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BILL OF COMPLAINT.
IN CHANCERY OF NEW JERSEY.

*To the Honorable Edwin Robert Walker, Chancellor
of the State of New Jersey:*

10

Complainant, of the City and County of Camden,
and State of New Jersey, respectfully shows:

1. For some time prior to December 10, 1921, and
up until on or about the tenth day of March, 1922,
complainant was in possession of ALL that certain
tract or parcel of land situate in the City and County
of Camden, State of New Jersey, described as fol-
lows:

BEGINNING in the Northwesterly line of the 20
semi-circular extension of the Mount Ephraim
Pike on the Westerly side thereof at a corner
to lot No. 12, block No. 56 on plan hereinafter
mentioned at a point distant sixty-eight and
seventeen one-hundredths feet Westwardly and
Southwestwardly, measured along the North-
erly and Northwesterly lines of said semi-cir-
cular extension from the point of intersection
thereof with the Westerly line of Mount
Ephraim Pike, said last mentioned point being 30
distant one hundred and twenty-five and sixty-
four one-hundredths feet Southwardly from the
Southwest corner of Minnesota Road and Mount
Ephraim Pike; thence (1) Southwestwardly
along the Northwesterly line of said semi-cir-
cular extension curving to the South with a
radius of forty-two feet a distance of fifteen

and forty-nine one-hundredths feet to a corner to lot No. 14 said plan; thence (2) along said lot No. 14 South seventy-one degrees, forty-three minutes West, twenty-one and sixty-seven one-hundredths feet to another corner to said lot No. 14 in the middle line of party wall between premises Nos. 3145 and 3147 Mount Ephraim Pike; thence (3) still along said lot No. 14 and the middle line of said party wall and the extended middle line of same North sixty-three degrees, seventeen minutes West, thirty-four and thirty-eight one-hundredths feet to another corner to said lot No. 14; thence (4) still along said lot No. 14 South seventy-one degrees forty-three minutes West, eighteen and ninety-three one-hundredths feet to the Easterly line of a rear street; thence (5) along same, North eighteen degrees, seventeen minutes West, twenty-nine and eight-tenths feet to an angle therein at a corner to lot No. 12 said plan; thence (6) along said lot No. 12 North seventy-nine degrees, seventeen minutes East, thirty-six and nine-tenths feet to an angle therein; thence (7) still along said lot No. 12 South sixty-three degrees seventeen minutes East fifty and fifty-six one-hundredths feet to the place of beginning. Being lot No. 13, Block No. 58, sheet No. 33 on Official Property Map of Yorkship Village and being also known as premises No. 3145 Mount Ephraim Pike.

2. That on or about the tenth day of December, 1921, the United States Shipping Board Emergency Fleet Corporation, which will hereafter be referred to as the Shipping Board, held a public auction of all the real estate situate in that part of Camden, New Jersey, known as Fairview, in which the above-

described premises were located, the said premises being among those offered for sale on that day.

3. It was the expressed policy of the said Shipping Board to give to the tenants who were living in the various properties the preference of purchasing the same, when they desired to do so.

4. Upon the day of the said public auction, to wit; December 10, 1921, the complainant attended the said sale, and the said premises being offered for sale, the highest bid received therefor was the sum of \$2100; and inquiry being then made by the auctioneer as to whether the tenant of the property was present and interested in buying the same, complainant, in response to said inquiry, indicated that he was so interested, and thereupon, the premises were withdrawn from the sale, for the purpose of giving complainant an opportunity to complete a purchase of the same, if he could do so. 10 20

5. Prior to the said auction, complainant had talked to one Michael F. Falvey, sometimes known as Michael J. Falvey, one of the defendants hereinafter named, and informed him that he desired to buy the property, and the said Falvey expressed himself as being willing to assist complainant in that respect.

6. Nora C. Falvey, also one of the defendants hereinafter named, the wife of the said Michael F. Falvey, was also present at the said auction sale; and she, thereupon, inquired of the complainant whether he had made arrangements to buy the house, and complainant then and there informed her that he had been unable to carry out certain arrangements which he expected to perfect; and the said Nora C. Falvey then and there informed complain- 30

ant that she was willing to purchase the house for him, and made an appointment for the following morning at her home to discuss the matter.

7. In pursuance of the said appointment, complainant went to the home of the defendants the next morning, and the matter was discussed between them, the result of which discussion was that the defendants agreed to purchase the premises for
10 complainant under an arrangement by which the complainant was to repay the defendants the amount paid by them for the said property, at his convenience and as soon as practical; and when such amount had been so repaid, an arrangement was to be made with a building association to take a mortgage on the property.

8. On or about December 12, 1921, the complainant and the defendants went to the auction room for the
20 purpose of perfecting arrangements to take over the said property, and it was then ascertained that the agreement for the sale of the said property had been prepared from the Fairview Realty Company (which, complainant is informed, is a subsidiary corporation of the said Shipping Board) the holder of the title to the said premises, to complainant, providing for the payment of the balance of the purchase price by complainant at the time of settlement and the giving by complainant of the purchase
30 money mortgage to the Shipping Board in the sum of \$1470.

9. Upon said circumstances being made known to the defendants, they refused to proceed further with the transaction unless the contract was drawn between the Fairview Realty Company directly with them; and the said contract was so re-drawn and

executed between the Fairview Realty Company and the defendants.

10. After making the said agreement and in pursuance of the arrangement between complainant and defendants, complainant paid to the said Nora C. Falvey, on January 9, 1922, the sum of \$100, and on February 5, 1922, the further sum of \$50, which the defendants were to apply toward the payment of the purchase price of the said property, and on March 10, 1922, settlement for the said property was had; and the said Fairview Realty Company made a deed to the defendants for the said property, and the said defendants gave a purchase money mortgage to the said Shipping Board for the sum of \$1470, payable at the expiration of three years from the date thereof with interest at 6%, the balance of the purchase price above the amount of the said mortgage being paid in cash by the said defendants, a portion of which said cash consisted of the said sums aggregating \$150, which had theretofore been paid by complainant to the said defendants; and on the 11th day of March, 1922, the day following said settlement, complainant paid to the said defendants the further sum of \$50, to be applied to the said purchase price.

11. The above mentioned deed was dated March 10, 1922, and recorded in the Camden County Register of Deeds' Office on the twenty-third day of March, 1922, in Book 502 of Deeds, pages 98, &c., and the said mortgage, bearing even date with the said deed, was recorded on the twenty-third day of March, 1922, in the said Register's Office in Book 193 of Mortgages, pages 294, &c.

12. The above mentioned mortgage was cancelled

Bill of Complaint

of record on the eighteenth day of January, 1923, without complainant's knowledge or consent.

13. Complainant has paid to the defendants, at the times hereinafter stated, the following sums of money, in addition to the \$200 above referred to:

	DATE	AMOUNT
	April 14, 1922	\$50.00
	May 5, 1922	50.00
10	June 7, 1922	39.20
	June 7, 1922	23.00
	July 1, 1922	50.00
	August 4, 1922	50.00
	September 2, 1922	50.00
	October 7, 1922	50.00
	November 11, 1922	50.00
	November 30, 1922	39.20
	December 13, 1922	50.00
	January 18, 1923	50.00
20	February 17, 1923	40.00
	March 19, 1923	50.00
	April 19, 1923	50.00
	May 16, 1923	50.00
		<hr/>
		\$741.40

14. That the amount of \$39.20, paid by complainant to defendants on June 7, 1922, and the like sum paid on November 30, 1922, was for the purpose of
30 paying the taxes upon the said premises for the year 1922, and the sum of \$23.00 paid by complainant to defendants on June 7, 1922, was for the purpose of paying the water rent on the said premises for that year.

15. The last payment made by complainant to the defendants was on or about May 16, 1923, up to

which time the relations between the complainant and the defendants continued to be friendly; but at or about that time, the attitude of the defendants toward the complainant underwent a change; and upon complainant's asking the defendant, Nora C. Falvey, with whom he had practically all of the dealings with respect to the payment of money, as to when the transaction would be completed, she answered him in an evasive manner and refused on one pretext and another, to accept any further money from him, and, finally, on several occasions, became so violent and abusive toward complainant, when he attempted to discuss the matter with her, that he made no further attempt to make any further payments. 10

16. On or about July 26, 1923, a notice was served upon complainant's wife, requiring the complainant to quit the said premises, copy of which said notice is hereunto annexed, hereby made part hereof, and marked "Schedule A;" and on the following day, complainant went to the home of the defendants and asked the defendant, Nora C. Falvey, for an explanation of the notice, and the said Nora C. Falvey replied that the notice meant just what it said, that the house belonged to her, that complainant would have to get out and lose all the money he had put into it, and that complainant would have to do just what she said about it. 20

17. That complainant has always been willing, is now willing, and has always manifested himself to be willing to pay to the defendants whatever sums of money would be necessary to repay to them the amount of the purchase price above the purchase money mortgage, with whatever amounts may have been paid by the defendants for interest upon the said mortgage and any other expenses in connection 30

with the transaction; but the said defendants have always refused to accept from the complainant any such payments and have entirely repudiated the transaction.

18. On December 10, 1923, complainant was served with a summons and complaint in an action in ejectment in the Camden County Circuit Court, at the suit of the defendants herein, a copy of which is
10 hereunto annexed, hereby made part hereof and marked "Schedule B."

19. The time for filing an answer in the said ejectment suit has not expired, and the complainant has filed no answer therein.

20. That the payment by the defendants of the said purchase money mortgage was in violation of the arrangement made between defendants and complainant, in that the said mortgage was not payable until March 10, 1925; and it was understood between the parties that the said mortgage should remain until it became due unless prior to that time, it was possible to negotiate a building and loan association mortgage in a sufficiently large amount to pay and satisfy the said purchase money mortgage and to repay to the defendants the amount which would, at that time, be due to them, represented by the difference between the amount of money the defendants had advanced for the purchase of the premises, together with interest thereon and the sums
30 of money paid to the defendants by the complainant on account of the same.

21. Ever since the making of the said deed for the said premises to the said defendants and the execution by them of the said purchase money mort-

gage, complainant has been in possession of the said premises and exercised all the rights of ownership thereover.

22. Complainant charges that the defendants took title to the said premises with the imposition thereon of a constructive trust in favor of the complainant; and that when the defendants were repaid by the complainant, the amounts paid by the defendants for interest upon the said purchase money mortgage and the amounts paid by them for the purchase price of the said property with interest, the trust should thereupon be executed and the complainant entitled to receive the legal title to the said premises, which is now held by the defendants; and that the actions of the defendants in this respect are a gross fraud and imposition upon the complainant and contrary to equity and good conscience. 10

23. The said Michael F. Falvey is referred to in the record of the said deed and mortgage as Michael J. Falvey; but the said ejectment suit is in the name of Michael F. Falvey as one of the plaintiffs. 20

Complainant is without adequate remedy at law and, therefore, prays:

I.

That the said Michael F. Falvey, otherwise known as Michael J. Falvey, and Nora C. Falvey, who are the defendants to this suit, may answer this bill and each allegation therein made. 30

II.

That the said defendants be decreed to hold the

title to the above mentioned premises in trust for the complainant.

III.

That the said trust be decreed to be executed and the defendants decreed to convey the legal title of the said premises to the complainant.

IV.

That an accounting be had by the defendants of the amounts paid by complainant to them as part of the transaction above set forth; and if, upon such accounting, the defendants be found to have been overpaid, that a decree be made by this Honorable Court in favor of complainant for such excess.

V.

That the said defendants be required, upon such conveyance, to create or take back a mortgage upon the said premises, payable both as to principal and interest, in accordance with the terms of the purchase money mortgage above referred to.

VI.

30 That the said defendants be restrained from prosecuting the aforesaid action at law in ejectment, until the further order of this Court.

VII.

That a writ of subpoena may issue commanding

the defendants to answer this bill of complaint and to abide by such decree as the Court may make in the premises; and that the complainant may have an order in the nature of an injunction, restraining the defendants from the further prosecution of the said ejectment suit.

D. T. STACKHOUSE,
*Solicitor for and of Counsel with
Complainant.*

The complainant hereby amends the foregoing bill of complaint as follows: 10

1. By inserting the following as paragraph 9A:
Complainant consented to the agreement being so drawn because he feared that if he did not, he would lose the property.

2. By inserting the following as paragraph 13A:
The said payments are each evidenced by receipts signed by defendant, Nora C. Falvey, the first of which is in the following form: 20

“1-9-22. Recd. of Fred Fagan 100 hundred dollars.

Mrs. Falvey”

The other receipts being practically identical in form with the exception of the date and amount; and with the further exception of the receipt given for the payments of \$39.20 and \$23.00 on June 7, 1922, which reads as follows: 30

“June 7-22. Recd. of Fred Fagan 39 Dollars and 20 cents for taxes.

‘I red. 23 dollars for water.

Mrs. Falvey.’ ”

D. T. STACKHOUSE,
*Solicitor for and of Counsel with
Complainant.*

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

FREDERICK B. FAGEN, of full age, being duly sworn, according to law, on his oath, says:

1. I am the complainant in the foregoing bill of complaint.

10

2. For some time prior to December 10, 1921, and up until on or about the tenth day of March, 1922, I was in possession of premises 3145 Mount Ephraim Pike, Fairview, Camden, New Jersey, more fully described in the foregoing bill of complaint.

20

3. On or about the tenth day of December, 1921, the United States Shipping Board Emergency Fleet Corporation, which will hereafter be referred to as the Shipping Board, held a public auction of all the real estate situate in that part of Camden, New Jersey, known as Fairview, in which the above described premises were located, the said premises being among those offered for sale on that day.

4. It was the expressed policy of the said Shipping Board to give to the tenants who were living in the various properties the preference of purchasing the same, when they desired to do so.

30

5. Upon the day of the said public auction, to wit: December 10, 1921, I attended the said sale, and the said premises being offered for sale, the highest bid received therefor was the sum of \$2100, and inquiry being then made by the auctioneer as to whether the tenant of the property was present and interested in buying the same, I, in response to said inquiry,

indicated that I was so interested, and thereupon, the premises were withdrawn from the sale, for the purpose of giving me an opportunity to complete a purchase of the same, if I could do so.

6. Prior to the said auction, I had talked to one Michael F. Falvey, sometimes known as Michael J. Falvey, one of the defendants hereinafter named, and informed him that I desired to buy the property, and the said Falvey expressed himself as being 10
willing to assist me in that respect.

7. Nora C. Falvey, the wife of the said Michael F. Falvey, was also present at the said auction sale; and she thereupon inquired of me whether I had made arrangements to buy the house, and I then and there informed her that I had been unable to carry out certain arrangements which I expected to perfect; and the said Nora C. Falvey then and there informed me that she was willing to purchase the 20
house for me and made an appointment for the following morning at her home to discuss the matter.

8. In pursuance of the said appointment, I went to the home of the defendants the next morning, and the matter was discussed between us, the result of which discussion was that the defendants agreed to purchase the premises for me under an arrangement by which I was to repay the defendants the amount paid by them for the said property, at my 30
convenience and as soon as practical; and when such amount had been so repaid, an arrangement was to be made with a building association to take a mortgage on the property.

9. On or about December 12, 1921, the defendants and I went to the auction room for the purpose of

perfecting arrangements to take over the said property, and it was then ascertained that the agreement for the sale of the said property had been prepared from the Fairview Realty Company (which, complainant is informed, is a subsidiary corporation of the said Shipping Board) the holder of the title to the said premises, to me, providing for the payment of the balance of the purchase price by me at the time of settlement and the giving by me
10 of the purchase money mortgage to the Shipping Board in the sum of \$1470.

10. Upon said circumstances being made known to the defendants, they refused to proceed further with the transaction unless the contract was drawn between the Fairview Realty Company directly with them; and the said contract was so re-drawn and executed between the Fairview Realty Company and
20 the defendants.

11. After making the said agreement, and in pursuance of the arrangement between me and defendants, I paid to the said Nora C. Falvey, on January 9, 1922, the sum of \$100, and on February 5, 1922, the further sum of \$50, which the defendants were to apply toward the payment of the purchase price of the said property, and on March 10, 1922, settlement for the said property was had; and the said Fairview Realty Company made a deed to the de-
30 fendants for the said property, and the said defendants gave a purchase money mortgage to the said Shipping Board for the sum of \$1470, payable at the expiration of three years from the date thereof with interest at 6%, the balance of the purchase price above the amount of the said mortgage being paid in cash by the said defendants, a portion of which said cash consisted of the said sums aggre-

gating \$150, which had theretofore been paid by me to the said defendants; and on the 11th day of March, 1922, the day following said settlement, I paid to the said defendants the further sum of \$50, to be applied to the said purchase price.

12. The above mentioned deed was dated March 10, 1922, and recorded in the Camden County Register of Deeds' Office on the twenty-third day of March, 1922, in Book 502 of Deeds, pages 98, &c., 10 and the said mortgage, bearing even date with the said deed, was recorded on the twenty-third day of March, 1922, in the said Register's office in Book 193 of Mortgages, pages 294, &c.

13. The above mentioned mortgage was cancelled of record on the eighteenth day of January, 1923, without my knowledge or consent.

14. I have paid to the defendants, at the times 20 hereinafter stated, the following sums of money, in addition to the \$200 above referred to:

DATE	AMOUNT	
April 14, 1922	\$50.00	
May 5, 1922	50.00	
June 7, 1922	39.20	
June 7, 1922	23.00	
July 1, 1922	50.00	
August 4, 1922	50.00	
September 2, 1922	50.00	
October 7, 1922	50.00	30
November 11, 1922	50.00	
November 30, 1922	39.20	
December 13, 1922	50.00	
January 18, 1923	50.00	
February 17, 1923	40.00	
March 19, 1923	50.00	

Bill of Complaint

April 19, 1923	50.00
May 16, 1923	50.00
	<hr/>
	\$741.40

15. That the amount of \$39.20, paid by me to defendants on June 7, 1922, and the like sum paid on November 30, 1922, was for the purpose of paying the taxes upon the said premises for the year 1922,
10 and the sum of \$23.00 paid by me to defendants on June 7, 1922, was for the purpose of paying the water rent on the said premises for that year.

16. The last payment made by me to the defendants was on or about May 16, 1923, up to which time the relations between me and the defendants continued to be friendly; but at or about that time the attitude of the defendants toward me underwent a change; and upon my asking the defendant, Nora
20 C. Falvey, with whom I had practically all of the dealings with respect to the payment of money, as to when the transaction would be completed, she answered me in an evasive manner and refused on one pretext and another to accept any further money from me and, finally, on several occasions became so violent and abusive toward me when I attempted to discuss the matter with her, that I made no further attempt to make any further payments.

17. On or about July 26, 1923, a notice was served
30 upon my wife, requiring me to quit the said premises, copy of which said notice is hereunto annexed, hereby made part hereof and marked "Schedule A;" and on the following day, I went to the home of the defendants and asked the defendant, Nora C. Falvey for an explanation of the notice, and the said Nora C. Falvey replied that the notice meant

just what it said, that the house belonged to her, that I would have to get out and lose all the money I had put into it, and that I would have to do just what she said about it.

18. I have always been willing, am now willing, and have always manifested myself to be willing to pay to the defendants whatever sums of money would be necessary to repay to them the amount of the purchase price above the purchase money mortgage, with whatever amounts may have been paid by the defendants for interest upon the said mortgage and any other expenses in connection with the transaction; but the said defendants have always refused to accept from me any such payments and have entirely repudiated the transaction. 10

19. On December 10, 1923, I was served with a summons and complaint in an action in ejectment in the Camden County Circuit Court, at the suit of the defendants herein, a copy of which is hereunto annexed, hereby made part hereof and marked "Schedule B." 20

20. The time for filing an answer in the said ejectment suit has not expired, and I have filed no answer therein.

21. That the payment by the defendants of the said purchase money mortgage was in violation of the arrangement made between defendants and me, in that the said mortgage was not payable until March 10, 1925; and it was understood between us that the said mortgage should remain until it became due unless prior to that time it was possible to negotiate a building and loan association mortgage in a sufficiently large amount to pay and satisfy the said 30

purchase money mortgage and to repay to the defendants the amount which would at that time be due to them, represented by the difference between the amount of money the defendants had advanced for the purchase of the premises, together with interest thereon and the sums of money paid to the defendants by me on account of the same.

22. Ever since the making of the said deed for
10 the said premises to the said defendants and the execution by them of the said purchase money mortgage, I have been in possession of the said premises and exercised all the rights of ownership thereover.

23. All of the allegations of the foregoing bill of complaint not herein reiterated, are true.

FREDERICK FAGAN.

20 Sworn and subscribed to before me this 29th day of December, 1923.

FRANK W. DAVIS,
Attorney at Law of New Jersey.

SCHEDULE A.

30 Camden, New Jersey, July 28th, 1923.
TO MR. FRED FAGAN,
3145 Mt. Ephraim Avenue,
Camden, New Jersey.

DEAR SIR:

You are hereby notified to yield up and surrender premises 3145 Mt. Ephraim Avenue, Camden, New Jersey, to the undersigned, on the First day of

November A. D. nineteen hundred and twenty-three.

MRS. NORA FALVEY

SCHEDULE B.

The State of New Jersey to
Frederick Fagen.

10

You are summoned to answer the annexed complaint of Michael F. Falvey and Nora C. Falvey, in an action in ejectment in the Camden County Circuit Court. And take notice, that unless you file your answer to said complaint, with the Clerk of the County of Camden, at Camden, within twenty days after service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

20

WITNESS, Frank T. Lloyd, Judge of the Camden County Circuit Court, at Camden, this tenth day of December, A. D. nineteen hundred and twenty-three.

PATRICK H. HARDING
Attorney

WM. D. BROWN
Clerk.

30

CAMDEN COUNTY CIRCUIT COURT.

BILL OF COMPLAINT.

10	MICHAEL F. FALVEY, and NORA C. FALVEY, <i>Plaintiffs,</i>	}	Action at Law. In Ejectment. Complaint.
	v.		
	FREDERICK FAGEN, <i>Defendant.</i>		

1. On March 10, A. D. 1922, plaintiffs owned and possessed a lot of land in Camden, County of Camden and State of New Jersey, described as follows:

20 BEGINNING in the Northwesterly line of the semi-circular extension of the Mount Ephraim Pike on the Westerly side thereof at a corner to lot No. 12, block No. 56 on plan hereinafter mentioned at a point distant sixty-eight and seventeen one-hundredths feet Westwardly and Southwestwardly, measured along the Northerly and Northwesterly lines of said semi-circular extension from the point of intersection thereof with the Westerly line of Mount Ephraim Pike, said last mentioned point being

30 distant one hundred and twenty-five and sixty-four one-hundredths feet Southwardly from the Southwest corner of Minnesota Road and Mount Ephraim Pike; thence (1) Southwestwardly along the Northwesterly line of said semi-circular extension curving to the South with a radius of forty-two feet a distance of fifteen

and forty-nine one-hundredths feet to a corner to lot No. 14 said plan; thence (2) along said lot No. 14 South seventy-one degrees, forty-three minutes West, twenty-one and sixty-seven one-hundredths feet to another corner to said lot No. 14 in the middle line of party wall between premises Nos. 3145 and 3147 Mount Ephraim Pike; thence (3) still along said lot No. 14 and the middle line of said party wall and the extended middle line of said party wall and the extended middle line of same North sixty-three degrees, seventeen minutes West, thirty-four and thirty-eight one-hundredths feet to another corner to said lot No. 14; thence (4) still along said lot No. 14 South seventy-one degrees forty-three minutes West, eighteen and ninety-three one-hundredths feet to the Easterly line of a rear street; thence (5) along same, North eighteen degrees, seventeen minutes West, twenty-nine and eight-tenths feet to an angle therein at a corner to lot No. 12 said plan; thence (6) along said lot No. 12 North seventy-nine degrees, seventeen minutes East, thirty-six and nine-tenths feet to an angle therein; thence (7) still along said lot No. 12 South sixty-three degrees seventeen minutes East fifty and fifty-six one-hundredths feet to the place of beginning. Being lot No. 13, Block No. 56, sheet No. 33 on Official Property Map of Yorkship Village and being also known as premises No. 3145 Mount Ephraim Pike.

2. Defendant, on that day, wrongfully entered upon said land and dispossesses plaintiffs and still keep them out of possession, depriving them of the rents and profits.

3. Said rents and profits amount to the sum of \$600 a year.

4. Plaintiffs' right to the possession of said land accrued on March 10, 1922.

Plaintiffs, therefore, demand judgment for possession of said premises and \$1500 damages.

PATRICK H. HARDING,
Atty. for Plaintiffs.

10

AMENDMENT TO BILL.
IN CHANCERY OF NEW JERSEY.

20	Between FREDERICK FAGEN, <i>Complainant,</i> and MICHAEL F. FALVEY, <i>et ux.,</i> <i>Defendants.</i>	}	On Bill, Etc. Amendment to Bill.
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30 Complainant hereby amends his bill of complaint in the above cause in the following particulars:

1. By inserting after the word "complainant" on the fourth line, fourth page of the bill, the name "Frederick Fagen."

2. By inserting after the third line on page one, the following heading, "First cause of action."

3. By adding the following to the bill of complaint:

“Second cause of action.”

“1. Paragraphs 1 to 21 of the first cause of action are hereby made part of this cause of action.

2. Complainant charges that the deed which was made by the Fairview Realty Company to the defendants was not intended to be an absolute conveyance to the said defendants; but only a conveyance by way of mortgage upon the said premises as security for the re-payment by complainant to the defendants of the amount of money loaned and advanced by them to complainant for the purchase of the said premises, the said deed to be cancelled, or a conveyance of the said premises made to complainant upon his re-paying to the defendants the amount so as aforesaid advanced by them; and complainant further charges that he has so repaid any amounts which he may have owed to the defendants in that behalf, and if it should be found, upon an accounting, that he owes the said defendants any further sum of money, he hereby tenders himself ready and willing to pay the same; and upon the payment thereof, complainant further charges that he is entitled to receive the legal title to the said premises which is now held by the defendants, but that the said defendants refuse to convey the legal title to complainant, and that the actions of the said defendants in the above respect are gross fraud and imposition upon the complainant and contrary to equity and good conscience.

3. Paragraph 23 of the first cause of action is hereby made a part of this cause of action.

Complainant is without adequate remedy at law, and, therefore, prays:

I.

10 That the said Michael F. Falvey, otherwise known as Michael J. Falvey, and Nora C. Falvey, who are the defendants to this suit, may answer this bill and each allegation therein made.

II.

20 That the said deed, so as aforesaid made by the Fairview Realty Company to the defendants, be decreed by this Honorable Court to be a mortgage held by the said defendants as security for the payment of the money so as aforesaid advanced by the defendants for the purchase for the complainant by the defendants of the said lands and premises.

III.

30 That an accounting be had by the defendants of the amounts paid by complainant to them as part of the transaction above set forth; and if, upon such accounting, the defendants be found to have been paid the amount to which they are justly entitled, that they be required to convey the said lands and premises, and the legal title thereto, to the complainant.

