

New Jersey Court of Errors and Appeals

Between

FREDERICK R. MADDOCK, Substi-
tuted Admr. &c. of EDMUND
F. HEATH, deceased,

Complainant-Appellant,

and

MARJORIE HEATH CONNOLLY,

et als.,

Defendants-Respondents.

*On Appeal
from the
Court of
Chancery.*

Brief for Appellant.

Statement of the Case.

The bill of complaint in this cause is filed to foreclose a certain mortgage made by Charles Heath to Edmund F. Heath, dated December 8th, 1892, and acknowledged the same day and registered in the Register's Office of the County of Essex on the sixteenth day of July, 1900, the said mortgage being given to secure the payment of \$30,000. in one year from the date thereof with interest. The mortgagor, Charles Heath, died on or about the 8th day of July, 1900, leaving a last will and testament probated in the Essex County Surrogate's Office on the twenty-seventh day of July, 1900, a copy of which is set out in the bill of complaint, and the said will is also Exhibit C. 4 (page 124). The said Charles Heath left him surviving as his next of kin and heirs-at-law his three children, Edmund F. Heath, Jr., Marjorie Heath and Carlotta Heath.

The said Edmund F. Heath, Jr., died intestate on or about April twenty-eighth, Nineteen hundred and nine, leaving him surviving his widow Bertha Baker Heath, who is also administratrix of his estate.

The mortgagee, Edmund F. Heath, died August eleventh, Nineteen hundred and four, leaving a last will and testament probated in the Essex County Surrogate's Office August twenty-third, Nineteen hundred and four, in and by which he did appoint his wife Margaret C. Heath the sole executrix thereof (Case p. 5).

The said Margaret C. Heath subsequently died and Edmund F. Heath, Jr., was appointed substituted administrator with the will annexed on August sixth, Nineteen hundred and six. The said Edmund F. Heath, Jr., died on April twenty-eighth, Nineteen hundred and nine, and thereupon the complainant Frederick R. Maddock was appointed substituted administrator with the will annexed on or about November first, Nineteen hundred and nine (Case, p. 5).

The defendants to the foreclosure bill are the two surviving children of Charles Heath, deceased, to wit, Marjorie Heath Connolly, wife of Henry G. Connolly, Carlotta Heath, a minor when the bill was filed but now of full age, and Bertha Baker Heath individually and as administratrix of Edmund F. Heath, deceased (Case, p. 8).

In the bill of complaint it is alleged that the bond and mortgage had been lost prior to the institution of the suit. In the answer filed by Bertha Baker Heath she joined in the prayer of the bill of complaint for the foreclosure and sale of the property mentioned therein.

Answers were filed on behalf of the defendants Marjorie Heath Connolly and Carlotta Heath denying the existence and validity of the bond and mortgage.

In the opinion filed in the Court of Chancery, it was held that the bond and mortgage were sufficiently established, but the court further held that the complainant was not entitled to recover in the action, because the court found that the bond and mortgage were without consideration (Case, p. 105).

GROUNDS OF APPEAL.

Pursuant to the decision of the Court of Chancery a decree was entered in said court on or about the seventeenth day of June, A. D., Nineteen hundred and thirteen (Case, p. 107), whereby the complainant's bill was dismissed with costs in favor of the defendants Marjorie Heath Connolly and Carlotta Heath.

The appellant now appeals to this court from the decree of the Court of Chancery claiming that he is entitled to the relief sought and prayed for by him in his said bill of complaint filed in this cause, for the several reasons which are set forth in the ensuing argument.

Argument.

1. *As to the lost instruments.*

(a) The existence, execution and delivery of the bond and mortgage mentioned in the bill of complaint has been fully established.

At the hearing Mr. Hemphill, general clerk in the office of the Secretary of State, produced the will and inventory of the estate of Edmund F. Heath on file in that office, which was received in evidence and marked Exhibit C. 1 (Case, page 29).

From the testimony of Mr. John D. Anderson, a member of the New Jersey Bar, it appears that he, together with the executrix Mrs. Heath, and one J. J. Toppin made the inventory and appraisalment. The

inventory was in the handwriting of Mr. Anderson as also was the item as follows:

“One bond and mortgage Charles Heath Estate \$30,000., value uncertain.” (Case, p. 31.)

Among the assets to be inventoried by the witness and the other appraiser, together with the executrix, was the bond and mortgage given by Charles Heath to Edmund F. Heath (Case, p. 35). The witness testifies positively to their existence and that he actually had the bond and mortgage in his hands (Case, p. 37), and relates the efforts that were being made to fix a value thereon. And finally, the witness states (Case, p. 41) that he believed the instruments were the original bond and mortgage.

The complainant in this cause testifies that he first became acquainted with Edmund F. Heath forty or fifty years ago and was associated with him in one capacity or another from 1882 down to the date of his death. The complainant was first bookkeeper for the firm of Edmund F. Heath & Son composed of the said Edmund F. Heath and Charles Heath. The witness also resided with Edmund F. Heath until the time of his death in 1904 (Case, pp. 43-44). The complainant was first bookkeeper and then became superintendent of the factory until Mr. Charles Heath died in 1900, when the witness became a partner with Edmund F. Heath and maintained that relation until the latter's death (Case, p. 45).

The complainant testifies that he was superintendent at the factory of E. F. Heath & Son the 8th of December, 1892, and that he had seen the bond and mortgage made by Charles Heath to his father mentioned in the bill of complaint. The bond and mortgage was kept in the safe of E. F. Heath & Son to which complainant had access, and that complainant saw the bond and mortgage about the time it was given about 1892 (Case, p. 47). The witness then proceeds to describe the papers he saw and states his familiarity

with bonds and mortgages, and that this particular bond and mortgage was regular in form. The mortgage was not recorded at the time he first saw it, but was kept in the safe of the firm for a number of years (Case, p. 48). After the death of Charles Heath, July 8th, 1900, the complainant saw the bond and mortgage at the office. Upon that occasion Edmund F. Heath gave it to him and directed him to take it down to the court house to be recorded (Case, p. 49).

The complainant also saw the bond and mortgage at the residence of Mr. Edmund F. Heath, 300 Roseville avenue, after his death, and was present at the time Mr. Anderson made the inventory (Case, p. 50).

The witness is not certain whether he saw the paper after the time of the making of the inventory or not. After the death of Mrs. Heath, the grandson, Edmund F. Heath, was appointed administrator of the grandfather's estate, and continued in that capacity until he died in 1909, when complainant was appointed administrator with the will annexed (Case, pp. 51 and 52). The complainant testified that this bond and mortgage never came into his possession since he was appointed administrator with the will annexed. He further testifies that he searched diligently for the instruments at 300 Roseville avenue, the homestead, and at 225 Warren street, the factory, and everywhere he could think of to try to find the papers, in the safes at the office and in the safe at the house. The witness also searched through all his papers and made inquiry of the counsel who had represented Mrs. Heath and the grandson Edmund (Case, p. 52 and 53).

Upon cross-examination the complainant describes the bond and mortgage and repeats what he had previously stated on direct testimony in respect to his inspection of the same (Case, p. 64 *et seq.*).

The complainant was examined by the court and cross-examined by counsel and thoroughly described

the instruments and their location from the time of their execution until the time of the making of the inventory of Mr. Heath's estate (Case, p. 68 and following).

At the hearing Bertha B. Heath, the widow of Edmund F. Heath, Jr., testified that she had no knowledge as to the whereabouts of the bond and mortgage (Case, p. 73).

From the testimony of the witnesses and the documentary proofs offered, the existence, execution and delivery of the bond and mortgage, was clearly established.

Furthermore, a certified copy of the registry of the mortgage was admitted in evidence and marked Exhibit C. 5 and is found on page 128 of the printed case. From the registration and the testimony of the complainant particularly hereinabove mentioned, the contents and character of the bond and mortgage are thoroughly established.

On this branch of the case the court below in the course of the opinion says:

"I am of opinion that the burden of proof so resting upon the complainant in this case has been fully met, and I shall assume without further statement or argument that the complainant has established the fact that an instrument of the sort mentioned in the bill once existed and that it was of the tenor and effect therein set out. I base my conclusion as to this fact upon the testimony of Mr. Maddock and the introduction of the certified copy of the registry of the mortgage, which I think is evidential on this point."

2. *As to the consideration of the bond and mortgage.*

(a) The bond and mortgage were given for a valuable consideration.

Upon the application of the counsel for the defendant Carlotta Heath, an order was entered in the Court of Chancery on or about October twenty-third, Nineteen hundred and twelve, appointing Richard F. Stevens as an expert accountant to make an examination of the books, papers and memoranda of all transactions of Charles Heath with Edmund F. Heath, personally, and also those of Charles Heath with the co-partnership of Edmund F. Heath & Son (Case, page 114). The report of General Stevens pursuant to the direction of the order aforesaid, was admitted in evidence and marked "Exhibit C. 6" and is found in the printed case, page 131 and following.

At the time the bond and mortgage bore date the said Charles Heath was associated with his father, Edmund F. Heath, in business under the firm name and style of Edmund F. Heath & Son.

From the report of General Stevens it appears that the books show that commencing with December ninth, 1892, and ending April 5th, 1893, Edmund F. Heath's personal account was debited by certain checks drawn to the order of Charles Heath amounting to the sum of \$32,132.16 and further that the stubs of the firm check book show that they were drawn in the handwriting of Charles Heath; and that the entries in the ledger were made by the bookkeeper of the concern (Case, pp. 75-77).

Furthermore, from the report of General Stevens, it appears that at the time of the death of Charles Heath on July seventh, Nineteen hundred, he was indebted to the firm of Edmund F. Heath & Son in the sum of \$26,548.11, and that his indebtedness remained in this situation upon the books at the time of the

death of Edmund F. Heath about four years later (Case, p. 78).

It is interesting to note that prior to the date of mortgage Charles Heath was indebted to the partnership in the sum of \$2,896.03 on July first, 1892, and that one year later he was indebted to the partnership in the sum of \$5,568.61. If any present consideration was needed it would seem that sufficient could be found in the item referred to (Case, p. 134).

Evidently the court below held the bond and mortgage invalid because there was no present consideration. Should present consideration be absolutely essential it would seem that what has been cited with reference to the partnership relationship would be sufficient to show an existing indebtedness which was expected to be increased. The court below seemed to hold that the mortgage was objectionable because it was apparently given to secure future advances.

In the first place, it is respectfully insisted that parol testimony is competent and admissible to show the purpose and intent for which the bond and mortgage was given.

In *Bell vs. Fleming's Exrs.*, 12 N. J. Eq. 13 at page 18 of the opinion is the following:

"The objection that parol testimony is not competent for the purpose of showing that the mortgage was executed and intended to secure a debt different from that expressed in the mortgage, was particularly noticed by the Vice Chancellor in the case of *The Bank of Utica vs. Finch*, 3 Barb. C. R. 297. Its admissibility was properly sustained on the ground that it was offered, not to contradict the written instrument, but to show the purpose and intent for which it was executed. But this objection must necessarily have been considered in every case where the validity of the mortgage for future advances has been sustained."

The observations of Vice Chancellor Pitney in *Campbell vs. Perth Amboy Ship Building Company*, 70 N. J. Eq. 40 at page 59 are pertinent to this subject. They are as follows:

“That it is quite competent for the parties to use the mortgage for a security other than that mentioned in it, is entirely clear and authoritatively settled.”

“It is authoritatively settled in this State that it is competent to prove by parol what the real object of a mortgage is, and that it is given for a purpose not disclosed in the condition.”

Of course, it must be remembered that the parties to this transaction have both been dead now for some years and under the circumstances the best and the only evidence available are the books of the partnership of which they were members and in which they were vitally interested.

In the opinion of the court below the bond and mortgage was considered null and void primarily because it was given to secure future advances. We repeat that at the date of the mortgage there was already existing an indebtedness from the son to the father. However, it is perfectly apparent from the evidence produced as shown by the books of the partnership and from the written records made by the mortgagor himself, that the mortgage was made, executed and delivered for the purpose of securing indebtedness from the son to the father quite independent of the partnership relation.

By reference to the schedule annexed to General Stevens' report (Case, p. 139) it appears that on the day following the date of the mortgage the mortgagor received the sum of \$1,750, and that between the ninth day of December, 1892, and the fifth day of April, 1893, the mortgagor received from his father \$32,132.16. It is a remarkable coincidence that the amount advanced immediately after the execution of the

mortgage should have been a sum a little in excess of the amount stated in the mortgage.

After these advances were made, it appears that the indebtedness of Charles Heath to his father in the partnership relation increased from year to year until at the time of his death on the seventh day of July, 1900, the balance due exceeded \$26,000. which remained unpaid at the death of the father and still remains unpaid.

Furthermore, by reference to the accounting made on behalf of the father as executor of his son's will, Exhibit D. Connolly 4 (Case, p. 155) it appears that the father was obliged to and did make advances personally for the purpose of settling up the affairs of the son's estate.

From the testimony of Mr. Maddock (Case, p. 49) it appears that after the death of Charles Heath he was directed by Edmund F. Heath to register the mortgage and he did so file the same for registration in the Essex County Register's Office on the sixteenth day of July, Nineteen hundred. This action on the part of the mortgagee certainly manifests an intention on his part to assert his rights under the mortgage and to secure the benefit of it as a security for the indebtedness due from his son to himself.

After the death of the father, Edmund F. Heath, in August, Nineteen hundred and four, Edmund F. Heath, the grandson, and his sister Marjorie Heath (now Marjorie Connolly), one of the defendants in this suit, purchased the interests of what are called the Canadian heirs in the residuary estate of Edmund F. Heath, and secured from the said Canadian heirs a deed of assignment marked "Exhibit D. Heath 1" in this cause (See Case, p. 140). By this instrument it appears that Marjorie Heath Connolly and her brother set out in detail the assets of the estate of Edmund F. Heath, their grandfather, and among them the following:

"Bond and mortgage given by Charles Heath and wife to Edmund F. Heath to secure the sum of Thirty thousand dollars covering property on the corner of Centre street and Hamilton road, South Orange, New Jersey, and property on Oakwood avenue, Orange, New Jersey, (Case, p. 145 l. 35-40), from which it is very apparent that Mrs. Connolly and her brother considered the mortgage an asset of the estate of their grandfather and were endeavoring to secure their interest in the same.

It is no objection to the validity of the bond and mortgage in this case because they were given to secure future advances. Among the earliest cases on this subject in this State is *Bell vs. Fleming's Exrs.*, 12 N. J. Eq. 13.

In the course of the opinion of the Chancellor it is said:

"It has been repeatedly decided that a mortgage to secure future advances is a valid security, as against subsequent encumbrances, for all advances made up to the time when such encumbrances intervened. Whether it will secure advances to the time only when the subsequent encumbrance was actually executed, or to the time of the actual notice of such future encumbrance, may be deemed not altogether a settled question. The authorities are numerous and are very decided and uniform in reference to the validity of such mortgages as against a subsequent lien for all advances prior to such liens being acquired."

In the same case on appeal, 12 N. J. Eq., 490, in the course of the opinion by the Court of Errors and Appeals, the Chief Justice says:

"It is objected that the mortgage did not constitute a valid lien upon the mortgaged premises, because the amount it purports to secure was not due at the time of its execution, being in fact given as a security for future advances. No ac-

tual fraud is imputed to the parties in its execution, but it is insisted that a mortgage given for future advances is not, in this State, a valid security as against subsequent encumbrances."

"That such mortgage given to secure future advances is valid as between the mortgagor and mortgagee does not seem to be seriously questioned.

* * *

"I think it must be regarded as a settled question in this State, as well as elsewhere, that a mortgage given for future advances is valid and that the registry of such mortgage entitles the holder to priority over subsequent registered encumbrances, under the provisions of our Registry Laws, at least for all advances made prior to such subsequent lien being acquired."

In the course of the opinion in *Holt vs. Creamer*, 34 Eq., 181, at page 188, Van Fleet, V. C., says:

"The validity of a mortgage made in good faith to secure future advances is no longer open to question. Such instruments have been repeatedly upheld by the courts of this State (Cases cited). To render them valid, it does not seem even to be necessary that the mortgagee should be under a binding obligation to make a further advance, but where that matter is left optional with him, so that he may do it or not, as he sees fit, they have been held good."

This subject is also considered in *Ward vs. Cooke*, 17 N. J. Eq., 93, at page 99. Here the Chancellor in the course of the opinion says:

"A mortgage given to secure future advances, duly registered, is good not only as against the mortgagor, but is entitled to priority over subsequent encumbrances, for all advances made prior to notice of the subsequent encumbrance."
(Cases cited.)

The parties defendant to this action stand in the place of the mortgagor. The rights of other encumbrancers are not involved in any way. Certainly, in view of the decisions above cited, there can be no objection to the bond and mortgage in the suit for the reason that the same were given to secure future advances. After the execution of the mortgage and within four months thereafter, a sum in excess of \$30,000 was advanced by the mortgagee to the mortgagor. These moneys have never been repaid and furthermore, upon the death of the mortgagor Charles Heath in Nineteen hundred, he was indebted to his father in addition to the above sum, to the extent of \$26,000 and upwards. After the death of the son the father immediately registered his mortgage and made every effort to secure himself as best he could. Outside of the real property mentioned in the mortgage, the mortgagor, Charles Heath, had but little property, all of which is set forth in the inventory filed by the father as executor of the son's will (Exhibit D. Connolly 1 page 148).

For these reasons, it is respectfully insisted that the decree of the Court of Chancery should be reversed, set aside and for nothing holden, and that the appellant is entitled to the relief sought and prayed for by him in his bill of complaint filed in this cause.

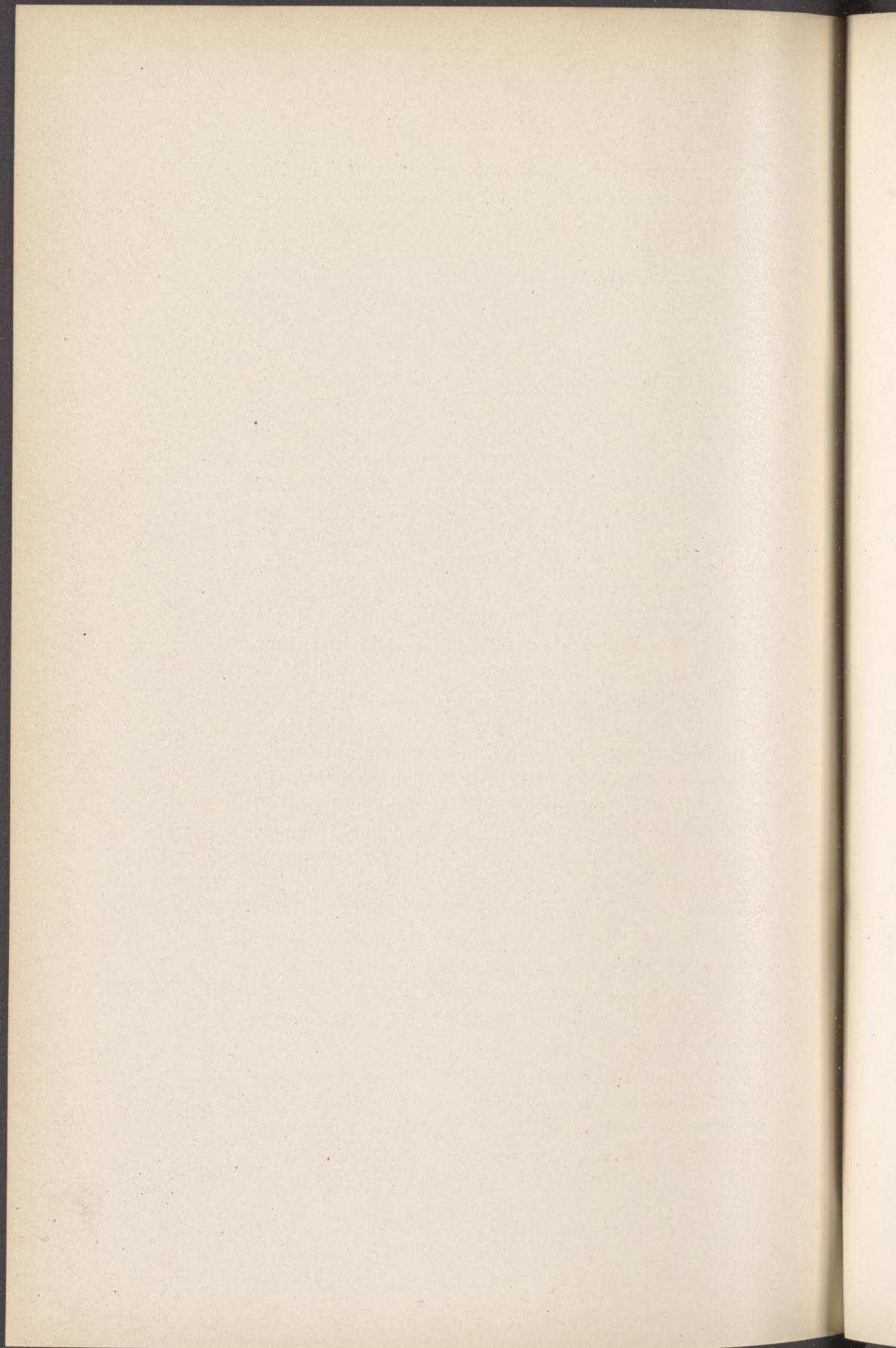
LUM, TAMBLYN & COLYER,

Of Counsel with Appellant.

RALPH E. LUM,

EGBERT J. TAMBLYN,

Of Counsel.



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On Bill, &c.

On Appeal, &c.

Brief for Carlotta Heath, Defendant.

STATEMENT OF FACTS.

This suit was brought for the foreclosure of a mortgage alleged to have been made by Charles Heath, in his lifetime and on December 8th, 1892, to his father, Edmund F. Heath, to secure a bond of even date for \$30,000 payable in one year. The mortgage covers three tracts of land, one the homestead of the mortgagor situated in South Orange, and two vacant lots in Orange.

The bond and mortgage are sued on as lost instruments and much of the testimony in the case is directed to showing their loss and to proving them by secondary evidence.

The testimony would seem to indicate that these two instruments are not now existent. When last seen they were in the possession of Mrs. Edmund F. Heath, the wife and executrix of the mortgagee and

the mother of the mortgagor. If they were still in existence after her death they passed into the possession of her grandson (and the son of the mortgagor), Edmund F. Heath, Jr., who succeeded his grandmother in the administration of the estate of Edmund F. Heath, the mortgagee. Both Edmund F., Jr., and his grandmother, presumably, knew of the bond and mortgage and of the circumstances under which they came to be made. Each of them had the right to cancel them. Each of them had plenty of justification for doing so. It is more than likely that one or the other of them destroyed the papers, in the belief that by so doing they discharged the debt and the lien they created.

Such information as we have of the early history of the bond and mortgage is obtained from the testimony of the complainant. He had for ten years prior to the date of the papers been intimately connected with Mr. Edmund F. Heath, both in his family and in his business; in 1892 he was superintendent of the factory; and after the death of Charles he succeeded him as a partner in the business. From him we learn the following:

That is 1892 and prior thereto Edmund F. Heath (the mortgagee) was in partnership with his son Charles (the mortgagor) in conducting a prosperous business of making enameled cloth, carried on at 225 Warren street, in the City of Newark, under the firm name of Edmund F. Heath & Son (pp. 42-6).

That he saw the bond and mortgage prior to the death of Charles Heath in 1900; and that they were kept in the safe at the office, to which safe, Charles Heath, Edmund F. Heath, one McCarroll, the bookkeeper, and he, the witness, had access (pp. 46-9); this safe was always open in business hours and any one in the office authorized to go there had access to it; and Charles Heath had "full access" to the papers at any time (p. 55).

That the bond and mortgage were in the safe at the time of the death of Charles on July 8, 1900. About three weeks later [in fact it was only eight days, if the registry of the mortgage is properly in evidence, which shows that the mortgage was registered in the Register's Office of Essex County on July 16, 1900 (p. 128)] the mortgage was handed to the witness by Edmund F. Heath for the purpose of being recorded and it was taken to the Register's office by him and there registered (p. 49).

From the testimony of the complainant and from the other evidence in the case these facts appear:

1. There was no evidence of any actual delivery of the bond and mortgage in suit.
2. That a bond and mortgage from Charles to his father, presumably the bond and mortgage in suit, were kept in a safe in the office of Edmund F. Heath & Son, and while there were as much under the control and in the possession of Charles Heath, the mortgagor, as of Edmund F. Heath, the mortgagee.
3. That they remained in the safe from December, 1892, until after the death of Charles in July, 1900, a period of nearly eight years, and during all that time no interest or principal was paid upon any debt they might have secured and the papers do not seem to have possessed any importance.
4. That for nearly eight years and not until after the death of Charles was the mortgage registered.
5. That the wife of Charles did not join in the mortgage (p. 94, l. 18, 128).
6. There were no fire insurance policies held as collateral to the mortgage (p. 57), although there were valuable buildings on the mortgaged property.
7. That the mortgage (and presumably the bond also) was incomplete, in that the interest rate was

not agreed upon and was left blank (pp. 48, 128, 130).

8. At the time the mortgage bears date Charles Heath was not indebted to his father (p. 70).

9. There was no entry made in any of the books of account of the bond and mortgage, although the mortgagee was a man of strict business habits.

10. There was no record in any book of account, or on the bond, or any where else of the payment of any interest, or of the payment of the principal or any part of it.

11. That upon the death of Charles, Edmund F. Heath acted as executor under the will of his son, administered upon his estate and took possession of the mortgaged premises; and he did not treat himself either as a mortgagee in possession, or as a creditor of the estate. On the other hand he collected the rents and appropriated them to the payment of his son's debts (pp. 124, 148, 152, 157).

12. That Edmund F. Heath never accounted to the estate of Charles Heath for the interest of the decedent in the co-partnership of Edmund F. Heath & Son, the value of which must have been considerable, for at the time of the death of Charles the yearly profits were about \$15,000 (pp. 86, 99).

To these it should be added that Charles was the only child of his father and their relations were evidently more than usually close and tender (pp. 95-8, 99, 100, 103).

I.

THERE WAS NO DELIVERY OF THE
MORTGAGE.

The bond and mortgage themselves not being in existence to be produced at the trial by the mortgagee to then prove themselves, the burden of proving not only the original execution of these instruments, *but of their delivery*, fell upon the complainant.

There was no proof of actual delivery, nor were there any facts shown from which delivery could be inferred.

The bond and mortgage were both incomplete in that the interest rate was left blank; the mortgage was not executed by the wife of Charles; there were no fire policies collateral to mortgage; there was no evidence that when the papers were executed Charles was indebted to his father, and the mortgage was left for years unregistered. In addition to these significant facts, the instruments were kept in a safe, which did not contain the valuable papers and securities of the mortgagee (p. 56), but which contained generally the firm's papers, which safe was as much in the control and possession of Charles as it was of his father.

The mere fact that the mortgage was found in the safe was under the circumstances no evidence whatever of delivery.

To show delivery there must be proof of that which evinces an intention on the part of the grantor to part with the instrument, and this intention must be made to appear either from the circumstances of the transaction, or from the acts or words of the grantor.

Terhune vs. Oldis, 17 Stew., 156.

Vreeland vs. Vreeland, 3 Dick., 56.

The possession of the instrument by the grantee is, of course, strong evidence of delivery. But, on the

other hand, as Vice-Chancellor Van Fleet in *Vreeland vs. Vreeland* says: "Where the deed is found in the possession of the grantor his possession is regarded as furnishing equally strong evidence that it has not been delivered."

Tested by these cases there is nothing in the evidence to sustain the complainant's case.

It is intimated in *Terhune vs. Oldis* that an acknowledgment is sometimes evidence of delivery. But obviously such evidence is very weak at the best (27 *Cyc.*, 1113). In many of the cases to be found in the books where the delivery of deeds was questioned the instruments were acknowledged. Charles Heath might well have retained the mortgage in his possession, even though it had been acknowledged.

It is also intimated in *Terhune vs. Oldis* that registry is usually *prima facie* evidence of delivery, and this may be accepted as a general principle of law. But obviously registry to be effective as evidence in such a case must have relation to the date of the deed, and it is only when the registry is made immediately after the date of the deed that such a fact is of importance. If there is an unreasonably long interval of time between the date of the deed and the date of its registry this fact might well be a circumstance to cast doubt upon the fact of delivery. And where the deed is left unrecorded for years and is then only recorded after the death of its grantor it is rather evidence against the delivery than for it. The fair inference in this case is, that as the mortgage was not recorded till after the death of Charles Heath, nearly eight years after it was made, it was not discovered by the father till then and that there was never any delivery of it.

It is respectfully insisted that the complainant wholly failed in his proof of delivery, and that the learned Vice-Chancellor might well have rested his opinion upon this branch of the case.

II.

THERE WAS NO CONSIDERATION FOR THE MORTGAGE.

The testimony shows that on December 8, 1892, the date of the mortgage, Charles Heath was not indebted to his father or to the firm. This is the testimony of the expert accountant called into the case and whose evidence was relied upon in the place of the books of account themselves (p. 78, l. 25).

It is insisted, however, that the mortgage was given for future advances.

A mortgage to secure future advances is good, and it is not necessary that the purpose should appear on the face of the mortgage.

Griffin vs. N. J. Oil Company, 3 Stock., 49.

Bell vs. Fleming, 1 Beas., 13; *Aff'd on Appeal*, *Ib.*, 490.

These cases also hold that parol evidence is admissible to prove the real transaction.

There are many cases in our books relating to mortgages for future advances, and wherever a mortgage securing a fixed stated debt has been held to be a mortgage for future advances, evidence of the consideration or evidence of the intention of the parties has been shown.

In this instance there is no other evidence except the fact that shortly after the mortgage the father advanced to the son \$32,132.16.

It is respectfully insisted that the mere fact that these payments were made shortly after the making of the mortgage, which it is to be observed, exceed the face of the mortgage, does not raise an inference that they are connected with the mortgage.

Assuming that it is proved that the moneys in question were actually advanced by the father to the son, and did not come to the son through his in-

terest in the partnership, then the fairer inference is, in view of the extraordinary relations that existed between the father and the son, that the moneys he gave him were gifts. Where everything is to be settled by inference only it is much fairer to ascribe these payments as a gift than it is to associate them in any way with the mortgage.

As against the idea of connecting the subsequent moneys which Charles received with the mortgage we have the significant facts which are set forth in this brief in the Statement of Facts, viz.: (1) that the wife of Charles did not join in the mortgage as she surely would have done if it had been intended as security for so large a sum as \$30,000; (2) that the mortgage was incomplete, in that the interest rate was not agreed upon; (3) that there were no fire policies belonging to the mortgage; (4) that the mortgage was not registered for eight years and until after the death of the mortgagor; (5) that after the death of Charles, his father, even after he had become executor and had taken possession of the mortgaged premises, did not treat himself as a creditor of the estate, or even as a mortgagee in possession, and (6) the absence of any statement of the mortgage in any of the accounts between the father and the son.

It is respectfully insisted that the conclusion of the learned Vice-Chancellor that the complainant failed to show that there was any consideration for the mortgage was entirely justified.

III.

THE MORTGAGE HAS BEEN PAID OR
SATISFIED.

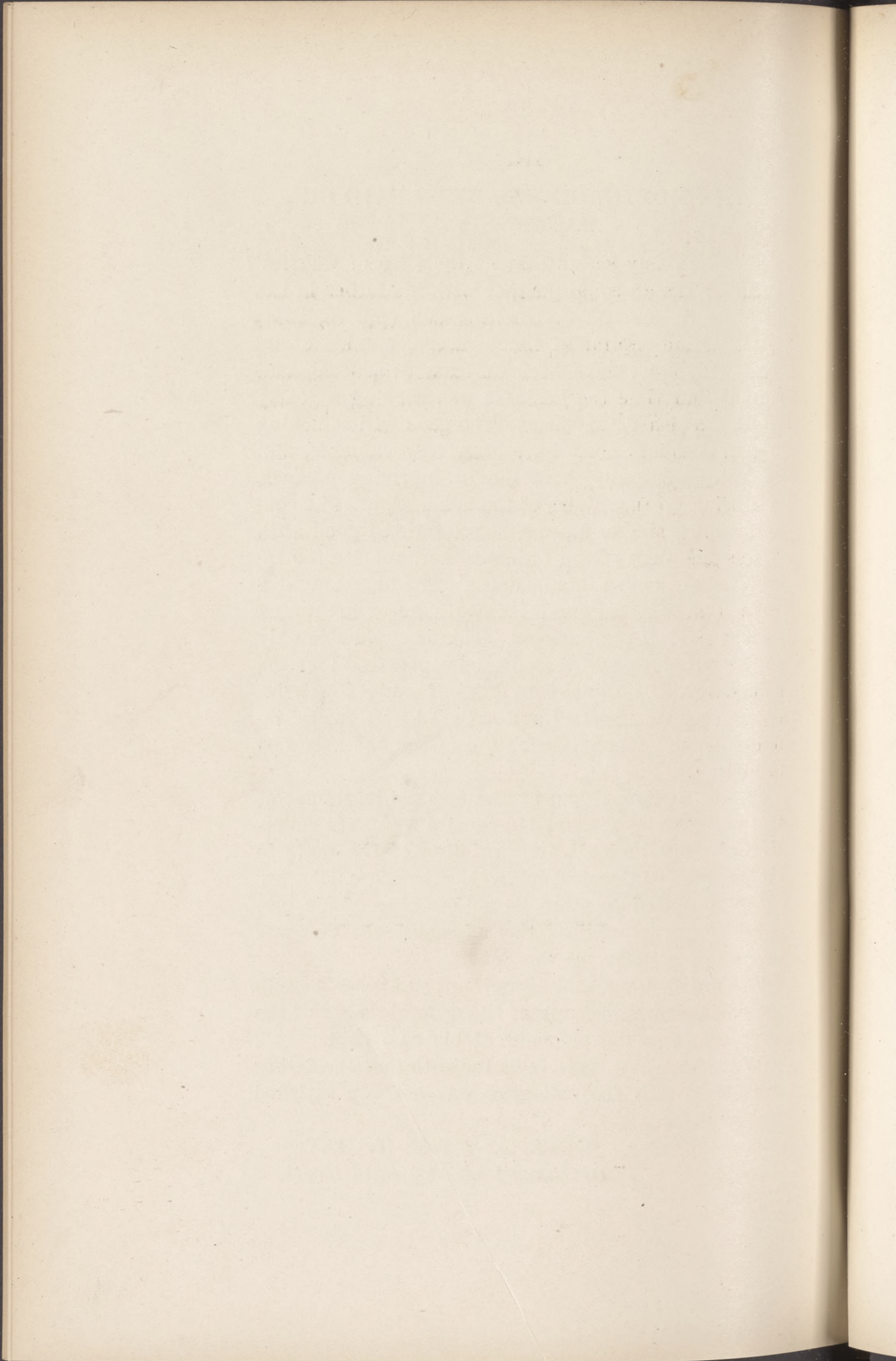
The testimony shows that at the time of Charles' death he was an equal partner with his father in the business of Edmund F. Heath & Son (pp. 75, 103), and that the capital of that concern, outside of its good will, must have been at least \$75,000.00, and that at that time the business was earning a yearly profit of at least \$15,000.00. The good will attaching to that business must have been very valuable, and the cases, generally, hold that a surviving partner, in settling up the affairs of the business, or if he continue the business, must account for the good will. It was the duty of the father to account for the interest of the son in this business. The testimony discloses that Mr. Edmund F. Heath never accounted for any part of the business. This is explicable only on the theory that at the time he considered that the indebtedness of Charles to himself and of Charles to the firm were settled and satisfied by Charles' interest in the business, which the father had absorbed to himself.

This is further shown by the father's treatment of the mortgaged premises, his repairs to it, his collection of rents, and his appropriation of the rents to the payment of Charles' debts. Furthermore, Charles' debts amounted to more than the value of his personal property, and the father advanced whatever was necessary to make up the deficit.

The father never held himself out as his son's creditor nor appropriated any of the general assets of the son's estate to the payment of his own debt.

We think all of these facts indicate that the father considered that the mortgage was entirely satisfied and paid.

EDW. A. & WM. T. DAY,
Of Counsel with Carlotta Heath.



New Jersey Court of Errors and Appeals

Between

FREDERICK R. MADDOCK, Admr.,
&c.,

Complainant-Appellant,
and

MARJORIE HEATH CONNOLLY,
et als.,

Defendants-Respondents.

On Appeal
from
Chancery.

Brief for Marjorie Heath Connolly.

I.

DECREE BELOW SHOULD BE AFFIRMED FOR THE REASONS GIVEN BY THE VICE-CHANCELLOR AND OTHER REASONS.

The Vice-Chancellor was right in holding that there was no sufficient evidence of any consideration for the alleged mortgage.

The complainant asks the aid of a Court of Equity to establish a lost instrument and to cut off defendants' equity of redemption.

It is plain that they should be required to give full and complete proof that the bond and mortgage were actually made and delivered, and that they were so made and delivered for a consideration which remains unpaid.

They must prove that there was consideration for which the mortgage was given and if this consideration was a debt then that the debt is due.

No account is produced showing any indebtedness from Charles Heath to his father at the date of the alleged mortgage.

