

New Jersey Court of Errors and Appeals.

Between

JAMES FOUNTAIN *et al.*, Executors,
etc.,
Complainants-Respondents,

and

GUSSIE C. CARLTON *et al.*,
Defendants,

RALPH A. BULLIS,
Petitioner-Appellant.

CONCLUDING BRIEF OF APPELLANT IN ANSWER TO RESPONDENTS' BRIEF.

These mortgages given by Bullis to Broderson were purchase money mortgages; the loan to be used for the purchase of these lands from Watgen and to be so applied. The claim made that Bullis was to assume this lien of respondents' decree is not supported by the evidence, neither was it an assumption in law binding by him. The letters written by Mr. Spencer a year afterwards cannot bind either Watgen or Bullis. Watgen, in his evidence (bottom of p. 26, concluded on top of p. 27, Printed Case), says *that Bullis was not to assume such payment* and certainly Watgen knew what the contract was,

and no doubt in law that if Bullis was compelled to lose this money, he would have his recourse against Watgen on his covenants as against liens and Watgen would be estopped by such covenant. It would be no defense as to this that Bullis knew at the time of taking his deed of this decree. The law is well settled on that (Rawe on Cov. of Titles, p. 128, 3rd Ed.). The counsel in his brief appears to take the position that because Watgen did not purchase these lands, but got them by inheritance, that it was a matter of indifference to him; that his only object was to make a profit. This is a peculiar position to take. It makes no difference whether Watgen got these lands by ~~P~~roscription or purchase, his liability as grantor and as an heir at law of Carlton would be the same (assuming the position that Bullis assumed this decree, which clearly he did not in law, besides the Statutes of Fraud). The evidence shows that Kehoe, solicitor of respondents, had this money in his hands sufficient to pay this decree. It makes no difference whether this money was due to Watgen or Bullis, the evidence clearly shows that it was *expressly* applied, first, by Watgen and so appropriated for the payment of this decree *and so recognized by Kehoe*, the solicitor of the respondents at the time (Exhibit P1, p. 38, Printed Case), and again so shown to be so applied *and so recognized by Kehoe*, said solicitor, by the statement he rendered to Bullis (Exhibit P9, p. 46, Printed Case). Now, suppose, in Bullis' case, that Kehoe had first handed this money in his hands over to Bullis and Bullis had paid back to Kehoe, such solicitor, the amount of this decree (the Vice-Chancellor recognized and allowed the payment of the costs to him of \$86), would this Court say

that that *would not have been a payment of this decree binding upon the respondents*, the clients of Kehoe? That being so, where is the distinction between that and Kehoe deducting it and charging it to Bullis for such purpose, with his costs of decree, which such statement shows he did and showing that it was thus applied by Bullis also (irrespective of the appropriation and application already made for such payment by Watgen). The questions are:

(1) Did money belonging to either Watgen or Bullis (as the case may be) come to the hands of Kehoe, the solicitor of complainant-respondent sufficient to pay this decree?

(2) Was such money applied by either Watgen or Bullis, or both (as the case may be), for the payment of this decree?

(3) Was such application of payment of such money to Kehoe, the solicitor of the respondents, a payment binding on his clients (the respondents), he being their solicitor at the time?

Are not all these questions answered in the affirmative by the evidence?

The position is taken by counsel that it was not possible that Kehoe first applied this money to his clients' decree and then stole it (which appeared to be the only ground the Vice-Chancellor based his conclusions on),—greatly relied on by counsel in his brief.—(Why not possible does ^{not} appear.) In answer to this, I will simply say that there is not the slightest evidence to warrant such a conclusion, He could just as well have stolen it either way and both of the statements rendered by him show that he had thus applied it. He certainly had the money when Watgen got his statement; *besides*

this could not alter the case, the same thing could have been said in the cases I cited, the Colorado and Virginia cases, that it was stolen before the attorneys applied it to their clients' judgments. It is not a question as to what particular time he stole the money. It would be a strange position to take that if a judgment-debtor paid to the attorney of the judgment-creditor, his client's judgment and such attorney *stole such payment before he applied it to his client's judgment* to say in such case that the judgment was not satisfied.

Are we to conclude from the Vice-Chancellor's finding that if the evidence showed that Kehoe, by some act, had first specifically applied or set apart for the payment of this decree the money so in hand, and then stole it, that he, the Vice-Chancellor, would have found in favor of appellant? It is not a question of an application by Kehoe, but a question of an application by the person liable to pay decree.

The claim by counsel of respondents that Watgen and his attorney were in fault and negligent in having a warranty deed executed by Watgen without first finding out if all liens were paid, and cancelled of record appears to be a claim bordering on the ludicrous. The very object of the meeting at Kehoe's office was to pass the deed and arrange for the payment of the liens, including this decree, and which was done and the money in Kehoe's hands was then and there *expressly applied by Watgen* for the payment of this decree and deducted from the purchase money due him, and was done in the customary manner that is generally followed in such matters. To whom would one pay this decree if not to Kehoe, the solicitor of respondents, and so recognized by all parties at said

time? With whom, in law, should this decree be settled if not with Kehoe, the solicitor of the respondent?

Judgments and decrees are in almost all cases paid to either the attorney or solicitor. The respondent's counsel doesn't make any claim in his brief that Kehoe was not at the time the solicitor of respondents, but appears to consider it an act of negligence for Bullis to have employed Kehoe to look after his title. Query: Was it not an act of negligence also for the complainants to employ Kehoe to foreclose their mortgage?

Cases cited in appellant's opening brief, 7 Grattan (Va.), 138, 2 Col., 330 and 10 West Virginia, 206, are all clearly in point, one might say, on "all fours" with this case.

None of the cases cited by counsel ~~is~~^{are} in point, as the Court will see, viz.: Pepper v. Cairns, 33 Penn., 114, and Henkin v. Schwicker, 174 N. Y., 174; Pres. Church v. Levingston, 60 At., 154.

Counsel seems to think that it would be a great hardship to the respondents to lose this money by the theft of their solicitor, that it was an act of indiscretion on Bullis' part to employ Kehoe to look after his title. (It was Broder-son really and not Bullis who entrusted Kehoe with this money.) But was Bullis any more negligent in thus employing Kehoe than the respondents in employing him to foreclose this mortgage or to collect it? In case of loss, would their hardship be any greater than would be the hardship for Bullis to lose it? The same thing could be said in the Colorado, Virginia and West Virginia cases cited in my brief: That it was a hardship to the judgment-creditors to

lose their money by the thefts of their respective lawyers.

In Conclusion.

If the evidence, facts and circumstances don't show a payment of this decree in law binding on the respondents, what would?

Respectfully submitted,

JOHN W. BEEKMAN,
Counsel with Appellant.

[625]

INDEX.

	PAGE
Statement of Case Before Petition Filed.....	1
Petition of Ralph A. Bullis.....	2
Bill to Foreclose.....	10
Rule to Show Cause.....	11
Order Dismissing Order.....	14
Opinion	36
Notice of Appeal.....	50
Petition of Appeal.....	52
Answer to Petition of Appeal.....	56

TESTIMONY.

William A. Spencer:

Direct	16
Cross	19
Redirect	22

Richard Watgen:

Direct	22
Cross	24
Redirect	26

Ralph A. Bullis:

Direct	27
Cross	30
Recalled	35

Emil Stremiau:

Direct	31
Cross	31

Asbury Fountain:

Direct	32
Cross	34
Redirect	34

Jacob M. Klein:

Direct	35
--------------	----

Filed May 11th 1917

IN CHANCERY OF NEW JERSEY.

Petition of Ralph A. Bullis.

10 Between,
ASBURY FOUNTAIN, JAMES FOUNTAIN and
ELEANOR FOUNTAIN, Executors of
James T. Fountain, deceased,
Complainants,
and
GUSSIE C. CARLTON and SAMUEL CARL-
TON,
Defendants.

On Bill
to Fore-
close.

20 To the Honorable Edwin R. Walker, Chancellor
of the State of New Jersey:

30 The petition of Ralph A. Bullis, of the City of
Perth Amboy, in the County of Middlesex and
State of New Jersey, respectfully shows that on
the tenth day of September, nineteen hundred
and eight, the defendants, Gussie C. Carlton and
Samuel Carlton, her husband, gave a certain
mortgage on the lands mentioned in the bill of
complaint filed in this cause to the complainants,
belonging to the said Gussie C. Carlton, to secure
the sum of seven hundred dollars.

40 That afterwards, on the day of ,
nineteen hundred and twelve, the said complain-
ants filed their said bill of complaint in this Court
for the foreclosure of said mortgage, and that
such proceedings were afterwards had thereon,
that on the 11th day of March, 1913, a final de-
cree was made in said cause thereon, wherein
and whereby it was ordered, adjudged and de-

Petition of Ralph A. Bullis.

creed that those certain mortgaged premises with the appurtenances in said complainants' bill particularly set forth and described, that is to say:

All that certain tract or parcel of land and premises situate, lying and being in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, and being further described as follows: Being known on a map made by J. Opperman, dated November 16, 1875, as Lot No. 3, in Block D, said lot beginning in the easterly line of Hartford Street at a corner of Lot No. 2; thence running southerly, along said street, twenty-five (25) feet to the corner of Lot No. 4; thence easterly, along line of Lot No. 4, one hundred (100) feet to corner of Lot No. 21; thence northerly, along the line of said Lot No. 21, twenty-five (25) feet to the corner of Lot No. 2; thence westerly, along line of said lot, one hundred (100) feet to Hartford Street or place of beginning.

Together with all the estate, right, title, interest, therein and thereto, to be sold to pay and satisfy unto the said complainants the sum of \$843.50, the principal and interest on said mortgage, together with the interest from the 10th day of February, 1913, until the same is paid and satisfied, and also the costs of the complainants, as by said final decree will more fully appear.

And your petitioner further shows that an execution was issued thereon out of this Court on March 27th, 1913, directed to the sheriff of the County of Middlesex, directing a sale of said mortgaged premises in pursuance of the direction of said decree.

That the sheriff of said County to whom said execution was directed, afterwards returned it

Petition of Ralph A. Bullis.

into Court without any sale being made there-
under.

10 That although Emil Stremlau was the solicitor of record of said complainants; that in truth and in fact, he became such solicitor at the request of Henry W. Kehoe, who was then a practicing attorney in the said city, and who was the real solicitor and attorney for the complainants, and such mortgage was placed in the hands of the said Henry W. Kehoe for foreclosure by said complainant, and not in the hands of said Emil Stremlau, who had no authority from said complainants in said matter (and who were entire strangers to each other) and such
20 proceedings in foreclosure were under the complete control of the said Henry W. Kehoe, as such real solicitor and attorney of said complainants.

That on November 30th, 1913, the said Gussie C. Carlton, said defendant and mortgagor and the sole owner of said mortgaged premises departed this life intestate, leaving her surviving, her brother Richard Watgen, her only heir at law and next of kin.

30 That no letters of administration have been issued on her estate; that the said defendant Samuel Carlton predeceased, his wife, and that no suggestion of her death has been entered on the minutes of the Court, or the death of her said husband Samuel Carlton.

