NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

ELLEN M. FENNIMORE, ET AL.,

Complainants and Respondents,

AND

IDA E. WAGNER, ET AL.,

Defendants,

IDA E. WAGNER,

Appellant.

BRIEF FOR RESPONDENTS.

The bill of complaint in this cause was filed by two of the daughters of one Elizabeth Walsh, who were residuary legatees named in her will, against Ida E. Wagner and Clara J. Chadwick, two other daughters of Elizabeth Walsh, who were the executrices named in said will, and charges that at a time when Elizabeth Walsh was of advanced years, in feeble health and of weakened mental

capacity, she was induced by the defendant, Ida E. Wagner, to take up her home with her, and that Elizabeth Walsh continued to live with the defendant, Ida E. Wagner, until her decease; that while residing with the defendant, Ida E. Wagner, the said Elizabeth Walsh was fraudulently induced and unduly influenced by the defendant, Ida E. Wagner, to assign and transfer unto her, without any consideration therefor, all of the personal estate of the said Elizabeth Walsh, all of the value of about $8,300; that such transfer was made after the execution of a will which bequeathed all of said property equally to her daughters; that subsequently, as executrix, the defendant, Ida E. Wagner, refuses to account for all of said personal property, but fraudulently claims the same as her own; that by reason of a collusive agreement between the executrices, Clara J. Chadwick and Ida E. Wagner, the former discontinued a suit in this Court to compel an accounting, and received under such collusive agreement a consideration of pecuniary nature for so doing.

The bill prayed that all of said personal property should be adjudged to be a part of the personal estate of Elizabeth Walsh, deceased, and should be accounted for by the defendants. A decree pro confesso was taken against Clara J. Chadwick, and the defendant, Ida E. Wagner, filed a plea which stated simply that the transfers were made for a good and valuable consideration passing from her to the said Elizabeth Walsh. To this plea the complainants filed a replication.

At the hearing the defendant called two witnesses to sustain her plea. The first witness called was a solicitor, and the other the husband of the defendant, Ida E. Wagner. The solicitor testified that upon a visit to the testa-

trix, at the home of the defendant, Ida E. Wagner, the testatrix stated to him that she desired to turn over certain mortgages and fire insurance stock to her daughter, the defendant Ida E. Wagner. In answer to the question put to the witness:

"Ques. Did she say anything about what the consideration was or why she was doing this?"

The witness answered as follows:

"Ans. She told me that—I asked her about that—she told me that she had a good home there and that she intended to say there the rest of her days and that she wanted to turn these over to Mrs. Wagner on that account." (Page 20, line 25.)

He further testified that the mortgages were brought to his office and assignments were prepared and sent to the testatrix, no proof being offered that a delivery was ever made by the testatrix to Mrs. Wagner. This witness further testified (top of page 21) that there was no agreement made between the testatrix and the defendant, Ida E. Wagner, regarding the matter of support, so far as he knew; and no such proof is furnished by any other witness. The other witness, the husband, merely testified that the testatrix came to live in his family in February, 1904, and remained there until she died—something less than a year; that she did not pay board or do any housework; but on cross-examination he stated that the testatrix always had money and that when the bills came in the defendant (his wife) would present them to her mother and get the money for them. (Page 24, line 16.)

It is too clear for argument that upon these proofs the defendant failed to support her plea that the transfer was founded on a good and valuable consideration. It has

been repeatedly held by the courts of this State that in transfers between persons occupying relations of this character, the burden of proof is thrown upon the person in whom confidence is reposed in showing affirmatively that the transaction is fair, open, voluntary and that the price paid is adequate.

Mott vs. Mott, 4 Dick., 192.
Hammell vs. Hyatt, 14 Dick., 174.

In the former case it is held that where the only consideration alleged is an agreement to support, it is fraud on the part of the child not to give to the parent an instrument of equal solemnity with that which is received.

In this case the defendant does not allege gift; she alleges that a valuable consideration was given; but the instruments transferring such property to her failed to set forth the fact that the agreement to support was the consideration for them, and no proof is furnished that an agreement to support existed at all, much less that it was ever reduced to writing.

The defendant having failed to prove the truth of her plea upon the hearing, the plea was properly overruled and a decree given for the complainant according to the case stated in the bill.

Miller vs. U. S. Casualty Co., 16 Dick., 110.
Hunt vs. W. J. Traction Co., 17 Dick., 225.

It is respectfully submitted that there was no cause for the appeal in this cause and that said decree in the Court of Chancery should be affirmed.

FREDERICK A. REX,
GREY & ARCHER,
For Respondents.

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

Between ELLEN M. FENNIMORE ET AL., *Complts. and Respondents,* *and* IDA E. WAGNER ET AL., *Defts.* IDA E. WAGNER, *Appellant.*	Appeal from Chancery.

Brief for Appellant.

The bill shows, among other things, that Elizabeth Walsh in her lifetime was the owner of certain real and personal property; that in February, nineteen hundred and four, she went to live with her daughter, Ida E. Wagner; that on April first, nineteen hundred and four, she assigned to her daughter, Mrs. Wagner, certain mortgages and other personal property, but retained her real estate, and that she continued to live with Mrs. Wagner till the time of her death.

Without showing any facts that would amount to fraud, the bill alleges these assignments were fraudulently obtained, and asks that they be set aside and for an accounting.

The defendant files a plea "that for the assignment and transfer by Elizabeth Walsh to this defendant of the bonds, mortgages, shares of stock and other personal property in the bill mentioned, good and valuable consideration passed from this defendant to said Elizabeth Walsh."

The complainant joins issue upon this by a replication.

Upon the issue so framed the sufficiency of the plea is admitted. It matters not if the plea is entirely insufficient in law. If the truth of the plea is proven the bill must be dismissed.

Hunt v. *W. J. Traction Co., 17 Dick. Ch. 225.*

The complainant offered no testimony. The defendant offered in evidence assignments of the mortgages under seal asknowledged and recorded. The attorney who prepared the assignments testified to the instructions given him by Mrs. Walsh and her statement as to what was the consideration for the transfers.

"*Ques.* Did she say anything about what the consideration was or why she was doing this?

"*Ans.* She told me—I asked her about that; she told me that she had a good home there and that she intended to stay there the rest of her days, and that she wanted to turn these over to Mrs. Wagner on that account."

Page 14, lines 12 to 17.

Mrs. Wagner was present at this interview (page 19, lines 33 and 34), and did not object to the proposition. She accepted the assignments and furnished her mother a home there the rest of her days.

Page 21, lines 31 to bottom.

Upon this uncontradicted proof the Vice-Chancellor decreed that the assignments of the mortgages and stock were not made for a good and valuable consideration and set them aside.

Pages 34 and 35.

I. A Good Consideration is Shown.

A good consideration is that of blood or of natural love and affection.

2 Blackstone's Comm. 296.

It appears both by the allegations of the bill and the testimony that Mrs. Wagner is a daughter of Mrs. Walsh.

II. The Proofs Show a Valuable Consideration.

A. *Effect of a seal.*

The mortgages were assigned to the defendant by deeds of assignment under seal.

Page 27, bottom.

A seal imports a consideration.

4 Cyc. 31.

In *Waln* v. *Waln* this Court held that the act concerning evidence (*Gen. Stat. 1413, sec. 72*), permitting the consideration to be controverted on sealed instruments does not apply to a release, and that "the release being under seal the consideration could not be questioned."

Waln v. *Waln, 29 Vr. 640.*

As the complainant offered no testimony to show lack of consideration, so far as the mortgages are concerned a consideration is conclusively proven.

B. *Proof independent of the seal.*

The bill alleges that Elizabeth Walsh assigned to her daughter, Ida E. Wagner, six mortgages, some fire insurance stock, some money and furniture.

The only things alleged with any certainty are the mortgages and insurance stock.

The undisputed testimony is that Mrs. Walsh sent for Joseph Kaighn concerning some other business he had in charge for her, and after that was disposed of she brought up the matter of these assignments. She had at that time been living with her daughter, Mrs. Wagner, for over a month.