There is no proof whatever of the mortgage being intended for future advances. The mortgage was for \$30,000. If the items (p. 139) showing checks drawn to Charles Heath's order constituted advances by Edmund F. Heath to Charles Heath, they are in no way connected with this mortgage.

The first alleged advance was December 9th, 1892, \$1,750. There is no other item until fifty-three days afterwards, and not until April 5th, 1893, or nearly four months after the date of the mortgage is an advance made, which does not make up \$30,000, but a sum of \$2,132.16 in excess of \$30,000.

If these items represented a debt secured by the mortgage, we should expect them to make up exactly the amount of the mortgage. As they do not do so the presumption is more strong that these items do not represent a debt for which the mortgage was given, and if they do stand for a debt it is not the debt said to be evidenced by the bond and mortgage.

The checks are *prima facie* evidence payment to Charles Heath by the firm of which he was a member. His endorsement of them does not even evidence a debt to the maker of the checks, who was the firm and not Edmund F. Heath.

The bookkeeping entry "E. F. Heath account" and the debitting of these items to that account seem to us only to show a payment by the firm to Edmund F. Heath of the various items.

Where are the checks themselves? It would seem easy to trace these checks and find out how they were applied. If they went to pay a debt of Charles Heath it would be some evidence that the transaction was the advancement of money by Edmund F. Heath to Charles. In default of such evidence, which ought to be within complainant's control, we have the right to

assume that they were applied for the benefit of Edmund F. Heath. They may represent some stock transaction or some other venture of Edmund F. Heath which he did not care to have it known that he was connected with. Such artifices are quite common among capitalists and business men.

The giving of these checks and the bookkeeping in connection therewith do not evidence that the mortgage was for future advances and that the items mentioned are the future advances intended to be secured by the mortgage. The presumptions, as we have shown, are quite the other way.

Complainant must prove that there is money due on the mortgage in order to foreclose. *Perkins vs. Realty Co.*, 3 Robb., 723.

A mortgage is the mere incident of a security for the debt.

Shields vs. Lozear, 5 Vr., 496-503.

Blue vs. Everitt, 56 N. J. Eq., 455-8.

Courts of Equity inquire into consideration of a mortgage for purpose of ascertaining what is due. *Farnum vs. Burnett*, 6 C. E. Gr., 87-89; *Shotwell vs. Shotwell*, 9 C. E. Gr., 378-385.

When the mortgage presents only a case of contract. *V. C. Garrison* held in *Perkins vs. Realty Co.* "The mortgage may only be foreclosed or rights under it enforced when there is a debt to secure which it is given." * * *

"If there be no debt then there is no right to enforce the mortgage, and the matter of consideration may be inquired into for the purpose of showing there was no debt." See pages 726-727. *Perkins* case—holding that consideration must be inquired into in order to enforce foreclosure.

Complainant has not met the burden of proof to show that any money was advanced on the mortgage when it was taken, or to prove that it was a mortgage for future advances and that money is now due on the mortgage.

II.

PROOF WAS INSUFFICIENT TO ESTABLISH
THE EXISTENCE OF A LOST BOND AND
MORTGAGE.

The Bill of Complaint (p. 1) alleges the execution on December 8th, 1892, of a bond, in the penal sum of \$6,000 conditioned for the payment of \$3,000 in one year at per cent per annum.

It also alleges (p. 2) that to secure the moneys represented by this bond, a certain mortgage was given.

The Vice-Chancellor decided that complainant had met the burden of proof necessary to prove the existence at one time of "an instrument of the sort mentioned in the bill" and that it was of the tenor and effect in the bill set forth.

He bases his conclusion (p. 105, l. 25) on the testimony of complainant and the registry of the mortgage which he holds to be evidential.

Maddock's testimony is most unsatisfactory. Briefly it is as follows: Maddock testified (p. 46, l. 30), that he had seen a bond and mortgage from Charles Heath to Edmund F. Heath (p. 47, l. 22). It was kept in the firm's safe, and he saw it about 1892. Asked to describe them he says (p. 48) that they covered property 458 Centre street, South Orange, and 200 feet of property in Orange. They were in the handwriting of George S. Duryee, and seemed to him regular in form, for \$30,000; rate of interest blank. Charles Heath died in 1900 and from 1892 the bond and mortgage were kept (p. 49) in the firm's safe, to which Charles Heath and others had access. Edmund Heath in 1900 after Charles Heath's death gave it to witness to register. Witness never saw it again until after Edmund F. Heath's death (p. 50). Edmund F. Heath had a safe at his house and witness saw it after Mr. Heath's death

(which occurred in August, 1904), at Mr. Heath's house. It had been taken by witness with other papers to Mr. Heath's house after his death and inventoried there (p. 51). He afterwards thinks he saw them in Mrs. Heath's possession (p. 52). It never came into his possession (p. 55). The bond and mortgage were in the office safe among other bonds and mortgages when witness first saw them. They were in an open pigeon hole of the safe, open to everyone, and Charles Heath had full access to it (p. 56). Edmund F. Heath kept special securities of his own in his house and the firm's safe was for firm papers. Witness saw George Duryee's name on the papers somewhere. He didn't look at acknowledgment (p. 57). There were other mortgages of Mr. Heath's in the pigeon hole. He remembers no insurance policy with the bond and mortgage. Mr. Heath never took the bond and mortgage to the house in his lifetime. Witness never saw the bond and mortgage after it was inventoried. All Mr. Heath's papers were passed over to his son Edmund who (p. 59) was administrator of his grandfather's estate from 1907 to 1909. Witness advised as to settling up Edmund F. Heath's estate, during young Edmund's lifetime (p. 60). He last saw bond and mortgage when it was inventoried (p. 61). He gave the papers to Mrs. Heath (p. 64). Bond and mortgage was for \$30,000, in one year (p. 67). Another mortgage of \$10,000 on Charles Heath's homestead covered by the mortgage in suit (p. 68). Don't think he read the bond particularly. Can't remember about bond, whether there was a thirty days' clause. He read the mortgage all through (p. 69). Had tax clause in mortgage, can't say about insurance clause. Mortgage was partly printed and partly written. Also bond (p. 70). Read mortgage after Mr. Heath's death. Covered Centre street and Oakwood avenue property (p. 91). Centre street property has house on it. House rented about a year after Charles' death—it was improved.

This witness does not plainly put before the court the contents of the lost instruments. The court must clearly understand the exact tenor and nature of the mortgage it is asked to enforce, and Maddock does not supply this. Further proof is also lacking on the following points:

A.

There is no proof of the actual execution of a bond and mortgage by Charles Heath to Edmund F. Heath.

The only way that these documents could be legally proved, if actually produced, is by calling the subscribing witness, or if he is dead, proving his signature or the signature of the maker.

Maddock does not testify that the signatures of these documents were in Charles Heath's handwriting, or that they were witnessed, who the witness was and that he knew witness' signature. He merely says that he saw a bond and mortgage purporting to be executed by Charles Heath, but the legal proof of its actual execution is wholly lacking. And yet Maddock was probably entirely competent to prove Charles Heath's handwriting and signature.

B.

There is no sufficient proof of the contents of the bond or when it was payable.

Maddock says he did not read the bond particularly and can't remember any special clauses in it.

The bond might have had various special conditions, making it only payable in case of some contingency which may not yet have happened or may never happen.

C.

The existence of the bond, its terms and execution cannot be proved by the registry of the mortgage.

The registry act directs that the clerk shall register and enter certain facts in regard to mortgages produced before him. He is to enter the mortgage money and when payable. C. S. 3417, sec. 17. He has no right or duty to mention any bond, and if he does so the mentioning of it is not evidence.

Consequently as to the bond, Maddock's evidence certainly was not helped by the registry.

D.

Alleged proof of the execution of the mortgage itself is not helped by the registry.

Until recently the registry of a mortgage has never been claimed to be evidential of its execution and contents. *R. R. Co. vs. Suydam*, 17 N. J. L., 25, 60; *Harker vs. Gustin*, 12 N. J. L., 42.

It is now claimed that it is evidential by force of the statute C. S. 3413, section 17a, which provides that where an entry or abstract of a mortgage shall be made "as authorized in the seventeenth section of the act such entry or abstract and a transcript of such entry duly certified shall be received as secondary evidence in any court of this state in the same manner as the record of deeds is received and shall be evidence of the facts therein stated."

We remark: 1. That the abstract must be made as authorized by section 17.

2. That when so made it shall be received in evidence in the same manner as the record of deeds is received.

3. That it is only when it is abstracted as authorized and received in evidence is it proof of the facts therein stated.

We turn then to see what the clerk may abstract.

Section seventeen authorizes the clerk to abstract and register the following facts:

1. Name of mortgagor and mortgagee.

2. Date of mortgage.
3. Mortgage money and when payable.
4. Description of land.
5. Date of registration.

So far as the registry of the mortgage (c. 5, p. 128) sets forth that the mortgage money was payable according to the condition of a bond of even date. That no application for deduction should be made for taxes; that it was acknowledged December 8th, 1892; that such acknowledgment was before Edward S. Duryee, Master in Chancery, or that the mortgage was acknowledged at all; the registration of these facts was not authorized by section 17, and certainly these facts cannot be proved by the document.

Mortgages need not be acknowledged to be registered. *N. J. R. R. Co. vs. Suydam*, 17 N. J. L., 60.

But no deed can be recorded unless it is legally acknowledged (C. S. 1549, sec. 41). *Pinkney vs. Burage*, 31 N. J. L., 21, and the record cannot be offered in evidence unless it appears to be legally acknowledged. *Fox vs. Lambson*, 8 N. J. L., 275; *Harker vs. Gustin*, 12 N. J. L., 43; *Armstrong vs. Rice*, 29 N. J. E., 110; *Doremus vs. Smith*, 4 N. J. L., 142.

It could not be intended that the mere abstract of a mortgage should more easily prove the facts and contents of the mortgage than the record in full of the deed or the mortgage. The record in full of a mortgage authorized by C. S. 1541, sec. 21, if defectively acknowledged, would then be no evidence while an abstract of the same mortgage would be full evidence. The record of a deed which appears to be informally acknowledged would be no evidence and an abstract of a mortgage not acknowledged at all or incorrectly acknowledged is full and complete evidence.

Can we imagine that the legislature intended any such absurdity?

C. S. 3413, sec. 17a. evidently intended to make the registry of a mortgage only as good as the record of a deed; not better and only as good as a deed when it proves, or it is proved *aliunde* that it was properly and formally executed and acknowledged.

The record of a deed not acknowledged or improperly acknowledged, might be received in evidence in various cases, *e. g.*, when it is referred to in the chain of title of the party against whom it is offered or he had actual notice of it. In these and other cases which may no doubt occur to the court, the proof of the facts in such deed stated might be admitted, in evidence, or when the record showed defective acknowledgment it might be proved that it was in fact correctly acknowledged.

The statute C. S. 3413, sec. 17 A. may be so construed to give it some efficacy, but so far as making the abstract evidence of the contents of the mortgage, and of the facts therein stated, the statute does not help complainant in default of proof, which does not exist in this case, that the mortgage was legally and properly executed and acknowledged.

E.

The abstract of the mortgage offered in evidence was not made according to C. S. 3413, sec. 17.

As construed by complainant's counsel it produces an absurdity. This we have shown. Such statutes should be construed according to their letter and most strictly. They are extremely dangerous.

As the registration sets forth other things besides what is authorized to be abstracted in section 17, it is not in accordance with that section. By such surplusage the whole registration is vitiated so far as it may be claimed to be evidence.

F.

The decision *Chase vs. Caryl*, 28 Vroom, 545, does not help complainant.

The decision made in 1895 is one by the Supreme Court and not binding on this court.

The decision was that the record of a mortgage recorded at length in New York, and which New York laws provided might be read in evidence with the full force and effect as the original conveyance, was entitled to be so read in evidence here by force of the United States Constitution. The case gives (pp. 552-554), a history of our recording and registration acts and in doing so recite C. S. 3413, sec. 17a.

The decision does not attempt to construe or apply that section. It merely notes the fact of its existence and summarizes its contents as set down in the statutes. The decision has no application to the case in hand. And the point decided was probably wrongly decided.

III.

PROOF WAS INSUFFICIENT OF THE DELIVERY OF THE BOND AND MORTGAGE.

There was no delivery of the alleged bond and mortgage. This is shown :

A.

Because the document was incomplete. It is admitted by the bill: Maddock testifies and the registration, if evidence, shows that though the parties contemplated that some interest should be paid, the rate of interest was left blank. Papers are often drawn up, acknowledged and executed with the rate of interest left blank. But that rate is usually filled in before the delivery of the papers. The fact that interest was provided for, but the rate of such interest

was not mentioned, is strong evidence that the minds of the parties had not met, and that they had not finally made their agreement, and had not actually delivered the papers.

B.

Because mortgagor's wife did not join in the mortgage. It is also to be considered that in 1892, Mrs. Charles Heath was alive. If this mortgage was intended to secure a debt owed by Charles Heath, it is strange that his wife should not have joined in the mortgage.

C.

Acknowledgment is insufficiently proved.

The acknowledgment of an instrument is often said to be proof of delivery.

Maddock testified that the papers were in the handwriting of George S. Duryee (pp. 56-30). He says he didn't recollect looking at the acknowledgment.

Q Can you tell us whether George Duryee took the acknowledgment? A I rather think he did. That is my impression.

This is the only attempt at evidence that there was any acknowledgment.

The acknowledgment, to be of any force, must contain a certificate, by a legally authorized officer, that he was satisfied that the party acknowledging was the party named in and who executed the instrument; that he made known its contents and that the party acknowledged it.

It is only such legal acknowledgments that are evidence of delivery and the proof falls far short of showing such acknowledgment, or that it was acknowledged before an officer authorized to take the acknowledgment.

The registration is no proof that the mortgage was acknowledged because the fact of its being acknowl-

edged is an extraneous matter, which the register is not directed to make and if he does make could not be evidence. We have argued this point in commenting on C. S. 3413, section 17 and 17a.

If the registration could be evidence it would contradict Maddock as to the mortgage being acknowledged before George S. Duryee.

D.

Charles Heath never parted with the control of the bond and mortgage.

The papers were left in a pigeon hole of the firm safe, to which both parties had access. It was not put aside in Edmund F. Heath's separate part of the safe or taken to his depository for private papers at his home.

To constitute a delivery the grantor must part not only with the possession but the control of the deed and deprive himself of the right to recall it. 1 Halst. Chy., 430.

In order to pass title by conveyance there must be such an actual or constructive tradition from the grantor to the grantee as puts it beyond the control of the former and it must be accompanied by an intention to pass title. *Martling vs. Martling*, 2 Dick., 132.

The retention of the deed by the grantor is strong evidence of non-delivery. *Farlee vs. Farlee*, 1 Zab., 279. *Vreeland vs. Vreeland*, 3 Dick., 56.

Garroch vs. Sherman, 2 Halst. Chy., 219, holds that unless bond is delivered, a mortgage given cannot be foreclosed.

E.

The papers are not treated as a delivered document. Such instruments are usually promptly recorded. Yet it is kept off the record from December 8th, 1892, to

July 16th, 1900—over 7½ years. Apparently the first time Edmund F. Heath treated the paper as a delivered paper was after Charles was dead and he could not protect or object, and eight years after Charles Heath's death the mortgage is merely abstracted—not recorded.

F

The only evidence of the actual possession of the mortgage is that of Edmund F. Heath, after the death of Charles, and when he was executor of Charles.

Edmund's possession at this time was the possession of the estate of Charles Heath. He first exercises an act of possession after Charles' death. The presumption is that the mortgage came in Edmund's possession as a paper he had found among the assets of his son.

G

No interest was ever paid on the mortgage. This is admitted.

H

No attempt was made to foreclose the mortgage.

Edmund F. Heath might have foreclosed the mortgage after it was due, December 8th, 1893.

He did not do so during Charles Heath's life—whose death occurred July 6th, 1900.

Edmund F. Heath does not foreclose during his own lifetime. He died August 11th, 1904. Margaret C. Heath, his wife and executrix, did not foreclose during her lifetime, although she was bound to distribute the residue partly among Edmund H. Heath's "Nieces named Heath and Haddock" (p. 118, line 32). She seems to have held the mortgage for about two years until 1906, and then on her death Edmund F. Heath, Junior, son of Charles Heath, was appointed substi-

tuted administrator with the will annexed of Edmund F. Heath.

Although Edmund, the younger, and his sister Marjorie had acquired the interests of all the other residuary legatees of Edmund F. Heath (Ex. D. 1, p. 140) and he and his sister Marjorie were equally entitled to one-half of the mortgage in suit in this case, Edmund F. Heath, the younger, does not foreclose this mortgage. The younger Edmund had only one-fifth interest in his father's (Charles Heath's) property. (See Charles Heath's will, p. 125, 3rd clause.) Edmund had one-half interest in the mortgage and so did his sister Marjorie, and it was to the interest of both to enforce the mortgage, thus sweeping away the real estate of Charles Heath, and cutting out Carlotta from two-fifths. Yet Edmund F. Heath does nothing and dies April 28th, 1909.

The present complainant, appointed substituted administrator of Edmund F. Heath, the elder, November 1st, 1909, waits two and one-quarter years and begins this suit, over eighteen and one-half years after the mortgage was due.

This long delay in acting by all parties especially by the elder Edmund, his wife and the younger Edmund, all of whom may be presumed to have had knowledge of the invalidity of the mortgage, is strong evidence of the invalidity of the bond and mortgage.

I.

Edmund F. Heath's wife and executrix listed the mortgage "value uncertain."

This is the usual way of describing securities which have lost their apparent value or to which there are defences.

If the mortgage was valid its value was easily ascertainable. Its value was the real market value of the Orange lots, on which it was a first mortgage, and the

market value of the homestead, less \$10,000 first mortgage. Chiefly as a result of a conversation with Mrs. Heath and her counsel, the mortgage was listed as "value uncertain" (p. 39, line 30) and not because of the valuation of the property mortgaged.

J

Charles Heath's will shows that he never recognized this mortgage as valid.

Edmund F. Heath's account of Charles Heath's estate (p. 152) shows that the personal estate was less than the debts.

His real estate is all within the mortgage and are indeed as charged in this bill "a scanty security for the payment of the principal of the mortgage," much less principal and interest amounting to \$60,000 or \$70,000 with the first mortgage included.

If this mortgage is valid, Charles Heath when he made his will (p. 124) November 4th, 1899, owed the mortgage

principal	\$30,000
interest for nearly seven years about.....	12,500
first mortgage	10,000
	<hr/>
Total	\$52,500

The personal assets left at his death, including one \$6,000 insurance money, amounted to less than \$10,000. Inventory p. 148.

As against this see debts paid as per account, p. 152.

Yet the complainant puts in evidence Charles Heath's will (p. 124) whereby six months before his death he makes careful provision for his family and their support from his estate. Would any sane man make such a will when he knew his estate was hopelessly swamped by debt? And Charles Heath had nothing to dispose of when he made his will and left nothing at his death, if he owed this bond and mort-

gage, except his interest in the good will of the business of Edmund F. Heath & Son. This interest was subsequently taken over by his father without accounting. If Charles recognized this mortgage he must have valued the good will very highly. And it was valuable as we contend hereafter.

K

Edmund F. Heath never treated this mortgage as an existing debt.

He did nothing during Charles Heath's lifetime. After Charles' death he became his executor and trustee. He never proved the debt, as would have been proper if a debt existed and took decree barring creditors (p. 151).

His duty was to foreclose the mortgage and to obtain payment from the mortgaged premises. Instead of this he uses personalty unmortgaged to enhance the value of the mortgaged property. See his account (pp. 152-3). He also loans more money.

His dealings with the estate are not such as we shall expect from a man who held a large mortgage and claim against the estate.

IV

THE MORTGAGE WAS SATISFIED.

If the mortgage was ever valid then there was some settlement or adjustment of the same between Edmund F. Heath and the estate of Charles Heath.

Charles Heath died a member of the firm of Edmund F. Heath & Son, and having a half interest.

Charles' half-interest in a going concern making over \$15,000 in 1900, the year of Charles' death, was certainly a valuable asset of his estate. To be accurate Charles' share of the profits for the year ending July, 1900, was \$7,422.15 (p. 86, l. 35).

After Charles' death his father took over the whole business without accounting for the value of Charles' interest in the good will on the books of the firm (p. 80) or by the inventory of Charles' estate (p. 148).

Now the alleged consideration, if any, went to Charles Heath from the firm, or through the firm.

It was apparently in some way connected with the firm business.

Assuming that there was consideration we contend that as it was made through the firm it was adjusted through the firm.

Edmund F. Heath closed up all debts between himself, or his firm, with Charles' estate by taking over and appropriating Charles' share and interest in the good will and business of the firm in exchange for all indebtedness of Charles' estate to him or to the firm.

If the mortgage was ever delivered and was ever valid all the facts in this case corroborate this contention.

It explains the delay in recording. The true consideration of the mortgage and the amount, if any, due thereon could not be ascertained before Charles' interest in the firm was finally adjusted.

When Charles died Edmund Heath thought it proper to register the mortgage, July 16th, 1900, but when he made the inventory October 5th, 1900 (p. 148) he had decided to cancel all indebtedness between himself and Charles' estate, in consideration of taking over all the good will and makes no mention of Charles' firm interest as an asset of the estate and does not even mention \$7,400 credited Charles for the year ending July 7th, 1900.

Mrs. Heath, knowing the facts of invalidity or satisfaction probably destroyed the bond and mortgage.

The evidence of their being in the hands of Edmund F. Heath the younger, after he was appointed substituted administrator, or after Mrs. Heath's death, is very hazy. If we turn to Exhibit D. 1, page 140,

dated July 26th, 1896, and where all the remaining assets of Edmund F. Heath's estate are mentioned it will be noted that the date, and generally the record of eight of the nine mortgages therein mentioned are given with great particularity, while this mortgage (p. 145, l. 35) is erroneously noted as given by Charles Heath *and wife*; date and record are not given, and the property mortgaged is stated, all as if from memory, and as to the other mortgages mentioned, no property is mentioned. It is evident that the draftsman of Exhibit D. 1 had all the original papers before him, but this bond and mortgage.

The delay of all parties, especially those who are likely to know the true facts about the mortgage, its consideration and its satisfaction, including Edmund F. Heath, his wife and son, is most significant and in accord with our contention.

Lapse of time (16 years) with other corroborating circumstances, is evidence of payment of bond and mortgage, Court of Errors. *Eckel vs. Eckel*, 4 Dick., Chy., 587.

Probably fuller reported in 27 Atl., 433.

Any circumstances which tend to make the proposition of payment either more or less probable is relevant and admissible in evidence on the issue of payment. 30 Cyc., 128.

Our statute of limitations, C. S., 3165, sec. 6, outlaws suits on bonds in sixteen years.

This does not prevent foreclosure of the mortgage. But the bond is presumed to be paid. This presumption ought certainly to be helpful as a circumstance strongly supporting our contention that there was satisfaction.

V

THE MOTION TO DISMISS SHOULD BE
GRANTED.

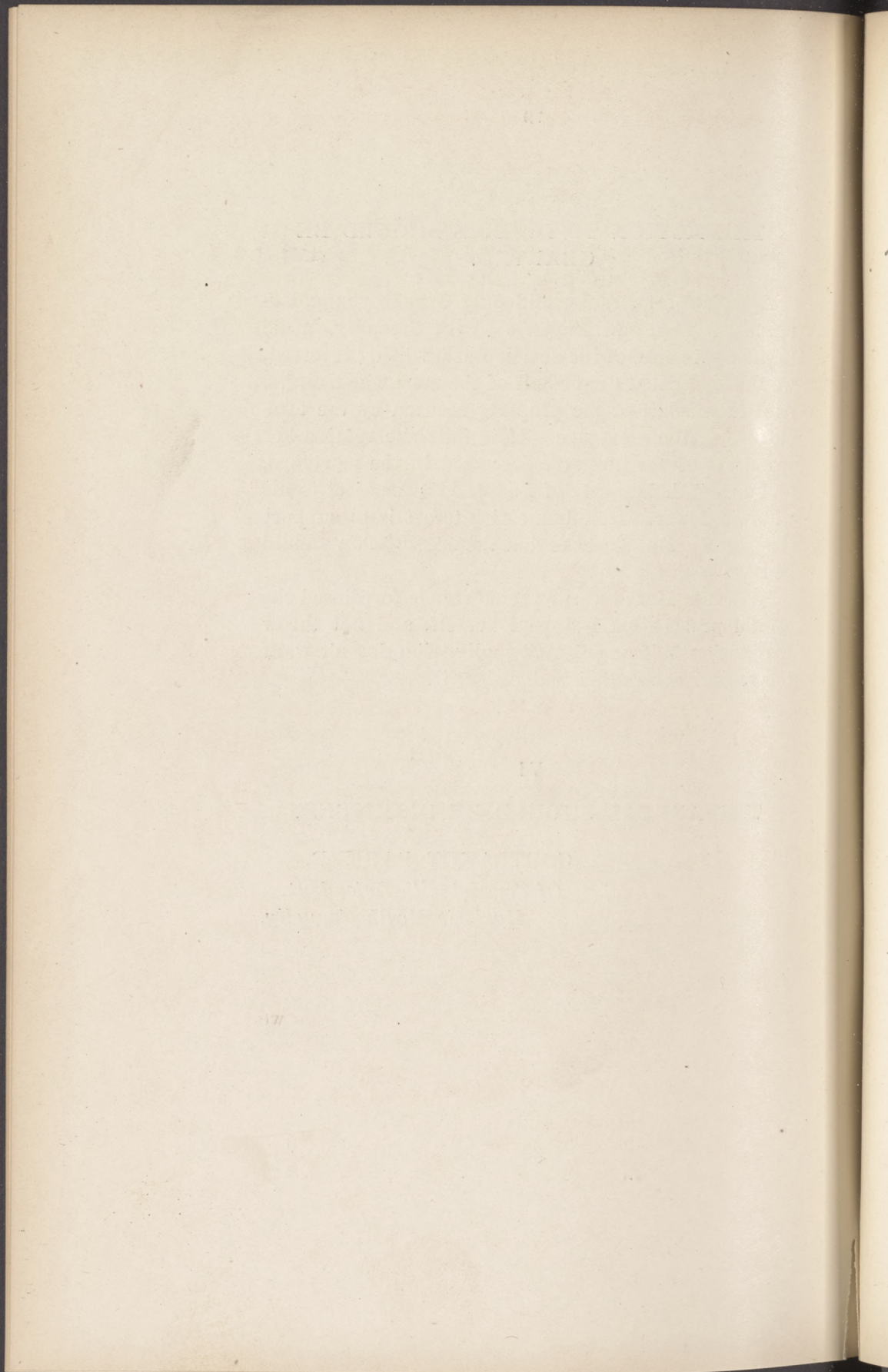
Appellant's success could only benefit young Edmund's widow, and Marjorie Heath Connolly. Mrs. Connolly, in case of the decision below being reversed, would be entitled to one-half of the mortgage moneys. And to one-half of the property secured by the foreclosure of the mortgage. If it fails she retains her two-fifths of the property described in the mortgage, and one-tenth formerly of Edmund, but subject to his widow's dower. Her financial interest is to support the appeal. But she asks that the decree below should be sustained.

If Bertha Heath wants the mortgage foreclosed she should prosecute the appeal herself, and not throw the burden half on Mrs. Connolly, who doesn't want the appeal prosecuted and resists it.

VI

THE APPEAL SHOULD BE DISMISSED.

CORTLANDT PARKER,
Of Counsel with Defendant,
Marjorie Heath Connolly.



New Jersey Court of Errors and Appeals

Between

FREDERICK R. MADDOCK, Substituted Administrator of EDMUND F. HEATH, Deceased,
Complainant-Appellant,

and

MARJORIE HEATH CONNOLLY,
et al.,

Defendants-Respondents.

*On Appeal
from
Decree
Dismissing
Bill to
Foreclose.*

Brief for Bertha B. Heath, individually and as Administratrix of Edmund F. Heath (the younger).

The Case and the Parties.

The complainant below is substituted administrator of Edmund F. Heath, deceased, and as such filed his bill to foreclose a mortgage given by Charles Heath (also now deceased) to the said Edmund F. Heath, to secure the sum of \$30,000 payable on the bond of said Charles Heath to the said Edmund F. Heath. Said bond and mortgage were dated December 8, 1892. The mortgage covered lands in Essex County, and was *registered* in the office of the Register of Essex County on July 16, 1900, in Book H-15 of Mortgages for said County, page 121.

The bill alleged that said bond and mortgage were lost and tendered proof of their contents.

Edmund F. Heath, the mortgagee, was the father of Charles Heath, the mortgagor, and the two were associated in business for many years under the name and style of Edmund F. Heath & Son.

Edmund F. Heath departed this life August 11, 1904, leaving a last will and testament appointing his wife, Margaret C. Heath, sole executrix; the executrix proved the will and letters testamentary were issued to her August 23, 1904; she died sometime afterwards and on August 6, 1906, Edmund F. Heath, a grandson of the testator (and a son of Charles Heath) was appointed substituted administrator with the will annexed; the grandson died on April 28, 1909, and the complainant was, on November 1, 1909, appointed administrator with the will annexed, and so became entitled to collect the bond and mortgage referred to in the bill of complaint.

Charles Heath, the mortgagor, departed this life on July 8, 1900, leaving a last will and testament appointing his father, Edmund F. Heath, executor; the father proved the will and received letters thereon and after so doing died as above stated on August 11, 1904; on November 3, 1904, letters of substitutionary administration with the will annexed were issued to the complainant, who is therefore administrator with the will annexed of both mortgagor and mortgagee.

Charles Heath left him surviving three children, all of whom were minors at his death, Edmund F. Heath, Jr., Marjorie Heath and Carlotta Heath. Edmund F., after being appointed substitutionary administrator of his grandfather's estate, as above stated, died on April 28, 1909, leaving him surviving a widow, Bertha Baker Heath, but no issue. Marjorie married Henry C. Connolly, Carlotta was a minor when this bill of complaint was filed but is now of age.

The will of Charles Heath established a trust of his residuary estate for the lifetime of his wife and during the minority of his children. His wife pre-

deceased him. When his youngest child should attain the age of twenty-one, the trust required the conveyance to his children, or to their heirs, of his real estate then unsold, and the distribution among them of his personal property, two-fifths thereof to each of his daughters and one-fifth thereof to his son. There was a gift over to the issue of a child dying before the youngest attained the age of twenty-one. If any child died without lawful issue before the time of settlement fixed by the will, the share to which the deceased child would be entitled, if living, was to be distributed between the surviving children or conveyed and transferred to the survivor if only one then survived.

As Edmund died without issue before Carlotta attained her majority, his share has passed to his surviving sisters, his widow, Bertha Baker Heath, taking no interest therein. She has taken out letters of administration on his estate, and as administratrix and individually is made a party defendant to this suit.

The daughter, Marjorie (with her husband, Henry G. Connolly), and the daughter, Carlotta, the only beneficiaries at the time this bill was filed under the will of Charles Heath, are also parties defendant.

Charles Heath died seized of the premises described in the bill of complaint (subject to a mortgage on one of the tracts for \$10,000), and the lands remain in his estate.

Under his will (Exhibit C. 4, page 124) his executor became vested with the legal title to his real and personal estate. The complainant, Frederick R. Maddock, is substitutional administrator with the will annexed by appointment of the surrogate. The case does not show that he or anybody else was ever appointed by any court as trustee, and whether the legal title devolved on him by his appointment by the surrogate as substituted administrator is more than doubt-

ful. It probably is of no consequence in this matter as the period for the vesting and distribution of his estate has now arrived and his daughters are the only beneficiaries and are both before the court in this suit and have answered the bill of complaint.

The will of Edmund F. Heath (the father and mortgagee) is Exhibit C. 2, page 117. It devises the residue of the testator's estate to his grandchildren, Edmund F. Heath and Marjorie Heath (Mrs. Connolly) and to his nieces named Heath and Hadden, Edmund F. and Marjorie to have their shares when twenty-one. The residue was to be divided between his grandchildren and nieces share and share alike. The latter were four in number and sold and conveyed all their interest in the estate to the grandchildren, Edmund F. Heath and Marjorie Heath. (See Exhibit D. Heath 1, page 140.)

It will be noted that Carlotta (the third child of Charles) took nothing in the residue of her grandfather's estate, but did receive a legacy of \$20,000.

The residue of the estate after the purchase above referred to belonged in equal parts to Edmund F. Heath, grandson, and Marjorie Heath (now Connolly), granddaughter, in equal parts. By the death of Edmund F. without children his widow has succeeded to his whole estate (Comp. Stat., 3875). The stage of administration of the grandfather's estate is not disclosed by the record and the bond and mortgage referred to in the bill of complaint is an asset of the estate which may or may not, for all this case shows, ultimately reach the present owners of the residue. The legal title to the bond and mortgage is in the complainant, and for it he is accountable. It is his duty to collect it, if collectable, and his bill of complaint is filed for that purpose.

The answers filed by the beneficiaries under the will of Charles Heath question the existence and validity of the bond and mortgage, and challenge the

complainant's competency to institute this suit because he is not only substitutional administrator with the will annexed of Edmund F. Heath but also substitutional administrator with the will annexed of Charles Heath, and guardian of Carlotta Heath, the minor defendant.

I.

The Complainant is competent to File this Bill.

Occupying trust relations, involving divers and adverse interests in the same subject matter, it is the complainant's duty to submit them to the court, making at the same time, so far as possible, his *cestuis que trustent* parties defendant.

The *prima facie* right of the estate of a mortgagee to collect a mortgage taken by the decedent in his lifetime is clear, and the duty of filing a bill for such a purpose is not weakened by a trust relation to the estate of the mortgagor. The complainant in this case has summoned the beneficiaries under the mortgagor's will as defendants, and offered every opportunity for effective defence of the mortgagor's rights. He has also made party defendant the residuary legatees under the mortgagee's will. What more could he do? Certainly his course has been in accordance with equity practice and brings the parties in interest before the Court on the merits.

II.

The Existence of the Bond and Mortgage has been Proven.

The bill set forth that the bond and mortgage had been lost. They could not therefore be exhibited to the court, as is usual with such instruments in foreclosure cases.

It was incumbent on the complainant to prove that the bond and mortgage once existed, that they were lost and not found after proper search, and to offer satisfactory proof of the contents.

The court below put the burden upon the complainant and held that he had fully met it. In this the court was clearly right.

The mortgage had been registered on July 16, 1900, at 1.52 o'clock in the afternoon in Book H-15 of Mortgages for Essex County, page 121. A certified copy of the registry is in evidence (see Ex. C. 5, pages 128 to 130).

This registry is in accordance with law and is evidential of the existence of the mortgage and of its contents. It also refers to the bond of even date.

The supplement to the act concerning mortgages passed in 1886 (Comp. Stat. 3413, Sec. 17-a) expressly provides that in every case where an entry or abstract of any mortgage has been or shall be made in the books provided for that purpose, as authorized in the seventeenth section, such entry or abstract and a transcript of such entry or abstract, duly certified by the clerk or register in whose office the same is kept, shall be received as secondary evidence in any court of this state, in the same manner as the record of deeds is now received, *and shall be proof of the facts therein stated.*

In *Chase vs. Caryl*, 57 N. J. Law, 545, Mr. Justice Lippincott, speaking for the Supreme Court, in discussing the object of statutes requiring records of

certain instruments to be made in public offices of the state, used this language:

"It would appear that there was some other and more important object than that of mere notice.

"I think it is well expressed in a single sentence by Chief Justice Gibson, in the case of *Brother-ton vs. Livingston*, 3 Watts & S. 334, when he says: 'The object of recording acts is not only to give notice, put to perpetuate the writing and proof of its execution.' Had notice been the only object, the common law evidence of execution would not have been dispensed with as it has by the act of 1715 (this being a statute of Pennsylvania, similar to the statute of the State of New York), which provided that an exemplification of a recorded deed should be allowed in all courts to be as good evidence as the original."

Any difference between the registry of a mortgage and the record of a deed has been done away with by the amendment to the mortgage act, Section 17-a, above quoted.

The existence of the bond and mortgage is abundantly shown by the testimony of the complainant, ^{Who} was the confidential man of the mortgagee for many years, and familiar with his affairs both before his death and afterwards while the widow was acting as executrix.

Mr. Maddock testified that he first saw the bond and mortgage when first given away back in 1892 (page 47, ll. 20-28); that they were bond and mortgage by Charles Heath to Edmund F. Heath (ll. 30-40) covering property 458 Center street, South Orange and 200 feet of property in Orange, vacant lot (page 48, l. 1); that witness was very familiar with bonds and mortgages and this one was in regular form for \$30,000 with rate of interest blank (ll. 10 to 25); that the mortgage was not recorded when witness first saw it

and was kept until after the death of Charles Heath in 1900 in the safe of Edmund F. Heath & Son, at 225 Warren street, to which the mortgagor and the mortgagee and the witness all had access (page 48, line 30 to 49 l. 12); that Edmund F. Heath about three weeks after Charles died gave the mortgage to the witness to take to the Court House to be recorded by the register (ll. 20 to 32); that witness next saw the bond and mortgage at 300 Roseville avenue after Mr. Heath's death (ll. 32 to 40); that the bond and mortgage remained at the house about a year in the custody of the executrix, and witness saw them when the estate was inventoried (page 50).

