. Mr. Ritchie, I understand that, but I say that no assurance was given that these notes should be taken care of in whole or in part to some extent by collections on notes to the Bank. You deny that, I understand.

page 164 } A. Yes, sir.

Q. That never occurred?

A. No, sir, that did not occur.

Q. How was this paper carried on the books of the Bank?

A. As an asset of the Bank.

Q. In what form?

A. In the bills and notes, from the bills and notes account.

Q. Do I understand you to mean it was taken as a direct obligation of the bank?

A. Yes, sir.

Q. Just as though a man had borrowed \$1,000 from the Bank and given his note for it?

A. Yes, sir.

Q. If that be true why was it carried without any interest?

A. It was taken without interest because the Directors showed their willingness to restore the Bank's capital and they had a right to charge any rate or no interest, as it might be considered advisable.

Q. And no time provided for payment?

A. On demand.

Q. Unlimited?

A. I beg your pardon. I didn't answer to unlimited there.

Q. That is what it was, wasn't it?

A. No, on demand. Presentation to be made at a reasonable time. I didn't say unlimited.

page 165 } Q. I will ask you to look at that paper that has been introduced in evidence. You can familiarize yourself with it, Mr. Ritchie.

Logan R. Ritchie.

A. I have never seen it before.

Q. Take some time and look it over.

A. Yes, sir.

Q. How are those notes designated in that report? What is that?

A. It purports to be a report of examination of the Peoples Bank of Bloxom as of the close of business January 14, 1937, made by the F. D. I. C.

Q. How are those notes classified? For instance take the T. Lee Byrd note of \$350.00.

A. As a direct obligation. \$350.00 direct obligation.

Q. What is this?

A. Director's guarantee note.

Q. That a direct obligation?

A. According to this report.

Q. What is the significance of a Director's guarantee note? What does that mean?

A. I didn't make the report and I cannot testify as to this. I am not familiar with the report and not familiar with that report form.

Q. You say in the case of T. Lee Byrd, Norman Davis, Dr. Kerns, Mr. Marshall, Mr. Somers, and others, there are certain obligations referred to other than by the language Director's guarantee notes. Now these fall under the direct and indirect indebtedness, do they not, according to this report?

page 166 } A. According to the report, yes, sir, but I am not familiar with the report and know nothing about the preparation and I do not like to testify on that report.

Q. But in this report they are described as Director's guarantee notes?

A. Yes, sir.

Q. Mr. Ritchie, will you let me ask you this. Are you quite sure that you were present throughout all of the negotiations with these Directors on the 20th of March, 1935?

A. I haven't so testified. I said I was present at the Board meeting on March 20th. I was not present at all of the conferences which might be held with Directors of the institution on that day or any previous day.

Q. Were you present at the time these notes were actually made?

A. Yes, sir.

Q. Are you sure of that?

A. Positively.

Logan R. Ritchie.

Q. Do you remember any discussion of a note in the Bank's papers known as the Hickman note?

A. I can't recall at this time. Mr. Gardner,—the division of the work was such that Mr. Gardner handled the notes and Mr. Gardner was responsible for that phase of it. In the examination of any Bank the work has to be divided up and in this particular case we assigned the classification of the notes to Mr. Gardner.

Q. Do you remember any other particular notes that were discussed there that day?

A. I was present during the discussion of the page 167 } notes, but at this time I can't recall the various notes which were discussed in detail.

Mr. Powell: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Mapp:

Q. Mr. Ritchie, Mr. Powell asked you about this examination you didn't make. Does this same report he asked you about of January 14, 1937, show the note of Dr. W. W. Kerns also listed as a direct obligation of the Bank? He asked you about T. Lee Byrd, but we are trying Dr. Kerns' case.

A. Shown as a direct obligation.

By Mr. Powell:

Q. And how is it described?

A. Director's guarantee note, in brackets "reserved".

By Mr. Mapp:

Q. Mr. Ritchie, Mr. Powell asked you about the Hickman note and you say you can't recall that note being discussed. I think I asked you about it, but in view of that question I want to make it plain. In arriving at this impairment of the capital did you or not consider any notes except those notes shown by this report or listed by this report as doubtful or worthless?

A. No, sir, they are the only notes that went into the impairment.

Mr. Mapp: That is all.

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W. W. BURKE,

a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Mapp:

Q. Mr. Burke, please state your full name.

A. William Wood Burke.

Q. And by whom are you now employed?

A. Corporation Commission, State Banking Department.

Q. What is your connection with the Banking Department?

A. I am an examiner.

Q. How long have you been with the Department?

A. About six and a half years.

Q. How long have you been an examiner?

A. About four years.

Q. Were you an examiner on March 20, 1935?

A. No, sir, I was an assistant examiner.

Q. Did you come over on the Sunday preceding March 20, 1935, with Mr. Gardner and Mr. Ritchie?

A. I did.

Q. You have heard what they testified to; haven't you?

A. Yes, sir.

Q. About having the report of February 8, 1935, with them. Is that correct?

A. Yes, sir.

Q. Were you present on any of the occasions to which they have referred between your arrival on Sunday and the Directors meeting of the following Wednesday, at any rate on March 20th when this report was gone over with
page 169 } Dr. Kerns?

A. No, sir.

Q. That part of it you don't know?

A. No, sir.

Q. Your first examination was when you came over just before March 20, 1935?

A. I had been to the Bank on the previous examination.

Q. Were you present at the Director's meeting in the Bank on March 20, 1935?

A. I was in the Bank, but not in the meeting.

Q. Mr. Burke, how long did you remain in the bank?

A. Approximately seven weeks.

Q. You say you were not in the meeting. You mean you were in no part of the meeting or didn't take any active part of what went on, or were you in and out of the meeting?

W. W. Burke.

A. No, sir, I was outside in the banking room. I can explain why I was out there.

Q. Why were you not in the meeting?

A. When we arrived Sunday we came over feeling that there was some irregularities in the Bank and after we started our examination Sunday we found out that we were right in our supposition. So then Monday morning when the Bank opened one of the employees, the Assistant Cashier, wasn't present and the Cashier himself was under suspicion, so Mr. Baylor and myself were out in the front room really assuming responsibility for the operation of the Bank. Mr. Shreaves, the Cashier, was there but you might say we were scrutinizing very closely all transactions, and for that reason we were not in the meeting.

page 170 } Q. So you can't testify as to the talks had in this meeting between Mr. Ritchie and Mr. Gardner and these gentlemen?

