

2734 7-5
191-665
Ex. 1. 24
Mar. 11/1955

Record No. 3690

In the
Supreme Court of Appeals of Virginia
at Richmond

W. N. HALL

v.

KATHERINE MacLEOD AND
COLIN MacLEOD, JR.

FROM THE CIRCUIT COURT OF LOUDOUN COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

191 VA 665

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS

RECEIVED

MAY 16 1950

RECEIVED
RICHMOND, VIRGINIA

INDEX TO PETITION

Record No. 3690

	Page
Subject Index to Petition	1*
Table of Citations	2*
Introduction	1*
I Facts	2*
II Assignment of Errors	3*
III The Issues	4*
IV The Argument	4*
(a) Introduction	4*
(b) Petitioner's Contentions	4*
(1) Petitioner owed the contractual duty to Defendants of completing the structure according to the design as selected and modified by the active Defendant. He had fulfilled this duty and as a result he was discharged from any responsibility or liability to Defendants.	5*
(2) There was no evidence before the trial Court upon which to base a finding that Petitioner had warranted the structure in any way or that Petitioner was bound by, and liable upon, any warranty which anyone else might have made.	6*
(3) The use and occupancy of the structure by Defendants, coupled with payment in full to Petition, constituted acceptance by Defendants of the structure and a waiver by them of any and all defects in the building.	10*
V Conclusion	11*

Table of Citations

Cases Cited.

<i>Acme Markets v. Remschel</i> , 181 Va. 171	9*-10*
<i>Adams v. Tri-City Amusement Co.</i> , 124 Va. 473	5*
<i>Atlantic & D. R. Co., v. Delaware Construction Co.</i> 98 Va. 503	10*
<i>Clarke v. Pope</i> , 70 Illinois 132	6*

	Page
<i>Hitt v. Smallwood</i> , 147 Va. 778	5*
<i>Loneragan v. San Antonio Loan & Trust Co.</i> , Texas, 104 S. W. 1061	6*
<i>Mason v. Chappell</i> , 15 Gratt. (56 Va.) 572	7*
<i>Morris v. Terrell</i> , 2 Rand. (23 Va.) 6	9*
<i>Reese v. Bates</i> , 94 Va. 321	8*
<i>Richmond Eng. Co. v. Loth</i> , v35 Va. 110	7*
<i>Silliman v. Fredericksburg, etc. R. Co.</i> 27 Gratt. (68 Va.) 119	9*
<i>Smith v. Packard</i> , 94 Va. 730	11*
<i>Smith v. Tate</i> , 82 Va. 657	7*
<i>Southgate v. Sanford Co.</i> , 147 Va. 554	5*
<i>Talbott v. Richmond & Danville R. Co.</i> 31 Gratt. (72 Va.) 685	7*
<i>Va. & Kentucky Railway Co. v. Heninger</i> , 110 Va. 301 . . .	11*
<i>Va. Portland Cement Co., v. Luck</i> , 103 Va. 427	9*

Secondary Authorities

9 American Jurisprudence, Section 27 (Title-Building and Construction Contracts)	6*
-----------------------------------------------------------------------------------------------	----

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 3690

W. N. HALL, Plaintiff in Error,

versus

KATHERINE MacLEOD AND COLIN MacLEOD, JR.,
Defendants in Error.

PETITION FOR WRIT OF ERROR.

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

Your Petitioner, W. N. Hall, sheweth unto the Court that he is aggrieved by a final judgment of the Circuit Court for Loudoun County, Virginia, entered against him on the 18th day of August, 1949, for Two Thousand Three Hundred Ninety-three Dollars and Sixteen Cents (\$2,393.16), and interest thereon until paid, in proceedings held pursuant to a notice of motion for judgment for Two Thousand Four Hundred Fifty-eight Dollars and Sixty-six cents (\$2,458.66) by Katherine MacLeod and Colin MacLeod, Jr., the plaintiffs in the Court below, your Petitioner, W. N. Hall, being the defendant in the said lower Court.

The notice of motion was filed at Leesburg, Virginia, before the Circuit Court, aforesaid, and in said notice of motion claim was asserted for \$2,458.66 damages based upon the breach of an oral contract between the parties hereto by the

terms of which W. N. Hall was to construct a building upon the lands of Katherine MacLeod and Colin MacLeod, Jr.

There was a judgment in favor of the said Katherine MacLeod and Colin MacLeod, Jr., which the Judge of the Circuit Court for Loudoun County, refused to set aside as 2* being contrary to the law *and evidence, of which judgment your Petitioner now complains. Petitioner therefore presents this petition for a Writ of Error from the aforesaid judgment which he asserts is erroneous, and tenders herewith the transcript of the record in the said cause.

I. THE FACTS.

1. In this petition, the plaintiffs in the trial Court will be referred to as "Defendants", and the defendant in the trial Court will be referred to as "Petitioner".

2. This suit was commenced by a notice of motion for judgment filed by the Defendants asserting a claim for \$2,458.66 damages growing out of the alleged failure of Petitioner to comply with the terms of an oral contract under which Petitioner was to construct a building on the lands of Defendants. (R., pp. 1-2.)

3. Petitioner filed a demurrer to the original notice of motion for judgment (R., p. 3) which demurrer was sustained and leave granted to the Defendants to amend their notice of motion. (R., p. 4.)

4. Subsequently, Defendants filed an amended notice of motion (R., pp. 4-6) and Defendants were ordered to file a Bill of Particulars and Petitioner his Grounds for Defense (R., p. 6). Both the Bill of Particulars and Grounds for Defense were filed. (R., pp. 6-9.)

5. The parties waived a trial by jury and agreed to submit all questions of law and fact to the Court. (R., p. 10.)

6. At the conclusion of the presentation of Defendants' evidence in chief, Petitioner moved the Trial Court to strike out the evidence, which motion was overruled by the Court. (R., p. 17.)