IV.

If, upon such accounting, the defendants be found to have been overpaid, that a decree be

made by this Honorable Court in favor of complainant for such excess; or if it be found that the complainant still owes, to the defendants, any sum of money growing out of the above transaction, that such conveyance by the defendants to the complainant be decreed to be made upon the payment by complainant to the defendants of the amount so owing by him; and that he be entitled to redeem the said premises from the said deed, or equitable mortgage. 10

V.

That said defendants be required, upon such conveyance to create or take back a mortgage upon the said premises, payable as to principal and interest in accordance with the terms of the purchase money mortgage above referred to. 20

VI.

That the said defendants be restrained from prosecuting the aforesaid action at law, in ejectment, until the further order of this Court.

VII.

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That a writ of subpoena may issue commanding the defendants to answer this bill of complaint and to abide by such decree as the Court may make in the premises; and that complainant may have an order in the nature of an injunction perpetually restraining the defendants

whereby she agreed to loan any money to complainant.

4. Defendants deny the 7th paragraph of the complaint.

5. They admit the 8th paragraph of the complaint.

6. They deny the 9th paragraph of the complaint.

7. Defendant, Nora Falvey, denies that part of the 10th paragraph wherein it states that she represented to a representative of the Shipping Board that she was loaning to complainant money necessary to enable him to complete a purchase of said property, and denies that the agreement made between her and the Shipping Board was made as a result of any such representation, or that she was permitted to sign said contract or agreement as a result of any such representation; but says that said agent well knew that she was buying said property in her own name and with her own funds, and not under any false pretense or any false representation whatever. 10
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8. She denies the 11th paragraph of the complaint, and says that the policy of the Shipping Board, so far as the tenants' rights to purchase property were concerned, was limited to the extent that if no better price were obtained, the tenant should have the first right on the bid price, and that no tenant bid the sum bid by defendant, Nora Falvey, at said sale, in the same sum or in excess of the amount of \$2100, bid by her for said property. 30

9. The defendants deny the 12th paragraph of the complaint.

10. They admit that part of the 13th paragraph of the complaint regarding the sums of money paid by complainant to defendant, Nora Falvey, but deny that said payments were made by them to apply towards repayment of any amount or sum advanced by complainant to defendant, Nora Falvey.

10 11. They admit that part of the 14th paragraph of the complaint, relative to the conveyance and the making of the mortgage on said property, but deny that the balance of the purchase price above the amount of the mortgage was advanced by defendants to complainant in pursuance of any arrangement, and deny that they advanced any sum whatever as a loan to the complainant.

12. They deny the 15th paragraph of the complaint.

20 13. They admit the 16th, 17th and 18th and 19th paragraphs of the complaint.

14. They deny the 20th paragraph of the complaint, so far as it refers to the application of the sums therein, to the payment of taxes or water rent, and say that if any such sums were paid, they were paid without the knowledge or consent of defendants.

30 15. They deny the 21st paragraph of the complaint.

16. They admit the 22nd paragraph of the complaint, but deny the conversation referred to therein between the complainant and Nora Falvey.

17. They neither admit nor deny the 23rd para-

graph of the complaint, as they have no knowledge or belief concerning same.

18. They admit the 24th and 25th paragraphs of the complaint.

19. They admit that part of the 26th paragraph of the complaint averring the possession of the premises by the complainant, but deny that said complainant exercised any right of ownership over said premises by the knowledge or consent of the defendants, or either of them. 10

20. They deny the 27th paragraph of the complaint.

ANSWER TO SECOND CAUSE OF ACTION.

1. These defendants, in answer to the 2nd cause of action, deny all the matters and things contained in both the 1st and 2nd paragraphs thereof. 20

2. As regards the 3rd paragraph, they admit they refused to convey the legal title to said premises to the complainant, but deny the rest of this paragraph.

ANSWER TO THIRD CAUSE OF ACTION.

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1. These defendants, in answer to the 1st and 2nd paragraphs of said third cause of action, deny all the matters and things contained therein.

DEFENSE.

1. In defense to said bill of complaint, said defendants say, that at or about the time mentioned in complainant's bill of complaint, of the auction held by the Fairview Realty Co., of property described in the bill, defendant, Nora Falvey, met complainant, Fagen, at the auction hereinbefore referred to, and that complainant, Fagen, informed defendant, Nora Falvey, that his property (meaning the property of which he was the tenant) would be up for sale on that day and at said time he asked defendant, Nora Falvey, if she would be willing to re-sell him the property or sell him the contract in case he would be willing to make settlement on same before the date fixed for the settlement by the Fairview Realty Co. with the said Nora Falvey. That she expressed her willingness so to do, but that the said Fagen, nor anybody on his behalf, at any time before the date of settlement by the said Nora Falvey with the Fairview Realty Co. for said property, viz., March 11, 1922, offered or tendered the amount paid by said Nora Falvey for said property at the time of settlement aforesaid. In fact, when the said Nora Falvey called complainant's attention to the time that settlement was to be made by her on the said property with the government, the complainant informed her that he was not interested in the purchase and indicated he would not go through with their agreement. But subsequent to the time said declaration was made by complainant, he still evidenced an intention to want the property and indicated that he would make an offer from time to time, but up to the time of filing this bill in this cause, complainant made no offer for said property, even though defendants stated repeatedly to com-

plainant that if he was still interested in the property, they would make the price reasonable.

The complainant, when pressed for the fixing of a figure for said property, would invariably state that he did not have the money and that he was not ready to make any such offer, and it was only after complainant had failed and refused to make any new offer for said property, or to agree to any price for same, that defendant, Nora Falvey, brought action to recover said property.

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2. Defendants further say that they have always been ready and willing to let the complainant have said property upon the fixing of a reasonable price to be agreed on between them, and did intend to let complainant have the benefit of any sums or sum that he had paid on said property in the purchase price, and charge him only for the interest on the investment plus whatever charges or expenses would be incurred, including municipal taxes and liens, but that complainant refused and declined each and every proposition suggested and seemed to be of the impression that by reason of his having paid the sums specified in the 13th and 18th paragraphs of his bill, that he was entitled to his property without any further consideration, and that defendants, therefore, should make a deed to him for said property.

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3. By way of further defense to said amended bill, these defendants say that complainant is not entitled to any relief in the premises, by reason of the fact that no evidence in writing or any memorandum is offered or alleged of or concerning said alleged intention of the grantor, or the complainant to convey the said premises by mortgage and not by deed in fee simple, and that complainant is, there-

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fore, not entitled to the interposition of this court, since his claim falls within the statute of frauds and perjuries, which is hereby pleaded and made part of this defense.

Defendants, therefore, pray that they may be hence dismissed with their costs and charges in this behalf sustained.

Solr. for Defendants.

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REPLICATION.

IN CHANCERY OF NEW JERSEY.

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Between

FREDERICK FAGEN,
Complainant,

and

MICHAEL F. FALVEY, and

NORA C. FALVEY,
Defendants.

On Bill, Etc.
Replication.

30

The complainant joins issue upon the answer of the defendants, Michael F. Falvey and Nora C. Falvey.

D. T. STACKHOUSE,
Solicitor for Complainant.

BEGINNING in the Northwesterly line of the semi-circular extension of the Mount Ephraim Pike on the Westerly side thereof at a corner to lot No. 12, block No. 56 on plan hereinafter mentioned at a point distant sixty-eight and seventeen one-hundredths feet Westwardly and Southwestwardly, measured along the Northerly and Northwesterly lines of said semi-circular extension from the point of intersection thereof with the Westerly line of Mount Ephraim Pike, said last mentioned point being distant one hundred and twenty-five and sixty-four one-hundredths feet southwardly from the Southwest corner of Minnesota Road and Mount Ephraim Pike; thence (1) Southwestwardly along the Northwesterly line of said semi-circular extension curving to the South with a radius of forty-two feet a distance of fifteen and forty-nine one-hundredths feet to corner to lot No. 14 said plan; thence (2) along said lot No. 14 South seventy-one degrees, forty-three minutes West, twenty-one and sixty-seven one-hundredths feet to another corner to said lot No. 14 in the middle line of party wall between premises Nos. 3145 and 3147 Mount Ephraim Pike; thence (3) still along said lot No. 14 and the middle line of said party wall and the extended middle line of same North sixty-three degrees, seventeen minutes West, thirty-four and thirty-eight one-hundredths feet to another corner to said lot No. 14; thence (4) still along said lot No. 14 South seventy-one degrees forty-three minutes West, eighteen and ninety-three one-hundredths feet to the Easterly line of a rear street; thence (5) along same, North eighteen degrees, seventeen minutes West, twenty-nine and eight-tenths feet to an

angle therein at a corner to lot No. 12 said plan; thence (6) along said lot No. 12 North seventy-nine degrees, seventeen minutes East, thirty-six and nine-tenths feet to an angle therein; thence (7) still along said lot No. 12 South sixty-three degrees seventeen minutes East fifty and fifty-six one-hundredths feet to the place of beginning. Being lot No. 13, Block No. 58, sheet No. 33 on Official Property Map of Yorkship Village and being also known as 10 premises No. 3145 Mount Ephraim Pike.

2. That on or about the tenth day of December, 1921, the United States Shipping Board Emergency Fleet Corporation, which will hereafter be referred to as the Shipping Board, held a public auction of all the real estate situate in that part of Camden, New Jersey, known as Fairview, in which the above described premises were located, the said premises being among those offered for sale on that day. 20

3. It was the expressed policy of the said Shipping Board to give to the tenants who were living in the various properties the preference of purchasing the same, when they desired to do so.

4. Upon the day of the said public auction, to wit; December 10, 1921, the complainant attended the said sale, and the said premises being offered for sale, the highest bid received therefor was the sum 30 of \$2100; and inquiry being then made by the auctioneer as to whether the tenant of the property was present and interested in buying the same, complainant, in response to said inquiry, indicated that he was so interested and thereupon the premises were withdrawn from the sale, for the purpose of

giving complainant an opportunity to complete a purchase of the same, if he could do so.

5. Prior to the said auction, complainant had talked to one Michael F. Falvey, sometimes known as Michael J. Falvey, one of the defendants hereinafter named, and informed him that he desired to buy the property, and the said Falvey expressed himself as being willing to assist complainants in that
10 respect.

6. Nora C. Falvey, also one of the defendants hereinafter named, the wife of the said Michael F. Falvey, was also present at the said auction sale; and in a conversation had between complainant and the said Nora C. Falvey, complainant informed her that he had been unable to carry out certain arrangements which he had expected to make for the purpose of acquiring the property; and the said Nora
20 C. Falvey then and there informed complainant that she was willing to loan him the funds necessary to enable him to purchase his house, and made an appointment for the following morning at her home to discuss the matter.

7. In pursuance of the said appointment, complainant went to the home of the defendants on the following morning, and the matter was discussed between them, the result of which discussion was
30 that the said Nora C. Falvey agreed to loan to complainant the amount necessary to enable complainant to purchase the said premises, which the complainant was to repay to the said Nora C. Falvey at his convenience and as soon as practicable; and when such amount had been so repaid an arrangement was to be made with the building association to take a mortgage on the property.

8. That it was the practice of the Shipping Board, in making sales of the said properties, to take back a purchase money mortgage for seventy per cent of the purchase price, should the purchasers desire to purchase the premises upon such terms.

9. On or about December 12, 1921, the complainant and the defendant, Nora C. Falvey, went to the auction room of the Shipping Board for the purpose of perfecting arrangements to take over the said property; and there was presented for complainant's signature an agreement for the sale of the said property from the Fairview Realty Company (which, complainant is informed, is a subsidiary corporation of the said Shipping Board) the holder of the title to the said premises, providing for the payment of the balance of the purchase price at the time of settlement, and the giving by complainant of a purchase money mortgage to the Shipping Board in the sum of \$1470, being seventy per cent of the purchase price of \$2100. 10 20

10. The said Nora C. Falvey then insisted that the contract be made with her by the said Fairview Realty Company; and she then and there represented to the representative of the Shipping Board and of the Fairview Realty Company that she was loaning to complainant the money necessary to enable him to complete his purchase of the said property; and acting upon such representation, the representative of the Shipping Board and Fairview Realty Company permitted the said Nora C. Falvey to sign the contract for the sale and purchase of the said property, between the Fairview Realty Company and the defendant, Nora C. Falvey. 30

11. The sole, enabling cause of the said Nora C. Falvey's being permitted to sign the said agree-

ment with the Fairview Realty Company was the representation made by the said Nora C. Falvey that she would loan to complainant the funds necessary to enable him to purchase the property, which, under the policy of the Shipping Board, complainant had the sole right to do at that time for the said sum of \$2100.

12. Complainant consented to the agreement's
10 being signed by the defendant, Nora C. Falvey, because he feared that if he did not, he would lose the property.

13. After the signing of the said agreement, and in pursuance of the arrangement between the complainant and the defendant, Nora C. Falvey, complainant paid to the said Nora C. Falvey on January 9, 1922, the sum of \$100, and on February 5, 1922, the further sum of \$50, which the defendant was
20 to apply towards the repayment to her of the amounts advanced and to be advanced by her, she having paid, at the time of the making of the said agreement of sale, the sum of \$210, being ten per cent of the gross purchase price for the said premises, pursuant to the said agreement of sale.

14. On March 10, 1922, settlement for the said property was had and the said Fairview Realty Company made a deed to the defendants, Nora C.
30 Falvey and Michael F. Falvey, her husband, for the said premises, and the said defendants made and executed a purchase money mortgage to the said Shipping Board, bearing date the day and year last aforesaid, and recorded on the twenty-third day of March, 1922, in the office of the Register of Deeds of Camden County, New Jersey, in Book 193, page 294, to secure the payment of the sum of \$1470,

payable at the expiration of three years from the date thereof, with interest at six per cent, the balance of the purchase price, above the amount of the said mortgage being loaned and advanced by the defendants to complainant in pursuance of the arrangement theretofore had between them, a portion of which said cash consisted of the said sums aggregating \$150, which had theretofore been paid by complainant to the defendants.

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15. On the eleventh day of March, 1922, the day following the said settlement, complainant repaid to the said defendants the further sum of \$50 on account of the moneys loaned and advanced to complainant by the said defendants.

16. The above mentioned deed was dated March 10, 1922, and recorded in the said Register of Deeds' Office on March 23, 1922, in Book 502 of Deeds, page 98, &c.

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17. The above mentioned mortgage was cancelled of record on the eighteenth day of January, 1923, without complainant's knowledge or consent.

18. Complainant has repaid to the defendants, at the times hereinafter stated, the following sums of money, in addition to the \$200 above referred to:

	DATE	AMOUNT
	April 14, 1922	\$50.00
	May 5, 1922	50.00
	June 7, 1922	39.20
	June 7, 1922	23.00
	July 1, 1922	50.00
	August 4, 1922	50.00
	September 2, 1922	50.00
	October 7, 1922	50.00

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November 11, 1922	50.00
November 30, 1922	39.20
December 13, 1922	50.00
January 18, 1923	50.00
February 17, 1923	40.00
March 19, 1923	50.00
April 19, 1923	50.00
May 16, 1923	50.00

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 \$741.40

19. The said payments are each evidenced by receipts signed by defendant, Nora C. Falvey, the first of which is in the following form:

“1-9-22. Recd. of Fred Fagan 100 hundred dollars.

Mrs. Falvey”

The other receipts being practically identical in form with the exception of the date and amount; and with the further exception of the receipt given for the payments of \$39.20 and \$23.00 on June 7, 1922, which reads as follows:

“June 7-22. Red. of Fred Fagan 39 dollars and 20 cents for taxes. I red. 23 dollars for water.

Mrs. Falvey”

20. That the amount of \$39.20 paid by complainant to defendants on June 7, 1922, and the like sum paid on November 30th, 1922, was for the purpose of paying the taxes upon the said premises for the year 1922, and the sum of \$23.00 paid by complainant to defendants on June 7, 1922, was for the purpose of paying the water rent on the said premises for the year 1922; the aggregate of all of the payments made by complainant to defendants being \$941.40.

21. The last payment made by complainant to defendants was on or about May 16, 1923, up to which time the relations between the complainant and the defendants continued to be friendly; but at or about that time, the attitude of the defendants toward the complainant underwent a change; and upon complainant's asking the defendant, Nora C. Falvey, with whom he had practically all of the dealings with respect to the payment of money, as to when the transaction would be completed, she answered him in an evasive manner and refused on one pretext and another to accept any further money from him, and finally, on several occasions became so violent and abusive toward complainant when he attempted to discuss the matter with her, that he made no further attempt to make any further payments. 10

22. On or about July 26, 1923, a notice was served upon complainant's wife, requiring the complainant to quit the said premises, copy of which said notice is hereunto annexed, hereby made part hereof and marked "Schedule A;" and on the following day, complainant went to the home of the defendants and asked the defendant, Nora C. Falvey, for an explanation of the notice, and the said Nora C. Falvey replied that the notice meant just what it said, that the house belonged to her, that complainant would have to get out and lose all the money he had put into it, and that complainant would have to do just what she said about it. 20 30

23. Complainant has always been willing, is now willing, and has always manifested himself to be willing to pay to defendants all the sums of money necessary to repay to them the money loaned and advanced by them to complainant above the amount

of the purchase money mortgage, with whatever amounts may have been paid by defendants for interest upon the said mortgage, and any other expenses in connection with the said transaction; but the said defendants have always refused to accept from the complainant any such payments, and have entirely repudiated the transaction.

10 24. On December 10, 1923, complainant was served with a summons and complaint in an action in ejectment in the Camden County Circuit Court, at the suit of the defendants herein, a copy of which is hereunto annexed, hereby made part hereof and marked "Schedule B."

25. The time for filing an answer in the said ejectment suit has not expired, and the complainant has filed no answer therein.

20 26. Ever since the making of the said deed for the said premises to the said defendants and the execution by them of the said purchase money mortgage, complainant has been in possession of the said premises and exercised all the rights of ownership thereover.

30 27. Complainant charges that the defendants took title to the said premises with the imposition thereon of a resulting trust in favor of the complainant, and that when the defendants were repaid by the complainant the amounts loaned and advanced by the defendants to complainant in payment of the purchase price of the said property with interest, the trust should thereupon be executed and the complainant entitled to receive the legal title to the said premises, which is now held by the defendants, and that the actions of the defendants in this respect

are a gross fraud and imposition upon the complainant and contrary to equity and good conscience.

28. The said Michael F. Falvey, complainant charges, had whole and complete notice and knowledge of the transactions between the complainant and the said defendant, Nora C. Falvey.

Complainant is without adequate remedy at law, and, therefore, prays: 10

I.

That the said Michael F. Falvey and Nora C. Falvey, who are the defendants to this suit, may answer this bill and each allegation therein made.

II.

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That a decree be made that a resulting trust arose for the said premises in favor of the complainant and that the said defendants be decreed to hold the title to the said premises in trust for complainant.

III.

That the said trust be decreed to be executed and the defendants decreed to convey the legal title of 30 the said premises to the complainant.

IV.

That an accounting be had by the defendants of the amounts paid by complainant to them as part

of the transaction above set forth; and if, upon such accounting, the defendants be found to have been overpaid, that a decree be made by this Honorable Court in favor of complainant for such excess.

V.

- 10 That the said defendants be restrained from prosecuting the aforesaid action at law in ejectment, until the further order of this Court.

VI.

- 20 That a writ of subpoena may issue commanding the defendants to answer this bill of complaint and to abide by such decree as the Court may make in the premises; and that the complainant may have an order in the nature of an injunction, restraining the defendants from the further prosecution of the said ejectment suit.

SECOND CAUSE OF ACTION.

1. Paragraphs 1 to 26 of the first cause of action are hereby made part of this cause of action.
- 30 2. Complainant charges that the right extended to him by the Fairview Realty Company and the Shipping Board, to purchase the said premises for the sum of \$2100, which right was paramount to that of any other person to purchase the same for said sum, was a valuable, equitable right; and that the deed which was made by the Fairview Realty

Company to the defendants was a conveyance by way of a mortgage upon the said premises and by way of a pledge of the complainant's right to purchase the same, as security for the repayment by complainant to the defendants of the amounts of money loaned and advanced by them to complainant to enable him to purchase the said premises, the said deed to be cancelled or a conveyance of the said premises to be made to complainant upon his repaying to the defendants the amounts so as aforesaid advanced by them; and if it should be found, upon an accounting, that he owes the said defendants any further sum of money, he hereby tenders himself ready and willing to pay the same; and upon the payment thereof, complainant charges that he is entitled to receive the legal title to the said premises, which is now held by the defendants. 10

3. That the said defendants refused to convey the legal title to the premises; and the actions of the said defendants in that respect are a gross fraud and imposition upon the complainant and contrary to equity and good conscience. 20

The complainant is without adequate remedy at law, and, therefore, prays:

I.

That the said Michael F. Falvey and Nora C. Falvey, who are the defendants to this suit, may answer this bill and each allegation therein made. 30

II.

That the said deed so as aforesaid made by the Fairview Realty Company to defendants be decreed

by this Honorable Court to be a mortgage held by the said defendants as security for the payment of the moneys loaned and advanced by the defendants to complainant to enable him to purchase the said lands and premises.

III.

10 That an accounting be had by the defendants of the amount paid by complainant to them as part of the transaction above set forth; and if, upon such accounting, defendants be found to have been paid the amount to which they are justly entitled, or if any sum still remains due them upon the payment of such sum, that they be required to convey the said lands and premises and the legal title thereto to the complainant.

20

IV.

That if upon such accounting the defendants be found to have been overpaid that a decree be made by this Honorable Court in favor of complainant for such excess.

V.

30 That complainant be decreed to be entitled to redeem the said premises from the said deed or equitable mortgage.

VI.

That a writ of subpoena may issue commanding the defendants to answer this bill of complaint and

to abide by such decree as the Court may make in the premises and that the complainant may have an order in the nature of an injunction, restraining the defendants from the further prosecution of the said ejectment suit.

VII.

That the said defendants be restrained from prosecuting the aforesaid action at law in ejectment, until the further order of this Court. 10

THIRD CAUSE OF ACTION.

1. Paragraphs 1 to 26 of the first cause of action are hereby made part of this cause of action.

2. Complainant charges that by reason of the representation made by the defendant, Nora C. Falvey, to the representative of the Shipping Board and of the Fairview Realty Company, that she was acting in the interest of the complainant in purchasing the said property, defendants took title to the said premises with the imposition thereon of a constructive trust in favor of complainant, which trust the complainant is now entitled to have executed and to receive the legal title to said premises, which is held by the defendants; and that the actions of the defendants in this respect are a gross fraud and imposition upon the complainant and contrary to equity and good conscience. 20 30

Complainant is without adequate remedy at law, and, therefore, prays:

I.

That the said Michael F. Falvey and Nora C. Falvey, who are the defendants to this suit, may answer this bill and each allegation therein made.

II.

10 That a constructive trust be decreed to exist as against the said defendants and in favor of the complainant; and that the said defendants be decreed to hold title to the above mentioned premises in trust for the complainant.

III.

20 That the said trust be decreed to be executed and the defendants decreed to convey the legal title of the said premises to the complainant.

IV.

30 That an accounting be had by the defendants of the amounts paid by complainant to them as part of the transaction above set forth; and if, upon such accounting the defendants be found to have been overpaid, that a decree be made by this Honorable Court in favor of complainant for such excess.

V.

That the said defendants be restrained from prosecuting the aforesaid action at law in ejectment, until the further order of this Court.

VI.

That a writ of subpoena may issue commanding the defendants to answer this bill of complaint and to abide by such decree as the Court may make in the premises; and that the complainant may have an order in the nature of an injunction, restraining the defendants from the further prosecution of the said ejectment suit.

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D. T. STACKHOUSE,
*Solicitor for and of Counsel with
Complainant.*

SCHEDULE A.

Camden, New Jersey, July 28, 1923.
TO MR. FRED FAGAN,
3145 Mt. Ephraim Avenue,
Camden, New Jersey.

20

DEAR SIR:

You are hereby notified to yield up and surrender premises 3145 Mt. Ephraim Avenue, Camden, New Jersey, to the undersigned, on the First day of November A. D. nineteen hundred and twenty-three.

MRS. NORA FALVEY

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SCHEDULE B.

The State of New Jersey to
Frederick Fagen.

You are summoned to answer the annexed complaint of Michael F. Falvey and Nora C. Falvey,

mentioned at a point distant sixty-eight and seventeen one-hundredths feet Westwardly and Southwestwardly, measured along the Northerly and Northwesterly lines of said semi-circular extension from the point of intersection thereof with the Westerly lines of Mount Ephraim Pike, said last mentioned point being distant one hundred and twenty-five and sixty-four one-hundredths feet Southwardly from the Southwest corner of Minnesota Road and Mount Ephraim Pike; thence (1) Southwestwardly along the Northwesterly line of said semi-circular extension curving to the South with a radius of forty-two feet a distance of fifteen and forty-nine one-hundredths feet to corner to lot No. 14 said plan; thence (2) along said lot No. 14 South seventy-one degrees, forty-three minutes West, twenty-one and sixty-seven one-hundredths feet to another corner to said lot No. 14 in the middle line of party wall between premises Nos. 3145 and 3147 Mount Ephraim Pike; thence (3) still along said lot No. 14 and the middle line of said party wall and the extended middle line of said party wall and the extended middle line of same North sixty-three degrees, seventeen minutes West, thirty-four and thirty-eight one-hundredths feet to another corner to said lot No. 14; thence (4) still along said lot No. 14 South seventy-one degrees forty-three minutes West, eighteen and ninety-three one-hundredths feet to the Easterly line of a rear street; thence (5) along same, North eighteen degrees, seventeen minutes West, twenty-nine and eight-tenths feet to an angle therein at a corner to lot No. 12 said plan; thence (6) along said lot No. 12 North seventy-nine degrees, seventeen minutes East, thirty-six and nine-tenths feet to an angle there-

in; thence (7) still along said lot No. 12 South sixty-three degrees seventeen minutes East fifty and fifty-six one-hundredths feet to the place of beginning. Being lot No. 13, Block No. 56, sheet No. 33 on Official Property Map of Yorkship Village and being also known as premises No. 3145 Mount Ephraim Pike.

2. Defendant, on that day, wrongfully entered
10 upon said land and dispossesses plaintiffs and still keep them out of possession, depriving them of the rents and profits.

3. Said rents and profits amount to the sum of \$600 a year.

4. Plaintiffs' right to the possession of said land accrued on March 10, 1922.

20 Plaintiffs, therefore, demand judgment for possession of said premises and \$1500 damages.

PATRICK H. HARDING,
Atty. for Plaintiffs.

ANSWER TO AMENDED BILL.
IN CHANCERY OF NEW JERSEY.