A. No, sir.

Q. How long did you remain with the Peoples Bank after that time?

A. I was there about seven weeks in all, and the day of this meeting was possibly about the middle of the first week.

Q. What did you do during those seven weeks, Mr. Burke?

A. Well, we conducted an audit of the Bank. Ordinarily an examination is far from being an audit. In our audit we sent out verification sheets to all makers of notes and all depositors with the request that they reconcile their appearances and mail them back to us, because certain shortages had developed and we could not ascertain the condition of the Bank until we verified their accounts, so that was my job chiefly in staying over there was to check up on these verification sheets and help the customers reconcile their accounts and considerable difficulty did result from the audit.

Q. As a result of that check up and examination at that time of the audit you have referred to did it still further impair the capital stock of the Bank?

A. Well, only to this extent. The shortages that developed as a consequence of the verifications were covered by the employees bonds and for that reason it wasn't considered further impairment of capital, because it was protected by Fidelity Companies.

Q. Now, Mr. Burke, did you attend the next meeting of the Directors following the meeting of March 20, 1935?

A. Yes, sir.

W. W. Burke.

page 171 } Q. I hand you here paper purporting to be the minutes of that meeting of March 20, 1935, in which there is a pencil notation at the end of the first paragraph, pencil memorandum reading "End A. L. Bunting will be satisfactory". I will ask you in whose handwriting that is.

A. Mine.

Q. Do you recall who made those minutes right there, or who typed them?

A. I can't recall who made them, but I am quite sure I must have typed them.

Q. Were those minutes read at the meeting of the Board of Directors following the meeting of March 20, 1935?

A. My answer would be yes, but I would like to explain why I answer.

Q. All right, sir.

A. As previously stated the pencil memorandum on there is in my handwriting and under no conditions can I conceive of me changing the minutes without some authority for doing so. Now you understand the Cashier and Assistant Cashier had both resigned. An entirely new man had come in, Mr. N. J. Godwin, and while I was there I was responsible for the operation of the Bank and attended the Directors meetings and tried to carry on as best I could. I assume that pencil memorandum was put on there by me as a correction to the minutes when they were read at a later meeting. Another thing, these minutes, which I am quite sure—

Mr. Powell: We are going to make a very vigorous objection to these when they are offered, and we page 172 } would prefer to have the Court itself pass upon the admissibility of these without further testimony before the Jury.

The Court: Are you all going to offer them?

Mr. Mapp: Yes, sir.

The Court: The Jury can retire then.

Note: The following testimony taken out of the hearing of the Jury:

By Mr. Mapp:

Q. But you prepared the minutes of the *substant* meetings?

A. Yes, sir.

Q. Signed them?

W. W. Burke.

A. Yes, sir.

Q. They are in here?

A. No, sir.

Q. Do you have any idea where they are?

A. No, sir.

Q. None of the meetings you attended are included in this book?

A. I can't say. I haven't seen them. If there are none between March 20th and June of 1935 none of the minutes prepared by me would be in there, because I left the institution early part of May.

Q. But they should be in this book while you were there and made them?

A. That is where they should be, but I say conservatively there are numerous minutes missing. I can testify that there were meetings of Directors in the seven weeks page 173 } while I was there, but there are no minutes there to show it. I can testify that the minutes were prepared, but where they are I don't know.

Mr. Powell: It is a matter of considerable interest to these gentlemen who are defendants and we claim they are not any where near authenticated.

Mr. Doughty: Mr. Godwin has testified these minutes are today as they were when they were turned over to me. We are not the only people who had the handling of this Minute Book. They were in the hands of the Directors and Cashier from March, 1935, to July, 1937. Mr. Godwin says they are the same as they were when they were turned over to me.

The Court: I don't hold you are responsible and don't think you are, but the question before the Court is whether or not the minutes,—they are more like a memorandum. You can't call them minutes because they aren't signed and in the Minute Book. They are not even fastened in there. The best Mr. Burke can say is he thinks they were read at the next meeting and that is because "End" is in his handwriting and he thinks they must have been changed when they were read. I don't think that is sufficient to put them in as minutes. They aren't even signed at all. The best you can make out of them is a memorandum somebody made, and who I don't know. It isn't the Court's fault, but the evidence doesn't disclose who made them, but he copied them on the typewriter.

W. W. Burke.

Mr. Mapp: Will your Honor in the absence of page 174 } the Jury let us continue the examination so we can offer them?

The Court: Yes, sir.

By Mr. Mapp:

Q. Mr. Burke, did you or did you not forward a copy of this resolution to the corresponding bank of the Peoples Bank of Bloxom?

A. Yes, sir, I did, I had to.

Q. Was Dr. Kerns present at the meeting of the Directors following March 20, 1935?

A. I couldn't say.

Q. Was he present at any of the meetings while you were there between March and May?

A. Yes, sir.

Q. Are you positive that this paper, whether it be memorandum or minutes, was read at the meeting of the Directors following the meeting of March 20, 1935?

A. Yes, I am. May I explain one thing. You ask me about the resolution being sent to the corresponding bank. The Cashier had been relieved of his authority. A new Cashier had come in. Nothing else seems to indicate that a new Cashier has been elected other than this so-called memorandum.

Mr. Mapp: Now, if your Honor please, we offer this paper in evidence, as Exhibit G.

The Court: You didn't qualify your answer to whether or not those minutes were read at the next meeting of the Board of Directors as you did while ago when you were examined.

A. If I remember correctly, your Honor, I said that I am sure these minutes were read at the next meeting, because I didn't prepare them and under no circumstances would I have changed the minutes without some authority for having done so. I know the previous minutes were read at subsequent meetings; that that memorandum is in my handwriting and I say I was authorized to put that in there.

By Mr. Powell: I would like to ask one question.

Q. Mr. Burke, if that is true why did you not enter on these

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minutes some memorandum showing that they were read at that meeting, or failing that why didn't you sign them or identify yourself with them in some way.

