

New Jersey Court of Errors and Appeals

Between INDUSTRIAL SAVINGS
& LOAN COMPANY AND GEO.
C. VAN TUYL, JR., Superin-
tendent of Banks of the State
of New York,

Complainants-Respondents,

and

GRACE FRANCES PLUMMER AND
G. WINSLOW PLUMMER, her
husband,

Defendants-Appellants.

On Bill, &c.

Brief of

Defendants-

Appellants.

The bill of complaint in this cause was filed by the above-named complainants to foreclose a second mortgage dated April 22, 1908, made by the defendant to Marion W. Matthews (Dummy for the complainant, Industrial Company) for \$4,500 with interest at 6% and to be paid as follows:

Five Hundred Dollars on April 16, 1909, and a like sum upon the same day of each year thereafter and in addition thereto, \$6 500 on June 1, 1908, and upon the same day of each month thereafter until April 22, 1913, when the balance of said principal sum and unpaid interest should become due and payable.

The first mortgage on the property was for \$7,500 and was given by Harold M. Runlett to Thomas J. Mohair. This was a dummy mortgage and was assumed by the defendants.

The above two mortgages covered lots 62, 63 and 64 in Block 24, Columbia Avenue, Grantwood, N. J. which the defendants purchased from the Columbia Real Estate and Investment Company on April 22, 1908, for \$13,000.

This property which was sold subject to mortgage of \$12,000, the defendants alleged was worth only \$6,000 and that they were defrauded to the extent of approximately \$7,000, and they ask an abatement against the said second mortgage of \$4,500.

On December 29, 1913, a decree was given against the defendants for the amount of said mortgage of \$4,500 and interest, making a total of \$4,923.59.

At the time of the purchase, the title stood in the name of the Columbia Real Estate & Investment Company. The first mortgage of \$7,500 was held by the New York Mortgage Company. The second mortgage of \$4,500 was held by the Industrial Savings & Loan Company. The Columbia Real Estate & Investment Company, The New York Mortgage Company and the Industrial Savings & Loan Company were under the control of one man, a Mr. Knox. They had their offices in the Times Building in New York occupying an entire floor (p. 14).

Marion W. Matthews was a dummy (p. 16).

Mr. F. E. Knox was president of the company (p. 45).

At the time of the purchase the defendant lived in New York (p. 52).

She was ignorant of real estate values and believed the things that were told her (p. 54).

The salesman who negotiated the sale guaranteed the sale of the property at the end of a year's time if she was dissatisfied, and represented that if the property was not worth the money, the title company would not have guaranteed the title, and also that the mortgages would not have been put on the property if it had not been worth more than the price of \$13,000 (p. 52).

He said that valuations were advancing (p. 53).

Defendant paid one hundred dollars on deposit and a check for nine hundred dollars, and five hundred dollars at the end of the year (p. 55).

Defendant knew that she had assumed the \$7,500 mortgage and had to pay that (p. 56).

Defendant executed the \$4,500 mortgage (p. 57).

The agent who agreed to sell the property within a year did not do so (p. 57).

Defendants were given to understand they were getting a bargain (p. 57).

The defendants relied upon the representations made by the representative of the Columbia Company (p. 61).

The defendants paid \$3,129.16 (p. 65).

The \$7,500 mortgage was a dummy mortgage (p. 22).

The three lots were worth from \$2,000 to \$2,100 (p. 25).

The house was worth \$5,000 (p. 27).

The defendants are entitled to an abatement to the extent of \$6,000 which will more than equal the whole of the second mortgage which is sought to be foreclosed in this suit.

The abatement is warranted by law.

In *Dayton vs. Melock*, 32 N. J. E., p. 570 it is held:

Where a grantor, by misrepresentations, induces his grantee to believe that the property contains more land than in fact it does contain, such grantee is entitled to a proportionate deduction from the amount due on his mortgage given for part of the consideration, on its foreclosure.

In *Lomerson vs. Johnston*, 47 N. J. E., p. 312, the Court holds:

A wife, understanding from statements made to her by her husband's creditor that her husband was in danger of immediate arrest, executed a mortgage to the creditor securing the husband's debt in order to avert the arrest. The creditors had not stated that the husband's arrest was imminent, but from the wife's conduct it was evident to him that she so understood him.—Held, that the case was one of false representation.

In order to establish a case for false representation it is not necessary that things which are false shall have been stated as if they were true. If the presentation of that which is true creates an obvious impression which is false, as to one who seeks to profit by the misapprehension he has thus produced, it is a case of false representation.

In *Peterson vs. Reid et al.*, 74 At., p. 662, the Court holds:

The mere fact that the damages, sought to be set up as an abatement of the mortgage debt in a suit to foreclose the mortgage are unliquidated does not prevent equity from granting the abatement, as the damages may be ascertained by a jury in a law court.

Where a vendor of lowland of small value covenanted to fill in the same, and the purchasers gave a mortgage for the price, based on the land

filled in, one succeeding to the rights of the purchaser under the conveyance from the vendor and his covenant, could, in a suit to foreclose the mortgage by an assignee having no interest in the litigation, reduce the mortgage debt to the extent of the damages sustained by the vendor's breach of covenant.

A vendor of lowland of small value covenanted to fill in the same. The purchaser gave a mortgage for the price, based on the valuation of the land filled in. A third person acquired the purchaser's rights. After the time for performance, the vendor and the third person entered into an agreement, whereby the vendor agreed to perform the covenant. Prior to the agreement the vendor had assigned the mortgage to an assignee, who was a mere volunteer, and who had no actual interest in the matter. Held, that in a suit by the assignee to foreclose the mortgage, the third person could reduce the mortgage debt to the extent of the damages sustained by the vendor's breach of the original covenant. * * *

False representations knowingly made by a vendor to a vendee previous to the sale as to the character, condition and value of the property, are presumed to have influenced the mind of the purchaser, even though he had full opportunity to observe and know the actual truth, and the burden is on the vendor to prove clearly that such false representations did not influence the vendee in making the sale. *Turner vs. Houpt*, No. 53, N. J. E., p. 526.

Upon the foreclosure of a purchase-money mortgage the mortgagor may claim a reduction from the mortgage debt if the quantity of land which was the subject of the purchase and sale had been falsely and fraudulently represented to be greater than that which was actually con-

veyed and such fraudulent misrepresentations induced the purchase. Such a defence may be now interposed by answer without cross-bill.

When one who has been induced to contract for the purchase of land by fraudulent misrepresentations of its quantity, acquires knowledge before accepting the conveyance that the quantity which it will pass will not equal that represented, his acceptance of the conveyance will estop him from a rescission of the transaction. If by the tendered conveyance he is put upon inquiry and reasonable inquiry would disclose the deficiency, a like result will follow. But when the tendered conveyance indicates that the quantity of the land is less than that which had been represented and the purchaser calls the attention of the vendor to the discrepancy and is assured by the vendor that the represented amount will pass by the conveyance because of accretions made along a tide-water boundary of the tract, which accretions if the representation was true, would be included in the description and pass by the conveyance, the purchaser is not bound to resort to a survey but may rely on the representations and if it was knowingly false may have relief by a deduction from the mortgage debt. *McMichael vs. Webster*, 57 N. J. E., p. 295.

THE COURT RECEIVED ILLEGAL AND INCOMPETENT EVIDENCE AND REFUSED TO RECEIVE LEGAL AND COMPETENT EVIDENCE.

The Court received in evidence mortgage of April 22, 1908, for \$4,500 without title to same being shown in *George C. VanTuyt*, and without proof of his office or his right to sue in the courts of New Jersey (p. 9).

The Court allowed evidence of book entries between Industrial Savings and Loan Company and Columbia Real Estate and Investment Company (p. 13).

This was hearsay evidence and was illegal.

The Court did not allow in evidence part of an affidavit made by Thomas Milson (p. 22).

This was competent and was an admission and should have been received in evidence.

The Court allowed George C. White to answer the question, "If you were building it yourself would you sell it after you had built it for \$5,000?" relating to the house of the defendant (p. 31).

This question was improper, illegal and incompetent.

The Court allowed the question to be asked of Mr. Wells "What would you say the value of the Plummer lots is as they stand today?" (p. 43).

This was illegal and incompetent and immaterial.

The Court refused to allow Emma Hazelwood to answer the question "Is it not a fact that the prices given by the Columbia Company were grossly excessive over the real market value of the land?" (p. 48).

This was a proper and legal question.

The Court refused to allow Charles McLean to answer the question "Do you know whether the Industrial Savings and Loan Company frequently, in the last year, acquired numbers of these properties for the first mortgage which was held in the name of the New York Mortgage Company?" (p. 84).

This was a proper and legal question and should have been allowed.

The theory of complainants is that Mr. Van-Tuyl is acting in the capacity of receiver for the Industrial Savings and Loan Company.

In his official capacity (if it were proven, as it is not) he could not maintain a suit in the courts of New Jersey.

The complainants have failed to prove that Mr. Van Tuyl is Superintendent of Banks.

To maintain this suit the Industrial Company should have a receiver or ancillary receiver in this State, or other appropriate proceedings instituted to properly bring the matter before the Court.

In *Hurd vs. City of Elizabeth*, 40 N. J. L., 218, the Court holds:

When the suit is by a receiver, appointed by a Court of another state, the declaration must show the grounds of his right to sue officially.

Nor in such case will a promise to pay laid as being made to such receiver, cure the defect, as against a demurrer.

The Superintendent of Banks represents the State of New York. The State of New York is, therefore, in effect, the party to this suit. This Court has no jurisdiction.

The Court of Chancery is without jurisdiction.

Subd. 2 of Section 2 of Article 3 of the Constitution of the United States provides:

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party the Supreme Court shall have original jurisdiction."

Governor of Georgia vs. Madrazo

26 V. S. - 110 -

Kentucky vs. Hennis

65 V. S. - 97 -

The complainant, George C. VanTuyl, Jr., Superintendent of Banks of the State of New York is the State of New York within the meaning of the Constitution.

It is respectfully submitted that the decree of the Court of Chancery should be reversed.

FRANK G. TURNER,
Solicitor and of Counsel
with Defendants-Appellants.

NEW JERSEY COURT OF ERRORS AND
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INDUSTRIAL SAVINGS and LOAN
COMPANY and GEORGE C. VAN
TUYL, JR. Supt of Banks of
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GRACE FRANCES PLUMMER and
G. WINSLOW PLUMMER, her
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Defendants Appellants.

} *On Bill, Etc.*

BRIEF OF COMPLAINANTS RESPONDENTS.

This suit was brought to foreclose a second mortgage for \$4,500 dated April 22, 1908, covering a residence property occupied by the defendants as their home at Grantwood, Bergen County, New Jersey. The property lies within a tract on the top of the Palisades on the Hudson opposite Grants Tomb which was developed by the Columbia Investment and Real Estate Company commencing about 1901. At that time it was nothing but rocks and woods. The Company put in all the improvements, laid it out, built the streets and invited people to buy lots (page 79). They had a regular schedule of prices for the houses and lots which they were offering for sale. The premises in question consisted of an eight room

residence cottage and three lots known as Nos. 62, 63, 64 in block 24. This property was purchased by defendants from the Columbia Investment and Real Estate Company at the time the mortgage here foreclosed was given. The sale was negotiated between defendants and one Schuyler Budlong, a salesman of the Columbia Company. The matter was first taken up with said Budlong about three weeks or a month before the sale was consummated (page 61). The defendants had previously lived in New York City and desired to purchase a home and were recommended to Grantwood. The defendant Grace Frances Plummer went to the property of the Columbia Company and inspected the premises here in question at least twice, once with a lady friend and once with her husband the defendant G. Winslow Plummer (page 65). She talked the matter over with her husband and refused a proposition to purchase for \$14,500 with two lots. She finally offered to give \$13,000 provided an extra lot was added and this proposition was accepted (page 74). She paid \$1,000 cash, took the property subject to a first mortgage of \$7,500 held by the New York Mortgage Company and executed the present mortgage for the balance of \$4,500. The mortgage was made to Marion W. Matthews, who was an employee and dummy for the plaintiff, the Industrial Savings and Loan Company, and said Matthews assigned the mortgage the same day to the Industrial Savings and Loan Company which paid the full amount thereof to the Columbia Investment and Real Estate Company (page 20). The defendants went into possession of the premises and have occupied them ever since and are still occupying them as their home (page 56). The mortgage herein provided for monthly payments of \$65 each commencing June 1, 1908, and in addition \$500 on April 16, 1909, and annually thereafter until April 22nd, 1913, when the mortgage would become due. Said payments were to

be applied first to the payment of interest on first mortgage, second to the payment of interest on second mortgage and third to reduction of principal of second mortgage (page 120). The defendants made these payments with more or less regularity from June 1908, to March 29, 1912, namely a period of over three years, nine months, making during that period twenty-three individual payments aggregating \$3,129.16 (Exhibit C 8 p. 127). No payments have been made since March 29, 1912. Of this amount of \$3,129.16, \$1,942.50 was paid for interest on the first mortgage and the balance of \$1,186.66 was applied on the present mortgage. This balance was insufficient to pay the interest on the present mortgage on which at the date of trial there was due \$4,908.59. The defendants never made the slightest claim or complaint that they had been defrauded with reference to the purchase of the property until after the bill in this suit was filed (page 70). They filed an answer and an amended answer to the bill claiming that the value of the property had been misrepresented by the agents of the Columbia Investment and Real Estate Company conspiring with the New York Mortgage Company and Industrial Savings and Loan Company which by their agents united in representing to the defendants that the property was worth \$13,000 whereas defendants here allege it was in fact of the value of only \$6,000 and claim an abatement of the mortgage. The suit went to a hearing on the facts before Vice Chancellor Stevenson on December 9, 1913, at Jersey City and resulted in a final decree of December 29th, 1913, in favor of complainants directing the sale of the premises, and defendants have appealed to this court from such decree.

POINT I.

THE CLAIM OF FRAUD IN CONNECTION WITH THE SALE OF THE PREMISES TO DEFENDANTS IS WITHOUT MERIT.

Passing over the serious question as to whether in any event an abatement of this mortgage could be allowed, claimed by answer alone, against the present complainant for the fraud of the Columbia Company which is not a party to the suit or attempted to be brought in by cross bill, although it received \$1,000 of the purchase price of which an abatement is asked, it is perfectly clear from the facts that no fraud was committed. In view of this it is unnecessary, we believe, to argue the point that the Industrial Savings and Loan Company by its own employee and dummy, Marion W. Matthews, took this mortgage directly from the defendants on the date of the deed to defendant Grace Frances Plummer and therefore, not being an assignee of the Columbia Company, can not be bound by any fraud in the transaction between the Columbia Company and defendants. For the same reason neither is it necessary to argue the question whether an abatement for fraud in misrepresenting the purchase price can be claimed by answer alone against the assignee of the vendee without bringing in the vendor himself by cross bill, as to which from the following authorities (which we will simply cite without attempt at discussion), there would seem to be grave doubt.

- Peterson v. Reid, 76 Eq. 378.
- Haberman v. Kaufer, 60 Eq. 271.
- McMichael v. Webster, 57 Eq. 295.
- Kuhnen v. Parker, 56 Eq. 286.
- Wooster v. Cooper, 56 Eq. 759.
- Green v. Stone, 54 Eq. 387.
- Richman v. Donnell, 53 Eq. 32.
- Skinner v. Christie, 52 Eq. 720.

Melick v. Dayton, 34 Eq. 245.
Parker v. Hartt, 27 Eq. 362.
Parker v. Hartt, 32 Eq. 570.
Parker v. Jameson, 32 Eq. 222.
Parker v. Hartt, 32 Eq. 225.
O'Brien v. Hulfish, 22 Eq. 471.
Coursen v. Caufield, 21 Eq. 92.
Graham v. Berryman, 19 Eq. 28.
Graham v. Berryman 21 Eq. 370.
Miller v. Gregory, 16 Eq. 274.

Our reasons for saying that defendants' claim of fraud is without merit are, 1st, that the only misrepresentation claimed is as to the value of the property, which is a matter of opinion and not a matter of fact and, 2nd, the evidence in the case clearly shows that the value was not misrepresented, and the learned Vice Chancellor has so found.

The elements of fraud alleged in the answer are that the agents of these companies represented that the property was worth \$13,000 and, in order to give credibility to this representation, placed a dummy first mortgage on the premises of \$7,500 which they claim was assigned to New York Mortgage Company without consideration; that the agents of these companies guaranteed to resell the property for \$13,000 at any time within a year if defendants were dissatisfied with it; and stated that the title would be guaranteed for \$13,000 by a Title Company and that this would not be done unless the property were worth \$13,000. It is clear without argument that the so-called verbal guarantee to re-sell is a promise and not an element of the fraud. Neither is the statement with reference to the title insurance, a representation as to any existing fact, and no evidence was attempted to be produced to show the alleged falsity of the statement that the Title Company would not insure unless the property was reasonably worth the amount. There is no

proof in the case that the first mortgage was without consideration, and in fact the evidence shows that the complainant has paid to the New York Mortgage Company on account of said first mortgage interest amounting to \$1,942.50 out of the moneys collected from defendants (pages 13, 14, 15). The only remaining issues therefore are whether the value of the property was misrepresented to defendants and if so, whether such misrepresentation constitutes legal fraud for which they are now entitled to relief. As hereinafter appears, the value was not misrepresented, and misrepresentation of value even if it existed, would not constitute fraud, and hence defendants claim of fraud is without merit.

POINT II.

THE VALUE OF REAL PROPERTY IS A MATTER OF OPINION AND CANNOT BE A SUBJECT OF FRAUDULENT MISREPRESENTATIONS IN THE ABSENCE OF RELATIONS OF TRUST AND CONFIDENCE.

The above proposition is sustained by the following cases which hold, in effect, that statements as to value made by a vendor have always been considered mere expressions of opinion which the other party accepts as true at his own risk.

Hallinger v. Zimmerman, 59 Eq. 644.

Conlan v. Roemer, ^{Low} 52 Eq. 53.

Wise v. Fuller, 29 Eq. 257.

Miller v. Gregory, 16 Eq. 274.

A vendee has no legal or equitable right to rely upon the vendor's statements of value as matter of fact, "it being deemed his own folly to credit a ~~nude assertion of that nature~~, Wise v. Fuller, nude assertion of that nature." Wise v. Fuller, *supra*. It is no proof of fraud "that the defendant

paid too high a price for the land." *Miller v. Gregory, supra.*

There is not the slightest claim that the salesmen who represented the Columbia Company in this transaction were under any fiduciary duty to defendants. They were entitled to indulge in the customary "dealer's talk" and to assure defendants that the price asked was cheap and that the defendants were getting a bargain. If the price paid was too high, it is defendants' own folly and furnishes no ground for any legal or equitable relief even against the Columbia Company.

Furthermore any proper claim for fraud which the defendants might ever have had has been waived by their laches and acts of affirmance.

"If the defrauded party acquires knowledge of the fraud while the contract remains executory and thereafter does any acts in performance or affirmance of the contract, or exacts performance from the other party, he thereby condones the fraud and waives his right of action."

20 Cyc., 92, title "Fraud."

See also, *Conlan v. Roemer, supra.*

The conduct of the defendants in this case in remaining in possession of the property ever since April 22, 1908, without making any complaint until they filed their answer in this case and meanwhile making repeated payments on account of the mortgage herein for a period of over three years and nine months operates as an effectual waiver of any fraud that may have been committed upon them, if indeed it does not indicate that the present defense is not interposed in good faith. Where a party is guilty of laches and his conduct is lacking in good faith, equity will grant him no relief. The present defendants have no standing in this court on the ground of misrepresentation in the value of the property.

POINT III.

THE EVIDENCE SHOWS THAT THE VALUE OF THE PROPERTY WAS NOT MISREPRESENTED TO DEFENDANTS.

On the question of the value of the property, in order to sustain their defense of misrepresentation, defendants called three witnesses, a young builder Mr. George C. White, two real estate experts, George H. Limbach and Fred A. Wells and a former sales manager of the Columbia Company, Charles McLain.

The plaintiff, in rebuttal, called one real estate expert and appraiser, James A. Eaton.

Limbach, testifying for defendants, stated that the three lots in question were worth, to-day, possibly \$2,200, and that in 1908 they would sell for "double value" (pages 25, 26). According to this witness therefore, the lots in 1908 were worth \$4,400.

Wells, testifying for defendant, stated in his opinion the three lots were worth in 1908 about \$3,000. He had the two lots adjoining them for sale at that time for \$2,100 (page 34). Many lots of this character however, sold as high as \$1,500 a piece, p. 38) and he knows of lots similar to the Plummer lots which were held by the owners at \$1,500 a piece (p. 40). He thinks that the schedule price for lots where the Plummer lots were, was in the neighborhood of \$1,500 (p. 41). The values to-day are much lower than in 1908 (p. 43), and he thinks the Plummer lots are worth to-day \$1,800 only, for the three.

McLain, a witness also testifying for defendants and sales manager for the Columbia Company from January, 1904, to June, 1912, testified that two lots immediately adjacent to the Plummer lots sold for \$3,350 or \$3,400 and that the regular schedule price of the Plummer lots in 1908, ran about \$1,500 or \$1,600 a piece (p. 81)

Mr. Eaton, complainant's expert, was more conservative if anything than defendants' witnesses. He stated the fair market value of the three lots in 1908, at \$3,750, although he knows that the two lots adjoining on the east sold for \$3,400 (p. 90).