The existence of the papers was also proven by John D. Anderson, an experienced clerk of the Essex County Surrogate's Office, who, as an appraiser, participated in the making of the inventory of the estate of Edmund F. Heath, October, 1904, when witness handled the papers; witness distinctly remembered the bond and mortgage of Charles Heath to Edmund F. Heath for \$30,000 and a conversation about it which he was not permitted by objection from counsel to relate, as a result of which it was inventoried as of uncertain value (pages 30 to 41).

The bond and mortgage appear on the inventory of the estate (see Exhibit C. 1, page 117).

The bond and mortgage are also mentioned in the conveyance, dated July 26, 1906, by the nieces of Edmund F. Heath of their interest in the estate to the grandchildren Edmund and Marjorie (page 140, *item sixth* 145) and constitute part of the property for which the grantees in that deed paid \$82,000.

If it is ever possible to prove the existence of a lost instrument and of the contents thereof, it has been done in this case. The evidence is abundant and satisfying.

The proofs as to search for the lost instruments cover every reasonable opportunity to discover them. (Maddock, pages 69 to 72; Bertha B. Heath, page 73.)

III.**The Proofs Show Consideration for the Mortgage and Non-Payment.**

An order was made in the cause on October 23, 1912, (Record, page 114) upon motion of Edward A. and William T. Day, of counsel with the defendant Carlotta Heath. This order recites that it appears from the pleadings in the cause and "statements of all the counsel for the respective parties to this suit, as well for the complainant as for the several answering defendants" that the suit is brought for the foreclosure of a certain bond and mortgage executed in his lifetime by Charles Heath to his father, the late Edmund F. Heath, and that both instruments have become lost; that at the time of the execution of said bond and mortgage and at the time of the death of said Charles Heath, the said Charles Heath was a partner with his father Edmund F. Heath and carried on business with him under the firm name of Edmund F. Heath & Son; that the said Edmund F. Heath was the executor of the will of the said Charles Heath, and after the death of the said Charles Heath the said Edmund F. Heath made no accounting with respect to the interest of the said Charles Heath in the said business, so that it does not appear at the death of the said Charles Heath that he was indebted to his said father; that the defendant Carlotta Heath is an infant, under the age of twenty-one years, and that the complainant is the guardian of her person and property, and has in his possession, as such guardian, a sum of \$20,000 and upwards; that it is proper and right that an examination by an expert accountant, of the books, papers and memoranda of the said Edmund F. Heath and of the said business or co-partnership of the said Edmund F. Heath & Son, should be had for the protection of the said infant. The recital concludes with the statement "and all parties consenting thereto." It is there-

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upon ordered that Richard F. Stevens be appointed an expert accountant to make an examination of all the books, papers and memoranda as well of the said Edmund F. Heath as of the said Charles Heath and of the business or co-partnership of Edmund F. Heath & Son, in order to ascertain the origin and consideration of the said bond and mortgage in this suit, and also in order to ascertain whether at the death of the said Charles Heath, deceased, he was possessed of any interest in the said co-partnership with his said father, what that interest consists of and for what, if anything, the said Edmund F. Heath was accountable as the surviving partner, and what he in his lifetime should have been charged with, and what his personal representative is now charged with for the benefit and advantage of the estate of the said Charles Heath, deceased, and whether for other causes appearing from the books, papers and memoranda the said mortgage has not been paid, satisfied or discharged.

The accountant's report, with its accompanying schedules, is printed in the record beginning at the top of page 131. From the report it appears that the accountant was unable to procure any copy of the articles of co-partnership but the transactions on the books show that the capital of the firm was not jointly owned but that the interest of the two partners varied from time to time; that each partner participated equally in the profits which were divided yearly; that no interest was credited to either of the partners for the capital he had invested in the concern, neither was he charged with interest for any sum he might owe the firm; that it appeared that Edmund F. Heath kept no personal bank account but that all his transactions were apparently entered in the books of the firm under the head of "Edmund F. Heath."

The report further shows that while some of the transactions of Charles Heath were entered in the

books of the firm he, in addition, kept a private bank account; it appears from the report that on July 1, 1890, the period at which the accountant began, the books showed that Charles Heath's interest in the firm amounted to \$6,362.25 and Edmund F. Heath's interest to \$52,819.25. From that time on each partner was charged with the various payments made on his account and credited with any moneys he put in and his annual share of the profits of the business. (The report does not show but Colonel Stevens was sworn as a witness and it appears in his testimony, on page 75, that the profits of the concern were divided equally between the two partners at the end of each year.)

The report shows that at the time of the death of Charles Heath, on July 7, 1900, he was indebted to the firm in the sum of \$26,548.11 and Edmund F. Heath had invested in the firm the sum of \$71,792, and that this sum of \$26,548.11 was virtually owing by Charles Heath to his father under the conditions of the partnership, and this indebtedness remained in this situation upon the books of the firm at the time of the death of said Edmund F. Heath.

The schedules show the varying interests of the partners from July 1, 1890 to July 7, 1900, the date of the death of Charles Heath. On July 1, 1892, the interest of Charles Heath had become merely nominal and on July 1, 1893 had entirely vanished.

The report shows that certain personal transactions between Edmund F. Heath and Charles Heath were recorded on the books, and that commencing with December 9, 1892, and ending with April 5, ~~1913~~, 1893, Edmund F. Heath's personal account was debited by certain checks drawn to the order of Charles Heath, amounting to the sum of \$32,132.16, and that these sums were not credited on the books to Charles Heath but were evidently placed to his credit in his personal bank account; that the stubs of the firm check books

show that these checks were drawn in the handwriting of Charles Heath, and the entries in the ledger made by the bookkeeper of the concern.

The accountant further states that he can find no mention in any of the firm's books of any mortgage being given for any of these checks, "that they were transactions outside of the company's business and being personal matters. Charles Heath's account on the books does not show that any of this amount was repaid to his father; that there is no charge to him and no credit to his father."

It further appears that the accountant could not find the cancelled checks and that there was no cash book kept; that the ledger, the journal and the check book stubs were the only books where such transactions could appear.

A list of the checks, aggregating \$32,132.16, referred to in the report, is found in the schedule printed on page 139 of the record. The first is drawn on December 9, 1892, for \$1,750, and the last on April 5, 1893, for \$5,011.42. Six checks, representing about two-thirds of the amount, were drawn during February.

The bond and mortgage given by Charles Heath to his father Edmund F. Heath are dated on December 8, 1892, and it appears from the certified copy of the registry (Record, page 130) that the mortgage was acknowledged on December 8, 1892. This was one day before the first check upon the schedule was drawn.

The natural inference, from the advance during a period of three months beginning on the day following the execution of this bond and mortgage, is that the mortgage for \$30,000 was given by Charles Heath to secure his father to the extent of \$30,000 against advances then about to be made. The fact that such advances, made over a period of three months, slightly exceed the total of \$30,000 named in the mortgage

does not destroy the inference that the mortgage was given for such advances. Such difference suggests nothing more than that when the mortgage was given the exact amount to be advanced over a period of time then beginning was not exactly known.

It further appears from the accountant's report (Record, page 133) that the accounts of the estate of Charles Heath were kept by his father, Edmund F. Heath, as executor, until the death of the latter, in his handwriting, and after his death by the administrator who succeeded him, being the complainant in this cause; that there was no inventory or accounting of the estate of Charles Heath filed by Edmund F. Heath, and that such an account was later filed by the complainant as substituted administrator with the will annexed, which account showed that Edmund F. Heath, the father personally advanced \$2,537.02 to settle bills and claims against Charles Heath's estate. That account is set forth in the record on pages 157 to 161, and the amount so advanced by Edmund F. Heath appears as a liability near the end of the account.

The report made by the accountant, under the reference, should be given the effect of evidence. The accountant appointed by the order was, however, sworn as a witness, his testimony beginning on page 73, and the facts set forth in his report and its schedules are directly sworn to and are neither contradicted nor impugned in any way by any other evidence taken in the cause.

While it appears from the report and the schedules, and the testimony of the accountant, that Charles Heath drew sums in excess of the profits from the firm to such an extent that he entirely exhausted his contribution to the capital and died indebted in the sum of \$26,548.11 to the firm, any inference that the father was repaid any portion of the indebtedness, secured by the bond and mortgage, is entirely rebutted in the first place by the absence of anything on the books to

show the debit of Charles for the benefit of Edmund, or, in the second place, and so completely as to be conclusive, by the retention of the bond and mortgage by Edmund, the father, from its date until the death of Charles, and the recording by the father of the instrument on the 16th day of July, 1900, eight days after the death of Charles which took place on July 8, 1900.

We have already referred to the testimony of Mr. Maddock that he knew of this bond and mortgage when it was executed; that it was kept in the office safe, to which both father and son had access; and that after the death of Charles, some seven or eight years after the date of the instrument, his father gave the mortgage to Mr. Maddock with instructions to take it to the Register's Office for record, and that in compliance with such instructions Mr. Maddock did take the mortgage to the Register's Office and left it there. The fact of registry appears by the certified copy in evidence.

This evidence, taken all together, shows not only that the mortgage was in existence at the date of the death of Charles, in July, 1900, but that it was then unpaid and unsatisfied. *We could have no stronger demonstration if Edmund F. Heath were alive and had actually been sworn in this cause.* It is inconceivable that considering the relations between the father and son, as disclosed by this record, the father could have recorded this instrument if it had been paid and satisfied.

When the son died he was indebted to the father, as the result of their partnership relations, in the sum of \$26,548.11, and, notwithstanding this situation, the father, as administrator of the son, later advanced \$2,537.02 to settle bills and claims against his son's estate. It is not shown in the present case that any creditor of Charles Heath is in any way interested in this controversy. It does appear from

the account of the administrator (record, pages 157-161) that there has been a deficiency of assets and that the estate is in debt, but all that indebtedness is to the estate of Edmund F. Heath, the mortgagee in the mortgage under discussion. There are no presumptions, therefore, as against consideration for the original mortgage or in favor of its payment, as might be suggested if this were a contest between creditors and a mortgagee.

It is not pretended that there has been any payment, principal or interest, on this mortgage since the death of Charles Heath. The statute of limitations had not run on the mortgage when the bill was filed, and no plea of limitations has been made by any defendant interested in the estate of Charles. No presumption of payment of either bond or mortgage is pleaded by either Mrs. Connolly or Carlotta Heath. The answer of the latter, filed by her guardian *ad litem*, while calling upon the complainant for proof of the allegations in his bill suggests that if any such bond and mortgage were actually executed and delivered by her father to her grandfather they were given for some ulterior purpose, not known to the infant defendant, and with no intention that they should be kept alive as an obligation on the part of the said Charles Heath to his father. The answer of Mrs. Connolly affirmatively suggests valid consideration for this mortgage, inasmuch as it alleges in its sixth paragraph, beginning at the bottom of page 16, that about the year 1890 the said Charles Heath having become responsible for debts outside of the firm business his father gave him money to liquidate the same, the answer further stating that if the father took a mortgage from Charles it was only to guard against future claims and was only intended to be enforced in case the said Charles Heath should thereafter become liable for other outside debts. To these suggestions in the answers, whatever their weight may be,

the act of Edmund F. Heath in recording the mortgage which was in his possession, immediately after the death of his son Charles, makes effective denial. If the mortgage was given without intention to enforce why did the father immediately after the death of his son make it a public record? If it had already been paid and satisfied why did it continue in existence? If it had been paid and satisfied why did the mortgagee assert the right to enforce it by sending it to be recorded?

The vice-chancellor says in his opinion, referring to this matter, that he is not justified in connecting these advances, paid out of the firm's account to Charles Heath and debited on the firm's books against Edmund F. Heath, in any way with the mortgage. He does not dispute that the effect of the transaction was to record on the firm's books a series of loans aggregating \$32,132.16 from December 9, 1892, until April 5, 1893, by Edmund F. Heath to Charles Heath. This is clearly just what happened, and while the defendant, Marjorie Heath Connolly, was sworn as a witness and said nothing in her testimony on the subject she sets up in her answer (record, page 16) that, "About the year 1890 the said Charles Heath having become responsible for debts outside of the firm's business, his said father gave him money to liquidate the same." Marjorie was fifteen when her father died in 1900 (record, top of page 93), and there is no significance, considering the fact that she was only seven years old in 1892, in the difference in date in the answer and in the mortgage. There is no room for doubt that for some reason outside of the business, during the time from December 9, 1892, to April 5, 1893, Edmund F. Heath did advance to Charles Heath the sum of \$32,132.16.

The vice-chancellor further in his opinion says that it has always been held that future advances on a mortgage should not be encouraged because of the

facility they afford for the commission of fraud, inasmuch as the proof of the advances lies wholly in parole, and he further remarks that this observation applies with much more force to a case in which a recovery for future advances on a lost instrument is sought to be had.

The suggestion as to the opportunity for fraud has no application except to a case where creditors are involved, and mortgages on real estate, given to secure future advances, have never been in this state held to be open to any presumption of invalidity. Such mortgages have uniformly been held good against subsequent encumbrances, with notice either by record or otherwise, to the extent that advances have been actually made. It is not necessary that the mortgage should show on its face that it was given as security for future advances. There is in the present case no dispute as to priority of liens, and the question rises squarely as between mortgagor and mortgagee. The court below held that the existence of the lost bond and mortgage had been abundantly established. That being so there is no room for any different application of presumptions to this case, ~~and~~ to any other case arising between mortgagor and mortgagee.

Moreover the mortgage in the possession of the mortgagee can be supported by other indebtedness of Charles, the mortgagor, to the mortgagee than that for which it was originally given. While there is not the slightest evidence in the case that any part of the money advanced by the mortgagee to the mortgagor (December 9, 1892, to April 5, 1893) has ever been repaid, the complainant may rely on the other indebtedness, not at all disputed, of the mortgagor to the mortgagee, which at the death of the mortgagor in 1900 was \$26,548.11, and after his death and before the death of the mortgagee was increased by advances to pay debts, \$2,537.02 (Report of General Stevens, page 132, line 20; page 133, line 28). The retention

of the bond and mortgage by the mortgagee, and its record after the death of the mortgagor, indicate existence of the security and intention to enforce it, and if the original consideration on the theory of future advances be rejected, and a presumption of an earlier consideration refused, the clear fact of an undisputed, unpaid indebtedness of later origin than the mortgage still remains. That the parties might use the mortgage as security for the later debt is settled. (*Campbell vs. Perth Amboy Ship Building Company*, 70 N. J. E., 40, 59.)

It is contrary to all human experience that under the circumstances shown in this case Edmund F. Heath should have exercised dominion over this bond and mortgage after the death of his son Charles, and recorded the mortgage in the registry office as a valid existing security, if the bond and mortgage had then been paid and satisfied, and the record offers convincing proof of consideration which cannot be rejected without doing violence to evidence both direct and circumstantial of a very positive kind.

It is urged in support of the decree of dismissal of complainant's bill, that to hold the bill and sustain this mortgage is to the benefit of the widow of the grandson Edmund, the defendant's, Bertha B. Heath, and against the infant granddaughter Carlotta, and that the infant should be favored. This suggestion surely discloses no equity or offers any reason for changing conclusions upon a similar state of facts. The will of Edmund F. Heath was dated July 16, 1892 (record, page 119) after his son Charles had ceased to have other than a nominal capital interest in the firm, and a few months before the date of this mortgage and the practically contemporaneous advance of a sum of money slightly greater than the face of the mortgage. The father, Edmund F. Heath, did not mention his son in his will or leave him directly or indirectly a single

dollar. He provided for the children of Charles but not with equal hand, giving the infant defendant Carlotta a specific legacy of \$20,000 and bringing the younger Edmund and Marjorie into the distribution of the residue. The failure to provide for Charles in this will was doubtless due to the financial condition of the latter, and is in absolute harmony with the exaction later, in December, 1892, of mortgage security from Charles for advances then to be made, thus preserving to his own estate and for the beneficiaries under his own will the money represented by the mortgage security. This will remain^{ed} unchanged during Charles' lifetime and immediately after Charles' death the mortgage is recorded and the benefit of its lien perpetuated against the estate of Charles. This will continued unchanged after the death of Charles although the father knew, as executor of the son's will, of the disposition the son had made of his estate. If the father had then cancelled the mortgage it would have been to modify the results of the provisions of his own will, and to disturb the scheme of his bounty as applied to his grandchildren, as by subjecting the amount of the mortgage to distribution under the son's will Carlotta would have received a larger proportion thereof as against her brother and sister, than under her grandfather's bequest. If Edmund F. Heath had desired to accomplish this purpose he needed either to satisfy the mortgage or to make a new testament. He did neither, but affirmatively showed by the record of the mortgage, after the death of Charles, a fixed intention to adhere to the provisions originally made by him for his grandchildren. The law has established the widow of the grandson as his successor to the estate coming to him as a residuary legatee, because he died childless. Also because the younger Edmund died childless, but because^{of} the provisions of the will of Charles and not by operation of law, the widow of the younger Edmund has no

interest in his share in the estate of Charles given over in such case to the daughters, Marjorie and Carlotta.

If Carlotta is disadvantaged if this mortgage be sustained, it is not because her grandfather intended the contrary, but in strict adherence to his intention as to the provision intended by him for her. There is therefore no equity in her favor as against her childless brother's widow.

The real facts supporting the existence and *bona fides* of the bond and mortgage sought to be collected by complainant's bill are as plain as though Edmund F. Heath, the elder, were alive and testifying in this very cause. The establishment of the lost instruments entitled them to every effect that they could have if Edmund F. Heath himself produced them before the chancellor. The evidence sustains an original consideration. The evidence shows no payment in whole or in part. The estate of Edmund F. Heath (the elder) is entitled to enforce the security as a valid and subsisting asset. No rights of creditors intervene to be affected by the retention of the instrument from record or by any other circumstance relating to it. The mortgagor died with the bond and mortgage validly created by him in the possession of the mortgagee. The controversy here is between mortgagor and mortgagee, and the mortgagee should not under the evidence have been dismissed without relief.

IV.

The Decree should be Reversed.

JOHN R. HARDIN,

Of Counsel for BERTHA B. HEATH
Individually and as Administrator of Edmund F. Heath (the Younger).

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Bill of Complaint.

(Filed February 7, 1912.)

In Chancery of New Jersey.

To the Honorable Mahlon Pitney, Chancellor of the State of New Jersey: 10

Humbly complaining shows unto Your Honor, your orator, Frederick R. Maddock, substituted administrator with the will annexed of Edmund F. Heath, deceased, late of the City of Newark in the County of Essex and State of New Jersey:

1. That on or about the eighth day of December, One thousand eight hundred and ninety-two, Charles Heath then of the Township of South Orange in the County of Essex and State of New Jersey, became and was indebted unto Edmund F. Heath in the sum of Thirty thousand dollars, and being so indebted the said Charles Heath in order to secure the payment of the said sum of Thirty thousand dollars with interest, did make and execute under his hand and seal and deliver unto the said Edmund F. Heath a certain bond or obligation bearing date the same day and year aforesaid in the penal sum of Sixty thousand dollars, lawful money of the United States of America, to be paid to the said Edmund F. Heath or to his certain attorney, executors, administrators or assigns, with a condition thereunder written that if the said Charles Heath, his heirs, executors, administrators or any of them should well and truly pay or cause to be paid unto the said Edmund F. Heath or to his certain attorney, executors, administrators or assigns the just and full sum of Thirty thousand dollars in one year from the date thereof with lawful interest for the same at the rate of . . . per cent. per 20
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annum, payable semi-annually, without any fraud or other delay, then the said obligation to be void, otherwise to remain in full force and virtue; that subsequently to the making, execution and delivery of the said bond the same was lost, but your orator is ready to make proof of the contents thereof at such time and in the manner as this Honorable Court may direct.

10 2. That the said Charles Heath in order to secure the payment of the said sum of Thirty thousand dollars together with interest thereon, executed and delivered unto the said Edmund F. Heath a certain indenture of mortgage bearing date the same day and year first aforesaid made by the said Charles Heath of the first part to the said Edmund F. Heath of the second part, whereby the said Charles Heath did give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Edmund F. Heath and to his heirs and assigns forever;

20 All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of South Orange in the County of Essex and State of New Jersey.

30 BEGINNING at the corner formed by the intersection of the easterly line of Centre street with the northerly line of Hamilton road; thence running along the northerly line of said Hamilton road south fifty-eight degrees thirty-one minutes east three hundred feet; thence northerly and parallel with Centre street two hundred and sixty-two feet and thirteen hundredths of a foot to lot number six (6); thence along the westerly line of lot number (6) six north sixty-six degrees twenty-five minutes west three hundred and two feet and eighty-seven hundredths of a foot to Centre street; and thence southerly along the easterly line of Centre street two hundred and twenty feet and five-tenths of a foot to the point or place of beginning. Being known as lot number five (5) on a map of property of Thomas S. Kingman and Henry P. Finlay in

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Orange and South Orange, filed in Essex County Register's Office and the same premises which were conveyed to the said Charles Heath by George J. Ferry by deed dated December 4, 1890, and recorded in the Essex County Register's Office in Book W 25 of Deeds for said county, pages 355, &c.

And also all those two tracts or parcels of land and premisis situate, lying and being in the City of Orange in the County of Essex and State of New Jersey. 10

THE FIRST TRACT. Beginning in the centre of Oakwood avenue at the northwest corner of the property conveyed to Paul F. Gerhard by the said Charles Heath; from thence running southwesterly along the centre of said Oakwood avenue one hundred and one feet and ninety-eight hundredths of a foot; thence south thirty-five degrees thirty-two minutes east two hundred and two feet and seventy-two hundredths of a foot; thence northeasterly and parallel with Harrison street one hundred and one feet more or less to line of lands of Paul F. Gerhard and thence north thirty-five degrees and thirty-three minutes west, two hundred and forty-four feet and thirty-hundredths of a foot to the centre of Oakwood avenue and place of beginning. 20

THE SECOND TRACT. Beginning in the centre of Oakwood—at the northeast corner of the property conveyed to Paul F. Gerhard, by the said Charles Heath; from thence running northeasterly along the centre of Oakwood avenue one hundred and two feet and fourteen hundredths of a foot; thence south thirty-five degrees thirty-two minutes east two hundred and forty-five feet and sixty-five hundredths of a foot; thence southwesterly and parallel with Harrison street eighty-six feet; thence north thirty-five degrees, thirty-two minutes west one hundred and thirteen feet; thence south fifty-one degrees seventeen minutes west fourteen feet and thence north thirty-five degrees 30 40

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thirty-two minutes west one hundred and thirty-one feet and twenty-one hundredths of a foot to the centre of Oakwood avenue and place of beginning. The above two tracts being a portion of the same premises conveyed to the said Charles Heath by Emma S. Winslow and husband by deed dated August 26, 1887, and recorded in the Essex County Register's Office in Book Q 23 pages 550, &c. TOGETHER with all and singular

10 the profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining; ALSO all the state, 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 tract or lot of land and premises with the appurtenances unto

20 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:

PROVIDED ALWAYS, that if the said party of the first part, his heirs, executors and administrators should well and truly pay or cause to be paid unto the said Edmund F. Heath or to his certain attorney or attorneys, heirs, executors, administrators or assigns the said sum of Thirty thousand dollars in one year from the date thereof with lawful interest for the same at the rate of . . . per cent. per annum payable

30 semi-annually, according to the condition of the said bond bearing even date therewith, according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted should cease, determine and be void.

3. That after the execution of the said indenture of mortgage and on the eighth day of December, Eighteen hundred and ninety-two, the same was in due form of law acknowledged by the said Charles

40 Heath before Edward H. Duryee, Esquire, a Master

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of this Honorable Court, and on the sixteenth day of July, A. D., Nineteen hundred, was duly registered in the Register's Office of the County of Essex in Book H 15 of Mortgages for said county on pages 121-123 as by the several certificates endorsed on said indenture of mortgage more fully appears; that subsequently to the execution and delivery and registration of the said mortgage the same was lost, but your orator is ready to make proof of the contents thereof at such time and in the manner as this Honorable Court may direct. 10

4. That on or about the eleventh day of August, Nineteen hundred and four, the said Edmund F. Heath departed this life having first duly made, executed and published his last will and testament in writing in due form of law and thereby did among other things appoint Margaret C. Heath, his wife, sole executrix thereof; that said last will and testament was duly admitted to probate by the Surrogate of the County of Essex on the twenty-third day of August, Nineteen hundred and four, and letters testamentary thereon were issued to the said Margaret C. Heath; that subsequently the said Margaret C. Heath departed this life and on or about the sixth day of August, Nineteen hundred and six, one Edmund F. Heath, the grandson of said testator, was appointed substituted administrator with the will annexed of said Edmund F. Heath by the Surrogate of the County of Essex; that on or about the twenty-eighth day of April, Nineteen hundred and nine, the said Edmund F. Heath departed this life and thereafter and on the first day of November, Nineteen hundred and nine, your orator was appointed substituted administrator with the will annexed of Edmund F. Heath, deceased, by the Surrogate of the County of Essex; that your orator has taken upon himself the burden of the administration of the estate of the said Edmund F. Heath, deceased, pursuant to his said last will 20 30 40

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and testament, and that he is entitled to have and receive the moneys now due and owing for principal and interest on the said bond or writing obligatory and in the proviso of redemption of the said deed or indenture of mortgage mentioned.

10 5. That on or about the eighth day of July, Nineteen hundred, the said Charles Heath departed this life seized of said premises having first duly made, executed and published his last will and testament in writing in due form of law, and thereby did among other things, appoint his father, Edmund F. Heath, the executor thereof; that said last will and testament of said Charles Heath was afterwards, to wit, on the twenty-seventh day of July, Nineteen hundred, duly proved by the said Edmund F. Heath, the executor therein named, before the Surrogate of the County of Essex as by the record thereof now remaining in the Surrogate's Office of said County of Essex in Book H 3 of Wills, page 540, reference being thereunto had may more fully appear, and that letters testamentary were issued by the said Surrogate to the said Edmund F. Heath; that subsequently and on or about the eleventh day of August, Nineteen hundred and four, the said Edmund F. Heath departed this life and thereafter and on or about the third day of November, Nineteen hundred and four, letters of substitutionary administration with the will of the said Charles Heath, deceased, annexed were issued to your orator by the said Surrogate of the County of Essex.

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6. That the said Charles Heath left him surviving as his only next of kin and heirs-at-law his three children, Edmund F. Heath, Jr., Marjorie Heath and Carlotta Heath, all of whom were minors at the time of his death; that Annie M. Heath, the wife of the said Charles Heath, had predeceased him.

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7. That in and by his said last will and testament the said Charles Heath did order his debts to be paid and did give, devise and bequeath all his residuary estate unto his executor therein named upon certain trusts as follows:

(a) To collect the rents, issues and profits of said estate and pay the entire amount thereof in equal quarterly payments to his wife during her life, to be used and applied by her for the support and maintenance of herself and his three children Edmund F., Marjorie and Carlotta Heath. 10

(b) After the death of his wife, to apply the income of his estate or so much thereof as the executor may deem necessary, to the support and maintenance of his said children or the survivor or survivors of them until the youngest surviving child shall have attained the age of twenty-one years.

(c) When the youngest surviving child shall have attained the age of twenty-one years, to convey to his said children or to their heirs forever all his real estate as may then be unsold, and also to distribute among them his personal property in the following proportions, namely: Two-fifths thereof to each of his said daughters and one-fifth thereof to his son. If either of said children die before the youngest surviving child shall have reached the age of twenty-one years, the lawful issue, if any, of such child should be entitled to receive so much of the income of the estate and also such portion of the estate on final settlement as its parent, if living, would have been entitled to. If either of said children die without lawful issue before the time fixed for settlement of the estate, the portion of the estate to which such child, if living, would have been entitled, is to be distributed among the testator's surviving children and if but one of said children be then living, the whole of the estate to be conveyed and transferred to such surviving child, its heirs, executors and administrators. 20 30 40

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(d) That in and by said last will and testament the said Charles Heath did authorize and empower his executor to sell and dispose of all or any of the property of which he might die possessed as aforesaid, at such times and upon such terms and in such manner as to him shall seem judicious, and to make the necessary conveyances and transfers thereof and invest the proceeds, &c.

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8. That Marjorie Heath, the daughter of the said Charles Heath, is now of full age and is married and her husband's name is Henry G. Connolly; that Carlotta Heath is a minor and under the age of twenty-one years; that Edmund F. Heath, the son of the said Charles Heath, departed this life on or about the twenty-eighth day of April, nineteen hundred and nine, leaving him surviving his widow Bertha Baker Heath but no issue; that said Edmund F. Heath died

20 intestate and that subsequently thereto his widow, Bertha Baker Heath, was appointed administratrix of the estate of the said Edmund F. Heath by the Surrogate of the County of Essex.

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9. That there is now due unto your orator as administrator with the will annexed of the said Edmund F. Heath, deceased, the said principal sum of thirty thousand dollars mentioned in the condition of the said bond or writing obligatory and in the proviso of redemption in the said deed or indenture of mortgage,

30 and lawful interest upon said principal sum from the eighth day of December, eighteen hundred and ninety-two, and the estate of your orator in said mortgaged premises has become absolute.

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10. That the said Marjorie Heath Connolly and Henry G. Connolly, her husband, Carlotta Heath and Bertha Baker Heath individually and as administratrix of the estate of Edmund F. Heath, deceased (who are the defendants hereto) or some or one of them

40 since the execution of your orator's said mortgage

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have possessed and enjoyed and do still possess and enjoy the said mortgaged premises and have always received and still receive the rents, issues and profits thereof; and that the said premises are a scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid; and that your orator or some other person or persons on his behalf have frequently and in a friendly manner applied to the said defendants or some or one of them, and requested them or one of them to discharge and pay the said principal and interest moneys so due to your orator on the said bond and mortgage and your orator well hoped that they would have complied with such reasonable requests as in justice and equity they ought to have done. 10

In tender consideration whereof and for as much as your orator is remediless in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged premises or safely sell the same for the payment and satisfaction of said principal and interest moneys without the aid of this honorable court where matters of this nature are particularly cognizable and relievable: 20

To the end therefore, that the said defendants hereinafter named may without oath (answer by oath being hereby waived), true, full and perfect answer make to all and singular the premises as fully as if here repeated and they thereto particularly interrogated, and that they or some of them may be decreed to pay to your orator the said principal sum so due on the said bond and mortgage and the interest due and to grow due thereon with your orator's costs and charges in this behalf sustained by a short day to be appointed by this honorable court; and that in default thereof the said defendants and all persons claiming or to claim under them or any of them may be foreclosed of and from all right, title and equity of redemption of, in and to the said mortgaged prem- 30 40

Bill of Complaint.

ises and every part thereof with the appurtenances, and may deliver unto your orator the possession thereof with all deeds, demises and muniments of title relating to and concerning the same; or that the said mortgaged premises with the appurtenances may be sold, and that out of the moneys arising from such sale your orator may be paid the said principal money and interest and costs; and that your orator may have
 10 such other and further relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orator a writ or writs of subpoena issuing out of and under the seal of this honorable court to be directed to the said Marjorie Heath Connolly and Henry G. Connolly, her husband, Carlotta Heath and Bertha Baker Heath individually and as
 20 administratrix of the estate of Edmund F. Heath, deceased, therein and thereby commanding them on a certain day and under a certain penalty therein expressed to be and appear before your honor in this honorable court, then and thereto answer the premises, and to stand to, abide by and perform such decree therein as to your honor shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray, &c.

LUM, TAMBLYN & COLYER,
 30 *Solicitors for and of Counsel with Complainant.*

Answer of Marjorie Heath Connolly.

Answer of Marjorie Heath Connolly.

(Filed April 18, 1912.)

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK R. MADDOCK, Substi-
tuted Administrator, *et al.*,
Complainant,

and

MARJORIE H. CONNOLLY, *et als.*,
Defendants.

*On Bill
to Fore-
close.*

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The answer of Marjorie Heath Connolly, wife of Henry Connolly, one of the defendants in this suit to the bill of complaint of Frederick R. Maddock, substituted administrator with the will annexed of Edmund F. Heath, deceased. This defendant answering the bill of complaint says:

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1. That she is ignorant and has no knowledge of any indebtedness by said Charles Heath to Edmund F. Heath at the date and time of the giving of the bond mentioned and set forth in said bill of complaint, nor of any bond being given by said Charles Heath to said Edmund F. Heath, nor of any mortgage given by said Charles Heath to Edmund F. Heath to secure payment of money due on said bond, or any other moneys, and she denies the allegations of said bill of complaint relative to such indebtedness, and said bond and mortgage except that she admits that there appears on the records of the Register's office of the County of Essex the registration of an alleged mortgage alleged to have been dated and acknowledged the eighth day of December, 1892, and to have

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Answer of Marjorie Heath Connolly.

been registered on the sixteenth day of July, 1900, in Book H 15 of Mortgages for Essex County, page 121, &c.

And this defendant says that the registration aforesaid is as follows. After describing the said lands set forth in said bill of complaint down to the words "Together with all and singular the profits, privileges and advantages," &c., the registration continues as follows:

10 "The premises above described are mortgaged by Charles Heath, of the said Township of South Orange to Edmund F. Heath, of the City of Newark, Essex County, New Jersey, to secure the payment of thirty thousand dollars in one year from the date of all the mortgage with lawful interest, at per cent. per annum payable semi-annually according to the conditions of a bond bearing even date therewith. Said mortgagor not to apply for any deduction by reason

20 of this mortgage from the taxable value of said lands.

The mortgage is dated and acknowledged the eighth day of December, A. D. eighteen hundred and ninety-two, before Edw. H. Duryee, a master in chancery of New Jersey. And received in the office July 16, A. D. 1900, at 1.52 P. M.

JOHN P. DEXHEIMER,
Register."

2. And this defendant further says that she admits

30 that about the eleventh day of August, 1904, Edmund F. Heath died leaving a will appointing his wife Margaret C. Heath, sole executrix; that on August 23rd, 1904, said last mentioned will was proved before the Surrogate of Essex County and letters testamentary on said will were issued to said Margaret C. Heath, his widow, and that she admits that subsequently Margaret C. Heath departed this life and that on August 6th, 1906, Edmund F. Heath, her grandson, was appointed substituted administrator with the will annexed of said Edmund F. Heath, and that on July

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Answer of Marjorie Heath Connolly.

28th, 1909, the said Edmund F. Heath, grandson of said Edmund F. Heath, Sr., died, and that on the first day of November, 1909, complainant was appointed substituted administrator with the will annexed of said Edmund F. Heath's estate, deceased, and took upon himself the burden of the administration of said estate, but she denies that he is entitled to receive any money on said alleged bond and mortgage, or that any moneys are due thereon.

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3. This defendant admits that about July 8th, 1900, Charles Heath died seized of premises mentioned in said bill of complaint, having previously executed a will appointing his father, Edmund F. Heath, his executor, and she admits that said will was proved by said Edmund F. Heath on the 27th day of July, 1900, and was recorded as in said bill stated, and that letters testamentary were then issued to said Edmund F. Heath, and that he took upon himself the burden of the administration of the said estate, and she admits that on August 11th, 1904, said Edmund F. Heath, Senior, departed this life and thereafter on November 3rd, 1904, letters of substitutionary administration, with the will annexed were issued to the complainant as substituted administrator of the will of Charles Heath, deceased.

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4. And this defendant admits that the said Charles Heath left him surviving his son Edmund F. Heath, Jr., this defendant Marjorie Heath Connolly and Charlotte Heath, his daughters, and she says that at the time of the death of said Charles Heath all of the said children were then minors and she admits that Annie M. Heath, wife of said Charles Heath, predeceased him.

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5. And this defendant admits that the said Charles Heath by his will ordered his debts to be paid and gave his residuary estate unto his executor, the said Edmund F. Heath, his father, in trust for the benefit

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Answer of Marjorie Heath Connolly.

of the wife and children of said Charles Heath, as set forth in said bill of complaint, but for further certainty she prays that reference be had to said will, or the record thereof.

10 And this defendant admits that she is of full age and married to Henry G. Connolly; that her sister Carlotta Heath is a minor under the age of twenty-one years. That her brother, Edmund F. Heath, the younger, died April 28th, 1909, leaving no issue, and that letters of administration of his estate were granted to Bertha Baker Heath.

20 And this defendant admits that about the 3rd day of November, nineteen hundred and four, after the death of Edmund F. Heath, Senior, letters of administration of the estate of Charles Heath, with the will annexed were granted to said Frederick R. Maddock and she is advised that thereby the legal estate in the lands of Charles Heath, vested in said Frederick R. Maddock as trustee of said last estate and that said Frederick R. Maddock as such trustee is a necessary party to this suit, and is not such party and she prays all benefit of this defence as though set up by demurrer.

30 And this defendant denies that there is due to complainant, as administrator or otherwise, the sum of thirty thousand dollars, alleged to have been mentioned in the alleged bond or writing obligatory or in the proviso for redemption in said alleged mortgage, or any other sum, or any interest whatsoever, and further denies that the said complainant has any estate or interest in said lands, by virtue of said alleged bond and mortgage absolute or otherwise, but she says that substitutionary administrator with the will annexed, as under the will of Charles Heath, deceased, said complainant may be interested in the said lands but that such interest is and should be to defend the lands and the interest of this defendant and her sister, children of Charles Heath in their father's

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Answer of Marjorie Heath Connolly.

real estate from any lien or encumbrance of said alleged mortgage.

