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*Defendants' Answer to
Petition of Appeal. 72*

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AMENDED COMPLAINT.

(Filed June 16, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

MARY WEIKEL,

Complainant,

and

GEORGE WILLIAMS, *et als.*,

Defendants.)

On Bill, etc.
Amended Complaint.

10

To the Honorable, Edwin Robert Walker, Chan-
cellor of the State of New Jersey:

20

The complainant, Mary Weikel, of the City of Atlantic City, County of Atlantic and State of New Jersey, says that:

1. The complainant is married and her husband's name is Harry Weikel.

2. On or about June 20, 1924, the complainant's husband purchased and equitably became the owner of the following lands and premises:

30

ALL that certain lot, tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

TRACT #1

BEGINNING at a point in the Easterly line of East Riverside Drive 275 feet Southwardly of the Southerly line of Arkansas Avenue, and extending thence

1) Eastwardly parallel with Arkansas Avenue, 95 feet to Penrose Canal; thence

2) Southwardly along the said Penrose Canal, 50 feet; thence

10 3) Westwardly parallel with Arkansas Avenue, 95 feet to the Easterly line of East Riverside Drive; thence

4) Northwardly along the said Easterly line of East Riverside Drive, 50 feet to the place of Beginning.

Being Lots 3 and 4 in block A Map of Venice Park.

20 3. Said Harry Weikel, fraudulently and with intent to deprive the complainant of her dower right and interest in said lands and premises, had the title to said tract placed in the name of Warren Wilson of Atlantic City, New Jersey, but title to said lands was held in trust for and to the use of the said Harry Weikel.

4. Harry Weikel, immediately after purchasing tract number one, above mentioned, began building and completed on or about September 1, 1925, the construction of a bungalow thereon at his own cost.

30 5. On or about March 9, 1926, the said Harry Weikel placed his wife, the complainant, and her two children in actual possession of said bungalow and tract number one, above mentioned, notifying her at the same time that the property was his own and the complainant has ever since that time been

in open, notorious, visible, unequivocal, exclusive and uninterrupted possession of said bungalow and the lot on which same is erected.

6. On October 11, 1926, the aforesaid Warren Wilson and Emily Wilson, his wife, of the City of Atlantic, County of Atlantic and State of New Jersey, without consideration and for the purpose of fraudulently impairing and depriving the complainant of her dower interest in the lands and premises, executed and delivered unto Smith Craighead of Philadelphia, Pennsylvania, a deed purporting to convey tract number one above mentioned, with the buildings thereon erected. Said deed was recorded in the Atlantic County clerk's office on October 20, 1926. 10

7. On December 31, 1926, the aforesaid Smith Craighead and Mabel E. Craighead, his wife, of Philadelphia, Pennsylvania, without consideration and for the purpose of fraudulently impairing and depriving the complainant of her dower interest in the lands and premises, executed and delivered unto George Williams, single, of Atlantic City, New Jersey, a deed purporting to convey tract number one, above mentioned, with the buildings thereon erected. Said deed was recorded in the Atlantic County clerk's office on January 4, 1927. 20

8. On January 3, 1927, George Williams, single, aforesaid, executed and delivered unto the Islanders Building and Loan Association, a corporation of the State of New Jersey, a mortgage to secure the sum of six thousand dollars (\$6000.00) on the said lands and premises, which mortgage, having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon, was recorded in the Atlantic 30

County clerk's office on January 4, 1927, in Book 447 of Mortgages, page 20.

9. The Islanders Building and Loan Association aforesaid, was not an innocent purchaser or incumbrancer of the said lands and premises but had, by virtue of the complainant's possession as above set forth, notice of her right of dower therein.

10 10. At the time of the execution and delivery of the mortgage by George Williams to the Islanders Building and Loan Association, aforesaid, Mary Weikel was in possession of the premises as set forth herein and any inquiry by the said Islanders Building and Loan Association of the complainant would have revealed to it her rights in the lands and premises.

20 11. On or about February 10, 1925, the complainant's husband purchased and equitably became the owner of the following described lands and premises:

ALL that certain lot, tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

TRACT #2

30 BEGINNING at a point in the Easterly line of East Riverside Drive, 225 feet Southwardly of the Southerly line of Arkansas Avenue and extending thence

1) Eastwardly parallel with Arkansas Avenue, 95 feet more or less to Penrose Canal; thence

2) Southwardly along the said Penrose Canal and parallel with East Riverside Drive, 50 feet; thence

3) Westwardly parallel with Arkansas Avenue, 95 feet more or less to the Easterly line of East Riverside Drive; thence

4) Northwardly along the said Easterly line of East Riverside Drive, 50 feet to the place of Beginning.

Being Lots 5 and 6 in Block A Plan of Venice Park.

12. Said Harry Weikel, fraudulently and with intent to deprive the complainant of her dower right and interest in said lands and premises, had the title to said tract placed in the name of Warren Wilson of Atlantic City, New Jersey, but title to said lands was held in trust for and to the use of the said Harry Weikel. 10

13. On October 11, 1926, the aforesaid Warren Wilson and Emily Wilson, his wife, of the City of Atlantic City, County of Atlantic and State of New Jersey, without consideration and for the purpose of fraudulently impairing and depriving the complainant of her dower interest in the lands and premises, executed and delivered unto Charles B. Walker, single of Philadelphia, Pennsylvania, a deed purporting to convey tract number two above mentioned. Said deed was recorded in the Atlantic County clerk's office on October 20, 1926. 20

14. The complainant files this bill for the purpose of protecting her dower interest in tracts numbers one and two above described against the possibility of a conveyance to an innocent purchaser before dower becomes consummate. 30

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

1. That Harry Weikel, Warren Wilson, Smith Craighead, George Williams, Islanders Building and Loan Association, and Charles B. Walker, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That the property described in the bill of complaint be declared as held in trust for and to the use of Harry Weikel and that the complainant be decreed to be entitled to inchoate right of dower there-
10 in free of all liens, claims or incumbrances.

3. That the said Warren Wilson, Smith Craighead, George Williams and Charles B. Walker be decreed to have held the lands described in the bill in trust for and to the use of the said Harry Weikel.

4. That the Court decree that the complainant's inchoate right of dower in lands and premises be
20 protected.

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

SAMUEL MORRIS,
*Solicitor for and of Counsel
with Complainant.*

ANSWER OF ISLANDERS BUILDING AND
LOAN ASSOCIATION.

(Filed Aug. 6, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between
MARY WEIKEL,
Complainant,
and
GEORGE WILLIAMS, *et als.*,
Defendants. } On Bill, &c.
Answer of Islanders
Building and Loan
Association.

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The Islanders Building and Loan Association, a corporation of the State of New Jersey, says that:

1. It has no knowledge of paragraph 1 of the complainant's bill of complaint, and demands proof of the same.

2. It denies paragraphs 2, 3, 4, 5, 6 and 7 of the complainant's bill of complaint.

30

3. It demands proof of making and recording of the mortgage referred to in paragraph 8 of the complainant's bill of complaint.

4. It denies paragraphs 9, 10, 11, 12 and 13 of the complainant's bill of complaint.

8 *Answer of Islanders Building and Loan
 Association*

5. Defendant answering paragraph 14 of the complainant's bill of complaint denies that the complainant has a right to file this bill to protect her dower interest in the lands referred to in the complainant's bill of complaint, or that she has any dower interest in said tracts.

FIRST SEPARATE DEFENSE.

10 The complainant is guilty of laches.

SECOND SEPARATE DEFENSE.

The facts and matters recited in the complainant's bill of complaint have been adjudicated by this Court adversely to complainant.

THIRD SEPARATE DEFENSE.

20 The mortgage of the Islanders Building and Loan Association referred to in paragraph 8 of the complainant's bill of complaint was in the nature of a purchase-money mortgage, the proceeds thereof being used to pay for the erection and construction of the house erected on the premises described in the bill of complaint.

FOURTH SEPARATE DEFENSE.

30 The mortgage referred to in paragraph 8 has been foreclosed, and at sheriff's sale the property covered by said mortgage was purchased by one, William Swinton for the sum of \$100.00.

FIFTH SEPARATE DEFENSE.

And right that the complainant may have had to

dower in the lands of her husband has been lost by her by reason of her adultery and infidelity.

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel
with the Defendant, Islanders
Building and Loan As-
sociation.*

10

ORDER OF SUBSTITUTION.

(Filed August 17, 1928.)

IN CHANCERY OF NEW JERSEY.

68-448

20

Between

MARY WEIKEL,

Complainant,

and

GEORGE WILLIAMS, *et als.,*

Defendants.

On Bill, etc.
Order of Substitution.

It is, on this day of , 30
1929, ordered, that Thompson & Hanstein, Esquires,
be substituted for Bolte & Tripician, Esquires, as
solicitors for the defendant, Islanders Building &
Loan Association.

E. R. WALKER,
C.

10 *Answer of Defendant, Warren Wilson, to
Amended Bill of Complaint*

We hereby consent to the filing of the above order.

BOLTE & TRIPICIAN,

*Solicitors for and of Counsel
with Defendant, Islanders
Building & Loan Associa-
tion.*

10

ANSWER OF DEFENDANT, WARREN WIL-
SON, TO AMENDED BILL OF
COMPLAINT.

(Filed Sept. 24, 1928.)

IN CHANCERY OF NEW JERSEY.

20

Between	}	On Bill, &c.
MARY WEIKEL,		Answer of Defendant,
<i>Complainant,</i>		Warren Wilson, to
and		Amended Bill of
GEORGE WILLIAMS, <i>et als.</i> ,	}	Complaint.
<i>Defendants.</i>		

30

The defendant, Warren Wilson, of the City of Atlantic City, County of Atlantic and State of New Jersey, answering the amended bill of complaint filed in this cause says that:

1. He has no knowledge concerning the allegations set out in paragraph 1 in the amended bill of complaint and leaves complainant to her proof.

Answer of Defendant, Warren Wilson, to 11
Amended Bill of Complaint

2. He denies paragraph 2 of complainant's amended bill of complaint.

3. He denies paragraph 3 of said amended bill of complaint.

4. He denies paragraph 4 of said amended bill of complaint. 10

5. He has no knowledge concerning the allegations set forth in paragraph 5 of said amended bill of complaint and leaves complainant to her proof.

6. He denies paragraph 6 of said amended bill of complaint.

7. He has no knowledge concerning the allegations set forth in paragraph 7 of said amended bill of complaint and leaves complainant to her proof. 20

8. He has no knowledge concerning the allegations set forth in paragraph 8 of said amended bill of complaint and leaves complainant to her proof.

9. He has no knowledge concerning the allegations set forth in paragraph 9 of said amended bill of complaint and leaves complainant to her proof. 30

10. He has no knowledge concerning the allegations set forth in paragraph 10 of said amended bill of complaint.

11. He denies paragraph 11 of said amended bill of complaint.

12 *Answer of Defendant, Warren Wilson, to
Amended Bill of Complaint*

12. He denies paragraph 12 of said amended bill of complaint.

13. He denies paragraph 13 of said amended bill of complaint.

14. He has no knowledge concerning the allegations set forth in paragraph 14 of said amended bill
10 of complaint.

EDMUND C. GASKILL, JR.,
*Solicitor for and of Counsel
with Defendant, Warren
Wilson.*

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REPLY TO ANSWER OF ISLANDERS
BUILDING & LOAN ASSOCIATION.

IN CHANCERY OF NEW JERSEY.

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Between	}	Reply to Answer of Islanders Building & Loan Association.
MARY WEIKEL,		
<i>Complainant,</i>		
and		
GEORGE WILLIAMS, <i>et als.</i> ,	}	tion.
<i>Defendants.</i>		

To Thompson & Hanstein, Esquires, Solicitors for 20
the Defendant, Islanders Building & Loan Association:

The complainant, Mary Weikel, replying to the answer filed in the above-entitled cause by the Islanders Building & Loan Association, says that:

1. She joins issue on the defendant's answer.
2. Complainant denies the allegations of the defendant's first separate defense. 30
3. Complainant denies the allegations of the defendant's second separate defense.
4. Complainant denies the allegations of the defendant's third separate defense.