A. You mean for me to authenticate this record in some way of the subsequent meetings? The record was supposed to authenticate that.

Q. I didn't think you could authenticate the record either.

A. I swear I was there at subsequent meetings. I could authenticate those.

Q. But you didn't put on this anything at all,—no memorandum to show this was read. You say you assume you had this identical paper at the meeting that day?

A. Yes, sir.

Q. Yet there is no memorandum put on this to show it was read to the Board of Directors that day.

A. That isn't usually done. You don't enter on previous minutes they were read. You put in your subsequent minutes that the minutes of the previous meeting were read.

Q. All you know about this, Mr. Burke, is you think you typed it and read it at the next meeting?

page 176 } A. Yes, and I know I acted on it by sending that resolution to corresponding banks.

Q. You haven't even the minutes of the subsequent meeting and you have no memorandum on this that it was read and approved. It isn't signed by anybody. Nothing whatever to show what was done with it at that time.

A. Mr. Powell, may I say this. I don't know whether it is established as a fact or not a fact that there are numerous minutes of the Directors meetings missing. I think that has been established. Now I know that minutes were prepared. Now what became of them I can't say, but I held numerous directors meetings in the seven weeks I was there.

Q. I just wanted to ask the question why, under the peculiar circumstances of this case, you didn't put on that paper there something to identify it in connection with that meeting.

A. I had no authority to do it.

Q. You had some authority to read it?

A. Yes, sir, but as a usual thing you don't make any memorandum on the previous minutes. You refer to it in the present minutes that you have done so.

Q. The trouble is, Mr. Burke, we haven't even got that now.

A. No, sir.

W. W. Burke.

By Mr. Mapp:

Q. Mr. Burke, the point that the Judge is asking you. If I understand you correctly there is no qualification as to your answer that you read these minutes in the meeting following March 20, 1935. Your qualification, if I understand you correctly, is that the pencil notation shows that page 177 } at the meeting following March 20, 1935, you were authorized by the Board of Directors to state in reference to the Bundick & Littleton note that the endorsement of A. L. Bunting would be satisfactory?

A. Yes, sir.

Q. You notified those creditors just as soon as you typed that paper, didn't you?

A. Yes, sir.

Q. You didn't wait until the Board of Directors meeting thirty days hence and have those minutes approved, did you?

A. No, sir, because the day those minutes were made was the day the Board met and one Cashier was relieved of his duties and the new Cashier was clothed with his authority to transact business. I had to act promptly to get the resolution to the corresponding banks.

Q. You didn't wait thirty days?

A. I couldn't because they wouldn't have paid that draft.

Mr. Mapp: We offer the minutes.

The Court: Same ruling.

Mr. Mapp: We except.

Mr. Mapp: We offer the minute book referred to for the purpose of showing that there are numerous minutes of the Board of Directors between March 20, 1935, and the closing of the Bank August 19, 1937, that are not included in this book. Also for the purpose of showing—

The Court: Do you have to offer the book for that purpose? It has been testified to.

Mr. Mapp: All right, we can show by this witness all the minutes are not here after March 20, 1935.

Mr. Powell: Mr. Mapp the book wouldn't prove it. The book would only prove the number of minutes there.

Mr. Doughty: We want to show how many meetings were had so far as the book is concerned.

Mr. Powell: Wouldn't that be by independent testimony rather than the book itself.

Mr. Mapp: I will ask this witness to go through here and tell the number of meetings as shown by the minutes held

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after March 20, 1935, and then we will show the number of meetings they actually held.

Mr. Powell: The best evidence of that unquestionably is the minutes of the meeting.

Mr. Mapp: It may be the best evidence, but if the minutes are not in here we have a right to show there are other minutes not recorded in the Minute Book.

Mr. Doughty: You have agreed the book isn't complete.

The Court: I think you can do this: If you can show it that there were other meetings held and minutes in there *there* that are not signed. Whether or not this is really minutes of this meeting, but the fact they may have had other meetings and no record I don't see that that helps. The thing we want to know is whether this writing here is actually minutes of a meeting of the Board of Directors. The fact they didn't have a meeting for three months wouldn't help you at all, and wouldn't help the Jury or Court.

page 179 } Mr. Doughty: This witness has testified there were numerous meetings after that.

The Court: You can put on Mr. Godwin as Receiver to show there were other meetings. I think that is as far as you can go.

Mr. Mapp: We want to ask this witness.

The Court: You can show it by him. I don't think the book is any evidence of that fact.

Note: Jury returned to the Court Room, and the following taken in their hearing:

By Mr. Mapp:

Q. Mr. Burke, I believe you have testified you remained at Peoples Bank approximately seven weeks after March 20, 1935?

A. Yes, sir.

Q. And during that time you were making examination and assisting Mr. N. J. Godwin, the new Cashier in the Bank?

A. Yes, sir.

Q. Were there one or more meetings of the Board of Directors during this seven week period following March 20, 1935?

A. Yes, sir.

Q. Did you write up the minutes of these meetings during that seven week period and the minutes of the meeting following March 20, 1935?

A. I did.

W. W. Burke.

Q. Were they signed by you?

A. Yes, sir.

Q. Do you know whether they were signed by page 180 } anyone else or not?

A. I can't answer that question. I am under the impression that the Chairman would have signed them.

Q. Who was the Chairman?

A. I think Dr. Kerns was.

Q. Those minutes of the meeting following March 20, 1935, you have testified you wrote up and signed. What did you do with them?

A. Put them in the minute book.

Q. I will ask you if they are in the Minute Book today.

A. No, sir. (Witness looked through Minute Book.)

Q. Did you ever take, or have any occasion to take these minutes, that is those of the meeting of the Directors following March 20, 1935, out of the Minute Book?

A. No, sir.

Q. When you left the Bank did you leave them in the Minute Book?

A. I did.

Q. Mr. Burke, you have been with the Banking Department continually since March 20, 1935, have you not, as an Examiner?

A. Yes, sir.

Q. When were you made Examiner?

A. I think it was in July, 1936.

Q. When was the first time that you or any member of the Banking Department to your knowledge had any notice that Dr. Kerns and the other Directors claimed that as soon as enough collections had been made out of worth- page 181 } less and doubtful paper to offset these notes of the Directors aggregating \$3,500.00 that those notes were to be returned to them? When was the first time you ever heard that indicated?