40 That on July 27th, 1914, the said Richard Watgen, as such heir at law and only next of kin of the said Gussie C. Carlton, deceased, by deed of conveyance and warranty, dated on that day, conveyed to your petitioner all his right, title

Petition of Ralph A. Bullis.

and interest in said mortgaged premises in fee simple, who thereby became and now is the sole owner thereof in fee.

And your petitioner further shows that the said Gussie C. Carlton, afterwards and in her lifetime, and after the making of said decree of foreclosure, paid to the said Henry W. Kehoe, the solicitor and attorney of the said complainants on April 26th, 1913, \$200.00 on account of said decree, and also on September 13th, 1913, \$200.00 on account of said principal of said decree and paid to complainants by him. 10

And your petitioner further shows, that at the time of the purchase of said mortgaged premises by your petitioner, for the purpose of clearing the title to the same, the said Richard Watgen paid or caused to be paid to the said Henry W. Kehoe, said attorney and solicitor of the complainants the sum of \$496.47, the balance due on said decree with the costs and interest and in full satisfaction as will appear by the statement hereto annexed, made out at said time, which time was taken out of the purchase price due from your petitioner to the said Richard Watgen, the money for the same passing through the hand of the said Henry W. Kehoe, who received the said \$496.50, as the attorney and solicitor of complainants. 20 30

Your petitioner further shows that on March 10th, last past, Jacob M. Klein, was substituted as the solicitor of the said complainants, and notwithstanding such payment in full of said decree as aforesaid, said complainants Asbury Fountain, James Fountain, and Eleanor Fountain, said executors, on a petition made for such pur- 40

Petition of Ralph A. Bullis.

10 pose obtained an order from this Court for leave to issue another execution for the sale of said premises of your petitioner, by virtue of said decree, claiming by said petition that there was a balance remaining still due thereon of the sum of \$443.56 with the costs of the original proceeding and the costs of such application.

20 And your petitioner further shows that by virtue of such order another execution was issued out of this Court on March 30th, last past, on said decree, directed to the sheriff of the said county of Middlesex, returnable on June 30th, 1917, commanding him to make sale of your petitioner's said premises by selling so much thereof as may be necessary for such purpose, the said sum of \$443.50, together with lawful interest thereon from March 14th, 1911, and the sum of \$86.25 taxed costs and the costs of said application \$28.01, which will more fully appear by the records thereof, which execution was delivered to Edward F. Houghton, Sheriff of said County to be executed.

30 And your petitioner further shows that by virtue of said execution, the said sheriff has advertised your petitioner's lands to be sold at public sale at his office in the City of New Brunswick on Wednesday, the 16th day of May, 1917, at two o'clock in the afternoon, by public advertisement made for such purpose.

40 Your petitioner therefore prays that an order be made by this Court upon the said Asbury Fountain, James Fountain and Eleanor Fountain, executors of James T. Fountain, deceased, said complainants to show cause before this Court at such time and place as the Court shall desig-

Petition of Ralph A. Bullis.

nate, why the decree should not be declared satisfied and ordered to be cancelled by this Court, and why said execution should not be stayed, and the meanwhile the said Edward F. Houghton, Sheriff of the County of Middlesex be directed by an order of this Court to desist from proceeding with said execution (except to adjourn said sale from time to time) until the further order of this Court. 10

And your petitioner will ever pray, etc.

RALPH A. BULLIS,

Petitioner.

BEEKMAN & SPENCER,

Solicitors of Petitioner.

JNO. W. BEEKMAN,

Of Counsel. 20

STATEMENT.

GUSSIE C. CARLTON ESTATE.

PAYMENTS AS PER RECEIPTS OF CARLTON.

Dec. 17th, 1909—Interest	\$21.00	
Mar. 11th, “ “	21.00	
Dec. 21st, 1910 “	20.00	
June 4th, 1912 “	25.00	30
Oct. 9th, “ “	25.00	

\$112.00

Principal of Mortgage \$700.00

Due April 26th, 1913—Interest 191.92

Total \$891.92

Interest paid as per list. 112.00

\$779.92 40

Petition of Ralph A. Bullis.

	April 26th, 19	By cash—Account of principal	200.00
			<hr/>
			\$579.92
10		Int. to Sept. 13, 1913	14.00
			<hr/>
			\$593.92
	Sept. 13th, 1913.	Cash—Account of principal	200.00
			<hr/>
			\$393.92
		Int. to July 27th	15.70
			<hr/>
			\$409.62
		Costs of foreclosure	86.85
20			<hr/>
		Total due	\$596.47

EXPENSES.

	Fountain mortgage	\$596.47
	Kelly & McAllinden Co. Mtg.	719.42
	Crouse Mortgage	1,069.36
	Taxes	1,112.59
	B'ldng Loan Ass'n	2,250.00
	Cash paid on account	200.00
		<hr/>
30		\$5,947.84
	Purchase Price	\$7,202.00
	Expenses	5,947.84
		<hr/>
	Balance paid by check	\$1,254.16

Petition of Ralph A. Bullis.

State of New Jersey,)
 Middlesex County,) ss.:

I, Ralph A. Bullis, the above named petitioner, being duly sworn according to law, on my oath say: That I have heard read the above petition and know the contents thereof, and that the same is true to my own knowledge; that I am the owner of the lands in said petition described and that the same are advertised to be sold as in said petition set forth; that Henry W. Kehoe was the real attorney and solicitor in charge of the collection of the mortgage mentioned in the petition; that at the time I purchased said lands of said Richard Watgen, who is the sole heir of the said Gussie C. Carlton, deceased, there was paid to said Henry Kehoe, said solicitor of the complainants, Asbury Fountain, James Fountain and Eleanor Fountain, executors of James T. Fountain, deceased, the balance of the amount due on said decree in full, including interest and costs, which amounted to the sum of \$496.47, and the same was deducted from the amount due said grantor from the purchase price agreed to be paid by me to said grantor and in full discharge thereof, and that the annexed is a copy of the statements made at said time by said Kehoe of the amount due on said decree, and so retained by him at said time from said Richard Watgen, my grantor.

RALPH A. BULLIS.

Sworn and subscribed to before me }
 this 10th day of May, 1917. }
 Andrew S. Wight,
 M. C. C. of N. J.

10

20

30

40

Henry W. Kehoe
Return of ¹⁰ Ralph A. Bullis
~~Bill to Foreclose.~~

IN CHANCERY OF NEW JERSEY.

Between,

10

ASBURY FOUNTAIN, JAMES FOUNTAIN and ELEANOR FOUNTAIN, executors of JAMES T. FOUNTAIN, deceased,

Complainants,

and

GUSSIE C. CARLTON and SAMUEL CARLTON,

Defendants.

On Bill to Foreclose.

20

State of New Jersey, }
Middlesex County, } ss. :

30

I, Emil Stremlau, being duly sworn according to law, say; that although I was the solicitor of record in the above entitled cause; that in truth and in fact, I became the solicitor in said cause by the request of Henry W. Kehoe, a then practicing attorney in the City of Perth Amboy, who signed the bill of complaint filed therein as counsel, and who had complete control thereof.

40

That the mortgage upon which said foreclosure was founded was brought to me by the said Henry W. Kehoe, and did not come to my

Rule to Show Cause.

hands from the complainants, and that I was not employed by said complainants in said cause.

EMIL STREMLAU.

Sworn and subscribed to before me }
this 11th day of May, 1917. }

George J. Miller,
An attorney at law,
of New Jersey.

10

A true copy.

ROBERT H. McADAMS,
Clerk.

Filed May 11-1917
Rule to Show Cause.

IN CHANCERY OF NEW JERSEY.

20

Between,

ASBURY FOUNTAIN, JAMES FOUNTAIN and ELEANOR FOUNTAIN, executors of JAMES T. FOUNTAIN, deceased,

Complainants,

and

GUSSIE C. CARLTON and SAMUEL CARLTON,
Defendants.

Bill to
Foreclose.

On Petition
of Ralph A.
Bullis.

30

Upon opening the matter to the Court by John W. Beekman, of counsel with the petitioner, and it appearing to the Court by the verified petition of the said Ralph A. Bullis and affidavits thereto made in the above stated cause that af-

40

Rule to Show Cause.

10 ter the making of the final decree for the sale of the mortgaged premises mentioned in the bill of complaint filed in this cause, that the whole amount due thereon with the interest and costs and execution fees have been paid to Henry W. Kehoe, who as the complainants' attorney and real solicitor, in said cause.

20 And it further appearing to the Court that such sale is advertised to take place at the sheriff's office of Middlesex County on the 16th day of May, instant, and it further appearing to the Court by said petition and affidavits, that the said petitioner is now the owner in fee of said premises upon which the complainants' mortgage was so given and was so decreed to be sold, and it also appearing to the Court by said petition and affidavits that said decree has been paid as to the whole amount thereof and should be cancelled.

30 It is, therefore, ordered on this 11th day of May, 1917, that the said Asbury Fountain, James Fountain and Eleanor Fountain, executors of James T. Fountain, deceased, show cause on the 22nd day of May instant, at the hour of ten o'clock in the forenoon, at the State House in the City of Trenton, why said sale of the premises of the said petitioner Ralph A. Bullis should not be stayed and said decree be declared paid and satisfied by this Court.

40 And it is further ordered that in the meanwhile that Edward F. Boughton, sheriff of the County of Middlesex, stay all proceedings on the execution in said cause now in his hands (except to adjourn said sale from time to time) until further order of the Court, and it

Rule to Show Cause.

is further ordered that a copy of this order with said petition and affidavits thereto annexed be served upon the present solicitor of the complainants and that a copy of this order be also served upon Edward F. Houghton, sheriff as aforesaid, within two days from the making of this order. 10

Respectfully advised,
E. R. WALKER,
C.
JOHN H. BACKES,
V. C.

A. true copy.
ROBERT H. M. ADAMS,
Clerk. 20

30

40

Order Dismissing Order.

(Filed June 25 1917)

IN CHANCERY OF NEW JERSEY.

10	Between JAMES FOUNTAIN, ASBURY FOUNTAIN and ELEANOR FOUNTAIN, Executors of James T. Fountain, deceased, <div style="text-align: right;">Complainants,</div>	On Bill to Foreclose. On Petition of Ralph A. Bullis.
	and	
20	GUSSIE C. CARLTON and SAMUEL CARLTON, <div style="text-align: right;">Defendants.</div>	On Rule to Show Cause. Order.

This matter coming on to be heard in the presence of Jacob M. Klein, solicitor and of counsel with the complainant, and Beekman & Spencer, solicitors of Ralph A. Bullis, petitioner, John W. Beekman, of counsel, and the pleadings having been read, witnesses examined, and proofs having been taken and the arguments of the respective counsels heard and considered, and the

Court having considered said pleadings, proofs and arguments, and it appearing to the Court that the petitioner is not entitled to all the relief prayed for in his petition, but is only entitled to have allowed to him the taxable costs of the foreclosure of the mortgage in this cause and included in the execution issued on the final decree therein, amounting to the sum of eighty-six (\$86.00) dollars, paid by him to Henry W.

40

Order Dismissing Order.

Kehoe, who was, at the date of such payment one of the solicitors of said complainants of record, and which are included in the execution issued on the final decree.