14 *Reply to Answer of Islanders Building
& Loan Association*

5. Complainant admits the defendant's fourth separate defense in so far as same alleges that its mortgage has been foreclosed and that the property was sold at sheriff's sale to one, William Swinton.

6. Said William Swinton was not an innocent, *bona fide* purchaser for value of the premises. The said property was purchased at said sale by the defendant, Islanders Building & Loan Association but in the name of said William Swinton. Said property was bought with notice of the complainant's claim.

7. Complainant denies the allegations of the defendant's fifth separate defense.

SAMUEL MORRIS,
*Solicitor for and of Counsel
with Complainant.*

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30

DECREE PRO CONFESSO.

(Filed Sept. 28, 1928.)

IN CHANCERY OF NEW JERSEY.

68-448

10

Between

MARY WEIKEL,

Complainant,

and

GEORGE WILLIAMS, *et als.,*

Defendants.

On Bill, etc.
Decree Pro Confesso.

20

This matter being opened to the Court by Samuel Morris, solicitor for complainant, and it appearing that process of subpoena calling upon the defendants, George Williams, Harry Weikel, Warren Wilson, Smith Craighead, Islanders Building and Loan Association and Charles B. Walker, to answer the complainant's bill of complaint, has been duly issued and returned served upon the defendants, Smith Craighead, Warren Wilson and Islanders Building and Loan Association.

30

And it further appearing that due notice of the order of this Court made on the seventeenth day of July, 1928, directing the defendants, George Williams, Smith Craighead and Charles B. Walker to appear and answer the complainant's bill of complaint filed herein on or before the eighteenth day of September, 1928, has been published and also

mailed to the defendants, George Williams, Harry Weikel and Charles B. Walker, according to the rules of this Court.

And it further appearing that the said defendants, George Williams, Harry Weikel, Warren Wilson, and Charles B. Walker have not nor has any of them filed an answer to said bill of complaint within the time limited by law or by said order but have wholly failed and neglected so to do.

10 And it further appearing that the defendants, Islanders Building and Loan Association and Warren Wilson have filed answers of general denial.

It is, thereupon, on this 28th day of September, 1928, ordered that the said complainant's bill of complaint be and the same is hereby taken as confessed against the said defendants, George Williams, Harry Weikel, Smith Craighead and Charles B. Walker, to the end that such decree may be made
20 just.

E. R. WALKER,
C.

ORDER OF REFERENCE.

(Filed Oct. 1, 1928.)

IN CHANCERY OF NEW JERSEY.

68-448

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Between MARY WEIKEL, <i>Complainant,</i> and GEORGE WILLIAMS, <i>et als.,</i> <i>Defendants.</i>	}	On Bill, etc. Order of Reference.
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This matter being opened to the Court by Samuel Morris, solicitor of the complainant and Thompson & Hanstein, solicitors of the defendant, Islanders Building and Loan Association, and Edmund Gaskill, solicitor for the defendant, Warren Wilson, and upon reading the consent hereunder written.

It is, on this 1st day of October, 1928, ordered that the above-stated cause be referred to the Hon- 30
 orable R. H. Ingersoll, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor, and to report thereon to him, and to advise what order or decree should be made therein.

E. R. WALKER,
C.

We consent to the making of the above order.

SAMUEL MORRIS,

Solicitor of Complainant.

THOMPSON & HANSTEIN,

Solicitors of Defendant, Islanders Building and Loan Association.

EDMUND C. GASKILL, JR.,

Solicitor of Defendant, Warren Wilson.

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CONCLUSIONS.

March 25
(Filed ~~1929~~, 1929.)

IN CHANCERY OF NEW JERSEY.

20

Between

MARY WEIKEL,

Complainant,

and

GEORGE WILLIAMS, *et als.,*

Defendants.

On Bill, &c.
On Final Hearing.
Conclusions.

These conclusions are not to be published in the
30 official or unofficial reports.

MR. SAMUEL MORRIS, for the complainant.

MESSRS. THOMPSON & HANSTEIN, for the defendant,
Islanders Building and Loan Assn.

MR. EDMUND C. GASKILL, JR., for the defendant,
Warren Wilson.

INGERSOLL, V. C.:

The complainant is the wife of one, Harry Weikel. On or about the 30th day of June, 1924, the Venice Realty & Construction Company conveyed to Warren Wilson, a defendant, a certain tract of land in Atlantic City, New Jersey, and on the 18th day of February, 1925, said company conveyed to said Wilson another tract of land in said city. Shortly after the conveyance first mentioned, a bungalow was erected upon said tract.

On or about March 9th, 1926, the said Weikel and his wife, the complainant, who had not for some time prior thereto lived with her husband, moved into said building, and resided therein for some period—the husband later moving therefrom, but the wife remaining. On October 11th, 1926, Wilson and his wife conveyed said tract No. 1 to one, Smith Craighthead, who in turn on December 31st, 1926, conveyed same to one, George Williams, who on January 3rd, 1927, mortgaged same to the Islanders Building and Loan Association for the sum of \$6,000.00.

All conveyances and said mortgage were in due form and were promptly and properly recorded.

Wilson, on said October 11th, 1926, conveyed tract No. 2 to one, Charles B. Walker.

The contention of the complainant is that her husband furnished all the money for the purchase of said premises, and for the building of said bungalow, and that the title was taken in the name of Wilson to be by him held in trust for and to the use of said Weikel to avoid the inchoate right of dower which would be created if the title should have been taken in him.

Also, that the Islanders Building and Loan Association mortgage was subject to such inchoate right of dower, because she (the complainant) was in visible and actual possession of said premises at its

date, and had enquiry been made of her the association would have been informed of her claim.

It is evident that Weikel furnished the funds for the purchase of these lots and that he also furnished the funds, or a large portion thereof, for the building of the bungalow.

10 The testimony of the defendant, Wilson, is, that Weikel agreed to advance to him the funds necessary; Wilson who was a carpenter was to superintend, and work upon the construction of the building and the improvement of the land, and upon the sale thereof, Weikel was to receive the amount of the money advanced by him, together with interest thereon; Wilson to receive all moneys received from the sale in excess of the amount to be repaid to Weikel.

20 The building was erected—no purchaser being found for a considerable period, Weikel moved into the premises, crediting Wilson the rental value thereof upon interest charges for money advanced. Finally the premises were actually sold, and no profits resulted.

The evidence before me in so far as the complainant is concerned consist of the record title, and a considerable number of checks, proving her claim that Weikel advanced moneys. This is not denied by the defendant, but is in fact admitted by him to be true.

30 In accordance with my views of the nature of the transactions between the parties and of the finding of fact that the said premises were conveyed by Wilson and that no profits resulted therefrom, the bill must be dismissed, by reason of the failure of the complainant to sustain the allegations therein contained.

Determined: March 25th, 1929.

FINAL DECREE.

(Filed April 1, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

MARY WEIKEL,

Complainant,

and

GEORGE WILLIAMS, *et als.,*

Defendants.

On Bill, &c.
Final Decree.

10

This matter being opened to the Court in the presence of Thompson & Hanstein, solicitors for defendant, Islanders Building and Loan Association, and Edmund C. Gaskill, Jr., Esquire, solicitor for defendant, Warren Wilson, and in the presence of Samuel Morris, Esquire, solicitor for complainant, Mary Weikel; and

20

It appearing that a bill has been filed herein by the said complainant for the protection of an inchoate right of dower in land alleged to be held in trust for the husband of the complainant; and

The Court having read said bill and having heard and considered the evidence and the arguments of counsel, and being satisfied that the bill should be dismissed for failure of the complainant to sustain the allegations of her bill.

30

It is, on this 30th day of March, 1929, on motion of Thompson & Hanstein, solicitors of defendant,

Islanders Building and Loan Association, and Edmund C. Gaskill, Jr., Esquire, solicitor of defendant, Warren Wilson, ordered, adjudged and decreed, that the bill of complaint filed herein be and the same is hereby dismissed, with costs to be taxed.

E. R. WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,

10

V. C.

NOTICE OF APPEAL.

(Filed April 2, 1928.)

20

IN CHANCERY OF NEW JERSEY.

Between

MARY WEIKEL,

Complainant,

and

GEORGE WILLIAMS, *et als.,*

Defendants.

30

On Bill, etc.
Notice of Appeal.

The complainant, Mary Weikel, hereby appeals to the Court of Errors and Appeals in the last resort in all causes, from the final decree made in

the above-entitled cause by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, and respectfully advised by Honorable Robert H. Ingersoll, Vice-Chancellor, on the 30th day of March, 1929, from the whole and every part thereof in that it dismisses the complainant's bill, whereas the said decree should have granted the relief prayed for in the bill, declaring and protecting the complainant's inchoate right of dower in the lands therein described.

10

SAMUEL MORRIS,
*Solicitor for and of Counsel
with Complainant.*

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

SAMUEL MORRIS,
*Solicitor for and of Counsel 20
with Complainant.*

30

PETITION OF APPEAL.

(Filed April 2, 1928.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

Between MARY WEIKEL, <i>Complainant-Appellant,</i> and GEORGE WILLIAMS, <i>et als.</i> , <i>Defendants-Respondents.</i>	}	On Appeal from the Court of Chancery. Petition of Appeal.
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*To the Honorable, the Court of Errors and Appeals
in the Last Resort and All Causes:*

30 The petition of Mary Weikel, appellant, in the above-entitled cause, respectfully shows that your petitioner finds herself aggrieved by the final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, and respectfully advised by Honorable Robert H. Ingersoll, Vice-Chancellor, bearing date the 30th day of March, 1929, wherein Mary Weikel is complainant and George Williams, *et als.*, are defendants, in this respect, to wit, that the said final decree dismisses the complainant's bill of complaint, with costs to be taxed, upon the ground that same is erroneous in the whole and every part thereof, for

the reason that the Court should have decreed the relief prayed for in the said bill of complaint.

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

SAMUEL MORRIS,
*Solicitor for and of Counsel
with Complainant-Appellant.* 10

STIPULATION.

(Filed April 2, 1928.)

NEW JERSEY COURT OF ERRORS
AND APPEALS. 20

Between
MARY WEIKEL,
Complainant-Appellant, }
and } Stipulation.
GEORGE WILLIAMS, *et als.,* }
Defendants-Respondents. }

30

It is hereby stipulated between counsel that the following are abstracts of exhibits offered at the trial of the above-entitled cause. Printing in full is waived.

Exhibit C1—DEED—Venice Realty and Construction Co. to Warren Wilson for Lots 3 and 4, Block A, dated June 20, 1924, recorded July 2, 1924.

Exhibit C3—SEARCH—Deed—Warren Wilson, and Emily L., his wife, to Smith Craighead for Lots 3 and 4, Block A, dated October 11, 1926, recorded October 20, 1926.

- 10 Exhibit C3—SEARCH—Deed—Smith Craighead and Mabel E., his wife, to George Williams, for Lots 3 and 4, Block A, dated December 31, 1926, recorded January 4, 1927.

Exhibit C3—SEARCH—Mortgage—George Williams to Islanders Building and Loan Association, in the sum of \$6000.00 covering Lots 3 and 4, Block A, dated January 3, 1927, recorded January 4, 1927.

- 20 Exhibit C2—DEED—Venice Realty and Construction Co. to Warren Wilson for Lots 5 and 6, Block A, dated February 10, 1925, recorded February 21, 1925.

Exhibit C3—SEARCH—Deed—Warren Wilson and Emily L., his wife, to Charles B. Walker, for Lots 5 and 6, Block A, dated October 11, 1926, recorded October 20, 1926.

- 30 Exhibit C4.—Statement of Settlement at Chelsea Title & Guaranty Co. on June 30, 1924, between Venice Realty and Construction Co., grantor and Warren Wilson, for Lots 3 and 4, Block A, showing a total cost of \$1,854.00 to grantee.

