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NOTICE OF APPEAL.

(Filed July 6, 1927.)

IN CHANCERY OF NEW JERSEY.

Between
SAMUEL H. PINE,
Complainant,
and
CORDELIA MARY GARDNER,
Defendant.

On Bill, &c.
Notice of Appeal.

10

The complainant, Samuel H. Pine, hereby appeals²⁰
from the final decree made in the above entitled
cause on July 6th, 1926, and from the whole and
every part thereof, to the Court of Errors and Ap-
peals in the last resort in all causes.
Dated July 5, 1927.

ALEXANDER L. ROGERS,
Solicitor for and of Counsel with
Complainant.

30

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

ALEXANDER L. ROGERS,
Of Counsel with Complainant.

AMENDED NOTICE OF APPEAL.

(Filed July 13, 1927.)

IN CHANCERY OF NEW JERSEY.

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Between
 SAMUEL H. PINE,
Complainant,
 and
 CORDELIA MARY GARDNER,
Defendant.

On Bill, &c.
 Amended Notice of
 Appeal.

20

The complainant, Samuel H. Pine, hereby appeals from the final decree made in the above entitled cause by Honorable Edmund B. Leaming, one of the Vice-Chancellors, on July 6th, 1926, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. Dated July 12, 1927.

ALEXANDER L. ROGERS,
*Solicitor for and of Counsel with
 Complainant.*

30

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

ALEXANDER L. ROGERS,
Of Counsel with Complainant.

BILL OF COMPLAINT.

(Filed Jan. 7, 1925.)

IN CHANCERY OF NEW JERSEY.

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

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The complainant, Samuel H. Pine, of Blackwood, Gloucester County, New Jersey, respectfully shows that:

1. On or about the 25th day of July, 1910, complainant purchased of one Charles P. Fox, one of the executors of the Estate of Philip A. Mason, deceased, and of Ann Eliza Mason, widow of Philip A. Mason, deceased, for the consideration of eighteen hundred dollars, a certain tract of land in Deptford Township, Gloucester County, New Jersey, known as the Mason Farm, and bounded and described as follows:

20

TRACT 1. BEGINNING at a stake in the South-erly side of the South Branch of Timber Creek being a corner to the "Parsonage Place;" thence (1) by the line of said "Parsonage Place" South thirty-six degrees and twenty minutes West, about twelve chains and twenty-five links to a large sassafras corner; thence (2) by the same South eighty-three degrees West, ten chains and seventeen links to a stake corner to a lot belonging now or late to William Brewer; thence (3) by said lot North fifty-one and a half degrees West four chains to a stake; thence (4) South forty-four degrees West, two chains and

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sixty-nine links to a stake; thence (5) still by the same South forty-six degrees East one chain and forty-five links to a large pine corner to the aforesaid "Parsonage Place;" thence (6) by said "Parsonage Place" South twenty degrees and fifty minutes West one chain and eighty-one links to the middle of the road from Samuel Wards to Blackwoodtown; thence (7) along the middle of said Road North sixty-seven degrees West, twelve chains and
 10 twenty-five links to a corner in the line of lands now or late belonging to James M. Perce; thence (8) by the same North fourteen degrees East twenty-three chains and fifty links to a maple in Perce's line corner to lands now or late belonging to Jonathan Williams; thence (9) by lands last mentioned South seventy-two degrees and forty minutes East thirteen chains and fifty links to a stake; thence (10) by the same North fifty-two and one-half degrees East four chains and sixty links; thence (11) still by the same
 20 South sixty-one degrees East two chains and sixty-three links to a stone; thence (12) still by the same North twenty-nine and three quarter degrees East eighty-five links to a corner of land now or late belonging to William Brewer; thence (13) by lands last mentioned South seventeen degrees East four chains and eighty-five links; thence (14) by the same South forty-one degrees and ten minutes West one chain and seventy-three links to a white oak corner; thence (15) South thirty degrees East one chain and
 30 thirteen links to a white oak corner on the edge of the marsh; thence (16) by the same North sixty-one and one-half degrees East three chains and ninety links to the side of the aforesaid creek; thence (17) up the same the several courses and distances to the place of beginning.

CONTAINING sixty acres and seventy hundredths of an acre, be the same more or less.

TRACT II. BEGINNING at a post for a corner by the Southerly side of the South Branch of Great Timber Creek, being a corner also to lands late of Josiah Clark, Jr., deceased; thence (1) by the same South seventy-one degrees West two chains and fifty links to a corner; thence (2) by said lands late Clarke's North nineteen degrees West, two chains and forty-nine links to a corner of land late of William Brewer, deceased; thence (3) by said lands late
 10 of Brewer North seventy-one degrees East two chains and seventy links to the Creek aforesaid; thence (4) up the same the several courses and distances thereof to the place of beginning.

CONTAINING three quarters of an acre, be the same more or less.

TRACT III. BEGINNING at a pine tree corner to the "Parsonage land" and running thence, (1) North eighty-three degrees and forty-five minutes East four chains to a stake; thence (2) North fifty degrees and forty-five minutes West four chains; 20
 thence (3) South forty-four degrees and forty-five minutes West two chains and sixty-nine links; thence (4) South forty-four degrees East one chain and forty-eight links to the place of beginning.

CONTAINING seventy-seven hundredths of an acre, be the same more or less.

TRACT IV. BEGINNING at low water mark on the South Branch of Timber Creek at the corner of a lot called "Farrow's lot" and running; thence (1) bounding on said lot South seventy-four degrees and
 30 fifty minutes West two chains and sixty links to a stone; thence (2) North sixteen degrees and forty minutes West, four chains and twenty-seven links to a gum tree by the edge of the marsh; thence (3) South eighty-nine degrees West one chain and two links to a stake; thence (4) South sixteen degrees

and forty minutes East, four chains and eighty-nine links to a stone; thence (5) South forty-one degrees and thirty minutes West, one chain and seventy-three links to a large white oak tree for a corner; thence (6) South twenty-nine degrees and twenty minutes East, one chain and fourteen links to a corner where formerly stood a white oak tree (now down); thence (7) along the edge of the meadow North sixty-two degrees East, three chains and ninety links to low water mark on said Creek; thence (8) down said Creek bounding on low water to the place of beginning.

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CONTAINING one acre and nineteen hundredths of an acre, be the same more or less.

TRACT V. BEGINNING at low water mark on the South Branch of Timber Creek corner of lot now or late belonging to Randal Morgan by which lot it runs; thence (1) South seventy-one degrees West two chains and seventy-five links to Clark's line; thence (2) along said Clark's line South nineteen degrees East eighty-three links to a lot formerly called No. 3; thence (3) along No. 3 North seventy-one degrees East two chains and seventy links to low water mark on said Creek; thence (4) down said Creek its several courses and distances to the place of beginning.

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CONTAINING twenty hundredths of an acre, be the same more or less.

30 2. Shortly before said July 25, 1910, and with the object of purchasing the above described real estate, complainant entered into an oral agreement with Howard Mason, another of the executors aforesaid, with the defendant, who is complainant's step-daughter, and with one Isaak E. Beakley, a relative of complainant, by the terms of which complainant

paid to the said Howard Mason one hundred dollars cash, and the said Beakley undertook to advance to said Fox on behalf of said estate the balance of the purchase price, to wit, seventeen hundred dollars, which advance of seventeen hundred dollars for complainant was to be secured by two mortgages, of five hundred dollars and twelve hundred dollars, respectively, the one for five hundred dollars being a second mortgage to be given by defendant (and her husband, since deceased), upon certain real estate consisting of a store and lot owned by defendant in the town of Blenheim (Mechanicsville) in said township; the other mortgage to be a first lien upon the Mason farm aforesaid. As her part in said agreement the defendant undertook to give the said mortgage of five hundred dollars in consideration of her family relationship to complainant, but complainant volunteered and agreed with the defendant and the said Isaak E. Beakley, to secure defendant's loan by vesting title to the said Mason farm in her and her husband (since deceased), it being agreed and understood between defendant, complainant, the said Beakley and the said Fox that said title should remain in defendant and her husband only until complainant should have repaid five hundred dollars of the proposed advances from said Beakley, with interest, and that upon said payment of five hundred dollars the said five hundred dollar mortgage on the Blenheim store would be cancelled by said Beakley and a deed to the Mason farm would immediately be executed and delivered by defendant and her said husband to complainant.

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3. According to said agreement, which was understood to be one of trust upon the part of defendant in favor of complainant, and of bargain and sale be-

tween the said Fox and the defendant, the purchase mentioned in paragraph one hereof was consummated on the date therein aforesaid, and complainant immediately entered into possession and enjoyment of said farm and its appurtenances, cultivating the same and from the fruits and proceeds thereof paying regularly the interest on said mortgages and the taxes as the same fell due.

10 4. At the expiration of one year from July 25, 1910, the date of said mortgages, the same were assigned by the said Beakley to one Mattie E. Berg, of the City and County of Camden, New Jersey, and complainant thereupon and thereafter paid the interest as it fell due, to the said Mattie E. Berg, and also paid off instalments of the principal sum, until August 25, 1916, by which date he had fully paid by said instalments and satisfied said five hundred dollar mortgage, and on which date the same was cancelled of record.

20 5. Complainant thereupon requested and thereafter repeatedly requested defendant to execute to him a deed to the Mason farm aforesaid as she had agreed and promised to do, but she ignored and evaded his said requests for a long time, meanwhile demanding of him from time to time a share in the proceeds of certain sales then being made by complainant of lots or parcels of said farm, which had since the year 1910 increased in value as building land. Complainant paid defendant from time to time as he made such sales a share of the proceeds thereof, solely in order that he might thus secure from her in each instance a legally sufficient deed for the purchaser of such parcel, and he requested defendant at such times to keep such payments intact,

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as he would require her to account for the same, and this she frequently agreed to do.

6. Complainant was then and for a long time thereafter dissuaded by his wife (the mother of defendant and an invalid, since deceased), from seeking relief in the premises by applying to this Court, nevertheless he continually asserted his right to have the title of said Mason farm so conveyed to him, and in the year 1920 employed an attorney to draw a deed and present the same to defendant for her signature. Defendant agreed orally with said attorney to sign and deliver said deed, but delayed and when requested in writing by said attorney to execute her promise, she refused to do so.

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7. On April 15, 1920, complainant fully paid the remaining mortgage of twelve hundred dollars to Mattie E. Berg and the same was thereupon cancelled of record, which cancelled mortgage complainant is ready to produce. Out of tender regard for the wishes of his late wife, complainant ever refrained during the remainder of her lifetime from seeking the aid of this Court to obtain the legal title aforesaid, but shortly after her death in the year 1923, complainant again demanded of his wife's daughter, the defendant, that a deed be executed to him without further delay. Defendant would neither agree nor definitely refuse to execute a deed to the whole tract aforesaid as requested, but did refuse to execute further conveyances of parcels of said farm, although complainant had, with defendant's knowledge, sold further parcels under instalments and agreements, and for which he was and still is obliged to furnish deeds. Complainant again sought the advice of counsel, who thereupon

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undertook to induce defendant to fulfill her obligations to complainant, and his grantees as aforesaid, but after notice that this bill would be filed unless deed should be forthwith executed by defendant to complainant, defendant in December, 1924, definitely refused to execute said deed.

Complainant is without remedy in the courts of law, and therefore prays:

10

1. That Cordelia Mary Gardner, the defendant to this suit, may answer this bill of complaint, and each statement therein made:

2. That an account may be taken of the amount due complainant from defendant out of the proceeds of sales of lots heretofore paid her by complainant in trust for his use:

20

3. That defendant may be decreed to pay complainant the amount so found due, with interests and costs:

4. That defendant may be decreed to specifically perform her trust by conveying the real estate described in this bill of complaint, or in default of her so doing, that the decree of this Court shall operate as such conveyance:

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5. That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

WESCOTT & WEAVER,
Solicitors and Counsel with
Complainant.

ANSWER.

IN CHANCERY OF NEW JERSEY.

Between SAMUEL H. PINE, <i>Complainant,</i> and CORDELIA MARY GARDNER, <i>Defendant.</i>	}	On Bill, &c. Answer.	10
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The answer of Cordelia W. Gardner, of Laurel Springs, County of Camden and State of New Jersey, to the bill of complaint of Samuel H. Pine. 20

This defendant answering the bill of complaint, says that:

1. She denies paragraph 1.

2. She denies paragraph 2.

3. She admits that complainant entered into the possession and enjoyment of said farm, but denies paragraph 3 in other respects. 30

4. She admits the assignment of the Beakley mortgage to one Mattie E. Berg, and afterwards the cancellation of record thereof, but denies paragraph 4 in other respects.

5. She admits demanding of the complainant from time to time the proceeds of sales of lots or parcels of said farm and receiving certain payments on account, but denies paragraph 5 in other respects.

6. She admits a deed was presented to her for signing and refusal to sign said deed, but she denies paragraph 6 in other respects.

10 7. She admits the payment of the mortgage held by Berg and its cancellation of record and also her refusal to execute a deed to the complainant, but she denies paragraph 7 in other respects.

This defendant prays that the bill of complaint be dismissed, with her costs in that behalf most wrongly sustained.

GROVER C. RICHMAN,
Solicitor for Defendant.

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TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between	}	10
SAMUEL H. PINE,		
<i>Complainant,</i>		On Bill, &c.
and		
CORDELIA MARY GARDNER,	}	
<i>Defendant.</i>		

September 16, 17, 18, 1925.

20

LEAMING, V. C.

APPEARANCES:

JOHN O. WESCOTT, Esq., RALPH W. WESCOTT, Esq.,
for complainant.

GROVER C. RICHMAN, Esq., for defendant. 30

The Court: I have read the pleadings and I guess I have a grasp of the situation very well. It has appeared to me in reading the pleadings that the

only issue of fact, or the main issue of fact presented, at least, is whether or not this title was placed in the name of the defendant, Mrs. Gardner, as security to her to secure the payment of a mortgage or mortgages and to secure her against liability for what she had done, or whether she was to receive some beneficial interest in the estate.

10 Mr. John Wescott: She claims the estate now.

The Court: Absolutely?

Mr. John Wescott: Absolutely. That seems to be the point at issue.

The Court: Unless there are some other features that counsel desire to draw my attention to, we may as well proceed with the proofs.

20 Mr. Ralph Wescott: I regret to suggest any delay, but two very important witnesses for us do not seem to be here; we had every expectation they would be here and our plan was to have their proof first. Possibly we can make some other arrangement, we will try to.

The Court: A couple of ladies have just come in, are they the ones?

30 Mr. Richman: No, they are my clients.

THE CASE FOR THE COMPLAINANT.

ISAAC E. BEAKLEY, SWORN.

By Mr. Ralph Wescott:

Q. Where do you live, Mr. Beakley?

A. Williamstown. 10

Q. Were you living there prior to 1910?

A. No, sir.

Q. Where were you living then?

A. At Blenheim, N. J.

Q. At that time were you acquainted with Samuel H. Pine, the complainant in this case?

A. Yes, sir.

Q. What business or businesses were you engaged in at that time?

A. Farming. 20

Q. What was your relationship, if any, to Mr. Pine?

A. He worked for me at the time.

The Court: Who?

Q. Mr. Pine, the complainant. He was working for you as a farmer?

A. Yes, working on the farm, just a farmer.

Q. Did he have any talk or negotiations with you 30 regarding the purchase of a farm?

A. He did.

Q. Will you please tell his Honor about that as well as you can recollect it.

A. He said he was about to buy the Mason farm, or had a chance to buy it and he didn't have the

money; he took a day or so off and he looked for the money and he couldn't find it, and I told him I didn't think he could borrow \$1700 on a farm he is only paying \$1800 for, and he said, "You need me to work on the farm and if you will get me this money as soon as I get through work I will endeavor to get it, I think I can get it," so I told him I would get him the money but there wasn't enough security, I didn't feel like taking a chance —

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The Court: Did he want you to advance \$1700?

The Witness: Yes, take a mortgage, and he was going to pay \$1800. So he came back in a few days and he said Mrs. Gardner would give a second mortgage on her store property at Blenheim for \$500.

The Court: So that your security would be a \$1700 mortgage on the farm and have this other mortgage to secure you in addition?

20

The Witness: They gave me \$1200 on the farm and the other \$500 on the other property, making \$1700.

Q. Whose suggestion was it, Mr. Beakley, if you recall, that Mrs. Gardner should put up part of the security?

A. I don't know who suggested that.

30 Q. Was it discussed between you and Mr. Pine before he told you that Mrs. Gardner would put it up?

A. He came to me and said she would do that.

Q. You haven't quite got my question. Will you repeat the question, Mr. Stenographer?

(Question repeated.)

A. I don't remember. I told him if they could give me ample security I could get the money, but whether he mentioned Mrs. Ward or not—but he came back and said Mrs. Ward would give a second mortgage.

The Court: You mean Mrs. Gardner?

The Witness: Yes, Mrs. Gardner, not Mrs. Ward.

10

Q. About when was it that Pine first talked to you about this farm?

A. Well, it was around the first of July, I presume.

Q. 1910?

A. 1910.

Q. How long after that did he tell you Cordelia Gardner would give you a mortgage of \$500 on the Blenheim store?

A. Well, a few days, possibly a week.

Q. You don't know whether it was you or whether it was Pine who originally suggested he could get the additional security in that way?

20

A. No, I don't know whether I suggested that, I know he came back and said she would give a second mortgage on her store property.

Q. Did they satisfy you?

A. Yes, that satisfied me, yes, it looked a whole lot better.

Q. Why, if you know, wasn't the title given to Pine when the purchase was made?

30

Mr. Richman: I object unless he confines his answer to whether he knows.

The Court: You may state what you know about it and how you know it.

The Witness: I suggested that myself, I said, "Why not make the deed right to Mrs. Gardner"—I never thought Mr. Pine would pay for this farm, to tell the truth, and I thought it would save her that much trouble in case she would have to take the farm she would have title to it until such times as he paid for it.

10 The Court: That was your suggestion to him?

The Witness: Yes.

Q. That is to say, when the \$500 mortgage was paid off then Cordelia Gardner and her husband were to deed the farm to Pine, is that the idea?

A. That was the idea.

Q. How did you get that idea when the \$500 mortgage was paid off the farm was to be deeded to Pine, how did you get that idea?

20 A. He would be entitled to have a deed because she wouldn't be going security any longer.

Mr. Richman: I object and ask that the answer be stricken out.

The Court: I think it may stand. Of course, it is only his conclusion. What was the suggestion you made, you said it was your suggestion that this course be taken that the title be taken by Mrs. 30 Gardner, can you remember just what form your suggestion took?

The Witness: When he said she was going as security and would put up the store I said, "Then why not make the deed in her name," that would double secure her, she would have the farm to fall

back on. Whether I was right or wrong, I don't know, that was just my view of it.

Mr. John Wescott: You said that to Pine?

The Witness: Yes, sir.

Q. Who was present at that time?

A. I don't remember anybody being present.

Q. Simply you and Pine?

10

A. Yes.

Q. Now, how long after that did the settlement take place, do you know?

A. I think it was July 15, 1910.

Q. As I understand they got the \$1700 from you. Do you recall just how you obtained that money and what you did with it?

A. I gave Mr. Fox a check for \$1675, now the other \$25.00 somebody got it, but just how they got it I don't know. I haven't any check to show for it, 20 I couldn't find it, I think I have a check somewhere, but the mortgage was \$1700 but the check only shows \$1675.

Q. Have you that check, the cancelled check?

A. It was a certified check.

Q. Did you give that to me or did you keep it?

A. I gave it to you.

Mr. Ralph Wescott: We will find it and offer it, if the Court please. 30

The Court: But you paid \$1700 you understand?

The Witness: Yes, sir.

Q. Is that the check?

A. Yes, sir, that is the check.

Mr. Richman: That is only a copy of the check, isn't it? This isn't the check at all.

The Witness: This is a receipt you get for the certified check; you never get your certified check again out of bank.

Mr. Richman: You must have delivered a certified check.

10 The Witness: It was made out to Mr. Fox, I delivered it to him. I guess I can get the check.

Mr. Ralph Wescott: We will get it if it is needful. We can offer that for what it is worth, as indicating such a check was obtained by this witness from this bank.

The Court: May I see it?

20 Mr. Ralph Wescott: Yes, sir.

The Court: This appears to be the bank's slip showing issuance of this certified check to the order of Charles P. Fox for \$1675. It is dated July 15, 1910, and this certificate of the bank says "Charge to the account of Isaac E. Beakley" drawer of the check. The bank's stamp—I don't know what that stamp is, the puncture says something, but I can't

30 Mr. Ralph Wescott: As a rule those punctures indicate payment.

The Court: I guess it says "paid."

Mr. Ralph Wescott: The rest will be the date.

The Court: Some number, 15-10. Have it marked, will you?

(Said paper marked Exhibit C1.)

Q. That was on the Camden National Bank, wasn't it?

A. Yes, I borrowed the money.

Q. And gave it to whom?

A. I made the check to Mr. Fox but it was for 10 Mr. Pine, S. H. Pine.

Q. Charles P. Fox?

A. Yes.

Q. And what was his connection with the transaction?

A. I understood he was executor of the estate.

Q. Of the Mason estate?

A. Yes, sir. I didn't bother much about that; it was made out to him.

Q. Do you recall how many executors there were, 20 or parties interested in the Mason estate?

A. No.

Q. For how long a time were your two mortgages to run?

A. I think the mortgages will speak for themselves.

Mr. Richman: I have one of them.

Mr. Ralph Wescott: We will be glad to have it. 30

Mr. Richman: Have you got the other one.

The Witness: The mortgage would run for one year, but Mr. Pine he was to get the money as soon as he could, see, in four months, eight months, or twelve months, but it ran a year.

Q. Did he get it within a year?

A. No, he did not.

Q. What did you do after the year was up with regard to collecting your money?

A. I went to see Mrs. Gardner and told her there had been no interest paid on the mortgage and she seemed to be very nice about it and she said, "He should pay the interest money" she said "You treated him right and he has got to pay you, he must pay you," and it went on a while longer, probably two or three weeks, and I didn't hear nothing from Mr. Pine and I went to see Mrs. Gardner again and at that time she wasn't in such a good humor, she said, "You might let it run another year, Mr. Pine has done enough for you" and I said, "I paid Mr. Pine for everything he ever did for me," and she said, "You are not going to sell my store?"—that was security for the \$500—but, of course, I never intended to sell it, but Mr. Lippincott did write her a letter threatening foreclosure.

Q. Is Mr. Lippincott a lawyer?

A. Yes, Judge Lippincott.

Q. Well, did Cordelia Gardner come across with any interest money?

A. No.

Q. Did Pine eventually?

A. He never paid me anything until the mortgage was taken over, assigned to Mattie Berg.

30 The Court: Both mortgages?

The Witness: Both mortgages, and then they paid me—she did.

Q. Who paid you?

A. Mattie Berg, I got her check.

The Court: Who paid you?

The Witness: Mattie Berg.

The Court: Who is she?

The Witness: She was a cousin to me by marriage and we always called her Cousin Mattie.

The Court: What connection did she have with Pine, if any, or with Mrs. Gardner? 10

The Witness: She was a cousin to his wife.

Q. How did she come into this transaction, Mr. Beakley?

A. She knew that I had the mortgage and was trying to raise the money for the mortgage and I suppose they spoke to her about it, tried to borrow the money off her, I don't know, but they sent for me to come to Camden to get my money, and when I came up Cousin Mattie changed her mind, she said she wouldn't let them have it. 20

Q. Do you remember when that was?

A. Three or four weeks before it was assigned over to her, and I talked to her awhile, I said, "I don't want to foreclose, I don't want to press these people, but I would like to have the interest on this money and if you will take this mortgage I will guarantee this for one year and if you don't want it at the end of a year you assign it back and I will take it back, I don't want you to have any trouble," and after a long talk she agreed to do that, and at the end of the year the interest had been paid up and she was perfectly satisfied, she said, "Ed, I will just keep this mortgage, it is all right, Sam has paid 30

up the interest"—I don't know whether he paid some of the principal or not, but he paid up the interest and she was tickled to death, and that is all I had to do with it.

By Mr. John Wescott:

Q. How do you know she said that Sam had paid the interest on the mortgage—Sam who?

10 A. Sam Pine, S. H. Pine, the gentleman right here.

Q. Didn't she satisfy you in any way that that was so?

A. She said he paid everything up and she was satisfied to keep the mortgage, she thought the mortgage was all right.

By Mr. Ralph Wescott:

20 Q. Witness is shown a form of mortgage George Gardner and Cordelia Mary Gardner, his wife, to Isaac E. Beakley, dated July 25, 1910, to secure \$1200, premises Deptford Township, Gloucester County, New Jersey, stamped across the endorsement "Cancelled of record April 16, 1920" and the signatures of the clerk and deputy clerk of Gloucester County, and the witness is asked if he is familiar or has seen this mortgage?

A. Yes, I had that mortgage.

30 Q. Is that the \$1200 mortgage you have spoken about here?

A. Yes, that is the \$1200 mortgage.

The Court: Let it be marked.

(Said paper marked Exhibit C2.)

The Court: Is it cancelled?

Mr. Ralph Wescott: Yes, the seals are torn off.

Q. And I am about to ask the witness if he recognizes the handwriting on the back of the mortgage as follows: "Received payment of \$200.00 on account of principal of the mortgage, July 25, 1916, all interest payments made to date in full to me, Mattie E. Berg."

A. That is her signature.

Q. And a further receipt in the same handwriting 10 of \$400, July 25, 1919; another of \$100, January 25, 1920, leaving \$500 principal with interest for the year 1919, that is signed Mattie E. Berg, and a further receipt of \$500 balance of mortgage and interest paid to date, April 15, 1920, the day before it is marked for cancellation, and the usual notice to the Register of Deeds to cancel it of record.

The Court: Does he recognize the signatures to 20 them as well?

Q. I show the witness the other signatures on the back of the mortgage and ask if they are also in the handwriting of Mattie E. Berg?

A. To the best of my knowledge it is.

Q. Any particular doubt about it?

A. I don't doubt it for an instant, no.

Mr. Richman: She received the subsequent pay- 30 ments, not you, that is correct, isn't it?

The Court: He said he had nothing more to do with it after he assigned it.

Q. Do you happen to know, Mr. Beakley, how it came about Pine not having been able to pay the

interest to you during the first year was able to pay the interest and principal off to Mattie Berg?

A. Well, he sold some of the farm off.

Q. How good a farm from a farming standpoint was this Mason farm he bought for \$1800, was he able to make a living off of it?

A. Well; I don't think he could, it was a pretty poor farm.

10 The Court: Did he go into possession of the farm, after the conveyance was made to Mrs. Gardner did Pine take possession?

The Witness: Yes.

The Court: And farmed it, worked it?

The Witness: Yes.

20 Q. Who lived there with him on the farm?

A. His wife lived with him.

Q. From 1910 on; do you recall when she died?

A. She lived there on until she died.

Q. When was that?

A. Well, I don't know, about a year ago.

Cross-examination.

By Mr. Richman:

30 Q. Mr. Beakley, Mattie Berg is dead, isn't she?

A. Yes.

Q. Do you know when she died?

A. I don't know just the date, no, a couple of years ago, I think.

Q. She died several years ago, didn't she?

A. I don't know whether it is one or two years ago; it hasn't been very long ago.

The Court: Who?

Mr. Richman: Mrs. Berg, the person to whom he assigned the mortgages.

Q. You wouldn't loan the money to Pine, would you? 10

A. How is that?

Q. You wouldn't loan the money to Pine, would you?

A. No, not with the security, I didn't feel like doing it; I might have done it later on after reconsidering it.

Q. Wasn't that because of your financial relations with him prior to that?

A. I don't just get that.

Q. He lived on the Wood place, didn't he? 20

A. Not at that time.

Q. Didn't you hold a chattel mortgage on his household goods, farming implements and stock?

A. I have had two or three chattel mortgages, I don't remember whether I did.

Q. And you foreclosed every one you had on him, didn't you?

A. No, sir.

Q. You forced him to pay?

A. He made a sale in his own name. 30

Q. You forced him to pay?

A. Either had to do that or get nothing.

Q. And that was your experience with Pine up to that time, wasn't it?

A. Yes, he had bad luck farming.

Q. And he also was addicted to drink, wasn't he?

A. He would take a drink once in a while, the same as any other man.

Q. Now, do you remember a conversation—strike that out—you went to see Mrs. Gardner about the payment of interest on the mortgage, didn't you?

A. Yes, sir.

Q. And at that conversation didn't you suggest to her if she made a deed to you for the farm you would release both mortgages?

10 A. No, sir, I did not.

Q. You did not?

A. No.

Q. And didn't she tell you that that farm belonged to her and she had bought it for a home for her mother and father?

A. No, sir.

Q. And she was going to keep it for a home?

A. No, sir.

20 Q. And if you wouldn't let her have the money she would get it from Cousin Mattie, and if she didn't let her have it she would get it from somebody else?

A. No, sir.

Q. She didn't say that?

A. No, sir, she did not.

Q. Now, Mrs. Berg did tell you that Pine paid the interest on the mortgage up to the time she took, or not?

A. She did tell me that.

30 Q. She didn't tell you where he got the money?

A. No, she didn't tell me where he got the money.

Q. You knew nothing about that?

A. I knew he sold some ground.

Q. This particular ground?

A. Yes, ten acres for \$1000, gave it away to raise the money.

Mr. John Wescott: Part of this farm?

The Witness: Yes.

Q. When you went to see Mrs. Gardner about the interest that was the first conversation you had with her about the matter?

A. Yes.

Q. Do you know what this land is worth now?

A. No, I do not. 10

Q. Can you give us any idea, you have bought and sold farms in that locality.

A. I judge it is worth twenty-five times as much as he paid for it, probably thirty.

Q. Is it worth \$500.00 an acre today?

A. I think so.

The Court: What has increased its value?

The Witness: Why everything has increased 20 out there, the trolleys running by it and a good concrete road just been built by it, everything has jumped up down there, \$100 an acre to \$2000 an acre.

By Mr. Ralph Wescott:

Q. It is desirable as building land, isn't it?

A. Just now it is, for a certain class; no high class, just an ordinary class. 30

Q. Have you any idea how much Pine has sold off in building lots?

A. No, I do not.

Q. When did you first hear of his beginning to sell; you spoke of ten acres for \$1000, didn't you, do you remember when that was?

A. That is seven or eight years ago, I think, I don't just remember, probably longer than that.

Q. Do you know how active he has been in selling ground from any part of this Mason tract?

A. He sold quite a lot of it; I know he has been hustling around trying to sell it.

Q. Has he been keeping up the farm at the same time?

A. The land looks all right, the buildings are
10 dilapidated.

Q. Did you ever hear anything said as to why the buildings were not kept up?

A. He told me himself he wouldn't fix up the buildings until he got the farm deeded back to him because that was a question now whether Mrs. Gardner was going to give him a deed or not.

Mr. Richman: Mrs. Gardner wasn't present
20 when he said that?

The Witness: No, he told me that.

Mr. Richman: I doubt whether that is admissible.

The Court: No, that isn't competent.

Mr. Ralph Westcott: We will withdraw that
30 question and answer; the Court will have to obliterate it from his mind.

By Mr. Richman:

Q. Do you know Harold Dunk?

A. Yes, sir.

Q. He is in the real estate business in that locality, isn't he?

A. Yes, sir.

Q. Do you remember having a conversation with him sometime in 1920 on Market Street in Camden?

A. Oh, I have had several conversations with him.

Q. Do you remember this particular conversation with him on Market Street?

A. No, I do not.

Q. Do you remember him telling you that Pine
10 was trying to get this place away from Cordie, meaning Mrs. Gardner?

A. What?

Q. From Cordie, meaning Mrs. Gardner?

A. I don't remember him telling me anything like it, and I wouldn't listen to it because it never belonged to Mrs. Gardner.

Q. Didn't you tell him that Mr. Pine had no
20 business to do that because the farm belonged to Cordie?

A. No, sir.

Q. And she bought it for a home for her mother and father, didn't you tell him that?

A. No, I did not.

DANIEL W. BECKLEY, Esq., sworn.

By Mr. Ralph Westcott:

30

Q. Mr. Beckley, what is your business?

A. Counsellor at law.

Q. Practicing where?

A. Woodbury.

Q. Were you practicing there in 1917?

A. Yes, sir.

Q. Did the complainant in this case come to see you at that time regarding some business?

A. Yes, he came to me in 1916, I believe.

Q. In 1916?

A. 1915 or 1916, I don't recall which.

Q. A matter concerning this Mason farm?

A. Yes.

10 Q. Explain to the Court what that transaction was?

Mr. Richman: I object.

The Court: If this is merely preliminary I apprehend —

Mr. Ralph Wescott: My object was to save time; I thought Mr. Beckley, with his experience —

20

The Court: He may show the business that was placed in his hands if it was in order to explain what he did later.

The Witness: Mr. Pine first came to see me and the first I ever knew him, I think it was the early part of November, 1916—no, it was earlier than that, though. I will have to use my correspondence in order to refer to it. I think that is correct, 30 sometime in November, 1916.

Q. What was his trouble then?

A. The property which I understand is the subject of this suit had been sold by the collector of taxes for Deptford Township for non-payment of taxes and it had been purchased by a concern in

Newark known as the Holding Company and they had obtained and filed a certificate of tax sale with the County Clerk of Gloucester County. Mr. Pine had received word from the Collector of Taxes that this certificate had been delivered and that on a certain date his time for redemption for the payment of these taxes would be up and his business with me at that time was to endeavor to secure a settlement of these past due taxes and the satisfaction of this certificate on the record, which I afterwards did by corresponding first with the Collector of Taxes of that Township, which was, I believe, first Mr. James Davis, and he was succeeded by another man by the name of Kirkbride, and eventually I got a statement of what was due and tendered to the Collector of Taxes the money and the Holding Company objected to me paying it to the Collector of Taxes, which I took it the statute required that the money should be paid to the Collector and not to them, but they demanded it be paid to them and eventually after I got a statement from the Holding Company and all the charges made on behalf of this certificate Mr. Pine sent me his check which I sent to the Holding Company and they returned to me a certificate duly satisfied with an authorization to the County Clerk to cancel it and I cancelled it on the record. 10 20

Q. In whose name was the place taxed?

A. The place was taxed in the name of S. H. Pine. 30

Mr. Richman: If the Court please, I don't think that is evidence, because the record should be produced to show that.

The Court: Have you any official record showing that?

The Witness: I have the certificate of tax sale which sets out the assessment and the amount of taxes which were due together with the charges, which certificate I obtained and had cancelled, as I have testified before. That was recorded in the Clerk's office at Woodbury.

The Court: That is the original certificate?

10 The Witness: I think that is a copy.

Mr. Ralph Wescott: We offer that.

Mr. Richman: I object to it as not the best evidence.

The Court: I think it is competent; let it be marked.

20 (Said paper marked Exhibit C3.)

The Court: The only real purpose that occurs to me as making it competent is to show that Pine paid the taxes; I don't think it alters anything as to who it was assessed to at all.

Mr. Richman: Do you have Pine's check?

30 The Witness: No, I don't have the check. No, I deposited his check in bank to my account as attorney and sent my check to the Holding Company.

Q. Have you that check?

A. I don't have my check, but I have my correspondence here, showing the number of it and date of it if you want that.

Q. When was it?

A. I sent the check to them on April 4, 1917, and it was my attorney check No. 68, drawn to the order of the Holding Company on the First National Bank of Woodbury, for \$97.00 even.

Mr. Richman: What was the date?

The Witness: April 4, 1917.

Mr. Richman: And the check was for \$97.00 10 even?

The Witness: \$97.00.

Q. Did the name of Cordelia Gardner come into this transaction?

A. No, I didn't know anything about Mrs. Gardner at that time.

Q. Did you have any correspondence with her 20 in regard to this matter before settling these taxes?

A. No, sir, not at that time.

Q. Didn't know she had anything to do with the property?

A. No.

Q. When did you ascertain that she appeared to have an interest in it or claimed any interest in it?

A. Sometime in May, 1920, Mr. Pine came to see me and stated that she had a deed—well, I suppose that is objectionable—that is the first knowledge I 30 had, when Mr. Pine came to me in May, 1920.

Q. Did he desire your assistance then?

A. He did, and employed me to prepare and send a deed to her for this property, excepting such parts as might have been conveyed up to that time.

Q. Did you prepare such a deed?

A. I first went to the County Clerk's office and made a search to find what deeds were of record made by Mrs. Gardner and her husband affecting the original tract of which this was a part, and prepared a deed for the original farm, which I think contained five tracts, excepting out those parts which already had been conveyed, and I sent that to her on May 10, 1920.

10 The Court: A deed from her to Pine?

The Witness: From her and her husband to Samuel H. Pine.

Q. With what result?

A. I sent that to her by letter on May 10, 1920, and on May 20, a letter was mailed by her to me in reply to my letter.

Q. Have you that letter?

20 A. I have that letter and the envelope that goes with it.

Q. Read it.

Mr. Richman: Before that is read, if the Court please, I think that is objectionable because it is admitted that Mr. Beckley does not represent him now and I have a case in 30 Law where the Court refused the admission of a letter written by the complainant in the case sometime prior to the litigation in which they are involved and the Court refused to admit the letter saying that it wasn't legal evidence, that it can only be considered the declaration of an agent whose agency had ceased.

30 The Court: This is a letter by the defendant, Mrs. Gardner; is not this Mrs. Gardner's letter?

The Witness: Yes, sir.

The Court: What is the objection to that?

Mr. Richman: I object to his producing that letter.

The Court: I think it can be produced from the clouds; I don't think it matters where it came from if it is her handwriting.

10

Mr. Richman: Exception.

Q. First read the envelope, please, and the address.

A. "Daniel W. Beckley, Esq., Woodbury, N. J."

The Court: I don't understand this is a confidential communication between her and her attorney, this witness was not her attorney?

20

The Witness: No, I was not.

The Court: Go ahead then.

The Witness: The postmark is "Laurel Springs, N. J., May 20, 1920, 5:30 P. M." This is the letter: —

The Court: You had better read the letter this is an answer to in order that we get the context.

30

The Witness: This is my letter, May 10th —

Q. What is the date of it?

A. May 10, 1920.

The Court: Is this a carbon copy?

The Witness: Yes.

The Court: Have you any objection to it on the ground it is a carbon copy?

Mr. Richman: No.

A. "Dear Madam: Samuel H. Pine has asked me to prepare a deed from yourself and husband to him conveying the property which you hold for him situate in Deptford Township, this County. Mr. Pine has paid the mortgage given by yourself and husband to Isaac E. Beakley and the same was cancelled on the record on April 16, 1920. I also understand that Mr. Pine has paid the mortgage covering a property owned by yourself which you gave in order to raise part of the money with which to purchase the land in question. I herewith enclose the deed which I have prepared. Will you and your husband kindly execute the same and acknowledge it before a Notary Public, or some other person authorized to take an acknowledgment, and return it to me at your earliest convenience, and oblige, Very truly, C. W. Beckley. Mrs. Cordelia Mary Gardner, Berlin, N. J., R. F. D."

Q. That was the 10th of May?

A. That is correct.

Q. And you received a reply to that letter dated the 20th?

A. That is right.

Q. Read the letter.

A. "Laurel Springs, N. J., May 20, 1920. Daniel W. Beckley, Esq. My Dear Sir: My suggestion is, let Mr. Pine come across and settle up like a man. The purchase money has not been settled for and he has not paid me for having my signa-

ture acknowledged to the deeds sent over. There is enough money in bank now in my name to settle up but no thanks to him. I also out of it paid Harold Dunk the balance of borrowed money that Mr. Pine owed him since 1913. Now then when Mr. Pine wanted that place so badly he had not one penny to pay for purchase money, ask him who put it up, and he never would pay me a cent of interest or give me a note, when I asked for a note he would say, "Why it is all yours." He run and run for help. If I would help him I would never regret it. When the year was up Ed. Beakley demanded his money, the mortgage, and offered to release my property if I would sign the farm over to him. I refused as I did not think it a fair deal and I was in no condition to be bothered either as I was not well and my little baby was very sick, hovering at time between life and death, and I wrote and begged Mr. Pine to get some one to take it all over and relieve me and he paid no attention whatever, then Mr. Gardner wrote Mrs. Berg that he would not be responsible for any of it and it made Mr. Pine mad and he came over here so drunk and called Mr. Gardner all kinds of yellow dogs. He had gone such a pace in that year that no one wanted to risk anything. Mr. Gardner objected very strongly to signing bonds, etc., in the first place and I threatened to divorce him as I had given my word. He has Harold Dunk to thank for Mrs. Berg putting up the money finally to pay Ed. Beakley off and now he has forbidden him to come on his place, simply because he is honest and it is not his, Mr. Pine's place as it happens. We did not want that ten acres sold to Grunise but he was three years back in interest and back in taxes and it was either sell lots or sell the whole place. Mr.

Pine has never paid one penny as what money he earned went for rum. I allowed him to sell lots in order to pay mortgage and have a peaceful mind, he never could pay rent, taxes and interest money. Now if he wants it out of my name let him settle up my Grandfather Wards money, he did not have to marry my mother or did not have to take me home as I had a good home with my guardian and was going to a good school and she was adding my interest money to the principle and clothing me out of her own, but no, he had to get that money in his clutches. I was fourteen (14 years old) and that was the end of that money. I even paid my own doctor bill after I got to nursing, that is why the place was always to stay in my name. Let him dealsquare and I will gladly sign it over, but before I do there must be some provision made for my mother. I could tell a whole lot more but it takes too long. The best thing those little children ever done was when they run away. Another thing has he satisfied cousin Tom Stratton's note on record and Mrs. Dobbs? That is why I feel that he is going to put it in some one elses name and the ingratitude does hurt. I never could talk business with him, he was most always drunk and he will not come here and act like a man, but when there was money in my pockets it was Dear daughter this and that. I am sorry to say but he is one sucker and as slippery as an eel but I pitied him and thought I would give him one more trial against good men's judgment. Very truly yours, Cordelia W. Gardner."

The Court: What relation is Mr. Pine to Mrs. Gardner?

The Witness: As I understand it, Mr. Pine is a stepfather to Mrs. Gardner.

The Court: He married her mother?

The Witness: Yes.

The Court: No dispute about that, I imagine?

Mr. Ralph Wescott: No, that is correct. We offer that letter. 10

(Said letter marked Exhibit C4.)

Q. After receiving that letter, Mr. Beckley, did you do anything further in this matter, and if so, what?

A. Of course, I consulted Mr. Pine regarding the matter after that, and then on July 8th I attempted to reply to the letter. 20

Q. Did you reply?

A. Yes.

Mr. Ralph Wescott: Will you agree that he go on and have this correspondence read, I suppose one part is as good as another?

The Court: Did she reply to this?

The Witness: Yes, later on, after some more correspondence. 30

The Court: Read your letters and the replies.

Q. Read the whole correspondence that is pertinent, let us have it all in its order.

A. "July 8, 1920. Dear Madam: Your favor of May 20th in relation to deed which I sent you for property at Almonesson to be signed by yourself and husband came duly to hand. I take it that your main objection is that Mr. Pine might squander the property if he obtained title in his own name. As far as this is concerned I think I might induce Mr. Pine to agree to have title taken in the name of his wife and himself jointly and in that event in
 10 the case of the death of Mr. Pine first the property would become his wife's absolutely. As regards the other matters in your letter, of course, Mr. Pine does not feel that he is obligated in any respect and feels very much hurt that you should write in the manner in which you have. However, I believe the only way to come to a settlement is to meet and talk the matter over and if you could arrange to meet me at my office I will notify Mr. Pine to be here and we will endeavor to come to
 20 some kind of a settlement. I will appreciate it if you can arrange to do this. Very truly,
 Mrs. Cordelia W. Gardner,
 Laurel Springs, N. J."

Q. Did you get any answer to that?

A. No, I didn't receive an answer to that letter.

Q. The date was what?

A. July 8, 1920. On July 22, 1920, I wrote her again. "July 22, 1920. Dear Madam: I wrote you on July 8th in relation to the Pine matter but
 30 so far I have not heard from you. I enclose a stamped and addressed envelope and would appreciate an early reply. Very truly,
 Mrs. Cordelia Gardner,
 Laurel Springs, N. J."

On July 24th I received a reply, or at least there was a letter written on July 24th, postmarked on that date, from Mrs. Gardner.

Q. How does that read?

The Court: What is the date?

The Witness: July 24, 1920. Shall I read the envelope on that, too?

Q. Yes.

A. That was a self-addressed envelope, it was the envelope I enclosed in my letter of July 22nd. 10

Q. Let us have the letter.

A. That was postmarked on July 24, 1920, 5:30 P. M., from Laurel Springs, N. J. "July 24, 1920, Laurel Spring, N. J., R. F. D. Box 192. Mr. D. W. Beckley. Dear Sir: Your second letter received yesterday (23rd) about S. H. Pine and his deed. I can not see that it will benefit mother much if it is in her name as he would be chasing her with the gun the first time he got drunk to make her sign it over. What I wanted was something
 20 definite for her. I have bought her clothes and given her money, nursed her and paid her doctor bills and I can not do it any longer. Her insurance is only \$85.00 dollars and I paid that every month until this last year. It seems there ought to be some way to take care of her. He has treated her nasty—while it was in my name she was sure of a home and so was he—I have a letter now from him telling me to apply and I can have my mother. He is always telling her to get ready and he will
 30 bring her here to stay, then he wanted to get Walter and I then and have her put in the asylum, the place where he ought to be. I really don't want to be bothered with him or the place, but knowing the man so well I hesitated to give it up. I really don't have to you know. If I was sure of what

mother wanted I could feel better. When I think of all that she has gone through for that man. There was a time that she did not have a crust of bread or five cents to get any with, but he was working and getting his three meals a day and her son was just up the road aways but I was out in Reading getting \$3.00 per month and did not know anything about it. He writes me he will meet me anywhere excepting in my own home. Before I
 10 sign anything he will have to produce the deed to my Blenheim property or have a copy made. I took the deed to him to have Ed. Beakley's lawyer look at it and it has never been returned, I must have one and I most surely will not pay for another one. I want to go to my mother's either Tuesday or Thursday of next week, if I am able, but I am not very well and have to keep quiet this hot weather. If I do will probably stop off and see you. I don't think he will make much by seeing me, he
 20 is going to start proceedings today, it will only be an expense to the county to provide for me and keep me in medicine. If you can fix it up satisfactorily I will sign it to mother but it has got to stay in her name and he will have to bring or send a notary here as I will not drag George or myself out to do one thing for him ever again. Very truly yours,

C. W. Gardner."

30 Mr. Ralph Wescott: I offer that in evidence.

(Said letter marked Exhibit C5.)

Q. What was the next step in this correspondence, Mr. Beckley?

A. I don't recall having any more correspondence with Mrs. Gardner until December 6, 1921.

Q. That is the December following?

A. The following December when she wrote me a letter.

Q. Read it, please.

A. The envelope is Mr. Daniel W. Beckley, Woodbury, N. J., and the postmark is "Laurel Spring, N. J., December 6, 1920, 5:30 P. M." "Laurel Springs, N. J., R. F. D., Box 192. December 6, 1920. Mr. Daniel W. Beckley. Dear Sir: I
 10 have had a letter from mother urging me to come see you. I will come as soon as I conveniently can. Will you tell me what days and what hours you are in your Woodbury office then when I find I can come I will drop you a line or phone. I cannot say when I will be able to come, not this week though, I think. I think it would be well for you to advise Mr. Pine to treat my mother a little better as he certainly illtreats her. How she has suffered it all of these years is more than I can
 20 say. Very truly yours, Cordelia Ward Gardner."

Mr. Ralph Wescott: I offer that.

(Said letter marked Exhibit C6.)

Q. What further was done in this matter either through correspondence or personal interviews?

A. I don't know whether I replied to that promptly or not; I don't seem to have a carbon copy in my files, so I don't know.
 30

Mr. Richman: I think you did.

Q. Here is a letter on your stationery, Mr. Beckley, dated September 19, 1921.

A. I have a carbon of that letter.

Q. Let us have the whole story.

A. On September 19th, I wrote her, which Mr. Richman has the original letter there. "September 19, 1921. Dear Madam: Last December you wrote me that you would call and see me regarding the Samuel H. Pine matter. I think it is advisable that this matter be settled promptly as there is nothing gained in leaving it in the present situation. Will you kindly advise me whether you
10 will come to see me or whether I shall come to see you, and when and where I may do so."

Q. That is September of the following year?

A. Yes.

Q. About eight months later?

A. Yes.

Mr. Ralph Wescott: I offer that.

(Said letter marked Exhibit C7.)

20

Q. Are these the originals of the letters you read us from you to Mrs. Gardner?

A. Yes, they are the originals.

Q. Then what happened?

A. I didn't receive any reply from Mrs. Gardner and in the early part of November, 1921, Mr. Pine asked me to go personally and see Mrs. Gardner, which I did on Monday, November 14, 1921.

Q. What was the interview and where?

30

A. I first went to—I went by trolley from Woodbury to Blackwood, Mr. Pine having arranged with a jitney driver to take me from Blackwood to Mrs. Gardner's place which was between Kirkwood and Gibbsboro, as I recall, and I went by trolley from Woodbury to Blackwood and there met the jitney man—I didn't know who he was, but by talking

with him I found out his name was Irwin, I believe, and I went with him from Blackwood, at the terminus of the trolley, to Grenloch Terrace, or in the neighborhood of Grenloch where Walter Ward lived —

Q. Walter Ward being what relation?

A. Walter Ward, I understood, was a brother to Mrs. Gardner, and likewise a stepson to Mr. Pine.

Q. You saw Ward?

A. Yes, I saw Mr. Ward.

10

Q. Did you discuss this matter of turning the farm over to Mr. Pine with Ward?

A. Yes, Mr. Pine had suggested —

The Court: You can't tell the conversation.

The Witness: Mr. Pine had requested that I go and see Mr. Ward first before I went to see Mrs. Gardner and I talked the matter over with him first and from there I went directly to Mrs. Gardner's
20 house.

Q. Did you have a satisfactory interview with Ward?

A. Yes.

Q. Then you went on to see Mrs. Gardner?

A. That is correct.

Q. What was the result of that interview?

A. I went to Mrs. Gardner's house with this man in the jitney and he drove me in the side yard, and
30 I got out of the car, the automobile, leaving him in the automobile, and I went in the house, rather went to the door, knocked, and Mrs. Gardner came—I had never met her before and didn't know her. I told her who I was and she invited me in. We went inside and I told her what I had come

there for, that I had come there for two purposes, one was to see what objection she had for executing a deed to Mr. Pine for this property, and recited the fact I had sent her this deed a long time before, and also that I would like to get a statement of what moneys she had in her hands for the sale of lots which was part of this property, deposited in the Blackwood bank or any other place, that Mr. Pine desired such a statement, and she immediately engaged in reciting all these past matters which she has referred to in those letters here, about the settlement of her Grandfather Ward's estate—and I recall on one of those letters there is a memorandum which I made at that time as to what the amount of the Ward estate was, it was \$580.00 she told me, and who the guardians were, and the name of the man, with the idea of checking that up with Mr. Pine when I returned —

10 Q. Did she make it clear to you how Mr. Pine was involved in that?

20 A. No, she endeavored to say he had used the money, that someone else had been guardian and he had gotten possession of the money in some way and it had never been turned over to she and her brother.