In the presence of Mrs. Wagner (page 19, lines 33 and 34), Mrs. Walsh told Mr. Kaighn that she wanted to make these transfers to Mrs. Wagner (page 14, lines 3 to 7; page 19, lines 18 to 22). Mr. Kaighn asked her about the consideration (page 14, lines 12 to 17). She replied "she had a good home there, and that she intended to stay there the rest of her days, and that she wanted to turn these over to Mrs. Wagner on that account" (page 14, lines 14 to 17).

Mrs. Wagner was present. If she objected to this arrangement it was her duty to speak. By remaining silent and accepting the assignments she assented to the proposition, and accepted the offer as fully as if she had done so in writing. Mrs. Walsh could have enforced the agreement against Mrs. Wagner in case she had failed to perform.

"An acceptance of an offer may be by act, as where an offer is made that the offerer will pay or do something else, if the offeree will do a particular thing. In such a case performance is the only thing needful to complete the agreement and create a binding promise."

9 Cyc. 257.

"Acceptance of an offer may often be inferred from silence."

9 Cyc. 258.

Justice Depue, speaking for this court, said:

"A deed inter parties whereby an estate is conveyed, if accepted by the grantee, although signed only by the grantor, is in law the deed of both parties, and an action of covenant may be brought by the grantor against the grantee for a breach of the covenants in it on his part."

Crowell v. *Hospital of Saint Barnabas, 12 C. E. Gr. 650–652.*

Here Mrs. Wagner accepted the assignments and fully performed the agreement on her part. Mrs. Walsh lived there and made it her home the rest of her days. During that time Mrs. Wagner fed and cared for her.

Testimony, page 21, lines 31 to bottom.

The agreement was one which the parties could make and the consideration was valuable.

"A valuable consideration, in the sense of the law, may consist either of some right, interest, profit or benefit accruing to the one party, or some forebearance, detriment, loss or responsibility given, suffered or undertaken by the other."

Vol. 8, Words & Phrases, page 7271, citing 19 cases.

In the code States, the following definition is given:

"Any benefit *conferred* or agreed to be conferred upon the promisor by any other person to which the promisor is not lawfully entitled, or any prejudice *suffered* or agreed to be suffered by such person other than such as he is at the time of consent lawfully bound to suffer as an inducement to the promisor, is a good consideration for a promise."

Rev. Codes N. D., 1899, sec. 3871.
Civ. Code S. D., 1903, sec. 1124.
Civ. Code Cal., 1903, sec. 1605.
Rev. St. Okl., 1903, sec. 766.
Civ. Code Mont., 1895, sec. 2160.

Here Mrs. Wagner was under no obligation to furnish a home to her mother. The mother had property, both real and personal.

At common law a child having means is under no duty to support an indigent parent. The obligation, so far as it exists, depends wholly on statute.

Dwight on Persons and Personal Property, page 256.

Our statute requires children of sufficient ability to relieve and maintain a poor parent in such manner as the Court of Quarter Sessions shall order and direct.

2 Gen. St. 2510, par. 30.
Laws of 1904, page 309.

They are required to do so only when ordered by the quarter sessions.

The party to be relieved must be a poor person and without property.

Meeker v. *Meeker, 32 Vr. 146.*

This section is designed for the indemnity of the public against the maintenance of paupers.

Ackerman v. *Ackerman, 26 Vr. 42.*

There is nothing to compel a child to support a parent having property.

It has been held in a number of cases that if a child furnishes the parent with board and necessaries while living with the child, the law implies no promise on the part of the parent to pay for them.

But support so furnished is a sufficient consideration to sustain a deed made by the parent therefor.

A deed may be based upon a consideration of support and maintenance.

13 Cyc. 531, and cases cited.

A parol agreement to support one during life is a good consideration.

Hutchinson v. *Hutchinson, 46 Me. 154.*

This Court has held that maintenance by a son of his father is a valuable consideration and will support conveyances of land.

Collins v. *Collins, 18 Stew. 813–820.*

Here the assignments were made and the assignee furnished a home for her mother during the remainder of her life. The Vice-Chancellor assumed that the daughter was obliged to pay all bills. The agreement, however, was simply that she was to be furnished a home, which admittedly was done. Mrs. Wagner did more than this. She paid the living expenses (page 23, lines 7 to 15). The bills which Mrs. Walsh paid were merely repair bills for work done upon her properties from which she received the rent (page 25, lines 1 to 14).

The contract was fully executed and carried out by both parties to it.

III. Delivery.

If it is necessary to show delivery, which we deny, it sufficiently appears by the bill.

Page 26, lines 1 to 13.

Delivery in a case of this kind is presumed.

Collins v. *Collins, 18 Stew. 813–821.*

But the only question to be determined is that of consideration.

IV. Money and Furniture.

The allegations as to money and furniture are so uncertain that no relief could be based upon them.

The exact amount of money is not given. The furniture is not described or in any way designated.

The assignment of all these things is stated in the bill as one entire transaction (page 4, top). Any consideration that would apply to part would apply to all of it.

However, the decree does not grant any relief as to this alleged money or furniture, and these items are eliminated from the case.

V. Sufficiency of the Consideration.

Whether or not under the circumstances of this case the consideration was sufficient is a question which cannot be considered. That could have been raised by a hearing upon the sufficiency of the plea. The complainants having elected to file a replication, the only question now to be determined is the truth of the plea.

Hunt v. *W. J. Traction Co., 17 Dick. Ch. 225.*

Any consideration, no matter how small, supports the plea.

So far at least as the mortgages and insurance company stock is concerned a perfect consideration has been shown. The transaction is shown by the bill to be entire. Any consideration proven applies to everything assigned.

Where the bill covers several things and the plea is fully proven as to some of the things in the bill and not proven as to others the bill will be dismissed as to the matters concerning which the plea is proven and the defendants required to answer the residue of the bill
Moore v Holt
3 Jenn Ch 141-143

If for any reason the Court should find that there is anything to which the consideration did not apply, that cannot justify a decree that the mortgages and insurance stock were assigned without consideration. The decree deals with nothing but these mortgages, the proceeds thereof and the insurance stock.

As to everything for which a consideration has been shown the bill should be dismissed.

If the defendant had entirely failed to prove her plea, the complainant would not be entitled to the decree made, but only a decree "to the extent of the Court's jurisdiction."

Miller v. *U. S. Casualty Co., 16 Dick. Ch. 110–117.*

Hurlbut v. *Britian, 2 Doug. (Mich.) 191.*

It has been repeatedly held that a general allegation of fraud gives no jurisdiction. The facts constituting it must be shown.

Kip v. *Chamberlin, Spencer 656–658.*

Bowne v. *Titus, 1 Vr. 340–344.*

Truan v. *P. R. R. Co., 27 Vr. 277.*

Liveright v. *Greenhouse, 32 Vr. 156.*

"In pleading fraud, either at law or in equity, it is a well-settled rule that the facts must be stated in the declaration or petition, not conclusions."

20 Cyc. 96 C.

It is submitted the decree should be reversed and the bill dismissed.

JOSEPH KAIGHN,
FRENCH & RICHARDS,
For Appellant.

IN CHANCERY OF NEW JERSEY.

To the Honorable William J. Magie, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your oratrices, Ellen M. Fennimore and Emma L. Deegan, residents of the city of Camden, State of New Jersey, that they are the daughters of Elizabeth Walsh, now deceased, and that the defendants, Ida E. Wagner and Clara J. Chadwick, are executrices under the will of the said Elizabeth Walsh, deceased, as hereinafter set forth.

And your oratrices further show, that the said Elizabeth Walsh, being then a resident of the city of Camden, State of New Jersey, departed this life, in said city, on the twenty-fifth day of December, A. D. nineteen hundred and four, having first made and executed her last will and testament, bearing date the twenty-fifth day of February, A. D. nineteen hundred and four, wherein and whereby she did appoint her daughters, Ida E. Wagner and Clara J. Chadwick, the defendants, to be the executrices of said will; and after devising a certain property situate in the city of Camden to her husband, one Joseph Walsh, did give, devise and bequeath all of the rest, residue and remainder of her estate, both real and personal, unto her children, Ida E. Wagner and Clara J. Chadwick, the defendants herein, and Ellen M. Fennimore and Emma L. Deegan, the complainants herein, and unto her granddaughter, Dora Meister, to be held by them in fee simple, share and share alike.