Exhibit C5—Check dated June 28, 1924, payable

to the order of Chelsea Title & Guaranty Co. in the sum of \$1,854.00 drawn by Harry Weikel.

Exhibit C6—Statement of Settlement at Chelsea Title & Guaranty Co. on February 18, 1925, between Venice Realty and Construction Co., grantor and Warren Wilson for Lots 5 and 6, Block A, showing a total cost to grantee of \$1,854.00, less \$200.00 credit for deposit, leaving a balance of \$1,654.00.

10

Exhibit C7—Check dated February 18, 1925, payable to the order of Chelsea Title & Guaranty Co. in the sum of \$1,654.00 drawn by Harry Weikel.

Exhibit C8—Certificate of Marriage between Henry Weikel and Mary Noonan, dated January 1, 1904.

The following are abstracts of Exhibits C9 and C10, of bids for work and labor performed and materials furnished in the erection and construction of house on Lots 3 and 4, Block A, all bids being addressed to WARREN WILSON. The amounts indicate checks drawn by HARRY WEIKEL in payment for said work and labor performed and materials furnished:

William Uneles, Tile work	\$138.00	
Atlantic City Tile Co.	4370.00	
Chelsea Hardware Co.	51.53	
Chelsea Hardware Co.	36.47	30
Frank Vernegla	125.00	
Harry Clark Painting	265.00	
West Side Lumber Co.	337.19	
West Side Lumber Co.	500.00	
West Side Lumber Co.	331.83	
West Side Lumber Co.	400.00	
West Side Lumber Co.	4.51	

Exhibit D2—Building Permit.

Exhibit D3—Plans and Specifications.

We hereby consent to the filing of the above stipulation.

SAMUEL MORRIS,

*Solicitor for and of Counsel
with Complainant-Appellant.*

THOMPSON & HANSTEIN,

*Solicitors for and of Counsel
with Defendant-Respondent, 10
Islanders Building & Loan
Association.*

EDMUND GASKILL, JR.,

*Solicitor for and of Counsel
with Defendant-Respondent,
Warren Wilson.*

Dated 3/28/29.

Mr. Morris: With the consent of counsel, I would like to offer in evidence the following papers:

Deed from Venice Realty & Construction Company to Warren Wilson for Lots 3 and 4.

(Deed admitted in evidence and marked Exhibit C1.)

I offer in evidence deed from Venice Realty & Construction Company to Warren Wilson for Lots 5 and 6.

(Deed admitted in evidence and marked Exhibit C2.)

Title Insurance Policy, Chelsea Title Company to Warren Wilson, for Lots 3 and 4.

The Court: How is that admissible in evidence?

Mr. Morris: Just to show the chain of title. Here is the policy from Venice Realty to Warren Wilson, then I have a search showing the condition of the title later on.

The Court: How is the title policy admissible in evidence? They are not parties to the suit.

Mr. Morris: Except by consent of counsel.

Mr. Hanstein: I will consent that it be admitted.

The Court: Suppose it is by consent, what weight does it have in court? What is there evidential in the title policy?

Mr. Morris: I just want to show, as shown on this title policy, the property was owned by the Venice Realty and Construction Company, and that it was conveyed according to these deeds to Warren Wilson, and then I show the search—perhaps it is not evidential.

The Court: If counsel makes no objection I will admit it, but it is certainly not evidential of the conveyances.
10

(Offer withdrawn.)

Mr. Morris: I offer in evidence a search continuation of Chelsea Title search, showing these premises.

(Search admitted by consent and marked Exhibit C3.)

20 I offer in evidence settlement sheet of the Chelsea Title & Guaranty Company showing settlement on Lots 3 and 4, Block A, showing that there was \$1854 due the seller on these Lots 3 and 4, for which check of one Harry Weikel was given.

Mr. Hanstein: Mr. Morris, I have no objection to the settlement sheet with the exception that I do not quite see where the figures coincide, nor do I see that the date on the check coincides with the date on the settlement, and I think that you ought to tie up that check.
30

The Court: In the offer of the search in this matter, I notice innumerable items, judgments, taxes, abstracts of judgments and so on and so forth. Is it admitted by the defendant that those are charges

against the land in question? If you consent to the admission of this paper in evidence, it admits the facts contained in it.

Mr. Hanstein: Your Honor, the issue as between us at this time is whether Weikel was seized of this estate that his wife had a dower interest. Now if there were judgments against it, that merely reduces the equity in his estate, but, of course, we don't know anything about those judgments at all. 10

The Court: If you are consenting to the admission of this evidence, you are consenting to that as being proof of facts contained in it, and the Court is not inclined to sit here and analyze a long search of this sort that has no application to the case in question.

Mr. Morris: My purpose, if your Honor please, is merely to show the chain of title from the original grantor. 20

The Court: Then why not do it in a legal way?

Mr. Morris: Except that to avoid the subpoenaing of numerous witnesses, I thought perhaps we could save much time.

The Court: That is just it, if it is agreed by the other side these are the facts in the case, I am perfectly willing to admit it, you admit by numerous papers here, and then expect the Court to analyze them and find out whether or not they have any application to the case or not, it isn't expected of the Court to do that. If you want to prove your chain of title, it should be proven. 30

Mr. Morris: May I read into the record from the search the chain of title?

The Court: If counsel will make a stipulation as to what the chain of title is, I will permit you.

Mr. Hanstein: I will consent to his reading the chain of title.

10 Mr. Morris: Deed from Warren Wilson and Emily, his wife, to Smith Craighead, dated October 11, 1926, covering tracts 3 and 4, in Block A.

Deed Smith Craighead and Mabel, his wife, dated December 31, 1926, to George Williams, same premises.

Mortgage, George Williams to Islanders Building and Loan, covering the same premises, dated January 3rd, 1927, to secure six thousand dollars.

20 The Court: What is the date of the record of those respective papers?

Mr. Morris: Deed from Craighead to Williams was recorded January 4th, 1927. The mortgage to the Islanders Building & Loan was recorded January 4th, 1927.

Deed Warren Wilson to Charles B. Walker, covering Lots 5 and 6, Block 8, dated October 11, 1926, recorded October 20th, 1926.

30 I offer in evidence check for \$1854 of Harry Weikel, and settlement sheet covering Lots 3 and 4, Block A, between Venice Realty & Construction Company and Warren Wilson.

¹ (Check and settlement sheet offered, received in evidence and marked Exhibits C4 and C5.)

I offer in evidence settlement sheet between Venice Realty and Warren Wilson, showing the payment of \$1654, together with check covering the same amount, covering Lots 5 and 6 in Block A.

(Settlement sheet and check received in evidence and marked Exhibit C6 and C7.)

10

MARY WEIKEL, SWORN.

Direct examination.

By Mr. Morris:

Q. You are the complainant, Mary Weikel?

A. Yes, sir.

Q. Where do you live?

20

A. I live 119 South St. James Place.

Q. Is Harry Weikel, the defendant, your husband?

A. Yes, sir.

Q. When did you marry him?

A. Married him in 1904. Here is my marriage certificate.

(Marriage certificate offered, received in evidence and marked Exhibit C8.)

30

Q. I show you what purports to be a check drawn by Harry Weikel to the order of William Uncles in the sum of \$138, dated August 19, 1924. Is that your husband's signature?

A. Yes, sir.

Mr. Morris: There is offered in evidence bid of William Uncles for tile work for bungalow, 2124 East Riverside Drive, the letter is written to Warren Wilson and the check is made by Harry Weikel.

(Check and bid offered, received in evidence and marked Exhibits C9 and C10.)

- 10 Mr. Morris: 2124 East Riverside Drive is admitted by counsel to be lots 3 and 4.

Mr. Hanstein: The purpose of this testimony is to show that Mr. Weikel paid for some work done on this property under bills made to Warren Wilson, I take it?

Mr. Morris: Yes.

- 20 Mr. Hanstein: Suppose, without introducing all of that in evidence, we will concede that that was so, there is no use going through all of that. If you want to put the amount on record or something like that, we will agree to that.

Mr. Morris: I don't believe I identified the check accompanying the settlement sheet.

- 30 Q. Mrs. Weikel, I show you what purports to be a check drawn by Harry Weikel to the order of the Chelsea Title Company for \$1654. Is that your husband's signature?

A. That is my husband's signature.

Q. I show you what purports to be the check of Harry Weikel to the Chelsea Title Company for \$1854. Is that your husband's signature?

A. Yes.

Mr. Morris: I offer in evidence bill of the Atlantic City Tile Company to Warren R. Wilson for \$4370 for work on these premises.

Mr. Hanstein: Read the amounts into the record. I don't see why you won't.

Mr. Morris: Chelsea Hardware Company, \$51.53.
Chelsea Hardware Company, \$36.47.
Frank Vernegla, \$125. 10
Harry Clark, painting, \$265.
West Side Lumber Company, \$337.19.
West Side Lumber Company, \$500.
West Side Lumber Company, \$331.83.
West Side Lumber Company, \$400.
Ralph DaGrossa, plumbing and heating, \$100.
William E. Stewart, plumbing, \$470.
William E. Stewart, plumbing, \$500.
West Side Lumber Company, \$4.51.
Longport Electrical Company, \$40. 20
C. J. Adams, insurance, \$35.

Mr. Hanstein: How would that have any bearing?

Mr. Morris: Insurance on these premises. Well, I will leave it out.

Francis Molinara, cement work, \$140.
Charles Barker, plastering, \$45.
Charles Barker, plastering, 150. 30
Charles Barker, plastering, \$325.

Q. Mrs. Weikel, do you know who Warren Wilson is?

A. Yes, sir.

Q. Who is he?

A. He is a carpenter. He was a carpenter that worked on the house.

Q. He is the carpenter that worked on the house?

A. He worked for Harry Clark, and worked on the house.

Q. Is he the one in whose name your husband placed this property?

A. Yes, sir.

- 10 Mr. Hanstein: Just a minute. I don't want your question to amount to a conclusion on that, and I object to the question.

The Court: Sustain the objection. I am afraid that is what I have to determine.

Q. Did your husband pay Warren Wilson any money for the carpenter work which he did on the house?

- 20 A. On those checks he did.

Q. Do you know whether your husband paid?

A. Warren Wilson told me himself when I came back that he built the house.

Mr. Hanstein: I object to that.

The Court: Sustain the objection. Let it be stricken.

- 30 Q. When did you move in the premises 2124 East Riverside Drive, being the house on lots 3 and 4 described in the bill of complaint?

A. Well, it was either the last of March until the 3rd of April.

Q. What year?

A. 1926.

Q. Was the house completed then?

A. Yes. There were a few little things that he done around there when I was there.

Q. Who placed you in possession of the property?

A. My husband.

Q. Under what circumstances?

A. Well, I hadn't lived with him, we had been separated for fifteen years and he was down in body and soul, sick, and he returned to Philadelphia to my home, 1039 Nevada Street, in Philadelphia, with my son, one night, quarter to one in the morning, and cried and said he was sick and that he—— 10

Q. We don't want all these details. Just come down to the circumstances.

A. He came to ask——

Mr. Hanstein: I want to object to any testimony as to her conversation with her husband.

The Court: Certainly that is objectionable.

A. Well, he took me here, had my furniture shipped down here and took me into the home and told me he had built—— 20

Mr. Hanstein: You can't tell what was said.

Q. About when did he place you in possession of this property?

A. Between them I couldn't say, the last of March, I mean the last of February, but I was there the third of March. 30

Q. How long did you remain in the premises?

A. He stayed there until around in July, but he had been going out.

Q. How long did you remain in possession?

A. I remained there until the 16th of last October.

Q. 1928?

A. 1928.

Q. And you were evicted under the order obtained by the Islanders Building & Loan, under their mortgage foreclosure?

A. Yes, I was put out by them.

Q. Your husband gave you all these papers which have been marked and offered in evidence?

A. He certainly did, give me them papers when he came back to put away for him. I wasn't there two
10 days when he gave me the papers.

Cross-examination.