It is ordered on this 25th day of June, 1917, that there be allowed and credited on the execution issued in this cause and now in the hands of the sheriff of the County of Middlesex, the sum of eighty-six (\$86.00) dollars, the taxable costs on said decree, and that all further relief sought and prayed for by said petitioner in his said petition be and the same is hereby denied. 10

And it is further ordered that the order heretofore made in this matter on the eleventh day of May, last past, restraining Edward F. Houghton, Sheriff of Middlesex County, from proceeding with the sale of the said premises mentioned in said petition be dismissed, together with the rule to show cause granted in this cause. 20

E. R. WALKER,
C.

Respectfully advised
John H. Backes, V. C.

True copy.

ROBERT H. McADAMS,
Clerk. 30

William A. Spencer, direct.

Q. Connected with whom? A. Yourself, Beekman and Spencer, of Perth Amboy.

Q. Are you acquainted with Mr. Watgen? A. Yes, sir.

Q. How long have you known him? A. About three years.

10

Q. Will you state to the Court in your own way about the settlement in regard to the transfer of property by him to Ralph A. Bullis? A. Yes, sir. I drew an agreement for the sale of property on the 24th day of June, 1914; I have the original in my hand. This was an agreement for the sale of four properties belonging to Mr. Watgen, which he inherited from his sister, Mrs. Carlton; the consideration was \$7,202, and included the property upon which this mortgage was. On the 10th day of July, when the deed was to pass, there was an application for a ten days' further time, either by Mr. Bullis or Mr. Watgen, I don't remember which, and indorsed on the contract, which brought the time for the contract to expire to July 20, 1914. I was interested also at that time in the Perth Amboy Mutual Homestead Building Association; it held a mortgage on one of the properties for \$2,000, I think it was, much in arrears of interest. I was authorized to settle that mortgage in this transaction for \$2,250. I don't recall that the deal went through on the 20th of July, but around that time—I think it went over for a few days, and I drew the deed from Mr. Watgen to Mr. Bullis; the deed is also among the papers there; and I was also there when the deed was delivered and the deal closed. I have also with me a memorandum which was made at the time. I don't remember whether it was made by

20

30

40

William A. Spencer, direct.

10 Mr. Kehoe or myself, but it showed the amount due on the Carlton mortgage at that time; a statement of all interest paid and all amounts paid upon the principal. It also showed the amount due on a mortgage held by Kelly and McAllinden Company on one of these properties; and also one by Ira Crouse on one of the properties; it also showed the taxes due; everything that was against the property was put down on that paper. Mr. Watgen received a check for the difference.

20 Q. Where did you get the amount that was due on that decree, the amount due and the cost and the principal of the decree? A. From Mr. Watgen; that is also there; he had the receipts for—

Q. Was Mr. Kehoe there at the time? A. Yes; they were signed by Kehoe.

Q. Who composed the firm of Kehoe and Strem-lau? A. Henry W. Kehoe and Emil Strem-lau.

Mr. Klein: That is objected to, and I ask to strike out the testimony; a more definite time should be stated, and it is not the best evidence.

30 The Court: The objection is overruled and the motion denied.

Q. What relation did Kehoe and Strem-lau bear to each other at the time the bill was filed, and thereafter? A. They were partners at the time the bill was filed, but how long thereafter I don't know.

40 Q. Can you fix a time in connection with the date of the deed? A. They were not partners at the time the deed was given.

William A. Spencer, cross.

Cross examination by Mr. Klein:

Q. Where was the deed from Watgen to Bullis delivered? A. At Mr. Kehoe's office.

Q. Were you present? A. Yes, sir.

Q. The contract you have there states at what place the deal was to be transacted or to be consummated? A. Yes, sir. 10

Q. Where? A. At the office of Beekman and Spencer, Perth Amboy.

Q. Why wasn't it consummated there? A. By arrangement that we were going to Mr. Kehoe's office?

Q. What was the object of going there? A. At his suggestion.

Q. Wasn't it because Mr. Bullis informed you that he was his counsel and wanted it to be consummated at his office? A. No. 20

Q. Wasn't it that Mr. Kehoe told you he represented Bullis? A. No, sir.

Q. What was the reason for going to his office to negotiate this transaction, when the contract stated it should be done at your office? A. Simply by arrangement.

Q. What was the purpose of that arrangement? A. Only we were all together; I don't recall that it was closed on the 20th, but probably a week later. I had made the appointment to be to Mr. Beekman's office and close the deal; it is only one block away. 30

Q. Can you give me any reason whatsoever for the deal not being consummated in your office according to the agreement which was drawn up? A. None whatever.

Q. Did you make a search for the property? A. No. 40

William A. Spencer, cross.

Q. Who did? A. I don't know

Q. You represented the purchaser in this transaction, didn't you? A. No, sir.

Q. You did not? A. No.

10 Q. How did you get any statement or arrive at any sum as to what was due on the Carlton mortgage to the Fountain estate? A. Mr. Watgen gave me the receipts he had for the moneys paid.

Q. Why were you interested in that? A. Any more than for Mr. Watgen.

Q. What was the purpose of Mr. Watgen's interest? A. I represented Mr. Watgen in the transfer of property and drew the deed for him, and saw that he got the amount of money due him.

20 Q. Yes, and you made the arrangement to see that he gave a warrantee deed? A. No, I was to see that he got the amount of money due him after paying off the claims on the property.

Q. Who was to pay off the claims? A. Mr. Kehoe.

Q. For whom? A. For Mr. Broderson and Mr. Bullis.

Q. Mr. Kehoe had still supervision as to paying off those claims, did he not? A. Yes, sir.

30 Q. Did you read any correspondence in this transaction of Mr. Carlton's as executor? A. I may have.

40 Q. Did Mr. Kehoe represent Mr. Bullis at the time the transaction was made, the transaction of the purchase of the property from Watgen to Bullis? A. I don't know; Mr. Kehoe was interested as solicitor for the Fountains in the foreclosure of the mortgage on one of the properties; he also made a search of the property for which Mr. Broderson was loaned \$5,000; I sup-

William A. Spencer, cross.

pose he represented him and Bullis in the transaction and the Fountains—

Mr. Klein: I move to strike out the supposition.

The Court: I will let it stand.

10

Q. Do you know whether Mr. Bullis bought that property subject to the Fountain estate mortgage?

The Court: Isn't that a matter of law?

Mr. Klein: I will withdraw the question.

Q. I show you a letter, Mr. Spencer, written July 9, 1915, addressed to Asbury Fountain, in which you state that Henry W. Kehoe represented Mr. Bullis at the time the transfer was made, among other things, did you write that? A. Yes, sir, that's my signature.

20

Q. Did you dictate that letter?

The Court: He says that is his signature.

Mr. Klein: I offer it in evidence.

Said letter is marked "Exhibit C1 for identification."

Q. I show you a letter dated October 23, 1915, that is your signature, isn't it? A. I wrote that letter.

30

Mr. Klein: I offer it in evidence.

Said letter is marked "Exhibit C2 for identification."

Mr. Beekman: I have here a statement which I want to offer in evidence.

Said statement is marked "Exhibit P1."

40

Richard Watgen, direct.

Redirect examination by Mr. Beekman:

Q. Where did you get those mortgages from (handing witness papers)? A. I got those two mortgages from Ralph A. Bullis to Broderson from Mrs. Bradsen yesterday.

10 Q. Did she loan them to you? A. Yes.

Q. And put them in your hands? A. To be returned to-morrow.

Mr. Beekman: I offer the mortgages to show where Mr. Bullis got the money from to pay for the property. I offer these papers in evidence.

Said papers are marked "Exhibits P3, P4, P5, P6 and P7," respectively.

20

RICHARD WATGEN, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. Beekman:

Q. Where do you live? A. At present with my niece.

30 Q. Are you the man that made that deed to Mr. Bullis, showing the deed spoken of in this case? A. Yes.

Q. Were you by at the time; your deed was a warrantee deed, as you understood it? A. Yes.

Q. At the time the settlement was made where was that made? A. In Kehoe's office.

Q. Who was by at the time? A. Mr. Spencer, Mr. Bullis and Mr. Broderson.

40 Q. What was done with regard to the liens that were against Mrs. Carlton's property at the time?

Richard Watgen, direct.

By the Court:

Q. They were deducted from the purchase price, weren't they? A. Yes, sir.

Q. Did you receive the balance due you? A. Yes.

Q. What was done with the money that was in the hands of Mr. Kehoe? 10

Mr. Klein: That is objected to.

The Court: Objection overruled.

A. It was to be paid to the creditors.

Q. To the lien holders? A. Yes, sir.

Q. Did you leave the money in his hands at the time for that purpose? A. Yes.

Q. Would that include the Fountain decree? A. Yes, sir, everything. 20

Q. What was the amount of that decree at the time he stated to you what the amount was? A. I think it was \$496.00, but I think it ought to have been only \$396.00, \$100.00 less.

Q. And that money was left in Mr. Kehoe's office at the time? A. Yes.

Q. Did he have the money at the time? A. He had—

Q. Do you know where the money came from? A. Broderon. 30

Q. Where did he live? A. In Tottenville.

Q. Did he make a loan to Bullis at the time of the purchase? A. Yes.

Q. Who made the bargain between you and Bullis to buy the property; who was the bargain made with? A. Made it with Bullis and Broderon was present.

Q. Was Broderon by? A. He was the go-between. 40

Richard Watgen, cross.

Q. Do you know what the conversation was at the time where the money was to come from? A. Yes.

10 Q. Where? A. Broderson said, "Go ahead," and he would furnish him the money. Bullis said, "I got money enough to buy it"; and Brad-
sen said, "I'll furnish you with the money," and that's the whole transaction.

Cross examination by Mr. Klein:

Q. Was Mr. Kehoe empowered by you to pay off the Fountain mortgage? A. All his debts, one and all.

Q. Did Mr. Kehoe represent you? A. No, sir.

Q. Who did? A. Spencer and Beekman.

20 Q. Why didn't you see that all encumbrances and liens were paid off so there could be a war-
rantee deed? A. The whole thing was, that Mr. Kehoe wanted to handle the money; Kehoe was Mr. Fountain's attorney, and he would take up the mortgage and pay Mr. Fountain, and Mr. Fountain sent me a letter; I was living in New York at the time, and I brought it and showed it to Mr. Bullis; of course, Mr. Bullis knew what money was in Kehoe's office for Mr. Fountain's mortgage; and then I gave it to Mr. Spencer; of
30 course, he was my attorney, and he sent it to Mr. Fountain, that is, he sent the letter to Mr. Fountain.

Q. The only reason you can say that Mr. Kehoe paid off these encumbrances so you could give Mr. Bullis a warrantee deed was, that he made the assertion to you regarding the Fountain estate? A. Yes, sir.

40 Q. And even though Beekman and Spencer were your attorneys, you permitted Mr. Kehoe to

Richard Watgen, cross.

put through this deal for you and pay off these liens because he asked you to let him do it? A. Mr. Kehoe didn't put through the deal.

Q. What did he do? A. We put through the deal in Beekman and Spencer's office.

Q. You mean, you signed the contract for the sale of the property? A. There was something between Brodersen and Mr. Kehoe; he owed Bradsen some money, and Brodersen preferred to go over to Kehoe's office and deliver the money there. Bradsen said, "Can you give Bullis a warrantee deed"? I said, "Yes"; and he was satisfied with Kehoe's search, which all debts had to be paid from the proceeds of the money of the sale. 10

Q. But you were to give Mr. Bullis a warrantee deed? A. I did. 20

Q. How could you unless you saw to the fact that these encumbrances were paid off by your attorney? A. Because the money was in Kehoe's office.

