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AMENDED COMPLAINT.

IN CHANCERY OF NEW JERSEY.

71-16

Between

HOWARD LEE DANEN-
HAUER,

Complainant,

and

GEORGE EDWARD DANEN-
HAUER, *et als.,*

Defendants.

10

On Bill, etc.
Amended Complaint.

20

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

Your complainant, Howard Lee Danenhauer, of the village of Mays Landing, County of Atlantic and State of New Jersey, by his amended complaint, respectfully shows that:

1. On or about November 1, 1921, Nettie Lee Danenhauer, of the City of Philadelphia, County of Philadelphia and State of Pennsylvania, the mother of your complainant, was the owner of the following described tract of land and premises in the village of Mays Landing, County of Atlantic and State of New Jersey, particularly described as follows:

BEGINNING at a stake by the side of Great

Egg Harbor River, near what is commonly called the Hance Place; thence

10 1.) South, eighty-four degrees West, two chains to a gum marked four blazes and twenty-four notches close by the fence bank and upland; thence the same course South, eighty-four degrees West, in all twenty chains and fifty links to a pine by the edge of the main swamp marked four blazes, twelve notches for a corner; thence

2.) By the edge of said swamp the several courses thereof until it intersects Nicholas Rape's line;

3.) Along said Rape's line through the swamp to the River aforesaid; thence

4.) By the same the several courses thereof to the place of beginning.

20 Containing one hundred and fifty acres be the same more or less. Being the same premises inter alia which Snyder B. Simes by indenture dated February 6, 1903, and recorded in the Clerk's Office of Atlantic County at Mays Landing in Book #283, page 299, etc., granted and conveyed unto Edwina L. H. Coleman in fee. Under and subject to all encumbrances and taxes now on the above described premises.

30 2. On or about the said date, the complainant was the owner of certain real property in the City of Philadelphia and State of Pennsylvania, and intended to sell same in order to purchase a tract of land and premises in Chester County, Pennsylvania, for agricultural and horticultural development.

3. Both the complainant's father, the late Frank Howard Danenhauer, and the complainant's mother aforesaid, induced the complainant not to buy the

property in Chester County aforesaid, but to move to the premises described in paragraph one herein, and develop same as he intended to develop the Chester County property aforementioned. Both the father and the mother of the complainant suggested that the move would be advantageous to him, for there would be no charge for the property and the complainant could improve same as he saw fit. Both the complainant's mother and father aforesaid, promised and agreed that the property would be his absolutely, after their death. On or about the aforesaid date the mother promised and agreed to devise same to the complainant, so that the complainant would be the owner thereof after her death and the death of her husband, aforesaid. 10

4. The complainant accepted the offer and together with his wife moved to the premises described in paragraph one herein, on or about March 1, 1922. 20

5. Since taking possession as aforesaid, the complainant has made extensive improvements on the land, made additions and alterations to the buildings, constructed new buildings, installed plumbing fixtures, and machinery and cultivated the land.

6. The complainant has cultivated and is growing beautiful iris flowers in large quantities on the land aforesaid. 30

7. The complainant has spent, during the past six years, including the value of his services, approximately twenty thousand (\$20,000.00) dollars, for the construction, development and improvements on the aforesaid land and premises and only has the complainant done this, relying on the promise of his

mother and father, that the mother would devise the property to him so that he would become the owner thereof on the death of both parents.

8. The complainant's mother died at the age of seventy-four on or about December 20, 1927, at Philadelphia, Pennsylvania.

10 9. The complainant's father died on or about January 15, 1928, at Primos, Delaware County, Pennsylvania, the home of the complainant's brother, George Edward Danenhauer.

20 10. By the terms of the will of the complainant's mother, provision was made for the payment of debts and the entire remainder to the complainant's father for life. After his death, the complainant and his brother are to receive a life interest, and following their death, the estate is to be divided into two equal parts. One of these parts is given absolutely to the complainant's brother's children, and the other part is to have \$5,000.00 taken from it, given to the complainant's son, Howard Lee Danenhauer, Jr., the balance share and share alike to the children of the complainant's brother. The executor named in the will was Frank Howard Danenhauer, the complainant's father, and after his death, George Edward Danenhauer, the complainant's brother,
30 with full power of sale.

11. The will was probated by the complainant's brother, who swore there was no personal property and a total real estate value of \$11,500.00, consisting of #2811 Poplar Street, 343-344-416 Laura Avenue, Cheltenham, Pennsylvania, a lot of ground and three

buildings in Weymouth Township, Atlantic County, New Jersey.

12. The said George Edward Danenhauer became the administrator of his father's estate, on his allegation that his father destroyed his will in his presence during his lifetime.

13. The defendant, George Edward Danenhauer is married and his wife's name is Margaret Frazier Danenhauer, and he has two children, to wit: Edward Danenhauer, aged five and Mary Lee Danenhauer, aged eight. 10

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

1. That George Edward Danenhauer, individually and as executor of the estate of Nettie Lee Danenhauer, George Edward Danenhauer, administrator of the estate of Frank Howard Danenhauer, Margaret Frazier Danenhauer, Edward Danenhauer, infant, Mary Lee Danenhauer, infant, who are the defendants to this suit, may answer this bill of complaint and each statement therein made. 20

2. That the executor or any other lawful representative of the estate of Nettie Lee Danenhauer may be compelled by the decree of this Court, specifically to perform the said agreement with the complainant. 30

3. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint

and to abide by such decree as the Court may make
in the premises.

SAMUEL MORRIS,
Solicitor of Complainant.

10

[ENDORSED]

I hereby consent to the filing within
amended complaint this 13th day of
March, 1929.

Isadore Sacks,
Atty. for Defendants.

20

30

ANSWER.

IN CHANCERY OF NEW JERSEY.
71-16

Between		10
HOWARD LEE DANEN- HAUER,	} On Bill, etc. Answer.	
Complainant,		
and		
GEORGE EDWARD DANEN- HAUER, <i>et als.</i> , Defendants.		

20

The defendants, George Edward Danenhauer individually and as executor of the estate of Nettie Lee Danenhauer; as guardian of Edward Danenhauer, an infant, and Mary Lee Danenhauer, an infant, and Howard Lee Danenhauer, Jr., an infant; and the defendant Margaret Frazier Danenhauer, answering the complaint say that:

1. Paragraph #1 of the complaint is admitted. 30
2. Paragraph #2 of the complaint is denied.
3. Paragraph #3 of the complaint is denied.
4. Paragraph #4 of the complaint is denied.

5. Paragraph #5 of the complaint is denied.

6. Paragraph #6 of the complaint is denied.

7. Paragraph #7 of the complaint is denied.

8. Paragraph #8 of the complaint is admitted.

9. Paragraph #9 of the complaint is admitted.

10

10. Paragraph #10 of the complaint is admitted.

11. Paragraph #11 of the complaint is admitted.

12. Paragraph #12 of the complaint is denied.

13. Paragraph #13 is admitted except that the age of the children as set out in the complaint is incorrect said children, however, being infants.

20

ISADORE SACKS,
Solicitor for Defendants.

30

ORDER APPOINTING GUARDIAN AD LITEM.

(Filed April 12, 1929.)

IN CHANCERY OF NEW JERSEY.

Between		10
HOWARD LEE DANEN- HAUER,	}	On Bill, etc. Order Appointing Guardian Ad Litem.
<i>Complainant,</i>		
and		
GEORGE EDWARD DANEN- HAUER, <i>et als.</i> ,	}	
<i>Defendants.</i>		

20

Upon reading the petition filed herein by Howard Lee Danenhauer, Jr., a party defendant in the above entitled cause, setting forth that the said Howard Lee Danenhauer, Jr., is an infant over the age of fourteen years and under the age of twenty-one years, and praying that his uncle, George Edward Danenhauer, may be appointed his guardian *ad litem* by whom he may answer and defend this suit, and upon reading the written consent of the said George Edward Danenhauer annexed to the said petition to accept the said appointment, and the affidavit of Maurice M. Green verifying the age of the said petitioner, and stating that the said petition and consent was signed in his presence. 30

It is, on this 12th day of April, nineteen hundred

10 *Application for Appointment of
Guardian Ad Litem*

and twenty-nine, ordered that the said George Edward Danenhauer be assigned and appointed guardian *ad litem* for the said infant defendant Howard Lee Danenhauer, Jr., by whom he may answer and defend this suit.

E. R. WALKER,
C.

10

APPLICATION FOR APPOINTMENT OF
GUARDIAN AD LITEM.

IN CHANCERY OF NEW JERSEY.

71-16

20

Between

HOWARD LEE DANEN-
HAUER,

Complainant,

and

GEORGE EDWARD DANEN-
HAUER, *et als.,*

Defendants.

} On Bill, etc.
Application for Ap-
pointment of Guar-
dian Ad Litem.

30

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

The petition of Howard Lee Danenhauer, Jr., of the City of Philadelphia, County of Philadelphia and State of Pennsylvania, respectfully shows that:

1. Your petitioner is a party defendant in the above entitled cause, and is an infant under the age of twenty-one years and over the age of fourteen years, to wit, of the age of seventeen years, and by reason of his infancy is unable to answer or defend this suit in a legal, competent and proper manner.

Your petitioner, therefore, prays that his uncle, George Edward Danenhauer may be assigned and appointed guardian *ad litem* of your petitioner by whom he may answer and defend this suit. 10

HOWARD LEE DANENHAUER.

Dated, Philadelphia, Pa., April 9th, 1929.

I, GEORGE EDWARD DANENHAUER, uncle of the said infant Howard Lee Danenhauer, Jr., above named, do hereby consent and agree to accept the appointment of guardian *ad litem* above prayed for, of said Howard Lee Danenhauer, Jr., an infant under the age of 21 years and over of 14 years, to answer and defend this in behalf of the said infant. 20

In witness whereof, I have hereunto subscribed my name this 9th day of April, 1929.

GEORGE EDWARD DANENHAUER.

Signed in the presence of
M. M. GREEN.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.

MAURICE M. GREEN, of full age, being duly sworn
10 according to law, upon his oath deposes and says:

1. I was present and saw George Edward Danenhauer subscribe his name to the above written agreement, the same having been by me first read to the said George Edward Danenhauer. I was also present and saw the above named infant, Howard Lee Danenhauer, Jr., subscribe the foregoing petition, the said petition having been by me first read to the said Howard Lee Danenhauer, Jr.

20

2. I further say that from information given me, and from the appearance of the said Howard Lee Danenhauer, Jr., I verily believe and have no doubt that he is under the age of twenty-one years and over the age of fourteen years.

MAURICE M. GREEN.

Sworn and subscribed to before me this day
of April, 1929.

30

SAMUEL L. GREEN,
Notary Public.

Commission expires 1-22-31.

New Jersey State Library

ORDER APPOINTING GUARDIAN AD LITEM.

(Filed April 12, 1929.)

IN CHANCERY OF NEW JERSEY.

71-16

10

Between

HOWARD LEE DANEN-
HAUER,

Complainant,

and

GEORGE EDWARD DANEN-
HAUER, *et als.*,

Defendants.

On Bill, etc.
Order Appointing
Guardian Ad Litem.

20

Upon reading the petition filed herein by George Edward Danenhauer, the father of Edward Danenhauer and Mary Lee Danenhauer, both party defendants in the above entitled cause, setting forth that the said Edward Danenhauer and Mary Lee Danenhauer are infants under the age of fourteen years, and praying that the petitioner may be appointed their guardian *ad litem*, by whom they may appear and defend this suit, and upon reading the written consent of the said petitioner annexed to the said petition to accept the said appointment, and the affidavit of Maurice M. Green verifying the ages of the said Edward Danenhauer and Mary Lee Danenhauer, and stating that the said petition and consent were signed in his presence.

30

14 *Petition on Behalf of Infants for Appointment of Guardian Ad Litem*

It is, on this 12th day of April, nineteen hundred and twenty-nine, ordered that the said George Edward Danenhauer be assigned and appointed guardian *ad litem* for the said infants Edward Danenhauer and Mary Lee Danenhauer, by whom they may answer and defend this suit.

E. R. WALKER,
C.

10

PETITION ON BEHALF OF INFANTS FOR APPOINTMENT OF GUARDIAN AD LITEM.

IN CHANCERY OF NEW JERSEY.

71-16

20 Between

HOWARD LEE DANEN-
HAUER,

Complainant,

and

GEORGE EDWARD DANEN-
HAUER, *et als.,*

Defendants.

On Bill, etc.
Petition on Behalf of
Infants for Ap-
pointment of Guar-
dian Ad Litem.

30

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

The petition of George Edward Danenhauer, of the City of Primos, County of Delaware, and State of Pennsylvania, respectfully shows that:

Petition on Behalf of Infants for Appointment of Guardian Ad Litem 15

1. Your petitioner is the father of Edward Danenhauer, an infant under the age of 14 years, to wit, the age of 8 years, and is also the father of Mary Lee Danenhauer, an infant under the age of 14 years, to wit, of the age of 10 years, and that said Edward Danenhauer and Mary Lee Danenhauer are party defendants in the above entitled cause.

Your petitioner, therefore, prays that he may be appointed guardian *ad litem* for the said Edward Danenhauer and Mary Lee Danenhauer by whom he may answer and defend this suit. 10

Dated, Phila., Pa., April 9th, 1929.

GEORGE EDWARD DANENHAUER.

I, GEORGE EDWARD DANENHAUER, above named, do hereby consent and agree to accept the appointment of guardian *ad litem* above prayed for of Edward Danenhauer and Mary Lee Danenhauer both infants under the age of 14 years, by whom they may answer and appear for the purpose of this suit. 20

In witness whereof, I have hereunto subscribed my name, this 9th day of April, 1929, in the year nineteen hundred and twenty-nine.

GEORGE EDWARD DANENHAUER.

Signed in the presence of
M. M. GREEN.

30

16 *Petition on Behalf of Infants for Appointment of Guardian Ad Litem*

STATE OF PENNSYLVANIA, }
COUNTY OF , } ss.

MAURICE M. GREEN, of full age, being duly sworn according to law, upon his oath deposes and says:

10

1. I was present and saw George Edward Danenhauer subscribe his name to the foregoing petition and to the foregoing agreement, the said petition and agreement having first been read by me to the said George Edward Danenhauer.

20

2. From information given me, and from the appearance of Edward Danenhauer and Mary Lee Danenhauer, the infant defendants in the foregoing petition and agreement named, I verily believe and have no doubt that they are under the age of fourteen years to wit, of the age of eight and ten years, respectively.

MAURICE M. GREEN.

Sworn and subscribed to before me this 9th day of April, 1929.

SAMUEL L. GREEN,
Notary Public.

30

My commission expires 1-22-31.

REPLY.

IN CHANCERY OF NEW JERSEY.
71-16

Between		10
HOWARD LEE DANEN- HAUER,	} On Bill, etc. Reply.	
Complainant,		
and		
GEORGE EDWARD DANEN- HAUER, <i>et als.</i> ,		
Defendants.		

20

To Isadore Sacks, Esquire, Solicitor for Defendants:

The complainant, Howard Lee Danenhauer, replying to the answer filed in the above entitled cause by the defendants, says that:

1. He joins issue on the defendants' answer.

Dated: May 17, 1929.

SAMUEL MORRIS,	30
Solicitor for and of Counsel with Complainant.	

TESTIMONY.
IN CHANCERY OF NEW JERSEY.

10

Between

HOWARD LEE DANEN-
HAUER,

Complainant,

and

GEORGE EDWARD DANEN-
HAUER, *et als.,*

Defendants.

On Bill, etc.
Final Hearing.

20

Atlantic City, N. J., October 22, 1929.

Before HON. ROBERT H. INGERSOLL, Vice-Chancellor.

30 APPEARANCES:

For the complainant, SAMUEL MORRIS, Esq.

For the defendants, ISADORE SACKS, Esq.

HOWARD LEE DANENHAUER, SWORN.

Direct examination.

By Mr. Morris:

Q. Mr. Danenhauer, you are Howard Lee Danenhauer, the complainant in this case? 10

A. Yes, sir.

Q. On or about November 1st, 1921, your mother was the owner of the property described in the bill of complaint?

A. Yes.

Q. On or about November 1st, 1921, were you the owner of certain property in Pennsylvania?

A. I was.

Q. Did you intend to sell—was it your intention to sell that property to make a certain purchase of 20 land in Chester County, Pennsylvania?

A. It was.

Mr. Sacks: I object to that unless the property that he was the owner of is more specifically described and the time fixed.

The Court: Sustain the objection.

Q. Of what property were you the owner in Pennsylvania? 30

A. 1712.

Q. November 1st, 1921.

A. 1712 North Edgewood Street, Philadelphia.

Q. What did you intend to do with that property?

A. It was my intention to dispose of that property and purchase a property at Paoli, Pennsylvania, for

the intention of raising and hybridizing plants such as iris and poenies, narcissus and dahlias.

Q. Now, did you go through with your intention of selling the property and buying property in Chester, Pennsylvania?

A. I did not.

Q. Why didn't you?

A. My mother and father induced me to bring that proposition to Mays Landing —

10

Mr. Sacks: I object to that.

The Court: Sustain the objection.

Q. As the result of conversation with your mother and father, you did not buy the property in Pennsylvania —

20

Mr. Sacks: I object to that. It is leading.

The Court: Oh, it is leading, but we may save time. I will permit it.

Q. As the result of conversation with your mother and father, you did not buy the property in Chester, Pennsylvania?

A. That is right.

Q. Where did you go?

A. I came to Mays Landing and established a
30 planting there.

Q. On the premises described in the bill of complaint?

A. Premises so described.

The Court: Are these the premises opposite the Court House Station?

A. Yes, sir.

Q. These premises are known as Treasure Oak?

A. Several names, Treasure Oak, Meadowcroft, Taylor's Meadows.

Q. Will you describe these premises as they existed at the time you took possession?

A. The land was uncultivated, largely grown up in brush, the house was unpainted, falling very rapidly into a state of dilapidation. The river front was broken through in several places enabling the river to flood large areas of this land. The road leading in from the main highway was practically impassable. 10

Q. Now, you moved on these premises with whom?

A. With my wife.

Q. Did your mother and father live on the premises?

A. During the summer season, from May until November.

Q. What did you do on these premises? 20

A. Cared for the land, cultivated it, cared for the property, improved it, that is, the buildings, improved it, added additional buildings, hired and bought machinery to care for the land.

Q. What is your occupation?

A. Present occupation is horticulturalist.

Q. What kind of a horticultural development did you have over there?

A. Hybridizing iris and distributing them through a western agency, originating new varieties of iris. 30

Q. Was there any horticultural development on this land before you took possession?

A. None other than what I put there.

Q. Do you have any picture showing this property before you took possession?

A. Yes, sir.

Q. Will you tell me what picture number 2 shows?

A. Shows the general condition of the house —

Mr. Sacks: I object to that, if your Honor please, unless those pictures are properly proven, who took them and so forth.

The Court: You are entitled to that.

10

Q. I show you what purports to be a picture with a house, and that is marked number 2 on the back, will you tell us what that is, and will you tell us who took it?

A. I took this photograph.

Q. With a camera?

A. Yes, sir.

By the Court:

20

Q. Is it a fair representation of the field as it then appeared?

A. Yes, sir.

Q. I say field, I mean the field of the camera?

A. Yes, sir.

By Mr. Morris:

Q. Will you tell us what that represents?

30 A. This represents the property —

Mr. Sacks: May I also enter this objection, that I do not think any time has been fixed as to when that picture was taken?

The Court: Should be a time.

Q. When did you take this picture?

A. That picture was taken about 1918, as nearly as I can tell.

Q. Will you tell us what this picture purports to show?

Mr. Sacks: If your Honor please, I object to any testimony on this picture. I don't like to object all the time.

10

The Court: Three years prior to any connection with this, first connection is 1921.

Q. Did you have any pictures, Mr. Danenhauer, purporting to show the condition of this property about the time that you took possession?

A. I have.

Q. Will you show them to me?

A. They are about the only two photographs that I have.

20

Mr. Morris: If your Honor please, we don't have any picture that can afford the Court any help outside of this one.

Q. Will you show me any picture of the property after you took possession?

A. After I completed the development or during the time?

30

Q. During the course and afterwards.

A. Yes, sir, that picture shows part of the planting.

Q. The property?

A. This is the starting of the construction.

Q. I show you picture marked number 8 on the

back, will you tell the Court what this picture purports to show?

A. Picture shows the house on this property at the beginning of the improvement that I constructed myself, shows the foundation being erected.

(Photograph offered in evidence.)

10 Mr. Sacks: If your Honor please, the only objection I wish to make to any pictures taken afterwards, of course the only evidence we have as to what he said as to conditions, but there are no photographs showing what the conditions are.

The Court: They are admissible, but the question as to value or probative force is a different thing.

(Photograph admitted and marked Exhibit C1.)

20 Q. Will you show me any pictures of the other construction on the house?

A. All these pictures the same subject (referring to picture marked No. 9.)

Q. Shows the progress of construction?

(Photograph offered, received in evidence and marked Exhibit C2.)

Q. C3, what does that show?

30 A. Direction of the roof columns and roof, trusses on the front porch, also the foundation.

(Photograph offered, received in evidence and marked Exhibit C3.)

Mr. Sacks: If your Honor please, has time been fixed as to when these pictures were taken?

Mr. Morris: He says during construction, after he moved in.

The Court: Mr. Sacks is entitled to some date, if he can give it.

Q. Picture C3, about what date was this picture taken?

A. I have a picture here that is taken after that, that is dated March, 1925, I would say that picture was taken around December, 1924, as nearly as I can tell. 10

Q. Exhibit C4, about when was this taken, and what does it show?

A. That shows about the same thing.

Q. About when was it taken?

A. At the same time.

(Photograph offered, received in evidence and marked Exhibit C4.) 20

Q. Exhibit C5, what does this show?

A. Shows the completion of the porch with the roof on it, without the side addition to the building.

(Photograph offered, received in evidence and marked Exhibit C5.)

Q. Exhibit C6, what does this show?

A. Same thing. 30

(Photograph offered, received in evidence and marked Exhibit C6.)

A. Picture shows the completion of the side, that was taken October 29th, 1926.

(Photograph offered, received in evidence and marked Exhibit C7.)

A. That shows the completed building.

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

A. That is all of the construction.

10 Q. They are all the pictures you have showing the construction?

A. Yes.

Q. What other pictures do you show?

A. Showing the field in bloom and hybridizing work, and the development of that.

Q. I show you a picture, will you tell us when this picture was taken and what it purports to show?

A. I can't give the date of this picture.

Q. About when?

20 A. 1925 as nearly as I can tell.

(Photograph offered, received in evidence and marked Exhibit C9.)

A. That would be in May, 1925.

Q. What does that picture purport to show?

A. That shows myself at work hybridizing iris.

Q. On the property described in the bill of complaint?

30 A. Yes, sir.

Q. I show you another picture, will you tell me when that was taken and what that purports to show?

A. This was taken in 1924, showing the results of that work of hybridizing work, shows the seed developed and labeled.

(Photograph offered, received in evidence and marked Exhibit C10.)

Q. I show you a group of pictures, will you tell me what they purport to show, and about when they were taken?

A. These were all taken about 1924, showing the results of the hybridizing work, the flowers in bloom, the seeds after they have been hand-pollinated and crossed, and after collection. 10

(Photographs offered, received in evidence and marked Exhibits C11 to C15, inclusive.)

By the Court:

Q. What part of the property is your iris field?

A. Directly in back of the house, your Honor, on a portion of the flat that lies off the lowland.

Q. Did you have to rebuild the sluice? 20

A. The sluice was rebuilt, yes, sir.

Q. The sluice was rebuilt, which was called Endicott Shoals?

A. Yes, it has since broken through again.

Q. Your house is now in Hamilton Township, isn't it?

A. No, sir, I think it is still in Weymouth.

Q. The line used to run between your house and your barn?

A. That is it. 30

Q. And you are still in Weymouth Township?

A. Yes, sir.

By Mr. Morris:

Q. Mr. Danenhauer, what does this picture purport to show, and when was it taken?

A. The picture is dated 1923, showing the back building, the barn, which was erected by my brother-in-law and myself, and the field in bloom.

(Photograph offered, received in evidence and marked Exhibit C16.)

Q. Do you have any other pictures?

10 A. Picture showing the field in bloom in the rear of the house.

Q. When was this picture taken, about when?

A. 1927, May.

Q. And it shows?

A. Iris.

Q. House and field in bloom?

A. Yes, sir.

(Photograph offered in evidence.)

20

Mr. Sacks: Let me understand, your Honor, he took all these pictures? I don't want to object to each one individually.

A. Yes, sir. Pardon me, with the exception of the one that is now being entered was taken by a man by the name of Mr. Light, that is the only one.

30 Q. Does this picture represent the true condition of the house and property at the time the picture was taken?

A. Yes, sir.

Q. That is a fair representation?

A. In fact, I was standing right alongside of Mr. Light when he took that picture.

The Court: I will admit it.

(Photograph offered, received in evidence and marked Exhibit C17.)

Q. When was this picture taken and what does it purport to show?

A. This was taken in 1925, showing Austin W. W. Sand, of Cornell University, making some scientific investigations on my hybridizing work in the field.

Q. On the property in question?

A. Yes, sir.

10

(Photograph offered, received in evidence and marked Exhibit C18.)

Q. Who was this?

A. Austin W. W. Sand.

Q. Mr. Danenhauer, you said that that last picture showed whom?

A. Mr. Austin W. W. Sand, of Cornell University, making some investigation or notes on iris that I was hybridizing.

20

Q. Do you know why he made those investigations?

A. It was practically the only locality in the country where those investigations could be made, and he was sent there by the University.

Q. Sent to your place by the Cornell University?

A. Yes, sir.

Q. I show you picture, will you tell me what this purports to show?

30

A. This shows the road that led into the place at the time of me taking up the work there.

Q. When was it taken, about when?

A. 1921.

(Photograph offered, received in evidence and marked Exhibit C19.)

Q. What does this picture purport to show and when was it taken?

A. Taken about 1921, shows the field that is now occupied by iris.

Q. What was the field then?

A. Nothing at all.

(Photograph offered, received in evidence and marked Exhibit C20.)

10

Q. What does this picture purport to show and when was it taken?

A. This was taken about 1921, shows the general condition of the premises, the grass at the side of the house, there is nothing of planting.

(Photograph offered, received in evidence and marked Exhibit C21.)

20 Q. That was before you began to cultivate the premises?

A. Yes, sir.

Q. What does this picture purport to show, and when was it taken?

A. I can't be certain of the date of this picture. It shows the dike that was constructed to keep out the river water from flooding the lowlands after it had broken.

30 (Photograph offered, received in evidence and marked Exhibit C22.)

Q. What do these two pictures purport to show, and when were they taken?

A. This picture was taken in 1925. It shows the rear of the premises after the completion of the shop.

(Photograph offered, received in evidence and marked Exhibit C23.)

A. This is the same thing.

(Photograph offered, received in evidence and marked Exhibit C24.)

Q. What does this picture purport to show, and when was it taken? 10

A. Taken in 1925, showing the condition of the place after some planting had been done in the front along the river bank.

(Photograph offered, received in evidence and marked Exhibit C25.)

Q. Mr. Danenhauer, you say you were talking about certain improvements that were made on the land. At whose expense were those improvements made? 20

A. At mine.

Q. Now, what improvements did you make at your expense?

A. I cleared about fifteen acres, probably more, and brought about three acres into finished cultivation, paid for plowing, I would say about four or five acres, paid for brushing out the road, trimming the brush in various locations around the property, general labor on the premises, such as care and cultivation, fertilizer bills. 30

Q. How about actual construction, what did you do?

A. The cost of the actual construction?

Q. Now, what did you do in the line of construction on the premises, construction of houses or parts of houses?

A. Construction and demolition?

Q. Yes.

A. There were two old buildings demolished and removed, a number of old trees cut down and removed. There was one two-story building about 16 by 36, two rooms downstairs, stairway, and three rooms upstairs, with basement, and foundation was dug for that, foundation walls built and building completed.

10

Mr. Sacks: Did I understand him to say he did all of this?

The Court: Yes.

Q. Go ahead.

20 A. Front porch was constructed on the house, there was a side cellar dug, walls built, and sun parlor erected, bathroom over that, making an additional wing to the house. The entire interior of the house was refinished, banisters constructed.

Q. Any outbuildings or shops?

A. The outbuilding was the shop that I just described.

Q. Do you have any bills or cancelled checks showing payments for that work —

A. Yes, sir.

30 Q. —which you have just described? Will you produce them? Will you produce the bills and cancelled checks for work done on the premises by you?

(Question withdrawn.)

Q. I show you what purports to be a picture of a house and parts on it, will you tell me whether or

not that represents the condition and appearance of the premises on or about the time you took possession of the property?

A. Yes, sir.

(Photograph offered in evidence.)

Mr. Sacks: If your Honor please, I don't want to be critical, but I think the formation of these questions is very leading. 10

The Court: They are all very leading.

(Question withdrawn.)

Q. Will you tell me what this picture purports to show and when was it taken?

A. It was taken about 1918 and represents the appearance of the house — 20

Mr. Sacks: I object to that.

The Court: Sustain the objection, three years before the date.

Q. Does this picture show or purport to show the condition, the same condition as existed on or about November 1st, 1927?

A. That condition existed up until the time that I got there. 30

Mr. Sacks: I still object.

The Court: Sustain the objection. Too remote.

Q. Will you produce any cancelled checks or re-

ceipts you may have showing money paid by you for the improvements which you have mentioned?

A. There is a check for \$200 paid to Wedow & Myers, for constructing the dike.

Q. When was the dike constructed?

A. The dike was constructed during 1922, July of 1922.

Q. After you took possession?

10 A. Yes.

(Check offered, received in evidence and marked Exhibit C26.)

Q. What is this check?

A. Another check paid to Wedow & Myers for work done on the dike, 1922.

20 (Photograph offered, received in evidence and marked Exhibit C27.)

Q. What is this check?

A. Check to the Easton Western Road Machinery Company for \$29.75, representing the price of two scoops used in construction work on the premises.

(Check offered, received in evidence and marked Exhibit C28.)

30 A. \$17.98 to Sears & Roebuck, representing the price of plumbing materials purchased for the premises.

(Check offered, received in evidence and marked Exhibit C29.)

A. Another check to Sears & Roebuck, \$19.41,

represents the price of materials installed in the house, plumbing.

(Check offered, received in evidence and marked Exhibit C30.)

Q. You give me a bunch of checks for stock, and a bunch for materials.

A. I am sorting the material out, that is the construction cost and expenditures. 10

Q. Give them to me in a group so we won't take up the Court's time. Now, Mr. Danenhauer, I show you a group of checks, and will you tell the Court in general what they represent and what they were paid for?

A. Represent expenditures by me for labor and materials on the premises.

(Bundle of checks offered, received in evidence and marked Exhibit C31.) 20

Q. Do you have any other cancelled checks showing expenditures made by you on the premises?

A. I have cancelled checks here showing expenditures made in the purchase of horticultural materials, stock, plant stock, and so forth, that are used in the premises in developing.

(Checks offered, received in evidence and marked Exhibit C32.) 30

Q. Mr. Danenhauer, do you have any other receipt showing moneys paid for construction work on the premises or horticultural development?