A. Well, since I have been over here this time. I have not been back to the Bank on an examination.

Q. You have not had occasion to examine the Bank since you left following March 20, 1935?

A. No, sir.

Q. Did you bring with you, pursuant to subpoena *duces tecum*, a record showing all conditions of the Bank following March 20, 1935, up to the closing of the Bank July 19, 1937?

A. Yes, sir.

Q. Mr. Burke, are you familiar with them?

W. W. Burke.

A. Yes, sir.

Q. Mr. Burke, was there any time between March 20, 1935, and July 19, 1937, that the capital stock of the Peoples Bank was not impaired, unless you have counted in and used these notes aggregating \$3,500.00?

A. No, sir.

Q. How were these notes carried by the Bank continuously from the time they were given up to and including the closing of the Bank July 19, 1937?

A. They were carried on the books as direct obligations, like any other note.

Q. How many examinations of the Bank were made between March 20, 1935, and July 19, 1937, by the Banking Department?

A. I could refer to a list I brought over with me. I couldn't tell you from memory.

page 182 } Q. Look at your list.

A. Now both the F. D. I. C. and the State or the State only?

Q. Can you testify about the F. D. I. C.?

A. Yes, sir, we get copies.

Q. Both then.

A. Five examinations.

Q. Were reports of each and all of those examinations, results of those examinations, forwarded by the Banking Department of the State of Virginia to the Peoples Bank at Bloxom?

A. Yes, sir, all except the work papers and all that I prepared when I was over there conducting the audit. In other words, when I was left in the Bank for the seven week period my principal duty was to assist the Cashier in operating the Bank and to verify accounts with customers so all of those work papers never did go back to the Bank.

Q. I understand about that, but the reports of the five examinations did go back to the Bank?

A. Yes, sir.

Q. About how soon after each examination would those reports go back?

A. Well, that sometimes varies. It could be within three weeks and it might be as long as six weeks, and maybe as long as two months.

Q. Have you any record showing the dates the various reports went back?

A. I could tell by referring to the reports.

Q. I am going to ask you to refer to the reports and give

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the Court the different dates these various re-
page 183 } ports were mailed back to the Peoples Bank from
March 20, 1935, to July 19, 1937.

A. Can I refer to them over there. They are over on the other side.

Q. Yes, sir.

A. The report made on April 7, 1936, was transmitted to the Peoples Bank of Bloxom May 22, 1936; October 2, 1935, transmitted to the Peoples Bank 11/13/35; 7/29/36 transmitted Peoples Bank 9/16/36; 1/14/37 transmitted Peoples Bank April 15, 1937; 7/12/37 transmitted People Bank 7/20/37.

Q. Mr. Burke, either Mr. Gardner or Mr. Ritchie testified that the report of February 8, 1935, had been mailed to the Peoples Bank prior to your coming over with them just before March 20th. I will ask you to refer to that report, please, and tell us when that report of February 8, 1935, was mailed to the Peoples Bank.

A. March 2, 1935.

Q. Following the mailing of these various reports, five I think you have testified, to the Bank showing the examinations between March 20, 1935, and the closing of the Bank July 19, 1935, did the Banking Department receive any complaints from Dr. Kerns or from any of the Directors as to the way these Directors' notes were carried on said report, that is as direct obligation of the makers? Was any complaint received by the Banking Department?

A. No, sir.

Q. Was any complaint made after the receipt of any of these five reports as to the classification of the notes in there as doubtful or loss, or worthless, slow or good?

A. That would be an office record. I could only page 184 } tell by referring to some of the correspondence that I have in the folder.

Q. I will ask you to refer to the correspondence and see if there was any complaint.

A. It seems that I only have in the file here one letter of transmittal dated May 2, 1936, to the Board of Directors of the Peoples Bank of Bloxom, and that letter was written in connection with the report of April 7, 1936, and the reply to that letter is a letter from the Board of the Peoples Bank under date of June 12th. Shall I read the letter?

Q. Not unless there is a complaint in that as to the way the report classified doubtful and worthless paper.

A. I see no record of any complaint.

W. W. Burke.

Q. You have already testified, Mr. Burke, that the Bank without these notes, that the capital never was unimpaired after March 20, 1935. When was the date of the last examination of the Bank prior to the appointment of Mr. Godwin as Receiver? I will ask you to get that report, please.

A. July 12, 1937.

Q. Was the capital stock of the Bank impaired at that time?

A. Yes, sir.

Q. I am going to ask you the amount of impairment at that time and the items making up the impairment.

A. I have total loans and discounts estimated as losses \$19,569.14; bonds and securities \$2,140.09; other real estate \$3,000; Banking house \$3,500.00. Now that is a total of your losses there.

Q. That makes a total loss of how much?

A. \$28,209.23, and in addition to that loans and page 185 } discounts amounting to \$9,809.56 were classified as doubtful.

Q. That makes a total to be charged off how much?

A. \$38,018.79, according to my calculation.

Q. That much was to be charged off and you included in arriving at those figures the Directors notes of \$3,500.00?

A. Yes, sir.

Q. In other words, without the \$3,500.00 the charge off would be \$38,000 plus \$3,500?

A. No. I don't know that I exactly understand. The \$38,018.79 is the total of items classified as loss and doubtful.

Q. That is right.

Q. Now to absorb that loss, irrespective of the preferred and common capital, you have a surplus fund of \$6,596.41. You have a net undivided profit account of \$366.20 and your reserve for losses \$3,500.00.

Q. That is where these notes come in?

A. Yes, sir.

Q. All right, sir.

A. Now that gives me a figure of \$10,462.61 to absorb this \$38,000 in loss.

Q. What was your total preferred stock?

A. Preferred stock was \$15,000.

Q. Common stock?

A. \$12,500.00.

Q. In other words, Mr. Burke, at the time of the last examination all of the common stock and all of the preferred stock had been wiped out? More than wiped out?

W. W. Burke.

page 186 } A. Yes, sir.

Q. And that had happened even though you collected every cent of the \$3,500.00 in notes?

A. Yes, sir.

Mr. Mapp: You gentlemen take the witness.