By Mr. Hanstein:

Q. You weren't there two days when he gave you the papers?

A. I wasn't back in his home in Venice Park until he was showing me everything.

20

Mr. Morris: These lots numbers 5 and 6 described in the bill are adjoining your house?

A. Adjoining the house.

By Mr. Morris:

Q. All together?

A. All together.

30

COMPLAINANT RESTS.

WARREN WILSON, SWORN.

Direct examination.

By Mr. Gaskill:

- Q. Mr. Wilson, where do you reside, where do you live? 10
- A. 317 West Park Avenue, Pleasantville.
- Q. What is your business?
- A. Carpenter.
- Q. Were you a carpenter in 1926?
- A. Yes, sir.
- Q. And 1925?
- A. Yes, sir.
- Q. Do you know Harry Weikel?
- A. Yes, sir.
- Q. How long have you known Mr. Weikel? 20
- A. About sixteen years.
- Q. Were you friendly with him?
- A. Yes sir.
- Q. Did you own a boat together?
- A. Yes, sir.
- Q. Were you a carpenter in 1924?
- A. Yes, sir.
- Q. Are you the Warren Wilson that had title to four lots out in Venice Park?
- A. Yes, sir.
- Q. Lots 3 and 4, 5 and 6 in Block A? 30
- A. Yes, sir.
- Q. Now the title, as I understand, was taken in your name, you had title to the property?
- A. Yes, sir.
- Q. Was there more than one deed to you?
- A. I couldn't tell you of the number of lots, there

were two lots bought first and two bought afterwards, but I couldn't tell you the numbers.

Q. How much was paid for the lots?

A. \$3800, all together, four lots.

Q. That is \$3800 for the four lots?

A. Yes, sir.

Q. How came you to buy these lots?

10 Mr. Morris: I object, if your Honor please. There is no evidence that he bought them.

The Court: He says he received a deed for them for which he paid \$3800.

Mr. Morris: I believe, if your Honor please, the question said "was paid," he didn't say he paid it.

The Court: I will admit the question.

20 (Question repeated.)

A. Why, he wanted me to go to building for myself instead of building for somebody else.

Mr. Morris: I didn't hear your answer.

A. I say he wanted me to go to building for myself instead of building for somebody else, to make a little money for myself.

30 Q. Just state to the Court the conversation between you relative to going in the building business.

A. He wanted me to build for myself, as I just told you, instead of building for somebody else.

Q. Who do you mean told you that?

A. Weikel.

Q. Harry Weikel?

A. Harry Weikel told me, yes, and I told him I couldn't because I wasn't financed to do it, and he said he would finance me, so he financed me and took care of all business because I was superintendent for Clark Construction Company, and couldn't take care of it.

Q. Now under that arrangement, how were you to be paid?

A. Well, I was to be drawing out, that is, if I had time to work on the house, but the biggest part of the time I worked Saturday afternoons and nights. 10

Q. You did this during your spare time?

A. My spare time, not all of it.

Q. How were you to be paid for your services?

A. I was paid out of the, same as he was paying all the rest, out of this \$10,000 note.

Q. Assuming that a house would cost and the lots would cost \$10,000, and the property should be sold by you for twelve, what would become of the two thousand? 20

Mr. Morris: I object.

The Court: What is the objection?

Mr. Morris: This is a hypothetical question. There is no evidence that there was such an understanding.

The Court: Sustain the objection to the form of the question. 30

Q. What was the agreement, if any, as to profit on the sale of any houses that you built?

A. There was no agreement, that is, I was to have the profit, but I was to pay him back the interest on the money if I sold.

Q. Now did you give Mr. Weikel anything to secure him for the advancement of the various sums that he was to pay on your account?

A. I didn't quite get you, Mr. Counsel.

(Question repeated.)

A. Nothing, only this note.

Q. You did give a note to Mr. Weikel?

10 A. Yes, sir.

Q. I show you a paper purporting to be that of a promissory note dated July, 1924, in the sum of \$10,000, and purporting to be signed by Warren R. Wilson and Mrs. Warren R. Wilson, and ask you if you gave that note to Mr. Weikel to secure for moneys —

Mr. Morris: I object.

20 The Court: What is the objection?

Mr. Morris: I think the note speaks for itself. I don't think they are entitled to say what that note was given for.

The Court: Why not?

Mr. Morris: The question is whether or not that note was given as security.

30 The Court: Yes.

Mr. Morris: The note is not security, if your Honor please.

The Court: Not always. I will permit the question.

Q. —to be advanced on your account on the purchase of these lots and the erection of the buildings?

(Question repeated.)

Mr. Morris: I object, on the ground it is a leading question.

The Court: Objection sustained.

Q. Mr. Wilson, I show you note and paper purporting to be that of a note dated July 1st, 1924, in the sum of \$10,000, payable to the order of Harry Weikel, and purporting to be signed by Warren R. Wilson and Mrs. Warren R. Wilson, and ask you if you made that note and delivered the same to Mr. Weikel? 10

A. Yes, sir.

Mr. Gaskill: May I offer the note at this time? 20

The Court: You may do so.

(Note received in evidence and marked Exhibit D1.)

Q. Referring to the body of the note, the handwriting outside of the signatures, I ask you who wrote the body of the note?

A. Harry Weikel.

Q. The signature Warren R. Wilson was made by you? 30

A. By myself, yes, sir.

Q. Was Mrs. Warren R. Wilson signed by your wife?

A. Yes, sir.

Q. What was that note given for, W. Wilson?

A. Why, for to secure on the property, as I should call it.

Q. Now, did you start to build the building on two of these lots?

A. It was built on one lot.

Q. Did you obtain a building permit?

A. Yes, sir.

Q. I show you a paper purporting to be a building permit issued by John W. Conway, Superintendent of Buildings, Atlantic City, number 369, dated July 11, 1924, issued to Warren R. Wilson, and ask you if this permit was issued to you before you started to erect that building?

A. Yes, sir.

Q. Was that for the building erected on this lot in question?

A. Yes, sir.

(Building permit offered, received in evidence and marked Exhibit D2.)

Q. I show you a set of plans and specifications, marked "Designed by Warren R. Wilson, Builder and Owner, Venice Park, N. J., 7/10/1924," together with specifications for bungalow to be erected for Warren R. Wilson, East Riverside Drive, Venice Park, N. J., and ask you if those are the plans and specifications that were used for this house, the house built on this lot in question?

A. Yes, sir.

(Plans and specifications received in evidence and marked Exhibit D3.)

Q. You went ahead and completed the building, Mr. Wilson?

A. Yes, sir.

Q. Under your arrangement with Mr. Weikel, who paid the bills?

A. Mr. Weikel paid all bills, took care of all bills except the building, that is, carpenter work, he took charge of everything.

Q. You were taken sick before this building was completed, were you not, at some time?

A. I had blood poison.

Q. After the building was completed, who took possession of it, who moved in, if anyone? 10

A. It stood idle for, I should say, very near a year, and Mr. Weikel suggested to moving in there instead of living, he lived down on Buffalo Avenue, moved up there, and that would help me out on the interest on the money.

Q. How much credit were you to receive for the occupancy of this house?

A. \$45 a month.

Q. Did you finally sell the—did you try to sell the premises, the house? 20

A. Tried to sell it, yes, sir, at the time I build it.

Q. Were you able to do it?

A. No, sir.

Q. When did you have blood poisoning?

A. I hurt myself on the first of October, around after the eighth day to about the last of October, I had it.

Q. Remember what year?

A. 1926.

Q. You were very seriously ill, were you not? 30

A. Yes, sir.

Q. And did Mr. Weikel come over to your home to see you while you were ill?

A. He came over there for the settlement for the house, he said he had a man that would buy the property.

Q. Who was that man?

A. Why, he was represented by Clark from Philadelphia, but the buyer was supposed to be Craighead, but I couldn't tell you the first name.

Q. And do you remember a settlement with Mr. Weikel at that time?

A. We had the settlement right there that night, yes, sir.

Q. That was during the time you were ill?

A. Yes, sir.

10 Q. And your life was despaired of for some time, was it not?

A. Yes, sir.

Q. Did you and Mr. Weikel figure out, as best you could, the interest on this house?

A. Yes, sir.

Q. And the interest on the lots?

A. Yes, sir.

Q. When you and Mr. Weikel figured up the cost of the whole proposition, how much did it total?

20 A. What do you mean, the whole property and everything?

Q. Cost of the lots and cost of the materials and labor that went into the building?

A. It was very near ten thousand, just a trifle under ten thousand dollars. I couldn't tell you just exactly the figures. I didn't have the papers.

Q. Did you then settle with Mr. Wilson?

A. Yes, sir.

Q. For the moneys that he had advanced to you?

30 A. Yes, sir.

Q. And for you?

A. Yes, sir.

Q. What did you receive in return for the transfer of this property?

A. I didn't receive anything only the note he was holding.

Q. The note that has been marked in evidence, D1?

A. Yes, sir.

Q. Did you hold the property in question, that is these four lots in trust for Mr. Weikel?

A. Yes, sir.

Q. You held them in trust for him?

A. I misunderstood you. Held them as my own property.

10

Cross-examination.

By Mr. Morris:

Q. You did hold the property in trust for Mr. Weikel?

A. I held it as my own property.

Q. How much did you pay for this property?

A. For the lots?

Q. Yes.

A. \$3800.

Q. To whom?

A. There.

Q. To whom?

A. Why, Murray was the real estate agent and I believe Morganweck was the owner, was the company.

Q. How much cash did you put up?

A. All the business was done by Mr. Weikel.

Q. You didn't put up one dime in cash, is that right?

A. I took his note, he took my note.

Q. In the whole transaction you didn't put up any money for the purchase of these lots or the construction of the building, is that right?

A. Sure that is right.

20

30

Q. Did you ever receive any money from Mr. Weikel for the work which you performed as a carpenter about that house?

A. I did.

Q. You did?

A. Yes, sir.

Q. If you were the owner of the property why did Mr. Weikel pay you as carpenter about the house?

A. Because he was holding the money.

10 Q. He was what?

A. He was holding the money.

Q. Holding whose money?

A. The ten thousand dollars that he loaned me.

Q. That he loaned you?

A. Yes, sir, that note right there calls for.

Q. That isn't money, is it?

A. It is a note, that is all I know.

Q. When did you give him this note?

A. I couldn't tell you just exactly.

20 Q. Do you know when the property was bought?

A. Yes, sir.

Q. When?

A. Bought in the year 1924.

Q. What month, 1924?

A. I couldn't tell you just exactly that.

Q. How long after the property was bought from the Venice Realty Company did you give Mr. Weikel this note?

30 A. Couldn't tell you that. I think I gave him the note before the property was bought.

Q. Do you know whether you gave him the note before the property was bought?

A. I couldn't say sure, no.

Q. You don't know whether you gave him the note before the property was bought or after the property was bought, is that right?

A. I couldn't tell you exactly, no.

Q. Where did you have this agreement with Mr. Weikel about buying this property in your name?

A. Right in my house.

Q. Where?

A. Atlantic City.

Q. Where?

A. 3 Raynor Terrace.

Q. When?

A. 1924.

Q. What month?

10

A. I couldn't tell you.

Q. What day?

A. Saturday.

Q. On Saturday?

A. Yes.

Q. At what time?

A. I couldn't tell you that, either.

Q. Who was present?

A. My wife and I.

Q. Is your wife in court?

20

A. No, sir.

Q. She is not in court?

A. No, sir.

Q. She heard all this conversation?

A. Yes, sir.

Q. Nobody else was present?

A. No, sir. Couple of children around there, small children.

Q. How old were they at the time?

A. One was about seventeen and the other four-
teen, I think. 30

Q. Children? You say these small children were seventeen and fourteen then?

A. Yes, sir. They are still small and married.

Q. They are married?

A. And still small.

Q. And they heard this conversation?

- A. I don't know whether they did or not.
- Q. They were in the room at the time?
- A. No, I don't know as, whether they were in that room or whether they were in the other room.
- Q. You say they were present?
- A. They were present, yes, but I never let my children interfere with me when I have business.
- Q. I didn't ask you whether they interfered, but you said they were present with your wife and heard
- 10 this conversation.
- A. No, I didn't say that.
- Q. You didn't say that?
- A. I said they were in the house.
- Q. Where were they in the house?
- A. I couldn't tell you.
- Q. You don't know?
- A. No.
- Q. Was your wife present?
- A. She was.
- 20 Q. In the same room?
- A. Yes, sir.
- Q. She was there, where was she sitting, was she sitting or standing?
- A. That is pretty hard to tell.
- Q. Was she listening in?
- A. She certainly was.
- Q. What was she doing at the time?
- A. Listening in, just what I have said.
- Q. Is that all, just listening?
- 30 A. That is all she could do, was listen, wasn't it?
- Q. Did she ask any questions?
- A. No, sir.
- Q. Who did all the talking?
- A. Mr. Weikel and I.
- Q. How long did this conversation last?
- A. Oh, half an hour or so.