A fair inference from this evidence is that the three lots were reasonably worth at least \$4,500 in 1908, and they might reasonably be regarded as cheap at that price. It is undisputed that a boom was in progress prior to 1908, and that prices had been gradually rising since 1904, and had not yet begun to fall in 1908, although the panic had practically stopped the sales. Real estate prices had not yet felt the effect of the panic (pp. 43, 95).

As to the house, defendants' witness, White, a builder but thirty-three years of age and with but six years experience in building, who had apparently never built a similar house (p. 32), stated that in his opinion he could duplicate it to-day for \$5,000 and that materials were 10% less in 1908. This figure would not include, however, any carrying charges, cost of grading, gardening, surveying, gas range, window chades, bath fixtures or seller's profit (pp. 31, 32).

Mr. Eaton, a mortgage loan broker and real estate appraiser, who saw the Plummer house built and inspected it while in the course of construction (p. 89) estimated the cost of the house in 1908 at \$7,500 (p. 90) which would not include grading, surveying, carrying charges or selling profit. The Learned Vice Chancellor would certainly be justified in accepting, as he evidently did, Mr. Eaton's appraisal in preference to Mr. White's. It cannot be said that the evidence on the question of the value of the house at all preponderates in favor of defendants' estimate and consequently this court must assume that the reasonable cost of the house was \$7,500. The vendor would be justified in adding to the cost a reasonable amount for selling profit, carry-

ing charges and the extras not included in Mr. Eaton's appraisal so that a valuation of \$8,000 or \$8,500 would be moderate. Figuring the lots at \$4,500 and the house at \$8,500 would give a price of \$13,000.

It is clear, therefore, that there was no falsity in the representation that the property in 1908 was worth \$13,000 when sold on the liberal terms of the sale to defendants. A house identically similar and located on three lots in a little better location sold for \$14,000 (p. 94). The trouble is that since 1908 real estate values in that vicinity, as in many other places, have been going steadily down. Moreover the Columbia Company has gone in the hands of a Receiver (p. 85) and development has ceased and the appearance of the tract has consequently suffered (p. 26) which naturally reacts on real estate values. This transaction however, must be considered in the light of the situation as it existed in 1908, and it would seem that \$13,000 was at that time a fair valuation.

POINT IV.

THERE ARE NO ERRORS IN THE RULINGS ON RECEPTION OR REJECTION OF EVIDENCE.

Appellant complains of various alleged errors in reception and rejection of evidence. Some of them have no foundation in fact and none of the others presents any serious question. For instance, the Court did *not* allow evidence of book entries between Industrial Savings & Loan Company and Columbia Real Estate & Investment Company. This matter appears in the record at pp. 20, 21 (and not p. 13, as cited in appellant's brief) where it appears the respondent's counsel did not press the point. The ruling of the Court as to the affidavit of Thomas Milsom was, as ap-

pears from p. 24 "I will hold this matter under advisement." There is no ruling rejecting this affidavit and appellant's counsel will not deny that this was considered by the Vice Chancellor in his oral decision and its weight as evidence pointed out, assuming it to be competent. The affidavit is clearly immaterial. It simply states that the first mortgage when issued, was issued to a dummy of the Columbia Company. This does not in the slightest prove that when assigned to the New York Mortgage Company the latter company paid no consideration for the assignment. We submit that the Milsom affidavit *was* admitted and considered, and that it is immaterial in its effect, as it is not supported by any evidence that the New York Mortgage Company did not pay value for the first mortgage. The remaining rulings on evidence complained of are too clearly correct to require any argument.

POINT V.

THERE IS NO FOUNDATION IN THE RECORD FOR APPELLANT'S ARGUMENT THAT THE COURT OF CHANCERY IS WITHOUT JURISDICTION.

Appellant claims that there is no proof of title in the Complainant George C. Van Tuyle, Jr.; that the suit is maintained by him as Superintendent of Banks of the State of New York; that there is no proof that George C. Van Tuyle Jr. is Superintendent of Banks of the State of New York; that the State of New York is the complainant within the meaning of Sub. 2 of Sec. 2 of Art. 3 of the Constitution of the United States; and that the Court of Chancery has no jurisdiction.

None of these points is well taken. It is not the theory of complainants, as alleged in appellant's brief, that Mr. Van Tuyle is acting in the

capacity of receiver for the Industrial Savings & Loan Company. The theory of complainants with reference to Mr. Van Tuyle's relation to the suit is that he is at most a formal and proper, but unnecessary, party. No proof of title was offered because he is vested with no title, and it is not alleged that he is vested with title. The allegation of the complaint with reference to the complainant George C. Van Tuyle, Jr., Superintendent of Banks of the State of New York appears at p. 104 of the record. After alleging the assignment of the mortgage in suit by Marion W. Mathews to the complainant Industrial Savings & Loan Company and alleging that "the said Industrial Savings & Loan Company became, was and still is the owner and holder of said bond and mortgage," the complaint continues as follows:

"And your orators further show that on the 29th day of June, 1912, George C. Van Tuyle, Jr., Superintendent of Banks of the State of New York, pursuant to the provisions of Sec. 19 of the New York State Banking Law took possession of the property and business of the Industrial Savings & Loan Company and now retains possession thereof."

The complaint, therefore, alleges that the Industrial Savings & Loan Company is the owner and holder of the mortgage and the suit is consequently maintained by it and in its name, and the presence of the Superintendent of Banks is not necessary to the maintenance of the suit. Defendant's answer does not deny the ownership of the mortgage by the Industrial Savings & Loan Company and it does not deny the above allegation with reference to George C. Van Tuyle, Jr. There was nothing, therefore, for complainants to prove under the pleadings with reference to the complainant George C. Van Tuyle, Jr. The fact that he is in possession of the property and busi-

ness of the Industrial Savings & Loan Company is admitted, but he is vested with no title, does not claim to be the owner and holder of the mortgage and does not bring the suit as such owner and holder. It is simply alleged that he is in possession of the property and business of the Industrial Savings & Loan Company pursuant to the New York State Banking Law, which furnishes the excuse for making him a formal party complainant. This suit is maintained, and the decree was entered, in the name of the owner and holder of the bond and mortgage, the complainant, Industrial Savings & Loan Company, and is not maintained, actually or constructively, by the State of New York.

Furthermore the provision of the Constitution of the United States cited by appellant does not deprive a State Court of jurisdiction over an action brought by a State against citizens of other states. *Plaquemines Tropical Fruit Co. v. Henderson*, 170 U. S., 511. The jurisdiction of the United States Supreme Court is not exclusive, but concurrent with that of the State Courts, subject to the right of removal to the proper Federal Court.

The case of *Hurd v. City of Elizabeth*, 40 N. J. L. 218 cited by appellant is inapplicable to the facts of this case. There the suit was brought by the receiver and the Chief Justice sustained a demurrer to the declaration on the ground that it did not show any right in the plaintiff to sue for debts alleged to be due not to him but to another person. It is not claimed in the present suit that the Superintendent of Banks is the legal owner and holder of the mortgage but the contrary is claimed, namely, that the complainant Industrial Savings & Loan Company is such owner and holder; and it is alleged in the complaint and not denied in the answer, that George C. Van Tuyle, Jr., Superintendent of Banks of the State of New York, has taken possession

of the property and business of the Industrial Savings & Loan Company pursuant to the New York State Banking Law. The consequence of this is that the he would seem to be a proper party, though not a necessary party, to the suit which is brought and maintained in the name of the Industrial Savings & Loan Company.

It is true that the defendant's answer contained the following, (page 109) :

“These defendants deny that George C. Van Tuyle, Jr., Superintendent of Banks of the State of New York, has the power or authority in his official capacity to maintain a suit of this nature in the Court of Chancery. They deny his office and power of office.”

The suit, however, is not maintained by Mr. Van Tuyle but, as appears from the complaint, by and in the name of the Industrial Savings & Loan Company and consequently this attempted denial raises no issue as it is not addressed to any allegation of the complaint.

Lastly, it would seem that even if there was any substance to appellants' objection with reference to the capacity of complainant George C. Van Tuyle, Jr., to maintain the suit such objection should have been raised by demurrer or at least by motion to dismiss and is waived by answering and going to a hearing on the merits.

Hoagland v. Supreme Council, 70 Eq.
607, 610.

POINT VI.

THE DECREE HEREIN OF THE COURT OF CHANCERY
OF DECEMBER 29TH, 1913, SHOULD BE AFFIRMED
WITH COSTS.

Respectfully submitted,

FREDERICK P. SCHENCK,
Solicitor of Complainants-Respondents.

J. BOYCE SMITH, JR.
Of Counsel.

10/1/30

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Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

Filed Feb. 16th, 1914.

Between INDUSTRIAL SAVINGS
& LOAN COMPANY AND GEO.
C. VAN TUYL, JR., Superin-
tendent of Banks of the State
of New York,

Complainants,

and

GRACE FRANCES PLUMMER AND
G. WINSLOW PLUMMER, her
husband,

Defendants.

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On Bill, &c.

Notice of Appeal

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The defendants, Grace Frances Plummer and George Winslow Plummer, her husband, hereby appeal to the New Jersey Court of Errors and Appeals in the last resort in all causes from the final decree, and from the whole and every part thereof, made in this court, in the above stated cause, as declares the mortgage of the said complainant, Industrial Savings & Loan Company, in the pleadings in the cause mentioned, to be an existing encumbrance upon the premises described in the complainant's bill of complaint; and also to every part of the decree that holds, or from which it may be inferred that the Court of Chancery of New Jersey has jurisdiction of this cause of action; and to every part thereof which holds, or from which it may be inferred, that George . Van Tuyl, Jr., Superintendent of Banks

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of the State of New York, is in fact Superintendent of Banks of the State of New York or that if he were such Superintendent of Banks of the State of New York, he would be entitled to, or could maintain this suit; and to every part of the said decree which holds or from which it may be inferred that the defendant, Grace Frances
 10 Plummer, is not entitled to have an abatement against the mortgage of the Industrial Savings & Loan Company, either to the full amount of said mortgage or to a certain portion or portions of said mortgage; and from every part thereof which holds that the premises described in the bill of complaint should be sold to raise the sum of \$4,923.59; and the defendants appeal
 20 from the whole of the said decree because the court admitted illegal and incompetent evidence, upon which the said decree is founded and because the court refused to receive legal and competent evidence offered on behalf of the defendants; and because the court refused to make a decree finding that the defendants were not indebted to the complainant, and that the complainant, Industrial Savings & Loan Company, was indebted to the defendants, and because the
 30 court refused to make a decree finding that under the Constitution of the United States, it had no jurisdiction of this cause of action and no jurisdiction over the parties to the said suit.

Yours respectfully,

FRANK G. TURNER,
 -Solicitor of Defendants.

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

FRANK G. TURNER,
 Of Counsel with Defendants.

Petition of Appeal.

Filed March 10, 1914.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between INDUSTRIAL SAVINGS
& LOAN COMPANY AND GEO.
C. VAN TUYL, JR., Superin-
tendent of Banks of the State
of New York,

Complainants-Respondents,

and

GRACE FRANCES PLUMMER AND
G. WINSLOW PLUMMER, her
husband,

Defendants-Appellants.

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On Bill, &c.
Petition of
Appeal.

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The petition of Grace Frances Plummer and
G. Winslow Plummer, her husband, the appel-
lants in the above stated cause, respectfully shows,
that your petitioners find themselves aggrieved
by a final decree made in the Court of Chancery
by his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey, bearing date the 29th
day of December in the year 1913, wherein the
said Industrial Savings and Loan Company and
George C. Van Tuyl, Jr., Superintendent of Banks
of the State of New York, were complainants and
the said Grace Frances Plummer and G. Winslow

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Plummer, her husband, were defendants, in this respect, to wit, that the said decree declares the mortgage in the bill of complaint in the said cause mentioned to be an existing encumbrance upon the premises described in the bill of complaint; and because the said decree holds, or it may be inferred therefrom, that the Court of Chancery
10 of New Jersey has jurisdiction of this cause of action, whereas, your petitioners allege that the Court of Chancery of New Jersey has no jurisdiction over this cause of action; because the said decree holds, or it may be inferred therefrom, that George C. Van Tuyl, Jr., is Superintendent of Banks of the State of New York, whereas, there was in fact, no proof that he is Superintendent of Banks of the State of New York, or that there
20 was in existence any such person as Superintendent of Banks of the State of New York, or that there was any such office as the office of Superintendent of Banks of the State of New York; that the said decree holds or it may be inferred therefrom that the Superintendent of Banks of the State of New York is entitled to and can maintain this suit in the Courts of New Jersey, whereas, your petitioners allege that the Superintendent of Banks of the State of New York, as such,
30 has no power or authority to maintain this suit; that the said decree adjudges that the said Grace Frances Plummer is not entitled to have an abatement against the mortgage of the Industrial Savings and Loan Company, either to the full amount of said mortgage or certain portion or portions of said mortgage; because said decree adjudges that the property described in the bill of complaint should be sold to raise the sum of \$4,923.59, whereas these appellants claim that the said property
40 should not be sold to raise the said sum of \$4,923.59; that the said decree adjudges or it may

be inferred from the same that the Industrial Savings and Loan Company is not indebted to the defendants, whereas these appellants claim that the said Industrial Savings and Loan Company is indebted to these appellants-defendants and that the said defendants are not indebted to the said Industrial Savings and Loan Company. That the said decree is based upon illegal and incompetent evidence and the said court at the hearing in this suit refused to receive legal and competent evidence offered by the defendants-appellants upon which said decree should have been based. 10

That the court erroneously received in evidence the mortgage of April 22, 1908, for \$4,500 without title to same being shown in George C. Van Tuyl and without proof of his office or his right to sue in the courts of New Jersey; that the court allowed evidence of book entries between Industrial Savings and Loan Company and Columbia Investment and Real Estate Company. Because the court did not allow in evidence part of an affidavit made by Thomas Milson; because the court allowed George C. White to answer the question: "If you were building it yourself, would you sell it after you had built it, for \$5,000?", relating to the house of the defendant. That the court allowed the question to be asked of Mr. Wells: "What would you say the value of the Plummer lots is, as they stand to-day?"; that the court refused to allow Emma Hazelwood to answer the question: "Is it not a fact that the prices given by the Columbia Company were grossly excessive over the real market value of the land?"; that the court refused to allow the following question to be answered by Charles McLean: "Do you know whether the Industrial Savings and Loan Company frequently, in the last year acquired numbers of these properties for the first mortgage 20 30 40

which was held in the name of the N. Y. Mortgage Co.?"

Your petitioners humbly appeal from the entire decree herein, because the same is erroneous and because the same is based upon the foregoing testimony which was improperly admitted and is made notwithstanding the exclusion of foregoing
10 testimony which was improperly excluded.

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

FRANK G. TURNER,
Solicitor of Appellants,
and
Of Counsel with Appellants.

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Answer to Petition of Appeal.

Filed March 20, 1914.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

Between INDUSTRIAL SAVINGS
& LOAN COMPANY AND GEO.
C. VAN TUYL, JR., Superin-
tendent of Banks of the State
of New York,
Complainants-Respondents,

and

GRACE FRANCES PLUMMER AND
G. WINSLOW PLUMMER, her
husband,
Defendants-Appellants.

On Bill, &c.,
Answer to
Petition of
Appeal.

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The answer of the above named respondents to
the petition of appeal of the above named appel-
lants.

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These respondents, not acknowledging all or any
of the matters which in the said petition of ap-
peal are contained to be true, for answer thereto,
nevertheless, say and admit, that a decree was,
on the 29th day of December, 1913, last past,
made and entered in the Court of Chancery, in
the cause for that purpose mentioned in the said
petition, as is therein stated; but as to the sub-
stance and form thereof, these respondents pray

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to refer thereto when the same shall be produced.
And these respondents are advised and believe,
that the said decree is agreeable to equity, and
they pray that the same may be affirmed, with
costs to be adjudged to these respondents.

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FREDERICK P. SCHENCK,
Solicitor of and of Counsel
with Respondents.

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Testimony.

IN CHANCERY OF NEW JERSEY.

INDUSTRIAL SAVINGS & LOAN
COMPANY *et al.*,
Complainants,

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and

GRACE FRANCES PLUMMER *et al.*,
Defendants.

Jersey City, N J., Tuesday December 9th, 1913. 20

Before Honorable EUGENE STEVENSON, Vice
Chancellor.

SMITH SCHENCK and MC DAVITT (Mr. J.
Boyce Smith and Mr. Frederick P.
Schenck) for Complainant.

Mr. Frank G. Turner, for Defendant.

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Complainant's counsel offered in evidence mortgage from Grace Frances Plummer and G. Winslow Plummer to Marion W. Matthews, dated April 22, 1908, for \$4,500 recorded in the Bergen County Clerk's Office April 23, 1908 in Book 210, page 465, being the mortgage upon which the suit is brought.

Mr. Turner: I object to the offer of this mortgage and of any other exhibits that are offered in this case relating to this mortgage unless they

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are afterwards connected up to show title in the complainant George C. Van Tile the commissioner of banking of New York and we raise the question in this case that we desire proof of the office of Mr. Van Tile and we also insist that he is not entitled in his capacity as such commissioner if it is proved he is such to maintain an action
10 in the Courts of this State.

The Court: You may proceed the objection is not sustained.

Mortgage offered in Exhibit C. No. 1 December 9, 1913, H. W. K.

Mr. Smith: I offer in evidence bond of Grace Frances Plummer and G. Winslow Plummer to Marion W. Matthews, dated, April 22nd, 1908, in the penal sum of \$9,000.

Mr. Turner: The bond is not proven.

20 Mr. Smith: Do you deny that is the bond of the defendant (exhibiting bond to Mr. Turner).

Mr. Turner: It is admitted.

The bond offered in evidence was marked C, No. 2, December 9th, 1913, H. W. K.

30 Mr. Smith: I offer in evidence an assignment of mortgage executed by Marion W. Matthews to the Industrial Savings and Loan Company dated April 22nd, 1908, received in the office of the Clerk of the County of Bergen, April 29th, 1908, and recorded in Book 46 of assignments of mortgages page 80.

Marked Exhibit C, No. 3, December 9, 1913, H. W. K.

MARION W. MATTHEWS, sworn for the Complainant.

Direct examination by Mr. Smith:

Q. What is your occupation? A. Bookkeeper.

Q. By whom are you employed at present? A. At present by the State Banking Department in liquidation of the Industrial Savings and Loan Company. 10

Q. Before you were employed by the State Banking Department by whom were you employed? A. By the Industrial Savings and Loan Company.

Q. How long were you employed by the Industrial Company? A. About 17 years.

Q. During those seventeen years were you employed by any other company? A. No, sir. 20

Q. Did the State Superintendent of Banking continue the offices of the Industrial Company in the Times Building? A. He did.

Q. Did you stay in the office of the Industrial Company after the State Superintendent of Banking took charge? A. I did.

Q. What are your duties at the present time and what were they before the State Superintendent took charge? A. Now, bookkeeper and prior bookkeeper. 30

Q. Since January, 1908, have you kept charge of the books of account of the Industrial Company? A. I did.

Q. Have you kept charge of the payments of interest on mortgages? A. I did.

Q. Have you kept charge of paying out interest on first mortgages where the interest was to be paid out of the sums received on second mortgages? A. I did. 40

Q. Are you familiar with the second mortgage

of \$4,500. executed by Grace Frances Plummer and G. Winslow Plummer to you, and assigned by you to the Industrial? A. I am.

Q. Are you the Marion W. Matthews mentioned in that mortgage? A. I am.

10 Q. Have you with you the original entries in the books showing the payments made by Grace Frances Plummer and G. Winslow Plummer on account of that mortgage? A. I have.

Q. Have you figured the amount of interest from April 22nd, 1908 until to-day December 9th, 1913, at six per cent on \$4,500 the principal of that mortgage? A. I have.

Mr. Turner: I object to that as far as mortgage is concerned, there is nothing as yet to show that there is \$4,500 due.

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The Court: Counsel for the complainant sees fit to go into this matter, but I do not see why counsel does so. The bond and mortgage are proved.

Mr. Smith: I want to show the amount due to-day.

The Court: Cannot you admit the amount that has been paid to date?

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Mr. Smith: Yes, but I want to give Mr. Turner an opportunity of knowing how I arrive at it.

Q. What is the amount of that interest? A. \$1,510.25.

Q. Have you added \$85. for insurance premiums? A. I have added that to the principal of the mortgage.

Q. What is the result? A. \$6,095.25.

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The Court: Up to what date?

Witness: That is up until to-day.

Q. Will you state the amount of the total payments made on the mortgage from April 22nd, 1908? A. \$3,129.16.

Q. Will you state the amount of interest paid on the first mortgage of \$7,500 of April 22nd, 1908? A. \$1,942.50.

Q. What is the difference between \$1,942.50 and \$3,129.16? A. \$1,186.66. 10

Q. Have you subtracted that \$1,186.66 from the \$6,095.25? A. I have.

Q. What is the result? A. Balance due \$4,908.59.

Q. That is the balance due today on the mortgage of \$4,500 with interest?

Mr. Turner: Objected to as a conclusion.

The Court: Let the witness testify. 20

Q. Will you answer the question (last question read to witness)? A. It is.

Q. And after deducting from the payments the amount paid on account of interest on the first mortgage? A. I do not understand that question.