CROSS EXAMINATION.

By Mr. Powell:

Q. I believe you stated that you were not present in the Directors Room where the business was transacted on the 20th of March, 1935?

A. That is right.

Q. During the time that you were in the Bank, and I understand that was until sometime about the middle of May, seven weeks from the 20th of March, you had complete control of the books and records of the Bank, just as any Cashier would have?

A. Well, not for the entire period. I was there with Mr. Godwin guiding him and telling him as best I could. For all intents and purposes I was responsible for the operation of the Bank, but he was performing the duties of the executive officer.

Q. Between you and him all of the records and books of the Bank were there?

A. Yes.

Q. Were any books missing at that time, can you recall now?

A. No, sir.

Q. What was the name of the book in which would be entered payments on notes, if they were collected
page 187 } *in whole in part* from time to time?

A. That would be on your Journal, what we call a Cash Journal, a Day Book in which you would write up your transaction.

Q. Would that show the name of the party whose note was paid?

A. Yes, sir.

Q. And the amount paid?

A. Yes, sir.

Q. Was there any other record that carried the same kind of information?

A. No, sir.

Wrendo M. Godwin.

Q. What became of those records when you left, so far as you know?

A. They were there in the Bank.

Q. In the custody of the Cashier?

A. Yes, sir.

Q. Did you return again to the Eastern Shore while the Bank was going?

A. Yes, sir.

Q. When?

A. Well, on several occasions, not to examine that particular Bank, but I was over here in connection with other examinations.

Q. But you were not at Bloxom in connection with this Bank?

A. No, sir.

Q. The question was asked you whether you had heard any complaint from any of the Directors as to the manner in which their notes were carried on the books of page 188 } the Bank and you replied no. You had not been over here to hear any complaints of that kind, had you, around the Bank?

A. No, sir.

Q. Now as a result of the examination of February 8, 1935, in brief the Bank was insolvent then, was it not?

A. No, sir.

Q. Was not?

A. No. They had a capital impairment, but I don't think the Bank was insolvent.

Q. Did you stay at Bloxom continuously through those seven weeks, Mr. Burke?

A. With the exception of maybe one or two days. I had to take a hurried trip back to Richmond, but as soon as I could be relieved I came right back over here.

Mr. Powell: I don't think we have anything else.

Mr. Mapp: That is all, Mr. Burke.

WRENDO M. GODWIN,
recalled, testified as follows:

By Mr. Doughty:

Q. Mr. Godwin have you as Receiver sold the Banking House at Bloxom?

A. Yes, sir.

Q. What did it bring?

Wrendo M. Godwin.

A. \$2,550.00, to the best of my recollection.

Q. Have you also sold the office fixtures and equipment there?

A. All but a safe or vault that we have that is page 189 } inside of the vault of the Bank.

Q. What is the value of that?

A. I have been offered \$35.00 for it.

Q. What did you get for the balance of the fixtures you sold?

A. Less than \$250.00. I don't remember the exact figures.

Q. Where did you keep the records of the Bank that were turned over to you up until the Bank property was sold?

A. In the Bank.

Q. And where did you keep them since that time?

A. Sometime after the Bank was sold and the purchaser wished to take possession of the Bank I naturally had to move the books and stuff that were in the Bank, so I moved them over to my brother's store adjoining the Bank building and put them in his storage in the back of his store and that room was locked up, and so far as I know and can recall the window lights weren't broken out as Mr. Somers stated.

Q. When was that store property burned?

A. One day last week.

Q. Was it burned in a general conflagration up there?

A. Yes, sir.

Q. The Minute Book that has been examined about in this case,—did you turn over to me as counsel for the Receiver this book?

A. Yes, sir.

Q. Can you say there was any other minutes in there except the one set of minutes that were used in the Supreme Court and not in there now when you turned it page 190 } over to me?

A. Those were all the minutes I found.

Q. After this question of the liability of those directors on these bonds came up did you make any effort or search through the other papers in the Bank to find any more minutes?

A. Yes, sir.

Q. Did you find any?

A. No, sir.

Q. Have you as Receiver made any collections on the W. L. Bloxom paper that was classified in the report of February 8, 1935, as doubtful or loss?

A. I found as collateral to Mr. Bloxom's obligation a life

Wrendo M. Godwin.

insurance policy which had been assigned to the Bank by Mr. Bloxom and his wife. In turn in due process of liquidation I sold that policy to Mr. R. L. Somers.

Q. For how much?

A. Something over \$700.00. I presume what he said yesterday was right.

Q. Have you collected any money on the R. F. Bevans note?

A. No, sir.

Q. Roy P. and Susie Byrd?

A. No, sir.

Q. Elmer P. Hall?

A. No, sir.

Q. H. H. Killmon?

A. No, sir.

Q. Isaac Nock?

A. No, sir.

Q. Clyde Shrieves?

page 191 } A. No, sir, I didn't get that note.

Q. Bill Somers?

A. No.

Q. Viola Somers?

A. Didn't get that.

Q. H. Chris Somers?

A. No.

Q. Samuel P. and H. E. White?

A. Didn't get that note.

Q. The Sam Ames note?

A. No.

Q. The W. L. Bloxom note of \$100.00?

A. No.

Q. The J. Frank Calloway note?

A. No.

Q. Annanias Rogers?

A. Yes.

Q. How much?

A. I compromised the settlement of that note for \$250.00 or \$275.00, I don't know which.

Q. J. E. Stran?

A. No.

Q. Have you since you have been Receiver been paid anything by Mr. R. L. Somers for which you failed to deliver to him his note back?

A. No, sir.

Wrendo M. Godwin.

page 192 } Q. Do you as Receiver hold any notes of Mr. Somers?

A. No, sir.

The Court: He said a collateral note.

Q. A collateral note, I will ask you.

A. I will explain to the Jury this way, if I might. I think it was sometime this fall Roland Somers approached me from the Post Office in Bloxom and asked me if I had seen anything of a note that was in the Bank that had been made payable to him by one of his tenants and the Bank was taking care of for him. I said No, Roland, I haven't seen anything of it. I will take a look for it and if I can find it you can have it. It may have been there, but I never have seen it. That had nothing to do with the assets of the Bank. It was just a note that was left there for the Bank to keep. I wasn't responsible for Mr. Somers note he left there in the safe-keeping of the Bank.