And this defendant denies that this defendant and her husband, Carlotta Heath and said Bertha Baker Heath have at any time possessed and enjoyed, or do possess and enjoy the said premises described in said bill of complaint, but on the contrary she says from the date of the death of Charles Heath in the year 1900 to the present time the said premises have been in the possession of the personal representatives of the estate of Charles Heath, that is to say Edmund F. Heath, Senior, and the said complainant as substitutionary administrator of said Charles Heath, deceased, and that said Edmund F. Heath in his life time, and said complainant since the decease of said Edmund F. Heath, Senior, always rented and managed the said property, collected rents, paid taxes, and repairs and otherwise possessed, managed and controlled said premises and said complainant is now in the entire and sole possession, management and control thereof.

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And this defendant says that said Edmund F. Heath as executor of Charles Heath and said Maddock as administrator with the will annexed are accountable for the rents and profits of said lands, and that they had full power of sale thereof, and that the outlying unimproved lots being those on Oakwood avenue, ought long ago to have been sold and the proceeds thereof applied to the benefit of the estate of Charles Heath, and that the said complainant as such administrator is accountable for any loss that may have occurred by delay of such sale.

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6. And this defendant further answering says that the said Edmund F. Heath, the elder, in his life time carried on a large and prosperous manufactory of enameled leather in the city of Newark and conducted a profitable and lucrative business which existed for over thirty years before his death. That about the year 1880 he and his only son and child,

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Answer of Marjorie Heath Connolly.

Charles Heath, formed a partnership known under the name of Edmund F. Heath & Son, which partnership conducted said business and continued until the death of Charles Heath in 1900; that outside of said business the said Edmund F. Heath was very wealthy and possessed over three hundred thousand dollars worth of property and this defendant says that the relations between said Charles Heath and his father were very cordial and kindly; that the said Charles Heath was a full partner in said business but otherwise was without means except for some unproductive real estate owned by him and his homestead wherein he lived, situate on Centre street and Hamilton road, South Orange, being the first tract mentioned in said bill. That the chief source of income of said Charles Heath was his interest in said partnership. Said Edmund F. Heath desired to have his son and his son's family maintained in a position suitable for the only child and heir of a wealthy man and for that purpose gave him money from time to time for his support and maintenance and the maintenance of his wife and family; that said gifts were never considered or intended to be considered by the said Edmund F. Heath as constituting any debt owed by the said Charles Heath to him, but she says that about the year 1890 the said Charles Heath having become responsible for debts outside of the said firm business, his said father gave him money to liquidate the same and if he took any such alleged mortgage from the said Charles Heath it was only to guard against future claims, and this defendant says that the said moneys were a gift and the said mortgage, if any, was only intended to be enforced in case the said Charles Heath should thereafter become liable for other outside debts and he never did become so liable.

7. And this defendant further says that for some years prior to his death, the said Charles Heath was an invalid and in poor health and at the time the said

Answer of Marjorie Heath Connolly.

Edmund F. Heath gave him further moneys to support himself and his family out of the profits in the firm of said Charles Heath, and out of his private income.

8. And this defendant further says that upon the death of said Charles Heath the said Edmund F. Heath became executor of his will; that at said time the partnership of Edmund F. Heath & Son was conducting their business and the said Edmund F. Heath then took the business over and conducted the same until the time of his death in 1904, that though he made an inventory of the estate of the said Charles Heath and filed the same in the Essex County Surrogate's Court the said inventory contained no reference to the value of said Charles Heath's interest in the partnership firm of Edmund F. Heath & Son, and this defendant says that the said partnership interest of said Charles Heath in said firm was very valuable and of greater value than the said amount of thirty thousand dollars mentioned in the bill of complaint and interest and this defendant says that the said Edmund F. Heath then adjusted any indebtedness including any bond or mortgage of said Charles Heath to him by appropriating to himself the whole of the value of the interest of Charles Heath, in the firm of Edmund F. Heath & Son, and it was his intention by appropriating such interest to cancel any indebtedness of his son Charles Heath to him, including said bond and mortgage, and this defendant says that such arrangement was further recognized by Margaret Heath, the wife of said Edmund F. Heath, and his executrix and by his substitutionary executors, and no moneys were ever demanded as interest or principal on any mortgage nor was any claim made against said estate of Charles Heath for any such debt, and she charges that any such alleged mortgage and bond were cancelled as being paid.

Answer of Marjorie Heath Connolly.

8. And this defendant further says that any such alleged mortgage is liquidated and paid and there is nothing due thereon and the same cannot be enforced against this defendant and her sister, Carlotta Heath.

10 9. And this defendant further says that the said complainant is not only substituted administrator of the estate of Edmund F. Heath, deceased, but also substituted administrator of Charles Heath's estate and has been appointed guardian for Carlotta Heath, one of the children of Charles Heath estate, and she says it is his duty as substituted administrator, with the will annexed of Charles Heath, deceased, and as such guardian of Carlotta Heath to protect the estate of Charles Heath against the said mortgage and that the same cannot be foreclosed by said Frederick L. Maddock as complainant against himself as defendant. And this defendant prays the benefit of this defence as if made by way of plea or demurrer.

20 And this defendant prays to be hence dismissed with her costs and charges.

CORTLANDT & WAYNE PARKER,

Solicitors for Defendant, Marjorie Heath Connolly.

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Answer of Carlotta Heath.

Answer of Carlotta Heath.

Filed March 23, 1912.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK R. MADDOCK, Substi-
tuted Administrator, &c.,
Complainant,

and

MARJORIE HEATH CONNOLLY,
et als.,
Defendants.

On Bill, &c.
Answer of
Carlotta
Heath,
an Infant.

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The answer of Carlotta Health, an infant, under the age of twenty-one years, by Alfred L. Dennis, her guardian, to the bill of complaint of Frederick R. Maddock, substituted administrator, with the will annexed of Edmund F. Heath, deceased.

This defendant answering by her said guardian, says:

1. That she is ignorant and has no knowledge of any indebtedness by the said Charles Heath in his lifetime to Edmund F. Heath in his lifetime at the date and time of the giving of the bond mentioned and set forth in said bill of complaint, nor of any mortgage given by the said Charles Heath to Edmund F. Heath to secure the payment of any moneys due on said bond or of any other moneys as in said bill is set forth, and she leaves the complainant to make full and due proof of the said matters aforesaid, according to the practice of this court.

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Answer of Carlotta Heath.

2. And this defendant further answering, on information and belief, says that she admits that the said Edmund F. Heath died leaving a will and appointing Margaret C. Heath the executrix thereof, and that the said Margaret C. Heath undertook the burden of the administration of the said estate; that the said Margaret C. Heath departed this life and that Edmund F. Heath, Jr., was appointed substituted administrator with the will annexed of the said Edmund F. Heath, and that the said Edmund F. Heath, Jr., subsequently died, and that the complainant was appointed substituted administrator with the will annexed of the said Edmund F. Heath, deceased, as is alleged in said bill.

3. And this defendant further answering, on information and belief, admits that Charles Heath, the father of this defendant, died seized of the premises mentioned in the said bill of complaint, having previously executed a will appointing his father, Edmund F. Heath, his executor; that said will was duly proved and that letters testamentary were issued thereon to the said Edmund F. Heath, and that he took upon himself the burden of the administration of the said estate; that the said Edmund F. Heath subsequently died and that the said complainant was appointed substituted administrator with the will annexed of Charles Heath, deceased, as in the said bill is set forth.

4. And this defendant further answering, on information and belief, admits that the said Charles Heath left him surviving his son, Edmund F. Heath, Jr., Marjorie Heath, the wife of Henry G. Connolly, and this defendant, and that at the time of the death of the said Charles Heath all of the said children were infants; and she also admits that Annie M. Heath, the wife of Charles Heath, predeceased him.

Answer of Carlotta Heath.

5. And this defendant further answering, on information and belief, admits the making of the will by the said Charles Heath, set forth in said bill, but whether the said will is correctly set forth in said bill she has no knowledge and she prays that the complainant may produce the said will or the record thereof and make due proof thereof.

6. And this defendant further answering, on information and belief, says that she is informed and believes that if the said bond and mortgage given by her said father to her grandfather, mentioned in the said bill of complaint, were actually executed and delivered the said bond and mortgage were not given to secure the payment of the sum of thirty thousand dollars, for which they purported to have been given, or any such sum, but that they were given for some ulterior purpose not now known to this defendant, and with no intention that they should be held and kept alive as obligations on the part of the said Charles Heath to his said father; and that the said bond and mortgage were subsequently cancelled and discharged by the said Edmund F. Heath, and they have not since been and are not now of any force or validity.

7. And this defendant further answering, on information and belief, says that at the time of the death of the said Charles Heath he was a partner with his father carrying on a large and prosperous manufacturing business under the firm name and style of Edmund F. Heath & Son, and that the said Charles Heath had a large and valuable interest therein, more than sufficient to pay and discharge his said bond to his said father if in fact it at that time existed; that there was no accounting by the said Edmund F. Heath as the executor of the last will and testament of Charles Heath with respect to his son's interest in the said business, or with respect to any of the other dealings between the said father and his

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Answer of Carlotta Heath.

said son, and that if, as a matter of fact, the said bond and mortgage were at that time alive in the hands of the said Edmund F. Heath, he destroyed the same, considering that the interest of the said Charles Heath in the said business which he, the said Edmund F. Heath, took over and appropriated to himself was fully sufficient to pay and discharge the said mortgage.

10 8. And this defendant further answering, on information and belief, says that the said complainant, after the death of the said Edmund F. Heath, managed the affairs of his estate at the direction of the said Margaret C. Heath who was the executrix of the estate of the said Edmund F. Heath, deceased, and that while the said Edmund F. Heath, Jr., was acting as the substituted executor of the estate of Edmund F. Heath, deceased, the said complainant likewise managed and controlled the said estate, and that
20 since the death of the said Edmund F. Heath, Jr., he, as substituted administrator of the said estate, has been in the control and management thereof; and that he pretends to have ultimately succeeded to the business of the firm of Edmund F. Heath & Son; and that all the books and papers and accounts of the firm are in his keeping and possession; and that the said complainant should be required to account of and in respect to all the dealings, matters and things of the said firm of Edmund F. Heath & Son with respect to the said Charles Heath in his lifetime, and
30 with his estate since his death.

9. And this defendant further answering says that the said complainant is not only the substituted administrator of the estate of Edmund F. Heath, deceased, but is likewise the substituted administrator of the estate of Charles Heath, deceased; that he has been appointed guardian for this defendant and still continues to act as such guardian, and that it is his
40 duty to protect this defendant against the said mort-

Answer of Carlotta Heath.

gage, and that he is, by reason of his peculiar position and relation to the matters in controversy in this cause, incompetent to bring this suit.

And this defendant humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

EDW. A. & WM. T. DAY,
Solicitors for and of Counsel with 10
the Defendant, Carlotta Heath.

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Answer of Bertha Baker Heath.

Answer of Bertha Baker Heath.

(Filed April 6, 1912.)

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> FREDERICK R. MADDOCK, Substi- tuted Administrator with the Will annexed of EDMUND F. HEATH, Deceased, <div style="text-align: right;"><i>Complainant,</i></div> </p>	<p><i>On Bill to Foreclose.</i></p>
	<p style="text-align: center;"><i>and</i></p> <p>MARJORIE HEATH CONNOLLY, <i>et als.,</i> <div style="text-align: right;"><i>Defendants.</i></div> </p>	
20		

The answer of Bertha Baker Heath, defendant, to the bill of complaint of Frederick R. Maddock, substituted administrator with the will annexed to Edmund F. Heath, deceased.

30 1. This defendant answering says that as to the matters alleged in paragraphs one, two, three, four, five, six and seven of complainant's bill of complaint this defendant is advised and believes them to be true.

2. This defendant further answering says that as to the matters alleged in paragraph eight so far as they relate to this defendant and her late husband, Edmund F. Heath they are true, and so far as they relate to other defendants in this suit she believes them to be true.

40 3. This defendant further answering says, that as to the matters alleged in paragraph nine of complainant's bill she is advised and believes them to be true.

Answer of Bertha Baker Heath.

4. This defendant further answering says that as to the facts alleged in paragraph ten, she has no personal knowledge as to who has been in possession and enjoyment of said mortgaged premises, but that so far as said allegations relate to her personally she has not been in possession or enjoyment of said mortgaged premises.

And this defendant consents that a decree be made by this honorable court for the sale of said land and premises in the foregoing indenture of mortgage mentioned and set forth in complainant's bill of complaint. 10

SWEENEY & SCOPPETTONE,
*Solicitors for and of Counsel with Defendant,
Bertha Baker Heath.*

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40

Replication.

Replication.

(Filed April 19, 1912.)

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> FREDERICK R. MADDOCK, Substi- tuted Administrator, &c., <i>Complainant,</i> <i>and</i> MARJORIE HEATH CONNOLLY, <i>et als,</i> <i>Defendants.</i></p>	} <i>On Bill, &c.</i>
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20

The replication of Frederick R. Maddock, substituted administrator with the will annexed of Edmund F. Heath, deceased, complainant to the answer of Marjorie Heath Connolly, defendant.

The complainant joins issue on the answer of the said defendant.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with Complainant.

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40

*Replication.***Replication.**

(Filed April 17, 1912.)

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK R. MADDOCK, Substi-
tuted Administrator, &c.,
Complainant,

and

MARJORIE HEATH CONNOLLY,
et als,
Defendants.

On Bill, &c.

10

20

The replication of Frederick R. Maddock, substituted administrator with the will annexed of Edmund F. Heath, deceased, complainant to the answer of Carlotta Heath, defendant.

The complainant joins issue on the answer of the said defendant.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with Complainant.

30

40

Frederick P. Hemphill, direct.

IN CHANCERY OF NEW JERSEY.

April 28, 1913.

10	<p><i>Between</i> FREDERICK R. MADDOCK, Substi- tuted Administrator, &c., <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MARJORIE HEATH CONNELLY, <i>et als,</i> <i>Defendants.</i></p>
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20 Transcript of shorthand notes of testimony taken
 in the above entitled cause on April 28, 1913, at Chan-
 cery Chambers, Newark, N. J., before Hon. James E.
 Howell, Vice-Chancellor.

Lum, Tamblyn & Colyer, for the complainant.

Mr. Cortlandt Parker, for Marjorie Heath Con-
 nolly.

Mr. Edward A. Day, for Carlotta Heath.

Mr. John R. Hardin and Mr. Algernon T. Sweeney,
 for Bertha Baker Heath individually and as adminis-
 tratrix of Edmund F. Heath, deceased.

30 FREDERICK P. HEMPHILL, sworn.

Direct examination by Mr. Lum.

Q Your business is what?

A General clerk in the Secretary of State's office.

Q Are you familiar with the records of that office?

A I am.

Q In response to a request from our office have
 you produced a paper from that office?

A I have.

40 Q What is the paper to which you refer?

Frederick P. Hemphill, cross.

A The will, and also inventory of the estate of Edmund F. Heath.

Q It is marked G. 1369?

A Yes, sir.

Q You identify this as such paper?

A I do.

Paper offered in evidence.

Cross examination by Mr. Parker.

10

Q I understand you know nothing more about these things excepting they are files from the office of the Secretary of State, is that so?

A Filed in the office of the Secretary of State by the Surrogate of Essex County.

Q That is because you found the endorsement there; you don't know who filed it?

A Nothing other than that they are brought there by a representative of the surrogate's office.

Q Do you remember the bringing there of this paper? 20

A Yes, sir.

Q This very paper?

A Not that particular paper at that time.

Q You are talking of the ordinary course of business?

A Yes.

Mr. Day. I object to the offer, as it seems to me it is an attempt to make evidence on the part of the estate, one estate against the other estate; it does not seem to me that the statement in there of this executrix can be taken as binding or affecting the interest of this infant. 30

The Court. I think your objection goes rather to the weight of the evidence than to its admissibility; I think it is admissible testimony; it is part of the history of the cause and it ought to be in the case, both the will and inventory ought to be in the case.

Marked Exhibit C. 1.

40

John D. Anderson, direct.

Further direct examination.

Q When was it filed in the Secretary of State's office?

Mr. Lum. August 23, 1904, recorded in Book Q. 3 of wills of Essex County, on page 209.

A We have no filing mark that is placed on each individual will, but the surrogate's returns are filed in our office and shows just when these are filed.

10 Q Can you tell us from anything that is on that paper when it was actually filed in the Secretary of State's office?

A Not on this paper; no.

Q Have you any recollection of it?

A No, I haven't any recollection of this individual paper.

Q Can you tell us in a general way?

A In a general way, the probabilities are it was filed in January, 1904.

20 *Mr. Parker.* I move to strike that out.

The Court. Yes.

Q Where did you get it from?

A From the files of the Secretary of State's office.

JOHN D. ANDERSON, sworn.

Direct examination by Mr. Lum.

Q What is your business vocation, profession?

A I am a lawyer.

30 Q And you are a member of the New Jersey bar?

A Yes.

Q You are at the present time in the surrogate's office of Essex County?

A I am.

Q (*By the Court.*) How long have you been there?

A Twelve years the first of February last.

40 Q Do you recall the will of Edmund F. Heath or anything in connection with that estate?

John D. Anderson, direct.

A I recall the will, and I recall a great many things in connection with the estate.

Q The paper before you which has just been marked in evidence indicates that you are one of the appraisers appointed by Mrs. Margaret C. Heath, the executrix of the estate of Edmund F. Heath; do you recall that fact?

A I recall making the inventory with the assistance of the executrix and John D. Toppin, who was the other appraiser. 10

Q This exhibit refers, among other things, to an item as follows: "One bond and mortgage Charles Heath estate \$30,000, value uncertain." In whose handwriting is that?

A The entire inventory with the exception of the signatures of Mrs. Heath, the signature of the surrogate—well, the body of the inventory is in my handwriting, and that entry to which you refer is in my handwriting. 20

Q Where was the inventory of that item made, if you know?

A That part of the inventory was made at home of the late Edmund F. Heath, which was also the home of Margaret C. Heath, at 300 Roseville avenue, in the city of Newark.

Q Will you tell us who was present at the time?

A At the time of the making of the inventory I recalled there being present Margaret C. Heath, Frederick R. Maddock, John D. Toppin and myself. 30

Q Were there securities there at the time?

A There was brought to our attention for appraisal several bonds and mortgages and other assets of the estate; they were contained in a box and were produced there on the evening when the inventory was made; I made a list of the assets and afterward used that list in the actual preparation of the inventory.

Q Do you recall seeing the securities, you and the other appraiser, at the time? 40

John D. Anderson, direct.

A We saw the securities, examined them, and such information as was needful to enter into the inventory was taken at the time.

Q Do you recall when that paper that is before you, approximately, was sent to the Secretary of State's office?

A The appointment of the appraisers bears date as shown by the paper, August 30, 1904. I took my affidavit before Henry Young, as shown by the paper, October 14, 1904; Mrs. Heath's affidavit to the inventory, as shown by the exhibit, bears date October 18, 1904; the paper bears a filing mark of the Surrogate October 18, 1904.

The Court. Now how long a time is allowed to you to make your returns?

A The statute requires—

Q (*By the Court.*) Never mind that. Can't you state, a month, six months, or three months?

A It doesn't allow any time at all; it says the quarterly return shall be made.

Q (*By the Court.*) Returns are made quarterly then?

A Yes, returns are made quarterly with the Secretary of State; it isn't physically possible to make them exactly on the date.

Q Do you recall whether there was any conversation at this time when the inventory was made at 300 Roseville avenue with reference to this mortgage?

A I remember a conversation which the bond and mortgage brought forth.

Q (*By Mr. Parker.*) Who was the conversation with?

A There was a general conversation there between Mr. Maddock, Mr. Toppin, Mrs. Heath and myself with regard to those two instruments, the bond and mortgage.

Q Will you just cover the situation as to the conversation as clearly as you can recall it?

John D. Anderson, direct.

Mr. Day. I cannot admit anything that isn't proper, on account of my infant. Is this conversation proper?

The Court. Do you think it is proper?

Mr. Lum. The administratrix or the executrix, whose duty it was, and this man, whose duty it was to inventory and cover this matter, were present and in the performance of their duties. This is presented for the appraisers to inventory and appraise. The defendants now set up that it is not an asset of the estate. It seems to me that the conversation made by and in the presence of those whose duty it was to cover this specific thing at this time, is of value. However, I do not desire to press it if the other side object. 10

The Court. I think you are entitled to prove everything that was done on this occasion, as, for instance, whether Mr. Anderson examined the paper, the two papers, the bond and mortgage, whether anybody else examined them, and all the details, the particular details of what took place on that occasion; but conversations I am afraid will lead us astray. 20

Q Did you yourself examine the bond and the mortgage?

A I did.

Q And did the other appraiser in your presence apparently examine them? 30

A As far as I recall, he did.

Q Without going into the question of conversation, was there any conversation with reference to it at the time to fix it in your mind?

The Court. Yes or no.

A Yes.

Q And was there anything done at the time, or anything said that led up to the fixing of the value that was done there?

A Yes. 40

John D. Anderson, direct.

Q And what was that?

A I don't know whether I can detail that without going into some part of the conversation. I will try, however. The bond and mortgage was exhibited—

Q (*By the Court.*) In the first place, how did it first come into your possession or to your knowledge?

A It was contained in a box, the contents of which
10 was exhibited to the appraisers.

Q (*By the Court.*) Who produced the box?

A The box was at the home; I first saw it in the parlor, or one of the front rooms in the house at 300 Roseville avenue.

Q (*By the Court.*) In whose possession was it when you first saw it?

A My recollection is that it was sitting on a table or resting on some table or chair, or something of that sort there.

20 Q (*By the Court.*) And in the actual possession of nobody then; I mean to say nobody had it in his or her hands?

A I think not, as I recall.

Q (*By the Court.*) Who opened it?

A I don't remember about that, sir.

Q (*By the Court.*) Was it locked?

A I don't remember about that.

Q (*By the Court.*) Who took the papers from it?

30 A I don't remember that.

Q (*By the Court.*) Were you all sitting around the table on which it was?

A We were all in the room; whether we were actually clustered about the table I don't recall.

Q (*By the Court.*) At what point in this interesting performance was it that you first saw this particular bond and mortgage?

A As I recall it, we went there, we examined the contents of the box as the items appear in here.

40 Q (*By the Court.*) In the inventory you mean?

John D. Anderson, direct.

A In the inventory, and in the box was these two instruments, this bond and mortgage given by Charles Heath to Edmund F. Heath.

Q You were starting to cover how the value was fixed.

The Court. Let us go on with what was done about the paper, what became of the paper, who saw it, and how they saw it, and what it was, and all those particulars. 10

A I remember very definitely seeing the paper, and remember a conversation which its examination called forth from me.

Q What was done with it after you finished the conversation?

A My recollection is that all of the papers that were in the box were put back in the box.

Q (*By the Court.*) Do you remember whether the instrument was written with pen and ink, or whether it was typewritten on blank? 20

A I don't recall that.

Q (*By the Court.*) My question related to the mortgage alone?

A I don't recall as to whether the instrument were typewritten or in longhand, or whether they were on blanks or written out at length.

Q (*By the Court.*) You are now speaking of both the bond and mortgage? 30

A Speaking of my absence of recollection as to both instruments, on that point.

Q Did you examine them yourself?

A I remember examining a bond and mortgage there given by Edmund F. Heath—given by Charles Heath to Edmund F. Heath, as a part of the contents of that box.

Q And it was one of the things inventoried as part of this estate, was it?

A It was listed— 40

John D. Anderson, direct.

Mr. Parker. That is a strongly leading question.

The Court. It appears by the paper itself.

Mr. Parker. Then what is the use of asking the question.

Q Do you recall whether the paper was destroyed at that time or not?

10 A I don't recall the destruction of any papers, or any of the contents of that box; I can say from recollection, or my recollection is that none of the contents of that box was in any way destroyed.

Q What was done with the instrument after you finished your share of the work?

A My recollection is I should say it was put back in the box.

Q Do you know what became of that box of your own knowledge?

20 A I never saw it from that time.

Q Will you now cover first the transactions leading up to fixing the value of the instrument?

A It was explained by Mr.—you are speaking of the conversation?

Q Anything that led up to the fixing of the value by you in the performance of your duties there?

30 A The mortgage, or the examination of the papers brought forth a question as to what value should be placed upon the mortgage, and after a discussion with Mrs. Heath Mr. Maddock, Mr. Toppin and myself, the suggestion was made, as I recall—

Mr. Day. Is that proper?

The Court. What was done? After the conversation what happened?

A Why, I made a lead pencil memorandum of the mortgage, and afterward, on the advice, as I recall it, of Mrs. Heath's counsel, listed it, or gave it a value, or listed it, as it appears here, "value uncertain."

40 Q (*By the Court.*) Was Mrs. Heath's counsel there?

John D. Anderson, cross.

A Not on that occasion; that was in the evening.

Q (*By the Court.*) Now, Mr. Anderson, did you have this bond and mortgage in your hands?

A I actually had all those papers in my hands.

Q (*By the Court.*) Did you unfold the bond and read it?

A I don't think I read the entire instrument, no, sir.

10

Examined by the Court.

Q What examination of the bond did you make, if you remember?

A I don't remember making any special examination of the bond or of the mortgage; I remember getting from some source at that time the simple amount, and was told—

Q Do you remember examining the signatures to either the bond or the mortgage?

A I do not.

20

Q Do you remember whether the mortgage was signed by Charles Heath's wife? Was she living then?

Mr. Parker. No; she was dead, sir; she died before him.

A I don't recall the examination of the instrument going that far, your honor.

Q Or examining the certificate of the acknowledgment on that occasion?

A No, sir.

30

Q (*By Mr. Tamblyn.*) Did you notice whether it was registered or recorded?

A I don't recall that.

Cross examination by Mr. Day.

Q You say you marked this as uncertain at the suggestion of Mrs. Heath's counsel; who is that?

A I think, as I recall it, Henry Young, Jr., was her counsel.

40

John D. Anderson, cross.

Q Did you go and examine the real estate covered by the mortgage?

A No, sir.

Q Do you know what real estate it covered?

A Only from a conversation which was had on the occasion.

Q That is all you know?

A That is all the information that I had as relating to it; I never knew any of the family previous to that.

Q Can you say whether or not that mortgage you there had before you is the mortgage that is being foreclosed now?

A No, sir, I can't; I haven't read or seen any pleadings in this case, sir.

Q Now, did you have while you were making your inventory the books of Mr. Edmund F. Heath or the books of Edmund F. Heath & Son?

A Not there on that occasion.

Q I mean at any time?

A We had certain books in the office of Edmund F. Heath.

Q (*By the Court.*) When?

A Within a day or two after, shortly after the beginning of the inventory.

Q (*By the Court.*) Before it was finally made up and signed?

A Yes, sir.

Q That is to say then, Mr. Anderson, you met first up at Mrs. Heath's house, then after that you went to the office of Edmund F. Heath & Son, and made your inventory there, both places?

A We went to both places, yes.

Q Any where else?

A That was 300 Roseville avenue and the factory up here, we went all around the factory and the factory yard, I remember in the store house there in the various rooms where the industry Mr. Heath had conducted was being carried on.

John D. Anderson, cross.

Q How many times were you at the factory, do you remember?

A My recollection is that we were there twice.

Q And during that time you examined the books?

A I remember seeing certain books there, yes, sir.

Q Did you stop to examine them to see whether Charles Heath was indebted to his father?

A I do not recall that there was any examination of the books on that point; no, sir. 10

Q Might have been?

A I doubt it.

Q Didn't you go over his books in order to ascertain what assets he had?

A If I see the inventory that might refresh my memory as to what we did see.

Q (*By the Court.*) I suppose you did not preserve the pencil memorandum that you made as you went along? 20

A No, sir, I did not. I don't recall any examination of the books of the Edmund F. Heath & Company or firm, or whatever name they were doing business under.

Q You are a very careful man?

A I sometimes think I am very careless.

Q I have always found you very careful; why did you put in that value "uncertain"? That is what I want to find out, just at the direction of Mr. Young?

A Because of that conversation which was had on that occasion in which Mrs. Heath, Mr. Maddock, Mr. Toppin and myself took part, and a later conversation, as I recall it, with Mr. Young, who was Mrs. Heath's counsel. 30

Q Then as a result of that conversation, and under the directions of Mr. Young, you put that in as value uncertain?

A That is the extent, as I recall it, yes.

Q And you hadn't gone to the books to ascertain whether Charles Heath was indebted to his father? 40

John D. Anderson, cross.

A No, sir.

Q And you did not at that time examine to see whether Edmund F. Heath was indebted to his son, Charles, in the business?

A No, sir.

Q And you did not examine the real estate?

A No, sir.

10 Q Covered by this mortgage? Do you know whether this property had another mortgage on it?

A I knew nothing about that, the title of the property I knew absolutely nothing about, don't to-day.

Q (*By Mr. Parker.*) I understand you did not take any note as to what the property was that was included in this mortgage?

A I remember the conversation only as to what property was included.

Q And you did get some knowledge of what the property was included?

20 A Considerable knowledge from this conversation which has been ruled out.

Q And after knowing what the property was on which this mortgage was supposed to cover you then marked the thing as "value uncertain"?

A On the advice of Mrs. Heath's counsel, yes.

Q And as a result of conversations which you had with Mrs. Heath, the executrix?

A And with Mr. Maddock and with Mr. Toppin.

30 Q You did not inquire into the value of the property which was supposed to be mortgaged?

A There was some question as to the value which caused us to put it in "value uncertain."

Q Some question as to the value of the property?

A Some question as to the value of the land which it covered which caused us to put it in as value uncertain.

Q Is that the only reason?

40 A That was as I recall the main and chief reason; I don't recall any other reason.

John D. Anderson, cross.

The Court. I don't think that the conversations which took place at that time are admissible. I don't see how these people could make evidence in favor of this mortgage, in favor of the validity of this mortgage on that occasion by anything that they might say. The thing that is being attempted now is to prove that there was such an instrument as that that is described in the bill, that there was a mortgage, that it covered certain property, that it was properly executed, and eventually that there was something due on it, that it was lost, and that proper and adequate search had been made for it, and that it could not be found. Those are the issues in the case. 10

Q (*By Mr. Hardin.*) This conversation you refer to, Mr. Anderson, had to do entirely with the matter of value? 20

A Yes, it did.

Examined by Mr. Parker.

Q You said there were other conversations besides as a result of conversation about the value of the property and other things that you put it in as "value uncertain"?

A Yes, I took Mr. Hardin's question to mean the conversation at the house on the evening when the instrument was first examined by the appraisers.

Mr. Hardin. That was what I meant. 30

Q Then afterward there was conversation with Mrs. Heath's counsel which also caused you to put it in as value uncertain?

A Yes, those two incidents taken together.

Q Can you be positive that you saw an original document, and not a copy of it?

A I could answer that question in this way, that in my belief the instrument was the original instrument, it was the original bond and mortgage, as I recall it; I cannot be absolutely positive on that point. 40

Frederick R. Maddock, direct.

FREDERICK R. MADDOCK, sworn.

Direct examination by Mr. Tamblyn.

Q Where do you reside?

A Corner of Munn avenue and Central avenue, East Orange.

Q Are you in business in this city?

A Yes.

10

Q Where?

A 225 Warren street.

Q And what business are you engaged in?

A In the manufacture of enameled cloth.

Q You are the complainant in this suit, are you not?

A Yes, sir.

20

Mr. Tamblyn. I will offer in evidence exemplified copy of the will of Edmund F. Heath, deceased, together with the proofs thereon, the order for probate, grant of letters to Margaret C. Heath and the proceedings upon the appointment of Edmund F. Heath, Jr., substituted administrator with the will annexed.

Marked Exhibit C. 2.

And also the letters substitutionary administrator with will annexed, of Edmund F. Heath, deceased, granted unto Frederick R. Maddock by the Surrogate of Essex County, November 1st, 1909.

30

Marked Exhibit C. 3.

And also a certified copy of the record of the last will and testament of Charles Heath, deceased, and a copy of the record of letters of substitutionary administrator, granted unto Frederick R. Maddock.

Marked Exhibit C. 4.

Q You were acquainted with Edmund F. Heath, Sr., in his life time?

A Yes, sir.

40

Q How long have you lived in this vicinity?

Frederick R. Maddock, direct.

A About thirty years.

Q When did you first become acquainted with Mr. Edmund F. Heath?

A Possibly forty years ago or fifty years.

Q Had you been associated with him in his lifetime?

A Yes.

Q When did you first become associated with Mr. Heath? 10

A In 1882.

Q In what capacity or what manner were you associated with him?

A Bookkeeper.

Q In connection with what?

A With the manufacturing of enameled oil cloth.

Q Where was that conducted?

A 225 Warren street.

Q And under what name, what title? 20

A Name of Edmund F. Heath & Son.

Q Who constituted the persons, who were the persons trading under that style?

A Edmund F. Heath and Charles Heath.

Q Who was Charles Heath?

A Charles Heath was the son of Edmund F. Heath.

Q Where did you reside when you formed this business association with Mr. Heath?

A 205 South Orange avenue. 30

Q Was that your residence?

A Mr. Edmund F. Heath's home.

Q Mr. Edmund F. Heath's home?

A Yes, sir.

Q So you lived with him?

A Yes, sir.

Q And did you live with him from the time you began your business relations with him?

A Yes.

Q In 1882? 40

Frederick R. Maddock, direct.

A Yes.

Q Who constituted his household there in the South Orange avenue house?

A Mr. Edmund F. Heath and Mrs. Edmund F. Heath, his wife.

Q No others in the family at that time?

A No, sir.

10 Q How long did you continue residing with Mr. Heath?

A Until he died.

Q You continued from that time, from 1882 until the time of his death you resided in his family?

A Yes.

Q Were you married or unmarried during that interval?

A Unmarried.

Q What was the date of Mr. Heath's death?

20 A 1904.

Q Did he live at the South Orange avenue address constantly during that interval of time?

A No, sir, he lived there until he lived at Roseville avenue for twelve years, about twelve years.

Q So that during the time you were living with him he lived at these two places?

A Yes.

Q You were first employed in the capacity of bookkeeper in 1882?

30 A Yes, sir.

Q How long did you remain in his employ, or were you associated with him in business, in any capacity I will say?

A Yes, I was a partner with Mr. Heath for about four years.

Q Were you in his employ or connected with him in business from the time you went with him in 1882?

A With the exception of about a year and a half.

Q Down to his death you mean?

40 A Yes.

Frederick R. Maddock, direct.

Q Where were you during that year and a half?

A I was in the insurance business and in the hardware business.

Q Here?

A Yes, sir.

Q About when was that?

A That was about 1884.

Q And did you live with him during that interval also? 10

A Yes.

Q In what capacities were you in his employ before you became a partner with him?

A I was superintendent of the factories.

Q You were promoted to that position from bookkeeper, were you?

A Yes; I took the place of a bookkeeper just while the other bookkeeper was absent in Europe; then after that I became superintendent of the factory. 20

Q And how long did you remain as superintendent?

A Until Mr. Heath died, or until four years of his death, until Charley died.

Q When did Mr. Charles Heath die?

A 1900.

Q And when did your partnership relation with Mr. Heath begin, Edmund F., after Mr. Charles Heath's death?

A Yes. 30

Q And continued until the time that he died?

A Yes.

Q You know this suit is brought to foreclose a mortgage secured by a bond made by Charles Heath to his father Edmund F. Heath?

A Yes.

Mr. Day. I object to that as leading.

The Court. It is merely an introductory question.

Frederick R. Maddock, direct.

Mr. Day. That declares that the mortgage is there.

The Court. Oh, no, it don't; it is a mere question of identification.

Q You were associated with Mr. Heath, Edmund F., I mean now, on the eighth of December, 1892?

A Yes.

10 Q In what capacity were you working then?

A I was a partner then.

Q In 1892?

A I beg pardon, I was superintendent.

Q Of the factory at that time?

A Yes.

Q You knew Mr. Charles Heath?

A Yes.

Q Where did he reside at that time?

20 A He resided in South Orange, Center street, South Orange.

Q And he was a partner with his father at that time in 1892, was he not?

A Yes, sir. Mr. Tamblyn, I am not so sure about 1892, whether he resided in South Orange. Yes, he certainly did, it is all right.

Q He was associated with his father in the business where you were superintendent, anyway, at that time?

A Yes.

30 Q Mr. Maddock, have you ever seen a bond and mortgage made by Charles Heath to his father, to secure the payment of \$30,000?

A Yes.

Mr. Day. Don't answer that question. I object to that question.

The Court. Upon what ground?

40 *Mr. Day.* I think, if the court please, it is quite improper for this witness to testify as against his *cestui que trust* in this way. It is his duty to be here and protect them, not to testify against

Frederick R. Maddock, direct.

them. I think his mouth is closed. And, furthermore, I object to anything that—well, I think that goes to the extent of my objection.

The Court. I overrule the objection upon this ground: That all the *cestui que* trusts are here in court represented by counsel, and everyone of them has filed a pleading in the cause, so that their rights can be fully protected by the court on the making of a decree. You may answer the question, yes or no. 10

A Yes.

The Court. That question is a mere question that goes merely to the identification of the document. You have got to bring the witness's mind to the paper that is in controversy as set out in the bill and answer. When and where did you first see this document?