Q. Half an hour, this entire ten-thousand-dollar transaction lasted a half an hour?

A. Yes, sir.

Q. Who talked first?

A. He did.

Q. He did?

A. Yes.

Q. What was the first thing he said?

A. I couldn't tell you that.

Q. What kind of a day was this?

10

A. I couldn't tell you that.

Q. Raining or sunshine, or what?

A. I couldn't tell you.

Mr. Hanstein: Your Honor, I object to that.

The Court: Sustain the objection.

Q. What did you say this agreement was between you and Weikel?

20

A. He was to take care of all business, pay all bills out of this ten thousand dollars.

Q. Out of what ten thousand dollars?

A. Out of that note, then.

Q. All you did was to give him a note for ten thousand dollars and he was to put up all the money, move into the house, take possession, pay for the construction of the building, all you did was to give him a blank note for ten thousand dollars; is that right?

30

A. There was no agreement he was to move into the house, he wanted to help me out, as I told you before.

Q. Are those children of yours, seventeen and fourteen, in Atlantic City now?

A. One of them is in More, Pennsylvania, and the other one is in Pleasantville.

Q. Did you have any conversation with anybody before you came into court about what you were going to say today?

A. What I was going to say, no, sir.

Q. Didn't talk to anybody?

A. No, sir.

Q. You talked with Mr. Gaskill?

A. I talked with Mr. Gaskill.

10 The Court: How is that an admissible question? Are you going to charge that Mr. Gaskill has caused this?

Mr. Morris: No.

The Court: If Mr. Gaskill has not talked to him, probably Mr. Gaskill has not rendered the duty he owes to the Court calling witnesses without knowing what they are going to say.

20 Q. Now, you say Mrs. Weikel moved in to the house and you were given credit for \$45 a month; is that right?

A. I didn't say Mrs. Weikel. I said Mr. Weikel.

Q. Mr. Weikel moved in?

A. Yes, sir.

Q. Credit was given for \$45 a month?

A. Yes. It was taken off the interest.

Q. Taken off of what?

A. Acted as interest on this note.

30 Q. Did Mr. Weikel ever pay you any interest?

A. Why should he pay me interest?

Q. That is what I—who paid the interest?

A. He lived in the house and counted that as interest on the money and squared it up on the note.

Q. Interest on what money?

A. On that note there.

Q. And that interest amounted to \$45 a month?

A. I don't know what the interest amounted to, I told him I thought that would be about right, \$45 a month, and he agreed to it.

Q. How much interest was this note supposed to bear?

A. Six per cent.

Q. Does it say six per cent on here?

A. No, sir.

Q. On this note—does this note say anything at all about attorney's fee for collection, do you know? 10

Mr. Hanstein: I object.

The Court: Sustain the objection, the note is in evidence.

Q. And this \$45 a month was supposed to act as a credit on that interest, is that right?

A. Yes, sir.

Q. Did you keep any books showing how much credit he was given? 20

A. No, sir.

Q. Do you know how long Mrs. Weikel remained in the house?

A. I don't know.

Q. Do you know how long Mr. Weikel remained in the house?

A. I couldn't tell you that.

Q. This note is due when, how long after payment, how long after the making? 30

Mr. Hanstein: I object. It speaks for itself.

The Court: Sustain the objection.

Q. It is a ninety-day note, isn't it?

Mr. Hanstein: I object.

The Court: Sustain the objection.

Q. As a ninety-day note, did you ever make an effort to enforce the payment of the note?

A. No.

Q. Never did?

A. Never intended to.

10 Q. Did you?

A. That wasn't in the agreement.

Q. What was the agreement concerning —

The Court: What is the confusion here, admittedly he gave this note. I understood it was given by this witness.

Mr. Morris: Yes, Wilson.

20 The Court: Why would he do anything to enforce the payment?

Mr. Morris: He wouldn't, that is true.

Q. Did Mr. Weikel ever do anything to enforce the payment of that note?

A. No, sir.

Q. Was it the intention to enforce this note?

30 Mr. Hanstein: I object to that.

The Court: Sustain the objection.

Q. You say this note was secured on the property, is that right?

A. The property and the building.

Q. Your idea of security is the note?

Mr. Hanstein: I object, please your Honor, his idea of security.

The Court: Sustain the objection.

Q. Don't you know, Mr. Wilson, as a matter of fact, the reason this property was placed in your name was because Mr. Weikel was fearful that a woman with whom he had had some relations would sue him and take away and recover a judgment and take away the property that he had in his name? 10

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Didn't Mr. Weikel ever tell you that?

A. No, sir.

Q. Didn't Mr. Weikel ever tell you that he had some trouble with a woman at one time?

A. No, he never told me he had trouble.

Q. Never told you that? 20

A. No, sir.

Q. Do you know whether or not he always lived with his one wife?

A. I know he wasn't living with his wife.

Q. Do you know with what woman he was living?

Mr. Hanstein: I object to that.

The Court: Sustain the objection. 30

Q. How much did you receive from Mr. Weikel all together in cash for your work on the building, do you remember?

A. No, I don't.

Q. You have no idea?

A. Around \$250 as near as I can come to it.

- Q. What?
- A. As near as I can come to it, around \$250.
- Q. How much work did you do on that property?
- A. I don't know, I have got that down here, I don't know how much I done, I worked there Saturday afternoons and worked nights.
- Q. Saturday afternoons and nights?
- A. After I got it closed in so I would be inside, I worked there some Sundays.
- 10 Q. What work did you do?
- A. Carpenter work.
- Q. What particular carpenter work about the house?
- A. All parts of it.
- Q. How many Saturdays did you work there?
- A. I worked there every Saturday from July the 11th up until the first of November.
- Q. From July 11th until the 3rd of November?
- A. First of November.
- 20 Q. You worked every Saturday?
- A. Every Saturday was fit, didn't storm.
- Q. What say?
- A. Every Saturday was fit to work, Saturday afternoons.
- Q. How many of those Saturdays were fit to work?
- A. I don't know.
- Q. You were working inside all the time, weren't you?
- A. No, I wasn't working inside. There is other
- 30 work to do on a house besides the inside of it.
- Q. That is what I want to know.
- A. Part of the time I was outside and part of the time I was inside.
- Q. What work did you do on the outside?
- A. Sheathed it, weather-boarded, put the roof on.
- Q. All by yourself?
- A. No, sir.

- Q. What help did you have?
- A. Had two carpenters that I took off the job, Mr. Clark's whenever he could spare them.
- Q. You had two carpenters?
- A. Yes.
- Q. Who paid them?
- A. They were paid out of this money.
- Q. What money?
- A. The note.
- Q. Paid out of that note? 10
- A. Sure.
- Q. Was that note discounted?
- A. That note. He advanced me ten thousand dollars, and that was the note against it, and he was holding the money and paying all bills.
- Q. Holding his own money and paying all bills, is that right?
- A. I should call it my money.
- Q. So you worked every Saturday from July to November, what were you doing on the days that you did not work on this house, where were you working? 20
- A. Working in Venice Park for Harry Clark.
- Q. Carpenter for him?
- A. Yes.
- Q. Working on other houses?
- A. Yes.
- Q. Saturday afternoon when you were not working for Harry Clark, you worked on this house, is that right? 30
- A. Yes.
- Q. So all together you worked about sixteen Saturday afternoons; is that right?
- A. Yes, but it isn't all carpenter work; some of it was wheeling cinders in back to fill in the back of the lot, had to put in a bulkhead there, and haul the cinders.

Q. But all together it took you about sixteen Saturday afternoons, is that right?

A. Yes, sir.

Q. For which you received \$250, is that right?

A. I received the \$250 for work I done, or days I worked there, not talking about Saturday afternoons.

Q. How much did you get for working for Harry Clark?

10

Mr. Hanstein: I object as immaterial.

The Court: I will permit it. Perhaps it would be a more pertinent question, what is the regular wages.

(Question withdrawn.)

20 Q. What are the regular wages that you were receiving from Harry Clark at the time?

A. Used to get \$65 a week from Harry Clark, superintending his work.

Q. \$65 a week?

A. Yes, sir.

Q. By the week or by the day, were you paid according to weekly wages or daily wages?

A. If it was his fault I had to take the time off, he had it to pay for; if I took the time off myself I lost out on the labor.

30 Q. Were you a union man?

A. Yes, sir.

Q. You got so much per hour, is that right?

A. I was superintending the work.

Q. As a union man, what was the union wage?

A. Superintendent's end of it doesn't come under the union whatever.

Q. You didn't come under the union?

A. I was a union man, but you don't have to be a union man to be superintendent of any work.

Q. How was this \$65 per week computed, so much per hour?

Mr. Hanstein: If your Honor, please I object to that.

The Court: Sustain the objection. 10

Q. You are also known as Joseph Warren Wilson?

A. Joseph Warren Wilson?

Q. Yes.

A. No, sir.

Q. Don't you?—Who is Joseph Wilson?

A. I don't know no Joseph Wilson, only my brother's boy, and he is dead.

Q. Was his name Joseph?

A. Yes. 20

Q. When did he die?

A. I couldn't tell you just when, was drowned off here in that boat, the night they had the party.

Q. Did he ever do any work on this house?

A. No, sir.

Q. I show you what purports to be a check drawn by Harry Weikel to Warren Wilson, \$200, dated February 27, 1924, is that your endorsement on there?

A. Yes, but that is not on the house. 30

Q. You received that from Harry Weikel?

A. Charles Estergram, that is named on the boat Noarsman, that is the name of the boat, Charlie Estergram we bought a boat from.

Q. Harry Weikel bought a boat from him?

A. Harry Weikel and I bought the boat together and that is the check he gave him.

Q. Do you know a man by the name of Henderson?

A. Henderson?

Q. Yes, G. W.?

A. No, sir.

Q. Hubbs?

A. No, sir.

Q. William Clark?

A. I know one William Clark, yes, in Philadelphia.

Q. What did he do around that house?

A. He didn't do anything.

Q. He didn't do anything?

A. No, sir.

Q. Do you know where Mr. Weikel is now?

A. No, sir.

Q. Did you keep any account as to how much Mr. Weikel paid you?

A. I have it home, yes.

Q. You have it at home?

A. Yes, sir.

Q. You didn't see fit to bring it into court?

A. I didn't think of it.

Q. As owner of that property, did you ever attempt to exercise ownership of the property by evicting the occupants of the house?

Mr. Hanstein: I object to that, please your Honor; immaterial and irrelevant.

The Court: Sustain the objection.

Q. Did you ever exercise any dominion of ownership over the house?

Mr. Hanstein: I object to that, please your Honor. That is immaterial.

The Court: I will permit that. It may have some weight. You may answer that question.

A. I advertised the house for sale in the paper.

Q. What paper?

A. Atlantic City Press.

Q. When?

A. First year I built it.

Q. At whose request did you advertise it?

A. My own. 10

Q. Who paid for the ad?

A. I did.

Q. How much?

A. I don't remember what it was.

Q. When?

A. 1924.

Q. What month of 1924?

A. I couldn't tell you what month.

Q. To whom did you pay it?

A. Paid it to the Press, the paper. 20

Q. Where?

A. In the office.

Q. Do you know what girl you paid it to, to what girl?

A. No.

Mr. Gaskill: I object.