Q. You have deducted from the payments made by the Plummers the amount which was used to pay interest on the first mortgage held by the New York Mortgage Company, have you not? A. Yes, sir. 30

Q. And you have given them credit for the balance of the payment? A. Yes, sir.

Cross examination by Mr. Turner:

Q. The Industrial Savings and Loan Company is doing no further business, is it? A. Not as the Industrial Savings and Loan Company, it is of course with the State Banking Department liquidating the Industrial Savings and Loan Company, as such it is doing business. 40

Q. The State Banking Department is doing all the business, is it not? A. It is, for the Industrial Savings and Loan Company.

Q. You have been in the employment of that company for how many years? A. Seventeen or more.

10 Q. You spoke of a first mortgage that is held by the New York Mortgage Company? A. It is.

Q. Where did they have their office? A. In the Times' Building.

Q. At the same place as the Industrial? A. Not the same offices in the same building.

Q. On the same floor? A. The same floor.

Q. Part of the same offices of the same suite? A. Yes, they have an entire floor, they are separate offices.

20 Q. The same suite, though? A. No, divided off.

Q. The same entrance? A. The same entrance, yes.

Q. Did the Columbia Real Estate and Investment Company have an office there? A. They did.

Q. The same entrance? A. Yes, sir.

Q. On the same floor? A. The elevator was the opening and there was one main hall which gave admission to all the offices.

30 Q. Did you do work for the New York Mortgage Company too? A. No.

Q. Did you keep any of their records? A. No.

Q. How did you know then about the interest on this first mortgage if you did not keep a record? A. Because we have interest table cards; with the second mortgage we ought to take care of the first mortgage interest, therefore I knew they had the first mortgage and we had to pay the interest.

40 Q. You paid the interest to the New York

Mortgage Company on the first mortgage, did you? A. Yes, sir.

Q. What did you have to do with the Columbia Investment and Real Estate Company? A. Nothing.

Q. Did the Industrial Savings and Loan Company, the New York Mortgage Company and the Columbia Investment and Real Estate Company all move into these offices at the same time? A. Practically. 10

Q. Did you ever act as a dummy for the Columbia Investment and Real Estate Company? A. That, I do not recall.

Q. Did you ever act as a dummy for the New York Mortgage Co.? A. I do not recall that.

Q. How often did you act for the Industrial Savings Loan? A. I could not state that.

Q. Very often? A. I do not remember. 20

Q. This \$4,500 the amount of this mortgage given to you, you did not advance \$4,500 for Mrs. Plummer, did you? A. Not personally.

Q. Or any other sum? A. Not personally.

Q. Did anybody turn over \$4,500 to her? A. The Industrial Savings and Loan Co.

Q. Turned over \$4,500 to her in cash? A. No, not to Mrs. Plummer; she assumed the \$4,500 from the Industrial Savings and Loan Co. 30

Q. No one turned any cash over to her, did they? A. Not to my knowledge.

The Court: This was a purchase money mortgage I understand?

Mr. Smith: Yes, sir.

Q. Did you ever hold title to this property? A. The evidence shows such, does it not, the mortgage—the transfer of the mortgage. 40

Q. You never had a deed for this property,

did you, the title to this property was in the Columbia Investment and Real Estate Company at all times, was it not? A. I don't remember.

Q. As a matter of fact you don't know, is that correct? A. I don't remember the mortgage was in my name, was it not? The papers have been put in evidence that shows the mortgage was
10 put in my name at that time.

Q. That is all you know about it, is it not?
A. Why, I know I signed those papers.

Q. All you signed was an assignment of the mortgage, was it not? A. I don't remember.

Q. At the time this mortgage was made to you so far as you know you had absolutely no interest in this property at all? A. Only as a matter of conveyance.

Q. You did not have any interest as a matter
20 of conveyance, did you? A. The mortgage was taken in my name.

Q. And that is all there was to the transaction? A. It was a proper mortgage taken in my name, the mortgage really existed.

Q. Can you tell us how frequently you did act as a dummy for the taking of such mortgages?
A. I cannot.

Q. Was it several times a week? A. I don't remember.

Q. You very often did act, did you not? A.
30 Once in a while.

Q. And then you always assigned these mortgages to the Industrial, did you? A. I do not remember.

Q. You personally never saw Grace Frances Plummer before today, did you? A. I may have, I do not remember. I met Mr. Plummer in the transaction, but not Mrs. Plummer as far as my
40 memory is concerned.

Q. Who else was there who acted as a dummy?

A. I do not recall.

Q. Was Mr. Runlett there? A. I do not know him.

Q. Do you know Mr. Mohair? A. Yes, sir.

Q. Did he act as a dummy too? A. He may have, not to my personal knowledge.

Q. In whose employ was he? A. He was employed by the Industrial Savings and Loan Company, I think. 10

Q. Was not Mr. Runnett also employed by the Industrial? A. No, I do not know the person.

Q. Did you have title there with the Industrial or were you simply a clerk? A. I was supposed to be cashier, cashier and bookkeeper.

Q. Were you a director? A. No.

Q. Who had general supervision of the matters of the Industrial? A. Why, I suppose that would come into the Secretary's duties. 20

Q. When any question was to be passed upon who was the head to which it was taken to be passer upon? A. It would depend upon what the question was.

Q. Take the matter of acting as a dummy on a mortgage, who would tell you to do that? A. I don't know just who would decide on that.

Q. Was Mr. Knox connected with this company? A. He was Secretary. 30

Q. And he passed on those questions, didn't he? A. I don't know if he passed on them all there were other officers.

Q. But he passed on all he had an opportunity to pass on, didn't he? A. Such as came under his jurisdiction, I presume.

Q. Did Mr. Knox also pass on questions for the New York Mortgage Company? A. I know nothing about it. 40

Q. Did he also pass on questions for the Columbia Real Estate and Investment Co.? A. I know nothing at all about it.

Q. You did know that Mr. Knox had the New York Mortgage Company formed, didn't you? A. I knew of such a company and knew Mr. Knox was connected with it, but I had no dealings with them personally.

10 Q. You knew that Mr. Knox was connected with the Columbia Real Estate and Investment Company? A. Yes, sir.

Q. Didn't many matters arise in the Columbia Company that were also referred to Mr. Knox at the Times Building? A. I know nothing about their business, I was in the Industrial and had nothing to do with either of the other companies.

20 Q. Where was your office in the Industrial as related to the office of Mr. Knox? A. On the extreme end of the building; Mr. Knox's office was on the 42nd St. end of the building and mine was on the 43rd St. end, the extreme ends of the building.

Q. Did you have occasion to go into his office during the day? A. I did.

30 Q. In what part of the offices was the office of Mr. Knox in relation to the Columbia Company and the New York Mortgage Company? A. I don't know. I presume in their director's meetings, they held them there. I don't know anything about that part. Mr. Knox had an office at the Times Building, the extreme end, the 42nd St. end.

Q. How many rooms were there in the office in your suite? A. There was one general work room and I think there were three or four small rooms.

40 Q. Which room were you in? A. I had a small office off the general work room.

Q. In the general work room was the business of the Industrial transacted? A. It was.

Q. Was the business of the Columbia transacted there? A. It was not.

Q. Where was it transacted? A. In their own department, they had an office of their own which was opposite the entrance of the elevator.

Q. Who was in their office? A. They had a 10
corps of help, I don't just recall all.

Q. Was not the business of the New York Mortgage Company transacted in the general work room? A. Transacted in its own office.

Q. Where was that? A. In one of the suite of offices on that floor.

Q. Which company had the most office work to be done? A. That would be very hard to say, they were both large companies, the Columbia and the Industrial. They both had large suites 20
of offices and it would be very difficult to say which had the most work.

Q. Was the room the Columbia Company as large as the room of the Industrial—the work-room? A. I don't know anything about the floor space, they were both large rooms.

Q. How many employees were there altogether on that floor? A. There was quite a number; I never counted them.

Q. You do not know for which companies they 30
worked? A. I know who worked for the Industrial, I was not connected with the other companies therefore I was not interested in their employees.

Redirect examination:

Q. You understand that Mrs. and Mr. Plummer 40
bought the property on which this mortgage was

given from the Columbia Real Estate and Investment Company, don't you? A. Yes, sir.

Q. And they gave back this \$4,500 second mortgage as part of the purchase price? A. They did.

Q. And the mortgage was issued to you as a dummy, was it? A. Yes, sir.

Q. And assigned by you to the Industrial Savings and Loan Company? A. Yes, sir.

Q. Do you know if the Industrial Savings and Loan Company actually paid the Columbia Company for that assignment? A. There is no doubt they did, the book entires show that.

Mr. Turner: I object.

Witness: I say the book entry shows it.

The Court: You may cross examine. The question whether they did. She must answer of her own knowledge.

Q. Did you keep books in reference to that transaction? A. I did.

Q. I show you a paper and ask you what that is? A. That is a leaf in reference to this mortgage out of a loose leaf book which contained the mortgage.

Q. You had a loose leaf ledger? A. Yes, sir.

Q. Is that the original page? A. That is the original page.

Q. After refreshing your recollections from that page can you state whether or not the Industrial Savings and Loan Company paid cash for this second mortgage of \$4,500?

Mr. Turner: I object to that on the ground that it is not competent. Also on the ground that is an attempt to prove the fact by hearsay that the book itself

is not produced and it is not a book of original entry.

Witness: This is the book of original entry.

The Court: Can we not shorten this. Why should counsel for the complainant go into this matter. Does it make any difference whether the Industrial Savings and Loan Company got any money for this mortgage from the holder or gave it to them for nothing—does it make any difference so far? 10

Mr. Smith: No, not so far, it is only on this question of fraud.

The Court: You are meeting the case on the other side and inviting a cross examination which may extend the case very greatly. 20

Mr. Smith: I know it is not in regular order and that we do not have to show that now, but I—

The Court: You have proved your bond and mortgage is not that enough?

Mr. Smith: I think it is enough. That is all.

Complainants Rest.

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Mr. Turner: I would like to read into the record a part of an affidavit?

The Court: What do you offer in evidence?

Mr. Turner: I do not wish to offer the whole affidavit.

The Court: You are not obliged to, what do you offer? 40

Mr. Turner: I offer in evidence a part of an affidavit submitted by the complainants in this suit.

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"Thomas Milson being duly sworn deposes and says that he was Treasurer of the New York Mortgage Company at the time said New York Mortgage Company received an assignment of a mortgage for \$7,500. dated August 16th, 1906, made by Harold M. Runlett to Thomas J. Mohair, covering lots 62, 63 and 64 on Block 24, map of Grantwood Borough, Cliff Side, Bergen County, N. J. That said Thomas J. Mohair and Harold M. Runlett were at that time employees and dummies for the Columbia Investment and Real Estate Company."

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Mr. Smith: I object to that as incompetent I have no objection to the entire affidavit going in.

Mr. Turner: Then I think counsel's objection is bad.

Mr. Smith: I will withdraw my objection if Mr. Turner will offer the whole affidavit.

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Mr. Turner: I will not do that because I think it is not all true.

Mr. Smith: That affidavit is not competent evidence in the case; it was made for the purpose of a motion and the man says he is not an officer and he is not a party to this suit, and that affidavit was never considered by the Court for any purpose.

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The Court: Why is it not competent, it is an affidavit which was offered in this case by you. It is not a question of whether it is binding but is it not evidence

in the cause,—when you come before the Court in a case and offer an affidavit of certain facts is not that such a statement in the cause that it is to be taken as evidence against you in the nature of an admission?

Mr. Smith: I do not think so unless it would come under the general rule of being an admission by a party or by the agent of a party. 10

The Court: Is it not your statement on record?

Mr. Smith: I have no case on the subject, but I have offered such affidavits myself and the Court has overruled them,—Affidavits of the other side, of an officer of a corporation on a motion for an injunction and I was not allowed to offer that affidavit in evidence, a stronger case than this. 20

I do not think it is very important the fact that Harold Runlett and Mohair were employees and dummies of the Columbia Company. As a matter of fact I doubt whether that was strictly so. Furthermore he made Miss Matthews his own witness on this question and she has testified that Mohair was in the employ of the Industrial and that Runlett was not in the employ of any company, and he is trying to impeach his own witness, he made her his witness on that point and I did not question her about it. 30

The Court: Have you any objection to the whole affidavit going in?

Mr. Turner: Yes, I think part of the affidavit is untrue; I think this part is probably true so I offer this part. 40

The Court: I will hold this matter under advisement.

GEORGE H. LIMBACH, sworn for the defense.

10 Direct examination by Mr. Turner:

Q. What is your business? A. Real estate.

Q. How long hve you been engaged in real estate? A. Twenty years.

Q. Where is your office? A. Palisade, N. J.

Q. How near is that to Grantwood? A. It is the adjoining town, five or six ordinary city blocks distant.

20 Q. How many years experience have you had in buying or selling Grantwood property? A. Five or six.

Q. Are you familiar with the land values there? A. Yes, sir.

Q. Are you familiar with the property belonging to Grace Frances Plummer known as lots 62, 63 and 64, in Block 24? A. Yes, sir.

Q. Will you tell us what is the value of the three lots on which the house is located there?

30

Mr. Smith: I object to this as not material, what the present value of the lots is, the transaction took place in 1908 at the time of a boom, when the property was in the hands of a company which was actually developing it, and now that company is in the hands of a receiver, the improvements have stopped and I think the present value of this land is not competent in this issue.

40

The Court: I think it has a bearing. Counsel will bear in mind that one of the points to be determined under these pleadings is the value of the property at the time of the deal and it may be that the property is not worth one third now of what it was then. I will admit this evidence simply because it goes to show in connection with other evidence what the value of the property was at the time of the deal. It is a little out of order but it is not incompetent or irrelevant although by itself it would not have very much force if any. 10

A. Those three lots are worth about \$2,000 possibly \$2,100 to \$2,200 the limit.

Q. Do you know the size of the lots? A. They are all, as they are laid out there, 25 feet. That would be 75 feet frontage, some are a little bit deeper and some are a little bit less than others. 20

Q. Do you remember how the property was there in 1908? A. Do I remember how it was?

Q. Yes, do you remember the condition in 1908? A. I do sir.

Q. Has this street improved or gone back since 1908? 30

Mr. Smith: I object to that as a conclusion it should be more specific.

The Court: I suppose counsel means to ask, and probably the witness so understands it, whether or not the property on that street has increased or decreased in value since that date. I suppose that is the question is it not?

Mr. Turner: Yes, sir.

The Court: I will allow it. 40

A. It has decreased considerably since that time, property does not look near as good there as it did then, it is neglected.

Q. Do you remember what the value was in 1908 of those two lots?

10 Mr. Smith: I object to that. Value is a matter of opinion.

The Court: He is asked his opinion as an expert. He has given the present value, now he is asked his opinion of the value in 1908, it is entirely proper.

20 A. I do not believe the value was any more than what it is to-day; things looked better and more cheerful and it is more than likely that those cheerful looks were taken advantage of.

By the Court:

Q. The question is what would it sell for, would it sell for more than that it would now?

A. Yes, sir.

Q. Counsel wants to know how much more?

A. Double value.

30 Further direct examination:

Q. Have the transportation facilities increased since that time? A. No, sir.

Q. The traffic is much greater now is it not, from there to New York than it was at that time?

A. More people live there than there did then.

By the Court:

40 Q. In your estimate of the present value— which I think you said was \$2,100? A. Yes, sir.

Q. Does that include the house? A. No, sir, just the lot.

Q. Just the value of the lots? A. Yes, sir.

No cross examination.

10

GEORGE C. WHITE, sworn for the defense.

Direct examination by Mr. Turner:

Q. What is your business? A. I am a builder.

Q. How long have you been engaged in that business? A. Six years.

Q. Are you familiar with Grantwood property?
A. I am.

Q. Are you familiar with the property of Mrs. Plummer? A. I am. 20

Q. Have you examined that property? A. Yes, sir.

Q. For what purpose? A. For the purpose of building another house exactly like it.

Q. Were you told when you examined the property it was for the purpose of testifying?
A. I was not.

Q. I show you a picture and ask you what that is? A. That is the house I gave a figure on. 30

Q. You examined that carefully did you? A. Yes, sir.

Q. What figure did you give on that house to duplicate it? A. \$5,000.

Q. Based on the present prices of material?
A. Yes, sir.

Q. In the last two years has the price of material increased or decreased? A. It has in-

40

Q. Since 1908 how much has it increased? A. I should say about ten per cent.

Q. So that in 1908 you could have erected that house for less than \$5,000? A. I think I could.

Q. At least ten per cent less? A. About ten per cent less.

10 Q. Your figure is about the figure that is estimated for the erection of such a house in almost all localities is it not? A. What do you mean by all localities?

Q. I mean in Bergen County? A. Yes, sir.

Q. I show you a clipping and ask you if you ever saw that picture before? A. Yes, sir, that is all I had to go by in going over the house.

20 The Court: You have shown the witness two papers and they have not been marked for Identification.

Mr. Turner: I offer the photograph.

Mr. Smith: That is a photograph of this house?

Mr. Turner: Yes, sir.

Mr. Smith: I have no objection.

Photograph marked D, No. 1, Dec. 9, 1913, H. W. K.

30 Q. Do you know whether there are such houses as I have shown you in this second picture now erected in Bergen County? A. As this house?

Q. Yes. A. I know of one other.

Q. Where is that? A. Morsemere, N. J.

Q. That is near there? A. Yes, sir.

Q. Does that in any way resemble the Plummer property? A. It does.

Q. In what respect? A. Very much like it.

40 Q. Do you know the cost of that property?

A. I have not been on the property, I have been by the street and saw the house.

Q. Do you know who that house was erected by? A. I do not.

Clipping containing picture of house which was shown witness marked D, 2 for Identification, Dec. 9, 1913, H. W. K. 10

Cross examination by Mr. Smith:

Q. How old are you? A. Thirty three.

Q. What is your business? A. Builder.

Q. How long have you been in that business?

A. About six years.

Q. Have you been in business for yourself six years? A. Yes, sir.

Q. Where do you operate? A. At Grantwood. 20

Q. Do you know how many rooms there are in this Plummer house? A. I do.

Q. How many are there? A. Eight rooms and a bath as I remember it.

Q. Only one bath? A. I believe that is all.

Q. Did you notice particularly the interior finish of this house? A. I did.

Q. It is not a little better than ordinary? A. No, no.

Q. It is pretty well finished inside is it not? 30

A. The wood work is of very good quality but the finish is very poor.

Q. What do you mean by the finish? A. The finish of wood work.

Q. Do you mean the paint? A. The rubbing down and painting.

Q. You say the wood work itself is of good quality? A. It is.

Q. It is really better than in an ordinary house of this kind is it not? A. No. 40

Q. Would you not say that the wood work in this house is of a better quality that you would put into a house of the same kind which you could build for \$5,000? A. I would not.

Q. Where is this other house you had reference to which is a duplicate? A. At Morsemere.

Q. How far is it from the Plummer house? A. I should say about two miles.

Q. And you said it was very similar? A. Yes, sir.

Q. Do you know how many lots it is on? A. I could not tell you.

Q. Do you know what the house sold for? A. I do not.

Q. Do you know whether or not it did not sell for \$14,000? A. I know nothing about the sale price of it, I only saw it as I went by the street.

20 Q. When you were called upon to make an estimate of the Plummer house did it not occur to you it would be a wise thing for you to find out what this other house cost and what it sold for, which is an exact duplicate? A. No, sir, I was figuring on an exact duplicate of the one Mr. Plummer now lives in, I was not interested in the other house at all.

30 Q. You could have found out the figures if you wanted to could you not? A. I had no desire to find out the figures I did my own figuring.

Q. What you wanted to do was to make an estimate on the Plummer house? A. Yes, sir.

Q. And you wanted to make it as low as you could? A. No, sir.

Q. What are you here for? A. I wanted to make it so as to get the job.

40 Q. Do you think you could erect it for less than \$5,000? A. At the present day, no, I am figuring on what I would do the work for.

Q. It would cost \$5,000? A. That is the estimate I gave.

Q. And if you built it that would be the actual cost? A. Yes, sir.

Q. The cost of the material? A. No, sir.

Q. What? A. My contract price.

Q. Including labor and material? A. Yes, sir.

Q. Including superintendents? A. Yes, sir. 10

Q. Including carrying charges, interest on the money that goes into it until it is sold? A. No, sir, I was figuring on it as a contract.

Q. If you were building it yourself you would sell it after you built it for \$5,000?

Mr. Turner: Objected to as incompetent and immaterial.

The Court: I will take it, on cross examination. 20

Q. What is the answer? A. What is the question?

Q. (Last question read)? A. I would not.

Q. You would expect a reasonable profit would you not? A. I would.

Q. How did you arrive at the estimate of \$5,000 for this house? A. Because I went over it very carefully, took the measurement of the rooms, windows and doors, and figured it up. 30

By the Court:

Q. I understand that the figure \$5,000 is what you would bid to do the work, giving yourself a reasonable profit? A. Yes, sir.

Further cross examination:

Q. What profit do you usually allow or expect 40

on work of that kind? A. Well, that is a little hard question to answer, up in that part of the country we generally figure five per cent on a contract job.

10 Q. Did you, in your examination see anything that would make it improbable to you that that house cost over \$8,000? A. I had nothing to make me think such a thing. I was asked to give a figure at what I would duplicate it for.

Q. If it were testified that house cost over \$8,000 would you say that \$8,000 could not have been reasonably spent upon that house? A. I certainly would.