And your oratrices further show, that said last will and testament was duly proved before the Surrogate of the

said county of Camden, on the thirteenth day of January, A. D. nineteen hundred and five, and letters testamentary granted thereon by said Surrogate unto the said defendants, Ida E. Wagner and Clara J. Chadwick; that the said Elizabeth Walsh was in her lifetime possessed of certain bonds and mortgages securing the same, upon premises situate in said city of Camden, to wit:

Bond and mortgage of eight hundred dollars bearing date the sixth day of December, A. D. 1899, recorded in the office of the Register of Deeds of Camden county, in Book 81 of Mortgages, page 233, &c., made and executed by Winfield Stetser, et ux., to said Elizabeth Walsh;

Bond and mortgage of eight hundred dollars bearing date the twenty-fifth day of January, A. D. 1892, recorded in the office of the Register of Deeds of Camden county, in Book 58 of Mortgages, page 513, &c., made and executed by Abigal F. Hugg, to said Elizabeth Walsh;

Bond and mortgage of twelve hundred dollars bearing date the twentieth day of January, A. D. 1892, recorded in the office of the Register of Deeds of Camden county, in Book 87 of Mortgages, page 177, &c., made and executed by Edwin T. Anthony, to said Elizabeth Walsh;

Bond and mortgage of twelve hundred dollars bearing date the twenty-fifth day of April, A. D. 1903, recorded in the office of the Register of Deeds of Camden county, in Book 91 of Mortgages, page 165, &c., made and executed by Anna C. Marshall, et al, to said Elizabeth Walsh;

Bond and mortgage of fifteen hundred dollars bearing date the twenty-ninth day of August, A. D. 1900, recorded in the office of the Register of Deeds of Camden county, in Book 89 of Mortgages, page 169, &c., made and executed by Catherine Neutze, to said Elizabeth Walsh;

Bond and mortgage of seven hundred dollars bearing date the nineteenth day of August, A. D. 1895, recorded in the office of the Register of Deeds of Camden county, in Book 69 of Mortgages, page 603, &c., made and exe-

cuted by John Baxter, et ux., to said Elizabeth Walsh; said mortgages conveying the premises in the same described, to secure the payment of the said bonds respectively.

And your oratrices further show, that the said Elizabeth Walsh was in her lifetime also possessed of seventy-two shares of the capital stock of the Camden Fire Insurance Company, a corporation organized under the laws of the State of New Jersey, the same being of the value of eight hundred and sixty-four dollars.

10

And your oratrices further show, that the said Elizabeth Walsh was in her lifetime possessed of the sum of about one thousand dollars in cash, and of household furniture of the value of two hundred dollars.

And your oratrices further show, that the said Elizabeth Walsh was a woman of advanced years, of the age of seventy-seven, in feeble health and of weakened mental capacity, and not expected long to live; and while in such condition was induced by the said defendant Ida E. Wagner to go to live with her daughter, the said Ida E. Wagner, in the said city of Camden, in the latter part of February, in the year nineteen hundred and four, having on or about the same time made and executed her last will, wherein she divided her estate equally between her four children and one grandchild, as above set forth and as in said will appears, and continued to live with her daughter, the said Ida E. Wagner, as aforesaid, until her death.

20

And your oratrices further show, that the said Ida E. Wagner thus securing the custody and physical control of her mother, the said Elizabeth Walsh, who was thereafter until the time of her death in an enfeebled and weakened, mental and physical condition, and wholly incapable of resisting the persuasions and entreaties of her daughter, the said Ida E. Wagner, fraudulently induced and unduly influenced her, the said Elizabeth Walsh, on or about the first day of April, A. D. nineteen hundred and

30

four, to assign and transfer unto her, the said Ida E. Wagner, without any consideration therefor, the said several bonds and mortgages, together with the said shares of stock in the Camden Fire Insurance Company, the moneys and household furniture, in the bill of complaint before mentioned, being all the personal property belonging to the said Elizabeth Walsh, and all of the value of about eight thousand three hundred and sixty-four dollars.

And your oratrices further show, that the said Ida E. Wagner, having thus fraudulently and by means of undue and unfair influences exercised upon the said Elizabeth Walsh obtained the assignments of said bonds, mortgages and shares of stock, and the possession of the said moneys and household furniture, still continues to claim fraudulently the same as her own and withholds them from the proper administration of the estate of said Elizabeth Walsh, deceased, and wholly refuses to assign said bonds, mortgages and shares of stock, or to deliver the possession of the household furniture and money to said estate, or to account for any or all of said bonds, mortgages, shares of stock, household furniture or moneys as part of said estate, or to file an inventory and appraisement of the same as part of said estate.

And your oratrix further shows, that on the contrary, the said Ida E. Wagner, on or about the eighteenth day of January, A. D. nineteen hundred and five, transferred and assigned to one Abraham Anderson the above mentioned mortgage made by Anna C. Marshall to said Elizabeth Walsh to secure the sum of twelve hundred dollars; and has likewise transferred and assigned to one Frank J. Burr, on or about the tenth day of September, A. D. nineteen hundred and five, the above mentioned mortgage made by Abigal F. Hugg to said Elizabeth Walsh, to secure the sum of eight hundred dollars, and has converted the proceeds of said assignments to her own use and refuses to account therefor to the said estate; that said Ida E. Wagner, in refusing to administer the

said estate, has said to complainants that there is no estate to administer.

And your oratrices further show, and charge that they are entitled to a full and complete discovery of all the said matters and an accounting of all the proceeds derived from the assignments of said mortgages, as well as a surrender of all other securities and personal property still retained by said Ida E. Wagner, individually to said estate.

And your oratrices further show, that the said defendant, Clara J. Chadwick, on or about the 10
day of , A. D. nineteen hundred and five, filed a bill in this honorable Court as executrix of the estate of Elizabeth Walsh, deceased, for herself and the complainants in this bill and the other beneficiaries under the will of Elizabeth Walsh, deceased. In said bill the said defendant Clara J. Chadwick charged that the defendant Ida E. Wagner by undue influences and without consideration had assigned to her certain mortgages on real estate in the city of Camden, together with bank 20
stock and moneys, the property of the said Elizabeth Walsh, which said mortgages and personal property are set out in this bill; and the said defendant Clara J. Chadwick also charged that said defendant Ida E. Wagner refuses and neglects to account to the said estate for said personal property; the prayer of the bill as filed by the defendant Clara J. Chadwick being that the said defendant Ida E. Wagner should account for and assign to the estate of said Elizabeth Walsh the said personal property so obtained as aforesaid, that the defendant Clara J. Chad- 30
wick and the other beneficiaries under the will might have their equal share in said property. After the filing of said bill the defendant Ida E. Wagner filed a plea. The said defendant Clara J. Chadwick thereupon neglected and refused to prosecute the said bill filed by her, and the complainants are informed and credibly believe that the said defendant Clara J. Chadwick has entered into a monetary

relation with the other defendant Ida E. Wagner not to prosecute said bill so filed by her, to the prejudice and injury of the complainants' rights; and the said defendant Clara J. Chadwick stated to complainants that she, Clara J. Chadwick, had been satisfied and that the other heirs must take care of themselves.