7. At the conclusion of the presentation of evidence by both parties, Petitioner moved the trial Court to strike out all the evidence, which motion was overruled by the Court. (R., p. 17.)

8. After hearing all of the evidence introduced by both Petitioner and Defendants, the trial Court determined the pertinent facts to be as set forth in Petitioner's Bill of Ex-
3* ceptions *(Number One) (R., pp. 14-17). Judgment was entered in favor of Defendants, which judgment Petitioner moved the trial Court to set aside as contrary to the

law and evidence. Petitioner reduced to writing his grounds for the motion to set the verdict aside and filed them with the Court. (R., pp. 10-11.)

9. After hearing argument of counsel for Petitioner and Defendants, the trial Court entered an order on the 18th day of August, 1949, overruling the motion of Petitioner to set aside the verdict as contrary to the law and evidence (R., pp. 11-12) and stated its basis for this action in Petitioner's Bill of Exceptions (Number Two) (R., pp. 18-19).

II. ASSIGNMENT OF ERRORS.

1. The trial Court erred in finding that the facts in this case gave rise to a warranty by Petitioner that the building would support any amount of hay with which the Defendants chose to load it.

2. The trial Court erred in holding that, as a matter of law, a builder who undertook the construction of a building on the basis of an oral contract to receive the cost of the labor and materials plus ten per centum (10%) thereof for supervision was responsible for any defects in design where he followed a model chosen by the owners as modified in accordance with the instructions of the owners.

3. The trial Court erred in finding that the facts in this case gave rise to any warranty by Petitioner as to fitness of the structure for intended use.

4. The trial Court erred in finding that the facts in this case gave rise to any warranty by Petitioner that the plans were free from defects and that the structure, when completed, would be satisfactory for the use intended by Defendants.

5. The trial Court erred in not finding that the Defendants by their use and enjoyment of the structure coupled with
4* their *act of paying the builder in full for its completion according to the agreed design and dismissing him, had accepted the work and materials and were barred from asserting a claim for damages resulting from the subsequent collapse of the building when filled with baled green hay.

6. The trial Court erred in overruling Petitioner's motion to strike out all the evidence at the conclusion of the presentation of Defendants' evidence in chief.

7. The trial Court erred in overruling Petitioner's motion to strike out all the evidence at the conclusion of the presentation of evidence of both parties.

8. The trial Court erred in overruling Petitioner's motion to set aside the verdict as being contrary to the law and evidence.

III. THE ISSUES.

The foregoing assignment of errors raises only the following issues:

1. What duty does a builder under a labor and materials plus 10% contract owe to the owner?
2. Does the record show sufficient facts upon which to base a warranty by the builder?
3. Acceptance by owner of completed building as bar to recovery for structural defects.

IV. THE ARGUMENT.

(a) *Introduction.*

Petitioner will present his argument and authorities in support of his contentions in the order in which they are enumerated.

(b) *Petitioner's Contentions.*

Petitioner contends that the facts in this case (R., pp. 14-17) show that Petitioner had completely executed his contract with Defendants; that there was no warranty which bound Petitioner for any defects in the building or for 5* any fault of design; and that *Defendants were barred from asserting any claim against Petitioner as the result of their acceptance of the completed structure.

(1) Petitioner owed the contractual duty to Defendants of completing the structure according to the design as selected and modified by the active Defendant. He had fulfilled this duty and as a result he was discharged from any responsibility or liability to Defendants.

The facts in this case (R., pp. 14-17) show that Defendants contracted orally with Petitioner, through his foreman and agent, Ball, to construct for them a shed with hay loft. Defendants told Ball to follow the design of a structure on a neighboring farm (R., p. 14) except that only three vertical supports were to be used (R., p. 16). The structure was completed during the month of March, 1948 (R., p. 15), Petitioner was paid in full for his work (R., p. 7), the hay loft filled with baled green hay during the summer 1948 (R., p. 15) and that the building collapsed during August of that year. (R., p. 15).

It is submitted that a contractor upon a cost-plus basis owes to the owner the duty of using the same skill and ability in the performance of the work as he uses in contract work for a gross sum. *Hitt v. Smallwood*, 147 Va. 778, 787.

There is no evidence in the record to show that Petitioner failed to perform this duty.

The instant undertaking constituted an entire contract in that Petitioner was bound to complete the construction of the building as a condition precedent to the receipt by him of payment under the contract. Petitioner admits that he would have been required to rebuild the structure if it had been destroyed prior to completion. However, if it had collapsed before completion because of defect in plans submitted by the owner, there would have been no liability on the contractor under the rule set forth in *Adams v. Tri-City Amusement*

Co., 124 Va. 473 and *Southgate v. Sanford Co.*, 147 Va. 6* 554. But he maintains that *there was no liability on him to rebuild, or refund the payment which he had received, where the building collapsed, or if it had been destroyed, after completion.

As is said in 9 American Jurisprudence, Title—"Building and Construction Contracts", section 27

"The contractor's liability is fixed by the terms of his contract. He is liable to perform according to those terms. The principles which govern the rights and liabilities of a contract in case of the destruction of a building in the course of erection do not apply where the structure is destroyed or injured after completion. In the absence of special provisions in the contract, the contractor's obligation is ended upon the completion of the structure in accordance with the terms of the contract. Therefore, he is not liable in case the structure is subsequently damaged or is destroyed by some accident or calamity, or falls down from some defect or weakness in the structure or fault of the soil, inasmuch as he does not guarantee the sufficiency of the specification, but only the skill with which he performs his work and the soundness of the materials used therein."

The foregoing rule was enunciated in the case of *Loneragan v. San Antonio Loan & Trust Company*, Texas, 104 S. W. 1061, 22 L. R. A. (N. S.) 364 citing *Clark v. Pope*, 70 Illinois 132.