Q. Have you ever built a house similar to this?

A. I think not.

Q. Does your estimate include electric wiring?

A. Yes.

20 Q. And electric fixtures? A. Yes, sir.

Q. Would it include grading the property?

A. No, sir.

Q. And gardening the front yard? A. No, sir.

Q. Would it include painting? A. Yes, sir.

Q. Would it include the gas range? A. No, sir.

Q. Would it include making the water connection? A. Yes, sir.

30 Q. Would it include surveying? A. No, sir.

Q. Would it include mantels and tileing? A. Yes, sir.

Q. And heating plant? A. Yes, sir.

Q. Window shades? A. No, sir.

Q. Bath room fixtures? A. Yes, sir.

Q. I mean towel racks and things of that kind? A. No, sir.

40 Q. Would it include digging the cellar? A. Yes, sir.

FRED A. WELLS, sworn for the defense.

Direct examination by Mr. Turner:

Q. What is your business? A. Real estate.

Q. How long have you been in that business?

A. About 35 years.

Q. How long have you been up in the vicinity of Grantwood? A. Thirteen years. 10

Q. Have you been familiar with Grantwood property all that time? A. I lived there ten years.

Q. Do you remember the values in 1908? A. I remember the value of some of the property.

Q. In 1908 can you tell us the value of the Plummer property lots 62, 63 and 64 in Block 24? 20

Mr. Smith: Objected to on the ground the witness has not properly qualified as an expert.

Q. How long have you been in the real estate business? A. I have been in the real estate business in New York and Grantwood for the last fourteen years and previous to that over twenty years in Chicago. 30

By the Court:

Q. Are you acquainted with values at Grantwood? A. Yes, I think I am.

Q. How long have you been acquainted with them? A. I lived there up to three years ago for ten years previous to that on the next street to where Mrs. Plummer lived.

Q. During that period were you cognizant of sales made there? A. Yes, sir. 40

Q. And the prices paid? A. Yes, sir.

Q. Did you follow them as a matter of interest?

A. Yes, sir.

Further direct examination:

Q. You made sales yourself there did you not?

10 A. I made a few there.

Q. In 1908 what in your opinion was the value of lots 62, 63 and 64 in block 24 being the Plummer property, the value of those lots? A. Well, I would think they were worth about \$3,000, the three lots. I had two lots adjoining those for sale at that time at \$2,100, the two lots west; I had a sign on the property for a year.

Q. Were you able to sell them? A. I did not sell them, I could not sell them.

20 Q. Were you familiar with the plans of the Industrial Savings and Loan Company were you at that time? A. Oh, I have always done business with them for the last ten years.

Q. Were you familiar with the Columbia Real Estate and Investment Company? A. Yes, sir.

Q. And the New York Mortgage Company? A. No, sir, I never did any business with them at all.

30 Q. The Columbia Company and the Industrial Savings and Loan did they have offices at Grantwood? A. Certainly they had an office at the corner of Grant Avenue in Grantwood, it was called the station, at the corner of Grant Avenue and the trolley and they had their salesmen come out there, but the main business was done at New York at the Times Building.

40 Q. Did they occupy the same building in Grantwood? A. No, no, at the Columbia Real Estate and Investment had an office at Grantwood, nothing to do with the bank, the Industrial had no office there.

Q. It did not? A. Not that I know of.

Q. What was this office in Grantwood for?

A. Used as their office to sell property to people buyers who came over there and wanted to rent houses and all that, they always kept an employee or agent there and the other agents used to come there too.

Q. Headquarters for the salesmen who sold the property? A. Yes, sir, they always had a representative there, either a lady or a gentleman there to do business for them. 10

Cross examination by Mr. Smith:

Q. Where did you first engage in the real estate business? A. Where did I first engage in the real estate business?

Q. Yes. A. In New York in 1904. 20

Q. Were you not in business in Chicago prior to that? A. Yes, sir.

Q. I mean when at any place did you first engage at the real estate business? A. I was in the real estate business in Pennsylvania in 1896.

Q. How long were you in business there? A. In Pennsylvania?

Q. Yes. A. I was born there and I left there and went to St. Paul in 1870 and then I was in the real estate business in St. Paul from 1870 to 1871. 30

Q. Then you went to Chicago? A. Yes, sir.

Q. Then you came to New York in 1906? A. No, sir, I came to New York in 1899.

Q. Where did you have your office? A. In New York.

Q. Yes. A. When I was in the real estate business? 40

Q. Yes. A. In the Times Building, I was with the Wood Company.

Q. Where was their property? A. Windfield Heights, four miles from Long Island City.

Q. On Long Island? A. Yes, sir. They had their offices on the 5th floor of the Times Building.

10 Q. When did you first come to Grantwood? A. In 1901.

Q. Where was your office at that time? A. 1901?

Q. Yes. A. I had no office in 1901.

Q. Didn't you have any business? A. I was with a stock exchange house, different stock exchange houses.

20 Q. You were in the stock business? A. Yes, sir, I was working on commission for James B. Brown & Company at 62 Cedar Street, that year.

Q. In 1901? A. Yes, sir.

Q. You had given up the real estate business then had you? A. I certainly did when I went there, I was there a year with them.

Q. Then you took up your residence in Grantwood did you? A. Yes, sir.

30 Q. What was your next occupation after you left that stock house? A. I went with another stock house, that stock house went out of business.

Q. What was the name? A. Lockwood, Hurd & Company, 46 Broadway.

Q. How long did you stay with them? A. About six months.

Q. Then what did you do? A. I did whatever I wanted to.

Q. What business did you engage in? A. I don't know that I have to say what my business was during that time.

40 Q. When did you take up real estate again?

A. When I went with Mr. Howel Wood, in 1906, the Wood Development Company.

Q. How long were you with them? A. Nearly a year until they failed.

Q. Until 1907? A. Yes, sir.

Q. Were you living in Grantwood then? A. Yes, sir.

Q. But you were not buying and selling the real estate then? A. I guess I was, I guess I can show I was selling real estate in Grantwood and Long Island both, I think the books of the Columbia Company will show I was doing business with them. 10

Q. You were primarily working for the Wood Company? A. Yes, on Long Island. But not in Grantwood, any business I did at Grantwood was with the Columbia Company only, with the Industrial Savings and Loan Company, no others. 20

Q. Your main business was not in Grantwood? A. After I came back, no. You say not in Grantwood? Certainly it was.

Q. When, when you were with the Wood Company? A. No, I did very little business until 1908 when I started in business and was agent for a large amount of property there and my signs were up and some are up still.

Q. So your experience in real estate in Grantwood dates from 1908? A. Well, I lived there since 1901 and knew all about the property. I lived there and owned the property next to where the school is now on Lawton Avenue and I sold out four years ago; I was there all the time and know as much about the property as anybody in that region or am supposed to. I am called upon to appraise property for different people, and if I didn't know something about it why would I be called upon to appraise. 30

Q. You say in your opinion these three lots in 40

1908 were worth about \$3,000? A. Well, that is what would be my appraisal of the land at that time, I had the two adjoining lots for sale for \$2,100, the two on the east of them, and my sign was up on the land for one year, and I think the Industrial foreclosed on the lots afterwards.

10 Q. They were sold for \$2,100 afterwards? A. I didn't say that, I had them for sale for \$2,100, I didn't sell them.

Q. When was that? A. 1908.

Q. Who owned those lots? A. A gentlemen in Grantwood, I cannot think of his name now, he had the asthma and he used to come quite often to see me.

Q. He lived in Grantwood? A. Yes, sir.

20 Q. And he wanted to get rid of his lots? A. Yes, sir.

Q. What did he want to pay for them? A. I don't know what the man paid for them I never saw his deed.

Q. You won't say that \$3,000 is the highest price paid prior to 1908 for three lots of the character of the Plummer lots will you? A. Oh, no, I would not say that.

30 Q. You say that was a fair market value? A. Yes, sir. The further you went east they increased in price, they were supposed to be more valuable. I know what lots sold for ever since I have been up there, ever since 1901.

Q. But many lots of this character sold as high as \$1,500? A. Lots of that character. I know there were lots sold on different streets as high as \$1,500 and higher, yes I will say that.

40 Q. How far away from the Plummer lots were they? A. I think the lots adjoining the—I don't say adjoining the Plummer lots but east of

there they sold for more, down on the next street, but that is a long block—as you go towards the river and lots are supposed to be worth more money. I know the prices they were held at by the Columbia Company and others who bought them on speculation, I know about those prices, every lot there for sale—(interrupted).

Q. The value of property depends to some extent on how anxious the parties are to buy or sell? A. That cuts very little figure; the location of the property in Grantwood as I told you—as you go west it gets cheaper all the way over; as you go towards the river it is supposed to be higher and was always held that way until the failure of the Columbia Company, that is all changed now, they don't buy so much over to the Hudson River as they used to. 10

Q. Would you consider that in 1908 it was fraudulent to place a value of \$1,500 apiece on these Plummer lots? 20

Mr. Turner: I object to that as incompetent and irrelevant and calling for a conclusion.

The Court: I think I will allow it on cross examination; it is one way of getting at the judgment of the witness as to the possible range of judgment. 30

Perhaps a better question would be to ask whether such a value was grossly excessive.

Q. Would you consider a value of \$1,500 a lot for these Plummer lots—\$1,500 apiece in 1908 would be grossly excessive? A. Well, if you ask me for such an opinion, I never thought the price they held the lots at there were right. I don't say they were fraudulent. I don't accuse 40

any man of using fraud by putting up his prices for I have many cases where people put the price at double the value of the lots, I have a good many now where they ask twice the amount I can sell them for.

Q. You do know of some lots similar to the Plummer lots which were held by the owners at
10 \$1,500 apiece? A. Oh, yes, held by the owners, certainly I know them.

Q. That is the valuation the owners placed upon them? A. I know that is what they asked and it must be the value they placed upon them, —that part is all right.

Q. Did not some people ask more than \$1,500 in 1908 for lots similar to the Plummer lots?

Mr. Turner: I object to that unless
20 counsel specifies who asked more.

The Vice Chancellor: The witness may answer the question.

A. I do not think that any one asked more than that for lots in that vicinity. As I told you the lots were held very high.

Q. There had been a good deal of real estate activity just prior to 1908 had there not? A. Yes, sir, three years prior to that by the Columbia
30 Company.

Q. When did they start that developement? A. I don't know, I moved there in 1901 and I don't know exactly because I never had been there until about three weeks before I moved there.

Q. Between 1901 and 1908 was the Columbia Company, making improvements in that section?

A. Oh, yes.

Q. Making streets? A. Certainly.

Q. And sewers? A. They were improving it
40 all the time.

Q. So the property seemed to be steadily improving from 1901 to 1908? A. The property went up from the time I went there, that is, they held it up keeping the prices up from the time I went there to live.

Q. Until just before the failure? A. About a year before the failure they went off.

Q. The prices from 1901 to 1908 were steadily rising were they not? A. Well, no, I cannot say they were steadily rising all that time. There were one or two years there that they did quite a good deal of business, quite a large number of houses were sold. Of course there was a great discrepancy in the price of lots held by people for instance, you could buy two lots from one man for \$1,400 and the next man would want \$2,000. That is the case most always, some people think their lots are worth more than others.

Q. Then prices in that vicinity in 1908 were more or less indefinite? A. Well, the property was nearly all owned by the Columbia Company and they had Scheduled prices that I used to get any time I asked for them.

By the Court:

Q. Do you know what their prices were according to their schedule for lots where the Plummer lots were? A. Well, I have the prices for those lots on my desk, right to-day; I cannot remember now, I don't purpose to keep those things in my mind all the time.

Q. Can you tell approximately? A. I think their prices were in the neighborhood of \$1,500 I would not say whether they were more or less for I really do not know without looking.

Q. Most of this land was originally a swamp was it not? A. Well, I can't say. There was never any swamp up there after I went there.

Q. But there were places where the water stood on the lots there? A. It was claimed to me after I bought my place that my house was built in a swamp, but it didn't show it and does not
10 show it to-day. It may have been but I never saw it.

Q. So that it was only increasing in value as a swamp land was drained and done away with?

A. Naturally of course if you take swamp land and drain it and fill it up and put in the sewers and everything that makes good ground of it.

Q. These people that held their lots at high prices, were they people who bought from the Columbia Company? A. All the people bought
20 from the Columbia Company, the Columbia Company owned all that property and everybody up there must have bought it from them except a few old residents and they were very few, all the rest bought from the Columbia Company. I bought from the Columbia myself.

Q. The views which they obtained as to values were views obtained from the Columbia Company were they not? A. That I cannot answer, the
30 Columbia Company made their prices and kept changing their prices every year, sometimes of-tener.

Q. Those people who were trying to sell a lot and holding it at these prices were trying to get out of the lot what they had paid to the Columbia Company? A. Some were trying to get a great deal more than they paid, that you know is human nature.

Q. They were trying to get a good deal more than they paid? A. Certainly.
40

Q. Were some trying to get less? A. Where they fell down in their payments, yes. I had quite a number of cases of that kind; that same thing is true to-day.

Q. Are the values there to-day higher or lower than they were in 1908 A. Oh, they are much lower.

Q. What would you say the value of the Plummer lot is as they stand today? 10

Mr. Turner: I object to that your Honor as incompetent.

The Court: I will allow it.

A. Well, you could buy lots in that block for \$1,200, that is two lots, \$600 apiece. I have quite a number of lots on the street, Mr. Plummer's house is on that I could see for \$1,100—\$1,200—\$1,250—two lots that is, fifty feet by one hundred; I have them for sale. 20

By the Court:

Q. Was there a boom in 1907 and 1908? A. There certainly was a boom there for three or four years.

Q. When did it come to an end? A. Well, it really came to an end I should say about three years ago. 30

Q. Did the boom burst suddenly or gradually? A. No, it was just gradual, there was no trouble or anything like that, we just got to a point where we could not sell any property that's all.

Further direct examination:

Q. Then you say the present value of the Plummer lots is about \$1,800? A. Well, I 40

would not like to say they are worth more than \$1,800 now. Two sold across the street for \$1,200 and I have two on the same block for sale for \$1,200 now.

Recross examination:

10 Q. Is there any developing going on there now?

A. In Grantwood?

Q. Yes. A. Not in the way of streets, a great many houses have been built in the last year.

Q. The Columbia Real Estate and Investment Company is not doing business now? A. No, sir.

Q. It is in the hands of the receiver? A. Yes, sir, George R. Beach.

20

EMMA HAZELWOOD, sworn for the defense.

Direct examination by Mr. Turner:

Q. Have you had any connection with the Industrial Savings & Loan or the Columbia Company? A. Yes, with the Columbia Real Estate & Investment Company.

30 Q. How long were you with that company?

A. About seven years.

Q. During what period? A. The seven years prior to the failure of the company?

Q. Were you there in 1908? A. Yes, sir.

Q. Whereabouts were you located, in what office? A. The main offices were in the Times Building and there was a small office on the property.

40 Q. Where did you stay? A. I had no particular place.

Q. What was your connection with the company? A. Saleswoman.

Q. Was your business to sell lots? A. Yes, sir.

Q. And houses? A. Yes, sir.

Q. Are you familiar with the affairs of the Industrial Savings & Loan and of the New York Mortgage Company? A. Not at all. 10

Q. Do you know anything about the directors of those companies? A. I was not acquainted with them but just knew them as they were on the heading of their stationery, that is all.

Q. Did you come in contract with them? A. As much as they were connected with the Columbia Company that is all.

Q. Who was the head, under whom you worked for the Columbia Company? A. Mr. F. E. Knox, the President of the company. 20

Q. What connection with the Industrial did Mr. Knox have? A. As to that, I cannot just remember office he held.

Q. Do you know what connection Mr. Knox had with the New York Mortgage Company? A. I do not.

Q. Do you know about values there in Grantwood? A. Well, yes I do.

Q. What were your instructions as to selling prices there? A. Of course we had to sell according to instructions from the company, they had their price list and we had to sell accordingly. 30

Q. Were you given any other instruction besides the price list? A. Not unless any particular case came up and then we referred it to our President.

Q. Who was that, Mr. Knox? A. Yes, sir.

Q. Then did he change the price or what did he do? A. Sometimes he would, he could change it, no one else could. 40

Q. Were the books in the office in New York?
A. Yes, sir.

Q. Do you know who had charge of the affairs there of the Industrial Company? A. No, I don't know who had charge of the Industrial Company.

10 Q. Do you know who had charge of the affairs of the New York Mortgage Company? A. I do not, no.

Q. You say that the names of the directors at that time were on the stationery? A. Yes, sir.

Q. Were circulars given out by this company? A. Yes, sir.

Q. And you have seen the stationery of the New York Mortgage Company? A. Yes, sir.

20 Q. And of the Industrial Savings & Loan? A. Yes, sir.

Q. Were the same names on the three different letterheads?

Mr. Smith: I object to that.

The papers would be the best evidence. It is an improper way of proving people are directors, by showing that their names on stationery which this witness has seen.

30 Mr. Turner: I offer the testimony for what it is worth.

The Court: The objection is you are trying to prove by a witness the contents of a papers and you should produce them.

The objection is well taken.

Q. Do you know who were held out by these companies as the directors?

40 Objected to.

A. That I do not know.

The Court: What possible difference makes as this case stands before the court, what the relations that these three companies were to each other? Suppose they were all one working all together with the same officers and directors, what difference would it make? 10

The Columbia Real Estate and Investment conveyed this land to Mrs. Plummer and she gave back a bond and mortgage; there is no suggestion that the holder of this mortgage occupied any better position than the Columbia Company itself would have occupied in taking a mortgage back to itself directly. I have heard no suggestion and there is nothing in the pleadings to suggest it. Why don't you undertake Mr. Turner to prove the fraud for what there may be in it as a defense? 20

Mr. Turner: This witness wanted to get away, and I called her out of order.

The Court: I ask you what this has to do with the case?

Mr. Turner: If it is admitted that these three companies—

The Court: No, never mind what is admitted, what, from your point of view, difference does it make what the relation of these three companies is to to each other. Is the defense of fraud if it be a defense, less available against the present holder of this mortgage than it would have been if the mortgage had been taken back by the Columbia Real Estate & Investment Company and was under foreclosure by them. 30
40

Mr. Smith: I think it is in this case for this reason—

The Court: You need not argue it, I only want to know if this is your position?

Mr. Smith: Yes, because it is a counter-claim, they simply allege a tort action.

10

The Court: Not at all, it is an abatement of the mortgage debt, it is not a set off, it is an abatement of this claim precisely as when a purchase money mortgage is given on the sale of land and the land is shown to be ten acres short, it is an abatement. The original mortgagee would hold the mortgage subject to that abatement, and if he transferred the mortgage to somebody else, under the general rule the transferee takes it subject to whatever defenses—it would be subject to in the hands of the assignor.

20

Still if you take that position, go ahead Mr. Turner.

Q. Do you know about the title insurance that was given on lots sold up there—property sold there? A. I know it was given by the title company of Hackensack.

30

Q. Are you familiar with actual values, actual market values, up there outside of the prices that were given you by the Columbia Company?

A. To a certain extent, yes.

Q. Is it not a fact that the prices given by the Columbia Company were grossly excessive over the real market value of the land?

40

Mr. Smith: Objected to as the witness has not qualified as an expert on general values.

The Court: I do not think the witness qualified as to an expert as to values, she has testified she sold from schedules simply, it does not appear she knew anything more about the values than that.

Q. Did you have any other experience outside of your experience with the Columbia Company? 10
A. No, sir.

By the Court:

Q. Do you know what the schedule value of Mrs. Plummer's lot was in 1908 before they were sold to her? A. I cannot remember that, no, sir.

Q. Do you know anything about the actual sale to her? A. Yes, I know certain lots there were sold to her. 20

Q. Did you negotiate the sale? A. No, sir.

Q. But you were cognizant of it at the time, were you? A. Yes, sir.

Q. Do you know whether the sale was according to schedule prices? A. I was told it was not, that I do not know about.

Q. You do not know about it? A. No, I was just told it was not. 30

Cross examination:

Q. Are you acquainted with Mrs. Plummer?
A. I am.

Q. And Mr. Plummer? A. Yes, sir.

Q. Who was the sales manager of the Columbia Company? A. Mr. McLain.

Q. He had charge of all the selling, did he?
A. Yes, sir. 40

Q. Did he give you the prices? A. No—well

they came through him, yes, but they come from Mr. Knox.

Q. Through Mr. McLain? A. Yes, sir.

Q. Do you know whether Mr. McLain is acquainted with Mr. and Mrs. Plummer? A. I do.

Q. Is he a friend of yours? A. Well, I hope so.

10 Q. Did they live close together? A. Almost in the same town.

Q. You have seen them together, have you? A. I have.

Q. You know they are acquainted? A. I know they are acquainted.

Q. And they were acquainted in 1908 were they not? A. Mr. McLain had to get acquainted with everyone before Mr. Knox would allow him to sell the property.

20 Q. What did Mr. McLain have to do with the Plummer sale? A. He had all to do with it, that is in the closing of the contract, of course, Mr. Knox was the man but Mr. McLain was the medium.

Q. And Mr. McLain collected a commission on the Plummer sale didn't he? A. I presume so, I don't know.

30 Q. He collected commission on all the sales, didn't he? A. I presume so; I do not know Mr. McLain's contract with the company whatsoever and this acquaintance between Mr. McLain and the Plummers goes back further than 1908, does it not? A. Not before they bought over there, no, sir.

40 Q. Did you and Mrs. Plummer meet Mr. McLain before they bought over there? A. Not before the business came up between them, then as I say it was necessary according to Mr. Knox's rules for Mr. McLain to get acquainted with the people.