The Court: I sustain the objection; not cross-examination. 30

Q. Wasn't that advertisement as the result of an understanding with Mr. Weikel, wasn't that advertisement inserted in the paper as the result of an understanding with Mr. Weikel to dispose of the property in his behalf?

A. No, I was to sell the property myself, I built it for myself and was selling it for myself.

Q. Who was to get the money for it?

A. I was to get the money.

Q. You were?

A. Sure.

Q. What was Mr. Weikel to get for the money that he put into the house?

A. He was to get his money back with interest, 10 he wasn't putting any money in the house.

Q. He wasn't putting any money in the house?

A. No.

Q. You were putting the note in the house, is that it, you were paying the cash, he was putting things in, and yet he wasn't putting any money in?

A. I suppose he was putting money, but it wasn't his money; it was mine.

Q. Did you attend the settlement at the Chelsea Title Company when title was taken for these lots?

20 A. No, sir.

Q. Did Mr. Weikel attend the settlement?

A. I suppose he did. He was doing my business for me.

Q. Doing your business for you?

A. Yes, sir.

Q. Did you attend either settlement at the Chelsea Title Company?

A. No, sir.

Q. Who paid the taxes on the property?

30 A. They were paid out of the same moneys, as I told you.

Q. Mr. Weikel paid them?

A. Yes, sir.

Q. You never paid any taxes?

A. No, sir.

Q. You never paid any insurance to keep up the house?

A. No, sir.

Q. Never paid any sewerage bill?

A. No, sir, no sewerage building against the house.

Q. Sure of that?

A. House isn't connected up to sewer.

Q. Do you know what this check was drawn for, Harry Weikel, to Atlantic City Sewerage Company, \$11.06, September 15, 1924?

A. No, I guess they made him pay it. I notified 10 them, got a bill, and took them right out there and showed them the sewer is connected right into the canal, and that is where it is connected today, right into the canal.

Q. When is the last time you were in the premises?

A. I couldn't tell you that.

Q. A year ago?

A. No.

Q. Two years ago?

A. No, sir. 20

Q. Were you ever in the house while Mrs. Weikel was there?

A. Yes.

Q. You were? How often?

A. I couldn't tell you. I used to go to see Mr. Weikel pretty near every night.

Q. Used to see Mrs. Weikel every night?

A. Mr. Weikel.

Q. While Mrs. Weikel was in the house?

A. She was there sometimes and sometimes she 30 wasn't.

Q. Would he ever ask you to pay this note of \$10,000?

A. No, sir.

Q. He never demanded the payment of that note?

A. No, sir.

Q. Where was this note signed?

Mr. Hanstein: I object to that. I think he has been all over it.

The Court: You have been into that several times; sustain the objection.

Q. You sold this house to Smith Craighead, didn't you?

A. Yes, sir.

10 Q. How much cash did you receive from him?

Mr. Hanstein: I object to that, please your Honor. I don't see the materiality of that.

The Court: Question of testing his credibility. I will admit it on that ground.

A. I was relieved of my note from Mr. Weikel.

Q. You were relieved of your note?

20 A. Yes, sir.

Q. Mr. Weikel gave you this note back to you?

A. Yes, sir.

Q. As a matter of fact, did Mr. Weikel ever have that note in his possession?

A. Yes, sir.

Q. How long?

A. From the time it was drawn up until the day of the sale of the property.

30 Q. How much did you make on this transaction then?

A. I didn't make a nickel, I was money out.

Q. But you paid nothing for the house and you received nothing for the house, is that it, actual cash, outside of this note?

Mr. Hanstein: I object. He has explained this transaction numerous times.

The Court: Sustain the objection.

Q. You sold these lots to Charles B. Walker, didn't you?

A. Yes, sir.

Q. Did you?

A. Yes, sir.

Q. How much did you receive from him?

A. I settled up the whole thing, I told you, for the note which he held against me. 10

Q. Did you attend this settlement between Wilson and Walker, between yourself and Walker?

A. No, sir.

Q. And where did the settlement take place, do you know?

A. No.

Q. Did Mr. Walker pay any money in the transaction?

A. I couldn't tell you.

Q. As a matter of fact, didn't you and Mr. Weikel 20 have an agreement to take title to this property to defeat Mrs. Weikel of her dower interest in the property?

A. No, sir.

Q. Never had any talk at all about the wife?

A. No, sir.

Q. You were on friendly terms with Mrs. Weikel?

A. I was, yes, sir.

Q. So in selling the house and lots you didn't receive one penny in return, is that it? 30

A. No, sir, I didn't receive it.

Q. You merely got your note back?

A. That is all.

Q. Mr. Wilson, do you know a Catherine Gayman?

Mr. Hanstein: I object to that. I don't see that is material in any respect.

The Court: I don't know. I will admit it. It may be.

A. I know a girl by the name of Catherine, but I couldn't tell you whether her name is Gayman or what.

Q. Married woman?

A. I couldn't tell you that.

10 Q. Do you know whether or not she lived in this house before Mrs. Weikel moved in?

A. I have seen her at the house, yes.

Q. You have visited her and Mr. Weikel at that house, didn't you?

Mr. Hanstein: I object.

The Court: Sustain the objection. What relevancy can that have?

20

Mr. Morris: If your Honor please, I am trying to show this woman with whom Mr. Weikel had these relations, and she is the woman of whom he was fearful of suing him, therefore he had the property placed in the name of Mr. Wilson.

The Court: Sustain the objection.

30 Q. Did Mrs. Weikel ever put you out of the house?

A. No, sir.

Q. Did you ever tell Mrs. Weikel that you acknowledged that the house belonged to Harry Weikel?

A. No, sir.

Q. Never did?

A. No, sir.

By Mr. Gaskill:

Q. Mr. Wilson, you spoke of signing, when Mr. Morris asked you if you attended the settlement, when this property was sold, if I understood your direct examination, the deeds were signed by you at your home in Pleasantville?

A. Oh, yes, done over there, but not to no title company.

Q. Was that the time that you were sick with the 10
blood poisoning?

A. Yes, sir.

Q. And were both of the deeds for the four lots, these two deeds, one for two lots and the other for two lots, were they not?

A. Yes.

Q. Were they all signed at the same time?

A. Yes, sir.

Q. That is all.

20

FLOYD S. SUMNER, SWORN.

Direct examination.

By Mr. Hanstein:

Q. Mr. Sumner, what is your connection with the Islanders Building and Loan Association?

A. Secretary.

30

Q. Was an application made to your company for a mortgage on two of the lots in question in this suit?

A. Lots 3 and 4.

Q. Who made the application?

A. George Williams.

Q. Did you ever hear of Mrs. Weikel in connection with this property up until the time you started to foreclose your mortgage?

A. We had never heard, or, rather, I had never heard, and I do not believe anyone in the building and loan ever heard of Mr. Weikel until such time as the loan got in arrears and we had started to foreclose.

Q. You have charge of the making of settlements?

10 A. Yes, sir.

Q. And is this application that was presented to you?

A. That is the application that was presented and approved by the Board of Directors.

Q. The application was made and signed by George Williams?

A. George Williams.

(Application offered, received in evidence, and
20 marked Exhibit C11.)

Q. Did you have the title to this property searched?

A. That title was searched and insured, that is, the building and loan was insured under the search by the Atlantic Guaranty.

Q. The Islanders Building and Loan subsequently foreclosed this mortgage and is now the record owner of the title?

30 A. Owner of the property.

Cross-examination.

By Mr. Morris:

Q. Mr. Sumner, did you ever go down to inspect this property before the mortgage was placed?

A. Yes, sir.

Q. And what did you inspect?

A. I went out with an appraisal committee, some two or three weeks before the loan was granted. At that time our committee were themselves satisfied.

Q. You went out to inspect?

A. I went out with a committee.

Q. Did you go into possession —

A. If you will allow me —

10

The Court: Just answer the questions.

Q. Did you go into the house?

A. No, sir.

Q. You made no inquiry inside of the house to find out who was in possession.

A. We were satisfied.

Q. No, Mr. Sumner, did you make any inquiry in the house as to who was in possession of the property?

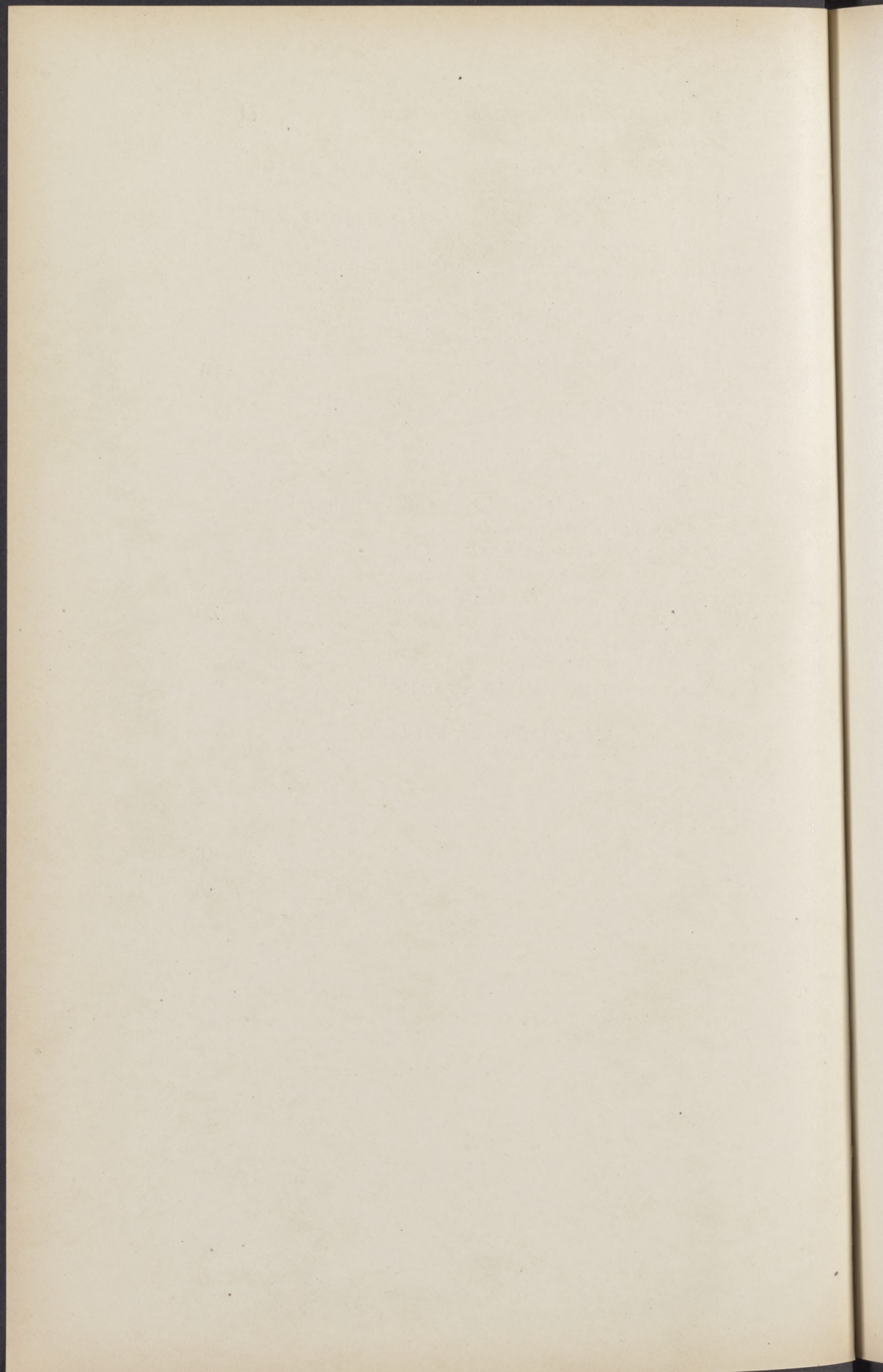
20

A. Not in the house itself.

DEFENDANTS REST.

