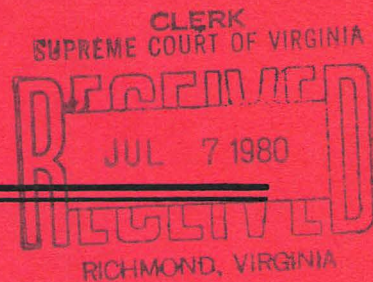


223VA462



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO., 800002

SHIRLEY T. GREENE

APPELLANT

v.

WARRENTON PRODUCTION CREDIT ASSOCIATION
AND
JAMES W. GREHAN

APPELLEES

JOINT APPENDIX

Benjamin H. Woodbridge, Jr., Esq.
WOODBIDGE, SMITH, SCOTT, VAN LEAR
and BASS
700 Princess Ann Street
Fredericksburg, Virginia 22401

Counsel for Appellant

David F. Peterson, Esq.
HICKS, BAKER and PETERSON
303 Charlotte Street
Fredericksburg, Virginia
22401

Counsel for Appellee

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MOTION FOR JUDGMENT

TO: THE HONORABLE JUDGES OF SAID COURT

Plaintiff respectfully moves said Court for judgment against Defendants on the following grounds, to-wit:

1. That, Plaintiff was in indebted to Warrenton Production Credit Association, as evidenced by three (3) notes dated respectively, September 24, 1976, in the original amount of Fifteen Thousand Dollars (\$15,000.00), March 1, 1976, in the original amount of Fifty Nine Thousand Seven Hundred Seventy Seven Dollars (\$59,777.00), and September 10, 1976, in the original amount of Twenty Five Thousand Dollars (\$25,000.00), copies of said notes being attached hereto as Plaintiff's Exhibits 1, 2 and 3;

2. That, said notes were, allegedly secured by that certain Security Agreement, dated September 24, 1976, a copy of which is attached hereto as Plaintiff's Exhibit 4.

3. That, said notes appointed James W. Grehan, Defendant herein, and DuVal Q. Hicks, as Attorneys-In-Fact, authorized to confess judgment on behalf of Warrenton Production Credit Association in the event of default of the payments required under said notes.

4. That, on or about February 1, 1978, James W. Grehan, as is evidenced by the records of the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, ostensibly acting under the authority purportedly vested in him under said notes, caused judgments to be confessed against Plaintiff in the amounts of \$48,989.94, \$31,468.81 and \$18,365.11; but,

that, however, the acts of said James W. Grehan, in confessing judgments as aforesaid, were not performed in accordance with the requirements of law.

5. That, therefore, the said judgment should be set aside and any executions and levies conducted pursuant to the confession of said judgments are and were of no effect.

6. That, ostensibly pursuant to the aforesaid Security Agreement, Defendant, Warrenton Production Credit Association, acting through its agent and employee, James W. Grehan, took possession of, and caused to be sold, certain personal property described in said Agreement, said sale occurring on February 18, 1978, in Spotsylvania County, Virginia,.

7. That, said James W. Grehan and Warrenton Production Credit Association owed to Plaintiff a duty to conduct said sale in a responsible commercially acceptable manner; that, notwithstanding said duty, and in complete breach of it, said Defendants incurred excessive and unjustified costs and expenses in the employment of an auctioneer to conduct said sale and retaining Counsel; and that said Agreement did not authorize Defendants to incur said expenses.

8. That, at the aforesaid sale, certain items of Plaintiff's property which were not included in said Security Agreement as collateral for said indebtedness, were sold by Defendants acting through the auctioneer retained by them, to conduct said sale; and that Defendants had no authority or right to take possession of, sell and convey said property.

9. That, subsequent to said sale, Plaintiff received from

Warrenton Production Credit Association an accounting of the receipts and disbursements derived from the sale of said property; and that said accounting indicated that Plaintiff's aforesaid indebtedness to said Defendant was satisfied in full.

10. That, notwithstanding the aforesaid, Defendants failed to indicate the satisfaction and payment of that judgment confessed against Plaintiff the said James W. Grehan, in the amount of Eighteen Thousand Three Hundred Sixty Five and 11/100 Dollars (\$18,365.11), said judgment docketed in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia. That, Defendant's failure to indicate the satisfaction of said judgment in the office of the Clerk of said Court has caused Plaintiff to suffer injury to his reputation and impairment to his credit, all to his damage; and that the existence of said unreleased judgment has and will prevent Plaintiff from obtaining credit and negotiating loans, necessary for the conduct of Plaintiff's business and personal affairs.

WHEREFORE, Plaintiff respectfully moves for judgment against Defendants, jointly and severly, in the amount of One Hundred Thousand Dollars (\$100,000.00) together with the cost of this action.

Respectfully submitted,

SHIRLEY T. GREENE

BY 

Of Counsel

Benjamin H. Woodbridge, Jr., Esq.
Woodbridge, Smith, Scott & Van Leak
620 Princess Anne Street
Fredericksburg, Virginia 22401

NOTE

\$ 15,000.00

Warrenton, Va., September 24, 1976

FOR VALUE RECEIVED, on demand, the undersigned jointly and severally promise to pay to the order of
Warrenton Production Credit Association

at its Office in Warrenton, Virginia,

the sum of Fifteen Thousand and No/100-----Dollars,

with interest thereon at the rate of 8% per annum from the date hereof; provided, however, that the Association may from time to time hereafter increase said interest rate to the interest rate then applicable to loans then being made by the Association; and further provided that without prejudice to the interest rate herein prescribed, the Association may, at its option, reduce the same from time to time.

The makers and endorsers of this note jointly and severally waive presentment for payment, demand, protest and notice of non-payment hereof.

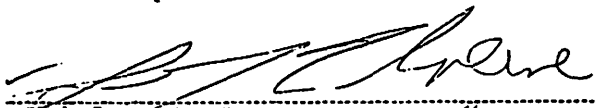
We, the makers and endorsers hereof, jointly and severally do hereby appoint DuVal Q. Hicks, Jr.
James W. Grehan

and _____, severally and not jointly, as our attorney-in-fact to appear in the Office of the Clerk of the Court for the County of Spotsylvania, Virginia, at any time, and to confess judgment upon this note against us, the makers and endorsers jointly and severally, in favor of the holder hereof for the amount which may be due, together with interest, costs and an attorney's fee of fifteen percentum (15%) thereof; and hereby waive the benefit of all exemptions, homestead or otherwise, which we may have under or by virtue of the constitution or laws of Virginia, or any other state; and further waive any and all defenses or right of offset which we or either of us may or might have against the payee hereof when this note is held by said Association, the Federal Intermediate Credit Bank of Baltimore, or the successors or assigns of either; and in the event this note is placed in the hands of an attorney for collection or is collected by legal process do hereby further agree to pay fifteen percentum (15%) thereof as attorneys' fees.

This note is secured by a security interest in personal property which is duly publicized by Financing Statement No. 71
 and by _____, duly entered in the proper office in Spotsylvania
 County Virginia.

WITNESS our hands and seals the day and year aforesaid.

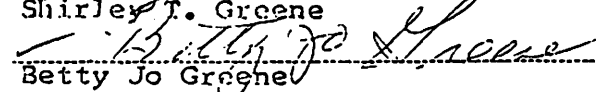
(SEAL)



(SEAL)

Shirley T. Greene

(SEAL)



(SEAL)

Betty Jo Greene

(SEAL)

(SEAL)

NOTE

\$ 59,777.00

Warrenton, Va., March 1, 1976

FOR VALUE RECEIVED, on demand, the undersigned jointly and severally promise to pay to the order of

Warrenton Production Credit Association

at its Office in Warrenton, Virginia,

the sum of -----Fifty Nine Thousand Seven Hundred Seventy Seven and No/100----- Dollars

with interest thereon at the rate of $8\frac{1}{2}$ % per annum from the date hereof; provided, however, that the Association may from time to time hereafter increase said interest rate to the interest rate then applicable to loans then being made by the Association; and further provided that without prejudice to the interest rate here in prescribed, the Association may, at its option, reduce the same from time to time.

The makers and endorsers of this note jointly and severally waive presentment for payment, demand, protest and notice of non-payment hereof.

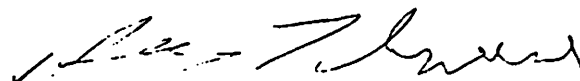
We, the makers and endorsers hereof, jointly and severally do hereby appoint DuVal Q. Hicks, Jr. and James W. Grehan, severally and not jointly, as our attorney-in-fact to appear in the Office of the

Clerk of the Court for the County of Spotsylvania, Virginia, at any time, and to confess judgment upon this note against us, the makers and endorsers jointly and severally, in favor of the holder hereof for the amount which may be due, together with interest, costs and an attorney's fee of fifteen percentum (15%) thereof; and hereby waive the benefit of all exemptions, homestead or otherwise, which we may have under or by virtue of the constitution or laws of Virginia, or any other state; and further waive any and all defenses or right of offset which we or either of us may or might have against the payee hereof when this note is held by said Association, the Federal Intermediate Credit Bank of Baltimore, or the successors or assigns of either; and in the event this note is placed in the hands of an attorney for collection or is collected by legal process do hereby further agree to pay fifteen percentum (15%) thereof as attorneys' fees.

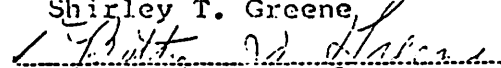
This note is secured by a security interest in personal property which is duly publicized by Financing Statement No. 71 and by _____, duly entered in the proper office in Spotsylvania County Virginia.

WITNESS our hands and seals the day and year aforesaid.

_____(SEAL)

 (SEAL)
Shirley T. Greene

_____(SEAL)

 (SEAL)
Betty Jo Greene

_____(SEAL)

_____(SEAL)

NOTE

\$ 25,000.00

Warrenton, Va., September 10, 1976

FOR VALUE RECEIVED, on demand, the undersigned jointly and severally promise to pay to the order of
 Warrenton Production Credit Association

at its Office in Warrenton, Virginia,

the sum of Twenty Five Thousand and No/100-----Dollars,

with interest thereon at the rate of 8 % per annum from the date hereof; provided, however, that the Association may from time to time hereafter increase said interest rate to the interest rate then applicable to loans then being made by the Association; and further provided that without prejudice to the interest rate herein prescribed, the Association may, at its option, reduce the same from time to time.

The makers and endorsers of this note jointly and severally waive presentment for payment, demand, protest and notice of non-payment hereof.

We, the makers and endorsers hereof, jointly and severally do hereby appoint DuVal Q. Hicks, Jr.

James W. Grehan and -----, severally and not jointly, as our attorney-in-fact to appear in the Office of the Clerk of the Court for the County of Spotsylvania

Virginia, at any time, and to confess judgment upon this note against us, the makers and endorsers jointly and severally, in favor of the holder hereof for the amount which may be due, together with interest, costs and an attorney's fee of fifteen percentum (15%) thereof; and hereby waive the benefit of all exemptions, homestead or otherwise, which we may have under or by virtue of the constitution or laws of Virginia, or any other state; and further waive any and all defenses or right of offset which we or either of us may or might have against the payee hereof when this note is held by said Association, the Federal Intermediate Credit Bank of Baltimore, or the successors or assigns of either; and in the event this note is placed in the hands of an attorney for collection or is collected by legal process do hereby further agree to pay fifteen percentum (15%) thereof as attorneys' fees.