Between	}		
FREDERICK FAGEN,		On Bill, &c.	10
<i>Complainant,</i>		Amendment to Bill.	
and		Answer to Amended	
MICHAEL F. FALVEY, <i>et ux.</i> ,	Bill.		
<i>Defendants.</i>			

Defendants, in answer to item 2 of paragraph 3 of the amended bill, says:

1. They deny all the matters and things contained in said paragraph. 20

2. They make the same answer to all of the other paragraphs of said amended complaint, as were made by them to said paragraphs in answering the original bill, and that so far as complainant asserts that the conveyance made by the Fairview Realty Co. to defendants was by way of mortgage, or intended as a mortgage, these defendants specifically deny that said conveyance was made as a mortgage or that it was intended as such, but that it was made and intended as a true and absolute conveyance in fee simple by the said Fairview Realty Co. to these defendants. 30

3. By way of further defense to said amended bill, these defendants say that complainant is not entitled

to any relief in the premises, by reason of the fact that no evidence in writing or any memorandum is offered or alleged of or concerning said alleged intention of the grantor, or the complainant to convey said premises by mortgage and not by deed in fee simple, and that said complainant is, therefore, not entitled to the interposition of this court, since his claim falls within the statute of frauds and perjuries, which is hereby pleaded and made part of
 10 this defense.

PATRICK H. HARDING,
Solicitor of Defendants.

REPLICATION.

20 IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, Etc. Replication.
FREDERICK FAGEN, Complainant,		
and		
MICHAEL F. FALVEY, <i>et ux.</i> , Defendants.		

30

The complainant joins issue upon the answer of the defendants to the amended bill of complaint and upon the several defenses contained therein.

D. T. STACKHOUSE,
Solicitor for Complainant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, Etc. Final Hearing. Testimony.	10
FREDERICK FAGEN, <i>Complainant,</i>			
and			
MICHAEL F. FALVEY, <i>et ux.,</i> <i>Defendants.</i>			

September 17, 1924.

LEAMING, V. C.

APPEARANCES:

D. TRUEMAN STACKHOUSE, Esq., for complainant.
PATRICK H. HARDING, Esq., for defendant.

FREDERICK FAGEN, SWORN.

By Mr. Stackhouse:

Q. Mr. Fagen, you are the complainant in this suit
against Mrs. Falvey?

30

A. Yes, sir.

Q. You are living in this property which is in dispute, aren't you?

A. Yes, sir.

Q. How long have you been living there?

A. Been living there now about four years or more, close to five years.

10 The Court: Give me the date as nearly as you can.

The Witness: I think I went in there July 10th—my wife knows exactly, I guess.

Q. You testify as you know, if you don't know, say so.

A. 1921.

20 The Court: I don't suppose there is any dispute about that; you were a tenant when the property was sold. I wanted to see how long you had been there when the property was sold. 1921, you think it was?

The Witness: Yes.

Q. What is the number of this property?

A. 3145 Mt. Ephraim Avenue, Fairview, Camden, New Jersey.

30 The Court: 3145 Mt. Ephraim Avenue?

The Witness: Yes.

Q. You remember the sale which took place there of all the houses down at Fairview and Yorkship—in December of 1922, wasn't it?

A. December 10, 1921.

Q. 1921?

A. Yes, sir.

Q. Did you attend the sale?

A. Yes, sir, I did.

Q. What was done with reference to this property in which you had been living in as a tenant?

A. Why, when I attended to the sale, when the sale was going on, bidding houses, I think Alabama went first and then they come to Mt. Ephraim Pike, and when the houses were going at auction—when 10 my house came up it was around the third or fourth house that went off, why, Mr. Day, the auctioneer, he called the house out for certain price, \$2100, and whoever wanted to buy—if the tenant was there he had the first preference on the property, they who were living in it —

The Court: He set the price himself?

The Witness: Yes, sir.

20

The Court: Or had there been bidding?

The Witness: There was bidding, he didn't set the price.

Q. When the bid was made of \$2100 did Mr. Day or his auctioneer make any announcement at that time with reference to the property?

A. The bid was closed, the officers called \$2100 30 and when nobody bid any higher he said the property will go at \$2100 and if the tenant is here, if the tenant is here he has the preference on the property if he wishes to take it, so I raised my hand up and Mr. Day's auctioneer clerk, Mr. Conklin, he saw me hand raised up and he came down the aisle—it was in the center aisle about a dozen seats back of where Mr.

Day had his stand—and he came right down to me with his pencil and pad and asked me and told me to sign my name, so I told him, “Mr. Conklin, wait a few seconds, I have a man here that promised to loan me \$100.00 to get the house for me,” that was Mr. Stormfeltz, and the man had disappeared, and I found out later he thought the property was going much cheaper that it did, and it came too high, they expected around \$1100 or \$1200, and when I looked
10 for this man Stormfeltz he disappeared, and Mr. Day went right on with the auction, and my house was laid over until Mr. Conklin said, “You go around and get the money and I will come around and fix you up after.”

The Court: Did you sign at the time?

The Witness: No, I didn't sign at the time, so I looked around and I couldn't find Mr. Stormfeltz,
20 and I spoke to a few other men there did they see Mr. Stormfeltz, I think I asked Mr. Saunders, and he said, “I think he beat it,” and I happened to look across the way, and on my right was Mrs. Falvey and Mrs. Wallace. Mr. Falvey looked at me and she beckoned to me and I went over, and she was in the middle of the seats and I had to cross a few people, and Mrs. Falvey said, “What is the matter, Mr. Fagen, you look kind of white,” she said, “Did you get your property?” And I said, “No, I am looking
30 for Mr. Stormfeltz, he was going to loan me the money for my property, and” I said, “He is gone.” She said, “Well, if I had the money here I would give it to you right away,” so I said, “I am sorry you ain't got it, Mrs. Falvey,” so Mrs. Falvey said, “Never mind” she said, “Sit down,” so they made room for me, and they were going on with the auction, and every once in a while she would speak about

the auction and different things and said she was sorry for me, so that was all right until that night. I stayed about half an hour and I went home, it was going around six o'clock —

The Court: Up to that time she hadn't said whether she would let you have the money?

The Witness: She said if she had the money with her she would let me have the money. 10

The Court: Did she say whether she would get it for you?

The Witness: No, sir, she said if she had the money there with her she would let me have it; so that was all right, and I went out and was prying around —

The Court: How much did you have to pay down? 20

The Witness: \$200.00, and I had to pay the auctioneer's fee, that was \$15.00.

The Court: You wanted \$215.00?

The Witness: \$215.00 altogether, that would be counting the auctioneer's fee; for the tenant \$200.00, he wouldn't have to pay the fee, it was only on account of the auctioneer's fee, like. 30

Q. Mr. Fagen, what was done with the property on the 10th day of December, was it sold?

A. No, the property was held over, they went on with the auction and that house was kind of held for me; they went on and that would come up in the

next day if the auction wasn't completed. So that night I went there, I went home —

The Court: Went to Mrs. Falvey's home, you mean?

The Witness: No, to my own home, and I told my wife how it was, and I went and I met Mr. Conklin, and late at night, o'clock —

10

Q. Who was Mr. Conklin?

A. He was the auctioneer for Mr. Day, that is, his helper, as I would say.

Q. Clerk?

A. Clerk, he had several of them, so I met Mr. Conklin nine o'clock, and I told him if he would hold the property, and he said, "It hasn't been sold, we will hold it until you get the money, probably you will get some by to-morrow, and that was on a Sunday. Sunday I was down where they had the office in Fairview —

20

The Court: The following day was Sunday, this sale was on Saturday?

The Witness: Yes, the 10th and the 11th. And all houses that weren't sold had to go to Washington and be recorded and start another sale to complete the houses on Monday, see, that was the 12th; so Mr. Conklin told me my house was still there and if I got the money he would see I got the house.

30

The Court: Did you get the \$200.00 to pay down?

The Witness: Yes. So that Sunday morning I went to Mrs. Falvey's house, and I said to Mrs. Falvey, I said, "Mrs. Falvey, I still have my house

held for me if I can get the money," so in the meantime—that was around nine o'clock somewhere, around nine or nine-thirty, and Mr. Falvey was at mass at the Sacred Heart Church, Ferry Avenue and Broadway, and she told me to wait until Mike came home, and I waited half an hour and he came from church and we spoke about it and Mike was perfectly satisfied for Mrs. Falvey to loan me the money to purchase my house, so we made arrangements there for Monday would be the sale, and I was to come 10 there and get Mrs. Falvey and bring her over to the sale. I came over Monday and before we went to the sale I brought Mrs. Falvey to my house and Mrs. Falvey and entered the house—that was the first time, I think, my wife met Mrs. Falvey, and I introduced her to her, and Mrs. Falvey looked through the house and my wife brought her upstairs and downstairs and showed her, and she said, "I want to tell you people you are getting a nice little house for the money," and I thanked her all I could for 20 the money she was loaning me to get the house —

The Court: What was the amount she was to loan you?

The Witness: The \$200.00, and after we looked through the house it was already time for the sale—the sale began at 10 o'clock, I believe, and we went down there and we made arrangements with Mr. Conklin he would see us first thing and get it over 30 for us as soon as possible the next day on a Monday, which I seen Mr. Conklin Sunday after he came back from Philadelphia, and he told me he had everything and everything would be all right for me to meet him on Monday half past one or two o'clock in the auditorium, the moving picture house it was, so I

did as Mr. Conklin told me and it was around half past one or quarter to two we meet Mr. Conklin.

The Court: You and who?

The Witness: I and Mrs. Falvey.

The Court: She hadn't yet paid the money over to you?

10

The Witness: No, sir, not yet. We went in the moving picture place where the sale was, and before the sale started—I guess it was started about just as soon as we got there, or a little after, I don't think it started just as we got there, and Mr. Conklin says, "Come on, we will fix you up and have it settled," so we followed Mr. Conklin, and he went up and got a book and papers, and it was right near the wall, and there was a few seats there, or a bench, or something like that, and we were right there at the little
20 table, and he says, "Now, we will fix this up," so Mrs. Falvey—he asked Mrs. Falvey if she was willing to put the money down for this and she yes; so we got the papers ready, and as he was getting the papers ready Mrs. Falvey kind of hesitated a while, that she didn't like the idea of buying a property and putting the title in my name. "Well" I said, "Mrs. Falvey, everything is all right, you don't need to be afraid of me, I am a friend of yours, and as far
30 as you know the right kind of a man, and Mr. Falvey knows me by working in the mill," I said, "You don't need to be afraid, I will pay it back as soon as possible," so she didn't quite like that, and she said she would pay the \$15.00 extra auctioneer fee and have the papers put in her name as security until I paid the \$215.00 which she paid down, and when I paid it back she was supposed to have the papers

put in my name and my wife's names, turn the house and papers over to us as soon as I paid her back the money she put in, so I was perfectly willing to let her take her name to the papers until I paid the money back, the \$215.00 which she paid in, and then she would turn the papers over to me.

The Court: Had the papers been drawn first in your name?

10

The Witness: Yes, all papers were first made out in my name, Mr. Conklin had them all made out ready for quick work, and after Mrs. Falvey hesitated and said she would rather have it in her name for security I was satisfied to do that.

The Court: The papers were drawn all over?

The Witness: Yes, sir.

20

The Court: What sort of papers were made out, a deed?

The Witness: I don't think it was a deed; I don't know what papers they were, I am not acquainted with real estate or anything like that, I was so anxious —

Q. One moment, Mr. Fagen. Did you see the agreement which was made at that time?

30

A. No, sir, I did not, Mr. Stackhouse.

Mr. Stackhouse: No dispute but what that is the agreement.

Mr. Harding: That is the agreement, I think. I

presume it is the original agreement, it is the agreement Mrs. Falvey brought in.

The Court: What is the date?

Mr. Stackhouse: 10th of December, 1921; it seems to be for the same property and for the same amount. Probably it may have been antedated. If there is no objection I will offer this in evidence.

10

(Said paper marked Exhibit C1.)

The Court: This receipt is for \$210.00, and the auctioneer's fee was \$15.00; was it \$225.00 altogether that was paid?

The Witness: I thought it was \$215.00.

20 Mr. Stackhouse: Is that the original? Let me look at it for a moment as soon as you are finished with it.

The Court: I didn't follow that out far enough to see whether it provides for the payment of the balance; does it provide a time for the payment of the balance? Have you noticed whether or not it provides a time for the payment of the balance.

30 Mr. Stackhouse: I think it fixes the time for settlement there. This \$225.00 that would be ten per cent of the purchase price and \$15.00 auctioneer fee, which would be the total of \$225.

The Court: I didn't read the details about the purchase money mortgage. Let me make a note to get this right. The price was \$2100; now, there was paid on account of the price \$210.00, that is ten per

cent, that makes \$1890, now 70 per cent was privileged —

Mr. Stackhouse: That would be a mortgage for \$1470.

The Court: That would leave only \$420 as the cash balance?

Mr. Stackhouse: Yes.

10

The Court: All right, I have got the situation, I guess.

Q. Now, Mr. Fagen, after Mrs. Falvey had this agreement made in her name, what happened then, anything further on that day?

A. No, only we went from the hall up to our house again and we stayed a little while, and from there we went up as far as the car line on Collings Road— I believe she didn't care to ride on buses that day, I heard she was afraid, and I believe she took a trolley car, I imagine she got a trolley car, the trolleys were running then. 20

Q. What was the next transaction you had with Mrs. Falvey in connection with the property?

A. The next transaction; I don't believe there was any more unless I visited her house once, until the first payment, and she was in the house and we mentioned we were going to try to give as much as possible into the house, and she said, "There is no need of you hurrying, you don't have to deprive yourself or family of any needs, you can pay me back as much as you can afford each month," and I told her, I said, "I will try and give you \$50.00 a month," and she said, "It is not necessary for that, pay me exactly what you can, that is all, and if you should run 30

short on taxes or water rent I will pay that for you and you can pay later on," and I said, "All right, we are perfectly willing," and we were well satisfied, and that is the only thing I think I said.

Q. Mr. Fagen, do you know when settlement was had for the property?

A. No, sir. I do not, Mrs. Falvey never told me those things.

Q. Were you present at the settlement?

10 A. No, sir.

Q. When was the first payment you made?

A. The first payment I made I think it was in January, I think it was January 6th or 9th.

Q. Did you get a receipt for it?

A. No, only in the book, only in the book, I think it was \$100.00 I gave her.

Q. Witness is shown a book containing a number of receipts, the first of which reads, "first month, ninth, 1922, received of Fred Fagen \$100.00, signed,
20 Mrs. Falvey," and is asked if that is the receipt —

The Court: Received of what?

Mr. Stackhouse: Fred Fagen, \$100.

The Court: That is all it says?

Mr. Stackhouse: That is all it says.

30 Q. And is asked if that is the receipt for the first money that was paid to Mrs. Falvey?

A. Yes, sir.

The Court: May I ask there; is that the first item in the book?

Mr. Stackhouse: Yes, sir.

The Court: How did you happen to get the book?

The Witness: Mrs. Falvey gave me this book; when I brought over the first payment she got this book from the house and she started to mark my payments, every time I would give her the payments she would mark on the book, so every time I came with the payments every month I handed the book and she put down the amount and handed me the book back.

10

Q. When did you next make a payment?

A. I made a practice of going over most every month, tried to make a payment.

Q. Did you get a receipt for each payment?

A. Only in the book.

Q. This is the receipt book, is it?

A. Yes, sir.

Q. And each time you paid money to Mrs. Falvey, did she give you a receipt in this book?

20

A. Yes, sir, each time.

Mr. Stackhouse: I think I can save time by offering this book.

The Court: Yes. That, I assume, Mr. Stackhouse, is correctly noted in the 13th paragraph of your bill, the items in the book are the same as these items?

Mr. Stackhouse: Yes.

30

The Court: This total of \$741.40, is that exclusive or inclusive of the three items of January 9, 1922, \$100, February 5, 1922, \$50.00, and March 11, 1922, \$50.00?

Mr. Stackhouse: Exclusive of the first two items.

The Court: Then the total amount is \$900 instead of \$700.

Mr. Stackhouse: The complainant has paid the following sums of money in addition to the \$200 above referred to.

The Court: Then that makes \$941.

10 Mr. Stackhouse: No objection if I offer this in evidence?

Mr. Harding: No.

Mr. Stackhouse: I ask it be marked Exhibit C2.

(Said book marked Exhibit C2.)

20 The Court: Those receipts, all of them, the early part of each succeeding month, right straight through, and after the \$100.00 payment, they all appear to be \$50.00, excepting in June, \$39.20, and another payment in June, \$23.00, and another one of \$39.20, and one of \$40.00; excepting those, all the rest are \$50.00 payments.

30 Mr. Stackhouse: The receipt of June 7th, I call your Honor's attention to, reads, "June 7, 1922, received of Fred Fagen, \$39.20 for taxes," and apparently on the same date, reads as follows, "Received \$23.00 for water," signed, "Mrs. Falvey." An item of \$39.20 and \$23.00, which I think appears there representing taxes and water, respectively.

The Court: The item of November 30, 1922, of \$39.30, is that again for taxes?

The Witness: Yes, sir.

Mr. Stackhouse: That was for taxes?

The Witness: Yes, sir, the other half of the taxes.

The Court: What is the item of February 17, \$40?

The Witness: That day I offered Mrs. Falvey \$50.00 across the kitchen table and she said, "No, 10 you are depriving yourself too much," and she pushed \$10.00 back, and she said, "Mr. Fagen, you are depriving yourself too much, \$50.00 is quite a large amount to pay, and," she said, "take the \$10.00 back, and if you don't want to pay all that you can have more back," and I said, "I can pay all of it," but she insisted on me taking the \$10.00 back.

Q. You weren't present at the settlement and know nothing about giving the deed? 20

A. No, sir.

Mr. Stackhouse: I offer the deed for the property in question from the Fairview Realty Company to Michael F. Falvey and Nora C. Falvey, dated March 10, 1922, and recorded in the Register's office in Book 502 of Deeds, page 98, and ask it be marked Exhibit C3.

(Said deed marked Exhibit C3.)

The Court: Can you tell me—just a moment Mr. Stackhouse—whether there was a purchase money mortgage given back at the time this deed was made, so I can make a note of it? 30

Mr. Stackhouse: Yes. I offer in evidence mortgage from Michael F. Falvey and Nora C. Falvey to

the United States Shipping Board, Emergency Fleet Corporation, dated March 10, 1922, for \$1470, payable at the expiration of three years, with interest at six per cent, covering the premises in question, and recorded in the register's office in Book 193 of mortgages, page 294, and has the endorsement of the Register of Deeds as to its being cancelled of record on January 18, 1923. I ask that that be marked Exhibit C4.

10

(Said mortgage marked Exhibit C4.)

Q. Did you keep on making your payments in accordance with your ability to Mrs. Falvey?

A. Yes, sir, until June 20th, the first payment she refused.

Q. What took place?

The Court: What year, June 20th?

20

The Witness: Of last—1923, I believe it was 1923; this is 1924 now, it is a year ago June past, it is 1923.

The Court: Go ahead.

30

The Witness: On June 20, 1923, I went over with the payment of \$50.00, and I met Mrs. Falvey at the door, and she said, "Come in," and then she said, "Mr. Fagen, I am not going to take any more money from you, I am waiting to hear from the building and loan gentleman expecting to put you in any day," and she has been waiting to hear from the building and loan over a week, and I said, "All right, Mrs. Falvey," and she said, "You can take the money right home and if you need it use it and when I hear from the building and loan I shall let you know right away," and I said, "All right, Mrs. Falvey,"

and I stayed a little while talking to her and then I went home.

Q. When did you next hear from Mrs. Falvey or have any conversation with her?

A. I kept on going, and the next month I think was the next call, and I had the two payments with me, the \$100, and I went in to her and Mrs. Falvey told me the same thing, she was waiting for the building and loan to reply to her any day, and as soon as she does she will put me in the building and loan and I wouldn't have to worry any longer, everything would be easier, I wouldn't have to pay so much, I would only pay \$15.00, \$17.00 a month, and I thought everything was all right, and I went home, and I think that was in the morning around 11 o'clock, something like that I stopped at Mrs. Falvey's, I think it was around 12 o'clock, and I said, "I must be going home, I have to go to work three o'clock,"—I was on the three o'clock shift, so I got on the bus and went home, and when I went up the walk at my home my wife was sitting on the front porch in the rocking chair and she had a slip of paper in her hand, so I said, "What is the matter?" And she showed me the paper and told me to look at it, and it was a notice to get out in ninety days, that this property belonged to Mrs. Falvey. 10 20

Q. Is this the paper handed to you by your wife at that time?

A. Yes, sir, that is the paper. 30

Mr. Stackhouse: Any objection to this going in evidence?

(Said paper marked Exhibit C5.)

The Witness: That was only two hours between times, that I took the two payments again and she told me she was waiting to hear from the building and loan any day, and two hours after I went home and found that home in my wife's hand.

Q. After you received that notice, did you go and see Mrs. Falvey about it?

A. I had to go in at three o'clock to work, so I
10 said, "That is all right, I will go and see her," so
I brought that with me the next day, and I brought
it to Mrs. Falvey the next day, and I went to the
door and I knocked at the door and she came and
said, "Come in," and I walked in, and she seen I
must have been looking white, and she said, "What
is on your mind?" And I said, "What does this
mean?" And she said, "Did you receive a letter?"
And I said, "It isn't a letter, it is worse," I said,
"What does it mean?"—And that is the first time
20 Mrs. Falvey ever spoke rough to me as long as I
been going there, about two years, and she said—
stamped her feet and she said, "That is what I
mean, you your wife and children will have to get
the hell out of the house, the house belongs to me,"
and I said, "How does that house belong to you, it
belongs to me, I paid you all this money," and she
said, "That don't make any difference the money
you paid, the house belongs to me, that is all," and
she went through the house hollering and talking,
and she wouldn't let me talk, and I got scared to
30 tell the truth about it, and I said, "All right, I will
see," I said, "Mrs. Falvey that belongs to me,"
and she said, "No, I want you out right away," so
I said all right, and I put on my hat and left the
house, never said a word rough, or anything, never
said anything rough to the lady as long as I know
her, so I went home and I told my wife about it,

then I went to see a few men and a few men advised me what to do, and I went to a man, a real estate man, and he told me you can't do much I would have to go and see a lawyer, and I came to Mr. Stackhouse and brought the case to him and he questioned me and I told him of the case.

Q. Did you see Mrs. Falvey after that?

A. Yes, sir, after she told me that I went over just the same, as I was advised; I went over each time the payment was due, and I went each time, 10
and one time she wasn't home, at least, I couldn't get in.

Q. Did anyone go with you?

A. The first time nobody whatever, then the second time I went there I was told to take witnesses with me, and I brought Mr. Charles Clark from Fairview, I asked him if he would go, and he said certainly, so I brought Mr. Clark, so once I brought him and nobody was home, and the next day I brought Mr. Clark again, and this time we found 20
her at home, so I went to the door and Mrs. Falvey came to the door, and she said, "What do you want around here?" And I said, "Mrs. Falvey, I came to make the payments of the money you loaned me on my house, and she said, "I don't want your money, I want you out of the house, the house belongs to me," and she slammed the door, and I went right along, and Mr. Clark was with me, and he can testify to that.

Q. Did you see her again after that?

A. Every time the payment was due. I went the 30
next time, once was \$100, \$150, and then \$200, went again on the \$200 and the same thing, and I think the next time I went to her she was raving, she was kind of mad, and she stamped her feet, hollered at me, and she said, "I want you out of here and out of that house, that house belongs to me, you are a

crook and your wife's a crook, and all your people and all your wife's people are crooks," and Mr. Clark was with me at the same time. Mr. Clark has been there three or four times, and I took another fellow one time, I took another fellow, Mr. Fow, and she called me a crook and all my family a crook, and all my wife's family crooks, and I saw no reason for that because I never stole a penny off anybody.

10 Q. Is that the last time you saw her?

A. No, I seen her again. So the next time I went with Mr. Fow and mostly the same thing took place. Then at that time she refused the money and hol-
lered at me and called me a crook and slammed the door on my face; and one time I went there in between those times after I received this notice to get out in ninety days I was working the three to eleven shift, and I told my wife, I says to my wife, "You
20 see what he has to say," so my wife came up and then after she visited Mr. Harding and came away she came to the mill where I was working, and when she came down she told me —

Mr. Harding: You had better let your wife tell that; don't tell what your wife told you.

The Witness: After that I made a visit to Mr. Harding myself, I came up after my wife was there
30 first and then I came and I told Mr. Harding —

The Court: Never mind that. You can tell about your visits to Mrs Falvey.

The Witness: I believe that was the last time I visited Mrs. Falvey with Mr. Fow, that was on November 19, 1923.

Q. Did you have any other papers served on you?

A. Yes, sir, I had one paper to get out in ninety days and another paper in thirty days.

Q. Is this the other paper you refer to?

A. Yes, sir, that is it.

Mr. Stackhouse: This is a summons and complaint in an ejectment suit by Michael F. Falvey and Nora C. Falvey against Frederick Fagen. No objection to that being offered? I ask that that be 10 marked.

(Said paper marked Exhibit C6.)

Q. Had you had any conversation with Michael F. Falvey, Mrs. Falvey's husband, with reference to the purchase of this property?

A. I mentioned about a week or so before the sale when every body who was in the mill staying around Fairview paying rent, they were all anxious about the sale coming off, and everybody was talking about they were going to try to get a house, they would look at the house what they would try to get, and this one and that one spoke about it like that, so Mr. Falvey was kind of on the same shift I was, but I got changed around, I was changed around several times, down there working myself all the time, and I spoke to Mr. Falvey about it, I didn't have no money with me at that time, I had a little money in the bank, about \$100, and it cost me \$75.00 to move from Paterson, the moving van company, and I said, "Mr. Falvey, I would like to have my house, but I have no money," and he said, "I could fix that up with my wife, I think my wife would be willing to put the money down for you to buy the house," and I said, "That would be fine," and there was no more took place, and that was the first time and about the only 20 30

time Mike and I ever spoke about it, he said, "I will speak to my wife and see what she says," and I didn't hear anything more about it until I met Mrs. Falvey at the sale, because another man said he was going to visit my house that Sunday before the sale, and a week previous, it was on a Saturday and there was a big snow storm, and three gentlemen who work at the mill came to my house and we had dinner and we were all talking, and they were going around
10 visiting house, to see which is the best, and they stopped at my house to get me to go with them.

Q. Was Mr. Falvey with them?

A. No, sir.

Q. I am speaking about any transaction with Mr. Falvey.

A. That is all I had, he said he was going to ask his wife if she would put the money down for me to get the house, and he thought she would do it right away.

20 Q. Was he present at any conversation you and Mrs. Falvey had about the house?

A. He was only present at one or two payments that I know of.

Q. When was that?

A. Once when she refused, the first time was June 20th, and Mr. Falvey was home from work and was fixing the front porch, putting up the screening, he was putting up the screening, and he had another old gentleman, I guess he lived across the
30 street, helping him, so this old gentleman was helping Mr. Falvey, and I volunteered to help myself being he was an older man, I volunteered myself, so Mrs. Falvey came out on the porch several times, and when the work was almost finished, all but the door, the door wasn't just right, I heard her say she wasn't satisfied with the door.