Q. That is where they became acquainted? A. Yes, sir.

Q. As far as you know they were friends still, is that right? A. As far as I know, yes.

GRACE FRANCES PLUMMER, one of the defendants, sworn. 10

Direct examination by Mr. Turner:

Q. You are the defendant in this case? A. I am.

Q. About the 22nd of April, 1908, did you purchase certain property in Grantwood, New Jersey, from the Columbia Real Estate and Investment Company? A. I did. 20

Q. The paper I now show you the deed of the property? A. Yes, sir.

The Court: Showing witness what?

Mr. Turner: I show the witness a deed dated April 22nd, 1908, made by the Columbia Real Estate and Investment Company to Grace Frances Plummer.

I offer it in evidence.

The Court: State the place of record. 30

Mr. Turner: Recorded in Book 690 of deeds for Bergen County, page 418 on the 23rd day of April, 1908.

The consideration is \$1.00 and other good and valuable considerations. It conveys three lots in question subject to a mortgage dated August 16th, 1906, made by Harold M. Runlet to Thomas J. Mohair, given to secure the payment of the sum of \$7,500 and recorded in the office 40

of the Clerk of Bergen County, New Jersey, in Liber 187, page 156 of Mortgages, which said mortgage said party of the second part assumes and agrees to pay together with the interest thereon from the date hereof.

Marked Ex. D. 3 Dec. 9, 1913, H. W. K.

10

Q. Whom was the salesman who negotiated this sale with you? A. The salesman who approached us was Schuyler Budlong, I think that is the correct name.

Q. How long previous to the date of the deed was this? A. Approximately three weeks.

Q. At that time were you living in New York? A. In New York.

20 Q. What did he say to you in reference to the property in question? A. Do you mean in regard to the value?

Q. Yes and about the property everything he said about the property. A. Why for one thing he guaranteed the sale of the property for us at the end of a years time if we were dissatisfied.

30

Mr. Smith: I object to that and move to strike it out as not constituting any fraud and being parole evidence tending to contradict the contents of a written instrument.

The Court: At present I do not see that it is material but I will let it stand.

Q. Tell us all he said. A. Guaranteed the property was worth the money we were paying, otherwise the guarantee company would never have guaranteed it for that.

40

Q. What else? A. He also told us that the two mortgages, or that the first mortgage would

never have been put upon the property if it had never been worth far more than that value.

Q. What did he say the first mortgage was?

A. \$7,500.

Q. Did he tell you who held it? A. He did not.

Q. Did he tell you whether the Columbia Real Estate and Investment Company was in any way interested with the property? A. We understood we were buying the property from the Columbia Real Estate and Investment Company. 10

Q. What else did he tell you about the property? A. He told us that the valuations were advancing.

Q. What value did he place on the property?

Mr. Smith: I object to that. I would like to have the conversation. Tell us what he said about the value of the property. 20

A. Why he claimed it was worth the full value we were paying.

Q. What was that? A. We paid \$13,000.

By the Court:

Q. Was that the price that he put on it at the time? A. No, he put a price on it of either \$14,000 or \$14,500 and we paid \$13,000. 30

Further direct examination:

Q. What was the conversation if any that resulted in the reduction of the price? A. Why we told him we would not buy it at that price, and later on he came to us with the price of \$13,000.

Q. What did he say about that, did he say he had been authorized or anything like that? A. I understood he had been authorized. 40

Q. Did he tell you? A. Yes, he came to us and told us.

Q. What did he tell you? A. That we could have the property for \$13,000.

Q. In reference to the Title Insurance what did he say if anything about that (handing witness a paper)—is that the policy? A. That is the guarantee of the title.

Q. What did he say if anything in reference to Title Insurance of \$13,000? A. He said he would not give it if the property had not been worth it.

Q. Had the insurance been given at that time? A. It had not until the deal was closed as I understand.

Q. Did he say there had been any negotiations with reference to the Title Insurance? A. I knew of none.

Q. Tell us everything he said about the title insurance? A. I cannot recall any conversation with regard to the title insurance except that the title would be guaranteed for the purchase price. That is all I recall at the present time.

Q. Did he say anything as to whether that would indicate the value of the property? A. Why, yes.

Q. What was that? A. It would not have been given if it had not been worth it.

By the Court:

Q. Would not have been given or would not be given? A. It would not be given if the property was not worth the amount.

Further direct examination:

Q. Did you believe the things told you? A. Yes, I was ignorant in regard to real estate val-

ues and believed what I was told because of the bonds and mortgages and the guarantees.

The Court:

Q. Did you make the deal or your husband?

A. It was my money.

Q. Who actually did make the deal with the salesman? A. Well it was joint, we saw the salesman and visited the property together. 10

Further direct examination:

Q. Is your husband a business man? A. Well, he is an artist and an advertising man and is not a practical business man.

Q. He had no knowledge of business generally? A. No knowledge of real estate values at the time we bought the property. 20

Q. Who attends to the business of the household? A. I do.

Q. All business affairs are attended by you, are they not? A. Yes, sir.

Q. When you got this deed how much if any money did you pay? A. We paid \$100 on deposit and a check for \$900 when the papers were passed.

Q. Did you make any other payments? A. Why we paid the interest and we also paid a check for \$500 at the end of the year. 30

Q. So that besides the interest you paid \$1,500 on the principal? A. Yes, sir.

By the Court:

Q. Did you make a contract with the company before you got the deed or did you just verbally agree on the terms and take your deed and pay 40

the money? A. We had our deed and it was stipulated in there—

Q. No, madam—before you got the deed and paid the \$900 at the time you paid the \$100 was the contract signed? A. No, sir, we got a receipt for one hundred dollars just as a deposit.

Q. Stating that it was on account of the price of these lots? A. Yes, sir.

Q. What price was stated in the receipt? A. Well, the price of the whole property not the price of the lots alone.

Q. No, the whole property. A. Yes, sir.

Q. And you held that receipt until the time came to take your deed and then you took your deed and paid the \$900? A. Yes, sir.

Q. Where was that deal closed? A. In New York City in the office of Ferris & Roker.

Q. And about the time the deed was dated? A. Well the latter part of April the 27th I think, the deed is practically the same date.

Q. 1908? A. Yes, sir.

Q. Did you take possession of the property? A. Yes, sir.

Q. The house is on the property? A. Yes, sir.

Further direct:

Q. How long did you live there? A. From 1908 on.

Q. You are living there now? A. Yes, sir.

Q. You knew that you assumed this \$7,500 and that you had to pay that? A. Yes, sir.

Q. Did you receive any money from Marion W. Matthews? A. Never.

Q. Did you ever see her until today? A. Never until today.

Q. As a matter of fact did you receive any

money from anybody for this \$4,500 mortgage?

A. No, sir.

Q. You executed that as a part, as you understood of the necessary papers to complete the transaction? A. I did.

Q. When did you discover that the value of this property was not as represented? A. Well we tried our best to sell the house for over a year and could not even get an offer. 10

Q. This agent who agreed to sell the property for you within a year did he make any effort to sell it for you? A. I approached him and had no results whatever.

Q. What did he say when you approached him?

A. I would only get a smile.

Q. Did anyone else ever make a representation concerning the value of this property besides this agent before you took title any one connected with the Columbia Company or the Industrial or the New York Mortgage Company? A. Our principal dealings were, or part of our dealings were, with Mr. Budlong, and Mr. McLain closed the papers. 20

Q. Did he tell you what the property was worth? A. We were given to understand we were getting a bargain.

By the Court: 30

Q. That was by Mr. Budlong? A. Yes, sir, and Mr. McLain represented we were getting it.

Q. But do I understand that the deal was finally closed and you were to take the property for \$13,000 subject to the mortgage of \$7,500 and give them another mortgage of \$4,500 and pay one thousand dollars in cash; was that deal made between you and Mr. Budlong? A. The original deal was. 40

Q. Who did you pay the \$100 to, Mr. Budlong or Mr. McLain? A. \$100 was paid to Mr. Budlong.

Q. He gave a receipt did he? A. He gave a receipt.

Q. Over in New York? A. Yes, sir.

Q. Was that before you had met Mr. McLain?
10 A. Yes, sir.

Further direct examination:

Q. Mr. McLain was at that time the sales manager of— A. I understood so.

Q. When you had the talk with Mr. McLain was that before you took title? A. Yes, sir.

Q. What did he tell you, do you remember?
A. I cannot give the exact conversation now, we
20 were given to understand we were getting it cheap.

Q. By whom, who told you that? A. Why by both Mr. Budlong and Mr. McLain.

Q. Did they come there together? A. We visited the house, I cannot say whether we met them together or not.

By the Court:

30 Q. Before you paid the \$100 and took the receipts I suppose you inspected the house, didn't you? A. Yes, sir.

Q. You went over there? A. Yes, sir.

Q. Whom did you meet over there to show you the house? A. Mr. Budlong was the one who showed us the house.

Further direct examination:

Q. Did anyone come from the Columbia Company for the purpose of appraising your property?

A. An appraiser came to the house soon after the company went into the hands of the receiver

Mr. Smith: That is objected to as incompetent; objection sustained. 10

Q. Did you after the purchase money was paid learn anything concerning the affairs of the Columbia Company and the Industrial Company and the New York Mortgage Company after you had purchased the property? A. I was told the reason Mr. Budlong could not sell the property was because there was a rule of the company that no agent could resell for the purchaser. 20

Q. Did you know anything about who were the directors in these three companies or the officers?

A. We understood they were practically the same.

Q. How did you understand it, from what source? A. Common conversation, hearsay.

Q. Who was the controlling spirit in the three companies?

Mr. Smith: I object to that. 30

A. Mr. Knox.

The Court:

The witness may know that as a fact, the witness has been allowed to testify to what was obviously heresay without objection, but as to this fact she may know it, as to whether it is relevant or not is another matter: I will overrule the objection. 40

By the Court:

Q. Do you know who ran the three companies and controlled them of your own knowledge? A. Mr. Knox had the credit—

Q. No the question is whether you know anything about it yourself? A. No, I cannot say
10 that.

Q. Upon what did you base your opinion? A. Mr. Plummer did advertising of the company and heard many of the conversations in the company and—

Objected to.

Cross examination by Mr. Smith:

20 Q. Your husband is in the advertising business is he not? A. Advertising and illustrations as well.

Q. As you just said he did work for the Columbia Company didn't he? A. Yes, sir.

Q. He wrote up prospectus of the company?
A. Under Mr. Knox's instructions.

insert → Q. About how long was that before you finally got the deed? A. Approximately three weeks or
a month.

30 Q. Did your husband go with you? A. Yes, sir.

Q. You both looked at various properties did you? A. What they showed us.

Q. And you finally liked the present property the best? A. We took the present property.

Q. Did you see this property when you first went there? A. Yes.

Q. That was about a month you think before you took the deed and paid the \$1,000? A. Three
40

Q. So in connection with the writing up of those prospectuses he made a study of the real estate conditions did he not? A. Under Mr. Knox.

Q. And he received a great deal of information about the real estate developments of the Columbia Company didn't he? A. What Mr. Knox told him.

Q. And he prepared and wrote articles describing the real estate conditions over there? A. Yes, but he always got his information from Mr. Knox.

Q. Where did you live before you moved to Grantwood? A. In New York.

Q. Just tell me exactly how this matter of your purchasing this Grantwood property originated? A. Why we found it was necessary to get into the country and that was the available place and we went there to look at the property.

Q. At that time was your husband working for the Columbia Company? A. No, sir.

Q. What attracted you to Grantwood? A. A friend told us to go over there and just look.

Q. And you went over there and met Mr. Budlong? A. Yes, sir.

Faint, illegible text, possibly bleed-through from the reverse side of the page.

weeks or a month I cannot give you the exact date.

Q. Did Mr. Budlong mention any price that first day? A. Yes, but I cannot give you the exact price.

Q. Did he come down to \$13,000 that day? A. No.

Q. Did you and your husband talk the matter over after you went home? A. Naturally. 10

Q. Did you talk it over with anyone else? A. No.

Q. What investigation did you make if any to determine whether the price asked was a price at which you would care to buy? A. Why we relied upon them and the representations they made.

Q. You said they first asked you \$15,000? A. I think it was \$14,500. 20

Q. You didn't pay \$14,500? A. No, sir.

Q. They told you it was worth \$14,000? A. I think that is what they told us.

Q. Then you decided somehow you would not pay \$14,500 didn't you? A. Yes, sir.

Q. You decided it was not worth \$14,500? A. We did not know what it was worth, we could not pay that much.

Q. You did not accept Mr. Budlong's opinion when he told you it was worth \$14,500? A. We did not accept his first proposition. 30

Q. You do not mean to say it was you alone and not you and your husband that made this deal? A. It was my money.

Q. It was your thousand dollars? A. Yes, sir.

Q. You and your husband both went on the bond? A. Yes, sir.

Q. Your husband has made the payments on 40

the mortgage ever since? A. Not all the time it has partly been my money.

Q. You were to pay \$65 a month? A. Yes, sir.

Q. You started immediately paying \$65. a month after April 1908 did you not? A. Yes, sir.

10 Q. How long did you pay \$65. a month? A. I cannot give you the exact date.

Q. Who sent the checks for that? A. The checks we always made out in Mr. Plummer's name for convenience.

Q. Did you sign the checks? A. No, I never signed checks but I very frequently and most of the time made them out.

20 Q. You knew your husband was paying this money then every month didn't you? A. Yes, sir.

Q. That continued during all of 1908 didn't it? A. Yes, sir.

By the Court:

30 Q. Did you have a separate bank account? A. My money before we purchased the house was not here and then I drew my money out from where it was and brought it here—and it was put in Mr. Plummer's account to have it there.

Q. So you did not maintain any bank account yourself? A. Not here, no, sir.

Q. Where did you have it? A. In our home town, Warren.

Further cross examination:

40 Q. Then you paid this \$65. a month all through 1909, did you not? A. I think so.

Q. You paid \$500. in May, 1909? A. Yes, sir.

Q. And in 1910 do you know what payments you made? A. I cannot give you the payments now.

Q. You made some monthly payments in 1910 did you not? A. The payments continued for quite a while, then the money that Mr. Plummer made or that was charged for his advertising services to the Columbia was applied on the house. 10

Q. In other words he was doing business with the Columbia Company? A. Yes, sir.

Q. And after he had a bill for services due him he would have it applied upon this mortgage is that right? A. I think the Columbia would give him a check and he would endorse that to the other company. 20

Q. And you knew that was being done didn't you? A. Yes, sir.

Q. And that was done as late as 1912 was it not? A. I don't think so.

Q. You are not positive about that? A. I am not positive.

Q. It was done in 1911 was it not? A. I think it was.

Q. If the books show there was a payment on March 29th, 1912, have you such a good recollection that you would say that is not so? A. If you show me his signature I can indentify it. 30

Q. Of course you have the checks? A. I did not have those checks.

Q. Oh, no. Did you find out pretty soon after the property was purchased that it was not worth what you paid for it? A. Not until we put it up for sale. 40

Q. And that was at the end of a year was it not? A. No, it was later on than that.

Q. You said that this man said he would sell it for you at the end of a year? A. Oh, yes, we did then we told him we wanted to get rid of it, we did not put it in any other dealers hands only his.

10

By the Court:

Q. Why did you want to get rid of it at the end of a year? A. Financial difficulties.

Q. Difficulty in carrying it? A. Yes, sir.

Further cross examination:

20 Q. After he would not help you to get rid of it did you get someone else? A. Not at that time.

Q. When did you? A. I cannot give you the exact date, but approximately two or three years after that.

Q. Cannot you recollect what month of the year or what part of the year? A. I could not.

A recess was then taken.

30 Q. Did you consult an attorney in closing the title of that property? A. We had an attorney to see that the papers were in order that is all.

Q. Clark Ferris was it? A. A man named Ferris I don't know his first name.

Q. Where was his office? A. On Broadway, New York, I cannot give you the number.

40 Q. And you first visited this property about two weeks before you finally received the deed? How many times did you see the property before the matter was finally closed on April 22nd? A.

Not more than two or three times I cannot tell you positively the number.

Q. Did you go through the house two or three times? A. Twice surely I am not confident if any more.

Q. Your husband was there in each occasion?
A. On one occasion not on the other occasion that I recall. 10

Q. Did he only see the house once? A. I could not say how many times he saw it.

Q. You were both buying the house together were you not? A. The house was in my name and the money was in my name.

Q. A thousand dollars? A. Yes, sir, in fact the \$500 was mine too.

Q. You and he signed the bond together didn't you? A. Yes, sir. 20

Q. It has been testified that the payments on the bond were \$3,129.16, a great deal of that was your husband's money was it not? A. Part, not all.

Q. Did you have his advice on the subject before you decided to purchase? A. We talked it over that is all I can say.

Q. You talked it over with him did you? A. Why certainly, naturally.

Q. And did you look at several other houses?
A. I only recall looking at two others. 30

Q. Did you look at houses in places other than Grantwood? A. No, we did not.

Q. Did you at any time within a year or two previous look at houses in any other place? A. Not with a view of buying.

By the Court:

Q. Did any friends accompany you when you went to the house? A. A friend of mine a lady accompanied me once, but at no other time. 40

Further cross examination :

Q. I want to find how you came to believe that you had been defrauded as you claim here?

A. Well, one thing that lead us to believe that was when Mr. McLain told us how he had paid practically twice as much for the lots on which his house stood as the former purchaser paid that is one thing.

Q. Mr. McLain told you that? A. Yes, sir.

Q. That he himself had? A. That he himself had.

Q. He was a salesmanager of the Columbia Company? A. But this happened afterwards.

Q. After what, after he took your property?

A. It happened after we had bought, some time after; that was one of the things that influenced me.

Q. About how long after—years or months?

A. Years. Possibly four.

Q. You testified this morning you thought it was two or three years after the sale when you realized that the property was not worth what you paid for it? A. When we were trying to sell it.

Q. I would like to know when you did first realize that the property in your opinion was not worth what you paid for it? A. It was a slow process, the beginning was when Mr. Bud-long made no effort to sell the property for us, and it continued all along, it was nothing we arrived at all of a sudden.

Q. You arrived at it about the time foreclosure was begun did you not? A. No, before.

Q. Who did you tell then that you had been defrauded? A. I cannot say that we told anybody.

Q. You continued to pay this money and you

never made any claim to the Industrial that you had been defrauded? A. I made no claim.

Q. Did your husband make any claim? A. I cannot say.

Q. Are you familiar with your husband's signature? A. I am.

Q. I show you a letter and ask you if that is signed by your husband? A. Yes, that is his signature. 10

Paper shown witness marked C, 4 for Identification, December 9, 1913, H. W. K.

Q. I show you another letter dated January 12th, and ask you if that in your husband's signature? A. Yes, sir.

Paper shown witness marked for Identification Exhibit C, 5, December 9th, 1913, H. W. K. 20

Q. Do you know up to what time you continued to make the payments of \$65. a month? A. I could not tell you that.

Q. This is December, 1913? A. Yes, sir.

Q. Cannot you tell approximately when you stopped making payments of that money? A. I cannot because I told you this morning that Mr. Plummer did advertising for the money and the money was applied on the account. 30

Q. Was the reason why you stopped making payments was because you found out the property was not worth what you thought it was? A. Eventually yes.

Q. At the time you stopped making the payments— A. Well, we decided to consult an attorney at that time and the fact that Mr. Plum- 40

mer did work for the Columbia Company prevented him.

Q. So after you decided to consult an attorney Mr. Plummer had his applied as part on this mortgage? A. As long as he continued to work for them.

10 Q. Is it not a fact that about the time you stopped the payments on that mortgage you were in rather straightened circumstances financially? A. We were having some difficulty.

Q. You did not have money available very easily to pay the \$65. a month? A. Not at all times regularly.

Q. And you are still in possession of the premises? A. We are.

20 Q. What is the last payment you can recollect having made on these mortgages to anyone in return for occupying these premises? A. One of these bills—the last bill Mr. Plummer had against the company.

Q. According to your recollection was that about March, 1909? A. I could not say, if you show me the check I can identify his signature.

Q. Who do you think you were buying the property from? A. The Columbia Real Estate Company.

30 Q. You knew you were paying \$13,000 for it, didn't you? A. Yes, sir.

Q. And \$1,000 of it was in cash? A. Yes, sir.

Q. And \$7,500 of it was by the assuming of the first mortgage? A. Yes, sir.

Q. So that makes a difference of \$4,500, does it not? A. Yes, sir.

Q. Where did you think that was coming from? A. We had no knowledge.

40 Q. How did you think you were going to pay that \$4,500? A. That was a second mortgage, we were assured that second mortgage would be extended if necessary.

Q. Who was going to take the second mortgage? A. I did not know that part of it.

Q. Did not Mr. Budlong or Mr. McLain or some of the men who represented the Columbia Company in the transaction explain to you that the Industrial Savings and Loan Company would advance the money to complete the purchase?

A. I have no knowledge of it.

10

Q. Don't you remember anything of that kind?

A. No, the only thing that I remember is that the price was \$13,000 and we were to pay \$1,000 down which we did and the remainder was to be on one and two—the first and second mortgage.

Q. Didn't you know the Columbia Real Estate and Investment Company was going to have the Industrial Company take that second mortgage?

A. I have no recollection of it.

20

Q. Didn't you know that it was the Industrial Company that was going to loan the money to you with which to pay the Columbia Company?