This note is secured by a security interest in personal property which is duly publicized by Financing Statement No. 71 and by -----, duly entered in the proper office in Spotsylvania County Virginia.

WITNESS our hands and seals the day and year aforesaid.

(SEAL)

Shirley T. Greene (SEAL)

(SEAL)

(SEAL)

(SEAL)

Betty Jo Greene (SEAL)

SECURITY AGREEMENT

THIS AGREEMENT, made this 24th day of September, 1976, by and

between Shirley T. Greene and Betty Jo Greene

whose address is Route #4, Box 227, Spotsylvania 22553, Spotsylvania County, Virginia, (hereinafter called "Debtor," whether one or more) and the WARRENTON PRODUCTION CREDIT ASSOCIATION whose principal office is at 516 Fauquier Road, Warrenton, Virginia 22186 (hereinafter called "Secured Party");

WHEREAS, THE UNDERSIGNED DEBTOR IS INDEBTED TO THE SECURED PARTY AND HEREAFTER EXPECTS TO SEEK ADDITIONAL LOANS AND ADVANCES FROM THE SECURED PARTY AND DESIRES TO GIVE SECURITY FOR ALL SUCH INDEBTEDNESS AND FUTURE ADVANCES;

NOW, THEREFORE, WITNESSETH: As security for the payment of EXISTING AND FUTURE INDEBTEDNESS of the Debtor to the Secured Party not exceeding an amount outstanding at any one time, the sum of

One Hundred Thousand and No/100-----DOLLARS

(\$ 100,000.00), plus interest, the Debtor hereby gives and grants unto the Secured Party a security interest in the property described in the Schedule on the reverse side hereof (hereinafter referred to as "collateral"), and warrants, covenants and agrees with the Secured Party as follows:

1. That the statements contained in the Debtor's loan application or applications are true and correct and that the proceeds of the loan or loans secured hereby will be used solely for the purposes set forth in such applications, and to the extent that any of the collateral is purchased with the proceeds of any loan or advance secured hereby, the Debtor hereby authorizes the Secured Party at its option to disburse such proceeds to the seller of such collateral.

2. That the Debtor is the owner of the within-described collateral free and clear of liens and encumbrances and prior security interests.

3. That the Debtor will pay when due all indebtedness secured hereby with interest, together with any rent, taxes, levies, assessments or other claims which are or may become liens against the said collateral.

4. That the Debtor will care for and maintain the collateral in a good and husbandlike manner and will not further encumber, conceal, remove, sell or otherwise dispose of the same without the written consent of the Secured Party and, upon demand, will provide additional collateral acceptable to the Secured Party.

5. That the Debtor will insure the collateral in such amounts and in such manner as may be required by the Secured Party, and will pay the premiums therefor.

6. That the Secured Party, or its agents, shall have the right to inspect the collateral at any time.

7. That upon the death of any Debtor or upon the filing by any Debtor of a petition for relief under the Federal Bankruptcy Act or under the insolvency laws of any state or upon the making by any Debtor of an assignment for the benefit of creditors or upon the levy by any other creditor upon any of the collateral, the entire indebtedness secured hereby shall, at the option of the Secured Party, become immediately due and payable.

8. That nothing herein contained shall be construed to obligate the Secured Party to make any loans or advances to the Debtor and that the sole purpose of this writing is to provide collateral security for presently existing indebtedness and loans and advances which, in the absolute discretion of the Secured Party, may hereafter be made to the Debtor.

9. That the Secured Party may at any time exercise the right of set off with respect to any money held by the Secured Party for the account of the Debtor or with respect to any stock or stock rights held or acquired by the Debtor in the Secured Party and, without notice to the Debtor, may retire and cancel such stock or stock rights and apply the proceeds on account of indebtedness due from the Debtor to the Secured Party which action shall not, in any manner, alter or affect any of the rights or remedies of the Secured Party with respect to the collateral herein described or otherwise.

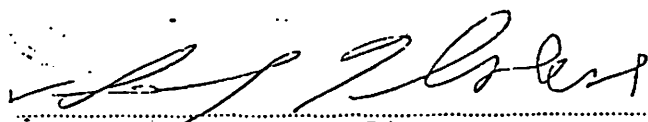
10. UNTIL DEFAULT the Debtor may retain possession of the collateral and use the same in a manner not inconsistent with the intent and purpose of this Agreement and may use and consume any hay, grain, food, forage, fodder or crops covered hereby in preserving or preparing for market any livestock or poultry described herein as collateral.

11. UPON DEFAULT by the Debtor in the performance of any of the covenants or conditions hereof or upon the breach of any warranties herein contained, the entire indebtedness hereby secured shall, at the option of the Secured Party, become immediately due and payable and the Secured Party, its agents or attorneys, shall have and possess the rights and remedies with respect to the collateral as are set forth in the "Uniform Commercial Code" and in addition thereto, the Secured Party and its agents or attorneys shall have the right with or without process of law to enter upon the premises where the collateral is located and immediately take possession of the collateral and do and perform all things necessary to preserve the same and any expense incurred for that purpose shall be added to and included in the debt secured by the said collateral; and the Secured Party, its agents or attorneys, may proceed to make sale of the said collateral at public auction on the premises where the collateral is located, or elsewhere, upon such terms and conditions as the Secured Party may determine after giving notice of such sale by posting at least ten (10) days prior thereto at the front door of the Court House of the County in which the sale is to be held, which sale may, at the discretion of the Secured Party, be postponed from time to time until the collateral is sold, the proceeds of which said sale shall be applied as follows: (a)---to the payment of costs and charges incurred in connection with the sale including an attorney's con-

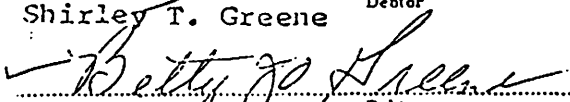
ion of 10% of the gross amount derived from the sale; (b) -to the payment of any amount paid or any expense incurred by the
red Party for taxes, levies, assessments, insurance premiums or in caring for or preserving the collateral; (c)—to the payment
he indebtedness and interest secured hereby; and (d) the residue, if any, shall be paid to the Debtor.

12. This Agreement is subject to the provisions of the "Uniform Commercial Code." (Code of Virginia Titles 8.1 - 8.10).

IN WITNESS WHEREOF the undersigned have caused this Agreement to be executed the day and year aforesaid.

.....(SEAL)

Shirley T. Greene Debtor

.....(SEAL)

Betty Jo Greene Debtor

.....(SEAL)
Debtor

.....(SEAL)
Debtor

SCHEDULE OF COLLATERAL

1. CROPS--All the following crops planted or to be planted within one year from the date hereof on the hereinafter described lands:

none

2. EQUIPMENT--

1 Combine; MF model 510 with corn and grain head
2 Tractors; Ford 8600; Serial No. C 380 879
1 Disc Harrow; Miller 10'; Serial No. IHH 8740
2 No-Till Crop Planter; Allis Chalmers; Series 600
1 Ford 9600 Tractor
1 A/C Combine with 4-row cornhead; Serial No. MKS 13337
1 Ford Tractor; model 9600; serial no. C497649

3. FARM PRODUCTS--LIVESTOCK--POULTRY--

none

4. FIXTURES -

none

5. OTHER COLLATERAL--

none

6. All property of the type herein described now owned or hereafter acquired by the Debtor, including but not limited to additions, replacements and progeny; and all feed, hay, grain, fodder, ensilage, chemicals, fertilizers now located or hereafter to become located on premises occupied or to become occupied by the Debtor; the products of collateral, and all stock or rights to stock of the Debtor in the undersigned Association.

7. All proceeds of sale of collateral or products thereof and all accounts receivable resulting from such sales.

The above described crops and fixtures are or will become located on the farm occupied or owned or operated by the Debtor in

..... District, County, Virginia,

which said farm is located on Road and is

bounded on the North by lands of, on the East by lands

of, on the South by lands of

..... and on the West by lands of and contains

approximately acres.

ANSWERS AND GROUNDS OF DEFENSE

Comes now, the defendants, Warrenton Production Credit Association and James W. Grehan, by Counsel, in answer to the motion for judgment filed herein, and supplemented by the response to motion for bill of particulars herein, and state as follows:

1. The allegations contained in numbered paragraph 1 of the aforesaid motion for judgment are admitted.

2. In respect to the allegations contained in numbered paragraph 2 of the aforesaid motion for judgment, your defendants admit that certain items of personal property as described in plaintiff's exhibit # 4 were security for the three notes therein described, but deny each and every implication of the word "allegedly" used in said numbered paragraph 2, and further deny any inference contained therein that the security agreement thereto attached as plaintiff's exhibit # 4 was the sole basis for security for the indebtedness of the said Shirley T. Greene to Warrenton Production Credit Association.

3. The allegations contained in numbered paragraph 3 of the aforesaid motion for judgment are admitted.

4. In respect to the allegations contained in numbered paragraph 4 of the aforesaid motion for judgment, your defendants admit that on or about February 1, 1978, James W. Grehan, as is evidenced by the records of the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, acting under the authority vested in him under said notes, caused judgments to be confessed against the plaintiff in the amounts of \$48,989.94, \$31,468.81 and \$18,365.11; but your defendants specifically deny any and all other

allegations contained in said paragraph as supplemented by plaintiff's response to motion for bill of particulars as filed herein.

5. In respect to the allegations contained in numbered paragraph 5 of the aforesaid motion for judgment, your defendants state that the allegations contained therein are not statements of fact and are a prayer and legal conclusion but deny any and all allegations contained therein.

6. In respect to the allegations contained in numbered paragraph 6 of the aforesaid motion for judgment, your defendants admit that portion of said paragraph that alleges that pursuant to the aforesaid security agreement, Warrenton Production Credit Association, acting through its agent and employee, James W. Grehan, took possession of, and caused to be sold, certain personal property described in said agreement, said sale occurring on or about February 18, 1978, in Spotsylvania County, Virginia, but your defendants specifically deny any and all other allegations contained therein, specifically including the implication that all that personal property sold as aforesaid was sold under the security agreement as therein described.

7. In respect to the allegations contained in numbered paragraph 7 of the aforesaid motion for judgment, your defendants admit those portion of the allegations contained therein which allege that Warrenton Production Credit Association owed to Plaintiff a duty to conduct said sale in a commercially acceptable manner, but specifically deny any and all other allegations contained therein.

8. In respect to the allegations contained in numbered paragraph 8 of the aforesaid motion for judgment, your defendants admit that, at the aforesaid sale, certain items of plaintiff's property which were not included

in the security agreement attached thereto as plaintiff's exhibit # 4 were sold by defendant, Warrenton Production Credit Association, acting through the auctioneer retained by them, to conduct said sale, but deny any and all other allegations contained therein.