Q. You entrusted that money in Kehoe's office to pay off those encumbrances? A. Yes.

Q. If Beekman and Spencer represented you, why didn't they do— A. They were representing the same thing, because Kehoe and Spencer was agreeable on it. 30

Q. Did you ever receive a demand from the Fountain estate for the money due on that mortgage? A. I received a letter while I was living in New York; of course, the money was in Mr. Kehoe's office, to pay Mr. Fountain for the mortgage.

Richard Watgen, redirect.

Redirect examination by Mr. Beekman:

Q. Did Mr. Kehoe represent you in any way at all? A. No, sir.

10 Q. Did you have anything to do with him except to leave the money there in his hands as solicitor of the complainant? A. Yes, I did, and I met Mr. Kehoe after Mr. Fountain sent me the letter. Mr. Spencer showed him the letter and said to pay the mortgage, and I met Mr. Kehoe and he was very mad about it.

By the Court:

Q. Is this the letter? A. Yes, sir.

Mr. Beekman: I offer it in evidence.

20 Said letter is marked "Exhibit P8."

Q. From whom did you get the amount due on the Fountain decree; who gave it to you? A. Mr. Bullis.

Q. Do you know where he got it from? A. Mr. Broderson.

Mr. Beekman: That is objected to.

The Court: Objection overruled.

30 Q. When you made the contract with Mr. Bullis, when you got these letters what did you do with them? A. I only got one.

Q. Which one? A. This one ("P8").

Q. What did you do with it when you got it? A. I showed it to Mr. Bullis, and Mr. Bullis went to Mr. Spencer and gave him the letter, and Mr. Spencer went over to Kehoe and showed him the letter, and I met him after, and he was very sarcastic that I didn't give him the letter. I said, "You are not my attorney; I got nothing to do with you;" and we had quite hot words about it.

40 Q. Was there any arrangement made between

Ralph A. Bullis, direct.

you and Mr. Bullis, that Mr. Bullis was to assume the payment of that decree? A. No, sir.

Q. Nothing of the kind? A. No, sir.

Mr. Klein: No questions.

RALPH A. BULLIS, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. Spencer:

Q. Where do you live? A. Perth Amboy.

Q. You purchased the property from Mr. Watgen? A. Yes, sir.

Q. Where was the deal closed? A. In Beekman and Spencer's office.

Q. How did you come to buy the property? A. Mr. Broderson was at my place one day, and he asked me to take a ride with him in his carriage, and we stopped at a saloon, and Mr. Watgen was there, and he asked me if I wanted to buy the property, and I asked him what he wanted; he said \$15,000. I said, "I'll give him half that;" I told him I was short of money anyway—

Q. Where is Bradsen? A. He is dead.

Q. Has he been dead for some time? A. Yes, a couple of years.

Q. What was said about arranging to buy the property? A. I agreed to buy the property for \$7,500, at the time, and Mr. Watgen broke his leg, and in three or four months he come again, and I purchased the property by deducting the lien and other things from it, and I made some improvements, a toilet and things like that.

Q. Did you take possession of the property be-

10

20

30

40

Ralph A. Bullis, direct.

fore you had the deed? A. I had possession of the business property for years.

Q. The purchase price figured up to \$7,202.00?

A. Yes.

10 Q. What was said about giving the money for the property? A. I was to get from Mr. Broder-son.

Q. Was he there? A. No; but before that I made arrangements with him, and he said he would let me off—he would let me have it for \$7,000, if I wanted it.

Q. Who was his attorney? A. Mr. Kehoe.

Q. Were you present when the deed was delivered and the deal closed? A. Yes.

20 Q. Where was it closed? A. Well, that was in Kehoe's office.

Q. Who was there? A. Mr. Watgen, yourself, Mr. Kehoe and myself.

Q. Was anything said about the liens on the property at that time? A. Of course, nothing particular any more than everything was to be paid; of course, I was to get a warrantee deed for the property.

Q. Wasn't there a statement made out of what was against the property? A. Yes.

30 Q. And that was to be paid out of what money? A. I got \$5,000 from Broder-son, and I was to pay the balance myself, which I did.

Q. You paid the balance yourself? A. I did.

Q. Who got the money? A. Mr. Kehoe; I didn't see any of the money.

Q. From whom? A. Mr. Bradsen.

Q. Do you know what claims were against the property? A. Well, not exactly; if I saw the statement I could.

40

Ralph A. Bullis, direct.

Q. Was there a statement made up at that time? A. Yes.

Q. I show you one; do you remember seeing that statement ("Exhibit P1")? A. Yes, sir.

Q. Do you remember the Fountain mortgage being spoken of? A. Yes. 10

Q. And the Kelly-McAllinden mortgage? A. Yes, sir.

Q. And the Crouse mortgage? A. Yes.

Q. And the taxes? A. Yes.

Q. And the Building Loan Association mortgage? A. Yes.

Q. And the deposit you had made, how much was that, do you remember? A. When?

Q. When the contract was signed. A. I think it was \$25.00. 20

Q. Was it \$200.00? A. Probably.

Q. Do you remember Mr. Watgen getting a check? A. I don't know; I didn't see that check.

Q. That represented the difference between the liens on the property and the purchase price, did it not? A. Yes.

By the Court:

Q. Whose checks were they? A. At the time Mr. Broderson left me, they had the \$5,000; he had one at \$3,000, and he took the one for \$3,000 to Mr. Kehoe. 30

Q. That was of your \$5,000? A. Yes, and when he got the other he—

Q. Let me understand. Was that Mr. Kehoe's check? A. Yes; he sent me the balance and I sent him a check.

Q. Do you remember a check being drawn that day for the Building and Loan? A. They were not drawn in my presence, none of them checks. 40

Ralph A. Bullis, cross.

By the Court:

Q. Mr. Kehoe was looking after your interest at the time? A. Yes, sir.

Q. Mr. Kehoe had been your attorney for how many years? A. A good many years.

10 Q. And in the case that you had before? A. Yes.

Q. When you sold the property and you got the balance of the money that was due you, when Mr. Watgen sold you the property you assumed all these obligations here? A. Yes.

Q. To pay as a part of the purchase price? A. Yes.

Q. And that was supposed to have been paid right way, was it not? A. Oh, yes.

20 Q. Now, afterwards, did you ever get a statement from Mr. Kehoe? A. I did.

Q. Did you get a statement of settlement from Kehoe showing your settlement with him? A. Yes.

Q. Did you make a check for \$235.56? A. Yes.

Mr. Spencer: I offer this statement showing the disposition of the \$5,000.

Said statement is marked "Exhibit P9."

30 Q. Did we represent you at all in that? A. No.

Cross examination by Mr. Klein:

Q. You say Mr. Kehoe represented you? A. Yes.

Emil Strelau, direct.

EMIL STREMLAU, a witness produced on behalf of the petitioners, being duly sworn, testified as follows:

Direct examination by Mr. Beekman:

Q. What is your business? A. Attorney and counsellor-at-law. 10

Q. Were you ever in partnership with Henry W. Kehoe? A. I was.

Q. When? A. From October 1, 1911 to August 1, 1912.

Q. Did you file a bill in chancery? A. I did.

Q. For what purpose? A. To foreclose a mortgage of the estate of Eleanor Fountain against Gussie Carlton.

Q. Where did you get the mortgage from? A. From Mr. Kehoe; I was with Mr. Kehoe at the time the bill was filed; I think it was filed in July, 1912, and I left him the first of August and he asked me whether I wouldn't continue the suit. 20

Q. Did you continue them? A. Yes, and got a decree and had execution issue and had the property—I was under the impression that the suit was started after I left him; the bill was filed while we were partners.

Q. Do you know Mr. Fountain? A. I met him, yes. 30

Q. When? A. While I was with Mr. Kehoe.

Q. Was he your client at any time? A. Not mine personally, no.

Q. Whose client was he? A. Mr. Kehoe placed considerable money through Mr. Fountain.

Cross examination by Mr. Klein:

Q. You had all the papers of foreclosure in your office all the time? A. Yes. 40

Asbury Fountain, direct.

Q. You had the mortgage in your possession also, didn't you? A. I had all the papers.

Q. So, from the time you got that thing until it was finished up, you had exclusive charge of it? A. No, I drew up the pleadings; I had the management of the case under the direction of Mr. Kehoe.

ASBURY FOUNTAIN, the above-named complainant, being duly sworn on behalf of the petitioner, testified as follows:

Direct examination by Mr. Beekman:

Q. You are one of the executors of James T. Fountain? A. One of the three.

Q. And one of the mortgagees in this case? A. Yes.

Q. Who took that mortgage to be foreclosed? A. I went over to Mr. Kehoe's and had some conversation with him about foreclosing it; the Carlton people were old people and I didn't want to distress them; they were two years behind with their interest, and Mr. Kehoe said, "I can't do it, my partner will do it." There are certain business reasons which I wouldn't want to state here.

Q. It was foreclosed? A. It was put in Mr. Stremlau's hands to take up.

Q. Here is a letter dated March 12, 1914; did you write that letter? A. Yes, sir, that is my writing.

Mr. Beekman: I offer it in evidence. Said letter is marked "Exhibit P10."

Asbury Fountain, direct.

Q. You had considerable business with Mr. Kehoe, did you not, all along from 1911 to 1914 or '15? A. This was the only mortgage regarding the estate.

Q. Didn't you have other mortgages? A. I recommended other people to go to him.

10

Q. And you corresponded with him regularly, did you not? A. Not regularly, no; I suppose a dozen different people I sent to the firm of Stremmlau, who was City Recorder at the time.

Q. Didn't you correspond with Kehoe very frequently about business affairs? A. About the foreclosure of this mortgage?

Q. Any other? A. I had frequent correspondence regarding this Carlton mortgage with the gentleman.

20

Q. Did you write that letter to Mr. Kehoe? (Handing witness a letter). A. That is my signature, yes.

By the Court:

Q. You were very well acquainted with him? A. Yes, he was the City Recorder.

Q. You were on very friendly terms? A. I wouldn't say friendly.

Q. You went out together, didn't you? A. Very rare. I had Mr. John A. Coan and Mr. Silzer to do my business.

30

Q. Did Mr. Kehoe ever pay you any money on account of the Fountain mortgage? A. He paid me \$21.00, \$21.00, \$15.00, \$20.00 and \$20.00. Mr. Klein has the statement I rendered.

Q. Does this refresh your memory (handing witness a paper)? A. These two here (indi-

40

Asbury Fountain, cross.

cating) were never received; it was in 1908 that the mortgage was given.

10 Q. You received it from Kehoe? A. It was in 1908 that the mortgage was given; then they paid the interest for three years regularly, and then fell behind for two years.

Q. After the decree of foreclosure, how much money was paid? A. I received \$200.00 from Mr. Kehoe April 28, the same day this decree was about to be foreclosed.

Q. And that was the time that the execution was about to be issued and the property sold? A. About the time the property was to be sold.