A. I have no recollection of that.

Q. Did you know that an application would be made in your name to the Industrial Company for the loan? A. I knew nothing about it.

Q. Do you know how much fire insurance was kept on your house? A. I think it was \$7,500 and I think they increased it without our knowledge to \$8,500.

30

Q. Did you make any protest about it? A. No.

Q. You knew then that you were paying—being charged with premiums for \$8,500 worth of insurance on your property, is that right? A. Yes, sir.

Q. And you did not make any protest about it? A. No, I understood it was no use, we were given to understand that they had a right to do that sort of thing to increase it \$1,000 without our knowledge.

40

Q. Now I want you to tell the court the first

time you ever complained to anyone that you had been defrauded by the company?

Q. And you made no complaint until your complaint was made through your present attorney, Mr. Turner? A. No formal complaint.

Q. You just kept it to yourself, did you? A. We probably talked about it, naturally.

10 Q. But you did not communicate at all with the Columbia Company or the Industrial Company? A. No formal complaint.

Q. Did you ever know anybody who did complain to the Industrial or Columbia—did anyone get any satisfaction to complaints when they did complain?

Objected to.

20 A. Never to my knowledge.

Q. When you asked the salesman to resell your property did he report to you or tell you what he had reported to his company that fact? A. Mr. Budlong only smiled.

Q. When was it Mr. McLain told you he had been charged double price for his property? A. I cannot give you the exact date.

Q. About how long? A. I should judge about three years ago, I cannot give you the exact date.

30 Q. And he was then the general selling agent of the Columbia Co.? A. He was.

Q. He still remained in their employ, did he? A. He did.

Q. Did he ever tell you that he had complained to the company? A. Yes.

Q. And what was the result of that complaint? A. None at all.

40 Mr. Smith: I object to that as incompetent.

The Court: You may proceed but it is very remote if competent at all.

Q. Have you made inquiry and taken pains to find out what the property is worth up in Grantwood? A. We have.

Q. Have you been familiar with the selling prices from 1908 up to the present time? A. I know what I can obtain property at the present time for. | 10

Q. Do you know how the prices have been running for the last five years? A. Down.

Q. When this contractor gave a figure on your house for the erection of it, was that for the house as it stands now or for a new house?

Mr. Smith: I object.

20

A. A new house.

The Court: How is that competent?

CHARLES MCLAIN, sworn for the defense.

Direct examination by Mr. Turner:

30

Q. Were you connected with the Columbia Real Estate & Investment Company? A. Yes.

Q. For how long? A. From January 1, 1904 to June 29th 1912.

Q. You were connected with the Company in 1908? A. I was.

Q. In 1908 was there then a New York Mortgage Company? A. I cannot say, I do not remember, I think there was.

Q. Was there an Industrial Company too? A. | 40

Yes, sir, and a New York Mortgage Company too.

Q. They had their office where? A. In the Times Building 12th floor.

Q. New York City? A. Yes, sir.

Q. How frequently were you in those offices? A. Every day, or nearly every day—week days.

10 Q. Who was the head of the affairs of the N. Y. Mortgage Co., there? A. Mr. Milson and Mr. Knox.

Q. Who was at the head of the affairs of the Industrial Savings & Loan Company? A. Mr. Knox.

Q. Who was at the head of the Columbia Company? A. Mr. Knox.

Q. Are you a director in any of those companies? A. In the Columbia.

20 Q. Were you a stock holder? A. No, sir.

Q. From whom did you obtain the stock you held that made you a director? A. When I went in there there were two shares issued to me but I was requested immediately to endorse them back again.

Q. To whom? A. Endorse in blank.

Q. Who employed you there, who was the gentleman who arranged for your employment? A. Mr. Knox.

30 Q. Who directed the affairs of the three companies there? A. Mr. Knox.

Q. Do you know how much stock Mr. Knox held in those three companies? A. I do not.

Q. Did you ever see anyone else there direct the affairs of either of these three companies? A. Thy had heads of the different departments who did the directing.

Q. Mr. Knox was over them was he? A. He was.

40 Q. Did you know Mr. Runlett? A. No, sir.

Mr. Smith: I object to this on the ground that it makes no difference what the relations of the officers of the companies were or what the relations of the companies were unless the Industrial Company is actually connected with this transaction. I presume they have all their evidence of fraud in and the only fact shown is that Mr. Budlong and Mr. McLain the present witness who represented the Columbia Co. had dealings with Mrs. Plummer. There is no imputed fraud unless the agent obtains knowledge of the fraud while he is representing his company or unless he is guilty of fraud while he is representing the company and if the proof on the acts of or participation in fraud is in, I think it is waste of time to go into the internal affairs of the workings of the companies, I do not see how any amount of evidence of that kind can bring the fraud home to the Industrial. It is not shown that their officers acting as officers of the Industrial, participated in any way in this transaction.

The Court: I will allow evidence of the connection of these three companies with each other and the examination will depend largely on the discretion of counsel. Mr. Smith has stated that counsel for the complainant does not admit that this case is now on trial as if the mortgage in question had been given directly back, as a purchase money mortgage, to the Columbia Company, and the Columbia Company was the complainant here. There is an uncertain and unknown field, beyond that simple case and I cannot limit the

examination as to the relations of these three companies whatever my own view may be of the value of the evidence.

Q. Did Mr. Knox know of these transactions with Mrs. Plummer? A. Yes, sir.

10 Q. And he knew of the facts as to the price and the arrangement and all that sort of thing? A. Yes, sir.

Q. Did you consult with him about it? A. Yes, sir.

Q. And brought it to his direct knowledge. Now then the price asked for this property was \$13,000 was it not? A. No, it was \$14,500 for the two lots, that is our price if I remember correctly. Mr. Budlong had reported that such and such was the case, they had been to see him
20 two or three times if I remember correctly and finally said he would give \$13,000. I consulted with Mr. Knox and we concluded not to accept, it but finally did, myself going to see Mr. Plummer personally a couple of times. But he would not pay the \$13,000 unless we added an extra lot which made 75 feet front. I consulted with Mr. Knox once or twice more and he concluded to take it. I had already received a \$100. check from Mr. Budlong and the deal was then closed.

30 Q. Was the price of \$14,500 fixed on the schedule issued by the Columbia Company? A. Yes, sir.

By the Court:

Q. Was that price list printed? A. By typewriter only.

Q. I suppose there was a map of the whole property? A. Yes, sir.

40 Q. A very large property? A. Quite large.

Q. How many lots? A. Several hundred lots.

Q. Lying on the top of the Palisades? A. Yes, sir, opposite Grant's tomb.

Q. Was this typewritten price list exhibited to any but the officers of the company? A. The officers and all my agents.

Q. It was not shown to the public I suppose?
A. Only as—they were not distributed to the public, but of course if they came in to buy a lot it was exhibited to them. 10

Q. The purchaser of the lot, then would, in the ordinary course of business learn what the prices were set upon the lots? A. Yes.

Q. That was the practice to show the intended purchaser the price list? A. Yes, sir.

Further direct examination: 20

Q. Mr. Budlong was the agent who put this deal through? A. He was.

Q. Is he here to-day? A. I don't know where he is.

Q. Were you present at any of his conversations with Mrs. Plummer, now there might have been at the house on the porch, I cannot recall in regard to that, which might have been the first time or the second time I met them. 30

Q. Did the company permit its agents to re-sell its property? A. It did not, unless by special permit.

Q. That was a matter upon which Mr. Knox passed, was it? A. Yes, sir.

Q. If Mr. Knox instructed them they might re-sell then they might re-sell but otherwise not? A. That was under him.

Q. All these rules in reference to the three companies were subject the pleasure of Mr. Knox were they not? A. Yes, sir. 40

Q. Do you know how the different prices on the price sheet ranged as to the various lots and the prices charged for them, were some higher than the price you asked for the Plummer property? A. Lots? Well, they ranged about the same price in the same locality.

10 Q. You yourself were the owner of some property there were you not? A. I was.

Q. How did it compare with the Plummer property? A. My lot was right on the edge of the cliff.

Q. The more valuable location? A. Very much.

Q. Do you own the property now? A. I do not.

Q. Did you sell it? A. No, I didn't sell it it was taken from me, they foreclosed or something, I gave it up anyhow.

20 Q. Did the Industrial Co. take it? A. Either the Industrial Co. or the N. Y. Mortgage Co., the N. Y. Mortgage Co., I think.

Q. Did they take your house for the first mortgage? A. It was not a house just simply a lot.

30 Q. Did they take it for a first mortgage? A. I don't know how it was sold, I made an exchange, I lost my money on it but I made an exchange to get another lot to make two lots complete, adjoining that.

Q. With all this property it was the practice was it not that the first mortgage was held by the New York Mortgage Company, and the second mortgage by the Industrial Savings & Loan Co. with the title in the Columbia Company? A. I cannot say as to that.

40 Q. Don't you know that that is true as to most of the property? A. In some cases. That part of the business I had very little to do with.

Q. Did it come to your knowledge? A. Indirectly.

Q. Did it come to your knowledge in connection with your selling the lots? A. Yes, sir.

Q. In every case almost, or can you say in every case, was the mortgage taken in the name of a dummy and then transferred to the Industrial Company? A. Not in every case, in some cases that I knew of. 10

The Court: You heard of or knew of?

Witness: Knew of.

Q. Will you tell us why a dummy was used in some cases and not in other cases? A. That part I cannot say I do not know.

Q. All that part was done under the direction of Mr. Knox was it not? A. All that was done under the direction of counsel or of Mr. Knox. 20

By the Court:

Q. Sometimes real estate men when they offer a house for sale think advantageous to have a mortgage already on it and to offer the property subject to a mortgage? A. Yes, sir, that is usually the case. 30

Further direct examination:

Q. Do you recollect how much had been paid for the property before you bought it? A. No, sir.

Q. Did you learn how much it had been sold for before you bought it? A. No, sir.

By the Court:

Q. Were you in the employ of the company when they laid out this property and made their maps? A. No, sir.

Q. They bought large tracts did they not? A. It was about four years before I went with them.

Q. When you went there the company had their property all mapped out? A. Nearly all they bought some pieces afterwards that had not been mapped then.

Q. And the lots were subdivisions of their tracts were they not? A. Yes, sir.

Q. They did not buy separate lots from separate parties did they? A. No, they bought acres and divided them into lots.

20

Further direct examination:

Q. What year was it you had first had knowledge of it there? A. Before I really had knowledge of what the property cost I think it was 1911 or 1912. I had no access to the books at least I did not care to have any.

Q. When did you first become familiar with the property? A. What do you mean by familiar?

30

Q. When did you first go there? A. January 1st, 1904.

By the Court:

Q. What is the date of the map? A. About 1900 or 1899,—1899 to 1901, I think about 1900.

Q. Do you know anything about the property prior to their purchase? A. I do not.

40

Q. Do you know whether it was lying wild,

woods and lots? A. Oh, yes, they made the improvements, put in the street.

Q. The company put in all the improvements?
A. Yes, sir.

Q. Laid it out and built the streets? A. Yes, sir.

Q. And invited people to buy lots? A. Yes, sir and build houses. 10

Q. Before that speculation was started, so far as you know was there anything there at all other than the rocks? A. Nothing but the rocks and the woods.

Q. No improvements? A. No improvements.

Further direct examination:

Q. From 1904 until 1910 how were the prices of the property were they going up or going down? A. They were going up all the time. 20

Q. When did they begin to go down? A. They began to gradually go down from 1909 from that on; in other words we made greater discounts, we did not change the prices very much, but we gave greater discounts.

Q. You arranged it by discounts? A. Yes, sir.

Q. In what year were the largest discounts given? A. Oh, I think that was about 1910-1911 and 12. 30

Q. Were they giving discounts in 1908? A. Not very much.

Q. In some cases? A. Very few.

Q. The plan of giving discounts was to take the price list of all the properties in that section and show it to the intending purchaser and tell him that so much percentage would be taken off the price, is that right? A. It depends on the party as to how much money they had, how 40

badly they wanted to buy and how much they could pay and what they could afford to pay, we always took that into consideration and the more they could pay in cash the less they could buy it for, or the larger was the discount.

Q. In 1908 what was the highest per centages you were taking off? A. I cannot remember, I
10 think it was about fifteen or twenty per cent.

Q. Fifteen to twenty? A. I think so.

Q. So that in some cases you would take off one-fifth of the price? A. That was not on the improved property, that was on unimproved property, lots.

Q. On improved property how much did you take off? A. Well, that depended a good deal on the circumstances, there was no set price to take off from that.

20 Q. Do you know in 1908 what was the highest percentage taken off on the price of improved property? A. In 1908?

Q. Yes. A. There was no regular percentage taken off. Of course we always asked more than the property was worth, that was always understood.

30 Q. How much more would you—A. Well, perhaps not more than the property was worth, but more than we would sell it for. For instance we asked \$14,500 for this house of Mr. Plummer's and it could be sold and we did sell it for \$13,000.

The Court: And threw in another lot?

Witness: Yes, sir.

Q. You made specific reductions did you instead of percentages then? A. Yes, sir.

Cross examination by Mr. Smith:

Q. Are you familiar with the prices at which lots similar to the Plummer lots were sold? A. Yes, sir.

Q. Are you familiar with the sale in 1906 of lots 61 and 62 in block 24 to E. K. Lifebath, I think it is? A. I cannot recall the name. Oh, yes that is the two lots east of Mrs. Plummer's I think. 10

Q. They are immediately adjacent? A. Just east.

Q. On the same block and on the same side of the street? A. Yes, sir.

Q. On the same side as lots 62, 63 and 64, Mr. Plummer's lots? A. Well, I can't remember exactly but I think those are the numbers.

Q. Do you remember the price at which those lots were sold? A. I think we sold those for \$3,350. or \$3,450, I don't remember exactly. 20

Q. Between \$3,350 and \$3,450 for the two lots? A. Yes, sir.

Q. About when was that? A. I cannot recall.

Q. Was it before the Plummer sale before 1908? A. I think it was.

Q. What was the regular schedule price of the Plummer lots in 1908 as near as you remember? A. I think they ran about \$1,500 or \$1,600. 30

Q. Is that the price which was put on lots similar to the Plummer lots in that locality? A. Yes, sir.

Q. Was the price which was quoted to the Plummer's any higher than was quoted for similar lots in that locality? A. We didn't take lots into consideration we took the house and lots together. 40

Q. Did you have other improved property? A. Yes, sir.

Q. Did you have any other property about the same as the Plummer property? A. Yes, sir.

Q. Can you remember any now? A. Oh, yes, several.

10 Q. Can you specify any particular property and tell what it was sold for? A. Yes, there was one same kind of a house down on Grand Avenue that is down nearer the cliff those lots were worth about \$2,000 each.

Q. What was that house and lot sold for? A. \$18,000.

Q. A house indentially similar to the Plummer house? A. Yes, sir.

Q. How many lots went with that? A. Three.

20 Q. In your opinion was \$13,000 a fair valuation at which to sell this Plummer property in 1908?

Mr. Turner: I object on the ground the witness is not qualified as an expert.

The Court: I do not recall anything in the direct examination on that lays a basis for that question.

30 Q. Are lots 60 and 61 east or west of 62 and 63? A. They are east I think—yes, they are east.

Q. I show you a map and ask you whether that is a map of this property in Grantwood of the Columbia Company? A. Yes.

Q. Can you find there lots, 62, 63 and 64 in Block 24? A. Yes, sir.

40 Q. Are those the lots that were sold to Mr. and Mrs. Plummer? A. Yes, I had in my mind 61, 62 and 63 but it might be 62, 63 and 64, it is right in that vicinity.

Q. The testimony is that it was 62, 63 and 64. Will you point out lots 60 and 61 which you testify were sold between \$3,350 and \$3,450? A. Yes, either those two or these two (indicating).

The Court: Are they on the same grade and of the same physical characteristics as the Plummer lots?

10

Witness: Just about.

Map shown witness marked C, 7 for Identification December 9, 1913, H. W. K.

By the Court:

Q. Is the map you were looking at a map prepared by the Columbia Company advertising this property? A. Not at that time, only part of it. For instance we had this part (indicating) in a separate map at first which took in these streets (indicating) and then later they bought this property and later they bought this property down below here.

20

At that time we had this part and this part adjoining (indicating).

Q. Was the map used as to portions you have pointed out? A. Yes, sir.

30

Further cross examination:

Q. This shows how the land was subdivided into lots does it? A. Yes, sir.

Redirect examination:

Q. Do you know how many foreclosure suits have been brought on these different properties in the last year or two?

40

Objected to as immaterial; objection sustained.

10 Q. Do you know whether the Industrial Savings and Loan Company has frequently in the last year, acquired numbers of these properties for the first mortgage which was held in the name of the N. Y. Mortgage Co.?

Objected to as immaterial; objection sustained.

Reserving the right to call the defendant Mr. Plummer should he arrive before the complainant's case is closed, defendants rest.

20 Complainant's Counsel then offered in evidence Letter marked C. 4 for identification. Objected to as immaterial, incompetent and not binding on the defendant Grace Frances Plummer.

Objection overruled. Marked Ex. C. 4.

30 Defendant's counsel also offered in evidence the letter heretofore marked C. for identification (same objection and same ruling). Marked Ex. C. 5.

HOWARD B. JOYCE, sworn for the complainants in rebuttal.

Direct examination by Mr. Smith:

40 Q. Are you connected with the Columbia Real Estate and Investment Co.? A. With the receiver.

Q. Is that company in the hands of the receiver? A. Yes, sir.

Q. When did it go in the hands of the Receiver?

Objected to as incompetent.

Q. It is now in the hands of the receiver? 10

The Court: He has testified to that without objection.

Q. Did you work for that company before it went into the hands of the receiver? A. Yes, sir.

Q. Up to what time did you work for the Columbia Co.? A. Up until July 1, 1912.

Q. How long before July 1, 1912, did you work for that company? A. I think it was the latter part of 1909. 20

Q. What were your duties with that company? A. Auditor.

Q. Did you have charge of the books? A. I did.

Q. Were you employed by the receiver of the Columbia Co.? A. Yes, sir.

Q. And you are still employed by him? A. Yes, sir.

Q. In what capacity are you employed? A. I don't know what they call it now, I am generally assisting him. 30

Q. Are the books in your company? A. They are.

Q. Did you produce here today the books of the Columbia Real Estate and Investment Co. showing the construction account of a house erected on lots 63 and 64 in Block 24, Grantwood? A. I have. 40

Q. Will you refer to the books and state the items showing the cost of the house on lots 63 and 64 in Block 24, Grantwood?

10

Mr. Turner: I object on the ground that it is incompetent and that it is not a proper way to prove the cost of construction; that it is hearsay and that it is not shown that the witness has any knowledge of the facts.

The Court: I suppose your objection really is that the books of the company are not competent instruments of evidence to show the cost of a building erected by the company?

Mr. Turner: Yes, sir, their books are hearsay.

20

Mr. Smith: This is the question of fraud which is always a question of intent and I think this evidence is material as showing that the books of the company contain an account giving the cost of the construction of the house. In that respect I think it is material. If Mr. Turner insists upon his objection I presume it can be shut out but I think there should be some latitude allowed in a fraud case. I am willing to show all of the items on this book some of which you may think should not go in the construction account, but I have done the best I can to show our good faith.

30

The Court: I understand you offer a regular account in detail on the books of the company as this witness found them in 1909 when he went into the company's employ, a detailed account of the expense of the construction of the house in question, on the Plummer lot.

40

Mr. Smith: Yes, sir.

The Court: The objection is made as I understand it that the charge being that there was fraud in the representation of the value of the house, that such representations was made by the Columbia Company or by agents and that the Columbia Company and its successors, those who stand in its place, cannot offer evidence going to disprove a charge of fraud, going to show that there was no over valuation, which consists of their own entries in their own books. 10

I am not quite certain in my own mind, but I think it safe to exclude that offer.

It will be borne in mind that the testimony which is sought to be put in it the testimony of the books pure and simple; the books are identified and proved to be the regular books of account now the books are made instruments of evidence. I am inclined to think that under the rules as they now are in their application in this class of evidence the books are not competent when offered on behalf of the maker of the books. 20

Mr. Smith: Your Honor will allow me an exception—just for the purpose of the record. 30

The Court: It is not necessary, no exceptions are allowed or taken, the record shows the ruling. Can you tell whether the construction account includes an item for window shades?

Same objection.

(The witness was then withdrawn.)

Mr. Smith: I am willing to close now 40

although I did expect another witness in rebuttal.

(At this point Mr. Turner applied for a postponement.)

10 The Court: I see no reason why the case as it now stands should be postponed in order to enable counsel for the defendants to produce one of the defendants, Mr. Plummer, perhaps the principal defendant, in order to merely corroborate the testimony which Mrs. Plummer has given. I have in mind that testimony, I followed it closely and I do not think it is at all necessary or advisable to postpone the case when Mr. Plummer can merely corroborate.

20 If counsel can state some facts, Mr. Plummer can testify to, further than already testified to by Mrs. Plummer the case might be different.

 The case is closed on both sides.

 Mr. Smith: My witness has just arrived.

 The Court: You can put him on. If Mr. Plummer arrives before he gets through Mr. Turner will have the right to put him on.

30

JAMES A. EATON, sworn for the complaintant in rebuttal.