The uncontroverted pleadings of Defendants (R., pp. 4-6) (R., p. 7), as borne out by evidence introduced in their behalf (R., pp. 14-17) show the fulfillment of the contract and the erection of the building in completed form by Petitioner.

(2) *There was no evidence before the trial Court upon which to base a finding that Petitioner had warranted the structure in any way or that Petitioner was bound by, and liable upon, any warranty which anyone else might have made.*

The facts in this case, as established by Defendants' evidence and pleadings, show a contract to erect a structure, the completion thereof according to a design chosen by the owners, payment of the contractor for his work, the use and occupancy of the building by the owners, the filling of the loft with an admittedly heavy type of baled hay, and the collapse of the building after the loft had been filled.

Petitioner insists that, in the absence of a specific 7* warranty *that the building would carry the weight of the largest possible amount of hay, or even a reasonable and normal amount of hay, with which Defendants could load it, there is no liability on Petitioner for the collapse of the building after it had ben completed, had ben accepted by Defendants, used by them for approximately five months, Defendants had paid Petitioner in full and the relationship of contractor and owner had been terminated.

It is settled law that the intention of the parties is a cardinal rule in the construction of contracts. *Talbott v. Richmond & Danville R. R. Co.*, 31 Gratt. (72 Va.) 685. The intention of both parties must be considered and when the contract is arrived at orally, the determination of the actual intention of both parties at the time of execution of the contract is more difficult but it still must be sought. *Richmond Eng. Corp. v. Loth*, 135 Va. 110, 143.

In the instant case Defendants base their claim upon a warranty, or guarantee, which they have alleged was one of the terms of the contract (R., p. 5) (R., p. 7) and have presented no evidence to prove such a warranty other than the remark of Petitioner's foreman that "he could construct the building with the use of the three vertical supports and that it would stand up" (R., p. 16). Does such a remark by the agent of Petitioner constitute a warranty that the building not only would "stand up" but further that it would support the weight when the loft had been filled with green baled *lespedizia* hay? An intention to warrant is necessary in order to constitute a warranty. *Mason v. Chappell*, 15 Gratt. 572.

The Court found that Petitioner's foreman occupied the relationship of agent to his principal, your Petitioner (R., p. 14), and accordingly his principal would not be bound by the agent's acts except insofar as he was acting within the authority which Petitioner had actually given him, which includes not only the precise act which he expressly authorizes

8* him to do, but also *whatever usually belongs to the doing of it, or is necessary to its performance. *Smith v. Tate*, 82 Va. 657, 665.

Defendants made no claim that the agent, Ball, had any authority other than that of a general agent and the record fails to show a finding of fact that the agent did possess any express or implied authority to do more than contract for the construction of the building and supervise the work. (R., pp. 14-17.)

The record does not show that the principal ever made any warranty concerning the freeness from structural defects of the plan selected by Defendants, and modified by them. (R., pp. 14-17). Accordingly, the only evidence to support the allegation of warranty, which is the basis for Defendants' case, is the aforementioned statement of the agent that the building would "stand up".

Defendants made no attempt to show that the agent was specifically empowered to make any warranty which would bind his principal nor did they make any attempt to show a custom or usage of the trade in the business in which Petitioner is engaged upon which to base an implied authority in the agent to enter into a contract of warranty which would bind his principal. (R., pp. 14-17.)

The rule of law as to the power of an agent to make a contract of warranty which would be binding upon his principal, is succinctly stated by the Court in *Reese v. Bates*, 94 Va. 321, 325, as follows:

"A general agent to sell has no power to make a warranty, or any collateral contract binding upon his principal, outside of the express authority, or of that which is implied upon the custom of the trade in the business in which he is engaged. Without express authority a general agent is as powerless as a special agent to make such contracts and bind his principal, unless by the custom or usage of the trade in which he is engaged, such contracts of warranty are made; and the person who deals with an agent is as much bound by this limitation upon an agent's authority, when there is no custom or usage of the trade, as the principal is bound by the authority conferred by implication when there is such custom or usage. This is a correct statement of the law upon the subject."

9* *In the instant case, Defendants were dealing with Ball with full knowledge that he was the agent of Petitioner. (R., p. 16). Where a person deals with an agent, he does so at his own risk. The law presumes him to know the extent

of the agent's power; and if the agent exceeds his authority, the contract will not bind the principal, but will bind the agent. *Silliman v. Fredericksburg etc., R. Co.*, 27 Gratt. (68 Va.) 119; *Morris v. Terrell*, 2 Rand. (23 Va.) 6.

The burden of proving all of the essentials of their case by a preponderance of the evidence was upon Defendants. *Va. Portland Cement Co. v. Luck*, 103 Va. 427, 430.

Defendants have failed to introduce a scintilla of evidence that:

1. Ball, the agent of Petitioner, had any specific authority to warrant the structure, or

2. The existence of a custom or usage of the business that such contracts of warranty are made by an agent.

Accordingly, Defendants wholly failed to carry the burden of proof and the trial Court erred in overruling Petitioner's motion to strike Defendants' evidence and enter a verdict in favor of Petitioner (R., pp. 17-18).

Recognizing that, in the instant case, the trial Court heard the matter, without the intervention of a jury and accordingly was the sole arbiter of the law and the facts, where there is no evidence that an essential fact has been established, the trial Court is incapable of ascertaining that fact has been proved and should have granted the motion to strike Defendants' evidence. In the case of *Acme Markets v. Remschel*, 181 Va. 171, at page 178, the court held:

"Insufficient evidence is, in legal contemplation, no evidence. If there is no evidence that ought reasonably to satisfy a jury that the fact sought to be proved is established, then no jury question is presented. The trial Court must always primarily say whether there is any evidence upon which a jury can properly proceed to find a verdict for the 10* party producing it upon whom the *onus of the proof rests. The Courts in Virginia, in effect, do say this in passing upon demurrers to the evidence, the usual motion to strike the evidence and sometimes after verdict when motion is made to set it aside because unsupported by the evidence. Whether there is sufficient proof to sustain the claim of the party upon whom the burden of proof rests is a law question. If it turns out that the evidence is sufficient though conflicting, then it is for the jury."