20 Q. And Mr. Kehoe and Mr. Stremlau were the solicitors in the Case? A. Yes, Mr. Stremlau.

Q. The Carltons are both dead? A. Yes, died within one month of one another, the same year the foreclosure was to be made.

Cross examination by Mr. Klein:

Q. The moneys that were received, that you just spoke of, were the moneys paid by the Carltons? A. Yes.

30 Q. And had nothing to do with this transaction? A. Nothing to do with this foreclosure or deed.

Q. No moneys have been received by you through Kehoe since Mr. Bullis acquired title? A. No.

Redirect examination by Mr. Beekman:

Q. Did you ever make any demand of Mr. Bullis for any money? A. Yes.

Q. When? A. I sent word to Mr. Bullis—

40 Q. By letter? A. By letter; and I received

Jacob M. Klein, direct.

two letters from Mr. Bullis that he would strike it out; between Mr. Kehoe and the rest of them there were some—

Mr. Beekman: I call for the letters.

Mr. Klein: We haven't them.

10

Q. Did you say Mr. Bullis wrote you two letters? A. He did.

Q. When? A. In the year after he had bought the property.

Q. Where are the letters? A. I think they were sent to Mrs. Eleanor Fountain.

By the Court:

Q. Where are they? A. They are not here.

20

RALPH A. BULLIS, being recalled on behalf of the complainants, testified as follows:

Mr. Beekman: I want to ask this witness if he ever wrote any letters to Asbury Fountain; he is a hostile witness.

The Court: No, I don't think he was; but I don't think it makes any difference.

Petitioners Rest.

30

JACOB M. KLEIN, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Thomas L. Hanson:

Q. What is your profession? A. Attorney at law.

Q. At the present time you are substituted solicitor of the complainant? A. Yes, I am.

40

Opinion.

Q. After you received a substitution of attorney did you see Mr. Bullis? A. I did.

10 Q. Where and at what time? A. I telephoned to Mr. Bullis and stated that I had been retained in this matter, and before proceeding, which would entail him, as I thought at that time, considerable more expense, I wished to see him to arrange the matter with him. Mr. Bullis called at my office and told me he wanted a little time to see Mr. Kehoe about it; that Mr. Kehoe had received those moneys from him, Mr. Kehoe, to pay out, and that Mr. Kehoe had been paid by Mr. Bullis for attending to these matters.

20 Q. Did you have any other conversation with Mr. Bullis outside of that one? A. Possibly one or two others, but I don't think there was any variation as to the substance of his comment.

Mr. Klein: I offer the receipts of payment by Carlton.

Said receipts are marked Exhibit C-11.

BOTH SIDES REST.

Opinion.

30

The Court (orally):

The present controversy is due to the embezzlement of one Kehoe, a former solicitor of this Court, to whom both parties to this litigation entrusted their affairs. Kehoe's speculations from his clients were numerous. I know this from other cases that have been before me or are now before other Vice-Chancellors. This case bears some resemblance to the one that

40

Opinion.

was before me three or four weeks ago, in which the present petitioner Bullis figured.

In this case the complainants foreclosed their mortgage and entered a decree for \$843.00. Kehoe was their solicitor. \$400.00 of the decree was paid by the former owner, and an alias *fi. fa.* issued to make the balance. After the decree was entered, the owner of the equity of redemption sold the mortgaged premises to Mr. Bullis. Bullis was to have a clear title and he hired Kehoe to look after his interest. The property was heavily encumbered and after paying the vendor the difference between the purchase price and the amount of liens, Bullis entrusted Kehoe with \$5,000.00 to pay off the liens. Kehoe failed to pay the complainants, and the question is, "Is Bullis or are the complainants to lose the amount of the theft? Was it Bullis's money or the complainants' that Kehoe stole?" It seems to me it must be held that the thief stole the money when and as it was given to him; that is Bullis's money. I cannot suppose, and there is nothing in the case to indicate, that Kehoe first applied the sum to the complainants' debt and then stole it.

The rule to show cause allowed to Bullis, why the *fi. fa.* should not be stayed and the decree cancelled, will be dismissed with costs.

10

20

30

40

*Exhibits.***Exhibit P1.**

Statement—GUSSIE C. CARLTON ESTATE.
 Payments as per receipts of Carlton

	Dec. 17, 1909—Interest.....	\$21.00
10	March 10, 1909 “	21.00
	Dec. 21, 1910 “	20.00
	June 4, 1912 “	25.00
	Oct. 9, 1912 “	25.00
		<hr/>
		\$112.00
	Principal of Mortgage	\$700.00
	Due April 26th, 1913, Interest.....	191.92
		<hr/>
	Total	\$891.92
20	Interest paid as per list.....	112.00
		<hr/>
		\$779.92
	April 26th, By cash—Account of Principal	200.00
		<hr/>
		\$579.92
	Int. to September 13, 1913.....	14.00
		<hr/>
		\$593.92
	Sept. 13th, 1913 Cash—Account of Prin-	
30	cipal	200.00
		<hr/>
		\$393.92
	Int. to July 27th.....	15.70
		<hr/>
		\$409.62
	Costs of Foreclosure.....	86.85
		<hr/>
	Total due.....	\$596.47

Exhibits.

EXPENSES.

Fountain Mortgage.....	\$596.47	
Kelly & McAlinden Co. Mtg....	719.42	
Crouse Mortgage.....	1,069.36	
Taxes	1,112.59	10
Bldnd. Loan Ass'n.....	2,250.00	
Cash paid on account.....	200.00	
	<hr/>	
	\$5,947.84	
PURCHASE PRICE.....	\$7,202.00	
EXPENSES	5,947.84	
	<hr/>	
Balance paid by check.....	\$1,254.16	

Exhibit P3.

20

Mortgage from Ralph A. Bullis and wife to Soren N. Broderson on lands mentioned in the petition filed in this cause with other lands, and dated July 15, 1914, conditioned to secure the payment of \$3,000, to secure hereinafter bond.

Exhibit P4.

Bond from Ralph A. Bullis and wife to Soren N. Broderson given in the penal sum of \$6,000 to secure the sum of \$3,000, dated July 15, 1914.

30

Exhibit P5.

Mortgage from Ralph A. Bullis and wife to Soren N. Broderson, dated August 24, 1914, given to secure the sum of \$2,000 with interest, and covering the lands mentioned in the petition filed in this cause with other lands, to secure the hereinafter mentioned bond.

40

*Exhibits.***Exhibit P6.**

Bond from Ralph A. Bullis and wife to Soren N. Broderon in the penal sum of \$4,000 conditioned to pay \$2,000, same date.

10

Exhibit P7.

THIS INDENTURE, made the twenty-seventh day of July, in the year of our Lord One Thousand Nine Hundred and Fourteen, BETWEEN Richard Watgen (widower) sole heir at law of Gussie C. Carlton, deceased, late of the City of Perth Amboy, in the County of Middlesex and State of New Jersey, of the First Part; AND Ralph A. Bullis, of the City of Perth Amboy in County of Middlesex and State of New Jersey of the Second Part:

20

WITNESSETH, That the said party of the First Part, for and in consideration of One Dollar and other good and valuable considerations lawful money of the United States of America, to him in hand well and truly paid by the said party of the Second Part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the First Part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the Second Part, and to his heirs and assigns, forever, ALL those certain lots tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of

30

40

Exhibits.

Perth Amboy in the County of Middlesex and State of New Jersey.

First tract:—Beginning in the easterly line of Hartford Street where the southerly line of Cedar Street (now abandoned) as shown on the hereinafter mentioned map—intersects said line of said Hartford Street; thence running along the northerly line of Cedar Street and parallel with the southerly line of lands of the Easton and Amboy Railroad Company, easterly one hundred and four tenths (100.4) feet to the westerly line of lot number nineteen (19) in Block D as laid down on said map; thence running southerly and parallel with Hartford Street along said line of last said lot and also the like line of lots numbers twenty (20) and twenty-one (21) as also laid down on said map seventy-four and five tenths (74.5) feet to the northerly line of lot number four (4) in said Block as shown on said map; thence westerly and parallel with Buckingham Avenue along last said line of last said lot one hundred (100) feet to the said easterly line of said Hartford Street and running thence northerly along said line of last said Street sixty-five and eight tenths (65.8) feet to the place of beginning.

Bounded on the north by said Cedar Street, south by said lot number four (4) east by said lots numbers nineteen (19) twenty (20) and twenty-one (21) in said Block D, and west by Hartford Street, and being known on a map filed in the Clerk's Office of Middlesex County made by J. Opperman, dated November 16th, 1876, as lots numbers one (1), two (2) and three (3)

10

20

30

40

Exhibits.

in Block D, and so shown on said map, and being the same lands and premises of which Gussie C. Carlton, lately died seized and to which said party of the first part has title as her only next of kin and heir at law.

- 10 Said lots numbers two (2) and three (3) being the same lands that were conveyed to her in her life-time by Sheriff's deed dated Nov. 8th, 1894 and recorded in the said Clerk's Office in Book 272 on pages 103 &c., and said lot number three (3) being the same lands and premises that were conveyed to her by a deed from The Birkbeck Investment Savings and Loan Company of America, dated Aug. 18th, 1908 and recorded in said Clerk's Office in Book 424 of deeds on pages
- 20 90 &c.

- 30 Second tract:—Beginning in the easterly line of Hartford Street where the same intersects with the southerly line of Cedar Street as laid down on the aforesaid map (said street being since abandoned) thence running easterly along last said line of Cedar Street one hundred and four tenths (100.4) feet to a point one hundred (100) feet distant on a line at right angles with said Hartford Street; thence northerly in a direct line across said Cedar Street twenty five (25) feet to the southerly line of lands of the Easton and Amboy Railroad Company; thence westerly along last said line one hundred and four tenths (100.4) feet to a point opposite the above named beginning point; thence southerly across said Cedar Street twenty-five (25) feet to the place of beginning.

- 40 Bounded northerly by lands of the Easton and Amboy Railroad Company, southerly by lot num-

Exhibits.

ber one (1) in Block D, on map made by J. Opperman, dated November 16th, 1875, easterly and westerly by other portions of Cedar Street.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining: 10

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the First Part, of, in and to the same, and of, in and to every part and parcel thereof.

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the Second Part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the Second Part, his heirs and assigns forever: 20

AND the said party of the first part, doth for himself, his heirs, executors and administrators covenant and agree to and with the said party of the Second Part, his heirs and assigns, that he the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or 30

40

Exhibits.

may be changed, charged, altered or defeated in any way whatsoever:

10 AND ALSO that the said party of the First Part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid:

AND ALSO, that he, the said party of the first part, as to the first tract, will WARRANT, secure, and forever, defend the said land and premises unto the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

20 IN WITNESS WHEREOF, the said party of the First Part has hereunto set his hand and seal the day and year first above written.

(SEAL.) RICHARD WATGEN.

Signed, Sealed and Delivered in }
the presence of }
William A. Spencer.

Duly acknowledged.

30

40

*Exhibits.***Exhibit P8.**

Matawan, N. J.,
Feb. 21st, 1914.