And your oratrices well hoped that the said Ida E. Wagner would have given up and yielded to said estate the said bonds and mortgages, shares of stock, moneys and other personal property so held by her, and that she would have released to said estate all pretence of right and title to the same, and would have accounted for the proceeds of the sale thereof, and that for that purpose your oratrices have in a friendly manner applied to the said Ida E. Wagner and requested her so to do; but now so it is, may it please your Honor, that the said Ida E. Wagner, contriving and intending to injure and aggrieve your oratrices, and the other beneficiaries named in the will of said Elizabeth Walsh, deceased, and to defraud them out of the said personal property, which of right belongs to them and the said other beneficiaries, wholly refuses to comply with such reasonable request of your oratrices, as in justice and equity she ought to have done; and to justify such fraudulent and inequitable conduct, said Ida E. Wagner insists upon various untrue and unjust allegations, giving out that the said Elizabeth Walsh voluntarily and without any undue influence or persuasion had given all of said personal property to her, the said Ida E. Wagner; and the said defendants, Ida E. Wagner and Clara J. Chadwick, still refuse to file any account or to assign any property of the said Elizabeth Walsh, deceased, in their possession, to the estate of the said Elizabeth Walsh, deceased. And your oratrices expressly charge that the said assignments and transfers and deliveries of said personal property were obtained by the said defendant Ida E. Wagner by fraud, circumvention and undue influence, and that the said defendant Clara J. Chadwick

has been paid by the said defendant Ida E. Wagner a sum of money, the amount to complainants unknown, not to prosecute the said bill heretofore filed by the said Clara J. Chadwick; all of which things are contrary to equity and good conscience and tend to the manifest injury of your oratrices and the other beneficiaries named in the said will.

In tender consideration whereof and for that your oratrices are remediless in the premises by the strict rules of the common law and can only be adequately relieved in this honorable court, where matters of this nature are properly cognizable; to the end, therefore, that said Ida E. Wagner and Clara J. Chadwick may, without oath, true, full and perfect answer make according to their knowledge, information and belief, to all and singular the matters and things hereinbefore stated, and that as fully and particularly as if the same were here repeated and they and each of them thereunto interrogated, paragraph by paragraph, and that they may answer and set forth whether the said Ida E. Wagner did obtain said assignments of said mortgages, transfers of shares of stock and delivery of said furniture and moneys as hereinbefore described from the said Elizabeth Walsh, and whether she agreed to pay any consideration therefor, and that the said Clara J. Chadwick may answer and set forth, but without oath, what arrangement she has made with the defendant, Ida E. Wagner, not to prosecute the bill filed by her of her own benefit and for the benefit of the complainants, and what consideration the said Ida E. Wagner has agreed to pay to the said defendant, Clara J. Chadwick; and that they, the said defendants, may discover and set forth the particulars and value of said personal estate of the said Elizabeth Walsh; and whether they have sold or otherwise disposed of said personal estate or any part thereof, and to whom and for how much; and that they may account for the proceeds thereof; and that an account may also be had and stated of the moneys

10

20

30

received by the said Ida E. Wagner directly from the said Elizabeth Walsh; and that the said assignments of mortgages, transfers of stock and delivery of moneys and other personal effects by the said Elizabeth Walsh to the said Ida E. Wagner may be decreed to be fraudulent and unduly obtained and therefore void and inoperative as against the complainants and other beneficiaries; and that the same may be set aside and decreed to be canceled, and that said mortgages, shares of stock, moneys and other personal property, be given up to be
10 administered as part of the estate of Elizabeth Walsh, as well as the proceeds of the sales of said personal property received by her from the said Elizabeth Walsh; and that said Ida E. Wagner and Clara J. Chadwick may be decreed to pay to your oratrices the costs and charges to be taxed in this suit; and that your oratrices may have such other and further relief in the premises as the nature and circumstances of this case may require.

May it please your Honor, the premises considered, to grant unto your oratrices the State's writ of subpoena,
20 issuing out of and under the seal of this honorable court, directed to the said Ida E. Wagner and Clara J. Chadwick, thereby commanding them, by a certain day and under a certain penalty to be specified therein, to be and appear before your Honor, in this Honorable Court, then and there to answer all and singular the premises contained in this, your oratrices' bill of complaint, to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience; and your oratrices, as in duty bound, will ever
30 pray, &c.

FRED'K A. REX,
Solicitor for and of Counsel with Complainants.

Bill filed November 10th, 1905.

IN CHANCERY OF NEW JERSEY.

Between ELLEN M. FENNIMORE, ET AL., Complainants, and IDA E. WAGNER, ET AL., Defendants.	ON BILL, &c. PLEA.

10

The plea of Ida E. Wagner to the bill of complaint of Ellen M. Fennimore and Emma L. Deegan, complainants.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth, and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill, says that for the assignment and transfer by Elizabeth Walsh to this defendant of the bonds, mortgages, shares of stock and other personal property in the bill mentioned, good and valuable consideration passed from this defendant to said Elizabeth Walsh.

20

All which matters and things this defendant doth aver to be true and she pleads the same in bar to the said complainants' bill, and prays the judgment of this Honorable Court whether she should be compelled to make any other or further answer to the said bill, and prays to be hence dismissed with her costs and charges in this behalf most wrongfully sustained.

30

JOSEPH KAIGHN,
Solicitor for Defendant, Ida E. Wagner.

STATE OF NEW JERSEY,
COUNTY OF CAMDEN, } ss.

IDA E. WAGNER, of full age, being duly sworn according to law, on her oath says, that the foregoing plea is not interposed for delay, but in good faith for the causes therein set forth.

IDA E. WAGNER.

Sworn and subscribed to before me this 21st day of
10 December, A. D. 1905.

WM. B. KNIGHT,
M. C. C. of N. J.

I certify that I have perused the complainants' bill in the above stated cause, and that the foregoing plea is well founded in point of law.

20 SAMUEL H. RICHARDS,
Of Counsel with Defendant.

Filed December 21, 1906.

30

IN CHANCERY OF NEW JERSEY.

Between ELLEN M. FENNIMORE, ET AL., Complainants, and IDA E. WAGNER, ET AL., Defendants.	ON BILL, &c. REPLICATION.

10

The complainants join issue on the plea of the defendant, Ida E. Wagner.

FRED'K A. REX,
Solicitor for Complainants.

20

Filed January 11, 1906.

Suggestion upon record of death of Emma L. Deegan and substitution of Philip J. Deegan, administrator, &c., of Emma L. Deegan, deceased, as co-complainant.

30

IN CHANCERY OF NEW JERSEY.

Between

ELLEN M. FENNIMORE and EMMA L. DEEGAN,

Complainants,

and

IDA E. WAGNER and CLARA J. CHADWICK,

Defendants.

ON BILL, &c.

10

TRENTON, N. J., September 6, 1906.

20

Transcript, &c., of shorthand notes taken of the testimony given in the above cause at the final hearing, before his Honor, James J. Bergen, one of the Vice Chancellors of this State, at the State House, at the time above stated.

Messrs. FREDERICK A. REX and F. MORSE ARCHER appeared for the Complainants.

Messrs. JOSEPH KAIGHN and SAMUEL A. RICHARDS, of FRENCH & RICHARDS, appeared for the Defendants.

30

Counsel for the defendants say they admit the transfer, deny the want of consideration and they have filed a plea, and the burden is on them to show consideration.

JOSEPH KAIGHN, called and affirmed on the part of the defendants, testified as follows:

Direct examination.

By Mr. Richards:

Mr. Rex: I would state that I have noticed the other side to produce the assignments of the mortgages, and I have asked Mr. Richards to allow me to see them. I have never seen them, and he has declined my request. 10

Mr. Richards: They will be submitted in due form; I will offer them in evidence.

Ques. You are an attorney-at-law of this State?
Ans. I am.
Ques. And a Master of this court?
Ans. Yes.
Ques. Have you read a copy of the bill of complaint in this cause? 20
Ans. I have.
Ques. Did you know in her lifetime Elizabeth Walsh, deceased, mentioned in that bill?
Ans. I did.
Ques. Did you have occasion to represent her in a matter?
Ans. I did.
Ques. What was the nature of it?
Ans. The first time, I can't tell the first, because I was working for her; I did some work for her, and then I was down there in reference to the collection of a claim, when she first spoke to me about the assignment of these mortgages. 30
Ques. Who was that claim against?
Ans. I think it was Martha French, but had nothing to do with this matter, it was another matter.