(3) *The use and occupancy of the structure by Defendants, coupled with payment in full to Petitioner, constituted acceptance by Defendants of the structure and a waiver by them of any and all defects in the building.*

Whether or not Defendants accepted the building and by such acceptance waived any defects therein, appears to be a question of fact to be decided by the jury under proper instructions. And, in the present case, where the Court heard the question without a jury, the findings of fact of the Court are entitled to the same weight which would be accorded a finding by a jury.

However, a jury finding, which is contrary to the evidence, or without evidence to support it, will not be allowed to stand. *Acme Market v. Remschel, supra.*

In the instant case, we have a building completed in April of 1948, completely paid for, used and occupied by Defendants for the shelter of animals and storage of hay until August of the same year when it collapsed. There is no indication that Defendants had made any complaint to Petitioner prior to the said collapse. (R., pp. 14-17.)

In the case of *Atlantic & D. R. Co., v. Delaware Construction Co.*, 98 Va. 503, 510, the Court had to determine which party must bear the loss of a warehouse, pier and trestle which the contractor had completed as part of his contract. The entire contract had not been completed. The owner claimed the contract was entire, whereas the builder claimed it was severable. The Court stated it was immaterial whether the contract was entire or severable as it appeared that the pier and trestle had been fully completed and the warehouse had been completed with the exception of a skylight and 11* had ben turned over to the owner *which had moved into and taken possession of it. In deciding in favor of the contractor, the Court said:

“It is true there had been no formal acceptance of the pier, trestle, and warehouse. This was not necessary, since the company had taken possession thereof and was occupying and using the same for its purposes, without having made any objection to its construction. 1 Beach on Mod. Law of Contracts, Section 109.”

And, in the case of *Smith v. Packard*, 94 Va. 730, where an electrical contractor had contracted with the owner in writing to install certain wiring, saying “This wiring also includes all necessary safety devices, cut outs, etc., to make this a perfect and workmanlike installation. * * * We guarantee our work to be first class in every respect throughout, and to meet the approval of the officers of the Roanoke Electric Light and Power Co.” The Owner accepted the work as done and used it without objection until after suit for payment was

brought some seven or eight months later. In affirming a judgment for the contractor, the Court said,

“* * * If the work was not ‘first class and thorough in every respect throughout’ or ‘the work had been done negligently and carelessly’, at least objection should have been made at the time. In accepting the work done, the defendant admits that it is some benefit to him, and that the plaintiff is entitled to some remuneration. 4 Rob. Pr. 534, and authorities cited.”

Also, in the case of *Virginia and Kentucky Railway Co. v. Heninger*, 110 Va. 301, where the owner accepted work which was not complete in all respects, the court held that the owner had waived objection by its acceptance and use.

V. CONCLUSION.

Your Petitioner respectfully contends and submits that the judgment of the lower Court in this case should be reversed, and that it should be remanded to the Circuit Court for Loudoun County for a new trial for the foregoing reasons assigned and respectfully prays that he be awarded a writ of error pending the review of the record by this Court and this Petition may be read in addition, as your Petitioner's opening brief, *for which said Petitioner intends it.

A copy of this Petition has been mailed to Mr. Stirling M. Harrison at Leesburg, Virginia, who was the attorney appearing for the Defendants in Error in the trial of this case before the Circuit Court for Loudoun County, Virginia, and said copy of the Petition was mailed to him on the 19th day of December, 1949.

Counsel for your Petitioner desires to state orally the reasons for reviewing the decision and action of the lower Court hereinabove complained of.

Respectfully submitted,

W. N. HALL
By Counsel.

ELIJAH B. WHITE,
Attorneys for Petitioner.

I, Elijah B. White, an attorney practicing before the Supreme Court of Appeals of Virginia, do certify that in my opinion the judgment complained of in the foregoing petition

is erroneous and should be reviewed and reversed by the Supreme Court of Appeals of Virginia.

Given under my hand this the 19th day of December, 1949.

ELIJAH B. WHITE.

STIRLING M. HARRISON, Esquire
Leesburg, Virginia.

You are hereby notified that I will file the within Petition with the Clerk of the Supreme Court of Appeals of Virginia, at Richmond, Virginia, on the 19th day of December, 1949.

ELIJAH B. WHITE.

Received December 19, 1949.

M. B. WATTS, Clerk.

Jan. 13, 1950. Writ of error and *supersedeas* awarded by the court. Bond \$3,000.

M. B. W.

RECORD

VIRGINIA:

Pleas at the Court House of the County of Loudoun before the Circuit Court of said County on the 18th day of August, 1949.

Be It Remembered, that heretofore, to-wit: In the Circuit Court of the County of Loudoun on April 8th, 1949, came Katherine Mac Leod and Colin Mac Leod, Jr., and filed that Notice of Motion against W. N. Hall, which Notice of Motion and exhibits therewith filed are in the words and figures following.

NOTICE OF MOTION.

To W. N. Hall,
Middleburg, Virginia.