Q. In the month of December, about the time this

property was put up for sale, did I understand you to say you went on Sunday morning, the 11th, to see Mrs. Falvey?

A. Yes, sir.

Q. Was Mr. Falvey there?

A. He was at church, but he was there after mass; I waited until Mr. Falvey came home.

Q. Did the conversation that you had with Mrs. Falvey with reference to the property take place in his presence or didn't it?

10

A. She told me to wait until Mike came home, and when he came home we talked it over and we were all perfectly satisfied, and I stayed about an hour and went home and told my wife.

Q. Mr. Fagen, did you know of the custom of the Shipping Board to take back 70 per cent of the purchase price of the property by way of a mortgage when properties were bought?

A. No, I don't think I did know; I didn't know much about anything that was going on, I was just so anxious she was loaning me the money.

20

Q. Did you know there was to be a mortgage taken back when she bought the property for you?

A. I don't think I did. What do you mean, Mr. Stackhouse, I don't believe I get you.

Q. There was a mortgage on this property, you knew that?

A. Yes, I knew there was a mortgage.

Q. Did you know about it being customary to give a mortgage when you bought a property from the Shipping Board?

30

A. The Shipping Board would give the tenants a mortgage?

Q. Yes.

A. They would have to pay the mortgage off in certain length of time, the first mortgage, and then a second mortgage, something like that.

Q. Did you know about that?

A. Yes.

Q. Did you know about the mortgage on this property?

A. No, sir, I did not.

Q. Was any conversation had between you and Mrs. Falvey or Mr. Falvey with reference to the payment of the mortgage on the place?

A. They never mentioned any mortgage, I had to
10 pay any mortgage; Mrs. Falvey mentioned to me as soon as I paid her the \$200 she paid down for me, that she loaned me, she would sign the papers over to me, as soon as I paid her up, and she was going to put us in the building and loan, and if she couldn't find the building and loan she was supposed to leave it in the Government's hands, the mortgage, if that is what you want.

Q. She was to leave it in the Government's hands until she got it in the building and loan?

20 A. Yes, sir.

Q. Did you know anything about her paying for the Government mortgage?

A. No, sir, she never told me any of those things until everything was too late when she turned against me and she told me I was going to lose my property and everything, and then she started to tell me those things, she said she didn't have it in the building and loan, she was waiting for it every day, and a long time after that she told me she didn't
30 have it in the Government's hands, and it surprised me, and she told me she had it in some folks' hands in Brooklyn and she was going to take it out of their hands and put it in the building and loan. The building and loan men were over to my house twice, twice the building and loan men were over there and they just looked at the property, but they didn't say anything, they didn't talk with me or anything, just

looked at it, and Mrs. Falvey told me one time she wanted \$1700 and the building and loan would only give her \$1500. They would only give \$1500 one time and \$1700 another time.

Cross-examination.

By Mr. Harding:

Q. When you went to the auction on December 10 10th, this property was auctioned off, wasn't it?

A. It was auctioned off.

Q. And there were quite a number of bidders there?

A. Yes, sir.

Q. How many bids were made on the property?

A. I don't know how many.

Q. Were there several?

A. It is an attached house and whoever bid the highest price took them, all went the same price. 20

Q. And there were several bids, weren't there?

A. I guess there was, I couldn't say sure.

Q. You had a man by the name of Stormfeltz whom you expected to be there to advance you the money to purchase your property, is that correct?

A. Yes, sir.

Q. And Mr. Stormfeltz didn't put in any appearance?

A. He was there.

Q. Was he there?

A. Yes, sir. 30

Q. Did he talk to you?

A. No, sir, he didn't talk to me. I got in there and it was crowded and he was in back and I was up towards the front, and I was looking for him.

Q. Did you talk to him?

A. No, sir, when I went to look for him he was

gone; as soon as he found out the first bunch of houses on Alabama Road—when he found out they were bid so high he went out the door.

Q. He left?

A. Yes, sir.

Q. He didn't talk to you at all that day?

A. No, sir.

Q. And then you saw Mrs. Falvey there?

A. Yes, sir.

10 Q. And she beckoned you to come over?

A. Yes, sir.

Q. And she told you you looked kind of white and wanted to know what the trouble was?

A. Yes, sir.

Q. And you told her you were buying your house, is that correct?

A. Yes, sir.

Q. You went to the auction for the purpose of buying your house, no question about that?

20 A. Yes, sir.

Q. And you didn't have a dollar, did you?

A. No, sir.

Q. Didn't have a dollar going to that auction to buy your property?

A. No, sir. I didn't tell her I was buying my house.

Q. What did you tell her?

30 A. I told her I was there and I didn't have no money and my house was going off and Mr. Stormfeltz was supposed to be there to put the money down for my house and Mr. Stormfeltz was gone, and she felt sorry for me and that was all said.

Q. Now, you didn't tell her you were there to buy the house, did you?

A. I told her I wanted my house; I said, "My house is going off and I want it bad and Mr. Stormfeltz is gone."

Q. You did tell her you wanted to buy the house, didn't you?

A. I didn't say I wanted to buy it; I didn't have the money with me.

Q. Won't you tell me whether you told her you wanted to buy the house; did you indicate to Mrs. Falvey you wanted to obtain that house through that auction?

A. Yes, sir, I was trying to get my house.

Q. I don't want to be unfair, whether you wanted 10
to buy it or get it. You told her you wanted to get the house from the auction but Mr. Stormfeltz had gone away and left you?

A. Yes, sir.

Q. Now, you told Mrs. Falvey you had no money?

A. Yes, I did. I told Mr. Falvey that also.

Q. Did you ask her for money?

A. No, sir.

Q. What was said then about the amount that
was to be put up to purchase this house? 20

A. Mrs. Falvey said if she had the money with her she would put the money down right away.

Q. She didn't have the money there, did she?

A. She said she didn't.

Q. When the house was auctioned off the highest figure offered for it was \$2100, that is correct, isn't it?

A. Yes, sir.

Q. And then you as a tenant of the house, you say, indicated by raising your hand that you would purchase the house, is that correct? 30

A. Yes, sir.

Q. Did you at that time, at the time you told the auctioneer you had purchased the house, did you at that time have Mrs. Falvey's money or assurances from her that she would give you the money?

A. No, sir, not at that time. At that time I was

looking for Mr. Stormfeltz, and another gentleman was there also looking for him.

Q. The auction passed off that day and the house was withdrawn, not sold?

A. No, sir, it wasn't sold.

Q. Then you say you saw Mrs. Falvey the next day, Sunday, at her house?

A. Yes, sir.

Q. And had some talk about the matter and as the
10 result of that talk you went back to the auction room on Monday, is that correct?

A. Yes, sir.

Q. Then this agreement which has been offered and marked C1, that was prepared, wasn't it?

A. I never read that agreement.

Q. Were you there when it was signed?

A. If that is the same paper Mr. Conklin had then I was there in the presence of it, but I really can't
tell you what kind of a paper it was.

20 Q. You were interested?

A. Yes, sir, I was interested, but I was so excited, I was glad that Mrs. Falvey was putting down the money for me to purchase my house that anything she said would go, I had faith in her and believed in her.

Q. And at the time did you hear Mr. Conklin talk to Mrs. Falvey about a fee?

A. Yes, he told me if the papers were signed in my name it wouldn't be necessary to pay the auc-
30 tioneer's fee.

Q. It wouldn't be necessary?

A. Yes.

Q. But he did collect the auctioneer's fee from Mrs. Falvey?

A. On account of Mrs. Falvey wasn't satisfied to have the papers made out in my name.

Q. In other words, Mrs. Falvey didn't want to ad-

vance her money and put the property in your name and you not having given her any money at all?

A. She wanted the house secured for the money she was loaning me.

Q. Now, at the time you and Mrs. Falvey were present with Mr. Conklin and made this transfer, the transfer under the agreement, was there any conversation between you and Mrs. Falvey as to what the terms of this arrangement were to be?

A. Were to be?

10

Q. Yes. In other words, she was to put up the money for you, you say, to buy this property?

A. Yes, sir.

Q. Now, what were the terms, tell us explicitly what the terms were?

A. The only terms, as soon as I paid her back the \$200 she put down for me to buy the house she was supposed to turn these papers over to me and my wife.

Q. Was there anything said about the time for 20 settlement?

A. No, sir, I didn't know anything about it.

Q. Did Mr. Conklin say anything to you when the settlement might take place?

A. No, sir, he didn't say anything to me.

Q. Did Mrs. Falvey say anything to you to the effect that if you repaid her what she put in the property before the date of settlement or on the day of settlement she would transfer the agreement?

A. No, sir.

30

Q. What was the real understanding between you and Mrs. Falvey as to her being repaid her money?

A. That is the only thing I know, she told me just as soon as it was satisfied, as soon as I paid the money back she put down for me then she was going to turn the property over to me, that is, the \$200.

Q. You fixed the sum as \$200.00?

A. Yes.

Q. When were you to pay the \$200.00?

A. As soon as I got it, no specified time.

Q. As soon as you got the \$200.00?

A. Yes, sir.

Q. Did you know how much Mrs. Falvey was putting in the property?

A. \$2100.

10 Q. Then did you figure if you paid her \$200 you were to get the property back?

A. I was supposed to take on the mortgage, I suppose, but she never mentioned that.

Q. Was she to take a mortgage for \$1900 for the balance?

A. I guess she was.

Q. How was the balance of \$1900 to be made up?

A. Paid off as soon as I got it.

Q. Wasn't any time fixed at all in which you were to pay this money?

20 A. No time at all.

Q. You know, as a matter of fact, that on the day of the settlement between Mrs. Falvey and Mr. Conklin she had actually paid \$225.00, didn't you?

A. I know she paid the fee, but I don't know how much.

Q. Don't you know how much she paid?

30 A. I took it as \$215.00; she was supposed to put \$200.00 if I got my name signed and all the papers were made out in my name, and she was satisfied, she was willing to pay the \$15.00 extra to have the papers in her name.

Q. And then you began this course of payment on this property not immediately after the auction but in January, you started in January, you paid nothing in December?

A. January 9th, because I didn't have the money. I had \$100.00 in bank, and I sent to my brother-in-

law to go to the bank to draw out the \$100.00, which he did, and he sent it to me and no more than I received it I believe it was a day or so, I brought it to Mrs. Falvey.

Q. And you continued making those payments until May, 1923?

A. Yes.

Q. And you say you tendered a payment in June and Mrs. Falvey showed evidences of bad temper?

A. She had no bad temper in June.

10

Q. She just refused the money?

A. Yes, sir.

Q. Didn't show any evidence of temper at all?

A. No, sir.

Q. And you say at that time she said to you, "Mr. Fagen, don't pay any more because I am going to put you in the building and loan and it will make things easier for you."

A. Yes, sir.

Q. Are you sure she made that statement?

20

A. Yes, sir, several times.

Q. Do you know when she put the property in the building and loan?

A. No, sir, I do not.

Q. Do you know when the Shipping Board mortgage was cancelled in January, 1923.

The Court: 1923.

Q. Yes, sir. That was several months, wasn't it, before you met Mrs. Falvey in June, is that correct?

30

A. I guess it is.

Q. And it was on the cancellation of that mortgage that the building and loan mortgage was put on the property?

A. I don't know anything about that, Mr. Harding, I was never told any of those things.

Q. But you say she did tell you she was going to arrange to put it in the building and loan for you?

A. Yes, sir, she told me that all the time.

Q. Mr. Fagen, isn't the truth of this whole matter that you went to this auction and you met Mrs. Falvey there and told her you didn't have any money and that she told you that she would take this contract from the Government and purchase this property and that if you would reimburse her by the time
10 of settlement, March 10th, that she would turn over the contract to you, and you failed to do it?

A. No, sir, she didn't say anything about the contract, or anything.

Q. Did she leave you under the impression she was to put her money in the property and you were to go along indefinitely and pay so much a month until the amount was paid?

A. No, sir, the only thing she told me when I was, she put down her money and she wasn't quite satisfied until she had her name on the papers, and she
20 said, "Remember, just as soon as you pay me back this money the papers will be turned over to you," and I said, "All right, Mrs. Falvey, I will try to get it for you as soon as possible."

Q. That means the \$200.00 you have testified to?

A. Yes, sir.

Q. You paid Mrs. Falvey, according to the statement of your counsel, you paid Mrs. Falvey on January 9th, \$100.00?

A. Yes, sir.
30

Q. That was about a month after the agreement was signed. And you paid on February 5th, \$50.00?

A. Yes, sir.

Q. And you paid her on March 11th, the day after the settlement, \$50.00, that made \$200.00, didn't it, it that right?

A. Yes, sir.

Q. Why didn't you demand of Mrs. Falvey a deed?

A. I didn't know that element was going to come up.

Q. Why did you continue for a period of fifteen or sixteen months after that to pay Mrs. Falvey the \$50.00 a month and pay the items of taxes and water rent?

A. Because Mrs. Falvey never mentioned about settlement, or anything, and I didn't know anything about property, and she was all the time telling me about putting me in the building and loan and making it easier for me and my wife and family by putting us in the building and loan and I would only have to pay \$15.00 or \$17.00 a month in the building and loan. 10

Q. You knew as much about property as she did?

A. No, sir.

Q. She never handled any real estate before that you know of?

A. She told me herself. 20

Q. Besides her own house?

A. Yes, sir, she told me she owned a house on State Street, and she said Mr. Falvey didn't know nothing about it.

Q. You were a poor man working for your living?

A. Yes, sir.

Q. And money meant a great deal to you?

A. Yes, sir.

Q. When you paid \$200.00 under this agreement you made with Mrs. Falvey why did you continue to pay \$700.00 more without raising any question? 30

A. I figured my property was being paid off in a hurry and if I could have given more I would have given more; my wife would save and I would bring it to Mrs. Falvey, and she did state, she said, "Mr. Fagen, these payments are good and it won't be long

before you has this property paid for." Didn't you say that, Mrs. Falvey?

Q. Never mind that. That is all the explanation you can give for paying the excess over the \$200.00 before getting your deed?

A. Yes, sir. Mrs. Falvey said she knew all about real estate, and I took faith in Mrs. Falvey, and she treated me right as a mother, and so did Mr. Falvey, good friends, until June 20th, the refusal, and Mr. Falvey, I met Mr. Falvey Saturday at the mill, and I stood here and Mr. Falvey there, and I left my machine running, and I said, "Mr. Falvey, what does this mean?" and I told Mr. Falvey about it, and he said, "I don't know what is the matter with my wife, she must have gone cookoo, or something; I will see her to-morrow," he said, "You come to-morrow," and that was on a Sunday, "You come to-morrow about one o'clock," he said, "And you and I and my wife will talk it over," so I made the arrangements and at one o'clock the next day I was at his house and I couldn't get in, so I walked around town and about an hour later I went again and I couldn't get in, the door was locked, so I waited another hour, and I went three times, an hour in between each time, and the third time I went I didn't see nobody home, I rang the bell and knocked and nobody came, so I didn't go no more, so I met Mr. Falvey after going to work and I passed him on the street and he wouldn't say nothing about it, and after that Mr. Falvey used to have a habit of coming down and talking to me, he went past me in the machine room, and after the trouble started Mr. Falvey would take the roundabout way when he would go to the office, and other times he would pass my machine, but after the trouble and he found out what was coming up he walked around the other way

so he wouldn't have to pass me or speak to me, or anything else.

AUGUSTUS C. CONKLIN, SWORN.

By Mr. Stackhouse:

Q. Where do you live, Mr. Conklin? 10

A. 10413 112th Street, Richmond Hill, Long Island.

Q. By whom were you employed and what was your business on the 10th day of December, 1921?

A. Joseph P. Day, Incorporated.

Q. What capacity?

A. Collector of deposits, and filling out the terms of sales for the purchasers.

Q. In that connection did you attend the auction sale at Fairview on December 10, 1921? 20

A. Yes, sir.

Q. Do you remember this property 3145 Mt. Ephraim Avenue being put up for sale?

A. As a group being put up on that block.

Q. Did you meet Mr. Fagen at that time?

A. I did, yes, sir.

Q. What was done with reference to the property on that day?

A. Why, they had started the sale about one o'clock in the moving picture house, and they sold Alabama Avenue and went into Mt. Ephraim Pike, and there were several bids on, and the bid was struck down by Mr. Day at \$2100, and a request made by him at that time if there were any tenants on the premises who occupied the house, even though an outsider had made the bid, they had the preference on the house if they intended to purchase it, 30

and the tenants then raised their hands, and under the leadership of our general manager, Mr. Murphy, we followed the direction of the hands in the aisle and went down and made out the terms of sale, and also checked back with the United States Shipping Board to find out whether they were the tenants.

Q. What was done with respect to that property at the time, was it withdrawn from the sale?

A. Mt. Ephraim Pike he had picked up several
10 tenants for those properties and there being no other persons desirous of buying that row he laid them all over and went into another one.

Q. Do you know Mrs. Falvey?

A. I met her there in the place.

Q. Did you have any conversation with her or overhear any conversation with her with reference to the purchase of this property 3145 Mt. Ephraim Avenue?

A. On December 12th just prior to the sale Mr.
20 Fagen brought her to me, because I had held up his terms of sale as requested by him, in which we were instructed to do for a period of a couple of days, and he told me he had negotiated or arranged with Mrs. Falvey to loan him the money to purchase the property, and I said, "All right, as long as you have arranged with that you are ready or she is ready to go through with the transaction" —

Q. Was Mrs. Falvey present?

A. Yes, sir, she was present; and I then immedi-
30 ately talked to her about it, and we first tried to arrange with her to leave the property in Mr. Fagen's name, and she said no, she wouldn't consider that under any consideration, she said the property as a whole didn't interest her to purchase it for her own use, but being a friend of Mr. Fagen's she would loan him the money to purchase the property, and she hemmed and hawed about securing the amount of

money she put down in order that he might have his property, and after he had talked for a while he finally agreed to let her sign the terms of sale in order to secure her for the amount of money, which was ten per cent of the purchase price.

Q. Did she say why she wouldn't have the property put in Mr. Fagen's name?

A. The only reason being she didn't have nothing to secure herself.

Q. Did you have any further transaction with Mrs. Falvey with respect to this property? 10

A. No, sir.

Q. Did you attend the settlement?

A. No, sir.

Q. The papers, as I understand it, were drawn originally in Mr. Fagen's name?

A. Now, the bid was taken up by him, and the paper was made up regarding that the day of the sale, and also the location of the property, and Mr. Fagen had agreed to take the property, but he hadn't signed the paper. 20

Q. This agreement, Exhibit C1, is dated the 10th day of December, which is the Saturday the property was withdrawn from the sale; how do you explain the fact it was dated on that day and the sale didn't actually take place until the following Monday, the 12th?

A. The reason for that is when I met Mr. Fagen he told me he had arranged—or he didn't have the money at the present time but he had arranged with a party to loan him the money and if I would wait possibly a short time, if I could arrange to hold this contract up or the terms of sale up for a period of a short time, that afternoon, we will say, he would get hold of the money and close the sale. Now, our next step in that case is to report to our general manager, and we had order at that time, because 30

we were informed when we left New York that we were going among a class of people that didn't have a great amount of money, and to be courteous with them, and by the time we got there we had an awful name, and under those orders if the party didn't have the money, or if he only had a ten dollar bill, we would hold it for a period of time, for a day or two, say from over Sunday to Monday, and I reported to the general manager that Mr. Fagen wasn't in a position to take the property but he was arranging to get the money, so the general manager told me to take the terms of sale—this is the duplication, the original being with the Shipping Board—and to hold it in my possession until Monday, and if it wasn't taken up at that time to turn it back, and in the meantime I had to inform our cashier's department I was holding this number open because they would then have a record of this being sold and checked up with the cash received, that is the explanation of why this is dated the 10th. The paper wasn't destroyed, this was held in my possession, but there was no signature.

Q. Did you get Mrs. Falvey's signature on it?

A. Yes, sir, I stayed right with it until they closed the transaction; as far as the terms of sale were concerned the auctioneer's fee is put on there for the simple reason Mrs. Falvey wasn't a tenant, and Mr. Day stated at the beginning of the sale that any tenant who bought his property would not have to pay the auctioneer's fee, and we checked that up between the Shipping Board officers and Mr. Day.

Q. Did Mrs. Falvey say anything to you about the transaction at the time this agreement was signed?

A. She didn't say anything to me personally except she wasn't interested, and when I tried to talk to her about the thing to help Mr. Fagen out she said she would loan him the money and when the pay-

ments were made up that he then was to have the property.

Cross-examination.

By Mr. Harding:

Q. Did you have many transactions of this kind?

A. I believe this is the only one that came under my charge; there may have been several others with the other men. 10

Q. You say the auction took place on a Saturday?

A. Yes, sir.

Q. Mr. Fagen as a tenant really didn't get any preference over anybody else as far as the price was concerned?

A. No, sir.

Q. If I went down there and the tenant didn't want it and no outsider wanted it I would get the property? 20

A. Absolutely.

Q. So the only preference given the tenant was when all bids were equal?

A. If you had bid \$2200 and Mr. Fagen wanted the property at \$2200, he would be given the property.

Q. In other words, he would have to equalize my bid to get the property?

A. Yes, sir.

Q. The Saturday this auction took place Mr. Fagen as tenant indicated to you he would pay \$2100 for the property? 30

A. Indicated to the auctioneer, and I was instructed to go down and sign him up.

Q. And when you went to sign him up he confided in you that he didn't have the money but he would probably get it Monday?

A. No, he would arrange for it that afternoon.

Q. Did he come back that afternoon?

A. It was quite late when he did arrive back, towards evening.

Q. And he didn't have the money?

A. No, sir, he said he hadn't been able to see his party but he was sure he could arrange it.

Q. And the next time you saw him was on Monday?

10 A. I talked to him Sunday afternoon at the office, and he said he had arranged to secure the money.

Q. And he came with Mrs. Falvey and he wanted you to make the agreement out in his name?

A. Yes, sir.

Q. And of course, Mrs. Falvey refused to permit that on the theory she would have no security for her money, and she insisted that the agreement be made to her?

A. Yes, sir.

20 Q. So far as you and the Shipping Board were concerned, this property was really sold to Mrs. Falvey?

A. Yes, sir.

Q. No strings or anything attached to it, an out and out sale between the Government and Mrs. Falvey, and she, as an outsider, paid the auctioneer's fee of \$15.00?

A. Yes, sir.

30

CATHERINE FAGEN, SWORN.

By Mr. Stackhouse:

Q. Mrs. Fagen, you are the wife of Frederick Fagen who was on the stand a few minutes ago?

A. Yes, sir.

Q. Do you remember the time that this property was bought, the property in which you were living in Fairview?

A. December 10th, but I wasn't at the sale.

Q. You know Mrs. Falvey?

A. I never met her until the Monday she came to my house.

Q. Did she come to your house on Monday, the 12th of December?

A. Yes, sir, on Monday.

10

Q. What was said by her at that time with reference to buying the house?

A. She went all through the house, and she says, "You are getting a nice little house for the money, and," she said, "I won't make it hard, I will make it as easy as I can, you will pay back just as much as you can every month, and if you can't pay the water rent and taxes," she said, "come to me and I will pay them and you can pay me back and," she said, "I will take what you can save every month, it doesn't make any difference what it is."

20

Q. What did she say, if anything about putting up this money for the purchase of the property?

A. Well, she said, "When you pay me back then I will give you the deed, put it in you and your husband's name," and we were to pay her back as soon as we could.

Q. What were you to pay back?

A. The \$2100 and the interest.

Q. What were you to do in order to make you liable to her for this money, why did you have to pay it back?

30

A. That is all she said, "You can pay it back just as you get it every month."

Q. What moneys were you to pay back?

A. The money she loaned us.

Q. Did she make any reference to a loan?

A. She said, "I am going to put you in the building and loan as soon as I can," and she said if I can't get a building and loan she was supposed to keep it with the Shipping Board.

Q. Did you have any conversation with her after that with reference to the property?

A. I believe she came back and said ——

Q. When?

A. No, she didn't come back after the sale; I don't
10 remember whether she came back or not.

Q. Is that all the conversation you had?

A. Yes. I would go and see her once in a while and she kept saying she was going to put us in the building and loan, but she never did.

Q. Did you go to see her in a friendly way?

A. Yes, sir, every once in a while.

Q. How often did you go to visit her?

A. Once maybe a couple of months.

Q. Mrs. Fagen, can you say when you first went
20 to see her after the 1st of December, 1921?

A. No, sir.

Q. Do you know when the settlement took place for the property?

A. No, sir, she never said anything about settlement or anything else.

Q. When you went to see her what was it she would say to you about the property?

A. She would say, "I am going to put you in the building and loan, it won't be long, and then you
30 won't have to pay so much."

Cross-examination.

By Mr. Harding:

Q. On the occasion that she talked to you at her house did you ever say anything to her as to how much money was to be paid?

A. No.

Q. When she went to your house the day of the settlement under the agreement, was there anything said then about what you were to pay?

A. No.

Q. Did you know how much you were to pay?

A. I thought I was to pay \$2100.00 and the interest.

Q. \$2100.00 and the interest, that is what you thought? 10

A. Yes, sir.

Q. Did your husband ever tell you there was any other sum to be paid besides that?

A. No, I don't remember.

Q. Did he tell you there was any other sum other than \$2100.00 to be paid?

A. No.

By Mr. Stackhouse:

Q. When you say \$2100, do you mean including the amount which he had already paid? 20

Mr. Harding: I object.

The Court: Yes, I don't think the answer will carry any particular weight, Mr. Stackhouse.

Q. Witness being shown Exhibit C5, notice addressed to Mr. Fred Fagen, and is asked if that was served upon you? 30

A. Yes.

Q. That is the notice you afterwards exhibited to your husband?

A. Yes.

WILLIAM E. WICKHAM, SWORN.

By Mr. Stackhouse:

Q. Mr. Wickham, do you know Mr. Fagen?

A. Yes.

Q. You work with him at some shop?

A. He works with us, yes.

10 Q. And you know Mrs. Falvey?

A. Yes, sir.

Q. You remember the time the auction was had at Fairview for these Government properties in December of 1921?

A. Yes, sir.

Q. Did you have any conversation with Mrs. Falvey or did you overhear any conversation had by her with reference to the purchase of this property at 3145 Mt. Ephraim Avenue, the Fagen property?

20 A. The only occasion that I overheard was when she spoke direct to me about it.

Q. When was that as nearly as you can say?

A. That was about—that was in December, 1922.

The Court: When who spoke to you?

The Witness: Mrs. Falvey.

Q. What was the occasion of that conversation?

30 A. She called at my house and asked for the reinstatement of a son of a neighbor of hers.

Q. And how did she come to mention this property?

A. Because I spoke to her at that time of her generosity in looking out for other people.

Q. Did you make any mention of Mr. Fagen?

A. And in her answer she said, "Yes, I am buying a house for Mr. Fagen, in Fairview."

Q. Did she say anything about what arrangement was made?

A. That he was paying her off, that was about as far as I got.

The Court: What date was this conversation?