Q. That is hardly relevant, but it may show her state of mind.

30 A. And she recited, as I say, all of these facts which are incorporated in her first and second letters to me, and I listened to all of that and after she got through I talked to her and asked her if she wouldn't be willing to make the deed to Mr. Pine and his wife jointly and explained to her that that constituted an estate by the entirety and in the case of the death of either it would be the other's property, and her main objection seemed to be she

wanted a home for her mother, and I said so long as the property was in both names her mother would have a home there, and before I left she told me she would be willing to sign a deed having it in both names, and that she would make up or have made up a statement of the moneys in bank from the sale of these lots and send me such a statement.

Q. Did you ever get such a statement from her?

A. I never received any statement from her? 10

Q. Did you have reason to expect you would receive it after this interview?

A. I did.

Q. Did you prepare a second deed?

A. I did not. The jitney driver brought me home and instead of having him stop at Blackwood I had him take me to Mr. Pine's place which was between Blackwood and Almonesson, along the trolley track, and in order to stop at Mr. Pine's place I would have to get off at the lane and then wait another hour for the trolley, so I had him drive me to Mr. Pine's place, so he did, he took me to Mr. Pine's house and Pine wasn't at home, Mrs. Pine was there and she asked me if I had seen Mrs. Gardner, and I asked where Mr. Pine was and received the answer he was gunning with Dr. Carr of Pitman, and I left word for Mr. Pine to call and see me. He called to see me in the course of a few days, it was promptly, and I explained to him that Mrs. Gardner would be willing to have the deed in both their names, and he objected to that being done and said he wouldn't consent to it, he wanted the deed in his name or not at all. 20 30

Q. Had you discussed that with his wife when you stopped there and found he was out gunning?

A. Mrs. Pine asked me how I made out and I told her what my conversation had been and she said

she was glad and she hoped the matter would be settled, she didn't like it the way it was.

Q. Was there anything further after that?

A. No.

Q. The matter just hung fire from then on?

A. Yes, I don't think I had any further correspondence either with Mrs. Gardner—I know I didn't—and I don't think I had any with Mr. Pine from that time on.

10 Q. And the next time you were interested in the matter was when I came to see you?

A. Yes.

Cross-examination.

By Mr. Richman:

Q. Mr. Beckley, referring to the conversation you had with Mrs. Gardner, isn't it a fact that she said 20 she would sign a deed to her mother provided there was a clause put in it that it would come back to her at her mother's death?

A. No.

Q. Are you positive of that?

A. I am sure of that.

Q. Was there any conversation along that line?

A. I don't recall it, I don't recall any conversation about the deed being in her mother's name and citing it would come back to her except what is 30 incorporated in one of those letters, but when I talked to her on that day there was no conversation of that kind.

Q. She didn't make that statement?

A. No, sir.

By the Court:

Q. Did she at any time while you were there on

that last occasion say to you whether or not that title was placed in her name as security for her, or otherwise?

A. No.

Q. Did she claim that it was her's absolutely and that Pine had no interest in it?

A. No.

Q. Did she claim it wasn't her's?

A. She did not.

Q. I gather from your answers nothing specific 10 was said touching the original transaction?

A. There was not, except as far as her answers were concerned she did not commit herself as to how she held the title.

Q. Didn't you discuss with her whether or not she had any right to refuse to turn it over?

A. Yes, I told her this property was bought in Mr. Pine's name, as I understood it, with the understanding that when these mortgages were satisfied that then the property was to be reconveyed to him. 20

Q. Bought in her name, you mean?

A. Yes, with the understanding that when the mortgages were satisfied it should be reconveyed to him, but I don't recall that she made any binding statement as to that.

Q. Did she deny it?

A. No.

SAMUEL H. PINE, SWORN.

30

By Mr. Ralph Wescott:

Q. Where were you born, Mr. Pine?

A. Blackwood, N. J.

Q. And when?

A. 1962.

Q. 1862?

A. 1862, 12th day of December.

Q. 12th day of December?

A. Yes, sir.

Q. Where have you lived since your boyhood?

A. Practically speaking most of the time near my home town, Blackwood; I lived at Mt. Royal once, and lived at Woodbury one time.

10 Q. What have you done generally to make a living?

A. Oh, practically speaking, farming, a farmer. I have done other things at different times; farm work, farmhand, or farming for myself has been my occupation principally.

Q. Now, there has been some reference to a store property in Blenheim in this case, did you have that property at one time?

A. I did.

20 Q. When?

A. Well, that was soon after I was married, but I don't remember the date.

Q. Speaking of your marriage, you refer to your marriage with whom?

A. Why, Mrs. Ward, the mother of those two children, rather man and woman they are now, but when they came to my house they were children.

Q. When were you married to Mrs. Ward?

A. That I don't remember, but it has been some 30 years ago.

Q. You had been married to her about how long when you acquired this Blenheim store?

A. Not very long, a very short time.

Q. What did you do with the property?

A. Why, we kept a store there in the first place when we were first married and afterwards I went to work on a farm.

Q. Mrs. Ward kept the store?

A. Mrs. Pine and I kept the store.

Q. Mrs. Pine I should have said. Now then —

A. And I worked on the farm by the day and she attended the store when I was off farming, I worked all the time.

Q. How did you come to lose that place?

A. Well, the year of the panic —

The Court: Is this going to aid us? 10

Mr. Ralph Wescott: Possibly not material, but I think it will give your Honor —

The Court: Because it isn't an issue that can be brought out if there is any dispute about it, because it isn't in the case.

Mr. Ralph Wescott: I don't think there will be any dispute about it, but I thought it would throw 20 some light on the main issue to disclose the interest of both parties in this particular piece of property.

The Court: Make it short then.

Q. What became of that store?

A. I went bankrupt, practically speaking.

Q. That was in 1907?

A. I don't remember when it was.

Q. And your stepdaughter acquired that property, 30 didn't she?

A. Yes, later on, she bought the mortgage in some way or the other.

Q. How did you become interested in the Mason farm?

A. I lived at Blenheim at the time and Howard Mason came up—there used to be a little place there

for country people to gather in the evenings, a country store, and he came up there one evening —

Q. Who is Howard Mason?

A. He is one of the heirs of the Mason farm as everybody always called it, the Mason farm.

Q. What was your conversation with him?

A. Howard said to me, "Sam, you like to farm, why don't you buy our farm"—they wanted to
10 settle up the estate—"Well," I said "Howard, I will give you \$1500 for it," that is what I said to him —

The Court: I don't think these details are of importance, we must get through.

The Witness: He said, "That will never buy it," and I said to him, "Well, you come to me before you do sell it," and he said he would.

20

Q. You finally offered him \$1800, and he agreed to take it, didn't he?

A. Yes.

Q. Did you make him a down payment?

A. Yes, a payment of \$100 and he gave me a receipt but I don't know where that receipt is, like most of the other papers, they have gotten away from my home.

Q. Do you recollect how you got that \$100.00?

30 A. I thought at first I paid him with a check but I asked him and he said I paid him with money.

Q. And that may be so?

A. Yes, he said I paid him \$100, in money, but I don't remember whether I paid with check or money.

Q. How did you get the rest of the money?

A. The rest of the money to pay off my home or farm?

Q. Yes.

A. By working and selling building lots off of my own home and farm.

Q. Originally you had paid Mason a total of \$1700?

A. How I got the rest? Mr. Beakley furnished the money, \$1700.

Q. What security did you give him? 10

A. \$1200 on my home and Mrs. Gardner gave \$500 mortgage on her home at Blenheim.

Q. What was the inducement to her to do that?

A. I told her and explained to her I would have the deed made in her name as collateral security until her mortgage was paid to secure her in case anything happened to me. That was the agreement and she was living home with me at the time, with her mother and me, right at the time.

Q. Where was home at that time? 20

A. Blenheim.

Q. Were you then living on the Mason farm?

A. No, this was at Blenheim before I took possession of the Mason farm.

Q. The store property?

A. The store property, certainly.

Q. And she agreed to that?

A. She certainly agreed to that or she wouldn't have given the mortgage.

Q. You were present at the settlement?

A. No, I left that to Mr. Ayres, a neighbor of
mine and a notary public. 30

Q. He has since died?

A. Yes, he did all the work for me and I was working for Mr. Beakley at the time for \$1.00 a day and board.

Q. You said a moment ago you worked and sold lots; when did you succeed in paying off the \$500 mortgage?

A. That I don't remember, but you have the record of that; I remember having paid it but I don't remember the date, I have no record of it.

Q. To whom did you pay it off?

A. I don't remember who paid it off, but it was paid, that is all I remember. I don't remember those things.

10 Q. Witness is shown a paper purporting to be a receipt signed by Mattie E. Berg, as follows: "Received Camden, N. J., April 25, 1919, the sum of \$130 from Samuel H. Pine, \$100.00 on account of mortgage and \$30.00 interest up to January 25, 1919, the principal sum of said mortgage now being reduced to \$900." Signed "Mattie E. Berg."

The Court: Received from who?

20 Mr. Ralph Wescott: Samuel H. Pine.

Q. Can you recognize that handwriting, Mr. Pine?

A. That is Mattie E. Berg's handwriting to the best of my knowledge.

Q. The signature or the whole business?

A. The signature is.

30 The Court: Chancellor Walker has written an enlightening opinion to the effect that that isn't the way to prove handwriting.

Mr. Ralph Wescott: I feel as if I am always willing to learn.

The Court: In the last advanced sheets of the Advanced Reports he scolds Masters very hard for

their permitting handwriting to be proven without the witness stating he has actually seen the party write.

Q. Let us find that out. Have you seen Mattie Berg write with pen and ink?

A. Yes, I have seen her write lots of times.

Q. Did you see her write this receipt?

A. I don't remember.

Q. But you have seen her write lots of times? 10

A. Yes, I have seen her handwriting lots of times.

Q. On January 25, 1919, did you pay her any money?

A. I don't remember whether I did or not; there is a receipt, that is all I know.

Q. Did you ever pay her any money?

A. Sure I have paid but I can't tell you when, paid her all that was coming to her, nobody else paid her but me.

20

Mr. Ralph Wescott: I offer this.

(Said receipt marked Exhibit C8.)

Q. Do you remember where you got the money to pay that?

A. No.

Mr. John Wescott: Do you remember anything, do you remember you are alive? Remember something. 30

The Witness: I got it by working or building lots, or something, it came off my home.

Q. Who paid the taxes, Mr. Pine, on this place?

A. I did.

Q. Where did you get the money?

A. Where did I get the money?

Q. Yes, sir.

A. I either got it from hard labor—I worked on the farm and sold my produce, when I first got there I went to market and afterwards home marketed it, and I worked at Bateman's and different places, and perhaps some of it may have come from building lots, no doubt, off my own home.

10 Q. Now, I show you a series of checks on the First National Bank of Blackwood, made payable to Redman Bentley, Col. Who was Redman Bentley?

A. Tax Collector.

Q. These checks are signed "S. H. Pine," are these your signatures?

A. Those are my signatures, every one of them; I do know my own signature.

Q. Are these checks by which you paid the taxes from year to year on this farm, do you recognize

20 them as such?

A. What say?

Q. Do you recognize those checks?

A. Sure I recognize them.

Q. You paid them to Bentley?

A. Yes.

Q. For taxes, that is correct, is it?

A. Yes, sure.

30 Q. There are eight of such checks here, although I notice that two of them are made payable to M. E. Berg, dated respectively June 3, 1920, and I imagine that would be March 6th—when they use figures to indicate the month and year the month comes first and then the date and then the year—so that would be the 6th of March, 1920, and the 15th of April, 1920, the first being for \$100 to M. E. Berg, signed by S. H. Pine, on the Blackwood Bank and

the second to Mattie E. Berg for \$7.50, with a notation in the same handwriting as the maker of the check "Interest due on mortgage."

The Court: What are the amounts of the two checks to Mrs. Berg?

Mr. Ralph Wescott: \$100 and \$7.50 that I have just referred to.

The Court: Do they correspond to that receipt that was just offered? 10

Mr. Ralph Wescott: No, sir, this receipt is 1919, and would represent a payment the previous year.

Q. Now, have you any other checks besides these you have handed me, Mr. Pine?

A. Not concerning the case.

Q. What has become of them to the best of your 20 knowledge?

A. Well, to the best of my knowledge—when I got too much trash in the way I would burn it up, anything like a check that was paid I didn't save them, didn't know they were important, but other things I know went away from my home that was never burned, lots of them.

Q. Do you mean to have us understand that your papers have been looked into by others?

A. I do, positively.

Q. Without your permission? 30

A. Yes.

Q. In your absence?

A. In my absence, of course, they wouldn't do it in my presence, that is sure.

Q. And that is the reason why you can't produce all the checks you have paid Mattie Berg?

A. That is the reason—no, not the checks, understand, but other papers, not the checks, because I burned up lots of checks, every year I generally clean up and burn them, not the checks, I don't say they have taken any checks, nobody has taken them, I don't say that, because I may have burned them.

Q. Now, I show you a counter check on the First National Bank of Blackwood dated April 15, 1920, and payable to Mattie E. Berg in the sum of \$400, and ask you if the signature on that is your own?

10 A. This here. Balance of mortgage in full.

The Court: What is that date?

Q. April 15, 1920. Bearing that date in mind can you tell us what that check was for?

A. That was in settlement of the mortgage in full, \$1200, to Mattie E. Berg.

Q. I show you a debit slip with the same date and same amount from the same bank and ask you how you got this?

20 A. I got it through settlement in bank.

Q. Represents the same transaction?

A. Yes.

Q. I suppose this is what he had in his possession until he procured the check?

A. They loaned me that check, the Blackwood bank loaned me that this week.

Q. Referring again to these checks made out to the Tax Collector, Bentley, they cover a period from 30 May, 1920, to June, 1923, and one of them is dated "1-9-4" probably meaning 1924, because the perforation in the checks show the year to be 1924, that is for \$73.00, was that in payment of taxes?

A. Redman Bentley, yes, sir.

Q. \$73.00, 1924?

A. Yes, sir, all to him was in payment of taxes.

Q. Did any of this money with which you paid the taxes or with which you paid the interest on the mortgages, or with which you paid for these mortgages, come from your stepdaughter, Cordelia Gardner?

A. Not that I know of, not a penny of it, without as she said, she borrowed \$100 from Mrs. Weaver, and Mrs. Weaver said she borrowed that \$100 off of her for me. 10

Q. Now, what \$100 are you referring to, Mr. Pine?

A. That must be the first \$100 that she paid on the property to Mr. Mason; if it was \$100 he got that must be the \$100 she borrowed from Mrs. Weaver for me.

By the Court:

Q. I thought you said you paid that first hundred 20 yourself?

A. I don't think I said that. I gave Mr. Mason the \$100, but that isn't where it came from, see.

Q. You actually handed it to him?

A. I actually handed Mr. Mason the \$100.

Q. And you say you got it from your daughter, Mrs. Gardner?

A. I don't say positively I did, but it might have been she gave me the money, borrowed it from Mrs. Weaver to pay that, binder money to hold the deal. 30

By Mr. Ralph Wescott:

Q. I show you two checks on the Blackwood bank made payable to Cordelia Gardner, apparently signed by you, one dated the 1st of January, 1924,

and one dated the 28th of November, 1923, the first being for \$25.00 and the second for \$75.00, and ask you what they represent?

A. I gave them to her while she was taking care of her dear mother, that is what I gave them to her for.

The Court: Checks from who?

10 Mr. Ralph Wescott: Pine to his stepdaughter.

Q. They happen to total \$100?

The Court: That was for taking care of your wife, her mother?

The Witness: Her mother, yes, sir.

By Mr. John Wescott:

20

Q. Where was she then?

A. The first three weeks of her sickness she was home and as soon as she was able we moved her to Gibbsboro to her daughter.

Q. And it was after that you paid this \$100 to her?

A. Yes.

By Mr. Ralph Wescott:

30

Q. If you borrowed from Mrs. Weaver, through your stepdaughter, the original \$100 that you paid down on this farm, did you pay it back?

A. She has had that back more than ten times over.

Q. Did you ever have Mrs. Weaver, or Mrs.

Peters, if that is her name now—did you ever pay her directly?

A. No, sir, I did not.

Q. When you say you have paid it ten times over you refer to money you have given to Cordelia Gardner?

A. Moneys she has had in different ways when she was a child, when she came to my house until she was married, and still afterward.

10

Mr. Richman: I think that should be stricken out because it is not responsive to his question; he is talking about Mrs. Weaver and Mrs. Peters and the witness is talking about Mrs. Gardner.

Q. I asked a further question which the answer is responsive to. At the time when you and Mrs. Cordelia Gardner agreed that she would make her store security for \$500 to Beakley and you agreed that she should hold title to the farm until that was paid back, did you have any reason to pay her anything, did you owe her anything at that time? 20

A. I didn't owe her anything at that time, no, sir.

Q. Did she agree or didn't she agree at that time that when that \$500 mortgage was paid off by you she would deed the farm to you, she and her husband?

A. I left the business to Mr. Ayres and he understood that the deed was to be made to her, and I told him to make it to her as collateral until her mortgage was paid, that was the understanding between me and her. 30

Q. Didn't you have any direct understanding to that effect with your daughter?

A. Only with my stepdaughter and wife, that is all.

The Court: Only what?

The Witness: Only with my stepdaughter and wife.

Q. What understanding did you have with your stepdaughter and wife?

A. She was to hold the deed until her mortgage was paid off, have my home until the mortgage was
10 paid off.

Q. Who was to pay it off?

A. I was, sure.

Q. Is that all you were to do?

A. That is all I was to do as far as I know.

Q. There is something —

A. I think I done my share enough before that time.

By the Court:

20

Q. You have confused things so I don't know now what your testimony is. First you said that Mr. Ayres made the arrangement.

A. He did all the business.

Q. I gather from that you didn't have any talk with your stepdaughter. Did Mrs. Gardner and you have any conversation together about what she was going to do when you paid the mortgage off, or didn't you?

30

A. That was understood.

Q. I don't care what was understood, what was said. I don't understand, and I can't understand from what you understood. I want to know what was said. Did you and Mrs. Gardner have any conversation on the subject at the time as to whether or not she was to convey this property to you when you paid the mortgage off?

A. At the time the mortgage was given?

Q. Yes.

A. Yes, sir.

Q. What conversation did you have?

A. She was to deed the property to me.

Q. What did she say?

A. She said she would do it.

Q. That is what I wanted to know; you might have said that a long time ago.

A. Beg your pardon, I didn't get your question. 10
This is new business for me.

By Mr. Ralph Wescott:

Q. When did you move on to the Mason farm, Mr. Pine?

A. Directly after I got possession, directly after I bought it.

Q. Do you remember when you bought it?

A. Sometime in the summer, July or June some- 20
time, and I moved there on the farm and still worked for Mr. Beakley the balance of the season.

Q. Do you remember what year that was?

A. No, I don't remember the year.

Q. It was the year you were working for Beakley?

A. Yes, sir.

Q. Where have you lived ever since?

A. There right in my home where I am now. I was away a year at that time, I farmed for Mr. Beakley a part of the year and I moved there in the spring and when the fall came I moved back again. 30

Q. Who constituted your family when you moved on this Mason tract?

A. My wife and two of my wife's—she was a great aunt—and two little children, one was a boy and one was a girl.

Q. Did your stepdaughter make her home with you then?

A. No, she was married and living in her own home at Gibbsboro.

Q. When did Cordelia Gardner come there to live?

A. Where?

Q. With you?

A. Not on the farm, she never lived on my farm.

10

By Mr. John Wescott:

Q. Didn't she live there with you?

A. No, sir, she was married and lived in her own home at Gibbsboro.

Q. Didn't she ever live with you at all?

A. She has often been there but not lived there.

By Mr. Ralph Wescott:

20

Q. When did you begin to sell off part of this ground, Mr. Pine?

A. Now, I don't remember the dates, as I have said before I haven't the dates of anything, you have the dates.

Q. You have got a memory, give us your idea?

A. I can't recall those things, there is too much in my head.

30

The Court: One would think when you had a suit like this you would sit down and study out those things.

The Witness: I have to work night and day on the farm besides.

The Court: Then you don't know anything?

Q. Did you sell any lots at all?

A. I did, yes, sir.

Q. How many, about?

A. Somewhere in the neighborhood of three or four hundred.

Q. Lots?

A. Three or four hundred counting them by lots 20x100.

Q. But you didn't sell them one at a time?

A. No.

10

Q. I show you a number of sheets pinned together, listing names, lots, amounts of money, and whether they are paid in full or not, and whether deeds have been given or not, and I ask you in whose handwriting those sheets are in?

A. Myself.

Q. Now, when did you make up this list, Mr. Pine?

A. Where is the date?

Q. You made it up, didn't you?

20

A. Yes. 1-19-25.

Q. Did you make it up recently?

A. 1-19-25, the year 1925.

Q. You made it up in January of this year?

A. Yes, January, 1925.

Q. Do you recollect how many transactions are covered by this list?

A. No, I do not.

Q. The list here gives the names of those to whom you have sold lots?

30

A. Yes, sir.

Q. And have you made other sales besides those represented on this list?

A. I have made one sale since.

Q. I call your attention to a receipt purporting to be signed by H. A. Dunk, as follows: "Received

of Salvatore Granese \$1000 being payment in full for ten acres of land from George Gardner and Cordelia Gardner to Salvatore Granese, 1915, taxes to be satisfied out of this payment," and ask you if you have ever seen that before and know what it is?

A. I have seen it only recently, I received it from Tony Granese, Mr. Harold Dunk gave it to him.

Q. Does that represent the first sale of lots off of this Mason farm that you made?

10 A. That I made, yes, sir.

Q. Can you now say when you began to make sales? Well, it was the date of this receipt, wasn't it?

A. Sure.

Mr. Richman: Let him answer.

Mr. John Wescott: He is the dumbest man that ever lived.

20 Q. This is the first sale you made?

A. Yes, sir, 1915.

Q. Did you sell lots continuously after that?

A. Yes, sir.

Q. When after that first sale to Tony Granese did you make your next sale?

A. Here it is, Henry F. Lee, June 7, 1919.

Q. You have 1919, does that represent the year 1919 or the year 1915?

30 A. That represents the year.

Q. 1919?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. Now then, was there any other transactions between 1915 when you sold to Granese and this

1919 sale to Henry F. Lee? There is nothing else on this paper; I am asking you if you can recall.

A. There was a tract across the stream that sold for \$500, Harold Dunk made that transaction.

Q. Now, did Cordelia Gardner get any part of the \$1000 from Granese in 1915?

A. I don't think she did, no.

Q. Did she demand any part of it from you?

A. She did not.

Q. Did she get any part of the purchase price for any of these later transactions that are noted on these sheets? 10

A. She did, yes, sir.

Q. What part?

A. I don't know just what part, how much.

Q. Was there any agreement between you and Cordelia Gardner that she was to get any particular proportion?

A. Positively no.

Q. Did she have any arrangement with you by which you were to act as her agent and sell this ground for her? 20

A. Positively no, no, sir.

By the Court:

Q. Can't you tell what that arrangement was with her? You couldn't sell a lot and give a deed for it because the title was in her name. If you found a purchaser what was the arrangement between you and her? 30

A. I would sell the lots and when they would pay for the lots I would make out the description and have the deed sent to her and she would sign it.

Q. What would become of the money, who would receive the money?

A. I would receive the money.

Q. How did she get any money in her hands?

A. Through people who came to borrow money on their property and wanted to have that ground, they couldn't borrow without having title, and she did that.

Q. Did what?

A. She had to give the title because the deed to the property was in her name.

10 Q. She always had to give the title to any lot. What I want to know is —

A. The balance of the money she got that.

Q. How did she get the money?

A. That is the way.

Q. How?

A. By going wherever the people borrowed money there—I don't understand these things—she would have to be there to give the release, and she would get the money, the balance on the lots that
20 hadn't been paid before she would sign the deed.

Q. She would refuse to sign a deed unless the money was paid to her?

A. That was on these occasions, yes, but she signed all these other lots without that.

Q. How many deeds has she signed where she received no money?

A. A number of times.

Q. Can't you give me some notion?

A. I would say ten or twelve, anyway.

30 Q. How many has she signed where she refused to sign unless she got the money?

A. I don't know how many; she refused, said she wouldn't give any deed here a short time ago.

Q. How long ago did she refuse to sign?

A. Well, we will say a rough guess, a year.

Q. A year ago she refused to sign a deed unless she got some money?

A. Yes.

Q. Had she ever refused before a year ago to sign a deed unless she got some money?

A. No, she hadn't, she always signed, that is, before.

Q. Listen to my questions and we will get along better. Did she ever more than a year ago get any money when she signed deeds, or are they all within the past year when she got money?

A. I can't answer that question.

Q. What did you mean by a year ago when you said it? 10

A. That was on the last one she refused to sign; the first she ever refused to sign unless she got money prior to a year ago, before a year ago.

Mr. Ralph Wescott: I understood the witness to reply to your Honor's question that the last time she refused to sign was a year ago.

The Court: What I want to find out is this—and I don't think you are going to find out from this man—what her attitude has been with reference to these conveyances, and if she received money when they were made why she received it. He said she received money because she refused to sign deeds, as he said, when mortgages were involved. I don't know anything about that, maybe he doesn't either. Here were two people who are now claiming they are owners of the fee; lots were being sold and these deeds were signed. Now, under what circumstances did she sign them, did she require the money before signing them, or didn't she? 20 30

Q. The purchasers of these lots, how did they pay, in lump sums or installments?

The Court: And who did they pay?

The Witness: They paid me.

Q. How?

A. Installments, monthly.

Q. What did Cordelia Gardner have to do with the selling of these lots?

A. Nothing at all.

10 Q. Nothing?

A. No, sir.

Q. But she had to make the deeds?

A. Sure.

Q. Now, were you paid in full by any purchasers, and if so, about how many purchasers, before the deeds were given?

A. Practically all except a few.

Q. Paid you?

A. Yes, sir.

20 Q. In full.

A. In full.

Q. And in those cases did Cordelia Gardner require any money of you before she signed the deeds?

A. Positively no.

Q. But in cases where you hadn't received all the money some of these purchasers would go to Cordelia Gardner after you had received part of the money and pay the balance to her?

30 A. Only through, as I said before, the building and loan, where people wanted to borrow money on the property and hadn't paid for their lots in full.

Mr. Ralph Wescott: I suppose, if the Court please, where the title was to go elsewhere —

The Court: I suppose, too, but I don't know.

Mr. Ralph Wescott: I am frank to say I haven't succeeded in getting a better answer in talking to Mr. Pine privately than your Honor is getting now. I simply had to infer from his explanation which is always about what it is at the present time.

The Court: I should think he ought to know how the money was paid, he sold the lots, and if she received part of the money I think he ought to know that and when he doesn't know it makes me sus- 10 picious that he does know and doesn't want to tell, and the only thing that reduces my suspicions is his excessive dumbness.

Mr. Ralph Wescott: This is not the first occasion I have had to struggle with him.

Q. Now, why did you let her have any money if it was coming to you?

A. Her mother was always receiving letters from her telling her what poor circumstances she was in 20 and how hard a time they had to make things meet, and, of course, she would tell me this and whenever I could help them I would.

Q. Write to your wife?

A. Yes, her mother and tell her what was happening, and her mother would tell me those things.

Q. Do you mean to have us understand that it was because of the poor circumstances in which your stepdaughter was that you would turn over part of 30 the sales price of these lots to her?

A. Not altogether, no, I didn't turn the price of the sale of any of them except a very few, she was collecting that through the loan, but I put \$75.00 in the bank to her credit when they were having such hard times.

Q. Can't you explain the circumstances of these loans you speak of? When the purchasers of a lot from you would want to borrow from a building and loan association the purchase price of the lot or money to build a house are we to understand Cordelia Gardner refused to sign a deed either to the purchaser or to the building and loan association until some money had been paid to her?

A. I understood it she always had to go because
10 she was the title holder to give the title, and she received that amount of money on the lots.

Q. What amount?

A. The amount that was due, coming to me on the lots, she received that.

Q. Did she ever give you any money she received on any of these balances?

A. No.

The Court: It is possible he may mean this, that
20 sometimes all the money due on the lots was paid to him in full and in such cases she would make a deed as soon as he had gotten all the money and reported to her the lot was paid for in full. In other cases a few of the purchasers wanted to borrow money on their lots and they hadn't paid off all of the purchase price but had paid him in part and there was a balance remaining due, and the building and loan, of course, required the lots should be paid for in full and a deed made, so when settlement was
30 made there would be a balance due to the owner of the land and that would go to her. That is what he may mean, but that is only a guess on my part.

The Witness: That is what I mean, you have explained it thoroughly.

By the Court:

Q. Did your stepdaughter, Mrs. Gardner, ever refuse or object to making a deed to a purchaser to whom you had sold a lot when all the payments had been made to you?

A. Not until recently.

Q. How recently?

A. Now, I can't remember how long, but a year,
10 anyway.

Q. Who was it she first objected to?

A. Samuel Coley.

Q. Is he here today?

A. Yes, sir.

Q. Coley paid you in full?

A. She wanted half of that money before she
would deliver a deed.

Q. Was that the first objection?

A. The first objection I can recall, the first one,
20 positively, and he is here.

Mr. John Wescott: Can you show approximately the amount of money he got out of the sales of these lots?

Mr. Ralph Wescott: There was no total of the items on these sheets; I have added that up myself

The Court: I don't think this list can really serve
us, Mr. Wescott; I don't think the list would be evi-
30 dential.

Mr. Ralph Wescott: To refresh his memory.

The Court: Yes, if he put it down at the time; I thought he said this was recently made up.

Mr. Ralph Wescott: That is my understanding.

The Court: What is his?

By Mr. John Wescott:

Q. How did you get the facts to make this sheet up?

A. From my book at home.

10 Q. Where is your book, at home?

A. Yes.

Q. Have you still got it?

A. Yes, sure, my account book.

The Court: Has anybody got the list of conveyances; the attorney here made a search of the records.

20 Mr. Richman: If the Court please, I have an abstract from the title company; they didn't have time to write up the search, but this is their abstract.

The Court: That would be more like it.

Mr. Richman: And I probably will have at the adjourned hearing the search made up from this abstract.

30 The Court: If we had in connection with that an authoritative statement of who the money went to we would know where we stood. Will your list state who received the money in each case?

Mr. Richman: No. I can show what Mrs. Gardner received.

The Court: Go ahead, we will get along the best we can.

Mr. Ralph Wescott: I have a number of tax receipts, if the Court please, made out against this property to Samuel H. Pine; they don't cover the entire period from 1910 to 1925, but I will offer them for what they may be worth.

Mr. Richman: If the Court please, I think I should object to these tax receipts; the mere offer of tax receipts doesn't show Mr. Pine paid them.

10

Mr. Ralph Wescott: I think they will couple up with the checks that are introduced. These are your tax receipts for the years named on each receipt?

The Witness: Sure they are.

Mr. Ralph Wescott: Have you paid those?

The Witness: I certainly have.

20

The Court: With your own money?

The Witness: With my own money.

(Said receipts marked Exhibit C9.)

Q. Did Mrs. Gardner ever furnish the money to pay for them?

A. No, sir.

Q. You heard Mr. Beckley of Woodbury testify about the time when the Mason farm was sold for taxes?

30

A. Yes, sir.

Q. And you had him clear it?

A. Yes, sir.

Q. Did you pay him at that time?

A. I paid him.

Q. Out of your own account?

A. I sure did.

Q. Mrs. Gardner had nothing to do with paying that money?

A. No, sir, nothing at all.

Q. I show you a number of installment books marked on the back "Hazel Springs" and written upon under that title and ask you in whose hand-
10 writing it is?

A. My own.

Q. What was the purpose of these books?

A. When people bought lots and made payments that was their receipt book; when they did that I gave them a receipt in that book for what they paid.

Q. "Mrs. R. Wise, 135 East Allen, Philadelphia, Pa., total \$300.00, \$5.00 each month, 2 lots," that is in your handwriting or printed on the back of this book, and is that a correct record of what the peo-
20 ple just named have paid you?

A. Yes, sir, that is.

Q. In the inside of the book where the payments are recorded in the column marked "Signature" the name of S. H. Pine appears; these receipts are all made by you, are they, Mr. Pine?

A. Practically all except some of them my wife made, a few she has made on different ones.

Q. I show you another such book with the name of James F. Brennan and call your attention to the
30 signature column on the inside of the book and ask you when the signature appears to be "S. H. Pine, per A. M. P." who did that writing?

A. My wife.

Q. What was her name?

A. Annie M. Pine.

Mr. John Wescott: And she was the mother of this defendant?

The Witness: The mother of Mrs. Gardner and Mr. Ward.

Mr. Ralph Wescott: The same evidence appears in several of these other books. I would like to offer these, it having been testified that all of them were given to customers that bought their lots from
10 this complainant.

The Court: How many books have you there?

Mr. Ralph Wescott: Six.

The Court: Are any of them paid in full?

Q. Mr. Pine, can you answer the Court's question by referring to the names on the books? Take
20 this book with the name James Wright on it?

A. Paid in full.

The Court: Has he a deed?

The Witness: No, sir, no deed; there is the receipt in full, my signature.

Q. Take the book with the name William Seibel.

A. Paid in full.

30

The Court: Has he a deed?

The Witness: No, sir.

Q. The last payment was made when?

A. 3-15-24.

The Court: Why haven't those two people had their deeds?

The Witness: She has refused to sign deeds.

Q. G. W. Krebs.

A. This isn't paid in full, no.

Q. When was the last payment?

A. 8-11-24, and he has some receipts since then,
10 since he loaned me this book.

The Court: But it is not paid for in full?

The Witness: Not credited on the books.

The Court: Is the lot paid for in full?

The Witness: No, sir.

20 Q. William J. Wakeman. Is this your writing on the inside of the book?

A. It is receipted in full. He has his deed.

Q. He has his deed?

A. Yes, sir.

By the Court:

Q. It is paid for in full?

A. Yes, sir.

30 Q. When was the last payment?

A. 3-5-23.

Q. Did you receive all the money?

A. I received all the money.

Q. Did Mrs. Gardner make the deed?

A. Yes, sir.

Q. Without any objection because she hadn't received the money?

A. Without any objection whatever as far as I know.

Q. James F. Brennan?

A. That is paid in full and the last payment I received was 12-1-22, but I didn't receive all of it on this book.

The Court: Who did receive the balance?

The Witness: Mrs. Gardner. He wanted to borrow, he was building a big store at Hazel Springs on my property and he wanted a loan.

The Court: And in the settlement the balance went to Mrs. Gardner?

The Witness: Yes, she had to give the title.

Q. Now, referring again to the book signed Mr. and Mrs. R. Wise tell us whether that is paid up? 20

A. Not paid in full. Mr. Wise came to me last September about a year ago and said his children had no clothes and he had no coal in the cellar and he was out of work and he had paid \$65.00 on the lots and he wanted to sell them, and I said, "You can't sell them, you have no deed," and then he said he had some lots up Jersey, and I said, "Why don't you sell them and live here alongside your relatives?" and he said, "They won't give me any money on them what I paid for them, they are going to close me out," and I gave him his \$65.00 back again. 30

Mr. Ralph Wescott: I will offer these books, if the Court please.

(Said books marked Exhibit C10.)

Q. Have you had any more of these books—how did you get these?

A. Numbers of them, but most of them are people who live in the city, they have them; these are ones I got around home.

Q. You borrowed these?

A. Yes, sir; and when people would give them up and get their deeds I would destroy them.

Q. These are borrowed books?

10 A. Yes, sir.

Q. And there are others you can't get?

A. Yes, sir.

Q. And you have books at home that have got the whole account in?

A. Yes.

Q. Be sure to bring that the next time.

A. I will have to make a memorandum of it.

20 Mr. John Wescott: You don't have to do that.

The Court: Bring all the books you have that have anything about this case.

Q. And any further books or any papers you can locate. There is a memorandum you told me something about which I don't recall, can you explain what it is?

A. Yes, that is a memorandum; I don't know whether it is accurate or not.

30 Q. Whose handwriting is it in?

A. Payton, \$150.00, when he wanted to borrow money; Brennan \$175.00, and McKinley \$70.00, they all wanted loans.

Q. Did these people purchase lots from you?

A. Yes, sir.

Q. What was the occasion of your making this memorandum?

A. Just as it happened. I didn't make this memorandum until after they forbid me selling any more lots, not until then I made this memorandum, and I have lots of others to look after when I have the time.

Q. Does this represent sums of money that were received by Cordelia Gardner or sums of money these people wanted to borrow from building and loan associations, or what?

A. Wanted to borrow from building and loan as- 10 sociations and that is what they owed on their lots, owed on their lots, see, what they owed.

Q. What is your best recollection, Mr. Pine, of the total amount that you have received on the sales of these various lots?

A. I haven't figured it up, I don't know how much.

Mr. John Wescott: Throw something at him.

20 The Court: I don't suppose you are interested at all.

Q. Do you care whether you get this farm or not?

A. I sure do. I would say \$10,000, maybe more, that much, anyway.

Q. That you have received?

A. Yes.

Q. Does that include any part that has gone to Cordelia Gardner? 30

A. That is what I have received.

Q. Now, how much do you suppose she has received from all these sales?

A. Say in the neighborhood of \$1,000 through various ways.

Q. Did you ask Mr. Beckley of Woodbury to get an accounting from Cordelia Gardner?

A. Did I ask Mr. Beckley?

Q. Yes.

A. I don't remember.

Mr. Richman: Let him testify, Mr. Wescott.

Q. Have you ever wanted to know how much Cordelia got?

A. I sure have.

10 Q. Did you ask her?

A. We weren't on good terms, awful bad terms until after mother's sickness and I buried the hatchet and everything was nice. That is the reason I never went to her home, I said I would never cross her door but I did bury the hatchet.

Q. Did you ever ask her how much money she got from these lots?

A. No.

Q. Have you had anybody else do that?

20 A. No.

The Court: When she received the moneys from the building and loan associations in the settlements why didn't you have her pay them to you?

The Witness: Why didn't I have them pay it to me?

The Court: Yes, instead of her keeping it, why
30 didn't you have her pay it over to you?

Q. It was your money?

A. Yes, but she was writing home to mother what poor circumstances she was in, and so on, and I didn't bother making any trouble, it was all in the family.

Q. Was it a matter of indifference whether she kept \$1,000 of your money or not?

A. Not in the final settlement, no, sir; that is what we are trying to get at now.

The Court: Didn't you have any use for the \$1,000 she had in her hands?

The Witness: I sure had. I might have used it
10 in the future years.

Q. You were willing to let her have it if she needed it more than you did?

A. I certainly was at that time.

Q. What was your wife's attitude on this matter?

A. My wife's attitude was always for her daughter and grandchildren, always. Blood is
is thicker than water.

Q. Did you do anything to bring this matter down
to brass tacks and have it figured out? 20

A. Only what Daniel Beckley did for me.

Q. Did you threaten to take proceedings?

A. Yes, sir.

Q. When did you first begin to do that?

A. I told her—I don't know when, I don't remember those dates.

Q. When did you pay Mattie Berg off the \$500 mortgage on the Blenheim store?

A. I don't remember the date of it, I don't remember the date of it. I remember it was paid off
30 lest the mortgage wouldn't have been cancelled.

Q. You remember that such a thing happened?

A. Sure.

Q. And at that time did you make any attempt to get from Cordelia and her husband a deed?

A. I sure did.

Q. When was that?

A. Somewhere around that time. It was so much trouble to get deeds way to Gibbsboro.

Q. Did you go to see them about it or did they come to see you?

A. I wrote them and I got Beckley to do the work for me, I wrote them.

Q. Did you do anything before you went to Beckley except to write them?

10 A. No, not to my recollection.

Q. Did you threaten to do anything before that time?

A. I threatened to enter proceedings to get the deeds and have the deeds.

Q. Now, was there anything said that led you to believe —

A. Mother said, "Everything will be all right," their mother is my wife, "Everything will be all right, you will get the deeds," and I said, "Yes, but 20 I need them right away."

Q. What was the state of your wife's health during this time?

A. Very poor health.

Q. What would be her attitude when you would say you insisted on getting your deed?

A. I was afraid the excitement—she had heart trouble and I was afraid the excitement would cause a collapse.

Q. And that led you to desist?

30 A. That led me to ease up and not go on with the proceedings.

Q. Do you recall when your wife died?

A. No, I do not; sometime in the winter of 1924—1922, I think she has been dead two years, or will be this winter.

Q. And it was directly after that, that you took up

this matter of getting your deed from Cordelia Gardner?

A. Not much Mr. Richman called me—requested me to come to his office at such and such a time on such and such a date, but I was there as requested.

Q. When was it you went to Beckley?

A. That was a couple of years ago, three years ago, probably, I don't remember just how long.

Q. That was before your wife died then, wasn't it?

A. Yes, sir. 10

Q. Why did you go to see Mr. Richman?

A. Why, through his request, that is the reason I went to see Mr. Richman.

Mr. John Wescott: This Mr. Richman?

The Witness: Yes, sir, Mr. Grover Richman.

Q. Did he make any proposal to you?

A. He told me that he was requested by Mrs. 20 Gardner to forbid me selling any more lots.

Q. And did you argee or not that you would sell any more lots?

A. He wanted me to promise him I wouldn't sell any lots in the future and I told him I would sell no more at present.

Q. Then what did you do?

A. He asked me if I had employed counsel and I said no but I would before I left Camden. We had quite a little talk.

Q. Was it from there you came to Wescott and 30 Weaver's office?

A. No, I went to Mr. Tobin's office first.

Q. Mr. Tobin's office?

A. Yes.

Q. And it was through him finally the matter reached us, is that correct?

A. Not exactly through him but it was through me it reached you.

Q. But it got there?

A. Yes.

Q. And now we are here?

A. Yes.

The Court: It is now five minutes of one—three minutes of one; can counsel get back by half-past one?
10

Mr. Richman: Yes.

The Court: Then we will take a recess until half-past one.

(At this point a recess was taken until 1:30 o'clock P. M.)

20

(Trial of the cause resumed at 1:30 o'clock P. M., pursuant to adjournment.)

SAMUEL H. PINE, recalled.

Cross-examination.

30 By Mr. Richman:

Q. Mr. Pine, who was Mr. Ayres you spoke of?

A. Mr. Ayres was a neighbor of mine in Blenheim; I lived there at the time and he did the business for me, that is, making searches, and so on, Notary Public.

Q. Did he prepare these mortgages?

A. He did. I suppose he did, yes, he did the business for me.

Q. At your request?

A. At my request.

Q. And you say he understood all about it, did he?

A. Yes, sir.

Q. When did he die?

A. You have that record. When did he die? Two or three years after he made this. 10

Q. It is a fact he died October 22, 1919, didn't he?

A. I won't say that, I don't know, but I went and got the date from the tombstone in the Baptist churchyard and gave it to my attorney.

Q. When these papers were signed you were not present?

A. No, sir.

Q. Do you know who was present?

A. I don't know, I was working at the time for Mr. Beakley. 20

Q. And you don't know what Mr. Ayres said to Mr. and Mrs. Gardner who signed the mortgages when they did execute them, do you?

A. No, sir, I do not.

Q. Now, Mrs. Berg, Mattie Berg, did she understand about the original transaction?

A. The original transaction?

Q. Between you and Mrs. Gardner?

A. She understood that.

Q. She thoroughly understood it, did she? 30

A. Yes, positively.

Q. And she used to visit you?

A. Yes, sir.

Q. As a matter of fact, she used to live with you during the summer time?

A. Yes, sir.

- Q. When did she die?
 A. That I don't know, I don't know when.
 Q. She died in 1923, didn't she?
 A. I won't say she did, because I don't remember.
 Q. February, 1923?
 A. Yes.
 Q. Now, Mrs. Pine, your wife, she understood about the original transaction, didn't she?
 A. She sure did.
 10 Q. Thoroughly?
 A. Yes, sure she understood it.
 Q. And if she was living she could testify today?
 A. I am sure she would.
 Q. And she died when?
 A. I don't remember the date, sometime I should say—two years ago this coming winter or fall.
 Q. Do you remember the exact date, Mr. Pine?
 A. No, sir.
 Q. When do you say she died?
 20 A. To the best of my knowledge—time flies so fast.
 Q. You are now speaking about your wife, when did she die?
 A. When?
 Q. Yes.
 A. I have told you as near as I can; I don't remember now.
 Q. When was it as near as you can say?
 A. Two years ago this fall or winter.
 30 Q. Two years ago this fall, is that your best recollection?
 A. It might be three, but somewhere around there. Time flies.
 Q. Is that your best recollection?
 A. That is my best recollection.
 Q. And you fix it two or three years ago last fall?

- Mr. Ralph Wescott: This fall.
 Q. This fall?
 A. Two years ago, I should say, to the best of my knowledge.
 Q. Do you remember the month?
 A. No, I do not.
 Q. But you are sure it was in the fall?
 A. Fall or winter or spring, I don't know, I don't remember which. 10
 Q. What?
 A. I don't remember what time exactly, whether it was in the fall or winter.
 Q. Now, Mr. Pine, you stated in your direct testimony that at one time you owned the Blenheim property, did you?
 A. What say?
 (Question repeated.) 20
 A. Yes, sir.
 Q. And you were sold out by the sheriff?
 A. No, sir.
 Q. You lost the property?
 A. I lost the property but not sold out by the sheriff.
 Q. And Mrs. Gardner bought that property at your request and Mrs. Pine's request, didn't she?
 A. She got possession of it.
 Q. She bought it for both of you and took the title 30 in her name?
 A. Took the title in her name, bought the mortgages.
 Q. And you lived there, you and your wife?
 A. Yes, sir.
 Q. And paid a nominal rent of \$5.00 a month, isn't that correct?

- A. Yes, sir.
- Q. And then you moved from there to the Mason farm, isn't that correct?
- A. Yes.
- Q. And you went to the Mason farm because you wanted a little more room to farm, isn't that correct?
- A. No.
- Q. What is correct then?
- 10 A. I bought the Mason farm thinking it would be worth some money some day soon, that is what I bought it for, and a home besides.
- Q. Now, you had an understanding with Mrs. Gardner about this property, didn't you?
- A. An understanding?
- Q. Yes.
- A. When her mortgage was paid it was to be my home, sure.
- Q. Now, were you to pay the taxes, interest on the
- 20 mortgages, and taxes on the farm?
- A. I always did.
- Q. From your own money?
- A. From my own money.
- Q. But you were to pay the interest and taxes?
- A. What say?
- Q. You were to pay no rent?
- A. No, not on my own home.
- Q. But you were to pay interest and taxes, is that correct?
- 30 A. Yes, and I did pay them; not were to pay them, I did pay them.
- Q. What was the reason for selling a part of this property?
- A. What was the reason for selling it?
- Q. Yes.
- A. To not only pay my creditors but to help me

along with my back interest money and other things, and mortgages, to help me pay them.

Q. And the original sale of this property was put in the hands of Mr. Dunk by Mrs. Gardner, wasn't it?

A. No, sir, not to my knowledge.

Q. Mr. Dunk made two sales?

A. He acted as my agent, not Mrs. Gardner's.

Q. He made two sales whoever he acted for?

A. I don't know whether he made two sales or 10 not; I had a piece sold but he slipped in and closed the deal on that. I don't remember the second sale, I remember one; I don't think he made two, one.

Q. Do you know what Mr. Dunk did with the money he received?

A. I don't know exactly what he done with the money; I think he gave me a receipt that is out there.

Q. Mr. Dunk?

20

A. Yes.

Q. Did he ever pay you any money?

A. Did he ever pay me any money?

Q. Yes.

A. A small balance, I think. I think he kept that for the balance I owed him, a trifle, for putting up a sign, and things like that.

Q. You never received any money from Mr. Dunk, did you?

A. Who never received any?

30

Q. You?

A. Not to my knowledge, no, positively no.

Q. Now, after that you wanted to sell this property, didn't you?

A. Yes, sir, wanted to sell my own.

Q. You didn't approve of Dunk selling it, did you?

- A. No.
- Q. You had some quarrel with him?
- A. Yes, sir.
- Q. All right. Now then, you made an arrangement with Mrs. Gardner about your selling this land, didn't you?
- A. Made an arrangement with Mrs. Gardner about selling this land?
- Q. Yes.
- 10 A. Positively no.
- Q. Didn't you agree with her that if she would let you sell some lots that she was to get the entire purchase price except ten per cent to you?
- A. Positively no, sir.
- Q. All right, now. And didn't she agree to sell so much of the land as was necessary to pay off the mortgage and fix up the house?
- A. No, sir, positively no, no agreement of that kind.
- 20 Q. Wasn't that the understanding?
- A. Positively no.
- Q. Didn't you go to the First National Bank of Blackwood and open up a bank account with her when she made the arrangement with you?
- A. Positively no, sir.
- Q. What?
- A. Positively no, sir, never made the arrangement with her.
- Q. You did not?
- 30 A. No, sir.
- Q. You went to the bank, didn't you, and spoke to them about opening an account for her?
- A. I did.
- Q. You did or you did not?
- A. I did, yes, sir.
- Q. I understood you at first to say you did not.

Mr. Ralph Wescott: You asked a different question then.

- Q. You did go up and open a bank account in her name?
- A. Yes, sir.
- Q. Why did you do that?
- A. Why did I do that?
- Q. Yes.
- A. As I said before, before the Court here, her 10 mother was always receiving letters and she was stating how hard it was to make buckle and strap meet, that is the way I put it, and I did that to help them along.
- Q. Her husband was living at the time?
- A. Sure.
- Q. And living on their own farm?
- A. Yes.
- Q. And George was farming it?
- A. Yes. 20
- Q. As far as you knew they were getting along all right?
- A. No, not as far as I knew, because mother would tell me they were not. A farm doesn't always bring a profit.
- Q. You mean you turned some of this money over to her for her support?
- A. I opened an account in the Blackwood bank for her in case she needed it.
- Q. Do you recall how much money you put in that 30 account for her?
- A. \$75.00, your Honor.
- Q. And she afterwards gave you back \$50.00 of it, didn't she?
- A. What say?
- Q. Didn't she give you \$50.00 of that \$75.00?

A. I gave her a note for \$50.00, yes, and the note was never presented at the Blackwood bank, if it had that would have been paid.

Q. What was the note for?

A. I needed \$50.00.

Q. Was this check of \$50.00 a loan on a note?

A. No, sir, that wasn't no loan on a note, I deposited this \$75.00 to her credit in the Blackwood bank and then I gave her a note for another \$50.00.

10 Q. Did you ever pay it?

A. Never was presented at the bank, never presented to me, either, if it had been presented to the bank it would have been paid, or protested, and I never received no protest.

Q. Now, that \$75.00 was the proceeds of what sale, if any?

A. What sale?

Q. Yes.

A. Perhaps came from building lots I sold.

20 Q. Do you know whether it did or not?

A. It either came from my work or from selling building lots, I don't know whether it came from working or the building lots, but it came from my account.

Q. Now, Mr. Pine, when Mr. Dunk was selling lots you were working where?

A. On the Bateman farm.

Q. After you began to sell lots you quit work, didn't you?

30 A. No.

Q. The Bateman farm?

A. Yes.

Q. You were working there?

A. If I remember right.

Q. But shortly after you began selling lots you quit work, discontinued work, didn't you?

A. I discontinued work, sure.

Q. And devoted your time to selling lots?

A. No, sir, devoted my time home, worked on my place.

Q. Do you remember a settlement was made with the Storie Agency for one of these lots?

A. I remember several settlements which she made.

Q. The settlements were to be made with the Storie Agency because Mrs. Berg requested it, isn't that so, she held then the mortgage, they representing the mortgagee at that time? 10

A. I remember one settlement, but what it was—I remember Mrs. Berg was there, or her husband, maybe both at the time, at Storie's office, Woodbury. He is dead.