A. I have here a receipt showing money paid for materials used on the premises, and horticultural work.

(Receipt offered, received in evidence and marked Exhibit C33.)

Q. What else do you have?

A. Invoices and correspondence relative thereto, all in relation —

10 Q. Now, have you figured up, Mr. Danenhauer, about how much money you spent since you took possession of the premises, how much money did you spend in the erection and construction of buildings, repair of buildings on the premises and horticultural development?

A. Only approximately.

Q. About how much?

A. As near as I can tell, in the neighborhood of \$21,000.

Q. Outside of or including your services?

A. Including everything.

20 Q. Exclusive of services, about how much?

A. I would say roughly, as near as I can tell, \$10,000.

Mr. Sacks: If your Honor please, I hadn't any opportunity of examining these bills, they were just offered in a folder.

The Court: You may do that on cross-examination.

30

Q. What reputation did your development acquire as a result of this horticultural development?

Mr. Sacks: I object to that, if your Honor please.

The Court: Sustain the objection.

Q. Did you have any magazine or newspaper articles showing the notoriety given your horticultural development?

Mr. Sacks: I object to that, if your Honor please.

The Court: Sustain the objection.

Q. What quantities of iris do you cultivate and grow on these premises? 10

A. What quantities?

Q. Yes.

A. I don't exactly understand your question.

Q. Can you approximate the number of roots you develop, or flowers?

A. It would be very difficult.

Q. Your mother died when?

A. November, 1921.

Mr. Morris: With the consent of counsel, I would like to offer in evidence copy of the last will and testament of the complainant's mother. 20

A. No. I am wrong on that date. Nvember, 1927, I should have said, instead of 1921.

(Copy of will received in evidence and marked Exhibit C34.)

Q. Do you know where your mother died? 30

A. Yes, sir.

Q. Where?

A. 2811 Poplar Street, Philadelphia.

Q. At her own home.

A. Yes, sir.

Q. When and where did your father die?

A. Father died at Primace, Delaware County, January 30th, 1928, at the home of my brother.

Q. One of the defendants is your brother, George Edward Danenhauer?

A. Yes, sir.

Q. What is his wife's name?

A. Margaret F. Danenhauer.

Q. Do they have any children?

A. Yes, sir.

10 Q. What are their names?

A. Mary and Edward, two.

Q. Mary and Edward?

A. Mary and Edward.

Q. Do you know about how old they are?

A. About eight and ten.

Q. Do you have a child?

A. I have.

Q. How old is she?

A. Three.

20 Q. Eight?

A. Three.

Q. What is her name?

A. Joan Louise.

Cross-examination.

By Mr. Sacks:

30 Q. Mr. Danenhauer, you say, of course, that you owned 1712 North Edgewood Street, that is where you resided in Philadelphia?

A. Yes, sir.

Q. Where was this property that you were going to buy?

A. Tredefern Township, Chester County, Pennsylvania.

Q. What sort of property was that?

A. Sixty-five acres of low, muck-bottom land, planted in lilac, and there was a watercress development in that. It was the property, I believe the owner was Franz Warsupie.

Q. Is that the property somebody owned and you were going into partnership with them?

A. No, sir.

Q. You were going to buy that outright?

A. Yes, sir.

10

Q. Chester County?

A. Chester County.

Q. How much was that house of yours worth in Philadelphia at that time?

A. Seventy-five hundred, I think. I am not sure.

Q. How much did you sell it for?

A. Or forty-five hundred—forty-five hundred.

Q. How much mortgage did you have against it?

A. I can't recall that figure exactly, couple of thousand dollars.

20

Q. So that you had about \$2500 equity in that property?

A. Yes.

Q. And you had to have that \$2500 equity to buy this property up in Chester County, is that right, that \$2500 cash?

A. Yes.

Q. Did you have any other equities besides this house in cash on hand?

A. No.

30

Q. That is all you had?

A. A small bank account, yes.

Q. Now, you didn't buy this property in Chester County?

A. No, sir.

Q. What was your business before this time when you lived at Edgewood Street?

- A. Civil engineer.
- Q. Had any experience in raising flowers?
- A. Yes, I had.
- Q. Commercially?
- A. No.
- Q. Just around the house, probably?
- A. And at Mays Landing, I had had flowers growing there since 1919.
- Q. Where was this, on your father's property?
- 10 A. Yes, sir.
- Q. On your mother's property?
- A. Yes, sir.
- Q. You had put those flowers in there, had you?
- A. Yes.
- Q. And raised them there?
- A. Yes.
- Q. How many flowers had you put in, very many?
- A. Quite a few, yes, sir.
- Q. How many would you say, how many acres?
- 20 A. 1919, of course the planting was just started, so it wouldn't be a proposition of acres, it would be a matter of rows; I would say there were two rows.
- Q. From 1919 for two years, from 1919, or until about 1921, how much experience had you had with raising flowers in Mays Landing?
- A. From 1919 on?

Mr. Morris: Two years, from 1919 to 1921.

- 30 A. I had had the experience of those years.
- Q. How much land had you cultivated in flowers?
- A. Oh, I say two rows.
- Q. In those two years, you had cultivated two rows?
- A. Started with two rows and that developed upward and on, I would say a half an acre.

- Q. A half an acre?
A. Yes, sir.
Q. So that up until 1921 there was about a half an acre in cultivation in flowers in Mays Landing?
A. Yes, or more.
Q. Or more?
A. Or more.
Q. Might have been more?
A. Yes, sir.
Q. Which you had planted? 10
A. Yes, sir.
Q. Did you take care of those flowers?
A. Yes, sir.
Q. How often did you get down to Mays Landing?
A. During the time that I was engaged with the Lakewood Engineering Company in engineering work, I would get down there probably once a month or less. Later on I got down there oftener.
Q. Now, when was it that you were engaged in the engineering work that you say you got there 20 once a month or less?
A. That was in about 1919.
Q. 1919, for how long a period was it that you only visited the farm once a month?
A. While the plants were there, a period of a year.
Q. Who took care of the plants in the meantime?
A. I suppose Father did.
Q. Father plant any of those flowers there?
A. He helped me plant several importations, yes, 30
sir.
Q. He helped you to plant them?
A. Yes, sir.
Q. He was living on the farm there, wasn't he?
A. During the summer.
Q. So he had to help you plant them when he

was living there and you were only visiting there once a month or less?

A. If an importation would come in that would be necessary for me to go there and place them in the ground, regardless of the time it got there, on one occasion in particular I recall, in December, 1920, or '21, Father went down, the importation was so large that Father went down with me to help me put it in. My brother-in-law went with me at the
10 same time.

Q. So whenever he received any importations, as you call them, he would call you from Philadelphia, and you would come to Mays Landing to help him put them in the ground?

A. Not always.

Q. How long had your father been on the farm prior to 1919?

A. Since 1902.

Q. He had been on the farm for seventeen years?

20 A. Yes, sir.

Q. And yet he would have to have your help to put some flowers in the ground, and you were a civil engineer and had no experience, is that so?

A. No, he didn't have my help to put any flowers in the ground. I had his help to put my stock in the ground.

Q. But I say, this was all your stock?

A. Stock that I purchased from France and England.

30 Q. In 1919 why did you put your stock in the ground in Mays Landing?

A. Because I was using that as a development.

Q. On what sort of an agreement or arrangement were you using that ground as a development?

A. Under the agreement with my father and mother that I could make use of those premises to grow my stuff, as it was a desirable place to grow

plants, and if I would bring the stuff there and improve the place, it would finally become mine.

Q. When was that made?

A. That was more or less continuous, that sort of an agreement, it was mentioned frequently, it wasn't at one particular time.

Q. When was it first mentioned, that you know of?

A. I should say in 1919 or thereabouts, as near as I can tell.

10

Q. And there were no flowers around until 1919?

A. I wouldn't say no flowers, just a few things planted around, nothing of any account.

Q. So that there was an agreement in existence, an oral agreement between you and your father and mother, that some day that place would be yours, as far back as 1919?

A. Very probably so, yes.

Q. Very probably?

A. It was understood.

20

Q. It was understood? What gave you to understand that?

A. If there hadn't been any such understanding, I would not have risked any expenditures there, a number of plants in, if I had felt at some future time I would lose them.

Q. Before 1919, you risked moneys and spent considerable amount to put plants in there because you had expected some day that place would be yours?

A. Yes, sir.

30

Q. That is right?

A. Yes, sir.

Q. How much money would you say you spent from 1919 to 1921, to improve the place and put plants in?

A. Several hundred dollars.

Q. Several hundred dollars?

- A. Yes, sir.
- Q. In two years?
- A. Yes, sir.
- Q. Wasn't more than that?
- A. I can't say.
- Q. Might have been more than that?
- A. Very probably might, yes, sir.
- Q. Now then, when was it that you talked about buying this place up in Chester County?
- 10 A. About 1921.
- Q. 1921? Now, why did you think of buying a place in Chester County when you expected this place to be yours as far back as 1919?
- A. The results that I was obtaining at Mays Landing were not quite what I looked for.
- Q. Now, what sort of results do you mean, Mr. Danenhauer, in the plants?
- A. Yes, sir.
- Q. Condition of the soil?
- 20 A. Yes, sir.
- Q. That is why you wanted to buy a place in Chester County?
- A. Yes, sir.
- Q. But despite the fact that the soil was poor in Mays Landing, you were not getting results over a period of two years, you nevertheless came down to Mays Landing in 1922 and settled there?
- A. At my father's insistence.
- Q. He insisted that you come there?
- 30 A. Yes, sir, insisted that I abandon the proposition of purchasing the property at Paoli, and put all my investment in the Mays Landing property.
- Q. What was your investment in the Mays Landing property?
- A. To put all my future investment in the Mays Landing property.
- Q. Your future investment?

A. Yes, sir.

Q. So that your assets of \$2500, and some money which you had, he told you not to put in Chester County, but to save it and put in the Mays Landing property?

A. I wouldn't say that they were the only assets, no.

Q. What other assets were there?

A. Assets of stock that was already in the ground there.

Q. Amounting to a couple of hundred dollars?

A. Or more.

Q. That was yours, wasn't it?

A. Yes, sir.

Q. And you had already had that in?

A. Yes, sir.

Q. What else?

A. Labor that had been put on the property up to that time.

Q. Well, that was, you expected that labor to be all for your benefit during those two years that you worked there, didn't you, some day?

A. Yes, sir.

Q. Then, you say that in 1921, when you had this proposition in Chester County, you decided Mays Landing wasn't good as a future for raising flowers, and you wanted to go up to Chester County?

A. Yes, sir.

Q. What happened, and when did it happen to change your mind about going to Chester County?

A. I had taken my wife to see the property.

Q. Taken your father, too?

A. I had taken my father to see the property.

Mr. Morris: Which property?

A. In Paoli.

Q. Pennsylvania?

A. Pennsylvania, yes, sir. Coming home he very decidedly advised against purchasing the property, and he said, "Your business will be new, you will have more or less trouble in establishing, you haven't any too much money; if you will bring all your plants and your proposition to Mays Landing and stay there with us, as your mother wants you to, you needn't worry about the taxes, I will carry
10 the taxes; you improve the property, develop yourself there and let it come along, as it will, and as soon as it puts itself on a paying basis, I want you to take your brother into the business with you, and you will eventually own the place."

Q. And it was upon that suggestion of your father's that you decided to give up this Chester County proposition?

A. Yes, sir.

Q. Now, what other plants were there that you
20 said that you had that your father told you to bring up to Mays Landing?

A. A number of plants that I had in transit from France; it took a month, sometimes three, five and six months to get those.

Q. You ordered those plants originally to plant in Mays Landing, didn't you?

A. Wherever I happened to be at the time of their arrival.

Q. You didn't know whether you were going to be
30 in Mays Landing or going to have another farm —

A. No.

Q. When you ordered those things?

A. No, probability was that they would be planted in Mays Landing.

Q. Now, was it upon that suggestion of your father's that you moved to Mays Landing?

A. Yes, sir.

Q. Was there any suggestion coming from any other source that made you move?

A. That same suggestion had been repeatedly made by Mother prior to that time.

Q. Prior to that time?

A. Yes, sir.

Q. Did she make that suggestion at the time that you were going to buy this Chester County property? 10

A. Through Father, yes, sir.

Q. Through Father, how do you know that she made it through Father?

A. Because she discussed the thing upon our arrival.

Q. What did she say?

A. She said that she wanted us there with her, she would rather have us there with the flowers growing around her, she liked them, and if I would abandon the idea of moving to Paoli, she would appreciate it very much, if I would do the planting there, that she enjoyed the flowers as much as I did, and that I had nothing to worry about, that eventually the place would be mine. 20

Q. Then she also said that?

A. Yes, sir.

Q. Why didn't you say that before when I asked you? You said it was your father's suggestion that caused you to go to Mays Landing, but now you say it was also your mother's suggestion? 30

A. I said nothing of the sort, sir.

Q. Pardon me?

A. I said nothing of the sort.

Q. You said nothing of the sort?

A. No, sir.

Q. What do you mean, you said that you meant

that you didn't say it was upon your father's suggestion?

A. I told you that made my decision —

Mr. Morris: If your Honor please, I don't see any inconsistency there.

The Court: Sustain the objection. The record is before us.

10

Q. You first went on this land in accordance with an agreement or understanding with your father and mother as far back as 1919; is that so?

A. Yes, sir.

Q. Did you give up any job or give up any plans or any opportunities or any possibilities at that time to go on the land in 1919?

A. Yes, I would say that I did, yes.

20

Q. What?

A. The development interest, the increasing interest in this horticultural project was accompanied with a diminishing interest in sales of road machinery which I was conducting at that time.

Q. That is what you would say you lost in diminishing interest in your road machinery?

A. Yes.

Q. Sales of your road machinery?

A. Yes, sir.

30

Q. And that diminishing interest was brought about because you called at your father's place over a period of a year, once a month or less?

A. No.

Q. You said in your direct examination that when you went to this property in 1922 the land was uncultivated; did you mean that, that it was uncultivated?

A. Oh, yes.

Q. Now, there was this land that you have cultivated at the time that you moved in, wasn't there?

A. The portion that I planted was cultivated, yes.

Q. Then it wasn't wholly uncultivated, was it?

A. Very largely so, it was a wilderness.

Q. Pardon me?

A. It was more or less of a wilderness.

Q. The road was impassable?

A. To modern cars, yes; unless you cared to have 10
your car ruined, coming through brush, it was impassable.

Q. Your father and mother made that their home there, didn't they?

A. During the summer months, yes, sir.

Q. Now, you said something about a sluice being rebuilt by you; who had built that sluice originally?

A. I said nothing about a sluice being rebuilt by me.

Q. Didn't you mention that as one of the items 20
that you had done?

A. Sluice was built.

Q. You built the sluice?

A. The sluice was built by Wedow & Myers.

Q. Who paid for it?

A. About the only money that was paid for it,
was—it has never been paid for totally.

Q. Never been paid for?

A. No, sir.

Q. So that that is not one of the expenditures 30
you put on the property, is it?

A. My friends constructed the sluice and I never paid for it, by my father, the sluice would not have been constructed by the firm of Wedow & Myers had I not assumed the responsibility for it.

Q. Do you know your father's signature and recognize it?

- A. Yes, sir.
- Q. Who is Albert C. Wescoat, do you know?
- A. He is a roofer and house mover in Atlantic City.
- Q. Built a sluice?
- A. Yes.
- Q. When was that sluice built?
- A. 1922, I think it was.
- 10 Q. Couldn't have been built in 1924, could it?
- A. There were repairs made to it by Albert Wescoat at that time, the sluice broke through and it was necessary for Albert Wescoat to rebuild it.
- Q. Your father paid for those repairs?
- A. Albert Wescoat, I believe he did, yes, sir.
- Q. You were on the property then, weren't you?
- A. Yes, sir.
- Q. Why didn't you pay for them? Was that one of the things your father was supposed to do?
- 20 A. There were many things there that Father paid for, many things that I paid for.
- Q. Many things that Father paid for?
- A. Yes, sir.
- Q. What was the first thing you did when you got on this property, as far as improving it was concerned?
- A. Put some of the land in better shape for cultivation.
- Q. That was your own labor, wasn't it?
- A. Yes, sir.
- 30 Q. You spend any money soon after you got on the property?
- A. Yes, sir.
- Q. For what?
- A. Labor.
- Q. To whom?
- A. I had various laborers engaged there, different times, as high as four at a time on the place.

Q. How much did you expend, would you say, in 1922, to improve that property?

A. I can't tell you that, sir.

Q. Couldn't tell?

A. No, I couldn't tell you that.

Q. Did you spend a thousand dollars or a hundred dollars or two hundred dollars?

A. I can't even approximate it, sir.

Q. You couldn't say whether it is a hundred or a thousand?

A. It is not a thousand.

Q. It wasn't a thousand dollars in 1922?

A. No.

Q. Were you working when you started to move on this property at any other vocation except the raising of flowers?

A. No, sir.

Q. Never had any other source of income?

A. No, sir.

Q. Where did you get this money that you spent in 1922 to put in this property?

A. That had been from my salary and savings, that I had converted.

Q. You had saved enough money from your salary?

A. From my salary was used up, and sale of the plants as I made, they was replaced.

Q. You mean the salary that you had made prior to the time that you moved on this property, or salary you made afterwards?

A. As the salary was made it was largely spent in buying plant stock to put in here.

Q. Had you made any salary after 1922, after you moved on this property, did you?

A. No, except the income I received from the plants.

10

30

Q. Income you received from the sale of the plants?

A. Yes.

Q. They were all your plants?

A. Yes, sir.

Q. Father paid for none of them?

A. He paid for none of my plants, no. He paid for some few plants that he used for himself.

10 Q. What did he use them for, to sell, or just for his own pleasure?

A. Only his own pleasure, more than anything else.

Q. How many plants or how much of a plot would you say that he cultivated personally?

A. About one-eighth of an acre.

Q. About one-eighth of an acre?

A. Yes.

Q. Why isn't that sluice repaired now?

A. Why is it not repaired now?

20 Q. Yes.

A. You will have to ask the estate that question.

Q. Oh, I see, you are depending upon the estate to pay for those things, are you?

A. I don't know who is to pay for the repair of that sluice now.

Q. You considered that this property was yours all the time, didn't you?

A. Yes, sir.

30 Q. And you were paying for the repairs and for the upkeep?

A. Yes, sir.

Q. In fact, you spent ten thousand dollars?

A. Yes, sir.

Q. Still you have been unable to pay for this sluice, or won't pay for it?

A. After my mother's death I discovered that there was some other disposition to be made of the

property, that is why I am before the Chancellor now.

Q. This sluice broke after your mother's death, didn't it?

A. Yes, sir.

Q. Now, did you make all the improvements on this property, on the houses, buildings, outhouses, shop and everything, at your own expense, after you moved on this property?

A. Not entirely, no.

10

Q. Your father helped to pay for some of it?

A. For the lumber.

Q. Pay any plumbing bills?

A. No. One minute, yes, he paid for some plumbing fixtures, the installation of the plumbing and piping I paid for.

Q. Why was it he paid for some plumbing fixtures; did you ask him to pay for them?

A. That was understood, when the addition was started, that the plumbing was to be put in there, and he was to purchase the plumbing fixtures from a firm in Philadelphia. I wanted to buy them myself, in fact, from Fleck Brothers in Atlantic City, but he said that he could probably do better in Philadelphia, and he purchased them at his own expense from Mark & Company. 20

Q. All these things he bought, did he pay for anything else there besides plumbing fixtures?

A. Lumber.

Q. Who did he buy that from?

30

A. Egg Harbor Lumber Company.

Q. Pay for anything else?

A. Cement from the Egg Harbor Lumber Company.

Q. Anything else?

A. Things of that nature.

Q. Things of that nature; what was it you spent money for?

A. The same sort of thing.

Q. In other words, he paid part of it and you paid part of it?

A. Exactly.

Q. You had lumber bills and he had lumber bills?

A. Yes, sir.

10 Q. What lumber bills did you have and what lumber bills did he have, what parts of the property?

A. That is another difficult thing to say, I would go out and buy lumber, go out and buy cement at my own expense, go out and purchase labor at my own expense, pay for it in check and cash.

Q. This was all contrary to your original understanding, with your father and mother, that they were to pay the taxes and you could live on the place?

20 A. That wasn't contrary to that understanding, no. They were paying the taxes.

Q. Then, your understanding was that they were to pay for everything?

A. No such thing.

Q. What was your understanding?

A. I have told you what the understanding was.

Q. I don't recall what you said. Do you mind repeating it?

30 A. The understanding was that I was to come there and develop the horticultural establishment, and assist in developing the place, and bring my own labor and materials and plants in there, with the understanding that I was to have free rent there, free thought in developing anything I wanted to, the taxes would be taken care of by Father, that was specifically —

Q. Is that the only thing he was to take care of?

A. There was a method of distribution.

Q. So far as the house, buildings and so forth, you understood he was to pay for those?

A. No.

Q. Did you understand that you were to pay for them?

A. We had no understanding like that at all.

Q. You had no understanding like that at all?

A. No.

Q. With this lumber, cement, plumbing and various other things that your father spent, you say that you have spent ten thousand dollars in improving that place in cash?

A. Yes, sir.

Q. Where did you get that money?

A. The money was the result of the income from the plants, my own salary prior to the time of coming there.

Q. How much of a salary did you have prior to coming there, Mr. Danenhauer, that you talk about? 20

A. \$3,000 a year.

Q. How much did you save out of that, how much money did you have in cash when you walked into your father's farm?

A. I can't answer that question, sir.

Q. Why not?

A. I don't know.

Q. Did you have a thousand dollars, ten thousand dollars, or a hundred dollars, or what?

A. I can't give you a definite answer on that. It wasn't any ten thousand dollars, or it wasn't a hundred dollars, but I can't tell you what the figure is, and there is no use guessing at it. 30

Q. During this time that you put in these improvements and purchased this material, did you borrow any money from your father to do this with?

A. I don't know that I did. I can't say that I did. I may have.

Q. You may have?

A. Yes, sir.

Q. Would you say that your father borrowed any money from you to put in any of these improvements?

A. Yes, sir.

Q. He borrowed some from you?

10 A. Yes.

Q. How much?

A. Sometimes as high as \$200 at a time.

Q. Your father was pretty well fixed, wasn't he? I mean, ordinarily, I don't mean he was a millionaire, he had enough to take care of himself and his summer home and winter home, didn't he?

A. Yes, he had an income.

Q. Why was it necessary for him to borrow money from you?

20 A. I can't answer that.

Q. You don't know?

A. No.

Q. And you were the money man in that business, you had all the money, and whatever improvements your father made or whatever he wanted to make, he borrowed the money from you to make them?

A. No, that is not true.

Q. That is not so?

A. No.

30 Q. Why did he have to borrow money from you, do you know?

A. I can't tell you that, sir.

Q. Do you know how much he borrowed from you?

A. Borrowed?

Q. Yes.

A. No, I couldn't tell you that, from varying

sums, he has borrowed as high as \$200 at one time, \$100 at another, the time of his wife's death he borrowed \$100, and brother borrowed some.

Q. Did he ever pay it back to you?

A. Some of it.

Q. Pay you back that \$200?

A. Which \$200 was that?

Q. The one you are talking about?

A. Wedow & Myers, for construction of the sluice. 10

Q. You said he borrowed \$200 from you?

A. Yes, sir.

Q. Is that what he borrowed the \$200 for?

A. Yes, sir.

Q. And he paid for that to Wedow & Myers?

A. Paid for that, there were two other checks of \$100 that I haven't paid.

Q. You testified before that the sluice wasn't paid for?

A. It is not paid for. 20

Q. How much still due on it?

A. About \$1200.

Q. I will show you some checks dated from 1924, I guess, is the first one that I see here, until 1927, all made to you; is this your father's signature?

A. Yes, sir.

Q. Can you say why those various sums of money were given to you by your father?

A. No, sir, I can't, except that they were probably, some of them may have been repayments of money loaned, and some of them may have been money that I borrowed from him and later repaid to him. 30

Q. Did you have any cancelled checks to show that you repaid the money?

A. Yes, sir.

Q. Where are they?

A. Want me to identify all these?

Q. Yes, you may look at all of them.

(Checks produced.)

Q. That is all you have, is it?

A. Yes, sir.

10 Q. So all you have are three cancelled checks, one for \$25, one \$14, which you have marked here, "Loan to N. L. D.," that is your mother, is it?

A. Yes.

Q. \$14?

A. Yes.

Q. That is not repayment of a loan to your dad, is it?

A. No.

Q. Another for \$6.

A. That is all I have here.

20 Q. Twenty-five and six? All right.

(Checks marked D1 for identification.)

Q. You say you had the two old buildings demolished and removed?

A. Demolished them myself.

Q. You had a foundation built on the house?

A. Built it myself.

Q. He paid for the materials?

30 A. Which foundation are you speaking of?

Q. The one you testified about, foundation of the house.

A. There were two foundations to that.

Q. Who paid for the material on both of them?

A. I paid for the cement in the foundation of the house, Father paid for the block. The foundation,

new shop, I believe Father paid for both the cement and block.

Q. What sort of work did Aurelio do at that house, John A. Aurelio?

A. Hauling.

Q. Hauling what?

A. Mostly household goods, like trunks for Father, anything that he might have sent down to the railroad station.

Q. Didn't he haul sand for you and fill in the 10 road?

A. Yes, fill in the road.

Q. Have you paid for it?

A. No.

Q. Your father paid for hauling that?

A. Yes.

Q. You had the front porch constructed?

A. Constructed it myself.

Q. You did it yourself?

A. Yes, sir.

Q. Who paid for the material or lumber?

A. Father paid for it.

Q. All of those things that you testified to that you did and paid for, you did not actually pay for them, did you, your father paid for them?

A. All the things that I testified that I actually did and paid for, I actually did and paid for, yes.

Q. And you testified that you paid for the foundation of all of the house?

A. Yes, where there was material bought.

Q. You testified that you paid for the front porch construction?

A. No, I did not.

Q. You testified that you paid for the cellar?

Mr. Morris: Your Honor please, can't we refer to the testimony?

The Court: There is no need of doing that.

A. I don't see where there is any mistake about that. I testified that Father and I paid for the material and I did the work.

Q. Now you want to change that testimony?

The Court: No, that won't do.

10 Mr. Sacks: Pardon me, I am sorry.

Q. Now I understand your testimony to be that you and father paid for the material and that you did the work.

A. I did the work and I purchased work done at my expense, I employed labor and paid for it, yes, sir.

Q. Did you pay for any part of the cellar construction?

20 A. Which cellar are you speaking of? There are two cellars there.

Q. Did you pay for any?

A. Yes, I paid for material and paid for labor, and did labor myself on them.

Q. Did you pay for any part of the front porch construction?

A. There was no labor that I employed on that front porch. That was my own labor.

Q. No lumber?

30 A. No lumber, no, sir.

Q. Did you pay for any part of the sun parlor construction?

A. Yes.

Q. What did you pay out on that, Mr. Danenhauer?

A. Why, the labor, plumbing installation, such as

pipefittings, force pump that was to go in the cellar to drive the pressure of the water through the plumbing system, I purchased at my own expense.

Q. Who paid—was there a furnace installed there?

A. Yes, sir.

Q. Who paid for that? .

A. Father. I constructed the foundation for it, cut the opening and helped install it.

Q. Did you pay for all the carpenter labor or did 10 your father help to pay for the carpenter labor?

A. Father paid for some at times, too.

Q. Father paid for some of the carpenter labor?

A. Yes, sir.

Q. You have testified, haven't you, Mr. Danenhauer, that there was an outhouse and shop above it, built by you?

A. Yes, sir.

Q. Was there an apartment in this house, or liv- 20 ing quarters?

A. Three rooms, second floor.

Q. Who were those—who was that place built for to live in there?

A. It was built for a shop, I was to use the shop as a garage, I constructed an office that I was to make use of. The basement was to be used as storage and packing house, and the three rooms upstairs were to be used by any laborer that I would later engage on the premises.

Q. Wasn't that apartment or whatever it was con- 30 sisting of three rooms, built for the specific and sole purpose of use of you and your family when you came down on the farm to visit?

A. Absolutely not.

Q. Now, coming back for just a moment, Mr. Danenhauer, to that place up in Chester County, how

much was the purchase price of that place, do you recall?

A. \$13,000.

Q. How much cash did it require?

A. That was never developed, the arrangements were being made to finance the proposition by Mr. Francis Lambert, real estate man on 63rd Street.

Q. You don't know how much cash you were required to put in?

10 A. It was never concluded, no, sir.

Q. Were you in a position to comply with the limited amount of money you had on hand?

A. I felt sure arrangements could have been made.

Q. But you don't know whether they would actually have gone through or not, do you?

A. Never went that far.

20 Q. Now, during those two years of 1921 and 1922, let's see, three years, before you went on this property you say you had no idea how much money you spent actually on the development of that property?

A. No, sir.

Q. During that period of three years?

A. During the entire period I can't tell exactly.

Q. What do you mean by the entire period, Mr. Danenhauer?

A. From that time to date.

Q. Then the \$10,000 that you have testified to is only your guess, is that so?

30 A. It is as close an approximation as I can let you have.

Q. Upon what do you base those figures?

A. The list of items submitted there that have been gone over, that is, I listed there.

Q. Did you sell this house on Edgewood Street, Philadelphia?

A. Yes, sir.

Q. What did you do with the money that you got out of that house?

A. Part of it was used in developing this property.

Q. Part of it?

A. Yes, mortgages, of course, had to be paid off.

Q. I know, but I am talking, Mr. Danenhauer, about the cash that you got. Of course, I understand that you didn't get all cash for the house, but I want to know what you did with the cash that you received out of the sale of that Edgewood Street house. 10

A. I would say that it was used in this nursery proposition, yes, sir.

Q. When would you have used that money, can you tell us?

A. When would I have used it?

Q. Yes.

A. Over the period of time that I took possession, immediately after taking possession. 20

Q. You say you would use it immediately after taking possession? How immediately, period of a month or a year, would it have been?

A. May extend over several months, yes.

Q. Would it have been as much as two years after taking possession that you would use that?

A. Hardly.

Q. When did you sell this property in Philadelphia? 30

A. In 1924.

Q. That was two years after you took possession, wasn't it?

A. Yes.

Q. So that you didn't have the use of that money for two years, did you?

A. No, the property was for sale at that time. I had the use of the income from the plants during that time.

Q. How much ground had you developed from 1922 to 1924, Mr. Danenhauer?

A. It was all in this same area that I have showed you pictures of.

Q. How much would that have been for that period of two years after you took possession?

10 A. Now, just exactly what do you mean by developing, do you mean bringing down to actual cultivation, or clearing brush?

Q. So that you could use it commercially.

A. Well, I would say fifteen acres.

Q. So in those two years you developed and were ready to produce flowers from fifteen acres of ground?

A. And probably more.

20 Q. Did you do any clearing from 1924 up to the present?

A. Clearing all the time, yes, sir.

Q. Now you say from 1922 to 1924, you cleared fifteen acres?

A. Yes, sir.

Q. Or more?

A. Yes, sir.

Q. In your direct testimony you said, did you not that up to the present time you have about fifteen acres cleared?

30 A. Yes, sir.

Q. So that from 1924 to this time you have cleared nothing?

A. Much of the field that is being cleared is not used for horticultural purposes, there are conditions there that arise that necessitate constant clearings.