You are hereby notified that on the 8th day of April, 1949, between the hours of 10:00 o'clock A. M. and 5:00 o'clock P. M., or as soon thereafter as it may be heard, the undersigned

will move the Circuit Court of Loudoun County, Virginia, at the Court House in Leesburg, Virginia, for a judgment against you for the sum of Two Thousand Four Hundred Fifty-eight Dollars and Sixty six Cents (\$2,458.66) with interest thereon from the date of judgment, until paid, together with the costs incident to this proceeding, all of which is justly due from you to the undersigned under and by virtue of this, to-wit: that certain oral contract entered into between you and the undersigned within the past fourteen months wherein you contracted and agreed to construct for the undersigned on their farm in Fauquier County, Virginia, near the Town of Upperville, a building in the form of a shed suitable for the protection of cows and horses together with an enclosed loft over said shed suitable for the storage of hay; that in pursuance of this contract you undertook to construct a shed for the protection of cows and horses together with a loft above same for the storage of hay, yet in doing so you did not comply with the terms of your contract in that you failed and neglected to properly brace, support, tie-in, and construct the said building, in violation of the terms of your contract, obligation and undertaking, and as a result of your failure to properly brace, support, tie-in and constrict the said building the same collapsed and fell to the ground and thereby became utterly worthless. As a result of your failure to conform to the requirements of said oral contract and your breach thereof as aforesaid the undersigned have received damages in the sum of Two Thousand Four Hundred Fifty-eight Dollars and Sixty six Cents (\$2,458.66) and the same still remains unpaid, though payment thereof has heretofore been demanded of you. Judgment therefor will be asked at the hands of said Court at the time and place herein set out, together with the costs incident to this proceeding.

KATHERINE Mac LEOD
By Counsel.

COLIN Mac LEOD, JR.,
By Counsel.

STILRING M. HARRISON,
Counsel.

SHERIFF'S RETURN.

I executed the within notice on the 23 day of March, 1949, by delivering a true copy of the within notice in writing to W. N. Hall, in person, in Loudoun County.

Filed March 23, 1949.

S. P. ALEXANDER
Sheriff of Loudoun County, Va.

page 3 }

DEMURRER.

Now comes the defendant, by counsel, and demurs to the Notice of Motion for Judgment filed herein and says that said Notice of Motion is not sufficient in law and assigns the following grounds of demurrer:

(1) That the said notice of Motion does not allege any duty owing by the defendant to the plaintiffs which has been violated by the defendant.

(2) That said notice of motion totally fails to set up properly any duty owing by the defendant with sufficient averment of facts as to alleged breach of any such duty to permit the Court to say that if such facts were proved, a cause of action against the defendant would arise.

(3) That the said notice of motion fails to charge any cause of action against the defendant and the allegations contained therein are absolutely meaningless.

(4) That said notice of motion on its face shows that the plaintiffs accepted the performance of the defendant under the alleged contract and the passage of a long period of time after the completion of said contract without complaint by the said plaintiffs, which, of itself, would constitute acceptance by the plaintiffs of the work and a waiver of any defects which might have been present.

(5) That the notice of motion is so vague and general in its terms that it is impossible for the defendant to ascertain whether the plaintiffs are proceeding in tort or in contract.

W. N. HALL,
By counsel.

ELIJAH B. WHITE, p. q.

Filed 4/8/49—E. O. R.

page 4 } ORDER ENTERED APRIL 11, 1949.

This day came the parties by their attorneys and thereupon the defendant's demurrer to the plaintiff's notice of motion being argued, it seems to the court that said notice of motion is insufficient in law and the said demurrer is sustained, and leave is granted the plaintiffs to amend their notice of motion within twenty-one (21) days.

J. R. H. ALEXANDER
Judge.

AMENDED NOTICE OF MOTION.

To W. N. Hall,
Middleburg, Virginia.

You are hereby notified that on the 8th day of April, 1949, between the hours of 10:00 o'clock A. M. and 5:00 o'clock P. M., or as soon thereafter as it may be heard, the undersigned will move the Circuit Court of Loudoun County, Virginia, at the Court House in Leesburg, Virginia, for a judgment against you for the sum of Two Thousand Four Hundred Fifty-eight Dollars and Sixty-six Cents (\$2,458.66) with interest thereon from the date of judgment, until paid, together with the costs incident to this proceeding, all of which is justly due from you to the undersigned under and by virtue of this, to-wit: that on or about, to-wit: the 15th day of February, 1948, you entered into an oral agreement with the undersigned, wherein you agreed to construct for the undersigned on their farm in Fauquier County, Virginia, located near the Town of Upperville, a certain building; that under the terms

of this agreement this building was to be constructed in the form of a shed suitable for the protection of cows, horses and other livestock, same being open on the East and enclosed on the southwest and north sides by cinder block walls, above this same shed and in conjunction therewith you were to construct a hayloft suitable for the storage of hay, this hayloft to be enclosed by wood boarding and roofed with tin; that further under the terms of this contract you agreed to use three vertical supports in the center of the eastern and open portion of the shed for the support of the hayloft at this point; that you individually and through your agent, expressly and by necessary implication warranted the sufficiency and soundness of this said vertical support and your skill in erecting and constructing same for the purpose of maintaining and supporting the said loft and

its contents; that under the terms of this contract it became your duty to so construct this vertical support in such a manner that it would support the contents of said loft for the purposes for which you knew it was to be used, namely, the storage of hay; that in pursuance to your said agreement you undertook to construct and erect a shed and hayloft over same as herebefore described, yet in violation of your duty under the contract your warranty thereunder, and agreement, and undertaking you did fail to so construct the vertical support hereinabove described in that you failed and neglected to properly brace, support and tie-in same with said building in that respect thereby breaching your contract with the said undersigned and as a direct result thereof you failed to deliver to the undersigned the building that you in

page 6 } your agreement aforesaid agreed and undertook to deliver and as a result of your said failure and breach of contract the said building on, to-wit, the 29th day of August, 1949, collapsed and became utterly worthless; that as a result of your failure as aforesaid to conform to requirements of your said oral contract, and your breach thereof as aforesaid, the undersigned have suffered damages in the sum of Two Thousand Four Hundred Fifty-eight Dollars and sixty-six Cents (\$2458.66) and the same still remains unpaid though payment thereof has heretofore been demanded of you. Judgment therefor has heretofore been demanded of you. Judgment therefor will be asked at the hands of said court at the time and place herein set out, together with the costs incident to this procedure.