Q. On December 18, 1919, Mrs. Gardner received \$70.00 from Mr. Storie's agency, why?

A. That I can't answer.

Q. Was it part of the proceeds of the sale of a 20 lot?

A. Not to my knowledge, I have no record of that.

Q. Did you tell Storie to send it to her?

A. Not to my knowledge I did not.

Q. Well, you don't deny that they did send it, do you?

A. Whether I did or not I don't know, I won't swear to a lie.

Q. Now then, if you were giving her this money because of support how comes it that Storie sent 30 her that money?

A. I don't remember him sending her any money, I don't know what he did.

Q. If he did send her \$70.00 you know nothing about it, do you?

A. No, I have no record of it.

- Q. Now, in May 15, 1920, she received from Mr. Dunk \$121.48, do you know what that was for?
- A. I don't know what it was for.
- Q. Do you know that he did send it to her?
- A. I don't know that he sent it to her, no, positively.
- Q. Don't know anything about it?
- A. No.
- Q. If he did send it to her was it part of the proceeds of the sale of a lot?
- A. It must have been because he wouldn't have gotten it any other way, because I wouldn't have let him have it, I wouldn't trust him that far.
- Q. You wouldn't trust him that far?
- A. No.
- Q. Now, do you remember again on October 13, 1920, Mrs. Gardner receiving \$160.00 from Mr. Dunk?
- A. No.
- 20 Q. Do you know what it was for?
- A. I don't know what it was for.
- Q. Don't know anything about it?
- A. No, positively, no.
- Q. You remember making a sale to a Mr. Brennan, don't you?
- A. I do.
- Q. You made that sale?
- A. His book is right here.
- Q. That settlement was made in the office of Mr. Watkins of Woodbury, wasn't it?
- 30 A. I don't know where it was made, it was made in Woodbury.
- Q. Mr. Watkins sent Mrs. Gardner on January 12, 1923, \$412.00?
- A. Yes.
- Q. Do you know anything about that?

- A. I don't know.
- Q. Wasn't that from proceeds of sale from the Brennan lot?
- A. I won't say whether it was or not, I don't know anything about it.
- Q. Was that sent to Mrs. Gardner for her support, or not?
- A. I don't know anything about that money, I tell you, I don't know, I have no record of it.
- Q. Now, there was another transaction in Mr. 10 Watkins' office, you sold a lot to a Mr. Peyton?
- A. Yes, Mr. Peyton.
- Q. And settlement was made in Mr. Watkins' office?
- A. I don't know where it was made.
- Q. Do you know whether he sent Mrs. Gardner on October 3, 1922, \$150.00?
- A. I don't know whether he did or did not, I know that is what he owed me on the lot.
- Q. That was the balance due on the lots? 20
- A. Yes.
- Q. That Peyton owed?
- A. Owed me, yes, sir.
- Q. \$150.00?
- A. Yes, sir.
- Q. But you didn't get it?
- A. No, sir.
- Q. Did you know that Mrs. Gardner got it?
- A. I supposed she got it, sure, she was there when Peyton got the lots. 30
- Q. Did you tell Mr. Watkins to send it to her?
- A. I did not, no, sir.
- Q. Did you sell a lot to a man by the name of McKinley?
- A. I did.
- Q. Do you remember giving Mrs. Gardner at that time \$35.00 in cash?

A. Do I remember giving it to her in cash? I didn't give her \$35.00 in cash, I don't remember anything of the kind.

Q. Do you remember giving her a check for that amount?

A. No, sir, I don't remember it.

Q. Do you remember a check sent for that amount?

A. No, sir. I remember Mr. McKinley wanted a loan and he hadn't paid for his ground and that was
10 adjusted at Woodbury or somewhere else, and I know she must have got the balance on that money.

Q. Now, did you sell a lot to Walter Farr?

A. Yes, sir, and he is in court.

Q. Has he got his deed?

A. Yes, sir.

Q. Now, you deny, I understand, you have acted as the agent of anybody in the sale of this land?

A. I never acted as agent.

Q. Never signed yourself as such?

20 A. What?

Q. Never signed yourself as such?

A. I sold it as my own but at the start I signed as agent.

Q. Agent of who?

A. S. H. Pine, agent.

Q. For who?

A. Nobody practically speaking, but I signed as agent because I wasn't the title holder under the circumstances.

30 Q. You did that when you first started?

A. Yes, sir, but after I was able to square myself I signed S. H. Pine always.

Q. When were you able to square yourself?

A. May I look at this?

Q. Yes.

A. I think I can get it from one of these. No, I can't. I don't just remember when.

Mr. John Wescott: What do you mean by square yourself?

The Witness: Have you got a book with you? Mean by squaring myself, able to handle the farm myself, my own home myself, able to square off the mortgages.

Mr. John Wescott: You mean when you got the mortgages paid off?
10

The Witness: Yes, I sold a lot and had \$1,000 and another \$1,000 in hand if I had to have it to settle with Mrs. Mattie Berg, if I had to have it.

(Mr. Wescott hands witness a book.)

The Witness: I can come pretty near to the date by this. Right around 11-19-20, the last signature I put in his book as agent.
20

Q. And that receipt to Mr. Farr where you indicate as being agent is signed by you?

A. That is my signature and receipt.

Q. Did you write the word "Agt." there?

A. Yes, that is my signature.

Mr. Richman: No objection to it going in?

Mr. Ralph Wescott: No, not at all.
30

(Said book marked Exhibit D1.)

Q. You had the farm or part of the farm plotted, didn't you?

A. What say?

Q. You had the farm plotted, didn't you?

A. Plotted what do you mean by plotted?

Q. Laid out in lots?

A. Yes, sir.

Q. Who did that for you?

A. Mr. Storie, Woodbury.

Q. All of it?

A. No, not all of it.

Q. Who else did it?

10 A. Gardner Driver surveyed it for me.

Q. Now, I show you two blue-prints which I have submitted to your counsel bearing date 1916, are they the blue-prints that you had made up by Storie?

A. Is his name on there?

Mr. Ralph Wescott: Storie's name is on there.

20 The Witness: Sure, and I paid him for making them up.

Q. The prints refer to the land of Cordelia Gardner, did you know that?

A. Whatever is on there I know because I have seen it if it is that way.

Q. Did you tell Storie to put that on?

A. I didn't tell him to put that on, positively no.

Q. How did he get the name of Gardner, do you know?

30 A. He did business for me in writing deeds and making searches.

Q. Is that the way he got the name of Cordelia Gardner?

A. Why, sure.

Q. Well, now, the \$500 mortgage was paid off at that time, wasn't it?

A. I don't remember whether it was or not.

Q. You do not?

A. No.

The Court: What is the date of the print?

Mr. Ralph Wescott: The record shows the title was in Cordelia Gardner; the civil engineer couldn't have done otherwise if he wanted to make a true record.

10

The Court: The date of the print?

Mr. Richman: One is 1914, and the other is July 14, 1916.

The Court: Do they both indicate Gardner is the owner?

Mr. Richman: The blue-print dated July 14, 1916, refers to it as the land of Cordelia Gardner, and the one dated 1914 refers to just Cordelia Gardner.

20

Mr. Ralph Wescott: The mortgage was cancelled—I have the one here that was cancelled in 1920, I haven't the other mortgage, Mr. Richman has that.

The Court: The \$500 one was cancelled when?

Mr. Ralph Wescott: In 1916, the year when this latter blue-print was made, your Honor.

30

The Witness: They must have been taken from my home, your Honor.

Mr. Ralph Wescott: But I suppose if the blue-

print was made now it would have to bear that name.

Mr. Richman: According to the record it was cancelled of record August 25, 1916.

The Court: That is the \$500 mortgage?

Mr. Richman: Yes.

10 Q. It was your understanding, Mr. Pine, when the mortgage was paid off you were to have a deed?

A. Yes, sir, sure was, I should have had it then.

Q. You knew the mortgage was paid off, didn't you?

A. I did, yes, sir, I knew that.

Q. Why did you continue to deal with this land as the land of Cordelia Gardner after that?

A. After I paid the mortgage?

Q. After the mortgage was paid off?

20 A. After I paid the mortgage why did I? It was my own under the consideration, I didn't owe her \$500.

Q. You had paid \$500 off?

A. Yes.

Q. And you continued to deal with the land as the land of Cordelia Gardner, didn't you?

A. Yes, as I always had, as my own, sure.

30 Q. What explanation have you that this blueprint bears the name of "Lands of Cordelia Gardner?"

A. What explanation?

Q. Yes.

A. The title was in her name, sure.

Q. But you continued to deal with the land after the \$500 was paid off as the land of Cordelia Gardner?

A. No, sir, as my own, always have continued to deal with it as my own and still am continuing to deal with it as my own home, and it is sure my own, I bargained for it and paid for it, interest and taxes were assessed to me and I always paid them, but this is a family affair, understand, a family affair, tried to adjust it within ourselves, but nothing doing.

Q. The original deposit of \$100 you never paid?

A. What say?

Q. The original deposit of \$100 you never paid? 10

A. Ten times over.

Q. How?

A. In different ways?

Q. In what way?

A. Different ways.

Q. When did you pay it?

A. It has been paid ten times over, bought her an organ, music teachers, clothed her and paid for it. She was no kin of mine.

Q. She was your daughter, wasn't she? 20

A. Did I marry the whole family?

Q. Probably not?

A. But I kept them, my dear sir, not only them but others.

Q. Wait a minute. Did you ever pay by cash or check the \$100 deposit?

A. Yes, I have.

Q. When?

A. There is two credits in the book there for \$75.00, and the last time in our home I asked her 30 if I owed her anything and she said "You don't owe me nothing," now, isn't it paid.

Q. You have maintained up to now what you paid her was for her support, you said that \$75.00 was for that purpose, now you say it was for the original deposit she made for you, is it or isn't it?

A. I paid that \$100 ten times over. She borrowed from me.

Mr. Richman: Have you any objections to these blue prints going in?

Mr. Ralph Wescott: No, sir, not at all.

(Said blue-prints marked Exhibit D2.)

10

Q. Do you know whether Mr. Dunk paid any interest to Mrs. Berg on the mortgages?

A. Whether he paid it or not?

Q. Yes.

A. I know he didn't pay anything without he got money from me to do it with.

Q. You are positive about that?

A. He got his money because there is the receipt in full to me; if he paid money to Mrs. Berg on interest he got it back again, he got it, that is his receipt.

20

Q. If he paid interest money to Mrs. Berg where did he get it?

A. If he didn't get it from me I don't know where he got it.

Q. How did he get it?

A. From the ground he sold off my farm he might have gotten it from that; he got the \$500, I understand he might have paid her interest from that.

30

Q. Outside of that did you ever give Harold any money to pay her interest?

A. I may have because he did her business for her, I didn't know anything about her business, understand, he did her business, I may have given him money to pay on the mortgage.

Q. Do you know that Mr. Dunk paid Mrs. Berg

interest on the mortgages from July, 1912, until January 25, 1920?

A. I know the interest on the mortgages was paid, my dear sir.

Q. Do you know that Mr. Dunk paid it?

A. If he did, he paid it through the money that came from my home or through me, if he did; he did her business, I tell you.

Q. But you don't know whether he did or not?

A. No, I don't know.

10

Q. Did you ever inquire of him whether he did or not?

A. I never inquired.

Q. Did you ever inquire of Mrs. Berg as to whether or not she was getting her interest?

A. No, because I knew if she didn't get it she would let me know.

The Court: Did you tell Mr. Dunk to pay it?

20

The Witness: If he paid it I must have told him.

Q. But did you tell him?

A. I must have; he wouldn't have paid it if I didn't give him the money to pay it with.

Q. Did you know that Mr. Dunk paid \$700 on account of these mortgages?

A. I know he did it, yes.

Q. You know he did it?

A. We have a record of it, yes.

30

Q. How did you know that?

A. How did I know that?

Q. Yes.

A. The record there, their receipt.

Q. That he gave you?

A. Yes, there it is. That is where we quit right there.

Q. You kept no track of the interest from 1912 to 1920, did you?

A. What say?

Q. You kept no track of the interest from 1912 to 1920, did you?

A. I sure did keep track and know what interest was coming due, I knew what I owed.

Q. But you didn't pay it?

A. It was paid and I did pay it; who else paid
10 it if I didn't.

The Court: From 1912 to 1920 I understand Mr. Dunk paid that interest; now, did you know that he was paying it or did you learn that after 1920 when it was all paid?

The Witness: He must have received the checks; I gave him the checks, I know it, to pay the interest with.

20 Q. You gave him checks between 1912 and 1920 to pay interest?

A. I don't mean to say that; if I did I knew he paid it because the checks would come back.

By the Court:

Q. Didn't you know whether the interest was being paid up or whether it was not?

30 A. Sure I did.

Q. What did you know?

A. I knew I was behind in interest more than once through unfavorable circumstances.

Q. Did you know it was paid up, or didn't you?

A. I knew everything was paid up.

Q. You know it now, but did you know at the time?

A. I knew whether I was paid up or not, whether I paid or whether I didn't, I knew that, your Honor.

Q. Did you know how it was paid?

A. But the dates I don't know anything about.

Q. Did you know at the time these payments were made that they were made and who made them, did you know that?

A. I sure did know at the time if he made them,
10 whether they were made.

By Mr. Richman:

Q. How did you know it?

A. How did I know it?

Q. Yes.

A. That is the question; I got a receipt there.

Q. From who?

A. Harold Dunk or Mrs. Berg, the mortgagee; I
20 would have the receipt.

Q. Where are they?

A. Where are they? Where did these papers come from? I will answer yours by asking you one. Where did they come from?

Q. Where are your receipts?

A. The receipts went the same as they did, right. Like lots of other papers, where are they?

The Court: By that I understand you to mean these blue prints were taken from your home with-
30 out your knowledge, and the reason you don't have receipts is because you believe the receipts were taken from your home?

The Witness: Yes.

Q. Now, don't you remember going to see Mrs. Gardner at Kirkwood where she lived and Marvin Beakley drove you there?

A. No, sir.

Q. Do you remember the conversation you had with her after you had dinner and were about to leave and go?

A. No, I don't remember, I don't remember being there with Marvin Beakley.

10 Q. Didn't you go there to tell her to go to Mr. Ayres and sign those papers?

A. I don't remember being there at all, positively. How could I remember telling her anything if I don't remember being there? I don't know that I was there, I don't remember.

Q. Don't you remember telling Mrs. Gardner that you understood that all you had to do was to pay the interest and taxes and that you and Mrs. Pine could live there but that she owned it?

20 A. Positively, no, no, she never said it.

Q. Didn't you say "Cordie, don't worry, it is all yours," didn't you say that?

A. Never said it, positively no.

Q. And didn't that conversation occur in her yard under the big tree that is there now?

A. No, sir, because I never said that.

Q. Now, right after that—you know Walter Ward, don't you?

30 A. I should have, I ought to know him, I ought to know him, indeed. I thought I knew him several years ago but I found him out later, know him better now than then.

Q. Your acquaintance has increased?

A. Yes, sir, I have found things out later.

Q. Remember going gunning with him after this transaction?

A. Lots of times.

Q. You remember particularly going gunning with him after this transaction was closed?

A. No, I don't remember that, but we gunned together lots of times.

Q. Don't you remember telling him the property was Cordie's and all you had to do was to pay the taxes and interest and you could stay there as long as you lived?

A. No.

Q. Didn't you have some conversation about it?

A. I don't remember whether I did or not, but not in that line, anyway, positively no.

By Ralph Wescott:

Q. Mr. Pine, look at this paper and tell me if you recognize the handwriting? I ought to have introduced this before, your Honor. "Received of Samuel H. Pine \$102.00 being a interest up to date 20 due January 25, 1912, on premises in Deptford Township, Gloucester County, New Jersey, in the name of Cordelia Mary Gardner and husband." Do you recognize that handwriting?

A. Yes, I do.

Q. Whose is it?

A. Isaac Beakley's.

Q. Have you ever seen him write?

A. Numbers of times; that is his handwriting.

Q. This is a receipt of principal and interest on 30 the mortgage before it was assigned. The paper shown the witness purports to be a receipt signed by I. E. Beakley as follows:—

The Court: Signed by who?

Q. I. E. Beakley, the first witness on the stand

today. "Received of Samuel H. Pine, \$102.00 for interest up to date, January 25, 1912, on premises in Deptford Township, Gloucester County, New Jersey, in the name of Cordelia Mary Gardner and husband, and premises at Mechanicsville, Gloucester Township, Camden County, New Jersey, full amount of principal being \$1700, interest on same to date being \$102.00. Received payment \$102.00."

10 The Court: What is the date?

Mr. Ralph Wescott: January 25, 1912. We offer that.

(Said paper marked Exhibit C11.)

Q. Look at that. (Witness is shown a paper purporting to be an accounting of disbursements from the Granese sale.)

20

The Court: From who.

Q. Granese, accounting of disbursements from Granese, that is the first \$1000 sale, and he is asked in whose handwriting it is.

A. Harold Dunk's.

Q. Are you familiar with his handwriting?

A. Yes.

30 The Court: Whose?

Mr. Ralph Wescott: Harold Dunk's.

Q. Have you seen him write?

A. Yes, sir, seen his writing and seen him write, too.

Q. Have you read this accounting over?

A. I have, yes, before I gave it to you.

Q. Where did you get that, Mr. Pine?

A. I received it from him.

Q. At the time this accounting was made?

A. Yes, I received this from him.

Q. At approximately the time the sale was made or after?

A. Shortly after, several days, sometime after.

Q. "Price received \$1000, principal paid off \$700; 10 interest due on principal \$725.16, \$255.00; tax lien with interest \$34.72; cancellation fee \$.28, collector \$.28, total \$.53; cancellation of mortgage \$.30; making a total of \$990.55, disbursements from the \$1,000, leaving a balance of \$9.45." Then there are some items below a line drawn across the paper referring evidently to some signs which Dunk apparently had put up, and the balance of the writing is "I am keeping the balance and calling same square although there is still \$.60 due me. Respectfully yours, H. A. 20 Dunk." I offer that.

(Said paper marked Exhibit C12.)

By Mr. Richman:

Q. Mr. Pine, did you get the money on that check for \$50.00?

A. I sure did.

Q. That check is from Mrs. Gardner, isn't it? 30

A. Mrs. Gardner.

Mr. Richman: Have you any objection to that?

Mr. Ralph Wescott: I haven't seen it; I don't suppose so.

Mr. Richman: I offer that.

(Said check marked Exhibit D13.)

The Court: What is the check for, from who to who?

Mr. Richman: Check dated March 31, 1919, drawn to the order of S. H. Pine for \$50.00, signed
10 Cordelia M. Gardner, endorsed by S. H. Pine.

Q. Mr. Pine, if, as you say, Mrs. Gardner needed support and that is how she came to get part of the proceeds of the sales of these lots, what explanation do you have of this check as a loan from her to you?

A. I gave her a note for that check, if I remember right. That is the \$50.00 note we spoke of.

Q. You say she was in bad circumstances?

20 A. I gave her a note.

Q. You say she was in bad circumstances?

A. I say from what her mother said, her own mother said, from the letter she received.

Q. But you didn't believe it?

A. I certainly did or I wouldn't have deposited this money, or I would have made trouble about the money she got from me.

Q. But you tried to borrow and did succeed in borrowing, \$50.00 from her?

30 A. Sure, from a note.

By Mr. Ralph Wescott:

Q. Was she in poor circumstances at the time you borrowed the \$50.00?

A. She must have had the money or I wouldn't have gotten the money, but where it came from I

don't know. She must have been willing to assist me for some reason or another.

Q. What did you want \$50.00 for at that time, have you any idea?

A. I don't remember what I wanted it for without it was in payment of a note, may have been in payment of a note due in the Blackwood bank, or something I bought at a sale, or something.

10

SAMUEL F. CAULLEY, SWORN.

By Mr. Ralph Wescott:

Q. Where do you live, Mr. Caulley?

A. Blackwood Terrace.

Q. Have you attempted to purchase a lot on this Mason tract sometimes known as Hazel Springs?

A. Yes, I bought a piece of ground there.

Q. Of whom did you buy it?

20

A. Mr. Pine.

Q. Did you ever hear that it didn't belong to him?

A. No, sir.

Q. That is, before you bought it?

A. Not before I bought it; later on when I had so much money in it then I found out and I couldn't get no deed.

Q. Have you paid for your lot?

A. No, sir, I stopped paying until I found out 30 what was going to be done.

Q. When did you make your last payment?

A. I will have to look at the book, 8-30-24.

Q. When did you make your first payment, Mr. Caulley?

A. Why, it was 8-12-19.

The Court: 1919?

The Witness: Yes, sir.

Q. How did you learn of these lots, what drew your attention to them?

Mr. Richman: I object as immaterial and irrelevant.

10

The Court: I think it is competent to see what the situation was around there.

Q. You may answer.

A. Well, I sold part of it to a man—I sold two lots, rather, for a certain amount —

Q. You didn't understand. Will you read the question, Mr. Stenographer?

20 (Question repeated.)

A. To buy them?

Q. Yes.

A. From friends of mine that had bought some.

Q. What did they tell you about them?

Mr. Richman: I object.

The Court: That is clearly incompetent.

30

Q. How did you get hold of yours?

A. Why, because I went to Mr. Pine and he had one part left there.

Q. Why did you see Mr. Pine?

A. Because friends of mine had bought their's and paid for them.

Q. Of Pine?

A. Yes, sir.

The Court: Now, you see, Mr. Wescott, his knowledge of that is necessarily what was told him.

Q. Yes. Did you see any advertisements signed by Mr. Pine?

A. No, sir, none whatever.

Q. How did you come to find out that Pine 10
couldn't give you a deed?

A. I understood he couldn't give deeds when I first bought the place, I understood that, your Honor.

Q. Did you know the reason?

A. As far as I understood Mrs. Gardner had a mortgage against it and, of course, he signed my book as agent, and I paid him as agent for Mrs. Gardner, that was my understanding when I paid the money, and I paid a few months and he took the agent off, and I made the remark to Mr. Pine, 20
"How is it you don't sign your name as agent any more?" and he said, "Well, I paid the mortgage off," and that is the understanding I had that he had paid it off.

Q. Then you expected to get a deed when you finished your payments?

A. Why sure, yes, sir.

Cross-examination.

By Mr. Richman:

30

Q. You did go and see Mrs. Gardner, didn't you?

A. Yes, sir.

Q. What did she say to you?

A. Will you let me explain; I tried to explain before but you stopped me.

Q. What did she say?

A. She said she wouldn't give me a deed unless she got half of the money I paid.

WALTER FARR, SWORN.

By Mr. Ralph Wescott:

10

Q. Where do you live?

A. I live in Blackwood Terrace.

Q. Have you purchased one of the lots that Mr. Pine has sold?

A. Yes, I purchased one, and more.

Q. From this Mason farm?

A. Yes, sir.

Q. Have you received deeds for it?

A. I have.

20

Q. To whom did you give the purchase money?

A. Mr. Pine, the man I bought the ground off of.

Q. All of it?

A. Every cent.

Q. Any objection ever raised about that to you?

A. No objection raised at all, and I never knew that Mrs. Gardner owned the ground, at least, that she said she owned the ground, until after I paid the last cent, and Mrs. Pine told me that, too.

Q. The wife of the complainant?

A. Yes.

30

Q. When you speak of Mrs. Pine you refer to Mr. Pine's wife?

A. Yes.

Mr. Richman: I ask that that be stricken out as hearsay.

Mr. Ralph Wescott: Yes, I am afraid it will have to be.

The Court: When did you buy?

The Witness: I bought it about six years ago and I have had my deeds about two years ago. I have paid taxes of my own about two years now, this is the second year I have paid my taxes.

10

Q. Is that the first purchase you made; you speak of buying more than one lot?

A. I bought three times.

Q. What was the earliest purchase?

A. About six years altogether and I got that there one paid off and I bought two more and I got them very near paid off and I bought two at the back.

Q. You have had no difficulty in getting a deed in each case?

A. I got them all in one deed.

20

The Court: And you paid all the money for all of them to Mr. Pine?

The Witness: Yes, the last payment I paid was \$185.00, and I paid every cent to Mr. Pine, he was the man I bought the ground off of.

Q. Who did you get the deeds from, who signed the deeds?

A. I got the deeds off Mr. Pine, I paid Mr. Pine \$3.00 for the deed.

30

Q. Do you know who signed the deeds?

A. No, I don't, but I could find out very soon at the next sitting; I know it is released by Cordelia Gardner.

Q. You got the release, did you?

A. Yes, sir.

The Court: That is probably the deed you are referring to.

Mr. Ralph Wescott: Undoubtedly he refers to the deed.

10 No cross-examination.

WILLIAM WAKEMAN, SWORN.

By Mr. Ralph Wescott:

Q. Where do you live, Mr. Wakeman?

A. Blackwood Terrace.

20 Q. Have you purchased lots from Mr. Pine?

A. I have.

Q. From the Mason farm?

A. The Mason farm.

Q. How many?

A. Well, one lot, and sold that and bought another lot.

Q. You have bought two from him?

A. Yes.

Q. Have you a deed or deeds for them?

A. Yes, deeds for both.

30 Q. A deed for each?

A. I did have but I turned the deed over for the one I sold.

Q. To whom did you pay the money?

A. Mr. Pine.

Q. All of it?

A. All of it.

Q. Have any difficulty in securing your deeds?

A. Not to my knowledge.

Q. By whom were they signed?

A. Cordie Gardner, I believe; to tell you, I never looked my deeds over to really know what they were.

Q. What is your business?

A. I am a builder.

Q. Did you have any conversation with Cordelia 10 Gardner respecting the purchase of these lots or respecting her interest in this farm?

A. I always done my business with Mr. Pine because I always thought Mr. Pine was the original owner; I figured Mr. Pine was the owner.

Q. Were you ever asked to do any work on the Pine homestead, the farmhouse there?

A. Mrs. Pine was after me continually to repair the place, that is, from the time I started in business down there until the time Mrs. Pine went to 20 Mrs. Gardner's home when she was sick, and on several occasions Mrs. Pine had wanted me to put a bay-window in her dining-room.

Q. Did you ever approach Mr. Pine about that work?

A. Yes, and no, because I realized that Mr. Pine —I heard him say he wouldn't do nothing until he got his deeds. Mr. Pine said "When I get my deeds" —

Q. What did you understand by that? 30

The Court: I wouldn't ask that.

Q. Don't answer that. What price did you pay for the two lots you got from Mr. Pine?

A. \$500 for one and \$150 for another, if I remember correctly.

Q. You had a book similiar to this lying on the table?

A. Yes.

Q. And had Mr. Pine's receipts in that book for all the money, did you?

A. Yes.

Cross-examination.

10 By Mr. Richman:

Q. You dealt with him as an agent, didn't you?

A. No, I dealt with Mr. Pine as the owner. It cost me \$25.00 to find out who was the owner through my own ignorance, I presume.

Q. Did he give you the receipts signed as agent?

A. I didn't ask for a receipt, I just trusted Mr. Pine because I have always put confidence in him.

20 The Court: You didn't get any receipt then?

The Witness: Only the book.

By Mr. Ralph Wescott:

Q. In the book how did he sign; have you the book with you?

A. No, I have not; there is one here of mine somewhere, I think.

30 Q. Is that the book, or one of the books?

A. Yes.

Q. This is already in evidence.

A. S. H. Pine.

Mr. Ralph Wescott: We beg to be able to introduce, when we can secure them, any further books the complainant has.

The Court: Introduce what?

Mr. Ralph Wescott: Any account books he may be able to bring in.

The Court: If your case is not closed you can put them in. Go ahead with your defense.

Mr. Richman: Before proceeding with my proof I want to put upon the record my objection and 10 raise the question of laches in this case. As disclosed by the testimony the complainant is subject to that defense and on that ground should be denied relief.

The Court: Do you want to amend your answer?

Mr. Richman: I don't understand I have to necessarily amend my answer.

The Court: Then you simply want to raise the 20 question of laches?

Mr. Richman: Yes.

The Court: Introduce your defense.

Mr. Ralph Wescott: We have a witness here we didn't know was present.

Mr. Richman: All right, I have no objection. 30

ANTHONY GRANESE, SWORN.

By Mr. Raph Wescott:

Q. Where do you live, Mr. Granese?

A. Blackwood Terrace.

Q. Did you make a purchase of land down there from Mr. Pine in 1915 or thereabouts?

10 A. About 1915 or 1916?

Q. How large a piece of ground was it?

A. Ten acres.

Q. How much did you pay for it?

A. \$1000.

Q. \$1000?

A. Yes, sir.

Q. Of whom did you buy that ground?

A. I bought it from Mr. Pine.

Q. Through him directly or did some agent have
20 it?

A. Of course, I had Mr. Storie do my business for me.

Q. Mr. Storie?

A. Yes, the late Mr. Storie.

Q. At the time you bought this ground what down payment or what arrangements did you make, and with whom?

A. All my arrangements was with Mr. Pine, that is all I knew, I didn't know of anybody else, but as
30 far as the deposit, I don't think there was a deposit laid, the money was paid cash.

Q. To whom did you give that cash?

A. Mr. Storie and I went to Dunk's house and I think it was Dunk who received the check.

Q. Nothing said about Cordelia Gardner as being the owner of the land?

A. I really don't remember; of course, after I got the deed I found out it was signed Cordelia Gardner. Storie had a Court House search made for me and I left it all in his hands, because I was about nineteen and didn't understand about it.

Q. You were only nineteen years old?

A. Yes, sir.

Cross-examination.

10

By Mr. Richman:

Q. Did you say you paid cash or by check?

A. I think it was a certified check.

Q. Who did you give it to?

A. I think Mr. Storie handed it to Dunk at Dunk's home.

Q. You first went to Mrs. Gardner, didn't you, with Mr. Pine with a \$1000 check?

A. I know I made a couple of trips with Mr. Pine, 20 but I can't recall what the purpose was.

Q. You remember going to see Mrs. Gardner, don't you?

A. Yes, sir.

Q. Do you remember Mr. Pine wanting to open a bank account in the name of Mrs. Gardner with this \$1000?

A. I don't know anything about that.

Q. And do you remember seeing Mr. Gardner there at the time?

30

A. I remember seeing him on one occasion.

Q. This particular \$1000 Mr. Pine wanted to open a bank account in Mrs. Gardner's name, didn't he?

A. I don't know anything about it.

Q. You do not?

A. Absolutely did not; if he did I was too ignorant

to know them things. I didn't know anything about those things.

Q. How did it come to get into Dunk's hands, do you know?

A. I do not know.

Q. Didn't Mrs. Gardner tell you to send it to Mr. Dunk?

A. Tell me to send it to Mr. Dunk?

Q. Yes.

10 A. Not that I know of.

Q. Mr. Dunk actually made the sale to you didn't he?

A. I think he represented Mrs. Gardner.

Q. And she told you the check would have to go through him?

A. I can't remember that.

Q. Do you remember Mr. Gardner coming there?

A. Coming where?

Q. Coming downstairs at the time?

20 A. I don't know.

Q. Do you remember him saying the \$1000 should go to Mrs. Berg?

A. I don't remember that.

Q. At any rate, Mr. Dunk got the \$1000 you paid, didn't he?

A. I think he did.

By Mr. Ralph Wescott:

30 Q. Do you happen to remember whether this was the first sale made by Mr. Pine?

A. As far as I can remember I think it was his first sale, as far as I know.

Q. Did you know of your own knowledge of any subsequent sales he made of that tract?

A. No.

THE CASE FOR THE DEFENDANT.

CORDELIA GARDNER, SWORN.

By Mr. Richman:

Q. Mrs. Gardner, where do you live?

A. Pitman now.

10

Q. Where did you live in July, 1910?

A. Kirkwood, between Gibbsboro and Kirkwood.

The Court: Speak out.

The Witness: I lived in Kirkwood.

Q. Who were you living with?

A. My husband.

Q. And his name was what?

20

A. George H. Gardner.

Q. Is he living?

A. No.

Q. When did he die?

A. October 19, 1922.

Q. Have you any family?

A. Yes.

Q. How large?

A. Three children.

Q. Now, in July, 1910, where was your mother and father living?

30

A. In Blenheim, the property in Blenheim.

Q. In whose property?

A. Mine.

Q. Were they paying rent?

A. \$5.00 a month rent.

Q. To you?

A. Yes.

Q. What did you do with the \$5.00 a month rent?

A. Well, at that time I had a first mortgage on it and I tried—I was paying that out of my own pocket and \$5.00 a month was paying for my building and loan. Mr. Pine paid it to Mr. Beakley to keep up the building and loan shares.

Q. Prior to that had your mother and father
10 lived in that property?

A. Yes, they lived there years ago?

Q. What happened?

A. Well, they finally lost it, I understood, through Sheriff's sale, I don't know, but I bought it from Mrs. Lawson.

Q. How did you come to buy it?

A. Mother wanted it, she grieved over it, and I was nursing, I had been nursing a couple of years, and I bought it for her.

20 Q. You bought it for her?

A. Yes, sir.

Q. Did you take the title in your name?

A. Not until after two years. My cousin bought it from Mrs. Lawson and I had an agreement to pay her \$200 in two years and then she would convey the property to me, but in the meantime I fixed it up for mother.

Q. And your mother and father came there to live after you owned it?

30 A. Yes.

Q. Now, have you sold that property?

A. Yes.

Q. Now, coming down to the Mason farm, how did you come to get into this transaction?

A. I went over there one Sunday, George and I —

Q. Now, where?

A. To my mother's at Blenheim.

Q. From Kirkwood to Blenheim?

A. Yes, sir. I was married and living at Kirkwood and I went over one Sunday to Blenheim and she told me about Mr. Pine wanting this place and he couldn't get the money, and I suggested probably I could help by giving a second mortgage on my store property, and I called Mr. Beakley, Uncle Ed.—I thought perhaps Uncle Ed. would loan me
10 the money—and she said there wasn't quite enough room there and Mr. Pine was tired of working by the day and he would like some other arrangements, so he wasn't home, he was over to Beakley's and I said I would think about it, but if I did it would always be mine and it would be their home. So
in the meantime —

The Court: Who were you telling this to?

20

The Witness: My mother. So she wrote me a note—when Mr. Pine came home that night she told him, and then she wrote me and told me the Masons were getting anxious about the place and wanted a deposit and if I was going to take it, would I send the \$100 deposit.

Q. Your mother wrote you that?

A. Yes.

Q. Do you know where the letter is?

30

A. No.

Q. Did you look for it?

A. Yes, and I didn't keep the letter, and I couldn't get my money for two weeks, it was on a time account, so I wrote to Mrs. Weaver, Mrs. Peters it is now —

Q. What Mrs. Weaver?

A. Mrs. Laura M. Weaver.

Q. Who was she, a friend?

A. Yes. I knew she had just come in from a case and would perhaps have some ready money and I asked her to loan me \$100, and send the check to Mr. Pine and make it payable to him so he could pay the Masons the \$100, which she did.

Q. Did you ever repay her?

10 A. Yes, I repaid her.

Q. Do you recall how you paid her?

A. Yes.

Q. How?

A. I gave her a check for \$75.00, and \$5.00 in cash and another check for \$6.00 on account of interest and Mr. Pine and mother owed me some rent money, mother collected the rent from the store and I didn't get it always, she rented the store for \$10.00 and I told Mr. Pine to pay the balance to Miss
20 Weaver, which was \$20.00.

Q. Do you know whether he did that or not?

A. Yes, he did.

Q. That was coming to you as rent?

A. Yes.

Q. Are these the two checks you sent Mrs. Peters?

A. Yes.

Q. One for \$75.00 dated August 25, 1911?

A. Yes.

30 Q. And one for \$6.00 dated June 29, 1911?

A. Yes.

Q. And the balance was paid \$5.00 in cash by you and \$5.00 in cash by Mr. Pine?

A. No, \$20.

Mr. Richman: I ask that they be marked.

(Said checks marked Exhibit D3 and D4.)

The Witness: She didn't want the money and she said as long as my money was on account I could keep it for awhile.

Q. How did you arrange to pay the balance of the purchase price?

A. \$1700.

Q. \$1700?

10

A. Mother came to see me —

Q. After she wrote the letter?

A. Yes, to see if I really would go ahead and buy the place and I told her Mr. Pine would have to see Mr. Beakley and if he would loan me the money I would do it, and I would put \$500 mortgage on the store and the balance would be on the farm and I said they were to pay the taxes and interest and keep us out of any expense on account I was married and I didn't think my husband would want to go to
20 any extra expense.

The Court: Who would pay the taxes and interest?

The Witness: Mr. Pine and mother was to pay the taxes and interest.

Q. Why?

A. I didn't expect any rent from them and I was trying to sell the store property at the time. 30

Q. Now, did your mother understand you were to buy it in your name?

A. Yes.

Q. Did you tell her so?

A. Yes.

Q. Then what happened after that?

A. Then I told her there was someone else I wanted to go ahead with the arrangements and Mr. Pine wanted Mr. Ayres because he was a neighbor, and the searches had to be made and Mr. Pine saw to that—I couldn't get away to attend to anything—and I thought if he wanted this place so badly it was his duty to help that far.

Q. Then what happened?

10 A. Then they went ahead with the arrangements and got the papers ready and Mr. Pine came over to my house on a Sunday about the 25th of July —

Q. You lived where?

A. At Kirkwood.

Q. Who came with him?

A. Marvin Beakley brought him in a horse and buggy, and the horse he brought was Joe horse which Mr. Beakley owned, and they had come to my house and they were going from my house to Tansboro—Mr. Pine had a dog lost or stolen and they were going to see about that, and they didn't want Mr. Beakley to know they were going to drive that far, and while Mr. Pine and Mr. Beakley were hitching up we had a talk under the big tree in our yard, and he said, "The papers are ready to sign and you are to go up on Wednesday, and George has to sign, too," and he said, "You are going through with it?" and I said, "Yes" and I said "As long as you keep the taxes and interest paid it is all right, but
20 I am buying it for a home for you and mother and
30 I expect you to keep it up."

The Court: You were saying this to whom?

The Witness: Mr. Pine under the big tree in my yard, and then they went on to Tansboro. And

he said, "Of course, it is all yours," and I said, "If you don't do that I will have to sell it or make other arrangements," and he said, "Of course, it is all yours," that is the words he said, and my grandmother was there at the time.

Q. Where is your grandmother?

A. She is dead now.

Q. Was she present?

A. No, she was there in the house, but she was 10 there when Mr. Pine came for dinner and Marvin.

Q. Was George, your husband, there?

A. Yes, he was there.

Q. And he understood about the transaction?

A. Yes, he understood about it but he didn't think much of it.

Q. He didn't approve of it?

A. No.

Q. Now, after that what did you do?

A. We went up and signed the papers. 20

Q. Where did you go?

A. Mr. Ayres' office on Kaighn Avenue.

Q. In Camden?

A. Yes, sir.

Q. Who was present?

A. No one but Mr. Ayres, George and I.

Q. Was there any difficulty?

A. Yes, there was some difficulty, I was about an hour getting Mr. Gardner to sign the papers.

The Court: What? I think I could hear better 30 if you wouldn't swing that fan toward your mouth.

The Witness: About an hour getting Mr. Gardner to sign the papers.

Q. What was the difficulty?

A. Well, he didn't want to sign them and when he went out that morning his father was there and he told me, he said, "Cordie, you are doing a foolish thing, you know Sam never kept his properties, never paid rent, taxes, or anything, he always lost his properties, and you are going to get in trouble," and George thought a lot of what his father said.

Q. Who was he?

A. Daniel C. Gardner.

10 Q. Where is he now?

A. Dead.

Q. Died since the transaction?

A. Yes.

Q. Well, did you have a conversation there with Mr. Ayres about it?

A. Yes, but not so much, he said I knew how Mr. Gardner felt about it, and he wondered why I undertook anything like that, and I really held a divorce over my head because I told him I would do this and wanted to see it through.

20 Q. Why did you do it?

A. Well, mother wasn't satisfied at the store, there was no room there, she couldn't keep store and no room to bring in anything, and Mr. Pine was tired of working by the day, and I bought it to have a home for my mother, and I had been trying to sell the store property and I thought if I could help out that way and got the store property sold I could help pay the mortgage off on that place and they could have their home there.

30 Q. Did you ever intend that Mr. and Mrs. Pine should pay those mortgages?

A. No, and in any conversation with Mr. Pine there was never a word about him having a deed or about when the mortgage was paid off at the store property he would have a deed, or anything of that kind.

Q. As a matter of fact, you expected to pay the mortgages from the sale of the Blenheim property?

A. Yes.

The Court: You were going to have a home there with Mr. Pine?

The Witness: No, it was a home for my mother and Mr. Pine, not for me, I had my home, and Mr. Pine, I knew he wouldn't pay the rent, and I thought he ought to pay the taxes and interest for the use of the place. 10

Q. You didn't mean a home for yourself?

A. No, not for me, I had my own home.

Q. The papers were signed?

A. Yes.

Q. Did Mr. Pine take possession?

A. They moved there in October.

Q. How did things go right afterward, do you know? 20

A. Well, not so much, I was taken sick then and I didn't go over there so very much, but they went pretty fair but they should have gone better because when he had a settlement with Mr. Beakley he paid him \$400 for wages.

Q. Did he leave the employ of Mr. Beakley?

A. Yes, because on that he would raise chickens and ducks and he would make a living there.

Q. You remember Mr. Beakley coming to you about the interest on the property? 30

A. Yes.

Q. On the mortgages?

A. Yes.

Q. Did he come to your place at Kirkwood?

A. Came to my place early in November, it was the day Dr. Smith's little boy was burned.

Q. What did he say?

A. He said Sam hadn't paid and he didn't know how he was going to make out and he had better call the mortgage in, and he stayed for supper but nothing serious was talked about and I didn't pay much attention to it, I thought interest and taxes would be paid, and that is all that was said.

Q. Did he come again?

A. Yes, and I knew he wanted his money and I
10 had written to cousin Mattie —

Q. Who is cousin Mattie?

A. Mrs. Berg, and Mr. Pine had gone to see
cousin Mattie and I had written her to see if she
would loan me the \$1700 and Mr. Pine had gone and
I knew mother had written and she was about ready
to take the mortgages over from Mr. Beakley, but
Mr. Pine hadn't been doing well and Mr. Gardner
decided he wouldn't have anything more to do with
it, he could have it sold, and he wrote to Mrs. Berg
20 to that effect, and Mr. Beakley and Mr. Pine went
up on a Thursday and she wouldn't take up the
mortgage and she called Mr. Beakley to one side and
gave him George's letter to read, but she didn't
show it to Mr. Pine.

Q. You had a conversation with Mr. Beakley?

A. Yes, Mr. Beakley came to my house the next
afternoon—I had a sick baby, and Mr. Beakley came
to my house on Friday afternoon, January 26th,
and while he was there Dr. Raleigh was there and he
heard what Dr. Raleigh had to say, he didn't know
30 whether the baby was going to live to morning or
not, and after he went out Mr. Beakley had this talk
with me about the property, he said, "I was think-
ing Cordie, if you would have the farm conveyed
over to me I would release the mortgage on the
Blenheim property and get my money out of the

farm," and I said, "No, that wouldn't be fair, I
bought that place for them to have as a home, and
if Mattie won't take over the mortgage I will get
somebody else who will," and I was angry at Mr.
Gardner for putting his foot in it at that time.

Q. What happened after that?

A. Then Mr. Beakley and George went out and
talked, I don't know what he talked about to Mr.
Gardner, I had my baby to think about, but that
night Mr. Pine came over and brought a man with
10 him, and I remember it because he was drunk and
he called Mr. Gardner a dirty, yellow cur for not
taking over the mortgages and, of course, that
wasn't a nice thing, that was a fighting name, and
Mr. Gardner was going to knock him down and I
wouldn't let him. "Well," he said, "Sam, you go
out but don't step your foot inside of my house
again," and I went out in the sleet and got him in
the wagon and turned the horse around and started
them home. 20

Q. Did you see Mrs. Berg about the mortgages?

A. No, that was Friday night and I had no time
on Saturday, the baby was taking every minute of
my time, so I got help Saturday and Sunday after-
noon Mr. Pine came over to see Mr. Gardner again
and he sat on the settee in our kitchen and he said
"George"—and Dr. Raleigh had come while Mr.
Pine was there—and he said, "George, I thought if
you would let Mattie go on and take the mortgages
off Ed, I will give you a chattel mortgage on every-
30 thing I have," and George said, "Sam, I don't want
anything that belongs to you."

Q. Did Mrs. Berg finally take the mortgages over?

A. Yes.

Q. How?

A. I wrote to her and Mr. Gardner went to see
her.

Q. And she agreed to take the two mortgages?

A. Yes, provided we kept the place in our name and it went on as we had. She knew mother wanted to live there and she knew I had bought it for a home for them, and they had moved around all their lives and we thought they were both too old to move any more and if they kept that place for a home there would be some satisfaction to it.

Q. And that was your object in the matter?

A. Yes.

10

Q. Now, Mrs. Gardner, when did Mrs. Berg die?

A. She died in February, early in February, 1922—February, 1923.

Q. After that what happened with respect to the interest and taxes, and so on?

A. Well, I don't know just how they done then for a while because in some way Mr. Pine got in with Mr. Beakley and Mr. Beakley got a chattel on him and then in 1913, either the latter part of January, somewhere around there, or early in February, he moved across to Mr. Beakley's place and farmed there for a year.

20

Q. He left the Mason farm?

A. Yes.

Q. Did your mother go with him?

A. Yes, and that winter, I think it was December, Mr. Beakley sold Mr. Pine out by the Sheriff; I am sure that was a Sheriff's sale.

Q. And then they came back to the Mason farm?

A. Yes, sir.

30

Q. How long had they been away?

A. It wasn't a year in months but it was a year in a working season.

Q. Now what happened about the mortgages, interest on the mortgages during this period?

A. After they came back, he kept going from bad

to worse all the time, not getting along, drinking heavily, and having these awful drunken parties on Sunday and the interest was back three years in 1916 and then we talked it over.

Q. Who talked it over?

A. Mr. Dunk and I and George, and Mr. Pine kept saying he would make these wonderful sales, but he never did, so we decided to sell and Mr. Dunk had plotted out those ten acres sold later to Granese and had them arranged in lots.

10

Q. What was the purpose in selling?

A. To pay off the mortgage and three years back interest and then pay off something on the mortgage, and fix the house, the house needed fixing up, but in the meantime this Tony Granese—I don't know whether he went to Mr. Pine or how but he came to Harold and said he could buy that ten acres from Mr. Pine for \$1000, and, of course, we ought to have had more, but Mattie was getting anxious and threatened to foreclose, so George and I decided to sell that to Granese and that brought in \$1000.

20

Q. What became of that?

A. Before that Harold had made a sale to Sylvester for \$500; I don't remember if that was before or the same summer.

Q. Had you told Mr. Dunk to go ahead and sell it?

A. Yes.

Q. What arrangement had you made with Mr. Dunk for that purpose?

A. He would talk to Mr. Pine and he was to receive a commission and he had to sign him up.

30

Q. What was to be done with the proceeds?

A. Pay taxes and interest and something on the mortgage, Mrs. Berg was getting anxious.

Q. Was any part of that money to go to Mr. Pine?

A. No, nothing was to go to Mr. Pine.

Q. That continued for a while, didn't it, with Mr. Dunk?

A. Yes, this was paid right away, and then Sylvester's land, the balances he paid, the Sylvester land that tided it over, the interest—I don't know whether it paid any of the taxes or not, but it paid most of the interest to 1920.

10 Q. Your understanding with Mr. Dunk was he was to apply the proceeds of the sale to the interests, taxes and mortgages, is that correct?

A. Yes.

Q. Now, do you know whether or not he did it?

A. Yes.

Q. He did it, didn't he?

A. Yes.

Q. Now, after that what happened?

A. Well, how do you mean?

Q. With respect to these sales?

20 A. Selling more lots?

Q. Yes.

A. Then Mr. Pine came —

Q. How much had Mr. Dunk reduced the mortgages from the sales he had made?

A. To \$1200, he paid \$700 on the mortgage.

Q. Both mortgages?

A. That left \$1200 mortgages, and then Mr. Pine was angry at Mr. Dunk about —

Q. Are you sure it left \$1200?

30 A. It left \$1000 mortgages.

Q. Now, after that had been done, what happened?

A. Well, about that certified check of Granese's Mr. Pine brought the check over, brought that check and wanted me to open a bank account in the Blackwood Bank, and, of course, I refused to do it, be-

cause there was nothing left, we had it all figured out what was to be done with the money and there was nothing left to open a bank account with, and I said, "I will call George and see what he says," and, of course, he said that check goes to Mattie Berg to pay off her interest and part of the mortgage, and Mr. Pine was awfully cross about that.

The Court: I didn't understand where the check came from? 10

The Witness: The Granese sale.

By the Court:

Q. What was Mr. Pine doing with the check?

A. He had a certified check that Granese was paying for that land.

Q. How did it happen to be paid to Mr. Pine?

A. He wanted me to open a bank account with it. 20

Q. Was it drawn to your order?

A. No, Mr. Dunks' order.

Q. Had it been endorsed and turned over to Mr. Pine?

A. No, it was given to Mr. Dunk and, of course, he looked after Mrs. Berg's business and he paid her the back interest.

Q. What became of the check?

A. It went back to Granese, I guess.

By Mr. Richman: 30

Q. Wasn't the check finally turned over to Mr. Dunk?

A. Yes, sir.

Q. And he used it in paying taxes, interest and principal on the mortgages, isn't that correct?

A. Yes.

Q. And Mr. Pine never had the check?

A. No, he didn't have it.

Q. He came with Granese to your house and wanted you to open up a bank account in your name?

A. Yes.

Q. And you refused to do so?

A. Yes.

Q. And that was because you had made arrangements to look after it, isn't that correct?

A. Yes.

Q. After that happened what was the next thing that occurred?

A. We had this Salvatore land to tide us over, had small payments off him, and he went into the service and we extended his time, and Mr. Dunk was looking after that, and the proceeds from that kept us going with the taxes and interest, most of the interest was paid, and then after that I made an arrangement with Mr. Pine.

Q. How did you come to do that?

A. He was so nasty to Mr. Dunk and wrote him such insulting letters I told him not to have anything more to do with him and I went there and made arrangements with Mr. Pine to sell lots.

Q. What was the arrangements?

A. He was to sell the lots and open a bank account in my name and put the proceeds in my name, and I was to pay the bills, and he was to sell enough lots to pay the mortgage.

Q. How much was then due on the mortgage?

A. \$1000, and then we had to fix up the house for it wasn't fit for a pig to live in.

Q. Was he to receive anything out of it?

A. Ten per cent commission, I guess that is what Harold was receiving and he was to receive the same as Harold.

The Court: You say you guess, was there anything agreed upon?

The Witness: Yes, ten per cent commission, but I expected him to keep on working, I thought he would keep on working at Bateman's and then he started in to sell lots and he did open a bank account in my name in 1918 with \$50.00 and \$25.00.

Q. Is that the bank book?

10

A. Yes.

Mr. Richman: I offer that.

(Said book marked Exhibit D5.)

By the Court:

Q. What is the date of the opening of the account?

A. July 8, 1918.

20

Q. 1918?

A. Yes, first deposit on this date.

Q. Had this gone on eight years, was Dunk agent for eight years?

A. No, Dunk didn't sell the land until 1916.

Q. Then it went on six years before any land was sold?

A. Yes.

Q. And Dunk sold the first land there was sold?

A. Yes.

Q. And nothing had been sold up until 1918 except what Dunk had sold?

30

A. That is all.

Q. And it was in 1918 that you discharged Dunk and told Mr. Pine —

A. I am not sure whether it was 1917 or 1918, but there is the first entry he made, Mr. Pine made for

me in the Blackwood Bank; he was to open an account for me and the Blackwood Bank sent me a card to sign to get my signature and he opened the account in 1918 and put in \$50.00, and another time \$25.00.