Q. I just want to check one point, Mr. Danen-

hauer, that I think of yet, and that is this, you testified on direct examination, did you not, that you had one child?

A. Yes, sir.

Q. You have two, haven't you?

A. Yes, one child by this marriage.

Q. Forgot about the other one who is a defendant in this action?

A. Yes.

Q. How old is that other boy? 10

A. About twenty.

Q. After your mother died, Mr. Danenhauer, did you visit your brother, George Edward, who is a defendant in this action?

A. Yes.

Q. And you went to his home, did you?

A. Yes.

Q. How shortly after your mother died would you say?

A. Immediately. 20

Q. Why did you go there?

A. At his request.

Q. At his request?

A. Yes, sir.

Q. What did you discuss with him?

A. Discussed the condition of the estate.

Q. Did he tell you about the existence of a will?

A. He did.

Q. Did you know anything about it up until the time that you were called at your brother's home? 30

A. Absolutely nothing.

Q. What did you say about the will, Mr. Danenhauer, when you saw that both you and your brother had merely been left a life estate in this property, what did you say to him about the will?

A. I told him that the will was not in accordance

with my understanding of Mother's intentions during her life, and that it was my purpose to contest it and defend my own rights and the right of my child.

Q. And you told him that immediately?

A. Yes, sir.

Q. When you say the right of your child, which child do you mean, this one?

A. I was speaking of this child here that had been practically disinherited.

10 Q. Joan?

A. Yes, sir.

Q. You were not interested in your other boy who had been left \$5000 or something of the sort, in this will, were you?

A. Not at all.

Q. He is your boy, isn't he? I mean, he is not your step-child or anything of that sort, is he?

A. No, sir.

20 Q. Now, did you make any suggestions to your brother as to what he ought to do with this will?

Mr. Morris: I object, if your Honor please. How is that material?

The Court: Sustain the objection. It is not cross-examination.

Q. Any of this writing on this paper in your handwriting, Mr. Danenhauer?

30 A. Yes, sir, that is partly in my handwriting.

Q. With the exclusion of what?

A. I don't believe this is my writing.

Q. Just those three lines there?

A. Yes.

Q. Referring to "342 Laurel Avenue, 1200, 344 Laurel Avenue, 1200, 416 Laurel Avenue, 2000"?

A. Yes, sir.

(Paper marked D2 for identification.)

Q. Mr. Danenhauer, another thing I think about, on your trip back after your father had—I think of this, too, Mr. Danenhauer, why was it that you took your father up to see the property in Chester County? Any particular reason?

A. To see whether he had any opinions or suggestions that he could make that would be of value.

Q. You didn't bring him up with the purpose of interesting him in loaning you money for the purchase? 10

A. Positively not, no.

Q. You said, did you not, Mr. Danenhauer, that on your way back, in your conversation with your father, that he suggested that you should not buy this property in Chester County, and that if you did not buy it in Chester County that you could go on this farm in Mays Landing, develop it, and when it became a paying proposition, take your brother in with you? 20

A. That was developed, too, yes, sir.

Q. That was the conversation?

A. Yes, sir.

Q. So that it was the intention of your father, was it not, at that time, or didn't you gather from that conversation that you and your brother were to have this property jointly in Mays Landing, and develop it together?

A. No, not at all. He wanted me to bring my brother there as an employe so he could make some income. 30

Q. You mean—do you have more than one brother?

A. This brother here.

Q. He wanted you to take him in as an employe?

A. Yes, sir.

Q. What was your brother doing at that time, Mr. Danenhauer?

A. I think he was in the hardware business. I am not sure.

Q. Did he have a pretty nice business, or was it a small business?

A. I don't know anything about the business at all.

Q. Is this in your handwriting?

10 A. Yes, sir.

(Paper marked Exhibit D3 for identification).

Q. From the time that you took possession of that property, after 1922, and moved in there with your family, what part of the building did you occupy? Were there more than one building, Mr. Danenhauer, there?

A. No, it was all living quarters —

20 Q. You occupied the house jointly with your father and mother and your wife?

A. Exactly.

Q. Did you remain continuously on that property from that time up until now?

A. With the exception of the closed winter months, say December and January.

Q. December and January?

A. For the first two years.

Q. 1922 to 1924?

30 A. About that, yes, sir, after that continuously.

Q. Do you remember an occasion in 1923 when your mother or your father sent you, or your family, away from that property?

A. No such occasion, no.

Q. Wasn't any such occasion?

A. No, sir.

Q. You were always on the best of terms with your mother, were you not?

A. Yes.

Q. Wife was also?

A. Yes.

Q. Is this signature, or a photostatic copy of your signature?

A. Yes, sir.

(Paper marked D4 for identification). 10

Mr. Morris: You have the original of that, do you?

A. I have the original here, yes.

Mr. Morris: Want it?

Mr. Sacks: Yes. Will you kindly offer it?

Mr. Morris: You want to offer it for identification now? 20

Mr. Sacks: Yes.

(Paper produced).

Q. This is the original of your settlement certificate when you sold that house on Edgewood Street?

A. Yes. 30

(Paper marked D4 for identification, in place of photostatic copy).

Q. Who paid for the food while you were in this house, Mr. Danenhauer, for you and your family?

A. Father and Mother paid for a portion of it, and I paid for the larger portion of it.

Q. Who paid for the food for the animals that were on the property?

A. I paid for nearly all of that.

Q. You paid for nearly all of it?

A. Nearly all of it, yes, sir.

Q. Who did you buy it from?

A. Bought it from the Mays Landing Water
10 Power Company.

Q. Are those the people that conduct the Mays Landing Department Store?

A. Yes, sir.

Q. Did you buy anything else besides, I mean did you buy from anyone else besides the Mays Landing Department Store, food and things of that sort, that was required around the farm, cracked corn for the chickens?

A. For the animals?

20 Q. For the animals.

A. Abbott & Company I bought some from.

Q. Did you buy anything on your father's name after his death from the Mays Landing Department Store?

A. Nothing that I can recall.

Q. Nothing that you can recall?

A. No, sir.

(Recess taken until 1:30 o'clock P. M.)

AFTERNOON SESSION.

Trial of the cause resumed at 1:30 P. M.

HOWARD LEE DANENHAUER, resumed:

Re-direct examination.

10

By Mr. Morris:

Q. Mr. Danenhauer, I don't recall, did you testify as to the date when you took possession of this property in Mays Landing?

A. I think I did, yes, sir.

Q. What was the date?

A. It was about March, 1922.

Q. You told Mr. Sacks between 1919 and 1921 there was about a half acre of this property in development?

20

A. Yes, sir.

Q. With iris?

A. Yes, sir.

Q. Will you tell me what was the agreement between yourself and your mother as to the disposition and possession of this property?

Mr. Sacks: Your Honor please, I think that has all been gone into.

30

The Court: Entirely on cross-examination. I think, Mr. Sacks, you have opened it up.

Mr. Sacks: I am satisfied, but I thought it was all in the record.

The Court: Probably is, but they are entitled to have it from their viewpoint, after you put it in. Whether it is admissible or not ordinarily is a different proposition.

Mr. Sacks: Your Honor please, you see they base their action upon their agreement.

10 The Court: But made no attempt to prove it on direct examination, carefully abstained from that. But you have opened the way now, so Mr. Morris can.

(Question repeated).

A. The agreement between ——

20 Mr. Sacks: Your Honor please, I don't know that they have mentioned which property it was.

Mr. Morris: Mays Landing, the property described in the bill of complaint, the Mays Landing property.

Mr. Sacks: May I also have Mr. Morris call his attention to some particular date?

30 The Court: You are entitled to that.

Q. Did you have any agreement or understanding with your mother as to the disposition and possession of the property in Mays Landing particularly described in the bill of complaint?

A. I did.

Q. Will you tell us when you had such an agree-

ment or understanding and what the agreement or understanding was?

A. The agreement between myself and Mother was entered into about, as near as I can recall, November of 1921, wherein I was —

Q. Where was this agreement made?

A. Mays Landing.

Q. On the premises?

A. Yes, sir.

Q. What was the agreement? 10

A. The agreement was that should I dispose of my property in Philadelphia, come to Mays Landing, put my plants in there and develop my horticultural business there, spending my efforts on these premises, that they would eventually, in the distribution of the estate, become mine in so much as the other brother had been set up in the hardware business.

Q. What do you mean, they would eventually become yours, when were they to become yours under this agreement? 20

A. At the death of the parents.

Q. Was that particularly said?

A. Yes, sir.

Q. And she said at the death of herself and her husband the property was to go to you?

A. I can't testify that they were the exact words; that was the intent.

Q. In effect?

A. Yes, sir.

Q. What did your father say about this? Did 30 your father make any such agreement with you?

A. Yes, sir.

Q. Your father and mother were on intimate terms?

A. Yes, sir.

Q. Very friendly?

- A. Yes, sir.
- Q. And very often the father talked for the mother and the mother talked for the father?
- A. Yes, sir.
- Q. What did he ever say about this agreement?
- A. The father said practically the same thing.
- Q. When?
- A. At the time of our visit to the Paoli property he made the same assertion.
- 10 Q. That was before your mother made the statement or after it, as near as you can recall?
- A. It was after.
- Q. After?
- A. After.
- Q. What was this you said on cross-examination about your father saying that your brother was to have an interest in the property?
- A. Not an interest in the property, no, sir.
- Q. What was it?
- 20 A. If the proceeds of the sale of the goods became sufficient that I could engage him in any capacity there, he would like me to do so.
- Q. Your mother owned that property, however?
- A. Yes, sir.
- Q. Your mother made no such qualification in the agreement?
- A. No, sir.
- Q. At the time you had this agreement and understanding with your mother and father, was anything
- 30 said as to who should pay for the construction of the different parts of the buildings about the premises?
- A. Nothing at all.
- Q. When the father felt like improving a portion of the premises, he paid for it?
- A. Whoever had the money at the time paid the expenses.

Q. Mr. Sacks has identified a number of checks written or drawn between the years '22, and 1926, purporting to be payments of money from your father to yourself?

A. Yes, sir.

Q. They aggregate about \$550, roughly, as I can figure?

A. Yes, sir.

Q. Do you know what those checks were given for?

A. Those checks represented money that I was to pay for material bought elsewhere, some of them were to repay money that I had advanced him on various occasions for different purposes such as paying taxes on the properties in Cheltenham, and there were various transactions back and forth between the two of us, I can't identify them now, but that was the nature of them. 10

Q. When you made the statement that you only had one child, you referred to the child by this present wife? 20

A. Yes, sir.

Q. Your first wife is living?

A. Yes, so far as I know.

Q. And you had one child by your first wife?

A. Yes, sir.

Q. Have you made the statement of the expenditures made over a period of years on these premises?

A. Yes, sir.

Mr. Morris: If counsel has no objection, I would like to present to the Court a statement made by this witness showing the expenditures made, which may aid the Court. 30

Mr. Sacks: I object to that as not the best evidence.

The Court: It is objected to.

By Mr. Sacks:

Q. Why was it necessary for your father to give you the checks to pay for material when he could have paid for them himself, couldn't he, with his checks?

A. I was in the way of assuming responsibility for
10 all work done on the place.

Q. And you didn't want to assume the responsibility for this merchandise that he had given you the checks for?

A. Sir?

(Question repeated).

A. I don't understand the question.

Q. You said that you had assumed the responsibility for that merchandise or these bills, and that is
20 why your father gave you the checks to pay for them, is that so?

A. Yes.

Q. And that was the reason that he gave you the checks?

A. Yes, sir.

Q. Now, what was your objection to assuming responsibility for these bills?

A. I had none.

30 Q. You had none?

A. I assumed the responsibility for all of them.

Q. All those improvements went on this property?

A. Yes, sir.

Q. What month was it that, in which you say that you had this alleged agreement with your mother, that she was going to leave this property?

A. About, as near as I can recall, November, 1921.

Q. November, 1921, in Mays Landing?

A. Yes, sir.

Q. How was it that they were in Mays Landing in the winter time; it was their summer home, wasn't it?

A. They stayed there usually until after election, having transferred their franchise to Weymouth Township.

Q. In other words, they did not only live there in the summer time, but they also lived there into the fall and winter? 10

A. I made that statement, from May until November.

Q. May until November?

A. Yes, sir.

Q. How long before this contract that you speak about was it that you had this intention or you had intended to buy this property in Chester County?

A. Not very long. 20

Q. In other words, shortly after you had expressed the desire of buying this property in Chester County, your mother told you that she would leave this to you, this property in Mays Landing?

A. Yes.

Q. You have no idea —

A. I can't fix that, no.

Q. —in weeks, days or months?

A. No, sir.

Q. Was there anything said in that agreement that your mother made with you regarding whether or not she was to live on these premises also, she and your father, or were they to be — 30

A. There was nothing said, but that was understood.

Q. That she was to live there?

A. Yes, sir.

Q. In other words, this promise that she made you was no detriment to her as far as her personal comfort or money or anything else was concerned?

A. No.

By Mr. Morris:

10 Q. Mr. Danenhauer, you took possession of these premises, relying on your mother's promise to devise this property to you?

A. Yes, sir.

DR. WILLIAM A. THOMAS, SWORN.

20 Direct examination.

By Mr. Morris:

Q. Doctor Thomas, you are a minister of the gospel in Mays Landing?

A. I am.

Q. And you reside in Mays Landing?

A. I do.

Q. You are the Presbyterian Minister?

A. I am, sir.

30 Q. Doctor, did you know the mother of the complainant, mother and father of the complainant, to wit, Frank H. Danenhauer, and Annette Danenhauer?

A. Very well, sir.

Q. When did you first make their acquaintance?

A. In the early spring of 1923.

Q. Made the acquaintance of both Frank and Annette Danenhauer?

A. I think so.

Q. Do you know where they lived?

A. I certainly do.

Q. And where?

A. They lived across the river from the railroad station in Mays Landing, in the township of Weymouth.

Q. And that property was known as Treasure Oak? 10

A. It was, sir.

Q. Doctor, did you ever have any conversation with the mother, Anita Lee Danenhauer, as to the disposition of that property after her death?

A. I did not.

Q. Did you ever have any conversation with Anita Danenhauer as to any disposition of the property?

A. No, sir.

Q. Did Mrs. Danenhauer ever speak to you in reference to the ownership of this property? 20

A. She did not.

Q. Did you ever have a conversation with the father, Frank Danenhauer, as to the ownership and disposition of this property?

Mr. Sacks: I object to that, if your Honor please.

The Court: I will permit that.

30

A. Often.

Q. When and what was the conversation?

A. It grew out of an interview which extended well over their little grounds a few acres that are cultivated by young Mr. Danenhauer, and when visit-

ing the place and in finding the younger Mr. Danenhauer present, always —

Q. By young Danenhauer, you mean the complainant?

A. Yes, I mean Mr. Lee Danenhauer, the interview was that his Pop would take a great pleasure in taking me about the place and showing me the improvements which his son Lee had wrought on the place, and he delighted at the success that he was meeting
10 in carrying out his plans.

Q. Carrying out whose plans?

A. The development of the place.

Q. That is, the father's plans or the son's plans?

A. The son's plans in the development of his plants.

Q. And what was the conversation which ensued as the result of this walk?

A. Well, it was, consisted of noting the various
20 items.

The Court: When was this, Doctor? Can you give us the date, and about when it was ?

Q. About when did you have this conversation with the father, about when?

A. I had several of them, sir, I couldn't say any time, in the day time, at different visits during the years.

Q. About, say, the first conversation, what month
30 and year was it, as near as you can recall?

A. The first year I became acquainted with the family, 1923, in the spring, about the time of the flowering of iris and peonies.

Q. Was it then the father took you about the premises and delighted in the development that his son was making?

A. It was.

Q. What conversation did the father have with you concerning the ownership and possession of this property and disposition of the property?

A. Why, he spoke of the satisfaction that he had in seeing the development of the property under his son's care and realizing what it meant to him in the future.

Q. Meant to whom?

A. To the son, what it meant to have the property developed along the lines that his son Lee had laid down, and he was particularly pleased with the success he was meeting with. The inference I drew always —

Mr. Sacks: I object.

The Court: Yes, you will have to tell us what the conversation was, Doctor.

20

Q. We can't have your inference, Doctor. Just the conversation.

A. It would not be possible for me to say just what that was, sir. It was comments upon the various things that had been done there, the plans that were being carried out and the development of the plant growth on the place.

Q. Did the father say exactly what he meant when he said it meant something for the future of the boy?

A. It meant, yes, sir, he certainly did. 30

Q. What did he say it would mean?

A. He said it meant very much to him.

Q. Did he express in what manner it meant, did he express exactly what it would mean to his son?

A. No, sir.

Q. He merely said, as you can recall, on this first

visit, that it meant a great thing for the boy's future?

A. It did, that is what he meant, sir.

Q. At that time he didn't say anything at all about how the property would be disposed of?

A. Not a word.

Q. At any subsequent conversation did the father say anything about how the property would be disposed?

10 A. Never.

Q. He merely delighted in the development of the property by his son and the future of the son on the property?

A. On the place, the future of his son on the premises.

Q. Doctor, do you recall the condition of this property before the complainant, Lee Danenhauer, took possession?

20 The Court: Nothing to indicate that he knew. He did not meet them until 1923, and Mr. Danenhauer took possession in 1922.

Q. Doctor, did you ever see this property before the complainant took possession of the property?

A. No, sir.

(No cross-examination).

MRS. FLORENCE THOMAS, SWORN.

Direct examination.

By Mr. Morris:

Q. Mrs. Thomas, you are the wife of Dr. Thomas who just testified?

A. I am. 10

Q. Did you know the mother and father of the complainant?

A. I did.

Q. To wit, Annette and Frank Danenhauer?

A. I did.

Q. When did you first make their acquaintance?

A. Well, I think a little later than Dr. Thomas.

Q. About when was that, do you know?

A. I couldn't tell you exactly.

Q. Approximately, 1924 or so? 20

A. Oh, yes.

Q. What was the condition of the property when you first saw it, that is this, meaning the property?

A. Well, the porch had not been finished at all, and neither the sun parlor or bath room put in, I don't know as I can think of anything else especially.

Q. How about the horticultural development, had that taken place yet?

A. Yes.

Q. Did you ever have any conversation with Annette Danenhauer and Frank Danenhauer as to the disposition or possession of that property? 30

A. Not with Frank Danenhauer.

Q. With Anna Danenhauer?

A. Yes, sir.

Q. Will you tell us when and where you had the

conversation with Mrs. Danenhauer, about when and where, as near as you can recall, we don't need the exact date.

A. I would say about three years ago. I am only judging the age of the little child who was playing on the floor at the time, I think she was probably about a year old, I am judging from that as to time.

Q. About three years ago?

A. I would say.

10 Q. That is about 1926?

A. About two years ago, I should say.

Q. How long before her death did you have the conversation with her?

A. Well, I would say probably two years.

Q. Will you tell us what that conversation was?

20 A. I said we are also in Mays Landing, I assume—well, we were just talking in generalities, and I was speaking about the view that they had and the different things just in general, and I suggested to her I wondered why she did not make certain improvements, and I don't remember exactly what the improvements were, but when I said that to her, her reply to me was, "This is Son's place."

Q. "This is Son's place?"

A. "This is Son's place."

Q. Do you know to which son she was referring?

A. Yes, she was referring to Mr. Lee.

Q. That is, the complainant?

30 A. Yes. She always called him Son.

Q. Did she say as to when it would be his place?

A. No, she was speaking of the present, and says, "This is Son's place."

Q. Do you what the complainant, Lee Danenhauer, did about these premises, improving it?

A. Why, yes.

Q. Will you tell us what you know as to what he did?

A. Well, I know that he put on the sun parlor and worked on the porch, I can't tell you specifically, probably, but those were the improvements that I saw when his father was not around at all.

Q. Do you know anything about his horticultural development of the property, as to who did that?

A. No. Well, I know that Mr. Lee did that.

Q. Did you ever see anybody cleaning up around 10 this property, cleaning up the brush and taking care of the flowers, and things like that?

A. The flowers, yes.

Q. You saw Lee Danenhauer attending to those?

A. Yes.

Cross-examination.

By Mr. Sacks:

20

Q. Mrs. Thomas, bringing you back to this conversation you had with Mrs. Danenhauer, what makes you feel that she referred to Lee Danenhauer as the person that she meant owned that place? In other words, let me say this different, in order words, isn't it possible that she might just as well have meant both of her sons or the other son as well as this son?

30

Mr. Morris: I object, if your Honor please, as to possibilities.

The Court: I will permit it.

Mr. Morris: What my objection was, if your

Honor please, if I may say, we can't indulge in probabilities or in possibilities.

The Court: Yes, but it is one of the questions admissible.

Q. Remember this question?

A. I think I do, because she always referred to one as Son and the other as George.

10 Q. That is why you thought she meant this one?

A. Yes, sir.

Q. Did you ever see Mr. Frank Danenhauer do any work around there, Mrs. Thomas?

A. No, I did not.

Q. The only person you ever saw do any work there was Mr. Lee Danenhauer?

A. Yes, sir.

20 Q. Do you recall what you were talking about, what sort of improvements you were talking about that lead up to this conversation about the disposition or the ownership of the property?

A. Well, I was thinking probably especially about electricity and telephone.

Q. Was there more than one house on this property, more than one building?

A. Yes.

30 Q. Well, were you referring, do you suppose, to one of the other buildings or the building that you were standing on, or some other part of the improvement?

A. It is the building that I was sitting in, in the sitting room, in the bay window.

Q. That was the main house, was it?

A. That was the main house.

GEORGE V. DOTTERER, SWORN.

Direct examination.

By Mr. Morris:

Q. Captain Dotterer, where do you live?

A. 101 North Derby, Ventnor Heights. 10

Q. Do you know the complainant, Lee Danenhauer?

A. I do.

Q. Did you know his mother and father in their life time?

A. I did.

Q. Do you know the property which Mr. Danenhauer now occupies in Mays Landing?

A. I do.

Q. Did you ever have a conversation with Annetta Lee Danenhauer and Frank Danenhauer, the father and mother of the complainant, as to the ownership or disposition of this property? 20

A. Not directly.

Q. Not directly?

A. No.

Q. Did you ever have a conversation with the mother and father as to this property?

A. Not open conversation, but just passing, as we walked around the place. 30

Q. With whom did you go around the place?

A. His father, Frank.

Q. What was the conversation?

A. In nineteen —

Mr. Sacks: I want to object to this also.

The Court: I will permit it. It must be connected to be of value, however.

A. In 1921, he took me over to the piece of ground facing the Court House platform, railroad station, and he wanted to give me a piece of ground to build a bungalow on it, I told him I had a nice shop and I could put one in there. That was two years after I first met him. Then we walked around and he
10 said that Lee was going to come down there and start an iris farm. That passed on that day, that was all.

Q. Any further conversation in the future about the possession or disposition of the property?

A. Not to me, only that same story, that Lee was coming down there to start an iris farm, and that was until 1922 when Lee arrived.

Q. Did you ever have a talk with the mother about the —

20 A. I did not.

Q. —ownership or disposition of the property? Do you know what work Mr. Lee Danenhauer, the complainant, did in the development and cultivation of this property?

A. I certainly do. I helped him.

Q. Will you tell us what you know as to what he did?

A. In 1922 I walked around, we burned a lot of
30 brush and hay, cut hay, and we washed the road, because it wasn't fit for an automobile to come through, and we used to go in and out uptown by boat. After that I arrived, the next year, which was 1923, in time to help put the roof on the shop, as they call it.

Q. What else?

A. At that time I was standing waiting for to go

down with Lee Danenhauer, and his mother was talking to him, I don't know what led up to the conversation, but she said, "Son, never mind, when we are gone this will be your place." That was just what I heard his mother say to him, but personally I never had any talk, direct talk with the mother.

Q. "Son, when we are gone, this will be your place?"

A. "When and Father and her are gone this will be his place. 10

Q. Do you know what Mr. Lee Danenhauer, the complainant, did towards the cultivation of these iris plants?

A. Well, the first year, 1922, latter part of 1921, there wasn't much iris, but in 1923 there was about twice as much, I would say, maybe an acre, a little over an acre, and from 1923 until 1928 I didn't see the place.

Q. From 1923 to 1928 you didn't see the place?

A. No, sir. 20

Q. Have you seen it recently?

A. I saw it about a month ago.

Q. Is there any marked improvement over the condition in which the premises were in 1922?

A. Yes.

Q. It looks more habitable now, doesn't it?

A. It does.

Q. Was it for habitation, would you say, in 1922?

A. Oh, you could live there, yes.

Q. But it didn't have the comforts it has now? 30

A. Not as it has now.

Q. Do you know about how old the building was in 1922, the main house?

A. No, I couldn't tell that.

Q. Could you approximate?

A. Well, the way it looked, I would say it was fifty years old.

Cross-examination.

By Mr. Sacks:

Q. Mr. Dotterer, was there a carpenter working there when you helped to put the roof on that job?

A. Nobody but the son Lee and his brother-in-law.

Q. And yourself?

10 A. And myself, I just got there in time to help to put the top of the roof on.

Q. Did anybody pay you for your work?

A. I worked for nothing when I helped anybody.

Q. When were you there recently?

A. I was there in—I can't tell you the date, unless you can remember the time that Corio gave a man thirty-nine years, whatever date that was, I was on the jury, that is, I think in August, no, September.

20 Q. Mr. Dotterer, do you have any idea of the value of properties or improvements? What is your business?

A. I was formerly in the brick manufacturing business in Philadelphia, a long time ago, but I should judge the improvements on that house there from the time I first saw it until here recently would make, say, forty-five hundred dollars.

Q. Just improvements alone?

A. Those improvements alone.

Q. How much is that house worth now in your opinion?

30 A. I should judge that house now, the way it stands, you couldn't place it for less than ten thousand, that is, with the inside fixings and everything.

Q. Of course you don't know who paid for those improvements, do you?

A. Not at all, no. I know who paid for the heater, because I helped to put it in.

Q. How do you know who paid for it?

A. Because his father said if I would stay there with Lee he would buy a heater for him, so I judge that he paid for it.

Mr. Morris: Who do you mean "he"?

A. Frank, his father.

Mr. Morris: The father paid for it? 10

A. If I would stay there with Lee during cold weather he would put a heater in, pipeless heater, which he did, and his son and I laid the foundation for it, and I suppose, under those circumstances, he paid for it.

20

MICHAEL J. FOX, SWORN.

Direct examination.

By Mr. Morris:

Q. What is your full name?

A. Michael J. Fox.

Q. Where do you live?

A. Belcoville, Weymouth Township. 30

Q. Mr. Fox, do you know the complainant, Lee Danenhauer?

A. I do, sir.

Q. Did you know his mother and father in their life time?

A. I did.

Q. Do you know where the property is on which Mr. Danenhauer resides in Mays Landing?

A. I do, sir.

Q. Did you ever have any conversation with the mother or father as to the disposition of this property and possession of it?

A. Never had no conversation with the mother.

Q. Did you ever hear her say anything about the disposition or possession of this property?

10 A. I did not, the only time I saw the mother or father, I wasn't feeling well, most of the time I saw the mother they were out in the other house, they were not in the main house.

Q. Who do you mean, they?

A. Mother and father.

Q. Did you ever have any conversation with the father as to the —

A. Indirectly, yes.

20 Q. What was the conversation?

A. It was in September, no, it was October, when the pears come in, between September and October.

Q. What year?

A. Almost positive it was 1926, 1925 or 1926, anyhow Lee was down on Main Street and Dad asked him if he gave me any pears, and he turned around to me and he said, "Why don't you load them up off of your place?" He said, "They are going to waste there on you. Why don't you give them to him?"

30 Q. Your place, why don't you give him some pears?

A. Yes, he had given me one basket, all I could use, but I didn't like to say that to offend him.

Mr. Sacks: If your Honor please, I don't want to object, but I think that was direct, in the first place.

The Court: Very direct. Repetition of testimony.

Mr. Sacks: I also want to object at this time, same objection, to the conversation with the father.

The Court: You are entitled to that general objection.

Q. Did you see this property in 1921? 10

A. Only direct across over the river, that is all. I have never been in there because it was private property.

Q. What was the condition of this property?

A. Didn't look so hot from across the river, I was looking, tell you frankly I wouldn't own it, if you want the frank statement, because I had bought one, and I know what it cost to fix it up.

Q. How about the land, was the land developed?

A. No, looked like any other Jersey land, lot of brush land, to me, across the river, in 1922, I didn't see it in 1921. 20

Q. How about the house?

A. Just like an ordinary country house to me, see millions of them, Mays Landing had thousands before they paved the street.

Q. How about now? Have you seen the property recently?

A. Yes, sir.

Q. What does the entire property look like now as compared to what it looked like then in 1922? 30

A. Well, it looks like a home now, to be frank with you.

Q. What does it look like?

A. Like a home, anybody would move into it and have all the comforts in there.

Q. Did you ever see Mr. Lee Danenhauer working on the property?

A. I saw him digging the cellar for the sun parlor, more than I would do, I am telling you frankly, couldn't help.

Q. What else did you see him doing around there?

A. I saw him painting, saw him working on the iris garden, saw him doing everything possible to see a man do around the place.

10 Q. How about the construction of parts of the building?

A. Well, I know that there was bathroom fixtures ordered and he cancelled them, if you want to trace that telegram out, you can get it, if it is possible.

The Court: Just answer the questions.

Q. Who ordered the plumbing fixtures?

A. He cancelled the first order and re-ordered.

20 Q. Who ordered that he should cancel them?

A. I don't know. He didn't want that kind, that is all I know, and he gets another kind.

Cross-examination.

By Mr. Sacks:

Q. Mr. Fox, at the time you called at this farm, you say that the parents were out in the outer house?

30 A. Mother was getting water for the Dad in the outer house, he just got over the stroke when I seen her.

Q. She had gotten over the stroke?

A. No, I think he did, from the conversation.

Q. Do you mean that they were living there in the outer house at that time?

A. I don't know whether they were living, but she said she was going out with water, and she was only in there a few minutes when I arrived there.

Q. In other words, the father was in the outer house?

A. I imagine that is where he was. I couldn't tell.

Q. At the same time, was the main house in a livable condition, I mean was there anybody living there?

A. There was no running water there. Lee and his wife were living there. 10

Q. In other words, Lee and his wife were living in the main house and father and mother were living in the outer house?

A. I don't know where they were living, but he was going out to her.

Q. I see, in the outer house?

A. Outer house.

Q. Is he still loading you up with pears off of that place? 20

A. No, I don't want any more of them. They are too hard.

Q. All right, Mr. Fox.

W. CLARE ELLIOTT, SWORN.

Direct examination.

30

By Mr. Morris:

Q. What is your full name, Mr. Elliott?

A. W. Clare Elliott.

Q. Where do you live?

A. Germantown, Philadelphia.

Q. Do you know the complainant, Lee Danenhauer?

A. About thirty years.

Q. Did you know his father and mother in their life time?

A. Just about the same length of time.

Q. Do you know the property in which Mr. Danenhauer now resides in Mays Landing?

A. Very well.

10 Q. Were you ever there?

A. Many a time.

Q. What was the first time you saw this property?

A. The first time I should say was about some years ago when we were a bunch of kids together, and I even contemplated putting a little shack up over at one corner.