KATHERINE Mac LEOD

By Counsel.

COLIN Mac LEOD

By Counsel.

STIRLING M. HARRISON

Counsel.

Filed 5/2/1949.

ORDER ENTERED JUNE 13, 1949.

It is ordered that the Plaintiffs file a Bill of Particulars within five days and the defendant his Grounds of Defense within ten days, and this case is set for hearing on June 29th.

PLAINTIFF'S BILL OF PARTICULARS.

For Bill of Particulars Plaintiff's rely on the allegations in the Notice of Motion filed in this cause and also in addition thereto the following:

page 7 } 1. That Defendant entered into a contract with the Plaintiffs to construct for the Plaintiffs a shed with hayloft above on Plaintiffs farm in Fauquier County, Virginia, near the Town of Upperville, Virginia.

2. That the design and specifications for said structure were the creation of the defendant.

3. That the Defendant guaranteed the skill with which he performed his work and the soundness of the material used.

4. That defendant warranted the sufficiency of three vertical supports in the center of the eastern portion of the structure for the support of the hayloft.

5. That defendant undertook and did create a structure in the form of a shed and hayloft above in pursuance of his said contract.

6. That said structure was defectively constructed by the said defendant in that the vertical support referred to in paragraph #4 hereof was improperly tied-in and constructed.

7. That Plaintiffs paid the Defendant \$ for constructing said structure.

8. That as a direct and proximate result of said defective construction said structure collapsed and became worthless.

9. That the cost to Plaintiffs to rebuild the shed and hayloft was \$2,458.66.

10. That Plaintiffs suffered damage in the amount of \$2,-458.66.

12. Plaintiffs reserve the right to amend this
page 8 } Bill of Particulars as they may be advised.

KATHERINE MacLEOD
COLIN MacLEOD, JR.
By Counsel.

STIRLING M. HARRISON
Counsel.

Filed June 18th, 1949.

E. O. R.

GROUNDS OF DEFENSE.

For grounds of defense to the notice of motion filed in this cause, the defendant states the following:

(1) The defendant undertook to do certain work on the plaintiffs' farm, in Fauquier County, Virginia, on an oral agreement, and that such work originally did not include the building of the shed, which is the subject matter of this controversy, but that after the originally contemplated work of building the house and barn had been completed, the plaintiffs requested the defendant to construct the shed, which would be left open on one side so that horses or other animals could find shelter therein from the elements, and that the greater majority of the materials to be used in the construction of such shed consisted of scrap lumber and materials which were not used in the construction of the house and barn.

(2) That the plaintiffs knew full well that some of the lumber and other materials which were to be used in the construction of the shed had not been used in the building of the house and barn because of their inferior quality.

(3) The design and specifications for the shed were not the creation of the defendant.

(4) The defendant did not guarantee the soundness of the material used and the defendant did not guarantee that he would use any extraordinary skill in the performance of his work.

(5) The defendant did not warrant the sufficiency of three vertical supports in the eastern side of the structure for the support of the hayloft.

(6) That the defendant performed the work of the construction of the said hayloft in accordance with directions of the plaintiffs, or one of them.

(7) The defendant denies that the vertical supports in the eastern side of the structure were improperly tied-in and connected.

(8) That the plaintiffs, or their agents, were guilty of putting a tremendous overload of green hay in the loft and, in fact, continued to load hay in the loft even after they had knowledge that the beams were sagging.

The defendant reserves the right to amend his grounds of defense.

W. N. HALL
By Counsel.

ELIJAH B. WHITE, p. q.

Filed 6/23/1949.

E. O. R.

page 10 } ORDER ENTERED JULY 7, 1949. ✓

This cause came on this day to be heard and both the plaintiff and defendant waived a trial by jury and agreed to submit all questions of law and facts to the Court, after the hearing of evidence and argument of counsel, and consideration by the Court, it is adjudged and ordered that the plaintiff do recover of the defendant the sum of Two Thousand three hundred ninety three dollars and sixteen cents (\$2,393.16), with interest thereon until paid, and their costs by them in this behalf expended, and it is further ordered that, until further order of this Court, no execution shall issue on the said judgment, provided, however, the defendant shall execute a bond with approved surety, before the Clerk of this Court, in the penalty of Five Hundred Dollars (\$500.00).

Whereupon the defendant moved for a new trial and the hearing thereon is set down for *hearing* on

J. R. H. ALEXANDER, Judge.

GROUND FOR MOTION TO SET ASIDE VERDICT.

The defendant, W. N. Hall, having moved the court to set aside the verdict entered against him in the amount of \$2,393.16, hereby states his grounds for such motion in writing as requested by counsel for the plaintiffs.

1. That the said verdict is contrary to the law and evidence.
2. On the basis of the facts are shown by the evidence, there was no implied warranty by the defendant that the
page 11 } hay-mow would hold and carry any amount of hay
which the plaintiffs, or their agent or employee, might wish to place in it.
3. That the evidence of the plaintiff, Colin McLeod, Jr., shows contributory negligence by him, or his agents, servants or employees, in overloading the said mow.
4. That the verdict allowed damages which are excessive and not based on the evidence.

The defendant respectfully requests leave of the Court to amend this statement of his grounds for the said motion in such manner as to him shall seem advisable.

E. B. WHITE
Counsel for W. N. Hall.

ORDER ENTERED AUGUST 18, 1949.

On this 7th day of July, 1949, came the parties by their attorneys, and the Court heard the motion made by the defendant, W. N. Hall, that the Court set aside the judgment previously announced on the day of the trial heretofore held, which judgment was in favor of the plaintiffs, in the amount of \$2,393.16, and enter a verdict in favor of the defendant for the reasons set out in writing and filed in the papers of this action.