Q. Do you know what the \$50.00 and \$25.00 were for?

A. Yes, from the proceeds of the sales, I was signing deeds all the time and paying for them out of
10 my own —

Q. Had you already at that time signed some deeds?

A. I don't remember—the Granese deed I had signed.

Q. Had you signed any deeds for lots that Mr. Pine had sold at the time your bank account was opened?

A. I don't think I had because he sold the lots by the installment plan.

20 Q. You have signed deeds?

A. Yes, I have signed all the deeds.

Q. That Mr. Pine has sold?

A. Yes, sir.

Q. What did you do about the commissions?

A. He didn't keep up to his agreement.

Q. What?

A. He didn't keep up to his agreement.

Q. Did you pay him commissions?

30 A. He took the money, that is all, and he sent mother over with a check and wanted me to give him \$50.

By Mr. Richman:

Q. In addition to the \$50.00 deposit and the \$25.00 deposit how much additional money did you

receive on account of the sales of this land, and from whom?

A. The settlement of Mr. Storie's office, December 18, 1919?

Q. Yes.

A. Mr. Storie wrote to me and said Mrs. Berg was getting \$100 out of the settlement and Mr. Pine had \$10 and what should he do with the \$70.00 remaining, and I said he should send it to me because I didn't know whether the taxes were going to be
10 paid or not, and I took that. I thought that belonged to me.

Q. Is that the letter you received from Mr. Storie?

A. Yes.

Q. At that time?

A. Yes.

Q. Do you know Mr. Storie's signature?

A. Only by his correspondence.

Q. Have you received other letters from him? 20

A. Yes.

Q. Did you ever see him write his name?

A. Yes, I did, Mr. Pine brought him to my house and got a deed to sign and Mr. Storie came with him.

Q. Can you say whether that is his signature?

A. Yes.

Mr. Richman: I offer that.

(Said paper marked Exhibit D6.) 30

Q. How much did you receive from Mr. Storie?

A. \$70.00.

Q. What was the next payment you received?

A. The Sylvester business of 1920.

Q. October 13th?

The Court: Who sold those lots?

The Witness: That is what Mr. Dunk had sold in 1916, I think it was, and I got \$376.48 from that; that was a \$500 lot but the balance had been paid in interest and some taxes.

10 Q. Was that deposited in this bank account?

A. Yes.

Q. What was the next you received?

The Court: This is the bank account that Pine opened?

Mr. Richman: Yes.

20 The Court: She went on with this bank account, did she?

Mr. Richman: Yes.

Q. What was the next you received?

A. 3rd of October, 1922.

Q. How much?

A. \$150.00 from Mr. Watkins on the Peyton deal.

Q. Was that a sale made by Mr. Pine?

A. Yes, sir.

Q. And you received that from him?

30 A. Mr. Watkins, D. O. Watkins, Woodbury.

Q. Do you know why you received it from him?

A. The settlement was made in his office, there was some law suit there and there was a settlement there at Mr. Watkin's office.

Q. Was that deposited in the bank account?

A. Yes, sir, and I paid Mr. Watkins \$10.00 out of that.

Q. What was the next amount you received?

A. January 12, 1923, \$412.00 from Mr. Watkins on the Brennan deal.

Q. Was that a lot sold by Mr. Pine?

A. Yes.

Q. What did you do with the \$412.00?

A. In bank.

Q. Anything more you received—what is the next amount? 10

A. \$25.00 from the McKinley deed.

Q. Who gave you that?

A. I think Walter brought me that; after Mr. Gardner died I couldn't go out very much.

Q. Walter Ward brought it to you?

A. Yes.

Q. What did you do with it?

A. I put it in bank.

Q. And that was deposited in this bank account? 20

A. Yes.

Q. Now, after this Mr. Pine continued to make sales of lots, as you say?

A. Yes.

Q. Did you ever receive any additional moneys from Mr. Pine personally?

A. No, only this \$25.00 he brought me over the first of January and I asked what it was for and he said it was a present but I put it in bank. Mother was sick at the time. 30

The Court: Mr. Pine did what?

The Witness: The check for \$25.00.

The Court: January when?

The Witness: 1924.

The Court: And said it was a present?

The Witness: I asked him what it was for and he said a present to me.

Q. Where was Mrs. Pine?

A. At my house sick.

10 Q. How long had she been there?

A. From the 5th of October until she died the 7th of January.

The Court: That is, he gave you this \$75.00 check as a present?

The Witness: In the beginning?

The Court: No, the one you are talking about
20 now?

The Witness: The \$25.00 check. I will tell you why I think he gave it to me. When I went to nurse my mother I had to board the children at the neighbors and I was there three weeks and I was paying their board and it worried her because she thought I ought not to have to do that, pay that out of my own pocket, and she said I should keep that check on account of their board.

30 Q. Now, Mrs. Gardner, Mr. Pine continued to make these sales, didn't he?

A. Yes.

Q. Did you sign the deeds?

A. Yes.

Q. Did you receive any part of the proceeds of the sales?

A. Only what I told you about.

Q. That is all you received?

A. Yes.

By the Court:

Q. Why did you continue signing deeds and allowing him to go on making sales if you weren't receiving any of the proceeds of the sales?

A. Every time there was a deed to sign he would write, "Cordie, you will have to sign these deeds, we need money," I would get a letter to that effect. 10

Q. You don't understand my question. Why did you allow him to continue making sales and collecting money if he wasn't turning it over to you?

A. I expected him to pay off the mortgage and fix up the house.

Q. When he wasn't doing it why did you let him go on making the sales and collecting the money?

A. Mother wanted me to.

Q. Do you know how much money he collected out of those sales? 20

A. Between twelve and fifteen hundred dollars.

Q. He didn't turn over?

A. Yes. He was so ugly to my mother when I didn't get a deed back.

Q. Why did you allow him to go on selling when he was keeping the money and not applying it to the mortgages?

A. The mortgage was paid off.

Q. Why did you allow him to go on making sales of lots and keeping the money \$1200 or \$1500 in amount? 30

A. It was on account of mother, she would always say they had to have this money to live on.

Q. He says he was paying to you on account of

your needing money and you say you were giving him money on account of his needing it?

A. The Gardners were pretty well fixed financially and he shouldn't have said anything about that; I am sure the Gardners wouldn't like to know that he said that.

By Mr. Richman:

10 Q. Did you send him a notice not to sell any more land?

A. Yes, sir.

Q. How many times did you tell him?

A. I was there in the spring of 1923 and I told him.

By the Court:

20 Q. Why didn't you say you wouldn't sign any deeds if he sold any lots?

A. He had been taking these peoples' money who paid their money on installments and it made so much disturbance I kept on signing them.

Q. Why did you keep on signing them if he was keeping the money? Why didn't you say to him, "If you sell another lot I won't sign another deed?"

A. Mother said they needed the money, but I had him in the spring of 1924—I had Mr. Richman tell him not to sell any more lots.

30 Q. Long prior to that he was keeping the money and not turning it over to you, as I understand you?

A. Yes, but mother would write and say they needed this money, he wasn't working, and that is all they expected to live on, I guess.

Q. He said he was letting you have money because you needed it?

A. That is as much money as I had.

By Mr. Richman:

Q. Is that true?

A. No, it is not; I was always giving my mother money.

Q. You are a trained nurse?

A. Yes. If he felt that way he ought to pay me some of the money I loaned him at Hill Top if he felt that way about it.

Q. Did you give him a written notice? 10

A. Yes, and I kept a copy of it.

Q. Is that a copy of the notice you sent him?

A. Yes.

The Court: What is the date?

Mr. Richman: June 12, 1923. Shall I read it in the record? "Laurel Spring, N. J., R. F. D., Box 192. June 12, 1923. Dear Mr. Pine: Please do not sell any lots anywhere on the farm until 20 further notice, also kindly send me the names of all the purchasers who are paying for lots on installments. Now please do as I advise in this letter as I am not signing any more deeds. Yours truly, Cordelia M. Gardner." I offer that.

(Said letter marked Exhibit D7.)

Q. Now, Mrs. Gardner, when did Mrs. Pine die?

A. February 7, 1924.

Q. You say it was not the understanding between 30 you and Mr. Pine he was to have a deed for this property at any time?

A. No.

Q. It was always to be yours and that they were to stay there, is that correct?

A. Yes, sir.

Q. And that was distinctly the understanding between you in the beginning?

The Court: I wouldn't rehash your testimony, she has been all over that ground. You can put it in the form of a question if you don't think anything is clear.

10 Q. What was the home relation between Mr. and Mrs. Pine as you know it?

A. Well, it wasn't very pleasant after 1920.

Q. What do you mean by that?

A. Well, when these deeds were coming in I guess every week I know of I very seldom went there I didn't find him drunk.

Q. Do you know how she felt toward him?

20 A. Yes, she always pitied him, but I don't know just how she felt exactly all the time. I know how I would have felt. He would chase her out with a gun and hold that over her head, and he often said if I came on the place he would blow my brains out, something to that effect.

Q. Whom did he chase with a gun?

A. Mother.

Q. Do you know that?

A. Yes, and there is someone here to tell you the same thing; knocked her with a brick, threw a brick at her.

30 Q. You went there from time to time, didn't you?

A. Yes.

Q. And will you state again why you signed deeds for Mr. Pine when you didn't get any of the proceeds of the sale?

A. Because he was so ugly to mother and mother would write "Now there is a deed to sign, sign it

and send it back, we want the money." Sometimes there would be something to pay on, sometimes very little, but he had received most of the deposits.

By the Court:

Q. How long ago did you begin signing deeds without getting any of the money or getting the money applied to your mortgages, how long a period did that continue over? 10

A. From 1920, the mortgage was paid off in 1920.

Q. There were proceeds of sales just the same and I want to know how long a period of time it was that you signed deeds without getting money or getting the money credited on mortgages—it would be the same thing.

A. I stopped in the spring of 1924.

Q. When did you begin signing deeds without getting money?

A. I had signed them all the time. 20

Q. How early?

A. From the time I let him sell the lots. This money I got wasn't from him, these payments were from the lawyers.

Q. No, what I mean, if the money which was paid by the purchaser for a lot and was applied on the mortgage you got the benefit of it, or if it was paid to you in cash you got the benefit of it, but when did you begin to sign deeds for lots where the money didn't either go to you or wasn't paid on the 30 mortgages, where Mr. Pine got it?

A. I signed them off and on all that time.

Q. Beginning about when?

A. From 1920 on. He put \$75.00 in bank in 1918, and that is all he did, and then the mortgage was paid off. It was off and on as far as I know, but he

didn't give me any money, I got the money from different settlements that it shows there in the book.

Mr. Richman: If the Court please, the abstract of search shows what happened in that respect.

The Court: The search will show what deeds were made, but it won't show what happened to the money; I would like to know what money Pine got
10 and what money she got.

Mr. Richman: She shows definitely what she got from the proceeds of these sales.

Mr. John Wescott: It is all in the bank account, isn't it?

Mr. Richman: Did you speak of the check from Mr. Dunk?

20 The Witness: Yes.

The Court: This bank account you can't tell, there are lots of items in there besides the land business.

The Witness: Yes, this is the statement of what I got from Mr. Pine.

Mr. Richman: Did you speak of the check from
30 Mr. Dunk of \$121.48?

The Witness: Yes, I got that May 15, 1920, and October 13th, I got \$160.00.

Q. When was the first lot sold, do you know, was that in 1918?

A. When was it—beg pardon?

Q. When was the first land sold, how far back?

A. 1916, but there is no record of that in there.

Q. That money went to pay off the mortgage?

A. Yes, left \$1,000 on the mortgage.

Q. When was the next one sold?

A. Sylvester's.

Q. None sold between 1916 and 1918?

A. Only this Sylvester's.

Q. What year was that?

10

A. That was 1916, I guess; I think that was in 1916, but he went to war and he was a good while paying for those lots.

Q. How much was paid on that?

A. \$376.00.

Q. What happened to that money?

A. That is in bank.

Q. That was paid to you?

A. Yes, in the final settlement.

Q. You got all the money and Mr. Pine none?

20

A. \$376.00, the rest of it went for interest.

Q. Mr. Pine didn't get any of it?

A. No.

Q. When did the next one come along?

A. I don't remember who was the next one, but that is all I got was the \$75.00 Mr. Pine put in bank for me; I was to have it all put in my name and I was to pay the bills but he didn't do it.

Q. That was in 1918?

A. Yes, sir.

30

Q. When did the next sale come off?

A. I can't remember those sales.

Q. Do you know how many sales there are that Mr. Pine made and kept the money for?

A. No, I don't; Mr. Richman is having a search of them.

Mr. Richman: You never had a record of that, Mrs. Gardner?

The Witness: No.

Mr. Richman: Did you ever ask Mr. Pine for it?

The Witness: No, I don't think I did.

10 Q. Do you know how many times you signed where you didn't get any money?

A. No, but I would know after I saw the record of it. I know what I have received here.

Q. I would like to know—go ahead.

A. Here is four deeds I have signed I got money from.

Q. Where you got no money?

A. Where I got money.

Q. Did you get it all?

20 A. No, because it was settled up in the lawyer's office, but this \$75.00 Mr. Pine put in bank when he opened the bank account and I gave him \$50.00 back.

The Court: I should think it would have been easy for counsel to have had a statement of all the deeds for this property and what happened to the money that went with each sale.

30 Mr. Richman: It would have been impossible for us to get that.

The Court: You know what you got, you say, and what you didn't get went somewhere else.

Mr. Richman: Yes.

The Court: If you can show what deeds she signed where she got the money we know the rest she did not.

Mr. John Wescott: What does that book show, what have you got in that book?

Mr. Ralph Wescott: From the testimony so far it appears Mrs. Gardner received the money on four deeds amounting to the sum of seven or eight hundred dollars. 10

Mr. Richman: Can you recall by the deeds you got the money on?

The Witness: The Clark settlement, \$70.00, the one that Mr. Storie sold.

Q. \$70.00 out of how much?

A. \$180.00. 20

Q. Who got the balance?

A. Mr. Pine.

Q. It didn't go out on the mortgages?

A. That went on the mortgages.

Q. Mr. Pine didn't get it?

A. Yes, sir.

Q. Mr. Pine didn't get anything, you got it if it went on the mortgages.

A. The next was the Sylvester's, Salvatore Sylvester, and that was \$376.48, that was a \$500 deed. 30

Q. You got \$375.00 and Mr. Pine the rest?

A. That went to pay the interest.

Q. So far as you are concerned if the property was yours you got the benefit of all that.

A. The next was 1922, October 3rd, \$150.00 from Mr. Watkins in the Peyton deal, but I don't know

how much that lot was; I thought I was going to get \$300 but he kept ——

Q. Do you know whether the balance went on the mortgages?

A. No, the mortgage was paid then, Mr. Pine got that, that was in 1922. In 1923, January 12th, I received \$412.00 from D. O. Watkins on the Brennan deal, but I don't know what that deed called for, how many hundred dollars.

10 Q. You simply took what was given to you?

A. Yes.

Q. You don't know whether Mr. Pine got some of that or not?

A. He got all the balance.

Q. You don't know how much balance there was, do you?

A. No, I do not.

Q. What is the next?

20 A. There is four so far. \$35.00 from the McKinley deal; I don't know how much that was, that was in January, 1923.

Q. There is five you got the money on; did all the rest go to Pine?

A. Yes, sir.

By Mr. Richman:

Q. Did you mention the Granese one?

30 A. That was settled for, that all went on the mortgage.

Q. Mr. Pine got none of it?

A. No.

Q. So that accounts for six of the deeds, is that true?

The Court: Six or five?

The Witness: Five.

The Court: All other deeds but those were deeds you got nothing for at all?

The Witness: Yes.

The Court: Is that right?

The Witness: Yes.

10

The Court: Any of them go on the mortgages, any of the others you didn't get anything on?

The Witness: The mortgage was paid off in 1920. Some of these may have gone on the mortgages because they were bought on installments, I don't think any of those were cash except the Granese sale, that was a cash sale, the ten acres, and I held this money, I thought I would be able to fix the 20 house up or I would have to do something for mother with it.

Mr. John Wescott: Shall we adjourn now?

Mr. Richman: I have Mrs. Peters here who loaned the original \$100.00, I just want to verify that loan.

30

LAURA PETERS, SWORN.

By Mr. Richman:

Q. Mrs Peters, where do you live?

A. Mt. Ephraim, N. J.

Q. How long have you know Mrs. Gardner?

A. Since 1896.

10 Q. Did you in 1910 receive a communication from her requesting a loan of \$100.00?

A. I did.

Q. In response to that communication what did you do?

A. I sent Mr. Pine a check for \$100 at her request.

Q. Was that paid to you and by whom?

A. Was it paid back?

Q. Was the \$100 paid back to you?

20 A. \$75.00 was paid by Mrs. Gardner—I received two checks from Mrs. Gardner, one for \$75.00 and one for \$6.00 and I received four \$5.00 bills from Mr. Pine.

Q. In cash?

A. In cash.

The Court: From whom, Mr. Pine?

The Witness: Mr. Pine.

30 Q. Is that the \$75.00 check you received?

A. Yes.

Q. And is that the \$6.00 check you received?

A. It is.

Mr. Richman: Referring to Exhibit D4 and D7.

Cross-examination.

By Mr. Ralph Wescott:

Q. Mrs. Gardner and you are good friends, aren't you?

A. We are friends.

Q. And at that time you were?

A. We have always been friends.

Q. You are in the some profession?

A. Yes.

Q. Now, when she asked for this loan she made it clear she was loaning the money to Mr. Pine and that is the reason the check was made out to him?

A. She told me about Mr. Pine wanting to purchase a farm on account of her not being able to get her money without giving them time, notice at the bank, she asked me if I would loan the \$100 and to save time she got me to send it direct to Mr. Pine and the check was made out to Mr. Pine and sent to Mr. Pine.

Q. Have you kept that letter?

A. I don't have the letter.

Q. Did she say anything that you can recall in it about how you were to be repaid?

A. She asked it as a loan, that is all, she didn't say who would repay me.

By Mr. Richman:

Q. You regarded it as a loan to Mrs. Gardner?

A. Yes.

The Court: I understand tomorrow's case will not be heard. I suppose there is no doubt about that, there has been a substitution of attorneys and the new attorney wants more time, so we can resume the hearing of this case tomorrow at ten, if counsel can be ready at that time.

(At this point an adjournment was taken until Thursday, September 17, 1925, at ten o'clock A. M.)

Camden, N. J., Sept. 17, 1925.

(Trial of the cause resumed on the above date at ten o'clock A. M., pursuant to adjournment.)

10 CORDELIA GARDNER, resumed.

By Mr. Richman:

Q. Mrs. Gardner, I don't remember having asked you yesterday about the conversation between you and Mr. Beckley, Lawyer Beckley, at your home. Did he come to see you?

A. Yes.

20 Q. And did you have a conversation about the Mason farm?

A. Yes.

Q. Did you tell him at that conversation that you would deed the property to Mr. Pine and your mother?

A. No, I did not.

Q. What did you tell him?

30 A. I told him I would deed it to mother provided there was a clause in it that it would come back to me, a clause put in the deed that it would come back to me.

Q. When?

A. At his death, because I expected to have that for my children.

Q. Did you afterward see your mother?

A. Yes.

Q. Where?

A. She came over to see me.

Q. And did you have a conversation with her about the Beckley episode?

A. Yes.

Q. And what did you tell her?

The Court: Would that be competent, Mr. Rich- 10 man?

Mr. Richman: I suppose not, if the Court please, but the testimony all along has linked up the mother with this case.

The Court: I know, but I don't think that would be competent, I don't think it would bind the com- 20 plainant.

Mr. Richman: I assume it would be as competent as the conversations between Mr. Beckley and Mr. Pine that went in yesterday.

The Court: I don't recall those conversations. If they went in they went in one ear and out the other if they were not competent. Sometimes when no objections are made I don't undertake to object but I close my mind to what is said. If they are in the 30 nature of hearsay I don't regard them and try to forget them.

Mr. Richman: I appreciate the case isn't before a jury.

Q. Now, Mrs. Gardner, you testified yesterday that you signed a number of deeds where the sale had been made by Mr. Pine because your mother wanted you to and because of the trouble that Mr. Pine was making for your mother, is that correct?

A. Yes.

Q. Now, you also said that you had received some letters from her?

A. Yes.

10 Q. Is that correct?

A. Yes.

Q. I show you a letter dater March 23, 1923, and ask —

The Court: From whom to whom?

Q. From your mother to you —

The Court: Can you connect Mr. Pine with that?

20 Mr. Richman: No, except this, the contents of the letter is a corroboration of the position taken by Mrs. Gardner that she signed the deeds on many occasions because of the abuse and the conduct of Mr. Pine toward Mrs. Pine, her mother.

The Court: Well, I can't see how any letter can be written by the mother that would be binding upon Mr. Pine unless he had been appraised of the contents of the letter before it was sent. I think it will
30 have to be excluded, Mr. Richman.

Mr. Richman: I only offer it, if the Court please, as corroboration of the fact which I have endeavored to establish in this case of her explanation of the signing of those deeds.

The Court: She can state her motives, but Mrs. Pine can't.

Mr. Richman: Of course, Mrs. Pine is deceased, that is one of the difficulties in the case.

The Court: I appreciate that.

Mr. Richman: I have several letters of that nature and I presume your Honor's ruling will apply 10 to all of them?

The Court: Oh, yes.

Mr. Richman: I suppose I should object to the refusal of the offer and let the record speak for itself.

The Court: Perhaps it would be well to reserve the benefit of any error I may make and have the letters marked for identification, and then they will
20 be excluded, so that the record—if you have occasion to make it up—will show the letters were excluded.

Mr. Richman: Letter from Mrs. Pine to Mrs. Gardner dated June 16, 1922.

(Said letter marked Exhibit D9 for identification.)

Mr. Richman: One dated August 4, 1922.

(Said letter marked Exhibit D10 for identification.)

Mr. Richman: One dated August 24, 1922.

(Said letter marked Exhibit D11 for identification.)

Mr. Richman: One dated March 14, 1923.

(Said letter marked Exhibit D12 for identification.)

Mr. Richman: One dated March 23, 1923.

10 (Said letter marked Exhibit D13 for identification.)

Mr. Richman: One dated August 4, 1923.

(Said letter marked Exhibit D14 for identification.)

20 Mr. Richman: The record had better appear they are all in the handwriting of Mrs. Pine.

Cross-examination.

By Mr. John Wescott:

Q. Mrs. Gardner, how old were you when you first saw Samuel Pine, the complainant?

A. When I first saw him?

Q. Yes.

30 A. It was the summer of my 12th year if I remember correctly.

Q. In your 12th year?

A. Yes, sir.

Q. Where did you see him?

A. I was spending a vacation at my grandfather Brown's and I saw Mr. Pine there when he was coming to see my mother.

Q. Where?

A. I was spending my vacation in the summer at my grandfather Brown's and I saw Mr. Pine there.

Q. Where?

A. Above Turnerville.

Q. Had you any brothers and sisters at that time?

A. I had one brother.

Q. How old was he?

A. Twenty-two months older than I.

The Court: Let me interrupt, I want to know the name of the witness who was examined yesterday out of turn. 10

The Stenographer: Mrs. Peters.

Q. At that time your mother was a widow, as I understand it?

A. Yes.

Q. And had been for how long? 20

A. Slightly over twelve years.

Q. Was she older or younger than Mr. Pine?

A. She was older than Mr. Pine.

Q. How much older?

A. I don't rightly know, ten or twelve years older.

Q. Ten or twelve years older?

A. About ten or twelve years older than Mr. Pine.

Q. Older than Mr. Pine?

A. Yes.

Q. How soon about did Mr. Pine marry your mother after you saw him when you were eleven years of age? 30

A. When I was twelve years of age.

Q. Twelve years of age.

A. I was in my 13th year when Mr. Pine and my mother were married. No, I was past thirteen, I

was thirteen in December and they were married in March.

Q. Well, where did Mr. Pine live at that time?

A. I don't know much about him; he lived in Blackwood with his father and mother, I suppose, stepmother, because I didn't spend my winters with them.

Q. Had your mother any means at that time, or how did she support herself?

10 A. She had a little means and she was helped out by different members of the family.

Q. What did her means consist of, do you know, how did she get the money?

A. She had some money from my father, I don't know how much.

Q. No idea how much?

A. No.

Q. Could she live on that?

A. I imagine she could, she was making her home
20 with her father.

Q. Whether she lived on —

A. She only had herself to support.

Q. —her own means you don't know?

A. I imagine she could.

Q. But you don't know.

A. No, I was too young to know those things.

Q. Now, she married Mr. Pine. You don't know where Mr. Pine then lived?

A. He lived in Blackwood, I know that much.

30 Q. After she married Mr. Pine where did she go to live?

A. They bought the store at Blenheim and went there to live.

Q. Who bought it?

A. Mr. Pine.

Q. Bought a store at Blenheim?

A. Yes.

Q. And Mr. Pine bought that?

A. Yes.

Q. And then your mother and Mr. Pine went to live in the store?

A. Yes.

Q. Where did you and your brother go?

A. We didn't go anywhere, we had went; I was living with my guardians in Camden and my brother was living in Mt. Royal. 10

Q. Then Mr. Pine and your mother lived there in the house?

A. Yes.

Q. For how long?

A. Until I was in my 15th year.

Q. Until you were in your 15th year?

A. Yes.

Q. Where did they go then?

A. Why, they lived there.

Q. They lived there then longer than your 15th
20 year; how long did they live there?

A. You asked me if they lived there alone.

Q. How long did they live there?

A. I don't know. They lived there until some time in 1890, I don't know when they moved away. They went to Woodbury to live.

Q. Did anybody besides Pine and his wife live in the house at Blenheim?

A. I came there in my 15th year.

Q. You moved there? 30

A. Mother wanted me there, and Mr. Pine.

Q. Who else lived there besides you and your mother and Mr. Pine?

A. No one at that time.

Q. At any subsequent time who else lived there?

A. My brother came there after that, but he worked.

- Q. How long did your brother live there?
 A. Well, it was a home —
 Q. How long did your brother live there?
 A. I don't just know; he couldn't have lived there so long because he was married when he was 21.
 Q. How long did you live there?
 A. I will have to count. I was with them off and on for ten years.
 Q. And you lived at the Blenheim house with Mr. Pine and your mother for how many years?
 10 A. Off and on for ten years.
 Q. And that made you how old; at the end of that time how old were you?
 A. Twenty-five.
 Q. Then you lived with them until you were twenty-five?
 A. Yes, sir.
 Q. And your brother lived there?
 A. Yes.
 20 Q. The four of you lived there, didn't you?
 A. Yes.
 Q. Now, up to that time, the time you were twenty-five, you and your brother, Mr. Pine and your mother lived in the Blenheim property?
 A. Excuse me.
 Q. You did, didn't you?
 A. I want to change that. My brother didn't live there, he worked by the year for different people and didn't live there; he came home there but he didn't live there.
 30 Q. Up until the time you were twenty-five what did you do?
 A. What did I do?
 Q. Yes.
 A. Well, I worked from the time I was eighteen, I worked at Beakley's off and on, helped my aunt

and got paid by the week, and I had friends in Camden I went to help, and then I was with mother, mother was sick and a lot of days I was with her.

Q. Now, did you have much of an income up to the time you were twenty-five?

A. I would have had enough to see me through if I had got it.

Q. How much of an income did you have?

A. Thirty some dollars.

Q. A week?

10

A. No, a year.

Q. A year?

A. Yes.

Q. What did you do with that income?

A. I didn't get it.

Q. You didn't get it?

A. No.

Q. Then you had no income?

A. No.

Q. Up until the time you were how old, did you say?

A. I was working before I was twenty-five.

Q. How old did you say?

A. How old what?

Q. When you lived with Mr. Pine last how old were you ?

A. Twenty-five when I went to study nursing.

Q. Then up to twenty-five you had no income?

A. No.

Q. And did you mother have any income?

30

A. I consider she had some money from my father.

Q. Outside of that did she have any income?

A. Well, as much as any housewife has.

Q. Where did she get her income?

A. She worked at the store.

Q. Where?

- A. At the store.
 Q. In the store?
 A. Kept store.
 Q. Mr. Pine worked there, too?
 A. Yes, and they were living —
 Q. Mr. Pine worked there, too?
 A. Well, he was working by the day, worked different places.
 Q. But Mr. Pine worked there, too?
 10 A. I guess he did.
 Q. You guess he did?
 A. Yes.
 Q. Then you had your mother working at the store without any income except what she got by that means, and Mr. Pine working at the store and you living there and your brother living there?
 A. Yes.
 Q. Did your brother bring any income in the house?
 20 A. Yes, he did, and he bought my clothes.
 Q. Anything else?
 A. Well, no, he gave mother money.
 Q. Gave your mother money?
 A. Yes.
 Q. Have you any idea what his income was?
 A. No, whatever he got a year; they worked by the year in those days. It was enough to satisfy him.
 Q. Now then, when did Mr. Pine part with the
 30 Blenheim home? Get that fixed accurately if you can?
 A. I don't just know, I was nursing and I don't remember.
 Q. You were twenty-five years of age when he parted with the Blenheim home, weren't you?
 A. No, he moved away from that after that but he didn't part with it.

- Q. He moved away from the Blenheim home?
 A. Yes, he was moving around all the time.
 Q. Moving all the time?
 A. Yes, from the time I was nineteen, or eighteen.
 Q. How many places did he move to?
 A. He moved to Woodbury and Mt. Royal and back to Blenheim again, and that is where he had typhoid fever.
 Q. Where else did he move to?
 A. He moved to Hill Top, Runnemedede, and back 10 to Mt. Royal.
 Q. Did you move with him?
 A. No, I wasn't there.
 Q. Where did you stay?
 A. I was nursing.
 Q. Where?
 A. I can't tell the places I have nursed unless I looked them up.
 Q. Then when Pine and your mother occupied the
 Blenheim home were you nursing? 20
 A. Part of the time.
 Q. What was your income from nursing?
 A. I couldn't exactly tell, I was receiving eighteen or twenty dollars a week.
 Q. And then you had a big income. What did you do with the money, saved it, I suppose, didn't you?
 A. No, I helped my mother.
 Q. You helped her support Pine, I suppose?
 A. Part of the time I expect I did.
 Q. Then you didn't save anything from that in- 30 come?
 A. Yes, I saved something from it, certainly.
 Q. How much did you save?
 A. Well, I am not prepared to say because I spent a lot of it buying the Blenheim property and nursing my mother.

Q. How much did you save?

A. I can't tell you how much I saved.

Q. Did you keep it in a bank?

A. I don't know that I have to answer that; do I have to answer that?

The Court: Why shouldn't you?

The Witness: Yes, I had a bank account.

10 Q. Where is your bank account when you were twenty-five?

A. I didn't bank until I graduated after I was 27.

Q. You were twenty-seven when you banked?

A. Yes.

Q. Up to twenty-five you had no bank account?

A. No.

20 Q. What I want to know next is when you acquired the Blenheim property?

A. I just can't remember, I think it was in 1902.

Q. How old were you then?

Mr. Ralph Wescott: Was that 1902 or 1910?

Q. 1902, she said.

The Court: How old were you in 1902?

30 The Witness: You will have to count: I am 52 now.

Q. Were you married then?

A. No.

Q. Then when you acquired the Blenheim property you were a single woman?

A. Yes.

Q. Of whom did you get the property?

A. My mother came to me to buy the property

Q. Tell me from whom you got that property?

A. I will have to go into that. My cousin bought the property from Mrs. Lawson for me.

Q. Then you got the property of whom?

A. Mrs. Lawson.

Q. And your brother got it for you?

A. No, not my brother, my cousin. 10

Q. Now, how much did you pay for that property?

A. I paid \$700 and two years back taxes when I bought that property.

Q. How much were the back taxes?

A. I think it was \$20.00.

Q. Then you paid \$720.00 for the property?

The Court: That much in cash. Was there a mortgage against it? 20

The Witness: That is what I gave Mrs. Lawson; Mrs. Lawson had taken it in at a sheriff's sale.

The Court: Was it clear?

The Witness: Yes, it was clear.

The Court: Bought it for \$700 clear?

The Witness: Yes. 30

Q. Where did you get the \$720.00 to pay for the property?

A. I borrowed the \$700 from my cousin Miss Agens.

Q. How did you secure your cousin?

A. I paid her \$200.00 in two years and she deeded the property to me and took a \$500 mortgage on it.

Q. With a \$500 mortgage on it?

A. Yes.

Q. She took a \$500 mortgage on it?

A. Yes.

Q. How long did that mortgage remain there?

A. When she died Mr. Dunk took that mortgage over.

10 Q. When did she die?

A. 1911, I think.

Q. Then Mr. Dunk took the mortgage over?

A. Yes.

Q. Did you pay that mortgage off?

A. No.

Q. Mr. Dunk still holds the mortgage?

A. No.

Q. Who does?

A. Nobody.

20 Q. What became of the mortgage?

A. I sold the property.

Q. Oh, you sold the property. When did you sell the property?

A. In 1923.

Q. For how much?

A. \$3,000.

Q. So far as you know the mortgage is still there?

A. I know Mr. Dunk was paid.

Q. Mr. Dunk paid the mortgage off?

30 A. I paid the mortgage off to Mr. Dunk.

Q. Now, that was in 1911, wasn't it?

The Court: 1923, I think she said.

The Witness: When I paid Mr. Dunk was 1923.

Q. 1923, very well. So you lived in the Blenheim property how many years?

A. I don't know how many years.

Q. When did you get married?

A. 1908.

Q. Did you have any children?

A. Yes.

Q. How many?

A. Three.

Q. Now, in 1908 you were married and in the 10 Blenheim property?

A. No, I married and went on the farm with my husband; I didn't live in the Blenheim property with my husband. I didn't live in the Blenheim property after I was nursing; I went there on visits when mother was there, when she lived there.

Q. Now, you owned the Blenheim property and sold it in 1923 for \$3,000, didn't you?

A. Yes.

Q. While you were in the Blenheim property what 20 income did you have?

A. Well, what I could get working. I told you before I would go to work for Mrs. Beakley, and I had friends in Camden and I would go and help her every spring, and I would go to Mrs. Stratton, my cousin, and help her some, and my brother would help me out with what new clothes I bought, but if I asked Mr. Pine for any money I never got it.

Q. Pine never gave you a thing?

A. No, sir, unless I had a fight with him.

Q. Had a fight with him?

A. Yes, and I will say right now while you are asking me when I was sixteen years old I wanted my money back and if they gave me the money then I could have gone out and earned my own living, if that is what you are trying to quiz me on, and Mr.

Pine and I had a fuss on it and he undertook to smack my mouth, but he never tried it again.

Q. Can you tell us when he undertook to smack your mouth?

A. When I was sixteen, in the winter.

Q. Why did he undertake to smack your mouth?

A. Because they had my money and I had nothing to show for it; I was a minor and I had no income and I couldn't have anything.

10 Q. He had your money?

A. Yes, the money that was turned over from my Grandfather Ward and my guardian turned over to them.

Q. How much was that?

A. Mr. Beakley told you yesterday.

Q. How much was it?

A. \$580.00. It wasn't very much but it would have given me an education

Q. Who had the money; did you say Pine had it?

20 A. It was given to mother and Mr. Pine wanted it.

Q. It was given to your mother?

A. Yes, she became my guardian afterward.

Q. But that money was given to your mother?

A. Yes, but I never saw it.

Q. And you contend Pine got it, don't you?

A. I suppose so; I don't know what else could happen to it.

30 Q. Then you were without means, as we understand you, you were without means?

A. Mr. Pine wanted me with them, he said when I was home on a vacation after they were married my home was with them.

Q. But you were without means?

A. No.

Q. Except what you earned by nursing and working here and there?

A. That was enough for me.

Q. When did you first get acquainted with the Mason property?

A. In 1910.

Q. 1910?

A. Yes.

Q. How did you happen to get acquainted with it?

A. I went over to my mother's and she told me Mr. Pine wanted to get this place but nobody would loan him the money. 10

Q. How did you happen to get acquainted with the Mason property?

A. I just told you, through my mother.

Q. Did you go and look at it?

A. No, I didn't go and look at it, I knew about it, I had been there years ago.

Q. How many years before that had you been there?

A. I don't know, I used to go around there and pick flowers and hunt teaberries. 20

Q. When you were a girl?

A. Yes.

Q. Had you any idea of the value of the Mason property at that time when you went there to look at it?

A. Yes, I knew some of the fields were fairly good.

Q. What was it worth?

A. I don't know; I considered it was worth what the Masons were asking for it, \$1,800.

Q. How much? 30

A. \$1,800.

Q. And you considered it worth \$1,800?

A. I did.

Q. And you at that time owned the Blenheim property with a mortgage on it?

A. Yes.

- Q. Was it worth more than \$1,800, do you think?
 A. I didn't know at that time.
 Q. The truth is you didn't know anything about it?
 A. Yes, I did know something about it.
 Q. What?
 A. I considered it was worth \$1,800.
 Q. What did you know about it?
 A. That was enough, wasn't it, to know about it?
 10 Q. Is that all you knew about it, you considered it worth \$1,800?
 A. Yes, sir, or I wouldn't have bought it at that price if I hadn't.
 Q. Was it worth anything more than \$1,800?
 A. I don't suppose it was at that time but it increased in value later.
 Q. It is worth a great deal more now and you know it?
 A. Yes, I know it to a certain extent.
 20 Q. Very well. At that time it was \$1,800 and you lived in the Blenheim property subject to a mortgage of \$500?
 A. No, I didn't live in the Blenheim property, my mother was living there.
 Q. Your mother was living there but you owned it?
 A. Yes.
- The Court: Your mother and Mr. Pine were living there?
 30 The Witness: Yes, they lived there four years at that time.
- Q. Why did you, owning the Blenheim property subject to a mortgage of \$500.00 —

- A. Why what?
 Q. Subject to a mortgage of \$500.00 —
 A. I didn't get your first question.
 Q. I say, why did you, owning the Blenheim property subject to a mortgage of \$500.00, without any means or resources except as you have told us, want to buy that Mason property?
 A. I had means and resources, I was married then, that was years afterward.
 Q. Let us go back to your means and resources. 10
 A. Because Mr. Pine and mother needed a home and they weren't satisfied in the Blenheim property.
 Q. So your whole motive under the circumstances of buying the Mason property was that Mr. Pine and your mother wanted a home?
 A. Yes, Mr. Pine was tired of working by the day.
 Q. And notwithstanding Mr. Pine was such a rascal and treated you so badly you wanted to see he got a home?
 A. For my mother's sake, yes. 20
 Q. Now, they had a home at Blenheim, didn't they?
 A. Yes.
 Q. And they weren't satisfied with that and you weren't satisfied with that and you made up your mind you would buy the Mason property?
 A. I was satisfied for them to stay there as long as they were at the Blenheim property.
 Q. Who did you see for the purpose of buying the Mason property? 30
 A. I told my mother to ask —
 Q. I didn't ask about your mother. Whom did you see with a view of buying the Mason property?
 A. I didn't see anyone, I told my mother to tell Mr. Pine to buy it for me and he went to Mr. Beakley for me.

Q. Then you got Mr. Pine to acquire the Mason property for you?

A. No, I did not.

Q. Who did you get to acquire it?

A. Mr. Pine wanted the place and he couldn't get it, nobody would loan him the money.

Q. Very well.

A. That is what my mother told me.

10 Q. When did you first get into your head that you wanted the Mason property? That is a perfectly simple question.

A. That I wanted the Mason property?

Q. Yes.

A. In 1910.

Q. What put it into your head to get the Mason property in 1910, being as poor as you were?

A. Mother and Mr. Pine wanted it.

Q. Because your mother and Mr. Pine wanted it?

A. Yes.

20 Q. Couldn't your mother and Mr. Pine manage the situation?

A. Mother told me no one would loan Mr. Pine the money.

Q. Now, up to that time Mr. Pine had been treating you very badly, hadn't he?

A. Well, not so badly, I always felt sorry for him and done what I could for him.

Q. Hadn't he slapped your mouth?

A. He did try to but he didn't do it.

30 Q. Hadn't he undertaken to shoot your mother?

A. Later on.

Q. Later on?

A. Yes.

Q. And hadn't he chased her with a shotgun and chased you with a shotgun?

A. Later on.

Q. That all happened later on. That is to say, he reserved his real wickedness until he got that property?

A. He must have, I don't know what else.

Q. Then he showed his real wickedness after you had done the magnificent thing of acquiring a home for him and your mother by getting the Mason property, that is correct, isn't it?

A. To a certain extent.

Q. Now, as I understand it you got that Mason property for your mother and your stepfather first because they wanted you to? 10

A. No, they didn't want me to, I done that myself.

Q. They didn't want you to?

A. They didn't ask me but I proposed that I would buy it.

Q. Let us get on that subject again. How did you propose to them to buy the Mason property if they didn't want it?

A. They wanted it. 20

Q. They did want it?

A. Yes.

Q. Now, did they or didn't they want it?

A. They wanted it.

Q. What was the reason that you got that Mason property, or tried to get it, was it because your mother and Pine wanted it?

A. Mother told me that Mr. Pine wanted it and nobody would loan him the money and I suggested—I proposed I would take it over by putting a second mortgage on my Blenheim property if Mr. Beakley would put up the money. 30

Q. Then you put a second mortgage on the Blenheim property in order to acquire the Mason property as a home for your parents, that is correct?

A. Yes.

Q. Didn't you appreciate the fact you were taking a good bit of risk in putting a second mortgage on your Blenheim property to buy the Mason property worth only \$1,800 and putting a mortgage on it for \$1,800, didn't you think you were running a risk?

A. A mortgage of \$1,800?

Q. Wasn't there a mortgage put on the Mason property?

A. For \$1,700.

10 Q. For \$1,700. I am \$100 out of the way.

The Court: \$1,200.

The Witness: \$1,200 on the Mason property and \$500 on my property.

The Court: And \$100 in cash.

20 Q. Didn't you think you were running a good deal of risk?

A. In a way, but I done that for them to have a home and I didn't expect any rent, they were to keep the taxes and interest money paid.

Q. Then you acquired that property under those circumstances, taking all the chances of losing your own home just to get a home for Pine and your mother?

A. I didn't consider I was losing my own home.

30 Q. If the obligations incurred in purchasing the Mason property had not been made you would have lost your home?

A. No, I don't think I would.

Q. Why not?

A. I had a little reserved.

Q. What had you reserved?

A. I had some building and loan shares.

Q. How much?

A. I was carrying three building and loan shares then, they would have amounted to \$600.

Q. Any other reserve?

A. I had a little money in bank.

Q. How much?

A. About \$200.00.

Q. What bank?

A. Camden National.

Q. Have you the bankbook?

10

A. No, I have not.

Q. This was all the reserve you had to support this financial undertaking, three shares of building and loan —

A. I had my place for sale then at \$1,800, and later on for \$2,000, the Blenheim property.

Q. That was way back in 1910?

A. Yes.

Q. Well, now, if I understand you, you agreed to acquire the Mason property on condition that Pine 20 should pay the taxes and the interest?

A. Yes.

Q. You made the agreement with him, didn't you?

A. Yes.

Q. Was it in writing?

A. No.

Q. You took his promise for that?

A. Yes, he was to pay the taxes and the interest.

Q. You took his oral promise?

A. Because that was to be his home.

30

Q. You took his oral promise for that, didn't you?

A. Yes.

Q. Did you like Pine then?

A. I liked him, I had nothing against him, in a way.

Q. Notwithstanding he had slapped your mouth?

A. Yes, I overlooked that; because he didn't slap my mouth, he undertook to.

Q. That is just as bad as if he had done it. Why didn't he succeed?

A. Because I didn't let him.

Q. You were smarter than he was?

A. No, I am not smarter than he is.

Q. Outside of his attempting to slap your mouth he was a good fellow, he worked, didn't he?

10 A. Yes, in those days.

Q. Took care of your mother, didn't he?

A. When are you speaking of?

Q. He took care of your mother, didn't he?

A. That was two years after they were married.

Q. He took care of your mother, didn't he?

A. When are you speaking of?

Q. I am asking you, I wasn't there, I wasn't a party to the transaction. He took care of your mother, didn't he?

20

Mr. Richman: If the Court please, she wants to know the time.

The Court: She can answer that. He is really inquiring about 1910 when you bought that property.

The Witness: No, he wasn't taking care of mother then to any account.

30

Q. He was a drunkard, wasn't he?

A. Yes, he drank quite a good deal.

Q. Didn't work?

A. He worked four years while he was working for Mr. Beakley by the day, he worked fairly well.

Q. But aside from that he didn't work; a shiftless man, wasn't he?

A. He became worse in his later years.

Q. Very well. Now, then, you acquired this property with the condition that Mr. Pine should pay the taxes and interest. It was a very important matter to see that he paid up the taxes and interest, wasn't it?

A. Yes.

Q. Because if he didn't you would lose your own home as well as the farm?

A. I didn't look at it that way, because ——— 10

Q. If you didn't look at it that way ———

A. I considered I had my place for sale.

Q. Now, did you keep track of Pine's obligation to pay the taxes and interest; did you watch him to see if he did it?

A. I did the best I could.

Q. What did you do to see that he paid the taxes and interest promptly?

A. Well, I supposed he was paying it.

Q. No, but what did you do to see that he did it? 20
Here was a man that was shiftless, a drunkard, abusive to your mother, undertook to slap your mouth and didn't succeed, what did you do to see that he paid this interest?

A. I was always nagging at him.

Q. Always nagging at him?

A. Yes, when the time came I wrote and wrote to my mother to see that those things were paid.

Q. You were always nagging when the time came; when did the time come? 30

A. When pay day came for the interest and taxes.

Q. When was it?

A. In January; I don't just remember when.

Q. You don't remember now but you did remember then and you nagged him every time the period of payment came around?

- A. Yes.
- Q. Now, did your nagging succeed?
- A. It didn't seem to because in 1912 I had a notice from Mr. Beakley's lawyer that the interest wasn't paid.
- Q. You got a notice from Mr. Beakley's lawyer that the interest wasn't paid?
- A. Yes.
- Q. Well, what did you do then?
- 10 A. I notified Mr. Pine.
- Q. What did Mr. Pine do, what did Pine do, pay up?
- A. When Mrs. Berg took the mortgage over he paid up. Mr. Beakley held the mortgage at that time.
- Q. Well, was that the first time that he disregarded his obligation to pay the interest and taxes?
- A. No, I think he paid them in 1911.
- Q. Was that the first time he disregarded his
- 20 duty?
- A. I think it was.
- Q. That was when?
- A. 1912.
- Q. You got after him and the result was he paid according to this receipt we have here in evidence, paid the interest and taxes?
- A. Yes.
- Q. Well, how much was he behind in taxes then?
- A. Why, I judge it was one year; I understood
- 30 the first year was paid.
- Q. When did he get behind again, or did your nagging succeed in keeping him up to the mark?
- A. I don't just remember how he got behind.
- Q. Did he get behind again?
- A. Yes, he got behind.
- Q. Can you tell when?

- A. Some of the records will show when.
- Q. You can't tell when?
- A. I have some receipts from Mr. Dunk where he paid the interest.
- Q. How many times did he get behind after that?
- A. Several times.
- Q. And you went after him and the result was he paid up?
- A. No, he didn't pay up; in 1916 the interest was
- 10 back three years.
- Q. How did he happen to pay up then; did you go after him again?
- A. No, he sold a piece of land.
- Q. How did he happen to sell a piece of land?
- A. The building had started, the people wanted building lots and Mr. Dunk and I talked it over and Mr. Dunk managed Mrs. Berg's affairs and I talked with him about selling some lots and he arranged those ten acres we later sold to Mr. Granese, he arranged them in little lots to sell.
- 20
- Q. Mr. Dunk did?
- A. Yes. See, Mrs. Berg had demanded her interest and the taxes were two years behind.
- Q. Now, did you pay Mrs. Berg?
- A. Then we finally —
- Q. What was her name?
- A. Berg. We finally sold ten acres to Granese.
- Q. Who did you see in regard to it?
- A. I don't just know; Mr. Granese—anyway Mr. Granese went to Mr. Dunk and said he had made an
- 30 offer for this ten acres and then Mr. Dunk came to me to see if I was willing to sell the ten acres instead of selling it off in little lots.
- Q. Pine had nothing to do with it?
- A. We had talked to Mr. Pine about selling this land.

- Q. Why did you do that?
 A. Out of courtesy, he was so ugly about things if he didn't know.
 Q. Pine had nothing to do with it, why did you go to Pine to see if he was willing to sell?
 A. I didn't ask him that.
 Q. Why did you go to him?
 A. I didn't go to him.
 Q. Then Pine had nothing to do with it?
 10 A. Not at that transaction, no.
 Q. Dunk carried on that transaction with this man?
 A. Yes.
 Q. Pine had nothing in the world to do with it, that is correct, isn't it?
 A. Yes.
 Q. And the money was paid to whom, to Dunk?
 A. The \$1,000 check?
 Q. Yes.
 20 A. Well, it was paid to Mrs. Berg.
 Q. Who paid it to her?
 A. Granese—from the Granese sale.
 Q. Did you attend to that?
 A. I had Mr. Dunk—Mr. Dunk was looking after those things for Mrs. Berg and for me.
 Q. Well, how many times did Pine disregard his obligation to pay the interest and taxes?
 A. I just can't tell; there was three years of back interest, that was in 1916, and that sale paid three
 30 years of back interest.
 Q. Did you keep an account of the matter in your books?
 A. No, I depended on Mr. Dunk at that time to take care of those things.
 Q. Did you keep an account of the matter?
 A. Mr. Dunk kept account of it.

- Q. Did you keep account of it?
 A. No.
 Q. Here you were owning an important piece of property, dealing with a man by the name of Pine who didn't keep his part with you and pay his taxes and interest and you had to keep nagging him, and you kept no account of the matter at all, why not?
 A. I trusted Mr. Dunk.
 Q. You trusted Mr. Dunk?
 A. Yes, sir. 10
 Q. How long did Mr. Dunk run the business for you?
 A. Mr. Dunk looked after that transaction.
 Q. How long did Mr. Dunk run the business for you?
 A. He sold —
 Q. Please answer that question. How long did Mr. Dunk run the business for you?
 A. You will have to let me explain, because there was another piece of ground that Mr. Dunk and I 20 had sold, rather Mr. Dunk was paying the taxes and interest on from 1916 to 1920.
 Q. From 1916 to 1920 Mr. Dunk paid the interest and taxes?
 A. Out of another piece of ground.
 Q. Mr. Dunk paid the interest and taxes?
 A. Out of another piece of ground.
 Q. Where was that piece of ground?
 A. On that property.
 Q. How much was it?
 A. \$500.00. 30
 Q. How much of the ground?
 A. It was a lot, I don't know how many feet.
 Q. Did Mr. Dunk furnish you any account of the matter?
 A. Yes.

Q. Where is it?

A. Mr. Richman has it.

Q. Mr. Richman has it?

A. Yes.

Q. Did he furnish you an account at the time of the transactions or has he furnished you this account since?

A. He furnished me an account all along of all the transactions.

10 Q. Is that in court?

A. Yes.

Q. Where are your accounts?

A. I would have to look them up.

Q. Won't you look them up?

A. The final account is there of it.

Q. I don't care about that, I want the accounts Dunk was keeping from time to time and year in and year out.

A. It is right there—Granese.

20

Mr. Richman: I have them, this is what she refers to.