TESTIMONY CLOSED.

30



*Answer of Defendants, Islanders Building
and Loan Association and Warren
Wilson, to Petition of Appeal* 72

ANSWER OF DEFENDANTS, ISLANDERS
BUILDING AND LOAN ASSOCIATION
AND WARREN WILSON, TO PETI-
TION OF APPEAL.

NEW JERSEY COURT OF ERRORS 10
AND APPEALS.

MARY WEIKEL, Complainant- Appellant,	}	On Appeal, &c. Answer of Defen- dants, Islanders Building and Loan Association and Warren Wilson, to Petition of Appeal.	20
v. GEORGE WILLIAMS, <i>et al.</i> , Defendants- Respondents.			

The answer of the above-named respondents, Islanders Building and Loan Association, and Warren Wilson, to the petition of appeal of the appellant says that these respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer there-
to, nevertheless, say and admit that on March 30th, 1929, a final decree was allowed and filed in the Court of Chancery of New Jersey, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form 30

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MARY WEIKEL,
Complainant-Appellant,

and

GEORGE WILLIAMS, *et al.*,
Defendants-Respondents.

ON BILL, ETC.

ON APPEAL FROM CHANCERY.

BRIEF OF COMPLAINANT-APPELLANT.

FACTS.

The complainant's husband, Harry Weikel, on June 20, 1924, paid one thousand eight hundred fifty-four (\$1,854.00) dollars (p. 26, ll. 34, 35; p. 27, ll. 1, 2), for two certain lots in Atlantic City, New Jersey. On February 18, 1925, he also paid a total of one thousand eight hundred fifty-four (\$1,854.00)

dollars for the adjoining two lots (p. 27, ll. 8, 12). Title to the both tracts was placed in the name of Warren Wilson (p. 26, ll. 2, 20). Shortly after the conveyance first mentioned, a bungalow, completely paid for by the complainant's husband, Harry Weikel, was erected on said tract (p. 27, ll. 19, 24).

On or about March 3, 1926, said defendant, Harry Weikel, and the complainant moved into said house (p. 39, ll. 20, 30)* the husband later moving therefrom, but the wife remaining until she was evicted on October 16, 1928, by the Islanders Building & Loan Association under proceedings taken to foreclose its mortgage hereinafter mentioned (p. 39, l. 35; p. 40, l. 2).

On October 11, 1926, Warren Wilson and his wife conveyed tract number one to Smith Craighead (p. 26, l. 5), who, in turn, on December 31, 1926, conveyed same to George Williams (p. 26, l. 10), who mortgaged same to the Islanders Building & Loan Association, for six thousand (\$6,000.00) dollars (p. 26, l. 15). The latter building and loan association, before granting the loan, made no inquiry of the complainant or anyone who was in the visible possession of the premises at the time (p. 71, l. 21).

On October 11, 1926, Warren Wilson conveyed tract number two to Charles B. Walker (p. 26, l. 25).

The complainant filed her bill to frustrate the consummation of the fraudulent design of depriving her of her dower interest in her husband's property, and to protect her dower interest against the possibility of a conveyance to an innocent purchaser before dower becomes consummate (p. 5, ll. 10, 30).

The only defense set up at the hearing was that the defendant, Warren Wilson, had an alleged agreement with Harry Weikel, whereby the latter was to loan the former the sum of ten thousand (\$10,000.00)

★(P 38, L. 35)

dollars for the purchase of the lots and the erection and construction of the house. If the house were sold, Harry Weikel was to be repaid his loan with interest and Warren Wilson was to retain all profits (p. 43, l. 3; p. 43, l. 36; p. 50, ll. 13, 14). Said loan from Harry Weikel to Warren Wilson was, he alleged, to be secured by a note which he and his wife gave Weikel (p. 45, l. 36; p. 46, l. 1). The property was supposed to have been sold to one Charles B. Walker, and Weikel is supposed to have returned to Warren Wilson the ten thousand dollar note (p. 67, l. 32).

The learned Vice-Chancellor Ingersoll advised a decree dismissing the bill because of failure of complainant to sustain her allegations (p. 20, l. 34).

QUESTION.

Is not the decree, appealed from, erroneous as being contrary to the great weight of the rational and credible evidence?

ARGUMENT.

There can be no doubt or dispute of the following facts in this case:

1. The complainant's husband furnished the funds for the purchase of ALL the lots in question, and also furnished ALL the funds for the erection and construction of the bungalow (p. 49, ll. 33, 36; p. 20, ll. 3, 27).

2. The defendant, Warren Wilson, did not furnish any money for the purchase of the lots, or the erection and construction of the building (p. 49, ll. 33, 36).

3. Wilson never attended any of the settlements at the title company when title was taken to the lots (p. 64, ll. 18, 20, 26), nor did he attend any settlement for the sale of the premises (p. 67, l. 13); nor did he know whether any money was paid for the sale of the premises (p. 67, l. 19).

4. Harry Weikel, and not Warren Wilson, paid the taxes on the property (p. 64, l. 32).

5. Harry Weikel, and not Warren Wilson, paid insurance and sewerage bills for the property (p. 64, l. 36; p. 65, ll. 1, 3).

Harry Weikel, having furnished all the money for the purchase of the lots and the erection and construction of the building, and having placed the property in the name of Warren Wilson, the law implies that Warren Wilson took title in trust for Harry Weikel.

“Where the son purchased and paid for the property and caused title thereto to be placed in his mother’s name, the law implies that the grantee took title in trust for her son.”

Pinkinson v. Pinkinson, 93 N. J. Equity 583.

“It is not necessary to cite authorities for the position that if A employs B to purchase a certain piece of real estate for him and furnished him with money to pay for it, and B negotiates for and purchases the premises, takes title in his own name, and pays for it with his

own money, A, in absence of any writing signed by B, by reason of the statute of frauds, can have no remedy against him."

"On the other hand, if A employs B to purchase a certain piece of real estate for him and gives him the money for that purpose, and B negotiates for and takes title in his own name, but pays A's money for it, B holds the title in trust for A, though there be no writing signed by him, on the ground that such trust resulted from the circumstance of the case."

"In each of the supposed cases, *title was taken in the name of B contrary to the parol understanding between A and B. But in either case, if the original agreement had been that the title should be taken by B for benefit of A, the result would have been the same.* In the one case, B could hold the title against A if he did not use A's money in payment of purchase money; *in the other case B holds the title for A because he did use A's money in payment of purchase money.*"

Pitney V. C. in *Schultz v. Waldons*, 60 N. J. Equity 71, 74.

"Under Compiled Statutes 1910, page 2043, enlarging a wife's right of dower to include lands whereof her husband 'or any other to his use,' was seized of an estate of inheritance at any time during coverture, where the husband paid purchase price of land, but had title conveyed to his brother, to hold in trust for the husband, the wife was entitled to maintain a bill to protect her dower in the land against the possibility of a conveyance to an innocent purchaser before dower becomes consummate."

Brown v. Brown, 82 N. J. Equity 40.

But the defendant, Warren Wilson, admitting that he paid nothing for the land or building, denies the complainant's right to relief, explaining the circumstances under which he acquired title to the property as follows:

Warren Wilson, who was a carpenter, was very friendly with Harry Weikel (p. 41, l. 20); (Wilson says) that Harry Weikel wanted Wilson to make some money for himself by building for himself instead of working for others (p. 42, l. 28). Wilson explained that he was not able to finance such a scheme, whereupon Weikel volunteered to aid him financially (p. 43, ll. 1-5). During the course of the erection of the building, Wilson was to draw regular wages, as the other employes on the building (p. 43, ll. 10, 15).

In the event of a sale of the premises Wilson was to have all the profit after paying Weikel back the amount of his investment, with interest (p. 43, l. 35). As security, he and his wife gave Weikel their notes in the sum of ten thousand (\$10,000.00) dollars. The property was subsequently sold and Wilson received no profit but Weikel returned the ten thousand dollar note to him (p. 48, ll. 1, 35).

Let us sift the proofs of Wilson's defense, with the slow process of logic and common human experience.

Veritas praevallebit. On direct examination, next to the last question propounded to Wilson by counsel, was:

“Q. Did you hold the property in question, that is these four lots in trust for Mr. Weikel?

A. Yes, sir” (p. 49, ll. 4-6).

Perhaps the answer was *secundum naturum*. But, when counsel, in his inimitable manner exclaimed,

“You held them in trust for him?” the witness resumed *secundum artem* and responded, “I misunderstood you. Held them as my own property” (p. 49, l. 9).

This *lapsus linguae* should certainly make one cautious in considering the truth of Wilson’s defense.

The defendant, Wilson, admits that he worked on or about the house sixteen Saturday afternoons (p. 58, l. 16; p. 60, ll. 1-4), for which he received two hundred fifty (\$250.00) dollars (p. 57, l. 35; p. 60, l. 5), or over fifteen (\$15.00) dollars for each Saturday afternoon he worked. His regular wages which he earned were sixty-five (\$65.00) dollars per week (p. 60, l. 21). He worked on this house only in his spare time, when he did not work on his regular job (p. 59, l. 24).

Can a rational person believe Wilson’s story? Does it seem in accordance with logic and human experience? Except for Wilson’s uncorroborated testimony there is no evidence to warrant the thought that Harry Weikel was a classic dupe. Weikel was to finance Wilson to help him make some money in his spare time and also pay him for his work about the premises more per hour than Wilson was charging others! Would a normal person become a benefactor not only on the condition that the donee be paid for work in his spare time, but that he be paid more than the union wage for similar work?

Would a man pay \$10,000.00 for a house and lot, move in with his family, pay taxes (p. 64, l. 32), insurance (p. 65, l. 1) and sewerage (p. 65, l. 10) bills on the preposterous understanding that the nominal grantee, who has been paid for his labor, should be the absolute owner and that the nominal grantee should take the profit on the sale of the premises?

Suppose the property could not be sold? Would Weikel be obliged to surrender possession at any time to Wilson and continue paying taxes and other charges?

Wilson did not even attend the settlement for the purchase or sale of the premises (p. 67, l. 12). He did not know whether Charles B. Walker, the supposed purchaser, paid any money for the property (p. 67, l. 19), yet Wilson was supposed to receive the profit.

In addition to these facts, we have the fact that Harry Weikel and the complainant moved into possession of the house and the complainant remained there until evicted, as aforesaid by the Islanders Building & Loan Association's foreclosure of its mortgage.

Wilson has sought to explain Weikel's possession by saying, in answer to his counsel's leading question, that he was to receive forty-five (\$45.00) dollars per month credit for Weikel's occupancy of the house (p. 47, l. 18). This, he says, acted as interest on the note (p. 54, l. 30). He says that he does not know what the interest amounted to but *he* thought forty-five (\$45.00) dollars per month would be about right, yet Weikel, was supposed to be the lender. Wilson knew so little about the nature of the story he was relating, that he said *he* never intended to enforce payment of the note (p. 56, l. 9). He says that Weikel never demanded payment of the note (p. 65, l. 34). Yet it was a ninety-day note.

Taken as a whole, it is difficult for one to realize the truth of Wilson's story. It is incomplete. *Caret initio et fine.*

Dower being favored in equity (Story's Jurisprudence, Sections 849, 850), will this Court, on the basis of Wilson's false and perfidious testimony, deprive the complainant of her dower right or will

it declare that Warren Wilson has not borne the *onus probandi* in substantiating his defense in setting up the note transaction?

Wilson was the only one who testified as to his transaction with Weikel. There was no corroborating witness or circumstance to support his palpably false story. Even though his wife and two children, aged fourteen and seventeen, were present at the time Wilson is alleged to have given the ten thousand dollar note, yet none of them were called to corroborate the witness' story (p. 51, ll. 19, 27, 31), in spite of the fact that they lived in Pleasantville which is seven miles from Atlantic City.