Q When and where did you first see this bond and mortgage? 20

A This bond and mortgage used to be kept in the safe of Edmund F. Heath & Son, which I had access to at all times, had the keys to the cash drawers, whatever securities were in the safe, during all my superintendency at the factory, and this bond and mortgage I saw back about the time it was given, about 1892.

Q Do you know by whom it was made, the bond and mortgage we are talking about? 30

The Court. You better let him describe what he saw, what was the paper, or what were the papers?

Q What were the papers you saw, describe the papers back about, you say, 1892; I want to confine your attention to the early history of the paper now.

A A bond and mortgage given by Charles Heath to Edmund F. Heath.

Q Can you describe what they were? 40

Frederick R. Maddock, direct.

A Covering property of 458 Center street, South Orange, and two hundred feet of property in Orange, vacant lot.

Q Do you remember the papers, the form which they took?

The Court. Don't lead him; this is the very nub of the case.

10 A These were papers, as far as I can remember, made out by George Duryea, who was a personal friend of Charles Heath, to Edmund F. Heath, and in handwriting—

Q (*By Mr. Lum.*) Continue the description of the paper as you remember it.

A As near as I can remember they were in the regular form of bond and mortgages; I am very familiar with bonds and mortgages, have handled so many of them, and these seemed to be in regular form.

20 Q (*By Mr. Lum.*) Any amount in it?

A Yes.

Q (*By Mr. Lum.*) What?

A Thirty thousand dollars.

Q (*By Mr. Lum.*) Do you recall the rate of interest?

A I rather think the rate of interest was blank, but I wouldn't be sure.

30 Q (*By Mr. Lum.*) Are there any other details you can recall at all?

A This mortgage was not recorded at the time I first saw it; it was kept in the safe for a number of years.

Q Charles Heath died, you said, in 1900?

A Yes, sir.

Q Where had this bond and mortgage, to which you now refer, been kept from the time which you say you saw it back in 1892, down to the date of Mr. Charles Heath's death?

40 A Kept in the safe of Edmund F. Heath & Son.

Frederick R. Maddock, direct.

Q Where was that safe kept?

A 225 Warren street.

Q (*By the Court.*) In the office of the firm?

A Yes, sir; in the office.

Q (*By the Court.*) Give us the names of all the people who had access to that safe from 1892 down to the time of Edmund F. Heath's death?

A Charles Heath and Edmund F. Heath, Senior, Thomas McCarroll, the bookkeeper, Frederick R. Maddock. 10

Q (*By the Court.*) That is yourself?

A Yes, sir; that is all, sir.

Q What time in 1900 did Charles Heath die, do you remember the date?

A About July 8th, I think.

Q Did you see this bond and mortgage after Mr. Charles Heath's death?

A Yes, sir. 20

Q Where did you see it?

A In the office 225 Warren street.

Q Upon what occasion did you see it?

A Edmund F. Heath gave it to me.

Q (*By the Court.*) When?

A About three weeks after Charles died.

Q (*By the Court.*) What did you do with it?

A Took it down to the court house to be recorded, to the register.

Q (*By the Court.*) How did you come to do that? 30

A Edmund F. Heath gave it to me and told me to take it down.

Q (*By the Court.*) When did you next see it?

A I saw it when we made—at 300 Roseville avenue, after Mr. Heath's death.

Q (*By the Court.*) Do you know where it had been in the meantime, of your own knowledge?

A It had been in the safe, 225 Warren street, and up at 300 Roseville avenue, at the house. 40

Frederick R. Maddock, direct.

Q (*By the Court.*) Did Mr. Heath have a safe at his house?

A Yes, sir.

Q Who had access to that?

A Mr. Heath and myself.

Q (*By the Court.*) How long did it remain there at the house, so far as you know?

10 A I think it was there about a year.

Q (*By the Court.*) Then what happened to it?

A Then it was in the possession of Margaret C. Heath, the executrix.

Q (*By the Court.*) I don't understand that. When was it taken to the house, if you know?

A It was taken to the house after Mr. Heath died.

Q (*By the Court.*) By whom?

A By myself.

20 Q (*By the Court.*) With other papers, or this bond and mortgage alone?

A All papers that belonged to him, sir, that were in the safe.

Q Did you take to the house the papers that Mr. Anderson referred to this morning that he inventoried at the house?

A Yes, some of them, only some of them.

Q What kind of a box was this that you speak of?

A It was all these papers, it was just a box to hold the papers together, that is all.

30 Q (*By the Court.*) Tin box.

A I am not sure whether it was tin box or not.

Q You were present at the time Mr. Anderson made the inventory?

A Yes.

Q Did you see these instruments there at the time?

A I did, sir.

Q This bond and mortgage which he inventoried was the same one which he saw back in 1892?

40 A Yes.

Frederick R. Maddock, direct.

Mr. Parker. That is very leading.

Q When next did you see these papers?

A I am not sure whether I saw the paper after that or not; it then was in the possession of Margaret C. Heath, executrix.

Q (*By the Court.*) Where is it now, if you know?

A I don't know, sir.

Q When was the last time you saw these two documents? 10

The Court. He has answered that question practically.

Q When did Mrs. Heath die?

A 1906.

Q Who became substituted administrator, with the will annexed, after her death?

A Edmund F. Heath, the grandson.

Q That was in 1906?

A Yes. 20

Q How long did he continue in that capacity?

A Until he died.

Q And when was that?

A 1909.

Q Where did he live during that interval?

A During his administratorship?

Q Yes.

A At 300 Roseville avenue.

Q (*By the Court.*) That is the old homestead?

A Yes, sir. 30

Q What was his business?

A He was a typewriter at the factory.

Q At the factory?

A Yes.

Q Was the safe in the house?

A There was a safe in the house, yes.

Q During that period, too?

A Yes.

Q Who had access to that safe?

A Myself, sir. 40

Frederick R. Maddock, direct.

Q At the house?

A Yes.

Q Who was living at 300 Roseville avenue when Edmund was there, the grandson?

A His sister, Carlotta, and myself.

Q You were appointed administrator with the will annexed first of November, 1909, according to the letters?

10 A Yes, sir.

Q And you have been acting as such since that time?

A Yes.

Q Did this bond and mortgage come into your possession?

A No, sir.

Q (*By the Court.*) Never?

A Never.

20 Q (*By the Court.*) I mean never since you were appointed administrator with the will annexed?

A No, sir.

Q What do you know of its whereabouts, if anything?

A I don't really know where it is at all, sir.

Q Have you made any search to find it?

A Yes, I have searched diligently.

Q Where have you searched?

30 A At 300 Roseville avenue, and at 225 Warren street, and everywhere I could think of, to try to find that paper.

Q In what places have you made this search?

A In the safes, the safe at the house and the safe at the office.

Q No other safes?

A No, no other safes.

Q That were used by these people at all?

A No, sir.

40 Q (*By the Court.*) Now just tell what you did, what search did you make?

Frederick R. Maddock, direct.

A Why, I searched through all the papers that were in my possession, or anything that I had control of in any way as administrator of different estates, and as executor of one estate, and as of guardian of Carlotta; I looked through everything; I had access to everything at the place of business and at the house, and I searched everywhere for it, everywhere I could think of.

Q (*By the Court.*) Did you have any assistance in making the search? 10

A I also asked Mr. Young, who is Mrs. Heath's attorney part of the time, I asked Mr. Young if he had it in his possession; he didn't have it; I thought probably, no doubt, Edmund, it came into his possession after his grandmother died, and Mr. Charles T. Glen was Edmund's counsel, and I asked Mr. Glen to search his office for it, and couldn't find it there.

Q (*By the Court.*) Mr. Glen is now dead? 20

A Yes.

Q Had you access to Mr. Glen's papers?

A Yes, I had access to all his papers.

Q You married Mr. Glen's daughter?

A Yes.

Q Have you searched through his papers?

A Yes, over and over again.

Q Find any trace of it or anything there?

A No, sir, nothing at all, no mention.

Q Who did you say had access to the safe at the house? 30

The Court. During what period?

Q After the death of Edmund F. Heath, Senior?

A Mrs. Heath, his wife, and myself.

Q And then after his death?

A I had access only.

Q After her death did you examine that safe for these papers, since her death?

A Why, I opened the safe for Edmund and gave Edmund all the papers that belonged to the estate, or 40

Frederick R. Maddock, cross.

we kept some of them in that safe, I used to open the safe and keep his papers, he kept them there, that belonged to the estate, he was administrator with the will annexed, and he used to keep some of the papers in that safe, and then ask me for them; other papers he kept down in the safe in the office 225 Warren street; he had access also to that safe.

10 Q Have you found any evidence in your examination of the payment of this mortgage?

Mr. Day. I object.

The Court. I suppose that would be a matter of defense. I will take it subject to your objection; I will take the answer.

Q (Question read.)

A What do you refer to, whether the mortgage has been paid?

Q Yes?

20 A No, I haven't found any evidence that it has been paid.

Cross examination by Mr. Parker.

Q Do you remember when the settlement was made by you, by which all parties interested in the Edmund F. Heath estate transferred their interest to Edmund and Marjorie?

A It was not made by myself.

30 Q Well, do you remember when that arrangement was made?

A Yes.

Q About what date was that?

Mr. Hardin. Is there a paper writing on the subject?

Mr. Parker. I don't know.

Mr. Hardin. If there is a paper writing on the subject show it to him.

40 A About 1907 I think, Mr. Parker, toward the end of 1907, if I recollect correct.

Frederick R. Maddock, cross.

Q Now I understand that this was the office safe in the office in Warren street where you say you first saw a bond and mortgage by Charles Heath to Edmund F. Heath?

A Yes, sir.

Q It was in the safe among other papers, what other papers?

A Among other bonds and mortgages.

Q Then a whole lot of bonds and mortgages were kept there together? 10

A Not very many, there were just a few, maybe three or four.

Q And was it a separate compartment of the safe, or were these things kept in the safe generally?

A It was a separate, open, not a locked compartment, but just a separate pigeon hole.

Q Just a pigeon hole?

A Yes, sir. 20

Q And in these pigeon holes there were certain bonds and mortgages?

A Yes.

Q And was this bond and mortgage in a pigeon hole too?

A Yes.

Q So that when the safe doors were opened there was these pigeon holes shown to everybody that was there, weren't they?

A Yes. 30

Q The safe was open during business hours, wasn't it?

A Yes.

Q Anybody had access to the papers there that was in the office and authorized to go there?

A Yes.

Q And Charles Heath had full access to that paper?

A Yes.

Frederick R. Maddock, cross.

Q Now there were other papers of Mr. Edmund F. Heath kept in the office there, stocks and bonds and negotiable securities, were there not?

A No, not to my recollection, Mr. Parker.

Q Didn't he keep his certificates of investments in bank stocks, &c., at the office?

A He generally kept them at the house.

Q Kept them at the house?

10 A Yes.

Q Then those special securities and things of his own personal property he kept up at the house?

A Yes, sir.

Q And wasn't the safe generally, at the office, generally adopted for the purpose of keeping firm securities, &c., there?

A Yes, sir.

Q You say you think this paper was drawn in the handwriting of George Duryea?

20 A Yes, sir.

Q He was a very good friend of Charles, wasn't he?

A Yes. Mr. Parker, will you pardon me a minute? I am not so sure whether I said that, that it was drawn in the handwriting of George Duryea.

Q That is what I wanted to get at, your recollection on that?

30 A It was drawn in handwriting, I wouldn't say whether it was George Duryea's, but I saw George Duryea's signature on that paper somewhere.

Q You think, your remembrance is that George Duryea's signature was on it?

A Yes.

Q Did you look at the acknowledgment of it?

A I don't recollect, Mr. Parker.

Q Can you tell us whether George Duryea took the acknowledgment?

A I rather think he did, that is my impression.

40

Frederick R. Maddock, cross.

Q And these mortgages were lying there, you say, openly; can you tell us what other mortgage was there beside this?

A Mr. Heath had different mortgages of his own, personal mortgages from time to time, which he sold property, the old homestead, he used to take mortgages and used to keep them there, I couldn't tell you, I couldn't particularize.

Q Then you couldn't tell us any one mortgage besides this one you saw of Charles Heath, you couldn't say any other, was there? 10

A There was a mortgage there from Albert Doviey to Edmund F. Heath or John Iffland which took the property afterwards to Edmund F. Heath; there was probably a mortgage there from John F. Glutting to Edmund F. Heath.

Q There were no insurance policies there of this mortgage of Charles Heath, was there?

A I can't remember, Mr. Parker. 20

Q You saw that there for some time, you say that this paper went up to the Roseville avenue house?

A Yes.

Q With other papers?

A Yes, sir.

Q You don't remember what you took up there with those other papers?

A I couldn't say, probably all the mortgages that are specified in the inventory, because they were taken up there for that purpose after Mr. Heath died. 30

Q There were a good many stocks and bonds specified in the inventory?

A They were in the safe up at the house, yes.

Q But during all Mr. Heath's life time he never took that bond and mortgage up to the house?

A No, sir.

Q Then you never saw the bond and mortgage after it was inventoried?

A I thought it was in our safe afterwards, I thought it was in the safe. 40

Frederick R. Maddock, cross.

Q Which safe?

A 225 Warren street, after Edmund died, the grandson, when I became administrator with the will annexed, I thought I could go right there and put my hand on it, and when I went there to put my hand on it it was not there.

Q Why should it be in the Warren street safe if you had last seen it up in the Roseville avenue place?

10 A The papers were given to Edmund, who succeeded his grandmother, and he kept a great many of those papers down at 225 Warren street.

Q But you gave, the papers that were given to Edmund when he became administrator instead of his grandma were given to him at the Roseville avenue house, weren't they?

A Yes.

Q All the papers at the Roseville avenue house that belonged to him were given to him then?

20 A Whatever ones he desired.

Q Whatever ones he desired. Didn't you take out and separate the papers and things that belonged to the Edmund F. Heath estate and give them to Edmund?

A Yes, but some of them he didn't wish to keep them at 225 Warren street.

Q And some he kept in the house?

A Some he kept in the house.

30 Q Where was the transfer made of the securities of the Edmund F. Heath estate to young Edmund, where was that made, where did you pass them over?

A They were passed over either at the house or the factory, I couldn't tell you.

Q Couldn't tell us which?

A No, sir.

Q What time in 1909 did Edmund die, the young Edmund?

A I can't recollect that.

40 Q Can't tell whether it was the autumn?

Frederick R. Maddock, cross.

A Oh, it was in the spring.

Mr. Sweeney. Four years to-day, April 28.

Q And for these years, from 1906 to 1909 Edmund was acting as administrator of the estate, wasn't he?

A From 1907, the latter end of 1907 to 1909, yes.

Q And you were very closely connected with Edmund?

A Yes. 10

Q Your relations were very friendly and cordial?

A Yes.

Q And isn't it a matter of fact, didn't you direct Edmund and advise with him in the carrying on of the Edmund F. Heath estate, settling it up?

A Yes.

Q Now, you say that some time after Edmund's death you made search for these papers, when, about how long after?

A When I was appointed administrator with the will annexed. 20

Q Then you looked after these papers, did you?

A Yes.

Q And at whose suggestion?

A At my own suggestion, because it was my duty to take charge of everything.

Q And it was then you looked for them?

A Yes.

Q In the performance of your duty?

A Yes. 30

Q Did you regard it as a duty to collect the mortgage and look for a mortgage to enforce against the estate of Charles Heath?

A Yes, as administrator I had to look out for each estate.

Q Yes, but you think it was a duty to take the one estate and put it in another, is that it?

A Yes, it was legal paper, a mortgage, and I thought it was due the estate of Edmund F. Heath.

Frederick R. Maddock, cross.

Q Well, you then searched at the office for this paper you say?

A Yes.

Q And not finding it there you searched where?

A I searched at the house.

Q Where, in the safe at the house?

A Well, I did, yes, I searched the safe in the house then, through young Edmund's papers, every paper
10 that he had.

Q You looked all over his papers?

A Yes.

Q And you say you couldn't find it?

A No, sir.

Q Did you ever inquire for any safe deposit place of Edmund's?

A He didn't have a safe deposit place that I know of.

20 *Cross examination by Mr. Day.*

Q Mr. Maddock, when was the last time you saw that bond and mortgage?

A At the time of taking, Mr. Anderson taking the inventory at the house.

Q That night?

A Yes.

Q That is the very last time you saw those two papers?

A To my recollection it is.

30 Q Now, you say that those papers had been brought up for Mr. Anderson and Mr. Toppin's inspection?

A Yes.

Q You had brought them up from the factory?

A Yes.

Q With the Charles Heath bond and mortgage and some other mortgages?

A Yes.

Q Made by Glutting, did you say?

40 A Glutting, I think was one of them.

Frederick R. Maddock, cross.

Q And Iffland and Doviey?

A Yes.

Q Any other?

A There were a number of them.

Q Now they were all in this box, it was on the table?

A Yes.

Q You saw the box that night?

A Yes. 10

Q You had brought them up in that box?

A No, I wouldn't say I did bring them up in the box; I brought them up.

Q To whom did you give them when you brought them up, to whom did you give them?

A I gave them to Mrs. Heath.

Q Now, Mrs. Heath was right in the room and you saw her all the time, too, didn't you?

A What time do you mean? 20

Q How long before the meeting of the appraisers did you bring those papers, how many hours, or an hour, or what?

A Probably two or three hours.

Q Probably—you brought them up in the evening when you came home from business?

A Yes.

Q And you gave them to her in the parlor?

A Yes.

Q Did you see what she did with them?

A I couldn't tell you, Mr. Day. We no doubt put them in a safe place until Mr. Anderson arrived, and Mr. Toppin. 30

Q But Mr. Anderson saw they were in a box?

A Yes.

Q With other papers, with these other mortgages you have specified?

A Yes.

Q Now, did you bring up this box?

A The probability is that this box was in the safe with other securities in, and when we handed this box 40

Frederick R. Maddock, cross.

out then we took the mortgages which were not so important to keep as securities that were unregistered and put them in this box and brought them altogether on the table.

Q Now, you say the probabilities are; don't you know?

A I don't want to swear to it.

10 Q You handled the securities up there more than once, didn't you?

A Yes.

Q You always had access, both during Mr. Heath's lifetime and after his death, to the securities in the safe in the house, didn't you?

A Yes.

Q Now was there a box in that safe?

A Yes, we had some—there was a tin box.

Q A tin box?

20 A Yes.

Q Now is that the box to which Mr. Anderson alludes?

A I don't think so.

Q What kind of a box was it?

A I rather think it was just an ordinary box like a hat box.

Q (*By the Court.*) You mean a paste-board box?

A Yes, paste-board box.

30 Q You think she went and got the box and put them all in?

A I think so.

Q And that is the last time you saw those papers?

A What papers ?

Q Bond and mortgage of Charles Heath to his father?

A To my sure recollection, yes; the probability is I saw them afterwards, but I could not say positively.

Q If you saw them afterwards where do you think you saw them?

40 A I would hand them over to Edmund Heath.

Frederick R. Maddock, cross.

Q Now after that inventory was made what became of the Iffland mortgage and Doviey mortgage and Glutting mortgage?

A They were kept in the safe at the house.

Q After that you didn't have any more papers kept down in the safe in the office then, any of these bonds and mortgages?

A I think not, Mr. Day, unless it would be perhaps one to take down to have something written upon it, or interest, something like that. 10

Q Interest was usually paid at the office, wasn't it, on all these mortgages that were large?

A Principally, yes.

Q Always?

A No, I won't say always; some of them were paid at the office, not all of them.

Q Generally?

A Generally. 20

Q Therefore you would have the bonds and mortgages at the office, wouldn't you, to make the endorsements on them?

A No, sir, because I didn't want to keep them there, I didn't want to run any chances of losing them.

Q After Mrs. Heath's death you kept them up there at the house, am I right?

A That is during Mrs. Heath's executionship; after that, when Edmund was the administrator, then he kept the papers down in the safe in the office, most of them. 30

Q All of these mortgages then came down after he—now, what papers do you mean that he brought down to the office?

A Some of the mortgages.

Q Some of the mortgages?

A Yes.

Q The safe in the office was a place to which you had constant hourly access, didn't you? 40

Frederick R. Maddock, cross.

A Yes.

Q You knew what was there all the time, didn't you?

A Why, pretty near.

Q Now, Mrs. Heath in her lifetime acted always under your directions and instructions, didn't she?

A No, sir.

Q You generally managed all her affairs, didn't
10 you?

A I acted as her bookkeeper.

Q Didn't you act also as her general manager of her affairs, her investments and securities?

A To a large extent, yes.

Q And after she died Edmund always acted under your management and control, didn't he?

A Not always.

Q And advice, I mean with regard to his business matters?

20 A To some extent, Mr. Day.

Q You have said generally that he always did, didn't you?

A I don't think I said that.

Q He was down there in the office under you?

A Yes.

Q Now this bond and mortgage you say was in the ordinary form of bonds and mortgages, with which you are familiar, am I right?

A Yes.

30 Q And is probably correctly set forth in the bill of complaint, isn't it?

A Yes.

Q And it recited that Charles Heath being indebted to his father in the sum of sixty thousand dollars, the usual penal sum, didn't it, and promised to pay thirty thousand dollars in one year after date, am I right?

A I think so, sir.

40 Q And it recited that he was indebted at that time, am I right?

Frederick R. Maddock, cross.

A Yes.

Q As ordinary bonds and mortgages do. Now you are a little mistaken about its being made out before George Duryea, aren't you?

A As near as I can recollect I saw George Duryea's name on the paper.

Q Couldn't have been Edward H. Duryea?

A They were both together there in the office. 10

Q Then as I understand it, this bond and mortgage were brought up by you after Mr. Edmund Heath's death, delivered to Mrs. Heath in this box, with this box, and there they remained at that house until after Mrs. Heath's death, am I right?

A Yes.

Q And then they were probably brought down, you don't say positively brought down by Edmund F. Heath, Jr., to the office, am I right?

A Yes. 20

Q And then kept in the office safe?

A Yes.

Q Who is Mr. McCarroll?

A Mr. McCarroll was the former bookkeeper of Edmund F. Heath & Son.

Q When did he leave Edmund F. Heath & Son's employ?

A I think about 1892 or 1893, some where along there.

Q (*By Mr. Parker.*) Is he alive? 30

A No, sir, he is dead.

Q Is this box that you speak of a box that would go in the safe, was this a large or small safe at the house?

A It was a pretty good sized safe for a house safe.

Q Would it hold a hat box in addition to what other things were in it?

A The idea was this; the papers we brought out, we had to put them in something for the appraisers; we simply took them when they came, those that were 40

Frederick R. Maddock, cross.

in the safe, and put them all in the box, and handed them out to the appraisers to look at.

Q After the appraisers went away didn't you put the papers back?

A Put them back in the safe.

Q Took them out of the box, you didn't put that box back in the safe?

A No, sir.

10 Q You are the guardian of Carlotta?

A Yes.

Q And you are the substituted administrator of Charles Heath?

A Yes.

Q You also now own the business of Edmund F. Heath & Son, don't you carry on business under that name, and you are the owner of it, aren't you?

A Yes.

20 Q You have kept all the accounts connected with this mortgage at your office, is that right?

A What do you refer to?

Q Are there any books of account kept by Edmund F. Heath in his lifetime with reference to any transactions between him and his son?

A There are the firm books.

Q I am now asking about the transactions between the father and son?

A Yes, those are in the firm books.

Q Those are in your possession?

30 A Yes.

Q Why did you put off the collection of this mortgage so long?

A You mean myself as administrator? We hadn't any money in the Charles Heath estate to pay interest, and we did not wish to foreclose too soon, we foreclosed just within the time limit, that was our idea.

40

Frederick R. Maddock, cross.

Examined by Mr. Tamblyn.

Q Was this real estate appreciating in value since your appointment?

A According to my judgment it was.

Examined by Mr. Parker.

Q There is another mortgage upon the Charles Heath homestead property, isn't there?

A Yes.

10

Q How much is that?

A \$10,000.

Q It doesn't cover the other property?

A No, sir.

Q And who was paying taxes on the vacant and unimproved property all the years while you had it?

A The Charles Heath estate.

The Court. Has this witness told all he knows about the identity of this document?

Mr. Hardin. I was going to ask him a question or two, if your honor please. 20

The Court. I inquired whether the witness had told all he knows about the identity of this instrument. To be frank with counsel on both sides, I must say I think his testimony on that point is very scrappy, and if he knows any more about it I think he ought to tell it, and I don't care on whose call it is, whether it is on the call of the complainants or the defendants. I have got a right to call for further testimony, if I see fit in the exercise of judicial discretion to do so. 30
Now, I want to know whether this witness knows anything more about these instruments than he has already told.

Mr. Hardin. As far as I am concerned I would be delighted to have your honor search this witness' conscience.

Frederick R. Maddock, cross.

Examined by the Court.

Q Did you ever read the bond in question?

A Judge, I don't think I ever read the bond in question, excepting just saw the names, and what it was, but I don't think I ever read it particularly.

Q Did you ever examine the signatures to the bond?

A I saw that the bond was signed.

10 Q Do you remember making an examination of that signature?

A No, sir.

Q Do you know what the form of the bond was?

A To the best of my recollection it was just about the same as ordinary bonds that go with mortgages.

Q Well, you know there are half a dozen kind of bonds that go with mortgages, some being in the common form for the payment of so much money at such a time, at such a rate of interest, and then there are
20 others with what we know as thirty day clauses, where the mortgage is made for a long time, and the provision is that the mortgage shall be due if the interest remains unpaid for thirty days or sixty days, or some other time is fixed; and you know there are also some other forms of bonds that contain references to payment of taxes and assessments; and perhaps there are other kinds; now do you remember which kind of a bond this bond was?

A No, sir; I really don't remember.

30 Q And do you know anything more about the mortgage, the particulars of the mortgage, than you have already stated; in the first place, I will ask you whether you ever read the mortgage?

A Yes, I read the mortgage.

Q Read it all through?

A Read it all through.

Q Can you tell me what the form of it was?

A Judge, it seemed to me, to my mind, just the regular form like I read, just an ordinary mortgage
40 on real estate.

Frederick R. Maddock, cross.

Q Do you know whether it contained a provision that the mortgagor should pay taxes, was it that kind of instrument?

A Yes, to my recollection it was that way, yes.

Q Were there any other special provisions in it that you know about?

A No, sir.

Q (*By Mr. Day.*) Did it contain the mortgagee clause and insurance clause? 10

A Mr. Day, I couldn't really tell you.

Examined by Mr. Hardin.

Q Do I understand that you delivered the bond and mortgage that you have described as having been in the safe from 1892 and as having been at the taking of the inventory, to the register's office for record, at the instance of Mr. Edmund F. Heath?

A Yes.

Q And you did not get it away from the register's office afterwards yourself? 20

A No, sir.

Q You saw it after it came back from registry?

A Yes, sir.

Q Both at the office of Warren street and at the house the night the inventory was taken?

A That I wouldn't say, whether I saw it at the office in Warren street, but I saw it the night the inventory was taken of course; I took the mortgage, probably took the mortgage up that evening, it was either there or up in the safe in the house, I couldn't tell which. 30

Q Probably you took it from the office to the house that evening?

A I rather think so, yes.

Q The mortgage which you say you read, was partly in writing and partly in print, as mortgages generally are?

A Yes.

Q And that was so with the bond also? 40

Frederick R. Maddock, cross.

A Yes.

Q You say you read the mortgage; when, if you recall it, did you read the mortgage?

A I read it right after Mr. Heath's death.

Q (*By the Court.*) What do you mean by that; you mean you began at the beginning of it and read it right straight through, word for word?

10 A Yes, I read it word for word, anything that was written, except if there was any printed part I probably didn't read it, because I am so used to printed parts; I read it in order to find out just what property it covered.

Q (*By the Court.*) And you read the written part for the purpose of discovering what property was covered by it?

A Yes.

20 Q (*By the Court.*) And you probably didn't read the printed part?

A No, sir.

Q And what property was covered by it?

A Property at 458 Center street, South Orange.

Q Was that the property where Charles Heath lived?

A Yes.

Q And what other property was covered by it?

A And 200 feet of land on Oakwood avenue, Orange.

30 Q Had you ever heard of that land before, those vacant lots, before you read the mortgage?

A Yes.

Q You knew those lots were lots that belonged to Charles Heath?

A Yes.

Q What search did you make at Mr. Glen's office?

A You mean for the paper?

Q Yes, what opportunity did you have for search, and what search did you make after Mr. Glen died?

Frederick R. Maddock, cross.

A I went through all his papers, all his legal papers; I looked for this mortgage only very recently, about one month ago I spent nearly a day looking for it.

Q At his office, or where are those papers?

A No, sir, those papers are with Mrs. Glen, Mr. Glen's wife, at 51 Wilcox avenue, East Orange, her home.

Q Was that the first time that you had made an effort to find those papers among Mr. Glen's papers? 10

A No, sir.

Q Where had you made an earlier effort?

A I had also made an effort in Mr. Glen's papers when they were in Elizabeth; Mr. Glen used to live in Elizabeth.

Q Whose possession were they in then?

A Mrs. Glen's.

Q During what period of time, if you know, did Mr. Glen represent the estate of Edmund F. Heath? 20

A He represented the estate from the time Edmund Heath, Jr., was administrator with the will annexed.

Q Until what time?

A Until he died.

Q And did he die before or after Edmund F. Heath, Jr.?

A He died before.

Q Who represented the estate after his death, what solicitor represented the estate after the death of Glen? You say Glen died before Edmund F. Heath? 30

A Mr. Tamblyn.

Q Have you inquired at Mr. Tamblyn's office?

A Yes, sir.

Q Is there any other place by reason of your acquaintance with the Heaths, Edmund F. Senior and Edmund F., Jr., and Charles Heath, and your own long association with them, residence in their house, 40

Frederick R. Maddock, cross.

all that sort of thing, is there any place that you know of where you can go to make any inquiry about this bond and mortgage that you haven't been?

A I don't think there is another place, Mr. Hardin, I have looked so thoroughly.

Examined by Mr. Day.

Q When did Mr. Glen die?

10 A 1908.

Q (*By Mr. Parker.*) Who has Mr. Edmund Heath's personal property, his clothes, his personal property, things of that sort?

A You mean Edmund, Jr.?

Q Yes.

A Mrs. Heath.

Q (*By Mr. Parker.*) And she has all his books too, hasn't she?

A She took all his property, yes.

20 *Mr. Lum.* I offer in evidence certified copy of the registry of the mortgage from Charles Heath to Edmund F. Heath, which is registered in Book H. 15 of Mortgages for this county, on pages 121 and 123.

Marked Exhibit C. 5.

Mr. Parker. We object to it.

30 *The Court.* May it not go to the extent, not of proving absolutely, but of being evidence that there did at one time exist an instrument of that nature.

RECESS.

The Court. I will admit the instrument.

Mr. Day. Subject to our objection.

The Court. Certainly.

Richard F. Stevens, direct.

BERTHA B. HEATH, sworn.

Direct examination by Mr. Lum.

Q You are the widow of Edmund Heath, Jr.?

A Yes.

Q You were his administratrix?

A Yes.

Q Did you on assuming your duties as administratrix of his estate come in possession of any papers and documents that formerly belonged to him? 10

A No, sir, I did not.

Q Not any papers or any documents of any kind?

A No, sir, I did not.

Q Will you tell us whether, either during the lifetime or after the death of your husband you have ever seen a mortgage made by Charles Heath to Edmund F. Heath covering property on Hamilton road, South Orange, and two places on Centre street in Orange?

A No, sir, I have never seen that. 20

Q Do you know anything directly or indirectly about its whereabouts at this time?

A No, sir, I do not.

NO CROSS EXAMINATION.

RICHARD F. STEVENS, sworn.

Direct examination by Mr. Tamblyn.

Q General Stevens, did you proceed to perform the duties designated in that order which I have read (the attention of the witness being called to the order of the Court appointing him accountant, made on the 23d day of October, 1912)? 30

A I did. I got the order, and in accordance with that order made the examination therein called for, and made a report upon the same.

Q Where did you make your examination, General?

A I made my examination at the office of the warehouse of Edmund F. Heath & Sons in Warren street. 40

Richard F. Stevens, direct.

Q Have you the result of your examination in some written or tabulated form?

A I have.

Q Have you taken up the subjects mentioned in the order and dealt with that report?

A I did.

Q Have you a report of your work with you?

A I have.

10 Q You have it in hand?

A I have it in hand.

Q Will you kindly refer to it and proceed to inform us of the result of your investigation made pursuant to this order?

The Court. Before that question is answered let me ask you how far you intend to go with this?

20 *Mr. Tamblyn.* The order directed that the relations between Charles Heath and his father and the relations of Charles Heath and his father to the business of Heath & Son, and their business dealings among themselves, should be investigated by this accountant.

30 *The Court.* I don't know that I want to take the accountant. If this mortgage shall be established if you go into it far enough to indicate that if the mortgage is established there is something due on it, a substantial sum due on it, I think that is as far as you need go.

Mr. Day. I don't see that they can do anything here unless the books are produced.

A The first question, with regard to the co-partnership of Edmund and Charles Heath, I was unable to procure any copy of any articles whatsoever, and the only evidence I had—

Mr. Day. I object to anything further.

40 *The Court.* Men may be partners without articles of co-partnership. He can tell what he

Richard F. Stevens, direct.

found in the book which would indicate either partnership or no partnership; why not?

A I found in the books, as I said, no articles of co-partnership, but I found statements in the hands of Edmund F. Heath in which the profits of the concern were divided equally between the two partners at the end of each year.

Q (*By the Court.*) What are these statements, describe them and tell where you found them. 10

A I found them in the office there on small pieces of paper, and also, and in addition to that, those same items which were divided appear upon the ledger credited to the two members of the firm at the end of each year.

The Court. How can you get along without those papers?

Mr. Lum. We have the stubs here. 20

A I found no records upon the books of the firm with regard to any mortgage or bond whatsoever, either in its issuance or cancellation.

Q (*By the Court.*) You refer now to what bond and mortgage?

A Any bond and mortgage in the books of the company; there were no direct personal accounts between the father and son; the accounts were either with the father and the firm or the son and the firm, but their personal accounts were not there between each other. I found, however, that between December 9, 1892, and April 5, 1893, that Edmund F. Heath's personal account was debited by certain checks drawn to the order of Charles Heath and in the handwriting of Charles Heath, and credited to Charles Heath, amounting to the sum of \$32,132.16. 30

Q (*By the Court.*) Have you got, General, the original data here from which you obtained that information?

A I have the stubs here. 40

Richard F. Stevens, direct.

Mr. Lum. And the other book will be here in ten minutes, all of them, so that everything that is not correct according to the statement can be checked up on cross examination.

A I find the stub of check No. 7160, dated December 9, 1892, for \$1,750, with the following entry, "Charles Heath, E. F. Heath's account." That check, that amount was debited Edmund F. Heath upon the books of the company.

10 Q (*By Mr. Day.*) How is Charles Heath connected with that?

A Charles Heath drew the check, I presume, and it was not appearing in his account at all, just like any other man that you pay a check to, it did not appear in his account.

Q Give the next item that you find in the book?

A I find on January 31, 1893, check No. 199, amount \$1,250, Charles Heath, E. F. H. account.

20 Q (*By Mr. Day.*) Then is your report wrong?

A The figure "21" should be "31."

Q (*By Mr. Hardin.*) In whose handwriting is the stub?

A It looks to me like Charles Heath's handwriting. On February 2, 1893, check No. 7203, amount \$2,525.41, E. A. Heath's account. On the same date check No. 7201, February 2, 1893, Charles Heath's E. F. H. account, \$729.53. The same date check 7202, \$1,663.48, Charles Heath, E. F. H. account. The handwriting is Charles Heath's handwriting.

30 Q (*By the Court.*) That means that the checks are drawn in favor of Charles Heath and then charged to the account of Edmund F. Heath?

A It means the checks were drawn in favor of Charles Heath and charged to Edmund F. Heath.

Q What became of those checks?

A Of course, I presume they were deposited in Mr. Charles Heath's personal account.

40 Q (*By Mr. Parker.*) Mere presumption of yours?

Richard F. Stevens, direct.

A Well, they did not appear in the books at all of the firm. On the same date, February 2, 1893, check No. 7205, \$12,450, Charles Heath, E. F. H. account, the same handwriting. February 13th check No. 7211, \$750, Charles Heath, E. F. H. account, the same handwriting. February 24th, check 7220, \$3,000, Charles Heath, E. F. H. account. March 28, check No. 7257, amount \$3,002.22, Charles Heath, E. F. H. account, the same handwriting. April 5th, check 7272, amount \$5,011.42, Charles Heath, E. F. H. account, the same handwriting. Those are the only amounts that I found of that character in the book. 10

Q (*By the Court.*) Now, how much do they foot up?

A They amount to \$32,132.16.

Q (*By the Court.*) That is the amount that you mentioned a little while ago?

A Yes. 20

Q (*By the Court.*) Did you follow those entries down in the books to see whether they had been made?

A I followed those entries down in the ledger and verified them by the entries upon the stubs.

Q And you found then that during that period checks were drawn to the order of Charles Heath and they were charged to the account of Edmund F. Heath amounting to thirty-two thousand odd dollars?

A That is so.

Q (*By the Court.*) Entered regularly in the book? 30

A Yes, entered and charged against Edmund F. Heath.

Q (*By the Court.*) What is the last rate you have?