9. In respect to the allegations contained in numbered paragraph 9 of the aforesaid motion for judgment, your defendants admit that the portion of allegations contained therein which state that subsequent to said sale, the plaintiff received from Warrenton Production Credit Association an accounting of the receipts and disbursements derived from the sale of said property and that the principal and interest owed to the defendant, Warrenton Production Credit Association by the plaintiff, were satisfied in full by the proceeds of the said sale, but specifically deny that the proceeds of sale were sufficient to satisfy the indebtedness of the said plaintiff to the defendant, Warrenton Production Credit Association, under the three judgments as heretofore set out.

10. The allegations contained in numbered paragraph 10 of the aforesaid motion for judgment are denied.

11. The defendants deny that they are indebted to the plaintiff in the amount of One Hundred Thousand Dollars (\$100,000.00) as alleged in the motion for judgment as aforesaid, or in any amount whatsoever.

WHEREFORE, the defendants pray that they be dismissed without costs.

AFFIRMATIVE DEFENSES

By way of affirmative defense, the defendants assert the following, in answer to which they expressly request a reply to this affirmative defense,

to-wit:

1. That notice of the three judgments as set out in numbered paragraph 4 of plaintiff's motion for judgment was given as called for in §8.01-438 of the Code of Virginia; and

2. That, additionally to the notice as set out in paragraph 1 hereinabove, the plaintiff and his agents had actual notice of the entry of the judgments as aforesaid; and

3. That despite the notices as aforesaid, the plaintiff made no motion to set aside or reduce said judgments; and

4. That plaintiff had no adequate defenses or set offs in action at law proceeding from the aforesaid notes and judgments; and

5. That the said judgments of the Circuit Court of Spotsylvania County, Virginia, have become and are final and binding judgments; and

6. That the plaintiff herein attempts to litigate questions in this cause of action which have been finally adjudicated and settled in the aforesaid judgments; and

7. That additionally, the plaintiff and his agents had actual knowledge of the sale which occurred on February 18, 1978, in Spotsylvania County, Virginia, as made reference to in numbered paragraph 6, 7 and 8 of plaintiff's motion for judgment; and

8. That despite such actual and constructive knowledge, plaintiff took no affirmative action to participate in, intercede in regard to or otherwise to affect the said sale of personal property by the defendant, Warrenton Production Credit Association; and

9. That the plaintiff herein ought not to be permitted to object to the manner of the sale, nor to the right of such defendant to sell and convey the said personal property; and

10. That all personal property sold by the defendant, Warrenton Production Credit Association on February 18, 1978, in Spotsylvania County, Virginia, were security for the indebtedness of the Plaintiff to the defendant, Warrenton Production Credit Association, under the financing statement duly filed in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, on February 22, 1974, a copy of which is attached hereto as exhibit "A" and made a part hereof as if set out herein, and under security agreements dated February 20, 1974, April 22, 1974, September 3, 1974, September 5, 1975, October 27, 1975, September 10, 1976, and September 24, 1976, copies of which are hereto attached as exhibit "B" and made a part hereof as if set out herein; and

11. That based upon the facts as hereinabove set out, your defendants specifically plead and will rely upon the defenses of resjudicata, estoppel, as well as all other defenses lawfully available to it which may be disclosed by evidence on discovery or trial, reserving the right to alter, amend or supplement this pleading or necessary to that end.

WHEREFORE, the defendants further pray that they be dismissed without costs incurred herein.

Respectfully,

WARRENTON PRODUCTION CREDIT
ASSOCIATION

JAMES W. GREHAN

BY: 

Of Counsel

HICKS, BAKER & PETERSON
303 Charlotte Street
Fredericksburg, Virginia 22401

BY: 

David F. Peterson

CERTIFICATE

I hereby certify that I have this 21st day of December, 1978, hand delivered a true and correct copy of the foregoing Answer and Grounds of Defense to Benjamin H. Woodbridge, Jr., 620 Princess Anne Street, Fredericksburg, Virginia 22401.


David F. Peterson

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ANSWER TO AFFIRMATIVE DEFENSE

TO THE HONORABLE JUDGES OF SAID COURT:

As his answer to the affirmative defense set forth in Defendants' answer, Plaintiff denies the allegations set forth in paragraphs 1 through 11 inclusive.

Respectfully,

SHIRLEY T. GREENE

By 
Of Counsel

Woodbridge, Smith, Scott & Van Lear
620 Princess Anne Street
Fredericksburg, Virginia 22401

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer to Affirmative Defense was hand-delivered this 15th day of January, 1979 to David F. Peterson, Esquire, 303 Charlotte Street, Fredericksburg, Virginia 22401.


Benjamin H. Woodbridge, Esq.

STIPULATION OF FACTS

It is stipulated by the parties that the following facts are true and shall be admitted by all parties for the purposes of and on the trial of this action:

1. That the Plaintiff, Shirley T. Greene, owned by himself or with his former wife all of the items of personalty which were actually sold at auction on February 18, 1978.

2. That the Plaintiff, Shirley T. Greene, received advance notice of that auction sale sufficient to allow him to consult with his attorney regarding the sale and to have attended should he have wished.

3. That the three judgments entered February 1, 1978 in favor of Warrenton Production Credit Association against Shirley T. Greene and Betty Jo Greene, arising out of three promisory notes previously signed by Mr. and Mrs. Greene, were confessed according to the requirements of the law and are valid judgments; which three judgments including attorneys fees called for the notes were in the original amounts of Thirty-One Thousand, Four Hundred Sixty-Eight and 81/100 Dollars (\$31,468.81), Forty-Eight Thousand, Nine Hundred Eighty-Nine and 94/100 Dollars (\$48,989.94), and Eighteen Thousand, Three Hundred Sixty-Five and 11/100 Dollars (\$18,365.11) totaling together Ninety-Eight Thousand, Eight Hundred Twenty-Three and 86/100 Dollars (\$98,823.86), \$86,913.86 as principle and interest and \$11,910.00 in attorneys fees.

4. That the attached seven security agreements are true copies of such security agreements signed by the Plaintiff, Shirley T. Greene and

Betty Jo Greene, which security agreements are dated February 20, 1974; April 22, 1974; September 3, 1974; September 5, 1975; October 27, 1975; September 10, 1976; September 24, 1976.

5. That the attached financing statement is a true copy of the financing statement signed by Shirley T. Greene and Betty Jo Greene as debtors, and Edward G. Silver for Warrenton Production Credit Association, as secured party, and filed in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia on February 22, 1974.

6. That on February 18, 1978, an auction sale was held by Ownby Auction and Realty Company, Inc., at the request of Warrenton Production Credit Association, at which time the following farm equipment owned by the Plaintiff Shirley T. Greene by himself or with his former wife was sold for the prices as shown:

Massey Ferguson Combine Model 510	
w/ 4 row corn head	
w/ grain head	\$ 14,500.00
Ford 8600 Tractor	10,100.00
Ford 8600 Tractor	9,100.00
Miller Disc	3,050.00
Ford 9600 Tractor	14,750.00
Ford 9600 Tractor	15,000.00
A. C. Gleaner Combine Model M	21,000.00
w/4 row corn head Model 435.	
A. C. No Til Corn Planter Model 600	1,850.00
A. C. No Til Corn Planter Model 600	1,750.00
A. C. No Til Corn Planter Model 600	1,775.00

Massey Ferguson Grain Drill 15 spout Model 33	1,000.00
Ford Disc Harrow Model 242-25'	5,400.00
Taylor-Way Offset Disc 9'	1,535.00
Ford 4 row Cuotivator - 3 pt. Hitch	800.00
Ford Rotary Cutter Model 902 - 100'	<u>810.00</u>
TOTAL	\$102,420.00

7. That of the farm equipment as described above, the following specific peices of such equipment were not identified individually and specifically in any of the seven security agreements:

A. C. No Til Corn Planter Model 600	\$ 1,775.00
Massey Ferguson Grain Drill 15 spout Model 33	1,000.00
Ford Disc Harrow Model 242-25'	5,400.00
Taylor-Way Offset Disc 9'	1,535.00
Ford 4 row Cultivator - 3 pt. Hitch	800.00
Ford Rotary Cutter Model 902 - 100'	<u>810.00</u>
TOTAL	\$11,320.00

8. That the proceeds of the auction sale described above held on February 18, 1978 in the gross amount of One Hundred Two Thousand, Four Hundred Twenty and 00/100 Dollars (\$102,420.00) was applied as follows:

A. Cost of retaking and transporting farm equipment for sale - Greg Turnley	\$ 350.00
B. Preparation for sale, advertising and conductiong auction sale - Ownby Auction & Realty Co., Inc.	10,242.00
C. Credit towards three judgments as described above	91,828.00

(1) \$ 8,749.44 towards attorneys fees

(2) \$83,078.56 towards principle and interest

David F. Peterson, Attorney for
Warrenton Production Credit Association
and James W. Grehan

Benjamin H. Woodbridge, Jr., Attorney for
Shirley T. Greene

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

SHIRLEY T. GREENE

Plaintiff


-vs-

WARRENTON PRODUCTION CREDIT
ASSOCIATION, et al

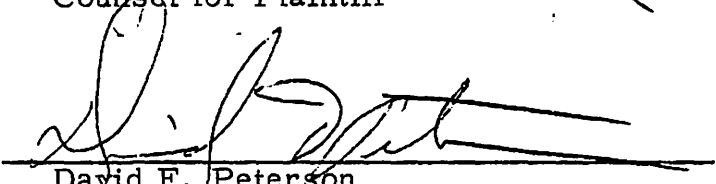
Defendants

STIPULATION

The parties, by Counsel, hereby stipulate that, in the cause of Dominion National Bank of Fredericksburg vs. Shirley T. Greene, et al, no further pleadings beyond those made a part of the record in the Final Order herein were filed or orders entered regarding the answer filed by Warrenton Production Credit Association, in said proceeding, relating to requesting or receiving consent of the Court to the acceptance of said answer, under oath, in lieu of the personal appearance of Warrenton Production Credit Association in the Dominion National Bank of Fredericksburg vs. Shirley T. Greene proceeding.



Benjamin H. Woodbridge, Jr.
Counsel for Plaintiff



David F. Peterson
Counsel for Defendants

Stipulation

No levy, garnishment attachment or execution of any kind, arising out of or based upon the three judgments against Shirley L. Greene & Betty Jo Greene, in favor of Warrenton Production Credit Assoc., were made against the fund created by the sale of the property sold pursuant to the various security agreements, at any time said fund was in the possession of Curley Auction & Real Estate Inc., Warrenton Production Credit Assoc. and/or Bill Baker & Peterson.

It is further stipulated that ^{a copy of} the letter dated January 31, 1978 from Warrenton Production Credit Assoc. to Curley Auction & Realty Co, Inc., said copy addressed to and sent to Shirley L. Greene at her

address in Plantation Fla., as
shown on said copy; was received
at the address shown which was
then the current business address.