Mr. Doughty: Take the witness, gentlemen.

By Mr. Gunter: Mr. Godwin, what became of these notes that you have been unable to collect?

A. I still have them.

Q. You never have sold them or anything?

A. No, sir.

Mr. Gunter: That is all.

By the Court:

Q. You said in answer to a question Senator Doughty asked about some notes you never had. You mean never came into your possession as Receiver?

A. No, sir. Evidently were paid off before, but never came into my possession as Receiver.

page 193 } The Court: That is all.

W. W. BURKE,
Recalled, as follows:

By Mr. Mapp:

Q. Mr. Burke, I am going to ask you to turn to your 1935, February 8th, report to the line of Mr. W. L. Bloxom for just a moment, please sir.

A. Yes, sir.

Q. How is that carried, as a loss or how? What I am getting at, was his entire line carried as a loss, or part as good or slow maybe?

A. I would have to make a little calculation here.

Q. I want to show his entire line. How much slow, how much doubtful and how much good.

A. It looks like it was all either considered slow, doubtful or loss.

Q. And the slow wouldn't figure in the impairment of the capital?

A. No.

Q. Mr. Wrendo Godwin has testified he collected a little over \$700.00 as Receiver out of an insurance policy put up by Mr. W. L. Bloxom. I am going to ask you to look at that report and see if you can find any reference to that insurance policy.

A. No, sir, this report doesn't refer to it.

Q. How much of his account was carried as neither worthless or doubtful, but simply slow?

A. \$500.00 as slow.

page 194 } Q. What is the \$500.00 item?

A. The \$500.00 item is a part of a \$1,500.00 item which was Mr. W. L. Bloxom's obligation joint with Elizabeth S. Bloxom, which was a judgment. \$500.00 was classified as slow and \$1,000 as doubtful.

Q. Do you know, or can you tell what that insurance policy was up against as collateral? Whether it secured worthless, doubtful or slow item there?

A. The comments from this particular line of credit did not make any mention of that insurance policy. If it was held as collateral it is probably general collateral. I am just assuming that. The report does not reflect the insurance policy.

Mr. Mapp: That is all.

Mr. Doughty: That is our case, if your Honor please.

T. LEE BYRD,
Recalled, testified as follows:

By Mr. Gunter:

Q. Mr. Byrd, were you in the Courtroom when Mr. Ritchie testified this morning?

A. I was.

Q. Did you hear all of his testimony?

A. I did.

Q. Did you hear him testify he was present March 20, 1935, at the Directors meeting when this note was given?

A. I heard him testify he was there during all the Directors meeting.

Q. Is that correct?

page 195 } A. No, it isn't.

Q. Were you present during the entire meeting?

A. I was.

Q. What portion of the meeting was he present?

A. He wasn't present in any portion of the meeting that discussion was made in regards to giving these notes at all. After we come to the agreement to give the notes Mr. Gardner called Mr. Ritchie in and Mr. Ritchie brought the notes.

The Court: What notes, the ones you all signed?

A. Yes, sir, the ones we all signed.

Mr. Gunter: Take the witness.

CROSS EXAMINATION.

By Mr. Mapp:

Q. When he brought them in were they all made out ready for your signature?

A. I don't remember.

Q. Where was he?

A. In the next room.

Q. How many rooms did you have there?

A. Two.

Q. Was the door open between?

A. I don't think it was. They called Mr. Burke in once or twice during the discussion, I don't know just what for.

Q. That was way back there nearly five years ago?

A. That is right.

R. L. Somers.

Q. Mr. Byrd, do you mean to testify he wasn't there at all during the discussion about the notes?
page 196 } A. The best of my recollection he wasn't.
Q. What did Mr. Gardner say when he called him?

A. He just called him in and I think he asked Mr. Ritchie to bring the notes in.

Q. And Mr. Ritchie evidently brought in all these notes?

A. No, I don't mean the Bank notes, I mean the ones we signed. He was in there when we signed them.

Q. Without having been present he was just told to come in and bring the notes and he brings them in?

A. Mr. Gardner told him what we agreed to do.

Q. Was he in the room when Mr. Gardner told him?

A. Mr. Gardner told him we agreed to give these notes.

Q. But he already had them with him.

A. I say I think he did. I didn't say for sure. I think he did.

Mr. Mapp: That is all, Mr. Byrd.

R. L. SOMERS,

Recalled, testified as follows:

By Mr. Gunter:

Q. Mr. Somers, did you hear Mr. Ritchie testify this morning?

A. Yes, sir.

Q. Did you hear him testify that he was present during the entire meeting of the Directors on March 20, 1935?

A. Yes, sir.

Q. I believe you have already testified you were present at that meeting?

A. Yes, sir.

page 197 } Q. Were you present during the entire meeting?

A. Yes, sir.

Q. Was Mr. Ritchie present during the entire meeting?

A. No, sir, he was not.

Q. What portion of the meeting was he present at?

A. He was in and out a couple of times. It was nobody in there at the time but Mr. Gardner, but we discussed that and agreed what to do, so far as I can remember, and Mr. Gardner went out for a minute and talked to somebody. We were

Dr. W. W. Kerns.

behind closed doors. Nobody was listening to that conversation only the Board and Mr. Gardner. Mr. Ritchie, I don't hardly know his name. I didn't know he was Chief Examiner, but Mr. Gardner was the one done the talking and Mr. Ritchie wasn't in when we were discussing giving the \$3,500.00. There was nobody in there but Mr. Gardner, and Mr. Burke once or twice, and the Board.

Mr. Gunter: Take the witness.

By Mr. Mapp:

Q. You did know Mr. Ritchie was over there representing the Banking Department, didn't you?

A. I hardly knew Mr. Ritchie. He wasn't in the conversation enough with us to hardly know him.

Q. You knew he wasn't some stranger walking right in?

A. I knew he was in the Bank for a purpose.

Q. You weren't paying any particular attention whether he went in the room or where he was, or how long he stayed in or out?