A April 5, 1893. I wanted to say that I traced the entries upon the books of the two partners from 1891 to July 7, 1900, and I found by that that each partner at the end of the period drew exactly the same amount, showing that—

Mr. Day. Excuse me! 40

Richard F. Stevens, cross.

The Court. No, don't draw inferences; just tell what facts you found, and do not draw inferences.

A That they drew the same amount, I found out that—

Q (*By Mr. Day.*) What days were those that they drew the same amount?

10 A From 1890 to 1900; that on July 1, 1890, Charles Heath's interest in the concern, according to the ledger, was \$6,362.25, that various payments and various receipts, together with what was added for profit and loss, that his account on July 7, 1900, showed that he owed the concern \$26,548.11.

Q What books did you use to make up this tabulated statement from which you have been reading?

20 A The journal, the ledger and the check book, that was all there was; there was no cash book. I would say that the books show that the firm as a firm had no capital, that the assets equalled the liabilities, and the profits at the end of each year were divided equally between the two partners.

Cross examination by Mr. Day.

Q General, did you find that on December 8, 1892, Mr. Charles Heath was indebted to his father?

A I did not.

Q So far as the books disclosed at that time, he was not indebted to his father a cent, was he?

30 A The books did not give the indebtedness of father to son or son to father; those were firm books.

Q I did not intend to confine you to any particular set of books, but as far as your examination shows you found, as I understand it, that on December 8, 1892, there was no indebtedness of Charles Heath either to his father or to the firm?

A Not that appeared on the books of the company.

Richard F. Stevens, cross.

Q Now, except for these entries in the stub of the check there was nothing to indicate that Charles was indebted to his father, was there?

A Nothing except the entries against his father on the ledger.

Q That is all?

A Yes.

Q That is to say, there was no account kept in any set of books that Charles had become indebted to his father? 19

A No set of books that I saw.

Q All you have is the statement on that stub, stubs of that check book?

A Yes.

Q And what you have been told by Mr. Maddock that they represented an indebtedness, I suppose?

A No.

Q You have no reason to say that that is not a gift, have you? 20

A I have no reason to say that it was a gift.

Q You have no reason to say it was not a gift?

A I say I have no reason to say it was not a gift.

The Court. I understand the General is merely telling what he found in the books, and that is all he knows about the case.

Cross examination by Mr. Parker.

Q I understood the books, they went on from the time you commenced to examine them until after July 1900, in the same way all the time, did they not, General? 30

A Yes.

Q And after 1900, July, 1900, they continued to go on exactly the same way?

A Yes, sir.

Q Do the books show any dealing of the firm of Edmund F. Heath or accounts with the estate of Charles Heath?

A They did not. 40

Richard F. Stevens, cross.

Q Did they show any valuation of the good will of the business?

A They did not.

Q Did they show any credits to the estate of Charles Heath or any interest he might have had in the firm of Edmund F. Heath's estate by way of a part ownership in the good will of the company?

A They did not.

10 Q Did they show any adjustment or account with the estate of Charles Heath as regards his interest in the company of the Edmund F. Heath estate?

A There was no more entries in the account of Charles Heath after the one that I gave you.

Q Practically then as it appeared by the books after the death of Charles Heath Mr. Heath took over the whole business, Charles Heath's interest in everything, and appropriated it to his own use, did he not?

20 A I stated before the firm had no principal, and the only thing that he could have taken over was the franchise.

Q And the good will of the company?

A And the good will.

Q There was a live business there?

A And a live business.

Q The books showed that he took that all over, so far as the books showing, without any account whatever to the estate of Charles Heath?

A Yes, that is so.

30 *Cross examination by Mr. Hardin.*

Q I don't know as I quite understood what you meant by saying that the books showed this business was conducted without capital. Just what did you mean by that?

A I meant to say that it was so, for instance, the only capital that the concern had was the assets. Now, then, those assets were balanced by liabilities, and the capital that they had of their assets over their liabilities was the liability of the firm to Edmund F. Heath.

40

Richard F. Stevens, cross.

Q That represented, then, on these tabulations that you have made what you have recorded at your annual assets as his then contribution to the capital?

A I don't catch the question.

Q (Question read.)

A That was the profit of the year which was divided at the end of each year.

Q These statements seem to show the status of Mr. Edmund F. Heath and Mr. Charles Heath with reference to the business? 10

A Yes.

Q At the end of each year of business?

A Yes.

Q And at the beginning, as you stated, Mr. Charles Heath had a credit on the books, as well as Mr. Edmund Heath?

A Yes.

Q Now, at the end Charles Heath had a debt, as you have told us, of \$26,548.11; at that time what credit did Edmund have on the books? 20

A Edmund had a credit of \$71,793.43. To make the books balance at the end of the year it would be necessary to put among the liabilities the liability of Edmund F. Heath, \$71,793.43, and on the assets side of the sheet it would be necessary to put the debit balance of Charles Heath, \$26,548.11; then the books would balance, but without those two figures they would not, the assets and liabilities would not balance. 30

Q These figures varied from year to year with increasing difference in favor of Edmund, did they not, from 1900 forward?

A They varied from year to year.

Q And increasing in favor of Edmund?

A Increasing in favor of Edmund. In other words, Charles Heath drew out of the firm more than his profit and loss, and Edmund Heath put in the firm more than he drew out. 40

Richard F. Stevens, cross.

Q And Edmund Heath's liability then, to make good the difference, was the capital of the firm; they were doing business on Edmund F. Heath's credit?

A Exactly.

Q (*By Mr. Parker.*) You mean to say the firm was doing business on the credit of the firm and on Edmund F. Heath's credit alone, is that what you mean?

10 A Well, the firm was doing business upon their credit and also upon the capital of Edmund F. Heath.

Q (*By Mr. Parker.*) Such capital as he had left in the firm?

A As he had left in the firm, yes.

Q (*By Mr. Hardin.*) Then why do you say the firm had no capital?

A Because it was his personal money in the firm.

20 Q (*By Mr. Hardin.*) Oh, because the firm owed him that amount.

A (No answer.)

Report of General Stevens made under order of October 23, 1912, offered in evidence and marked Exhibit C. 6.

Adjourned to May 13, 1913.

30

40

Richard F. Stevens, direct.

May 13, 1913.

Between

FREDERICK R. MADDOCK, Substituted Administrator, *et al.*,
Complainant,
and
MARJORIE H. CONNOLLY, *et als.*,
Defendants.

10

Continuation of examination pursuant to adjournment at the place and in the presence of the parties as before.

RICHARD F. STEVENS, resumes.

Direct examination by Mr. Day.

20

Q Have you got the report before you—with you now—your report?

A It is here with the stenographer, I think; I left it with him and it was filed as an exhibit.

Q On the first page you say, "But the transactions on the books show that the capital of the firm was not jointly owned, but that the interest of the two partners varied from time to time." Now, what do you mean by those words, "That the capital of the firm was not jointly owned"; how do the books show that? 30

A The books do not show any capital of the firm.

Q Then they don't show whether the capital of the firm was jointly owned or otherwise?

A They do not.

Q But you assumed that from the mere fact that there was practically no capital account at all?

A I did; I assumed that.

Q Now, again, you say that you did not go back of July 1, 1890, in examining the interests of the two 40

Richard F. Stevens, direct.

partners, but started from that date, the books showing at that time that Charles Heath's interest in the firm amounted to \$6,362.25 and Edmund F. Heath \$52,819.25. Now, from and after July 1, 1890, did they draw out equally from the profits of the business?

A They did.

Q After that?

10 A Yes.

Q (*By the Court.*) Down to the dissolution of the partnership?

A Down to the death of Charles.

Q Now, about these books, were they kept properly as firm books or were they irregularly and improperly kept?

A I won't say they were improperly kept; I would say they were poorly kept.

20 *The Court.* They were not scientifically kept.

Q Well, now, describe in what way generally they were defective.

A They were defective in this way, that there was no account kept of profit and loss. I am speaking now of the latter part, but at the end of the year in order to balance the liabilities each partner was credited with his share of the profits of the concern for that year.

30 Q (*By the Court.*) Do the books show how the profits were ascertained?

A They do not. If you allow me to state—

Q Certainly, everything.

A The statement of the profit and loss and of the interests of the two partners were not kept in the books, but they were kept in memorandums made at the end of each year by Mr. Edmund F. Heath. Those memorandums are in existence.

40 Q Now, on the last page you say that there was no inventory or accounting of the same being filed by

Richard F. Stevens, direct.

Edmund F. Heath. I don't know exactly what you mean by the word, "same" there?

A Why, the accounting of his estate.

Q But they were filed by Frederick R. Maddock, and showed that Edmund F. Heath personally advanced \$2,587.02, several bills and claims against the Charles Heath estate. Now, by that do you mean he advanced that amount over and above the assets of the Charles Heath estate? 10

A I mean to say that he advanced it in cash.

Q In cash?

A Yes.

Q Over and above what the assets of the estate of Charles Heath were?

A I wouldn't say that; Charles Heath estate owned real estate.

Q I mean outside of real estate, over and above what the personal estate amounted to? 20

A Over and above what the personalty amounted to.

The Court. That is to say the books show he advanced that amount of money to the estate of Charles Heath.

A The statements show that.

Q You mean that statement that was on file, you went up and examined the statement that was on file in the surrogate's office?

A The statement that was filed by Frederick R. Maddock showed that. 30

Q In the Orphans' Court?

A In the Orphans' Court.

Q (*By the Court.*) Did you find anything in the office which indicated such payment by Edmund F. Heath?

A I didn't look for it.

Q Did you make up a statement showing these profits that you have spoken of, calculated yearly by Mr. Edmund F. Heath? 40

Richard F. Stevens, direct.

A I verified the book entries by those statements of Mr. Edmund F. Heath's.

Q Annexed to your report are certain schedules. Do either of those schedules show those profits that you spoke of?

A They do.

Q On the very first one, isn't it?

A They show it from 1891.

10 Q What items show it; just point out to us, take your report and show, the schedules to your report, and show us where this is disclosed; is it on that first schedule. I want to find out where it is shown on your report?

A The profit and loss.

The Court. Schedule of profits?

Q Yes, schedule of profits as they were shown by Mr. Heath's statements.

20 A It is shown by Mr. Heath's statements, the profit and loss, for instance, July 1, 1891, of \$5,738.38 is shown on Mr. Heath's statement and is also credited in the ledger to Charles.

Q That was only half of the profit, wasn't it?

A That was half of the profit.

Q So they made that year apparently double that?

A Yes.

Q Now, take in 1899, what was the profit of that year?

30 A In 1899 the profit was \$4,244.21.

The Court. That is the half of it that was credited to Charles from this estate?

A That was credited to Charles from this estate.

Q Now, what was the profit July 1, 1900?

A In July, 1900, the profit was \$7,422.15.

Q That was Charles' share of the profits?

A That was Charles' share of the profits; the other statement of the account of Edmund F. Heath
40 shows similar amounts credited to him.

W. Stanley Naughtright, direct.

Q Did you go on to the books at all after the death of Charles, an examination?

A I did not.

Q You don't remember what became of the profits after that?

A I do not.

Q The books show it, do you know?

A I did not go into the examination. The only examination I made after that was to see that there was nothing credited or debited the account of Charles Heath after that date. 10

Q There was not?

A There was nothing either credited the estate of Charles Heath after that date.

Q (*By the Court.*) Now, what was that date again?

A After the date 1900.

Q (*By the Court.*) After 1900? 20

A After the time of his death.

The Court. Oh, yes, he died in 1900, and his father died in 1904. Now, has that statement been put in evidence?

Mr. Day. Yes.

W. STANLEY NAUGHTRIGHT, sworn.

Direct examination by Mr. Parker.

The Court. This statement appears to show that at the time of Charles Heath's death he owed the firm twenty-six thousand odd dollars. Now, the account of Edmund F. Heath shows that at the same time the firm owed him \$71,000. The capital of the firm must have been the sum of those two, the real capital. 30

Mr. Day. At least that, the sum of those two.

The Court. At least that amount must have been capital on which they did business. Then is it contended that those were advances made by the father to the son? 40

W. Stanley Naughtright, direct.

Mr. Day. That is what I supposed, but there is no evidence of it.

The Court. It is money drawn out of the firm by Charles and charged to Edmund F., \$32,000, from December 9, 1892—during the years 1892 and 1893, during a very short period of time, from December, 1892, to April, 1893.

10 Q You are employed in the office of Cortlandt and Wayne Parker?

A I am.

Q At my request did you compare certain wills and inventories and so forth in relation to the Heath estate at the Court House?

A I did.

Q I show you a copy of a paper purporting to be a copy of the will of Charles Heath, deceased; did you compare that with the original?

20 A I did.

Q Is it a true copy?

A It is.

Mr. Parker. I offer it in evidence.

Mr. Lum. Isn't there a certified copy of that in?

Mr. Parker. Then I will withdraw that offer, if that is already in.

30 Q Did you find an inventory of the estate of Charles Heath, deceased, made by Edmund F. Heath?

A I did.

Q I show you that paper; is that the copy of the inventory?

A It is.

Q When was it dated, filed October 5, 1900?

A Filed October 5, 1900.

Q That is the inventory made by Edmund F. Heath of the estate of Charles Heath. I offer it in evidence.

40 Marked Exhibit D Connolly 1.

W. Stanley Naughtright, direct.

Q Did you find proof of order barring creditors in notices up there?

A I did.

Q I show you this notice dated July 27, 1900; is that a true copy from the files?

A It is.

Q I also show you an order to limit creditors; is that a true copy from the files?

A It is.

10.

Order to limit creditors filed July 27, 1900, offered in evidence and marked Exhibit D. Connolly 2.

And the notices limiting creditors, and the decree barring creditors of April 27, 1901, offered in evidence and marked Exhibit D. Connolly 3.

Q Did you find any account of the estate of Charles Heath, deceased, made by Edmund F. Heath, or anybody on his behalf of Edmund F. Heath's transactions with Charles Heath estate?

20

A I did.

Q I show you this account; when is it dated?

A On the 22nd day of November, 1911.

Q The account of Edmund F. Heath estate, now deceased, who was in his life time the executor of Charles Heath, deceased, made by Frederick R. Maddock, administrator with the will annexed of Edmund F. Heath, deceased?

A That is right.

30

Q That is a true copy from the files, is it?

A It is.

Account offered in evidence and marked Exhibit D, Connolly 4.

Q Did you find any petition, or an order for the appointment of an administrator with the will annexed of Charles Heath, deceased?

A I did.

40

W. Stanley Naughtright, direct.

Q I show you this application, probated wills, book 17, page 260, sworn to 28th of October, 1904, is that the application you found?

A Yes, it is.

Offered in evidence and marked Exhibit D, Connolly 5.

10 Q I show you an order appointing a substituted administrator; is that a true copy from the files?

A It is.

Q What is that dated?

A Sworn to November 3, 1904.

Q That was his oath of office, November 3, 1904, the order is dated?

A Third day of November, 1904.

Offered in evidence and marked Exhibit D, Connolly 6.

20 Q I show you a notice of settlement of the accounts of Frederick R. Maddock, administrator with the will annexed of Charles Heath, deceased, and an account, notice dated August 6, 1912; is that a true copy from the record?

A It is.

Q This was filed August 7, 1912, and purports to be an account of Frederick R. Maddock, administrator, of the will annexed of Charles Heath.

Offered in evidence and marked Exhibit D, Connolly 7.

30 Q Final decree on that final account dated 8th of March, 1912, is that a copy from the record?

A It is.

Offered in evidence and marked Exhibit D, Connolly 8.

(No cross examination.)

Frederick R. Maddock, direct.

FREDERICK R. MADDOCK, recalled.

Direct examination by Mr. Parker.

Q This alleged mortgaged property consists of three tracts, does it not?

A Yes, sir.

Q Describe the first tract, the tract in South Orange, as it was in the time in 1890, and onward.

A It is a plot called 458 Center street, and it is bounded by Center street and Hamilton road, about 200 x 300. 10

Q And it has a house erected on it, wasn't there?

A Yes.

Q A dwelling house where Charles Heath used to live?

A Yes.

Q And how large is the dwelling house?

A Fourteen or fifteen rooms.

Q Now, didn't you after Charles' death have the renting of the property? 20

A Yes.

Q Mr. Edmund F. Heath put a large amount of money on improvements of the property, didn't he?

A Not a very large amount, Mr. Parker, put in new furnace, new heater.

Q Well, I see a bill was charged of Allen & Volker on April 5, 1901, for painting, \$346.15?

A Yes.

Q That was for that house? 30

A That was for the outside painting, yes, probably inside decoration.

Q And on April 8, there was Morehouse & Co., repairing wire, \$42; that was for the house, wasn't it?

A Yes.

Q And O'Brien was paid for letting the house \$137, wasn't he?

A Yes.

Q And there was cleaning up of the cesspool, \$45?

A Yes. 40

Frederick R. Maddock, direct.

Q And loops were paid for in May 9, 1901, \$36?

A Yes, sir.

Q And September 4, James S. Shaw, carpenter, was paid \$123?

A Yes.

Q And September 27, Ira Budd, for heating, \$844?

A Yes.

Q Now, all those moneys were paid out for that
10 house, were they not?

A Yes, sir.

Q Then it was rented at first to Mr. Aymar?

A Yes.

Q Do you know how much it was rented for?

A I am not sure; I think it was about \$120 a
month, something like that, maybe \$130.

Q Well, how long after Charles Heath's death was
the house rented?

A I don't know, Mr. Parker, probably a year,
20 maybe a little less than a year, I am not so sure.

Q And then these large improvements were put
on it and it was rented?

A Yes, it was necessary.

Q What is the character of the other property in-
cluded in these mortgages?

A Two vacant plots on Oakwood avenue, Orange.

Q Each about 100 feet front?

A Yes.

Q And how far depth?

A About 225, I think.
30

Q They front on the park, do they not?

A Yes.

Q But between these two lots there is a very high
fence, stable yard, is there not?

A Yes.

Q Did you get any rent from these vacant lots?

A No, sir.

Q Now, right straight down from the time that it
was first rented you have either collected or overseen
40 the collection of those rents, haven't you?

Marjorie Heath Connolly, direct.

A I had something to do with it, sir, most of the time, yes.

Q And since you were appointed administrator you have been in full charge, haven't you?

A Yes.

Q And you have made the leases?

A Yes.

Q What is it renting for now?

A \$135 a month. 10

Q You accounted as executor of Edmund F. Heath, or administrator of Edmund F. Heath, for his transactions with regard to this house, did you not?

A Yes; you mean I put in an accounting; yes, sir.

Q And then you finally accounted for your collections of the rents and disbursements on account of that house down to last September, did you not?

A Yes, sir.

(No cross examination.)

20

MARJORIE HEATH CONNOLLY, sworn.

Direct examination by Mr. Parker.

Q You are a daughter of Charles Heath?

A I am.

Q You are one of the defendants in this case?

A I am.

Q Of whom did his family consist?

A At present there are two, my sister and myself.

Q I mean when he died?

30

A My brother, my sister and myself.

Q I think you were the eldest of the family, were you not?

A No, my brother was older.

Q How old was your brother?

A My brother was seventeen.

Q At the time of your father's death?

A Yes.

Q And how old were you then?

A I was fifteen.

40

Marjorie Heath Connolly, direct.

Q And how old was Carlotta?

A She was seven.

Q She is usually called Charlie, isn't she?

A Yes; she was eight.

Q And where did you live?

A I lived with my father.

Q And where did he live?

A He was staying at that time at Wrightsville
10 Beach.

Q At the time of his death?

A Yes.

Q At the time from 1890 on where was he living?

A In Centre street, South Orange.

Q That is the house on the property sought to be
foreclosed in this case?

A Yes.

Q How long did your mother live?

A She lived until February, 1900.
20

Q Then she was alive in 1892, was she?

A She was.

Q She died about six months before your father?

A She did.

Q How long was your father ill before his death?

A He was sick in bed about two years.

Q Had his health been poor before that two years?

A It had for several years.

Q And what was the character of his sickness, did
30 it incapacitate him from mental work and attention
to business?

A Not at all.

Q He had some affection of the heart, did he not?

A He had a growth that pressed on his heart and
one lung.

Q And during all the time that you knew him was
he ever incapacitated from attention to business, ex-
cept temporarily?

A I never knew him to be.

40 Q What was his business?

Marjorie Heath Connolly, direct.

A He was a member of the firm of Edmund F. Heath & Son.

Q And while he was well did he attend to that business?

A I always thought he did.

Q Have you been down there and seen him in the office?

A Yes.

Q And you say he was ill for two years before he died; he didn't die in this state, did he? 10

A I don't understand that.

Q Your father didn't die in this state?

A No.

Q Where did he go and when did he go before his death?

A He went in the early part of March to Goldsboro, North Carolina.

Q And he remained there until his death? 20

A Why, he moved from Goldsboro to Wrightsville Beach.

Q And he died on some Beach?

A Yes.

Q He provided for the money for your household expenses, &c., when you were living, toward the end of your father's life?

A Why, grandfather sent it up every week, sent the money up.

Q Who do you mean by grandfather, Edmund F. Heath? 30

A Yes.

Q And who attended to its disbursements and application?

A My father.

Q Did you do anything about that matter yourself?

A After I came home from boarding school in June, from June until July I paid the household expenses. 40

Marjorie Heath Connolly, direct.

Q That was when you were down south?

A In North Carolina.

Q But when you were in South Orange you did not attend to the household expenses then?

A No.

Q Did you ever observe the relations between your father and your grandfather, Edmund F. Heath?

A I saw them together a great deal.

10 Q Just state what were their relations?

A I should say their relations were as close as those could be between a father and son, that they were both very devoted to each other.

Q Did your grand father have any other children?

A None living.

Q (*By the Court.*) Were there any grandchildren besides Charles Heath's children?

A No.

20 Q Did you ever talk to your grandfather about your father?

A I talked to him after my father's death.

Q And what did he say then?

Mr. Lum. I object. I don't see that it is competent or relevant or binding.

The Court. What is the object of it?

Mr. Parker. I want to show very close, tender relations and affection between the two.

30 *The Court.* I suppose that will be admitted, won't it?

Mr. Lum. Yes.

Q Did he speak to you about Carlotta, and what disposition should be made for her?

Mr. Lum. I object to that on the same ground.

40 *Mr. Parker.* Here is mortgage made between father and son, and our contention is that there wasn't any mortgage at all; that it was never delivered, and there wasn't any reason for it; all that Mr. Heath had was intended for Charlie,

Marjorie Heath Connolly, direct.

and it was improbable that he wanted to swallow up his son's fortune by this mortgage.

The Court. In so far as statements were made by Edmund F. Heath which can be in any way connected directly or indirectly with the existence of the mortgage in question, such statements will be competent, competent upon the same ground, I should say, that similar statements are competent which relate to lost wills. I have had occasion to examine the question so far as it relates to lost wills, and I find that the declarations of the decedent on the subject are admissible. Now in so far as these declarations of Mr. Edmund F. Heath can be related in any way to the mortgage they will be admissible, but if they are not so related then I should say they are not so admissible. I will take the testimony upon condition that it is to be connected with the mortgage.

Q I just wanted to know what that conversation was about Carlotta?

A Shall I give the conversation?

Q Yes, go on, give it.

A After my father died my grandfather came to me and he said that my father, he had promised my father to keep the children together and look after them, and he asked me in view of Charlie's age if I thought it was advisable for her to be sent to boarding school, or if it would be better for her to be kept in her home; he said he wanted to keep us together, but it seemed as though she was pretty young to be sent away to school when I was home; I was to come back; and I told him I thought his view was right, that she was very young to go to boarding school; and he said he would like to carry out my father's wishes, but if I thought it would be well they would keep her in their home.

Q Did your grandfather make you any allowance?

Bernard O'Rourke, direct.

A Yes, he did.

Q When did that commence?

A When I was in boarding school he gave me so much a year for my clothes.

Q He paid for your schooling?

A He paid for my schooling.

Q How old are you now?

A I am twenty-seven.

10 Q And when did your brother Edmund die?

A He died in—

Mr. Tamblyn. I think it is in the record, April 28, 1909.

BERNARD O'ROURKE, sworn.

Direct examination by Mr. Parker.

Q Where do you live?

A East Orange.

20 Q And what is your business?

A Shiping clerk.

Q And where are you employed?

A E. F. Heath & Son.

Q And how long have you been employed there?

A Somewhere in the neighborhood of thirty-five years.

Q And did you know Charles Heath in his lifetime?

A Yes, sir.

30 Q And did you know Edmund F. Heath?

A Yes.

Q The elder?

A Yes.

Q Do you know anything about their relations with one another?

A They always seemed cordial to me.

Q Did you know anything about taking money or things from Mr. Heath to Charles at his home?

40 A Yes, on several occasions he gave me some money to bring up.

Bernard O'Rourke, direct.

- Q How often did you do that?
- A I couldn't exactly say how often.
- Q And what did you carry?
- A What did I carry?
- Q Yes?
- A You mean the amounts or anything?
- Q Did you carry money?
- A I carried money in an envelope, I don't know what was in there, how much was in it. 10
- Q And did you carry other things?
- A Well, delicacies, like fish, something like that.
- Q Did you ever stay in Charles' house up in South Orange?
- A Stay over night?
- Q Yes?
- A No, I never stayed over night, I possibly did on one or two occasions.
- Q What was the business of Edmund F. Heath & Son? 20
- A Manufacture of enameled and rubber cloth.
- Q And what was your business?
- A Shipping clerk.
- Q Can you tell us about the business of the firm during the time from 1892 to 1900, as to its quantity and its business, and what was doing there, and whether it increased or diminished?
- A Well, in those years it seemed to run on about the same. 30
- Q In 1900, when he died, was that a good year?
- A Well, it seemed to be about the general average so far as I could tell; I never knew anything about the financial end of it.
- Q You had the shipping of the stuff that was manufactured, didn't you?
- A Yes.
- Q And you knew how much was going on?
- A I knew how much was sent out; it seemed to me about an average run, yearly run. 40

Bernard O'Rourke, direct.

Q Now who was the bookkeeper of the firm when you were there?

A Mr. Mockrel.

Q How long did he continue to be bookkeeper?

A I don't know; I think it was up to within four or five years may be of Mr. Heath's death.

Q Of which Mr. Heath's death?

A Mr. Charles Heath.

10 Q Well, as a fact, wasn't it before that?

A Well, I couldn't exactly say the time.

Q But after Mockrel's death Charles took full charge of the bookkeeping, did he?

A Yes, he used to do the bookkeeping.

Q And where was his office, where did he do his business, Charles Heath?

A Right there in the office.

Q Was the safe open, did he have the safe open?

20 A Yes.

Q Who had charge of the safe?

A Well, Mr. Heath and Mr. Edmund Heath, Mr. Charles Heath and Mr. Maddock, Mr. Mockrel.

Q They all had access to it?

A Yes.

Q Did you have any talk with Mr. Edmund F. Heath about Christmas, 1899, regarding Charles?

30 A No, only that Christmas eve he had made me a present of a watch; I thanked him for the watch, and hoped that he would be with us for a good many years to come, and he said he didn't care for himself so much as for his son; he would do all he could to have his son made well.

Q Did he say anything about having Charles having the property, his property, when he died?

A No, he never, Mr. Heath was a man that never went outside with things like that, and of course I didn't have access to the office, the inner part of it.

40 Q Did you carry money up to the children after Charles' death, to South Orange?

Frederick R. Maddock, direct.

A Yes.

Q How often did you do that?

A About once a week.

Q And where did you get money from?

A Mr. Heath.

NO CROSS EXAMINATION.

CARLOTTA HEATH, sworn.

10

Direct examination by Mr. Day.

Q You are one of the daughters of Mr. Charles Heath?

A I am.

Q And you are one of the defendants in this case?

A I am.

Q How old are you?

A I will be twenty-one the 12th of this June coming.

Q Mr. Maddock is your guardian?

20

A He is.

FREDERICK R. MADDOCK, re-called.

Direct examination by Mr. Parker.

Q You negotiated an assignment and transfer of the interests of all the distributive shares under Edmund F. Heath's estate other than Marjorie's and Edmund's to them, did you not?

A Do you refer to the Canadian heirs?

30

Q Yes.

A Why, Mr. Glen did that, sir.

Q It was done with your knowledge, wasn't it?

A Yes.

The Court. Just exactly what does that mean?

Mr. Parker. I will explain it to you in a moment. It is only one question. The bill of complaint was filed in regard to this matter in order to compel through the will, etc., recites that transaction whereby all the Canadian distribu-

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Frederick R. Maddock, direct.

tives under Edmund F. Heath's will conveyed to Marjorie and Edmund.

The Court. On the 21st of July, 1906, is that your recollection of the date?

A Yes, sir.

10 Q And by that means all the persons interested in Edmund F. Heath's estate as distributives and residuary legatees transferred their interest over to Edmund and Marjorie, is that right?

A All with the exception of Carlotta; we supposed that she was interested; afterwards it was decided that she was not interested as a residuary.

Mr. Sweeney. This deed that Mr. Parker has just referred to, I would like to offer a copy of it in evidence.

The Court. What light do you think that throws on the case?

20 *Mr. Sweeney.* It is a resume of all the assets of the Edmund F. Heath estate, and among the assets recited, and to which this distribution is based, is this identical bond and mortgage of \$30,000, and was part of the basis of the calculation of the share.

Mr. Lum. If the distribution was made on that to Marjorie it would seem to me to bind her.

The Court. What is the date of that instrument?

30 *Mr. Tamblyn.* 1906, July.

Mr. Parker. It isn't signed or anything.

Mr. Sweeney. I would like them to have leave to offer a certified copy.

Mr. Day. Is it recorded?

Mr. Sweeney. Yes.

The Court. Let it be admitted, subject to correction by the original.

Marked Exhibit D. Heath 1.

Carlotta Heath, direct—cross.

CARLOTTA HEATH, re-called.

Direct examination by Mr. Day.

Q Miss Carlotta, after your father's death where did you live?

A With my grandmother and grandfather, in Roseville avenue.

Q And did you live at their house when your grandfather died?

A Yes, sir. 19

Q All that time, did you have any conversation with your grandfather during that time with reference to your father's interest in the business of Edmund F. Heath & Son?

A Yes, I remember distinctly grandfather always told me, I remember one distinct occasion, one Sunday morning, he told me when father was twenty-one years old, on his twenty-first birthday he gave him a half share in the business, half partnership. 20

Cross examination by Mr. Tamblyn.

Q How old were you then when that conversation took place?

A I was about ten.

Q Ten years of age?

A Yes.

The Court. Was that after the death of both father and son?

Mr. Parker. No, sir, after the death of the son, but before the death of the father. 30

The Court. Of course it couldn't have been after the death of the father. After the death of the son, and before the death of the father?

Mr. Parker. Yes. It must have been then between 1900 and 1904.

ALL REST.

*Opinion.***Opinion.**

Filed June 5, 1913.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> FREDERICK R. MADDOCK, Adminis- trator, &c., <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> MARJORIE HEATH CONNOLLY, <i>et als.,</i> <div style="text-align: right;"><i>Defendants.</i></div></p>
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20 On final hearing on bill, answer, replication and proofs.

Mr. Ralph E. Lum and Mr. Egbert B. Tamblyn for the complainant.

Mr. Cortlandt Parker for the defendant, Marjorie Heath Connolly.

Mr. Edward A. Day for Carlotta Heath.

Mr. Algernon T. Sweeney and Mr. John R. Hardin for Bertha Baker Heath and others.

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MEMORANDUM:

HOWELL, V. C.

Whether a complaint seeks to establish a lost instrument such as a deed of conveyance or a will, or seeks to recover upon a lost instrument such as a mortgage or a promissory note, the burden is on him in the first instance to prove that a document of the sort alleged in the bill once existed, that it was properly executed and delivered, that it has been lost, and

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Opinion.

that proper search has been made for it; and when these points shall have been proved the court will then take secondary evidence as to its contents. This rule manifestly casts the burden of proof on the party claiming under the lost instrument, and it is quite consonant with reason that the burden of proof shall not only be sustained by him, but that the evidence as to the existence, execution and delivery of the lost instrument should be clear and cogent. *Maryett vs. Swain*, 1 Stew., 589. The authorities on the point in this State are very meagre, but the question has received attention elsewhere. *Connar vs. Pushar*, 86 Me., 300; 29 Atl., 1003; *Moses vs. Morse*, 74 Me., 472; *Day vs. Philbrook*, 89 Me., 462; 36 Atl., 991; *Edwards vs. Noyes*, 65 N. Y., 126; *Scurry vs. Seattle*, 56 Wash., 1; 104 Pac., 1129; 134 Am. St., 1092; *Taylor vs. Riggs*, 1 Pet., 591. 10

I am of opinion that the burden of proof so resting upon the complainant in this case has been fully met, and I shall assume without further statement or argument that the complainant has established the fact that an instrument of the sort mentioned in the bill once existed, and that it was of the tenor and effect therein set out. I base my conclusion as to this fact upon the testimony of Mr. Maddock and the introduction of the certified copy of the registry of the mortgage, which I think is evidential on this point. 20

But in my opinion the complainant has wholly failed to prove that there was any consideration for the mortgage in question, or that there was ever any money advanced upon it. The mortgage was executed either (1) to secure a present loan, or (2) to secure future advances to be made under it. There is no evidence whatever to the effect that the mortgagor owed the mortgagee anything at all at the time of the making of the mortgage; in fact, a searching investigation of the books of the parties made by a competent accountant fails to disclose any present indebtedness. 30

Opinion.

In fact, the books rather show, if they show anything at all, that there was no indebtedness from the son to the father at the time the mortgage purports to have been made. Neither is there any evidence that any money was advanced by the mortgagee to the mortgagor by way of a future advance on the mortgage itself. The mortgage appears to have been dated on December 8, 1892, and to have been registered on July 10 16, 1900, after the death of the mortgagor. There is an account in the books of the firm, which was composed of the mortgagor and mortgagee, showing that on the day after the mortgage was dated the firm's check was drawn to the order of the mortgagor for \$1,750, and that this amount was charged on the firm's books to the mortgagee, indicating possibly that \$1,750 had been on that day taken from the assets of the firm by the mortgagor and charged against the mortgagee, from which I am asked to infer that there 20 was created by that transaction an indebtedness from the mortgagor to the mortgagee. This course seems to have been continued according to the books from December 9, 1892, until April 5, 1893, up to which time this particular account reached an aggregate of \$32,132.16; but I do not think that I would be justified in assuming without any evidence at all that this account represents a transaction or a series of transactions connected in any way with the mortgage. It has always been held that future advances on a 30 mortgage should not be encouraged because of the facility they afford for the commission of fraud, inasmuch as the proof of the advances generally lies wholly in parol, and this observation applies with much more force to a case in which a recovery for future advances on a lost instrument is sought to be had. The burden of proof on this point lies with the complainant, and it is quite apparent that the burden has not been met, and I must therefore advise a decree dismissing the bill.

*Final Decree.***Final Decree.**

(Filed June 18, 1913.)

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK R. MADDOCK, Substituted Admr. of EDMUND F. HEATH, deceased,

*Complainant,**and*

MARJORIE HEATH CONNOLLY,
et als.,

*Defendants.**On Bill, &c.*

10

20

This cause coming on to be heard in the presence of Ralph E. Lum, Esq., and Egbert J. Tamblyn, Esq., of counsel with the complainant, and Cortlandt Parker, Esq., of counsel with the defendant, Marjorie Heath Connolly, and Edward A. Day, Esq., of counsel for the defendant, Carlotta Heath, by her next friend, and Algernon T. Sweeney, Esq., and John R. Hardin, Esq., of counsel for the defendant, Bertha Baker Heath, individually and as Administratrix of the Estate of Edmund F. Heath, Jr., deceased, and the pleadings and proofs having been read and heard, and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and argument, and it appearing to the court that the mortgage purporting to have been made by Charles Heath in his lifetime to the said Edmund F. Heath in his lifetime, dated the eighth day of December, Eight hundred and ninety-two, and registered in the office of the Regis-

30

40

Final Decree.

ter of Essex County on the sixteenth day of July, in the year Nineteen hundred, in Book H-15 of Mortgages, on pages 121, &c. (which said mortgage appears to have been lost and has been proved as a lost instrument) was made without consideration and was and is null and void, and that the complainant is not entitled to the relief prayed for in and by his bill of complaint;

10 It is, on the 17th day of June, Nineteen hundred and thirteen, on motion of Edward A. & William T. Day, solicitors for the said Carlotta Heath, by Edwin R. Walker, Esq., Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the complainant's bill be and the same is hereby dismissed with costs in favor of the defendants, Marjorie Heath Connolly and Carlotta Heath.

E. R. WALKER,
C.

20 Respectfully advised,
JAMES E. HOWELL,
V. C.

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Notice of Appeal.

Notice of Appeal.

(Filed June 24, 1913.)

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> FREDERICK R. MADDOCK, Substituted Admr. of EDMUND F. HEATH, deceased, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MARJORIE HEATH CONNOLLY, <i>et als.,</i> <i>Defendants.</i></p>	}	<p><i>On Bill, &c.</i></p>	<p>10</p> <p>20</p>
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The complainant hereby appeals from the final decree made in this court in the above stated cause on the seventeenth day of June, A. D., Nineteen hundred and thirteen, and from each and every part thereof, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated June 18, 1913.

LUM, TAMBLYN & COLYER,
Solicitor for and of Counsel with Complainant. 30

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

EGBERT J. TAMBLYN,
Of Counsel with Complainant.