Seen and agreed:
Benjamin B. Moody, P. O.
J. J. [Signature], P. D.

STIPULATION

No levy, garnishment, attachment or execution of any kind, arising out of or based upon the three judgments against Shirley T. Greene and Betty Jo Greene, in favor of Warrenton Production Credit Association, were made against the fund created by the sale of the property sold pursuant to the various security agreements, at any time said fund was in the possession of Ownby Auction and Real Estate, Inc., Warrenton Production Credit Association and/or Hicks, Baker and Peterson.

It is further stipulated that a copy of the letter dated January 31, 1978 from Warrenton Production Credit Association to Ownby Auction and Realty Co., Inc., said copy addressed to and sent to Shirley T. Greene at his address in Plantation, Florida, as shown on said copy, was received at the address shown which was his then current business address.

Seen and agreed:

/S/ Benjamin H. Woodbridge, Jr.p.q.

/S/ David F. Peterson, p.d.

WOODBIDGE, SMITH, SCOTT AND VAN LEAR

ATTORNEYS AT LAW

FREDERICKSBURG, VIRGINIA 22401

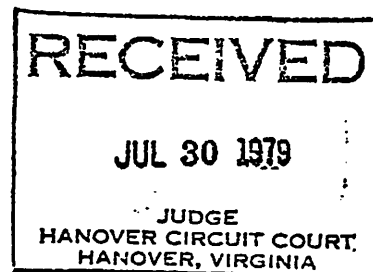
PHONE: 703-373-5300

BENJAMIN H. WOODBRIDGE, JR.
CARROLL E. SMITH
PAUL T. SCOTT
MURRAY M. VAN LEAR, II

620 PRINCESS ANNE STREET

July 27, 1979

The Honorable Richard H. C. Taylor
Circuit Court
Hanover Courthouse
Hanover, Virginia 23069



Re: Greene vs. Warrenton Production Credit
Association

Dear Judge Taylor:

Pursuant to your agreement to permit me to file a memorandum on the issues raised by Mr. Peterson in his pre-trial Motion, made in the captioned proceeding, I would respectfully submit the following argument.

First, I was, frankly, unprepared to argue against the points raised by Mr. Peterson because there was nothing in his responsive pleading to suggest the basis for his Motion or the facts from which he would argue. I will address myself more specifically to this point later in this memorandum.

Therefore, it is my understanding that the matters to be considered by the Court, at this juncture in the proceeding, are as follows:

1. DOES THE FACT OF WARRENTON PRODUCTION CREDIT ASSOCIATION'S PARTICIPATION IN THE FORMER PROCEEDINGS AGAINST GREENE BAR GREENE'S SUIT AGAINST WARRENTON?

2. EVEN IF THE ANSWER TO THE FOREGOING QUESTION IS ANSWERED AFFIRMATIVELY, CAN WARRENTON BE PERMITTED TO RAISE THIS ISSUE WITHIN THE CONTEXT OF ITS RESPONSIVE PLEADING?

QUESTION 1

With respect to the first question, I am attaching to this memorandum the various documents which relate to

the prior proceeding against Greene and which were relied upon by Mr. Peterson in his argument, as follows:

1. Petition for attachment filed by Dominion National Bank of Fredericksburg, filed on February 8, 1978, in connection with a claim of \$101,879.58 against Greene.

2. Petition for attachment filed by said bank on February 8, 1978, in connection with a claim against Greene in the amount of \$10,437.50.

3. Attachments issued by the Clerk of the Circuit Court of Spotsylvania County, on said date, with respect to said claims.

4. The answer to said proceedings filed by Warrenton on February 21, 1978.

5. Final Decree, entered in said proceeding on December 19, 1978.

6. The answer filed by Warrenton Production Credit Association.

First, the Court's attention is directed to Section 8.01-562 relating to the response which must be made by a "defendant" who is served with an attachment alleging that he is indebted to the principle defendant, in this case Greene, and I quote from this provision:

A defendant who at the time of service of the attachment was alleged to be indebted to a principle defendant, or had in his possession personal property belonging to such principle defendant, shall appear in person and submit to an examination on oath touching such debt or personal property, or he may, with the consent of the Court, after reasonable notice to the Plaintiff, (emphasis supplied) file an answer in writing under oath . . .

An examination of the answer filed by Mr. Peterson, on behalf of Warrenton, indicates a marginal notation, by Judge Jamison, dated February 21, 1978, indicating the filing of this answer. In the final paragraph of the answer, Warrenton makes this request ". . . Warrenton Production Credit Association asks consent of the Court to accept this answer in

writing, under oath, in lieu of appearance in person, and ask that the said Warrenton Production Credit Association be removed as a party hereto, and dismissed as to all further proceedings herein." It is further noted that the certificate of mailing is dated February 21, 1978, the date of filing. The suits brought by Dominion against Greene, in which Warrenton filed the aforesaid answer, do not reveal any further pleadings, orders or documents relating to Warrenton's participation in these proceedings. Specifically, there is no manifestation by the Court, in any form whatsoever, evidencing its consent to the filing of Warrenton's answer under oath, in lieu of its personal appearance. This would seem to be in clear derogation of the requirements of 8.01-562 of the Code. It certainly cannot be argued that, because Judge Jamison marked the answer filed on February 21, this provision was complied with because it is only after notice to the Plaintiff that the consent of the Court, for the filing of such an answer, may be sought and obtained. Clearly, the only notice given by Warrenton is set forth in the final paragraph of its answer, and, thereafter, no further proceedings were held whereby the consent of the Court was solicited or granted. Therefore, since the requirements of the Code were not complied with, it is respectfully submitted that the answer of Warrenton was a nullity and it did not effectuate its participation in the suit. It, therefore, logically follows that Warrenton cannot now be sustained in its argument that it properly raised issues in the former proceeding which now bar Greene's claim.

Irrespective of whether or not Warrenton's failure to comply with the provision of law, as aforesaid, is fatal to its present argument, it is further submitted that the disposition of the former suits, by entry of the Decree of December 19, 1978, did not constitute an adjudication of the issues existing in those proceedings so as to preclude Greene's present suit against Warrenton.

Initially, it must be noted that the Final Decree entered in the former suit did not, in its language, in any way refer to Warrenton, nor did Warrenton endorse the Decree. The Decree set forth certain terms and conditions, the satisfaction of which, would permit the conveyance to Greene of certain properties and note. The Decree further provided for the release of all liens asserted by the various parties against the real estate and note. No where in this Decree

is any reference made to the personal property sold by Warrenton, its claim against Greene or the sale of said property and the distribution of the sale proceeds.

To support its plea of, res judicata, Warrenton cites Martin v. Martin, 167 Va. 206. It is submitted that this case, is clearly distinguishable from the case at Bar. Conceding that res judicata or judicial estoppel are valid defenses to a suit which includes the same parties and identical issues involved in a prior proceeding, the situation presented here does not meet this test. Notwithstanding the fact that Warrenton, in its answer, requested that it be removed and dismissed as a party to the Dominion proceeding, no order of the Court, including the aforesaid Final Decree, granted this relief or in any way confirmed or approved the distribution of the sale proceeds set forth in the answer. Gilmer v. Brown, 186 Va. 630, comments clearly on estoppel and res judicata, the Court stating in 186 Va. at page 636:

Judicial estoppel and res judicata are frequently used interchangeably and have the same significance. Estoppel, because it concludes a party from alleging the truth, must be certain to every intent and its scope should not be extended by argument or inference.

It is essential to an estoppel by record that the identical question upon which it is invoked was an issue in the former proceeding.

. . . There must be an identity of issues, and by this is meant that the issue raised in the second suit, ~~in which the evidential force of the former judgment is to be directed,~~ must be identical with the issue, or one of the issues, raised and determined in the first action.

Applying the principle of law enunciated in the Gilmer case, how can it be argued that Warrenton, because it filed an answer to an attachment proceeding brought within the context of pending litigation, in which it merely set forth a factual situation relating to its assertion of a lien on specific personal property and the distribution of the proceeds of the sale of that property, raised and litigated to final conclusion, the identical issues involved in the suit brought by Greene against Warrenton. Nothing in the

records relating to the Dominion suits against Greene could even remotely be construed as an evidentiary determination of the questions presented in the present suit. It should be noted that Warrenton, in its answer filed in the Dominion proceedings did not request a reply to be made by any party. Reference is made to Rule 3:12, of the Rules of the Supreme Court of Virginia, which states as follows:

If a plea, motion or an affirmative offense sets up new matter and contains words expressly requesting a reply, the adverse party shall within 21 days file a reply admitting or denying such new matter. If it does not contain such words, the allegation of new matter shall be taken as denied or avoided without further pleading. All allegations contained in reply shall be taken as denied or avoided without further pleading.

Therefore, the situation created by Warrenton's answer in the Dominion suit was a bare allegation of certain facts and conclusions which were, under this Rule, denied by all parties. Thereafter Warrenton did not seek to prove its allegations and obtain a judicial determination of the issues presented by its answer. It would logically follow that the best that can be said of Warrenton's status in the Dominion suit is that there still remains to be decided, in that proceeding, the issues raised by Warrenton's answer. To reiterate, the Final Decree entered in the Dominion suit merely reflected the settlement which had been effectuated between Greene and various creditors, not including Warrenton.

Accordingly, based on the foregoing, it is respectfully submitted that the plea of estoppel or res judicata, asserted by Mr. Peterson, must be denied.

QUESTION 2

Regardless of whether or not Warrenton has a defense to Greene's claim on a theory of res judicata, it was improper for this issue to be raised within the framework of Warrenton's answer in the Greene suit. It is clear that affirmative defenses to a cause of action must be asserted in the defendant's response. The Court's attention is directed to the language of the answer filed by Warrenton and, specifically, that

portion of the answer characterized as "Affirmative Defenses". Paragraphs 1 through 10 of this pleading refer specifically and exclusively to the obtaining, by Warrenton, of confessed judgments against Greene (see paragraphs 1-6) and the facts relating to the sale of the equipment, by Warrenton, on February 18, 1978 (see paragraphs 7-10). In its final paragraph, this pleading states "That based upon the facts as herein set out, your defendants specifically plead and will rely upon the defenses of res judicata, estoppel, . . ."

Rule 1:4 (d) of the Rules of the Supreme Court of Virginia states as follows:

Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposing party of the true nature of the claim or defense.

This Rule was construed in the case of Lumbermen's Mutual v. Hodge, 205 Va. 36, a copy of which is enclosed. The Court, in Lumbermen's, dealt with an attempt by an insurance carrier, Lumbermen's, to assert a policy defense of lack of notice when this defense was not specifically pled by it. In commenting on the sufficiency of the defendant's response, the Court stated in 205 Va. at page 39 as follows:

The purpose of a defensive pleading is to inform the opposite party, and to permit the Court to determine what is the true nature of the defense. Unless this purpose is achieved, such a pleading is not sufficient at law (emphasis supplied).

