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AND FILED

IN THE
SUPREME COURT OF APPEALS OF VIRGINIA
AT RICHMOND

OSCAR SWINEFORD AND E. A. SWINEFORD

vs.

THE VIRGINIA TRUST COMPANY, ET ALS.

MOTION TO DISMISS APPEAL

The Virginia Trust Company comes and moves the Court to dismiss the appeal heretofore awarded in the above entitled cause as having been improperly awarded, because the record presented to this Court with the petition for an appeal herein does not comply with the provisions of Section 6339 of the Code of Virginia requiring a transcript of the record to be exhibited to this Court with the petition for appeal. It appears from the face

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of the record and from the affidavit hereto attached and made a part hereof that the exhibits filed with the oral testimony in this cause, consisting of letters, agreements and other most material evidence, have not been copied into and do not constitute a part of the record as exhibited to the Court in this matter. This denuded record does not comply with the requirements of the section of the Code above mentioned.

The opinion of this Court in the case of *Bowen v. Bowen*, 122 Va. 1, would seem to mean nothing unless it means that such a record does not comply with the statute and in the absence of a petition for a writ of *certiorari* to bring up the omitted parts of the record that a motion to dismiss the appeal should be sustained.

Respectfully,

A. B. DICKINSON, p. p.

STATE OF VIRGINIA,
CITY OF RICHMOND, to-wit:

I, Cornelia P. Royster, a Notary Public in and for the City of Richmond, in the State of Virginia, do hereby certify that A. B. Dickinson this day personally appeared before me, in my City aforesaid, and made oath that the record exhibited with the petition for an appeal in this cause, as appears from the face of said record, is incomplete and that the parts omitted are in the opinion of said affiant most material to consider and properly determine the matters involved in said cause.

Given under my hand this 2nd day of January, 1930.

CORNELIA P. ROYSTER,
Notary Public.