*Petition of Appeal.***Petition of Appeal.**

Filed July 8, 1913.

New Jersey Court of Errors and Appeals

10

Between

FREDERICK R. MADDOCK, Substi-
tuted Admr. of EDMUND F.
HEATH, deceased,

*Complainant-Appellant,**and*

MARJORIE HEATH CONNOLLY,

et als.,

20

*Defendants-Respondents.**On Bill, &c.*

To the Honorable, The Court of Errors and Ap-
peals in the last resort in all causes:

30

The petition of Frederick R. Maddock, Substituted Administrator with the will annexed of Edmund F. Heath, deceased, the appellant in the above stated cause respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the seventeenth day of June, A. D., Nineteen hundred and thirteen, wherein the said Frederick R. Maddock, substituted administrator with the will annexed of Edmund F. Heath, deceased, was complainant and the said Marjorie Heath Connolly and Carlotta Heath and Bertha Baker Heath, individually and as administratrix of the estate of Edmund F. Heath, deceased, were defendants in this respect, to wit; that the said

40

Petition of Appeal.

decree adjudges that the complainant's bill be and the same was thereby dismissed with costs in favor of the defendants, Marjorie Heath Connolly and Carlotta Heath.

And your petitioner humbly appeals from the whole and every part of the said decree of the Chancellor which decree as aforesaid, upon the ground that the same is erroneous, for that the mortgage made by Charles Heath in his lifetime to the said Edmund F. Heath in his lifetime dated the eighth day of December, Eighteen hundred and ninety-two, and mentioned in the bill of complaint in this cause, was made for a good, true and valid consideration, and that the said mortgage was good and valid in the hands of the said Edmund F. Heath in his lifetime and your petitioner as substituted administrator with the will annexed of the said Edmund F. Heath, deceased; and that your petitioner was entitled to the relief sought and prayed for by him in his bill of complaint filed in this cause.

Your petitioner therefore prays that the said decree of the said Chancellor 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 shall seem meet.

LUM, TAMBLYN & COLYER.

Solicitors for and of Counsel with Appellant.

EGBERT J. TAMBLYN, 30

Of Counsel with Appellant.

Endorsed:

"Filed Jul 8, 1913,

DAVID S. CRATER,

Clerk."

**Answer of Carlotta Heath to
Petition of Appeal.**

(Filed August 23, 1913.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

FREDERICK R. MADDOCK, Substi-
tuted Admr. of EDMUND F.
HEATH, deceased,

Complainant-Appellant,

and

MARJORIE HEATH CONNOLLY,

et als.,

Defendants-Respondents.

On Bill, &

On Appeal.

20

The answer to the above named respondent, Carlotta Heath to the Petition of Appeal of the above named Appellant.

30

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 Eighteenth day of June 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 the same shall be produced. And this Respondent is advised and believes that the said decree is agreeable to equity, and she prays that the same may be affirmed with costs to be adjudged to this Respondent.

EDWARD A. & WILLIAM T. DAY.

Solicitors and of Counsel with

Carlotta Heath, Respondent.

40

Answer to Petition of Appeal.

**Answer of Marjorie Heath Connolly to
Petition of Appeal.**

(Filed August 25, 1913.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

FREDERICK R. MADDOCK, Substi-
tuted Administrator of EDMUND
F. HEATH, deceased,
Complainant Below and Appellant,
and
MARJORIE HEATH CONNOLLY, *et als.*,
Defendants Below and Respond-
ents.

10

20

The Answer of Marjorie Heath Connolly, one of the Respondents to Petition of Appeal of the above named Complainant.

This Respondent, not acknowledging all or any of the matter which in the said Petition of Appeal are contained to be true, for answer thereto, nevertheless, says and he admits, that a decree was on the seventeenth day of June last, 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 the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

30

CORTLANDT & WAYNE PARKER,

Solicitors for and of Counsel with

Above Named Respondent. 40

Order Appointing Expert Accountant.

Order Appointing Expert Accountant.

(Filed Oct. 23, 1912.)

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> · FREDERICK R. MADDOCK, Substi- tuted Administrator, &c., <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> MARJORIE HEATH CONNOLLY, <div style="text-align: left;"><i>et als.,</i></div> <div style="text-align: right;"><i>Defendants.</i></div> </p>
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20 It appearing from the pleadings in this cause and
the statements of all the counsel for the respective
parties to this suit, as well for the complainant as for
the several answering defendants, that this suit is
brought for the foreclosure of a certain bond and
mortgage executed in his lifetime by Charles Heath
to his father, the late Edmund F. Heath, deceased,
both of which instruments have become lost; that at
the time of the execution of the said bond and mort-
30 Heath, the said Charles Heath was a partner with his
said father, Edmund F. Heath, and carried on busi-
ness with him under the firm name of Edmund F.
Heath & Son; and that the said Edmund F. Heath
was the executor of the will of the said Charles
Heath, and that after the death of the said Charles
Heath the said Edmund F. Heath made no account-
ing with respect to the interest of the said Charles
Heath in the said business, so that it does not appear
at the death of the said Charles Heath that he was in-
40 debted to his said father; and it further appearing

Order Appointing Expert Accountant.

that the defendant, Carlotta Heath, is an infant under the age of twenty-one years, and that the complainant is the guardian of her person and property and has in his possession, as such guardian, a fund amounting to the sum of Twenty thousand dollars and upwards; and it further appearing that it is proper and right that an examination by an expert accountant of the books, papers and memoranda of the said Edmund F. Heath and of the said business and co-partnership of Edmund F. Heath & Son should be had for the protection of the said infant, and all parties consenting thereto: 10

It is on this twenty-third day of October, Nineteen hundred and twelve, upon motion of Edward A. & William T. Day, of counsel with the defendant, Carlotta Heath, ordered that Richard F. Stevens be and he hereby is appointed an expert accountant to make an examination of all the books, papers and memoranda, as well of the said Edmund F. Heath as of the said Charles Heath and of the business or co-partnership of Edmund F. Heath & Son, in order to ascertain the origin and consideration of the said bond and mortgage in this suit, and also in order to ascertain whether at the death of the said Charles Heath, deceased, he was possessed of any interest in the said co-partnership with his said father, and what that interest consists of and for what, if anything, the said Edmund F. Heath was accountable as the surviving partner, and what he, in his lifetime, should have been charged with and what his personal representative is now charged with, for the benefit and advantage of the Estate of Charles Heath, deceased, and whether for other causes appearing from the books, papers and memoranda the said mortgage has not been paid, satisfied or discharged; provided that the expenses of the said expert accountant shall not exceed the sum of One hundred dollars; and it is further provided that the expenses of the said ex- 20 30 40

Order Appointing Expert Accountant.

pert accountant be paid by the said complainant out of the funds in his hands as guardian of the said Carlotta Heath.

And it is further ordered that counsel of either party may have leave to apply to the Court from time to time for such further order in the premises as circumstances may require.

E. R. WALKER,
C.

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Respectfully advised,
JAS. E. HOWELL,
V. C.

20

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EXHIBIT C. 1.

Inventory of the estate of Edmund F. Heath containing an item "One bond and mortgage Charles Heath estate \$30,000, value uncertain."

10

EXHIBIT C. 2.

IN THE NAME OF GOD, AMEN.

I, Edmund F. Heath of Newark, New Jersey, being of sound mind, memory and understanding, do make and publish this my last Will and Testament in the manner following, that is to say.

First. I direct that all my just debts and funeral expenses be paid as soon as conveniently may be after my decease.

20

Second. I give, devise and bequeath unto my wife Margaret C. Heath Seventy (\$70,000 00/100) thousand dollars, also all my household goods of every description. This bequeath to be in lieu of any right of dower she may have in my property.

Third. I give, devise and bequeath unto my grandchild Carlotta Heath Twenty (\$20,000 00/100) thousand dollars, and in the event of the demise of my wife Margaret C. Heath, or she marries again, I do appoint Harold P. Dortch of Goldsboro, North Carolina guardian of Carlotta Heath, also Administrator of legacy and request him to invest it in Mortgage securities for her benefit until she is twenty one years of age and in case my widow, Margaret C. Heath does not want Carlotta to live with her, I request H. P. Dortch to use the income from her legacy for her schooling and benefit.

30

Fourth. I give, devise and bequeath unto Frederick R. Maddock all my interest in the Phoenix Lock

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Exhibit C. 2.

Works of this City, consisting of shares, notes and all debts due me.

Fifth. I give, devise unto Mr. James Brown of London Two \$2000 00/100 thousand dollars and request my Executrix not to foreclose the Mortgage for Twenty-one Thousand Five Hundred Dollars until the expiration of the lease.

10 Sixth. I give devise and bequeath unto my Sister Caroline Hadden the house that she now lives in, in Guelph, Ontario, Canada, and at her decease the proceeds to be equally divided between her two daughters.

Seventh. I give devise and bequeath unto the Rev. George I. Dickenson one (\$1000 00/100) thousand dollars.

Eighth. I give, devise and bequeath unto Harold P. Dortch of Goldsboro, N. C. six (\$6000 00/100) thousand dollars.

20 Ninth. I give, devise and bequeath unto William T. Dortch of Goldsboro, N. C. Four (\$4000 00/100) thousand dollars.

Tenth. I give, devise and bequeath unto Isaac F. Dortch of Goldsboro, N. C. One (\$1000 00/100) thousand dollars.

Eleventh. I give, devise and bequeath unto James McLaughlin now in our employ Five \$500 00/100 hundred dollars.

30 Twelfth. I give, devise and bequeath unto John Lapp now in our employ Five (\$500 00/100) hundred dollars.

Thirteenth. The residue of my property of whatever kind I give, devise and bequeath unto my grandchildren, Edmund F. and Marjorie Heath also my Nieces named Heath and Hadden. It is my desire that Edmund F. and Marjorie Heath be paid their share when they are twenty one years of age. The residue of my estate is to be divided between my grandchildren and Nieces share and share alike.

Exhibit C. 2.

Fourteenth. I wish my grandchildren Edmund F. and Marjorie Heath to distinctly understand that if any or all of them sign any petition or go before a Judge or Court to ask for any member or relative of their mother's family to be appointed Guardian or Administrator then all gifts and bequests to them are null and void and that all claims and interest they may have in my estate is transferred to my Nieces to be equally divided between them. 10

Fifteenth. I hereby authorize my executrix to sell or dispose of any or all of the property that I die possessed of at such time times and upon such terms and in such manner as to her shall seem judicious and make the necessary conveyances and conveyances and transfers thereof.

Sixteenth. I nominate and appoint my wife, Margaret C. Heath sole Executrix.

Seventeenth. As the bulk of my property is in Real estate I advise my Executrix to sell all she can at less price than what I have asked, so as to close the Estate as soon as possible. 20

Eighteenth. In case my property is unable to pay all the Legacies then all and each Legacy is to be deducted *pro rata* according to the individual amount left in each legacy.

In Witness Whereof, I have hereto subscribed my name and set my seal this Sixteenth day of June in the year of our Lord Nineteen Hundred and two. 30

EDMUND F. HEATH, (L. S.)

Signed, sealed, published and declared by the said Edmund F. Heath the to be his last Will and Testament in his presence and at his request and in the presence of each other have hereunto subscribed our names as witnessed by

(Amounts inserted before signature.)

BERNARD J. O'ROURKE

JOHN J. KREITLER. 40

Exhibit C. 2.

ESSEX COUNTY SURROGATE'S OFFICE.

<p style="text-align: center;">IN THE MATTER OF THE PROBATE ON THE ALLEGED WILL OF 10 EDMUND F. HEATH, Deceased.</p>	}	<i>On Petition for Probate.</i>
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ORDER FOR PROBATE.

On reading and filing the petition of Margaret C. Heath for probate of the Last Will and Testament of Edmund F. Heath, deceased, and for Letters Testamentary thereon, and the Surrogate having inquired into the circumstances and taken proof, and being

20 satisfied of the genuineness of the Will produced, the validity of its execution and the competency of the testator, and it further appearing that the said testator died on the Eleventh day of August Nineteen Hundred and Four and more than ten days ago, and that no caveat has been filed against the probate of said Will.

It is, thereupon on this twenty-third day of August Nineteen Hundred and Four ordered and adjudged that the instrument offered for probate in this

30 matter, be and the same hereby is established as the Last Will and Testament of the said Edmund F. Heath, deceased, and that the same be and hereby is admitted to probate.

It is further ordered that Letters Testamentary thereon be issued to Margaret C. Heath, the Executrix named in said Will upon her qualifying as such Executrix.

J. W. ELLOR,
Surrogate.

Exhibit C. 2.

STATE OF NEW JERSEY.

ESSEX COUNTY SURROGATE'S OFFICE.

I, Joseph W. Ellor, Surrogate of the County of Essex, do certify the annexed to be a true copy of the last Will and Testament of Edmund F. Heath late of the County of Essex, deceased, and that Margaret C. Heath the Executrix therein named, proved the same before me, and is duly authorized to take upon herself the administration of the Estate of the Testator, agreeably to the said Will.

10

WITNESS MY HAND AND SEAL OF OFFICE, the twenty-third day of August in the year of our Lord one thousand nine hundred and four.

(Surrogate's

Seal

Essex County.)

20

J. W. ELLOR,
Surrogate.

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Exhibit C. 2.

STATE OF NEW JERSEY.

ESSEX COUNTY SURROGATE'S OFFICE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREET-
ING :

10 WHEREAS, Edmund F. Heath, late of the County of
Essex, in the State of New Jersey, departed this life,
having made and executed a Last Will and Testament,
which has been duly proved, according to law, before
the Surrogate of said County of Essex :

AND WHEREAS the said Testator appointed Mar-
garet C. Heath Executrix thereof, who after taking
upon herself the burden of administration, has de-
parted this life,

20 THEREFORE, I, GEORGE E. RUSSELL, Surrogate of the
County of Essex, do in the place and stead of the said
Margaret C. Heath, hereby substitute and appoint Ed-
mund F. Heath, Administrator of all and singular,
the goods, chattels and credits of said testator, who
it duly authorized as such substituted administrator
to administer the same agreeably to said Will.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal of office at Newark, this Sixth day of August,
nineteen hundred and six.

G. E. RUSSELL.

Surrogate.

30 (Surrogate' Seal
Essex County.)

Exhibit C. 3.

EXHIBIT C. 3.

STATE OF NEW JERSEY.

ESSEX COUNTY SURROGATE'S OFFICE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREET-
ING:

WHEREAS, Edmund F. Heath, late of the County of
Essex, in the State of New Jersey, died, having made
and executed a Last Will and Testament, which has
been duly proved according to law, before the Surro-
gate of said County of Essex:

10

AND WHEREAS, the said Testator appointed Mar-
garet C. Heath, Executrix thereof, who after taking
upon herself the burden of administration departed
this life.

AND WHEREAS, Edmund F. Heath, Jr. was duly ap-
pointed administrator with the will annexed of the
said testator, who after taking upon himself the bur-
den of administration departed this life.

20

THEREFORE, I, GEORGE E. RUSSELL, Surrogate of the
County of Essex, do, in the place and stead of the
said Edmund F. Heath, Jr., hereby substitute and ap-
point Frederick R. Maddock Administrator of all
and singular the goods, chattels and credits of said
testator, who is duly authorized as such Substituted
Administrator to administer the same agreeably to
said Will.

30

IN WITNESS WHEREOF, I have hereunto set my hand
and seal of office at Newark, this First day of No-
vember, nineteen hundred and nine.

G. E. RUSSELL,
Surrogate.

(Seal.)

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Exhibit C. 4.

EXHIBIT C. 4.

I, Charles Heath, of the Township of South Orange in the County of Essex and State of New Jersey, do make and publish this my last will and testament.

10 First. I direct that all my just debts and funeral expenses be paid, as soon as conveniently may be after my decease.

Second. I give, devise and bequeth all the residue of my estate, both real and personal, of which I may seized or possessed, unto my Executor hereinafter named, his heirs, Executors and administrators; in trust, nevertheless, for the following purposes: 1st. To collect the rents, issues and profits of my said estate, and pay the entire amount thereof, in equal quarterly payments, to my wife, Anna M. Heath, during her life; said income to be used and applied by my wife, during the period aforesaid, for the support and maintenance of herself and my three children, Edmund F., Marjorie and Carlotta Heath. It is my will that in the distribution of said income for the purposes aforesaid, my wife shall be at liberty to exercise and use her absolute discretion. 2d. After the death of my said wife, I direct my Executor, herein named, whom, on the happening of the event last aforesaid, I also appoint the Guardian of the persons and property of my said children, to apply the income of my said estate, or so much thereof as he shall deem necessary, to the support and maintenance of my said children, or the survivor or survivors of them, until my youngest surviving child shall have attained the age of twenty-one years. I especially desire that my said Executor, in distributing my income as aforesaid, shall consider the circumstances and condition of each of my said children, and that he make such distribution in such proportions as he, in view of their several conditions, shall deem wise and prudent, and I hereby

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Exhibit C. 4.

authorize him so to do. 3d. When my youngest surviving child shall have attained the age of twenty-one years, I direct my Executor, hereinafter named, to convey to my said children and to their heirs forever, such of my real estate as may be then unsold, and also to distribute among them my personal property, in the following proportions, namely: Two fifths thereof to each of my said daughters, and one fifth thereof to my said son, and I hereby give my said Executor full power and authority to effect and carry out such distribution. If either of my said children shall die before my youngest surviving child shall have reached the age of twenty-one years, the lawful issue, if any, of such child shall be entitled to receive so much of the income of my estate, and also such portion of my estate on final settlement as aforesaid, as its parent, if living, would have been entitled to. If either of my said children shall die without lawful issue, before the time fixed herein for the settlement of my estate, then the portion of my estate to which said child, if living, would have been entitled, shall be conveyed as aforesaid and distributed, in equal shares, among my surviving children. And if but one of my children be then living, the whole of my estate shall be conveyed and transferred to such surviving child, its heirs, executors and administrators.

10

20

Third. I hereby authorize and empower my said Executor, to sell or dispose of all or any of the property of which I may die possessed as aforesaid, at such times and upon such terms and in such manner as to him shall seem judicious, and to make the necessary conveyances and transfers thereof, and I direct that the proceeds of any such sale shall be invested by my said Executor, and kept invested by him until the settlement of my estate as aforesaid, in such securities as he shall approve.

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Exhibit C. 4.

Fourth. I nominate and appoint my father Edmund F. Heath, Executor of this my last Will.

IN WITNESS WHEREOF, I have hereto subscribed my name and set my seal, this fourth day of November, in the year of our Lord, one thousand, eight hundred and ninety-nine.

CHAS. HEATH. (L. S.)

10 Signed, sealed, published and declared by the said testator, as and for his last will and testament, in our presence, who, at his request, in his presence, and in the presence of each other, have hereto subscribed our names as witnesses.

MATILDA MCNEILLY,

475 Main St., Orange, N. J.

HENRY YOUNG,

20 800 Broad Street, Newark, N. J.

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Exhibit C. 4.

STATE OF NEW JERSEY.

ESSEX COUNTY SURROGATE'S OFFICE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREET-
ING:

WHEREAS, Charles Heath, late of the County of Essex, in the State of New Jersey, died, having made and executed a Last Will and Testament, which has been duly proved according to law, before the Surrogate of said County of Essex: 10

AND WHEREAS, the said Testator appointed Edmund F. Heath Executor thereof, who after taking upon himself the burden of administration departed this life,

THEREFORE, I, JOSEPH W. ELLOR, Surrogate of the County of Essex, do, in the place and stead of the said Edmund F. Heath hereby substitute and appoint Frederick R. Maddock, Administrator of all and singular the goods, chattels, and credits of said testator who is duly authorized as such Substituted Administrator to administer the same agreeably to said Will. 20

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Newark this Third day of November, nineteen hundred and four.

J. W. ELLOR,
Surrogate. 30

(L. S.)

Exhibit C. 5.

EXHIBIT C. 5.

CHARLES HEATH to EDMUND F. HEATH.	}	\$30.000
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All that tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of South Orange, in the County of Essex and State of New Jersey.

BEGINNING at the corner formed by the intersection of the easterly line of Centre Street with the northerly line of Hamilton Road; thence running along the northerly line of said Hamilton Road south fifty-

20 eight degrees thirty-one minutes East three hundred feet; thence northerly and parallel with Centre Street two hundred and sixty-two feet and thirteen hundredths of a foot to lot number six (6); thence along the westerly line of lot number (6) six north sixty-

30 six degrees five minutes west three hundred and two feet and eighty seven hundredths of a foot to Centre Street; and thence southerly along the easterly line of Centre Street two hundred and twenty feet and five tenths of a foot to the point or place of Beginning.

Being known as lot number five (5) on a map of property of Thomas S. Kingman and Henry P. Finlay in Orange and South Orange, filed in Essex County Register's office and the same premises which were conveyed to the said Charles Heath by George J. Ferry by deed dated December 4, 1890 and recorded in the Essex County Register's office in Book W 25 of deeds for said county, pages 355 &c. And also all those two tracts or parcels of land and premises situate lying and being in the city of Orange in the County

40 of Essex and State of New Jersey.

Exhibit C. 5.

THE FIRST TRACT. Beginning in the centre of Oakwood Avenue at the northwest corner of the property conveyed to Paul F. Gerhard by the said Charles Heath; from thence running southwesterly along the centre of said Oakwood Avenue one hundred and one feet and ninety eight hundredths of a foot; thence south thirty five degrees thirty two minutes east two hundred and two feet and seventy two hundredths of a foot; thence northeasterly and parallel with Harrison street one hundred and one feet more or less to line of lands of Paul F. Gerhard and thence north thirty five degrees and thirty three minutes west, two hundred and forty-four feet and thirty hundredths of a foot to the centre of Oakwood avenue and place of Beginning.

10

THE SECOND TRACT. Beginning in the centre of Oakwood avenue at the northeast corner of the property conveyed to Paul F. Gerhard, by the said Charles Heath from thence running northeasterly along the centre of Oakwood avenue one hundred and two feet and fourteen hundredths of a foot; hence south thirty five degrees thirty two minutes east two hundred and forty five feet and sixty five hundredths of a foot; thence southwesterly and parallel with Harrison street eighty six feet; thence north thirty five degrees thirty two minutes west one hundred and thirteen feet; thence south fifty one degrees seventeen minutes west fourteen feet and thence north thirty five degrees thirty two minutes west one hundred and thirty one feet and twenty one hundredths of a foot to the centre of Oakwood avenue and place of Beginning. The above two tracts being a portion of the same premises conveyed to the said Charles Heath by Emma S. Winslow and husband by deed dated August 26, 1887 and recorded in the Essex County Register's office in Book Q 23 pages 550, &c.

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30

The premises above described are mortgaged by Charles Heath of the said Township of South Orange

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Exhibit C. 5.

to Edmund F. Heath of the City of Newark, Essex County, New Jersey, to secure the payment of Thirty thousand dollars in one year from the date of the mortgage with lawful interest at per cent. per annum, payable semi-annually according to the conditions of a bond bearing even date therewith. Said mortgagor not to apply for any deduction by reason of this mortgage from the taxable value of said lands.

10 The mortgage is dated and acknowledged the eighth day of December, A. D., eighteen hundred and ninety two before Edw. H. Duryee a Master in Chancery of New Jersey.

And received in the office July 16, A. D., 1900, at 1.52 P. M.

JOHN P. DEXHEIMER,
Register.

20

CERTIFIED COPY OF MORTGAGE.

CHARLES HEATH
To
EDMUND F. HEATH.

The original mortgage of which this is an abstract copy, was received in the Register's Office of the County of Essex, State of New Jersey, on the 16th day of July, A. D., 1900, at 1.52 o'clock in the afternoon and registered in Book H 15 of mortgages for

30 said County on pages 121-123.

JOHN P. DEXHEIMER,
Register.

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Exhibit C. 6.

EXHIBIT C: 6.

*Between*FREDERICK R. MADDOCK, Substi-
tuted Administrator, &c.,*Complainant,**and*

MARJORIE HEATH CONNOLLY,

*et als.,**Defendants.*

10

Gentlemen:

Under the order of the Court of Chancery dated October 23, 1912, on motion of Edward A. & William T. Day appointing me as an Expert Accountant to make an examination of the books, papers and memoranda of all transactions of Charles Heath with Edmund F. Heath personally, and also those of Charles Heath with the co-partnership firm of Edmund F. Heath and Son—

20

I would respectfully report that the books and papers show that the firm of Edmund F. Heath & Son consisted of Edmund F. Heath and Charles Heath; that I was unable to procure any copy of the Articles of Copartnership, but the transactions on the books show that the capital of the firm was not jointly owned but that the interests of the two partners varied from time to time; that each partner participated equally in the profits which were divided yearly; that no interest was credited either of the partners for the capital he had invested in the concern, neither was he charged with interest for any sum he might owe the firm; that it appeared that Edmund F. Heath kept no separate personal bank account, but that all his transactions apparently were kept under the head of Edmund F. Heath.

30

40

Exhibit C. 6.

That while some of the transactions of Charles Heath were entered in the books of the firm, he in addition kept a private bank account; that on and after December, 1894, Charles Heath acted as bookkeeper and received an additional salary which was credited him on the ledger. I did not deem it essential to go back of July 1, 1890, in examining the interests of the two partners but started from that date, the books showing at that time that Charles Heath's interest in the firm amounted to \$6,362.25 and Edmund F. Heath's to \$52,819.25. From that time on each partner was charged with the various payments made on his account and credited with any monies he put in and his annual share of the profits of the business.

These accounts showed that at the time of the death of Charles Heath on July 7, 1900, he was indebted to the firm in the sum of \$26,548.11 and Edmund F. Heath had invested in the firm the sum of \$71,793.43.

This sum of \$26,548.11 was virtually owing by Charles Heath to his father under the conditions of the partnership and this indebtedness remained in this situation upon the books at the time of the death of Edmund F. Heath.

I annex Schedule showing the transactions yearly of the partners.

With regard to the personal transactions between Edmund F. Heath and Charles Heath, the books show that commencing with December 9, 1892 and ending April 5, 1893 Edmund F. Heath's personal account was debited by certain checks drawn to the order of Charles Heath and amounting to the sum of \$32,132.16; these sums were not credited to Charles Heath, he evidently placing them to his credit in his personal bank account. I annex Schedule showing the various sums so charged Edmund F. Heath.

While I was unable to get the cancelled checks, the stubs of the firm's check book show they were drawn in the handwriting of Charles Heath and the

Exhibit C. 6.

entries in the ledger made by the bookkeeper of the concern. I can find no mention in any of the firm's books of any mortgage given for these checks; they were transactions out of the Company's business; being personal matters Charles Heath's account does not show that any of this amount was repaid his father; there is no charge to him and no credit to his father.

The stubs simply show the checks were drawn to the credit of Charles Heath but give no other information. I would say that the Journal entries give no further facts than are stated in the Ledger. 10

There was no Cash book kept and the Ledger, the Journal and the Check stub book being the only books kept where such transactions could appear.

After the death of Charles Heath his account dropped out of the books of Edmund F. Heath & Son and no entries under his name appears.

The accounts of the estate of Charles Heath were kept by Edmund F. Heath as Executor during the life of the latter in his handwriting and after his death by Frederick R. Maddock, Administrator. 20

There was No Inventory or Accounting of the same filed by Edmund F. Heath, * * * but they were filed by Frederick R. Maddock and showed that Edmund F. Heath personally advanced \$2,537.02 to settle bills and claims against Charles Heath's estate.

In these books and in the Inventory and Accounting no mention is made of the \$30,000.00 mortgage and no interest is charged the Estate of Charles Heath on the same, neither is there any charge for interest on the balance due the firm of Edmund F. Heath and Sons of \$26,548.11. 30

Respectfully submitted,

RICHARD K. STEVENS,
*Certified Public Accountant of
 New Jersey and New York.*

STATEMENT OF THE PERSONAL ACCOUNT
 OF CHARLES HEATH WITH THE FIRM OF
 EDMUND F. HEATH & SON FROM
 JULY 1, 1890 to JULY 7, 1900.

DR.		CR.	
July 1, 1891, Sundry payments for year.....	\$11,749.68	July 1, 1890, Interest in Company.....	\$ 6,362.25
Balance	350.95	July 1, 1891, Profit & Loss.....	5,738.38
	<u>\$12,100.63</u>		<u>\$12,100.63</u>
July 1, 1892, Sundry payments	\$ 7,359.46	July 1, 1891, Interest in Company.....	\$ 350.95
	<u>\$ 7,359.46</u>	“ 1892, Profit & Loss.....	4,112.48
		“ “ Due Company	2,896.03
			<u>\$ 7,359.46</u>
July 1, 1892, Balance due Co.....	\$ 2,896.03	July 1, 1893, Profit & Loss.....	\$ 3,675.20
“ 1893, Sundry payments	6,347.78	“ 1893, Balance due Co.....	5,568.61
	<u>\$ 9,243.81</u>		<u>\$ 9,243.81</u>
July 1, 1893, Balance due Co.....	\$ 5,568.61	July 1, 1894, Profit & Loss.....	\$ 1,513.43
Less Error30	“ 1894, Balance due Co.....	13,872.62
	<u>5,568.31</u>		<u>\$15,386.05</u>
“ 1894, Sundry payments	9,817.74		
	<u>\$15,386.05</u>		

Exhibit C. 6.

July 1, 1894, Balance due Co.....	\$13,872.62	July 1, 1895, Balance due Co.....	\$25,233.68
“ 1895, Sundry payments	11,223.52		
“ “ Profit & Loss.....	137.54		\$25,233.68
	<u>\$25,233.68</u>		
July 1, 1895, Balance due Co.....	\$25,233.68	July 1, 1896, Profit & Loss.....	\$ 1,753.69
“ 1896,	3,184.43	“ “ Balance due Co.....	26,664.42
	<u>\$28,418.11</u>		<u>\$28,418.11</u>
July 1, 1896, Balance due Co.....	\$26,664.42	July 1, 1897, Profit & Loss.....	\$ 4,056.40
“ 1897, Sundry payments	2,244.96	“ “ Balance due Co.....	24,852.98
	<u>\$28,909.38</u>		<u>\$28,909.38</u>
July 1, 1897, Balance due Co.....	\$24,852.98	July 1, 1898, Profit & Loss.....	\$ 2,981.41
“ 1898, Sundry payments	4,534.75	“ “ Balance due Co.....	26,406.32
	<u>\$29,387.73</u>		<u>\$29,387.73</u>
July 1, 1898, Balance due Co.....	\$26,406.32	July 1, 1899, Profit & Loss.....	\$ 4,244.21
“ 1899, Sundry payments	2,641.64	“ “ Balance due Co.....	24,803.75
	<u>\$29,047.96</u>		<u>\$29,047.96</u>
July 1, 1899, Balance due Co.....	\$24,803.75	July 1, 1899, Profit & Loss.....	\$ 7,422.15
“ 7, 1900, Sundry payments	9,166.51	“ 7, 1900, Balance due Co.....	26,548.11
	<u>\$33,970.26</u>		<u>\$33,970.26</u>
July 7, 1900, Balance due Co.....	\$26,548.11		

STATEMENT OF THE PERSONAL ACCOUNT
OF EDMUND F. HEATH WITH THE FIRM
OF EDMUND F. HEATH & SON FROM
JULY 1, 1891 to JULY 7, 1900.

DR.		CR.	
July 1, 1891, Sundries	\$ 7,404.71	July 1, 1890, Capital	\$52,819.25
“ 1891, Farm	1,910.87	“ 1891, Profit & Loss.....	5,738.38
“ “ Balance	49,242.05		
	<u>\$58,557.63</u>		<u>\$58,557.63</u>
July 1, 1892, Farm	\$ 1,482.35	July 1, 1891, Balance	\$49,242.05
“ “ Balance	54,923.57	“ 1892, Sundries	3,051.40
	<u>\$56,405.92</u>	“ “ Profit & Loss.....	4,112.47
			<u>\$56,405.92</u>
July 1, 1893, Sundries	\$ 9,272.68	July 1, 1892, Balance	\$54,923.57
“ “ Farm	1,516.27	“ 1893, Profit & Loss.....	3,675.20
“ “ Balance	47,809.82		
	<u>\$58,598.77</u>		<u>\$58,598.77</u>

Exhibit C. 6.

July 1, 1894, Farm	\$ 1,316.50	July 1, 1893, Balance	\$47,809.82
" " Balance	54,007.30	" 1894, Sundries	6,000.56
	<u>55,323.80</u>	" " Profit & Loss.....	1,513.42
			<u>55,323.80</u>
July 1, 1895, Farm	\$ 874.65	July 1, 1894, Balance	\$54,007.30
" " Profit & Loss.....	137.54	" 1895, Sundries	7,505.26
" " Balance	60,500.37		<u>61,512.56</u>
	<u>61,512.56</u>		
			<u>61,512.56</u>

Note Error in Farm account of \$125.00, the balance in favor of Edmund F. Heath being carried as \$60,375.37.

July 1, 1896, Farm	\$ 115.92	July 1, 1895, Balance	\$60,375.37
" " Balance	64,877.21	" 1896, Sundries	2,864.07
	<u>64,993.13</u>	" " Profit & Loss.....	1,753.69
			<u>64,993.13</u>
July 1, 1897, Sundries	\$ 1,199.19	July 1, 1896, Balance	\$64,877.21
" " Balance	67,734.41	" 1897, Profit & Loss.....	4,056.39
	<u>68,933.60</u>		<u>68,933.60</u>
July 1, 1898, Sundries	\$ 6,937.85	July 1, 1897, Balance	\$67,734.41
" " Balance	64,677.97	" 1898, Profit & Loss.....	2,981.41
	<u>70,715.82</u>		<u>70,715.82</u>

July 1, 1899, Sundries	\$ 2,727.01
" " Balance	66,195.16
	<u> </u>
	\$68,922.17

July 7, 1900, Sundries	\$ 1,623.87
" " Balance	71,993.43
	<u> </u>
	\$73,617.30

July 1, 1898, Balance	\$64,677.97
" " 1899, Profit & Loss.....	4,244.20
	<u> </u>
	\$68,922.17

July 1, 1899, Balance	\$66,195.16
" " 7, 1900, Profit & Loss.....	7,422.14
	<u> </u>
	\$73,617.30

July 7, 1900, Balance	\$71,793.43
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Exhibit C. 6.

SCHEDULE.

STATEMENT OF ITEMS OF CHECKS DRAWN
TO ORDER OF CHARLES HEATH BUT
CHARGED TO THE ACCOUNT OF
EDMUND F. HEATH.

Ledger—Pages No. 69 and No. 212.

10

December 9, 1892, check paid Charles Heath.....	\$ 1,750.00
January 31, 1893, " " " "	1,250.00
February 2, " " " " " "	729.63
" " " " " " " "	1,663.48
" " " " " " " "	2,525.41
" " " " " " " "	12,450.00
" 13, " " " " " "	750.00
" 24, " " " " " "	3,000.00
March 28, " " " " " "	3,002.22
April 5, " " " " " "	5,011.42
	<hr/>
	\$32,132.16

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Exhibit D. Heath 1.

(EXHIBIT D. HEATH 1.)