The Court is respectfully reminded that the only issue argued at the pre-trial conference was the effect of the Dominion litigation and Mr. Peterson's contention that, because of the disposition of that suit, Greene was barred in his claim against Warrenton. The Court did not consider any issues relating to the factual allegations, asserted in Warrenton's affirmative defense, relating to the confessed judgments against Greene and the sale. Although arguably, the Court may later consider these facts, if proven, with respect to Warrenton's defense of judicial estoppel or res judicata, the Court cannot consider the Dominion suit with respect to these defenses because Mr. Peterson did not plead

the facts argued by him, at the pre-trial conference.

Therefore, it is respectfully submitted that the Court should deny Mr. Peterson's Motion and reinstate this proceeding on the docket of the Court, for trial on the merits.

Very truly yours,


Benjamin H. Woodbridge, Jr.

BHW,Jr.:lw

cc: David Peterson, Esq.

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HICKS, BAKER & PETERSON

ATTORNEYS AT LAW

303 CHARLOTTE STREET

FREDERICKSBURG, VIRGINIA 22401

DUVAL Q. HICKS, JR.
LELAND L. BAKER, JR.
DAVID F. PETERSON

AREA CODE 703
PHONE 373-5690

August 6, 1979

The Honorable Richard H. C. Taylor
Circuit Court
Hanover Courthouse
Hanover, Virginia 23069

Re: Greene vs. Warrenton Production Credit Association

Dear Judge Taylor:

I have prepared the following Memorandum of Law in the above styled action, it being my understanding from Mr. Woodbridge that you have agreed to receive such memoranda both on the procedural question of the sufficiency of the pleadings upon which the Court ruled on July 11, 1979, and upon the defense of res judicata, a final ruling on which the Court held in abeyance pending the decision by Mr. Woodbridge as to how he wished to proceed on certain questions.

While perhaps the two questions presented could better be set out with the procedural issue first, I have followed the same format contained in Mr. Woodbridge's memorandum, for the convenience of the Court. I believe Mr. Woodbridge and I are in agreement as to the two issues presented to the Court, I would prefer that they be phrased as follows:

1. DOES THE FINAL DECREE ENTERED DECEMBER 19, 1978 IN THE CONSOLIDATED ACTION STYLED UNITED VIRGINIA BANK OF SPOTSYLVANIA, ET AL VS. SHIRLEY T. GREENE, ET AL CONSTITUTE A BAR TO THE INSTANT SUIT BY GREENE AGAINST WARRENTON?

2. EVEN IF THE ANSWER TO THE FOREGOING QUESTION IS ANSWERED AFFIRMATIVELY, CAN WARRENTON BE PERMITTED TO RAISE THIS ISSUE WITHIN THE CONTEXT OF ITS RESPONSIVE PLEADING?

ISSUE 1

Warrenton Production Credit Association and Mr. Grehan (collectively hereafter Warrenton) take the position that the answer filed February 21, 1978 on behalf of Warrenton was in full compliance with the Code. Mr. Woodbridge has cited Section 8.01-562 (copy attached) and argues that the answer was a nullity never filed with the Court. Leaving totally aside the normal practice in attachment proceedings in this Court as well as the very real question whether Shirley T. Greene (hereafter Greene) has standing to even raise such an argument, the answer in writing under oath was on the return day tendered to the Court and received with the consent of the Court, as evidence by the marginal notation cited by Mr. Woodbridge.

In the event that either the Plaintiff or the principal Defendants had objections either to the form or the content of the answer, ample remedies are provided by Sections 8.01-564 and 8.1-565 of the Code of Virginia (see copies attached).

Chronologically put, specific pleadings were filed by Dominion National Bank regarding personal property owned by principal Defendant Greene and allegedly in the possession of Warrenton; after service making Warrenton a party, Warrenton filed a specific answer in writing under oath in regard to the sale of that personal property and disposition of funds therefrom, which was received by Judge Jamison and lodged in the file; no other party thereto, present in Court at the time of filing or afterwards, raised any issue regarding the sufficiency or the propriety of the answer.

Under Section 8.01-562, the answer under oath of Warrenton, as the Co-Defendant, is given different status than simply an answer, in that under the last sentence of that section, "An answer under oath under this section shall be deemed prima facie to be true." Contrary to the position taken by Mr. Woodbridge that the answer was simply a "bare allegation of certain facts and conclusions" which were, under this rule (Rule 3:12), denied by all parties "the contents of the answer were prima facie true," and unless rebutted by evidence produced by the Plaintiff or principal Defendant, no further evidence needed be produced by Warrenton in that respect.

The Plaintiff and principal Defendant are given a specific right under Section 8.01-565 of the Code of Virginia (attached) to inquire behind the answer of the Co-Defendant. No such demand or suggestion having been made by the other parties to the proceeding, Warrenton was under no obligation to come forward with further evidence, the burden having shifted to the other parties to come forward with contrary evidence.

It is clear from the record before the Court that not only was Warrenton a party to the prior suit, but it had produced unrebutted evidence that it had taken possession of certain personal property of Greene, pursuant to specific security agreement and financing statement which were made exhibits to the answer under oath, that upon reasonable notification to Greene said personal property was properly sold, that the proceeds had been disposed of pursuant to 8.9-504 of the Code of Virginia, and that Warrenton was not indebted in any amount to Greene. With the prior suit in the posture in regards to Warrenton, the Final Decree was entered on December 19, 1978. Said Decree clearly states that it is a Final Decree, recites that all matters and dispute have been settled, and discharges Greene from any all liens created against "said parties" and the real estate. There is no doubt whatsoever in reading the Decree that it is a final adjudication of all questions in issue in the proceeding.

In oral argument regarding this issue, Mr. Woodbridge raised the point that the Final Decree was by consent or agreement, and not fully adjudicated. Likewise, in his Memorandum of Law in the final paragraph on page 4 he accentuates the phrase raised and litigated to final conclusion. The law is clear that "a judgment or decree,

though entered by consent or agreement of the parties, is res judicata to the same extent as if entered after contest..... The conclusiveness or res judicata effect of a consent judgment applies even though the Court rendering the consent decree has not ascertained the truth of the facts averred, and has not deliberated and passed on the matters in controversy, and even though the judgment is erroneous."47 Am Jur 2d Judgments Section 10 89

On July 11, Warrenton presented to the Court a copy of Martin vs. Martin, 167 Va. 206. Without setting out why, counsel for Mr. Greene finds this case clearly distinguishable from the instant case. While certainly all cases are dissimilar in some respects, Martin vs. Martin is remarkably similar, in that there was a consent, compromise decree disposing of a prior suit, and then the bringing of a subsequent suit by some of the parties against some of the other parties, among other allegations, alleging that the decrees and judgment of the Court in the former suit were void "because the parties to that cause had, by written contract filed therein, settled by compromise their respective rights, and that the decree in the Court did nothing more than dispose of the case as agreed by the parties." Page 208-209. Citing a long line of Virginia cases, at page 211, Supreme Court made short shrift of that argument, extending the bar not only to matters actually litigated, but those which might have been litigated in that suit.

By the very nature, a consent or compromise decree avoids the full litigation of all the issues raised, but the law is clear that that does not make the judgment any less binding as to those issues, unless specifically excepted from the findings of the Final Decree. It is perhaps worthwhile to note again at this point that, at the time the consent decree was entered, Warrenton remained a party Co-Defendant, still subject to demand of the parties under Section 8.01-565 of the Code of Virginia, still liable to Dominion National Bank for any of the specified property or the proceeds thereof if it had sold goods not under lien or sold in an improper manner or distributed improperly; likewise, Warrenton was responsible to Green under the same circumstances.

Counsel for Greene has cited the case of Gilmer vs. Brown, 186 Va. 630, as bearing clearly on estoppel and res judicata. That case is extremely dissimilar to the case at bar, in that it revolves solely around the question whether the issues in a proceeding to appoint a guardian or committee for an adult are the same as to the issues, and thus res judicata, as a suit to determine the testamentary capacity of the same adult. Even given that the type of analysis which the Supreme Court made was of a wholly different nature than the question before this Court, in finding that testamentary capacity and need for a committee are separate issues and thus the one was not reached by the other case, it is interesting to note that Gilmer vs. Brown actually buttresses the position of Warrenton. In the excerpt quoted by Mr. Woodbridge, it is pointed out that "it is essential to an estoppel by record that the identical issue upon which it is invoked was in (note typographical error "an" for "in") issue in the former proceeding." The question of the possession and any debts owed by Warrenton to Greene was specifically raised by Dominion National Bank, was specifically answered and its answer was prima facie true.

Gilmer, again as quoted by Mr. Woodbridge, goes on to indicate the necessity of an identity of issues, "or one of the issues," between the two suits. In an attachment

suit, the existence of a lien and the report of disposition of such collateral, as it may bear upon any surplus and from it thus a debt owed to the principal Defendant, are central issues. Within the attachment proceeding, Warrenton faced liability to Dominion National Bank and/or Green, dependant upon the very issues which remained before the Court in the instant case. "The judgment of a Court of competent jurisdiction, dismissing a suit agreed, upon the ground that it has been agreed by the parties, is a final determination as to every other matter which the parties might have litigated in the suit." 8b M.J. Former Adjudication or Res Judicata Section 51, citing Virginia cases.

Also of help in determining whether res judicata applies, is the test set out in Cohen vs. Power, 183 Va. 258, at 261, stating "if the same facts or evidence would sustain both actions, then the two actions are considered the same and a judgment in one bars any subsequent action based upon the same facts."

Certainly in this case, the facts presented to the Court in the attachment proceeding as regards the lien, sale and disposition of the same property are indential to the questions remaining to be answered in this suit, and were disposed of by the Final Decree entered in that prior action.

In order to argue in this matter as Mr. Woodbridge has, that the prior adjudication has no effect on the present cause of action, it is in effect necessary to look behind that prior judgment and accept it as something less than it states on its face. To do so, would necessitate the question whether the terms of the settlement, or the settlement itself, would have been changed if, as now claimed by Mr. Greene, more than \$11,000.00 of equipment sold by Warrenton was outside the lien and thus subject to the attachment of Dominion National Bank, and additionally, as now claimed by Greene, the attorney's fees and auctioneer's fee of some \$19,000.00 was improper. Certainly the availability of those funds, at that time under specific lien of attachment by Dominion National Bank, could have made a significant difference in the bargaining position of the parties in the reaching of a settlement.

It is the position of Warrenton that such an exploration would be improper, that the Final Decree disposes of the issues among the various parties based upon the pleading before the Court. Virginia law is clear that such a settlement adjudicates all matters which might have been brought out on the merits, and Mr. Greene cannot be allowed to sit mute and accept the answer of Warrenton in the one instance, and then take the opposite stance once his previous position has resulted in a compromise settlement.