Direct examination by Mr. Smith:

40 Q. What is your occupation? A. I am a loan broker, a mortgage loan broker and a real estate appraiser.

Q. Where is your office? A. At Leonia, N. J.

Q. What territory do your operations cover?

A. Eastern Bergen Co., that is east of the Hackensack River.

Q. Have you made loans on property and appraisals in Grantwood, N. J.? A. Yes, sir.

Q. Are you familiar with the developments of the Columbia Co. there? A. I am familiar with that property. 10

Q. Have you made appraisals in Grantwood? A. Yes, sir.

Q. And made appraisals of lots in the Columbia Co. developments? A. Yes, sir.

Q. In connection with your business are you required to and do you make estimates of the construction value of houses? A. Yes, in connection with my loan and houses.

Q. Are you accustomed to estimate the value of finished houses? A. If necessary I loan on plans. 20

Q. Are you accustomed to make estimates on the probable cost of a house from the plans? A. Yes, sir.

Q. And you make loans based upon your estimation of value? A. Yes, sir.

Q. How long have you been engaged in this business? A. Approximately ten years.

Q. Are you familiar with the Plummer property in Grantwood? A. That is the property on Columbia Ave.? 30

Q. Yes, lots 62, 63 and 64 in Block 24, near Palisade Ave.? A. Yes, sir.

Q. Did you know that property while the house was being built? A. I saw that house while in the course of construction.

Q. Did you inspect it while it was in the course of construction? A. Yes, sir.

Q. Do you mean you just casually went through 40

it or— A. I made several trips there and inspected the construction.

Q. Did you make at that time an estimate of the value of the house? A. My recollection is that it was necessary for me to at that time.

Q. For mortgage purposes? A. I believe so. I cannot find that I did from my records, but I
10 am reasonably sure I did.

Q. Have you an opinion as to value of that house in 1908,, based upon the inspection you made in that year? A. I have.

Q. What, in your opinion, was a fair market value alone? A. \$7,500.

Q. Would that include the cost of the lots? A. That is the cost of the house.

Q. Exclusive of the land? A. Exclusive of the land.

Q. Would that include any selling profit? A. I
20 should not say so, that is my estimate of the actual cost of the construction of the house.

Q. Would that include grading the lot? A. No, not grading the lot, it would include the sidewalks of the house and sewer.

Q. Are you familiar with land values in the vicinity of the Plummer house? A. I am.

Q. What in your opinion was a fair market value in 1908 of lots 62, 63 and 64 in Block 24?
30 A. I should say a fair market value would be— was at that time \$1,250 a piece.

Q. That would be \$3,750? A. Yes, for the three lots.

Q. Do you know of lots which have sold for more than that in that vicinity? A. A lot adjoining on the east sold I find on the record for \$3,400, that is two lots.

Q. Lots 60 and 61? A. Yes, sir.

Q. Did you see those lots before they were
40 graded? A. I would not say, I undoubtedly did,

because inspection and grading was done after the foundation was completed, but I have no definite knowledge at this time of the conditions.

Q. Do you remember whether there was any considerable amount of grading done? A. I do not think there was.

Q. Does the estimate of the value of a house ordinarily include window shades? A. No, my estimate does not. 10

Q. What other items which are generally used in connection with the occupation of a house would it not include? A. Well, I don't know that I could say, my estimate would cover a house ready to be occupied with the exception—

By the Court:

Q. An unfurnished house? A. An unfurnished house. 20

Further direct:

Q. Would it include the cost of surveying? A. No, not the cost of surveying.

Q. So there would be some items entering in the cost of the house which would not be included in your estimate of \$7,500? A. My estimate covers the cost of the foundation and the building and the walks from the street to the front and the rear. 30

Q. Would it include fixtures? A. It includes costs of electric fixtures.

Cross examination by Mr. Turner:

Q. What was the occasion of your visiting this property so frequently in 1908? A. I was interested as the representative of the mortgagee. 40

Q. Whom? A. The mortgagee was the Industrial Savings and Loan Company at one time.

Q. Were you connected with the Columbia Co.? A. I had such a connection at one time, 1910, I think it was 1910, and 1911 I was there until June or July, 1911. I think.

10 Q. Were you also connected with the N. Y. Mortgage Co.? A. No, sir.

Q. Did you do anything for the N. Y. Mortgage Co.? A. I don't recall that I ever did. I never received any compensation from them and I do not think I ever did anything for them.

Q. When you made these appraisals to whom did you submit them? A. To the Secretary of the Industrial Savings and Loan Co.

Q. Who was that.? A. Mr. Knox.

20 Q. All were submitted to Mr. Knox? A. Yes, sir.

Q. You received your directions from Mr. Knox did you not? A. Yes.

Q. This \$7,500. is a general idea that you have from watching the construction of the building is it not? A. Well, the building in course of construction, yes.

30 Q. You did not make any particular note of just exactly how much material was used and how much time was spent did you? A. I did not.

Q. So of course you have no way of telling exactly what the cost would be have you? A. Not exact cost, except from my general experience that was my business.

40 Q. Your business was to appraise this house at the price you thought it would bring in the market? A. No, my business was to appraise what I thought was the actual cost of construction.

Q. I thought you said it was market value?

A. It was market value of the lots, perhaps I did of the house, I won't say.

Q. Do you say that \$7,500 is what you considered the fair market value of the house? A. What I consider the cost of the house.

The Court: I think you said cost without profit is that right? 10

Witness: Yes, sir.

Q. On what basis do you value the lots? A. My basis for the value of the lots was the sale prices in the immediate vicinity taking into consideration the restricted character of the lots and the location.

Q. You figured on the lots the price you thought they would bring in the market? A. Yes, sir, the fair market value of the lots. 20

Q. And you are sure you did not figure on the fair market value of the house? A. No, that was the cost of the house.

Q. How many times did you visit this particular house while in the course of construction?

A. My recollection is either three or four times.

Q. During the course of how many months?

A. Perhaps three and a half or four months.

Q. You waited about one month? A. Something of that kind. 30

Q. You did not expect to tell the cost from a visit once a month? A. Why, yes, I can tell pretty nearly the cost from the plans.

Redirect examination:

Q. Do you know of a similar house in that neighborhood? A. There is a similar house two 40

blocks north and about three hundred or three hundred and fifty feet nearer the cliffs.

Q. Practically a duplicate of this house? A. Yes, sir, almost entirely so.

Q. Do you know what that house sold for?

Objected to as immaterial.

10 The Court: It bears on the question I will allow it.

A. That house sold with three lots, the same sized plot for \$14,000.

Q. Those lots were a little better located than these lots? A. They are a little nearer the cliff and considered a little more valuable.

The Court: How many lots?

20 Witness: Three lots.

Recross examination:

Q. A little better house? A. Exactly the same plan.

Q. Built like it? A. Yes, sir.

Q. Is that a house that has been sold since that time? A. My recollection is the title passed in 1908; I have a record of it if you want the exact date of the recording of the deed.

Q. And it has been sold at Sheriff's sale since that time has it not? A. I think it has I would not say.

Q. Most of the houses up there have been? A. That was by arrangement, it has still the same owners.

Q. Most of the houses at Grantwood have been sold at Sheriff's sale? Why not the most of them? A. I think there have been no more than

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in any of the boroughs adjoining, on an average.

By the Court:

Q. Was there a boom on up to 1908? A. I would say up to 1907 when the panic struck there was a real boom on, from that time on real estate has been declining. 10

Further recross examination:

Q. Did real estate begin to go down in 1907?
A. After the panic, of course that was very late in 1907 there was a slight depreciation.

By the Court:

Q. Were the effects of that panic noticeable during the next year? A. Not so much in the drop in prices as in the falling off in a number of sales. 20

Q. The prices of the property there still held?
A. Yes, sir, there was no change in the prices for perhaps two years or three years after the panic.

Further recross examination:

Q. The sales decreased because the prices were held up didn't they? A. Well, there was no country buying there has not been since 1907. 30

Q. From 1907 until the present time, prices were decreasing at about what per cent per year?
A. It is a matter of six years. I should say about seven and a half or ten per cent per annum.

Q. Each year? A. Yes, sir. 40

Complainant's Rest in Rebuttal:

The Court: Is there anything further on the part of the defendants?

Mr. Turner: I am in the same position the witness has not come.

The Court: The court will have to declare the case closed.

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Mr. Smith: There is one fact I should like to have in the record and that is the schedule of the payments made on this mortgage Miss Matthews is here and can prove it. I have it here and will show it to Mr. Turner (doing so). It is just what was testified to in to—to this morning.

The Court: Have you any objection?

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Mr. Turner: My client is not in a position to admit or deny it.

The Court: I will open the case for the purpose of proving the dates.

MARION W. MATTHEWS, recalled.

Examined by Mr. Smith:

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Q. Have you made a schedule of the payments made by Mr. and Mrs. Plummer on account of the second mortgage of \$4,500 held by the Industrial Savings & Loan Association? A. I have.

Q. Have you that statement with you? A. Yes, sir.

Q. Is that the statement in your hand? A. Yes, sir.

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Complainants counsel offers in evidence statement just produced by witness. Marked Exhibit C 8, December 9, 1913, H. W. K.

Adjourned until Wednesday, December 17th, 1913, at two o'clock P. M. at the Court House Paterson, N. J.

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Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

Filed Feb. 1, 1913.

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Between INDUSTRIAL SAVINGS
& LOAN COMPANY AND GEO.
C. VAN TUYL, JR., Superin-
tendent of Banks of the State
of New York,

Complainants,

and

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GRACE FRANCES PLUMMER AND
G. WINSLOW PLUMMER, her
husband,

Defendants.

On Bill &c.
For Foreclos-
ure of Mortgage

*To the Hon. Edwin Robert Walker, Chancellor of
the State of New Jersey:*

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Humbly complaining, shows unto your Honor
your Orators, Industrial Savings & Loan Com-
pany and George C. Van Tuyl, Jr., Supt. of
Banks of the State of New York, of the City of
New York in the County of New York and State
of New York.

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That on or about the 22nd day of April in the
year One Thousand Nine Hundred and Eight,
Grace Frances Plummer and G. Winslow Plum-
mer, her husband, of the City of New York, in
the County of New York and State of New York,

became and were justly indebted unto Marion W. Matthews, in the sum of Forty-five Hundred Dollars (\$4500) and, being so indebted, the said Grace Frances Plummer and G. Winslow Plummer, her husband, in order to secure the payment of the said sum of money, with interest, did make and execute, under their hands and seals and deliver unto Marion W. Matthews. 10

A certain Bond or Obligation, bearing date the same day and year last aforesaid, in the penal sum of Nine Thousand (\$9000) Dollars, lawful money of the United States, with a condition thereunder written, that if the said Grace Frances Plummer and G. Winslow Plummer, their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto Marion W. Matthews, executors, administrators or assigns, the just and full sum of Forty-five hundred (\$4500) Dollars, lawful money aforesaid on April 22nd, 1913, with interest at 6 per cent. and to be paid as follows: Five Hundred Dollars on April 16th, 1909, and the like sum upon the same day of each year thereafter and in addition thereto Sixty-five Dollars upon June 1, 1908, and upon the same day of each month thereafter until April 22nd, 1913, when the balance of said principal sum and any unpaid interest shall become due and payable. 20 30

Provided, however, that said parties of the first part shall have the privilege of paying any additional sum at any time, it being mutually understood and agreed that said payments should be applied; first, to the payment of interest accrued on prior mortgage referred to in mortgage accompanying said bond, and second, to the payment of interest due on the sum secured by the mortgage accompanying said bond and, third, to 40

the reduction of the said principal sum thereby secured without any fraud or other delay.

Then the said obligation should be void, otherwise to remain in full force and virtue; as in and by the said Bond or Obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

10 And your orators further show, that the said Grace Frances Plummer and G. Winslow Plummer, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto said Marion W. Matthews.

20 A certain Indenture of Mortgage, bearing date the same day and year last aforesaid, made by said Grace Frances Plummer and G. Winslow Plummer, of the first part, to Marion W. Matthews, of the second part, in and by which said Indenture of Mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto Marion W. Matthews, said party of the second part her heirs and assigns forever.

30 All the following described lots, tracts or parcels of land and premises, situate, lying and being in the County of Bergen, and State of New Jersey, and known and designated on a certain map entitled "Map of Grantwood, in the Borough of Cliffside Park, Bergen County, N. J." made by Alfred W. Williams, C. E. and Surveyor and duly filed in the office of the Clerk of Bergen County on September 26th, 1904, as map of the Clerk of Bergen County on September 26th, 1904, as map No. 941 as lots No. 62, 63, 64 in block 24.

40 Said mortgage contained the following clauses

"Subject, however, to restrictions of record affecting said premises.

"Subject, also, to mortgage dated Aug. 16, 1906, made by Harold M. Runlett to Thomas J. Mohair given to secure \$7500 and recorded in the office of the Clerk of Bergen County, New Jersey, in Liber 187, page 156.

"The indebtedness hereby secured is for part of the purchase price of above described premises." 10

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And also, all the estate, right, title, interest, use property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, to the said lands, premises and real estate in said indenture of mortgages described, and every part and parcel thereof, with the said appurtenances: 20

To have and to hold, the therein above granted and described premises, with the appurtenances, unto Marion M. Matthews, the said party of the second part, her heirs and assigns, to her and their own proper use, benefit and behoof forever: 30

Provided, always, and the said Indenture of Mortgage was therein declared to be upon this express condition, that if the said Grace Frances Plummer and G. Winslow Plummer, her husband, party of the first party to the said Indenture of Mortgage, their heirs, executors or administrators should well and truly pay, or cause to be paid, unto said party of the second part, said Marion W. Matthews, or her certain attorney or attorneys, executors, administrators or assigns, 40

the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said Indenture of Mortgage, and the estate thereby granted, should cease, determine and from thenceforth be null and void.

10 And your Orators further show that after the execution of the said Indenture of Mortgage, the same was, in due form of law, acknowledged by the said Grace Frances Plummer and G. Winslow Plummer before Stark B. Ferriss, a Master in Chancery of New Jersey on April 22nd, 1908, and duly recorded in the Office of the Clerk in and for the said County of Bergen in Book 210 of Mortgages, page 455 on the 23rd day of April
20 in the year One Thousand Nine Hundred and Eight as by the Certificate of the Clerk of the said county, endorsed on the said Indenture of Mortgage, more fully appears, and to which Certificate so endorsed your Orators for greater certainty, beg leave to refer, if it be necessary so to do.

And it was expressly agreed in said bond that should any default be made in the payment of the said interest or any installment of principal
30 or of any part thereof, on any day whereon the same is made payable as therein expressed; or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying the said bond, and become due and payable; and should the said interest or any installment of principal remain unpaid and in
40 arrear for the space of thirty days or said tax, assessment, water rent or other municipal or

governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the principal sum of Forty-five hundred dollars (\$4500) less such sums as shall have been paid on said principal with all arrearage of interest thereon, should, at the option of the said Marion W. Mathews or her legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding.

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And your orators further show that the said mortgage contained an agreement to the same effect as that in the said bond above set forth in the preceding paragraph, viz.: that the whole of said principal should become due if said interest (or any installment of principal) or any part thereof remained unpaid after it became due for the space of thirty days.

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And your orators further show that the said Grace Frances Plummer and G. Winslow Plummer have failed to comply with the terms of said bond and mortgage by omitting to pay \$65. which became due on the 1st day of September, 1911, and by omitting to pay a like sum of \$65. which became due on the first day of each and every month thereafter, and that each of said defaults has continued ever since.

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And your orators have elected and hereby do elect that the whole of said principal less such sums as have been paid thereon, with all arrearage of interest thereon shall be due.

And your orators further show that the taxes for the years 1910 and 1911 became due and that

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the same are now unpaid and have been unpaid for thirty days and over.

And your orators further show that the said Marion W. Mathews duly assigned said bond and mortgage to the Industrial Savings and Loan Company, by assignment of mortgage dated April 22nd, 1908, and recorded on the 29th day of April 10 1908, in the Bergen County Clerk's Office in book 46 of assignment of mortgages for said county, page 80, whereupon the said Industrial Savings and Loan Company became, was and still is the owner and holder of said bond and mortgage.

And your orators further show that on the 29th day of June, 1912, George C. Van Tuyl, Jr., Superintendent of Banks of the State of New York, pursuant to the provisions of Section 19 of the New York State Banking Law, took possession of the property and business of the Industrial Savings and Loan Company and now retains possession thereof. 20

And your orators further show that the data in regard to the acknowledgments and the execution and recordation of any of the instruments mentioned in this bill more fully appear by the certificates endorsed on said instruments and to those certificates so endorsed, your orators for a greater certainty beg leave to refer, if it be necessary so to do. 30

And your orators further show that the said Grace Frances Plummer is or claims to be the owner of the equity of redemption in and to said premises and the said G. Winslow Plummer is or claims to be the lawful husband of the said Grace Frances Plummer and as such is entitled to an interest as tenant by the curtesy in said mortgaged premises; but your orators expressly charge that the estates of the said Grace Frances Plum- 40

mer and G. Winslow Plummer are expressly subject to your orators' said mortgage.

And your orators further show that it was compelled to pay and did pay the insurance premium on the insurance policy covering said premises, one payment of \$42.50 being made on September 1st, 1909, and one payment of \$42.50 being made on October 1st, 1912, and your orator therefore begs leave to include the amount of such insurance premium together with the interest thereon from the date of such payments in the amount due your orator under its said bond and mortgage. 10

And your orators further show that the said bond and mortgage and assignment to which your orators refer are in their possession ready to be produced and proved.

And your Orators further show, that all of the principal money shown in the said Bond or Obligation, and intended to be secured thereby, and by the said Indenture of Mortgage, with large arrears of interest, still remains due and owing to your Orators, no part thereof having been paid to your Orators; by reason of which said several premises the said Indenture of Mortgage, and the estate thereby mortgaged as aforesaid, have become absolute in your Orators and their heirs. 20

And your Orators further show, that the said Grace Frances Plummer and G. Winslow Plummer, her husband, since the execution of your Orators' said Mortgage, have, at all times possessed and enjoyed, and they do still possess and enjoy, all and singular the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive, all the rents, issues and profits thereof. 30

And your Orators further show and expressly charge, that the said mortgaged premises are a 40

slender and scanty security for the payment of the said principal and interest moneys so due to your Orators as aforesaid.

And that they or some other person or persons, for them has frequently and in a friendly manner applied to the said Grace Frances Plummer and G. Winslow Plummer, or one of them, and
 10 requested them or one of them to pay and discharge the said principal and interest moneys so due to your Orators on the said Bond or Obligation and Indenture of Mortgage hereinbefore mentioned and set forth.

And your Orators well hoped that they would have complied with such reasonable requests of your Orators, and would have paid to them the said principal and interest moneys so as aforesaid due to your Orators on the said Bond or
 20 Obligation and Indenture of Mortgage, as in equity and good conscience they ought to have done; yet the said defendants have wholly neglected, and still do neglect and refuse to pay the same, or any part thereof, to your Orators.

In tender consideration whereof, and, forasmuch as your Orators have not a complete and safe remedy in the premises of and by the strict rules of the Common Law; nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and
 30 satisfaction of the said principal and interest moneys so as aforesaid due to your Orators on said Bond or Obligation and Indenture of Mortgage without the aid and Decree of this Honorable Court,

To the end, therefore, that the said Grace Frances Plummer and G. Winslow Plummer, her husband, may, without oath, answer under oath
 40 being expressly waived, true and full answer make to all and singular the premises, as fully

and particularly as if the same were here again repeated, and they, and each of them, thereto particularly interrogated, according to the best of their respective knowledge, information and belief:

And that the said Defendants or some one of them may be decreed to pay to your Orators (by a short day to be appointed by this Honorable Court), the said principal sum so due to your Orators on the said Bond or Obligation and Indenture of Mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all the costs and charges by your Orators in this behalf sustained. 10

And in default thereof that the said Defendants, and each of them, and all persons claiming or to claim under them, or any or either of them, may be foreclosed of and from all right, title and equity of redemption or claim of right, title or equity in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances; and may deliver over unto your Orators all deeds, evidences and muniments of title, and writings whatsoever relating to or concerning the same; and that all and singular the said mortgaged premises, with the appurtenances, may, by the Order and Decree of this Honorable Court, be sold, and out of the moneys arising out of the sale thereof, your Orators may be paid the full amount of the said principal sum of money that may be found due to your Orators on the said Bond or Obligation and Indenture of Mortgage aforesaid, and all the interest money due and to become or fall due thereon, together with all costs and charges by your Orators in this behalf sustained. 20 30 40

And that your Orators may have such further and other relief in the premises as to Your Honor may seem meet, and shall be agreeable to equity and good conscience; may it please Your Honor, the premises considered, to grant unto your Orators a Writ or Write of Subpœna, issuing out, and under the seal, of this Honorable Court, to be directed to the said Grance Frances Plummer and G. Winslow Plummer, her husband, therein and thereby commanding them, and each of them, on a certain day, and under a certain penalty, therein to be inserted, to be and appear before Your Honor and this Honorable Court, then and there to answer all and singular, the premises and to stand to, abide by and perform such order and decree therein as Your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your Orators as in duty bound, will ever pray, etc.

FREDK. P. SCHENCK,
Solicitor for, and of Counsel
with Complainant.

FRANK M. PATTERSON
of the New York Bar
Counsel.

Answer.

Filed, April 28, 1913.

IN CHANCERY OF NEW JERSEY.

<p>Between INDUSTRIAL SAVINGS & LOAN Co. <i>et als.</i>, Complainants,</p>	10
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and

<p>GRACE FRANCES PLUMMER <i>et al.</i>, Defendants.</p>	20
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Answer.