Ques. While engaged in that she did consult you about the mortgages mentioned in the bill of complaint?

Ans. She said she had some things she wanted to turn over to her daughter, Mrs. Wagner, and I asked her what they were, and she said they were some mortgages, and she also said something about some Camden Fire Insurance stock, I believe, and I told her as to the stock I could not take care of that, the Camden Fire would take care of that direct, but the mortgages I would draw the assignments for when she was ready, if she would send them up.

Ques. Did she say anything about what the consideration was or why she was doing this?

Ans. She told me—I asked her about that; she told me that she had a good home there and that she intended to stay there the rest of her days, and that she wanted to turn these over to Mrs. Wagner on that account.

Ques. Wanted to know how she could do it?

Ans. She wanted to know how she could do it, and I told her by assignment of mortgage, as far as the mortgage was concerned, and I told her the stock would be transferred by the company, and I would transfer the mortgages, if she wished me to, and to send the mortgages up.

Ques. Did you later receive from her those mortgages?

Ans. I did.

Ques. And they are the mortgages mentioned in the bill of complaint?

Ans. Yes, they are the mortgages. I drew the assignment for them mentioned in the bill of complaint, yes.

Ques. I show you three papers purporting to be assignments of mortgages from Elizabeth Walsh to Ida E. Wagner, and ask you if you ever saw those before?

Ans. I have.

Ques. Were they prepared in your office?

Ans. Yes, sir.

Ques. In accordance with the instructions which you have just mentioned?

Ans. Yes.

Ques. Did you take her acknowledgment to them?

Ans. I did not.

Ques. How did that happen?

Ans. As I recollect it, there was an arrangement by which I should be there on a certain evening to take these acknowledgements, and I found that work turned up that I could not be down there at that time, and in order to keep my promise I sent Mr. Low, who does a good deal of work for me, down to take the acknowledgement. 10

Ques. He is a Commissioner of Deeds?

Ans. Yes, sir.

Three papers which the witness has just identified are offered in evidence and marked "Exhibits D1, D2 and D3."

Ques. That is all.

Cross-examination. 20

By Mr. Rex:

Ques. You are the solicitor of record, are you not, who filed the plea in this case?

Ans. I believe I am.

Ques. You are, are you not?

Ans. Yes.

Ques. Did you make this assignment yourself, or did you have it done in your office?

Ans. What do you mean? I didn't make the assignment. 30

Ques. I mean the physical drafting of the assignments. These appear to be in typewriting?

Ans. Yes, sir.

Ques. Was that done in your office?

Ans. Yes.

Ques. By whom?

Ans. I expect my stenographer. I don't remember that, probably they were.

Ques. You mention in one assignment of mortgage a consideration of $1,200?

Ans. Yes.

Ques. Where did you get that from?

Ans. That was the amount of the mortgages, I presume; we never drew an assignment for less than the amount.

10

Ques. Where did you get it?

Ans. I presume from the amount of the mortgage.

Ques. You didn't get it from Mrs. Walsh?

Ans. Not the $1,200.

Ques. You didn't get the amount from her; she didn't tell you what to put in there?

Ans. No.

Ques. I see one is for $800; she didn't tell you that?

Ans. No, that is true as to all of them.

Ques. That is to say, you just copied the mortgages?

20

Ans. Yes, the amount of the mortgages.

Ques. And that is the supposed consideration, is it?

Ans. No, that was not the consideration.

Ques. You say you were representing Mrs. Walsh in some business?

Ans. Yes.

Ques. Did you ever represent her before she went to live with Mrs. Wagner?

Ans. No.

Ques. You had represented Mrs. Wagner before that?

30

(Objected to as not cross-examination. Admitted.)

Ans. I think not.

Ques. Didn't you represent her in a case at Florence; didn't you represent Mr. Wagner?

(Objected to as irrelevant and improper. Admitted.)

Ans. Prior to that time?

Ques. Yes.

Ans. I can't say, I don't know. I have represented Mr. Wagner since.

Ques. I didn't ask you about since.

Ans. I don't know; if you will tell me in what case and when, I will tell you.

Ques. You recollect when these assignments were made?

Ans. About the date, yes. 10

Ques. Now, prior to that date, didn't you do business for Mr. Wagner and Mrs. Wagner?

Ans. I am not sure whether I did or not; I don't know.

Ques. You were acquainted with them?

Ans. Yes.

Ques. How did you get acquainted with them?

Ans. The first time that I ever met Mr. Wagner was when I did some work for Philip Renger; that is the first time I ever knew Mr. Wagner.

Ques. He was interested in that case? 20

Ans. I don't think he was.

Ques. Don't you know?

Ans. No, the work was done for Mr. Renger; whether he got any of the proceeds or not, I do not know.

Ques. You got yours first?

Ans. I believe I did.

Ques. Did you ever know Mrs. Walsh?

Ans. Yes, I knew her.

Ques. How?

Ans. By attending to legal matters for her.

Ques. What legal matters did you ever attend to for her? 30

Ans. In the collection of one or two claims for her.

Ques. Where was she then?

Ans. At Mr. Wagner's house on Broadway.

Ques. You never knew her before she went to Wagner's?

Ans. No, I think not—yes, I think there was one case when she was living with her husband.

Ques. When was that?

Ans. I can't tell you; it was prior to that.

Ques. You say she sent for you?

Ans. Yes.

Ques. Whom did she send?

Ans. I can't tell you that; it was either Mr. or Mrs. Wagner or one of the boys.

10 Ques. What do you mean by "one of the boys," Wagner's boys?

Ans. Yes, sir; or sometimes Mr. Walsh would come up.

Ques. He was not living there at that time she was living with Mrs. Wagner?

Ans. I can't answer that; I don't know.

Ques. You didn't see him there when you were there?

Ans. No.

Ques. So that it was one of the members of the Wagner family came to see you about this?

Ans. Either of Mr. Wagner's family or Mr. Walsh; I
20 think it was Mr. Walsh, I don't remember.

Ques. You say you said to this messenger, whoever he was, you told him to bring the mortgages up?

Ans. No, I didn't.

Ques. What did you tell him?

Ans. I was sent for to come down on the matter of this claim.

Ques. What was the claim?

Ans. The claim at that time was a claim against Martha French, but they didn't tell me at that time.

30 Ques. Who had the claim?

Ans. I had it.

Ques. I mean whose claim was it, Mrs. Wagner's or Mrs. Walsh's?

Ans. It was Mrs. Walsh's claim against Martha French.

Ques. Did Mrs. Walsh send for you?

Ans. Yes.

Ques. How did you know her at that time?

Ans. I think I had been down there once or twice on other matters.

Ques. For whom?

Ans. Mrs. Walsh.

Ques. What was the matter?

Ans. I don't have any recollection of it now, but I knew her at that time.

Ques. You are positive of that?

Ans. Yes, sir. 10

Ques. Did you go down at any time in reference to these mortgages?

Ans. Yes, sir; this was in regard to the claim.

Ques. Did you go down when she sent for you to go down?

Ans. I did.

Ques. How did you know about the transfer of the mortgages?

Ans. When we got through in regard to the claim, she spoke to me about an assignment of these mortgages, about wanting to turn the mortgages over and also the insurance stock. 20

Ques. Mrs. Walsh did?

Ans. Yes, sir.

Ques. Can you fix the date of that?

Ans. No; I can't.

Ques. In whose presence?

Ans. I don't remember whether there was more than the Wagners there or not; I don't know whether the nurse was there or not at that time.

Ques. Just tell me who was present; you need not say who was not there; I was not there and you were not. 30

Ans. Yes, I was.

Ques. Who was there?

Ans. Mr. and Mrs. Wagner.

Ques. That is all you can recollect?

Ans. Yes, sir.

Ques. Did she at that time hand you the mortgages?

Ans. No.

Ques. How did you get them?

Ans. They were afterwards sent up to me. I told her to send them when she was ready to send them.

Ques. Who brought them up?