Wilson says his wife was present and heard the conversation (p. 51, ll. 19, 24).

“Whenever the existence of any fact is necessary in order that a party may make out his case, or establish a defense, the burden is on such party to show the existence of such facts, and if he desires any Court to give judgment as to any legal right or liability, dependent on the existence or non-existence of facts which he asserts or denies to exist, he must prove those facts do or do not exist in order to be entitled to relief.”

Collins Realty Co. v. Sale, 7 N. J. Advance Reports 173, 177.

It is respectfully submitted that the learned Vice-Chancellor failed to adequately weigh and analyze all the testimony and the decree should therefore be reversed.

SAMUEL MORRIS,
*Solicitor for and of Counsel with
Petitioner-Appellant.*

The first part of the book is devoted to a general survey of the history of the world, from the beginning of time to the present day. The author discusses the various stages of human civilization, from the primitive state of nature to the development of modern societies. He traces the progress of science, art, and industry, and examines the influence of these factors on the human mind and the course of history.

In the second part of the book, the author turns to a more detailed examination of the political and social conditions of the world. He analyzes the different forms of government, from monarchy to democracy, and discusses the causes and consequences of revolutions and wars. He also explores the various social systems and the role of the individual in society. The author's analysis is based on a deep understanding of human nature and a keen insight into the forces that shape the world.

The third part of the book is devoted to a study of the human mind and its powers. The author discusses the various faculties of the mind, such as reason, imagination, and emotion, and examines their relative importance in human life. He also explores the different schools of thought and the various theories of knowledge, and discusses the methods of scientific inquiry and the nature of truth.

The fourth part of the book is devoted to a study of the human condition and the various problems that confront the human race. The author discusses the nature of happiness and the sources of suffering, and examines the different ways in which human beings seek to overcome their limitations and improve their lot. He also discusses the various moral and ethical systems and the role of religion in human life.

The fifth part of the book is devoted to a study of the future of the world and the various hopes and fears that attend the prospect of the future. The author discusses the different theories of the future and the various factors that will influence the course of human history. He also discusses the role of the individual in the future and the various ways in which human beings can contribute to the betterment of the world.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MARY WEIKEL,
Complainant-Appellant,

and

GEORGE WILLIAMS, *et al.*,
Defendants-Respondents.

ON APPEAL.

BRIEF OF DEFENDANTS-RESPONDENTS,
ISLANDERS BUILDING AND LOAN
ASSOCIATION AND WARREN
WILSON.

This brief is filed by the Islanders Building and Loan Association, and Warren Wilson, because the issue in this case affects each of said parties in the same way.

The bill is filed by the complainant to impress upon the premises in question her inchoate right of dower.

The gravamen of the complainant's bill is that her husband, Harry Weikel, purchased the premises in

question, and fraudulently and with the intention of depriving the complainant of her dower right in said land, had the title to the same placed in the name of Warren Wilson, but the title was, in fact, held in trust for and to the use of complainant's husband, Harry Weikel. Thereafter, the bill alleges, Harry Weikel erected a building upon said land.

The bill further recites that the complainant was put into possession of said premises by her husband, and thereafter the defendant, Warren Wilson, conveyed said land and thereafter a subsequent grantee of said land, mortgaged the same to the defendant, Islanders Building and Loan Association.

It is quite apparent that in order for the complainant to succeed she was obliged to establish to the Court that when Warren Wilson took the title to said land, he took it as trustee for complainant's husband, Harry Weikel. If she failed in establishing this trust, then obviously she was not entitled to dower in the land.

The complainant's testimony, insofar as it affected that issue, consisted entirely of proof of checks, receipted bills, &c., showing that complainant's husband had paid the purchase price of the land in question, and had also paid bills for the construction of the building which was erected thereon.

Complainant contended that upon that proof she had established that Warren Wilson held the title as resulting trustee for her husband, Harry Weikel. Assuming that such a conclusion was possible, from that meager testimony it is our contention that the presumption that may have arisen from that showing, was clearly and fully rebutted and overcome by the testimony of the defense.

The defendant conceded that the title to the land was put in the name of Warren Wilson, and it also conceded that Warren Wilson erected a dwelling

upon the land, and that the bills for the construction of the same were paid by Harry Weikel, but this arrangement, the defendants' testimony showed, arose from an agreement between Warren Wilson and his friend, Harry Weikel. These two men were old friends; Weikel comfortably fixed; Wilson a carpenter, working for a construction company. Under said agreement Harry Weikel proposed to Warren Wilson that Wilson should buy the land, and build a building, the expense of all of which Weikel agreed to finance, and all the profit from which was to be paid to Wilson, Weikel to be repaid the amount of his loan, with interest, and as evidence of the indebtedness from Wilson to Weikel, Wilson gave to Weikel a note for \$10,000.

Later, when it became apparent that there would be considerable delay in selling the house, these two men then agreed that Weikel could occupy the house, with his family, and that for the privilege of so doing, he should credit \$45.00 a month, which was agreed upon as the fair rental value of the property, to the interest charges against Wilson. Sometime later Wilson was taken seriously sick, and his life despaired of, and the parties then agreed to undo the transaction which had been entered into by them, and Weikel returned to Wilson his note, and Wilson conveyed the property to Weikel's nominee, Weikel taking the proceeds of that sale in payment of the note.

Reference is made to the testimony, which substantiates these statements.

Testimony of Warren Wilson:

“Q. How long have you known Mr. Weikel?

A. About sixteen years.

Q. Were you friendly with him?

A. Yes, sir.

Q. Did you own a boat together?

A. Yes, sir."

(S. C. p. 41, ll. 18-25.)

"Q. How came you to buy these lots?

* * * * *

A. Why, he wanted me to go to building for myself instead of building for somebody else.

Mr. Morris: I didn't hear your answer.

A. I say he wanted me to go to building for myself instead of building for somebody else, to make a little money for myself.

Q. Just state to the Court the conversation between you relative to going in the building business.

A. He wanted me to build for myself, as I just told you, instead of building for somebody else.

Q. Who do you mean told you that?

A. Weikel.

Q. Harry Weikel?

A. Harry Weikel told me, yes, and I told him I couldn't because I wasn't financed to do it, and he said he would finance me, so he financed me and took care of all business because I was superintendent for Clark Construction Company, and couldn't take care of it.

Q. Now under that arrangement, how were you to be paid?

A. Well, I was to be drawing out, that is, if I had time to work on the house, but the biggest part of the time I worked Saturday afternoons and nights.

Q. You did this during your spare time?

A. My spare time, not all of it.

Q. How were you to be paid for your services?

A. I was paid out of the, same as he was paying all the rest, out of this \$10,000 note.

Q. Assuming that a house would cost and the lots would cost \$10,000, and the property should be sold by you for twelve, what would become of the two thousand?

Mr. Morris: I object.

The Court: What is the objection?

Mr. Morris: This is a hypothetical question. There is no evidence that there was such an understanding.

The Court: Sustain the objection to the form of the question.

Q. What was the agreement, if any, as to profit on the sale of any houses that you built?

A. There was no agreement, that is, I was to have the profit, but I was to pay him back the interest on the money if I sold.

Q. Now, did you give Mr. Weikel anything to secure him for the advancement of the various sums that he was to pay on your account?

A. I didn't quite get you, Mr. Counsel.

(Question repeated.)

A. Nothing, only this note.

Q. You did give a note to Mr. Weikel?

A. Yes, sir."

(S. C. pp. 42, 43 and 44 to line 10.)

"Q. Mr. Wilson, I show you note and paper purporting to be that of a note dated July 1st, 1924, in the sum of \$10,000, payable to the order of Harry Weikel, and purporting to be signed by Warren R. Wilson and Mrs. Warren R. Wilson, and ask you if you made that note and delivered the same to Mr. Weikel?

A. Yes, sir.

Mr. Gaskill: May I offer the note at this time?

The Court: You may do so.

(Note received in evidence and marked Exhibit D1.)

Q. Referring to the body of the note, the handwriting outside of the signatures, I ask you who wrote the body of the note?

A. Harry Weikel.

Q. The signature, Warren R. Wilson, was made by you?

A. By myself, yes, sir.

Q. Was Mrs. Warren R. Wilson signed by your wife?

A. Yes, sir.

Q. What was that note given for, Mr. Wilson?

A. Why, for to secure on the property, as I should call it."

(S. C. p. 45, l. 10 to p. 46, l. 2.)

"Q. Now, you say Mrs. Weikel moved into the house and you were given credit for \$45 a month; is that right?

A. I didn't say Mrs. Weikel. I said Mr. Weikel.

Q. Mr. Weikel moved in?

A. Yes, sir.

Q. Credit was given for \$45 a month?

A. Yes. It was taken off the interest."

(S. C. p. 54, ll. 20-28.)

The complainant having offered nothing more than a presumption of a resulting trust, when the undisputed testimony of the defense was introduced, the Court very properly found that the presumption was overcome. There was no testimony off-

setting the testimony of defendant, Wilson, and there was no reason why that testimony should not have been believed by the Court, and made the basis of its decision.

Appellant contends in her brief that the story of the defendant, Wilson, is not worthy of credence. We submit that the parties were before the Court. The Court was in a position to judge them, and the conclusions of the Vice-Chancellor as to the probabilities of that story ought to be more accurate than the conclusions of anyone else. But, beyond that, there was an element of corroboration in the story of the defendant, Wilson, which cannot be overlooked, and which, if it was not true, could have been easily demonstrated by the complainant as being false. We refer to the note given by Wilson to Weikel, which is marked Exhibit D1 and printed on page 28 of the State of the Case; that note, as was shown by the testimony above referred to (and found on page 45, line 25 of the State of the Case) was in the handwriting of the complainant's husband, Harry Weikel, with the exception of Wilson's signature. If the defendant, Wilson, had not, in fact, given that note to Weikel, but had created it merely for the purpose of deceiving the Court, it would not have been in the handwriting of Harry Weikel. The complainant certainly must be familiar with her husband's handwriting, and would have been in a position to deny that the note was in the handwriting of Harry Weikel, if that was not the fact.

Appellant's counsel argues in his brief that there is a resulting trust, and refers to Vice-Chancellor Pitney's opinion in *Schultz v. Waldons*. We submit that there was no resulting trust in this case.

“A resulting trust arises by implication of law, and does not grow out of a contract. And

where there is an express trust, there cannot be a resulting trust. It results from the conduct, relation, and supposed intention of the parties independent of any agreement whatsoever between them. Where, for any reason, the legal title to property is in one person under such circumstances as to make it inequitable for him to have the beneficial interest, equity will imply a trust in favor of the person entitled to the beneficial interest. It must appear from the entire transaction that there is an obligation on the part of the holder of the legal title to hold it for the benefit of someone else. A resulting trust cannot be founded on an express agreement, nor can it arise from a conveyance made for a valuable consideration. In a resulting trust intention is an essential element, although that intention is never expressed by words of direct creation. The law, however, presumes the intent from the facts and circumstances accompanying the transaction.

* * * * *

It is a well established principle of law that where one buys real estate and pays the purchase-money with his own funds, and has the legal title placed in the name of another person, a trust results in favor of the one whose funds were applied to the payment of the purchase-price. Such a trust does not arise out of any contract between the parties but is founded on the presumed intention of the parties that the one furnishing the money should have the beneficial interest, while the other held the title for convenience or for a collateral purpose. Such a trust is a mere creature of equity, founded upon presumptive intention, and designed to carry that intention into effect—not to

defeat it. If it is not the intention that the estate shall vest in him who pays the purchase price, then no resulting trust in his favor attaches to the property." *Thompson on Real Property*, pages 330, 331 and 332.

The decree appealed from is just and equitable and should be sustained.

THOMPSON & HANSTEIN,
*Solicitors for and of Counsel with
Defendant, Islanders Building
and Loan Association.*

EDMUND C. GASKILL, JR.,
*Solicitor for and of Counsel with
Defendant, Warren Wilson.*