Q. Is this all the account Dunk furnished you?

A. That is the Granese account, isn't it?

Q. What say?

A. Isn't that the Granese account?

Q. Is this all the account that was furnished you?

A. I don't know what account you have there, if
30 you will tell me I can tell you.

Q. Is that all the account Dunk furnished you?

A. No.

Q. Where are the others?

A. Mr. Richman has them.

Q. Let me have them, will you please? Well, now, there are three papers, look at them, please, and tell

me whether they are all the accounts Dunk furnished you?

A. Do you mean the accounts from year to year or the final accounts? The final accounts are in my bankbook from the Granese sale.

Q. Are those the accounts Dunk furnished you from year to year?

A. This is on the Salvatore.

Q. Are those the accounts Dunk furnished you from year to year? That is a simple question. 10

A. Yes, it is a simple question, but I want to be sure what it is before I answer it.

Q. All right.

A. Yes.

Q. Now, those accounts cover what period of time?

A. From 1916 to 1920.

Q. From 1915 to 1920?

A. 1916 to 1920.

Q. That is a period of about four years, isn't it? Now, when did Dunk bring you the accounts stretch- 20
ing over a period of four years to you?

A. Sometimes he mailed them, sometimes I saw him.

Q. Where did you see him?

A. At my house.

Q. He came to your house?

A. Yes.

Q. And showed you the accounts?

A. He mailed them to me sometimes.

Q. And those are the accounts? 30

A. They are the accounts.

Q. Have you the envelopes in which they were mailed?

A. I haven't got them here.

Q. Have you got them anywhere?

A. I might have them somewhere, I don't know.

Q. You didn't keep the envelopes?

A. I am not sure whether I kept the envelopes or not.

Q. Now, had Pine anything to do at all with the Dunk management?

A. How do you mean?

Q. Anyway at all, did Pine have anything to do with what Dunk was doing?

A. With this account here?

10 Q. Dunk was your agent, representing you and carrying on these sales?

A. For these two sales.

Q. Two?

A. These two sales.

Q. Only two. Did Pine have anything to do with those two sales?

A. Not with those two sales, no.

Q. Didn't have anything to do with them?

A. No.

20 Q. Now, out of those two sales came the means, if I understand, to satisfy these mortgages and pay back taxes and interest, didn't it?

A. Most of them, yes.

Q. When did you get those papers that I showed you?

A. The last one was at the final settlement of Salvatore's.

Q. When did you get those papers, have you any idea at all?

30 A. When the settlements were made.

Q. And you have had them ever since, you have had them ever since?

A. Yes, I have had them ever since, and I have

The Court: You started to say something else. Did you say you had others you haven't kept?

The Witness: Mr. Dunk kept in touch with me through this last sale when he paid the interest and taxes from year to year and when the payments were made, that was the final account with Salvatore at the settlement, it is all on that account, all on that paper.

The Court: Is that 1920?

The Witness: That is from 1916 to 1920. 10

The Court: And he made two sales?

The Witness: Two sales, yes, in 1916. I think the \$500.00 sale was in 1916, or 1915—it is on my mind it was 1916. The Granese sale was a cash sale.

The Court: Which?

The Witness: The Granese sale. 20

The Court: The last one?

The Witness: The first one, I suppose it was the first one, the one we settled up with and paid some of the mortgage off with.

Q. I suppose you let Pine stay on the property willingly from the time you bought it up to the present hour, didn't you?

A. I let him stay on it willingly? What did you 30 ask me?

Q. You willingly let Mr. Pine occupy this property from the time you acquired it in 1910 down to the present time?

A. After these lots were sold and the Granese sale put through Mr. Pine was so ugly to Mr. Dunk

I didn't have him sell any more lots and I talked it over with Mr. Gardner and I decided to let Mr. Pine sell lots, and that is what he did. The agreement was he was to sell the lots and open a bank account for me in the Blackwood bank and deposit the money to my account and he was to receive the same as Harold had been getting, the arrangement with Mr. Dunk.

10 The Court: A commission?

The Witness: A commission, and I was to pay all bills and pay off the rest of the mortgage and fix up the house, that was my agreement.

Q. You willingly allowed Mr. Pine to occupy and farm that property from 1910 down to the present hour, didn't you?

A. As long as I could keep that place over his head
20 I was willing to let him stay there.

Q. Why?

A. Because I bought it for them to have a home.

Q. Your mother has been dead quite a while?

A. No, she has not; my mother only died in 1924,
February, 1924.

Q. You are still allowing Mr. Pine to stay there?

A. Certainly I want him to stay there.

Q. As bad as he is?

A. Yes.

30 Q. Now, did you have an agreement with Mr. Dunk in writing?

A. No.

Q. Didn't have any agreement with him?

A. No.

Q. Did you have any agreement with Mr. Pine in writing?

A. No.

Q. Where and when was it you made an agreement with Mr. Pine that he could sell lots at a commission?

A. At the farm.

Q. When?

A. I think it was—I am not sure—in the fall of 1917, or else it might have been in 1918.

Q. Was anybody present on that occasion?

A. My mother knew it. 10

Q. Was anybody present when the agreement was made?

A. No one but my mother.

The Court: You say your mother was present?

The Witness: Yes, my mother knew I was going to make that agreement with him, that offer to him.

Q. Was your mother present when the agreement was made? 20

A. I think my mother was present—I know she was.

Q. Where was the agreement made?

A. In the house.

Q. What part of the house?

A. I don't know, just on the farm, I imagine it was in the living room.

Q. What time?

A. I can't tell just what time?

Q. How did you happen to make that agreement with Mr. Pine? 30

A. Because I wanted the mortgage paid off and I wanted the house fixed up.

Q. The mortgage was paid off?

A. No, there was \$1000 on the house yet, \$1000 mortgage on the place.

Q. Then you wanted Mr. Pine to sell lots —

A. Yes, he had been ugly to Mr. Dunk, had threatened him to come on the place and written him nasty letters.

Q. Then you wanted to get Mr. Pine who had been ugly to Mr. Dunk and who had been ugly to you to take Mr. Dunk's place to sell lots—why?

A. Mr. Pine was living there and I wanted the mortgage reduced and I wanted the house fixed up for my mother.

10 Q. Mr. Dunk had been behaving splendidly, he had sold two lots —

A. That didn't make any difference.

Q. And Mr. Pine had been very nasty to Dunk, he had been nasty to your mother and he had been nasty to you; now, why would you want to dismiss Mr. Dunk who had been a good and faithful servant, to make a similar agreement with Mr. Pine who is such a bad man?

20 A. That hadn't anything to do with it, really.

Q. Really hadn't anything to do with it?

A. No. Mr. Pine had forbidden Mr. Dunk to come on the place and to make things harder for my mother and to stop this I decided to let Mr. Pine sell the lots.

Q. But you didn't have that in writing?

A. No.

Q. When did Mr. Pine begin to sell lots?

30 A. I imagine it was 1918, I am not sure whether it was late in 1917 or 1918, but he opened my bank account in 1918. It might have been that spring, but I am not sure.

Q. How many lots did he sell?

A. I can't answer that now.

Q. Didn't you keep any track of that?

A. No.

Q. Why not, it was very important to you, wasn't it?

A. Yes.

Q. To keep track of what your agent was doing?

A. There was a blue-print made for him to sell those lots.

Q. Here was a valuable piece of property and here was a scamp dealing with it without an agreement, didn't you realize as a shrewd woman —

A. I am not a shrewd woman. 10

Q. Didn't you realize to a woman who wasn't shrewd that was a pretty risky thing to do?

A. No, because Mr. Gardner and I always went over the lots and always knew how many feet there were. I didn't think it was a risk.

Q. When did Mr. Gardner die?

A. 1922.

Q. Did he keep track of Pine?

A. No.

Q. And you didn't? 20

A. I kept track of him to a certain extent, yes.

Q. What kind of track did you keep of him, what did you do?

A. I kept track that he didn't sell the whole place.

Q. You saw to it he didn't sell the whole place?

A. Yes, he just had the lots to sell I gave him permission to sell to pay off the mortgage and fix up the house, but he didn't fix up the house.

Q. Having made that contract with Pine and he 30 having sold those lots on commission, let me ask this; did you pay him commission or did he take it out of what he got?

A. Well, he was to open a bank account in my name and put the money in bank.

Q. All the money?

A. Yes, and I was to pay the bills and he was to have his commission then.

Q. Let me understand. Did he put all the money for all the lots he sold in bank in your name?

A. No, he did not.

Q. Did you know he wasn't doing it?

A. I didn't know it for a while.

Q. When you found out he wasn't doing it what did you do?

10 A. He was paying off the mortgage.

Q. Now, what did you do when you found out he wasn't putting the money in bank, what did you do?

A. What did I do?

Q. Yes.

A. I didn't see what there was for me to do.

Q. Why didn't you stop him selling the lots?

A. At that time the mortgage was still to be paid off.

20 Q. Why didn't you stop him selling lots; here was a man —

A. He was paying off the mortgage at that time, up until 1920.

Q. What did he pay off at that time?

A. \$1000.

Q. To whom?

A. To Mrs. Berg.

Q. When was that?

30 A. With this money I gave him permission to sell lots with.

Q. Did you know that he paid Mrs. Berg?

A. I knew Mrs. Berg was releasing it, certainly.

Q. How did you find that out?

A. Through correspondence and the releases he sent to me.

Q. Where is the correspondence?

A. I don't know that I have kept them all; I have one there from Mr. Storie.

Q. Did you and Mrs. Berg correspond about it; did you and Mrs. Berg correspond about it?

A. Not just about that, no.

Q. Why not?

A. It was through Mr. Dunk and Mr. Dunk looked after those things.

Q. Dunk was looking after it?

A. For Mrs. Berg. (10

Q. But did you and Pine look after it?

A. Pine was selling lots but Mr. Dunk looked after Mrs. Berg's interest.

Q. Have you any idea how many lots Pine sold?

A. No, I have not, not unless Mr. Richman has gotten a statement of it.

Q. Haven't you any idea how many lots Pine sold?

A. Up until the mortgage was paid off, or the present time? (20

Q. The present time; haven't you any idea how many lots he sold?

A. Not the lots, but I have an idea of twelve to fifteen hundred dollars worth he collected the money for.

Q. Haven't you any idea how many lots Pine sold?

A. Not the number of lots.

Q. Why not, why didn't you keep track of it; this was a pretty serious business, wasn't it? Here was a scamp selling lots for you on commission — (30

A. It wasn't that way, I didn't consider it that way at that time.

Q. He was a bad man, wasn't he?

A. I thought Mr. Pine was anxious to get rid of paying this interest and taxes and I wanted the home clear.

Q. Why didn't you keep track of the thing, why didn't you keep a book account, why didn't you have Pine tell you every lot he sold and how much he got for it, and who was the purchaser, why didn't you do that?

A. I don't know, I might have done that, but Mr. Pine was keeping an account of it.

Q. How do you know?

A. Because I saw his books.

10 Q. You saw Pine's accounts, did you?

A. Yes, off and on.

Q. Would you recognize the book if you would see it?

A. I might recognize one book, I don't know whether I would recognize that particular one.

Mr. John Wescott: Pine, did you bring those books up?

20 Mr. Pine: I did, your Honor.

Q. Are those the books Pine showed you?

A. Mr. Pine didn't show them to me, when I went over there I looked at it. I saw this book, this one I don't know anything about.

Q. Where did you go and look at it?

A. At the farm.

Q. When?

A. Oh, different times.

30 Q. Why did you go at different time to look at those books?

Q. I didn't go at different times to look at the books, I was there and looked at the books.

Q. What made you look at them?

A. Because it was my business.

Q. So at different times without the purpose of

looking at the books you went there and did look at the books, is that correct?

A. Yes.

Q. Did you tell Pine you had looked at the books?

A. No, I did not.

Q. What did you learn when you looked at the books?

A. I learned different ones that were paying.

Q. Take that book now and show me the different ones that you found were paying; take the book 10 and point them out.

A. Some of these names I recognize.

Q. Which?

A. I can't tell just all of them, I recognize the Clark name and Lawson.

Q. Did you say anything to Pine about it after examining the books?

A. I couldn't say much to Mr. Pine, he was mostly drunk when I went there and he made it so uncomfortable for mother if I started a fight that 20 I couldn't stay to finish it.

Q. Seeing him always drunk did that make you suspicious of his being a competent agent for you to put the money in bank?

A. He wasn't putting anything in bank, and at mother's suggestion I signed those deeds, mother begged of me to sign them because they needed the money, she said they needed the money, and later on he was so abusive, if I didn't sign the deeds and the deeds didn't come back promptly then trouble 30 started.

Q. Why didn't you discharge this drunken agent?

A. Well, for different reasons.

Q. State the reasons?

A. I just did state some of them, about his being abusive to mother and mother begging me to sign

those deeds and he became abusive if the deeds didn't come in and if any of those payments of this money was paid to me, and especially when I received that \$70.00 from Mr. Storie he became very abusive to my mother.

Q. After your mother died why didn't you discharge him; he kept on being drunk, didn't he?

A. That is his home, I bought that for him to have a home. I did stop him from selling lots.

10 Q. How?

A. I had Mr. Richman send him a note and I had written him once before that before mother died not to sell any more lots.

Q. You did discharge him before your mother died?

A. I wrote him a note, but he kept on selling lots, that was in 1923.

Q. What was the note, to stop selling?

A. Yes.

20 Q. And he kept right on selling, didn't he?

A. He was very abusive to my mother.

Q. He kept right on selling?

A. I suppose he did; I don't know how many he sold at that time.

Q. Didn't you you know he kept right on selling?

A. In a way I knew it.

Q. How did you know it?

30 A. Well, he was selling them, I suppose, he kept on selling them.

Q. Why didn't you go to a lawyer and get an injunction and stop him?

A. Because my mother begged me to make things as easy as I could, she didn't want to break up her home.

Q. Would that prevent your stopping him selling lots?

A. Prevent him from selling lots? She couldn't have lived with him if I stopped it.

Q. Why?

A. Because he was too abusive.

Q. Then you didn't stop him in order to save your mother, that is the truth of it?

A. But I did stop him after mother died.

Q. After your mother died, but as long as she lived you didn't stop him?

A. No.

10

Q. But after your mother died you stopped him by sending him a note?

A. No, I had Mr. Richman to send him a note.

Q. But you didn't apply to the court?

A. When I sent him the note in 1923 I had advice from an attorney then to send him a note not to sell any more lots, but mother was taken sick that summer.

Q. I understood you to say that Pine wasn't depositing any money in bank?

20

A. Not to my account.

Q. That came out of the sale of these lots, proceeds from the sales of the lots, that is correct, isn't it?

A. After he put in the \$75.00 he didn't put in any more, not to my account.

Q. Did he keep any account of the proceeds of the sale?

A. In his own banking account I presume he did.

Q. Why do you presume it; do you happen to know it?

30

A. He showed me.

Q. Go ahead.

A. After mother died he showed me his bank account and offered to make his will in my favor if I consented to let him go on and operate as he said.

Q. Why didn't you do that?

A. It wasn't necessary, the mortgage was paid off and he didn't fix up the house, and mother was dead and he was to have that for his home and it wasn't necessary for him to sell any more lots.

Q. Now, he was willing to will you the property?

A. He couldn't will that property, he wanted to make his will in my favor if I allowed him to operate, as he called it. Now, what did you mean,
10 Mr. Pine, to operate?

Q. Wait, wait. He was willing to will you the property?

A. No, he couldn't will me the property, the property was mine.

Q. But he was willing to make you a will if you would let him operate, will of what?

A. Of his money he had in bank, I don't know what else.

Q. Do you know how much money he had in
20 bank?

A. No.

Q. Weren't you curious to find out how much money he had in bank from the sale of these lots?

A. No.

Q. Why not?

A. Because I was in hopes he had enough to take care of himself with.

Q. Suppose from the sale of these lots he had fifteen or eighteen thousand dollars in bank?

30 A. He wouldn't have had that much because he spent too much buying whisky with.

Q. Suppose he had, that would have been a pretty important thing for you, wouldn't it?

A. It might be.

Q. And you were willing to let it go?

A. No, I wasn't willing to let it go; I did see his bank account.

Q. How much had he deposited in bank as the proceeds from these sales?

A. \$1000, or something like that.

Q. Didn't it run up to many thousands?

A. Not that I saw at that time.

Q. Weren't you interested enough as a woman of ordinary common sense to see what this man was doing with your property? Come, let's be reasonable.

A. I might have been if it hadn't been for my
10 mother. I have just told you how abusive he was to my mother, and I had tried to stop him selling lots before she died.

Q. You say you never agreed as Mr. Beckley testified here the other day that you were willing to make a deed to Pine and your mother jointly?

A. Did you say Mr. Beckley or Beakley?

Q. Beckley, the lawyer, he testified here the other day apparently clearly and rationally, that after talking with you to get you to deed this
20 property over to Pine he suggested that you deed it to Pine and his wife and you agreed to do it?

A. No, I did not.

Q. That is what he said?

A. No, I did not.

Q. Did he make such a suggestion to you?

A. He did make a suggestion.

Q. And you refused it?

A. I refused it.

Q. Why did you refuse it?

30 A. I told him I would deed that place to my mother provided there was a clause in the deed that it would come back to me at her death.

Q. I understood you to say yesterday Mr. Pine opened an account in the bank, what account do you mean?

A. I don't understand what you mean.

Q. I understood you to say that Mr. Pine opened an account in the bank, what kind of an account, account of what?

A. Who for?

Q. I don't know, I am asking you.

A. I have explained why Mr. Pine opened an account in the Blackwood Bank in my name.

Q. He did that, did he?

10 A. Yes.

Q. When was that?

A. When I told him I would let him sell lots to pay off the mortgage and to fix up the house.

Q. Where is that bank book, have you any idea?

A. It is here somewhere.

Q. Now, how much did he deposit in bank?

A. \$50.00 the first time, the book showed, and \$25.00 the second time.

20 Q. That is a deposit of \$75.00; what was that deposit for?

A. That was the agreement, I suppose, he intended to go on and do as he agreed to do, deposit the money from the sales from these lots in bank and I was to pay the bills.

Q. When he opened that account did he show it to you?

A. He had the bank send me a card for my signature.

30 Q. The bank sent you a card which showed Pine had deposited \$75.00?

A. No, they sent me a card for my signature.

Q. To show Pine had deposited \$75.00 for you?

A. No, not until I got my bank book.

Q. How did you know Pine opened that account and deposited \$75.00 for you?

A. I knew he opened the account because the bank sent a card for my signature, then I didn't find out

how much he deposited until I got my book from the bank and that was the following year, almost, sometime after that.

Q. That was the total he deposited, was it?

A. Yes.

Q. Now, what was the total you received from the lots that Pine sold, that you received, have you any idea?

A. I have a statement.

10 Q. Aside from the statement can't you approximate it; what, approximately, was the total amount?

A. What I received or what Mr. Pine deposited, which do you mean?

Q. Both?

A. I don't remember, it runs around \$1000, I am not sure of the exact amount whether it reaches \$1000, around \$900.00, and something. It is there, I have it somewhere.

20 Q. Let me get this. When did Samuel Pine undertake to shoot you?

A. He didn't undertake to shoot me, but my mother different times would write me not to come there, that Mr. Pine had a gallon of rum or he was on the warpath and if I came over there would be a fuss, I would look into things and she couldn't stand it, and I found out afterwards he said he would face the electric chair for me. I did go over just the same when I had a chance. I was often miserable different days, but when I could 30 go I went.

Q. Didn't you tell us yesterday Pine undertook to shoot you?

A. No, I don't remember that; he chased mother out with a gun once in a while.

Q. Did he say he was going to shoot you?

A. He said he would face the electric chair for me if I stuck my foot on the place, and mother told me that.

Q. Didn't you say yesterday he was going to shoot you, or threatened to shoot you, tried to shoot you?

A. Not to my face at that time, no.

Q. Sometime?

A. Yes, he was going to blow my brains out and
10 he would face the electric chair.

Q. When was that?

A. Between 1920 and 1923, up to the time I went there to nurse my mother; but I went there just the same when I had the chance.

By Mr. Ralph Wescott:

Q. Have you stated when your mother died?

A. 7th of February, 1924.

20

By Mr. Richman:

Q. Mrs. Gardner, you were cross-examined about the Blenheim property, how did you come to buy that property?

A. It had gone, as I understood, to Sheriff's sale, and my mother wanted it, wanted me to buy it badly.

Q. Why did she want you to buy it?

A. She liked the place and thought she would
30 have a home there, and I bought it for her to have a home and I fixed it up, but she didn't go there right away to live, she rented it, after I fixed it up she rented it and she got the proceeds, that meant \$9.00 a month.

Q. But the property was yours?

A. Yes, and she got that rent up until she went there to live; I don't know when that was, it might have been 1906, which I think it was, or 1907.

HAROLD DUNK, sworn.

By Mr. Richman:

Q. Mr. Dunk, where do you live? 10

A. I reside at Blackwood at the present time, have for the last four or five years.

Q. What is your business?

A. I have a canoe storehouse, and I have been in the real estate business more or less.

Q. For how long?

A. For a period of twelve or fifteen years.

Q. You knew Mrs. Gardner?

A. She is a cousin on my mother's side. 20

Q. Did you know Mattie Berg?

A. She is my mother's sister, my own aunt.

Q. Now, did you make any arrangements with Mrs. Gardner concerning the Mason farm?

A. I did after it came to the time my aunt was appealed to to help out in the matter.

Q. Who was your aunt?

A. My aunt was Mattie E. Berg, the mortgagee of the Mason farm after Mr. Beakley transferred the mortgage to her.

Q. Did you represent Mrs. Berg at that time? 30

A. I represented her in all her transactions in regard to this property.

Q. Did you look after the transfer of the mortgages to her in 1912?

A. I did, yes, sir.

Q. Now, what was the situation with respect to the—were you to collect the interest on the mortgages after Mrs. Berg took them?

A. Yes, I was elected to handle the things, Mrs. Gardner was in a bad situation and she appealed to my aunt to take over the mortgage, which my aunt did at my request. I said if she was going to do something for Mrs. Pine to do it while she was alive not wait until she was dead and consequently she took over the mortgages to help them keep the home there, and all I got was ingratitude for it.

Q. What was the situation with respect to the payment of interest?

A. After Mrs. Berg took over the mortgages, right after, there ceased to be interest for two and a half or three years, and my uncle and I both appealed to Mr. Pine, but the least interested one was Mr. Pine, he didn't seem to worry about the taxes or interest, everybody else did the worrying and he lived there, and I did my best to help all around.

Q. In that situation what happened?

A. When the mortgage got in arrears two or three years, of course, we naturally went after Mr. Pine to keep up the obligation to my aunt, I would write to Mrs. Gardner and I would see her occasionally—it was a family affair, of course, in a way—we were all interested to make it a go, and when it got so far there came a time when Mrs. Gardner agreed to let me lay out some lots on one side, it was a cater-cornered piece of ground there, and I was about to do it—Mr. Pine was so far in arrears with interest and taxes, and everything—and he comes in with this Granese business and they offered him \$1000 for the piece I was going to lay out in lots, the first piece.

Q. Can you pick it out on this blue-print, the Granese piece?

A. This is the piece here, I believe, this one here. I had drawn lots in there roughly, but I never went further, he had somebody come along which would liquidate the debts and reduce the mortgage. I had my aunt look the situation over and first she declined to release the place, there was no thought of any sale of lots when the place was bought, but she agreed finally to do it rather than to have any quarrel or argument, because it would liquidate the debt and that was the main thing at issue, to liquidate the indebtedness.

Q. Did you receive the proceeds of the sale to Granese?

A. I did, every cent of it, the check was made out to me, and I was to reduce the debts and liquidate the mortgage \$700.00, and I handled the situation the best I knew how under the conditions I had.

Q. Who did you receive that \$1000 check from?

A. The father of this Granese boy; it was the father who purchased the ground at that time, his money, and the boys were handling the proposition for him, the boys handled the deal and the father paid for the ground.

Q. What did you do with the proceeds of the sale of the Granese lot?

A. I applied it to pay off the indebtedness.

The Court: What time was that when that sale was made?

The Witness: That sale was made in 1915 or 1916, I believe, to the best of my knowledge. It should have been in 1915, I should say, because if the Beakley mortgage was assigned to my aunt in 1912 and there was two or three years arrearages of interest it would be in 1915.

Q. Mr. Dunk, I show you a check dated August 8, 1916, and drawn to the order of Mattie E. Berg and signed by you, what does that check represent?

A. That represents the accrued interest and \$700 of the mortgage that was paid off at that time and which I was instructed to pay to her by Mrs. Gardner.

Q. That is your check?

A. Yes, I handled the whole affair and settled it as justly as I could and I took no commission out of the sale, I just handled the situation to help everybody and I didn't take enough to pay for the sign which started the whole thing.

Q. That check is for \$955.00. I show you another check dated August 16th, drawn to the order of Kirkbride, Collector, is that signed by you?

A. Yes, I paid back taxes of the back year; I think it was one year's taxes. Every year's taxes had been in arrears and that was the last one that was paid, it was a lien on there.

By Mr. Richman: I offer them.

(Said checks marked Exhibit D15, 16.)

Q. Did you prepare a statement of the proceeds of the Granese sale?

A. Yes, sir.

Q. I show you a statement —

A. That is my statement, that is my writing and name.

Q. Did you submit that to Mrs. Gardner?

A. Yes.

Q. Do you recall when?

A. Immediately after the sale.

Q. That is your handwriting?

A. Yes.

The Court: This was a cash not an installment sale?

The Witness: Cash sale.

Q. Did you make any other sales?

A. Shortly after that time Mrs. Pine told me of another gentleman who wanted to buy a certain piece of ground and there was already a blue-print made, Mr. Storie had made it, and she requested me to come there and see him on a Sunday when he was down and I came there and saw him and he paid me, I think, \$25.00 to bind the bargain and he agreed to pay \$100.00—I forget the amount—in a certain number of days, and I was to have an agreement drawn up with Mrs. Gardner.

By the Court:

20

Q. This was when?

A. I think this was the following year, I guess it was the summer of 1916.

Q. Who was it buying?

A. A man by the name of Salvatore Sylvester.

Q. That was the second sale?

A. Yes. The idea was I was to carry the thing on and see that it didn't get in arrears, keep the home over their heads with the proceeds of this sale, which I did to the best of my ability, but it was a continual wrangle, Mr. Pine was always fighting with everybody and I just did the best I could to protect them.

Q. What is it you were selling at that time, a single lot?

30

A. A 3 1/2 acre piece of ground, which I have the blue-print here in my hand.

By Mr. Richman:

Q. Where did you get that?

A. I think Mrs. Pine turned that over to me so I could prepare the agreement, she had it there at the farmhouse.

10 Q. I think that has been marked as Exhibit D2. Now, Mr. Dunk, what was the total sale price for the Salvatore Sylvester lot?

A. \$500.00, I believe.

Q. What did you do with the proceeds of that sale?

A. The money came in in installments and I would write Mrs. Gardner and tell her when the interest or taxes were due and she would order me to mail—stop at Camden to see me, or I would
20 stop at her house, and I would be told what to do and I carried out the instructions she would give and she always asked me to pay the interest if I had the money and do the same with the taxes.

Q. Did you pay by check?

A. I paid everything by check, I believe.

Q. I show you some checks, the first one dated March 12, 1917.

A. That is my check.

30 Q. Signed by you and drawn to Kirkbride, Collector, for \$31.30?

A. That was possibly 1916 taxes.

Q. You paid that out of the proceeds of the Sylvester sale?

A. I did.

Q. Likewise a check dated March 14, 1917, to the Merchants Trust Company, do you know what that was for?

A. Haven't I got it in my statement? Was it a balance, or something? There it is, isn't it?

Q. Yes.

A. That was possibly a balance from cash I received from him, and I paid the taxes and that was the balance. It is all in my statement covering every penny I received. The only amount I took out was ten per cent for all the trouble I had, and it was some nice job.

Q. Was that the arrangement with Mrs. Gardner?
10

A. Yes, for handling the same, that included collection and sale.

Q. Another check dated June 5, 1917, drawn to Mattie E. Berg, being interest due January 25, 1917, on Cordelia Gardner mortgage, and signed by you?

A. That was the interest due on the balance of \$1000 mortgage after the first sale had liquidated the \$500 on the Blenheim property and \$200 on the
20 farm.

Q. And that was from the sale?

A. Yes.

Q. November 1, 1917, to Mrs. Berg for \$30.00.

A. That says July 25, 1917, interest.

Q. Likewise December 30, 1918, drawn to Mattie E. Berg for \$60.00?

A. Maybe the first half wasn't paid.

Q. Check for \$21.00, dated January 29, 1920, to Mattie E. Berg?
30

A. I think Mr. Pine came across with a sale of ground after that and she received the balance of \$300 for that piece of ground and that reduced the mortgage to \$700 and that \$21.00 is six per cent for six months.

Q. I show you check dated May 14, 1920, drawn to the order of Cordelia W. Gardner for \$121.48.

A. I completed the transaction and turned over to her the balance, and I was mighty glad to get out of it.

Q. All those checks I have called your attention to were out of the proceeds of the Sylvester sale?

A. Yes, sir.

Q. And they are your checks?

10 A. Yes, sir.

The Court: How much was the balance you turned over to Mrs. Gardner?

The Witness: \$121.48.

Q. Then did you submit to Mrs. Gardner or not a statement of what you had collected?

20 A. I sure did immediately after things were wound up.

Q. This little statement?

A. Yes. I used rather crude methods.

Q. Do you say now this is the statement you turned over to her?

A. I do.

Mr. Richman: I ask that seven checks, agreement, and two slips of paper be marked as one exhibit.

30 (Said papers marked Exhibit D18.)

Q. Do they represent the only sales you made?

A. Yes, because the matter of the mortgage was far reduced then and any sale that was made they would have to come to my aunt and she was sure to get the money what was left.

Q. You continued to represent her?

A. I continued to know what was transpiring, I lived with her at that time.

The Court: You refer to Mrs. Berg?

The Witness: Yes.

Q. What was the relation between you and Mr. Pine at that time? 10

A. None at all.

Q. You and Mrs. Gardner handled it up to that time?

A. Yes, all the time. I didn't consider he had any equity in the matter and, of course, I didn't see why I should consult him.

Q. Did you have any trouble with him?

A. He was living on the place and at first maybe I consulted him when I was going to sell lots, it was a gentlemanly affair, he was to be an agent, 20 and on the sign I had "Harold Dunk, Blackwood Office" and "Sam H. Pine, Office on the place," and I dropped out when the trouble began. He had the impression I was in there for graft, but if he can prove I got any graft out of it maybe he can prove his case.

Q. What was the trouble between you?

A. It was lack of cohesion, I had my ideas and he had his ideas on the matter and we just couldn't hit it, that is all. 30

Q. Did he want to be the sole salesman?

A. No, it wasn't so at that time, he seemed perfectly willing, glad to have me co-operate with him, because he needed help.

Q. Did he want to be the sole salesman afterwards?

A. I don't know anything about what happened afterward.

The Court: I would like to inquire whether Mr. Pine knew you returned the balance in your hands on the second sale over to Mrs. Gardner?

The Witness: I presume he did, but not directly through me; I told his wife what I had done. 10

The Court: Then you didn't tell Mr. Pine?

The Witness: No, I had no conversation with Mr. Pine at the time, as Mrs. Gardner said he threatened to shoot me.

The Court: Did he know you had a balance remaining that would be payable to either him or Mrs. Gardner?

The Witness: He knew the sale was going on and all the time telling the fellow that purchased the ground not to pay it to me to pay it to him, but the fellow had his agreement with Mrs. Gardner and I. 20

Q. He knew you had made those two sales and was collecting the money?

A. He must have; the unpleasant situation he made for me he must have known it. 30

Q. How did you come to get out of it finally?

A. When that sale was wound up I was only too glad to get out, it was no pleasure for me, I did it to help.

Q. Were you present at any conversation between Mrs. Gardner and Mr. Pine?

A. I just can't recall any, because Mrs. Gardner had a family growing up and she didn't have no time to attend to things like that, and that is why she trusted me, and I lived with my aunt and she trusted me to handle her affairs, and that is how I came to be in the situation, having had a little experience they both trusted me and I did the best I could, but I couldn't do anything with Mr. Pine and naturally I wanted my way because I thought I was doing things in the legal way, tried to. 10

Cross-examination.

By Mr. Ralph Wescott:

Q. What started the trouble between you and Pine?

A. I think I wanted to lay it out in acreage in order to cut out having so many deeds and he wanted to run small lots, and then he had a fancy name for it, Recreation Tract, or something like that, and I wanted to continue Linwood Grove Tract. 20

Q. I understand from that that the only difficulty between you was as to how the lots should be laid out, is that correct?

A. Well, of course, he was bull-headed in his way, and I suppose I was in my way, and I represented the owning parties and I didn't see where he had enough to do with it to be that way about it. It was a family affair, he was there living there, you couldn't push him out, it was bought for a home for him and he was living there and he was living off of it. 30

Q. Did you feel that he had any business to interfere with you?

A. No. I didn't act as though I did, did I?

Q. Did you ask Mrs. Gardner or Mrs. Pine to try to keep him away when you found you couldn't do it yourself?

A. No, I was dealing with the mortgagee and the owner, and he was the tenant.

Q. If I got it straight you said the only serious friction between you was your varying idea about laying out lots; wasn't there anything else?

10 A. My methods didn't suit him, that is all I can say.

Q. In regard to what?

A. Those are the main things I can recall at this time.

Q. Laying out the lots. What about the disposal of the proceeds of sale?

A. Well, he didn't have anything to do with that, I was dealing with the parties who had the money invested.

20 Q. Did he undertake to?

A. There was a squabble in the family, but I didn't deal in the family in that way, I was dealing with the principal.

Q. What was that squabble?

A. He wanted to get the money and drink it up, I suppose, something of that sort; he didn't want the mortgage to be paid off, he wanted to grab it and I insisted the debts should be liquidated and the home kept safe for him.

30 Q. Did he want the money?

A. It looks that way from all the testimony, doesn't it?

Q. Did it appear to you at that time that he wanted the money?

A. I don't know anything about it, I wasn't dealing with him, as I say, I was dealing with Mrs. Gardner and my aunt.

Q. Didn't you have anything to do with him?

A. Not after I put the sign up there; I started him off and all I got was ingratitude for it.

Q. You are referring now to the Granese sale?

A. I put the sign up before the Granese sale and that started him off. Everybody knew before that he didn't have a clear title to it and were afraid to do business with him, that is the way I heard it.

Q. You have told us in your direct examination you didn't get paid for putting up the sign? 10

A. I was glad to get out of it, I spent my labor and I had made the sales, and there was a small balance and I asked Mrs. Gardner if she was willing for me to take the balance and she said yes.

Q. At the bottom of your statement you got up as best you could is a note to the effect you are keeping the small balance \$10.05.

A. No, I didn't say that, did I? I show the lumber and paint, that was a total of \$8.05, and I thought my labor, at least was worth \$2.00 for 20 erecting that sign and how I figured sixty cents due me I don't know, but that is a small matter, I don't think that is worth considering.

Q. But you put it out in the statement?

A. I wanted to show Mrs. Gardner I was honestly handling the thing and I turned the statement over to her.

Q. To whom did you turn over this statement?

A. I turned over the statement to Mrs. Gardner, and then Mr. Pine was hollering, he thought I stole 30 it, and I think I sent her a duplicate statement.

Q. You are sure you didn't send it to Mr. Pine?

A. If I sent it to Mr. Pine it was at her orders; I did what I was ordered to do and what I thought the law required me to do.

Q. Now, Mr. E. I. Beakley, if I recall correctly, suggested he was the one who persuaded cousin

Mattie Berg to take over these mortgages, and then when Mrs. Gardner testified I think she said she was the one who got Cousin Mattie to do it, and now I understand you were the one.

A. I was the nearest one to her, I lived there with her day in and day out, and when she died she still thought enough of me to leave me quite a little of her property.

Q. What was your idea in telling her to take over
10 this obligation?

A. I thought the place would any time bring the price, and I knew she wanted to do something for her, I know she intended to leave her something, and I said to her if you intend to leave them something then you might as well do it now and keep the home for them, and she agreed to it.

Q. And she agreed?

A. She hesitated, she didn't like to take the chance; her husband wanted her to buy stocks and
20 things.

Q. Had the others all tried to persuade her?

A. Everybody did.

Q. And you convinced her she ought to do it?

A. I wouldn't say I convinced her, I only tried
to persuade her and told her those things, and that is why I felt obligated.

Q. You spoke of a blue-print you got from Mrs. Pine?

A. Yes.

Q. Do you know where she got it?
30

A. I presume Mr. Pine had had that prepared by Mr. Storie and it was there in the house and she knew where it was and when the sale was to made the blue-print showed what was to be sold and she showed it to me.

Q. The original request for you to sell this ten

acre piece in building lots came solely from Mrs. Gardner?

A. The original request for ten acres; no, I didn't say it came directly from her, I said taxes were in arrears and —

Q. Don't tell that again, tell us who the original request came from to sell this ten acres?

A. Pine practically made the sale, I didn't get any commission out of it, or anything else.

Q. Did Pine practically make the Sylvester sale, 10
too?

A. No.

Q. Who got you to make that one?

A. Mrs. Pine called me over there.

WALTER WARD, SWORN.

By Mr. Richman:

20

Q. Mr. Ward, where do you live?

A. Blackwood.

Q. Are you any relation to Mrs. Gardner?

A. Brother.

Q. And Mr. Pine is your stepfather?

A. Stepfather.

Q. How long have you lived in Blackwood?

A. Off an on about 31 or 32 years.

Q. Are you familiar with the Mason farm?
30

A. I am.

Q. How long have you known about it?

A. I have known the Mason farm for forty
years or more.

Q. How long have you known Mr. Pine?

A. I was about 14, I think.

Q. Was that about the time when he married your mother?

A. He married my mother later on.

Q. You knew him before he married your mother?

A. Yes, I have always seen him.

Q. Now, did you know of a purchase of the Mason farm by Mrs. Gardner?

A. I don't know anything about the transaction, 10 only in November after the farm was bought in 1910 I was over there a gunning —

Q. Where gunning?

A. Gunning around the Mason farm.

Q. Who was gunning?

A. Mr. Pine and I.

Q. Yes.

A. And he told me about the transaction and asked me if I thought he could make the interest and taxes.

20 Q. What did he say?

A. He said Cordelia bought the place, he had been to Mr. Wilcox to get the money and Mr. Wilcox wouldn't let him have it, and I don't know who else he had went to.

Q. Did he say anything else about the farm?

A. Well, he said he seemed to think he would make a living and pay the interest and taxes on it.

Q. Did he say anything more about it?

30 A. Well, in a general way; he said he was working around by the day, he had been working for Mr. Beakley, and he thought he could make a living there, Cordie had bought the place with a view of selling the Blenheim property later on and cleaning off the mortgage.

Q. Did he say anything to you as to who was the owner of that property?

A. No, not directly, not directly.

Q. Did he say anything indirectly?

A. Only that she had bought the place for them as a home is the way I understood it.

Q. And all he had to do was to pay the interest and taxes, is that correct?

A. Pay the interest and taxes.

The Court: Don't lead him, Mr. Richman.

Mr. Richman: I didn't mean to lead, I was 10 merely re-stating what he testified to.

The Court: I think it is objectionable.

Mr. Richman: I ask that it be stricken out.

The Court: It ought to be, I think.

Q. Now, Mr. Ward, when, if you know, did Mr. 20 and Mrs. Pine go to the Mason farm to live?

A. In 1910, in the fall of 1910.

Q. Where were you living then?

A. I was living in Blackwood.

Q. Where were you working?

A. I was farming in Blackwood.

Q. Now, did you visit your mother and father on the Mason farm?

A. I did.

Q. Were those visits regular or not?

A. Well, at that time I was living close and went 30 over there on a Sunday.

Q. How long did that visitation continue?

A. It continued for about two years until I moved to Grenloch and we were further away, and then they moved over to the Williams farm, farming

for Mr. Beakley, and I didn't get over quite so often, only when they sent for me.

Q. They left the Mason farm?

A. Yes, and went to farm the Williams farm for Mr. Beakley.

Q. And then did they return back to the Mason farm?

A. Yes.

Q. Did you go to see them after that?

10 A. Oh, yes.

Q. How often do you suppose you went over there?

A. Sometimes I would be over once a week and then probably three times a day when I was sent for.

Q. Who would send for you?

A. My mother.

Q. Why did she send for you?

A. Well, she was in trouble.

20 Q. In trouble with whom?

A. Mr. Pine.

Q. What was the trouble?

A. Drinking.

Q. Who would be drinking?

A. Mr. Pine.

Q. Now, can you tell us some instances of your going over there and finding that condition?

A. I went over on the second Sunday in June in 1923 and a man by the name of Gotlieb Myer had
30 brought him five gallons of whisky, and my mother told me it was the second lot —

Q. Just tell us what condition you found there.

A. Mr. Pine was pretty well filled up, and I was back there again on Monday twice.

Q. Why?

A. Because he was under the influence of liquor.

Q. Why did you go back?

A. My mother phoned for me.

Q. Do you know why she would phone for you?

A. Mr. Pine would be abusive and everything, and he shot at the mules.

Q. What do you mean, shot the mules?

A. He would let the mules get out and he went out and tried to get them in and couldn't and then he took the gun and shot at them, and I wouldn't just say it was that time, but one time she sent 10 for me because the little boy had shot his foot off.

Q. What little boy was that?

A. That was a grand nephew of my mother's living with them.

Q. How old was he?

A. I should judge he was about eleven or twelve years old.

Q. Yes.

A. Mr. Pine ordered him to go and shoot some 20 birds out of the cherry trees and some way or other the boy shot his foot off, and my mother phoned for me.

The Court: Cut out all these things his mother stated to him.

Mr. John Wescott: I am not objecting, if the Court please; it is incompetent, but I want to see how far they will go in abusing this man. 30

The Court: If you don't object it isn't up to me to do it, but it is encumbering the record. I give no attention to it, but it is confusing, and it isn't evidence.

Q. I only want you to tell what you observed when you went over there.

Mr. John Wescott: I want your Honor to understand it is not my thought to disparage the Court in not objecting, I just want to see how far these people go in abusing this man, that is all.

Q. What did you observe as to the conduct of
10 Mr. Pine toward Mrs. Pine when you went there?

The Court: Tell what you saw, not what was told you.

A. Mr. Pine sometimes when he wasn't drinking was all right, but when he was drinking he was bad. I seen him take hold of my mother and choke her, that was in February.

20 The Court: What year?

The Witness: The year 1922.

Q. What else did you see on any other occasion?

A. That was about the only time I seen him touch her, but I have seen him full a number of times.

Q. Ever hear him say anything to her?

A. Yes, curse and swear .

Q. At her, or not?

A. At her and me, but I took no offense at it.

30 Q. Do you remember any time what he said when he cursed her?

A. Well, he said one time he would shoot the whole damn family.

Q. Do you know how your mother regarded him?

A. Well —

The Court: Don't tell what she told you. If you saw any manifestations of fear or anger on her part, all right.

The Witness: She was afraid of him when he was drinking.

Q. Do you know anything about the signing of a deed by Mrs. Gardner?

A. Whenever there was a deed to be signed and 10 if it wasn't signed right away then Mr. Pine would drink and I would have to go there.

Q. What was his conduct toward Mrs. Pine at the time?

A. Sometimes he would be down and out, wouldn't know nothing.

Q. Now, Mr. Ward, how long a period did this cover, that you recall?

A. Well, from about—I think Mr. Pine worked for me for about four years and he was doing 20 pretty good then until along around 1920.

Q. Yes.

A. After he stopped working for me —

Q. Then what was the situation?

A. The situation was then he got hold of some money and he didn't work, he raised a little stuff around the place and sold it right there and my mother would go out and peddle with the horse and wagon, and the boy, and on Sundays he would have a lot of people come there into the place and 30 sometimes Mr. Pine would be full and sometimes he wasn't.

Q. Do you know whether or not Mrs. Pine wanted these deeds signed?

A. Well, I just can't say only from what she said.

Q. She did talk to you about it?
A. Yes.

Cross-examination.

By Mr. John Wescott:

Q. How long have you known Mr. Pine?
A. Since I was about 14 years old.
10 Q. Been with him a good bit, haven't you?
A. Off and on.
Q. Lived with him when you were a boy?
A. No, sir.
Q. You did not?
A. I lived there three months.
Q. Then you did live with him when you were a
boy?
A. Three months.
Q. Gunned with him a good many times?
20 A. Gunned with him lots of times.
Q. Drank with him a good many times?
A. No, sir.
Q. Never drank?
A. I have taken it, yes.
Q. Pine was willing to share with you once in a
while?
A. I was never drunk in my life.
Q. Pine was willing to share with you once in a
while?
30 A. In what way?
Q. Whisky?
A. Mr. Pine never gave me no whisky.
Q. What is your idea now coming into a public
court like this and testifying of Pine getting drunk,
what is your idea?
A. For the respect of my mother and sister.

Q. You and Pine have been for years very
friendly, haven't you?

A. Mr. Pine and I have always been friendly.

Q. And you have talked to Mr. Pine a number of
times about this case, haven't you?

A. Not so many times.

Q. Well, a number of times?

A. I don't know about a number of times.

Q. And you have told him, haven't you, he ought
to have the place, it was his? 10

A. I never told Mr. Pine that.

Q. What did you say to him about it?

A. Mr. Pine asked me.

Q. Asked what?

A. Asked me if I thought he could make his
taxes and interest.

Q. When was that?

A. In 1910.

Q. That was in 1910?

A. Yes, sir. 20

Q. Did he ever talk to you about it afterwards?

A. These family troubles, yes, sir.

Q. Ever talk to you about it afterwards, not the
family troubles?

A. In a family way, yes.

Q. What did he say to you about it?

A. He said a number of things.

Q. What did he say to you about it?

A. He told me later on when sometimes he
wasn't in a good humor that the place was his. 30

Q. What else did he tell you?

A. He told me he was going to have it.

Q. And what else did he tell you?

A. I just can't recall any other conversation that
would lead up to anything else.

Q. When he told you the place was his what did
you say?

A. I knowed nothing about it whether the place was his or not only from what he said. I didn't know anything about the transaction, how the place was bought, only what he told me.

Q. What did he say to you that indicated the place was his?

A. He seemed to think he ought to have it.

Q. What reason did he give you?

A. I can't tell.

10 Q. What did he state?

A. He didn't state.

Q. And you agreed with him?

A. I did not.

Q. Haven't you always told Pine in all your conversations with him that your sister was wrong, that this place was his?

A. I don't know that I have.

Q. Will you say you have not?

A. Only from what he said.

20 Q. Haven't you always told Pine your sister was wrong and that this place was his?

A. No, I have not.

Q. You know Mr. Beckley, don't you, the lawyer?

A. Mr. Beckley, the lawyer, yes, sir.

Q. You have had conversations with him about this matter?

A. I did.

Q. You have heard what he said about those conversations?

30 A. Mr. Beckley didn't mention my name.

Q. Didn't you hear what he said on the witness stand?

A. Mr. Beckley didn't mention my name on the witness stand, he only said he came to see me; no conversation mentioned between Mr. Beckley and I.

Q. When was it you turned against Pine?

A. Never turned against Pine until after my mother died and when I went there and Mr. Pine cursed me and I said he wouldn't curse me or no other man.

Q. Why did he curse you?

A. I don't know why, I don't know why.

Q. Just out of pure devilishment?

A. I don't know why.

Q. You say Pine choked your mother once; what 10 did he do, strike her or choke her?

A. He choked her; I was standing outside looking through the window.

Q. What did you do?

A. I went in and took hold of him.

Q. What else?

A. I gave him a shake and asked him what he meant.

Q. What else?

A. That is all. 20

Q. What did he do when you asked him what he meant?

A. What sense is there in a man that is full.

Q. He was a full man?

A. Yes.

Q. Have you ever seen Pine when he wasn't full?

A. Oh, yes.

Q. How many times have you seen him when he wasn't full? 30

A. I don't know.

Q. How many times have you seen him when he was drunk?

A. I couldn't answer that.

Q. How many times have you gunned with him?

A. I couldn't answer that.

Q. Are you interested in this case?

A. I am not.

Q. Not in the least?

A. No, sir.

Q. Do you know your sister has made you a will for one half of this farm if she wins the case?

A. No, I do not.

Q. Haven't heard of that?

A. No, sir.

10

Mr. Ralph Wescott: Not a will, a deed.

Q. A deed?

A. No, sir.

Q. Don't you know counsel in the case has that deed in his possession now?

A. I don't know it.

Mr. Richman: He doesn't know it because it
20 isn't so; if you refer to me it isn't so.

Q. Coming to this conversation you had with Mr. Beckley, what was that talk?

A. As near as I can recall it Mr. Beckley came to see me and asked me what I knew and I told him I didn't know anything only what Mr. Pine said, and the best way, I said, was for Mr. Pine to go over there with him and see Mrs. Gardner and settle it.

30 Q. What else was said?

A. That is all I said.

By Mr. Richman:

Q. Did you have any further conversation with Mr. Beakley?

A. No, sir. Mr. Beckley?

Q. No, Beakley?

A. I was referring to Mr. Beckley.

Q. Did you have a conversation with Mr. Beakley?

A. Mr. Beakley came to see me.

Q. For what purpose?

A. He came to where I was working and asked me—I can't just word it, but he said, "What is all this I hear about Cordie taking Sam's home away from him?" and I says, "I don't know that she is taking his home away from him, she is trying to keep it for him," and Mr. Beakley said "What is the idea of going on and doing this, you will get everything in the end anyway," and finally I asked him why he wanted to get into it and he said, "For different reasons" he said "Cordie might have saved my life when I was sick with typhoid fever, and that is the reason I am going to get into it, and he said, "I am going tomorrow to give it to Wescott and Weaver and you know what will become of the whole thing" he said "They will law it."

10

20

Q. Where was that conversation?

A. In Mr. Pine's lumber yard.

Q. How long ago?

A. June of last year.

The Court: I didn't understand who this conversation was with.

30

The Witness: Mr. I. E. Beakley.

The Court: That is the one the mortgage was made to originally?

The Witness: Yes, sir.

By Mr. John Wescott:

Q. Haven't you heard of a deed for half of this property?

A. No, sir.

Q. Don't know there is such a deed in existence?

A. No, sir.

Q. That wasn't put on record.

A. There isn't any.

10 Q. There isn't any such deed?

A. No, sir.

Q. Didn't your sister's attorney prepare such a deed?

A. No, sir, not to my knowledge.

Q. Did a man by the name of Bradshaw prepare it?

A. He undertook to prepare it but I destroyed it.

Q. Who is Bradshaw?

A. Bradshaw is the man who had been making
20 out Mr. Pine's deeds for him.

Q. When did Bradshaw make that deed?

A. I just can't tell when.

Q. About how long ago?

A. In 1923, the forepart of 1923.

Q. Well, how did he happen to make that deed—it was a deed for one half of this property to you, wasn't it?

A. I believe it was at the suggestion of my sister.

Q. Was it executed, signed by your sister?

30 A. It was.

Q. Why was that done, why would your sister give you a deed for one-half?

A. She thought probably if I had part interest I would look after it for her and stop Mr. Pine from selling lots and drinking.

Q. Now, her motive in making that deed to you,

she stated, was to stop Mr. Pine from selling lots and drinking?