A. He wasn't in there enough for me to even notice he was in there. He might have been in once or twice.
page 198 } He wasn't in there when we were discussing that.
I can nearly picture the room the way we were sitting in there.

Q. Do you know any reason why he should have avoided a discussion of these notes and he Chief Examiner of the State of Virginia?

A. No, but as he said, Mr. Gardner was taking care of this part of it and he had no business in there but to come in and out when he was called. Mr. Gardner stated he was taking care of that end of the business.

Mr. Mapp: That is all, Mr. Somers.

DR. W. W. KERNS,
Recalled, testified as follows:

By Mr. Gunter:

Q. Doctor, did you hear Mr. Ritchie testify this morning?

A. Yes.

Q. Did you hear him testify he was present during the entire meeting of the Board of Directors on March 20, 1935, when these notes were signed?

S. W. Marshall.

A. I did.

Q. Were you present at that meeting?

A. I was.

Q. Were you present during the entire time?

A. I was.

Q. Was Mr. Ritchie present during the entire time?

A. He wasn't.

Q. What portion of the meeting was he present?

A. I judge he was in there maybe three or four minutes at a time. He came in after the discussion. He
page 199 } didn't come in until after the discussion and then
he came in to bring some papers. I don't remember what it was, might have been notes or something like that. The meeting we had when Mr. Ritchie was present was a meeting between the Committee from the Metompink Bank & Trust Company and our Board. That is the only meeting that Mr. Ritchie was present during the entire time.

Mr. Gunter: Take the witness.

Mr. Mapp: No questions, Doctor.

S. W. MARSHALL,
being called, testified as follows:

By Mr. Gunter:

Q. Mr. Marshall, did you hear Mr. Ritchie testify this morning?

A. Yes, sir.

Q. Did you hear him testify that he was present during the entire meeting of the Board of Directors on March 20, 1935, when these notes were signed?

A. Yes, sir.

Q. Were you present during the entire meeting?

A. Yes, sir.

Q. Was he present during the entire meeting?

A. He wasn't present when Mr. Gardner and the Directors were discussing these notes.

Mr. Gunter: Take the witness.

Mr. Mapp: I haven't any question, Mr. Marshall.

page 200 } ELMER W. SOMERS,
being recalled, testified as follows:

By Mr. Gunter:

Q. Mr. Somers, did you hear Mr. Ritchie testify this morning?

A. Yes, sir.

Q. Did you hear him testify that he was present during the entire meeting of the Board of Directors on March 20, 1935, when these notes were signed?

A. I did.

Q. Were you present during the entire meeting?

A. I never left the meeting from the time I got in there and I was there during the entire time we discussed these notes.

Q. Was Mr. Ritchie present during the entire meeting?

A. No, Mr. Ritchie wasn't present while we were discussing the notes at all. After we reached an agreement about the notes Mr. Gardner went out and stayed a minute or two and later Mr. Ritchie came in with these notes.

Mr. Gunter: Take the witness.

By Mr. Mapp:

Q. Mr. Somers, Mr. Lee Byrd said Mr. Gardner after the discussion called Mr. Ritchie in the room and Mr. Ritchie came in with the notes. You say he went out and talked with him?

A. I say Mr. Gardner went out and later Mr. Ritchie came in with the notes.

Q. He didn't call him in, but went out and brought him in?

A. I don't know whether Mr. Ritchie or Mr. Gardner came in first. All I know Mr. Ritchie brought the notes in to sign.

page 201 } Q. If he said in substance that Mr. Gardner stayed in the room and called Mr. Ritchie to come in Mr. Lee Byrd or you are mistaken?

A. Not at all, because a bunch of us were talking. Mr. Gardner may have called him, but Mr. Gardner went out and later Mr. Ritchie came in and brought the notes. Whether Mr. Gardner called him or not I don't know.

Mr. Mapp: That is all.

Mr. Powell: That is all, if your Honor please.

Note: The Plaintiff and Defendant both having rested their case, the Court then read to the Jury the following instructions, which were all of the instructions given in this case, Instructions 1, 2 and 3 being given at the request of the Plaintiff, and Instruction A being given at the request of the Defendant.

INSTRUCTION 1.

The Court instructs the Jury that the burden of proof as to any alleged payment or credit by the defendant upon the notes sued upon rests upon said defendant.

INSTRUCTION 2.

The Court instructs the Jury that even though they believe from the evidence that at the time the defendant and other Directors of the Peoples Bank of Bloxom gave their notes to said Bank, it was understood and agreed that all amounts collected by said Bank upon bills and notes at that time due said Bank and considered worthless or doubtful, were to be credited upon the notes given by said Directors, that this defendant is only entitled to a credit
page 202 } of 11% of the amount since collected on said
worthless and doubtful paper.

INSTRUCTION 3.

The Court instructs the Jury that if they believe from the evidence that on or about March 20, 1935, there was an impairment of the capital stock of the Peoples Bank of Bloxom, Inc., and that the defendant, W. W. Kerns, gave to said Bank the note sued upon, to be held as a reserve for contingencies by said Bank against said impairment, and that said impairment had continuously existed from the date of March 20, 1935, up to and including the present, it is the duty of said Jury to return a verdict in favor of the Plaintiff.

INSTRUCTION A.

The Court instructs the Jury that if you believe from the evidence that the note sued on in this case was given by the defendant, Dr. W. W. Kerns, as one of nine notes and a check given severally by the directors of The Peoples Bank of Bloxom, Inc., on the 20th day of March, 1935, in all making the sum of \$3,500.00, and that said notes and check were given

by said directors with the understanding with the bank that the same were to be held by the bank, and whatever amounts should be collected and paid to the bank from notes classified as worthless or doubtful should be credited on said notes and checks given by said directors; and if you further believe from the evidence that payments made to the bank from collections on said notes classified as worthless or doubtful to the amount of \$3,500.00, or treated by the bank as amounting to \$3,500.00, then you should find for the defendant.

page 203 } Note: The case was fully argued by counsel for both sides and the Jury retired to consider their verdict. After sometime the Jury returning into the Court Room, returned the following verdict: "We the Jury find for the Defendant."

Thereupon Counsel for the Plaintiff moved to set aside said verdict on the following grounds:

1st. Because the Court erred in striking out the evidence offered in behalf of the Plaintiff.