Q. About how long ago was that?

A. I should say about twenty years ago.

20 Q. Were you acquainted with the property in and about 1921?

A. Just generally.

Q. Do you know, just roughly, can you tell us the condition of the property and house, the land and house?

A. Yes, I will say that the land looked like a wilderness and the house was just about habitable.

Q. Have you seen that house and land recently?

A. Yes, indeed.

Q. Is there any improvement?

30 A. Decided improvement.

Q. Along what lines?

A. Well, the house has been trimmed up in ship-shape, I remember very distinctly the porch, which Dennis put on, and the sun parlor, and the little bath room, remember those things distinctly, and I remember the time he put in the pump, because it

so happened I stopped down there one day with my wife, I remember this very clearly, because we bumped into Mother Danenhauer on the back porch, and she was in the act of scaling fish, that was the first time she had met my wife, and she was all perturbed because she had on a gingham dress, and hair disarranged, and I started to josh her as I usually did, and then we started to razz her about Dennis, and she seemed to think I was in earnest, and she opened up and gave me a story about her son being such a fine fellow, and how glad she was that he came down home, just as though I didn't know it, and told me then about the things that he had been doing, how fine he had made the place, how happy Father was, and how happy she was that he had come down to live there, and then I started to rag her about electricity, why in the deuce don't you get electricity down here, we even have it up to our place in the country, and she said, "I don't think Lee can afford electricity now, but maybe some day when we are gone he will fix that all up." There was another occasion I remember on the front porch with Pop Danenhauer, when I had gone down with my Dad, we were loafing around on the porch —

Q. What was the conversation?

A. With Mother Danenhauer?

Q. Yes.

A. I think it was in 1925. I don't think the baby was born yet, I think it was in 1925, around about September, then the time we came home from the country, we live in the country in the summer time, and wife and I usually slip away a couple of days recreation from the kiddies, before they go back to school, somewheres in September, around possibly the 10th or 15th.

Q. When was it you had the conversation with Father Danenhauer?

A. That was, we had been up to Ocean Gate, and we drove down and stopped to see the folks on the way up. I think that was in 1924, about 1924.

Q. What was the conversation?

A. We had been out on the front porch with Pop Danenhauer, and it so happens my Dad and myself are pretty close and we were ragging each other about personalities, and Pop Danenhauer had always been sort of a serious stern, father, and as a bunch
10 of kiddies we were half scared to death of him, and he couldn't seem to appreciate the attitude that existed between my Dad and myself, he said, "Well, I am sorry that I haven't been able to go through life with Lee in that way. I found out recently what"—and he started off to tell me about Lee, the inference was that he had been sorry he had not —

Mr. Sacks: I object.

20 The Court: Yes.

Q. Not what the inference was, the conversation as near as you can recall.

A. The exact detail I don't recall, but in effect that he had been sorry that they had not taken Lee in under his wing and been as close to him as I happen to be with my Dad, and he was down here and he was working on this place and he was making a go of it and he was going to make a success out
30 of his flowers. He referred also to peonies, iris and peonies at the time.

Q. Did he say anything about the ownership or disposition of the property after the death of the father and mother?

A. Definitely, no, sir, not that I recall.

Q. What do you mean definitely?

A. No, I can't say that I recall in detail the statement of his about the disposition of the property.

Q. But the mother, what was it that the mother said?

A. The mother's comment was that, when I ragged her about the electricity, that in later years no doubt Lee would do this himself.

Cross-examination. 10

By Mr. Sacks:

Q. Mr. Elliott, did you have any conversations with Mr. and Mrs. Danenhauer, the old folks?

A. I should say on an average of once a year, for the last ten years, I made it a point to always drop in and see them.

Q. During these conversations that you recall that they spoke about Lee, did they ever mention their other children or other boy? 20

A. I never recall a time that either Mother or Father Danenhauer referred to George, no.

Q. Always referred to Lee?

A. Yes. I grew up with Lee and I just knew George slightly.

CHRISTIAN E. JENSEN, SWORN. 30

Direct examination.

By Mr. Morris:

Q. Mr. Jensen, what is your full name?

A. Christian E. Jensen.

Q. Where do you live?

A. Mays Landing.

Q. You are acquainted with the complainant, Lee Danenhauer?

A. Yes, sir.

Q. Did you know his mother and father in their life time?

A. Yes.

10 Q. Were you acquainted with this property on which Mr. Danenhauer lives in Mays Landing?

A. Yes, sir.

Q. Were you acquainted with it in 1921?

A. Yes, since 1908.

Q. Is there any change in the condition and cultivation of the property from 1921 until the present date?

A. Sure.

Q. Generally, what is the change?

A. Why, it was very dilapidated condition before.

20 Q. I didn't hear you.

A. Everything was going down.

Q. In 1921 and 1922?

A. Yes, and previous to that.

Q. Everything was run down?

A. No paint on the house or anything.

Q. Did you ever see any improvements made on the property?

A. Oh, yes, constantly.

Q. Who made those improvements?

30 A. Mr. Danenhauer.

Q. You saw him working about the premises?

A. Yes.

Q. What did you see him do?

A. Everything practically that was to be done there, he was always working, improving the place.

Q. Always what?

A. Always working and improving the place.

Q. The iris plants?

A. Yes.

Q. Ever see the people around the house?

A. Yes.

Q. Did you ever have any conversation with the mother, Annetta Lee Danenhauer, as to the ownership or disposition of this property after the death of herself and her husband?

A. Yes, sir, I had on one occasion.

Q. When and where?

10

A. Why, that is about four years ago.

Q. About four years ago?

A. Yes, on a Sunday afternoon I was over there.

Q. Where, on this property in Mays Landing?

A. Yes.

Q. What was the conversation?

A. Why, Lee was working out in the front there pollenizing his plants, and Mrs. Danenhauer was talking about it, and I said, "Lee is pollenizing or working at his plants," so she said that would be eventually for his own benefit, doing that way down there, he would get the benefit of it later on, it will be his place. 20

Q. That would be his place?

A. Yes.

Q. Did you ever hear the father say anything about that?

A. Not directly.

Q. What were you doing on the premises at the time, just visiting?

30

A. Be over all the time pretty near.

Q. Pardon me?

A. We used to go over there right along, one visit one another.

Q. You are a neighbor?

A. Practically.

Cross-examination.

By Mr. Sacks:

Q. You say Mrs. Danenhauer said, she said, "This place will eventually be Lee's?"

A. Yes.

Q. "I will leave it to him after I die"?

A. Not exactly she leave it to him after die, but
10 eventually it will be his place.

Q. That was what she said?

A. Yes.

Q. You say this happened on a Sunday afternoon?

A. Sunday afternoon, yes.

Q. Is it customary for, was it customary for Mr. Lee Danenhauer to be working on the farm Sunday afternoon?

A. At that particular time pollenizing his plants,
20 had to do it certain times.

Q. Takes a lot of work, doesn't it?

A. Well, it does, yes.

Q. Are you in the same business, Mr. Jensen-

A. No, sir.

Q. But you do know something about growing plants, don't you?

A. A little bit, not much.

Q. If you should have a half acre or so of plants and only visit it once every month or month and a
30 half, not much chance for them to get along, is there?

A. Once a wek, twice a week, maybe, I would be over.

Q. Well, it was necessary on this Sunday for him to work out there on these plants?

A. Certainly it is, he couldn't do that kind of work.

Mr. Morris: I object.

The Court: Yes, there is no testimony it was necessary.

LEW. GEORGE HENDERSON, SWORN.

Direct examination.

10

By Mr. Morris:

Q. Mr. Henderson, are you acquainted with the complainant, Lee Danenhauer?

A. Thirty odd years.

Q. Did you know his mother and father?

A. Very well.

Q. Where do you live?

A. *Rose Valley, Delaware County, Pennsylvania. 20

Q. Were you acquainted with this property in Mays Landing on which Mr. Lee Danenhauer now lives? Were you acquainted with the property in 1921?

A. Yes, sir.

Q. Have you seen the property recently?

A. I have.

Q. Is there any marked change in the appearance of the property?

A. Very much.

30

Q. Along what lines?

A. I might state my profession is architecture, and the dilapidated condition of the property itself was very old, a very few years it would be almost beyond restoration. The amount of improvement that has been made on the property, some I might

say I discussed with Mr. Danenhauer as to the proportions.

Q. Mr. Lee Danenhauer?

A. Mr. Lee Danenhauer, the proportions, and the design of the porch, and also the bathroom addition, so as to enhance the property, which, I think, that he did very well, remarkably well.

Q. The property generally has a much better appearance than it had in 1921 and 1922?

10 A. Oh, yes, considerably.

Q. Land is cultivated?

A. Yes, the land is cultivated and cleaned.

Q. Did you ever have any conversation with Mrs. Annetta Lee Danenhauer as to the ownership or disposition of this property?

A. I think so.

Q. When and where and what was it?

A. On August the 13th, 1927, I went down there for a week-end visit, Mrs. Danenhauer was very hard
20 of hearing, Mr. Danenhauer and I were present, that is, Mr. and Mrs. Danenhauer, and I was sitting in the living room. I had spent eight or nine years in Honolulu, and Mr. and Mrs. Danenhauer never had the opportunity, or when was my good fortune to spend a little time with Lee Danenhauer and his folks, they seemed very interested in knowing about Honolulu. Mr. Danenhauer said there was one place that he had always liked to be able to visit.

Q. That is the father said that?

30 A. Father Danenhauer and Mrs. Danenhauer just smiled, and she says, "It must be beautiful," but Mr. Danenhauer up and up expressed upon wanting to visit that particular place. So then Mrs. Danenhauer, after the conversation was pretty well along, or, I might say, we kind of got tired talking about the one subject, of course, I told her how beautiful

the islands were. Then Mrs. Danenhauer said, "Well, Lew," she says —

Q. Who said this?

A. Mrs. Danenhauer, she said, "Lew, it is" —

Q. Who is Lew?

A. That is me, she said, "Lew, it is certainly lovely for you to come down and tell us about the beautiful islands out in the Pacific Ocean," and she says, "You know that we have got a very beautiful place here," and I quite agreed with her, because the site is certainly a beautiful site, and Mr. and Mrs. Danenhauer just loved that piece of property. Mrs. Danenhauer said to me, she said, "Lew," she says, "It is wonderful to think that my own son is going to live on this property and carry this property on, due to the fact that we both have so much love for this place at Mays Landing, and it certainly is wonderful to think that he is going to live on this property and develop his flowers, and it is wonderful that he is interested in it." 10 20

Q. Mr. Henderson, how is it that you recall so minutely the details of this conversation, did you keep a diary?

A. I am kind of old-fashioned, I have kept a diary for years.

Q. For that reason you can refresh your memory?

A. I made reference to the date, I knew the date of August 13th, 1927, is the date that I visited there for a week-end. 30

Cross-examination.

By Mr. Sacks:

Q. Did you keep in your diary, also minutely, the details of a conversation that you have on this day's visit?

A. It would be impossible.

Q. But you do recall in great detail, as you have testified, this conversation?

A. I do, sir.

Q. You are a great friend of Mr. Lee Danenhauer, aren't you?

A. Known him for thirty years.

Q. And you and Mr. Elliott and Mr. Danenhauer belonged to the same club for a great many years in
10 Philadelphia?

A. No, it is not a club. Thirty odd years ago Professor Houston —

Q. Just tell me what sort of an organization they are?

A. I want to tell you.

The Court: I don't think we have time to listen to that history.

20 Q. We don't want the history of it. What sort of an organization, what is it, a club or society or fraternity or what?

A. We used to go camping together, and after that they decided we would just be good pals, about twenty-five of us, and now eight of us out of the twenty-five, we kind of all liked each other.

Q. So three of you are pretty good pals even today?

A. No, there are eight of us that are good pals
30 today.

WILLIAM H. LUDWICK, SWORN.

Direct examination.

By Mr. Morris:

Q. What is your full name?

A. William H. Ludwick.

Q. Where do you live?

10

A. Downington, Pennsylvania.

Q. Do you know the complainant, Lee Danenhauer, and did you know his mother and father in their lifetime?

A. I do and did.

Q. Did you ever have any conversation with the mother or father as to the ownership or disposition of the property at Mays Landing on which Mr. Danenhauer lives?

A. No.

20

Q. Did you ever have any conversation with the mother or father as to this property?

Mr. Sacks: If your Honor please, he has already answered that.

A. Yes.

Q. Will you tell us the conversation?

A. I think the first time that I visited there —

30

Mr. Sacks: May I ask when?

A. I am just coming to that. The first time I visited was in 1921, August, 1921, we were in the back lot looking at the flowers, and we realized, I made the statement that it took quite a lot of work

to develop flowers of that character, and in developing new plants, and Mrs. Danenhauer immediately answered and said —

Q. That is the mother?

A. The mother, "What a wonderful opportunity there is to develop this place and how beautiful it might be if Lee would come down here and devote all his time to the developing of this place."

Q. And how what?

10 A. In the developing of this place.

Q. She said how possible it would be?

A. How great the possibilities would be if Lee would come down here and devote all his time.

Q. When do you say that conversation was?

A. August or July, August of 1921.

Q. There wasn't much of a development at that time?

20 A. Not a great deal of development, was just started, in fact, the blooms were all gone, you could just see what was being done or what had been done so far, and they were talking of their plans for the future in the development of new species of iris.

Q. Did you ever hear the mother or father say anything to Lee about the ownership of that property?

A. Not anything.

Cross-examination.

30 By Mr. Sacks:

Q. Are you also a member of this?

A. No, sir, I am not.

MRS. FLORENCE F. FOX, SWORN.

Direct examination.

By Mr. Morris:

Q. What is your full name, Mrs. Fox?

A. Florence F. Fox.

10

Q. Where do you live?

A. Belcoville, Mays Landing.

Q. Do you know the complainant, Lee Danenhauer, and his mother and father?

A. Yes, sir.

Q. Do you know the premises where Lee Danenhauer now resides in Mays Landing?

A. Yes, sir.

Q. Do you remember the property in 1921 and 1922?

20

A. Not in 1922, about 1923.

Q. Is there any difference in the development of the property from that date until the present date?

A. Oh, it is wonderful now, certainly is.

Q. Do you know who developed the property, who worked about the premises in the development?

A. Mr. Lee Danenhauer.

Q. Lee Danenhauer?

A. Yes, sir.

Q. Did you ever see him do anything?

30

A. I have seen him working on the sun-parlor and bathroom.

Q. And what else?

A. And I have seen him working on his own grounds outside, fixing all the yards up and everything.

Q. Did you ever see any laborers about the premises?

A. No, I don't remember that.

Q. Don't remember that?

A. No.

Q. Did you ever have any conversation with the complainant's mother or father about the ownership or disposition of this property?

A. Yes, sir, one Sunday morning went over to
10 visit them.

Q. About when was that?

A. About 1924 or 1925.

Q. On the premises?

A. Yes, sir, right in the living room.

Q. With whom did you have a conversation?

A. Mrs. Danenhauer.

Q. What did she say?

A. She said that her son wanted to buy in Paoli,
20 Pennsylvania, and she said that they wanted them to
come here and beautify it, that this place would be
theirs.

Q. Who was present when that conversatioin took
place?

A. My mother and Mrs. Danenhauer.

Q. Where is your mother now?

A. My mother is in Atlantic City but she is sick.

Q. Is she confined in the house?

A. Yes, she is confined. She is not allowed out.

Q. When do you say that conversation took place?

30 A. I think it was in 1924, on a Sunday morning.

Cross-examination.

By Mr. Sacks:

Q. Mrs. Fox, you related to Mr. Fox who was on
the stand before?

A. Yes, sir.

Q. How?

A. His wife.

Q. He didn't go along with you this morning to visit the Danenhauers?

A. No, we went over there ourselves, my mother and I.

Q. Your mother, you mean?

A. Yes.

Q. What led up to this conversation with Mrs. Danenhauer? 10

A. We were just talking about the son and that is the remark she made.

Q. How did you happen to be talking about her son?

A. He was working outside.

Q. That is a Sunday morning he was working outside?

A. Yes.

Q. What was he doing? 20

A. Around the flowers, around the iris, working out around.

Q. And you called his mother's attention to the fact he was out there working, and that is what she said?

A. No. Well, it led up to that, she said—while he was working out there, and she said he wanted to buy in Paoli, Pennsylvania, but she wanted him to come here and in time that this place would be theirs. 30

Q. Where did you say Mr. Danenhauer was, Lee Danenhauer, at the time this conversation took place?

A. What is it?

Q. Where did you say Mr. Lee Danenhauer was in this conversation?

A. He was outside there.

Q. Outside where?

A. Out in the yard working with his iris.

Q. Front of his house?

A. No, it is at the back.

Q. At the back part of the house?

A. Yes.

10

MRS. KATHERINE J. DANENHAUER, SWORN.

Direct examination.

By Mr. Morris:

Q. Mrs. Danenhauer, you are the wife of the complainant, Lee Danenhauer?

A. I am.

20 Q. And you are now living on this property described in the bill of complaint, in Mays Landing?

A. Yes.

Q. How long have you been married to your husband?

A. It will be thirteen years this coming April.

Q. There is one child?

A. Yes.

Q. What is her name?

A. Joan.

30 Q. When did you move on this Mays Landing property with your husband?

A. Well, we came down in 1921 and stayed until December, and then we went home and came down the following March and lived there ever since, 1922, March.

Q. Do you know whether or not in 1921 your

husband contemplated buying any property in Paoli County —

A. Positively.

Q. In Paoli, Chester County, Pennsylvania?

A. Yes.

Q. Did he go through with that purchase?

A. No, he did not.

Q. Do you know why he did not go through with that purchase?

A. Simply because his father, mother and father 10
asked him to come down here, and I didn't want to
go.

Q. You didn't want to go to Mays Landing?

A. I did not.

Q. Did you ever hear the mother and father,
mother or father, make any statement to him as to
the ownership or disposition of this property in
Mays Landing?

A. Yes, positively.

Q. When and where? 20

A. Well, the first time it happened was when we
still lived on Edgewood Street.

Q. Philadelphia?

A. Yes, and Mother Danenhauer was in Mays
Landing at the time, and Father Danenhauer used to
come out to our house nearly every Sunday night to
dinner, and he was sitting at the living-room table,
and he was talking then, we were saying something
about, you know he was interested in iris, and he
said, "Why not come to Mays Landing?" And Lee 30
said he didn't know about the soil conditions there,
so I didn't want to go, I knew the condition of the
place, and it was no home, positively no home at all
there, was just a barn and that was all. So we had
forgotten then all about it until a few months later,
we had then thought about going down there, be-
cause he and his mother, too, Lee's father and mother

both asked me would he please come down, and that was their very words, and Father Danenhauer —

Q. When was that?

A. That was about 1921, in the summer months, and toward fall, he and Mother were out to our house for dinner this night, and they asked me would he come down there, and I said at the time, I said, “Why, there is no living conditions down there at that place,” I said, “There is lots of things to think
10 of before you go.” So we were going to sell the house and then —

Q. Sell what house?

A. Edgewood Street, where we had then been living, and we wanted to go out to Paoli because the ground out there was a whole lot better, the soil conditions were better, and I am sure we could have made more money, that was my contention right there. Well, we looked at the place, and were very much struck with it, and I think we could have gotten
20 it very cheap.

Q. In Chester?

A. Yes, in Paoli. Lee’s father talked against it. Lee took his father in to see the place, and it was a beautiful place, and I am sure we could have made something of it. Anyhow, he talked to him, talked to Lee, and Lee finally consented to come down with the understanding that Lee could fix the place up, because it was to be Lee’s place, Lee’s very own place after they were dead, and Mother Danenhauer has
30 talked time and time again to me, she said, “All the work that Son is putting in this place is going to mean something to the both of you in later years.”

Q. Did she say specifically whose property it would be after the death of herself and her husband?

A. After Mother’s death, Mother claimed that she owned the property, and it was Mother’s own property, and she always said she could do with it as

she sees fit, and she says it was to be Son's property, and by Son she meant Lee.

Q. Did she ever refer to the other son as Son?

A. Never; George.

Q. Always referred to him as George?

A. Yes, and my own mother said to her, "Why do you call him Son and George, George?" She said, "It was my first-born." She said, "Understand this, I don't care one bit more for him than I do for the other one, but he was my first-born, five years, and he was always Son." 10

Q. What work did your husband do about this property in the development on Mays Landing?

A. Cleaned the place up, planted iris and peonies, fixed the house up, and it is in living condition now, we have running water, and the bathroom which we never had before, we just existed there before.

Q. How much time did your husband put in in the development of this property?

A. In Mays Landing? 20

Q. Yes.

A. Let's see, I should judge about eight years, easily.

Q. I mean was it constant work?

A. Constant work.

Q. Or some days he would work and other days he wouldn't, or parts of days?

A. Constant work and hard work.

Q. What specifically did he do that you can recall?

A. How do you mean? 30

Q. Well, did he build any houses?

A. Yes, he did.

Q. Or what did he do?

A. He built a shop, and office, with three living-rooms on top.

Q. What else did he do?

A. And he put an addition to the house we are

living in now, put a sun parlor and bath, and an additional cellar, cemented the two cellars, put running water in the house, and he also built a porch and re-decorated inside.

Q. Did George ever do anything on this property?

A. No, he did not, not in my time he didn't.

Q. Not in your time?

A. Not that I ever remember.

Q. That means since 1921?

10 A. Since 1913.

Mr. Sacks: That is not material at all, whether George did anything or didn't.

The Court: Sustain the objection.

Q. Were there any laborers employed about the place fixing it up?

20 A. Yes, we had a man to hang the doors in the sun parlor, because Lee was afraid he couldn't do that himself.

Q. How about cleaning up the land?

A. Did that himself with a few, little help, once in a while have some help.

Q. How much time has your husband spent in this horticultural development?

30 A. Ever since we were in Mays Landing, and before, about two years we went down there. We started with a little garden along in the back, and he used to raise iris, and we had some, quite a few peonies, and things like that, and we both had the feeling we would like to go in the horticultural business.

Q. Did your husband spend much time in that work, or did he merely work there as a pastime?

A. No, indeed, from the time he went there he worked, and he is still working.

Q. Did you ever see your husband spend any money for work performed or materials furnished in the construction of the house?

A. Yes, indeed, I did.

Q. Can you remember any specific occasion?

A. Lots and lots of times, because I know we had to do without lots just to put the money in that house, and we are doing without today for it, just 10 putting money in it.

Q. Can you name a few incidents where your husband paid for any work about the premises?

A. Yes.

Q. Will you name them?

A. I know he paid the man that was laboring around the place, and when we were putting the sun parlor, that is the man that hung the sun parlor doors.

Q. Any other work that you know of? 20

A. Around the place?

Q. Yes.

A. Cleaning up, yes.

Q. How about the erection or the repair of the house?

A. My brother helped with that free of charge.

Mr. Sacks: I object to that, leading.

The Court: Very leading; sustain the objection. 30

Q. Did you ever see—did your husband ever pay for the erection of any parts of the house?

A. No, only for helping to put the sun parlor doors up, that was all.

Q. Did pay for the erection of parts of the house?

A. Just for the material.

Q. Who paid for that?

A. Father Danenhauer and Lee.

Q. And Lee?

A. Yes.

Q. Does your husband sell any of the plants that he develops there?

A. Yes.

Q. To whom does he sell them? Do you know?

10 A. Everybody.

The Court: Why ask this witness that? Mr. Danenhauer is here. He can testify.

Cross-examination.

By Mr. Sacks:

20 Q. When your husband went on this property in 1919, two or three years before you moved there, did you know about this agreement or understanding that he had —

A. Yes.

Q. Just a moment. —that he had with his mother and father about him owning this property?

A. Yes.

Q. What did you know about that agreement?

30 A. Just what I say, that sitting at our living-room table.

Q. I am calling your attention now to 1919, two or three years before you moved on to the premises.

A. 1919?

Q. Yes.

A. Ask me that question, please.

(Question repeated.)

A. There was no understanding then.

Q. There was no understanding then?

A. No, there was talking about, there was no understanding.

Q. The first understanding of any sort was in 1922 or 1921, rather, in your home?

A. In our home.

Q. And they were there for dinner?

A. Yes, they were.

Q. Now, when was it that you first went out to look at this property in Paoli? 10

A. March, 1922.

Q. March, 1922?

A. Yes. It may have been the end of February. It was around that time. It was cold weather, very cold.

Q. You have referred to three-living rooms on top of one of the outer buildings; do you know who those living-rooms were built for?

A. Certainly. 20

Q. Who?

A. Just for any one that was coming on the place.

Q. They were built for sort of visitors' quarters?

A. Partly, and any time if we had any one come there to stay.

Q. Weren't they, as a matter of fact, Mrs. Danenhauer, built for you and your husband?

A. Positively not.

The Court: Were they furnished? 30

A. No, they were not furnished. My husband built the house, he built that place, and they were not livable rooms, they were not at all, they were all right to rough it week-ends.

Q. You have said the only help your husband had was one man to hang the doors in the sun parlor?

A. Yes.

Q. Did he have any other help that he paid for?

A. Not that he paid for, my brother helped him to put in the plumbing.

Q. The rest of the work he did himself?

A. He did himself.

Q. About the cost of the materials, do you know
10 how much of that cost your husband paid?

A. No, I couldn't tell you.

Q. Do you know whether he paid any of it?

A. Yes, I do.

Q. Do you know whether his father gave him back the money that he expended?

A. No, he did not.

Q. Now, when was it that you first found out that you were going to be disappointed about owning this property?

20

Mr. Morris: I object, if your Honor please. How is that material?

The Court: I will admit it on cross-examination.

A. When was it I first found out? The day that his father was buried.

Q. The day that his father was buried?

30

A. Yes.

Q. Well, hadn't you had any knowledge of Mother Danenhauer's will before that?

A. Not a bit.

Q. Didn't your husband know anything about it?

A. No, he didn't. Mother Danenhauer always made the remark that everything she had, she had

two children, two boys, everything would go to those two boys.

Q. One of those boys was George?

A. One of those boys was George, and the other was Lee.

Q. Then on the day that your father-in-law died, that was the day that you found out about this will of Mother Danenhauer's?

A. Yes.

Q. How did you find out about that? 10

A. George asked me to come out to his house, and I went out, and that is when Lee found it out.

Q. And he told you?

A. Yes, sir, that is all I know.

Q. That is the first intimation that Lee had about it?

A. That is the only intimation, yes, the first time.

Q. What did you say when you first found out about it?

A. Naturally I was disappointed, putting in the 20 best years of our life there, putting all our savings in there.

Q. Were you disappointed because this property was taken away from you?

A. How do you mean was taken away from us?

Q. Well, you have said that you practically owned that property.

A. No, I didn't say that.

Q. You were living on it, weren't you?

A. We were living on it, yes. I didn't say we 30 owned it.

Q. You had expected to own it?

A. From what Mother Danenhauer and Father Danenhauer told us.

Q. Wasn't your disappointment brought about more by the fact that your little girl had been disinherited rather than ——

A. Partly, yes. For myself I didn't care.

Q. It was because your daughter Joan had not been mentioned in this will that you were so disappointed about it?

A. Not just exactly like that, I felt this way about it, we put our life's savings in the place and gave the best years of our life to that place, and made it a home, which it wasn't before, and it always could do, and lose everything which we put in there which we
10 had.

Q. Under the will you were giving everything up?

A. Partly.

Q. Just partly giving it up?

A. Yes.

Q. And weren't you also disappointed because Mother Danenhauer had mentioned in the will and provided in the will for your husband's first son and not for your daughter?

A. Positively not.

20 Q. You had no feeling about that at all?

A. No, not a bit. That was my intention, I told Mrs. Danenhauer years and years ago, he was their own flesh and blood just as much as little Joan was, and they were the very ones that disowned the boy as a child.

Q. By this action you have taken you are attempting to take that very thing away from the boy that you wanted him provided for, aren't you?

A. No, I am not at all, I want to see him provided
30 for.

Q. Had you lived on this farm continuously from 1922 when you moved there until now?

A. Until now.

Q. Lived there all the time?

A. All the time.

Q. Didn't go to Philadelphia for the winter months?

A. No, we did not.

Q. Wasn't to —

A. 1921, we stayed until December, and then we went back and stayed until March, and we have lived on the place ever since.

Q. Wasn't there a time in 1923 when you had some sort of a quarrel with your mother-in-law and she ordered you off the premises and you went back to Philadelphia?

A. Positively not. There was never a quarrel 10
with Mother Danenhauer, never. That incident you speak about, I know what that is.

Q. Will you tell us?

A. Yes, I certainly will. There was a boat on the place, and my brother had been working, helping my husband work, and he went home and it was raining, Sunday night, and we had no way of getting in and off the place except by boat, and he took the little boat and took it across the river to take the train and the boat was left on the other side. In the mean- 20
time Father and Mother Danenhauer came down and found out the little boat was on the other side, and he said, "I don't want these boats to leave the place," and I explained to Father Danenhauer why the boat was on the other side, and it was such a stormy night I said it was foolish for Lee to go out, and that the boat would be brought back, and Father Danenhauer, he was good as gold, but he had one of his flare-ups, and he said, "Well, that boat is to stay on this place and not go off." So I said, "The 30
boat will be brought back," and I said, "Understand this, Father," I said, "I will never take anything like this from anybody." I said, "My own father and mother don't talk to me like this, and I will not take it from anybody else," so I went upstairs and said, "Lee, I am going home," and in the meantime, at that time I was sick and under the doctor's care,

and I said, "I am going home." I dressed and I went to Philadelphia. In the meantime Father Danenhauer wrote up to me and said, "I am sending paint from Lit Brothers, will you please bring it down?" I wrote a postal card back and said, "Yes." We were coming home Friday afternoon, and on our way home we stopped at the store and got the meal for that night's supper and came home and cooked it, and there was nothing said about it.

10 Q. That is the only time you were off?

A. That is the only time I was off the place.

Q. Is that the only time you ever had a quarrel?

A. Was no quarrel, Mother Danenhauer and I never had a word in our life. Father Danenhauer and I never did.

Q. Was there ever a time during the occupancy of those premises Mother and Father Danenhauer lived in the outer building and you occupied the main house?

20 A. Never, the only time when they were over there, when George and Margaret and their family were down, and they spent their days with them, and they came home for every meal.

Q. In other words, both families lived in the same house?

A. We lived in the same house always.

Re-direct examination.

30 By Mr. Morris:

Q. Mrs. Danenhauer, Mr. and Mrs. Danenhauer, Senior, died leaving other property than this house in Mays Landing, didn't they?

A. Yes.

Q. This was not the only property of which they were seized?

A. No.

Q. Do you know what your mother-in-law meant when she said that when they die everything was to go to both boys?

A. Yes.

Q. What did she mean, do you know?

A. Well, she had told Mother and I that she put George in business, at least, they put George, she didn't just say, "I did," "We have put George in the hardware business, and this place was to be Son's." 10

Q. What do you mean, this place; which place?

A. In Mays Landing, he did all the work there, and he made a home.

Q. This place was to be Son's?

A. That was to be Son's.

Q. And the hardware business was to be George's?

A. To be George's; that is all I know. That is all she told me. 20

Q. When did she tell you that?

A. Let's see how many years ago, I can't recall the year.

Q. About when?

A. I imagine it was about, I imagine '26, I think so.

Q. Were there any other laborers employed about the premises in cleaning up?

A. No. 30

Q. Colored or white?

A. We had a colored man on the place once in a while, maybe about two or three weeks.

Q. Have any other laborers in general cleaning up?

A. No.

Q. You say that, in answer to Mr. Sack's ques-

tion, Mr. Sacks asked you whether or not your husband was right when he said that your husband had a conversation with his mother in 1919 about the disposition of the property, and you said there was no such conversation, did you?