The Witness: In December, 1922. 10

Q. A year after the sale?

A. Yes.

Cross-examination.

By Mr. Harding:

Q. Where did this conversation take place?

A. In December, 1922. 20

Q. Where?

A. At my house in Gloucester; did you want the address?

Q. No, that isn't necessary. You were a foreman in the McAndrews & Forbes factory?

A. Yes, you might call me a foreman.

Q. And you employed some young men who had been discharged?

A. Yes, sir.

Q. And she went to see you about reinstating this young man? 30

A. Yes.

Q. Did you agree to reinstate him?

A. I did.

Q. And then as the result of the conversation you said something about her generosity in looking after people in general?

A. Yes, sir.

Q. Did you mention Fagen to her?

A. No, sir.

Q. Do you know any reason why she mentioned Fagen in a property transaction to you?

A. Only to decide a point in her generosity, perhaps.

Q. That was sort of a private financial transaction between people and you can't give any reason for
10 her stating that about the Fagens other than her tendency to be generous all around?

A. Perhaps, and it may be, being proud of the humane work, she might mention his name.

Q. Did she talk to you as though this matter between her and Fagen was a matter of generosity?

A. She merely made the remark as I stated; what was her opinion of it I don't know.

Q. She simply stated she was buying a house for
Mr. Fagen?

20 A. Yes, sir.

Q. Did she say whether Mr. Fagen was paying any money on the house, or anything?

A. She said he was paying her off.

Q. Did she say how or what the terms were?

A. No, sir.

Q. You didn't inquire?

A. No, I believe the conversation changed shortly after that.

Q. How long was she at your house?

30 A. I should say from half to three-quarters of an hour.

Q. Was your wife there?

A. Yes, sir.

Q. Did she hear the conversation?

A. Yes, sir.

Q. Now, in your affidavit which you took in this cause you simply stated that Mrs. Falvey told you

that she had bought the premises 3145 Mt. Ephraim Avenue, Camden, New Jersey, for Fred Fagen, that is all you stated in your affidavit; now, at the time you took the affidavit did you know at that time she had made the statement about that they were paying it off to her?

A. I think I made some mention of a correction on that affidavit this morning to Mr. Stackhouse, didn't I?

Q. In other words, you mean you made some suggestion of correction to Mr. Stackhouse by reason of the testimony you are giving now? 10

A. By reason of the address on that.

Q. But nothing regarding your conversation with Mrs. Falvey?

A. No.

Q. My question is to ascertain whether at the time you made this affidavit you at that time knew that Mrs. Falvey had told you that the Fagens were paying this property off? Did you know at that time you made the affidavit, or did you recollect that since? 20

A. I knew at the time I made that affidavit that Fagen was paying off the property.

Q. Why didn't you so state in your affidavit?

A. Because the affidavit was of Mrs. Falvey's statement to me at my home.

Q. Which affidavit was short and sweet, which didn't go any further than simply say, "Sometime in the month of December, 1922, Nora C. Falvey told the deponent she, Nora C. Falvey had bought premises 3145 Mt. Ephraim Pike, for Frederick Fagen," you didn't say anything more about how it was to be paid off, or anything else. Have you recollected that since? 30

A. Does that affidavit say that that is the affidavit of her statement at our house?

Q. That is your name there?

A. She merely said she is buying a house for Mr. Fagen at Fairview.

Q. That is as far as you can recollect; you are willing to correct your testimony to say that she told you she was buying a property for Mr. Fagen at Fairview?

The Court: Wait a moment, I want my mind clear
10 on this, and I want to be sure the witness realizes
what he is testifying to. On your direct-examination
you said what Mrs. Falvey said to you was she was
buying the property for Mr. Fagen and that he was
paying her off, now, in the affidavit, which you say
is correct, you don't say she said he was paying her
off. What is your present recollection of it, did she
say Fagen was paying her off, or didn't she?

The Witness: If I made that statement before I
20 won't state now I can say he was paying her off.

The Court: You can't at this time say positively
that Mrs. Falvey said he was paying her off?

The Witness: I can't at this time.

30 ELIZABETH WICKHAM, SWORN.

By Mr. Stackhouse:

Q. Mrs. Wickham, you are the wife of Mr. Wickham who was just on the stand?

A. Yes, sir.

Q. Do you know Mr. Fagen?

A. I only met Mr. Fagen last Saturday for the first time.

Q. Do you know Mrs. Falvey?

A. Slightly.

Q. When did you first become acquainted with Mrs. Falvey?

A. About six years ago.

Q. Do you remember Mrs. Falvey calling at your house any time during the year 1922?

A. Yes, I do.

10

Q. When was it?

A. Well, it was right after the Christmas holidays she called to have a fellow reinstated in the mill; she called to speak to my husband to have this fellow reinstated.

Q. Tell us what took place.

A. She called to my home to have this fellow reinstated that my husband laid off, and my husband told her he wouldn't reinstate him until the first of the year, which he had told the fellow.

20

Q. Was there anything said in that conversation with reference to the Fagen property on Mt. Ephraim Avenue?

A. Not right then, only my husband said, "Mrs. Falvey, you are too good to people," and she said, "I guess I am, Mr. Wickham, take for instance Mr. Fagen, I have bought"—no, she said, "I am buying Mr. Fagen his house and he is paying me so much a month," and she did say a figure, but I can't remember the figure.

30

Q. Was anything else said at that time?

A. No, sir, something happened to the baby and the conversation changed.

Cross-examination.

By Mr. Harding:

Q. Did she appear to be either a little bit disappointed or discouraged about the Fagen transaction from the way she talked to you?

A. No, sir, she didn't seem discouraged.

10 Q. Why did she say in response to your husband's remark that she was too good to people, "Yes, I guess I am," and then mention the Fagen incident?

A. Well, she was just telling us of how good she was to people.

Q. Did she say it in that way?

A. She really said it in a way that she meant it in good spirit.

Q. She told your husband that she was buying the Fagen property and that the Fagens were paying her off in monthly installments?

20 A. Yes, sir, so much a month, and she named the figure.

Q. And that conversation was between Mrs. Falvey and your husband?

A. No, between the three of us, but while this conversation was going on the baby was getting into mischief—I had a Christmas tree up and he was getting into mischief, and my husband was looking after the child.

30 Q. You, then, weren't present at the conversation all the time on account of the baby?

A. Yes, I was present all the time, the child was right in the room.

Q. So you heard distinctly everything that was said?

A. Very distinctly.

Q. And you have a distinct recollection of all that was said?

A. Yes, sir.

Q. And you recall distinctly that Mrs. Falvey said, "Yes, I am too generous," and then mention the Fagen transaction and said she was buying the Fagen house for the Fagens and that they were paying her in monthly installments, absolutely sure of that?

A. Yes, sir, I am sure of that.

Q. Did she say anything more?

A. She said no more, but she did name a figure, 10 but I can't remember the figure.

Q. Will you tell me how you account for her expression, "Yes, I am too generous," and then recite the Fagen transaction, if she didn't show a disappointment in it?

A. There was no disappointment about it.

Q. From the way she said it, it would seem to me as though she was disappointed in her generosity toward somebody.

A. No, sir. I don't know about putting it that 20 way, she was showing us how good she was to somebody.

Q. Why do you account for her saying, "Yes, I am too generous?"

A. She said, "I guess I am too good."

Q. Didn't that to your mind show evidence of doubt as to what she was doing regarding the Fagens?

A. No, sir, not the way she said it then.

Q. In other words, that, to your mind, was perfectly all right, and expressed no disappointment 30 over the property?

A. No, sir, everything was pleasant at the time.

Q. How many time has Mrs. Falvey visited your home?

A. Once.

Q. Once?

A. Yes.

Q. Are you sure she visited once?

A. Just the once.

Q. When she came to get the boy reinstated?

A. That was all.

Q. Why did you say this in your affidavit, "That Nora C. Falvey has visited deponent's home on several occasions?"

10 A. No, I didn't say that, that is why I didn't get up to the lawyer's in time, I wanted to have that fixed.

Q. Did you see it was in your affidavit?

A. Afterwards, yes.

Q. You signed the affidavit, though?

A. Yes, it was in after I read it.

Q. At the time you read it did you see that paragraph there?

A. No, sir, I am sorry, I did not.

Q. It was there, I guess, before you signed it?

20 A. Yes, but I don't remember reading it.

Bois B. Fow, sworn.

By Mr. Stackhouse:

Q. Mr. Fow, do you know Mr. Fagen?

A. Yes, sir.

Q. How long have you known him?

30 A. For the last fourteen or fifteen months.

Q. Where do you live?

A. 935 N. Fifth Street, Camden.

Q. Do you work in the same shop as Mr. Fagen?

A. Work right with him, yes, sir.

Q. Do you know Mrs. Falvey?

A. I have seen her once.

Q. Under what circumstances did you see her, what took place?

A. Why, Mr. Fagen asked me if I would do him a favor and I told him I would, I will do anybody a favor, and he said, "All right, after we get done work I want you to go around to some lady's house with me," and I said, "All right," so I met him and we goes to the corner and we meets his wife and his wife handed him an envelope of money and we goes to Mrs. Falvey's house and knocked at the door; I stood on the porch steps and she came to the door, and Mr. Fagen had the money in his hand and says, "Mrs. Falvey, here is some money for you, for the payments," and that is as far as he got, so she started to blackguard him, called him a dirty crook and a liar, and stamped her foot, and he couldn't say no more, he couldn't get a word in edgeways, so she raged and finally slammed the door in his face, and I laughed at her and we both walked up the street.

Q. That is the first and last time you had anything to do with Mrs. Falvey?

A. Yes, sir.

Q. Did you see Mr. Fagen have the money in his hand at the time?

A. Yes, sir.

Q. Did he offer it to her?

A. Yes, sir.

Q. And she didn't accept it?

A. She wouldn't take it at all.

30

Cross-examination.

By Mr. Harding:

Q. What is your name?

A. Fow, F-o-w.

Q. Are you still working with Mr. Fagen?

A. Yes, sir.

Q. You and he work together in the same department at the McAndrews & Forbes place?

A. Yes, sir.

Q. When was it he asked you to go to the Falvey house?

A. Sometime around November.

Q. Of what year?

A. Last year.

10 Q. Of 1923?

A. Yes, sir.

Q. He told you at the factory why he wanted you to go there?

A. No, he didn't tell me at that time.

Q. What did he say?

A. He asked me to do him a favor, and I told him yes, I will do anybody a favor, and I went on about my business, and he said, "You meet me after work,"
—we got done at three o'clock, so I waited for him
20 and we went together.

Q. Didn't you ask him what the favor was?

A. After we started up the street.

Q. And did he tell you?

A. Yes.

Q. What did he tell you?

A. He said he owed a lady some money and she wouldn't accept it.

Q. Did he say what for?

A. Something about a property.

30 Q. Did he tell you whether a lawyer or anybody had told him to do it?

A. No, sir, it didn't interest me.

Q. Did you say to him, "Why should that interest me, why should I go up?"

A. I asked him that and he said, "I want to have a witness that I tried to pay this woman."

Q. That was in November, 1923?

A. Yes, sir, around November.

Q. And he went to Mrs. Falvey's house and Mrs. Falvey came to the door and they had some pretty bad words there?

A. That is the idea.

Q. And some questionable language was used and you left the place?

A. Yes, sir, after she slammed the door we both left.

Q. Mr. Fagen left with you? 10

A. Yes, sir.

Q. Do you know how much money he had?

A. I didn't count it.

Q. How much do you think he had?

A. I judge he had around \$250.00, something, or under that, I imagine it was.

Q. Did he tell you he was going to give it to Mrs. Falvey?

A. I saw him hand it to her, he held it right in his hand. 20

Q. And she wouldn't take it?

A. No, sir.

CHARLES CLARK, SWORN.

By Mr. Stackhouse:

Q. Where do you live, Mr. Clark? 30

A. 3077 Constitution Road, Fairview.

Q. Where are you employed?

A. Evening Public Ledger.

Q. Do you know Mr. Fagen?

A. I do.

Q. Do you know Mrs. Falvey?

A. No, I do not.

Q. Have you ever seen her before?

A. Well on three occasions, I think, three or four occasions.

Q. What was the first occasion and when?

A. Well, I think I seen her about the second week in July.

Q. Of what year?

A. Last year, 1923.

Q. Who was present when you saw her?

10 A. Mr. Fagen.

Q. How did you come to go to her house—I presume this was at her home?

A. Yes, sir.

Q. How did you come to go there?

A. Mr. Fagen asked me to go along while he offered money to Mrs. Falvey.

Q. Did you go along?

A. Yes, sir.

Q. What happened?

20 A. The first time I went she was out, and then we went again the next day and she came to the door and Mr. Fagen walked up to her—at least, I rung the doorbell, I thought possibly she was home, like I thought she was the day before, and I rung the doorbell, and when she opened the door Mr. Fagen walked up the steps, and he had the money in his hand, and he said, “Mrs. Falvey, I came to pay you this money,” and she says, “Get out of here, I don’t want to see you, don’t want to have anything to do
30 with you,” and slammed the door.

Q. Did she say anything more than that?

A. No, that was the first time, she didn’t have very much to say that day.

Q. Did you see her again?

A. Then the next month I went again, that was in August. In August I went again, and he had \$50.00 more—the first time he went I think he had \$50.00,

or \$100.00, and the next time he had \$50.00 more, and he offered it to her again, but she was all excited the second time I went there and met her, and she started to blackguard him, stamped her foot and walked around, and told him what his people was.

Q. What did she say?

A. Well, she said he was a crook, and she kept on walking away all the time, and she said something about his wife—I don't know if she was a crook, but

10

Q. Did she say anything about his people?

A. And his people, too, she said they were all crooks, and Mr. Fagen was saying, "Now, Mrs. Falvey; now, Mrs. Falvey," and with that she walked in and slammed the door.

Q. Did you see her again?

A. The following month, that was September, and it was a repetition of the previous month, although I won't say she called him a crook that time; it was just she didn't want to see him any more, he would 20 have to get out, and slammed the door in his face.

Q. Did he say anything to her at the time about owning the property?

A. Did he?

Q. Yes.

A. Not that I can recollect.

Cross-examination.

By Mr. Harding:

30

Q. Was there anything said about the property at all?

A. Not in my presence, no.

Q. He asked you to go with him to Mrs. Falvey's house, is that right?

A. That is right.

Q. And the first time you went there was in July?

A. I think it was.

Q. And you are under the impression that at that time he had \$50.00 or \$100.00?

Q. Or \$100.00, you think?

A. I think it was \$50.00.

Q. Did he tell you what the \$50.00 was for?

A. Well, I knew about his trouble; the fact is he came to me in the beginning and asked me what I thought about it, and I told him he had better put it in the hands of a lawyer, not to muddle around and delay on it, and of course, I had an idea what it was, I had an idea.

Q. He had been telling everybody in the factory about it?

A. I didn't work at the factory.

Q. Did you work in the factory?

A. No, sir.

20 The Court: Is this important; do you dispute the visits?

Mr. Harding: No, sir.

(At this point a recess was taken until 1:45 P. M.)

(Trial of the cause resumed at 1:45 P. M.)

COMPLAINANT RESTS.

THE CASE FOR THE DEFENDANT.

NORA FALVEY, SWORN.

By Mr. Harding:

Q. Mrs. Falvey, where do you live?

A. Ferry Avenue, 1719 Ferry Avenue.

Q. On December 10, 1921, you attended an auction sale of the United States Shipping Board in Fair-view? 10

A. Yes, sir.

Q. And met Mr. Fagen, the complainant in this case, at the auction room?

A. He came and sat beside me.

Q. Right from there tell us just what conversations took place between you and Mr. Fagen, concerning the sale of the property 3145 Mt. Ephraim Avenue. 20

A. I went down to the sale with the intentions of buying a few houses, and the place was crowded, and this Fred Fagen, I had met him once before the sale, and he came and sat beside me, and he was crying, and he told me he had money in bank and if I would loan him the money to buy his property that he would return the money before settlement, so I said, "Mr. Fagen if you have money bank and you want to buy the property, that is too bad,"—not once thinking, they had plenty of time to get the money for the property because the Government gave them four months notice, and as it was called out for sale with the other properties he hollered, though he had no money he hollered "Tenant," and then he stayed with me for a while, and on Sunday morning he came to my home, and Mr. Falvey wasn't there, and he wanted to know if I would buy the 30

property and he would have my money for me before settlement, and I said I would, I would buy Fagen's property and if he would give me the money before settlement the property was his, and if not it was mine, and I went out on Monday morning and I met that man—he had been with that man on a Sunday—I don't know his name but this man right there, he met me at the door, and Mr. Fagen went and called him and this man came to us, and Fagen said to me,
10 “Mrs. Falvey, all you have to do is to be the cashier,” and I said, “I can't do it, I am poor, I work for a living, how can I buy for him and have nothing for myself; my husband has been sick all winter,” and he said, this man, this man right there, he said, “Well, that is what I was supposed to do if I was to buy the property”.

Mr. Stackhouse: Who are you pointing to when you say that man, Mr. Conklin?

20

The Witness: Yes, sir. He knows my statement is correct. Mr. Fagen called this man over, and he said to me, “Mrs. Falvey, I understand you are loaning money to this man to buy his property and you are going to leave the title in this man's name,” and I said, “I can't do that, how can I do that I have nothing to show for my hard work, if I die the property would be in that man's name,” so I said, “Didn't Mr. Fagen explain the case to you?” And
30 Mr. Conklin, whatever his name is, he said, “Mrs. Falvey, he didn't tell it that way,” and I said, “Bring him here and I will repeat it,” and he called him and he said, “Are you satisfied for this woman to buy the property and take title?” And he said yes, and not being a tenant I had to pay the \$15.00 auctioneer's fee, and the tenants didn't have to pay it, and I did, and I came away from the sale, and then

I got word for the settlement, and I sent Mr. Falvey to Mr. Fagen to tell him I had to settle for the property and he said he had no money and he couldn't do nothing, and I said, "You said you had money in bank," and he said, "Mrs. Falvey, I haven't," so I took Mr. Falvey and we came to the West Jersey Trust Company and I settled for the property.

Q. About when was that?

A. That was in March.

10

Q. How soon before the settlement did you receive word from the West Jersey Title Company to appear there for settlement?

A. A few days, because they were rushed with business; they had so many transfers of properties, and things, I only got a short notice.

Q. How soon after that notice did you send word to Mr. Fagen?

A. That day, I had to settle the next day.

Q. And you sent your husband?

20

A. Yes, to Mr. Fagen, and told him the property had to be settled for.

Q. And did Mr. Fagen come to see you?

A. He told me he had no money.

Q. Did Mr. Fagen come to see you?

A. Yes.

Q. Did you tell him about the settlement?

A. Yes, sir, I did.

Q. And what did he say?

A. Told me he had no money and he could do nothing about it.

30

Q. All right, go ahead.

A. I made the settlement for the property and Mr. Fagen in the meantime he was supposed to pay me the money, and he gave \$100.00 in January and \$50.00 in February, and then the settlement came and I had to settle, and then he said to me, "Mrs.

Falvey, if you will leave me stay I will make you these payments," and he figured the payments himself, and I took the payments, but in May he had nothing to give me—May he paid me, it was June and he was in the house six months after he stopped paying for the property, and I sent for him and I said, "Mr. Fagen, I want you to leave the place, take the six months and everything, but, leave in peace, even if you stay another month for nothing,
10 but leave the house," and that is the whole detail of the property.

Q. Did you ever have any arrangement with Mr. Fagen to the effect you were to let him pay rent in order to make up or compensate you for the amount of money you put in the property?

A. After I transfer the property Mr. Fagen was to pay me the \$225.00 I paid the Government, and on the payment—well then, of course, he didn't have the money to pay, he only gave me \$150.00, and I had
20 to settle for the property, and I said, "What shall I do?"—I didn't have the deed at that time, and he said, "You keep that," so I added the whole thing on to rent, the money I got from Fagen I called rent, and by the time he has been in the house, and everything, I don't think that is bad, such an enormous rent where he is.

Q. Then the last payment he made you, you say was about May?

A. May.

30 Q. And did he pay any rent for the house from May, or did he pay anything on account of the house from May up until the time of the hearing which took place in this case in February?

A. The following March after I bought the property I had to pay water, taxes, and June taxes; I have paid all the expenses on that property, mortgage interest, and everything.

Q. For this year?

A. Ever since I had it.

Q. He paid the taxes in 1923, didn't he?

A. Yes, but I added all his money onto rent, but all the taxes since that time and water taxes I have paid.

Q. Did he ever provide any insurance for the property?

A. Never provided anything for the place, I have provided everything for the place.

10

Q. You and your husband signed a bond and mortgage to the Shipping Board for that property?

A. I signed it myself, wasn't it Mr. Harding? Mr. Falvey wasn't there.

Q. The Shipping Board mortgage?

A. Yes, sir, we both signed that.

Q. Do you recall getting a building and loan mortgage on the property?

A. Yes, I did, because the Government sold their mortgages to a company in New York City and I transferred the house into the building and loan.

Q. Do you know when that was?

A. I imagine that was in January.

The Court: January, 1923?

The Witness: Yes, sir.

Q. Was the Shipping Board mortgage paid off at the time the building and loan mortgage was created?

A. Yes, sir.

Q. Out of the building and loan mortgage proceeds the Shipping Board mortgage was paid off?

A. Yes, sir. Had Mr. Fagen moved out of the property after he got notice he would have been in the property seven months for nothing.

Q. Now, you know Mr. Wickham?

A. Yes, sir, I do.

Q. And you know Mrs. Wickham?

A. Yes, sir.

Q. Do you recall visiting their house concerning an employee that was discharged at the McAndrews & Forbes Company?

A. For a few seconds I did.

10 Q. Was there any conversation at that time between you and Mr. Wickham, or you and Mrs. Wickham, concerning the Fagen property?

A. No mention of it. Bill Wickham, I have known him sixteen or seventeen years, and he has been coming to my home with Mr. Falvey that length of time, but I was never to his but that once and the property wasn't mentioned on, because his mother was wanting to know why I didn't visit them, and I told them, I was too busy, but no such thing was ever mentioned, and Bill Wickham censured me for going to
20 work for this boy, said I was foolish, but I never mentioned Fagens, or their names wasn't mentioned.

Cross-examination.

By Mr. Stackhouse:

Q. Mrs. Falvey you saw Mr. Fagen in reference to this property on Sunday?

A. I met him Saturday night at the sale.

30 Q. What time of the day was that?

A. Must been around nine o'clock at night.

Q. The sale lasted until the evening?

A. Way until morning, three o'clock in the morning.

Q. At that time he told you, didn't he, he wanted to buy the property?

A. He told me he had money in bank, and he

hollered "Tenant" and he had them save the property for him, but he had no money, he lied to me and made me think he had money, but he didn't.

Q. And did he pay you some money afterward?

A. Yes, and I have explained that.

Q. He had money at that time?

A. No.

Q. Didn't have any money when he paid it to you, is that the idea?

A. That was the idea.

10

Q. Mr. Fagen wanted to borrow some money to buy the property with at that time?

A. That I don't know anything about, because I didn't know Mr. Fagen, I met him once and that sale made the second time, so I didn't know anything about it.

Q. Didn't he say he wanted to borrow some money?

A. No, he said he had money in bank.

Q. Did he want to make a temporary loan?

20

A. No, he said he had money in bank.

Q. Did he want you to loan him money?

A. The understanding was I was to buy the property and he was to pay me before the settlement of the property, that was the understanding, and I had to pay the auctioneer's fee.

Q. You were to loan him how much money?

A. None.

Q. What did he ask you?

A. I didn't loan him anything, I bought the property. My papers show I bought the property.

30

By the Court:

Q. Your papers show that?

A. There was no loan in the deed.

Q. But Mr. Fagen testifies you loaned him the money?

A. I did not loan him any, I didn't have it to loan.

Q. And Mr. Conklin testifies that you said you were loaning him the money.

A. I said I was buying the property.

Q. But you wouldn't do it unless you had the property or security.

A. They had it all fixed for me, Mr. Conklin and
10 Mr. Fagen had it fixed up, all I had to do was to pay
the cashier, and I didn't know anything about, and
I don't think Mr. Conklin did, either, I don't think
he was to blame, and when I found out the arrange-
ments I was surprised, I said no I couldn't do it be-
cause I had to have some security for my money,
and I explained to Mr. Conklin how the case was,
how I was to buy the property and turn it over be-
fore settlement, and he said, "Mr. Fagen didn't ex-
plain the case that way," so I bought the property
20 and paid the auctioneer's fee, and I have made all
the settlements on the property since then, and car-
ried it, too, taxes, and everything.

By Mr. Stackhouse:

Q. How much did you pay at the time?

A. \$225.00.

Q. \$15.00 of that was the auctioneer's fee, wasn't
30 it?

A. Yes.

Q. You say that money wasn't loaned to Mr.
Fagen?

A. No, I didn't make any loan.

The Court: But you were to give him the prop-
erty if he paid the money back to you?

The Witness: Before settlement, before the deeds were taken out.

Q. All right. Now then, you say you didn't loan him any money?

A. No.

Q. I show you the receipt dated 1-9-23, "Received of Fred Fagen \$100.00," signed "Mrs. Falvey."

A. But that wasn't a loan.

Q. And ask you if that is your signature? 10

A. Yes, sir, that is it.

Q. Wasn't that to repay back part of the money you paid for the property?

A. Well —

Q. Was or wasn't it?

A. I will explain that.

Q. I am not asking for an explanation, but an answer.

A. But I bought the property for security.

20

By the Court:

Q. This payment is before settlement and he wants to know whether it is part of the money you advanced, whether he paid you back part of the money you advanced?

A. I didn't advance —

Q. That you paid out then. Was this \$100.00 that is receipted for there to pay you for part of the money you had spent? 30

A. To pay me back in full before settlement, it wasn't a loan; I had bought the property.

Q. That \$100.00 was before settlement, wasn't it?

A. Before I got the deed?

Q. Yes.

A. That was it.

By Mr. Stackhouse:

Q. This \$100.00 was to pay you back for what you paid for the property?

A. Before settlement.

Q. This was before settlement. Now, we come to the 5th day of February, 1922, in which you give him a receipt for \$50.00; that was given for the same thing, to pay you back before settlement, a part of
10 what you paid out?

A. Yes.

Q. When was it you notified Mr. Fagen that settlement was to take place?

A. The day before the settlement; I just got notice the day before myself.

Q. Did you receive a letter from the title company?

A. Yes, sir, I did.

Q. Have you the letter with you?

20 A. No, sir.

The Court: Isn't the payment of March 11th, \$50.00 also before settlement.

Mr. Stackhouse: The settlement took place on March 10th.

Mr. Harding: Not the settlement, the date of the delivery of the deed was March 10th.