2nd. Because there was sufficient evidence to sustain a verdict for the Plaintiff.

3rd. Because the verdict was contrary to the law and the evidence.

4th. Because of the admission of improper evidence and the refusal of the Court to admit proper evidence.

OBJECTIONS AND EXCEPTIONS TO INSTRUCTIONS.

Note: In addition to the instructions given in behalf of the Plaintiff, the following instruction was asked for by counsel for the Plaintiff, was objected to by counsel for the Defendant, and was refused by the Court, to which action of the Court in refusing to give said instruction the Plaintiff, by counsel, excepted:

INSTRUCTION 4.

The Court instructs the Jury that if upon the examination of any bank the State Corporation Commission shall ascertain that the banking laws of this State are not being fully observed, or that any irregularities are being practiced, or that its capital stock has been or is in danger of being impaired, the said Commission shall give immediate notice there-

of to the officers and directors of such bank and
 page 204 } demand that the impairment of the capital stock
 shall be made good, and upon the failure so to do
 within a reasonable time, not exceeding thirty days after
 such notice, said Commission may provide for the appoint-
 ment of a Receiver to take charge of the business affairs and
 assets of said bank and to wind up its affairs according to
 law.

Note: The Plaintiff by counsel moved the Court to set
 aside the verdict returned by the Jury and to enter final judg-
 ment in favor of said Plaintiff or to grant said Plaintiff a
 new trial upon the following grounds:

1. Because of the Court's refusal to sustain Plaintiff's
 Demurrer to Defendant's Grounds of Defense.

2. Because of the Court's refusal to sustain Plaintiff's
 motion to reject Defendant's Grounds of Defense.

3. Because of the admission by the Court of improper evi-
 dence in behalf of the Defendant.

4. Because of the exclusion of proper evidence by the Court
 in behalf of the Plaintiff.

5. Because of the Court's refusal to declare a mistrial as
 result of comments made by one of counsel for Defendant, and
 by the Court, in the presence of the Jury to the effect that
 The Peoples Bank of Bloxom, Inc., was insured by the Fed-
 eral Deposit Insurance Corporation.

6. Because of the Court's refusal to grant Instruction No.
 4 asked for by the Plaintiff.

7. Because of the giving by the Court of Instruction A
 asked for and given in behalf of the Plaintiff.

page 205 } 8. Because the Jury's verdict is contrary to
 the law and evidence in this case and without evi-
 dence to support same.

To Instruction A given at the request of the Defendant the
 Plaintiff, by counsel, objected on the following ground: That
 the last part of the instruction tells the Jury that if they
 believe from the evidence that payments made to the Bank
 from collections on said notes classified as worthless to the
 amount of \$3,500.00, or treated by the bank as amounting to
 \$3,500.00. then you should find for the Defendant. Our ob-
 jection to that is there is no evidence in here showing that
 \$3,500.00 was collected on those notes. And on the further
 ground that, first because same varies by parole evidence
 the language of the note sued upon, and second, because

there is no evidence upon which the Jury can properly base a verdict that \$3,500.00 was collected on the worthless or doubtful paper referred to in said instruction, and except to the giving of said instruction.

page 206 } JUDGE'S CERTIFICATE.

I, John E. Nottingham, Judge of the Circuit Court of Accomack County, Virginia, who presided over the foregoing trial of Wrendo M. Godwin, Receiver of The Peoples Bank of Bloxom v. W. W. Kerns, M. D., do certify that the foregoing is a true and correct copy or report of the testimony and other incidents of said trial, in the Circuit Court of Accomack County, Virginia, beginning February 26th, 1940, and ending on February 27, 1940, except Exhibits introduced by the Plaintiff, being note marked Exhibit A; letter marked Exhibit B; report of F. D. I. C. dated January 14, 1937 marked Exhibit E; and report of F. D. I. C. dated February 8, 1935, marked Exhibit F; and a paper writing offered as Exhibit G, purporting to be minutes of said Bank as of March 20, 1935.

As to the original Exhibits introduced in evidence, as shown by the foregoing report, to-wit, Plaintiff's Exhibits A, B, E, F and G, both inclusive, which have been initialed by me for the purpose of authentication, it is agreed by counsel for the Plaintiff and Defendant that they shall be transmitted to the Supreme Court of Appeals as a part of the Record in this case in lieu of certifying to the Court a copy of said Exhibits.

And I do further certify that counsel for the Defendant had reasonable notice in writing given by counsel for the Plaintiff of the time and place when the foregoing report of the testimony, Exhibits and other incidents of trial would be tendered and presented to the undersigned for signature and authentication, and that the said report was presented to me on the 23 day of April, 1940, within less than sixty days after the entry of final decree in
page 207 } this cause.

Given under my hand and seal this the 23 day of April, 1940.

JNO. E. NOTTINGHAM (Seal)
Judge of the Circuit Court for
Accomack County, Virginia.

A Copy—Teste:

JNO. E. NOTTINGHAM, Judge.

page 208 } State of Virginia,
County of Accomack, to-wit:

I, John D. Grant, Jr., Clerk of the Circuit Court for the County of Accomack, in the State of Virginia, do hereby certify that the foregoing is a true transcript of the record and proceedings in the Notice of Motion for Judgment pending in said Court in which Wrendo M. Godwin, Receiver of Peoples Bank of Bloxom, Inc., is plaintiff and W. W. Kerns, M. D., is defendant, with the exception of plaintiff's exhibits A, B, E, F, and G, both inclusive, offered and introduced in said cause, which are not copied in the foregoing transcript by virtue of the order of the Judge of said Court and which are delivered to the attorneys for the plaintiff along with this transcript, which exhibits bear the initials of the Judge of this Court for the purpose of authentication; and I further hereby certify that the defendant has been duly notified of the intention of the plaintiff to make application to have the said Judge sign certificate of report of the testimony and other incidents of the trial of said cause; and also of his intention to have the foregoing transcript of the record made out.

The cost of the foregoing transcript is \$10.65, and is charged to the plaintiff.

JOHN D. GRANT, JR., Clerk.
by ROBT. H. OLDHAM, Dy.

A Copy—Teste:

M. B. WATTS, C. C.

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