Ans. I don't know; the Wagners, some of them; I can't tell you because I don't know.

Ques. Did the old lady tell you at the time of this in-
10 terview what consideration to put in there?

Ans. At the time I was down there in regard to the claim when she first spoke to me about it?

Ques. Yes.

Ans. She told me what the consideration was.

Ques. Did she tell you what consideration to put in the assignments, I asked you?

Mr. Richards: He has already answered.

Ans. No; she told me what the consideration was, but
20 she didn't tell me what to put in the assignment.

Ques. So that the assignment consideration you just made from the mortgages themselves?

Ans. Yes, sir; from the principal of the mortgages.

Ques. What did she say the consideration was?

Ans. She told me that she had a good home there and that she intended to stay there the rest of her days, and she wanted to turn these things over to her.

Ques. She didn't say anything about the will?

Ans. I don't remember that she did.

30 Ques. You knew that she had a will?

Ans. No; I didn't at that time.

Ques. She didn't say anything about that at all?

Ans. Not that I recollect.

Ques. You would have recollected it if she had?

Ans. I think I would—oh, I am not sure about it.

Ques. You didn't know her sufficiently well to talk about that, about a will?

Ans. I think if it had been necessary; I knew her sufficiently well to talk about it, but I didn't see any reason for it at that time.

Ques. Was there any agreement made between Mrs. Wagner and Mrs. Walsh that you know of, as to her support?

Ans. Not that I know of.

Ques. You knew nothing of that?

Ans. No.

Ques. That is all. 10

HENRY WAGNER, sworn for defendants.

Direct examination.

By Mr. Richards:

20

Ques. You live in Camden, New Jersey?

Ans. Yes, sir.

Ques. And are the husband of the defendant, Ida E. Wagner?

Ans. Yes, sir.

Ques. She is the daughter of Elizabeth Walsh, deceased, is she not?

Ans. Yes, sir.

Ques. The bill states that Elizabeth Walsh came to live with your wife in February, 1904; is that correct?

Ans. I believe it is. 30

Ques. Did she continue to live there at the time of her death?

Ans. Yes, sir.

Ques. During that time did or did not your wife feed and care for her?

Ans. Yes, sir.

Ques. Did she pay any board?
Ans. No, sir.
Ques. Did she do any of the house work?
Ans. No, sir.
Ques. Did Mrs. Walsh require any special attention?
Ans. Very much, after she was taken sick.
Ques. What special attention did she require; did she require an attendant or not?
Ans. Did she require an attendant all the time?
10 Ques. Any of the time.
Ans. Yes, she required an attendant.
Ques. Who was that attendant?
Ans. My wife and Mrs. Wood.
Ques. Who paid for Mrs. Wood's services?
Ans. I don't know that she ever received any pay.
Ques. You don't know whether your wife ever paid her or not?
Ans. I do not.
Ques. Was any charge made against Mrs. Walsh for any of these services?
20 Ans. No, sir; not that I know of.

By the Court:

Ques. When did Mrs. Walsh die?
Ans. I think Christmas, 1904.
Ques. She came there in February, about 11 months?
Ans. Yes, sir.

Cross-examination.

30

By Mr. Rex:

Ques. What is your business?
Ans. I am a weaver.
Ques. What kind of a weaver?
Ans. A carpet weaver.

Ques. A rag carpet weaver?

Ans. Yes, sir; a rag carpet weaver.

Ques. And all the time that the nurse was there and Mrs. Walsh was there, were you making enough money to pay the bills yourself?

Ans. What bills?

Ques. The bills for nursing and medicine and bills for keeping, and whatever Mrs. Walsh required?

Ans. No, sir; I didn't make enough money for that.

Ques. Nobody paid them?

Ans. Yes, sir; they were paid. 10

Ques. Who paid them?

Ans. I believe Mrs. Wagner paid them.

Ques. Where did she get the money from?

Ans. She had money saved up.

Ques. From what?

Ans. From my work and money that I made on the outside.

Ques. At what?

Ans. By selling property and anything that I could make money at, I had it. 20

Ques. You always gave it to her?

Ans. My money that I make?

Ques. Yes.

Ans. Yes, sir; always gave it to my wife.

Ques. What does she do with it?

Ans. Keeps it in the house.

Ques. How much money did she have?

Ans. I don't know?

Ques. Whereabouts in the house did she keep it?

Ans. I can't tell you that; I suppose in a drawer. 30

Ques. How do you know that she keeps it in the house?

Ans. I know whenever I ask for money I get it.

Ques. And you suppose she paid the bills?

Ans. I suppose so; they are paid.

Ques. You don't know anything about it?

Ans. What bills?

Ques. I mean bills for the nurse, medicine, doctor and whatever was required. She was there 11 months.

Ans. The doctor was paid.

Ques. Who paid him?

Ans. Mrs. Wagner paid him?

Ques. From the money you saved?

Ans. I am not positive of that.

Ques. Mrs. Walsh was owner of considerable property?

Ans. Yes, sir.

10 Ques. What became of the rents during this eleven month?

Ans. Returned to Elizabeth Walsh by the agent who collected the rents.

Ques. So she always had money of her own?

Ans. She had money; yes, sir.

Ques. And, therefore, Mrs. Wagner didn't have to pay any of her bills?

Ans. When the bills came in—I mean have her paying them when they came in; Mrs. Wagner would present the bills to her mother and get the money.

20 Ques. Then it was not from your savings?

Ans. So far as family expenses are concerned, it came from my work.

Ques. I didn't ask you that; I asked you who paid her expenses; now you say that the rents were handed over to her and when Mrs. Wagner wanted any money she went to Mrs. Walsh—is that true?

Ans. I say when a bill came in.

Ques. Then she went to Mrs. Walsh to get the money?

Ans. I can't say that she went to Mrs. Walsh.

30 Ques. Did you?

Ans. No, sir.

Ques. Who did?

Ans. If a man came back with a bill for carpenter work or brickwork, we referred him to the old lady.

Ques. And she paid it?

Ans. If she had it; if she hadn't it, we sent her to the agent to get the money, which we have done.

Ques. But it was always Mrs. Walsh's money?
Ans. It was the money of her rents.

Re-direct.

Ques. You have spoken of small bills which Mrs. Walsh paid out of her rent money, and you referred to the bills of carpenter work and other work on her property, did you not?

10

(Objected to. Admitted.)

Ans. Yes, sir.
Ques. She didn't pay your store bill, did she?
Ans. No, sir.
Ques. That is all.
Ans. Could I make an explanation to the Court of the store bills?
Ques. No; that is all.

20

The Court: You may make an explanation to correct your evidence.

Ans. I have nothing to correct, but you spoke about store bills; I could tell a great deal about store bills.

The Court: That is all then.

Mr. Richards: I desire to have noted upon the record the fact that the statement was made in the second paragraph of the bill and in numerous other places that the defendant, Ida E. Wagner, is the daughter of Elizabeth Walsh; the statement is made that Elizabeth died December 25, 1904; in the twelfth paragraph that she went to live with her daughter, Ida Wagner, in February, 1904, and in the same paragraph continued to live with her

30

daughter, Ida E. Wagner, until her death.

In the thirteenth paragraph: "That said Elizabeth Walsh, on or about the first day of April, 1904, assigned and transferred to Ida E. Wagner the mortgages and property in question."

In the fourteenth paragraph, that Ida E. Wagner obtained the assignment of said mortgages and shares of stock and the possession of said mortgages and household furniture.

10 In the eighteenth paragraph the complainant charges that the said assignments and transfers and deliveries of the said personal property were obtained by the said defendant, Ida E. Wagner—

The Court: What is the purpose of this?

Mr. Richards: Simply, if the Court please, I am reading what Greenleaf on Evidence says.

20 The Court: State the purpose of reading what you have read.

Mr. Richards: The rule of law, as I understand—

The Court: What is the purpose in having this on the record?

Mr. Richards: To have it in evidence.