Mr. Richard Watgen,
1450 Second Ave.,
N. Y. 10

My dear Sir:

I am informed that you are the Executor of the Estate of Gussie C. Carlton, wife of Saml Carlton. Our Estate has a mtg. on House & Lots at No. 32 Hartford St., Perth Amboy, N. J. in the name of Gussie C. Carlton.

Please inform me if this is correct and what your plans are. Interest was due last Oct. & will be again in March. 20

Yours truly,

ASBURY FOUNTAIN

Executor

P. S. Have you an attorney in Perth Amboy?

P. O. Matawan, Mon. Co., N. J.

N. B. This was offered for complainant evidence and marked for petitioner.

30

40

*Exhibits.***Exhibit P9.**

Perth Amboy, N. J., Nov. 2 1914

Mr. R. A. Bullis

To H. W. Kehoe, Dr.

10

COUNSELLOR AT LAW

Tel. 457

338 State Street

1913

Mar 10 Drawing deed \$ 4.00

" Contract 1/2 with
Mikolajczak 2.00

May 2 1/2 Contract with Conquest 5.00

1914

20 Mar Assignment (Marg. & Pat-
rick Burke) 4.00

Recording fees 2.00

July Search (Grimly loan)
\$5,000.00 15.00

Bd. & Mtg. (Grimly loan 5.00

Recording Mtg. (Grimly
loan) 2.50

Commission 1% loan 10.00

30 Aug. Search—Broderson loan
\$5,000.00 20.00

Tax Search Broderson loan 1.00

Sup. Ct. Search Broderson
loan 1.34Bd. & Mtg. Broderson
loan 5.00Record Search Broderson
loan 2.50

\$79.34

40

Exhibits.

Perth Amboy, N. J., Nov. 2, 1914

R. A. Bullis,

To H. W. KEHOE, DR.

COUNSELLOR AT LAW.

Tel. 457

338 State Street.

10

1914

	Amt. Brought forward	79.34	
Aug.	Asbury Fountain Mtg.	409.62	
	Costs of foreclosure	86.85	
	Pd. to Crouse	500.00	
	Pd. by Kehoe to owner	1,254.16	
	“ “ “ “ taxes	650.59	
	“ “ “ “ Bldg.		
	loan	2,250.00	20
		<hr/>	
		\$5,151.22	
	Loan	\$5,000.00	
		<hr/>	
		\$ 151.22	151.22
		<hr/>	
		\$230.56	
Nov. 2	Int. on \$1,000.00 note Trust Co.	5.00	
		<hr/>	
		\$235.56	30

Exhibit P-10 Was a letter written March 12, 1914 from Asbury Fountain to Kehoe asking for a report concerning the progress of the Carlton foreclosure so he could show it to his co-executors. This letter has become lost since the hearing.

40

Exhibits.

Exhibit P-11 Receipts of payments by Samuel Carlton to H. W. Kehoe and given by him to Carlton dated April 26 and September 13th, 1914, respectively, of \$200 each on decree. These receipts have been lost or mislaid since hearing.

10

Exhibit C1.

July 9, 1915

Asbury Fountain, Esq.,
Old Bridge, N. J.

Dear Sir:

In reply to your favor of the 7th inst., relative to the Carlton mortgage held by you as executor, beg leave to report that the property was sold by Richard Watgen, sole heir-at-law of Gussie C. Carlton, to Ralph A. Bullis, subject to the lien of your mortgage. Mr. Henry W. Kehoe represented Mr. Bullis at the time the transfer was made. We are enclosing, for your information, a statement showing the amount due on your mortgage for which payment was assumed by Mr. Bullis.

20

Any further information which you may desire and which we can give, will be cheerfully furnished.

30

Very truly yours.

BEEKMAN & SPENCER.

40

*Exhibits.***Exhibit C2.**

October 23, 1915.

Asbury Fountain, Esq.,
Old Bridge, N. J.

Dear Sir:

10

In reply to your favor recently received in reference to your mortgage on the Carlton property, beg leave to say that Mr. Watgen who was the sole heir at law of Gussie C. Carlton, deceased, sold the property to Ralph A. Bullis about a year ago and at the time of the sale Mr. Bullis assumed the payment of the balance due on the mortgage. Mr. Watgen is no longer interested in the property and you will have to look to Mr. Bullis to settle the amount due. If I can be of any assistance to you as to adjusting the matter I will be only too pleased to do so. At the time of the settlement and the deed passing it was upon the basis that there was due on your mortgage \$596.47. It just now occurs to me that I have some interesting figures at my office in reference to your mortgage which do not coincide with yours. I will be pleased to show them to you if you will stop in and see me any time after election as I am out of the office most of the time until then.

20

30

Very truly yours.

WM. A. SPENCER.

40

Notice of Appeal.

(Filed July 31, 1917.)

IN CHANCERY OF NEW JERSEY.

10	Between, JAMES FOUNTAIN, ASBURY FOUNTAIN and ELEANOR FOUNTAIN, Executors of James T. Fountain, deceased, <div style="text-align: right;">Complainants,</div> <div style="text-align: center;">and</div> GUSSIE C. CARLTON and SAMUEL CARLTON, <div style="text-align: right;">Defendants.</div>	} On Bill to Foreclose. } On Petition of Ralph A. Bullis. } Notice of Appeal.
20		

The petitioner, Ralph A. Bullis, hereby appeals from so much of the order made in this Court in the above stated cause on the 25th day of ~~June~~ 1917, as declares that said petitioner is not entitled to all the relief prayed for in his said petition, but is only entitled to have allowed to him the taxable costs of the foreclosure of the mortgage in this cause and included in the execution issued on the final decree therein amounting to the sum of eighty-six dollars paid by him to Henry W. Kehoe who was at the date of such payment one of the solicitors of complainants of record, and which denies to this petitioner all further relief sought and prayed for by his said petition, and from all that part of said order which dismisses the order made in said matter on the 11th day of May last past,

40

Notice of Appeal.

restraining Edward F. Houghton, Sheriff of Middlesex County, from proceeding with the sale of the premises mentioned in the said petition, and which also discharges the rule to show cause, granted in said cause on the 11th day of May, last past, to the Court of Errors and Appeals, the last resort in all cases. 10

Dated July 30, 1917.

BEEKMAN & SPENCER,
Solicitors of Petitioner.

John W. Beekman,
Of Counsel.

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

JOHN W. BEEKMAN,
Of Counsel with Petitioner. 20

30

40

Petition of Appeal.

(Filed August 18, 1917.)

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

10

JAMES FOUNTAIN, ASBURY FOUNTAIN and ELEANOR FOUNTAIN, Executors of James T. Fountain, deceased,

Complainants and Respondents,

and

GUSSIE C. CARLTON and SAMUEL CARLTON,

Defendants,

20

RALPH A. BULLIS,
Petitioner and Appellant.

On Bill, etc.
On Petition of
Ralph A.
Bullis.

Petition of
Appeal.

To the Honorable Court of Errors and Appeals
in the Last Resort in all Cases:

30

The petition of Ralph A. Bullis, the appellant in the above stated cause, respectfully shows that your petitioner is aggrieved by an order made in the Court of Chancery, bearing date the 25th day of ~~July~~ 1917, for that, whereas your petitioner on the 11th day of May, 1917, filed his petition in said Court of Chancery in said cause, setting forth that your petitioner was the purchaser of certain lands in the City of Perth Amboy in this State in said petition described; that one, Gussie C. Carlton and Samuel Carlton, on September 10, 1908, gave a certain mortgage on said lands so purchased by your petitioner to the said

40

Petition of Appeal.

respondents; that the said respondents afterwards filed their bill to foreclose said mortgage in said Court of Chancery in a cause wherein the said respondents were complainants and the said Gussie C. Carlton and Samuel C. Carlton were defendants; that a final decree was made therein and an execution issued out of said Court of Chancery for the sale of such premises to satisfy such decree, and directed to the Sheriff of the County of Middlesex, who returned said execution without any sale being made thereunder; that one Henry W. Kehoe was the solicitor of the said complainants in said foreclosure proceedings; that the said Gussie C. Carlton and Samuel Carlton afterwards both departed this life leaving one Richard Watgen the sole heir to said lands; that the said Richard Watgen afterwards conveyed said lands to your appellant by warranty deed in fee, bearing date July 27, 1914, who became sole owner thereof; that said Gussie C. Carlton in her lifetime had paid to the said Henry W. Kehoe, said solicitor, \$400 on account of the principal of said decree; that at the time of the purchase of said lands by your petitioner for the purpose of clearing the title, the said Richard Watgen paid or caused to be paid to the said Henry W. Kehoe, said solicitor of respondents, the balance due on said decree with the costs and interests in full satisfaction of said decree and that the same was taken out of the purchase money due him from your petitioner; that notwithstanding such payment and satisfaction, afterwards, on March 10, 1917, another solicitor was substituted as the solicitor of the complainants on a petition made for such purpose, who obtained an order from

10

20

30

40

Petition of Appeal.

10 said Court of Chancery for leave to issue another execution for the sale of said premises by virtue of said decree claiming that there was a balance due thereon of \$443.33, with the costs of said proceedings; that another execution was issued by said Court of Chancery directed to the Sheriff of said County to make sale of said petitioner's lands by selling the same to satisfy said alleged deficiency; that by virtue of last said execution, Edward F. Houghton, Sheriff of said County, had advertised said lands for sale by virtue of said execution; that your petitioner in his petition prayed that an order be made by said Court upon the said James Fountain, Asbury Fountain, Eleanor Fountain, said executors of James T. Fountain, deceased, to show cause before said Court at such time and place as the Court should designate, as by said petition will more fully appear.

20

30 That a rule to show cause was granted in pursuance to the prayer of your said petitioner, returnable before the Chancellor on the 22nd day of May, 1917, at Trenton, in the Court of Chancery, when and where said matter was heard and considered by said Court, and that said rule of your petitioner was afterwards discharged by said Court except as to an allowance of the taxable costs of said decree as by said order will appear.

40 Your petitioner humbly appeals from that part of said order of the Chancellor that judges and decrees that your petition is not entitled to all the relief prayed for by him in his said petition but is entitled to have allowed to him only the taxable costs of the said foreclosure of said mortgage in said cause only and included in the

why such decree should not be declared satisfied and ordered to be cancelled by said court, and why said execution should not be stayed.

Petition of Appeal.

execution issued on the final decree thereon, amounting to \$86.00 paid by him to Henry W. Kehoe who was at the time of said payment one of the solicitors of complainants of record, and which also denies to this petitioner all further relief sought and prayed for by his said petition and also appeal from all that part of said order (upon the ground that the same is also erroneous) which dismisses the order made on the 11th day of May, last past, restraining said Edward F. Houghton, said sheriff of said County, from proceeding with said sale until further order of said Court of Chancery. But on the contrary the said Chancellor should have granted all the relief prayed for in your petitioner's said petition and should have found and so decreed that the said balance so claimed by the said respondents on their said final decree had been fully paid and satisfied and that the same should be cancelled and should have made said rule to show cause so granted your petitioner absolute.

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

BEEKMAN & SPENCER,
Solicitors of Appellant.
JNO. W. BEEKMAN,
Of Counsel with Appellant.

Answer to Petition of Appeal.