This indenture made the twenty sixth day of July in the year of our Lord one thousand nine hundred and six, Between Lylie Harrison Lewis and George Lewis her husband, Annie A. Tawse and Alexander Tawse her husband, of the township of Puslinch in the county of Wellington and province of Ontario, Canada, Annie H. Kerr, widow, and Margaretta L. Hadden, spinster, of the city of Guelph, province of Ontario, Canada, of the first part, and Edmund F. Heath and Marjorie Heath of the city of Newark, county of Essex and state of New Jersey of the second part; Witnesseth, whereas the said Lylie Harrison Lewis, Annie A. Tawse, Annie H. Kerr and Margaretta L. Hadden have an interest in the estate of Edmund F. Heath, late of Newark, New Jersey, deceased, under his will bearing date June Sixteenth, nineteen hundred and two, and proved before the Surrogate of the county of Essex in the state of New Jersey and United States of America on the Twenty Third day of August, nineteen hundred and four, and are all the persons designated by the testator in the Thirtieth Section of his said will as "my nieces named Heath and Hadden", said Lylie Harrison Lewis and Annie A. Tawse being the only daughters and children of Charles Heath a deceased brother of said testator, and the said Annie H. Kerr and Margaretta L. Hadden being the only daughters and children of Caroline Hadden a deceased sister of said testator; said testator, Edmund F. Heath, never having had any nieces named Heath and Hadden except the four above mentioned as parties of the first part herein; And Whereas, the said parties of the first part have agreed to sell, assign, transfer and set over unto the parties of the second part all their right, title and interest of every kind and nature in and to the estate of said Edmund F. Heath, deceased; Now Therefore we, Lylie Harrison Lewis and George Lewis

Exhibit D. Heath 1.

her husband, Annie A. Tawse and Alexander Tawse
 her husband, Annie H. Kerr and Margaretta L. Had-
 den, parties of the first part aforesaid, in considera-
 tion of the sum of Eighty Two Thousand Dol-
 lars lawful money of the United States of America
 to us in hand paid by Edmund F. Heath and Mar-
 jorie Heath, parties of the second part aforesaid, at
 or before the ensealing and delivery of these presents,
 the receipt whereof is hereby acknowledged, have
 granted, bargained, sold, aliened, remised, released,
 conveyed, confirmed, assigned, transferred and set
 over, and by these presents do grant, bargain, sell,
 alien, remise, release, convey, confirm, assign, trans-
 fer, and set over unto the said Edmund F. Heath and
 Marjorie Heath, parties of the second part aforesaid,
 and to their heirs, executors, administrators and as-
 signs forever, all our right, title and interest in and to
 the estate of said Edmund F. Heath, deceased, to-
 gether with all the lands, tenements, hereditaments,
 appurtenances, goods, chattels, rights, credits, monies,
 bonds, mortgages, accounts, books of account, notes,
 checks, bills, stocks, bonds, securities, assets of every
 kind and nature, choses in action, and all other prop-
 erty, real, personal or mixed, belonging to or in any
 wise appertaining to the estate of said Edmund F.
 Heath, deceased. It being our intention to convey
 absolutely to said Edmund F. Heath and Marjorie
 Heath our entire right, title and interest in and to
 every part and parcel of said estate whether the
 same be herein specifically enumerated or not. To
 have and to hold the same unto the said parties of
 the second part, their heirs, executors, administrators
 and assigns forever; And we do hereby make, con-
 stitute and appoint the said parties of the second
 part our true and lawful attorneys, irrevocable, in
 our names or otherwise, but at their proper cost and
 charges, to have, use, and take all lawful ways and
 means for the recovery of the lands, tenements, hered-
 itaments, appurtenances, goods, chatels, rights,

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Exhibit D. Heath 1.

credits, monies, bonds, mortgages, accounts, books of account, notes, checks, bills, stocks, bonds, securities, assets, choses in action and other preproperty above conveyed, and to demand, receive, prosecute, sue for, compound, release and discharge the same and in our names or otherwise to institute, conduct, prosecute and defend any suits or proceedings at law or in equity therefor or pertaining thereto as fully as we
10 might or could do if these presents were not made. And the said parties of the first part in consideration of the premises and of the purchase money above mentioned and in order to carry out and facilitate the sale and conveyance aforesaid do hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the said Edmund F. Heath and Marjorie Heath and to their heirs and assigns forever all our right, title and interest in and to all the following tracts or
20 parcels of land and premises;— The First Tract situate, lying and being in the city of Newark in the county of Essex and State of New Jersey; Beginning at the north easterly corner of the South Orange Road and Bergen Street, as the same is laid out on a map made for the said George Lewis by Dunn & Thompson, surveyors, April, 1851, and from thence running along Bergen Street north twenty seven degrees and thirty minutes east four hundred and fifty four feet two inches to the corner of Lot No. 22 on Block D on a map of the said property made for the said George
30 Lewis, thence south sixty two degrees and thirty minutes east along the southerly line of Lots Nos. 22 and 38 on said Blocks two hundred and thirty feet to the middle of Hunterdon Street on said map, thence south twenty seven degrees and thirty minutes west along the middle of said street for four feet six inches more or less to a point in range with the southerly line of lots Nos. 20 and 63 on Block C on said map, thence south sixty two degrees and thirty minutes east passing along the southerly line of said Lots Nos.
40 20 and 63 five hundred and five feet to the middle of

Exhibit D. Heath 1.

Bruce Street, thence along the middle of the same south twenty seven degrees and thirty minutes West two hundred and eighty three feet eight inches to the aforesaid South Orange Road, thence along the same North seventy four degrees and fifty five minutes west six hundred and eighty five feet four inches, and thence still along the same north seventy eight degrees and fifty five minutes west sixty eight feet one inch to the place of Beginning, excepting thereout so much as has heretofore been sold. Being the same premises conveyed by Abraham M. Reynolds, sheriff, to Edmund F. Heath by deed dated March 10, 1863, and recorded in Book Y 11 of deeds for Essex County, pages 423, 424, 425, 426. 10

The Second Tract lying on Staunton river, in the county of Pittsylvania, State of Virginia, together with all buildings and appurtenances thereon situated, and all rights, privileges, and easements which now, or may hereafter, belong to the said Haley or Heath on account of said land; the said land whereby conveyed is known as the Pocket-place, and is bounded and described as follows—Beginning at an Elm Tree on Staunton River at a corner with Lee's land, South sixty six (66) East nine (9) chains, South fifty seven (57) East eleven point fifty (11.50) chains, to a black Jack stump, south one (1) East thirty two point fifty (32.50) chains to a pine stump and pointers, south fifty two (52) West eight (8) chains to a pine stump in bottom, South seven and a half (7½) West eleven point thirty five (11.35) chains to a pine stump and pointers, corner with five different tracts of land, viz; Franklin, negro named Haley and others, South forty two (42) East fifteen (15) chains to a black Jack and pine stump, south sixty seven (67) East twenty nine (29) chains, South seventy two (72) East twenty five point fifty (25.50) chains to a corner with Snow and Huendley, North fifty three (53), East twenty one point fifty (21.50) chains to a small chestnut corner with H. B. Haleys land, thence North 20 30 40

Exhibit D. Heath 1.

sixty seven (67) West thirteen (13) chains to a corner Red Oak, on Snows mill road, thence North fifty three (53) West two point fifty (2.50) chains to pointers near said mill road, thence North thirty five three quarters ($35\frac{3}{4}$) East seventy two chains to the mouth of a branch on Staunton river, thence with the said river two hundred thirty nine point sixty (239.60) chains, as it meanders to the Beginning, the whole

10 containing nine hundred and sixty (960) acres, as per recent survey made by L. H. Pigg, county surveyor of Pittsylvania county, Being the same premises which was conveyed by Archibald Haley and Martha A. A. Haley his wife to Edmund F. Heath by deed recorded in the county clerks office of Pittsylvania County court on the 17th day of March, 1887 at 9 o'clock a. m. Also any and all other lands and real estate wheresoever situate belonging to said Edmund F. Heath, deceased, at the time of his death or owned or acquired by his

20 estate after his death Together with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And Also, all the estate, right, title, interest, dower and right of dower property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the ap-

30 purtenances. To Have and to Hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said Edmund F. Heath and Marjorie Heath their heirs and assigns forever, to the only proper use, benefit and behoof of the said Edmund F. Heath and Marjorie Heath their heirs and assigns forever. And the said parties of the first part in consideration of the premises and of the purchase money above mentioned do hereby grant, bargain, sell, assign, transfer and set over unto the

40 said Edmund F. Heath and Marjorie Heath the fol-

Exhibit D. Heath 1.

lowing bonds, mortgages, securities and personal property, viz:

First. Chattel Mortgage dated October 1, 1904, made by Frederick R. Maddock to Margaret C. Heath, executrix of Edmund F. Heath, to secure Five Thousand Dollars, recorded in Book 152 of chattel mortgages for Essex County, New Jersey, pages 578 to 580.

Second. Chattel Mortgage dated October 1, 1904, made by Frederick R. Maddock to Margaret C. Heath, executrix of Edmund F. Heath, to secure Fifteen Thousand Six Hundred and Twenty Five Dollars and Eighty Three Cents, recorded in Book 152 of chattel mortgages for Essex County, New Jersey, pages 582 to 585. 19

Third. Bond and mortgage dated July 1, 1897, made by James Brown and wife to Edmund F. Heath to secure the sum of Sixty Five Hundred Dollars. 20

Fourth. Bond and mortgage dated June 1, 1883, made by James Brown and wife to Edmund F. Heath to secure the sum of Eight Thousand Dollars recorded in Book F 8 of mortgages for Essex County, New Jersey, pages 242, 243 and 244. 20

Fifth. Bond and mortgage dated June 12, 1882, made by James Brown and wife to Charles Heath to secure the sum of Eighty Five Hundred Dollars (since reduced to Seven Thousand Dollars) recorded in Book B 8 of mortgages for Essex County, New Jersey, pages 439, 440 and 441, and assigned by Charles Heath to Edmund F. Heath, recorded in Book No. 33 of Assignments of Essex County, New Jersey, pages 106 and 107. 30

Sixth. Bond and mortgage given by Charles Heath and wife to Edmund F. Heath to secure the sum of Thirty Thousand Dollars covering property on corner of Centre Street and Hamilton Road, South Orange, New Jersey, and property on Oakwood Avenue, orange, New Jersey. 40

Exhibit D. Heath 1.

Seventh. Bond and mortgage dated April 15, 1901, made by David Grotta to Edmund F. Heath to secure the sum of Sixteen Hundred Dollars, recorded in Book U 15 of mortgages for Essex County, New Jersey, on pages 421 and 422.

10 Eighth. Bond and mortgage dated June 20, 1900, made by Louis Atz and wife to Edmund F. Heath to secure the sum of Four Thousand Dollars (since reduced to Five Hundred Dollars) recorded in Book D 15 of mortgages for Essex County, New Jersey, pages 1 and 2.

Ninth. Essex Club Bond No. 26 dated June 1, 1888, for Five Hundred Dollars.

Tenth. Fifty Six shares capital stock National State Bank of Newark, New Jersey of Fifty Dollars each, certificate No. 249.

20 Eleventh. One hundred and twenty shares capital stock National Newark Banking Company of Fifty Dollars each, certificate No. 2121.

Twelfth. Forty shares capital stock of The Percheron Norman Horse Co. of One Hundred Dollars each, certificate No. 73 (worthless not inventoried.)

Thirteenth. Sixty eight shares capital stock New Jersey State Agricultural Society of Twenty Five Dollars each, certificate No. 313 (seventy five per cent of the principal has been paid on this stock, the value of balance is unknown.)

30 Fourteenth. Forty nine shares capital stock of The American Insurance Company of Newark, New Jersey, Five Dollars each certificate No. 238.

Fifteen. Note of Two Thousand Dollars made by F. R. Maddock dated October 1, 1904, with accrued interest. Also all cash in bank and all other goods, chattels, rights, credits, monies, bonds, mortgages, accounts, books of account, notes, checks, bills, stocks, bonds, securities, assets of every kind and nature, choses in action and all other property belonging to
40 or in anywise appertaining to the estate of Edmund

Exhibit D. Heath 1.

F. Heath, deceased, or in and to which it has any right, title or interest whatsoever.

To Have and to hold the same unto the said Edmund F. Heath and Marjorie Heath their heirs, executors, administrators and assigns forever, to the only proper use, benefit and behoof of the said parties of the second part their heirs, executors, administrators and assigns forever. And we hereby make, constitute and appoint said Edmund F. Heath and Marjorie Heath our true and lawful attorneys irrevocable in our names or otherwise, but at their proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the goods, chattels, rights, credits, moneys, bonds, mortgages, accounts, books of account, notes, checks, bills, stocks, bonds, securities, assets, choses in action and other property above conveyed, together with the money due and to grow due thereon with the interest, and to demand, receive, prosecute sue for, compound, release and discharge the same and in our names or otherwise to institute, prosecute and defend any suits or proceedings at law or in equity therefor or pertaining thereto as fully as we might or could do if these presents were not made. We also agree to execute and deliver from time to time such other or further conveyances and transfers as may be necessary or desirable from time to time in order to vest the title to the real and personal property above conveyed in the party of the Second part.

In Witness Whereof we have hereunto set our hands and seals the day and year first above written.

Signed, sealed and delivered

in the presence of

E. TATHAM

LYLIE HARRISON LEWIS (L. S.)

GEORGE LEWIS (L. S.)

ANNIE A. TAWSE (L. S.)

ALEXANDER TAWSE (L. S.)

ANNIE HEATH KERR (L. S.)

MARGARETTA L. HADDEN (L. S.)

Exhibit D. Connelly 1.

EXHIBIT D. CONNELLY 1.

Inventories 0 2 p. 70.

Charles Heath, Dec'd.

Filed Oct. 5, 1900.

10 A True and perfect inventory and Appraisement
of the Personal Property of Charles Heath late of
the County of Essex, deceased, made by Edmund F.
Heath, Executor, and John J. Berry and Emanuel
Hanson, two discreet and impartial persons this fifth
day of October, A. D. 1900.

	Household furniture at residence 458	
	(Centre St., South Orange.....	\$952.25
	2 Wagons, Saddles, &c.....	30.
	268 Books (Miscellaneous).....	50.
	Paintings	575.
20	Silverware	216.15
	Jewelry	1402.25
	Poultry and Dogs.....	47.20
	Cash in Bank.....	420.60
	Value of Insurance Policies.....	6158.10
	Cash on hand.....	130.75
		<hr/>
	Total	\$ 9982.30

EDMUND F. HEATH,

Executor.

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Exhibit D. Connelly 1.

JOHN J. BERRY
EMANUEL HANSON }

Essex County, to wit: John J. Berry, one of the appraisers in the annexed inventory named, being duly sworn, on his oath says, that the goods, chattels and credits, in the annexed inventory set down and specified, were by him appraised according to their just and true respective rates and values after the best of his judgment and understanding, and that Emanuel Hanson, the other appraiser whose name is thereunto subscribed, was present at the same time with this deponent, and consented to the said valuation and appraisal; and that they appraised all things that were brought to their view for appraisal. 10

JOHN J. BERRY.

Sworn this Oct. 5, 1900, before
me

J. W. ELLOR,
Surrogate. 20

Essex County, to wit: Edmund F. Heath, Executor of Charles Heath, deceased, being duly sworn on his oath says that the annexed writing contains a true and perfect inventory of all and singular the goods, chattels and credits of the said Charles Heath, deceased, as far as have come to his possession or knowledge or to the possession of any other person or persons to his use, to his knowledge. 30

EDMUND F. HEATH.

Sworn this Oct. 5, 1900 before me

J. W. ELLOR,
Surrogate.

Exhibit D. Connelly 2.

EXHIBIT D. CONNELLY 2.

Order to Limit Creditors.

Book 6, p. 441.

July 27th, 1900.

10 ESSEX COUNTY SURROGATE'S OFFICE.

EDMUND F. HEATH,

Exec'utor.

CHARLES HEATH,

*Dec'd.**Surrogate's
Orders to
Limit
Creditors.*

20 On application of the above named executor it is
 ORDERED that the said Executor give public notice to
 the Creditors of the Estate of said Decedent, to bring
 in their debts, demands or claims against the same,
 under oath, within nine months from this date, by
 setting up a copy of this Order, within twenty days
 hereafter, in five of the most public places in the
 County of Essex for two months, and also, within
 the said twenty days, by advertising the same in the
 Newark Evening News for the same space of time,
 30 and if any Creditor shall neglect to exhibit his or
 her debt, demand or claim, within the said period
 of nine months' public notice being given as afore-
 said such creditor shall be forever barred of his or her
 action therefor against the said executor.

By J. W. ELLOR,
Surrogate.

Exhibit D. Connelly 3.

EXHIBIT D. CONNOLLY 3.

Proof of publication, of order to limit creditors and order to bar creditors.

ESSEX COUNTY ORPHANS' COURT.

CHARLES HEATH,	}	<i>Decree Barring Creditors.</i>	10
	}	<i>Deceased.</i>	

It appearing by due proof that the notice given pursuant to the order of the Surrogate made on the 27th day of July, nineteen hundred, limiting creditors of the Estate of the above named decedent to nine months to bring in their claims and demands against said Estate has been advertised and published according to law: 20

It is ordered that all creditors of said estate, who have neglected to bring in their claims and demands against said estate within the time so limited, be forever barred from their action therefor against the Executor of said decedent.

Dated April 27th, 1901.

J. W. ELLOR, 30
Surrogate.

Exhibit D. Connelly 4.

EXHIBIT D. CONNOLLY 4.

ESSEX COUNTY ORPHANS' COURT.

Account of Executor.

10	IN THE MATTER OF THE ESTATE OF CHARLES HEATH, DECEASED.
----	--

The account of Edmund F. Heath, now deceased, who was in his lifetime the executor of Charles Heath, deceased, made by Frederick R. Maddock, administrator, with the will annexed of Edmund F. Heath, deceased.

20	First	This accountant charges himself Amount of Inventory	\$9,982.30
	Second	Income Account, Dec. 29th, 1900,	
		Recd. from Interest Insurance Co. six checks	\$116.88
	Apr. 26/01	Recd. from Mr. Gerhard	10.00
		“ “ Mr. Aymar, rent Sept. 27/01 to Dec. 4/01	916.62
	Sept. 27/01	“ “ Daniel O'Hare	40.00
	Dec. 4/02	“ “ Mr. Aymar rent	1,399.94
	Nov. 3/02	“ “ Daniel O'Hare	18.00
30	Dec. 2/03	“ “ Mr. Aymar rent	1,399.93
	Apr. 1/04	“ “ “ “ “	466.64
	Sept. 10/04	“ “ Mr. William Graves, rent	625.00
		Total,	\$4,993.01
	Third	Loan Account.	
	Jan. 18/01	Loan from Edmund F. Heath	\$ 950.00
	Apr. 6/01	“ “ “ “ “	857.77
	Sept. 27/01	“ “ “ “ “	\$860.00
		Less returned	130.75
			729.25
40		Total,	\$2,537.02

Exhibit D. Connelly 4.

Fourth This accountant prays allowance for bills as follows:

Voucher No.

2	Aug.	4/00	Paid	Surrogate Ellor	\$24.45	
3	"	14/00	"	Feist, butcher	120.85	
4	"	17/00	"	Frederick Frelinghuysen, for note	1,837.50	
5	"	23/00	"	Edward H. Duryee, for note	502.50	
6	"		"	Von Lengerke and Detwold, sporting goods	1.11	
7	"	24/00	"	T. P. Garretson & Co.	13.77	
8	"		"	Spratts patent	3.25	
9	"	30/00	"	Carbolic Soap Co.	6.87	10
10	Sept.	10/00	"	Wm. B. Bond & Co.	28.65	
11	"	12/00	"	National Newark Bank, for note	995.56	
12	"	12/00	"	Mfg. National Bank, for note	747.00	
13	"	13/00	"	H. McGraw, physician	17.50	
14	"	15/00	"	J. F. McDonough, flowers	4.00	
15	"	19/00	"	Marshall & Ball, clothing	16.00	
16	"	26/00	"	J. A. Logan, undertaker	206.64	
17	Oct.	4/00	"	Dr. S. Runyon & Cobb	253.00	
18	"	11/00	"	Taxes, Oakwood Ave.	110.40	
19	"	11/00	"	Taxes, South Orange	101.20	
20	"	11/00	"	" " "	139.70	
21	"	13/00	"	Ward & Son, grocer	16.95	
23	"	31/00	"	B. Altman & Co., dry goods	4.00	20
22	"	15/00	"	James W. Shaw, carpenter	61.15	
24	"	31/00	"	Telephone	6.84	
25	Nov.	3/00	"	Andrew Alexander	3.00	
26	"	5/00	"	Wm. Rockefeller, express	5.00	
28	"	15/00	"	Hughes & Son, ranges, etc.	3.56	
27	"	12/00	"	Stern Bros.	7.57	
29	"	20/00	"	Water Ice Company	15.07	
30	"	29/00	"	Ballantine, interest	250.00	
31	Jan.	18/01	"	Jane O'Rourke, return loan	2,108.34	
32	Apr.	5/01	"	Allen & Volker, painting	346.15	
33	"	5/01	"	E. F. Heath & Son, return loan	258.18	
34	"	5/01	"	South Orange water tax	6.68	
35	"	8/01	"	Holmes B. Co., repairing wires	42.13	30
36	"	27/01	"	Ballantine, interest	250.00	
37	May	23/01	"	O'Brien for letting house	137.08	
39	June	22/01	"	Essex & H. Gas Company	9.79	
38	"	15/01	"	P. Kernan, cleaning cess-pools	45.00	
40	May	9/01	"	E. Lutz, plumbing	36.02	
41	July	18/01	"	R. A. Osborne, insurance	43.88	
42	Sept.	4/01	"	James S. Shaw, carpenter	123.98	
43	"	27/01	"	Ira Budd, heating	844.65	
44	Oct.	5/01	"	Williams, collector taxes	106.52	
46	"	5/01	"	Palen for taxes Centre Street	115.50	
47	"	16/01	"	Ballantine, interest	250.00	
45	"	16/01	"	Barnet, taxes, Centre St.	94.67	
49	Sept.	10/02	"	Ira Budd, plumbing	98.89	40

Exhibit D. Connelly 4.

	50	Sept.	11/02	Paid	Jas. S. Shaw, carpenter	\$124.65
	48	Aug.	28/02	"	Barnett, taxes Centre St.	102.80
	52	Oct.	6/02	"	Palen, taxes Centre St.	115.50
	53	"	6/02	"	Williams, taxes Oakwood Ave.	128.42
				"	Lost check stub	12.29
	47½	June	13/02	"	Ballantine, interest	250.00
		Feb.	14/03	"	R. J. William, taxes	72.62
		"	14/03	"	" " " "	72.62
		"	14/03	"	R. A. Osborne, insurance	28.00
	54	Nov.	12/02	"	Ballantine, interest	250.00
10	55	"	13/02	"	J. Vreeland, carpenter	12.94
	56	"	13/02	"	A. Volker, mason	18.15
	57	Dec.	8/02	"	R. A. Osborne, insurance	72.60
	58	"	8/02	"	E. Hughes & Sons, repairs	6.10
	59	Apr.	11/03	"	R. F. Ballantine, interest	250.00

\$11,937.24

		Voucher No.				\$11,937.24
	60	May	9/03	Paid	E. Hughes & Son, repairs	5.10
	61	"	21/03	"	T. S. P. Fitch, physician	100.00
	62	June	3/03	"	G. Volker, papering	24.50
	63	July	6/03	"	E. Luts, plumber	62.10
20	64	"	25/03	"	J. Vreeland, carpenter	6.46
	65	Oct.	7/03	"	R. F. Ballantine, interest	250.00
	66	"	8/03	"	C. J. Barnett, collr. taxes	156.00
	67	"	12/03	"	W. W. Palen, taxes	66.00
	68	"	14/03	"	C. A. Meigs, collr.	133.90
	69	Nov.	14/03	"	A. Volker, mason	15.95
	70	Dec.	13/03	"	A. Volker, mason	20.90
	71	Jan.	4/04	"	J. C. O'Brien, commission	150.00
	72	"	14/04	"	J. S. Shaw, carpenter	159.25
	73	Mar.	2/04	"	G. Volker, painter	378.24
	74	"	14/04	"	C. A. Meigs, collr. taxes	579.98
	75	June	1/04	"	A. Hoffman, plumber	77.00

30

Total,

\$14,122.62

Also prays allowance for

Decrease in value household goods	\$373.25
" " " poultry and dogs	47.20

Total

\$14,543.07

Exhibit D. Connelly 4.

RECAPITULATION.

Fifth

Amount chargeable to account as to Corpus		\$9,982.30	
Amount chargeable to account as to Income	\$4,993.01		
Amount chargeable to account as to Loan	2,537.02		
	<hr/>		
	\$7,530.03		10
Amount for which allowance is prayed as to Income	\$14,543.07		
	<hr/>		
	\$7,013.04		
Less balance of allowances exceeding Income		7,013.04	
		<hr/>	
Balance of Corpus on hand		\$2,969.26	

STATEMENT OF ASSETS.

Sixth

Paintings on hand	\$575.00	20
Books on hand	50.00	
Silver on hand	216.15	
Jewelry on hand	1,402.25	
Balance on hand	725.86	
	<hr/>	
	\$2,969.26	

LIABILITIES.

Due Edmund F. Heath for Loan	\$2,537.02	
	<hr/>	
Balance on hand	\$ 432.24	30

FREDERICK R. MADDOCK,
*Substitutionary Administrator, &c.,
of Edmund F. Heath, Deceased.*

Exhibit D. Connelly 5—D. Connelly 6.

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

10 FREDERICK R. MADDOCK, being duly sworn on his oath according to law, saith that he is the Administrator with the will annexed of Edmund F. Heath, deceased, who was in his lifetime the executor of Charles Heath, deceased, that the foregoing account is in all things just and true both as to the charge and discharge thereof, according to the best of his knowledge and belief.

FREDERICK R. MADDOCK.

Sworn and subscribed to before me
this 22nd day of November, 1911.

CHARLES F. LANDMESSER,
A Notary Public of New Jersey.

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EXHIBIT D. CONNOLLY 5.

Petition of Frederick R. Maddock for letters of substitutionary administration with the will annexed of Charles Heath, deceased.

EXHIBIT D. CONNOLLY 6.

30 Order appointing substituted administrator c. t. a.
in the matter of the estate of Charles Heath, deceased.

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Exhibit D. Connolly 7.

EXHIBIT D. CONNOLLY 7.

ESSEX COUNTY ORPHANS' COURT.

IN THE MATTER OF THE ESTATE OF
CHARLES HEATH, DECEASED.

Account of
Administra-
tor C. T. A.

The account of Frederick R. Maddock, administra-
tor, with the will annexed of Charles Heath, deceased,
of the Village of South Orange, Essex County and
State of New Jersey.

FIRST This accountant charges himself with the
amount of assets which came into his
hands \$2,969.26

INCOME ACCOUNT.

SECOND

Dec. 6/04	Cash from William Graves for rent	\$375.00
" 2/05	" " " " " " 12 months	1,500.00
Nov. 9/05	" " J. Vreeland	2.25
Dec. 8/06	" " William Graves for rent, 12 months	1,500.00
Dec. 11/07	" " " " " " " "	1,500.00
Dec. 12/07	" " Rebate Taxes	.80
Apr. 9/08	" " William Graves for rent, 4 months	500.00
May 6/08	" " " " " " I "	135.00
June 4/08	" " " " " "	175.00
Aug. 11/08	" " " " " "	135.00
Sept. 9/08	" " " " " "	135.00
July 7/08	" " " " " "	95.00
Sept. 7/09	" " " " " " 12 months, \$135	1,620.00
Sept. 6/10	" " " " " " 12 months, \$135	1,620.00
Jan. 3/10	" " Sundries	1.09
Feb. 28/10	" " J. G. Merkel	9.35
Sept. 4/11	" " William Graves for rent, 12 months, \$135	1,620.00
Oct. 5/11	" " " " " " 1 month, \$135	135.00
Apr. 8/12	" " " " " " 6 months,	810.00

TOTAL INCOME,

\$11,868.49

Exhibit D. Connelly 7.

THIRD This accountant prays allowance for bills as follows:

Voucher No.

			1904		
	1	Nov. 3rd	Paid	Ballantine, Interest	\$287.50
	2	Dec. 3rd	"	American Surety Company	10.00
	3	Dec. 30th	"	C. J. Barrett, collector	237.50
	4	Dec. 31st	"	C. A. Meigs, collector	126.96
			1904		
	5	Nov. 7th	"	American Surety Company	10.00
10			1904		
	6	Mar. 26th	"	A. Hoffman plumber	243.85
	7	May 5th	"	Ballantine, interest	250.00
	8	Apr. 7th	"	G. Volker, painter	224.08
	9	Sept. 9th	"	Jas. Shaw, carpenter	2.99
	10	Oct. 17th	"	E. Hughes & Son	.86
	11	Oct. 15th	"	A. Hoffman, plumber	143.76
	12	Dec. 10th	"	Jas. Shaw, carpenter	4.55
			1905		
	13	Jan. 5th	"	C. A. Meigs, collector	.36
	14	Feb. 24th	"	Jas. S. Shaw, carpenter	8.33
	15	Jan. 7th	"	Mt. Pleasant Cemetery Co.	1.50
20			Voucher No.		
	16	June 6th	Paid	Gravel Spottiswoode & Co.	12.00
	17	Aug. 8th	"	A. Hoffman, plumber	20.00
	18	Sept. 6th	"	R. A. Osborne, insurance	1.38
	19	Oct. 13th	"	William Graves, tenant	7.57
	20	Oct. 24th	"	R. A. Osborne, insurance	48.76
	21	Oct. 30th	"	C. A. Meigs, taxes	129.34
	22	Nov. 14th	"	J. Vreeland, carpenter	111.60
	23	Nov. 16th	"	Interest M. C. Heath, guardian	250.00
	24	Nov. 20th	"	" " " " "	10.00
	25	Dec. 14th	"	C. O. Vollman, plumber	22.00
	26		"	R. A. Osborne, insurance	31.75
30	27	Dec. 20th	"	C. J. Barrett, collector	253.00
			1906		
	28	May 23rd	"	Interest, M. C. Heath, guardian	490.00
	29	July 6th	"	Repairing window	.39
	30	July 13th	"	J. Vreeland, carpenter	1.38
	31	July 28th	"	Frank G. Coughtry, assessment	149.20
	32	Aug. 15th	"	Kimmerlie & Minder, florist	13.50
	33	Sept. 11th	"	J. Vreeland, carpenter	10.06
	34	Sept. 24th	"	J. Allen, painter	3.00
	35	Oct. 13th	"	American Surety Company	10.00
	36	Dec. 19th	"	Chas. J. Barrett, taxes	297.50
	37		"	F. B. Coughtry, "	136.00
40					

Exhibit D. Connelly 7.

1907					
38	Feb. 18th	Paid	Village of South Orange	\$76.28	
39	Mar. 9th	"	Browe & Co., gas fixtures	14.70	
40	" 27th	"	O. Volker, mason	28.30	
41	Jan. 13th	"	A. Hoffman, plumber	43.98	
42	Jan. 13th	"	H. Meyers	29.60	
43	July 12th	"	J. Vreeland, carpenter	9.69	
44	" 19th	"	A. Walters, architect	19.00	
45	Sept. 12th	"	Interest F. R. Maddock, guardian	500.00	
46	Nov. 13th	"	A. Hoffman, plumber	12.49	10
				<hr/>	
				\$4,294.92	

Voucher No. Page 3.

1907					
47	Nov. 15th	Paid	Taxes South Orange	\$117.47	
48	" 30th	"	Oakwood Ave. lots taxes	119.98	
49	Dec. 4th	"	American Surety Co.	10.00	
50	Dec. 18th	"	Taxes South Orange	330.75	
1908					
51	Jan. 3rd	"	J. Vreeland, carpenter	19.31	
52	" 4th	"	Mt. Pleasant Cemetery Co.	2.50	20
53	Mar. 12th	"	J. Vreeland, carpenter	6.52	
54	" 14th	"	" " "	78.01	
55	" 14th	"	A. Hoffman, plumber	2.20	
56	June 12th	"	Joseph Allen, painter	330.60	
57	" 15th	"	Theo. Geiser & Son, plumber	54.36	
58	" 20th	"	J. Vreeland, carpenter	7.16	
59	Oct. 20th	"	F. R. Maddock, guardian	500.00	
60	Nov. 10th	"	Taxes South Orange	53.50	
61	" 11th	"	" " "	112.89	
62	" 19th	"	J. Vreeland, carpenter	10.22	
63	" 19th	"	American Surety Co.	10.00	
64	" 28th	"	Taxes South Orange	125.22	
65	Dec. 20th	"	" " "	333.68	30
1909					
66	Jan. 12th	"	R. A. Osborne, insurance	36.50	
67	May 31st	"	T. Ryan	2.00	
68	July 17th	"	J. L. Kitchell & Son	170.00	
69	" 16th	"	J. R. Hampton, Jr., & Co., roofing	18.00	

Voucher No.

70	July 17th	Paid to Frederick Peters	\$67.00	
71	" 22nd	" " J. Vreeland, carpenter	107.00	
72	Sept. 1st	" " R. A. Osborne, insurance	10.46	
73	" 8th	" " Alfred Walters, architect	15.00	
74	Nov. 13th	" " Taxes South Orange	108.32	40

Exhibit D. Connelly 7.

	75	Dec. 4th	Paid to John W. Shaw & Son, mason	\$60.10
	76	" 4th	" " American Surety Co.	10.00
	77	" 16th	" " Joseph Allen, painter	145.02
	78	" 18th	" " Taxes South Orange	383.63
	79	" "	" " Taxes Orange	145.52
			1910	
	80	Jan. 13th	" " F. R. Maddock, guardian	500.00
	81	" 25th	" " C. W. Wollenslager, plumber	3.80
10	82	Feb. 25th	" " F. P. Merkel, plumber	41.28
	83	Apr. 16th	" " F. R. Merkel, "	27.45
	84	Nov. 14th	" " South Orange, assessment	103.74
	85	Nov. 19th	" " G. A. Volmann, painter	45.70
	86	Nov. 29th	" " Orange taxes	134.64
	87	Nov. 30th	" " Sash Cord	1.80
	88	Dec. 6th	" " American Surety Co.	10.00
	89	" 19th	" " Taxes South Orange	394.98
	90	" 28th	" " F. P. Merkel, plumber	22.10
			1911	
	91	Jan. 2nd	" " J. Allen, painter	309.33
	92		" " J. L. Kitchell & Son, plumber	4.26
	93		" " James Shaw, carpenter	81.92
20	94	" 13th	" " F. R. Maddock, guardian int.	500.00
	95	" 17th	" " Theo. Geiser & Son, plumber	27.08
	96	May 16th	" " F. P. Merkel, plumber	41.89
	97	" 25th	" " Village of S. Orange, tap.	25.00
				<hr/>
				\$5,777.89
			Page 4	
	98	Aug. 4th	Paid to F. P. Merkel, plumber	\$6.30
	99	Oct. 12th	" " F. R. Maddock, guard. int.	500.00
	100	Nov. 17th	" " R. A. Osborne, insurance	62.25
	101	" 20th	" " Isaac Shoenthal, Surrogate	25.00
	102	" 21st	" " American Surety Company	10.00
30	103	Dec. 5th	" " Assessment No. 458 Center St., S. O.	99.17
	104	" 9th	" " J. G. Hetzel, roofing	96.06
	105	" 16th	" " Jos. Arnold, tax receiver	455.04
	106	" 16th	" " F. G. Cougherty, tax receiver	164.00
			1912	
	107	Feb. 14th	" " James A. Shaw, carpenter	15.92
	108	" 23rd	" " R. A. Osborne, insurance	38.75
	109	Apr. 4th	" " J. G. Merkel, plumber	121.15
	110	" 17th	" " Isaac Shoenthal, Surrogate	40.00
			1905	
40	111	Mar. 1st	" " Adolf Hoffman	12.51
				<hr/>
				\$1,646.15

Exhibit D. Connelly 7.

TOTAL PAYMENTS.

Page 2	\$4,294.92
3	5,777.89
4	1,646.15
	<hr/>
	\$11,718.96

Prays allowance for bills, total \$11,718.96

FOURTH	Also prays allowance for Paintings divided between Edmund Heath, Marjorie Connelly and Carlotta Heath	\$575.	10
	Silver and jewelry divided between Edmund Heath, Marjorie Connelly and Carlotta Heath	1,618.40	
	Books divided between Edmund Heath and Marjorie Connelly	50.00	2,243.40
		<hr/>	
	Total		\$13,962.36

RECAPITULATION.

FIFTH	Amount chargeable to account as to Corpus—see Page 1,	\$2,969.26	20
	Amount chargeable to account as to income—see Page 1,	\$11,868.49	
	Amount for which allowance is prayed—see Page 5,	13,962.36	
	Less allowance over income	2,093.87	2,093.87
		<hr/>	
	Balance on hand.....	\$875.39	

STATEMENT OF ASSETS, etc.

SIXTH	Balance on hand as per recapitulation	\$875.39	30
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LIABILITIES.

	Amount of Edmund F. Heath loan	\$2,537.02	
	Amount due Estate of Edmund F. Heath in accounting	530.25	
		<hr/>	
	Total amount due Estate of Edmund F. Heath	\$3,067.27	3,067.27

TOTAL AMOUNT OF LIABILITIES OVER ASSETS..... \$2,191.88

Exhibit D. Connelly S.

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

10 FREDERICK R. MADDOCK, being duly sworn on his oath according to law, says that he is the administrator, with the will annexed of Charles Heath, deceased, and the accountant named in the foregoing account; that the foregoing account is in all things just and true both as to the charge and discharge thereof, according to the best of his knowledge and belief.

FREDERICK R. MADDOCK.

Sworn and subscribed to before me
 this 16th day of July, 1912.

W. A. WACHINFELD,
Notary Public of New Jersey.

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Exhibit D. Connelly 8.

EXHIBIT D. CONNOLLY 8.

O. C. R. 38, p. 127.

ESSEX COUNTY ORPHANS' COURT.

December Term, A. D. 1911.

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<p>IN THE MATTER OF THE FINAL AC- COUNT OF THE EXECUTOR OF CHARLES HEATH, DECEASED.</p>	} <i>Decree on Final Account.</i>
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The Surrogate having audited and stated the final account of Edmund F. Heath, now deceased, who was in his lifetime the executor of Charles Heath, deceased, made by Frederick R. Maddock, administrator with the will annexed of Edmund F. Heath, deceased, and placed the same on the files of his office twenty days previous to the eighth day of March, A. D. 1912, and having on the day last aforesaid reported the same to this court for allowance and settlement, and it having been proved to the satisfaction of the court that notice of his intention to settle the said account on the twenty-ninth day of December, A. D. 1911, in this court was given by said accountant according to law, and the matter having been duly continued to this day.

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And the court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein and having found the same to be correct in all particulars, and no exception being made thereto.

It is on this eighth day of March, A. D. 1912, ordered, adjudged and decreed, that the said account

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Exhibit D. Connelly 8.

be in all things allowed as reported, and that there is a balance remaining in the hands of the said accountant amounting to the sum of two thousand nine hundred sixty-nine and $26/100$ dollars to be disposed of according to law.

10 IT IS FURTHER ORDERED that from the aforesaid balance the said accountant be allowed the sum of five hundred and thirty and $25/100$ dollars as and for his commissions.

H. V. OSBORNE,
Judge.

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