30 The Court: Whatever is in the bill of complaint, admissions made by the complainant, you don't have to prove.

Mr. Richards: My only reason was, the language stated in Greenleaf, in a court of equity the bill may be read in evidence for the defendant, as to any matter directly and positively averred.

The Court: That is admitted. The bill is evidence and can be read. Anything else?

Mr. Richards: That is all.

Defendants rest.

Mr. Rex: I ask your Honor to make a decree according to the prayer of the bill. 10

WALTER FENNIMORE, sworn for complainants.

Direct examination. 20

By Mr. Rex:

(After a consultation between counsel for the complainants, the witness was withdrawn.)

Complainants rest.

Case closed.

(The case was then argued.) 30

Exhibit D. 1, D. 2 and D. 3 are deeds of assignment in the usual form under seal dated May 3, 1904, duly acknowledged the same day by Elizabeth Walsh before Joseph S. Low a commissioner of deeds in and for New Jersey and recorded in the office of the Register of Deeds of Camden County May 4, 1904 made by Elizabeth Walsh of the first part to Ida E. Wagner of the second part assigning the mortgages mentioned in the bill.

IN CHANCERY OF NEW JERSEY.

Between

ELLEN M. FENNIMORE and EMMA L. DEEGAN,

Complainants,

and

IDA E. WAGNER and CLARA J. CHADWICK,

Defendants.

ON BILL, &c.

Messrs. FREDERICK A. REX and F. MORSE ARCHER, for Complainants.

Messrs. JOSEPH KAIGHN and SAMUEL A. RICHARDS, for Defendants.

BERGEN, V. C.:

The bill of complaint in this cause charges that Elizabeth Walsh, having made her last will and testament, dated February 25th, 1904, departed this life December 25th, following; that she devised her personal estate to the complainants and defendants, her children, and to a grandchild who is not a party to this cause, in equal shares; that the defendants were appointed executrices of the will, have probated the same, and accepted their

appointments; that about the date of the execution of the will, whether before or after does not appear, the defendant, Ida E. Wagner, induced the testatrix to come and live with her, where she remained until her death; that having thus obtained the custody and physical control of the testatrix, who was then seventy-seven years of age and "in an enfeebled and weakened mental and physical condition and wholly incapable of resisting the persuasions and entreaties of her daughter, the said Ida E. Wagner, fraudulently induced and unduly influenced her, the said Elizabeth Walsh, on or about the first day of April, A. D. nineteen hundred and four, to assign and transfer unto her, the said Ida E. Wagner, without any consideration therefor," bonds and mortgages, stock in an insurance company and other personal property of the value of about $8,000; that the result of these transfers, if sustained, is to exhaust the personal estate and deprive the complainants and other beneficiaries under the will of the whole of their legacies; that the defendant, Ida E. Wagner, has reduced some of these securities to cash and refuses to account for any of them or their proceeds, and the prayer is that the pretended transfers of the securities she yet holds be set aside, and that they, together with the proceeds of those that had been sold, as well as other personal property transferred to her, as set out in the bill of complaint by the testatrix, be declared to be the property and estate of the testatrix at the time of her death, to be accounted for and administered as her estate by the defendants.

The defendant, Clara J. Chadwick, one of the executors, has not appeared in this cause, and a decree *pro confesso* has been taken against her.

The defendant Ida E. Wagner, to whom all of this property was transferred, in utter disregard of its disposition by the will, has not answered, but filed a plea on which the complainants have joined issue by a general replication. The pertinent part of the plea is in the fol-

lowing words, "for a plea to the whole of said bill says that for the assignments and transfer by Elizabeth Walsh to this defendant, of the bonds and mortgages, shares of stock and other personal property in the bill mentioned, good and valuable consideration passed from this defendant to the said Elizabeth Walsh."

The defendant, by her plea, presents but a single issue, and constructively admitting the charges of undue influence and fraudulent inducements charged in the bill, relies alone upon the assertion in the plea that for the property so transferred good and valuable considerations passed from her to the assignor.

At the trial of the issue so presented the defendant assumed the burden of sustaining her plea. But two witnesses were called on her behalf; one was the solicitor of record in this cause, and the other her husband. The solicitor testified that upon a visit to the testatrix with regard to some other matter, she consulted him with reference to the assignment of the disputed property. What the witness testified to is covered by the following questions and answers: "Q. While engaged in that did she consult you about the mortgages mentioned in the bill of complaint? A. She said she had some things she wanted to turn over to her daughter, Mrs. Wagner, and I asked her what they were, and she said they were some mortgages, and she also said something about some Camden Fire Insurance stock, I believe, and I told her as to the stock I could not take care of that, the Camden Fire Insurance Co. would take care of that direct, but the mortgages I would draw the assignments for when she was ready if she would send them up. Q. Did she say anything about what the consideration was, or why she was doing this? A. She told me that—I asked her about that—she told me that she had a good home there and that she intended to stay there the rest of her days, and that she wanted to turn these over to Mrs. Wagner on that account."

He further testified that, some time after this conversation, the mortgages were brought to his office, where the assignments were prepared according to his instructions, but the execution was acknowledged before another person. It does not appear that the solicitor ever saw the testatrix after the assignments were sent to her, nor is there the slightest evidence in the cause that they were ever delivered by the testatrix to Mrs. Wagner. The husband testified that Elizabeth Walsh came to live in his family in February, 1904, and remained there until her death; that she did not pay any board or do any housework; that she required special attention after she was taken sick, but that she had an attendant by the name of Mrs. Wood. While this witness testified at first that his wife paid the bills for the nurse, medicine, doctor and whatever was required, he qualified this, on cross-examination, by saying that Mrs. Walsh always had money, and that when the bills came in his wife would present them to her mother and get the money.

10

On this evidence I find that the defendant has not supported her plea that this $8,000 of property was transferred to her by the testatrix for a good and valuable consideration.

20

It distinctly appears in the evidence that so far as these witnesses know there was no agreement between the parties that Mrs. Wagner should keep her mother during her life, and so far as the case shows Mrs. Wagner could have turned off her mother the next day after the transfer was made. The intimation by the husband that the mother required special services was plainly introduced to bolster up a pretended consideration. The relation between these parties was that of mother and daughter, and in the absence of any express promise to pay she could not recover upon any implied promise, nor is there any proof that she rendered any special services such as would justify the transfer of this large amount of property, for it appears that during her illness, when

30

she required special attention, such attentions were rendered and performed by a person employed for that purpose, and, in the absence of all proof on the subject, the presumption is that such services were paid for by the testatrix. Mrs. Walsh was seventy-seven years of age, and to support such a transfer of all of her available estate to one daughter with whom she was living, justifies the presumption that she was dominated by the will of that daughter to make an unconscionable bargain, if any such bargain were made, because it must be borne in
10 mind that this defendant does not pretend that it was a gift, but rests her claim entirely upon a good and valuable consideration. The daughter to whom these transfers were made was not offered as a witness, nor any explanation made as to when these transfers came to her hands. Without delivery they would have passed no title, for their execution alone, if retained by the testatrix, would not result in a transfer of the property, and it may be that these papers came to the defendant after the death of her mother and by some act of her own. It has been
20 held by this Court that if the defendant fails in proving the truth of his plea upon the hearing, the plea must be overruled as false and the complainant entitled to a decree according to the case stated by the bill.

Miller vs. U. S. Casualty Co., 16 Dick., 110-115.
Hunt vs. West Jersey Traction Co., 17 Dick., 225-229.

The defendant having failed to sustain her plea, it will be overruled and a decree advised setting aside the assignments and transfers of the property described in the
30 bill of complaint and the same decreed to be held by the defendants as a part of the estate of the testatrix to be administered by them as executrices of the last will and testament of Elizabeth Walsh. If all of the parties interested in the fund under the will of Mrs. Walsh were parties to this proceeding, this Court could and perhaps ought

to require the accounting to be made here, but as the grandchild, one of the beneficiaries under the will, is not a party, the settlement of the estate can be more conveniently had in the Surrogate's Court of the county where the will was admitted to probate and where the grandchild will be afforded an opportunity to be heard upon the accounting.