Issue 2

In regard to Mr. Woodbridge's technical argument regarding the sufficiency of Warrenton's pleading, we respectfully submit that the pleadings were ample to place Mr. Greene and his counsel on notice, both as to the facts alleged and the specific affirmative defenses asserted, that prior adjudication and estoppel would be presented to the Court as defenses. As was pointed out to the Court during oral argument on July 12, no Final Decree had in fact been entered at the time of the

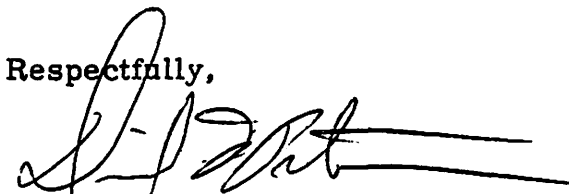
filing of the grounds of defense, but both parties were at that time before the Court in the consolidated attachment suit, to which Mr. Greene was a principal Defendant. In the event that Mr. Woodbridge felt that the defensive pleadings were insufficient, or in the event that he wished to ascertain what specific evidence would be presented to the Court, there was ample opportunity to do just that. Section 8.01-274 of the Code of Virginia calls for the making of a motion to strike, allowing amendment or elaboration. A bill of particulars, as used by Warrenton, would likewise have sufficed, as would interrogatories or other forms of discovery to delineate the issues.

Mr. Woodbridge has relied heavily upon the case of Lumbermen's Mutual vs. Hodge, 205 Va. 36. It is respectfully submitted that that particular case, which turned on an elementary waiver theory, does not apply upon the facts at hand. The question in that action was the propriety of a denial of coverage by an insurance company. The company sent a letter giving lack of permission as the reason for refusing coverage, the first jury trial was tried only on that issue, an appeal was made in which it was stated that that was the sole issue, and the case was remanded for trial upon the holding of the Supreme Court that the issue of whether the driver was operating with permission was for the jury. Lack of notice was never pled and was never mentioned in any respect prior to the attempt to amend on the day of trial.

It is the position of Warrenton that the facts are quite different in this case. Facts or allegations were made sufficient to put Plaintiff on notice plus there was a specific pleading of res judicata and estoppel. Plaintiff was on notice from the first instant that the grounds of defense was filed that these would be raised, and the fact that the Plaintiff failed to seek elaboration should not be to the prejudice of the Defendant Warrenton.

It is therefore respectfully submitted that the Courts prior ruling that the issue of res judicata was properly raised was correct and should not be changed, and that either final judgment should be entered in favor of the Defendants or a non-suit should be taken by the Plaintiff, as discussed by the Court and parties on July 11, 1979.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. F. Peterson', with a long horizontal flourish extending to the right.

David F. Peterson

DFP:sjs

cc: Benjamin H. Woodbridge, Jr.

Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT



JUDGES

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COUNTIES OF
NORTHUMBERLAND
WESTMORELAND
SPOTSYLVANIA
KING GEORGE
LANCASTER
CAROLINE
STAFFORD
RICHMOND
HANOVER
ESSEX
CITY OF FREDERICKSBURG

August 23, 1979

Benjamin H. Woodbridge, Jr., Esquire
Woodbridge, Smith, Scott and Van Lear
620 Princess Anne Street
Fredericksburg, Virginia 22401

David F. Peterson, Esquire
Hicks, Baker & Peterson
303 Charlotte Street
Fredericksburg, Virginia 22401

Re: Greene vs. Warrenton Production Credit
Association

Gentlemen:

At a hearing of the above matter on July 11, 1979, at Spotsylvania, the Court indicated that the issue of res judicata was properly raised in pleadings in this suit and that it was the Court's opinion that the same issue had been properly raised and adjudicated by the final decree in the previous suits arising out of the attachment proceeding brought by Dominion National Bank against Greene.

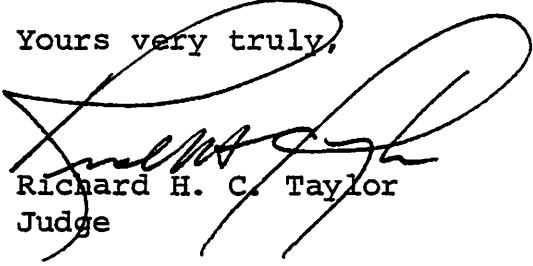
The Court stated on July 11 that the plaintiff had the option of taking a non-suit prior to the Court's entering judgment in favor of the defendants; therefore, the motion was taken under advisement until the plaintiff could determine his course of action. The Court received a request from Mr. Woodbridge to file a memorandum stating his position. The request was granted and the Court has received a memorandum from Mr. Woodbridge and a response from Mr. Peterson. After

Benjamin H. Woodbridge, Jr., Esquire
David F. Peterson, Esquire
Page Two
August 23, 1979

examining the two memoranda, the Court is still of the opinion that the issue was properly raised in pleadings in this suit and that the final decree in the Dominion suits settled the matter for all purposes. Therefore, the plaintiff is hereby placed upon terms to decide whether he desires to take a non-suit, which would allow him to go back into the Dominion suits if he feels a final determination was not made therein, or judgment will be entered for the defendants.

I am instructing Mr. Peterson to forward to Mr. Woodbridge ten days after receipt of this letter an order entering judgment for the defendants.

Yours very truly,



Richard H. C. Taylor
Judge

RHCT/jyh

cc/ Ms. Margaret Cooke, Clerk
Circuit Court, Spotsylvania County
Spotsylvania, Virginia 22553

FINAL ORDER

On the 11th day of July, 1979, came the Plaintiff Shirley T. Greene, by his attorney Benjamin H. Woodbridge, Jr., and the Defendants Warrenton Production Credit Association and James W. Grehan, by their attorney David F. Peterson, upon the pleadings, stipulation of counsel, and upon the motion of the Defendants that all matters now attempted to be litigated in this proceeding were litigated and concluded in the prior proceeding in this Court styled Dominion National Bank of Fredericksburg vs. Shirley T. Greene, et al; and was argued by counsel.

And it appearing to the Court, based upon the pleadings and stipulations, and the pleadings and decree in the prior proceeding introduced as set out herein above, that all matters now attempted to be litigated in this action were litigated and settled in the prior proceeding heretofore concluded between the parties by that certain Final Decree dated December 19, 1978, and that the said prior judgment now constitutes res judicata and estoppel to the action herein sought to be brought, it is therefore

ADJUDGED, ORDERED and DECREED, that the said motion of the Defendants Warrenton Production Credit Association and James W. Grehan be granted in favor of said Defendants, and that the Motion for Judgment is hereby dismissed with prejudice.

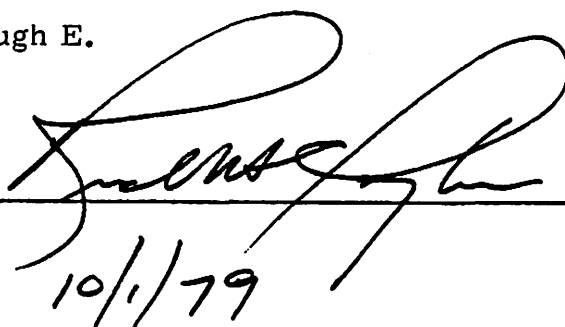
It is further ORDERED that this transcript herein be made a part of the record, and further that the attached certified copies of pleadings and decree in the cause of Dominion National Bank of Fredericksburg vs. Shirley T. Greene, et al, as consolidated, be made a part of the record in place and

stead of the Court files presented to the Court, which pleadings and decree are denominated as attachments A through E.

ENTER:

JUDGE

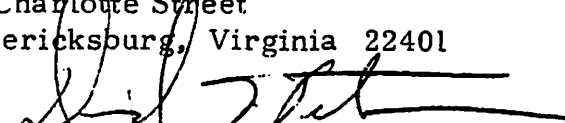
Date:


10/1/79

WE ASK FOR THIS:

HICKS, BAKER & PETERSON, p.d.
303 Charlotte Street
Fredericksburg, Virginia 22401

BY:


David F. Peterson

Seen and objected to:

WOODBIDGE, SMITH, SCOTT & VAN LEAR, p.q.
620 Princess Anne Street
Fredericksburg, Virginia 22401

BY:


Benjamin H. Woodbridge, Jr.

RECORDED IN LAW ORDER

BOOK 62 PAGE 134

A Copy Sent: Evelyn P. Toney, Deputy clerk

TO: Margarette Cooke, Clerk
Circuit Court of Spotsylvania County, Virginia

In the case of Dominion National Bank of Fredericksburg v. Shirley T. Greene, et als. (Principal amount of claim \$10,437.50), on an attachment, you are requested to issue attachment and summons against the following tangible personal property of the principal defendant Shirley T. Greene and the principal defendant Betty Jo Greene:

a. All farm equipment, machinery and inventory, including the following:

1. Massey Ferguson Combine, Model 510 - Serial #27392
w/4-row corn head - Serial #1864074588
w/15' grain head - Serial #1859-16487
2. Ford 8600 Tractor - Serial #C424611
Ford 8600 Tractor - Serial #C380879
3. Miller 10' Disc - Serial #1 HH8740
4. Ford 9600 Tractor - Serial #C458920
Ford 9600 Tractor - Serial #C497649
5. A. C. Gleaner Combine, Model M - Serial #MKS 13337
w/4 row corn head, Model 435 - Serial #580472-0222
6. A. C. 4-Row No-Til Corn Planter, Model 600
A. C. 4-Row No-Til Corn Planter, Model 600
Serial #010481
A. C. 4-Row No-Til Corn Planter, Model 600
Serial #011674
7. Massey Ferguson Grain Drill, Model 33 - Serial
#051010514 15 Spout
8. Ford Disc Harrow, 25', Model 242
9. John Deere Rotary Cutter, 15', Model 1508
Serial #002012 W
10. Taylor-Way Offset Disc, 9' - Serial #134912
11. Ford 4-Row Cultivator, 3 Pt. Hitch
12. Ford Rotary Cutter, 100", Model 902 - Serial
#K-209506

b. Twelve (12) acres more or less as shown on a plat of survey by Elliott and Associates Engineers-Planners dated June 30, 1975, of record in the Clerk's Office in the Circuit Court of Spotsylvania County, Virginia in Deed Book 368, at Page 489, which is the same twelve (12) acres reserved in a conveyance to Jules L. Elliott, Trustee, dated June 30, 1975, of record in the aforesaid Clerk's Office in Deed Book 368, at Page 294, being a part of the same real estate which was conveyed unto Shirley T. Greene and Betty Jo Greene by deed from George F. Hartnell and Helen B. Hartnell dated March 30, 1973, of record in the aforesaid Clerk's Office in Deed Book 314, at Page 145.

c. 8.317 acres more or less, according to a survey of Elliott and Associates dated May 18, 1976, lying and being in Chancellor Magisterial District, Spotsylvania County, Virginia, being the same land which was conveyed unto Shirley T. Greene and Betty Jo Greene, his wife, by deed from Jules L. Elliott, Trustee, dated June 2, 1976, of record in the aforesaid Clerk's Office in Deed Book 396, at Page 384.

d. More particularly, against the real and personal property of the said principal defendants now in the possession and control of the National Bank of Fredericksburg and Jules L. Elliott, Trustee.

e. That negotiable promissory note in the amount of \$152,000.00 dated June 30, 1975, and made by Jules L. Elliott, Trustee, payable to the order of Shirley T. Greene and Betty Jo Greene, his wife, at the National Bank of Fredericksburg. Which note is secured by a deed of trust on 139.497 acres of record in the aforesaid Clerk's Office in Deed Book 368, Page 296, wherein the said property was conveyed unto T. Stokeley Coleman and James E. Jarrell, Trustees.