A. Yes, sir.

Q. And that was in 1923?

A. Yes.

Q. And that was to save Pine from himself?

A. The deed started in 1922, if I am not mis-
taken.

Q. Where is that deed?

A. I destroyed it. 10

Q. Who destroyed it?

A. My wife.

Q. When?

A. I don't know.

Q. Why?

A. I told her to.

Q. You told her to destroy it?

A. Yes, sir, the deed was originally no good.

Q. Did you tell your sister you destroyed the
deed? 20

A. Yes, the deed was no good.

Q. Why not?

A. Mr. Bradshaw didn't take off for any lots that had been sold at all.

The Court: Anything more, Mr. Richman?

Mr. Richman: No, I rest.

The Court: Any rebuttal? 30

Mr. Ralph Wescott: If it would be convenient this might be a better time to adjourn than later. One of the principal witnesses we want to put on isn't here at present. We are expecting him from out of town.

The Court: It is a little early for adjournment; haven't you someone else?

COMPLAINANT'S REBUTTAL.

SAMUEL PINE, recalled.

10 By Mr. Ralph Wescott:

Q. Yesterday, Mr. Pine, you were asked to bring your books of original entries in which you kept a record of the sale of the lots referred to in this case; are these the books?

A. They are the books, yes, sir.

Q. Now, will you open them and show where your accounts of the sales of these lots are?

A. All of these were transferred from the old
20 book to the new book except those paid in full.

Q. There are two books, which is the old book?

A. This one.

Q. The small book?

A. The small one, beginning there.

Q. The small book, being at a page marked "1" and headed "Henry F. Lee." Now, are these sheets that were offered yesterday a copy in your own handwriting of the entries in this book?

A. Not all of them, some of them; all of them
30 isn't on there, and there is more entries since they were copied in this new book.

Q. Have you gone through, since our session yesterday, these books of original entry yourself and totaled up the installments so that you now know the total amount of money received by you on these lots you sold?

A. Yes, sir.

Q. Will you turn to that total, please?

A. That is the total less what they have of the lots that were sold off my farm.

The Court: What is the total of the amount actually received by you?

Q. Put on your glasses and point to the figures here.

10

The Court: You were asked how much was received by you; now, answer that and wait for some further question.

Q. Isn't it shown here?

A. \$14,220.

Mr. Richman: I object to that unless it is from those original books of entry. He is apparently reading —

20

The Court: Why didn't you object before it was in evidence?

Mr. Richman: I assumed he was reading from that book, but I notice he was reading from a slip.

The Court: Still this is a bill for an accounting and I suppose he can testify to it, but it ought to be checked up. Certainly I shall not undertake, in event of a decree for the complainant, to attempt an accounting myself, that will have to go to a Master.

30

Q. Mr. Pine, the figure you have just quoted appears on a separate sheet of paper that you have

here in your account book, and on that same sheet appears a list of names and opposite those names amounts of money which appear to be the items from which you got this total. Is this sheet a copy by you from entries in your book?

A. Yes, sir.

Q. So the total on this sheet is the total you would get by adding up the items that actually appear in the book?

10 A. Yes, sir.

By the Court:

Q. What disposition have you made of that \$14,000?

A. I have used it for different purposes, to live on and to pay off mortgages and interest, and my debts, which I had plenty of them, notes in bank, and everywhere, that is what I have used it for,
20 your Honor, except what I have left in the Blackwood Bank.

Q. Do you know how much of that has gone to pay for encumbrances on this property?

A. How much of this has gone —

Q. Yes, to pay for encumbrances on this property?

A. No, I do not, exactly.

Q. It couldn't be much, it was only \$1700 to start.

A. Yes, but there was interest for several years,
30 and different things, taxes.

By Mr. Ralph Wescott:

Q. Now, a map has been introduced in evidence this morning and it has been testified that the map reached the hands of Mr. Dunk from Mrs. Pine—I will withdraw that question.

By the Court:

Q. I would like to inquire whether there are any lots that have been sold for which deeds have not yet been executed?

A. Several.

Q. Amounting in value to about how much?

A. Well, I should say \$1500.00, \$1000, probably.

Q. \$15,000?

A. No, \$1000.

Q. \$1000 still unpaid, or the total amount? 10

A. Are paid in full, but have no deeds, your Honor.

Q. How many lots have been sold that have not been paid for, approximately, give me an idea?

A. I should say at least seven, five or seven.

Q. Five or seven different people?

A. Yes, different people.

Q. Are there any still paying in installments?

A. Yes. 20

Q. How many of them?

A. I would say twenty-five, anyway.

Q. How much altogether are the installment contracts outstanding?

A. I don't just get you.

Q. How much altogether do the installment contracts outstanding amount to?

A. Six or seven thousand dollars I should say.

By Mr. Ralph Wescott: 30

Q. What is the total number of sales to different parties that are shown in this book that you have made yourself?

A. That I have made?

Q. Yes.

A. I have a record of that here. What became of the list?

Q. Approximately, give us your idea, generally?

A. The number, I should say fifty or more have bought lots; not one, maybe two, three or four.

Q. That you have sold yourself?

A. Yes.

The Court: That represents how many purchasers, about?

The Witness: About?

The Court: About how many purchasers would that represent?

The Witness: In the neighborhood of thirty.

Q. That is to say, some of these entries of customers here are repetition, the same name appears more than once on this list?

A. Yes, have bought two.

Q. You have heard the testimony, Mr. Pine, regarding your relations with your wife; will you please state generally what those relations were and definitely whether you chased your wife with a gun, choked her, and otherwise abused and ill-treated her?

Mr. Richman: I object, if the Court please, he ought to ask —

The Witness: I will positively say I never chased her with a gun.

Mr. Richman: I object to the general statement by the witness. I think he ought to be asked specific questions and give specific answers.

The Court: I suppose all he can properly answer is what is charged against him and there is so much charged I don't know how you are going to cover it in any question. I think he may state what his relations have been with her.

The Witness: My relations with my wife were practically fine and good, except we would have a little difference like all other families, no doubt, but the most trouble was in getting deeds to my home, most arguments were about those things; as far as chasing her with a gun, positively no; as far as hurting her in any way, shape or form, positively no; I never hit her, never pushed her away. I have gotten angry at times because when the arguments would come she would have a brainstorm, but the next minute it was all over, want to hug and kiss you then, it was all over.

By Mr. John Wescott:

20

Q. What about your getting drunk with this fellow here?

A. What about my getting drunk? I don't deny getting drunk, I won't deny that, I have been drunk, sure, perhaps he has, too, and perhaps others, I don't remember that, but I don't think that concerns the title.

By Mr. Ralph Wescott:

30

Q. What about the relations between you and your wife, state whether they were influenced by the presence or absence of Mrs. Gardner in your house?

A. I didn't get that well.

Q. Was your attitude to your wife influenced at all by the presence or absence of your step-daughter, her daughter?

A. I don't understand the question.

Q. Did you get along with your wife when Cordelia Gardner was at your house as well as when she wasn't there?

A. I did because I didn't go near the house after we moved to my home on the Mason farm; when she was there, practically speaking, I kept in the field.

10 Q. Was Cordelia very frequently over to the Mason farm?

A. Not so very frequently.

Q. Did you ever notice any trouble between your wife and her daughter, Cordelia?

A. Many a time, many a time.

Mr. John Wescott: Call his attention to the fact after his wife went over to her daughter's place
20 how often he went over there, and whether he furnished any money, food, clothes, or what not.

Q. It has been testified by Mrs. Gardner that she managed to support herself; have you anything to say regarding her condition, her welfare, after she was married and went over to Kirkwood to live, was it still necessary for you to contribute to the maintenance of her family?

A. I felt so; I have saw letters she has written
30 to her mother and her mother not only saw the letters but her mother told me, positively.

Q. Did you do anything?

A. I did the best I could under the circumstances, always, always.

Q. In the way of supplying them with food?

A. Every time the wagon went over there it was loaded, every time, never went empty.

Q. Taking produce, I assume, from your farm?

A. Different things.

Q. To where?

A. To Mrs. Gardner's home at Gibbsboro.

Q. Now, after Mrs. Pine went just prior to her death to her daughter's place what did you do, did you ever go there to see her?

A. Yes.

Q. How often?

A. I was there once after mother's death. 10

Mr. Richman: I think this should have been brought out in direct examination; it is not in the nature of rebuttal, and I object to it.

The Court: I don't know whether it is or not.

Mr. John Wescott: The general idea was this man neglected his wife, and I want to get counsel to ask him about his visits to his wife after she went
20 to live with his daughter at Kirkwood.

The Witness: Every week I was there, once a week.

Q. Did you give her anything?

A. Always.

Q. What?

A. \$20.00 the first time, \$10.00 every time after-
ward, took chickens, eggs, oranges, and anything I
thought they needed, and I always gave the chil- 30
dren a dime apiece, and everything was lovely.

Q. How long a period of time did that last?

A. I should judge from September to February I think she died. Took them preserves and different things.

Cross-examination.

By Mr. Richman:

Q. Do you recognize this to be the handwriting of your wife?

A. The signature isn't on there.

Q. No.

A. I couldn't say it was or not, her signature
10 isn't there.

Q. You don't recognize that to be her handwriting?

A. No, sir, I wouldn't say that I did.

Q. Did you know she wrote to your daughter in June, 1922, to the effect that you were on a high spree of drunkenness and you would be better off dead?

A. No, positively no.

Q. Do you know she complained to your daughter
20 about being continually drunk?

A. No, positively no.

Q. Do you know she did that in letters?

A. No.

By Mr. John Wescott:

Q. Were you continually drunk?

A. No, sir.

Q. Are you sober now?

A. I will leave that to your Honor. When I get
30 home I will hear from him I was drunk in court. I have heard it before.

The Court: Let us adjourn now.

(At this point an adjournment was taken until 1.40 o'clock P. M.)

(Trial of the cause resumed at 1.40 o'clock P. M., pursuant to adjournment.)

SAMUEL H. PINE, resumed.

The Court: Didn't you finish with this witness?

Mr. Ralph Wescott: Yes, we had, but a question has occurred to us that we neglected to ask him. 10

By Mr. Ralph Wescott:

Q. You heard Mr. Dunk's testimony this morning, didn't you?

A. What?

Q. You heard Dunk's testimony?

A. Yes, sir.

Q. He said he had nothing to do, as I recall, with you in connection with selling the ten-acre tract to Granese and the 3½ acre tract to Sylvester; will you please tell the Vice-Chancellor your business dealings with Dunk, whether or not he was your agent at that time? 20

A. He was my agent at that time, but I sold the ten-acre tract to Tony Granese, I did that, and I also had this Salvatore on the job before he came there one Sunday and sold it to him, Harold Dunk.

Q. You refer to Harold Dunk?

A. Yes. 30

Q. Made the sale?

A. Made the sale.

Q. What, if anything, caused the falling out between you and Dunk?

A. When I made the sale of this \$1,000 I wanted Mrs. Berg to have \$700.00 on the mortgage and

I wanted \$300.00 for my own purposes, and Mr. Dunk said that she would have to have it all. I says, "Harold, she will do just as you say about it"—in other words, she told me she would accept the money as I had it to spare on the \$1200 mortgage, and one word brought on another, and finally I said to him, I said, "She will do just as you say about it, Harold," and he said, "Well, she will have to have it all," and I said, "I
 10 won't cater to you any longer, I have catered to you since you left your mother's breast and be damned if I will cater to you any longer," and I never have, and that was the cause of our falling out, your Honor.

Q. With relation to those blue-prints that have been introduced into evidence, how did they come to be made?

A. Mr. Storie made all the blue-prints that I ever had made.

20 Q. Did he make those?

A. Yes, he sure made those, certainly.

Q. At your request?

A. At my request, and I paid him for it.

Q. Now, what, if anything, caused a difference of opinion or ill feeling between you and Walter Ward?

Mr. Richman: I object, there has been no testimony —

30 Q. The question is leading; I am simply trying to get to the point.

The Court: I think it is all right.

A. I am only able to answer that question in this

way, except it was Cordie offering to make a deed for half of my home to him.

Q. Was there any understanding between you and Ward that he was to benefit at your hands?

Mr. Richman: I object to that as leading.

Q. Yes, it is leading.

A. I said to my step-son —

10

The Court: Never mind what you said to him.

The Witness: I offer to make my will and testament to him; something happened, it wasn't done for a week or so, and in the meantime one of my people who bought lots from me came to me and told me, he said Mr. Ward said not to pay any more money, and, of course, I didn't make that will.

Q. Did you ever learn from Ward why he said 20 you weren't to have any more money?

A. No.

Mr. Richman: I object to that as immaterial.

Q. Among the exhibits we have introduced, Mr. Pine, is C2, a mortgage from George Gardner and Cordelia, to Isaac E. Beakley, how did that reach our hands?

30

The Court: Which mortgage is that?

Mr. Ralph Wescott: This is the \$1200 mortgage.

A. Harold Dunk.

Mr. Richman: I object to that as rebuttal, there

has been no question raised about the cancellation of that mortgage.

The Court: You may open your case and put it in, anything you want to reply to you may.

Q. How did this mortgage get in your hands, Mr. Pine?

A. Harold Dunk done Cousin Mattie's business, 10 the mortgage, the one who held the mortgage.

Q. Do you mean us to understand by that this got in your hands through Dunk or through Mattie Berg?

A. Yes.

Cross-examination.

By Mr. Richman:

20 Q. Mr. Pine, you spoke about sending produce over to Mrs. Gardner's from your place, didn't you?

A. I spoke about something to that order; I remember what I said.

Q. Weren't they living on a farm themselves?

A. Yes, sir.

Q. Did they have all they needed?

A. They didn't have all different kinds of produce at the time, as I did.

Q. They had a farm?

30 A. Yes.

Q. Raised truck?

A. Sure.

Q. And raised it for their own use?

A. Did they raise sweet potatoes? I did.

Q. Didn't they raise everything for their own use?

A. Did they or didn't they? I don't think they

did or they wouldn't have wanted what I raised. Positively no, they did not.

By Mr. John Wescott:

Q. Did you take anything except farm produce over to them?

A. Yes.

The Court: There must be an end to this, you 10 have see-sawed now quite often.

SALVATORE SYLVESTER, SWORN.

By Mr. Ralph Wescott:

Q. Where do you live, Mr. Sylvester?

A. 213 S. 4th Street, Camden. 20

Q. Your business?

A. Yes, sir.

Q. What is your business?

A. Builder and contractor.

Q. Did you buy some ground down in Gloucester County from this Mason farm?

A. Yes, sir.

Q. When was that?

A. 1916.

Q. Whom did you see in the first place about 30 buying that ground?

A. I went over to Mr. Pine.

Q. And what proposition did you make, if any?

A. He didn't have no proposition until he sent for the agent.

Mr. Richman: I object to this testimony; it

seems to me this ought to have been put in on direct examination. Certainly it can't be rebuttal.

The Court: How does it get into rebuttal?

Mr. Ralph Wescott: The objection is well taken and I may be straining the proper procedure somewhat. I happened to hear of this witness for the first time during the recess and I ought to have explained to the Court and asked permission of the Court and counsel to introduce his testimony. The object is simply to add to our proof that those who came to buy lots during the period in question understood they had to get them from Mr. Pine, and it is for that purpose I have asked this witness to come here and present his testimony.

The Court: I don't know whether it will bind the defendant. Whether the circumstance that the people went to purchase lots of Mr. Pine is in any way binding upon the defendant I can't see just how it makes any difference, unless there is some dispute as to who this man went to, and I don't recall that there is. Is there any doubt about that?

Mr. Ralph Wescott: I think it has been testified to by Mr. Dunk that this man bought from him, and I think it may properly be offered as rebuttal in view of that.

The Court: If Mr. Dunk testified he made the sale to Sylvester it is competent. Go ahead and testify, anyway.

Mr. Ralph Wescott: (To the stenographer.) Will you read the last question?

(Last question and answer repeated by the stenographer.)

Q. And that was Mr. Dunk?

A. Yes, sir.

Q. Mr. Pine sent for?

A. Yes, sir.

No cross-examination.

10

ANTHONY GRANESE, recalled.

By Mr. Ralph Wescott:

Q. Are you the Anthony Granese that bought the ten acres of land in 1915 from Mr. Pine?

A. For my father, yes, sir.

Q. For your father?

A. Yes, sir.

20

Q. What is your recollection of the party you dealt with, did you deal with Mr. Pine or with Mrs. Gardner?

Mr. Richman: I object, the witness was offered for this very purpose on direct examination, complainant's direct case.

The Court: I think it is part of your case, unless Mr. Dunk testified he made this sale.

30

Mr. Ralph Wescott: My impression is he did, and that is my reason for calling the witness.

The Court: I can't be sure.

Q. Mr. Granese, what was the answer to my question?

A. I bought it from Mr. Pine and I thought he was the one all the time.

The Court: It is immaterial who you thought; who did you deal with, you are asked.

The Witness: I dealt with Mr. Pine right along.
10

Q. Did you deal with Mr. Dunk?

A. They came in afterwards. Of course, it was such a complicated affair, as I told you yesterday, it was all Greek to me; I left it up to Storie and he done the business.

Q. At whose request did you come to court to testify?

A. He subpoenaed me, Mr. Richman.

Q. When were you first requested to testify as
20 the complainant's witness here?

A. When I was first —

Q. When were you first requested to testify for me; did you ever see or talk to me before I saw you in court yesterday?

A. No, sir, not until yesterday in here.

No cross-examination.

30

ARTHUR PRATT, SWORN.

By Mr. Ralph Wescott:

Q. Where do you live, Mr. Pratt?

A. Blackwood, New Jersey.

Q. What is your business?

A. Cashier, First National Bank, Blackwood.

Q. Are you familiar with the records of the de- 10
positors in the bank?

A. Yes, sir.

Q. Have you at our request recently looked over the books in connection with Mr. Pine's account?

A. Yes, sir.

Q. Are you able to tell us from those records what the total or approximate total is of his deposits there since 1910 to date?

A. May I refer to notes?

Q. I guess there will be no objection to your mem- 20
orandum.

A. Approximately \$18,000.

Mr. Richman: I object, I thought he was going to refer to his notes.

The Witness: Approximately \$18,000.

Mr. Richman: I object on the ground it is im-
material. 30

The Court: Do you object because the books are not here?

Mr. Richman: And that further reason.

The Court: I will have to sustain the objection.

Mr. Ralph Wescott: If he has looked directly at the books and made his memorandum from those?

The Court: No, the books are the best evidence.

Mr. Richman: I object to that and for the further reason there is no indication of where the money came from.

10 The Court: No necessity for any further reason, he can't testify without the books.

DANIEL BECKLEY, Esq., recalled.

By Mr. Ralph Wescott:

20 Q. I recollect in your testimony yesterday you spoke of stopping to see Walter Ward when you were going at Mr. Pine's request to see his step-daughter?

A. That is correct.

Q. Now, Mr. Ward has testified as to what the conversation was when you stopped to see him at that time; I would like you to tell the Vice-Chancellor your recollection of that conversation.

30 The Court: Which conversation was that, Mr. Wescott?

Mr. Ralph Wescott: When Mr. Beckley was on his way to see Mrs. Gardner in an effort to get her to sign the deed to Pine; Mr. Beckley stopped, he said, at Walter Ward's place on his way at the request of Mr. Pine in order to get information or assistance in his dealings with Cordelia Gardner.

Mr. Ward was questioned about that and said he made no statement to Mr. Beckley regarding Mrs. Gardner's position in the matter or Mr. Pine's interest in the farm.

The Court: All right.

Mr. Richman: If the Court please, I object, first because it is not binding upon the defendant, and secondly I recollect no such statement in the testimony. 10

The Court: I don't think it is binding upon the defendant but if Ward testified that there was no such conversation you can question the truth of his statement for the purpose of discrediting him as a witness.

Mr. Ralph Wescott: Offered purely for that purpose. 20

The Witness: That was on November 14, 1921, we drove into the yard on the place where Mr. Ward was living and I went to the back door of the house and knocked and a lady came and I asked her if she was Mrs. Ward and she said she was, and I asked where Mr. Ward was —

The Court: Can't you tell us the conversation without the details? 30

The Witness: I went from the house to a building outside that was pointed out to me and as I got near the place Mr. Ward stepped out of the door and I said, "This is Beckley, I don't know whether you remember me or not," and he said, "Oh, yes, where have you been" —

The Court: Come down to the particular point; you know what we want, what did he say?

The Witness: I can't very well unless I lead up to it, if the Court please.

The Court: What did he say?

The Witness: He said, "How did you make
10 out?" and I said, "I haven't seen Mrs. Gardner yet, I stopped to see you first, Mr. Pine told me to stop and see you and ask you about the matter before I went to see Mrs. Gardner," and he said, "Why, that is all wrong, she is not entitled to the property and you tell her that I say so, and you try to get her to sign a deed for the place." I said, "I am going to try to get her to sign a deed which
20 I presented to her but if she don't sign that then I will ask her to sign a deed to Mr. Pine and his wife." He continued to talk on, it was a cold, raw day, and I started to leave him and go to the automobile, and he continued to talk on and I finally excused myself and got in the car and went away.

Q. That was the extent of the conversation?

A. Yes.

No cross-examination.

30 Mr. Ralph Wescott: That concludes the rebuttal.

DEFENDANT'S REBUTTAL.

WALTER WARD, recalled.

By Mr. Richman:

Q. Mr. Ward, you remember this conversation Mr. Beckley refers to? 10

A. I do.

Q. Did you tell him that Mrs. Gardner was not entitled to that property?

A. I don't remember telling him that.

Q. Did you tell him?

A. I don't think I did.

Q. Did you tell him to try to get her to sign a deed over to Mr. Pine?

A. I asked Mr. Beckley why he didn't take Mr. Pine with him and go over to Mrs. Gardner's and
20 straighten the thing out.

Q. And that is all you said?

A. That is all I said.

No cross-examination.

Mr. Richman: If the Court please, I want to renew my offer of letter marked for identification
Exhibit D9. 30

The Court: These are letters from Mrs. Pine?

Mr. Richman: To Mrs. Gardner, and these letters in particular shows her attitude toward Mr. Pine and her attitude toward Mrs. Gardner.

Mr. Ralph Wescott: May we see them, please?

Mr. Richman: It is offered in rebuttal of the position taken by Mr. Pine with respect to his attitude toward his wife and she toward him.

Mr. Ralph Wescott: It doesn't appear to be signed.

10 The Court: Do you object to the letter?

Mr. Ralph Wescott: Yes, we object to it.

The Court: What does it show? You need not put this on the record, but show me what it says that is in rebuttal of Mr. Pine's testimony.

Mr. Richman: I can only do so by reading it.

20 The Court: Read that part. (To the stenographer.) Don't take this.

(Mr. Richman reads letter at this point.)

The Court: I will let it go in; if you want to take a chance on its relevancy, let it go in.

(Said letter marked for identification Exhibit D9 now marked Exhibit D9.)

30 The Court: Has the handwriting been proven?

Mr. Richman: Mrs. Gardner identified it as the handwriting of Mrs. Pine. I renew my offer of the remaining letters marked for identification.

The Court: What is in them?

Mr. Richman: The same general tone.

The Court: Read it. (To the stenographer.) Don't take it down.

(Mr. Richman reads letter at this point.)

The Court: If you think that rebuts anything that the complainant has testified to, put it in.

Mr. Richman: I think it does. 10

(Said letter marked for identification Exhibit D14 now marked Exhibit D14.)

Mr. John Wescott: Over our objection.

(Mr. Richman reads letter.)

Mr. Richman: That is the general tone of that letter. 20

The Court: What does it rebut?

Mr. Richman: It corroborates in the beginning —

The Court: I am not entertaining it for a minute for corroboration, but what does it rebut? I don't mean to entertain it as corroboration of the testimony of the defendant, it is incompetent as to that. What does it rebut? 30

Mr. Richman: It rebuts the testimony of the complainant to the effect that the relations between the mother and daughter were not cordial.

The Court: Did he say that?

Mr. Richman: I gathered that from his testimony.

The Court: He said the relations were cordial between him and his wife, but I don't think he said they were cordial between him and his step-daughter.

Mr. Richman: That was my recollection.

10 The Court: Let it go in.

(Said letter marked for identification Exhibit D13 now marked Exhibit D13.)

Mr. Richman: I offer the other two.

The Court: I won't let it go in until I hear it.

20 Mr. Richman: Oh, I think we have enough, I won't press it.

The Court: I will hear counsel.

30

It is agreed between counsel for complainant-appellant and defendant-respondent, that Exhibits C1, C2 and C3 are as follows:

ALEXANDER L. ROGERS,
Solicitor for Complainant-Appellant.
GROVER C. RICHMAN,
Solicitor for Defendant-Respondent.

10

EXHIBIT C1.

Exhibit C1 has been lost since the trial of this cause and that the same was a bank slip showing the issuance by the Camden National Bank, of a certified check to the order of Charles P. Fox, dated July 15, 1910 for \$1675.00, which check was charged to the account of Isaac E. Beakley.

20

EXHIBIT C2.

Exhibit C2 is a mortgage dated July 25, 1910, between George Gardiner and Cordelia Mary Gardiner, his wife, of Kirkwood, in the County of Camden and State of New Jersey, of the first part, and Isaac E. Beakley, of the Township of Gloucester, in the County and State aforesaid, party of the second part, to secure the payment of the sum of \$1,200.00 at the expiration of one year from the date thereof, and covers the premises described in the bill of complaint, and that the execution of this mortgage was witnessed by Alpheus B. Ayres, who took the acknowledgment of the parties of the first part in the County of Camden, on July 25th, 1910, and

30

signed the same as a Commissioner of Deeds, and that this mortgage was recorded in the Clerk's office of the County of Gloucester on August 3rd, 1910, and that it was recorded in Book 106 of Mortgages, page 520, &c., and that there is endorsed upon the back of said mortgage the following:

10 "Received payment of \$200.00 on account of principal of mortgage July 25th, 1916. All interest payments made to date in full to me. (Signed) Mattie E. Berg."

"Received payment of \$400.00 on account of principal at July 25th, 1919 period; and \$100.00 at January 25th period, 1920. Leaving \$500.00 principal remaining with interest for year 1919. (Signed) Mattie E. Berg."

"Received \$500.00 balance of Mortgage and Interest to date April 15th, 1920. (Signed) Mattie E. Berg."

20 "The within Mortgage is fully paid and satisfied and the Register of Deeds is authorized to cancel same of record. (Signed) Mattie E. Berg."

And that said mortgage is stamped "Cancelled of Record, April 16, 1920, Oliver J. West, Clerk, R. Edward Klaisz, Deputy Clerk," and that following the cancellation is a memorandum marked "Can.—20¢—Pd. H. A. Dunk."

EXHIBIT C3.

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Exhibit C3 is a Certificate of Tax Sale executed by J. P. Avis, Collector of Taxes, and Arthur G. Jagard, Township Clerk, of the Township of Deptford, County of Gloucester and State of New Jersey, and that the same is dated December 2nd, 1915 and recites that on October 30, 1915, the Holding Co.,

Inc., of Newark, in the County of Essex and State of New Jersey, at a public sale of lands for delinquent taxes, purchased on account of unpaid taxes for the years of 1913 and 1914, together with costs thereon, for the sum of \$59.11, a tract of land in the Township of Deptford, for nineteen years, assessed in the name of S. H. Pine, the delinquent owner, and known and designated as The Philip Mason Farm containing ten acres; and that said Certificate of Sale was recorded in the Clerk's Office of the County 10 of Gloucester on January 25, 1917, and recorded in Book 115 of mortgages, page 502, and that there is endorsed on the back thereof, the following.

Newark, N. J., April 5, 1917,

The within Certificate has been fully paid and satisfied and may be cancelled of Record."

"HOLDING CO. INC."

Signed by the President and attested by the Secretary, both of whose names are illegible; and that there is also endorsed on the back of said Certificate 20 of Sale a notation that the same was cancelled of record on April 11, 1917, which is signed by Jas. Lafferty, Clerk.

EXHIBIT C4.

Laurel Springs, N. J.

May 20th, 1920. 30

Daniel W. Beckley, Esq.

My Dear Sir:

My suggestion is, let Mr. Pine come across and settle up like a man. The purchase money has not been settled for and he has not paid me for having my signature acknowledged to the deeds sent over.

There is enough money in bank now in my name to settle up but no thanks to him. I also out of it paid Harold Dunk the balance of borrowed money that Mr. Pine owed him since 1913. Now, then, when Mr. Pine wanted that place so badly he had not one penny to pay for purchase money, ask him who put it up—and he never would pay me a cent of interest or give me a note, when I asked for a note he would say, “why it is all yours.” He run and run for help.

10 If I would help him I would never regret it. When the year was up Ed. Beakley demanded his money, the mortgage, and offered to release my property if I would sign the farm over to him. I refused as I did not think it a fair deal and I was in no condition to be bothered either, as I was not well and my little baby was very sick hovering at times between life and death, and I wrote and begged Mr. Pine to get some one to take it all over and release me and he paid no attention whatever, then Mr. Gardner wrote

20 Mrs. Berg that he would not be responsible for any of it and it made Mr. Pine mad and he came over here so drunk and called Mr. Gardner all kinds of yellow dogs. He had gone such a pace in that year that no one wanted to risk anything. Mr. Gardner objected very strongly to signing bonds, etc. in the first place and I threatened to divorce him as I had given my word. He has Harold Dunk to thank for Mrs. Berg putting up the money finally to pay Ed. Beakley off and now he has forbidden him to come

30 on his place, simply because he is honest, and it is not his, Mr. Pine's place as it happens—we did not want that ten acres sold to Granese but he was three years back in interest and back in taxes and it was either sell lots or sell the whole place. Mr. Pine has never paid one penny as what money he earned went for rum. I allowed him to sell lots in order to pay mortgage and have a peaceful mind, he never

could pay rent, taxes and interest money. Now if he wants it out of my name—let him settle up my Grandfather Ward's money, he did not have to marry my mother or did not have to take me home as I had a good home with my Guardian and was going to a good school and she was adding my interest money to the principal and clothing me out of her own, but no, he had to get that money in his clutches, I was fourteen (14 years old) and that was the end of that money. I even paid my own doctor bill after I got

10 to nursing—that is why the place was always to stay in my name. Let him deal square and I will gladly sign it over, but before I do there must be some provision made for my mother. I could tell a whole lot more but it takes too long. The best thing those little children ever done was when they run away—another thing, has he satisfied Cousin Tom Stratton's note on record and Mrs. Dobbs? That is why I feel that he is going to put it in some one else's name and the ingratitude does hurt. I never could

20 talk business with him, he was most always drunk and he will not come here and act like a man, but when there was money in my pockets it was Dear daughter this and that. I am sorry to say but he is one sucker and as slippery as an eel—but I pitied him and thought I would give him one more trial against good men's judgment.

Very Truly Yours,
Cordelia W. Gardner.

EXHIBIT C5.

July 24th, 1920.
Laurel Springs, N. J.
R. F. D. Box 192.

Mr. D. W. Beckley.
Dear Sir:

Your second letter received yesterday (23rd) 10
about S. H. Pine and his deed. I can not see that it
will benefit mother much if it is in her name as he
would be chasing her with the gun the first time he
got drunk to make her sign it over. What I wanted
was something definite for her. I have bought her
clothes and given her money, nursed her and paid
her doctor bills and I can not do it any longer. Her
insurance is only eighty (\$85) dollars and I paid
that every month until this last year. It seems there
ought to be some way to take care of her. He has
20 treated her nasty. While it was in my name she was
sure of a home and so was he. I have a letter now
from him telling me "to apply and I can have my
mother, he is always telling her to get ready and he
will bring her here to stay, then he wanted to get
Walter and I there and have her put in the Asylum,
the place where he ought to be. I really don't want
to be bothered with him or the place, but knowing
the man so well I hesitate to give it up—I really
don't have to you know. If I was sure of what
30 mother wanted, I could feel better—when I think of
all that she has gone through for that man. There
was a time that she did not have a crust of bread or
5¢ to get any with, but he was working and getting
his three meals a day and her son was just up the
road a ways but I was out in Reading, getting \$3.00
per month and did not know anything about. He
writes me he will meet me anywhere excepting in my

own home. Before I sign anything he will have to
produce the deed to my Blenheim property or have
a copy made. I took the deed to him to have Ed.
Beakley's lawyer look at it and it has never been re-
turned. I must have one and I most surely will not
pay for another one. I want to go to my mother's
either Tuesday or Thursday of next week, if I am
able, but I am not very well and have to keep quiet
this hot weather. If I do, will probably stop off and
see you. I don't think he will make much by suing 10
me, he is going to start proceedings today. It will
only be expense to the County to provide for me and
keep me in medicine. If you can fix it up satisfac-
torily, I will sign it to mother but it has got to stay
in her name and he will have to bring or send a
Notary here as I will not drag George or myself out
to do one thing for him ever again.

Very Truly Yours,

C. W. Gardner.

20

EXHIBIT C6.

Laurel Springs, N. J.
R. F. D. Box 192.
December 6th, 1920.

Mr. Daniel W. Beckly.

Dear Sir:

I have had a letter from mother urging me to 30
come see you. I will come as soon as I conveniently
can. Will you tell me what days and what hours you
are in your Woodbury Office, then when I find I can
come I will drop you a line or phone—I can not say
when I will be able to come not this week tho, I
think. I think it would be nice for you to advise Mr.
Pine to treat my mother a little better, as he cer-

tainly ill treats her. How she has stood it all of these years is more than I can say.

Very Truly Yours,
Cordelia Ward Gardner.

EXHIBIT C7.

10

DANIEL W. BECKLEY
Counsellor at Law
Woodbury, N. J.

September 19, 1921.

Dear Madam:

Last December you wrote me that you would call and see me regarding the Samuel H. Pine matter.

I think it is advisable that this matter be settled promptly, as there is nothing gained in leaving it in the present situation. Will you kindly advise me whether you will come to see me or whether I shall come and see you, and when and where I may do so?

Very truly,

Daniel W. Beckley,
K.

Mrs. Cordelia W. Gardner,
Laurel Springs,
New Jersey.
R. F. D. Box No. 192.

30

EXHIBIT C8.

Received, Camden N. J. April 25th 1919 the sum of One hundred and Thirty (130.00) dollars, from Samuel H. Pine
One hundred dollars on account of mortgage—and thirty dollars interest up to Jan. 25th, 1919.

The principal sum of said mortgage now being reduced to nine hundred dollars.

Mattie E. Berg.

It is agreed between counsel for complainant-appellant and defendant-respondent, that Exhibits C9 and C10 are as follows:

ALEXANDER L. ROGERS, 10
Solicitor for Complainant-Appellant.
GROVER C. RICHMAN,
Solicitor for Defendant-Respondent.

EXHIBIT C9.

Exhibit C9 is a series of tax receipts covering the premises described in the bill of complaint, in the Township of Deptford, County of Gloucester, New Jersey, for the years 1915, 1919, 1920, 1922 (marked duplicate), 1923, 1924 and 1925; that the receipt for 1915 is in the name of S. H. Pine and marked paid August 17, 1916 and is for \$33.28 with interest amounting to \$1.44, making a total of \$34.72; that the receipt for 1919 is in the name of Saml. Pine and marked paid May 6, 1920 and is for \$38.00 with interest amounting to \$2.00 making a total of \$40.00; that the receipt for 1920 is in the name of Samuel Pine and marked paid September 10, 1920 and is for \$59.66 with interest amounting to \$1.09, making a total of \$60.75; that the receipt for 1922 is in the name of Samuel Pine and marked paid May 31, 1922 for the first half amounting to \$49.78 and the second half marked paid December 12, 1922 for \$49.78; that the receipt for 1923 is in the name of Samuel

Pine and marked paid June 2, 1923 in the amount of \$87.94; that the receipt for 1924 is in the name of Samuel Pine and is marked paid May 31, 1924, in the amount of \$73.00; and that the receipt for 1925 is in the name of Samuel H. Pine and is marked paid April 27, 1925, in the amount of \$119.50.

10

EXHIBIT C10.

EXHIBIT C10 is one of six instalment receipt books all similar to the above covering receipts of instalments paid on account of purchase price of lots by the following persons:

James F. Brennan, from May 17, 1920, to December 1, 1922.

G. W. Krebs, from August 29, 1919, to August 11, 1924.

20 James Wright, from June 21st, 1919, to November 25, 1924.

William J. Wakeman, from January 8, 1921, to March 5, 1923.

William Siebel, from October 16, 1920, to March, 15, 1924.

The receipts for payments in all the above books are signed either "S. H. Pine" or "S. H. Pine per A. M. P.," or "S. H. Pine per Annie M. Pine."

30 It should be noted that in the receipt book of James Wright there is a partially completed agreement of sale in the handwriting of S. H. Pine in which Cordelia W. Gardner is named as party of the first part.

Cover to installment book—

No. _____

HAZEL SPRINGS

Name Mr. & Mrs. R. Wise

Address 135 E. Allen

Phila., Pa.

Lot No. 2 lots

Book No. _____

\$5.00 of each months

Total \$300.00

Inside of installment book—

Received on account of the foregoing agreement the 10 following payment, vis:

Date	Amount	Signature
4/27/23	By Cash \$10.00)
5/11	" " 5.00)
5/28	" " 5.00)
) S. H. Pine
7/23	" " 5.00)
11/3	" " 5.00)
2/25/24	" " 10.00)
4/13	" " 5.00)
5/16	" " 5.00) S. H. Pine 20
/3	" " 5.00) S. H. Pine
7/30	" " 5.00) S. H. Pine
8/30	" " 5.00) S. H. Pine

EXHIBIT C11.

Received of Samuel H. Pine \$102.00 Dollars, Being interest up to date January 25th, 1912. On premises in Deptford Township, Gloucester Co. N. J. in the name of Cordelia Mary Gardner and husband. 30 And premises at Mechanicsville, Gloucester Township, Camden Co. N. J. Full amount of principal being \$1700.00. Interest on same to date being \$102.00

Received payment \$102.00

I. E. Beakley

	Charles McKee	218.00
	Harry Clark	10.00
	Thomas Lawson	188.00
	Mary Morton	217.50
	Mrs. Schultz	130.00
	Frank Wildermuth	190.00
	Viola Lauria	75.00
	James Nelson	180.00
	Richard McKee	150.00
10	Charles Sauter	255.00
	John Bradley	45.00
	Albert Alexander	125.00
	Frank McKegney	300.00
	No name	20.00
	Elizabeth McKee	55.00
	No name	10.00
	Robert Berry	120.00
	John Belko	115.00
	Mrs. H. Hofmek	70.00
20	Herman Hofmek	70.00
	Mr. & Mrs. Wise	60.00
	Bertram Deak	225.00
	Stephen Travis	15.00
	David (no other name)	10.00
	Clara Schuz	150.00
	Stephen Travis	255.00
	Edmund Weckesser	5.00
	Herbert Meyers	50.00
	Wm. MacLean	60.00
30	Wilmer C. Pretty	167.50
	Wright	20.00

Alexander L. Rogers,
Solicitor for Complainant-Appellant.
Grover C. Richman,
Solicitor for Defendant-Respondent.

EXHIBIT D1.

Installment book—(outside cover)

No

HAZEL SPRINGS

Name Walter McGinley

Address Blackwood Camden Co.

N. J.

Lot No

Block No

\$ Ten Dol. each month.

Total \$1000.00

THIS AGREEMENT between Cordelia W. Gardner of the Kirkwood Camden County State of New Jersey, party of the first part and Walter McGinley party of the second part, made this Agreement on this 10th day of July Eighteen Hundred & Eighteen,

WITNESSETH, that the said party of the first part for and in consideration of the sum of One Thousand dollars to be paid as hereinafter mentioned doth agree with the said Cordelia W. Gardner that he will sell to the said Walter McGinley, this heirs and assigns all certain lot or piece of land and premises situate in the Township of Deptford County of Gloucester and State of New Jersey and known as Lot No. 3 West Side of Oak Avenue, Blackwood Avenue Front in a certain plan known as Hazel Springs N. J. and the said party of the second part doth hereby agree to pay to the said party of the first part at his office the sum or consideration aforesaid as follows: One Hundred dollars upon the execution and delivery of this agreement and the balance in part payments of at least ten doll on or before the 6th day of each and every month thereafter until the whole amount thereof shall have been paid. And the said party of the second part doth further agree to pay all taxes and

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Defendant's Exhibits

5/6/22	“	10.00	S. H. Pine
6/20/22	“	10.00	S. H. Pine
			per Annie M. Pine
8/22/22	“	10.00	S. H. Pine
			per Annie M. Pine
10/7	“	10.00	S. H. Pine
1/2/23	“	10.00	S. H. Pine
6/19	“	10.00	S. H. Pine
8/30/23	Cash	58.00	

10

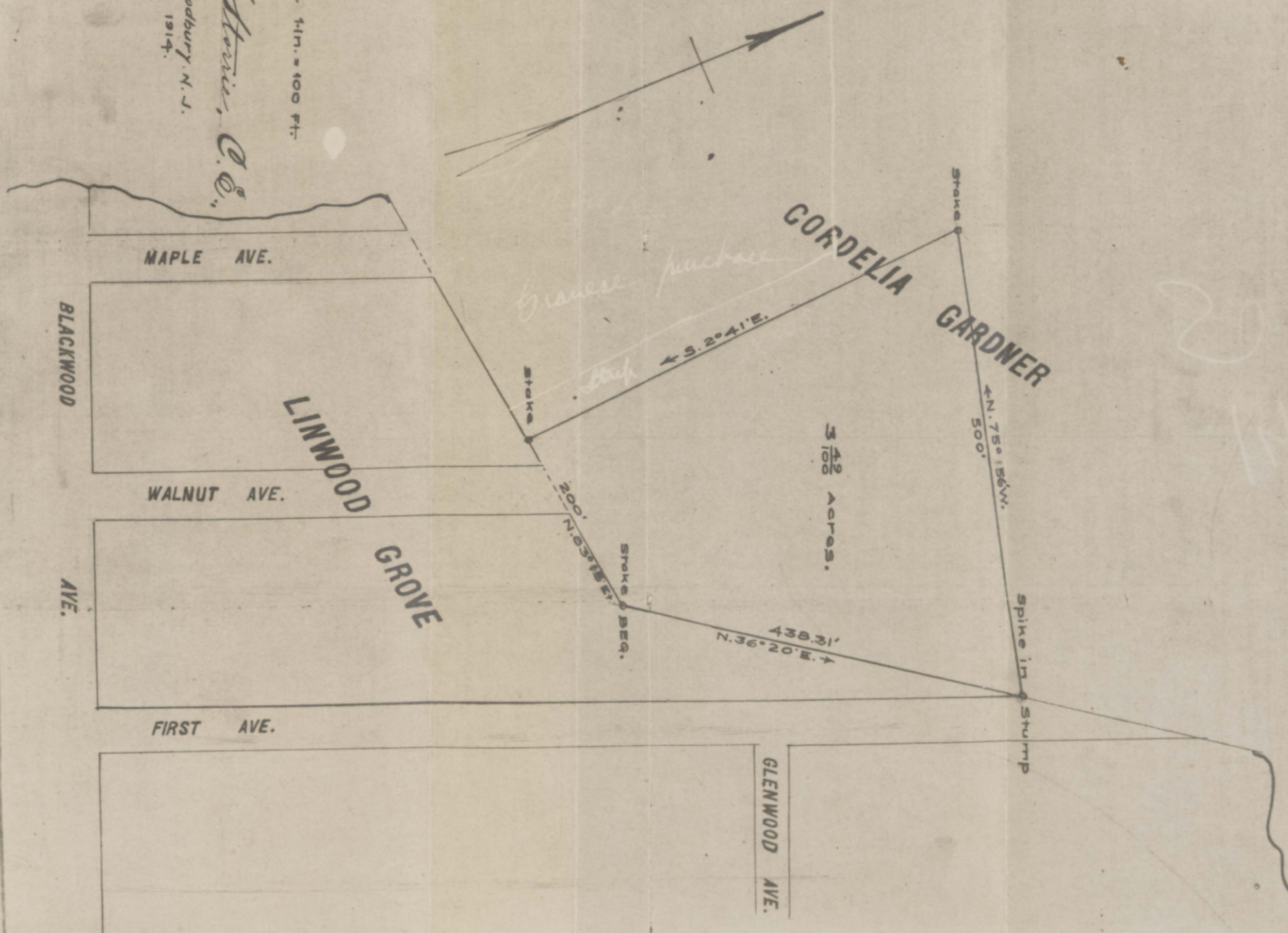
	<u>1000.00</u>	W. C. Ward
Pay in Full		Walter C. Ward.
		August 30/23

20

30

Mr. Astor, C. D.
Woodbury, N. J.
1914.

Scale 1 in. = 100 ft.



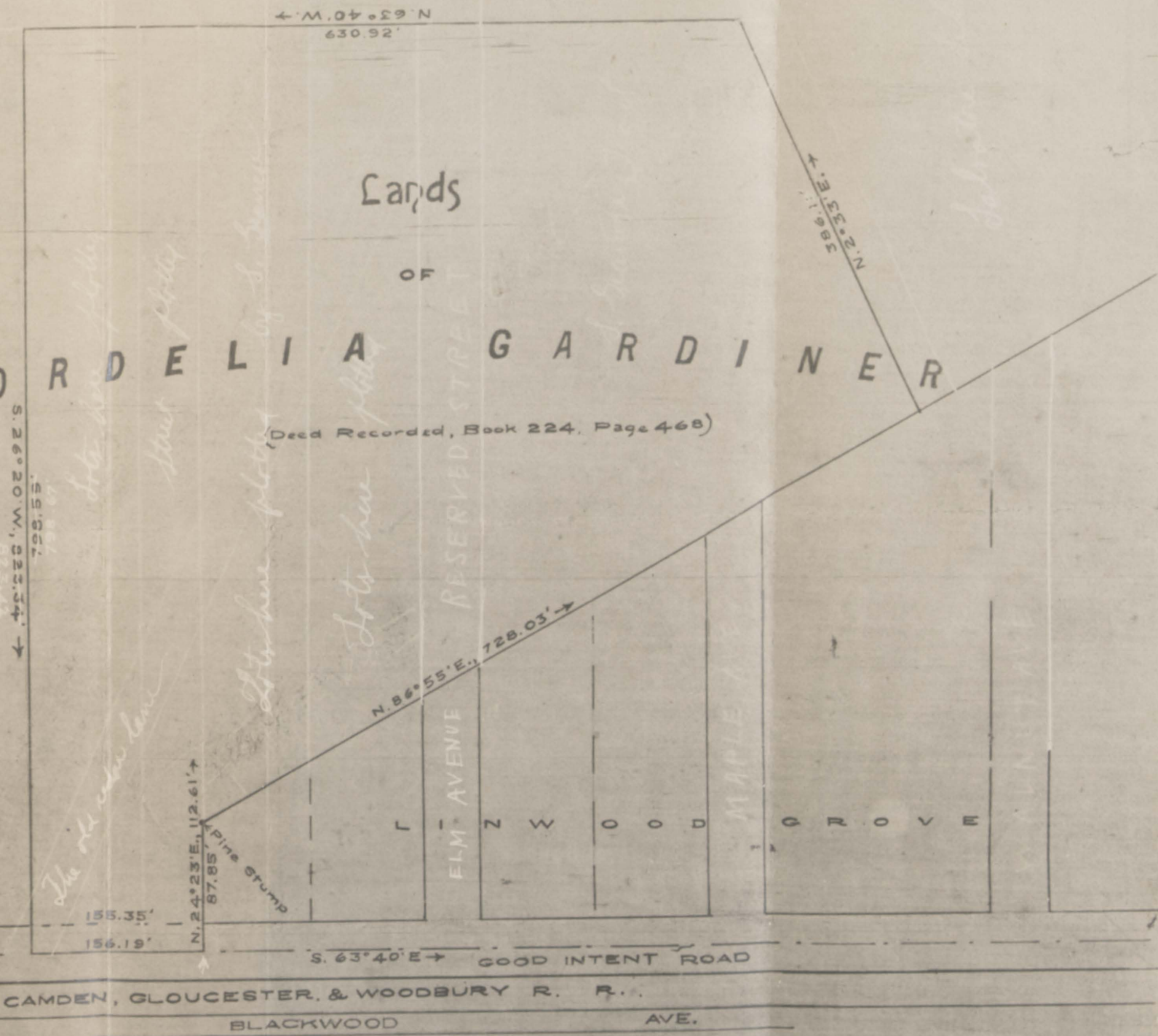
20
74

LANDS OF C O R D E L I A G A R D I N E R

(Deed Recorded, Book 224, Page 468)

Scale: 1 inch = 100 feet

Wm. L. Storie, C.E.,
WOODBURY, N. J.
7/14/16



S. 26° 20' W., 798.55'

N. 63° 40' W., 630.92'

N. 23° 31' E., 586.11'

N. 86° 55' E., 728.03'

N. 24° 23' E., 112.61'

155.35'
156.19'

S. 63° 40' E., GOOD INTENT ROAD

CAMDEN, GLOUCESTER, & WOODBURY R. R.

BLACKWOOD AVE.

lots here
This is the same line
lots here
lots here
lots here

John

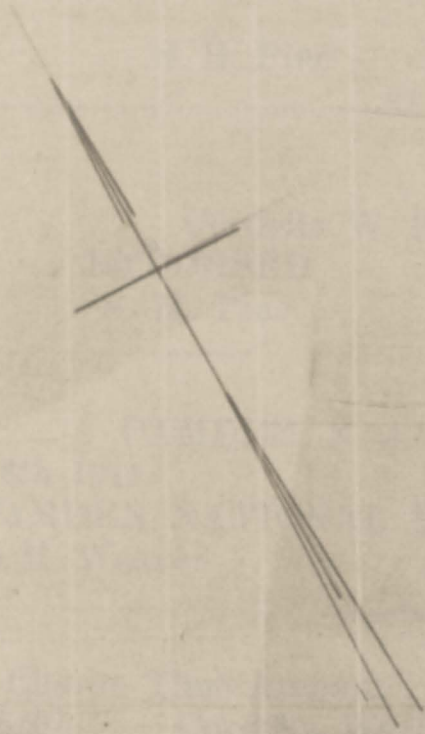


EXHIBIT D3.

Check.

BLACKWOOD, N. J. March 31st 1919
THE FIRST NATIONAL BANK

Pay to
The Order of S. H. Pine
Fiftyxx DOLLARS. 10
\$50.00

—
100 Cordelia W. Gardner
ENDORSED
S. H. Pine

Check.

CAMDEN, N. J. Aug 25 1911
Payable Sept 8th 1911
THE CAMDEN NATIONAL BANK

Pay to Laura M. Weaver or ORDER, 20
Seventy five Dollars
100

Charge Time Account
\$75 00/ No. 8407 Cordelia Ward Gardner,
ENDORSED
Laura M. Weaver

EXHIBIT D4.

Check.
 Blackwood, N. J. Dated June 29th.
 THE FIRST NATIONAL BANK
 Blackwood, N. J.

Pay to the
 10 Order of Laura M. Peters \$ 6.00
 —
 100
 Six xx DOLLARS
 No. 6.

Cordelia W. Gardner.
 ENDORSED
 Laura M. Peters
 Mrs. W. H. Carsen

20

EXHIBIT D5.