30 The Court: I notice the deed is dated March 10th, but is it certain that is the date it was actually delivered?

Mr. Harding: Here is the settlement sheet if Mr. Stackhouse agrees to it going in; it is also dated the 10th.

Mr. Stackhouse: I don't agree to that without identification of the date.

The Court: I am just making inquiry, I thought possibly it might be dated on the 10th, but actually made later. I have no knowledge about that.

Mr. Harding: I can call the title company up if Mr. Stackhouse won't agree to it. 10

The Court: I will assume it was made on the 10th unless there is something to the contrary.

Q. Do you know when this settlement was made?

A. It was made in the afternoon, I know.

Q. What day of the week was it, do you remember?

A. The papers ought to tell that, I can't recall that? 20

Q. I am asking you do you know what day of the week it was this settlement was made?

A. The papers are there to show, I can't recollect the day of the week it was made.

Q. The papers are dated the 10th day of March; do you know what day of the week it was you went to the title company and made this settlement for the property?

A. That I can't say, because I don't recollect the day of the week, but I know I was there. 30

Q. And it was made in the afternoon?

A. I think so, yes.

The Court: Have you got the check you paid them, the return check that comes back from the bank?

The Witness: I believe I have it home, but not here.

Q. So that it was made probably sometime from Monday to Friday, inclusive, because Saturday is a half holiday, that is right?

10 Mr. Harding: I may say their own bill states this settlement took place on March 10th.

The Court: Presumptively it was, but I thought there might be some mistake about it. Let me see that paper. The cancelled mortgage, when was it acknowledged. The 10th day of March.

Mr. Stackhouse: That may be true.

20 Mr. Harding: The 10th paragraph of the bill recites the settlement took place on the 10th day of March.

The Court: The mortgage was acknowledged by her on the 10th day of March, the purchase money mortgage.

Q. Did you sign all the papers when you were at the settlement, or did you sign them before the settlement?

30 A. Well —

Q. Were you down to the title company twice?

A. No, only once; I was to Fairview once and the title company once.

Q. And that was the day you signed these papers?

A. Yes, sir, Mr. Falvey was with me.

Q. When you notified Mr. Fagen that the settlement was to take place on the 10th of March, which

I understood you to say you did, did you write him a note?

A. No I sent word with Mr. Falvey that the place had to be settled for, and Mr. Fagen called to see me, and he told me he had no money, and I said, "Mr. Fagen, you told me you had money in bank," and he said, "I have no money."

Q. The place was to be settled for the next day?

A. We only got short notice to settle for the property.

10

Q. You told him the settlement was to take place the next day?

A. Yes, I did.

Q. And he sent word he had no money?

A. He came to see me and told me he didn't have any money.

Q. Yet on March 11th he sent you \$50.00?

A. But that wouldn't pay for the settlement and pay the mortgage.

20

By the Court:

Q. What did he pay you the \$50.00 for on the day after the settlement?

A. Because Mr. Fagen came in to me, and I wanted to be just and fair. I have given him a fair deal right through, and Mr. Fagen he said, "Mrs. Falvey, I would like to buy that property," and I said, "Any time you want to buy it we will talk it over some time later and I will give you the preference and sell it to you cheaper than others." I haven't done anything to Mr. Fagen.

30

Q. What did he give you \$50.00 for?

A. Mr. Fagen said if I took that money I would be paid in advance for rent, and I applied Mr. Fagen's money for rent, and I almost gave him seven months to get out of the property for nothing, so I have nothing belonging to Mr. Fagen.

By Mr. Stackhouse:

Q. What were properties renting for down there at that time?

A. He was paying \$36.00 to the Government.

Q. And \$50.00 to you?

A. Not when you count the months he was there for nothing, he was there seven months for nothing.

Q. During that time he paid you —

10

The Court: Which six or seven months are you referring to now?

The Witness: The last payment he made was May.

The Court: 1923. He is talking about the earlier time when he was paying you the \$50.00.

20 The Witness: He wanted to leave the money to my place, he volunteered the payments almost, he left the money to my house, and I gave him credit for the money, and I was also going to give him credit for everything, and when I notified him in July I didn't have any payments since May, and he got ninety days to get out, and I didn't go out to his place to December, and he was still there..

Q. In June you refused to take the \$50.00?

A. I didn't want it.

30

Q. You refused to take it?

A. After I notified him to get out.

The Court:

Q. He paid you in May \$50.00, and when he came to pay you in June you wouldn't take it?

A. I didn't get it.

Q. You wouldn't take it?

A. He didn't come with any money and I couldn't take it.

Q. He didn't offer it to you?

A. No, sir, and I left him stay in the house to July, the end of July.

Q. Didn't he come there in the forepart of July and offer you \$100.00?

A. No, sir, he was ordered out when he came with the money; he was notified to move when he came 10 to my house with any money.

Q. Do you mean to deny what this gentleman testified to that he went there with either \$50.00 or \$100.00, he couldn't remember which in the forepart of July and offered it to you, and you wouldn't take it?

A. He wasn't to my house in July with money. In March I paid the water taxes and June I paid taxes and I got nothing from him June, and the end of July I ordered Fagen out, I gave him ninety days to 20 get out.

Q. That gentleman is mistaken about being there with Mr. Fagen, being there about the forepart of July?

A. He must have been.

Q. You say he wasn't there at all; don't you remember his coming with that gentleman and offering you money?

A. When he came to me with money it was after he was ordered out of the property.

Q. It was after the last part of July?

A. And then I refused it.

30

By Mr. Stackhouse:

Q. Mrs. Falvey, Mr. Fagen was there with the tender, wasn't he, several times after the middle of May?

A. After he was ordered out of the property he was to my house with money; I don't know how much, because he didn't come inside my door.

Q. He had money in his hands?

A. I didn't see any money with Mr. Fagen.

Q. Do you know when this notice was served on Mr. Fagen?

A. The 23rd day of July.

10 Q. The notice is dated the 26th day of July, will that assist you in stating when the notice was served?

A. Well, Mr. Fagen never paid any more payments after May.

Q. You say the reason he hadn't paid any more payments was that you had ordered him out of the property and you wouldn't take the money from him, that is right, isn't that the case?

A. No, that is wrong.

Q. All right, let us hear what is right.

20 A. I will explain what is right. The last payment I got from Fagen was May, and I let Fagen stay in the property June and July, until the end of July, and I ordered him out, gave him ninety days to get out; after he got notice to move he came to my door with money, and I refused to admit him, because counsel told me not to.

Q. Mrs. Fagen, you know enough to know, don't you, that even where you order a person out of a property you are entitled to rent?

30 A. I didn't want the rent, because all of the payments I wanted to add up and call it rent, I didn't want nothing from Mr. Fagen, if he is willing to buy the property and give me a fair price he is willing to have it.

Q. What do you call a fair price for the property?

A. Well, that I can't say at the present time.

Q. You think it is worth a good bit more than \$2100 now, don't you?

A. I have done nothing to Mr. Fagen, I haven't done anything to him in any way.

Q. You consider it is worth more than \$2100 now, don't you?

A. Well, I suppose properties have raised, yes.

Q. Now, then, you say he was in the property for six or seven months without any rent, what period do you refer to when you say that?

10

A. From May until November I received no rent.

Q. But it was offered to you, wasn't it?

A. Not until he was ordered out of the property.

Q. Was any rent offered you in June?

A. No.

Q. Nobody was there in June to offer you any money?

A. If rent was offered me in June I would not be here.

Q. Your answer to that is there was no rent offered you in June?

20

A. No.

Q. And you still say that this gentleman who testified that he was there with Mr. Fagen when the rent was offered in July, wasn't there, Mr. Fagen came alone that time, is that right?

A. There was no rent offered me in July; the rent was offered to me in August after Mr. Fagen got notice to vacate the property and he got ninety days to get out.

30

Q. Who was with him when he came to pay the rent, make this payment in August?

A. That I don't know.

Q. Was there anyone with him?

A. That I couldn't say.

Q. You were there; couldn't you see?

A. Mr. Fagen came himself to the door on my porch.

Q. Wasn't there anybody with him on the porch?

A. If they was they were on the street, not on the porch.

Q. So the party who went with him in August and testified he was there and overheard the conversation was mistaken?

A. He wasn't on my porch, no man was there but
10 Fagen.

Q. Was anybody around within hearing?

A. That I couldn't say, because it is a public thoro-
fare.

Q. How about September, was there any offer of
money made in September?

A. I repeatedly told you that Fagen offered me
money after he was ordered to vacate the property.

Q. Was anybody with him?

A. I can't explain that, this is a public thoro-
20 and people are on the street all the time, and you
can't tell.

Q. How far back from the street does your house
set?

A. It doesn't sit back very far, but there is a large
porch.

Q. A little front yard in front, isn't there?

A. No.

Q. Does it sit right on the edge of the street?

A. No, sir.

30 Q. How does it sit?

A. That I can't say.

Q. You don't know?

A. All I know it is a little from the street?

Q. The house itself, is it back a little from the
street?

A. Yes. If you are on the street I couldn't tell

who it is or where you are going, because there are people there at all times.

Q. If Mr. Fagen and you had a conversation on your porch the party who was standing on the sidewalk wouldn't be able to hear unless you spoke in a loud tone?

A. No.

Q. And you didn't see on any of these occasions that Mr. Fagen came and offered you money after May, anybody with him?

10

A. No, sir.

Q. Could you have seen them if they had been there on the porch?

A. Nobody was there with him.

Q. Mrs. Falvey, if it was just a difference between you of some money matters why did you start in calling Mr. Fagen crooks, and his whole family crooks?

A. I didn't say that. I said, "Mr. Fagen, you are dishonest, you are untruthful and dishonest and I want no more dealings with you," that is what I 20 said.

Q. So these gentlemen are mistaken when they say that, is that the idea? You say Mr. Fagen was paying \$36.00 a month rent at the time the property was sold?

The Court: Is that what he was paying, \$36.00?

Mr. Stackhouse: The witness said that a few moments ago.

30

The Court: I thought she said \$26.00.

Mr. Stackhouse: \$36.00.

Q. And yet what he was paying you was by way of rent?

A. I applied it as rent because I had bought the house; I have explained to you the agreement I made with Mr. Fagen. I have no hard feelings with the Fagens and I am here to sell the property at a reasonable price to the Fagens if they want it, but the property I have paid for.

Q. They are paying \$50.00 a month rent, according to your story?

A. Not counting the months they stayed for nothing, I gave Mr. Fagen pretty near seven months to
10 get out without any rent, if he would leave the place.

Mr. Harding: If you will answer the questions without making a lot of statements you will save time and we will understand the situation more clearly.

Q. The months you refer to he was in the property without rent were the months after May of 1923,
20 weren't they?

A. He was in from May until November.

Q. Yes.

A. And I asked no rent.

Q. Nevertheless he came to your house and offered you what you call rent for those months, which you didn't take and wouldn't take, that is true, isn't it?

A. I have explained that Mr. Fagen gave me no payments after May, and when he came in August he had been ordered to vacate the property, I have
30 explained that, and those payments I refused.

Q. Now, you say you think he owes it, that is right, isn't it, he owes for the time he was in the property?

Mr. Harding: She didn't say that.

Mr. Stackhouse: I am trying to find out what is in her mind, it is very difficult.

Mr. Harding: You are speaking of the \$50.00 a month; she said if these payments were applied it would mean \$50.00 a month rent.

Q. Do you know how much it was he offered you during these months after May?

A. He offered me nothing after May.

Q. You didn't count the money?

A. He didn't offer me nothing after May until he was ordered out of the property.

10

The Court: He wants to know what he offered you afterwards?

The Witness: That I can't say; I didn't see Mr. Fagen outside of the time on the porch and I don't know what he had in regards to money.

Q. Did he have any money in his hands?

A. I didn't see it, I can't say.

20

Q. Will you say he didn't have any money?

A. I wouldn't say either one.

Q. What did he come for, did he come to offer money?

A. That I don't know, I didn't have any talk with him.

Q. Wouldn't let him talk to you?

A. I was afraid of the man.

Q. Oh, a new aspect on it. Did he ever threaten you?

30

A. No, but he is untruthful.

Q. Afraid of him because he is untruthful?

A. Yes, sir.

Q. Do you mean you are afraid he will do you bodily harm?

A. No, sir, I don't mean it that way.

Q. When you paid off this mortgage to the Ship-

ping Board did you tell Mr. Fagen anything about that?

A. About the mortgage?

Q. Yes.

A. Why, he had nothing to do with the property after I took the deed to the property and settled for the property; Mr. Fagen had nothing to do with it and I never mentioned anything about the property to Mr. Fagen.

10 Q. Mrs. Falvey, do you remember the visit you paid to the Wickhams?

A. Yes, I do.

Q. You went down there to intercede for some man who had been suspended or something of that kind?

A. Yes, I remember.

Q. And you say at that time Mr. and Mrs. Wickham are mistaken when they say any mention was made about the Fagen property?

20 A. Mr. and Mrs. Wickham have made a statement that I am a steady visitor to their homes and I spend afternoons with his wife; that was my first time to Bill Wickham's home, and I stayed about fifteen minutes, and his mother was there and his wife, and Mr. Fagen's name wasn't mentioned. He censured me for acting for the boy, he said I was too willing to do something for somebody else but they wouldn't do anything for me, and I stood by the front door; I don't think I was in there fifteen minutes, and I
30 saw Bill Wickham's mother, and his wife was there.

Q. You can say a good deal in fifteen minutes, can't you, Mrs. Falvey? You still stick to your story that no mention was made of Fagen?

A. His name wasn't mentioned.

Q. The only conversation was about getting this man back who had been suspended?

A. I asked for work for the boy and Bill Wickham

said he was suspended, and I said he was young and if he would give him a trial he would be all right.

Q. Now, Mrs. Falvey, just one or two more questions. You say you considered he was paying this \$50.00 by way of rent?

A. Yes.

Q. Is it usual when you want an increase of \$14.00 a month rent to make a man pay the taxes and water rent in addition to that?

A. I will explain that to you.

10

A. All right.

A. Mr. Fagen told me if I would take that money I would have it for rent, and I took it and gave a receipt; now, I am here, if he wants the property I am here to sell it. I haven't taken a thing from Mr. Fagen, I have given him a fair deal.

Q. You got \$50.00 a month for rent, and in addition to that he paid you \$39.20 in June of 1922, for the first half of the taxes?

A. No, that isn't right, because I allowed him six or seven months in that house for nothing.

By the Court:

Q. Do you say during the period that Mr. Fagen was making these payments, April, May, June, July, August, September, October, November, December, 1922, and January, February, March, April and May, 1923, these payments of \$50.00 a month, that there was no understanding between you and Mr. Fagen that you would deed the property back to him when he had paid you all you had in it?

A. No, sir, there was not.

Q. No understanding of that kind?

A. No.

Q. Why did he pay so heavy a rent?

A. Because he got it back, I didn't want such

heavy rent, he volunteered the payments, and as I explained to you by him staying in the house six or seven months for no rent he wouldn't be paying no heavy rent.

Q. Don't you think \$50.00 a month rent and the taxes and water rent in addition for a \$2100 house is almost unheard of buy way of rent?

A. Yes, but he didn't pay that, I have paid the taxes.

10 Q. Up until May, 1923, that is what he paid; wasn't that an exorbitant price for rent, isn't it an unreasonable price for the renting of a \$2100 property?

A. I wanted to allow the man for that by giving him seven months to get out of the property.

Q. You are speaking of something that occurs after May, but up until May, from the time you first took hold of this matter up until May, 1923, he paid \$50.00 a month and taxes.

20 A. He just paid the taxes.

Q. He didn't pay taxes and water rent in 1923, he paid taxes and water rent in 1922; during that period wasn't \$50.00 a month, under the circumstances, an extravagant rent?

A. I didn't want to take the \$50.00 rent, he gave me the money.

Q. What was the arrangement, what was he to do?

A. He forced the money on me, he asked me to take it, and I did.

30 Q. What were you doing with the money? Supposing he kept on paying the \$50.00, what were you going to do with the money you say he forced on you, supposing he kept paying the \$50.00 promptly?

A. If Mr. Fagen had kept on and done right I would have sold the property and sold it reasonable.

Q. I don't understand what you mean. Why should he pay that \$50.00, and obviously extravagant

rent, unless he was to get some benefits other than the mere occupancy of the property; what was he to get besides the occupancy, he could go somewhere else and get a similar property for \$50.00, why was he paying you the \$50.00?

A. If he had kept on he would have bought the property reasonable; he wanted me to have the money and I took it.

Q. Why did he want you to have it?

A. That I don't know; probably that is why I am 10 here.

MICHAEL F. FALVEY, SWORN.

By Mr. Harding:

Q. Mr. Falvey, you are the husband of Mrs. Falvey, the defendant in this suit?

20

A. Yes, sir.

Q. You know Frederick Fagen?

A. Yes, sir.

Q. Work at the same place he does?

A. Yes, sir.

Q. About the time that settlement was had on this property did you tell Mr. Fagen that your wife wanted to see him about the settlement?

A. Yes, sir.

Q. Do you know about when that was?

30

A. I think it was the day before settlement.

Q. Do you know whether he went to your house as the result of you telling him that?

A. That I couldn't say, I don't know.

Q. You yourself don't know anything about the transaction between your wife and Mr. Fagen?

A. No, sir.

Cross-examination.

By Mr. Stackhouse:

Q. Were you present at the settlement?

A. At the West Jersey?

Q. West Jersey Title Company.

A. Yes, sir.

10 Q. What day did that take place on?

A. I can't recall, I can't refresh my memory enough to answer that.

Q. Do you remember the day of the week?

A. I do not; I didn't pay much attention to it, I just went up.

Q. Mr. Falvey, didn't Mr. Fagen ever talk to you about wanting to buy this property?

A. Ever talk to me about buying the property?

Q. Yes.

20 A. No, sir.

Q. Didn't he see you shortly before the 10th of December, 1921?

A. Yes, sir, he saw me practically every day.

Q. Didn't he talk to you when he saw you about wanting to buy the property?

A. No, sir.

Q. Never said a word about it?

A. No, sir, other than everybody did talking about the sale in the shop.

30 Q. On the Sunday following the sale, which was the 11th day of December, you weren't present?

A. No, sir, I was in church.

Q. What time did you come home from church?

A. I think I came home about half-past twelve or shortly after twelve.

Q. Who was at your house when you came home?

A. Nobody but my wife.

Q. And you never had anything to do with any transaction with reference to this property?

A. No, sir.

By Mr. Harding:

Q. You signed the bond and mortgage delivered to the Shipping Board?

A. Yes, sir, when it was turned over.

Q. And that is all you had to do with it?

10

A. Yes.

LEON M. CLAIR, SWORN.

By Mr. Harding:

Q. Mr. Clair, you are in the real estate business?

A. Yes, sir.

20

Q. In Brooklawn?

A. In Fairview.

Q. Are you acquainted with this property 3145 Mt. Ephraim Avenue?

A. I know where it is located.

Q. How long have you been dealing in real estate down there?

A. Three years.

Q. Can you tell us what a fair rental for the property was at the time the Shipping Board sold it?

30

A. \$36.00.

Q. \$36.00, that is what the Shipping Board was receiving?

A. Yes.

Q. Subsequent to the sale by the Shipping Board, do you know whether rents were increased in that section or not?

Mr. Stackhouse: I object to the question in that form.

The Court: What would this property reasonably rent for from the time of that sale.

Q. What would you say would be the reasonable rent for that property from the time the Shipping Board disposed of it up until, say, February of this
10 year, or November of last year, or May of 1923?

A. \$38.00.

Q. About \$38.00?

A. Yes, sir.

Q. That would be a fair value?

A. Yes, sir.

No cross-examination.

Mr. Harding: That is our case.
20

DEFENDANT RESTS.

COMPLAINANT'S REBUTTAL.

FREDERICK FAGEN, recalled.

By Mr. Stackhouse:

30 Q. Mr. Fagen, did Mr. Falvey ever come to your house and notify you when settlement was to be made for this property at the title company?

A. No, sir, at no time did he ever mention a word about it.

Q. Did you know when settlement was made?

The Court: He testified he didn't know before.

Cross-examination.

By Mr. Harding:

Q. Did he ever tell you at the shop that Mrs. Falvey wanted to see you about the settlement?

A. No, sir.

Q. You didn't know anything about when the settlement was going to take place at all?

A. No, sir, not a thing.

10

Q. Did you ask Mr Falvey anything about the settlement?

A. No, sir.

Q. Did you ask Mr. Falvey anything about the settlement?

A. No, sir.

Q. Did Mr. Conklin at the time you met him Monday morning, December 12th, tell you when settlement would take place?

A. Mr. Conklin?

20

Q. Yes.

A. No, sir, he didn't tell me anything about the settlement.

Q. Didn't he tell you settlement would take place in two or three months?

A. No, sir.

Q. Did you ever know there ever would be a settlement in the matter?

A. Only between I and Mrs. Falvey.

Q. When did you figure that would take place? 30

A. After I got the money she loaned me, \$200.00.

Q. When you got the \$200.00 and paid her that, did you then ask her about the settlement?

A. She was going to turn the papers and deeds over to me.

Q. When you paid her the \$200.00, did you ask her

about making settlement, did you say anything to her?

A. She told me.

Q. You say she told you that when you had paid her the \$200.00 —

Mr. Stackhouse: I object.

10 The Court: It is going back over the same ground.

Mr. Stackhouse: I only asked him as to the one question.

BOTH SIDES REST.

EXHIBIT C1.

20 67 Liberty Street
New York City

Telephone
Cortlandt 0744

JOSEPH P. DAY
Auctioneer

AUCTION SALE, COMMENCING SATURDAY,
DECEMBER 10, 1921, OF 1383 HOMES AND
BUILDINGS, SITUATED IN YORK-
SHIP VILLAGE, FAIRVIEW, CAM-
DEN, NEW JERSEY

30

TERMS OF SALE

The premises designated by the house numbers and the lots and plots as shown on maps and description of houses entitled "Map showing property of the United States Shipping Board, Emergency Fleet Corporation, Yorkship Square, Camden, N. J., made by the Draughting Department of Joseph P.

Day, Auctioneer, 67 Liberty Street, New York City." title to which premises is in Fairview Realty Company belonging to United States Shipping Board, Emergency Fleet Corporation, will be sold under direction of United States Shipping Board, Emergency Fleet Corporation, by Joseph P. Day, Auctioneer, by said house numbers as shown on said map, and in the schedule printed with said map, showing a description of each house as to number, size of plot, number of rooms, type of house and approximate present rental. The map is for convenience for location only, and is not an accurate survey and does not show the exact size of the buildings or plots on which they stand; reference must be made to the description accompanying the map and to the maps in possession of the United States Shipping Board; other lots and plots will be sold by description announced at the time of sale. 10

The sale will be governed by the following Terms and Conditions: 20

FIRST: The purchaser will be required at the time and place of sale to sign a memorandum of his purchase and to pay on account of the purchase price to the Auctioneer **TEN (10%) PER CENTUM** of the amount of his bid, for which the receipt of Joseph P. Day as agent for the seller will be given, and the purchaser, except a tenant who shall buy the house which he is occupying, will also be required at the same time and place to pay said Auctioneer, in addition, the Auctioneer's fee of fifteen dollars (\$15.00) for each house or lot sold, for which the receipt of said Auctioneer will be given. 30

SECOND: The remainder of the purchase price must be paid in cash or partly in cash and the balance in a purchase money bond and mortgage as hereinafter set forth, during the week beginning January twelfth, 1922, or at such later date to which

the closing may be adjourned, at the office of West Jersey Title & Guaranty Co., corner 3rd and Federal Streets, Camden, N. J., or at any other place that may be designated by the seller, when and where the deeds of the property will be ready for delivery.

10 In case the seller cannot close any title on the date fixed, the seller has and reserves the right to adjourn the closing from time to time until it shall
20 be able to close the transaction. If the said seller shall refuse to give a deed to the purchaser for any house, lot or plot sold, subject to the covenants, conditions, restrictions, reservations, exceptions, agreements, encumbrances and other matters herein mentioned, the purchaser shall not be required to complete his purchase, and the money paid on account of the purchase price shall be returned to him and the sale of such house, lot or plot shall be void. If the title is not delivered to any house, lot
20 or plot, neither the owner nor the Auctioneer shall in any way be liable to the purchaser, except for the return of the deposit of Ten (10%) per centum or other amount, if any, paid on the purchase price, and the Auctioneer's fee paid to the Auctioneer without interest.

30 **THIRD:** Any purchaser will have the privilege of allowing a portion of the purchase money to the extent of 50%, 60% or 70% thereof to remain on purchase money bond and mortgage for a period of three years from the date of settlement at the respective annual rates of interest of Five (5%) per cent. where not exceeding 50% of the purchase price is left on mortgage, Five and one-half (5½%) per cent. where more than 50% and not exceeding 60% of purchase price is left on mortgage, or Six (6%) per cent. where more than 60% and not exceeding 70% of the purchase price is left on mortgage, pay-

able semi-annually. A tenant who purchases the house he is occupying will have the alternative privilege of paying ten per centum (10%) of the amount of his bid at the time and place of sale, ten per centum (10%) of the amount in cash on the day of closing title, and of having the remaining eighty per centum (80%) remain on purchase money bond and mortgage to be paid at the rate of two per centum (2%) a month, with interest on the unpaid balance at the rate of six per centum (6%) per annum, until the whole is paid in full. Such purchase money bond and mortgage covering the premises purchased shall be drawn by the attorney for the seller, in the form usually employed by it, and the purchaser is to pay the deed and mortgage recording fees and the U. S. Revenue Stamps charge required in the transaction. Any purchaser who desires to exercise such privilege must notify the United States Shipping Board, Emergency Fleet Corp., at their office, Yorkship Square, Camden, N. J., in writing to that effect before the twenty-fourth day of December, 1921, specifying the amount (not exceeding 70% of the purchase price) which is to remain on such bond and mortgage, and the number of years (not in excess of three years) which same is to run. Any purchaser who elects to give a purchase money mortgage must furnish to the mortgagee necessary title insurance and fire insurance for the full amount left on mortgage and for the term thereof at the expense of the purchaser.

FOURTH: It is understood and agreed that the houses, lots and plots to be conveyed shall include the right, title and interest of the seller, if any, to the land lying in the streets and avenues on which such houses, lots and plots abut respectively, to the centre lines of such streets and avenues, but the warranties will not cover any land in any street

or avenue, nor that such street or avenue has been legally established as a highway.

FIFTH: It is expressly understood and agreed that all the property offered for sale will be sold subject to any state of facts an accurate survey may show, and to covenants and restrictions of record, if any, and to any existing easements.