You are further requested to have the Attachment and the original Petition for Attachment served on Warrenton Production Credit Association which asserts a lien on all or a portion of the farm equipment, machinery and inventory itemized hereinabove, by serving said documents on an officer thereof at P. O. Box 888, 516 Fauquier Road, Warrenton, Virginia 22186 (Fauquier County).

You are further requested to serve the Attachment on
the National Bank of Fredericksburg, Fredericksburg, Virginia
and Jules L. Elliott, Trustee, 2924 Bragg Road, Spotsylvania,
Virginia 22553.

DOMINION NATIONAL BANK OF
FREDERICKSBURG

By


Of Counsel

WHITTICAR, SOKOL & LEDBETTER
P. O. Box 593
918 Princess Anne Street
Fredericksburg, Virginia 22401

Counsel for Petitioner

*2/3/78 filed.
by me.
C.S.*

Copy sent: Evelyn P. Toney, Deputy clerk

ATTACHMENT

COMMONWEALTH OF VIRGINIA:

To the Sheriff of LOUISA County, Greeting:

Whereas, Dominion National Bank of Fredericksburg, plaintiff, has this day filed in the Clerk's Office of our Circuit Court of Spotsylvania County a petition praying for the issuance of an attachment against Shirley T. Greene and Betty Jo Greene, principal defendants, founded on the original petition for attachment filed in the said Office against Shirley T. Greene, principal defendant, and others, upon the grounds set out in said original petition, to recover of the said principal defendants the sum of One hundred One Thousand Eight Hundred Seventy-Nine and 58/100 Dollars (\$101,879.58) plus interest thereon from December 2, 1977, until paid, and collection costs and expenses, including attorney's fees of 25%;

These are therefore in the name of the Commonwealth to command you forthwith to attach so much of the lands, tenements, goods, chattels, monies and effects of the principal defendants, Shirley T. Greene and Betty Jo Greene, now exempt from execution as will be sufficient to satisfy the plaintiff's demand, including the following:

1. Massey Ferguson Combine, Model 510 - Serial #27392
 w/4-row corn head - Serial #1864074588
 w/15' grain head - Serial #1359-16487
2. Ford 8600 Tractor - Serial #C424611
 Ford 8600 Tractor - Serial #C380879
3. Miller 10' Disc - Serial #1 M16740

4. Ford 9600 Tractor - Serial #C458920
Ford 9600 Tractor - Serial #C497649
5. A. C. Gleaner Combine, Model H - Serial #HKS 13337
w/4 row corn head, Model 435 - Serial
#580472-0222
6. A. C. 4-Row No-Til Corn Planter, Model 600
A. C. 4-Row No-Til Corn Planter, Model 600
Serial #010481
A. C. 4-Row No-Til Corn Planter, Model 600
Serial #011674
7. Massey Ferguson Grain Drill, Model 33 - Serial
#051010514 15 Spout
8. Ford Disc Harrow, 25', Model 242
9. John Deere Rotary Cutter, 15', Model 1508
Serial #002012 W
10. Taylor-Way Offset Disc, 9' - Serial #134912
11. Ford 4-Row Cultivator, 3 Pt. Hitch
12. Ford Rotary Cutter, 100", Model 902 - Serial
#K-209506

b. Twelve (12) acres more or less as shown on a plat of survey by Elliott and Associates Engineers-Planners dated June 30, 1975, of record in the Clerk's Office in the Circuit Court of Spotsylvania County, Virginia in Deed Book 368, at Page 489, which is the same twelve (12) acres reserved in a conveyance to Jules L. Elliott, Trustee, dated June 30, 1975, of record in the aforesaid Clerk's Office in Deed Book 368, at Page 294, being a part of the same real estate which was conveyed unto Shirley T. Greene and Betty Jo Greene by deed from George F. Hartnell and Helen B. Hartnell dated March 30, 1973, of record in the aforesaid Clerk's Office in Deed Book 314, at Page 145.

c. 8.317 acres more or less, according to a survey of Elliott and Associates dated May 18, 1976, lying and being in Chancellor Magisterial District, Spotsylvania County, Virginia, being the same land which was conveyed unto Shirley T. Greene and Betty Jo Greene, his wife, by deed from Jules L. Elliott, Trustee, dated June 2, 1976, of record in the aforesaid Clerk's Office in Deed Book 396, at Page 384.

d. More particularly, against the real and personal property of the said principal defendants now in the possession and control of the National Bank of Fredericksburg and Jules L. Elliott, Trustee.

c. That negotiable promissory note in the amount of \$152,000.00 dated June 30, 1975, and made by Jules L. Elliott, Trustee, payable to the order of Shirley T. Greene and Betty Jo Greene, his wife, at the National Bank of Fredericksburg. Which note is secured by a deed of trust on 130.497 acres of record in the aforesaid Clerk's Office in Deed Book 368, Page 296, wherein the said property was conveyed unto T. Stokeley Coleman and James E. Jarrell, Trustees.

and if any tangible personal property be taken possession of by you hereunder, you shall safely keep the same in your possession to satisfy any judgment that may be recovered by the plaintiff in this proceeding; that you summon the principal defendants, Shirley T. Greene and Betty Jo Greene, and the codefendants, Jules L. Elliott, Trustee and the National Bank of Fredericksburg, if they or any of them be found within your county or in any city or county wherein you may have seized property under and by virtue hereof, to appear before our Circuit Court of Spotsylvania County, at the Courthouse thereof, on the 21st day of February, 1978, at 2:30 p.m., and answer said petition or state the grounds of their defense thereto; that you further summon Warrenton Production Credit Association, Jules L. Elliott, Trustee, and the National Bank of Fredericksburg to appear before our said Circuit Court at the Courthouse thereof, in person, and submit to an examination on oath touching their indebtedness to the principal defendants, Shirley T. Greene and Betty Jo Greene, at the time of the service of this attachment, and the personal property of the principal defendants, Shirley T. Greene and Betty Jo Greene, in their possession, at the said time, or with the consent of the court, first obtained, file an answer in writing, under oath, stating whether or not they were so indebted, and, if so, the amount

thereof and the time of maturity, or whether they had in their possession any personal property belonging to the principal defendants, Shirley T. Greene and Betty Jo Greene, and, if so, the nature and value thereof.

And then and there make known how you shall have executed this writ.

Witness, Margaret M. Cooke, Clerk of our said Circuit Court, at her office, this 8 day of February, 1978.

Teste:

MARGARET M COOKE Clerk

by _____

Copy Teste: Evelyn P. Toney, Deputy clerk

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

DOMINION NATIONAL BANK OF FREDERICKSBURG,
a Virginia banking corporation,

Plaintiff

vs.

SHIRLEY T. GREENE, et als,

Defendants

ANSWER

COMES NOW, Warrenton Production Credit Association, co-defendant herein, being first duly sworn, and for answer to the Petition for Attachment filed herein does hereby answer as follows:

1. Warrenton Production Credit Association denies that at the time of the service of this Attachment it was indebted to the principal defendants, Shirley T. Greene and Betty Jo Greene.

2. That at the time of the service of the Attachment, the Warrenton Production Credit Association had in its possession the following personal property belonging to the principal defendant, Shirley T. Greene and Betty Jo Greene, to-wit:

		<u>Serial No.</u>
Massey Ferguson Combine	Model 510	27392
w/4 row corn head		1864074588
w/grain head		1859-16487
Ford 8600 Tractor		C424611
Ford 8600 Tractor		C380879
Miller Disc		1 HH8740

Ford 9600 Tractor		C458920
Ford 9600 Tractor		C497649
A. C. Gleaner Combine w/ 4 row corn head	Model M Model 435	MKS 13337 580472-0222
A. C. No Til Corn Planter	Model 600	
A. C. No Til Corn Planter	Model 600	010481
A. C. No Til Corn Planter	Model 600	011674
Massey Ferguson Grain Drill 15 spout	Model 33	051010514
Ford Disc Harrow 25'	Model 242	
Taylor-Way Offset Disc 9'		134912
Ford 4 Row Cultivator 3 pt. Hitch		
Ford Rotary Cutter 100"	Model 902	K-209506

3. That the Warrenton Production Credit Association, prior to any levy upon said personal property herein, took possession of the aforesaid personal property of the principal defendants, Shirley T. Greene and Betty Jo Greene under that certain Security Agreement dated September 24, 1976 (a copy of which Security Agreement is attached hereto as Exhibit 1 and made a part hereof as if included herein) and that certain financing statement filed in the office of the Clerk of the Circuit Court of Spotsylvania County, Virginia on February 22, 1974 (a copy of which financing statement is attached hereto as Exhibit 2 and made a part hereof as if set out herein).

4. That upon reasonable notification to the principal defendants herein, the aforesaid personal property of the principal defendants was sold at public auction sale at 10:30 a.m., February 18, 1978 on the property of

the principal defendants in Spotsylvania County, Virginia.

5. That after spirited bidding on each and every item of personal property as aforesaid, such personal property was sold to the highest bidder for the following prices:

Massey Ferguson Combine Model 510 w/ 4 row corn head w/grain head	\$ 14,500.00
Ford 8600 Tractor	10,100.00
Ford 8600 Tractor	9,100.00
Miller Disc	3,050.00
Ford 9600 Tractor	14,750.00
Ford 9600 Tractor	15,000.00
A. C. Gleaner Combine Model M w/4 row corn head Model 435	21,000.00
A. C. No Til Corn Planter Model 600	1,850.00
A. C. No Til Corn Planter Model 600	1,750.00
A. C. No Til Corn Planter Model 600	1,775.00
Massey Ferguson Grain Drill 15 spout Model 33	1,000.00
Ford Disc Harrow Model 242-25'	5,400.00
Taylor-Way Offset Disc 9'	1,535.00
Ford 4 row Cultivator - 3 pt. Hitch	800.00
Ford Rotary Cutter Model 902 - 100"	<u>810.00</u>
TOTAL	\$102,420.00

6. That pursuant to 8.9-504, Code of Virginia, as amended, the aforesaid proceeds of disposition are to be applied as follows:

Proceeds of Disposition	\$102,420.00
-------------------------	--------------

LESS:

- a. Cost of retaking and transporting
farm equipment - Greg Turnley \$350.00
- b. Preparation for sale and
auction sale - Ownby Auction &
Realty Co., Inc. 10,242.00
- c. Reasonable attorney's fees and
legal expenses, provided for
under the Security Agreement
as aforesaid 8,749.44
- d. Satisfaction of the indebtedness
secured by the Security interest:

Principal	\$79,406.54
Interest to 2/15/78	7,772.84
	<hr/>
	87,179.38
848 shares B stock applied	- 4,240.00
	<hr/>
Transferred to loans in process of liquidation	82,939.38
Interest from 2/15 - 2/22/78	+ 139.18
	<hr/>
	\$83,078.56

\$102,420.00

BALANCE

-0-

7. That the Warrenton Production Credit Association possesses no other personal property of the principal defendants, Shirley T. Greene and Betty Jo Greene, nor is it following the sale as set out aforesaid indebted to the said principal defendants in any amount.