A. How do you mean?

Q. I believe you told Mr. Sacks that your husband had no conversation with his mother in 1919?

A. His mother and father at our living room
10 table —

Q. Yes, but do you know whether or not he had a conversation with his mother in 1919, before this?

A. I couldn't tell you that.

Q. You don't know that?

A. I couldn't tell you that.

Q. Then you don't say that he didn't have any conversation?

A. No, I will not say that.

Q. Mrs. Danenhauer, I show you a group of pic-
20 tures, will you tell me whether or not there are any family pictures here taken after this supposed quarrel between yourself and your father-in-law?

A. There was no quarrel.

Q. Well, these words you had.

A. Yes.

Q. Is that one?

A. That is one.

Q. Is that your father and your baby?

A. That is my father and my baby.

30

(Photograph offered, received in evidence and marked Exhibit C35.)

A. That is another one.

Q. Who is in this picture?

A. Mother Danenhauer and I.

Q. About when was that taken?

A. I imagine end of the summer, twenty —

Q. Was it after these words with your father?

A. Yes.

(Photograph offered, received in evidence and marked Exhibit C36.)

A. This picture was taken in September.

Q. Which one?

10

A. Both of these.

(Photographs offered, received in evidence and marked Exhibit C37.)

Q. This picture was taken about September, what year?

A. 1924, I judge.

Q. Shows your mother-in-law and yourself?

A. Yes, at Ocean City.

20

Q. At Ocean City?

A. Yes.

Q. These all show your mother-in-law, all these pictures, and yourself?

A. Yes.

(Photograph offered, received in evidence and marked Exhibit C38.)

By Mr. Sacks:

30

Q. Mrs. Danenhauer, far as you know, did Father Danenhauer ever have any interest in that hardware business?

A. Oh, I don't know, just what Mother Danenhauer said.

Q. You don't know whether it was George's hardware business or Father Danenhauer's hardware business?

A. I don't know, he just told us he had put George in business out in Upper Darby, that is all I know.

10 PAUL HICKEY, sworn.

Direct examination.

By Mr. Morris:

Q. What is your full name?

A. Paul Hickey.

Q. Where do you live?

A. Oaklyn, New Jersey.

20 Q. Are you the brother of Mrs. Danenhauer?

A. I am.

Q. Who is the wife of the complainant?

A. Yes, sir.

Q. Do you know where Mrs. Danenhauer lives on this property in Mays Landing?

A. I do.

Q. Did you see this property in 1921 and 1922?

A. I came down in the winter time, in 1921, I think, and put some iris in the ground with Mr. Howard Lee Danenhauer.

30 Q. Is there any change in the condition of the property from that date to the present date?

A. Very much.

Q. What work, do you know what work did Mr. Lee Danenhauer do about the premises?

A. I put in the plumbing work in there, in the house.

Q. You put in the plumbing work?

A. In the house that they are living in now, and then helped to build the shop, that is, the shop downstairs, and office, and three rooms upstairs.

Q. What did Mr. Danenhauer do, Lee Danenhauer?

A. He would be working at the end of the week.

Q. On what thing?

A. On the sun parlor here, such as dig the cellar, he would have that dug until I came down, I would help him with the work on Saturday and Sunday. 10

Q. What else did he do?

A. Well, I lived down there a good bit in 1923.

Q. You lived?

A. Yes, sir.

Q. What did Mr. Danenhauer do?

A. He worked out in the iris, out in the fields during the day, until he got through, and then come down and help me on the house, which we were building. In 1923 we were building the old house down there. 20

Q. Building what?

A. Building that shop in 1923. And Mr. Danenhauer paid me all the wages.

Q. How much did Mr. Danenhauer give you?

A. I just couldn't recall, but I was very well satisfied, he paid me.

Q. He paid you for work about the premises?

A. Yes, sir, and he also had another man there, Mr. Coleman, who worked there, I think, one I know of, and I think possibly two. 30

Q. What did he do?

A. He worked around the iris field, and maybe one or two days a week Lee, Mr. Danenhauer, would have Mr. Coleman down there in the field, working down there clearing up.

Q. Did you ever see any other laborers about the premises cleaning up?

A. Time and time again he had a bunch of boys in there weeding and different things like that there.

Q. Did you ever hear Mrs. Annetta Danenhauer, or her husband, Frank Danenhauer, talk about disposing of this property after their death?

A. She was hard of hearing, when they would be sitting in the living-room, you couldn't help hear
10 what they would say.

Q. You did hear?

A. I did hear numerous occasions about this being Son's place, going to be Son's place, can't just recall the conversation.

Q. When did you hear her say that?

A. I just say I stayed there in 1923.

Q. In 1923 to whom did you hear her say that?

A. Mr. Frank Danenhauer, that is his father, he would have to talk loud for her to hear.

20 Q. How about the mother, what did she say?

A. Why, I couldn't say what she would say, because she would talk low, so he could hear, but she wasn't very—she was hard of hearing.

Q. Did you ever hear the mother say anything about the disposition of this property?

A. But I wouldn't say that I did.

Q. But you did hear the father say?

A. Yes.

Q. And what did you hear the father say?

30 A. That this place, that Lee was doing there, was for his own benefit.

Q. Did he say anything else?

A. I can't recall.

Cross-examination.

By Mr. Sacks:

Q. You say you lived on the place a whole year?

A. May until September, not quite a year.

Q. What did you do on the place, Mr. Hickey?

A. Took a couple of months to build that place down there, that little shack.

Q. You helped build around there, to work around there? 10

A. Yes, sir.

Q. How much salary did you get?

A. I didn't say I got a salary. I got so much for doing the job, but I don't know just how much I did get.

Q. You don't remember that?

A. No, but I was always satisfied.

Q. But you do remember these conversations that you overheard by Frank Danenhauer, saying he was going to leave the property to your brother-in-law? 20

A. I wouldn't say I heard him say that he was going to leave the property to his brother-in-law, but I heard him say what he was doing was for his own benefit.

Q. You remember that quite distinctly?

A. Yes, sir.

Q. How were you paid by Mr. Danenhauer, your brother, cash or by check?

A. Cash, always cash. 30

Q. Did you get paid every week?

A. No, got it by the month, same as I do up in Philadelphia, took some money with me.

Q. Pardon me?

A. Just about every month, maybe three weeks.

Q. You don't recall how much you got?

A. No, sir.

Q. You say there was another man on the place almost a year?

A. Yes, sir.

Q. What did he do?

A. He worked on the place.

Q. What kind of work?

A. Just gardening and different things around there.

10 Q. Worked there almost a year?

A. Yes, sir.

Q. Who paid him, did you see?

A. Certain times when Mr. Frank Danenhauer had him do little chores for him down in the flat, he would pay him, but other times Mr. Lee Danenhauer paid him.

Q. In other words, Mr. Frank Danenhauer had his own little garden that he worked?

20 A. He had a hobby, was taking care of a little plot down there, didn't amount to nothing, but just wanted his exercise, and there was things sometimes would be too heavy for him to do, such as push that little hand plow, and he would get Mr. Coleman to do it for him, just a little bit of cabbage, a few bushes.

Q. He would pay for that himself?

A. Yes, sir.

Q. All the other work H. Lee paid for?

A. Yes, sir.

30 Q. How do you know he did?

A. I have seen him pay him on numerous occasions.

Q. Is that Mr. Coleman, E. R. Coleman?

A. I wouldn't say what initials it is, but I know Mr. Coleman.

Q. You wouldn't remember that? You never heard him say, did you, Mr. Hickey, whether or

not the whole of the ground would be H. Lee Danenhauer's or whether just a part of it?

A. Never heard of it.

Q. About a hundred and fifty acres in this field, isn't there?

A. I don't know, I think a little more than that.

Q. And this man Coleman you say worked around there pretty steady?

A. Yes.

Q. Was he a white man?

10

A. Yes, sir.

Q. Your sister was there pretty steadily, wasn't she, on the place?

A. She was there.

Q. She must have seen Coleman working around there?

A. Sure she did, I know she did.

Q. You say you first came there in 1921?

A. I think it was the winter of 1921, December, we came down there to plant some bushes that he 20 got from the other side, I think it was Holland.

Q. You and Mr. Danenhauer came down then?

A. Yes, sir, and I think Mr. Frank Danenhauer, he came down once, too. I came down a couple of occasions.

Q. You put these bushes in in the winter time?

A. In the cold weather, sure.

Q. Why would you have to go along to help to put them in, so many of them?

A. Because he had a good day's work for three 30 men there.

Q. He did have a good day's work?

A. Yes.

Q. Were there any other flowers on the property at the time you put these in there?

A. Just little rose bushes or something around the house.

Q. Was this the first peonies that were in there that you put in in 1921?

A. Yes, sir, first I saw.

Q. First that you saw?

A. Yes. You couldn't see nothing, anyhow, in the winter time, ground was poor, and you can't tell how many peonies are there in the winter time.

Q. You hadn't been down on this property previous to 1921?

10 A. No, I haven't.

COMPLAINANT RESTS.

DEFENDANTS' TESTIMONY.

GEORGE E. DANENHAUER, SWORN.

20 Direct examination.

By Mr. Sacks:

Q. You are George Edward Danenhauer, one of the defendants?

A. George Edward Danenhauer.

Q. Mr. Danenhauer, what is your business?

A. At the present time I am secretary of a cemetery company, and superintendent.

30 Q. Were you in the hardware business at any time?

A. Yes, sir.

Q. When?

A. From 1924 to 1928.

Q. Where?

A. In Upper Darby and Drexel Hill.

Q. Who put you in that business, if anyone?

A. I put myself in the business.

Q. Did you borrow any money from your father or did your father give you any money to open that business?

A. No, sir.

Q. What sort of a business was it, a large business, small business, or what?

A. Rather fair-sized business.

Q. Fair-sized business, you disposed of it when? 10

A. The Upper Darby store was disposed of in December, 1926.

Q. How much did you get for that store?

A. For the real estate thirty-nine thousand.

Q. And for the stock and fixtures?

A. Stock and fixtures were held in storage.

Q. So that you were not in a position where you had to have a job to work on a farm for your brother, were you?

A. Not particularly, no. 20

Q. Do you recall an occasion when you attended a dinner or was present at a dinner at your father's house sometime immediately after your brother and your father returned from visiting some property in Chester County?

A. Yes, I recall that incident.

Q. Now, when was that?

A. As to the date, I couldn't give you a very good conception; it would be an estimate.

Q. Do you know what year that was? 30

A. I would say 1923, possibly.

Q. 1923? What was the occasion, Mr. Danenhauer?

A. My wife and myself were over there, and my brother was there, and my mother and father.

Q. Where, at their home?

A. At 2011 Poplar Street.

Q. That was their home?

A. My mother and father's home, and the question came up as to whether father would invest a certain amount of money in this piece of property in Chester County, and he decided that it would be very disadvantageous to my brother, for the reason that it was a fifty-fifty proposition, share and share alike, he invested so much money to put these hot-houses back into condition, and then they would

10 share fifty per cent.

Q. In other words, was your brother going to buy this business or buy an interest in this place?

A. From the conversation that night, I would say that it was —

Mr. Morris: I object, if your Honor please.

The Court: Sustain the objection.

20 Q. Do you know whether your brother was going to buy the place outright or was he going to have to share his profits with some one?

Mr. Morris: I object, if your Honor please. I think we are entitled to the conversation.

The Court: Yes, I think that is true.

Q. What was the conversation, tell us that?

30 A. That it would be detrimental to my brother to invest in a share-and-share proposition where he had to produce all the labor and the money.

Mr. Morris: If your Honor please, I don't believe that is responsive to the question. I don't believe that is the conversation.

The Court: The witness says so. I can't go beyond that.

Mr. Morris: I think we are entitled to who said what.

A. Mr. F. H. Danenhauer made that comment.

Q. That was your father?

A. My father.

Q. Do you know who he referred to about the 10 fifty-fifty proposition?

A. To the owner of the piece of property in Paoli.

Q. In other words, your brother was simply buying an interest in that property?

A. Yes, sir.

Q. And your father advised him against it?

A. Yes.

Q. How long was that after they had taken this trip or jaunt up to Paoli to look at this property?

A. Very close on the heels of it. 20

Q. You mean in days or hours or weeks?

A. No, in days.

Q. What did your brother reply to your father in response to that?

A. He never had very much to say to father's criticism.

Q. And your father said he did not think it was a logical thing, and your brother agreed with him, is that the idea?

A. He didn't disagree. 30

Q. Now, do you recall any other part of this conversation leading up to Mr. Lee Danenhauer's going to Mays Landing, your mother say anything or father say anything?

A. Mother thought that, mother said that it would be much better for him to put this material

that he was buying, this iris and peony roots that he was importing from Europe in Mays Landing, and try to gather some experience from that. He had absolutely no experience in horticulture at the time, and it was an experimental stage with him right from one end to the other.

The Court: Who said that?

10 A. Pardon me?

Q. Will you just relate what you know, just confine yourself to the conversation?

A. The statement that my mother made was that he should take this material and put it in Mays Landing and see if it was possible to make any money on it, and from the money that he could make in planting the material on her property he would be able to buy this cherished piece of ground or a
20 the soil conditions would be considered better for the growing of both peony and iris.

Q. Had your brother planted anything on this Mays Landing property previous to this time in the way of iris or peonies?

A. Previous to the expedition to Chester County, you mean?

Q. Yes.

A. I couldn't say.

Q. What say?

30 A. I couldn't say.

Q. You couldn't say?

A. No.

Q. Now, what did your brother respond to your mother's suggestion, if you recall?

A. I can't say as to that.

Q. You don't know what he responded?

A. No.

Q. Was there anything at all in that conversation, Mr. Danenhauer, with regard to a promise by your mother or father that they would leave this property to him after their death?

A. No.

Q. Are you positive of that?

A. Absolutely.

Q. Was Mrs. H. Lee Danenhauer present at this dinner?

10

A. Not at that time, no, sir.

Q. Do you know when it was that your brother finally moved on this property in Mays Landing, do you know the year?

A. I think it was in 1923.

Q. You think it was in 1923?

A. Yes, sir.

Q. This property in Mays Landing was your mother and father's property, was it not?

A. My mother's property.

20

Q. Your mother's property? Was their summer home, was it not?

A. Yes, sir.

Q. Was it in any state of cultivation at the time that your brother moved on?

A. From the time mother and father occupied that place as a summer home, there was usually a caretaker on there, and I dare say that they cultivated in their time, cleared ground and cultivated ten acres. Now that ground was all broken up ready for use and pretty well fertilized.

30

Q. Now you are one of the executors of your father's estate, are you?

A. I am the executor of mother's estate.

Q. Was there any administration of your father's estate?

A. Yes, sir.

Q. Who were appointed as administrators?

A. I am the administrator of father's estate.

Q. Whose signatures are they?

A. My father.

Q. On the back of them, can you go through them and tell us whose signature they are, endorsements, rather?

10 A. There is one I don't know, but the first endorsement is my brother, these are all H. Lee Danenhauer. I don't know what that is. That is for deposit to the credit of H. Lee. They are all his endorsements.

Q. They are all checks made by your father to your brother and endorsed by him?

A. With the exception of one which is for deposit to his account.

(Checks offered, received in evidence and marked Exhibit D1.)

20

Q. Will you look at these checks and tell me whose signature they are?

A. Frank H. Danenhauer.

Q. Is that your father's signature?

A. My father. That is an attorney account. My father wrote both my mother and father's signatures.

Q. Have you looked at these checks before this time?

30

A. Yes, sir.

Q. Seen to whom they were payable?

A. Well, where I knew who they were made out to, in some cases I didn't know.

Q. All these checks run from 1923 up until almost your father's death, do they not?

A. Yes, sir.

Q. In these instances of these checks, to whom would you say they were made payable?

Mr. Morris: I object.

The Court: Sustain the objection.

Q. Can you tell from these checks what these checks are for?

10

Mr. Morris: I object.

The Court: Could he tell?

Q. From the persons to whom they were paid?

A. In the majority of cases.

Q. What would you say they were paid for?

Mr. Morris: I object.

20

The Court: I will sustain that objection. If he knows he may say; if he don't know.

Q. Do you know who Albert Wescoat was?

A. No, sir.

Q. Will you look at this check and see what that pays?

A. Balance on sluice.

30

The Court: Wasting a great deal of time. If that is on the check the Court can read it just as well as the witness can.

(Bundle of checks offered, received in evidence and marked Exhibit D5.)

Q. Here is a check made to a man by the name of Coleman, is this your father's handwriting?

A. Yes, sir.

Q. Do you know whether this is the Coleman that was referred to before as having worked on your father's farm?

A. I do not.

Q. You don't know whether this is the same Coleman or not?

10 A. I couldn't say.

Q. You don't know what this check is for?

A. No, sir.

(Check offered, received in evidence and marked Exhibit D6.)

Q. I show you a paper and ask you in whose handwriting that is?

20 A. My brother's, and a few notations is mine on it.

Q. These notations of yours are the following: "342 Laurel Avenue, 1200; 344 Laurel Avenue, 1200; 416 Laurel Avenue, 2000"?

A. Yes, sir.

Q. Can you tell us how you happened to be in possession of this paper, and the occasion on which this paper was presented to you?

A. Yes, sir.

30 Mr. Morris: I object, if it is for the purpose of showing any settlement, I don't think that is material.

The Court: Of course, that is true.

Mr. Sacks: It is for the purpose of showing what

valuation H. Lee Danenhauer placed on this property after the father's death in his own handwriting; also to show, not possibly there was an agreement or he didn't recognize that there was any agreement existing with his mother because it was upon the basis of these figures he wanted to make a settlement with his brother.

The Court: Unaccepted offer of compromise certainly is not admissible. 10

Mr. Sacks: Your Honor, it isn't—perhaps I don't make myself clear, it wasn't an offer of compromise, if your Honor please, this is an offer for the purpose of showing that he did not, it is simply figures that have to be explained.

The Court: What is the purpose to show?

Mr. Sacks: The purpose is to show according to these figures, they were made up by him before he knew that there was any will in existence, and to divide that property in that way, he was to take a part of it and the other brother was to take a part, and what the conversation was at the time these figures were presented, to show that there was no agreement. 20

The Court: Show the conversation, perhaps something upon which that can be admitted; at the present time excluded. 30

Mr. Sacks: I didn't offer it yet, I just wanted that conversation which was objected to.

Q. Tell us what the conversation was at the time

that your brother gave you this paper and where it took place and when it took place.

Mr. Morris: May I renew my objection, if it is a conversation concerning a possible settlement, it wasn't effectuated, and it is not admissible.

10 The Court: That is absolutely true. It isn't offered for that purpose according to the statement of counsel. I will admit it and you may move to strike if it is not admissible afterwards.

20 A. The day or evening of my father's funeral my brother came out, at my request, and gave me his valuations on various properties, asked me to add a few that I was possibly more familiar with than he was, and at that time I explained to him why I wanted him to come out, which was to discuss the will, to tell him the conditions of the will, since I was executor according to the law after my father's death. The will was described, its conditions, and my brother requested me as to —

Mr. Morris: Your Honor please, I don't think there is any need for any further answer to this question. He has answered that question, he says those figures were put down there for an appraised value of certain properties.

30 The Court: He hasn't completed his answer. I will permit it. You may proceed.

A. My brother said since he had lived on and developed the property in Weymouth Township he would take that and give me the property Florida valued at \$150. I said that at the time it would be im-

possible for me to do that, as my father had turned mother's will over to an attorney by the name of Green, and immediately I was requested to destroy that will.

Q. By whom?

A. By my brother; and divide this property as requested, and come to an amicable understanding. My statement in answer to that was if the will was destroyed it could hardly be done because one piece belonged to the Weymouth Township property belonging to my mother, and the other piece in Florida belonged to my father. So that was the sum and substance of that conversation, and the same thing took place about a week later in the home of my parents, former home of my parents, 2811 Poplar Street. 10

Q. When he arrived in Philadelphia with that paper —

Mr. Morris: If your Honor please, may I move to strike that answer as not being competent, relevant or material, it shows a compromise, an effort of compromise only. 20

The Court: I will overrule the motion to strike. Proceed.

Q. When your brother arrived with this paper, did he know of the existence of a will, so far as you know? 30

A. Yes, I asked him to come out to my house so I could discuss the matter of the will with him.

Q. And he came out with those figures already prepared, did he?

A. Yes.

Q. When was that, after your mother's and father's death?

A. Yes, that was on the evening of my father's funeral.

Mr. Sacks: Then, if your Honor please, I would like to make that offer for the purpose of showing what value Mr. Danenhauer placed upon his own property.

10

The Court: I will sustain the objection.

Q. Did he say anything to you at the time that he was talking to you about the value of that property in Mays Landing?

A. He read this to me and said that Weymouth Township land —

20

Mr. Morris: I object, if your Honor please.

The Court: Sustain the objection.

Mr. Sacks: If your Honor please, this question is asked for the purpose of showing that the property was not worth what Mr. Danenhauer has testified on the stand, according to his own admissions to his brother.

30

The Court: You may show that if you can, by legal evidence, but this evidence is manifestly an unaccepted offer to compromise a case.

Mr. Sacks: Perhaps my fault, if your Honor please, but we don't offer this to show any compromise.

The Court: Therefore you can't offer it upon any purpose. If it was an unaccepted offer of compromise, it is inadmissible for any purpose, and that is the point upon which I am ruling it out.

Mr. Sacks: The next question I will ask is as to the conversation as to the value of the Mays Landing property.

The Court: You have already asked that, and this 10 witness replies by attempting to read the paper, which I have excluded.

Q. Can you recall, Mr. Danenhauer, without reading that paper, what the conversation was with regard to the value of this particular property in Mays Landing as placed by your brother at that time?

A. He tells me that the ground is worth \$700 and the buildings are worth \$500.

Q. That is what he told you at that time? 20

A. Yes, sir.

Q. Was there anybody present at that conversation?

A. My wife.

Q. And Mr. Lee Danenhauer and yourself?

A. Absolutely.

Q. That took place at your home?

A. At my home and in the former home of my mother and father, 2011 Poplar Street.

Q. How often did you visit this place at Mays 30 Landing, Mr. Danenhauer?

A. Since 1924 on an average of once a week during the summer months.

Q. When was it that you first saw the property, if you recall?

A. I think it was when I was about ten years old.

Q. What say?

A. I think it was when I was about ten years old.

Q. How many years ago is that?

A. That has been thirty years ago.

Q. Now, in 1921, Mr. Danenhauer, or, rather, in 1919, was there any development or cultivation of that property?

A. The ground had been cultivated prior to that time, which made it much easier to cultivate there-
10 after.

Q. Do you know anything about these improvements put on the property around 1922 and 1923, and do you know who paid for them?

A. My father told me that he paid for them. I was present at several meetings between he and my brother where he gave my brother checks to pay certain individuals for their work on the property, and for moving sand into the washouts on the road, and things of that type.

20 Q. Now, do you know anything about the erection of any of these buildings or the improvements themselves, what was done on this property?

A. Only what the other witnesses say, there was a shop —

Mr. Morris: I object, if your Honor please.

The Court: Yes.

30 Q. I mean from your own knowledge.

A. My own knowledge, there was a shop consisting of a basement, shop and office, or shop, office and garage on the first floor, and three —

Mr. Morris: If your Honor please, first the witness says he only knows from what the other witness says.

The Court: He has predicated this answer by saying of his own knowledge. Of course, he can only tell us what he knows of his own knowledge.

(Answer repeated.)

A. — rooms on the second floor.

Q. Do you know what that apartment —

A. Pardon me, making that third floor.

Q. Are you finished with your answer? Is that 10 all the improvements that were put in there?

A. There was a porch surrounding or crossing the front of the property and partially covering each of two sides, and a two-story addition consisting of a sun parlor and bathroom.

Q. Do you know who paid for those improvements, Mr. Danenhauer, of your own knowledge?

A. I can repeat a conversation with my mother.

Mr. Morris: I object.

20

The Court: Sustain the objection.

Q. Did your father tell you whether he paid for these improvements?

Mr. Morris: I object.

The Court: Sustain the objection.

30

Q. Do you know whether your brother paid for any of these improvements?

A. I don't know.

Q. Do you know why this three-room apartment was built above the—one of the outer buildings that you speak about?

A. I do.

Q. When was it built in the first place, do you know?

A. 1923.

Q. Do you know why it was built?

A. It was built to give a budding shed in the basement, or cleaning house for plant cleaning, in the basement, to keep the dirt away from the main house, the first floor or ground floor, I guess you
10 would call it, the second floor, from the entrance side of it was a garage in front and shop, in back of the shop there was an office in which my brother had a desk and my father had a desk in there, and on the third floor there were three apartments, a three-roomed apartment which was built to house my brother and his family. The reason I recall that was partly, was the fact that the staircase entered the upstairs from the office and there was quite a
20 controversy about the privacy or lack of privacy that the stairway going from that point gave the family upstairs, so immediately that was closed up and the stairway put in from the front, but that was never occupied, and right after my brother and his family declared their intention not to occupy it, my mother asked if she couldn't build a house for us so that we could come down there and she could live over there with us, and we sort of put our foot down on the idea, saying that this apartment was
30 plenty good enough for the time we would be able to spend there, so we furnished that and used that on our visits there, and that was considered our home there.

Q. Was there any time that your brother, from the time he went into possession of this place in 1922, ceased to occupy the premises?

A. I think in 1925, we called on the 'phone, father

called us from Mays Landing, telling us to come down ——

Mr. Morris: I object, if your Honor please. I don't think that is relevant. I think that is hearsay.

The Court: Yes, I think you are right.

Mr. Sacks: Conversations, if your Honor please, by persons deceased. 10

The Court: On what basis is that admissible?

Q. As the result of what you heard, did you go to Mays Landing?

A. Immediately.

Q. And what did you find upon arriving there?

A. Found mother sick, that is, very nervous condition, and father likewise in a very nervous condition, due to an argument they had had with —— 20

Mr. Morris: I object, if your Honor please.

The Court: Sustain the objection.

Q. How do you know that they had had an argument?

A. My mother told me ——

Mr. Morris: I object. 30

Q. You say your mother told you?

A. No, I haven't finished my statement.

Q. Well, finish it.

(Question repeated.)

Mr. Morris: I object.

The Court: I will permit that, mother told him.

Q. Was your brother there and his wife at the time?

A. No.

Q. They were no longer on the farm?

A. No, sir.

10 Q. Your mother tell you why they were not there?

Mr. Morris: I object.

The Court: Sustain the objection.

Q. How long a period did you remain there?

A. Three days.

Q. During that period of three days, did your brother or his wife come back?

20 A. No, sir.

By the Court:

Q. Can you fix the date of that time?

A. I think I did, 1925.

Q. Can you go any closer than that?

A. I don't believe I can.

(Further testimony adjourned until Wednesday,
30 October 23rd, 1929, at 10 o'clock A. M.)

Atlantic City, New Jersey, October 23rd, 1929.

(Trial of the cause resumed at 12:45 P. M.)

GEORGE E. DANENHAUER, resumed.

Direct examination (resumed). 10

By Mr. Sacks:

Q. Mr. Danenhauer, did you know the condition of this property at the time, that is 1919 and 1921?

A. Very well.

Q. What was the condition of that property?

A. It was in excellent repair, the interior of it, and it was used as a summer home for mother and father, and they had the usual conveniences of that type of a summer home, as far as the outside goes it had never been painted, but it was not in a dilapidated condition, about three coats of paint would put it in shipshape. 20

Q. Now from 1922 on, what improvements were made to the property? I am not talking about the property, I mean everything there.

Mr. Morris: If your Honor please, I believe that has been brought out by this witness, I believe. 30

The Court: I think I will permit it.

A. There was a shop, three-story shop, basement, first floor, with an office, shop and garage, and the third-floor apartment. Then the house was painted,

as I say, and a porch put around the front part, and a small addition set on one side, including a sun porch with a bathroom above it.

Q. Now was there other improvement in the land, cultivation of the land, from that time?

A. I should say an acre.

Q. An acre was improved?

A. In addition to what was already —

Q. To what was already cultivated?

10 A. — cultivated.

Q. Who was it that took care of these grounds and lands?

A. It was always the practice of my father to have a caretaker on the property. I can recall four different families who were there.

Q. As caretakers?

20 A. As caretakers, in a sense they were caretakers, but they paid a nominal charge of a hundred dollars a year rent, and what they were able to get off the ground was theirs absolutely.

Q. In other words, they raised produce and that?

A. They cultivated this vegetable garden and usually had cows, pigs and chickens, and marketed those in the near-by town of Mays Landing.

Q. Now, there was something said about the demolition of two buildings, I think two buildings demolished and removed by your brother. What were those two buildings that were demolished?

30 A. There were two buildings in back of the farmhouse, which had burned down later; the farmhouse burned down later. These two buildings were chicken houses and the pigsty, something like that, they were in such a dilapidated condition that if you would lean against them they would fall over almost.

Q. Were those the two buildings your brother referred to as having demolished and removed?

A. They are the two.

By the Court:

Q. When did the old building burn down?

A. I should say about 1920. I am not at all sure of that date.

By Mr. Sacks:

Q. Do you recall the occasion, Mr. Danenhauer, when you came on the premises or the farm, this 10 property, and rode home to Philadelphia with your mother?

A. Very well, yes, sir.

Q. Now, can you recall any of the conversations had between you and your mother at that time relative to this property?

Mr. Morris: I object, if your Honor please.

The Court: What is the objection? 20

Mr. Morris: Conversation with the deceased.

The Court: Yes.

Mr. Morris: For what purpose?

The Court: Isn't that the sole purpose of your suit, to show the conversation, that the deceased made a certain contract here, isn't it admissible to 30 show that there was no such contract? I presume that is the purpose.

Mr. Morris: If that is the purpose —

Mr. Sacks: That is the purpose.

A. We were down there to straighten my mother out after sort of a row with Brother and his wife. That being accomplished we were recalled about a week later. We had stayed there a couple of days and we were recalled to the place about a week later to take mother back home. Well, we had to take her up in the train about somewhere around 1923, I think, and as we left the place, Mrs. Danenhauer, Mrs. Katherine Danenhauer extended a very
10 cordial invitation to come back and visit them again.

Q. Who did she extend that invitation to?

A. To me.

Mr. Morris: If your Honor please, I don't believe this is responsive to the question.

The Court: It is not responsive at the present time.

20 Mr. Sacks: I think, if your Honor please, that leads up to what caused ——

The Court: Yes, but it is not responsive to the question.

Q. Just tell us what the conversation was between you and your mother.

A. Mother, as we were leaving the property to get to the train and boat, mother said, "That was a rather peculiar remark to make to you." I said,
30 "Yes, it is rather odd for my sister-in-law to be inviting me to my own home." And she said, "Well, it will never be her home. It will belong to both of you jointly."

Cross-examination.