Deposit Book
 THE FIRST NATIONAL BANK
 Blackwood, N. J.
 In account with Cordelia W. Gardner

1918			
July	8	C	50.
30 Aug	20	C	25.
			75.
Total of checks			50.
May	1	Balance	25.

Dec.	18		C	70.
				95.
Total of checks				none
Dec.	18	Balance		95.
May	15		C	121.48
Oct	13		C	160.
				376.48 10
Total of checks				20.
Nov	24	Balance		356.48
June	5		C	53.10
Aug	25		C	30.00
Oct	3		C	150.
				589.58
Total checks				273.87
				20
Oct	3	Balance		315.71
Nov	18		C	27.60
Sept	22		C	707.50
Dec	9		C	10.50
1923				
Jan	6		C	29.27
"	13		C	412.
Feb	9		C	13.
Mr	23	H 8982		688.78 30
May	24		C	20.00
"	29		C	33.
Sep	4		C	58.
"	12		C	125.
				2440.36
Total of checks				1161.24

Sep 22	Balance	1279.12
	Total of checks	800.00
Sept 26	Balance	479.12

EXHIBIT D6.

10 WM. A. STORRIE
Civil Engineer and Surveyor
No. 46 North Broad St.
Woodbury, N. J.
November 26th, 1919

Mrs. George Gardner,
Kirkwood,
Camden County, N. J.

Dear Madame,—

20 The price to be paid for the lots is \$180.—I forgot to ask Mr. Pine the price of the lots, when he gave me the order to make out the deed, so I could not fill in the price. Mrs. Berg has given a release of part of the mtge., about two acres, and is awaiting a payment of \$100.—to apply as a further reduction of the mtge. I am enclosing the deed to be signed and acknowledged, which, please send to Mr. Pine, or, if you wish me to have settlement in my office and take care of your interest, and pay Mrs. Berg, send the deed to me. Mr. Pine has received \$10.—from the purchasers of the two lots, leaving a balance of \$170.— Also let me know what portion is to go to Mr. Pine.

30 Yours very truly
William A. Storrie

EXHIBIT D7.

Laurel Springs N. J.
R. F. D. Box 192,
June 12th, 1923,

My Dear Mr. Pine:

Please do not sell any lots anywhere on the farm until further notice also kindly send me the names of all the purchasers who are paying for lots on installments. Now please do as I advise in this letter as I will not sign any more deeds.

Truly Yours,
Cordelia M. Gardner

EXHIBIT D8.

NO EXHIBIT.
(Error of Stenographer.)

EXHIBITS D9 TO D14, INCLUSIVE.

(Letters offered for identification only.)

EXHIBIT D15.

Check.
 CAMDEN SAFE DEPOSIT AND TRUST CO.
 No. 264 Camden, New Jersey. Aug 16th 1916
 Pay to the
 Order of G. I. Kirkbride, Collector \$ 34.72/100
 10 Thirty Four 72/100 Dollars
 Harold A. Dunk
 Endorsed
 G. I. Kirkbride
 Coll.

EXHIBIT D16.

20 Check.
 CAMDEN SAFE DEPOSIT AND TRUST CO.
 No. 263 Camden, New Jersey Aug 8th 1916
 Pay to the
 Order of Mattie E. Berg \$955.00
 \$700.00 and \$255.00 interest on Gardner Mortgage
 to July 25th, 1916
 Nine Hundred and Fifty Five.....DOLLARS
 Harold A. Dunk
 ENDORSED
 30 Mattie E. Berg

EXHIBIT D18.

THIS AGREEMENT, made this 22nd day of Sep-
 tember, A. D., nineteen hundred and Sixteen by and
 (name crossed out) as the party of the first part
 and Salvatore Sylvester of the City of Philadelphia,
 County of Phila. and State of Pennsylvania, herein-
 after known as the party of the second part,

WITNESSETH, That for and in consideration 10
 of the sum of Five Hundred Dollars dollars, and of
 the several covenants hereinafter mentioned, the
 party of the first part agrees to sell, and the party
 of the second part agrees to purchase a certain lot
 or piece of ground situate in Deptford Township,
 Gloucester County, New Jersey, known as Linwood
 Tract, being as shown on the plain of a lot made
 by Wm. A. Storrie C. Engineer, for the sum of
 \$500.00 dollars making for the whole lot the sum
 of \$500.00 dollars payable as follows, to wit: For 20
 (crossed out) lot on the signing of this agreement
 Fourty dollars, and the balance \$460.00 dollars in
 installments of \$10.00 dollars per month—\$100.00
 per year—on lot from and commencing the ninth
 day of October nineteen hundred and Sixteen, until
 the full amount is paid.

THE PAYMENTS are to be made to Lawrence
 B. Reader, Treasurer, at his office, No. 207 Market
 Street, Camden, New Jersey on each and every 30
 Tuesday during his regular office hours (nine
 o'clock A. M. until four o'clock P. M.)

The party of the second part covenants that no
 dwelling or building shall be built at a cost of less
 than _____ dollars and shall be located on a
 piece of ground not less than _____ feet in
 width. No manufacturing establishment shall be
 located on any lot or lots.

No tannery, slaughter house, glue, soap, candle or starch manufactory, or other building for offensive purpose or occupation shall be erected on any lot or lots.

- No drainage of filth into the lake shall be permitted; no building of any description shall be erected within _____ feet of the front line of any street or avenue, nor within one foot of any party line (all lots to be kept free and clean from all nuisances), the objects of the covenants being to secure uniformity of improvement, and the health, beauty and value of the place, and the same will be inserted in and made part of the deeds of conveyance, which deed of conveyance being a warranty in fee simple, and will be executed and delivered to the party of the second part when the whole of the purchase money shall have been paid. Prompt performance and time are of the nature and essence of this contract, and in default of the compliance with any of the above stipulations, this agreement shall terminate, and the party of the first part shall resume all right to the lot or lots, and shall reenter and re-occupy the same. And it is further agreed between the parties hereto that if default be made in any of the payments herein called for for the space of two months, this contract shall become null and void at the option of the party of the first part, and the right to the lots contemplated shall revert to the party of the first part and the payments made shall be held and retained as liquidated damages by the party of the first part.

IN WITNESS WHEREOF, the Blackwood Improvement Company has caused these presents to be signed by its Treasurer, and the corporate seal of the company hereto affixed, and the party of

the second part has hereunto set _____ hand and seal the day and year first above written.
Signed, Sealed and Delivered)

in the presence of _____)
_____)
_____)
_____)

ENDORSEMENT ON BACK OF AGREEMENT
AGREEMENT

10

for
Lot at Linwood Acreage Tract
to

Salvatore Sylvestre
113 South St. Phila.

Consideration \$500.00

First payment made Sept. 9th, 1916

12 payments yearly—\$100.00 per year

PAYMENTS NOTED ON BACK OF
AGREEMENT:

20

1917 date	Amt. Paid	Agent Received by	
	\$40.00		
Feb. 26th	\$35.00	H. A. Dunk, Agt.	
June 2nd	25.00	H. A. Dunk	
Sept. 22nd	40.00	H. A. Dunk	
Oct 28th, 1918	100.00	H. A. Dunk	
1919			
March 1st	100.00	H. A. Dunk	30
10/28/19 Int.	5.00		
May 1920	160.00		
	<hr/> \$505.00		
	9.11		
	<hr/> \$514.11		

Date	Amt. Paid	
Paid Taxes and deposited Bal. 3/12/17		\$ 31.30
Paid M. E. Berg June 5th		30.00
Paid M. E. Berg Nov. 1st(1917)		30.00
Paid M. E. Berg Dec. 30th (1918)		60.00
“ “ “ “ Jan. 29th (1920)		21.00
“ C. W. G. May 14th		121.48
		<hr/>
	Checks out	\$ 293.70
10	Settlement check C. W. G	160.00
		<hr/>
		\$ 453.78
	H. A. D. charges	60.33
		<hr/>
		\$ 514.11

TWO SLIPS PAPER

1st — Deposited in
 The First National Bank
 of Blackwood, N. J.
 20 by Cordelia W. Gardner
 By H. A. Dunk
 May 15th, 1920
 Checks as Follows
 \$ 121.48

2nd	No. 3157	1916	Balance
		W.	D.
	12/28/16		40.00
	3/14/17		3.70
30	Int. to 5/31/17		.51
	“ “ “ /30/17		.66
	1918		
	Oct. 29/1918	100.00	144.87
	Int. to 5/31/18		.66
	Dec. 30th	60.00	85.53
	Int. to 11/30/18		.92

1919			
March 4th, 1919	75.50	161.95	
Int. to 5/31/19	1.88	163.83	
“ “ 11/30/19	2.45	166.28	
March 10th	21.00	145.28	
Int. to date	2.03	147.31	
5/14/20	147.31		
		<hr/>	
		Deposits	Total D.
	Interests \$ 9.11	219.20	228.31
			10

CAMDEN SAFE DEPOSIT AND TRUST CO.
 No. 280 Camden, New Jersey March 12th, 1917
 Pay to the Order of G. I. Kirkbride Collector \$ 31.30
 Thirty-one 30/100 Dollars
 Harold A. Dunk

ENDORSED
 G. I. Kirkbride, Coll.

CAMDEN SAFE DEPOSIT AND TRUST CO. 20
 No. 281 Camden, New Jersey. March 14th, 1917
 Pay to the Order of MERCHANTS TRUST COM-
 PANY \$ 3.70
 Three70/100DOLLARS
 ENDORSED—MERCHANTS TRUST CO.
 Harold A. Dunk

CAMDEN SAFE DEPOSIT AND TRUST CO.
 No. 292 Camden, New Jersey June 5th, 1917
 Pay to the Order of MATTIE E. BERG \$30.00 30
 Thirty DOLLARS
 For Interest due Jan. 25th, 1917 on Cordelia Gard-
 ner mortgage.
 ENDORSED
 For deposit only Harold A. Dunk
 Mattie E. Berg

No. 308 CAMDEN, N. J. Nov. 1st, 1917
 CAMDEN SAFE DEPOSIT & TRUST CO.
 Pay to the order of MATTIE E. BERG
 Thirty DOLLARS
 Being Gardner mortgage interest payment of July
 25th, 1917
 \$30.00

Harold A. Dunk

10 ENDORSED—Mattie E. Berg

No. 347 CAMDEN, N. J. Dec. 30th, 1918
 CAMDEN SAFE DEPOSIT & TRUST CO.
 Pay to the order of MATTIE E. BERG
 Sixty DOLLARS
 Interest payment Gardner Mortgage to July 25th,
 1918
 \$60.00

Harold A. Dunk

20 ENDORSED For deposit only
 to the credit of
 Mattie E. Berg

No. 362 CAMDEN, N. J. Jan. 29th, 1920
 CAMDEN SAFE DEPOSIT & TRUST CO.
 Pay to the order of MATTIE E. BERG
 Twenty One DOLLARS
 Being Interest due on Gardner Mortgage to Jan.
 25th, 1920

30 \$21.00

Harold A. Dunk

ENDORSED—Mattie E. Berg

No. 363 CAMDEN, N. J. May 14th, 1920
 CAMDEN SAFE DEPOSIT & TRUST CO.
 Pay to the order of CORDELIA W. GARDNER
 One Hundred & Twenty One.....48/100....DOLLARS
 Harold A. Dunk

\$121.48

ENDORSED For deposit only
 Cordelia W. Gardner

10

20

30

CONCLUSIONS.

(Filed March 26, 1926)

IN CHANCERY OF NEW JERSEY.

10

Between

SAMUEL H. PINE,
Complainant,

and

CORDELIA MARY GARDNER,
*Defendant.*Final Hearing on
Bill for Relief.
Conclusions.

20

MESSRS. WESCOTT & WEAVER, for complainant.
GROVER C. RICHMAN, Esq., for defendant.

LEAMING, V. C.:

Complainant claims that a certain farm—the subject of controversy herein—was purchased by him and that title to the farm was taken in the name of defendant to secure her against certain liabilities then incurred by her. Defendant denies this and claims that she purchased the farm with her own money, and with the distinct understanding between her and complainant that the farm was to belong to her. She says that her primary purpose in making the purchase was to afford a home for her mother and complainant. Complainant is defen-

dant's step-father; his wife, now deceased, was defendant's mother. She says that the arrangement was that she would allow complainant and his wife to occupy the farm so long as he paid the taxes against the farm and interest on the mortgages which she executed to raise the money to enable her to make the purchase.

No writing exists to disclose a separation of the legal and equitable titles. Complainant's claim to an equitable title rests wholly in parol. The title necessarily vested as of the date of the conveyance to defendant; the prior and subsequent circumstances covered by the voluminous record are of value only to shed light on the conflicting testimony of the parties as to their parol agreement at the time the purchase of the farm was consummated.

The farm—known as the "Mason farm"—was purchased in July, 1910, from the executor of the Mason Estate for \$1800 in cash. Admittedly the idea of purchasing the farm was first conceived by complainant. He tried to borrow the necessary money, \$1800, from one Beakley for whom he worked as a farm hand, and could only offer Beakley as security for the loan a mortgage on the farm which he sought to buy for its full purchase price. Beakley deemed the security inadequate and refused the loan. At that time complainant and his wife occupied a property owned by defendant and known as the "Blenheim property" and paid defendant a rental of five dollars per month. Defendant's claim is that when she learned that her mother and complainant desired to move from her Blenheim property and to occupy the Mason farm and that complainant could not borrow the money to buy it, she agreed to buy it and allow them to occupy it so long as they paid the taxes and the interest on the mortgages she would be obliged

to execute to procure the money to make the purchase. She was to pay \$100 cash and procure the remaining \$1700 of the purchase price by executing a mortgage for \$500 on her Blenheim property and a mortgage of \$1200 on the Mason farm when purchased. Mr. Beakley was willing to loan \$1700 on those proposed two mortgages—one for \$500, the other for \$1200.

10 Mr. Beakley did not come in personal contact with defendant; but appears to have understood through his contact with complainant that the purchase was being made in behalf of complainant and that in the event of complainant paying off the \$500 mortgage on defendant's Blenheim property he would become the owner of the Mason farm. He says that he suggested to complainant that the deed be made to defendant. His testimony is: "I never thought that Mr. Pine (complainant) would pay for this farm, to tell the truth, and I thought it would 20 save her that much trouble in case she would have to take the farm she would have title to it until such times as he paid for it." It will be observed, however, that Mr. Beakley did not get these ideas from defendant, and the admissibility of that testimony is more than doubtful. One Ayres, a conveyancer, since deceased, consummated the transaction.

30 Thus it will be observed that the entire \$1800 which was used to purchase the property now in controversy was procured by defendant and was procured wholly on her credit. That is to say, the \$100 cash was borrowed by her from a friend because her money in bank was on a time account; the \$500 was borrowed on her bond secured by her mortgage on her Blenheim property; the \$1200 was borrowed on her bond secured by a mortgage

made by her on the property purchased at the time title was made to her. If it could be said with certainty that the \$100 cash was a loan from defendant to complainant and that the \$500 proceeds of the mortgage on defendant's Blenheim property and the \$1200 proceeds of her mortgage on the property purchased were also loans of money from defendant to complainant, a resulting trust could arise in behalf of complainant as the person whose money purchased the farm; but the evidence does 10 not support that view, and that contention does not appear to be made. The contention is, as I understand it, that the deed was made to defendant as security—in the nature of a mortgage of \$500 from complainant to defendant—to the end that should complainant discharge the \$500 mortgage he would become entitled to a deed. In the bill this agreement is referred to as a "trust" and no suggestion of protection of defendant from liability on her 20 \$1200 mortgage bond is made.

Defendant's claim is that complainant and his wife were occupying her Blenheim property practically as a gratuity from her, and that she wished to sell the Blenheim property (it was thereafter sold) and place complainant and his wife on the newly acquired property in essentially the same manner as they occupied the Blenheim property.

It transpired that later the taxes and mortgage interest became in arrears and the mortgagee, Beakley, was pressing for his interest, when relief 30 was found by the two mortgages being taken over by Mrs. Berg, an aunt of defendant's. Later lots were sold from the farm and the proceeds of the sales applied to satisfy taxes and interest, and eventually the two mortgages were wholly discharged by proceeds from the sale of lots from the farm. The \$500 mortgage was thus discharged

in 1916. In some instances the money received from the sale of lots which was not used to discharge taxes or mortgages was received by defendant and in many cases, especially later, by complainant. Defendant claims that complainant was her agent in the sale of lots, and explains her acts of signing deeds when she did not receive the proceeds and her failure to press her claims for money which complainant had received by the claim that her mother urged her not to make trouble. Complainant excuses his conduct in permitting defendant to receive proceeds from the sales of lots and his long delay in asserting his claims to a similar cause, that is, that his wife did not want him to make trouble. Defendant also claims that complainant agreed to open an account in bank in the name of defendant and deposit the proceeds of sales of lots in that account. The account was thus opened by complainant and two small deposits were so made. Complainant denies the agreement and explains the account as a gratuity. Indeed, much that each party has stated is in turn denied by the other. The search for truth has thus become almost hopeless.

After hearing the testimony of the several witnesses and enjoying the benefits of able briefs of counsel and carefully reading a transcript of the testimony, I am impelled to say that I find myself unable to determine with what I deem reasonable certainty what the truth may be touching the claims of the respective parties.

In this situation it cannot be overlooked that complainant did not supply any part of the purchase price of the property and that the uncertainty of his claim primarily arises from his negligence in failing to procure some written evidence of his alleged interest in the land; and that his long delay

in bringing this suit has occasioned the loss of the testimony of several witnesses whose testimony obviously would have been of great benefit in ascertaining the truth. Mr. Ayres, who drew the original papers and conducted the transaction, is now dead. The husband of defendant, who joined with defendant in the two mortgages and who appropriately would have been a party to an engagement to reconvey is now dead. Mrs. Pine, the mother of defendant and wife of complainant, whose attitude in this matter has been the mutual excuse of the parties for much of their conduct, is now dead. Mrs. Berg, aunt of defendant, who took an assignment of the two mortgages, is now dead. Each of these could have shed much light on the essential inquiry. Complainant has long known that defendant has disputed his claim and no adequate excuse appears for his long delay in asserting his rights in court. If his claim is well founded his rights matured in 1916. The bill was not filed until 1925. The rule in such circumstances, as defined in *Soper v. Cisco*, 85 N. J. Eq. 165, 174, is: "The general rule is well settled that he who, without adequate excuse, delays asserting his rights until the proofs respecting the transaction, out of which he claims his rights arose, are so indeterminate and obscure that it is impossible for the Court to see whether what is asserted to be justice to him is not injustice to his adversary, has no right to relief." Citing: *McCartin v. Traphagen*, 43 N. J. Eq. 324; aff. 45 N. J. Eq. 265. In *Lutjen v. Lutjen*, 64 N. J. Eq. 773, 781, the rule is stated as follows: "Lapse of time alone is deemed by the authorities to be a sufficient ground of estoppel in cases like the present, when the Court cannot feel confident of its ability to ascertain the truth now as well as it could when the subject for investigation was recent and before the memories

of those who had knowledge of the material facts have become faded and weakened by time. To constitute estoppel of this description it is not essential that any actual loss of testimony, through death or otherwise, or means of proof, or changed relations, to the prejudice of the other party, should have occurred. But the estoppel arises because the Court cannot, after so great a lapse of time, rely upon the memory of witnesses to reproduce the
 10 details that entered into the final execution of the instrument of settlement."

I will advise a decree dismissing the bill. Since defendant by her answer has made no claim against complainant for the money he has received, no relief of that nature can be awarded.

(Submitted January 25, 1926.)

(Determined March 26th, 1926.)

20

30

DECREE.

(Filed July 6, 1926.)

IN CHANCERY OF NEW JERSEY.

10

Between

SAMUEL H. PINE,
Complainant,

and

CORDELIA MARY GARDNER,
Defendant.

On Bill, etc.
 Decree

20

This cause coming on to be heard in the presence of Messrs. Wescott and Weaver, solicitors for complainant, and Grover C. Richman, Esq., solicitor for defendant, and the Court having read the pleadings and having heard the testimony and the arguments of counsel and it appearing that the complainant is not entitled to the relief prayed for and that the bill of complaint should be dismissed and no reason appearing to the contrary,

30

It is, on this 6th day of July, 1926, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the

bill of complaint filed in the above-entitled cause, be and the same is hereby dismissed with costs to be taxed.

Respectfully advised:
E. B. LEAMING,
V. C.

Approved as to form:
WESCOTT & WEAVER,
10 *Solicitors for Complainant.*

E. R. WALKER,
C.

PETITION OF APPEAL.

(Filed July 25, 1927.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

20

Between
SAMUEL H. PINE,
Complainant-Appellant,
and
CORDELIA MARY GARDNER,
Defendant-Respondent.

On Appeal from the
Court of Chancery.
Petition of Appeal.

30 *To the Honorable, the Court of Errors and Appeals
in the Last Resort in All Causes:*

The petition of Samuel H. Pine, the appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final

decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date July 6th, 1926, in a certain cause in said Court of Chancery wherein the said Samuel H. Pine was complainant and the said Cordelia Mary Gardner was defendant, in this respect, to wit, that the said decree adjudges that the bill of complaint filed in the above-entitled cause be dismissed with costs to be taxed.

And petitioner appeals from the final decree of the Chancellor, upon the ground that the same is erroneous in that it is not agreeable to equity, it is contrary to the weight of the evidence produced at the final hearing, and because the final decree was not in favor of the complainant in accordance with the prayer for relief in the bill of complaint. 10

Petitioner therefore prays, that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that the petitioner may have such other relief in the premises as to this Court shall seem proper. 20

ALEXANDER L. ROGERS,
*Solicitor for and of Counsel
with Appellant.*

30

NEW JERSEY COURT OF ERRORS
AND APPEALS.

SAMUEL H. PINE,
Complainant-Appellant,

v.

CORDELIA MARY GARDNER,
Defendant-Respondent.

ON BILL, ETC.

BRIEF FOR DEFENDANT-RESPONDENT.

STATEMENT.

The appeal taken in this case seeks to reverse a decree in the Court of Chancery dismissing the bill of complaint, dated July 6th, 1926, after final hearing before Vice-Chancellor Edmund B. Leaming.

The bill of complaint was filed for the purpose of establishing a resulting trust in favor of the appellant in a certain farm situate in Gloucester County, New Jersey. The premises were conveyed to the respondent July 14th, 1910. No writing exists setting forth the rights of the appellant and respondent in the property. The appellant's claim rests wholly in parol. The appellant claims to

have been entitled to a deed for the property August 25th, 1916, the date when the five hundred dollar mortgage on respondent's Blenheim property was paid off. The bill of complaint, however, was not filed until January 8th, 1925, more than nine years thereafter. The Vice-Chancellor filed an opinion (C. 300).

—
ARGUMENT.

The decree entered by the Vice-Chancellor should not be reversed on this appeal for two reasons:

1. *Because the appellant failed to sustain the burden of proof with that clearness and certainty which entitles a Court of Equity to award the relief sought.*

2. *Because appellant's claim is barred by laches.*

I.

The law of this State respecting the establishment of a resulting trust in real estate is well settled. The burden of proof is upon the party asserting it. He must prove his claim with such clearness and certainty as to leave no doubt in the mind of the Court that he is entitled to relief. Before discussing the testimony a reference to some of the cases upon this subject will be made.

In *Krauth v. Thiele* (45 N. J. Eq. p. 407) the subject of the suit was to establish a resulting trust in real estate. The Chancellor dismissed the bill because the proof was unsatisfactory and far from convincing, and on page 409 said:

“A resulting trust arises by operation of law from contemporaneous circumstances which give the legal and equitable titles different di-

rections. It must, therefore, arise at the instant the deed is taken and the legal title is vested in the grantee, and the situation of the transaction when the title passes is to be looked to, and not the situation preceding or following that time. *Tunnard v. Littell*, 8 C. E. Gr. 264; *Midmer v. Midmer*, 11 C. E. Gr. 299; *Read v. Huff*, 13 Stew. Eq. 229; *I Perry Trusts*, 133.

The circumstances that are relied upon to establish a resulting trust must be distinctly proved by full, clear and satisfactory evidence. *Cutler v. Tuttle*, 4 C. E. Gr. 549, 560; *Midmer v. Midmer*, 11 C. E. Gr. 299; *Parker v. Snyder*, 4 Stew. Eq. 164; *S. C. 5 Stew. Eq. 827*; *Read v. Huff*, 13 Stew. Eq. 229; *Dyer v. Dyer*, 1 Lead. Cas. Eq. 335.”

In *Herbert v. Alvord* (75 N. J. Eq. p. 428) was an attempt to fasten upon real estate a resulting trust and Vice-Chancellor Leaming dismissed the bill because the proofs offered were insufficient, and saying on page 429:

“The proofs, except as to acts or declarations of the party to be charged, must be of facts antecedent to or contemporaneous with the purchase, or so immediately afterwards as to form a part of the *res gestae*. The proofs must also be convincing and leave no reasonable doubt as to the intention of the party. *Peer v. Peer*, 11 N. J. Eq. (3 Stock.) 432, 439; *Persons v. Persons*, 25 N. J. Eq. (10 C. E. Gr.) 250, 260; *Linker v. Linker*, 32 N. J. Eq. (5 Stew.) 174, 177; *Lister v. Lister*, 35 N. J. Eq. (8 Stew.) 49, 56; *S. C.*, 37 N. J. Eq. (10 Stew.) 331; *Read v. Huff*, 40 N. J. Eq. (13 Stew.) 229,

233, 234; *Duvale v. Duvale*, 56 N. J. Eq. (11 Dick.) 375, 382.”

In *Magee v. Magee* (81 N. J. Eq. p. 190) Mr. Justice Bergen, speaking for the Court of Errors and Appeals, reversed the Court of Chancery and dismissed the bill of complaint because the proofs offered to establish a resulting trust were not satisfactory, saying that they should be definite, reliable and convincing, leaving no reasonable doubt of the intentions of the parties.

In *Phillips v. Phillips* (81 N. J. Eq. 459) the bill was filed for the purpose of establishing a resulting trust in favor of the complainant in the farm of 88 acres, and Vice-Chancellor Backes because the complainant did not sustain the burden of proof, dismissed the bill of complaint, and his decision was affirmed by the Court of Errors and Appeals in 81 N. J. Eq. p. 345, and on page 461 said:

“The burden of establishing a resulting trust is on the party asserting it. He must prove not only that the consideration for the conveyance was paid by him or out of his funds, but also that the money was paid as the purchase price and not as a loan. When there is evidence from which it may be inferred that the money was advanced as a loan, the burden is on him to overcome this inference by clear and satisfactory proof. *Cutler v. Tuttle*, 19 N. J. Eq. (4 C. E. Gr.) 549, 560; *Perry Trusts* (6th ed.), 133.”

In *Stines v. Carton* (129 Atl. p. 251) the Court of Errors and Appeals affirmed the opinion of Vice-Chancellor Foster where an attempt was made to create a resulting trust by parol testimony, and on page 253 said:

“While it is, of course, true that no special language need be employed to create a trust such as White now claims, it is equally true that an intention to establish such a trust and an effort to give effect to such intention must be shown by a clear preponderance of the proof, in order to establish such a trust.”

In *Mullen v. Mullins* (130 Atl. p. 629) cited by the Court of Errors and Appeals, October 19, 1925, the Court in affirming the opinion of Vice-Chancellor Fielder followed the same rule of preponderance of proof, and held that such proof must be certain, definite, reliable and convincing, leaving no reason for doubt of a contrary intention.

In this case Vice-Chancellor Leaming (C. 304) after discussing the testimony pro and con, said:

“Indeed, much that each party has stated is in turn denied by the other. The search for truth has thus become almost hopeless.

After hearing the testimony of the several witnesses and enjoying the benefits of able briefs of counsel and carefully reading a transcript of the testimony, I am impelled to say that I find myself unable to determine with what I deem reasonable certainty what the truth may be touching the claims of the respective parties.”

Now, the evidence submitted on behalf of the appellant and on which this Court is asked to reverse the decree of the Court of Chancery is unreliable and unsatisfactory and comes far from meeting the requirements of proof in the cases cited.

The testimony can perhaps be better discussed and understood from two aspects:

a. *Testimony relating the original transaction between the parties.*

b. *Testimony relating to the subsequent conduct of both parties as to the property.*

The appellant's proof as to what the original transaction was is very meager and uncertain. The farm cost \$1800. The title to the farm was taken in the name of Gardner. She paid \$100 down, gave a first mortgage of \$1200 on the farm, and a second mortgage of \$500 on her Blenheim property. The \$1700 was advanced to her by Mr. Beakley. Pine claims that this money was advanced as a loan to him by Gardner, and that the title to the property was taken in her name as collateral security. Pine fails, however, to prove it, and this he must do in order to succeed. Pine is the only witness who testified concerning the original transaction between he and Gardner. Beakley, although he advanced \$1700 to Gardner, never had any conversation with her about the matter until there was a default in the payment of interest on his mortgages (C. p. 29).

“Q. When you went to see Mrs. Gardner about the interest that was the first conversation you had with her about the matter?

A. Yes.”

So that what transpired between Pine and Gardner prior to, or at the time of the original transaction is not in any way supported by Mr. Beakley because he had no conversation with Mrs. Gardner and knew nothing about the transaction between Pine and Gardner as to this property.

Counsel for the appellant lays much stress upon

the fact that Mr. Beakley testified that he suggested to Pine that the deed to the property be made to the respondent, but this suggestion, it must be remembered, was made to Pine and not to Gardner and not even in the presence of Gardner. It was Beakley's idea which in no way can bind Gardner. The Vice-Chancellor, in referring to this feature of the testimony (C. 302) said:

“It will be observed, however, that Mr. Beakley did not get these ideas from defendant, and the admissibility of that testimony is more than doubtful.”

Counsel for the appellant also stresses the fact that when Beakley went to Gardner for the interest on the mortgages, Gardner told him that Pine should pay the interest and the argument is made that because Gardner said that Pine should pay the interest that that indicated that Pine was the owner of the property. The truth is, Pine was enjoying the use and occupation of the property and for that use and occupation he was to pay the interest on the mortgages and the taxes assessed against the property.

Indeed the conversation between Gardner and Beakley shows clearly that Gardner recognizes herself as the owner of the property. She testified (C. 138):

“Q. You had a conversation with Mr. Beakley?

A. Yes, Mr. Beakley came to my house the next afternoon I had a sick baby, and Mr. Beakley came to my house on Friday afternoon, January 26th, and while he was there Dr. Raleigh was there and he heard what Dr. Raleigh had to say, he didn't know whether the

baby was going to live to morning or not, and after he went out Mr. Beakley had this talk with me about the property, he said, 'I was thinking, Cordie, if you would have the farm conveyed over to me I would release the mortgage on the Blenheim property and get my money out of the farm,' and I said, 'No, that wouldn't be fair, I bought that place for them to have as a home, and if Mattie won't take over the mortgage I will get somebody else who will,' and I was angry at Mr. Gardner for putting his foot in it at that time."

In order to purchase this property, in addition to giving Beakley a \$1200 mortgage on the farm Beakley insisted and Gardner also gave him a \$500 mortgage on her Blenheim property. Beakley was willing if Gardner would turn the farm over to him, to release her Blenheim property. Had Gardner accepted Beakley's proposition, she could have had her Blenheim property released and be relieved of further trouble and responsibility in the matter, but she refused, and why? Because, as she told him then (C. p. 139), "I bought that place for them to have as a home." In other words, her position clearly indicates Gardner to be the owner, that she herself, had purchased the farm for a home for Pine and her mother and not otherwise, and therefore, Beakley's testimony in no way supports Pine's claim.

Beckley (lawyer) did not, so far as Mrs. Gardner was concerned, come into the matter until about 1920, and although he had correspondence with her and went to see her personally he admitted that nothing was said between them as to the original transaction (C. p. 50):

"By the Court:

Q. Did she at any time while you were there on that last occasion say to you whether or not the title was placed in her name as security for her or otherwise?

A. No.

Q. Did she claim that it was hers absolutely, and that Pine had no interest in it?

A. No.

Q. Did she claim it was not hers?

A. She did not.

Q. I gather from your answer nothing specific was said touching the original transaction?

A. There was not, except as far as her answers were concerned she did not commit herself as to how she held the title."

Witnesses Caulley, Farr, Wakeman, Granese, Sylvester and Pratt, being all the remaining witnesses produced on behalf of the appellant, yet none testified as to the original transaction because they knew nothing whatever about it. They came into the matter long after the original transaction happened, so that the burden of proof cast upon the complainant to establish the original transaction between the parties rests upon Pine's testimony, and no others.

Pine's testimony as to the original transaction is hopeless. He first says (C. p. 63) that he had an understanding with Gardner that when the \$500 mortgage was paid off she would deed the farm to him. He doesn't state when that understanding was arrived at, where it was had or when the \$500 mortgage was to be paid off. No details whatever are given by Pine as to this very important element in the case. When pressed as to what Gard-

ner actually said to him she would do, he was unable to answer, except to say generally she agreed to do it (C. p. 64).

“Q. What conversation did you have?

A. She was to deed the property to me.

Q. What did she say?

A. She said she would do it.”

Moreover, Pine further testified (C. p. 63) that he left the business to Mr. Ayres, the scrivener who prepared the mortgage papers, and who is now dead, and he depended upon Ayres to carry out this vague understanding he had with Gardner. But Pine does not even tell us what he told Ayres or whether there was any specific conversation between he and Ayres. We are left then absolutely in the dark so far as the complainant is concerned as to what was said between Pine and Ayres, and later between Ayres and Gardner. First, because Pine fails to testify to it, and secondly, because Ayres is dead and can't testify to it.

The case, then, is barren of any testimony as to the original transaction between Pine and Gardner except the testimony of Pine, and Pine's testimony throughout the case was so contradictory and so unreliable that no credence can be given to it at all. The mere pointing out of a few instances will fully demonstrate this.

Pine testified that he paid Mason (one of the sellers) \$100 to bind the bargain, but he could not remember whether he paid it in cash or by check, where he got it or where it came from (C. p. 61). Then he further testified that he paid it back to Gardner, but could not remember when, or how, except to say (C. p. 62) he had paid it ten times over. The truth is (C. p. 132) Gardner borrowed

the \$100 from Mrs. Peters. The check, at the request of Gardner, was sent to Pine. Afterwards Gardner paid it back (C. p. 132) and Pine to this day has failed to pay it. In a proceeding such as this the most important element is who paid the money for the property, and yet Pine knowing this, or his counsel at least knowing this, was unable to testify definitely and accurately about it.

Pine was required to pay the interest on the mortgages and taxes assessed against the land in lieu of rent. Pine testified that this was so. Dunk paid the interest on the mortgages from January, 1912, to January, 1920. This money represented the proceeds of the sale of part of the land to Granese and Silvester. Pine testified (C. p. 107) that if Dunk did not get the money from him with which to pay the interest and taxes during this period, he didn't know where to get it. He even ventured to say that he had given Dunk the money, but Dunk's testimony settles completely that he did not. Can you imagine one's memory so faulty? Here was interest being paid on mortgages for a period of eight years covering the farm which Pine claimed to own, and yet he could not remember where the money came from, or how the interest was being paid.

The most palpable illustration though, of Pine's faulty memory was his failure to remember (C. p. 90) the date of the death of his wife.

The case was tried September 16, 1925, and although Pine's wife only died February 7, 1924, one year and seven months (C. p. 153), Pine couldn't remember the date, and he testified (C. p. 91) thus:

“You are now speaking about your wife, when did she die?

A. When?

Q. Yes.

A. I have told you as near as I can, I don't remember now.

Q. When was it as near as you can say?

A. Two years ago this fall or winter.

Q. Two years ago this fall, is that your best recollection?

A. It might be three, but somewhere around there. Time flies.

Q. Is that your best recollection?

A. That is my best recollection."

Could anyone's memory be worse? Here were two people living in the country. Perhaps the most important event in Pine's life was the death of his wife. One would think that this date could never be erased from his memory, and yet Pine could not give it, although it had only happened a very short period of time.

Many more illustrations might be pointed out, but suffice to say these fully demonstrate how hopeless Pine's testimony really is. Indeed, his testimony was so uncertain and so unsatisfactory that that the Court was impelled to say (C. p. 66), "Then you don't know anything," and even his counsel (C. p. 68) exclaimed, "He is the dumbest man that ever lived," and then later his counsel, in dire disgust (C. p. 83), "Throw something at him." In fact, his dumbness was so pronounced on the witness stand that the Court (C. p. 73) said that his excessive dumbness made the Court suspicious that Pine knew more than he was testifying to, and what's more Pine's counsel, after reading the testimony and realizing the utter hopelessness of Pine's testimony, argues that the force of Pine's testimony lies in his stupidity. But Pine is seeking

to establish a resulting trust in real estate by parol where the title has been in the respondent for fifteen years and more, and stupid testimony from a stupid witness is not the test or rule of proof, the testimony must be clear and convincing so as to leave no reasonable room for doubt, and such testimony is impossible from stupid Pine, and thus his testimony as to the original transaction hopelessly fails.

While the cases cited show that the situation of the transaction when the title passes is to be looked into, and not the situation preceding or following that time, nevertheless some of the Courts hold that the subsequent conduct of the parties with respect to the property may or may not be helpful in determining the real intention of the parties. An examination of the subsequent conduct of Pine does not strengthen his position in the least.

(a) The deed to Gardner is dated July 14, 1910. Pine took possession in October, 1910. Both Pine and Gardner agree this was the understanding. Pine and his wife (Gardner's mother) were to live there, and Pine was to farm the farm for his own use and benefit. He was to make his living there if possible, and Gardner says (C. pp. 134-135) this was her sole purpose in buying the farm for them. Pine remained there until January or February, 1913 (C. p. 140), when he left the Mason farm and moved across to Beakley's place and farmed Beakley's farm for a year. Why did Pine do this? If Pine was the real owner of the farm, why leave it? Did he have no interest in the farm other than making a living, and did he think he could make a better living on the Beakley farm, and is this the reason why he left? If this be true, then

he was not the real owner of the Mason farm, and this act of leaving shows it. Indeed, when he left, he made no arrangement whatever as to occupancy, as to who should look after the place or who was to pay the taxes or the interest on the mortgages. He left it and abandoned it, as though he had no interest whatever in it.

(b) Gardner testified, and Pine did not dispute it, that Pine was to pay the taxes assessed against the property and interest on the mortgages. Pine was to pay no rent. The taxes and interest on the mortgages approximated \$150 per annum. Dunk, Gardner's agent, from January, 1912, to January, 1920, paid part of the taxes and all the interest on the mortgages, and reduced the principal of the mortgages to \$1000. It was during this period that Pine left the Mason farm for nearly a year. Pine did not know that Dunk was paying the interest on the mortgages (C. p. 107) and what's more, he testified (C. p. 107):

"Q. Did you ever inquire of him (Dunk) whether he did or not?

A. I never inquired."

If Pine was the real owner of the Mason farm wouldn't he have inquired as to the payment of the interest on these mortgages? This conduct on Pine's part indicates that his only interest was one of use and occupation, and that he had no real interest as owner, otherwise he would have never acted as he did concerning the obligations which he says were incurred for his benefit. The fact that he did pay some interest and some taxes, and did redeem the property after it had been sold for taxes, and took the tax title in his own name does not in-

dicate ownership in Pine, because that was his obligation in the first instance. He was to pay no rent, and certainly for use and occupation he ought to pay something, and that something was taxes and interest on the mortgages. The fact that he disregarded his obligation for a period of eight years refutes conclusively his claim that he was the real owner of this property.

(c) Pine ignored and disregarded his obligation to pay the taxes and interest to such an extent that foreclosure proceedings were threatened, and Gardner was forced to sell part of the farm in order to pay the taxes and interest, and finally the mortgages. She first made an arrangement with Dunk. Dunk acted as Gardner's agent (C. 141) and made two sales, one to Granese and one to Silvester. Pine and Dunk couldn't agree and Pine made himself the disturbing element in this, otherwise satisfactory arrangement between Gardner and Dunk. Pine wanted to sell instead of Dunk (C. 144, 145) so finally Gardner agreed that Pine should sell as her agent. This arrangement was made either in 1917 or 1918. If Pine was the real owner of this land, why did he agree to act as Gardner's agent? Pine claims that when the \$500 mortgage covering the Blenheim property was paid off he was entitled to a deed for this farm. The mortgage was cancelled of record August 25, 1916, and yet we find Pine in 1917 or 1918 agreeing to act as Gardner's agent in the sale of part of this land. Now there is no dispute in the testimony that Pine was Gardner's agent because he signed himself as agent as late as November 19, 1920. (C. p. 101 and Ex. p. 283.)

"The Witness: I can come pretty near to the date of this. Right along November 19, 1920, the last signature I put in his book as agent.

Q. And that receipt to Mr. Farr where you indicate as being agent was signed by you?

A. That is my signature and receipt.

Q. Did you write the word 'Agt' there?

A. Yes, that is my signature."

And what's more Pine had parts of the farm platted by a surveyor. (Ex. p. 285). Both of these plans referred to the land as "The land of Cordelia Gardner." Pine authorized these plans to be made, knew the land referred to as the land of Cordelia Gardner and used them in the sale of lots. This happened subsequent to the cancelling of the \$500 mortgage. If Pine was the real owner why was it necessary to refer to the land as the land of Cordelia Gardner, and why did he act as agent when he was entitled to act for himself. Counsel for the appellant argues that the maps referred to the land as "the land of Cordelia Gardner" because title was in her name, but that is the very point in this case. The title should not have been in her name, if Pine's claim is sound and his agreement to act as Gardner's agent in the sale of the land, absolutely refutes his claim.

But Pine did more than this. He allowed Gardner to receive part of the proceeds of the sale of this land. Pine claims that the \$1800 raised by Mrs. Gardner was a loan to him, and that the title was taken in her name as security for this loan. Now if this be true, the only obligation Pine had to Gardner was the payment of the principal and interest on these mortgages, and yet on October 3rd, 1922, she received from Mr. Watkins \$150 part of the consideration of the deed to Payton. On January 12, 1923, she received from Mr. Watkins \$412 part of the consideration for the conveyance to Brennan.

Both of these sales were made by Pine and prior to that, she had received from Mr. Dunk the balance of the proceeds of the sale that he had made, the sum of \$376.48. Indeed, in 1918 when this arrangement appears to have been made between Gardner and Pine, Pine opened a bank account which Gardner says he agreed to do in her name, and deposit in that bank account \$75 to her credit. On one occasion \$50 and later \$25. The payment of this money to Mrs. Gardner absolutely disproves Pine's interest in this land as owner. She could not have received the money under any other theory than that she was the owner of this property, and yet she received it, Pine knew she received it, and made no objection to her receiving it, and in fact, made two payments to her himself.

Pine continued to sell, but the taste of money was too much for him. He soon forgot his obligation to Gardner, his wife and every one else. He began drinking excessively. The result was that he kept the money. Gardner, it is true, signed deeds, and much point seems to be made of this fact, by Pine's counsel, but she did it, as she testified, because of her mother, and no one can read the testimony and come to any other conclusion. If Mrs. Pine were living and could testify, undoubtedly she would support her daughter in this respect. The letters between them show this. There was always trouble whenever a deed was to be signed. The mother was the one to suffer, and because of her suffering, occasioned by the drunkenness and abuse of Pine, Gardner signed the deeds. Whenever a settlement was to be made through a real estate or lawyer's office she received the money, but when Pine got his fingers on it, she did not. She protested and signed until finally in June, 1923 (C. p. 153), she wrote Pine

not to sell any lots anywhere on the farm and to send her the names of all the purchasers who were paying for the lots on installments. But the fact that Mrs. Gardner signed deeds, knowing that Mr. Pine received the proceeds of the sales, does not show that she was not the real owner of that farm any more than any other agent's disregard of his duty and obligation to the real owner, for Pine's selling of lots was in no way associated with the original transaction between Gardner and Pine. It was the result of a subsequent agreement between Gardner and Pine made fully eight years after the original transaction was consummated. And how can it be said that her conduct allowing Pine to keep the proceeds of some of the sales and signing deeds was any indication at all that her agent (Pine) was the real owner of this property. Many instances might be cited where agents have failed to account to the owner for proceeds of sales of land, and yet no one will venture to suggest that because the owner signed deeds it indicated that the agent was the real owner, and so here. She fully explained why she did it, and because the lips of her mother were sealed by death, she was unable to have her support in this trying circumstance of the whole case.

It must, however, be distinctly remembered that the selling of lots by Pine and the signing of deeds by Gardner was the carrying out by both of them, of a subsequent arrangement made between them more than eight years after the original transaction happened.

(d) Counsel for Pine lays much stress upon the correspondence between Gardner and Beckley (lawyer) and the conversation between Beckley and

Gardner at Gardner's home. The correspondence began July 8th, 1920, ten years after the original transaction. Counsel picks out certain isolated statements made by Gardner in her letters, and verbally to Mr. Beckley, and argues that they indicate Pine to be the real owner of the property. Similar isolated statements might be picked out of these letters and conversation with Beckley which would equally indicate Mrs. Gardner to be the real owner of the property. For example: (Ex. C4, C. 269) Gardner wrote that Pine says, speaking of the land, "Why it is all yours" (C. p. 270). "Beakley offered to release my property if I would sign the farm over to him" (C. p. 270), "I refused as I did not think it a fair deal." (C. p. 270) "We (meaning she and her husband) did not want that ten acres sold to Granese." (C. p. 271) "I even paid my own doctor bill after I got nursing—that is why the place was always to stay in my name." (Ex. C5, C. 272) Gardner wrote, "While it was in my name she (her mother) was sure of a home and so was he (Pine)." (C. 272) "I really don't want to be bothered with him or the place, but knowing the man so well I hesitate to give it up—I really don't have to you know."

These statements of Gardner's clearly indicate that she was the owner of this property and the letters read as a whole, and the conversation taken as a whole leaves no room for doubt, but that Gardner regarded herself as the owner, and nowhere did she agree to convey the property to Pine. The whole episode between Gardner and Beckley is saturated with the thought on the part of Gardner that she purchased the farm for the benefit of Pine and her mother, and particularly her mother, and that she felt it to be her solemn duty to see to it that her

mother was not disturbed, and that she should live there peaceably the rest of her life. Pine had tasted easy money from the sales of the lots, and it was only a belated attempt on his part to get something that did not belong to him. Whatever was written or said by Gardner has no evidential value whatever in indicating what the original transaction between Gardner and Pine was, because Beckley flatly admits that nothing was said between Gardner and himself touching the original transaction. Pine went to Beckley in 1916 regarding the redemption of the tax title. He was as much entitled to a deed then as he was in 1916, regarding the redemption of the tax title. He was as much entitled to a deed then as he was in 1920, and yet Beckley testifies that Pine never mentioned to him the fact that he was entitled to a deed to that property (C. 35). The only business at hand then was the redemption of the tax title which Pine had allowed to go by his own default. Why didn't he then urge Beckley, as he did in 1920, to secure for him a deed to the property? Cases hold a resulting trust arises at the instant the deed is taken, and not what happens before or after. Happenings ten years after the original transaction can have little, if any, evidential value, and it is true here because before the incident between Gardner and Beckley happened, Pine abandoned the farm, ignored his obligation to pay interest on the mortgages for a period of eight years, agreed to and did act as Gardner's agent in the sale of land, authorized the preparation of a map recognizing the lands to be Gardner's, and consented that she be paid portions of the proceeds of the sale of lots made by him.

After all of these happenings the force of the isolated statements pointed out by counsel and the

inferences drawn by him lose their force absolutely, in the face of the positive conduct on behalf of Pine recognizing Gardner to be the owner of this property.

II.

The defence of laches was raised in this (C. p. 125). It was not necessary to amend the answer in order to do so.

In *Cox v. Brown* (87 N. J. Eq. p. 462) the Court (V. C. Leaming) at page 464 said:

"But relief may be denied in equity in all cases of the nature above referred to when the claim asserted is a stale claim, and that defence need not be pleaded. In *Sullivan v. Portland and Kennebec Railroad Co.*, 94 U. S. 806, the rule touching the endorsement of stale claims in a court of equity is stated as follows: 'To let in the defence that the claim is stale, and that the bill cannot, therefore, be supported, it is not necessary that a foundation shall be laid by any averment in the answer of the defendants, if the case, as it appears at the hearing, is liable to the objection by reason of the laches of the complainants, the Court will, upon that ground, be passive, and refuse relief. Every case is governed chiefly by its own circumstances; sometimes the analogy of the statute of limitations is applied; sometimes a longer period than that prescribed by the statute is required; in some cases a shorter time is sufficient; and sometimes the rule is applied where there is no statutable bar. It is competent for the Court to apply the inherent principles of

its own system of jurisprudence and to decide accordingly.' ”

The law with respect to the doctoring of laches in this State is also well settled. Before discussing the testimony as to this defence a citation of some of the authorities will be made.

In *McCartin v. Traphagen* (43 N. J. Eq. 323), affirmed by the Court of Errors in (45 N. J. Eq. 265), the Chancellor applied the rule of laches because of the loss of testimony through death. Mr. Traphagen and Mr. Perry were both dead and the recollection of Mrs. McCartin and Mr. Van Vorst was so faded, that it was quite evident that when they attempted to tell what they recollected about the transaction they gave him impressions and conjectures other than actual recollection. The Court at page 338 said:

“The reason of the rule is apparent, and consists in the difficulty and, in many cases, the impossibility, of ascertaining, after a great lapse of time, the facts necessary to enable the Court to exercise its power with safety. He who delays asserting his rights, until the proofs respecting the transaction, out of which he claims his right arose, are so indeterminate and obscure, that it is impossible for the Court to see, whether what seems to be justice to him is not injustice to his adversary, should be denied all relief, for, by his laches, he has deprived the Court of the power of ascertaining, with reasonable certainty what the truth is, and thus of doing justice.”

In *Wilkinson, et al. v. Sherman* (45 N. J. Eq. 413), affirmed 47 N. J. Eq. 324, the Chancellor dismissed the bill because of laches, saying:

“If the circumstances of the making of this deed were such as to demand explanation from those who claim under it, it becomes manifest that equity requires that that explanation should have been demanded before the death of the possible, the only person who could have given it. After deliberate and intentional delay until the death of that witness and the possibility of explanation is thereby extinguished it is most inequitable that one who so purposely delays should now be permitted to say that such explanation is necessary to ensure title under the deed.”

In *Ten Broeck v. Jackson* (71 N. J. Eq. 582), affirmed 73 N. J. Eq. 734 (V. C. Stevens, page 585) in commenting on the facts in the case said (C. p. 585):

“If the complainant knew that she had a case, and knew, as she must have known, that her husband was pecuniarily responsible, it is very strange indeed that for the nine years that he lived she made no effort to recover the money; that she waited until his lips were sealed by death before she took action.”

The Court then as to the law (p. 586) said:

“It seems to me that this is a case to which the doctrine of laches expounded by the Court of Errors and Appeals in *Lutjen v. Lutjen*, 64 N. J. Eq. (19 Dick.) 773, is peculiarly applicable. The complainant has waited until it has become impossible to hear both sides and to ascertain the exact facts. It is said in counsel's brief that the statute of limitations does not apply. This is undoubtedly so. The Court of Errors and Appeals so decided in *Gray v. Gray*,

39 N. J. Eq. (12 Stew.) 511, but in that very case Chief Justice Beasley used this language: 'That a stale claim of this character would be open to the gravest suspicion, and would often be rejected in a court of conscience on its own peculiar methods of dispensing justice, is evident at a glance.' "

In *Mealey v. Howard* (79 N. J. Eq. p. 93), the Court (V. C. Leaming) dismissed the bill, and at page 95 said:

"My conclusion is that complainant has not sustained the burden of proof with that clearness or certainty which entitles a court of equity to award the relief here sought; and that the long delay of complainant in the assertion of her claim has rendered it impossible to accurately ascertain at this time the facts, and must, in consequence, be deemed operative to render it inequitable to deny to defendant, in view of such uncertainty at this time, the benefits of the purchase which he claims to have made."