WHEREFORE, the Warrenton Production Credit Association asks consent of the Court to accept this Answer in writing, under oath, in lieu of appearance in person, and asks that the said Warrenton Production Association be removed as a party hereto, and dismissed as to all further proceedings herein.

WARRENTON PRODUCTION CREDIT
ASSOCIATION

BY: James W. Grehan
General Manager

STATE OF VIRGINIA
CITY OF FREDERICKSBURG, to-wit:

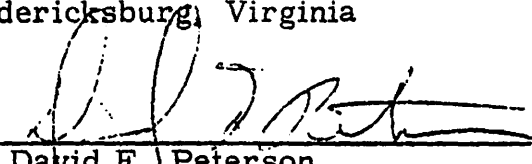
James W. Grehan, General Manager of Warrenton Production Credit Association, being first duly sworn, says that the foregoing Answer is true to the best of his knowledge, information and belief.

My commission expires: June 24, 1981

Glenn M. Edwards
NOTARY PUBLIC

HICKS, BAKER & PETERSON
303 Charlotte Street
Fredericksburg, Virginia

BY:


David F. Peterson

CERTIFICATE

I hereby certify that I have this 21st day of February, 1978, mailed a true copy of the foregoing Answer to Kevin S. Jones, Counsel of record for Dominion National Bank of Fredericksburg, 918 Princess Anne Street, Fredericksburg, Virginia; Betty Jo Greene, Route 4, Box 227, Spotsylvania, Virginia, and to Benjamin H. Woodbridge, Jr., 620 Princess Anne Street, Fredericksburg, Virginia, counsel for Shirley T. Greene.


David F. Peterson

Copy sent: Envelope P. Jones. Deputy clerk

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

UNITED VIRGINIA BANK OF SPOTSYLVANIA Plaintiff

vs.

SHIRLEY T. GREENE, et al., Defendants

and

FARMERS & MERCHANTS STATE BANK Plaintiff

vs.

SHIRLEY T. GREENE, et al., Defendants

and

DOMINION NATIONAL BANK OF
FREDERICKSBURG Plaintiff

vs.

SHIRLEY T. GREENE, et al., Defendants

(2 cases of same type)
and

BANK OF VIRGINIA-POTOMAC Plaintiff

vs.

SHIRLEY T. GREENE, et al., Defendants

DECREE

On march 27, 1978, these cases came on to be heard by this Court, sitting in Fredericksburg; present were Betty Jo Greene, in person and by Charles A. Blanton, her counsel, Shirley T. Greene, by Benjamin H. Woodbridge, his counsel, United Virginia Bank of Spotsylvania by A. Blanton Massey, its counsel, Farmers & Merchants State Bank by O'Connor G. Ashby, its counsel, Bank of Virginia-Potomac by Harry B. F. Franklin, its counsel, Dominion National Bank of Fredericksburg by Kevin S. Jones, its counsel, and the court, hearing motions and argument by counsel regarding the issues of consolidation of these cases, personal

jurisdiction over the Defendant Shirley T. Greene and the validity of the grounds of attachment, hath determined that for good cause shown and in the best interests of the Plaintiffs and Defendants in these cases, it is ADJUDGED, ORDERED AND DECREED that they be and hereby are consolidated for trial on the Chancery docket and the Clerk of this Court is directed to transfer Farmers & Merchants State Bank vs. Shirley T. Greene, et al., Bank of Virginia-Potomac vs. Shirley T. Greene, et al., and Dominion National Bank of Fredericksburg vs. Shirley T. Greene, et al.,^(2 cases) to the Chancery docket and it appearing that certain of the assets of Shirley T. Greene and Betty Jo Greene are in need of the protection of this court pending the determination of the ownership, liens and priority under these causes, the court doth ADJUDGE, ORDER AND DECREE that A. Blanton Massey, a discreet and competent attorney at law be and hereby is appointed Conservator of the estate of Shirley T. Greene and Betty Jo Greene; the court doth direct the Conservator to secure fire insurance in the amount of \$150,000 upon the former dwelling place and outbuildings of Shirley T. Greene and Betty Jo Greene located upon 12 acres of land in Spotsylvania County as shown on a plat of survey by Elliott & Associates dated June 30, 1975 recorded in the Clerk's Office of this Court in Deed Book 368 at page 489; the cost of such insurance premium to be paid out of the first proceeds of the estate of Shirley T. Greene and Betty Jo Greene, and it further appearing proper to do so, it is ADJUDGED, ORDERED AND DECREED that these cases be and hereby are referred to Albert J. Lilly, one of the Commissioners in Chancery of this Court, who shall forthwith hear evidence in

these cases beginning April 11, 1978, at 2:30 p.m. at the courthouse of the Circuit Court of the City of Fredericksburg, Virginia, and make his report to the court on the following matters:

1. Whether the Defendant Shirley T. Greene is subject to personal jurisdiction in any of these cases.

2. Whether the Plaintiffs have obtained personal jurisdiction over the Defendant Shirley T. Greene in any of these cases.

3. Whether all proper parties are before the court in each of these cases.

4. Whether any of the Defendants are in default.

5. Whether either of the principal Defendants, Shirley T. Greene and Betty Jo Greene, have committed an act which is grounds of attachment.

6. What property, real or personal, is owned by either of the principal Defendants, Shirley T. Greene and Betty Jo Greene, in the County of Spotsylvania or otherwise.

7. Who are the lienholders of the property of Shirley T. Greene and Betty Jo Greene and what is their priority of interest.

8. Whether there is any interest or profits due on the property of Shirley T. Greene and Betty Jo Greene.

9. Whether there are any assets of the estate of Shirley T. Greene or Betty Jo Greene that should be entrusted to the Conservator hereby appointed by this court for safekeeping for the benefit of the parties to these causes.

10. Whether judgment should be entered against the principal Defendants ^{Greenfield Farms of Virginia, Ltd.,} Shirley T. Greene and Betty Jo Greene.

or either of them in favor of any of the Plaintiffs.

11. What is the fair market value of the real and personal property of the principal Defendants Shirley T. Greene and Betty Jo Greene.

12. Whether the personal property and money subject to attachment will be sufficient to pay the judgments entered in these cases.

13. What property should be sold to satisfy the Plaintiffs' claims.

14. Such other matters as shall be brought to the attention of the Commissioner or which he shall deem pertinent.

ENTER:

JUDGE:

DATE :

Have pro tunc or 10 April 1978
John A. Jamison
April 11, 1978

We ask for this:

A. Blanton Massey
A. Blanton Massey, Of Counsel
United Virginia Bank of Spotsylvania

O'Connor G. Ashby 4/4/78
O'Connor G. Ashby, Of Counsel
Farmers & Merchants State Bank

Kevin S. Jones 4/4/78
Kevin S. Jones, Of Counsel
Dominion National Bank of
Fredericksburg

Harry B. F. Franklin
Harry B. F. Franklin, Of Counsel
Bank of Virginia-Potomac

Seen:

Benjamin H. Woodbridge
Benjamin H. Woodbridge, Counsel
for Shirley T. Greene

~~See~~
~~Charles A. Blanton~~
Charles A. Blanton, Counsel
for Betty Jo Greene

-4-

RECORDED IN CHANCERY ORDER

BOOK 2 PAGE 469

Atty Genl: Evelyn P. Soney, Deputy clerk

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

UNITED VIRGINIA BANK
OF SPOTSYLVANIA

FARMERS & MERCHANTS STATE BANK

DOMINION NATIONAL BANK
OF FREDERICKSBURG

BANK OF VIRGINIA-POTOMAC

Virginia Banking Corporations

Plaintiffs

vs.

SHIRLEY T. GREENE

JULES L. ELLIOTT, Trustee

GREENFIELD FARMS OF VIRGINIA, Ltd.

WILLIE R. JETT

BETTY JO GREENE, et al

Defendants

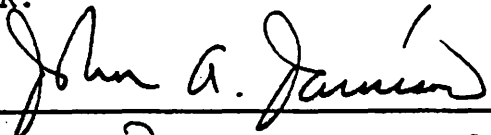
FINAL DECREE

It having been represented to the Court, by Counsel of record for all parties to these proceedings that all matters in dispute have been settled, by agreement; that said settlement shall require the payment of certain sums of money by Shirley T. Greene to Plaintiff banks, in payment of the indebtedness owed by him to said banks and, in addition, Shirley T. Greene shall execute, in favor of said banks, certain promissory notes in further payment of said indebtedness, all pursuant to said agreement; and that, upon Shirley T. Greene making said payments and delivering said notes, to Plaintiff banks, A. Blanton Massey, Special Commissioner herein, shall convey to said

Shirley T. Greene fee simple interest in the real estate heretofore vested in A. Blanton Massey, Special Commissioner, by the prior order of this Court, entered on November 28, 1978 and, in addition, said Special Commissioner shall transfer and assign that certain note, more fully described in said order, dated June 30, 1975, executed by Jules L. Elliott, Trustee to Shirley T. Greene.


Accordingly, it is ADJUDGED, ORDERED and DECREED that A. Blanton Massey, Special Commissioner, convey, in fee simple, all right, title and interest in that certain real estate which has been made the subject matter of these proceedings, said real estate being more particularly described in the aforesaid order of this Court, dated November 28, 1978 and, further said Special Commissioner shall assign and transfer that certain note executed by Jules L. Elliott, Trustee, dated June 30, 1975, and being more particularly described in said order; and it is further ADJUDGED, ORDERED and DECREED that said Shirley T. Greene, Betty Jo Greene, now Betty Jo Sumrell and Greenefield Farms of Virginia, Ltd. be and hereby are discharged from any and all liability for the claims asserted against them in these proceedings, by Plaintiff Banks, and all liens created against said parties and the real estate and aforesaid note, in these proceedings, shall be released by the conveyances aforesaid.


ENTER:

 JUDGE


Date: December 19, 1978

16-80


A. Blanton Massey
Counsel for United Virginia Bank
of Spotsylvania



Harry B. F. Franklin
Counsel for Bank of Virginia-Potomac


Russell H. Roberts
Counsel for Betty Jo Greene

James L. Elliott
James L. Elliott, Trustee

61

ASSIGNMENT OF ERROR

The Court committed error in sustaining Warrenton's Motion, by its ruling that all matters attempted to be litigated in the instant suit had been previously settled in a prior proceeding between the parties and concluded by a Final Decree entered December 19, 1978; and that said prior judgment constituted res judicata and estoppel to the instant action.