By Mr. Morris:

Q. About when did you visit the premises around 1919 or 1921, Mr. Danenhauer?

A. During the summer months.

Q. At that time the land was well cultivated?

A. I couldn't be specific as to say that at those particular dates. 10

Q. Well, around 1919?

A. My statement —

Q. No. I will withdraw that question. Around 1919 or 1920, was the land well cultivated?

A. The land was in excellent condition for cultivating work for planting.

Q. Was it well developed?

A. Yes.

Q. Had it been under cultivation?

A. For ten or fifteen years prior. 20

Q. What was developed about the property?

A. What was developed?

Q. Yes, what was developed about the land?

A. It was cleaned, that is, cleaned of heavy brush. Of course, not as to winter weeds and spring weeds; cleaned of heavy brush, and there was approximately ten acres of it there that was available.

Q. That was what?

A. Ten acres available. 30

Q. Available for what?

A. As improved ground.

Q. Improved for what?

A. Cultivating work, for planting work.

Q. Was it cultivated?

A. It had been cultivated, yes.

Q. What do you mean by cultivated or uncultivated?

A. An uncultivated piece of property is something that is grown up with heavy brush, that has to be cleaned, natural ground that has to be cleaned of heavy timber and heavy brush prior to cultivation.

10 Now, every piece of ground before cultivating has to be ploughed, if it has been cultivated the year before it has to be plowed to plow your weeds under. That is the natural course of events, but you call that cultivated ground, nevertheless.

Q. You mean by cultivation that this ground was free of big timber, is that it?

A. And brush.

Q. And brush?

A. Yes, sir.

Q. All of the land was free of big timber and brush?

A. The cultivated piece.

20 Q. How big was that piece?

A. Approximately ten acres.

Q. That was immediately around the house?

A. Yes.

Q. Did you see any flowers or any fruit around there or any vegetables growing in 1919 or 1921?

A. As to those dates I really couldn't say.

Q. Around that period?

A. Yes.

Q. You saw flowers around there?

30 A. Yes, sir.

Q. About how large an area was developed with flowers?

A. Well, I should say an acre.

Q. One acre?

A. Yes.

Q. When is the last time you saw this property?

A. In 1928, the early spring.

Q. Did you see any difference in the cultivation or improvement of the land from 1919 to 1928?

A. Yes, indeed.

Q. What was the improvement that you saw on the land?

A. There was additional cultivated area to the extent of possibly an acre or two.

Q. Is that all?

A. All I saw.

Q. In the eight years to your knowledge and belief only about how many more acres were cleaned up, one or two acres?

A. One or two acres, yes.

Q. Then all the rest of the tract remained with big brush and big trees, is that it?

A. Yes, indeed.

Q. Did you go around the land to see whether or not—certain other areas had been cleaned up, or did you just make the —

A. There was, the roadway had been opened up. 20

Q. It had been opened up?

A. Oh, yes.

Q. And what else?

A. That was practically impassable with a decent car.

Q. That is in 1919?

A. Yes.

Q. In 1928 it was passable?

A. Oh, yes.

Q. What else? 30

A. The road was in much better condition.

Q. What else?

A. That is about all I can say.

Q. Then in those eight years you say only about one or two acres was developed that you saw, is that right?

A. Yes.

- Q. What improvements did you see in the house?
A. The main dwelling?
Q. Yes.
A. A porch around the front.
Q. Did the house look any better in 1928 than it did in 1920?
A. Yes.
Q. It did?
A. It was painted.
10 Q. Much better?
A. Certainly.
Q. More habitable?
A. No.
Q. It was not any more habitable?
A. No.
Q. You thought it was just as pleasant and habitable in 1919 as in 1928?
A. Absolutely.
Q. You thought so?
20 A. I had lived there.
Q. Wasn't any more comfortable?
A. No, not to me.
Q. Wasn't any cleaner?
A. No.
Q. See any more paint around there, that is, upon the building?
A. Yes.
Q. It was painted?
A. It was painted.
30 Q. Yet you say the only addition was the porch and those extra rooms?
A. The small offset on one side of the building.
Q. So, all told, you don't think that there was much of an improvement in eight years?
A. Not a whole lot.
Q. In your opinion how much do you think was

spent during that period for the improvement of the buildings, if you know?

A. I couldn't say.

Q. Have no idea?

A. No.

Q. You think \$25 would pay for the entire improvement?

A. Certainly not.

Q. It wouldn't cost more than \$25?

A. More than \$25.

10

Q. It would cost more than \$25?

A. Yes.

Q. Would it cost more than a hundred?

A. Yes.

Q. More than a thousand?

A. You are including the material and labor?

Q. The whole thing, yes.

A. Yes, it might possibly cost two or three thousand dollars, I couldn't say.

Q. Cost two or three thousand dollars?

20

A. Yes.

Q. For the house alone?

A. For the complete improvements that you are speaking of.

Q. On the house?

A. On the house and ground you spoke about, that is the question you asked.

Q. How much was additional between the house and land?

A. I am not in position to say.

30

Q. How much would you say was spent improving and cultivating the land in those eight years? The land did look better at the end of eight years, didn't it?

A. Looked better because it was cultivated, yes, but the ground was always the same, it was possible of cultivation, very easy ground to cultivate.

- Q. Did you ever try to cultivate it?
 A. Yes, indeed.
- Q. How much of it did you cultivate?
 A. I tried it to find out the density of the soil more than anything else.
- Q. How much of it did you cultivate?
 A. I have never cultivated any immense amount of it.
- 10 Q. How much did you cultivate?
 A. Possibly a row.
 Q. A row?
 A. Yes.
- Q. Have you any idea as to the value of the roots that your brother put into that land there, that is, iris roots?
 A. No, I haven't.
- Q. Have no idea of the value of those things?
 A. No, sir. I have no idea of the value of the roots that he put in there, any of those things. I
 20 know what they used to cost.
- Q. You say there were caretakers on the premises?
 A. There were four to my knowledge.
- Q. Do you know what they did in taking care of the premises?
 A. Their chief —
 Q. That you saw?
 A. Yes, they cultivated this piece of ground that
 1 spoke of.
- Q. What piece of ground?
 30 A. This piece of ground in back of the buildings.
 Q. This one acre?
 A. No.
 Q. How much more?
 A. These ten acres.
 Q. Oh, I thought you said in those eight years only one additional acre was developed?

A. One or two additional acres by the iris part of it.

Q. I was talking about the entire cultivation and development.

A. No, the entire cultivation and development I would say in eight years had been no advancement.

Q. No advancement?

A. No more ground added to it in the years prior to his occupation.

Q. In the eight years all that Mr. Danenhauer 10 developed, your brother developed, was only one acre of iris?

A. An acre or so, an acre or two possibly —

Q. What did these caretakers do?

A. — in addition to the other cultivated ground.

Q. How many acres were there?

A. I mean he has broken into new, uncultivated soil to the extent of about two acres.

Q. And what did these caretakers do, how much 20 land did they develop?

A. They used the ten acres of ground that possibly was developed with the original owners.

Q. Did you see them develop it?

A. I saw these people use it.

Q. You did?

A. Yes.

Q. Use it for what purpose?

A. Growing of vegetables.

Q. About ten acres?

A. Yes.

30

Q. They were using that to the exclusion of your brother?

A. No, that was prior to this time.

Q. What was prior to what time?

A. These caretakers were prior to his time.

Q. Weren't there any caretakers on the property after your brother took possession?

A. I don't know.

Q. You don't know?

A. No, I am not in a position to say that.

Q. Didn't you tell Mr. Sacks that during the period that your brother was possessed of this property that there were about four caretakers on the property?

10 A. No.

Mr. Sacks: I don't think that was the answer, if your Honor please.

Q. Do I understand now that the caretakers were on there before your brother took possession?

A. That was what I meant to infer.

Q. Then there were no caretakers there during, after your brother took possession in 1922, is that
20 right?

A. There may have been for a very short time.

Q. Do you know?

A. And their name would have been McCauley, that was the last.

Q. Then there was a caretaker on the property after he took possession?

A. May I explain why I am in doubt?

Q. There was a caretaker on the property after your brother took possession?

30 A. It is possible.

Q. Do you know?

A. I can't answer positively.

Q. You don't know, then?

A. If not then, shortly before, because he used there —

Q. You have answered. You heard all these wit-

nesses—do you know how your father felt towards the improvements made on the land by Lee Danenhauer? Do you know whether he delighted in the improvements that his first son was making on and about the land?

A. He was particularly fond of flowers.

Q. No.

A. As far as his personal opinion or personal feeling went about the development of the land, it meant nothing to him.

Q. It meant nothing to him?

10

A. Absolutely not.

Q. Do you know whether or not he delighted and took pride?

A. No, he didn't..

Q. You don't know whether your father delighted and took pride in the development his son was making about the land and premises?

A. Not as far as the development to the land went.

Q. You don't think your father did delight in it? 20

A. Not particularly so.

Q. Then did you hear Dr. Thomas, the Presbyterian minister, testify?

A. Yes, sir.

Q. Recalling that testimony, do you still believe that your father did not delight in the work that his son was doing about the premises?

A. He delighted in flowers, yes, as Dr. Thomas said.

Q. He did not delight in his son's development? 30

A. Not in the cultivation or ground end.

Q. The son Lee did plant those flowers there, didn't he?

A. It was necessary to cultivate the ground to grow the flowers, yes.

Q. So the father did take delight in the flowers that the son had?

A. In the flowers.

Q. Only in the flowers?

A. Very fond of flowers.

Q. And so your father did take delight in the flowers that Lee had planted about the premises?

A. In the flowers that Lee planted and in his own. He had quite a bunch of his own.

Q. The father did not delight in any of the other improvements, did he?

10

The Court: We have gone over that enough. That question has been answered a number of times.

Q. Now, by whom had this land been cultivated prior to the time that your brother had cultivated it?

A. A man by the name of Sidell.

Q. About how long ago?

A. Thirty years, about twenty-five years ago.

20 Q. In that time no one else had developed the land until your brother came on the premises?

A. Mr. Sidell started then, I am not sure as to the rotation, but there was a Dr. Stout, sir, I can't recall the name of another family that did most of the work there.

Q. That was about twenty-five years ago?

A. No, this was the intervening space from twenty-five years up until the time he occupied, or possibly a short time before that.

30 Q. When was the last time, what was the last year that any work had been or any cultivation had been going on around there?

A. About 1920.

Q. Prior to that what was the last year, who cultivated in 1920?

A. The land had been cultivated —

Q. Who cultivated the land in 1920?

A. Mr. McCauley and Father.

Q. Is that the same one that had cultivated the land twenty-five years before?

A. No. Three other people intervened. That was their livelihood, cultivation of that soil.

Q. What did you see McCauley do around there in 1920?

A. Cultivate the ground, take care of the live stock.

Q. What did he do about cultivating the ground, 10 what in particular?

A. Plowed, harrowed and planted.

Q. About how large an area?

A. Ten acres.

Q. About what?

A. About ten acres.

Q. Now you say you were in the hardware business in 1924?

A. Yes, sir.

Q. Did your father give you any money to go into 20 that business?

A. No, sir.

Q. Did your mother give you any money to go into that business?

A. No, sir.

Q. Where did you get the money to go into that business?

A. Borrowed it.

Q. From whom?

A. Colonial Trust Company.

Q. With the aid of your father, directly or indi- 30 rectly?

A. No.

Q. Did your father endorse any notes or stand good?

A. My father endorsed the note in connection with a Mr. Joseph Goldstein.

- Q. So your father did give you some financial assistance going in that hardware business?
- A. No, sir.
- Q. By endorsing a note?
- A. No.
- Q. You didn't consider that financial assistance?
- A. Absolutely not.
- Q. The bank wouldn't have given you money without your father going on that note?
- 10 A. The bank gave me financial assistance.
- Q. But with your father's endorsement, is that the idea?
- A. That is the idea, with his co-endorsement.
- Q. What was the amount of the note that your father endorsed?
- A. I don't recall the figures.
- Q. More than ten thousand?
- A. Oh, no.
- Q. You don't recall?
- 20 A. It was under ten thousand.
- Q. Under ten thousand?
- A. Yes.
- Q. Less than five?
- A. No, it was between five and ten.
- Q. And yet you don't think that is financial assistance?
- A. No, that is not financial assistance. We repaid it.
- Q. Now, you went into bankruptcy twice, didn't you?
- 30 A. Never.
- Q. You gave up the first venture in the hardware business?

Mr. Sacks: I don't know how far this is going to go, if your Honor please —

A. No.

Mr. Sacks: —but I think this is all inadmissible.

The Court: How can that be admissible?

Mr. Morris: I just thought I would like to find out.

10

The Court: If that is the only reason, objection is sustained.

Q. Now, about this Chester, did your father want your brother to buy that property in Chester?

A. There was never anything said in front of me in reference to buying it.

Q. You knew that your brother was interested in going to Chester to take over a certain property there and make a horticultural development out of it? 20

A. Work in partnership with somebody.

Q. Was your father favorable to that proposition?

A. He was not favorable to investing any money in it.

Q. Was your brother to go in partnership with somebody else or with your father?

A. With somebody else, the owner of the property.

Q. Who was it? 30

A. I don't know who the owner of the property was.

Q. Franz Warsube?

A. Not to my own knowledge. I don't know that.

Q. Isn't that the name of the person who was suggested?

A. No.

Q. Did you know of any other person with whom he was supposed to go in partnership other than Franz Warsube?

A. I don't see how I can answer that question. Do I know, what is that?

Q. You say your brother was to go in partnership with somebody else in this Chester property, is that right?

10 A. Yes, sir.

Q. Do you know with whom?

A. I said no.

Q. You have no idea?

A. No. I know it was a woman.

Q. It was a woman?

A. Yes.

Q. He was to go in partnership with a woman?

A. Yes, she was the owner of the property.

20 Q. Was your father favorable to it, to him going in partnership with this woman?

The Court: How can this witness answer that? He has just replied it was never spoken of before him.

Q. You don't know whether or not your father was favorable to this?

30 Mr. Sacks: Your Honor please, I know what he said, the question of the sale was never discussed before him, but he did say that the partnership was discussed before him. I think that is what he means.

(Question repeated.)

A. He was not favorable to investing money in it.

Q. Did your father favor your brother going up to Chester County to live up there on this land?

A. I don't know any of the intimate details of that.

Q. No, do you know whether your father was in favor of your brother going up to Chester to live in this Chester property?

A. Only to the financial end of it, as far as he was concerned; other than that I don't know. 10

Q. Mr. Danenhauer, you can understand my question.

The Court: He has answered it fully, Mr. Morris.

Mr. Morris: I don't understand he has answered it fully.

The Court: He may not have answered it to your satisfaction, but he has answered it several times. 20

Q. As a matter of fact, didn't your father make great efforts to induce Lee to keep away from Chester County property and come down to Mays Landing and develop the property in Mays Landing?

A. Not to my knowledge.

Q. To your knowledge your father made no effort to induce your brother to come to Mays Landing?

A. No.

Q. Didn't you testify yesterday that your father 30 did, at one of these conversations in your brother's house, in your presence, suggest that Lee come to Mays Landing?

A. I recall testimony that was made in reference to my father's house, if that is what you mean?

Q. This property in Mays Landing?

A. He suggested that he could use that property, but used no pressure.

Q. Now, your father suggested what?

A. He could use the property in Mays Landing to develop the iris.

Q. He could use?

A. My brother could use the property.

Q. Your father suggested that your brother could use the property in Mays Landing?

10 A. Could use the property in Mays Landing for the development of the bulbs that he was importing.

Q. In what manner did he suggest that, do you recall the conversation?

The Court: Now, you haven't given the witness an opportunity to answer the other question, Mr. Morris.

20 (Question withdrawn.)

Q. Do you recall the conversation wherein your father suggested that Lee come to Mays Landing to develop the Mays Landing property?

A. I would be very inclined to say that that was a conversation with my mother.

Q. Now you just told us that your father made this suggestion. I want to know what the father said.

30 A. That he could use the land in Mays Landing to develop the bulbs and plants that he was securing from abroad, and that if he could make a go of it, if he could get enough experience and make enough money there, he could buy the piece of ground or buy a piece of ground in Chester County where he preferred the soil conditions.

Q. How did that conversation come about, what led up to it?

A. The general conversation on the growing of plants and what he would do with his new importations.

Q. When you say he, what who would do?

A. What my brother would do, he was the only one that was importing anything.

Q. Then your brother was in Mays Landing at that time?

10

A. At what time?

Q. At the time of this conversation of your father's?

A. This conversation of father's was an outgrowth of the talk about the partnership with this woman in Chester County.

Q. Where was that conversation?

A. At 2011 Poplar Street.

Q. At that conversation you say your father suggested that Lee, instead of going to Chester County, 20 could go to Mays Landing, is that right?

A. He offered him the use of the ground.

Q. And he told him to go down there?

A. No.

Q. Didn't tell him to go down there?

A. No.

Q. Didn't urge him at all?

A. No. You couldn't urge him.

Q. And he merely suggested he might go down to Mays Landing?

30

A. Absolutely. You couldn't urge him.

Q. Did your father urge him?

A. No.

Q. What do you mean when you say you couldn't urge him?

A. He wouldn't be urged.

Q. What do you mean by that?

A. If he wanted to go to Mays Landing he would go there. It was his home as well as mine. He would go there and do whatever work he wanted to do without any urge.

Q. About what year was that conversation?

A. About 1920, somewheres thereabouts.

Q. That was before he did come down?

A. Yes.

10 Q. That was before he came down to Mays Land-
ing?

A. Yes.

Q. What did the mother tell him about coming down to Mays Landing?

A. That he could use her ground there to develop his bulbs, if he made a succes sof it that he could buy a piece of ground.

Q. And he asked her or your father for permission to go down there to develop this land?

A. Oh, no.

20 Q. You don't know?

A. Not before me.

Q. You say he could have gone down there anyway, couldn't he?

A. So could I.

Q. Then you tell me why it was necessary for your mother and your father, if you know, why it was necessary for your mother or father to suggest that he could go down there if he wanted to?

A. Well, just the natural suggestion.

30 Q. Natural?

A. Yes.

Q. As a matter of fact, wasn't the reason for Lee going down to Mays Landing this, that the father and mother were growing old, and that they wanted somebody to develop the land, that nobody else was doing it, that Lee was the only person who should do it?

- A. No.
- Q. Had you done any development or work on this land from 1922 to date?
- A. No.
- Q. Never?
- A. No.
- Q. Prior to that?
- A. Quite a lot of it.
- Q. How much?
- A. Well, I cultivated. 10
- Q. Two rows?
- A. About four thousand fruit trees for about three or four summers until they started to get established.
- Q. When was that?
- A. Back in my—about 1903 or '04, in around there.
- Q. About thirty years ago you cultivated four thousand fruit trees?
- A. That isn't thirty years ago. 20
- Q. What is that?
- A. That isn't thirty years ago.
- Q. Well, it is twenty-seven, isn't it?
- A. Well —
- Q. Twenty-seven years ago you cultivated four thousand fruit trees, is that right?
- A. Approximately.
- Q. Then you were about fourteen years old?
- A. Yes.
- Q. And you cultivated four thousand fruit trees? 30
- A. Yes.
- Q. What did you do in cultivating four thousand fruit trees?
- A. Worked a circle around them about eighteen inches radius, about four inches deep, very light soil, very easy to cultivate.
- Q. Took you how long?

A. I don't remember.

Q. Didn't take you all summer, did it?

A. Well, I worked there off and on all summer long.

Q. As a boy?

A. As a boy for my father.

Q. You say you went down about 1925 to straighten out some kind of a fight?

A. Yes, one occasion.

10 Q. With whom was that fight?

A. Between my mother and father and brother and his wife.

Q. At that time you say what remark was passed about this being Lee's property?

A. There was never any such remark passed about it being Lee's property.

Q. You say that your mother told you at this time?

A. That was another time, in 1923, I spoke of.

20 Q. That is what I am referring to, what was the occasion of your mother making the statement that it is yours jointly with Lee?

A. The invitation of my sister-in-law; is that what you mean?

Q. Yes, what is that?

A. My sister-in-law invited me to come down and see them and mother remarked that it was a rather peculiar thing for a person to say. "Yes," I said.

30 Q. Your sister-in-law had invited you to come down to see them?

A. Yes.

Q. Was there anything peculiar about that?

A. Well, yes.

Q. Why?

A. It was rather odd to invite me to my own home.

Q. You were not living there, were you?

A. It always had been my home, I was welcome there.

Q. You had not been living there, you had a home of your own in Pennsylvania, didn't you?

A. Yes.

Q. Then why was it odd to invite you down to Mays Landing?

A. To my mother's home, home that I had always considered mine.

Q. You had a home in Delaware County, Pennsylvania, didn't you? 10

A. Yes.

Q. You lived there most of the year?

A. Yes.

Q. Did you see anything odd or peculiar about your sister-in-law and brother, who lived in Mays Landing, to invite you down to Mays Landing?

A. Yes.

Q. It was odd?

A. Yes, that was very odd, because I went there 20 every time I felt like it anyhow.

Q. Do you know why she invited you?

A. No, I don't know her motive.

Q. Had they ever invited you before to come down?

A. Not down there, no.

Q. Not down there, any other place?

A. To their own home.

Q. Where?

A. On Edgewood Street. 30

Q. That wasn't their home at the time they invited you to Mays Landing, was it?

A. The Edgewood Street was.

Q. No longer their home, was it, this house which they owned in Edgewood Street, no longer belonged to them, did it?

A. I couldn't say.

Q. You know they sold it, don't you?

A. Yes.

Q. And at the time they invited you to Mays Landing, you knew that they didn't own that home there, didn't you?

A. I think they did at that time.

Q. They did?

A. Yes, I think that was in 1923 and they sold the Edgewood property in 1924.

10

The Court: I am willing to give you every latitude, Mr. Morris, but what is there in all of this?

Mr. Morris: I am leading up, if your Honor please, to this conversation with the mother.

20 The Court: Perfectly willing for you to have that conversation, but to get this man's mental reaction as he heard his sister-in-law invite him, when the facts are so perfectly clear to the Court, is a mere waste of time.

Q. Now, at the time when your sister-in-law invited you to Mays Landing you came down?

A. No.

Q. You didn't come down?

A. No.

30 Q. Your mother made a certain remark to you concerning the invitation of your sister-in-law?

A. Yes.

Q. Didn't you come down on your sister-in-law's invitation?

A. No.

Q. How long after the invitation did you come down?

The Court: Now, Mr. Morris.

Mr. Morris: I am leading up.

The Court: Don't you understand this proposition, he was leaving after he had been there with his mother to go to Philadelphia, and the sister-in-law invited him to come down to see them and on the way with the mother, the mother made the remark. That is perfectly clear, combination of 10
circumstances.

Q. What was this remark that your mother made?

A. That it was rather odd for my sister-in-law to invite me, it was a rather odd remark, that was it.

Q. What else did she say?

A. Then followed my remark that yes it was peculiar for a sister-in-law to invite you to your own home.

Q. What did your mother say? 20

A. She said that that home would never belong to her, it would belong to the boys jointly.

Q. Belong to the boys jointly?

A. To the boys jointly.

Q. She said the boys jointly?

A. Yes, sir.

Q. Is that the words she used, to the boys jointly?

A. To the boys jointly.

Q. A few moments ago you said to both jointly. 30
Which word did she use, "both" or "boys"?

Mr. Sacks: I think that is objectionable.

The Court: I will permit that.

Q. What word did she use, "both" or "boys"?

A. "Boys jointly."

Q. Then you retract the statement that you made before when you said to both jointly?

A. The word, yes.

Q. You retract the word?

A. Yes.

Q. So now will you give us the exact phraseology of the words which your mother used?

10 A. That the property belongs to the boys jointly.

Q. The property belongs to the boys jointly?

A. Yes.

Q. Are you sure she said that?

A. Absolutely.

By Mr. Sacks:

Q. Getting back to this proposition as to that
20 Chester County property, I understood that your father was to invest part of that money in that Chester County property, is that so?

A. That was the idea.

Q. In other words, did your brother look to your father for assistance in buying this interest in that property?

A. For a loan.

Q. And your father, in response to that, said he would not invest any money?

A. Wouldn't invest any money in a proposition so
30 uncertain.

MARY C. SHALLCROSS, SWORN.

Direct examination.

By Mr. Sacks:

Q. Mrs. Shallcross, do you know Annetta Lee and Frank Danenhauer?

A. Very well. I was very intimate with both of them. 10

Q. How did you happen to know them so well?

A. They were my first cousins, and Mrs. Danenhauer and I were very, very close to one another, like sisters.

Q. Mrs. Annette Danenhauer was your first cousin?

A. First cousin.

Q. Now, were you ever on this property in Mays Landing? 20

A. I was on the property only once, in 1920, I was invited down there for two weeks.

Q. By whom?

A. By Mrs., by Annetta Danenhauer, by Annette and her husband.

Q. What was the condition of that property when you came down there?

A. Well, as far as the interior of the house was concerned, it was in very good condition, I found it very comfortable, very well kept for a summer home, it was very comfortable. The outside wasn't painted at the time, and the grounds had been cleared up only, the weeds had been cut down and presented a very good appearance. 30

Q. Do you know anything about the farm land, Mrs. Shallcross, particularly?

A. Well, I just know, when I say a cultivated bush, I know it is cultivated, we have a garden at home and I know about that.

Q. What did you see on the grounds was in cultivation, Mrs. Shallcross?

10 A. Well, of course we couldn't judge just the amount of ground, but there was quite a large place cultivated, and they had all kinds of vegetables planted, of course it was early for some of them, but they were planted, and they were getting some early things from those, but it was quite a large cultivated patch.

Q. Who did the cultivation there, if you know, Mrs. Shallcross?

A. Well, there was a Mr. Mackley employed on the estate, he lived in a little tenant house there on the place.

Q. And he did the gardening there?

A. He did the gardening while I was there.

20 Q. Did he raise vegetables then?

A. He was there, attended to the vegetables.

Q. Do you happen to know what was done with those vegetables that were raised there, Mrs. Shallcross?

A. Well, some of the vegetables were used on the table, why, of course, early in the season, very few of them, and I understood from Mrs. Danenhauer —

30 Mr. Morris: I object.

The Court: Yes.

Q. Did you have any conversations with Annette Danenhauer, as you call her, relative to this property and what she intended to do with it?

Mr. Morris: May we have the date, if your Honor please?

Mr. Sacks: I think she said she was there only once.

A. I was there only once.

Q. I mean on this visit.

A. On this visit.

10

Mr. Morris: When was that?

A. First week of July, 1920, and the only time, of course, Mrs. Danenhauer did talk to me a great deal, couldn't recall dates or anything like that, but just a short time, but wasn't more than once, say within a week of her extreme illness that I was there, and she and Mr. Danenhauer were alone.

Q. Where was this, now?

20

A. At 2811 Poplar, and I asked her, I said to her, "Why don't you get rid of some of this stuff around the house that is so much care, why don't you get rid of it?" "Well," she said —

Mr. Morris: Your Honor please, I don't think this is responsive to the question.

The Court: It is not responsive to any question.

30

Q. Mrs. Shallcross, let's get back to the time that you were on this farm on a visit in July of 1920. Did Mrs. Annette Danenhauer say anything to you about this property or what was going to happen to it?

A. Well, the only thing she ever said, and that she

had always, or many times, that all she had was to go to her two boys.

Q. Was there any remark made about some flowers at the time that you were down there, or some remark made about the proposed planting of plants on her ground?

A. Well, that was after I had been on that visit. She didn't say anything at the time.

Q. When was that, if you can recall?

10 A. Well, I don't know, that was that season, but I don't just recall, but she told me that Howard had wanted—was raising plants, wanted to raise plants, and that she had given her consent, told him that he would come down there, although he was thinking about getting a place to raise those plants, and she said about not going to the expense of doing that, that she would allow him to use the ground there until he got established and could find out just what
20 out, and then she said if he is successful he is going to buy a place and make a business of it. And then another conversation I had with her, I, of course, was interested in the boys, always had been —

Mr. Morris: I don't believe this is responsive.

The Court: No.

30 Q. Did you have any other conversations with her about it?

A. I said, "How is Howard getting along with his flowers?" —

Mr. Morris: Wait a minute.

The Court: You are entitled to that.

Q. Where was this conversation that you are about to relate, where did that take place?

A. That took place in my own home, 4624 Luper Street, Philadelphia.

Q. Do you know about when it took place?

A. Well, I think that was the season after I was there, I think that was the next season.

Q. What did she say at that time?

A. She said that—I asked her how Howard was getting along with his plants, and she said that the ground condition wasn't suitable for some of the bulbs and that they were not going as successful as he had expected, and then she said that he had intended if he did make that success to buy ground and establish a business in that line.

Q. Now, getting down to this time a few days or week or so before her death, did you visit her?

A. I did.

Q. Where?

A. 2811 Poplar.

20

Q. That was her home?

A. That was her home.

Q. Did you have any talk with her?

A. Yes.

Q. What did she say then?

A. I spoke to her about the house and so much there, and she said that, well, she said, "If I get better I will dispose of some of the things," at least she said, "I will give them to the boys," and I said to her, Mr. Danenhauer said, "We haven't got anybody to get us anything to eat," and I said, "Oh, I will stay and do that," and said, "You could have anything like that, I will stay and see that you get your evening meal," and she said, "No, Margaret is preparing our meals at home and bringing them over here." She said, "She always helps out in an emergency," and then I said, "Well," I said, "I

30

think the big burden is on Margaret," I said, "Why don't Howard and his wife help a little bit here and help you out?" And she said that, well, she said, "Of course, Margaret is the one that always does it," and she said that—I said, "Well, if you think I had better not stay," she says, "No, Margaret will be here," and I said, "Well,"—she said, "I don't think it will be very long, I don't think I will be here very long," and she said "Well, this will all
 10 belong to the boys when I am gone." She said, "All I have will belong to the boys." She always spoke to me as everything belonging to the boys, and in my visit with her she was always apologizing for not being able to invite me down only the one season, she said things were not congenial and I couldn't invite you down, and she said, I said, "How is it"—I said, "Don't you think it is too much for you to be coming up week-ends?" Well —

20 Mr. Morris: In this still responsive to the question?

The Court: Yes.

Q. Mrs. Shallcross, you see we can only answer one question at a time. Then after this visit or shortly after that Mrs. Danenhauer died?

30 A. Yes, she died in a very short time, a few days.

Q. You started to tell us something about her apology to you?

A. Apologizing to me about —

Q. When was that and where were these conversations at in which she apologized to you?

A. Many times —

Mr. Morris: Your Honor please, do we have to have any apologies here?

The Court: I don't know. I will permit the question.

A. Many, many times in my own home, because I used to see her at least——

Q. What were the conversations, Mrs. Shallcross?

A. She used to tell me, she told me at one time, she said that she had trouble, of course, that she ought not to have, and I said—I said, “Well, what like?” “Well,” she said, “I don't like to talk about my own, but,” she said, she gave me to understand that——

Mr. Morris: I object.

The Court: Yes.

Q. Not what she gave you to understand, Mrs. Shallcross, just what she said.

20

Mr. Morris: If your Honor please, I object to this conversation. I don't think it is relevant.

The Court: You may move to strike afterwards. I don't know whether it is going to be relevant or not.

Q. Proceed, Mrs. Shallcross.

30

A. She told me she couldn't invite me down there because things were not agreeable and she said that, I said, “Why do you—How is it you come up? Don't you think it is too much of a task to come up of week-ends?” She said, “No, I would rather come

up for"—she said, "I can't stand the fussing and the way things are going."