And the Court having heard the argument of counsel, the Court doth overrule the said motion of the defendant.

To all of which actions of the Court counsel for the defendant duly excepted.

And the said defendant, by counsel, having indicated his intention of applying to the Supreme Court of Appeals of Virginia for a writ of error to or an appeal from the
page 12 } judgment aforesaid, on his motion, is granted a
period of sixty (60) days from the 7th day of July, 1949, to which to file his bill of exceptions and execution of this judgment will be suspended for a period of ninety (90) days from the said date, to afford time within which to present his petition to the Supreme Court of Appeals of Virginia, provided that the defendant, or someone for him, post a suspension bond in the amount of Five Hundred Dollars (\$500.00), within fifteen (15) days from the date of the entry of this order.

J. R. H. ALEXANDER, Judge.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That we, W. N. Hall and E. B. White, his surety, are held and firmly bound unto the Commonwealth of Virginia, in the sum of five hundred no/100 dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our, and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemption as to this obligation. Sealed with our seals, and dated this 1st day of September, one thousand nine hundred and forty-nine.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas at a Circuit Court held for the County of Loudoun on the 7th day of July, 1949, in a certain action at law then pending in the said Court between Katherine MacLeod and Colin MacLeod, Jr., plaintiffs and W. N. Hall, defendant, a judgment was entered against the defendant in the sum of (\$2,393.16) two thousand three hundred ninety three dollars and sixteen cents, and whereas, on the 18th day of August, 1949, during the same term at which the said judgment was entered, the said court, in order to allow the said W. N. Hall, defendant to apply for a writ of error and *supersedeas* from said judgment, made an order suspending the execution of the said judgment for a period of fifteen days from the date thereof upon the said W. N. Hall or someone for him giving bond before the clerk of said Court in the penalty of five hundred dollars, conditioned according to law. And whereas, it is the intention of the said W. N. Hall to present a petition for a writ of error and *supersedeas* from said judgment; now, therefore, if the said W. N. Hall shall pay all such damages as may accrue to any person by reason of the said suspension, in case a writ of error and *supersedeas* to the said judgment shall not be allowed and be effectual within the said period of ninety days, specified in the aforesaid order of the said court, then the above obligation to be void, or else to remain in full force.

W. N. HALL (Seal.)

E. B. WHITE (Seal.)

In the Clerk's Office of the Circuit Court of the County of Loudoun.

This day personally appeared before me, E. O. Russell, Clerk of the Circuit Court of the County of Loudoun, E. B. White, and made oath that his estate, after the payment of all his just debts, and those for which he is bound for others and expect to have to pay is worth the sum of one thousand dollars, over and above all exemptions allowed by law.

Given under my hand this 1st day of Sept., 1949.

E. O. RUSSELL, Clerk.

Filed Sept. 1, 1949.

E. O. R.

NOTICE.

To: Stirling M. Harrison, Attorney for Katherine MacLeod and Colin MacLeod, Jr.

You are hereby notified that I will, on the 6th day of September, 1949, present to the Honorable J. R. H. Alexander, Judge of the Circuit Court for Loudoun County, Virginia, my bills of exceptions to rulings and actions of the Court in the subject case.

BILL OF EXCEPTIONS (Number 1)

Be it remembered that upon the trial of this action in the Circuit Court for Loudoun County, Virginia, the following facts were established:

That the plaintiffs owned a farm in Fauquier County, Virginia and in the fall of 1947 contracted orally with the defendant, through the defendant's foreman and agent, one Charlie Ball, to construct a shed to shelter horses and other stock with a hay loft above on said farm, the construction thereof to be similar in general to that of a shed on the farm of some neighbors by the name of Archbold.

ee ~~Hall~~ inspected the Archbold's shed and told the plaintiffs that he could follow the example of said shed and build a similar shed of the size that the plaintiffs wanted, which was 50' x 24'; that the said Ball as foreman and agent
page 15 } of the defendant during the winter of 1948 undertook and did build a shed with the hay loft above, completing same during the month of March of said year;

That the said hay loft was filled with baled green hay, baled by a pick-up baler, in the summer of 1948; and the said hay loft and building collapsed during August of that year; that the ground floor of the said shed was built of cinder blocks across both sides and the rear, while the front was left open. There were three vertical steel posts spaced at intervals of 12 1/2 feet across the front. A wooden girder measuring 6" x 12" was strung across the front a distance of 50 feet rested on the three vertical steel posts and on the cinder block wall at each end. This girder was made by bolting together three boards each 2" x 12" in size. Three similar girders ran from front to rear, being supported by the vertical steel posts in the front and the wall of the building in the rear.

That upon the collapse of the building two of the aforesaid steel posts were pushed out in front of the building, one of

them having been found about 50 feet from the building. The third post remained in place. None of the posts were bent. The woden girders which ran from the front to the rear of the building were broken;

That this work was done on the basis of an oral contract with the builder to receive the cost of the labor and materials, plus 10% thereof for supervision;

That the cost of the construction of this building amounted to \$2,393.16; that the cost to re-construct this building amounted to \$2,458.66; that the negotiations concerning the construction of said building were conducted by Colin MacLeod, Jr. on the part of the plaintiffs and Charlie Ball on the part of the defendant; that Colin MacLeod, Jr., knew nothing concerning architecture or construction and that Charlie Ball had been engaged in construction business for 25 years.

That Colin MacLeod, Jr., requested Charlie Ball to use only three vertical upright supports along the front of the shed upon which to support the hay loft giving as his reason that other internal vertical supports would be hazardous to brood mares and other livestock bumping against same; and asked Charlie Ball if this could be done and Charlie Ball answered in the affirmative, stating that he could construct the building with the use of the three vertical supports and that it would stand up;

That said vertical steel posts were not attached to the girders at their point of contact therewith nor were they attached at their base. That said posts each rested on an iron plate on a square concrete block and at the top the girders rested on a similar iron plate which in turn rested on the steel posts;

That defendant had constructed other buildings for the plaintiffs, among which were barns and hay lofts.