In *Dunham v. Adams* (82 N. J. Eq. 265), the rule of laches was applied because of the loss of testimony. It appeared that the papers were prepared in the office of Mr. Puster's, a lawyer. The matter was left entirely with him to attend to. He died in 1905. Some eight or nine years afterwards suit was instituted. The Court found that if Mr. Puster were living he undoubtedly could shed a great deal of light upon the transaction, and at page 270 said:

"There is further reason why, under the circumstances of this case, the plaintiff should not be allowed to maintain this action, viz., in the years that have elapsed since the debt became

due and her desertion, a number of witnesses upon whom the defendant might have relied to substantiate his defence have died, particularly Mr. Puster; and the facts in relation to the matter have become clouded in the mind of the defendant so that he is not as well able to defend as if the suit had been brought earlier. *Lutjen v. Lutjen*, 64 N. J. Eq. (19 Dick.) 773 (at pp. 783, 784). What the particular period of time is within which this suit might properly have been commenced is unnecessary to determine. It is sufficient to say that the delay in instituting the suit on one claim for upwards of sixteen years after it became due, and on the other for about fourteen years—which periods exceed the time allowed by the statute of limitations from eight to twelve years, respectively, considering that she had lived separate and apart from her husband twelve years before the claims were assigned and suit brought—constitutes such inexcusable laches that equity should not aid the plaintiff."

In *Soper v. Cisco* (85 N. J. Eq. p. 167), sixteen years intervened between the making of the deed in question and the filing of the bill, the result was that at the time of hearing the lawyer who took the complainant's acknowledgment of the 1897 deed was dead, and the lawyer who drew and took her acknowledgment of the 1898 deed had no reliable memory of the transaction. The memory of other witnesses with regard to this important matter as to the real facts have become dim. The complainant herself had reached such an extreme age and her mental faculties had become so much impaired as to render her testimony practically valueless, and the Court said:

“Such delay, in such circumstances, without adequate excuse, is a bar to relief.”

Pine claims to have been entitled to a deed for the property as soon as the \$500 mortgage covering the Blenheim property was paid off. This mortgage was cancelled August 25, 1916. At that time every witness who could have shed light upon the situation was living, and the Court could without difficulty have ascertained the exact truth touching the transaction, but Pine waited until 1925 when at least four material witnesses of the defendant had died.

George H. Gardner, the husband of the defendant, died October 19, 1922 (C. p. 129). Mr. Gardner joined with his wife in executing both mortgages. He was present in Ayres' office at the time the papers were executed. He was familiar undoubtedly with the most intimate facts concerning the transaction, and had Mr. Pine filed a bill in 1916 Gardner was living, and would have been a material witness.

Mr. Ayres, the man whom Pine testifies understood the transaction (C. 88-89) and that he left everything to him. Ayres drew the papers, Ayres was present when they were signed, and took the acknowledgments. Ayres is the only one who could have testified what Pine actually told him was the real transaction. Ayres must have understood it because he could not have intelligently taken Mr. and Mrs. Gardner's acknowledgment. Ayres was living in August of 1916, and did not die (C. p. 89) until October 22, 1919.

Mrs. Berg, the lady to whom the mortgages were assigned in 1916, certainly had some information about the transaction. She visited Pine's during the summer, and was on friendly terms with all. Pine says (C. 89) she thoroughly understood the

transaction. She refused to take an assignment of the mortgages until she ascertained who was responsible. Her testimony would have been material, and she was living in August of 1916, and did not die until (C. p. 90) February, 1922 or 1923.

Mrs. Pine (C. 90) no one would suggest that she did not know the circumstances and would not have been a material witness. Gardner first talked to her mother about the transaction before she had any conversation at all with Pine. She explained to her mother how she would buy the farm for them. Her mother wrote to her about it, and afterward went to Kirkwood to see her about it, where Gardner was living, and not at Blenheim, as Pine has testified to. She signed the receipt books used in the sale of lots by Pine, and signed Pine's name as agent. She knew undoubtedly why Gardner signed the deeds, knowing that Pine got the money and the reason for it. She knew whether Pine abused her or not, and about Pine's drunkenness. Indeed, her testimony from the very beginning would have bristled with interest in this case, and yet her testimony was unavailable because of death. She died (C. p. 153) February 7, 1924.

Vice-Chancellor Leaming in his opinion (C. pp. 304 and 305) in commenting upon this case, said:

“In this situation it cannot be overlooked that complainant did not supply any part of the purchase price of the property and that the uncertainty of his claim primarily arises from his negligence in failing to procure some written evidence of his alleged interest in the land; and that his long delay in bringing this suit has occasioned the loss of the testimony of several witnesses whose testimony obviously would have been of great benefit in ascertaining the truth.

Mr. Ayres, who drew the original papers and conducted the transaction, is now dead. The husband of defendant, who joined with defendant in the two mortgages and who appropriately would have been a party to an engagement to reconvey, is now dead. Mrs. Pine, the mother of defendant and wife of complainant, whose attitude in this matter has been the mutual excuse of the parties for much of their conduct, is now dead. Each of these could have shed much light on the essential inquiry. Complainant has long known that defendant has disputed his claim and no adequate excuse appears for his long delay in asserting his rights in court. If his claim is well founded his rights mature in 1916. The bill was not filed until 1925."

Why did Pine wait until these witnesses had died? Particularly why did he wait until his wife died? He knew Mrs. Gardner claimed to own this property. Was there any reason why he could not have filed the bill in 1916? He consulted a lawyer about the tax title and said nothing about the situation between he and Gardner. When he received a written notice in June, 1923, not to sell any more lots, and to give Gardner an account of what he had sold, he must have known then her attitude. Mrs. Pine was living, and if she were favorable to him was not then the time to have sought his right in a Court of Equity, but he waits, he even waits until after she is dead, and then he comes in court. There isn't a single excuse offered. He doesn't even substantiate the allegation in the bill that he refrained from instituting suit out of the tender regard for his wife. He deliberately waited until he had the defendant

at a disadvantage. His delay was intentional and inexcusable. Nine years have passed since the \$500 mortgage was cancelled of record. How dim the memory of the witnesses, even his own—so unreliable and uncertain as to be unworthy of belief. The cases cited clearly show that laches is a complete defence to the unjust claim filed by Pine in this case.

CONCLUSION.

Mrs. Gardner says that she purchased the farm for the benefit of her mother and father, so long as they lived, but the farm was always to be hers, and that they were to have the benefit of the farm during their lifetime. This was her avowed purpose, and absolutely in accord with her whole life toward Pine, and especially her mother. You can't intelligently consider the transaction with respect to the Mason farm without also taking into account the transaction with respect to the Blenheim property. Mr. and Mrs. Pine owned the Blenheim property at one time, living there and kept a store. They were sold out by the sheriff, and had to leave. For a time they went from place to place, finally Mrs. Gardner got hold of the Blenheim property. She purchased it for her mother and father, and even before they took possession of it she allowed her mother to rent it and collect the rent. Then they moved in and lived there. They paid a small rental. Mrs. Gardner took the title in her own name. It was her property, and she afterwards sold it, and no one to this day has ever questioned Mrs. Gardner's ownership of the Blenheim property.

While living in the Blenheim property both Pine and her mother became dissatisfied. Pine wanted

a larger place where he could farm. Mrs. Gardner wanted them to have it, and she purchased the Mason farm, and they moved there and lived and got the benefit of it. She took the title in her own name and Pine had no more right to question her title to the Mason farm than he did her title to the Blenheim property. Both were purchased by Gardner for the purpose of affording a place for Pine and her mother to live. Both transactions are linked together, and you can't consider one without considering the other.

If Mrs. Gardner had been a money lender and had charged an extreme bonus for her money, and had had the money to loan in her own right, perhaps more might be said against her, but she didn't have the money. She was compelled to borrow every cent that was paid for the Mason farm. She gave Pine and her mother exclusive possession for what purpose—because, and the testimony shows it, Mrs. Gardner loved her mother, and she was determined to protect her mother so long as she lived. The only reward, if any, that she would receive, would be that when Pine and her mother were through with the property, it would be hers for herself and children. This was her purpose from the beginning to the end, and no Court, particularly a Court of Equity, which for all time has been regarded as the Court of Conscience, could after she had done these things out of the goodness of her heart, and after a lapse of fifteen years with the title in her name, advise a decree that would take from her that which she justly and meritoriously deserves.

Respectfully submitted,
GROVER C. RICHMAN,
*Solicitor for and of Counsel
with Defendant-Respondent.*

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
SAMUEL H. PINE,
Complainant-Appellant,
and
CORDELIA MARY GARDNER,
Defendant-Respondent.

BRIEF FOR COMPLAINANT-APPELLANT.

This suit was instituted for the purpose of securing the conveyance from the respondent, Mrs. Gardner, of the premises described in the bill of complaint, it being contended by the appellant, Pine, that Mrs. Gardner, who is Pine's step-daughter, held title to secure her from loss by reason of certain liabilities which she had incurred at the time the premises were conveyed to her. Mrs. Gardner denies this and asserts that she is the owner of the premises free and clear of any rights of Pine.

The Vice-Chancellor who sat at the final hearing dismissed the bill upon the ground that he found himself unable to determine with what he deemed reasonable certainty, what the truth might be touching the claims of the respective parties and that Pine had without adequate excuse, delayed taking action for such a length of time to be estopped from

asserting them, citing: *Soper v. Cisco*, 85 N. J. Eq. 165, 174; *McCartin v. Traphagen*, 43 N. J. Eq. 324, aff. 45 N. J. Eq. 265; and *Lutjen v. Lutjen*, 64 N. J. Eq. 773, 781.

The land in question is a farm situate in Gloucester County. In the year 1910, Pine, desiring to purchase this farm because he thought it would increase in value (page 92), negotiated with the owners (the Mason Estate) and found it could be purchased for \$1800.00 (page 54). He did not have the money but asked a friend, Isaac E. Beakley, to loan \$1700.00 on mortgage on the farm but Beakley refused to do this because of the inadequacy of the security (page 16). Pine talked with his family about the matter and Mrs. Gardner suggested that she might help by giving a second mortgage on a store property which she owned at Blenheim, if Mr. Beakley would take a \$1200.00 mortgage on the farm (pages 131 and 133). This was satisfactory to Beakley (page 17) but in view of the position in which Mrs. Gardner was placing herself, he suggested that title be taken in the name of Mrs. Gardner until the \$500.00 mortgage on her store property had been paid (page 18). This was satisfactory to Pine. The down payment of \$100.00 was secured by Pine through Mrs. Gardner of a friend, Laura Peters (page 132), and settlement was made, the deed and mortgages executed and Pine went into possession of the farm and has remained in possession ever since excepting for one farm season when he worked on a farm nearby. In 1916 the \$500.00 mortgage was paid and cancelled through the sale of part of the farm. In 1920 the \$1200.00 mortgage was paid and cancelled, the money also being raised by part of the farm being sold. After the cancellation of the \$1200.00 mortgage, demand

was made by Pine through his attorney, on Mrs. Gardner, for the conveyance to him of the farm since the mortgages had been paid off (page 38).

Considerable negotiations resulted in the course of which Mrs. Gardner finally promised to give a deed to Pine and his wife (who was Mrs. Gardner's mother), and also to account for moneys she had received from the sale of lots. Pine refused to accept anything but a deed to himself and continued selling lots, kept the money and presented deeds to Mrs. Gardner for the lots sold which she signed (page 49).

In 1924, Mrs. Gardner, through her attorney, stopped Pine from selling lots and refused to sign any more deeds (page 152). On January 7, 1925, Pine started this suit.

THE FACTS SHOW PINE'S OWNERSHIP.

It is contended by the appellant that the evidence in this case as to his ownership of the premises in question, is certain, definite, reliable and convincing, and that such proof covers facts contemporaneous with the conveyance as well as facts concerning the manner in which Mrs. Gardner and Pine dealt with the property, both of which classes of testimony are recognized as aids in determining the intention at the time of the conveyance. *Mullen v. Mullins* (98 Eq. 728).

The first witness whose evidence meets satisfactorily this test is I. E. Beakley. It was to Beakley whom Pine applied for a loan on this farm—up to that time Mrs. Gardner had never thought about buying it and her attention was first called to it in a conversation she had with her mother who told

what Pine had in mind and then she suggested how she might help raise the necessary money for Pine to get the place. There was no thought in her mind of buying it herself or of trying to get a home for her mother as she afterwards insisted she was doing. It was not until Pine returned to Beakley with Mrs. Gardner's offer that Beakley suggested putting title in Mrs. Gardner's name to protect her until the \$500.00 mortgage was paid off. Just what happened is best told in Beakley's own language (page 17):

"Ques. Why, if you know, wasn't the title given to Mr. Pine when the purchase was made?

Witness: I suggested that myself; I said, 'Why not make the deed right to Mrs. Gardner?' I never thought Mr. Pine would pay for this farm, to tell the truth, and I thought it would save her that much trouble in case she would have to take the farm she would have title to it until such times as he paid for it.

The Court: That was your suggestion to him?

The Witness: Yes.

Ques. That is to say, when the \$500.00 mortgage was paid off then Cordelia Gardner and her husband were to deed the farm to Pine, is that the idea?

Ans. That was the idea.

Ques. How did you get that idea when the \$500.00 mortgage was paid off the farm was to be deeded to Pine; how did you get that idea?

Ans. He would be entitled to have a deed because she wouldn't be going security any longer.

Mr. Richman: I object and ask that the answer be stricken out.

The Court: I think it may stand. Of course, it is only his conclusion. What was the suggestion you made, you said it was your suggestion that this course be taken that the title be taken by Mrs. Gardner; can you remember just what form your suggestion took?

The Witness: When he said she was going as security and would put up the store I said, 'Then why not make the deed in her name,' that would double secure her, she would have the farm to fall back on. Whether I was right or wrong, I don't know; that was just my view of it.

Mr. John Wescott: You said that to Pine?

The Witness: Yes, sir.

Ques. Who was present at that time?

Ans. I don't remember anybody being present.

Ques. Simply you and Pine?

Ans. Yes."

Beakley is disinterested, his evidence is not contradicted, and it is very definite and certain. He testifies positively that he conceived the idea of having Mrs. Gardner take title until the \$500.00 mortgage she was to execute on her store property had been paid. Later Beakley called on Mrs. Gardner about his interest money and had this conversation with her (page 22):

"Ques. What did you do after the year was up with regard to collecting your money?

Ans. I went to see Mrs. Gardner and told her there had been no interest paid on the mortgage and she seemed to be very nice about it and she said, 'He should pay the interest money;' she said, 'You treated him right and

he has got to pay you, he must pay you,' and it went on a while longer, probably two or three weeks, and I didn't hear nothing from Mr. Pine and I went to see Mrs. Gardner again and at that time she wasn't in such a good humor. She said, 'You might let it run another year, Mr. Pine has done enough for you,' and I said, 'I paid Mr. Pine for everything he ever did for me,' and she said, 'You are not going to sell my store?'—that was security for the \$500.00—but, of course, I never intended to sell it, but Mr. Lippincott did write her a letter threatening foreclosure."

Mrs. Gardner testified that the following conversation took place between them when interest payment was discussed (page 138):

"Ques. What did he say?

Ans. He said Sam hadn't paid and he didn't know how he was going to make out and he had better call the mortgages in, and he stayed for supper but nothing serious was talked about and I didn't pay much attention to it, I thought interest and taxes would be paid, and that is all that was said.

Ques. Did he come again?

Ans. Yes, and I knew he wanted his money and I had written Cousin Mattie —

Ques. Who is Cousin Mattie?

Ans. Mrs. Berg, and Mr. Pine had gone to see Cousin Mattie and I had written her to see if she would loan me the \$1700.00 and Mr. Pine had gone and I knew mother had written and she was about ready to take the mortgages over from Mr. Beakley, but Mr. Pine hadn't been doing well and Mr. Gardner decided he wouldn't

have anything more to do with it, he could have it sold, and he wrote to Mrs. Berg to that effect, and Mr. Beakley and Mr. Pine went up on a Thursday and she wouldn't take up the mortgage and she called Mr. Beakley to one side and gave him George's letter to read, but she didn't show it to Mr. Pine.

Ques. You had a conversation with Mr. Beakley?

Ans. Yes, Mr. Beakley came to my house the next afternoon—I had a sick baby, and Mr. Beakley came to my house on Friday afternoon, January 26th, and while he was there Dr. Raleigh was there and he heard what Dr. Raleigh had to say; he didn't know whether the baby was going to live to morning or not, and after he went out Mr. Beakley had his talk with me about the property; he said, 'I was thinking, Cordie, if you would have the farm conveyed over to me I would release the mortgage on the Blenheim property and get my money out of the farm,' and I said, 'No, that wouldn't be fair, I bought that place for them to have as a home, and if Mattie won't take over the mortgages I will get somebody else who will,' and I was angry at Mr. Gardner for putting his foot in it at that time."

If Mrs. Gardner was the real owner of the farm at the time Beakley called upon her for the purpose of collecting his interest she would not have assumed the attitude she did. It is quite apparent from Beakley's recital of her conversation and from her own testimony concerning these two visits that she was only mildly interested. Upon the first occasion she merely says that Pine "should pay the money,"

and suggests that Beakley had treated Pine right and that Pine "must pay him." On the second visit she showed clearly that she was not the real owner when she told Beakley, "Mr. Pine has done enough for you" and later on in the conversation she exclaimed, "You are not going to sell my store?" Her attitude then was the attitude she would naturally assume if Pine was the real owner, but if she was the real owner she would have taken a different attitude entirely, would have talked differently about the interest money and made arrangements to pay it. Her attitude then is in exact agreement with what she wrote Mrs. Peters about Pine "wanting to purchase the place" (page 163), and the statement she testifies she made to her mother when the matter of acquiring the farm was first suggested when she volunteered the information that "she might help by giving a second mortgage on her store property" (page 131).

D. W. Beckley, Pine's attorney, a reputable member of the bar, to whom Pine had gone in 1920 in an endeavor to procure title to the farm, is very certain, definite and convincing in his testimony and his evidence is supported by the letters written to him by Mrs. Gardner.

On May 10th, 1920, Beckley wrote the following letter to Mrs. Gardner (page 38):

"Dear Madame:

Samuel H. Pine has asked me to prepare a deed from yourself and husband to him conveying the property which you hold for him situate in Deptford Township, this County. Mr. Pine has paid the mortgage given by yourself and husband to Isaac E. Beakley and the same was cancelled on the record on April 16, 1920. I also understand that Mr. Pine has paid the

mortgage covering a property owned by yourself which you gave in order to raise part of the money with which to purchase the land in question. I herewith enclose the deed which I have prepared. Will you and your husband kindly execute the same and acknowledge it before a Notary Public, or some other person authorized to take an acknowledgment and return it to me at your earliest convenience, and oblige

Very truly,
D. W. Beckley.

Mrs. Cordelia Mary Gardner,
Berlin, New Jersey. R. F. D."

The purpose of this letter is plain. It is to secure a conveyance of this farm to Pine. It asserts Mrs. Gardner is holding it for Pine. It calls her attention to the cancellation of both mortgages, a fact she knew to be true. With the letter was a deed to be executed and instructions as to how this should be done. Nothing could be clearer or more definite. It was an assertion that Mrs. Gardner did not own this farm and that she was holding it for Pine; that the purposes for which it had been placed in her name were accomplished and that Pine wanted title in his own name. Here, if ever, Mrs. Gardner should have asserted her claim to ownership. She might have done this by writing to Beckley to that effect, or by calling on him in person, or calling him on the telephone, stating in no uncertain terms what her position was and denying the existence of such an agreement, but she did none of those things, but wrote him a letter full of damaging admissions.

A written admission by a party, it need scarcely be said, if published by him, is strong evidence

against him. *Wharton on Evidence* (3rd Edition), Sec. 1122.

The full text of this letter is as follows: (See Exhibit C4.)

“Laurel Springs, N. J.
May 20th, 1920.

Daniel W. Beckley, Esq.

My dear Sir:

My suggestion is, let Mr. Pine come across and settle up like a man. The purchase money has not been settled for and he has not paid me for having my signature acknowledged to the deeds sent over. There is enough money in bank now in my name to settle up but no thanks to him. I also out of it paid Harold Dunk the balance of borrowed money that Mr. Pine owed him since 1913. Now then, when Mr. Pine wanted that place so badly he had not one penny to pay for purchase money, ask him who put it up—and he never would pay me a cent of interest or give me a note, when I asked for a note he would say, ‘why it is all yours.’ He run and run for help. If I would help him I would never regret it. When the year was up Ed. Beakley demanded his money, the mortgage, and offered to release my property if I would sign the farm over to him. I refused as I did not think it a fair deal and I was in no condition to be bothered either, as I was not well and my little baby was very sick hovering at times between life and death, and I wrote and begged Mr. Pine to get some one to take it all over and release me and he paid no attention whatever, then Mr. Gardner wrote Mrs. Berg that he would not be responsible for any of it and it made Mr. Pine mad and he came

over here so drunk and called Mr. Gardner all kinds of yellow dogs. He had gone such a pace in that year that no one wanted to risk anything. Mr. Gardner objected very strongly to signing bonds, etc. in the first place and I threatened to divorce him as I had given my word. He has Harold Dunk to thank for Mrs. Berg putting up the money finally to pay Ed. Beakley off and now he has forbidden him to come on his place, simply because he is honest, and it is not his, Mr. Pine’s, place as it happens—we did not want that ten acres sold to Granese but he was three years back in interest and back in taxes and it was either sell lots or sell the whole place. Mr. Pine has never paid one penny as what money he earned went for rum. I allowed him to sell lots in order to pay mortgage and have a peaceful mind, he never could pay rent, taxes and interest money. Now if he wants it out of my name—let him settle up my Grandfather Ward’s money, he did not have to marry my mother or did not have to take me home as I had a good home with my Guardian and was going to a good school and she was adding my interest money to the principle and clothing me out of her own, but no, he had to get that money in his clutches, I was fourteen (14 years old) and that was the end of that money. I even paid my own doctor bill after I got to nursing—that is why the place was always to stay in my name. Let him deal square and I will gladly sign it over, but before I do there must be some provision made for my mother. I could tell a whole lot more but it takes too long. The best thing those little children ever done was when they

run away—another thing, has he satisfied Cousin Tom Stratton's note on record and Mrs. Dobbs? That is why I feel that he is going to put it in some one else's name and the ingratitude does hurt. I never could talk business with him, he was most always drunk and he will not come here and act like a man, but when there was money in my pockets it was Dear daughter this and that. I am sorry to say but he is one sucker and as slippery as an eel—but I pitied him and thought I would give him one more trial against good men's judgment.

Very Truly Yours,
Cordelia W. Gardner."

If Mrs. Gardner at the time and under the circumstances was the owner of this land, she would never have written such a letter. There is no assertion of ownership or prompt repudiation of Pine's claim. Its contents bear close scrutiny. She writes, "My suggestion is, let Mr. Pine come across and settle up like a man. The purchase money has not been settled for. * * * There is enough money in bank now to settle up but no thanks to him." This quite evidently refers to what had happened when the place was purchased for if Mrs. Gardner was the true owner, Pine would have no responsibility for the purchase price, but if she was holding it for Pine, he would be expected to pay eventually the purchase price or at least to relieve her from any liability for it. In view of the fact that all but \$100.00 of the purchase price had been taken care of by the mortgages, both of which had been cancelled, she was referring to the loan of \$100.00 Mrs. Peters had made to Pine at Mrs. Gardner's request, which \$100.00 Mrs. Gardner had repaid to

Mrs. Peters. She then qualifies her statement by saying there is enough money in bank to cover that, showing very clearly that she had in her own hands money which she considered belonged to Pine.

Her next statement is very damaging: "He has not paid me for having my signature acknowledged to the deeds sent over." Mrs. Gardner knew she was holding the property for Pine or she would not have expected him to pay for the acknowledgment to deeds for her own property. She then explains how she had paid a bill Pine had owed Dunk "since 1913" out of the money in bank, further acknowledgment that she considered the money in her hands belonged to Pine. Next she writes, "When Mr. Pine wanted that place so badly he had not one penny for purchase money, ask him who put it up—and he would never pay me a cent of interest or give me a note, when I asked for a note he would say, 'why it is all yours.'" If she had bought this place herself she would not ask for interest, or a note, or make such a statement in a letter, but if she was buying it for Pine she would have a right to expect a note and interest.

Then she writes, "He run and run for help. If I would help him I would never regret it." This she is saying about Pine and his endeavor to finance the farm. There would have been no occasion for Pine to seek help if she was buying it, neither would she have had occasion to make reference to it.

Then she writes, "When the year was up Ed. Beakley demanded his money, the mortgage, and offered to release my property if I would sign the farm over to him. I refused as I did not think it a fair deal," but sickness came in the family and she wrote to Pine and "begged him to get someone to

take it all over and release me and he paid no attention whatever." Mrs. Gardner would not have made such statements if she were the owner—but it was a perfectly natural thing for her to have done if she was holding the title for Pine.

After having made all the above damaging admissions, she recites some of her troubles, makes a taunting remark about the place not being Pine's, and continues with damaging admissions, "Now if he wants it out of my name—let him settle up my Grandfather Ward's money" and then some more family history, ending up with, "That is why the place was always to stay in my name." Then she writes, "Let him deal square and I will gladly sign it over." She then refers to "Cousin Tom Stratton's note on record and Mrs. Dobbs," evidently what she considers to be judgments which would become liens on the property if in his name, as she writes further, "That is why I feel he is going to put it in someone else's name and the ingratitude does hurt." She closes this letter with bitter comments about Pine, ending with this statement, that has no meaning except that she is holding the property for Pine, "But I pitied him and thought I would give him one more trial against good men's judgment."

Now where, in this long letter, has she done what she would instantly have done upon receiving Beckley's letter if she really owned it—repudiated the suggestion that she did not own it and promptly denied the truth of Pine's claim of ownership?

Mr. Beckley again wrote Mrs. Gardner, as follows (page 42):

"July 8th, 1920.

Dear Madam:

Your favor of May 20th in relation to deed which I sent for property at Almonesson to be

signed by yourself and husband came duly to hand. I take it that your main objection is that Mr. Pine might squander the property if he obtained title in his own name. As far as this is concerned I think I might induce Mr. Pine to agree to have title taken in the name of his wife and himself jointly and in that event in the case of the death of Mr. Pine first the property would become his wife's absolutely. As regards the other matters in your letter, of course, Mr. Pine does not feel that he is obligated in any respect and feels very much hurt that you should write in the manner in which you have. However, I believe the only way to come to a settlement is to meet and talk the matter over and if you could arrange to meet me at my office I will notify Mr. Pine to be here and we will endeavor to come to some kind of a settlement. I will appreciate it if you can arrange to do this.

Very truly,
D. W. Beckley.

Mrs. Cordelia W. Gardner,
Laurel Springs, N. J."

But Mrs. Gardner was not prompt in answering, so on July 22nd, 1920, he again wrote her to which she replied: (Exhibit C5.)

"July 24th, 1920
Laurel Springs, N. J.
R. F. D. Box 192.

Mr. D. W. Beckley,
Dear Sir:

Your second letter received yesterday (23rd) about S. H. Pine and his deed. I cannot see that it will benefit mother much if it is in her

name as he would be chasing her with the gun the first time he got drunk to make her sign it over. What I wanted was something definite for her. I have bought her clothes and given her money, nursed her and paid her doctor bills and I cannot do it any longer. Her insurance is only eighty (\$85.) dollars and I paid that every month until this last year. It seems there ought to be some way to take care of her. He has treated her nasty. While it was in my name she was sure of a home and so was he. I have a letter now from him telling me 'to apply and I can have my mother,' he is always telling her to get ready and he will bring her here to stay, then he wanted to get Walter and I there and have her put in the Asylum, the place where he ought to be. I really don't want to be bothered with him or the place, but knowing the man so well I hesitate to give it up—I really don't have to you know. If I was sure of what mother wanted, I could feel better—when I think of all that she has gone through for that man. There was a time that she did not have a crust of bread or 5¢ to get any with, but he was working and getting his three meals a day and her son was just up the road away but I was out in Reading, getting \$3.00 per month and did not know anything about. He writes me he will meet me anywhere excepting in my own home. Before I sign anything he will have to produce the deed to my Blenheim property or have a copy made. I took the deed to him to have Ed. Beakley's lawyer look at it and it has never been returned. I must have one and I most surely will not pay for another one. I want to go to my mother's

either Tuesday or Thursday of next week, if I am able, but I am not very well and have to keep quiet this hot weather. If I do, will probably stop off and see you. I don't think he will make much by sueing me, he is going to start proceedings today. It will only be expense to the County to provide for me and keep me in medicine. If you can fix it up satisfactorily I will sign it to mother but it has got to stay in her name and he will have to bring or send a Notary here as I will not drag George or myself out to do one thing for him ever again.

Very truly yours,
C. W. Gardner."

There is no claim of ownership in this letter. She says about it, "I really don't want to be bothered with him or the place but knowing the man so well I hesitate to give it up—I really don't have to you know," and saying, "Before I sign anything he will have to produce the deed to my Blenheim property, or have a copy made," and that, "If you can fix it up satisfactorily I will sign it to mother."

There was no further correspondence between Mrs. Gardner and Mr. Beckley until December 6th, 1920, when Mrs. Gardner wrote a letter that appears as Exhibit C6, in which she stated that she would call and see him, but she evidently did not do so, for on September 19th, 1921, Mr. Beckley wrote again to her, which letter appears as Exhibit C7, inquiring whether she was going to come and see him or whether he should call and see her. Not receiving a reply from Mrs. Gardner, at the request of Pine, Beckley called on her on Monday, November 14, 1921 (page 47), and stated that he was calling for the purpose of inquiring what objection she

had to executing a deed to Mr. Pine for his property, calling her attention to the fact that he sent a deed to her a long time before for execution and telling her he would like to get a statement of what moneys she had in her hands from the sale of the lots. Mr. Beckley testifies that she again repeated the matters contained in the letters sent by her to him (page 48), and that finally before the interview was ended, she told him she would be willing to sign a deed, placing the property in the name of Pine and his wife, and would make up a statement of the moneys from the sale of the lots and send it to him (page 49). Mr. Beckley reported to Pine Mrs. Gardner's willingness to convey the property to him and his wife but this was not satisfactory to Pine as he insisted upon the deed being in his own name.

From the testimony given by Mr. Beckley, it appears that he again asserted Pine's claim of ownership of the property and that he had told Mrs. Gardner that this property was bought in her name with the understanding that when the mortgages were satisfied that then the property was to be reconveyed to Pine, which statement she did not deny. Mr. Beckley's testimony is also important because he relates how he was retained by Pine in November, 1916, for the purpose of redeeming the farm from a tax sale (see Exhibit C3), and that he completed the redemption of the property on April 11th, 1917, by having a certificate of tax sale cancelled of record after having paid the sum of \$97.00, which money was furnished to him by Pine (page 35).

It is not reasonable to suppose that if Mrs. Gardner was then the true owner of the property, after having had all of the trouble which she tells in detail with Pine, and after Pine had permitted the

property to be sold for taxes, she would not have taken steps for having it redeemed herself, but there is nothing in the testimony to show that she bothered herself with it in the slightest way.

The testimony of Laura Peters, who sent the \$100.00 check to Mr. Pine at Mrs. Gardner's request at the time the property was purchased, is not long but it is important because of what Mrs. Gardner wrote Mrs. Peters when she requested the loan. She was asked on cross-examination by Mr. Westcott (page 163):

"Ques. Now, when she asked for this loan, she made it clear that she was loaning the money to Mr. Pine and that is the reason the check was made out to him?"

Ans. She told me about Mr. Pine wanting to purchase the farm but on account of her not being able to get her money without giving them time notice at the bank, she asked me if I would loan the \$100 and to save time she got me to send it direct to Mr. Pine and the check was made out to Mr. Pine and sent to Mr. Pine."

If Mrs. Gardner was purchasing the property herself, she would not have used this language to Mrs. Peters, because it would have been just as easy to have written that she was buying the place, but the fact that she wrote as she did, stating that Pine was purchasing the farm and requesting that the money be sent directly to Pine, shows very clearly that Mrs. Gardner was not buying the property.

The testimony of Pine is very complete (page 51). It covers the entire period of time from the acquisition of this land, gives the conversations he had with Mrs. Gardner before title was taken in her

name, relates how he occupied the land, sold parts of it, paid off mortgages and interest, paid taxes, his dealings with purchasers and the agent Dunk, and tells how he sold and kept \$10,000.00 from the sale of the lots.

He first tells of meeting Howard Mason, one of the heirs of the Mason farm and discussing with him the purchase of it until a price suitable to both was agreed upon (page 54):

“Ques. You finally offered him \$1800.00 and he agreed to take it, didn't he?”

Ans. Yes.

Ques. Did you make a down payment?

Ans. Yes, a payment of \$100.00 and he gave me a receipt but I don't know where that receipt is, like most of the other papers they have gotten away from my home.”

Then follows a discussion as to whether he paid by check or cash (page 54):

“Ques. How did you get the rest of the money?”

Ans. The rest of the money to pay off my home or farm?

Ques. Yes.

Ans. By working and selling building lots off of my home and farm.

Ques. Originally had you paid Mason a total of \$1700.00?

Ans. How I got the rest? Mr. Beakley furnished the money, \$1700.00.

Ques. What security did you give him?

Ans. \$1200.00 on my home and Mrs. Gardner gave \$500.00 mortgage on her home at Blenheim.

Ques. What was the inducement to her to do that?

Ans. I told her and explained to her I would have the deed made in her name as collateral security until her mortgage was paid to secure her in case anything happened to me. That was the agreement and she was living home with us at the time, with her mother and me, right at the time.”

Then there was some discussion as to where his “home” then was (page 55):

“Ques. And she agreed to that?”

Ans. She certainly agreed to that or she wouldn't have given the mortgage.

Ques. Did she agree or didn't she agree at that time that when the \$500.00 mortgage was paid off by you she would deed the farm to you, she and her husband? (page 63.)

Ans. I left the business to Mr. Ayres and he understood that the deed was to be made to her and I told him to make it to her as collateral until her mortgage was paid, that was the understanding between me and her.

Ques. Didn't you have any direct understanding to that effect with your daughter?

Ans. Only with my step-daughter and wife, that is all.

The Court: Only what?

The Witness: Only with my step-daughter and wife.

Ques. What understanding did you have with your step-daughter and wife?

Ans. She was to hold the deed until her mortgage was paid off, have my home until the mortgage was paid off.

Ques. Who was to pay it off?

Ans. I was, sure.

Ques. Is that all you were to do?

Ans. That is all I was to do as far as I know.

Ques. There is something —

Ans. I think I done my share enough before that time.

By the Court:

Ques. You have confused things so I don't know now what your testimony is. First you said that Mr. Ayres made the arrangements.

Ans. He did all the business.

Ques. I gathered from that you didn't have any talk with your step-daughter. Did Mrs. Gardner and you have any conversation together about what she was going to do when you paid the mortgage off, or didn't you?

Ans. That was understood.

Ques. I don't care what was understood, what was said? I don't understand, and I can't understand from what you understood. I want to know what was said. Did you and Mrs. Gardner have any conversation on the subject at the time as to whether or not she was to convey this property to you when you paid the mortgage off?

Ans. At the time the mortgage was given?

Ques. Yes.

Ans. Yes, sir.

Ques. What conversation did you have?

Ans. She was to deed the property to me.

Ques. What did she say?

Ans. She said she would do it.

Ques. That is what I wanted to know; you might have said that a long time ago.

Ans. Beg your pardon, I didn't get your question. This is new business for me."

On cross-examination Pine testified as to his reasons for buying the Mason farm (page 92):

"Ques. And you went to the Mason farm because you wanted a little more room to farm, isn't that correct?

Ans. No.

Ques. What is correct then?

Ans. I bought the Mason farm thinking it would be worth some money some day soon, that is what I bought it for, and a home besides.

Ques. Now you had an understanding with Mrs. Gardner about this property, didn't you?

Ans. An understanding?

Ques. Yes.

Ans. When her mortgage was paid it was to be my home, sure."

After the settlement Pine went into possession of the farm. It is admitted that he was careless in paying the interest and taxes and that the place was sold for taxes. But it was a poor farm and it was not until 1915 that sales were made of parts of it. From two of these sales enough money was secured to pay off most of the principal of the mortgages. These sales were brought about by Pine's activity as appears by the testimony of Granese and Sylvester. Pine was now beginning to deal with others and altogether he received thousands of dollars from the sales.

From the time of the purchase in 1910 until Mr. Richman wrote him in 1924, no one had interfered with his activities, he had been prodded to do things for he was slow and careless, but he enjoyed everything that went with absolute ownership, except that the deed was in Mrs. Gardner's name, but she signed his deeds without a question, allowing him to keep all of the money from the sales. He paid

taxes, even after this suit was brought, as Exhibit C9 shows, he paid the taxes for 1925. Pine was asked, with relation to these tax bills (page 77):

“Ques. Did Mrs. Gardner ever furnish the money to pay for them?

Ans. No.”

Pine also paid interest to Mrs. Berg and part of the principal, as follows (page 58): March 6th, 1920, \$7.50; April 15, 1920, \$100.00, both of these being for interest; and on April 15, 1920, he paid to Mrs. Berg \$400.00 balance due on her mortgage and the \$1200.00 mortgage was sent to him for cancellation. His methods of handling the farm are shown by his testimony (page 69):

“By the Court:

Ques. Can't you tell what that arrangement was with her? You couldn't sell a lot and give a deed for it because the title was in her name. If you found a purchaser what was the arrangement between you and her?

Ans. I would sell the lots and when they would pay for the lots I would make out the description and have the deed sent to her and she would sign it.

Ques. What would become of the money, who would receive the money?

Ans. I would receive the money.”

According to Pine's testimony, Mrs. Gardner did not refuse to sign deeds until a year before the trial (the trial was held in September, 1925), and Mrs. Gardner in her testimony places the time she instructed Mr. Richman to write to Pine to stop selling as 1924. After this Pine consulted counsel and this suit was instituted on January 7th, 1925.

It is impossible to reconcile the testimony of Mrs. Gardner that she bought the property herself for the purpose of providing a home for her mother and that she never had any understanding with Pine that he was to be given a deed for the place when the \$500.00 mortgage was satisfied, with the weight of the testimony in this case. From the time the question of buying the farm was first brought up, until she had Mr. Richman stop Pine from selling lots and refused to sign any further deeds, everything that she did leads one to the conclusion that she was not the real owner but that she was holding the property, in accordance with the suggestion of Mr. Beakley, and as testified to by Pine.

The first time the subject of buying the farm was mentioned to her she suggested that she might help by putting a second mortgage on her property, and at the same time she wrote to Mrs. Laura Peters, according to Mrs. Peters' testimony, asking for the loan of \$100.00 and explained about “Pine wanting to purchase the farm.” She testified that Pine made all of the arrangements for the settlement and although she wanted someone else Pine had employed Mr. Ayres and had given him instructions as to the deed and mortgages, and told her when and where the settlement would take place. Her reason for permitting him to do all this was that “she thought if he wanted the place so badly it was his duty to help that far.” She explains the difficulties she had with her husband getting him to sign the papers because of the advice that had been given by her husband's father. It will be recalled that she testified that on the morning they were leaving for the settlement her father-in-law said, “Cordie, you are doing a foolish thing, you know Sam never kept his properties, never paid rent, taxes, or anything, he always lost his properties,

and you are going to get in trouble," and the remark that Mr. Ayres made to them, "he wondered why she should undertake anything like that."

Her present contention becomes more impossible of belief when you examine the testimony showing her attitude of not being responsible when Mr. Beakley was trying to collect his interest when she told him that Pine should pay the interest money, "he has got to pay you"—"he must pay you," and again, "Mr. Pine has done enough for you," and her remark to him, "You are not going to sell my store?"

If Mrs. Gardner did own the property, as she now contends, and if Pine had no interest whatever in it, she would have felt her responsibility for the payment of the interest and would have taken steps to see that the interest was paid, whether Pine paid any attention to it or not.

After the mortgages were assigned to Mrs. Berg, Mrs. Gardner still continued her attitude of not being responsible until the interest was in arrears for three years and then she talked things over with Dunk, who had gotten into the matter because he was looking after Mrs. Berg's affairs, and they discussed selling some of the land to pay up the interest and taxes, and Pine came along with Granese, who bought ten acres of the land for \$1000.00.

How can Mrs. Gardner now reconcile her claim of ownership with permitting Pine to redeem the farm after it had been sold for taxes? It is possible to see how a sale might have taken place, but it is impossible to see how, if Pine had neglected the interest for several years and had failed to pay the taxes and permitted the place to be sold to satisfy them, that she would not have taken steps herself to redeem the farm instead of allowing Pine to do it, but nothing in her testimony shows that she

was in any way concerned with the tax sale or that she took any part in the redemption.

After the first two sales and the satisfaction of the mortgages, Mrs. Gardner did nothing apparently in connection with the farm except to sign the deeds which were presented to her by Pine. From the year 1919 until the year 1924, Pine sold thousands of dollars' worth of property and kept the proceeds without protest on her part and she signed, apparently without question, all of the deeds he presented to her during that period of time. Mrs. Gardner received about one thousand dollars from the sales where settlements were made either in a lawyer's office or through a real estate agent, who would naturally insist upon sending the proceeds of sale to the record holder of title, but it must not be overlooked that Mrs. Gardner promised Mr. Beckley to account to Pine for the money she had received.

The problem of reconciling her claim of ownership with her conduct becomes hopeless when you consider the letters she wrote to and the conversations she had with Mr. Beckley, the lawyer. As has been previously said, if she had any idea that she was the owner of the property and that any claims that Pine made to such ownership were false, she would have asserted them when Mr. Pine had Mr. Beckley write her, but she did not do this, as has been seen, but she wrote two letters which can only be reconciled with the theory that Pine is correct in his statements that she was holding the property merely as security for her mortgage.

Except for the period of time when Mrs. Berg, through Dunk, was endeavoring to collect her interest, Mrs. Gardner has not been shown to be actively interested in the farm, and after the \$500.00 mortgage had been paid and a portion of the \$1200.00

mortgage was paid and Mrs. Berg's demands satisfied, she did not take any action with relation to the farm until 1924, when she made her assertion of ownership.

It should not be overlooked, in connection with the mortgages, that Pine made the final payment on the \$1200.00 mortgage which was sent to him for cancellation.

Mrs. Gardner would try to make it appear because Pine signed himself as agent in one of the receipt books that it is an admission on his part that he had no claim to ownership but it will be recalled that he testified in connection with this, that "he used the word agent because he was not the title holder under the circumstances but afterwards when he was able to square himself he signed S. H. Pine," and explained what he meant by "squaring himself," being able to "square off the mortgages." Pine's testimony in connection with this is corroborated by the fact that in the installment books (see Exhibit C10) the word agent does not appear.

The fact that Pine may have used blue-prints upon which the name of Cordelia Gardner, owner, appeared, is not of importance, nor from it can an inference be drawn that Mrs. Gardner was the owner for when the blue-prints were made the surveyor who made out the plan would have used Mrs. Gardner's deed and would naturally place upon the blue-print the name of the record holder of the title.

Mrs. Gardner would try to make it appear also that she permitted Pine to retain the money from the sale of the lots out of consideration for her mother and to keep peace in the family. This plea might have some weight if she had not said and

done all of the things above related, which things she would not have said or done if she really owned the land in question.

Mrs. Gardner testified how Dunk had been selling lands for her. Dunk's testimony is that he dealt only with Granese and Sylvester and both of these men testify that they bought from Pine and it will be recalled that when Dunk finally made settlement, Pine resented his interference, particularly his manner of handling the money, and after that Dunk had nothing whatever to do with the farm. Dunk's connection with the sales of part of the farm was not continuous but had to do only with the Granese and Sylvester sales.

If Mrs. Gardner's testimony is true that she did not hold the property for Pine, then Pine is endeavoring to defraud her and if he is endeavoring to do this, would he not have accepted the offer which was made by Mrs. Gardner to Mr. Beckley, to have the property put in the joint names of himself and wife, which offer Pine refused to consider?

It has been shown how impossible it is to reconcile the claim of Mrs. Gardner to ownership with the proof in this case and it is equally apparent how every contention of Pine that he is the owner is perfectly reconcilable with the testimony which has been offered and with the conduct, statements and letters written by Mrs. Gardner.

THE FACTS SHOW PINE HAS NOT BEEN GUILTY OF LACHES.

It is respectfully insisted that the appellant has not been guilty of laches in asserting his right to the premises in question. The decisions of our Courts to have a controlling influence on this case

should have been decided upon facts bearing at least some similarity to the facts established in this case.

The cases cited by the learned Vice-Chancellor in support of opinion that the appellant had been guilty of laches in asserting his claim were: *Soper v. Cisco*, 85 N. J. Eq. 165; *McCartin v. Traphagen*, 43 N. J. Eq. 324 (aff. 45 N. J. Eq. 265); and *Lutjen v. Lutjen*, 64 N. J. Eq. 773, 781.

In the case of *Soper v. Cisco*, the complainant had executed a deed conveying her property to her daughter with whom she and her husband lived for years and after sixteen years a bill was filed by the complainant for the purpose of setting aside the conveyance.

In *McCartin v. Traphagen*, after a lapse of fifteen or sixteen years a claim was attempted to be enforced although no attempt had been made to enforce it until the person against whom it was mainly aimed was deprived of all power to resist it by death and not until much, if not the entire body of the evidence, which may have existed tending to show that it was groundless, had by lapse of time, been entirely destroyed or become so obscure as to leave scarcely a trace of the truth.

In *Lutjen v. Lutjen*, there was an attempt to avoid a release ten years after it had been executed. The Court said, there has been no inflexible rule adopted by the Courts in fixing any exact period of time as a bar to relief in such cases. Under what variety of situations our Courts of Equity have refused relief to litigants who, being under no legal disabilities, have not used what the Courts have regarded as reasonable diligence in challenging their deliberate seals to like instruments, will be seen by the reference to the following cases: *Doughty v. Doughty*, 7 Eq., page 643;

Gifford v. Thorne, et al., 9 N. J. Eq. 702; *Trustees of East Newark Co. v. Gilbert*, 12 N. J. Eq., page 78; *Brown v. Mutual Benefit Life Insurance Co.*, 32 N. J. Eq., page 809; *Swayze v. Swayze*, 37 N. J. Eq., page 180; *Ryan v. Daily*, 99 N. J. Eq., page 585; *Ballantine v. Stadler*, 99 Eq., page 404; *Egan v. Egan*, 98 N. J. Eq., page 487.

In the case of *Doughty v. Doughty*, there was an attempt to set aside a partition deed, alleged to have been obtained by the defendant from the complainant when he was of unsound mind, after a lapse of twelve years.

In *Gifford v. Thorne*, the assignment of interest in an estate was attached for inadequacy of consideration after a period of twelve years.

In the case of *Trustees of East Newark Co. v. Gilbert*, four years after a deed had been given, a bill was filed to set it aside on the ground that it had been fraudulently obtained. In the meantime, part of the lands had been sold and mortgaged.

In *Brown v. Mutual Benefit Life Insurance Co.*, the complainant denied that his genuine signature was subscribed to letters of attorney and that he had signed a bond and mortgage. In this case the complainant had failed to object promptly and had continued to receive benefits.

In *Swayze v. Swayze*, the complainant alleged after a period of five years that a settlement and release had been obtained from him during his mental incapacity.

In *Ryan v. Daily*, the Court held that delay in exercising power of appointment for twenty-three years held gross laches. In the meantime, the person most interested in sustaining the power of appointment was dead.

In *Ballantine v. Stadler*, the suitors sought to repudiate their deeds of release by proceedings in-

stituted more than ten years after their execution.

In *Egan v. Egan*, where land was purchased by wife of one co-tenant at a tax sale, and the other co-tenant made no assertion or claim of right to land during the time she remained *compos mentis*, estimated at from ten to nineteen years after the sale, over all of which period the purchaser remained in open and hostile possession, such laches held a bar to any claim former co-tenant might assert.

It hardly needs to be said that the facts of this case bear no similarity to the above-reported cases. In almost every one of them a solemn instrument had been executed that was afterwards attempted to be repudiated but Pine was not endeavoring to have set aside any instrument which he had executed nor did he remain silent or inactive at any time as was the case in the authorities set forth. Neither did he during the long interval of time between 1910, when the premises were first acquired, and the date of the commencement of this action, January 7th, 1925, fail to constantly exercise his rights as owner of the premises. He arranged for the purchase, took care of all of the details of the settlement, arranged for the searches, has been in possession of the premises, except for a short period of time, he has paid taxes on the premises, has paid interest on the mortgages, he arranged for the sales which produced the money that paid off the mortgages, he redeemed the premises after they had been sold for taxes, he fixed the prices for which all of the land was sold and had the deeds drawn and he has received practically all of the proceeds of the sales, secured without question from Mrs. Gardner the execution of all the deeds he presented to her and in short, has enjoyed all of the attributes of ownership except that the title

has been in Mrs. Gardner's name, and the moment she refused to permit him to sell any more lands and refused to sign deeds, he consulted a lawyer and started this action.

The extent to which circumstances surrounding the individual case necessarily enter into and control the force of the defense of laches in a Court of Equity is recognized by many authorities as stated by Vice-Chancellor Leaming in *Cox v. Brown*, 87, 462.

The peculiar circumstances of this case all too clearly show that Mrs. Gardner's conduct misled Pine and her actions have contributed largely to the delay, but when her intention to claim the property as her own was revealed by her in 1924 he acted promptly.

Lapse of time will not bar relief where circumstances exist which excuse the delay and render it inequitable to interpose the bar: 21 *Corpus Juris*, 237; *Flaherty v. Cramer*, 62 N. J. Eq. 758; *Foster v. Knowles*, 42 N. J. Eq. 226; *King v. Morford*, 1 N. J. Eq. 274; *Young v. Young*, 51 N. J. Eq. 491.

There is no absolute rule as to what constitutes an excuse for an apparently unreasonable delay. It depends on the circumstances of the particular case: 21 *Corpus Juris*, 237, 217; *Halzer v. Thomas*, 69 N. J. Eq. 515; *Stevenson v. Markley*, 72 N. J. Eq. 686.

It must not be overlooked that Pine and Mrs. Gardner were related by marriage and that much of the delay in bringing this action was due to her conduct and the confidence reposed in her by Pine.

The fact that the parties are connected by ties of blood or marriage tends to excuse an otherwise unreasonable delay: 21 *Corpus Juris*, 251.

A delay is excusable where it was induced by the adverse party, he cannot take advantage of a delay which he himself has caused or to which he has contributed: 21 *Corpus Juris*, 243; *Hall v. Otterson*, 52 N. J. Eq. 522.

The continued recognition or acknowledgment by defendant of plaintiff's right is generally sufficient to account for delay in instituting suit to enforce it: 21 *Corpus Juris*, 243.

Delay will thus be excused when occasioned not only by defendant's promises to do equity or by actual payments but also by defendant's silence or other conduct indicating acquiescence in plaintiff's right: 21 *Corpus Juris*, 243.

The appellant, not having been guilty of any laches in the prosecution of this action, and having sustained the burden of proof by testimony which is certain, definite, reliable and convincing, is entitled to have the final decree entered in this matter reversed, and a judgment entered in his favor.

ALEXANDER L. ROGERS,
Solicitor for and of Counsel
with Complainant-Appellant.