Q. Where was—did she tell you where this fussing took place?

A. Yes, down at Meadowcroft, down at the place at Mays Landing, she said she couldn't stay there and stand the fussing.

(No cross-examination.)

10

MRS. MARGARET DANENHAUER, SWORN.

Direct examination.

By Mr. Sacks:

20 Q. You are the wife of George Danenhauer, Mrs. Danenhauer?

A. Yes.

Q. Mrs. Danenhauer, directing your attention to a time when you were present at a dinner when your brother-in-law, Howard Lee, was present and your father-in-law and mother-in-law and your husband was present, do you recall the occasion?

A. Yes, very well.

Q. Where did this dinner take place?

A. At mother's home.

30 Q. Where?

A. Poplar Street, 2811 Poplar Street, Philadelphia.

Q. By mother you mean your mother-in-law?

A. Mother Danenhauer.

Q. When, if you can recall?

A. I would say it was around February, it was

directly after the first of the year, anyway, of 1922, I am not sure of the date.

Q. Did you join in with these folks in talking, the conversation, about whatever was discussed?

A. My husband and I came in evidently in the middle of the conversation between Father Danenhauer and Lee, and as we entered the room, father made the remark, "I will invest no money for any such proposition, it is too indefinite, it doesn't look like a very good thing to me." 10

Q. Do you know what they were talking about after that, did you find out?

A. Father turned to us and said, "Brother had me out toay"—I am not sure about that—recently, anyway—"had me out to see a property in Chester County," I think it was Paoli he said, and he spoke about the property having watercress houses on, I believe, and he said, "We went out to look at it, Lee was going out, he thought he would like to develop it for horticultural purposes." Lee had previously 20
been thinking about going in that business, he had mentioned it to us at different occasions, and that he would like to get into that line of business, he was interested in it, and then Father, after explaining what they were talking about, went on and said, "No, I absolutely will have nothing to do with any such proposition."

Q. Well, now, was your father-in-law to invest any money to go into this business?

A. That was his remark, "I will invest no money 30
for any such proposition," that is what he was saying as we entered the room.

Q. Now, do you know from the conversation whether Lee was going to buy this property?

A. No, he said —

Mr. Morris: I object, if your Honor please.

The Court: Sustain the objection.

Q. Then what was said, Mrs. Danenhauer?

Mr. Morris: We have that, if your Honor please.

10 A. Mother then turned to Le and she said, "Son, why don't you, since you know nothing about growing flowers and it is a venture, anyway, why don't you go down and use Mays Landing? The ground is there and it won't cost you anything, and if you make a success of it then you can buy a piece of ground that you want," and he mentioned that he didn't think soil conditions would be very good there for raising iris and peonies, and Father says, "I have very good success with them, I have some down there."

Q. Then what was said?

20 A. Lee left very shortly after that, and the only remark I heard him say was, "Well, I will think it over."

Q. Now, directing your attention to a time when you called at Mays Landing and rode back with your mother-in-law and your husband from Mays Landing to Philadelphia, can you tell us, please, when that was, what year?

A. I am not sure of the year.

Q. You are not sure?

A. No.

30 Q. Did you ride back with your mother-in-law and your husband?

A. I would say it was in 1923, because we went home in the train, we didn't have a car at that time.

Q. You would say it was in 1923?

A. Yes, I would say it was 1923, but I am not sure of the date. We were down so often.

Q. Did you have any conversation with your mother-in-law—by the way, was your father-in-law present on that trip?

A. I don't think so. He might have been around the place, but he didn't go home with us, Mother went home with us.

Q. On your way home, did you talk and your husband talk to your mother-in-law about the conditions of that property, and so forth?

A. As we were leaving, my sister-in-law said, "Well, come down again and see us," and nobody said anything, and as we were going across in the boat, Mother said, "You might think it was Katherine's place, that was rather an odd remark to make," and just before we got on the train, my husband said, "I don't sort of like the idea of my sister-in-law inviting me to my own home, I am entitled to go any time I feel like." Then nothing more was said about it until we got on the train. 10

Q. Then what was said? 20

A. Mother said, "Well, I will settle this once for all, I am going to make a will." She said, "That place will never belong to Katherine, it is for the boys jointly," and my remark was, "Well, Mother, don't do anything you will be sorry for, give it plenty of time and think it over." I don't know when she made her will, I don't know until after the will was —

Q. There was some sort of an outer building built on the property in Mays Landing containing a shop and apartment above, do you know about that building? 30

A. Yes, it was put up to accommodate Lee and Katherine, they were to live in the apartment.

Q. Did you ever live in that building?

A. Yes.

Q. Did you furnish it?

A. I wouldn't say furnish it, because Father gathered a lot of second-hand furniture, but I provided all the other things such as kitchen utensils, china and those sort of things.

Q. Were there any particular circumstances surrounding this going and living in this apartment in the outside building?

10 (Question withdrawn.)

Q. Did your mother-in-law say anything to you about going up there and living in the apartment, Mrs. Danenhauer?

A. She wanted to build a place for us, she said, "I will build another property on the place," and she said, "We will let the folks live in the house that was there then and we will live in the other house, and you come down and live in that, and then at our death that place will be yours." And I said, "Why, 20 Mother, that is so foolish, the little bit we can come down now those three rooms up there over the shop are plenty good enough to accommodate us," and it was then that we furnished the place and fixed it up and made it habitable upon the second-hand furniture that Father had put in there.

Q. You recall, of course, when your father-in-law died, do you not?

A. When he died?

Q. Yes.

30 A. Yes.

Q. About the time that your father-in-law died, did your brother-in-law, H. Lee, visit you at your home?

A. My husband asked him to come out the day of the funeral, and he came that evening.

Q. Came that evening?

A. Yes.

Q. Were you present?

A. I think he was there before that, of course, I suppose so.

Q. But you recall when he came?

A. I am not sure whether he came out to the house, because Father wasn't buried from our house.

Q. But at any rate, was he at your home?

A. He was at our home the evening of the funeral, Father's funeral. 10

Q. Was there any conversation between him and your husband relative to this property?

Mr. Morris: I object, if your Honor please. I think the purpose is manifest to prove this agreement to compromise which was never consummated.

A. I don't know of any such agreement.

Mr. Sacks: Conversations, if your Honor please, if it develops it was made on account of any compromise agreement it may be stricken. 20

The Court: I will hear it and strike it if it is so.

(Question repeated.)

A. When Lee came in before the will was mentioned he said that he had stopped at the bank and found out how much money Father had in the bank.

Q. Did he say why he had stopped in the bank? 30

A. He stopped, I asked him if he was going to administer Father's estate, and he said yes he would like to.

Q. Then what?

A. And he told us about this money at the bank, and he brought a piece of paper out of his pocket

and he said, "Here are a few figures that I have written down so that we can come to some understanding about the relative value of the estate."

Mr. Morris: I object.

The Court: What is the objection?

A. Wasn't any compromise.

10

Mr. Morris: This is an effort to compromise.

The Court: Nothing so developed as yet. I will permit it. If it so develops you may move to strike.

A. Then my husband —

Q. Did he give any reason why he had put these figures down?

A. Not yet.

20

Q. Not at that time?

A. My husband said, "I am sorry I can't give you a copy of the will, but Father has turned it over to Mr. Green." He said, "I will tell you as near as possible the contents of that will," and after he told him, Lee said, "Are you our executor, no co-executor?" He had asked my husband previous to that to fill out some figures on this paper, he said that he had expected to be executor of the will and he brought this paper with that idea.

30 Q. What were the figures on the paper for, if you know?

A. To determine the value of the properties in the will, at that time, that is, of the properties that belonged to Mother.

Q. So that he could administer the properties?

A. So that he could.

Q. Did he ask your husband to put some figures down?

A. He asked my husband to put some figures on two or three places in there, mentioning Cheltenham, I am not sure of the numbers, he said, "Because you are more familiar with those than I am."

Q. Was this the paper that he produced?

A. I would say so, yes.

Q. Do you recognize any part of this as your husband's writing?

10

A. These that he asked him to fill in.

Mr. Sacks: I would like to offer this.

Mr. Morris: I object.

The Court: What is the objection?

Mr. Morris: I don't see how it is relevant, the witness says the figures were put down there so the administrator could know what the properties were.

20

The Court: Certainly, and writes certain figures, as I recall, fixing the value of the Mays Landing property. Now, it may or may not be binding, I don't know. Permitted.

Mr. Morris: If I may say a word, the administrator has nothing to do with the real property, he only administers personal property.

30

The Court: Yes, but the layman don't seem to understand that, and in their conduct of business they usually have that to consider. I will permit it.

(Paper admitted and marked Exhibit D2.)

Q. Was there any other conversation, Mrs. Danenhauer, after that, after that paper was produced, that you can recall?

A. About a week later I would say, my husband and I went to 2811 Poplar Street, Lee was coming up to take some things out.

Q. That was your mother's home?

A. Yes, and we went over to open the property, he had told us he had no key, we went over to open
10 the property, and when we got there he said he had climbed in the cellar window and he had already gotten in. He called us out into the dining room, there were several men there moving things out of the house, he called my husband and I out into the dining room and he said, "Why should we give the boy this \$5,000?"

Q. What boy was he referring to, do you know?

A. The boy mentioned in the will, his boy.

Q. His son?

20 Q. His son. He said —

Mr. Morris: I object, if your Honor please, to any further conversation.

The Court: Doesn't seem to have anything whatever to do with this case in question.

Mr. Morris: And I ask that testimony be stricken, if your Honor please.

30

Mr. Sacks: The only relevancy I thought it had, might possibly have to do with it, would be to tend to show that he did not recognize that he was entitled to this Mays Landing property as a matter of contract, and if he did think so he would not have

The Court: I see nothing that will connect that with the present testimony.

Mr. Sacks: I will withdraw that question.

Mr. Morris: Consent that the testimony be stricken?

The Court: Yes.

10

Mr. Sacks: I withdraw the original question.

Mr. Morris: And answer?

Cross-examination.

By Mr. Morris:

Q. Mrs. Danenhauer, at this conversation you said which took place between your brother-in-law and your husband and your father, your father-in-law suggested that Lee go down to Mays Landing and try to develop the land there? 20

A. My husband was not in that conversation.

Q. He wasn't there?

A. He was there. He wasn't in the conversation.

Q. He was present?

A. He was present.

Q. And your father-in-law told Lee to go down to Mays Landing to develop the land there? 30

A. My father-in-law didn't tell him to go down to Mays Landing. Mother was the one that made the suggestion at that particular time.

Q. Then your mother-in-law suggested that Lee go down to Mays Landing?

A. She suggested that the place was there and it

would cost him nothing to go down if he wanted to develop this proposition.

Q. Did she urge him?

A. No, not at that time.

Q. At any other time?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

10 Q. According to your idea of her feelings in the matter, she merely suggested that he go down, if he wanted to it was all right, and if he didn't want to it was all right?

A. Yes, I wouldn't say that.

Q. She was not zealous about him going down there, was she?

A. Why should she be?

Q. I am asking you?

A. No, I see no reason.

20 Q. She never urged him, in your presence, to go down to Mays Landing?

A. No.

Q. Did you ever hear her persuade Lee not to take the property in Chester but to go down to Mays Landing?

A. Mother?

Q. Yes.

A. No.

30 Q. Did you ever hear your father-in-law persuade him not to take the Chester property but to go down to Mays Landing?

A. Not persuaded. Simply said he would invest no money in that.

Q. Besides suggesting that he would not invest any money in the Chester property, did you hear your father-in-law persuade his son Lee to go down to Mays Landing?

A. Not at any time.

Q. Not at any time?

A. No.

Q. You never saw your father-in-law in the mood, anxious mood for Lee to go down to Mays Landing?

A. No, he was agreeable to his going, I would say.

Q. Very agreeable?

A. No more than he would have been if we were going down.

Q. But he was very agreeable that his son was going?

A. He was agreeable that Son was going down to raise flowers because he had gave him an opportunity.

Q. You don't think—do you know whether or not your father-in-law, Frank Danenhauer, delighted in Lee's developing the property in Mays Landing?

A. Delighted in it?

Q. Yes.

A. Well, he was not a demonstrative man. I don't know how you would get Father Danenhauer to express delight, he was a very —

Q. Do you know whether your father-in-law was satisfied that Lee was developing the property in Mays Landing?

A. He was perfectly satisfied that he was raising flowers there because he has said, he said, "I think it is a wonderful opportunity for the boy and I hope he makes a go of it."

Q. As a matter of fact, you were not present when your father-in-law told Lee to go down to Mays Landing or that he could go down to Mays Landing?

A. I never heard Father tell Lee to go to Mays Landing.

Q. As a matter of fact, when his mother told him to go to Mays Landing, you were not present in the room?

A. I was present, certainly.

Q. In the room or in the house?

A. In the room, in the dining room, we were all in the dining room, we always met in the dining room. We stayed for dinner, and Lee left.

Q. When you had left Mays Landing on one of these occasions your sister-in-law told you to come again some time?

A. She didn't tell me, she turned to my husband and she said, "Come down and see us again some
10 time."

Q. Had there been any ill feelings between you and the Lee Danenhauers?

A. No ill feelings, a week previous to that we were sent for to come down.

Q. But I mean between your family and the Lee Danenhauers?

A. No.

Q. Had been no ill feelings?

A. No, we never had any ill feelings.

20 Q. Did you think that there was anything unusual about Katherine, Lee's wife, saying, "Come down to see us?"

A. I would say so when my attention was called to it, because of the manner in which it was said.

Q. At the time it was said you didn't think it was unusual, did you?

A. Nobody answered, it was unusual because there was quite a gasp, and nobody said anything.

Q. Who gasped?

30 A. Everybody, just kind of.

Q. You gasped?

A. Mother and George and I just —

Q. Held your breath?

A. Yes.

Q. It was such a shock that you had to hold your breath?

A. No, it wasn't a shock, it was just unusual for

Katherine to say anything of the sort because she went down there just as I did.

Q. She was living down there at the time, wasn't she?

A. I don't think so, no; in fact, they hadn't moved.

Q. Do you know where their home was at the time?

A. They hadn't moved their furniture down. They might have been staying down there, but if you call that living —

Q. You say your husband said he didn't like the idea of his sister-in-law telling him to come down again, is that right? 10

A. He mentioned to Mother that it was rather peculiar for his sister-in-law to invite him to his own home.

Q. His mother didn't bring up that question?

A. Yes, she did.

Q. She did?

A. She prompted that question.

Q. How did she prompt the question? 20

A. She said that, "You might think that it was Katherine's place."

Q. And what did your husband say?

A. He said nothing at that particular minute, by the time we had gotten across the river.

Q. What did he say?

A. He said, "I don't like the idea of my sister-in-law inviting me to my own home that I have always been used to going to without an invitation."

Q. Then what did your mother say? 30

A. Nothing was said then.

Q. Then when you got on the train what did your mother say?

A. After we got on the train?

Q. What was said then?

A. Mother said, "I will end this once and for all,

I am going to make my will," and she said, "Katherine will never ——"

Q. Was there anything intervening said between your husband ——

Mr. Sacks: When he has asked a question I think she ought to be allowed to answer.

10 The Court: Yes.

(Question and answer repeated.)

Q. Katherine will never what?

A. "Katherine will never own that property, it is for the boys." She went on further to say, "I have never made any distinction between the two and I don't expect to now."

Q. She said the property is for the boys?

A. Yes.

20 Q. Are those her words?

A. She said, "I am going to make my will," she said, "Katherine will never own that property." She said, "Everything is for the boys."

Q. Is that all she said at that particular moment?

A. Yes.

Q. Now, a moment ago you said that she said that the property is for the boys jointly; now, you say it is for the boys. What did she say?

A. That is the same thing, isn't it?

30 Q. I want to know what her exact words were.

A. Well, she used that word "jointly."

Q. Oh, she did use the word "jointly?"

A. Yes.

Q. Then she didn't merely say, "It is for the boys," did she?

A. It is the same general idea.

Q. Did your husband suggest to your mother that she make a will?

A. Never.

Q. Never did?

A. No. I was sitting alongside of Mother in the train. He was in back of us. After he heard it he made no comment.

Q. Did you suggest to your mother that a will should be made?

A. I told her she had better not do anything that she would be sorry for, to take her time.

Q. Before she said that she would make a will, did you suggest to her?

A. No, she had been sitting there very quiet, and I was trying to cheer up, asked her to forget things.

Q. Before she said that she would make a will, did you suggest to her any manner of disposition of the property?

A. Why should I? We hadn't any interest —

Q. I am asking you? 20

A. No.

Q. Did you suggest to her that she ought to make a will?

A. No. If you mean Mother Danenhauer — No one could suggest to Mother Danenhauer.

The Court: There is no question.

GEORGE E. DANENHAUER, recalled.

Direct examination.

By Mr. Sacks:

Q. Mr. Danenhauer, I show you what purports to
be called a year book, and ask you in whose hand-
10 writing the items in this book are?

A. My father.

Q. Your father's handwriting?

A. Yes, sir.

Q. To what do most of these items refer?

Mr. Morris: I object, if your Honor please.

The Court: I will permit that as a general ques-
tion.

20 A. It was his method of keeping check, a tally of
the work done in Mays Landing.

Q. In Mays Landing?

A. I mean his general work, not necessarily Mays
Landing, but most everything.

Mr. Sacks: I would like to offer this diary.

Mr. Morris: I object.

30

The Court: Sustain the objection.

Mr. Sacks: It seems to me this is an exception to
the hearsay evidence rule, here is a diary kept by
the deceased person, showing various entries, show-
ing, for instance, when, two or three notations of

work done on George's house, I think it is quite important.

The Court: I will sustain the objection.

DEFENDANTS REST.

TESTIMONY CLOSED.

10

CHARLES C. LIVEZEY, SWORN.

Direct examination.

By Mr. Sacks:

Q. Mr. Livezey, did you know Frank and Annette Danenhauer?

A. Yes, sir, very well.

20

Q. How did you happen to know them?

A. Well, Fred Danenhauer was interested in the cemetery where I am employed as superintendent.

Q. Interested as an owner, was it?

A. Was an owner or part owner in the cemetery.

Q. In other words, you worked for Mr. Danenhauer partly?

A. Yes, sir, Mr. Danenhauer and Mr. Goldstein.

Q. Now, did you ever have any conversations with Mr. Danenhauer relating to improvement of property in Mays Landing?

30

A. Yes, sir.

Q. When?

A. About April of 1927.

Q. Where?

A. At the cemetery premises.

Q. What was the conversation?

A. I had an ancient pump and tank that was discontinued using at the cemetery and he asked me if there would be any possible way of getting that to Mays Landing, that he would like to use it there, and I asked him, I said, "What do you want to use that there for?" "Well," he said, "We only have one pump on the premises, and have a property there for my son George and one for Lee, and wanted to
10 establish this tank and pump, that it would supply water to the two different places on the premises.

Q. Was there any further conversation about it?

A. Well, yes, he spoke about where he thought it would be a suitable place to place it, so then in October of 1927, being a holiday, at the cemetery, I drove to —

Q. Do you remember what date, exactly, that was?

A. Yes, it was on the 6th of October, 1927, the exact day.

20 Q. Why do you remember that so exactly?

A. Because it was a Jewish holiday, what they call Yom Kippur, and I had no burials, and the cemetery was closed for the day, was the only day I could get away from the cemetery for a day.

Q. Then what did you do?

A. So we drove to Mays Landing there, and Mr. Danenhauer took me over the two different properties, the one as they call the tool house and apartment over it, where was known as George Danenhauer's home, the other property on the other side
30 where his summer home was, and his son lived there, and bath tub lying in the yard and the toilet ready to be installed in there, and in the addition that he had built on the place, so we was talking in regards to the place there, and I brought up the subject about the, at the time of the war that he had —

Mr. Morris: I object. Where were you, on the property when this conversation took place?

A. On the front porch.

Q. Who was there?

A. Mr. and Mrs. Danenhauer, myself and wife.

Q. And your wife?

A. And my wife.

Q. You mean Frank Danenhauer and Annette Danenhauer? 10

A. Frank Danenhauer, yes, sir, and Mrs. Danenhauer.

Q. What did you talk about?

A. We talked about in regards to the price he was offered for the place at the time of the war.

Mr. Morris: I object, if your Honor please.

Mr. Sacks: I think this will be very material to lead up to the conversation. 20

The Court: How can this be material what price he was offered for this property during the war?

Mr. Sacks: Only to lead up to the conversation as to why.

The Court: Sustain the objection.

Q. Leave out that part about the price and the time during the war. What else was said? 30

Mr. Morris: By whom?

A. He said that he had owned the place there all through life.

Mr. Morris: May I inquire the time?

Q. I presume you mean Mr. Frank Danenhauer?

A. Mr. Frank Danenhauer said that they had never wanted for anything, and he didn't think that they would, and they would own the place as long as they lived, and then the place belonged to the two boys.

10

Cross-examination.

By Mr. Morris:

Q. Mr. Livezey, you are the superintendent at the cemetery, which is owned by the corporation of which Mr. George Danenhauer is the secretary?

20 A. I am superintendent of the Montefiori Cemetery, yes, sir.

Q. And Mr. George Danenhauer is secretary?

A. Mr. George Danenhauer is secretary.

Q. And you act under him?

A. No, not directly under him. He is hired there, I imagine, the same as I am, working. I work there under Mr. Goldstein.

Q. Did Mr. George Danenhauer pay you anything to come down today?

A. No, sir.

30 Q. Not anything?

A. No, sir.

Q. Did he promise to pay you anything?

A. No, sir, he did not.

Q. How about your carfare?

Mr. Sacks: I don't think that is admissible.

A. There is no carfare attached to it. I have a machine.

The Court: How can that be of any advantage?

Mr. Morris: I just thought it might affect his credibility, if your Honor please, to state if that was paid.

The Court: I don't see how it would affect if his 10
carfare was paid. That certainly does not affect a
man's credibility.

Q. Did you talk to Mr. George Danenhauer before
coming down here?

A. Have I talked to him?

Q. Yes, about this case?

A. No, sir, not about the case, no, sir.

Q. How did you know to come down to this hear-
ing today? 20

A. He asked me to come down.

Q. When did he ask you?

A. A number of times in regards to it, Mr. Danen-
hauer has brought up the subject a number of times
in regards to what existed at the place there, old Mr.
Frank Danenhauer.

Q. Mr. George called your attention to this case
coming up today?

A. He told me the case was coming up and asked
me if it was possible for me to come down here. 30

Q. Did you discuss with him what you were going
to say?

A. No, sir.

Q. Did he ask you?

Mr. Sacks: I don't know whether that is the
question, either.

The Court: Yes.

(Objection withdrawn.)

Q. Did he ask you what you knew about anything might come up at the time of the trial?

A. No, he said I was in close touch with the father and if there was anything would aid him in any way, would I come down, and I told him sure I would

10 come down.

Q. Did you tell him what you knew about the case?

A. No, I didn't tell him anything.

Q. Did you tell him any conversation that you had with his father?

A. No, not direct conversations I had with his father, no, sir.

Q. Did you tell him that you knew you had conversations with his father?

A. He knew I had conversations with his father.

20 Q. How did he know?

A. In regards to borrowing the tank, I told him I had taken the pump and tank and things down for his father.

Q. When did you tell him that?

A. I told him that, I guess, maybe a year ago.

By Mr. Sacks:

30 Q. Did Mr. Danenhauer ever talk to you about the property relative to paying bills on the property?

A. Yes.

Q. I mean Mr. Frank Danenhauer?

A. Mr. Frank Danenhauer had often spoke to me of having bills and things to pay on the property.

Q. What were the conversations, do you recall?

A. Well, he would come to the cemetery on Sun-

day and he would tell me, he says, "Well, I got to go down to Mays Landing now some time through the week, and won't maybe see you next Sunday, it is about time we was going down there for the summer, and I have always got to go down and straighten up the bills and things has been contracted during the winter months," when he was away from there.

Mr. Sacks: I would like to offer this letter as identified as being the handwriting of the complainant and sent to his father. 10

(Letter received in evidence and marked Exhibit D3.)

Mr. Sacks: Books of the Mays Landing department store representing an account in the name of Frank Danenhauer, the father of the complainant, showing purchases up to January, 1928, always in the name of Frank Danenhauer, always paid by him, for food, coal, grain and various other items for the house. 20

The books of the Egg Harbor Coal and Lumber Company show purchases of lumber by the father, account in his name, from December, 1924, up until January, 1928, always in his name, and totalling, I think, eight hundred and seventy some odd dollars.

If your Honor please, I, at this time, want to recall George Danenhauer for the purpose of making one more offer. 30

Mr. Morris: I would like to mention the fact the testimony brought out in connection with these exhibits, I believe, as to the Mays Landing account

was, that Mr. Lee Danenhauer guaranteed the payment of this account, as I recall.

Mr. Sacks: The testimony was by Mr. Hoover that Mr. Lee Danenhauer said, "If my father don't pay these bills, I will pay them," and he also testified that the statement of balance still due them was sent to the Estate of Frank Danenhauer.

10

EXHIBIT C34.

15/23/29L.

20 I, NETTIE LEE DANENHAUER, of the City of Philadelphia and State of Pennsylvania, being of sound and disposing mind, memory and understanding do hereby make, publish and declare the following as and for my last Will and Testament, hereby revoking all former Wills by me made at any time heretofore made.

30 FIRST: I direct my hereinafter named Executor and Trustee to pay all my just debts and funeral expenses as soon as conveniently may be done after my decease.

SECOND: All the rest, residue and remainder of my estate, real personal or mixed, of whatsoever nature or kind and wheresoever situated, I give, devise and bequeath unto my husband, Frank H. Danenhauer, for and during the term of his natural

life, and from and after his decease, I give, devise and bequeath my said estate unto my two sons, H. Lee Danenhauer and George E. Danenhauer, for and during the terms of their natural lives, and from and after the deaths of my said sons, to distribute the principal thereof in two equal parts or shares. One of these equal parts or shares I give, devise and bequeath unto the children of my said son, George E. Danenhauer, share and share alike, their heirs and assigns forever. The other equal 10
part or share I direct to be distributed as follows:
The sum of Five Thousand Dollars (\$5,000.) to my grandson, H. Lee Danenhauer, Jr., absolutely and the balance to the children of my said son George E. Danenhauer, share and share alike, their heirs and assigns forever.

LASTLY: I nominate, constitute and appoint my said husband, Frank H. Danenhauer, to be the 20
Executor and Trustee of this my last Will and Testament with full power and authority to dispose of any or all of my real or personal estate at either public or private sale as he deems best, and in the event of the sale of any or all of my real estate to execute a Deed or Deeds therefor to the purchaser or purchasers thereof in fee simple. Upon the death of my said husband, Frank H. Danenhauer, I nominate, constitute and appoint my my said Son, George E. Danenhauer, to be executor and Trustee of this my last Will and Testament 30
with all the power and authority given as hereinbefore stipulated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of January, A. D. 1924.

Nettie Lee Danenhauer (SEAL)

Signed, sealed, published and declared by the Testatrix above named as and for her last Will and Testament, in the presence of us, who, at her request, in the presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

Charles S. Magoner
Jane L. Sheldon

1420 Chestnut Street
1420 Chestnut Street.

10

COMMONWEALTH OF PENNSYLVANIA, }
City and County of Philadelphia } ss.

Register's Office, October 21st 1929

I, WILLIAM F. CAMPBELL, Register of Wills and ex-officio Clerk of the Orphans' Court for the
20 City and County of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify the foregoing to be a full and complete copy of

The last Will and Testament of Nettie Lee Danenhour, deceased, also known as Nettie Lee Danenhauer, said Will was admitted to probate on the 25th day of June A. D. 1928.

as the same remains on file and of record in this office.

30

In Testimony Whereof, I have hereunto set my hand and official seal at Philadelphia the date above.

(Seal)

Wm. F. Campbell,
Register of Wills and ex-officio Clerk of the Orphans' Court

(Endorsed)

COPY

WILL OF

Nettie Lee Danenhour

Also known as

Nettie Lee Danenhauer

Deceased

Book 523

Page 176

No. 2176

1928

10

Compared by

A & J

EXHIBIT D2.

20

15/22/29L.

	Land	Bldg	Acres
Weymouth Twp	700.00	5000.00	150
Hamilton Twp	2000.00		106
Florida	150.00		25
2811 Poplar St			30
1 Cheltenham 342 Laurel Ave		1200	
2 " 344 " "		1200	
3 " 416 " "		2000	
Seaside Park.			

(On back)

4266 Parkside Ave

same, the parents living with them and sharing said premises, also sharing to some extent the expenditures thereon, and had fully performed upon his part the said contract, held, that at the instance of the son, equity will compel the performance of the agreement upon the part of the mother.

2. *Vreeland v. Vreeland*, 53 N. J. Eq. 387, followed.

The bill is filed to specifically enforce a parol contract to devise a parcel of land situate in the Townships of Weymouth and Hamilton, near the village of Mays Landing, in Atlantic County. The premises in question consisted of what had been, many years ago, a farm, upon which was erected a house and other buildings, none of which were up to date nor in good repair. Much of the property had been permitted to grow up in a growth of small trees. 10

The father and mother of complainant occupied the premises as a summer home, making little if any use of it for horticultural purposes. They had two sons, the complainant and his brother, George Edward, who, at the time the alleged contract was made, was in the hardware business in Philadelphia. 20

The complainant, desirous of entering into the horticultural business, was investigating property in Chester County, Pennsylvania, and had apparently approached his parents for advice and financial assistance. It is testified that the mother and father suggested to him that the property at Mays Landing was quite suitable for his purpose, and if he would occupy that property and develop the same in the manner in which he contemplated doing to such property as he should buy, that the mother would devise to him the premises in question, and that upon the death of both parents, the same would 30

be his. He did move upon the premises in question and developed it for horticultural purposes, having thereon, at the present time, as the complainant's brief expresses it, "a beautiful iris plantation of national fame."

10 The complainant, his wife and the father and mother lived upon the premises, apparently in complete harmony, and the father and son rebuilt the dwelling house, enlarging it, putting in heat and sanitary conveniences, and also erected other buildings. Both spent money upon these improvements. The son testifies that he expended approximately \$12,000.00, besides giving his entire time to the venture.

20 The complainant's mother died on or about the 20th of December, 1927. The father died on or about the 15th of January, 1928. By the terms of the mother's will, the father received the entire estate (after the payment of debts) for life. After the father's death, the complainant and his brother were to receive a life interest, and after their death, to be divided into two parts, one-half to be given to the complainant's brother's children, and the other half (after the payment of \$5,000.00, to the complainant's son) to be given, share and share alike, to the children of the complainant's brother. Beside the premises in question, there was other estate in the State of Pennsylvania.