The joint and several answer of Grace Frances Plummer and G. Winslow Plummer to the Complainants' bill of complaint.

These defendants deny that George C. Van Tuyl, Jr., Superintendent of Banks of the State of New York, has the power or authority in his official capacity to maintain a suit of this nature in the Court of Chancery. They deny his office and power of office.

These defendants deny that on the twenty-second day of April, 1908, or at any other time they were indebted to Marion W. Matthews in the sum of \$4,500 or any other sum. They deny that Marion W. Matthews ever had any right, title or interest in or to the said alleged mortgage in the bill of complaint mentioned, and they aver that the said alleged mortgage was a part of a fraudulent scheme as hereinafter set forth, and that there was no consideration for the said

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mortgage and the said mortgage was and is an invalid, fraudulent and illegal instrument and they deny that the said mortgage was for a part of the purchase price of the said premises because they say that the said Marion W. Matthews never owned or held the said premises except as a dummy for the Industrial Savings & Loan Company and the said holding was as hereinafter set forth and was a part of the said scheme. These defendants deny that the equity of Grace Frances Plummer is subject to the said alleged mortgage of \$4,500, and they insist that the complainants have no right or interest in or to the premises described in the bill of complaint because of said alleged mortgage.

And these defendants deny that the right of curtesy of the said G. Winslow Plummer in said premises is subject to the said alleged mortgage of \$4,500.

These defendants deny that the taxes for the year 1910 are unpaid, and they say that the said taxes are paid.

And these defendants humbly show unto your Honor that heretofore on and before the 22nd day of April, one thousand nine hundred and eight, a conspiracy was formed by the agents and servants of the Columbia Investment and Real Estate Company, a corporation of New Jersey, Industrial Savings & Loan Co., a corporation of New York, and New York Mortgage Co., a corporation of New York, whereby the agents and servants of the said corporations planned to exploit certain property, being lots 62, 63 and 64 in block 24, Map of Grantwood, in the Borough of Cliffside Park, Bergen County, N. J., and to procure from the defendant Grace Frances Plummer, a large sum of money by means of false and fraudulent representations. The said property with the

dwelling thereon was then worth about the sum of \$6,000, a mortgage was placed on said property for \$7,500, made by Harold M. Runlett to Thomas J. Mohair, dated August 16, 1906. The said Runlett and the said Mohair were then and there clerks in the employ of Industrial Savings & Loan Company. No consideration was given for the said mortgage and the purpose of the mortgage was to impose upon and defraud any one who might contemplate the purchase of said property by inflating the price thereof far beyond its actual value. The said Thomas J. Mohair was an employe of the Industrial Savings & Loan Co., and was also associated with Columbia Investment & Real Estate Co., and New York Mortgage Co., all of which said corporations were engaged in exploiting property at Grantwood, N. J., and were under the control of the same persons; and the corporation Industrial Savings & Loan Co., and New York Mortgage Co., were used for the purpose of procuring and transferring mortgages on the said property at Grantwood without consideration passing for said mortgages, the plan being to have the title of the property held by the Columbia Investment and Real Estate Co., and the alleged mortgages which were given without consideration were held by the said New York Mortgage Co., and Industrial Savings and Loan Co. The said first mortgage on the property mentioned in the bill of complaint for \$7,500 was without consideration made to Thomas J. Mohair and without consideration was assigned by the said Thomas J. Mohair to New York Mortgage Co., and the said alleged first mortgage of \$7,500 is not a valid and subsisting mortgage and was made for the purpose of carrying out a scheme of inflating the price of the said property and this scheme was afterwards on or about the

22nd day of April, 1908, used as a means of defrauding the defendant Grace Frances Plummer. The agents and servants of the Industrial Savings & Loan Co., and the Columbia Investment and Real Estate Co., and New York Mortgage Co., then and there on the said 22nd day of April, 1908, and before that time represented to, and
10 assured the said defendant Grace Frances Plummer and she believed and relied upon their said representations that the said property being lots 62, 63 and 64 in block 24, was of the value of \$13,000, whereas, in fact, the said property was not of the value of \$13,000 and was, in fact, of the value of only \$6,000, all of which was well known to the officers and agents and servants of the said Columbia Investment and Real Estate Co., and the said New York Mortgage Co., and
20 was unknown to said defendant.

These defendants allege that the said Marion W. Matthews and the said Thomas J. Mohair and the said Harold Runlett mentioned in the bill of complaint were clerks and each of them was, on the 22nd day of April, 1908, a clerk in the employ of the Industrial Savings & Loan Co., and as a clerk and clerks in the employ of the said company they performed services and were used as
30 dummies for the sale of property and the giving of mortgages for the said Columbia Investment & Real Estate Co., and New York Mortgage Co., and Industrial Savings & Loan Co.; and the said agents and servants of the Columbia Investment and Real Estate Co.; and Industrial Savings & Loan Co., and New York Mortgage Co., having conspired together as aforesaid to defraud the defendant, Grace Frances Plummer by means of the said fraudulent first mortgage of \$7,500 and
40 by assuring her that the said property mentioned in the bill of complaint was well worth the sum

of \$13,000 and using as an argument to such end, that if the property was not worth the sum of \$13,000 the New York Mortgage Co., would not have held a mortgage loan for \$7,500 and said that the title would be insured for \$13,000 and that such title insurance was an assurance of the value of the property and by said representations on said date which said representations she believed and relied upon the agents and servants of the Industrial Savings & Loan Co., and Columbia Investment and Real Estate Co., and New York Mortgage Co., wrongfully and unlawfully deceived and procured from the said defendant the sum of \$1,000 in money which was then and there paid to the agents and servants of the Industrial Savings & Loan Co., Columbia Investment & Real Estate Co., and New York Mortgage Co. (the said agents and servants being the same for each company), and the Columbia Investment and Real Estate Co., thereupon gave a deed to this defendant subject to the said fraudulent first mortgage of \$7,500 and the said fraudulent second mortgage of \$4,500. And by means of the said false and fraudulent representations on the part of the agents and servants of the Industrial Savings and Loan Co., one of the complainants in this suit, this defendant Grace Frances Plummer believing said representations was induced to sign a paper purporting to be a mortgage in the sum of \$4,500 on the said property, being the said alleged mortgage mentioned in the bill of complaint. And these defendants allege that there was no consideration for the said mortgage because the said property which was represented to be worth the sum of \$13,000 was in fact worth only the sum of \$6,000 and was already encumbered by a mortgage greater than its value, all of which was well known to the complainant, In-

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dustrial Savings and Loan Co., and was unknown to these defendants and the signing of the said alleged mortgage for \$4,500 mentioned in the bill of complaint was brought about and induced by the false and fraudulent representations on the part of the agents and servants of the said complainant Industrial Savings & Loan Co., they
10 well knowing that the said defendant Grace Frances Plummer had no knowledge of the value of the said property and she had faith and confidence in the agents and servants of the said complainant and believed and relied upon their said representations.

And these defendants further show that the said agents and servants of the said Industrial Savings & Loan Co., Columbia Investment & Real Estate Co., and New York Mortgage Co., in order
20 to carry out the said scheme to cheat and defraud the defendant Grace Frances Plummer and in order to induce her to pay over the said sum of \$1,000 and to accept a deed for the said property, and to accept the said mortgage of \$4,500 mentioned in the bill of complaint, then and there promised her that if she did not like the said property and wish to keep it, at the expiration of a year from the said twenty-second day of
30 April, 1908, that they would sell the said property for \$13,000 or more and give her the proceeds thereof; and in furtherance of said scheme they assured her that the title of the said property would not be insured for \$13,000 were it not for the fact that the said property was of the value of said sum, although they and each of them, then and there, well knew that the said property was worth no more than the sum of \$6,000.

40 And these defendants allege, and charge the fact to be that the said alleged mortgage of the

complainant, Industrial Savings & Loan Co., was taken by the said company with full knowledge of all the facts herein before stated, and the said complainant actively participated in, and ratified the same. And these defendants allege and charge the fact to be that the said agents and servants of the said Industrial Savings & Loan Co., and Columbia Investment & Real Estate Co., and New York Mortgage Co., refused to sell the same property for the sum of \$13,000 at the end of one year, as aforesaid, although duly requested so to do, and in fact, they could not sell the same for any greater sum than \$6,000. And these defendants allege and charge the fact to be that the amount for which the title of said property was insured did not, and does not represent or affect the value of the said property, all of which was then and there well known to the agents and servants of the said Industrial Savings & Loan Co., Columbia Investment & Real Estate Co., and New York Mortgage Co., and unknown to the defendants. The defendant Grace Frances Plummer because of the fraudulent first mortgage of \$7,500 on said property, and because of the title insurance in the sum of \$13,000 and because of the agreement to sell said property at the end of one year for \$13,000, was led to believe that the said property was then and there of the value of \$13,000, although in fact, the said property was worth only the sum of \$6,000 as was well known by the agents and servants of said three corporations. And the said defendant Grace Frances Plummer after purchasing said property spent the sum of about five hundred dollars in and about improving and repairing said property.

And this defendant, Grace Frances Plummer avers, that because of the said false and fraudulent representations and statements, by the agents

and servants of the said Industrial Savings & Loan Company, Columbia Investment & Real Estate Company, and New York Mortgage Company, as aforesaid, that she has been injured and has sustained damages in the sum of \$7,000, being the difference between the actual value of the said property and the fraudulent price at which
10 the same was sold to this defendant. And this defendant avers that she is entitled to and she hereby asks that the said mortgage of the complainant of \$4,500 with interest thereon, as set forth in the complainant's bill of complaint, be abated to the full amount thereof. And if the said damages of the said defendant shall be considered by the court, and treated as unliquidated damages, the said defendant tenders, and represents that she is ready to have the same ascer-
20 tained by a jury in the law court, and the said mortgage debt reduced to the extent of the damages sustained by her, because of the false and fraudulent representations of the complainant, as aforesaid. And these defendants say that the said complainants are not entitled to relief in this court, and they are not entitled to foreclose the equity of redemption and right of curtesy of the respective defendants. And they pray to be hence
30 dismissed with their reasonable costs and charges by them in this behalf most wrongfully sustained.

FRANK G. TURNER,
Solicitor for Defendants.

Before the making of the decree herein, the defendants objected to the jurisdiction of the Court of Chancery on the ground that the State of New York was a party to the suit and under
40 the Constitution of the United States the New Jersey Court could not acquire jurisdiction.

and moneys paid for fire insurance premiums, on their said bond and mortgage the sum of Forty-nine Hundred Twenty-three and 59/100 (\$4,923.59) and that it is necessary and advisable that the whole of the said mortgaged premises should be sold to raise and pay the moneys so due as aforesaid.

10 It is thereupon on this 29th day of December, 1913, by Edwin Robert Walker, Chancellor of the State of New Jersey,

Ordered, adjudged and decreed, and the said Chancellor doth by virtue of the power and authority of this Court hereby

20 Order, adjudge and decree: That the said mortgaged premises be sold to raise and satisfy the amount of money due to the complainant, that is to say, the sum of Forty-nine Hundred Twenty-three and 59/100 (\$4923.59) dollars, together with lawful interest thereon to be computed from the date hereof, with costs to be taxed; and that a writ of Fieri Facias do issue for that purpose out of this Court directed to the Sheriff of the County of Bergen, commanding him to make sale according to law, of the said mortgaged premises and that
30 out of the money arising from such sale be paid to the complainants or to their Solicitor, said debt, interest and costs;

And in case more money should be raised by the said sale, than shall be sufficient to make such payment, that such surplus be brought into this Court, to abide its further orders, unless otherwise previously disposed of by the order of this court:

And that said Sheriff make return without delay of the proceedings by virtue of the said Writ.

And it is further ordered, adjudged and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption, of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this Decree.

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And it is further ordered, adjudged and decreed that the sum of One Hundred Dollars (\$100) be allowed and paid to the Solicitor of the Complainant for their costs in this Court and that the same be included in the taxed bill of costs and collected with the other items of said bill

E. R. WALKER,
C.

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Respectfully advised,

EUGENE STEVENSON,
V. C.

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Exhibit C-1.

(Abstract)

Mortgage Grace Frances Plummer and G. Winslow Plummer, her husband to Marion W. Mathews dated April 22nd, 1908, acknowledged April 22nd, 10 1908, and recorded April 23rd, 1908, in the Office of the Clerk of Bergen County, Book 210 of Mortgages, page 455. Given to secure the bond of Grace Frances Plummer and G. Winslow Plummer of even date for \$4,500 with interest at 6% to be paid as follows:

20 "Five Hundred Dollars (\$500.00) on the 16th day of April, 1909, and the like sum upon the same day of each year thereafter, and in addition thereto Sixty-five Dollars (\$65.00) upon the first day of June, 1908, and upon the same day of each month thereafter until April 22, 1913, when the balance of said principal sum and any interest then remaining unpaid shall become due and payable; provided, however, that said parties of the first part shall have the privilege of paying any additional sum at any time, it being mutually understood and agreed that said 30 payments shall be applied first to the payment of interest accrued on prior mortgage referred to hereinafter, at the time of said payment, second to the payment of interest accrued and due on the sum hereby secured, and third to the reduction of the said principal sum hereby secured."

40 Covers premises described in bill of complaint and recites: "Being the same premises conveyed to the said Grace Frances Plummer by the

Columbia Investment & Real Estate Company by deed of even date herewith and duly recorded. Subject, however, to restrictions of record affecting the same premises. Subject also to mortgage dated August 16th, 1906, made by Harold M. Runlett to Thomas J. Mohair given to secure the payment of \$7,500. and recorded in the office of the Clerk of Bergen County, New Jersey, in Liber 156 of Mortgages for said County. The indebtedness hereby secured is for part of the purchase price of the above described premises." 10

Provides further as follows:

"And it is hereby expressly agreed, that should any default be made in the payment of the said interest or any instalment of principal of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable and should the said interest or any instalment of principal remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of thirty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Four Thousand Five Hundred Dollars (\$4,500) less such sums as shall have been paid on said principal." 20 30 40

and also as follows:

10 "It is also agreed, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, her executors, administrators or assigns and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises added 20 to the amount of the said bond or obligations, and secured by these presents, payable on demand, with interest at the rate of six per cent, per annum, from the time of payment of such premium or premiums."

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Exhibit C-2.

(Abstract)

Bond Grace Frances Plummer and G. Winslow Plummer, her husband to Marion W. Matthews, dated April 22nd, 1908, conditioned for the payment of \$4,500., with interest at 6%, as provided in the mortgage above. Contains the following provision: 10

“And it is hereby expressly agreed, that should any default be made in the payment of the said interest or any instalment of principal or of any part thereof, on any day whereon the same is made payable as above expressed; or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond and become due and payable; and should the said interest or any instalment of principal remain unpaid and in arrear for the space of thirty days or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien or any or either of them remain unpaid and in arrear for the space of thirty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Forty-five Hundred Dollars (\$4,500.00) less such sums as shall have been paid on said principal, with all arrearage of interest thereon, shall, at the option of the said Marion W. Mathews or her legal repre- 20
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sentatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anyway notwithstanding."

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Exhibit C-3.

(Abstract)

Assignment of mortgage Marion W. Mathews to Industrial Savings & Loan Company, a corporation organized under the Laws of the State of New York, dated April 22nd, 1908, acknowledged April 17th, 1908, recorded in the office of the Clerk of Bergen County, April 29th, 1908, in Book 46 of Assignments of Mortgages, page 80. Assigns bond and mortgage marked Exhibit C-2 and C-1 in this case. Covenants that there is due upon said bond and mortgage the sum of \$4,500. and interest thereon from date of the assignment.

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Exhibit C-4.

G. WINSLOW PLUMMER
NEW YORK CITY.

November 30th, 1909.

Mr. C. J. Kirkland, 10
Industrial Savings & Loan Co.,
New York City.

Dear Sir:

Replying to your letter of the 22nd inst., advising that I am two payments in arrears I would state that I had expected to be able to send check to cover same before this.

Business changes however have prevented me 20
from so doing but I hope to send you one covering Oct., Nov. and Dec., as early as possible during the coming month.

Very truly yours,

GEO. W. PLUMMER,
82 Columbia Ave.,
Grantwood, N. J. 30

Exhibit C-5.

G. WINSLOW PLUMMER
NEW YORK CITY.

January 12th, 1909.

10 Mr. Bishop,
Columbia R. E. & I. Co.,
New York City.

Dear Sir:

In accordance with our conversation of yesterday I enclose herewith a check for two months \$130. I expect to take up the balance of arrears by the end of February although as I stated to
20 you it may be possible for me to do so before that time.

Thanking you for your courtesy in the matter I am

Very truly yours,

GEO. W. PLUMMER,
82 Columbia Ave.,
Grantwood, N. J.

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Exhibit C-8.

Dec. 8, 1913,
H. W. K.

SCHEDULE OF PAYMENTS.

1908	June	8	\$65.	10
	July	7	65.	
	July	31	65.	
	Sept.	8	65.	
	Oct.	8	65.	
	Nov.	9	65.	
	Dec.	3	65.	
1909	Jan.	8	65.	
	Feb.	16	65.	
	Mar.	10	65.	
	April	15	65.	20
	May	1	565.	
	June	15	65.	
	July	20	65.	
	Aug.	26	65.	
	Oct.	4	65.	
1910	Jan.	13	130.	
	Feb.	28	65.	
	May	6	65.	
	June	25	269.52	
	Nov.	25	242.11	30
1911	Feb.	3	420.53	
1912	Mar.	29	397.00	
			<hr/>	
			\$3,129.16	

Exhibit D-4.

THIS INDENTURE, made the twenty-second day of April, in the year one thousand nine hundred and eight BETWEEN the Columbia Investment and Real Estate Company, a corporation organized under the law of the State of New Jersey, party of the first part and GRACE FRANCES PLUMMER of the City, County and State of New York, party of the second part WITNESSETH that the said party of the first part for and in consideration of the sum of One Dollar (1.00) and other good and valuable consideration to it in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents the receipt whereof, is hereby acknowledged, and the said party of the second forever released and discharged from the same by these presents. HAS granted, bargained, sold aliened, remised, conveyed and confirmed and by these presents, DOES grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to her heirs and assigns forever, ALL those certain lots or parcels of land situated in the County of Bergen, State of New Jersey, and known and designed on a map entitled, "Map of Grantwood in the Borough of Cliffside Park Bergen Co., N. J. made by Alfred W. Williams, Civil Engineer and Surveyor, and duly filed in the office of the Clerk of said County on September 26, 1904, as map number 941 as lots numbered sixty-two (62) sixty-three (63) and (64) in block twenty-four (24).

Said premises being conveyed, however, subject to a mortgage dated August 16th, 1906, made by Harold M. Runlett to Thomas J. Mohair, given to secure the payment of the

sum of \$7,500.00 and recorded in the office of the Clerk of Bergen County, New Jersey, in Liber 187, page 156 of mortgages for said County, which said mortgage said party of the second part assumes and agrees to pay together with the interest thereon from the date hereof.

This conveyance is made subject to the following restrictions: 10

Not more than one house shall be erected on said premises.

No such house shall be for more than one family, nor less than two stories in height, nor without cellar, nor with roof known as a flat roof, and shall not cost less than forty-two hundred fifty dollars.

No other building shall be erected on said premises except a private stable and a manure pit shall be constructed and maintained for use in connection therewith. 20

No building shall be erected thereon until its exterior plans have been approved by the party of the first part.

No intoxicating liquors shall be manufactured or sold, no stores erected or maintained no manufacturing of any kind carried on, and no hogs, geese or ducks kept upon said premises.

No building shall be erected within twenty feet of street line or within six feet of side lines or three feet of the rear line of said lots, nor any stable within sixty feet of said street line. This covenant shall not apply to steps, piazzas or bay windows upon houses so erected. 30

No fence shall be erected at a greater height than four feet.

These restrictions shall run with the land until January first, nineteen hundred and twenty, when they shall cease and terminate. 40

The house which now stands upon said premises has been erected by said Columbia Investment and Real Estate Company and complies with all of the above requirements.

10 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

AND ALSO all the estate, right, title interest property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances, TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances, unto the said party of the second part, her heirs and assigns to her and their own proper use, benefit and behoof forever.

20 AND the said party of the first part for itself, its successors does covenant, grant and agree to and with the said party of the second part her heirs and assigns, that the said party of the first part at the time of the sealing and delivery of these presents, is lawfully seized in its own right of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

30 AND that the said party of the second part her heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted

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premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance, of the said party of the first part, its successors or assigns, or of any other person or persons lawfully claiming or to claim the same.

AND that the same now are free, clear discharged and unincumbered of and from all former and other grants, titles, charges, estate, judgments, taxes, assessments and incumbrances of what nature or kind soever, except said restrictions. 10

AND the said party of the first part, its successors, the above described and hereby granted and released premises and every part and parcel thereof, with the appurtenances, unto the said party of the second part her heirs and assigns, against the said party of the first part, its successors and against all and every person and persons, whomsoever, lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND. 20

IN WITNESS WHEREOF, the said party of the first part has caused its corporate seal to be hereunto affixed and these presents to be subscribed by its Vice President and Secretary the day and year first above written. 30

COLUMBIA INVESTMENT & REAL ESTATE CO.,
By THOMAS H. ROTHWELL,
(SEAL) Vice-President.
THOMAS MILSON,

Attest

THOMAS MILSON,
Secretary.

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