SIXTH: It is further expressly understood and agreed that the following restrictions and covenants shall be strictly observed by the purchasers:

10 That the purchaser, heirs and assigns, will not erect, build or maintain or cause or permit to be erected, built or maintained upon any of said premises or any part thereof, any blacksmith, currier or machine shop, piggery, slaughter house, public stable or livery, soap, glue, starch or manufactory, or any trade or business or factory of any kind or nature whatever, and that any part and all of said property is to be strictly used for residential

20 purposes only; excepting, however, all that property situated on Yorkship Square and Collings Road on the south side from a point opposite E. Ironsides Road running east to Alabama Road and along Alabama Road on the southeast side of Merrimac Road can be used for the carrying on of trade or business not dangerous, noxious or offensive to neighboring inhabitants or property or any trade or business likely not to depreciate property values in the immediate vicinity and not within keeping of the general

30 character of the neighborhood. This covenant is to be construed as running with the land and also subject to the following restrictions, that the front of the buildings now erected and used and restricted for residential purposes shall not be extended from their present locations for a period of ten years.

Seventh: The seller reserves the right for itself or its assigns, to maintain and operate sewer dis-

posals plants, water, gas, electric power and lighting, surface cars and all public utilities, and also reserves all right and title in all lots, plots and areas not improved with houses or as streets, lanes or alleys.

EIGHTH: The property will be conveyed by bargain and sale deed, describing the property by house, lot or plot numbers, as shown on the above mentioned map, or by other proper description, and all the property will be conveyed in fee simple, free from encumbrances, except the covenants, conditions, restrictions, reservations, exceptions, agreements, encumbrances and other matters herein mentioned, and except also any existing building lines and except also all special assessments and water rates levied or imposed or charged upon the property subsequent to the date of the auction sale. Taxes, water rents and other fixed charges and rents shall be apportioned to date of settlement. 10

NINTH: The seller is not required to send any notice to the purchaser, and, if the purchaser neglects to call at the time and place specified to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, provided the seller shall deem it proper to extend the time for the completion of said purchase. 20

TENTH: The biddings will be kept open after the property is struck down, and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him may, at the option of the seller, be again put up for sale upon these same terms of sale, and such purchaser will be held liable for any deficiency there may be between the sum for which said premises shall be struck down upon the sale and that for which they shall be struck down upon the resale, and also for any costs or expenses of such resale, or the seller may, at its option, retain the ten per 30

cent. (10%) deposited by the purchaser as liquidated damages, and resell the property at public or private sale for its own account after ten (10) days' notice to the purchaser by mail at his address given on the Terms of Sale signed by him.

ELEVENTH: The premises that are now occupied are sold subject to leases expiring not later than March 31st, 1922, except that the following premises are subject to leases expiring as shown
10 on the following schedule:

20

30

YORKSHIP STORES AND BUSINESS PLACES

ADDRESS	NAME	BUILDING	TERM OF LEASE	EXPIRES	RENT	REMARKS
3075 Merrimac	Elwood Hochstetter	Dwelling	13 mos.	Aug. 10, 1922	\$53.00	Lease can be terminated by either party giving 14 days notice. See No. 1, Dwelling House form.
1423 Collings	John F. Schnitzius	Dwelling	12 mos.	May 10, 1922	50.00	Same as above.
1376 Collings	Geo. H. & Ada Brosal	Store	2 yrs.	Aug. 1, 1923	50.00	No renewal clause.
1382 Collings	Geo. H. & Ada Brosal	Store	2 yrs.	Aug. 1, 1923	50.00	Same.
1384 Collings	American Stores Co.	Store	3 yrs.	May 15, 1923	50.00	Lease can be terminated by either party giving 90 days notice prior to expiration.
1390 Collings	Samuel Lax (Assigned to Sigmund Jacobson)	Store	3 yrs.	Aug. 1, 1923	50.00	Same.
1392 Collings	Link Hardware Co.	Store	3 yrs.	Oct. 1, 1923	50.00	Same.
1398 Collings	Samuel Rosner	Store	3 yrs.	July 1, 1923	65.00	Same.
Gym. Collings Rd.	Harry G. Barry, assigned to George T. Richardson	Gym.	3 yrs.	July 23, 1923	200.00	No renewal clause.
Garage Collings	James J. Kelly, assigned to Kelly & Thompson	Garage	1 year	Apr. 30, 1922	100.00	Terminates at expiration.
Recreation Fld.	Fairview Ath. Ass.	Club house and grounds	6 mos.	Apr. 1, 1922	50.00	Lease can be terminated by either party giving 30 days notice prior to expiration.
2977 Alabama	Mary Conley	Dwelling	1 year	Aug. 10, 1922	55.00	No renewal clause.
2952 Y. S. Square	Charles Inverso	Store	1 year	Sept. 10, 1922	35.00	Same.
2950 Y. S. Square	American Stores Co.	Store	3 yrs.	July 31, 1923	166.67	Lease can be terminated by either party giving 90

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Exhibit

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2961 Y. S. Square Weiss Brothers	Store	1 year	June 1, 1923	125.00	days notice prior to expiration. One year renewal privilege.
2977 Y. S. Square Loring S. Strang	Store	3 yrs.	Oct. 15, 1924	125.00	Lease can be terminated by either party giving 60 days notice prior to expiration.
2958 Y. S. Square Dr. E. N. Davidson	Office	18 mos.	Apr. 1, 1923	20.00	See Form No. 1. Lease can be terminated by either party giving 14 days notice.
1525 Collings Robert Peters	Dwelling	1 year	Aug. 10, 1922	20.00	No renewal clause.

150

Exhibit

TWELFTH: The purchaser of any dwelling house agrees that if the same is tenanted at the time of purchase, the tenant shall not be required to vacate the premises prior to March 31, 1922, provided said tenant shall comply in all respects with the terms of his lease.

THIRTEENTH: The seller reserves the unrestricted right to reject any and all bids and all sales are made subject to approval and confirmation of the United States Shipping Board.

10

FAIRVIEW REALTY COMPANY,
Owners.

MEMORANDUM OF SALE

I, the undersigned, have this 10 day of December, Nineteen Hundred and Twenty-one, purchased the premises described on the map referred to in the 20 house

above Terms of Sale as lots numbered 3145 Mt. plots

Ephraim Pike for the sum of Twenty One Hundred 00/100 DOLLARS (\$2100), and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above mentioned and set forth.

Mrs. Falvey,

Purchaser. 30

Address 1719 Ferry Ave.

Camden N. J.

RECEIVED FROM

Two Hundred Ten 00/100 DOLLARS (\$210 —) being Ten (10%) per cent. of the purchase price to be paid by him for the above described property, this day sold to him.

Dated Camden, December 10, 1921.

FAIRVIEW REALTY COMPANY

Owners,

By JOSEPH P. DAY, Agent.

Per Acc.

Auctioneer's Fees: \$15.00

Knockdown Fees: \$

10

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK FAGEN,
Complainant,

and

MICHAEL F. FALVEY, *et ux.*,
Defendants.

} Final Hearing on Bill
for Relief.
Conclusions.

20

D. T. STACKHOUSE, Esq., for complainant.

P. H. HARDING, Esq., for defendants.

30

LEAMING, V. C.:

The law is clearly settled to the effect that one who sets up a resulting trust in himself, the conveyance being to another, must show that the land was bought with his money, and not merely that the purchase was made for his benefit. Nor will a subsequent payment of the money by relation attach a

resulting trust to the original purchase, since a resulting trust arises from the fact that the money of the real and not the nominal owner formed the consideration of the purchase at the time and became converted into land.

But it is not necessary that the money forming the consideration of the purchase pass through the hands of the real purchaser. If the purchase money was, in fact, advanced by the nominal owner as a loan of money to the real owner, a trust results. 10

It is entirely clear from the evidence that the money paid to the Fairview Realty Company at the time the contract of sale was executed was the money of complainant. The testimony of the agent of the Shipping Board clearly discloses that Mrs. Falvey loaned to complainant the money which was paid at the time the contract of sale was executed, but wanted the contract changed from complainant's name to her name to better secure her for the loan. That transaction made the money which was then 20 paid, the money of complainant, to the same extent as though the money had been first paid to complainant by Mrs. Falvey and by complainant paid to the Fairview Realty Company. Accordingly Mrs. Falvey acquired the contract from the Fairview Realty Company to her for the sale of the premises here the subject of controversy in trust for complainant's use and benefit. The right to pay the balance of the purchase price and acquire the legal title thus became the right of complainant; as 30 against complainant, Mrs. Falvey, could not thereafter, without complainant's consent, advance the balance of the purchase price and acquire more than an equitable lien for her expenditures.

Nor do I think any substantial doubt can exist as to the subsequent occurrences. It is my belief that at the time of settlement, no change had oc-

curred in the relations or purposes of either of the parties, and that Mrs. Falvey at that time advanced for complainant, and not for herself, the balance of the cash purchase price and executed the purchase money mortgage in precisely the same manner and for precisely the same purpose that she had advanced the original payment, that is, as a loan to complainant, thinking herself adequately secured by the deed of conveyance then made to her. I am
10 convinced that complainant did not even know what arrangements, if any, had been made by Mrs. Falvey with the Realty Company; he was confidently and ignorantly relying upon Mrs. Falvey's promise to procure for him a building association mortgage and to accept in installments the cash advanced or to be advanced by her for him. If, in fact, Mrs. Falvey lulled complainant into inactivity for the purpose of procuring for herself the legal title to the property in hostility to complainant's rights, a
20 constructive trust would follow the accomplishment of that purpose; but it is my belief that no notion of holding the legal title in hostility to complainant arose in the mind of Mrs. Falvey until more than a year thereafter.

A number of circumstances impel acceptance of the facts stated. At the time of settlement with the Realty Company, when Mrs. Falvey took over the legal title to the property, complainant, had repaid to her the major portion of the money she had
30 advanced for him. Had complainant been apprised of a desire on the part of Mrs. Falvey for the payment by him of the small balance, or had he been apprised that it was necessary for him to make settlement with the realty company to save for himself his home, it is reasonably certain that he would, at least, have made some effort to protect himself. Nor did Mrs. Falvey, in taking over the legal title,

return to complainant the payments he had already made on the original loan to him or credit him with those payments. Nor is it possible to believe that the subsequent payments made by complainant were as rent, as claimed by Mrs. Falvey. For over a year payments were made by complainant to Mrs. Falvey monthly far in excess of a reasonable rental, and during that period complainant paid, in addition to the monthly payments, the taxes and water rents assessed against the property. The aggregate pay- 10
ments so made by complainant far exceeded the total amount of cash required by the realty company, with interest on that amount and interest on the purchase money mortgage added. It is my belief that during all of that time complainant reposed in the confident and justifiable belief that all payments which Mrs. Falvey had made had been made by her for him as advances to him, and that all payments which had been made by him to her, except those made for taxes and water rents, had been received 20
by her as payments on account, and it is further my belief that up to the time that the breach occurred, Mrs. Falvey entertained precisely the same belief and intent. I am unable to accept the view that Mrs. Falvey's advances, originally intended as loans to complainant, had in any way undergone a change in their nature, purpose or effect. Mrs. Falvey appears to have been a woman who found great pleasure in aiding others less fortunate than she. She found that pleasure in aiding complainant. 30
When paid the full amount she had advanced to complainant, together with interest, and is relieved from the obligation of any encumbrance, she may have placed on the premises, she will be fully compensated, complainant being also credited with all payments made by him to her, with interest.

A decree will be advised in accordance with the

views herein expressed. A reference to a master may be made for an accounting in case the parties cannot agree as to amounts.

It should be noted that it is not an easy task to define with technical accuracy all possible equitable rights, interests or estates. The terms "constructive trusts" and "resulting trusts" will be found confused, at times, even in judicial utterances and by text writers. Professor Pomeroy has made the forceful suggestion that this confusion could and should be avoided by eliminating from the former name all trusts that result from acts not accompanied with fraud. The second cause of action in the amended bill filed herein defines the trust claimed by complainant as a "constructive trust." In the present case it also is doubtful whether the averments of the amended bill fully disclose a resulting trust in that it does not therein clearly appear that the advances of money made by Mrs. Falvey were advances for complainant, as loans to him; and very naturally complainant was unable to clearly distinguish between an advancement of money by defendant in the nature of a loan and a mere promise of aid. The inherent spirit of such transactions, more than their phrasing, determine their real nature and effect. But since the evidence which has been heard embraces all transactions between the parties and has not been restricted in any way by the averments of the pleadings, I think a decree should be made based upon the facts as I have found them to exist, with leave to complainant to further amend his bill to conform, should he be so advised.

Submitted October 28, 1924.

Determined November 7, 1924.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between FREDERICK FAGEN, <i>Complainant,</i> and MICHAEL F. FALVEY, <i>et ux.,</i> <i>Defendants.</i>	}	On Bill, Etc. Final Decree.	10
--	---	--------------------------------	----

This matter coming on to be heard before the
 Honorable E. B. Leaming, the Vice-Chancellor to
 whom the said case was referred in the presence of 20
 D. T. Stackhouse, Esquire, solicitor for the com-
 plainant, and Patrick H. Harding, Esquire, solicitor
 for the defendants, on amended bill, answer thereto,
 replication and proofs; and the arguments of coun-
 sel having been heard and considered; and it appear-
 ing to the Court that from all of the circumstances
 of the case the money which was paid for the prem-
 ises described in complainant's bill was money be-
 longing to complainant which was loaned to him by
 the defendants; and that title to the said premises 30
 was taken in the names of the defendants in order
 to secure them for the moneys so loaned and ad-
 vanced the complainant by the defendants and to
 be loaned and advanced to the complainant by the
 defendants; and that in consequence a resulting
 trust arose in favor of the complainant for the
 premises described in the bill of complaint, the title

to which was taken by the defendants under a deed from the Fairview Realty Company to the defendants, dated March 10, 1922, and recorded in the Camden County Register of Deeds' Office in Book 502, page 98, &c.; and that the said defendants loaned and advanced to the complainant on the 12th day of December, 1921, the sum of \$225, applying the same on account of the purchase price of the said premises; and on the 10th day of March, 1922, loaned
10 and advanced to the said complainant the further sum of \$453.37, which was applied to the purchase price of the said premises and to the payment of certain expenses for search fees, conveyancing and recording fees in connection with the settlement for said premises and certain taxes and water rents paid by the defendants on said premises, and made and executed a purchase money mortgage to the Fairview Realty Company, the then holder of the title to the said premises for \$1470, with interest at
20 6%, which has since been paid off and discharged by the said defendants.

It is on this 22d day of December, 1924, on motion of D. T. Stackhouse, Esquire, solicitor for the complainant;

Ordered, Adjudged and Decreed, and the Chancellor doth, by virtue of the power and authority of this Court, here Order, Adjudge and Decree that the said premises are held by the defendants for the said plaintiff in trust for the said plaintiff, said
30 trust resulting from the title to the said premises being taken in the name of the defendants, but the money paid therefor having been the money of the complainant.

And It Is Further Ordered, Adjudged and Decreed that within twenty days after the service of a copy of this decree, which may be certified by complainant's solicitor, upon the said defendants,

or their solicitor the said defendants make, execute, deliver and acknowledge a deed for the said premises to the said complainant, the said premises being more fully described in the deed hereinbefore referred to.

And It Is Further Ordered, Adjudged and Decreed that the said complainant at the time of the execution and delivery of the said conveyance pay to the defendants the sum of \$1774.62, which is made up of the moneys loaned and advanced by the defendants to the complainant and applied by the defendants to the purchase price of the said premises and the payment of expenses upon settlement therefor, and also moneys which the said defendants paid in discharging the mortgage from the said premises, with interest from the date of the said several loans and advances and payment of the mortgage, and also such moneys as may have been paid by defendants for taxes and water rents upon the said premises; less such sums as the said complainant has repaid to the defendants on account of the said loans with interest from the date of the said several payments. 10 20

It Is Further Ordered, Adjudged and Decreed that the complainant recover from the defendants his costs of this suit to be taxed, in which shall be included a counsel fee of \$150.00; and that the complainant have execution therefor according to law and the practice of this Court the amount, however, of which said taxed costs may be deducted from the amount heretofore ordered to be paid to the said defendants by the said complainant upon the delivery of the said deed. 30

It Is Further Ordered that Herbert Richardson, Sergeant-at-Arms of Camden Chancery Chambers, repaid to the solicitor for the complainant the moneys heretofore deposited with him by the com-

plainant, pursuant to the order of this court heretofore made, together with the interest or accumulations, if any, thereon.

E. R. WALKER,
C.

Respectfully advised,

E. B. LEAMING,
V. C.

Consented to as to form.

10

Solicitor for Defendants.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

20

Between

FREDERICK FAGEN,
Complainant,

and

MICHAEL F. FALVEY, *et ux.,*
Defendants.

On Bill, etc.
Notice of Appeal.

30

To D. Trueman Stackhouse, Esq., Solicitor for Complainant:

The defendant hereby appeals from the final decree, and every part thereof, made in this court in the above stated cause, as adjudges and decrees that the premises mentioned in the bill of complaint are held by the defendants for the said plaintiff in trust

for the said plaintiff, said trust resulting from the title to the said premises being taken in the name of the defendants, but the money paid therefor having been the money of the complainant, to the Court of Errors and Appeals in the last resort in all causes.

Dated January 20, 1925.

PATRICK H. HARDING,
*Solicitor of and of Counsel
with Defendants.*

10

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

PATRICK H. HARDING,
Of Counsel with Defendants.

20

[ENDORSEMENT]

Service of the within acknowledged
this 20th day of January, A. D. 1925.

D. T. Stackhouse,
Solicitor for Complainant.

30

trust resulting from the title to the said premises being taken in the name of the defendants, but the money paid therefor having been the money of the complainant; it is further ordered, adjudged and decreed that the complainant recover from the defendants his costs of this suit to be taxed, in which shall be included a counsel fee of \$150.00; and that the complainant have execution therefor according to law and the practice of this Court.”

10

2. Your petitioners humbly pray that the said decree of the Chancellor, which decrees as aforesaid, may be reversed, set aside and for nothing holden, upon the ground that the same is erroneous and that the said Chancellor should have made a decree that the complainant was not entitled to the relief prayed for in his bill and dismissing the said bill of complaint.

Your petitioners, therefore, pray that the said 20
decree of the Chancellor, in the particulars aforesaid, should be set aside and for nothing holden, and that your petitioners may have such relief as may seem meet in the premises.

PATRICK H. HARDING,
*Solicitor for and of Counsel
with Appellants.*

30

ANSWER.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	Between	}	On Appeal from
	FREDERICK FAGEN,		Chancery.
	<i>Complainant-</i>		Answer.
	<i>Respondent,</i>		
	and		
	MICHAEL F. FALVEY, <i>et ux.</i> ,		
	<i>Defendants-Appellants,</i>		

20 The answer of the above named respondent to the petition of appeal of the above named appellants.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the twenty-second day of December 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 substance and form thereof, this respondent prays to refer thereto, when

30 the same shall be produced.

This respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

D. T. STACKHOUSE,
*Solicitor for and of Counsel
with Respondent.*

NEW JERSEY COURT OF ERRORS
AND APPEALS.

FREDERICK FAGEN,
Complainant-Respondent,

v.

MICHAEL F. FALVEY, *et ux.*,
Defendants-Appellants.

ON BILL, ETC.

APPEAL FROM CHANCERY.

BRIEF OF DEFENDANTS-APPELLANTS.

The bill in this cause and the various amendments thereto, was filed by Frederick Fagen, to enjoin a suit in ejectment begun against him by Michael F. Falvey and Nora C. Falvey. Frederick Fagen claimed also in the said bill that he was the owner of the premises in question, upon either a resulting trust or constructive trust, claiming that when the property in question was sold by the United States Shipping Board, Emergency Fleet Corporation, the

property was sold for the sum of twenty-one hundred dollars (\$2100.00), and the said Frederick Fagen as a tenant had the option to purchase this property at that figure. This was on December 10, 1921. Mr. Fagen attended the sale and had no money of his own with him, but there was a friend, as he thought, a Mr. Stormfeltz who would loan him some money. Mr. Fagen had no money of his own and failing to find Mr. Stormfeltz arranged with the auctioneer's representative to keep the matter open. On Sunday he talked with Mrs. Nora C. Falvey and she agreed to purchase the property paying the initial deposit upon an oral agreement, that if Mr. Fagen would repay her the money put into the property before the date of settlement so that he would make settlement himself for the property, she would reconvey or assign her interest in the agreement to him.

There was a great deal of discussion at the time the deposit on account of the bid was made with the United States Shipping Board's representative. The agreement for the sale of the property by the Shipping Board had been prepared in the name of Mr. Fagen. Mrs. Falvey refused to make a deposit under these conditions, and the agreement that was drawn up was not executed, but a new agreement was made up and executed by the United States Shipping Board, to Mrs. Falvey. Mrs. Falvey paid the ten per cent deposit out of her own funds, amounting to two hundred and ten dollars (\$210.00), and in addition thereto under the terms of said sale paid fifteen dollars (\$15.00) additional, which was the auctioneer's fee and had to be paid in addition to the purchase price of twenty-one hundred dollars (\$2100.00), she not being a tenant of the property. She afterwards made settlement of the property under the agreement, taking the deed and executing a

purchase money mortgage for the balance of the unpaid purchase price. At no time did any of the money put down as the initial deposit pass into or through the hands of Frederick Fagen. He did not have any money with him and did not put any money down as a deposit or otherwise, and although the initial deposit made by Mrs. Falvey was two hundred and twenty-five dollars (\$225.00), Mr. Fagen insisted that he only had to pay her back two hundred dollars (\$200.00) for the two hundred and twenty-five dollars (\$225.00). Subsequent to the signing of the agreement of December 10, 1921, it evidently having been executed on December 12, 1921, and dated as of December 10th, Mr. Fagen paid various sums to Mrs. Falvey so that he had paid about one hundred and fifty dollars (\$150.00), before settlement was made for the property on March 10, 1922, and the day after the settlement made an additional payment of fifty dollars (\$50.00), since which time he has made various payments which Mrs. Falvey claims were by way of rental for the property, in view of the fact that Mr. Fagen did not exercise the right given him orally by Mrs. Falvey, that he could have the property, providing he return her money with interest before the settlement and made settlement for the property himself.

The story of Mr. Fagen at the most discloses an oral agreement concerning an interest in land which of course is in violation of the statute of frauds and perjuries, an oral agreement, the terms of which he had not the slightest idea. He did not know what he was to pay, when he was to pay, nor how much he was to pay and insisted that although Mrs. Falvey put down a deposit of two hundred and twenty-five dollars (\$225.00), that she agreed that he could have the property by paying her

back only two hundred dollars (\$200.00), without any explanation or reason why Mrs. Falvey should lose or desire to lose the twenty-five dollars (\$25.00).

In the testimony of Mr. Fagen, page 78 of the State of the Case, lines 9, etc., in answer to a question about any conversation Mr. Fagen had with Mrs. Falvey, with reference to paying off a mortgage on the place, he answered as follows:

“They never mentioned any mortgage, I had to pay any mortgage; Mrs. Falvey mentioned to me as soon as I paid her the \$200.00 she paid down for me, that she loaned me, she would sign the papers over to me, as soon as I paid her up and she was going to put us in the building and loan, and if she couldn't find the building and loan, she was supposed to leave it in the government's hands, the mortgage, if that is what you want.” And further in answer to a question as to the agreement he had with Mrs. Falvey, page 83 of the state of the case, line 16, etc., he answered, “The only terms, as soon as I paid her the two hundred dollars (\$200.00) she put down for me to buy the house she was supposed to turn these papers over to me and my wife.” And when further pressed for a definite statement as to what agreement he had with Mrs. Falvey, if any, about the property, and as to how he was to get it, whether he was to go along indefinitely and pay so much a month until the amount was paid, he answered (page 86, the state of the case, lines 18, etc., “No, sir, the only thing she told me when I was, she put down her money, and she wasn't quite satisfied until she had her name on the papers, and she said, ‘remember, just as soon as you pay me back this money, the papers will be turned over to you,’ and I said, ‘All right, Mrs. Falvey, I will try to get it for you as soon as possible.’ ”

The contention of Mrs. Falvey is further borne out in the testimony of Augustus C. Conklin, the representative of the auctioneer and shipping board, state of the case, page 94, line 12, etc., in answer to whether Mr. Fagen came with Mrs. Falvey and Mr. Fagen wanted Mr. Conklin to make the agreement out in Mr. Fagen's name, he answered, "Yes, sir."

"Q. Mrs. Falvey refused to permit that on the theory she would have no security for her money, and she insisted that the agreement be made to her?

A. Yes, sir.

Q. No strings or anything attached to it, an out and out sale between the government and Mrs. Falvey, and she, as an outsider, paid the auctioneer's fee of fifteen dollars (\$15.00)?

A. Yes, sir."

Further attention is called to the testimony of both William E. Wickham and Elizabeth Wickham, his wife, the former who in an *ex parte* affidavit did not know as much as he later testified to at the hearing of the cause, and the latter testifying that the *ex parte* affidavit which she had executed was untrue in part and she nevertheless executed it.

Further attention is called to the testimony of Mrs. Falvey on page 114, state of the case, lines 29, etc., where Mrs. Falvey testified to the transaction relating to the purchase of the property, discussion in the presence of Mr. Fagen, and Mr. Conklin, whatever his name is, he said, "Mrs. Falvey, he (Mr. Fagen) didn't tell it that way," and I said, "Bring him here and I will repeat it," and (Mr. Conklin) called him (Mr. Fagen) and he (Mr. Conklin) said, "Are you satisfied for this woman (Mrs. Falvey) to buy the property and take title?" and he said, "Yes."

This statement was not denied in rebuttal by either Mr. Conklin or Mr. Fagen. The reason for Mrs. Falvey accepting payments as rental was that she would agree to sell the property to Mr. Fagen, but no terms nor price was set by either of them and there was therefore no definite or binding agreement upon either of them in that respect.

In the conclusions of the Court of Chancery, through the Vice-Chancellor it was stated that it is not necessary that the money forming the consideration of the purchase pass through the hands of the real purchaser, if the purchase money was, in fact advanced by the nominal owner as a loan of money to the real owner, a trust results.

The appeal is taken from the decree of the Vice-Chancellor holding that the money paid was the money of Mr. Fagen and that the said premises mentioned in the bill of complaint are held in trust for the complainant by the defendants, said trust resulting from the title to the said premises being taken in the name of the defendants, but the money paid therefor having been the money of the complainant.

LAW.

There are quite a number of decisions relating to trusts, all of which hold that the money paid for the property must be money of the party who claims the trust in his favor.

In the case of *Ostheimer v. Single*, 68 Atlantic, page 231; 73 New Jersey Equity, page 539, decision by Vice-Chancellor Leaming (1907) it was held, "When a person purchases land with his own money and takes title in his own name, a trust cannot be raised in favor of another by a parol agreement of

the purchaser that he would make the purchase for the benefit of another and permit the other thereafter to make payment, since then the alleged beneficiary sets up a resulting trust in himself, the conveyance being to another, he must show that the land was bought with his own money and not merely for his benefit and a subsequent payment of the money will not by relation attach a resulting trust to the original purchase."

See also the case of *Walters v. Shraft*, 67 Atlantic, 1103; 70 New Jersey Equity, page 807.