(Filed August 31, 1917.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between,

JAMES FOUNTAIN, ASBURY FOUNTAIN
and ELEANOR FOUNTAIN,
Executors of James T. Fountain,
deceased,Complainants and
Respondents,

and

20

GUSSIE C. CARLTON and SAMUEL
CARLTON,

Defendants,

RALPH A. BULLIS,
Petitioner and Appellant.

On Bill, &c.

On Petition of
Ralph A.
Bullis.

To the Honorable Court of Errors and Appeals, in the last resort in all cases:—

30

The answer of the above named respondent to the petition of appeal of the above named appellant.

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 25th day of June, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said

40

Answer to Petition of Appeal.

petition as therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said order is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent. 10

JACOB M. KLEIN,
Solicitor of Respondent.
THOMAS C. CHRISTOPHER,
Of Counsel.

[411]

20

30

40

New Jersey Court of Errors and Appeals.

Between

JAMES FOUNTAIN, ASBURY FOUNTAIN and ELEANOR FOUNTAIN,
Executors, etc.,
Complainants-Respondents,

and

GUSSIE C. CARLTON and SAMUEL
CARLTON,
Defendants,

RALPH A. BULLIS,
Petitioner-Appellant.

BRIEF FOR COMPLAINANTS-RESPONDENTS.

Statement of Facts.

The complainants-respondents filed a bill to foreclose their mortgage in 1912 against Gussie C. Carlton and Samuel Carlton; Henry W. Kehoe and Emil Stremlau, partners, practicing law as Kehoe & Stremlau, being their solicitors. There was a decree taken by complainants for \$843.50 on March 11, 1913, and an execution issued for sale of the mortgaged premises. Carlton paid \$400 on the decree. The execution was unexecuted by the Sheriff to whom it was directed.

The Carltons both afterwards died and the appellant Bullis purchased the mortgaged premises together with other lands from Watgen, the heir to the property. Bullis borrowed \$5,000 of Soren N. Broderson for such purpose and gave mortgages to secure the same. The deed from Watgen to Bullis dated July 27, 1914, was a warranty deed conveying free from all encumbrances and warrants the said lands to be thus discharged. Kehoe represented the mortgagee, Broderson, for the purpose of determining the proper security for the money to be advanced to Bullis and the money for such mortgage was sent direct from Broderson to Kehoe and retained by him. Bullis also retained Kehoe to search the title to the property and represented him in the transaction of the sale of the property from Watgen to Bullis. Kehoe paid off all the encumbrances against the property for Bullis with the exception of the mortgage to the complainants-respondents. The balance due on the principal besides the interest was never paid by the said Kehoe to the complainants-respondents out of the \$5,000 left in Kehoe's hands by Bullis for the purpose of paying off all the liens which were recorded against the property at the time of the purchase.

An order was made by the Court of Chancery on proceedings taken for such purpose substituting Jacob M. Klein as solicitor for the complainants in the place of Kehoe and Stremiau.

On proceedings taken for such purpose, a new execution was issued out of the Court of Chancery directed to the Sheriff of Middlesex County commanding him to make out of said mortgaged premises the balance due on the decree with interests and costs and was delivered to the said

Sheriff to be executed, whereupon said Sheriff proceeded to sell said mortgaged premises and advertised the same to be sold. Whereupon the petitioner and appellant filed his petition in the Court of Chancery on the 11th day of May, 1917, setting forth such facts and claiming that said decree had been fully paid and satisfied, and praying that an order be made by said Court upon said complainants-respondents to show cause before said Court why the decree should not be declared satisfied and ordered to be cancelled by the said Court and why execution so issued should not be stayed. Whereupon, a rule to show cause was granted by said Court for such purpose, returnable on the 22nd day of May, then next, before said Court at Chancery Chambers at Trenton, when and where said matter was heard by said Court summarily and decided adversely to petitioner except as to allowance of costs paid out of said moneys to said Kehoe on said decree as such solicitor, and discharged the rule to show cause and the restraining order upon the Sheriff, from which decision the petitioner-appellant took an appeal to this Court.

Answers to Point One (1).

Conceding that the law on this point is well settled, it does not enter into the present transaction. If it were true that Kehoe had the whole charge of this foreclosure and if the money had been paid to him by another attorney for the purpose of having Kehoe hand the same over to Mr. Fountain and then Kehoe had stolen the money, there might be a question as to whose money was misappropriated, but in this instance Kehoe was not only the solicitor of the

complainants-respondents but he was also the attorney for Bullis, the party who paid him to see that he procured a clear title under the deed from Watgen to Bullis. So that Kehoe actually did handle \$5,000.00 of money belonging to Bullis and it did belong to Bullis because he had signed a bond and mortgage and encumbered his property to Broderon to borrow this \$5,000.00. Bullis paid him for seeing to the fact that he (Bullis) would get a clear title shown also by Statement, Exhibit P9, pages 46-47, printed case.

Answers to Point Two (2).

This point brought up for the Court's attention is clearly without merit and is an attempt to adjust the situation so, as to cause a loss to the complainants-respondents of the amount of the decree. Watgen's position was purely one of vendor. He did not purchase this property; he inherited it through law with its liens attached and his whole purpose in selling the property was to profit in the difference between the encumbrances existing against the property and the selling price, he to get the difference when the title went through and which he actually did receive in the amount of \$1,251.00.

It is Watgen's fault as well as the fault of Beekman & Spencer, his attorneys, who are ostensibly negligent, in giving a warranty deed without first finding out from Kehoe if the liens, which were actually taken out of the purchase price, were paid and cancelled from the record or not. This they failed to do and now it would appear that they are trying to make the complainants-respondents suffer for something

that they failed to do and which Bullis, having the confidence which he had in Kehoe, failed also to do. It is true that Kehoe received direct from Broderson the sum of \$5,000.00; and the question arises now after Kehoe received the sum of money, to whom did the money belong? Bullis had given Broderson a bond and mortgage. The purpose of raising this money on Bullis's part was to pay off the encumbrances which existed against the property that he was to buy from Watgen. Bullis authorized Kehoe as his attorney to handle this matter for him and to pay out of the said \$5,000.00 all of the encumbrances against the property. Bullis gave absolute dominion to Kehoe to handle this fund. It was Bullis's money and Kehoe, instead of paying out of Bullis's money the amount due on the foreclosed mortgage, misappropriated the amount to his own use. The question now arises, whose money did he misappropriate? It could not be Fountain's money because Fountain had neither legally nor technically come into the possession of the money. Fountain was one of the representatives of an estate and surely the control which Kehoe exercised over Bullis's money could not denote possession of the money in Kehoe's hands for the benefit of the estate.

Point Two (2) in petitioner-appellant's brief says further "Watgen further says (p. 24, Printed Case) 'Kehoe was Mr. Fountain's attorney' and he would take up the mortgage and pay Fountain." "I claim that that was a payment of a decree by Watgen, the grantor, to Kehoe, the solicitor of respondents and consequently a payment of the decree." Does it not seem ridiculous that by the mere hearsay of Watgen, petitioner-appellant wishes to bind Fountain in that they wish to construe Watgen's mere words as a

payment of the decree by Watgen, the grantor, to Kehoe? It is not so that by Watgen's consent and direction the money due on the decree was applied by Watgen on the payment of this decree. Watgen inherited the property subject to its encumbrances. The money due to the mortgage was not a personal debt due from him to the Fountain estate. Watgen was a mere vendor, who, after agreeing upon a certain price with Bullis, was to get the difference between the encumbrances against the property and the purchase price.

Kehoe was retained by Bullis to see that the title was clear and after making a search of the title, Kehoe must have informed Bullis that among other encumbrances against the property there was an open mortgage on record in favor of the Fountain Estate. There was only one thing for Kehoe to do and that was to pay off this encumbrance with the others out of the Bullis money which was borrowed from Broder-son. Watgen had nothing to do with this. Assuming that he was, however, interested in this part of the transaction, why did he not, before signing the warranty deed, either through his own instigation or through the instigation of his attorneys, Beekman and Spencer, see to it that this mortgage as well as the other encumbrances was cancelled of record.

In answer to the question at the end of Point Two:—"Could it be claimed that it was not a legal payment of the judgment, binding on the judgment creditor?" Could a contract be made between two parties for the benefit of the third party without the latter's consent or knowledge? There was no occasion "to hand the money over to

be simply handed back again." Kehoe was representing Bullis and with his (Bullis's) money Kehoe was to pay off these encumbrances.

Answers to Point Three (3).

"How can it be claimed that Bullis assumed under the evidence the payment of this decree?"

"Assumption of another man's obligation is a matter of law."

This is answered by Bullis's own answer to the Vice-Chancellor's questions (p. 28 of Printed Case) which follows:

"Q. When you sold the property and you got the balance of the money that was due you when Mr. Watgen sold you the property, you assumed all of these obligations here?

A. Yes.

"Q. To pay as part of the purchase price?

A. Yes."

Beekman and Spencer further prove that Bullis assumed the mortgage because they so wrote to Mr. Fountain on July 9th, 1915 which more fully appears by Exhibit C1 as appears on page 48 of the printed case and also as appears in a letter dated October 23rd, 1915 sent by William A. Spencer to Asbury Fountain in which he sets forth "Mr. Bullis assumed the payment of the balance due on the mortgage. Mr. Watgen has no legal interest in the property and you will have to look to Mr. Bullis to settle the amount due" (Exhibit C2, p. 49, Printed Case).

It seems to me it does not make any difference as to what was included in the statement rendered by Kehoe to Bullis as far as his receiving the amount due on this decree is concerned. The fact does stand out, however, that in the statement rendered by Kehoe to Bullis, it showed a

shortage of \$235.00 which Kehoe claimed to have paid out and for which he was reimbursed by Bullis proving thereby the relationship and understanding between Bullis and Kehoe.

To further argue under the circumstance if Bullis did not wish to assume the payment of this decree with the other encumbrances, he could have given Watgen the funds out of the \$5,000.00 loan with which to cover these matters but he elected to have Kehoe attend to these matters for him and since Kehoe misappropriated the funds which he was directed by Bullis to apply on this encumbrance, Bullis certainly must be the loser.

Testimony of Bullis—(Printed Case, p. 29) :

By Bullis's answers it is clearly shown that he knew of the Fountain mortgage, Kelly & McAlinden mortgage, Crouse mortgage and other encumbrances and in answer to questions by the court (on p. 30 of the Printed Case) it is also clear that Bullis entrusted Kehoe to pay all of these encumbrances off with his (Bullis's) money.

"Every debt you pay, you entrust the party you pay it to with the money." This is true and Bullis entrusted Kehoe with the money but unfortunately Kehoe did not use it for the proper purpose. It is true "this \$5,000.00, the Vive-Chancellor speaks of, came direct from Broderson to Kehoe" but whose money was it? It wasn't Fountain's. It wasn't Watgen's. It wasn't Kehoe's. It was Bullis's money. There is nothing in the testimony of Watgen to show that he ever directed Kehoe to apply the money for certain purposes, and the petitioner-appellant is again trying to fix this in Watgen's testimony (p. 24, Printed Case) "Kehoe was Mr. Fountain's attorney and he would take up the mortgage and pay Fountain."

Answers to Point Four (4).