That plaintiffs only used baled hay which the defendant knew.

That the Michigan hip roof, as used on this building, is built in such a way that it results in the construction of a loft which has a larger cubic content than does a loft built with a slant roof which gives an inverted V-shaped appearance.

That the building may have ben constructed in a skillful and workmanlike manner to a certain extent, but it was not constructed in such a manner as would bear the capacity of the hay loft when full.

Upon the completion of the plaintiffs' evidence the defendant moved the court to strike the plaintiffs' evidence and enter a verdict for the defendant, which motion was overruled by

the Court, to which action of the Court in overruling said motion the defendant at the time excepted.

Whereupon the defendant by counsel, upon the completion of the presentation of all of the evidence, renewed the motion that the Court strike the evidence of the plaintiffs and enter a verdict for the defendant, which motion was overruled by the Court, to which action of the Court in overruling said motion, the defendant at the time excepted, and in order to save the defendant the benefit of his exceptions to the rulings and actions of the Court in overruling the defendant's motion to strike the evidence in behalf of the plaintiffs and enter verdict for the defendant, this the defendant's W. N. Hall's, bill of exceptions is signed, sealed and saved to him and made a part of this record, which is accordingly done on this 16th day of September, 1949, and after due and reasonable notice in writing to counsel for plaintiff as required by law.

J. R. H. ALEXANDER
Judge of the Circuit Court of
Loudoun County, Virginia.

Presented Sept. 6, 1949.

J. R. H. ALEXANDER,
Judge.

page 18 } BILL OF EXCEPTIONS (Number Two)

Be it remembered that upon the trial of this action in the Circuit Court of Loudoun County, Virginia, the facts having been found as shown in defendant's Bill of Exceptions, Number one, after argument of counsel for the plaintiffs and the defendant, the Court being of the opinion that there was an implied warranty by the defendant that the hay-loft in question would hold and carry any amount of hay which the plaintiffs, or their agents or employees, might wish to put in it, within the limits of its capacity in size, and the structure having collapsed when it was filled with green baled *lespedizia* hay, the plaintiff's as a question of law were entitled to recover on the said implied warranty in the amount of money which the plaintiffs had paid to the defendant to build the subject shed and hay-loft and the Court having rendered a verdict for the plaintiffs in the amount of \$2,393.16, the defendant moved the court to set aside the said verdict on grounds as stated in writing by the defendant, which motion was overruled by the Court, to which action of the Court in overruling said motion,

the defendant at the time excepted, and in order to save the defendant the benefit of his exceptions to the rulings and actions of the Court in overruling the defendant's motion to set aside the said verdict on said grounds and enter a verdict for the defendant, this the defendant's W. N. Hall's, Bill of Exception is signed, sealed and saved to him and made a part of the record in this case, which is accordingly done on this 16 day of September, 1949, and after due and reasonable notice in writing to counsel for plaintiff as required by law.

J. R. H. ALEXANDER
Judge of the Circuit Court of
Loudoun County, Virginia.

Presented Sept. 6, 1949.

J. R. H. ALEXANDER, Judge.

NOTICE OF APPLICATION FOR RECORD.

To Stirling M. Harrison, Attorney for Katherine
MacLeod and Colin MacLeod, Jr., Plaintiffs.

You are hereby notified that I will, on the 25th day of November, 1949, at 10:00 A. M. at the office of the Clerk of the Circuit Court for Loudoun County, Virginia, apply to the said Clerk for the record in this cause.

ELIZAH B. WHITE
Attorney for defendant.

Legal and timely service of the above notice is hereby acknowledged.

STIRLING M. HARRISON
Attorney for Plaintiffs.

APPLICATION TO CLERK.

To: E. O. Russell, Clerk of the Circuit Court
for Loudoun County.

Pursuant to notice heretofore given to Stirling M. Harrison, attorney for the Plaintiffs, Katherine MacLeod and Colin MacLeod, Jr., the undersigned, W. N. Hall, hereby applies

to you as Clerk of the Circuit Court for Loudoun County, Virginia, for a transcript of the record in the cause of Katherine MacLeod and Colin MacLeod, v. W. N. Hall, in page 20 } which a *dinal* order was entered on the 18th day of August, 1949, for the purpose of applying to the Supreme Court of Appeals of Virginia for an appeal and *supersedeas* from the said order.

Respectfully submitted this 25th day of November, 1949.

W. N. HALL
By Counsel.

ELIZAH B. WHITE,
Counsel for Defendant.

CLERK'S CERTIFICATE.

I, E. O. Russell, Clerk of the Circuit Court of Loudoun County, hereby certify that the foregoing is a true transcript of the record in the case of Katherine MacLeod and Colin MacLeod, Jr., v. W. N. Hall.

Given under my hand this 5th. day of December, 1949.

E. O. RUSSELL
Clerk of the Circuit Court of
Loudoun County, Virginia.

A Copy—Teste:

M. B. WATTS, C. C.

INDEX TO RECORD

	Page
Petition for Writ of Error	1
Record	11
Notice of Motion for Judgment	11
Demurrer to Notice of Motion	13
Amended Notice of Motion for Judgment	14
Bill of Particulars	16
Grounds of Defense	17
Judgment, July 7, 1949	18
Grounds of Motion to Set Aside Verdict	18
Order, August 18, 1949, Overruling Motion to Set Aside Judgment	19
Bond.	19
Bill of Exceptions No. 1	21
Bill of Exceptions No. 2	23
Notice of Application for Record	24
Clerk's Certificate	25