The case of *Ostheimer v. Single*, together with a number of New York and Massachusetts cases, are cited in Volume 39 of *Cyc.*, page 107, with the following statement of the law:

"Since a resulting trust cannot be raised on an express agreement, no parol agreement between the parties made before or after the conveyance of property can give rise to a resulting trust therein, where the transaction itself is not such that a trust results immediately upon the passing of the legal title as when the person seeking to establish a trust in his favor under such agreement has not paid any of the consideration, although the agreement may be considered in establishing the fact of ownership of the purchase money and how it was invested. Thus where the conveyance is made to one person, the mere fact that he has agreed to purchase or hold it for another who has not paid any or a very small part of the purchase money does not create a resulting trust in the latter's favor.

In Ruling Case Law, Volume 26, page 1246, Section 92, concerning trusts it was held that where an agent purchases the property for his principal, but with his own money as a result of an oral agreement of agency, the contract is clearly within the statute and cannot be enforced by the principal.

In Pennsylvania, it has been held that a purchase of property at a sheriff's sale, with a promise to convey to the defendant in execution, does not create a resulting trust, where the purchase money is not paid by the debtor. *Trust Company v. Long*, 220 Pa. St. page 499; 69 Atlantic, 993.

"A resulting trust can only arise at the time of the execution of the deed; it cannot be raised from matter arising afterwards." (1868) *Cutler v. Tuttle*, 19 N. J. Equity (4 C. E. Gr.) 549; (1875) *Midmer v. Midmer*, 26 N. J. Equity (11 C. E. Gr.) 299; (1872) *Tunnard v. Littell*, 23 N. J. Eq. (8 C. E. Gr.) 264; (1862) *Howell v. Howell*, 15 N. J. Equity (2 McCart) 75.

"A resulting trust arises by operation of law from contemporaneous circumstances which give the legal and equitable titles different directions, and it must therefore arise at the instant the deed is taken and the legal title is vested in the grantee, and the situation of the transaction when the title passes is to be looked to, and not the situation preceding or following that time." (1889) *Krauth v. Thiele*, 45 N. J. Equity (18 Stew.) 407, 18 Atlantic, 351; (1890) *Whitley v. Ogle*, 47 N. J. Equity (2 Dick. Ch.) 67, 20 Atl. 284.

In the case of *Depeyster v. Gould*, 3 N. J. Equity, page 474. It was held that, "If a purchaser at a sheriff's sale of mortgaged premises, sold by virtue of a decree for the satisfaction of the mortgaged debt, purchased as agent for and at the request of the complainant, and take a deed in his own name, without paying any part of the purchase money, a resulting trust is raised in favor of the complainant."

This statement of the law showing that the money paid must be that of the person claiming the trust in his favor was confirmed by Vice-Chancellor Fos-

ter, in the case of *Sayre v. Lemberger*, 112 Atlantic Reporter, page 491, citing the case of *Depeyster v. Gould* (*supra*).

In volume 26, Ruling Case Law, page 1219, citing the case of *Depeyster v. Gould* (*supra*), and the case of *Belford v. Crane*, 16 N. J. Equity, page 265, as well as numerous decisions from other jurisdictions, the law is stated as follows:

“The law is well settled, that if a person purchases land and pays the purchase price, taking title in the name of a third person, a stranger to him, the grantee will take only the naked legal title, and the law will imply a trust in favor of the person paying the consideration.

This doctrine rests on the presumption that he who supplies the purchase money intends the purchase to be for his own benefit; and that the conveyance in the name of another is a matter of convenience or an arrangement between the parties for collateral purposes. If it was not the intention that the estate should vest in him who pays the purchase price, then no resulting trust in his favor attaches to the property. At common law, this doctrine was carried to the extent of holding that the legal title vested in the person paying the consideration, and that the lands could be sold on an execution against him.”

It was further held in Volume 26, Ruling Case Law, page 1220, in discussion of the law relating to resulting trust, “A trust of the kind here considered (resulting trust) results in favor only of the person paying the purchase money and does not inure to the benefit of one for whom the purchase might have been intended to be made. The rule is that, it is necessary that the person paying the purchase money should have actually paid it as his own.”

It is further stated in Volume 26, Ruling Case Law, page 1222, that, "A resulting trust does not always arise from the advance of the purchase money, and while the advance may create such a trust, it must be subject to the rights of others, and cannot be allowed to intervene to defeat prior and superior equities.

Applying this principle, it is held that the person in whose favor the trust is claimed to result must pay the purchase money as his own."

"To establish a resulting trust, where the consideration for land is paid by one person and the conveyance is taken in the name of another, it is frequently declared that the consideration must have been paid at the time of or prior to the purchase. * * * All the cases agree that a payment of the purchase money subsequently is not sufficient to raise a legal implication of a trust."

Volume 26, Ruling Case Law, page 1223, and cases therein cited.

"To the establishment of a resulting trust there must be an actual payment in money, or its equivalent by the one becoming the *cestui que trust*."

Volume 26, Ruling Case Law, page 1224, and the cases therein cited.

There has been a great deal of confusion relating to trusts and it seems that the following definitions state clearly the difference.

"A resulting trust is based on intention presumed or implied from the circumstances of the transaction."

"A constructive trust is not based on intention, but arrives in *invitum* for the purpose of working out justice in the most effective manner."

In our own state there is a long line of cases relating to constructive trusts, one of the latest of which is the case of *Brown v. Murray*, 118 Atlantic

Reporter, page 534, in a decision by Church, V. C., holding that, "The establishment of a constructive trust must be evidenced by something stronger than the mere breach of an oral promise to convey or to hold in trust."

The defendants also set up that the complainant is not entitled to the relief prayed for, as the contract or agreement he attempted to prove was a parol agreement and unenforceable and within the statute of frauds.

One of the leading cases on this point in this state is that of *Wallace v. Brown*, 10 Equity, 308. There the proofs made by the complainant were stronger than the case at bar.

The defendant, whom the complainant charged purchased the property in question for her under agreement, put the complainant in possession, and she made many repairs on the property and also paid a large part of the purchase money under the agreement. The answer admitted the repairs and the payment and set forth as the real agreement between the complainant and their decedent, a written memorandum as to decedent's intention to convey. The Court, in passing on this matter, denied the complainant relief under her parol agreement, holding that to enforce it would be in violation of the statute.

The Court, in this case, remarked, "There are cases to be found where Courts have undertaken to frame contracts for the parties *ex aequo et bono*, where none existed. These cases have been overruled, however, by many recent authorities, and there is a disposition in courts at the present day, in which I strongly participate to limit, rather than extend exceptions to these statutes."

It was also held in the case of *Schultz v. Waldons*, 60 N. J. Equity, page 71; 47 Atlantic Reporter, 187.

“Where there was no organized partnership or joint enterprise between the parties, and they agreed by parol that defendant should purchase and take title to the land in his own name, and hold it for the joint benefit of both, and plaintiff contributed no money to the enterprise, the contract was within the statute of frauds, and plaintiff could not recover any interest in the land, without written proof of the contract.”

All of the cases seem to hold that the money advanced for the purchase of real estate in order to effect a resulting trust must be the money of the party claiming the trust in his favor.

In the case at bar, it is only by building up an equitable fiction that it can be held that the money paid by Mrs. Falvey, herself, out of her own personal funds, was the money of Mr. Fagen, or even a loan to him, where she paid \$225.00 and he testified repeatedly he was only to pay her \$200.00 for it.

If Mr. Fagen has any right of action or any cause of action upon his alleged agreement with Mrs. Falvey, it is not in a court of equity, but in a court of law, in a suit for damages for breach of any agreement or contract that he could prove.

It is respectfully submitted that the decree entered herein should be reversed and the bill of complainant dismissed.

Respectfully submitted,
PATRICK H. HARDING,
*Solicitor for and of Counsel
with Defendants-Appellants.*

New Jersey Court of Errors and Appeals

Between

FREDERICK FAGEN,
Complainant-Respondent,

and

MICHAEL F. FALVEY, *et ux.*,
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF OF RESPONDENT.

STATEMENT OF FACT.

The parties will be referred to in this brief by their original designation of complainant and defendants.

The parenthetical references herein are to the pages of the printed state of the case.

The statement of fact contained in the brief of the defendants is in the main correct, but there are some elements to which reference has not been made, and which will be discussed in this brief.

Not many of the substantial facts were in dispute,

but those that were disputed we submit were resolved by the Vice-Chancellor rightfully in favor of the complainant.

On December 10, 1921, The United States Shipping Board Emergency Fleet Corporation, hereinafter referred to as the Shipping Board, held a public auction of certain buildings which had been erected by the Government at Fairview and Yorkship Village, Camden, New Jersey, for the use of persons employed in war work in the vicinity, it being the expressed policy of the Government to give the tenant in possession of any of the premises the preference as a buyer, provided he would meet any price that was offered by an outside purchaser (p. 89, lines 34, etc.; p. 93, lines 22, etc.).

The complainant occupied the premises involved in this litigation, No. 3145 Mt. Ephraim Avenue, Camden, New Jersey, which were, with the other properties, put up for sale, and having no immediately available funds, and realizing that his home was about to be sold, endeavored to interest several parties in the purchase of the property for him, and to advance to him the money necessary to pay for the same.

The highest bid was \$2,100; and the complainant, in response to the announcement, signified that he was interested as a tenant in the purchase of the property, and the further sale thereof was suspended.

The complainant had previously talked to the defendant, Michael F. Falvey, with reference to his assisting him in purchasing the property; and Mr. Falvey told him that he thought that Mrs. Falvey would likely come to his aid (p. 75, lines 30, etc.).

The auction sale took place on Saturday, December 10th, and on the following morning, December 11th, complainant went to the residence of Mrs.

Falvey and approached her on the subject of making him a loan with which to purchase his property, which conversation eventuated in Mrs. Falvey's promising to loan the complainant the money to buy the house (p. 61, lines 7, etc.).

Mrs. Falvey met complainant at the offices of the Shipping Board the next day, and the complainant told Mr. Conklin, a representative of the Shipping Board, in the presence of Mrs. Falvey, that she had arranged to loan him the money to buy his home (p. 90, lines 23, etc.), which Mrs. Falvey confirmed by her statement that, "Being a friend of Mr. Fagen's she would loan him the money to purchase the property" (p. 90, lines 35, etc.).

The agreement of sale was presented to Mr. Fagen for his signature, but Mrs. Falvey objected to this, and stated that she desired to take the same in her own name, and she was then permitted to sign the same and paid, pursuant to the terms of the sale, \$225, representing 10% of the purchase price, \$210, and \$15, auctioneer's fees.

As part of this arrangement, and prior to the signing of the terms of sale by Mrs. Falvey, complainant testified that when he had repaid to her the amount which she had expended, he was to receive a deed.

On the 9th day of January, 1922, complainant paid to Mrs. Falvey the sum of \$100, and on the 5th day of February, 1922, he paid the further sum of \$50, and on the 11th day of March, 1922, he paid \$50 more, which was within \$25 of what Mrs. Falvey had advanced at the time of the signing of the terms of sale (p. 67, lines 30, etc.).

Settlement was made without any notification to complainant, on the 10th day of March, 1922.

The complainant made further payments in addition to the \$200 above referred to, aggregating

\$741.40, making a total amount paid Mrs. Falvey of \$941.40, which payments were evidenced by numerous receipts written in a book, which was furnished by Mrs. Falvey to the complainant (p. 39, lines 28, etc.).

The receipt of June 7, 1922, comprised \$39.20, covering the first half of that year's taxes and \$23 for that year's water rent; and the receipt of November 30, 1922, of \$39.20, covered the second half of 1922 taxes.

The rental value, as testified to by the defendants' own witness, was not in excess of \$38 per month (p. 140, lines 10, etc.).

As part of the arrangement between the parties, Mrs. Falvey had spoken of securing a building association mortgage upon the premises; and complainant in June of 1923, tendered her the sum of \$50, which she refused to take, stating that she was expecting to hear from the building association, and the complainant retained the money until the next month, when he tendered her \$100, which she refused to take for the same reason (p. 70, lines 28, etc.; p. 71, lines 6, etc.).

Upon complainant's returning home after this last visit, he found his wife greatly agitated at the receipt of a notice addressed to the complainant and signed by Mrs. Falvey, notifying him to surrender the premises on the first day of December, 1923 (p. 49, lines 19, etc.; p. 71, lines 22, etc.).

Complainant called on Mrs. Falvey the following day for an explanation, and she informed him that she wanted him to get out of the house and did not want any more money from him; and that he was not to come back any more; that the house belonged to her and that he would have to do as she said.

Complainant called again at Mrs. Falvey's home with a Mr. Clark, who testified (p. 110, lines 20, etc.)

that the complainant tendered Mrs. Falvey some money which she refused to take; and she became violently abusive and told complainant that he was a crook and his wife and whole family were crooks (p. 111, lines 6, etc.).

Complainant went the following month to make another tender, in company with a Mr. Fow, who testified (p. 109, lines 6, etc.), that Mrs. Falvey again became violent and abusive, and after calling complainant several names, shut the door and refused to have any further conversation with him.

Complainant did not attempt to make any further tenders.

On the 10th day of December, 1923, an action in ejectment was commenced by the defendants against the complainant to recover possession of the premises in question, prosecution of which was stayed upon complainant's application upon the bill filed in this cause.

BRIEF OF THE ARGUMENT.

We submit that the Vice-Chancellor was justified in finding from the evidence in the cause that the first cause of action set forth in the complainant's amended bill (p. 33, etc.), setting up a resulting trust in favor of the complainant, arising from the transactions between the parties, was sustained.

The complainant was supported in his testimony by the witness, Conklin, the representative of the Shipping Board, who testified as to the transaction between the complainant and Mrs. Falvey on December 12th, when the terms of sale were drawn up, to the effect that Mrs. Falvey had stated that she was willing to loan the complainant the money to buy his home, (p. 90, line 33), when she stated, in

the language of the witness, "She said the property as a whole did not interest her to purchase it for her own use, but being a friend of Mr. Fagen's she would loan him the money to purchase the property;" and further, in response to a question why she would not have the property put in complainant's name, the witness stated (p. 91, line 8), "The only reason being she did not have anything to secure herself."

This is further substantiated, and we might say inadvertently so, by Mrs. Falvey herself, when she stated (p. 121, line 19), "I bought the property for security." Obviously, the only security for which she could have bought the property was the securing of the moneys advanced by her for the purchase of the same. If the property belonged to her, there would have been no object in her taking it as security.

The witness, Mrs. Wickham, testified (p. 103, line 27), that Mrs. Falvey told her, "I am buying Mr. Fagen his house and he is paying me so much a month."

The witness, William E. Wickham (p. 99), stated that Mrs. Falvey told him, "I am buying a house for Mr. Fagen in Fairview" and "that he was paying her off."

Complainant's testimony, as would naturally be expected, was in some measure denied by Mrs. Falvey; but in view of the fact that she denied the existence of facts which were in evidence, as to matters which took place within her direct knowledge, the truth of which testimony we submit could not be reasonably doubted, we think that her testimony on the subject could well be disregarded in its entirety.

As an instance of this, she testified that neither Mr. Clark nor Mr. Fow were with the complainant

on the occasions that he came to tender sums of money to her, although these two witnesses, who have no interest whatever in the matter, testified that they were present and overheard the conversation under such circumstances that Mrs. Falvey could not have failed to have seen them (p. 107, lines 10, etc.; p. 110, lines 25, etc.).

Mr. Falvey's testimony was confined to a denial of his being present on the Sunday when the arrangements were first discussed; but we think that the domination of a man of Mr. Falvey's evident temperament by a woman having the arrogant and domineering disposition of Mrs. Falvey is sufficient to satisfactorily explain his attitude in this respect.

II.

The Vice-Chancellor, in his opinion (p. 153), stated that it is not necessary that the money forming the consideration of the purchase itself pass through the hands of the real purchaser. If the purchase money was, in fact, advanced by the nominal owner as a loan of money to the real owner, a trust results.

This is not a novel statement of the law. It has been laid down in a number of jurisdictions.

The case of *Howell v. Howell*, 15 N. J. E., 75, is very similar to the instant case. In that matter a farm was purchased by complainants for their own use, and part of the consideration paid by them, their father consenting to aid them by raising money on his own farm, which money was so raised, and by way of security thereupon the deed for the premises was made directly to the father and to the complainants. It was held in that case that there was a resulting trust in favor of the complainants, the

Court saying, "Although it is necessary to create the trust that the funds should be paid by the *cestui que* trust at the time of the purchase, yet they may be supplied by a third person, or even by the nominal purchaser on credit."

This we submit is precisely the situation in the instant case. The arrangement between the complainant and Mrs. Falvey was that she was to loan him the money and he was to pay it back as soon as he could; or, in other words, when reasonably convenient (p. 62, lines 31, etc.). This arrangement gave rise to the relationship of debtor and creditor between the two parties, and had Mrs. Falvey not considered that she had benefited by the acquisition of the property, there is no question but that she could have invoked the aid of the courts to aid her in collecting the money which she had advanced to the complainant.

"One who borrows money to be repaid when convenient is bound to repay within a reasonable time and is not entitled to an indefinite period for payment."

Samuels v. Larimore, 104 P. 1001;
Howell v. Woodruff, 21 Wend. (N. Y.) 640;
Black v. Bachelder, 120 Mass. 171;
Hastings v. Summerfeldt, 30 Ont. 577.

The money, therefore, which Mrs. Falvey advanced at the time the terms of sale were signed, was Mr. Fagen's money which he owed to her, and consequently the land was bought with his money and the purchase was not made merely for his benefit and on his account; and this falls within the rule set forth in *Howell v. Howell*, *supra.*, and in *Ostheimer v. Single*, 73 N. J. E. 539, 68 A. 231, the latter case holding by inference that a party showing the land was bought with his money establishes a resulting trust.

III.

In the instant case it should be observed that the legal title to the premises did not pass to Mr. and Mrs. Falvey until the 10th of March, 1922, prior to which time the complainant had paid to Mrs. Falvey the amount of \$150 to partially reimburse her for the amount which she had theretofore advanced.

IV.

The doctrine that the purchase price need not pass through the hands of the real owner, but may be advanced by the nominal owner on credit is further borne out by the following cases from other jurisdictions.

- Walton v. Karnes*, 67 Cal. 255; 7 P. 676;
Caruthers v. Williams, 21 Fla. 485;
Towle v. Wadsworth, 147 Ill. 80; 35 N. E. 73;
Brooks v. Ellis, 3 G. Greene (Iowa), 527;
Page v. Page, 8 N. H. 187 (Cited in *Howell v. Howell*, *supra.*);
Schultz v. Harris (Tex.), 149 S. W. 242.

Several of these cases have points of striking similarity to the instant case, particularly *Towle v. Wadsworth*, in which a party took title to land in his own name under an agreement to hold it for the joint benefit of himself and another, the latter paying no part of the purchase price, but the nominal purchaser advancing half of it for himself and half as a loan to the other party. The nominal purchaser afterwards changed his mind, just as Mrs. Falvey did, but the Court nevertheless held that a trust resulted.

V.

The real reason for Mrs. Falvey's reluctance to carry out the terms of the trust is found in her own testimony (p. 129, lines 5, etc.), to the effect that the property had greatly increased in value.

VI.

The defendants' own witness, Mr. Clair (p. 140, lines 7, etc.), testified that the monthly rental value would not be in excess of \$38, while Mrs. Falvey was collecting \$50 a month in addition to the taxes and water rent. Her statement was that she was collecting this by way of rent and the reason she gave for collecting such an excessive amount was that the complainant had been in possession of the premises without paying any rent for six or seven months; but this period was after May of 1923, when the dispute first arose, and obviously she could not have anticipated from the early part of 1922, that the complainant was going to occupy the property for several months without paying rent over a year later, so that this explanation, we submit, fails through its very absurdity.

VII.

If the Vice-Chancellor is correct in his finding of fact, then there can be no doubt that the case is not within the statute of frauds, because that statute (2 C. S. N. J. 2611, *Section 3*), expressly excepts any trust or confidence arising or resulting by implication or construction of law.

“The statute of Frauds is not a good defense in the case of a resulting trust arising by implication of law or of actual fraud.”

Brannin v. Brannin, 18 N. J. E. 212.

VIII.

There is still another aspect to the case upon which the finding of the Vice-Chancellor can be sustained.

The second cause of action is founded upon an allegation that the deed which was made by the Fairview Realty Company to the defendants was a conveyance of the premises by way of mortgage or a pledge of the complainant's right to purchase the same to secure the repayment by the complainant of the money advanced by the defendants for the purchase of the premises.

The complainant was the owner of something of tangible value, viz.; the equitable right which was extended to a tenant by the Shipping Board to purchase at a definite figure the house which he was occupying. Mrs. Falvey did not have this right, and could only have acquired a right to purchase by making an offer to the Shipping Board in excess of \$2,100.

Although Mrs. Falvey attended the auction sale, she made no bid on the property, and, in fact, stated to the witness Conklin (p. 9, lines 34, etc.) “That the property as a whole did not interest her to purchase it for her own use,” this statement not being denied by Mrs. Falvey.

The complainant, however, did have the right to purchase at the figure of \$2,100, and no one else had any such right.

No matter how divergent the testimony of the

two parties is, it is quite evident that Mrs. Falvey at that time was loaning Fagen money and taking as security the equitable right which she had acquired from him by virtue of his tenancy which afterwards became converted into a legal title which was transferred on March 10, 1922, to Mrs. Falvey.

It is quite evident, therefore, that Fagen had something to mortgage, and it is equally apparent that this was not affected by the fact that his interest was an equitable interest.

“A deed from a debtor to a third person, which is made to secure the payment of money is as much a mortgage as if made to the creditor himself for the same purpose. Nor need the deed even be made by the debtor; it is sufficient if the debtor who claims to occupy the position of a mortgagor with the right of redemption has an interest, legal or equitable, in the premises, and the grantee of the legal title acquired it by the act and assent of the debtor and as security for his debt.”

27 *Cyc.* 992.

Mrs. Falvey acquired it only by virtue of the complainant's setting it over to her.

Mrs. Falvey evidently regarded the conveyance to her as being only by way of security, because when the complainant wanted the agreement made out in his name she “Refused to permit that on the theory that she would have no security for her money” and she insisted that the agreement be made to her (p. 94, lines 12, etc.); and in Mrs. Falvey's own testimony (p. 121, line 19), “I bought the property for security.”

IX.

There is still another angle to the matter which is involved in the third cause of action (p. 47). We submit that it is a reasonable inference to be drawn from the testimony that, assuming without conceding that the transaction did not savor of a resulting trust or of an equitable mortgage, a constructive trust or, as it is sometimes termed, a trust *ex maleficio* was created, and that the crafty Mrs. Falvey imposed upon the unsophisticated complainant to the extent of using his right as a tenant to secure to herself the property which he occupied, and after obtaining from him payments far in excess of the rental value in addition to making him pay the taxes and water rents then endeavored to take advantage of his helpless situation by attempting to eject him from the property which was really his.

Further than this the statements made by Mrs. Falvey to Mr. Conklin were tantamount to representations made to him and which induced him to permit her to make the agreement under the impression that she was purchasing the property for the benefit of the complainant.

With this phase of the case in mind we submit that it comes squarely within the doctrine laid down in *Johnston v. Reilly*, 66 N. J. E. 451, 57 A. 1049; 68 N. J. E. 130, 59 A. 1044, holding that a constructive trust will arise against a person who by falsely representing to B that he is acting in the interest of C obtains from B property which B intended to give to C, and that trust may be enforced by C, irrespective of the question of whether C had an enforceable claim against B.

See also

Johnston v. McKenna, 77 N. J. E., 555; 78 A. 19.

If the Shipping Board through its representative, Conklin, had not thought that Mrs. Falvey was acting in the interest of the complainant, it is an irresistible inference to be drawn from the circumstances that they would not have made any agreement with Mrs. Falvey or conveyed the property to her. This, taken in conjunction with her subsequent conduct, we submit is clear, convincing, satisfactory, plain, conclusive, unequivocal and unambiguous as to establishing either that the conveyance to the defendants was by way of a mortgage, that a constructive trust or a trust *ex maleficio* arose or that a trust *resulted* from the circumstances.

Without going into any extended analysis of the cases cited in the defendants' brief, we submit that none of them have any bearing on the case under present consideration except so far as they sustain the complainant's contention.

We agree with the contention of the appellant that if the money of the defendants paid for the property there would be no *resulting trust*. This contention, however, is not borne out by the facts.

XI.

In conclusion, therefore, it is respectfully submitted that the decision of the Court of Chancery should be sustained on one of the following three grounds:

1. That the circumstances gave rise to a resulting trust in favor of the complainant.
2. That the conveyance to the defendants was by way of mortgage for the moneys advanced by them toward the purchase price of the property.

3. That owing to the fraudulent conduct of the defendants, a constructive trust arose for the premises in question in favor of the complainant.

D. TRUEMAN STACKHOUSE,
*Of Counsel with Complainant-
Respondent.*

That owing to the fraudulent conduct of the
defendants, a constructive trust arose for the gran-
tee in question in favor of the complainant.

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE CHIEF OF RESPONDENT,
Respondent.

COMES NOW the Chief of Respondent and
files and submits the following answer to the
complaint of the United States of America:

That the Chief of Respondent is a citizen
of the United States of America and is
qualified to sue and be sued in this Court.

That the Chief of Respondent is a
law-abiding citizen and is entitled to
the same rights and privileges as
other citizens of the United States.

That the Chief of Respondent is not
liable for the actions of the
defendants in the above-captioned
case.

That the Chief of Respondent is not
responsible for the actions of the
defendants in the above-captioned
case.

The Jersey Court of Errors and Appeals

James H. Baxter, Sole Acting
 Trustee and Surviving Trustee,
 of James A. Bentley, de-
 ceased.
 Complainant respondent.
 120
 The Trustees of the First Presbyterian Church
 of Asbury Park, New Jersey, The Trustees of Second
 Presbyterian Church, of Asbury Park, New Jersey,
 and the Memorial Homeopathic Hospital, of Spring
 Garden, New Jersey.
 Defendants respondents.

On Appeal from x 10
 Chancery
 BRIEF

The Trustees of the First Presbyterian Church
 of Asbury Park, New Jersey, The Trustees of Second
 Presbyterian Church, of Asbury Park, New Jersey,
 and the Memorial Homeopathic Hospital, of Spring
 Garden, New Jersey.

STATEMENT OF CASE.

This case arises out of the final decree of the
 Chancery Court, entered December 16, 1924, construing
 the will of James A. Bentley, deceased.
 The will was dated June 26, 1896, (p. 101, 113).
 The Chancery Court's decree was dated May 3, 1916, (p. 101).
 The appeal was dated March 3, 1919, (p. 101).
 The appeal was dated June 6, 1921, (p. 101, 111).
 The appellant's personal estate in excess of \$100,000.00,
 and his real estate appraised in excess of \$100,000.00,
 (p. 101, 11, 19 & 20; p. 164).
 The appellant's relation to the construction of the will
 is set forth in the following:

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