10

IN CHANCERY OF NEW JERSEY.

Between ELLEN M. FENNIMORE, ET AL., Complainants, and IDA E. WAGNER, ET AL., Defendants.	ON BILL, &c. FINAL DECREE.

20

This cause coming on to be heard at Chancery Chambers, in the State House, Trenton, on the sixth day of September, nineteen hundred and six, on bill, plea, replication and proofs then taken in the presence of Frederick A. Rex, solicitor for the complainants, and French & Richards, of counsel with Ida E. Wagner, defendant, the complainants' bill having been heretofore taken as confessed against Clara J. Chadwick; and the pleadings and proofs and the arguments of the respective counsel having been heard and considered, and it appearing to the Court that all of the bonds and mortgages, shares of

30

stock, moneys, or the proceeds of the sale of the same, described in the bill of complaint, are assets of the estate of Elizabeth Walsh, deceased, and that they were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, and it further appearing that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint;

It is, on this thirtieth day of October, nineteen hundred and six, by William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, does hereby order, adjudge and decree that the transfer of the shares of the capital stock of the Camden Fire Insurance Company, described in said bill of complaint, made by the said Elizabeth Walsh in her lifetime to the said Ida E. Wagner, were not made for a good and valuable consideration, and that they be set aside, annulled and made void, and that the said moneys and shares of stock be hereby adjudged to be part of the estate of the said Elizabeth Walsh, to be accounted for by the said defendants.

And it is further decreed, that the assignments made by the said Elizabeth Walsh in her lifetime to the said Ida E. Wagner, of the bonds and mortgages made to the said Elizabeth Walsh by Winfield Stetser and wife, by Edwin T. Anthony, by Catharine Neutze, and by John Baxter and wife, respectively, as described in the said bill of complaint, were not made for a good and valuable consideration, and that they be likewise set aside and made null and void, and said mortgages are hereby adjudged to be a part of the estate of the said Elizabeth Walsh, deceased, to be reassigned by the said Ida E. Wagner and to be accounted for by the said defendants.

And it is further ordered, adjudged and decreed, that the proceeds of sale of the bonds and mortgages made to the said Elizabeth Walsh in her lifetime by Abigail F. Hugg and by Anna C. Marshall, respectively, assigned

by said Elizabeth Walsh, in her lifetime, to the said Ida E. Wagner, and thereafter assigned by the said Ida E. Wagner to one Abraham Anderson and to one Frank J. Burr, respectively, as alleged in said bill of complaint, which were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, be accounted for by the said defendants as part of the said estate of the said Elizabeth Walsh, deceased.

And it is further ordered, adjudged and decreed that the plea filed by the said defendant Ida E. Wagner, be overruled with costs. 10

W. J. MAGIE,
C.

Respectfully advised.
J. J. BERGEN,
V. C.

Filed October 31st, 1906.

20

30

IN CHANCERY OF NEW JERSEY.

Between ELLEN M. FENNIMORE, ET AL., Complainants, and IDA E. WAGNER, ET AL., Defendants.	ON BILL, &c. NOTICE OF APPEAL.

10

The defendant, Ida E. Wagner, hereby appeals from the final decree made in this Court in the above stated cause from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

20

JOSEPH KAIGHN,
Solicitor for Ida E. Wagner.
SAMUEL H. RICHARDS,
Of Counsel.

I conceive there is good cause for appeal in the above stated cause.

SAMUEL H. RICHARDS,
Of Counsel with Ida E. Wagner.

30

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ELLEN M. FENNIMORE, ET AL., Complainants and Respondents, and IDA E. WAGNER, ET AL., Defendants, IDA E. WAGNER, Appellant.	APPEAL FROM CHANCERY. PETITION OF APPEAL.

10

20

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of Ida E. Wagner, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor William J. Magie, Chancellor of New Jersey, bearing date the thirtieth day of October, nineteen hundred and six, wherein the said Ellen M. Fennimore and others were complainants, and Ida E. Wagner, et al., are defendants, in the following respects, to wit:

30

That the said decree adjudges that it appears to the Court that all of the bonds and mortgages, shares of stock, moneys, or proceeds of the sale of the same, described in the bill of complaint are assets of the estate of

Elizabeth Walsh, deceased, when there existed no evidence, pleading or facts upon which such a finding could be based or founded.

That said decree adjudges that said bonds, mortgages, shares of stock, moneys, or the proceeds of the sale of the same were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, when by the assignments themselves, under seal, and the uncontradicted testimony, it appeared that a good and valuable consideration passed therefor.

10

That said decree adjudged that the complainants were entitled to the relief sought and prayed for by them in their bill of complaint, when it did not appear, either by the pleadings or proofs, that complainants were entitled to any relief.

That said decree adjudges that the transfer of the shares of the capital stock of the Camden Fire Insurance Company described in said bill of complaint, made by the said Elizabeth Walsh in her lifetime to the said Ida E. Wagner, were not made for a good and valuable consideration, and that they be set aside, annulled and made void, and that the said moneys and shares of stock were thereby adjudged to be part of the estate of the said Elizabeth Walsh, to be accounted for by the said defendants, when by the undisputed testimony it appeared that such transfer was made for a good and valuable consideration and no evidence was offered to show that said shares ever were, are or could be part of the estate of Elizabeth Walsh.

20

That said decree adjudges that the assignments by Elizabeth Walsh in her lifetime to the said Ida E. Wagner of the bonds and mortgages made to the said Elizabeth Walsh by Winfield Stetser and wife, by Edwin T. Anthony, by Catharine Neutze and by John Baxter and wife respectively, as described in the bill of complaint, were not made for a good and valuable consideration, and that they be set aside and made null and void, and

30

adjudges said mortgages to be a part of the estate of said Elizabeth Walsh, deceased, to be reassigned by said Ida E. Wagner and to be accounted for by the defendants, when by the deeds of assignment of said mortgages, executed under seal, offered in evidence, a presumption of consideration was raised which was in no way rebutted or disproved, and when by the undisputed testimony it appeared that said assignments were made for a good and valuable consideration, and no evidence was offered to show that said mortgages ever were, are or could be a part of the estate of said Elizabeth Walsh, deceased. 10

That said decree adjudges that the proceeds of sale of the bonds and mortgages made to the said Elizabeth Walsh in her lifetime by Abigail F. Hugg and by Anna C. Marshall respectively, assigned by said Elizabeth Walsh in her lifetime to the said Ida E. Wagner and thereafter assigned by the said Ida E. Wagner to one Abraham Anderson and to one Frank J. Burr respectively, as alleged in said bill of complaint, which were not transferred and assigned to the said Ida E. Wagner for a good and valuable consideration, be accounted for by the said defendants as part of the said estate of the said Elizabeth Walsh, deceased, when it is not proven or admitted that the said Ida E. Wagner sold or assigned any such mortgages or received anything therefor, and when, by the undisputed proofs, it appeared that such bonds and mortgages were assigned to said Ida E. Wagner for a good and valuable consideration. 20

That said decree adjudges that the plea filed by the defendant be overruled with costs, when such decree should have dismissed the complainants' bill with costs to the defendant, Ida E. Wagner. 30

That said decree is contrary to law.

That said decree is inequitable.

That said decree is not in accordance with the practice in equity.

That the Court permitted illegal and improper cross-examination.

That said decree is against the weight of the evidence.

That said decree stands without any evidence to support it.

That the proof offered by the appellant upon the only issue in the case standing alone entitles appellant to a decree in her favor.

That the appellant having offered the assignments under seal, which import a consideration, and offered other evidence of consideration, established a *prima facie* case, and upon the complainant failing to offer any testimony, the appellant was entitled to a decree dismissing the bill with costs.

The decree is, in divers other respects, irregular, illegal and contrary to equity and good conscience.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

JOSEPH KAIGHN,
Solicitor of Appellant.
FRENCH & RICHARDS,
Of Counsel with Appellant.

Severance of appellant from co-defendant in usual form.

Answer to petition of appeal in usual form.