There should be no question as to who should be the loser. The Vice-Chancellor covered the point thoroughly in his opinion when he said "the property was heavily encumbered and after paying the vendor the difference between the purchase price and the amount of liens, Bullis entrusted Kehoe with \$5,000.00 to pay off the liens. Kehoe failed to pay the complainants-respondents and the question is, 'Is Bullis or are the complainants to lose the amount of the thefts? Was it Bullis's money or the complainants' that Kehoe stole?' It seems to me it must be held that the thief stole the money when and as it was given to him; that is Bullis's money."

In this particular transaction whom did Kehoe represent? Surely he represented Broderson for the purpose of seeing that the property was an adequate security for the loan; Bullis admits that Kehoe represented him in the transaction and was entrusted with the money to pay off all encumbrances against the property. But was Kehoe there also, as an agent of the Fountain estate to receive this money? There is nothing to show that Bullis considered Kehoe Fountain's agent in any way. There is nothing to show that he even had knowledge that Kehoe was the solicitor in the foreclosure. But it does appear from the testimony and admissions that Bullis allowed this money to remain in Kehoe's hands, who, representing him, was to pay off all encumbrances including the one in question; and when informed by the Fountain estate that the mortgage had not been paid, he (Bullis) stated he "wanted a little time to see Mr. Kehoe about it;" that Mr. Kehoe had received those moneys from him to pay out; and that Mr. Kehoe had been

paid by Mr. Bullis for attending to these matters (Klein's Testimony, p. 36, Printed Case). This was not contradicted by Bullis.

Cases Bearing on the Question.

The case of Trustees of Synod of Reformed Presbyterian Church *v.* Levingston (60 Atlantic Reporter, 154), is strongly in point, which decides that the act of the appellant putting the money in the agent's hands was the proximate act of negligence which enabled him to carry out the fraud, the appellant, unfortunately for him, must bear the loss.

In this case Bullis, who put the money in Kehoe's hands, constituted thereby, the proximate act of negligence which enabled the latter to carry out the fraud.

It is well settled law that where the mortgagor allows money to remain in the agent's hands for the purpose of paying off encumbrances against the property and the agent embezzles the money, the loss must fall upon the mortgagor.

Pepper v. Cairns, 33 Penn., 114.

Henkin v. Schwicker, 19 Atlantic Reporter, 336; 174 N. Y., 298; 66 N. Eastern, 971.

Wherever one of two innocent persons must suffer by the acts of a third, he, who has enabled such third person to occasion the loss, must sustain it.

16 Cyc., 773.

The above principle is also cited as sound law in case of *Baldwin v. Richmond*, 9 N. J. Eq., 394.

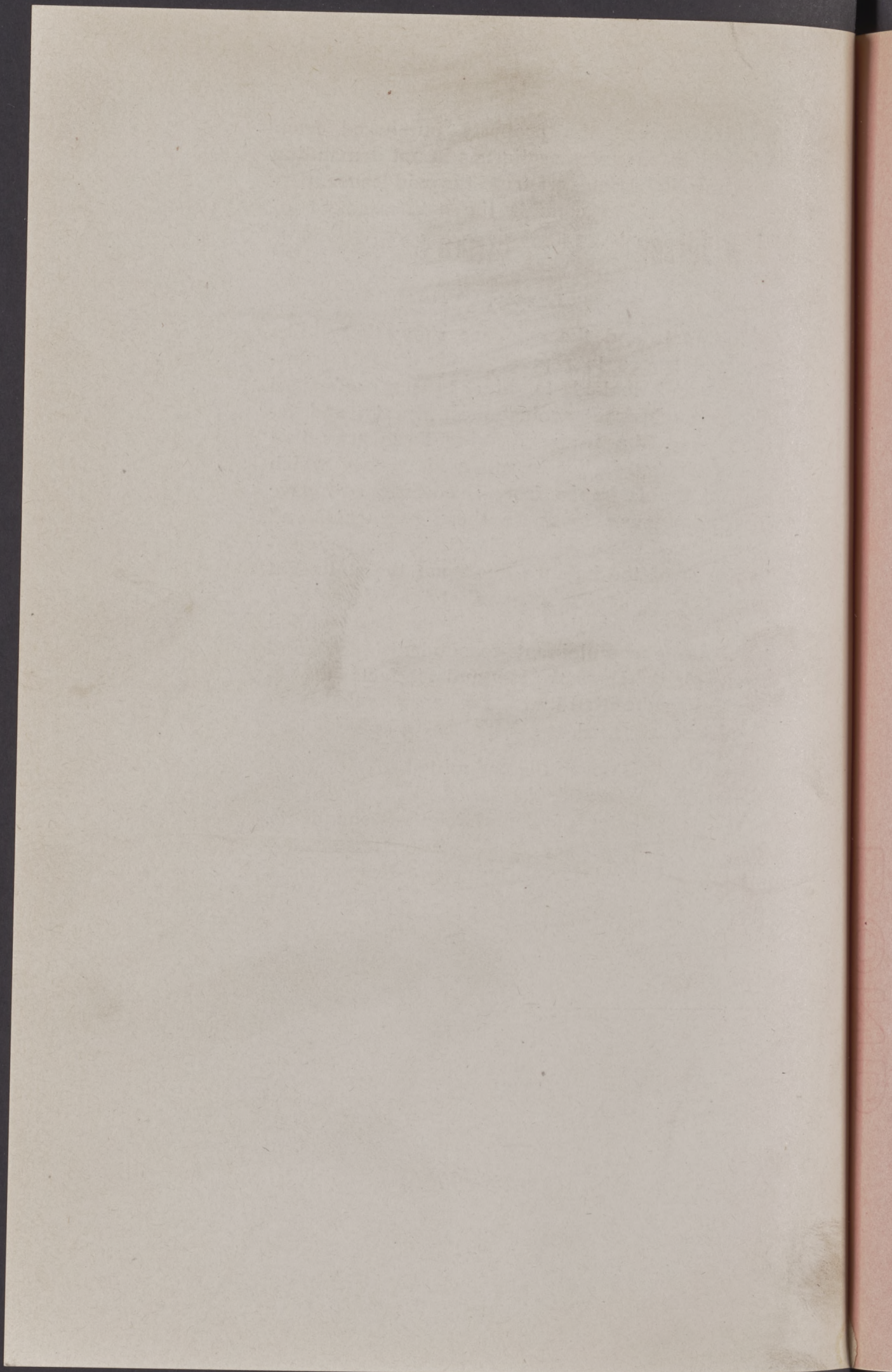
In the case at hand, Bullis, who entrusted Kehoe with the moneys to pay off the encum-

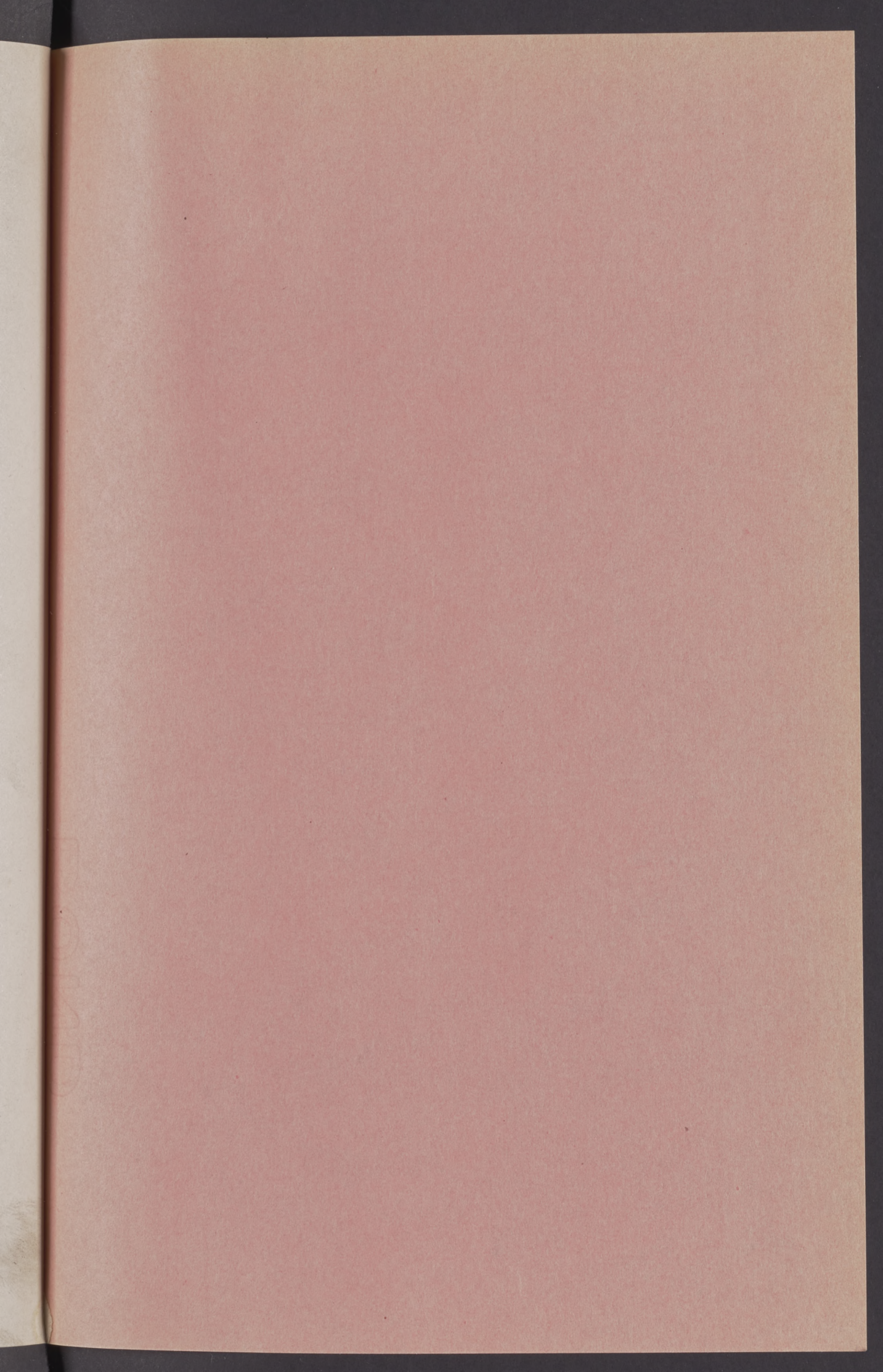
brances against the property purchased from Watgen, by his gross negligence in not demanding the cancelled mortgages from the said Kehoe, permitted Kehoe to commit the embezzlement of his (Bullis's) moneys.

Lastly.

The facts and the evidence show that Bullis retained Kehoe to represent him in this transaction and looked to him to pay off liens and encumbrances against the property, and remunerated him for performing these acts; that Bullis allowed Kehoe to retain his money which came into his hands from Broderson and gave him sole power to make these payments, and acquiesced in his acts as shown by his payment to Kehoe of the balance due upon the statement rendered to him by Kehoe; that there is nothing in this case to indicate that Kehoe first applied the sum to complainants-respondents' debt and then stole it. Upon the law and the facts is respectfully submitted that the order appealed from should be affirmed.

Respectfully submitted,
JACOB M. KLEIN,
Solicitor of Complainants-Respondents.
THOS. A. CHRISTOPHER,
Counsel for Complainants-Respondents.





W
O
R
L
D