30 It is unnecessary to further restate the testimony. The facts as proven in this case brings it squarely within the rulings of *Vreeland v. Vreeland*, 53 N. J. Eq. 387. I find that the father and mother both agreed that if the complainant should move to Mays Landing and develop the property there, that upon their death, the property should be devised to him; that he did move upon the property in question and expend a large amount of money thereon, the father

and mother living upon said premises with him during the greater part, if not all of their lifetime, and that he, the complainant, by his labor and expenditure of money, fully performed upon his part the agreement made by the proposition and its acceptance, and that at the instance of the son, equity will compel the performance of the agreement upon the part of the mother, who held title to the lands in question; that the agreement was mutual, definite and certain, both as to its terms and subject-matter. 10

The law is clearly set out by Chancellor McGill in *Vreeland v. Vreeland*, 53 N. J. Eq. 387, who said: "That equity will specifically enforce such a parol agreement at the instance of a complainant who shall have completely performed it upon his part, is now established, in this State, beyond controversy. The remedy is afforded upon the ground that it will work a fraud upon him who, induced by the agreement, had in good faith so performed it as to irretrievably change the situation of the parties to his disadvantage, to permit the other party to refuse fulfillment upon his part. It has had frequent recognition and application in adjudged cases in our courts. *Casler v. Thompson*, 3 Gr. Ch. 59; *France v. France*, 4 Halst Ch. 650; *Johnson v. Hubbel*, 7 Stock. 332; *Van Dyne v. Vreeland*, 3 Stock. 370; S. C., 1 Beas. 142; *Davison v. Davison*, 2 Beas. 246; *Cooper v. Carlisle*, 2 C. E. Gr. 529; *Brewer v. Wilson*, 2 C. E. Gr. 180; *Eyre v. Eyre*, 4 C. E. Gr. 102; *Brown v. Brown*, 6 Stew. Eq. 657; *Larison v. Polhemus*, 9 Stew. Eq. 506; *Schutt v. Missionary Society, &c.*, 14 Stew. Eq. 115; *Pflugar v. Pultz*, 16 Stew. Eq. 440; *Young v. Young*, 18 Stew. Eq. 27; S. C., 6 Dick Ch. Rep. 491; *Nibert V. Baghurst*, 2 Dick. Ch. Rep. 207; *Drake v. Lanning*, 4 Dick Ch. Rep. 452. 20

But a parol agreement of this character, because 30

of the situation and relations of the parties to it, and the consequent opportunity for the perpetration of fraud, is regarded with suspicion, and, when its enforcement is sought, is subject to close scrutiny. It must not only be mutual, but also definite and certain, both in its terms and as to its subject-matter, and it must be clearly proved. *Cooper v. Carlisle* and *Brown v. Brown, supra*. So, also, it must plainly appear that that which is alleged as
 10 part performance is referable to and was consequent upon the contracts alone, for the purpose of carrying it into effect. *Eyre v. Eyre, supra*; *Pom. Spec. Perf. Par. 108, 109.*”

I will advise a decree that the agreement shall be specifically performed.

FINAL DECREE.

20

IN CHANCERY OF NEW JERSEY.

Between	H O W A R D L E E D A N E N - H A U E R,	}	On Bill, Etc. Final Decree.
	<i>Complainant,</i>		
	and		
30	G E O R G E E D W A R D D A N E N - H A U E R, <i>et als.</i> ,	}	
	<i>Defendants.</i>		

This cause coming on to be heard in the presence of Samuel Morris, solicitor of the complainant, and

Isadore Sacks, solicitor of the defendants; the Court having examined the pleadings and taken proof orally in open court, and having heard and considered the arguments of counsel and being satisfied that the said Nettie Lee Danenhauer was, on or about November 1, 1921, the owner of premises situate, lying and being in the village of Mays Landing, County of Atlantic and State of New Jersey, particularly described as follows:

BEGINNING at a stake by the side of Great Egg Harbor River, near what is commonly called the Hance Place; thence 10

1) South, eighty-four degrees West, two chains to a gum marked four blazes and twenty-four notches close by the fence bank and upland; thence the same course South, eighty-four degrees West, in all twenty chains and fifty links to a pine by the edge of the main swamp marked four blazes, twelve notches for a corner; thence 20

2) By the edge of said swamp the several courses thereof until it intersects Nicholas Rape's line;

3) Along said Rape's line through the swamp to the River aforesaid; thence

4) By the same the several courses thereof to the place of beginning.

Containing one hundred and fifty acres be the same more or less. Being the same premises inter alia which Snyder B. Simes by indenture dated February 6, 1903, and recorded in the Clerk's Office of Atlantic County at Mays Landing in Book 283, page 299, etc., granted and conveyed unto Edwina L. H. Coleman in fee. Under and subject to all encumbrances and taxes now on the above described premises; 30

that, on or about November 1, 1921, the complainant planned to purchase lands in Chester County, Pennsylvania, for horticultural purposes; that the complainant's parents, to wit, Nettie Lee Danenhauer and Frank Danenhauer, and in particular Nettie Lee Danenhauer, on or about said date, agreed that if the complainant would abandon his aforesaid plan and move on the above-described lands and premises in Mays Landing, develop and
10 improve same, that they, and in particular Nettie Lee Danenhauer, would devise the aforesaid lands and premises to the complainant so that the same would belong to the complainant absolutely on the death of Nettie Lee Danenhauer and her husband, Frank Howard Danenhauer; that the complainant accepted the proposition; moved on the land and premises with his wife, developed and permanently improved same, and fully performed his part of the agreement; that the complainant's mother died on
20 or about December 20, 1927; that the complainant's father died on or about January 15, 1928; that the complainant's mother, in violation of the aforesaid agreement, devised said property leaving a life estate therein to the complainant and his brother, George, and following their death the estate is to be divided into two equal parts, one of these parts to be given absolutely to the complainant's brother's children and the other part to have five thousand dollars (\$5,000.00) therefrom given to the complainant's son, Howard Lee Danenhauer, Jr., the balance
30 share and share alike, to be given to the complainant's brother's children; that the executor named in the will was the complainant's father, Frank Howard Danenhauer, and after his death, the complainant's brother, George Edward Danenhauer, was to be the executor with full power of sale; that George Edward Danenhauer has been appointed ex-

ecutor of the estate of Nettie Lee Danenhauer; that the defendant, George Edward Danenhauer, is married and his wife's name is Margaret Frazier Danenhauer; that George Edward Danenhauer has two infant children, to wit, Edward Danenhauer and Mary Lee Danenhauer; that George Edward Danenhauer is guardian *ad litem* for Howard Lee Danenhauer, Jr., Edward Danenhauer and Mary Lee Danenhauer; that the heirs-at-law of Nettie Lee Danenhauer are two sons, the complainant and the defendant, George Edward Danenhauer; that the complainant has prayed for an order or decree of this Court, directing that the defendants comply with and specifically perform the verbal promise in all things on their part in the place and stead of Nettie Lee Danenhauer; and the Chancellor being of the opinion that the complainant is entitled to the specific performance of said verbal agreement on the part of the aforesaid executor and heirs-at-law and devisees of the said Nettie Lee Danenhauer, deceased, as in his said bill he has prayed;

It is, on this 3rd day of February, 1930, ordered, adjudged and decreed that the said verbal agreement be in all things specifically performed by the said defendants, George Edward Danenhauer, Margaret Frazier Danenhauer, George Edward Danenhauer, guardian *ad litem* for Howard Lee Danenhauer, Jr., Edward Danenhauer and Mary Lee Danenhauer, infants, heirs-at-law and devisees of Nettie Lee Danenhauer, and George Edward Danenhauer, executor of the estate of Nettie Lee Danenhauer, and that the said defendants do, within thirty days from the date of this decree, make, execute and acknowledge, in due form of law, and deliver to the complainant, a good and sufficient warranty deed for said premises and that they deliver at the

same time to the said complainant possession of the said premises.

It is further ordered, adjudged and decreed that the costs of the complainant be paid out of the estate of the said Nettie Lee Danenhauer, and that the complainant is to serve a copy of this decree upon the defendants or their solicitor within ten days from the date hereof, and either party is to be at liberty to apply to this Court for further directions
10 or relief in the premises, if occasion shall require.

E. R. WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,
V. C.

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30

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, Etc. Notice of Appeal.	10
HOWARD LEE DANEN- HAUER,			
Complainant,			
and			
GEORGE EDWARD DANEN- HAUER, <i>et als.</i> ,	}		
Defendants.			

The defendants hereby appeal from the final decree made by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the 3rd day of Feb., 1930, and the whole and every part thereof to the Court of Errors and Appeals, in the last resort in all causes.

Dated: Feb. 8, 1930.

ISADORE SACKS,
Solicitor for and of Counsel with Defendants.

30

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

ISADORE SACKS,
Of Counsel.
(Acknowledged Feb. 8, 1930.)

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between
 HOWARD LEE DANEN-
 HAUER,
Complainant-Respondent,
 and
 GEORGE EDWARD DANEN-
 HAUER, *et als.*,
Defendants-Appellants. } On Bill, Etc.
 Petition of Appeal.

20 *To the Honorable, the Court of Errors and Appeals
 in the Last Resort in All Causes:*

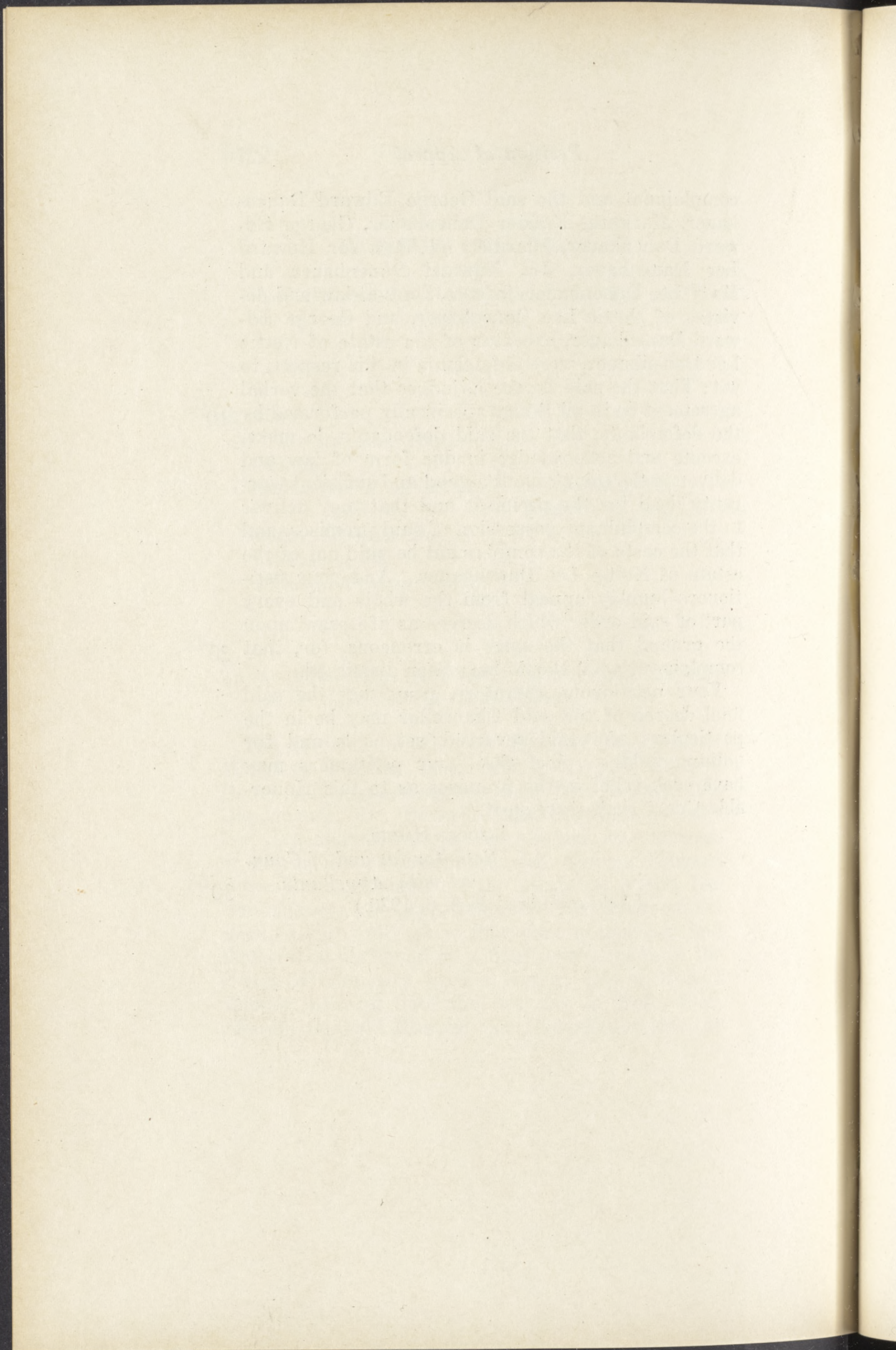
The petition of George Edward Danenhauer, Margaret Frazier Danenhauer, George Edward Danenhauer, guardian *ad litem* for Howard Lee Danenhauer, Jr., Edward Danenhauer and Mary Lee Danenhauer, infants, heirs-at-law and devisees of Nettie Lee Danenhauer, and George Edward
 30 Danenhauer, executor of the estate of Nettie Lee Danenhauer, the appellants in the above-stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, bearing date the 3rd day of Feb., 1930, wherein the said Howard Lee Danenhauer was the

complainant and the said George Edward Danenhauer, Margaret Frazier Danenhauer, George Edward Danenhauer, guardian *ad litem* for Howard Lee Danenhauer, Jr., Edward Danenhauer and Mary Lee Danenhauer, infants, heirs-at-law and devisees of Nettie Lee Danenhauer, and George Edward Danenhauer, executor of the estate of Nettie Lee Danenhauer, were defendants in this respect, to wit: That the said decree adjudges that the verbal agreement be in all things specifically performed by the defendants, that the said defendants do make, execute and acknowledge in due form of law and deliver to the complainant a good and sufficient warranty deed for the premises and that they deliver to the complainant possession of said premises, and that the costs of the complainant be paid out of the estate of Nettie Lee Danenhauer. And your petitioners humbly appeal from the whole and every part of said order which decrees as aforesaid upon the ground that the same is erroneous, for, that complainant's bill should have been dismissed. 10 20

Your petitioners, therefore, pray that the said final decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

ISADORE SACKS,
Solicitor for and of Counsel with Appellants.

(Acknowledged Feb. 8, 1930.) 30



NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

HOWARD LEE DANENHAUER,
Complainants-Respondents,

and

GEORGE EDWARD DANENHAUER, *et als.,*
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF OF APPELLANTS.

FACTS.

The complainant, Howard Lee Danenhauer, in this case files a bill in the Court of Chancery for specific performance of an alleged parole contract which he claims was entered into, according to his complaint, on or about the 1st day of November, 1921, between his mother, Nettie Lee Danenhauer, and himself. The terms of this alleged contract were that the mother of this complainant was to devise to this complainant after her death, certain property in Mays Landing, Atlantic County, New

Jersey, in consideration of which contract to devise, the complainant was to refrain from purchasing a piece of property in Chester County which he was considering, and instead was to move to the Mays Landing property and develop the same.

The complainant moved to Mays Landing and put in certain improvements on this property. Nettie Lee Danenhauer, the mother of this complainant, died on or about December 20th, 1927, leaving a will in which she gave, devised and bequeathed her estate unto her two sons, one of which was the complainant, for and during the term of their natural lives, and from and after their deaths, shall provide for the distribution of the principal of said estate to the heirs of her sons, with the exception of one child, a daughter of the complainant born to the second wife of the complainant, which child is now about three years old.

The further facts concerning this case will be brought out by citations from the testimony adduced at the hearing.

ARGUMENT.

By way of argument, may I cite various cases in order to present, first, the law covering the subject involved in this suit.

There can be no question, the fact that a parole agreement, if proven, will be enforced specifically in equity. This has been established in any number of cases in New Jersey. In the case of *Vreeland v. Vreeland*, 53 Equity, 389, the Chancellor has said:

“Equity will specifically enforce a parole agreement at the instance of a complainant who

shall have completely performed it upon his part; the remedy is afforded upon the ground that it will warrant a fraud upon him who, induced by the agreement, has in good faith so performed it as to irretrievably change the situations of the parties to his disadvantage, to permit the other party to refuse fulfillment upon his part.

“But a parole agreement of this character, because of the situation and relations of the parties to it and the consequent opportunity for the perpetration of fraud, is regarded with suspicion, and when its enforcement is sought, is subject to close scrutiny. It must not only be mutual, but always definite and certain, both in its terms and as to its subject-matter, and it must clearly prove.”

This view is supported in any number of cases, and especially in the cases of *Cooper v. Carlyle*, 2 C. E. Gr. 529, and *Brown v. Brown*, 6 Stew. Eq. 657.

Vice-Chancellor Backes, speaking in the case of *Tooker v. Vreeland*, 92 Equity, 340, says that:

“That such a contract be enforceable, it must be, like all other contracts, especially enforceable in equity, found upon a valid consideration, certain and defined, equal and fair, and sufficiently proven—witness to which Lord Loughborough said in *Lord Walpole v. Lord Oxford*, 3 Ves. Jr. 402, he knew no limitations.”

Vice-Chancellor Leaming, speaking in the case of *McEvoy v. Brooks*, 89 Equity, 37, says that:

“For part performance to justify parole evidence of the terms of the parole contract, the acts or conducts of the parties—that is, what

they did, as distinguished from what they agree to do, must be such as to point to the existence of a contract between them consistent with that which is set forth in the bill. In all suits for specific performance, clear proofs of the contract are required to support that form of extraordinary relief. But to enforce specific performance of a parole contract for the sale of real estate, it is even more imperative that the proofs of the contract shall be clear and convincing."

In *Eyre v. Eyre*, 19 New Jersey Equity, 102, that rule is expressed as follows:

"But, if I only doubted, the relief must be denied. The complainant or actor in all cases, must prove his case to the satisfaction of the Court, but in these cases, where the provisions of the Statute of Frauds are to be set aside by some act of specific performance, clear proof is eminently required. This salutary statute should be not lightly dispensed with."

The Chancellor, speaking in the case of *McTague v. Finnigan*, 54 Equity, 454, says that:

"It was the duty of the complainant to establish them (the contracts) by clear and convincing proofs for parole agreements of a kind, because of the situation and relation of the parties to them and the consequent opportunity for misunderstanding and perpetration of fraud are naturally regarded with suspicion, and when their enforcement is sought, are properly the subject of close scrutiny. Where the object of a suit in equity is to secure the specific performance of an alleged parole contract to leave

the estate of a foster parent to the child, the rule is that the agreement must be clearly established by satisfactory proofs. Such proofs do not exist in uncertain and unnecessary inferences."

In the case of *McNamara v. Bohn*, 108 Atlantic Reporter, 764, there was a bill filed to compel specific performance of a contract alleged to have been entered into between Philip C. Cohn in his lifetime and his daughter, Mrs. McNamara, whereby, if the daughter would give up her home in New York City, where her husband was employed, move to Dumont, N. J., and take care of her father during his lifetime, that he would leave his will devising the premises in question to her. The offer was accepted by the daughter, who in every respect faithfully performed her part of the alleged agreement.

Vice-Chancellor Griffin said that:

"The difficulty with the complainants' case is the absence of that character of proof which is required to establish a contract."

In the case of *Cooper v. Carlisle*, 17 New Jersey Equity, 525, the Court said:

"The contract proved must be clear, definite and certain, both as to its terms and its subject-matter, 'the spirit of the law gleaned from the authorities, is that, while courts of equity, to prevent fraud in such cases as this will, decree specific performance, yet, by reason of the possibility of fraud and misunderstanding, such contracts will only be enforced when their terms, if in writing, would have been enforceable and the proof of the oral agreement is clear and convincing.'"

In *Burell v. Middleton*, 72 N. J. Equities, 774, Vice-Chancellor Leaming said that: "Such parole agreements are not favored and must be clearly proven." He was affirmed in 73 New Jersey Equity, 741.

In the case of *Barbour v. Barbour*, 51 New Jersey Equity, 267, Chief Justice Beasley said that:

"And it will be remembered that those decedents that maintain that a parole contract relating to land may be performed by the Court after a part performance of a certain character, must strenuously insist that the proof of such contract must be of the most demonstrative character."

The case of *Wolfinger v. McFarland*, 67 Equity, 687, is most important. In this case, the complainant claimed to have a parole contract whereby a decedent had agreed to convey to him certain lands used for a foundry. The decedent devised those lands in fee to his widow. There were any number of witnesses who, like in our case, testified as to conversations had with the deceased. Most of the witnesses testified that the decedent made statements such as these: "He told me at the time that Mr. Wolfinger (the complainant) should get the foundry. I expect Irv (the complainant) to succeed me here." McFarland said, "He proposed to give that business to Irv." "I have arranged to let Irv Wolfinger continue the business on his own account." "I am going to give him the foundry." "He had decided to turn over the factory and business to him (Wolfinger) when he was dead." "He had promised Irv the factory." One witness testified that McFarland said: "The foundry business here is for Irv, my business manager * * * he told

me perhaps a dozen times that this property he proposed to give to him, his business manager, for extra services rendered. That is about the way he expressed himself." Another witness testified as follows: "Wolfinger made an agreement with him, to stay with him as long as he lives, to run the foundry, the foundry and business should be his when he either retired or died." The Court held that where all the proof leaves it in doubt, whether an alleged agreement to convey lands was an obligatory contract or a declaration of a purpose to confer a benefit, specific performance will not be decreed. All the terms of the alleged parole contract must, in cases where specific performance is sought, be proven by the complainant with definite certainty, or it will be refused.

It appears to us that one of the most important cases touching on the point involved in our case is *Haverman v. Kauer*, 70 New Jersey Equity, 381. The object of this suit was to compel the specific performance of a contract which the complainant alleges his father, Michael Haverman, made with him in 1894 to convey to the complainant some property in New Brunswick. The complainant alleges that he agreed with his father to serve him and his wife in the conducting of the lodging house business for the remainder of their lives, and that his father, in consideration thereof, agreed that he, on his death, would leave the lodging house property to the complainant in fee. The complainant alleges that he has fully and faithfully performed his part of the above-recited agreement, and prays that the Court would decree the specific performance of this contract.

Quoting Vice-Chancellor Grey:

"The burden is upon the complainant to

establish the fact that the contract which he sets up in his bill of complaint was actually made and that it was obligatory, not only upon Michael and Caroline (the father and mother), but also upon himself.

“That the services of caretaking of his father and mother and looking after their business were performed by the complainant proved no contractual relations. Those services are in law presumed to have been rendered in recognition of family duty and affection.

“Of course, a contract to convey lands which is not in writing is obnoxious to the Statute of Frauds.

“The wills made by Michael and Caroline are, in effect, denials that they had made any such agreement as the complainant now asserts.”

The evidence of other witnesses presented by the complainant in support of his claim is quite voluminous. Almost all of which relates parole declarations of the parents of complainants made to casual bystanders which gratefully recognizes the complainant's attention to his father and mother during their illness, and their inability to care for themselves or their business, and their wish and purpose to reward him. None of the supposed admissions defines the whole contract. Such evidence does prove a contract to convey lands with that certainty which ought to be before any Court which is asked to decree specific performance.

The case of *Johnson v. Hubell*, 10 New Jersey Equity, 332, raises another point which may have some importance in deciding the case before this Court. The Chancellor in that case, said that:

“The complainant has a right to the protection of this Court and to its aid in establishing and enforcing his rights, if that protection and aid cannot be afforded him without invading and disregarding rights of others, this Court may not, in its anxiety and desire to relieve one party, inflict a wrong and injury upon another entirely innocent in the transaction. Although the agreement upon which the bill is filed is a legal one, it does not follow that a Court of Chancery will decree its specific performance. It is not a matter of *right*, in either party, that the Court should make such a decree, but it is a matter of discretion in the Court, which withholds or grants relief according to the circumstances of each particular case, when the general rules and principles which govern the Court will not furnish any measure of justice between the parties.”

Pomeroy on Specific Performance, Third Division, page 136, speaking on oral agreements to devise, says:

“The rules as to weight of evidence are, or should be, applied with great strictness in this class of cases, for the reason that the death of the promissor puts the defendants at a great disadvantage in combatting the evidence of the plaintiff’s part. From the nature of the case, the proof must consist largely of the promissor’s oral declarations to third persons; and these are the most unsatisfactory species of evidence, on account of the facility with which they may be fabricated, the impossibility of contradicting them, and the mistakes and failure of recollection. The posthumous recollections of a neigh-

borhood as to the words of a testator, should weigh but little when set against his written will."

It is to be feared that the Courts of late years, have often lost sight of the strictness of this rule. "As one reads these (recent) cases he cannot but have an uneasy feeling that general expectations of becoming the object of a testator's bounty often ripen into a contract after testator's death." Professor Roscoe Pound, in 33 Harvard Law Rev. 933.

With the above excerpts from the cases in mind, let us examine the testimony to discover whether or not there is anything in the complainant's case to bring it within the law as laid down by the precedents in New Jersey, so that this Court could decree specific performance.

In examining the testimony, let us consider the following:

1. Was there any agreement between the complainant and Nettie Lee Danenhauer?
2. If there was an agreement, what were its terms?
3. What was the consideration shown for the agreement?
4. Was the proof of such calibre as to be clear, convincing, definite and certain?
5. Was there such part performance of this agreement as to take it out of the Statute of Frauds?
6. Can the Court decree specific performance and

relieve the complainant without inflicting a wrong and injury upon other persons entirely innocent in the transaction?

7. Has the complainant carried the burden of proof with that great strictness as is required in this class of case?

The following quotations from the testimony are statements upon which the complainant bases his claim that there was an agreement.

The first testimony that we have is brought out on cross-examination of the complainant, and is as follows:

“Q. In 1919 why did you put your stock in the ground in Mays Landing?

A. Because I was using that as a development.

Q. On what sort of an agreement or arrangement were you using that ground as a development?

A. Under the agreement with my father and mother that I could make use of those premises to grow my stuff, as it was a desirable place to grow plants, and if I would bring the stuff there and improve the place it would finally become mine.

Q. When was that made?

A. That was more or less continuous, that sort of an agreement, it was mentioned frequently, it wasn't at one particular time.

Q. When was it first mentioned, that you know of?

A. I should say in 1919 or thereabouts, as near as I can tell.

Q. So that there was an agreement in exist-

tence, an oral agreement between you and your father and mother, that some day that place would be yours, as far back as 1919?

A. Very probably so, yes.

Q. Very probably?

A. It was understood."

We next have an alleged conversation between the complainant and his father, also brought out on cross-examination, which is alleged to have taken place after a visit to the Chester County property, as follows:

"A. Coming home, he very decidedly advised against purchasing the property, and he said, 'Your business will be new, you will have more or less trouble in establishing; you haven't any too much money; if you will bring all your plants and your proposition to Mays Landing and stay there with us, as your mother wants you to, you needn't worry about the taxes, I will carry the taxes, you improve the property, develop yourself there and let it come along, as it will, and as soon as it puts itself on a paying basis, I want you to take your brother into the business with you, and you will eventually own the place.

Q. And it was upon that suggestion of your father's that you decided to give up this Chester County proposition?

A. Yes, sir.

Q. Now, was it upon that suggestion of your father's that you moved to Mays Landing?

A. Yes, sir."

Again, we have the following statement on cross-examination:

“A. The understanding was that I was to come there and develop the horticultural establishment, and assist in developing the place and bring my own labor and materials and plants in there, with the understanding that I was to have free rent there, free thought in developing anything I wanted to, the taxes would be taken care of by Father, that was specifically ——”

Again, we have this testimony brought out on cross-examination of the complainant:

“Q. You said, did you not, Mr. Danenhauer, that on your way back, in your conversation with your father, that he suggested that you should not buy this property in Chester County, and that if you did not buy it in Chester County that you could go on this farm in Mays Landing, develop it, and when it became a paying proposition, take your brother in with you?

A. That was developed, too, yes, sir.”

Upon re-direct examination of the complainant, we have this testimony:

“A. The agreement between myself and Mother was entered into about, as near as I can recall, Nov. of 1921, wherein I was ——

Q. Where was this agreement made?

A. Mays Landing.

Q. On the premises?

A. Yes, sir.

Q. What was the agreement?

A. The agreement was that should I dispose of my property in Philadelphia, come to Mays Landing, put my plants in there and develop my horticultural business there, spending my

efforts on these premises, that they would eventually, in the distribution of the estate, become mine, insomuch as the other brother had been set up in the hardware business.

Q. What do you mean, they would eventually become yours; were they to become yours under this agreement?

A. At the death of the parents.

Q. Was that particularly said?

A. Yes, sir.

Q. And she said at the death of herself and her husband the property was to go to you?

A. I can't testify that they were the exact words; that was the intent."

The testimony as to the agreement is corroborated by the following testimony of his wife:

"Q. Did you ever hear the mother and father, mother or father, make any statement to him as to the ownership or disposition of this property in Mays Landing?

A. Yes, positively.

Q. When and where?

A. Well, the first time it happened was when we still lived on Edgewood Street.

Q. Philadelphia?

A. Yes, and Mother Danenhauer was in Mays Landing at the time, and Father Danenhauer used to come out to our house nearly every Sunday night to dinner, and he was sitting at the living-room table, and he was talking then, we were saying something about, you know, he was interested in iris, and he said, 'Why not come to Mays Landing?' And Lee said he didn't know about the soil conditions there, so I didn't want to go, I knew the condition of the place and it was no home, positively no

home at all there, was just a barn and that was all. So we had forgotten then all about it until a few months later, we had then thought about going down there, because he and his mother, too, Lee's father and mother both asked me would he please come down, and that was their very words, and Father Danenhauer —

Q. When was that?

A. That was about 1921, in the summer months, and toward fall, he and Mother were out to our house for dinner this night, and they asked me would he come down there, and I said at the time, I said, 'Why, there is no living conditions down there at that place,' I said, 'there is lots of things to think of before you go.' So we were going to sell the house and then—anyhow, he talked to him, talked to Lee, and Lee finally consented to come down, with the understanding that Lee could fix the place up, because it was to be Lee's place, Lee's very own place after they were dead, and Mother Danenhauer has talked time and time again to me, she said, 'All the work that Son is putting in this place is going to mean something to the both of you in later years.'

Q. Did she specifically say whose property it would be after the death of herself and her husband?

A. After Mother's death, Mother claimed that she owned the property, and it was Mother's own property, and she always said she could do with it as she sees fit, and she says it was to be Son's property, and by Son she meant Lee."

The following is brought out on cross-examination of Katherine J. Danenhauer:

“Q. The first understanding of any sort was in 1922 or 1921, rather, in your home?

A. In our home.”

The complainant attempted to show by testimony of witnesses how his mother felt about the disposition of this property and the testimony of these witnesses is somewhat as follows:

“This is Son’s place.”

“Son when we are gone, this will be your place.”

“Why don’t you load him up with pears off your place?”

“The work he is doing will eventually be for his benefit.”

“There is a great possibility for Lee to develop this place.”

All of the above constitutes the alleged agreement.

Is there anything in this above testimony which, admitting that there was a consideration, would constitute such an agreement, that if it were in writing, it could be enforced specifically in Chancery?

There does not seem to me to be anything here, but a suggestion and to give it the greatest possible benefit, a very indefinite, unconvincing and uncertain promise.

As against this testimony, we have the testimony of George E. Danenhauer, one of the defendants, his wife and two other witnesses.

On direct examination of George E. Danenhauer, we have the following:

“Q. 1923? What was the occasion, Mr. Danenhauer?

A. My wife and myself were over there, and

my brother was there, and my mother and father.

Q. Where, at their home?

A. At 2011 Poplar Street.

Q. That was their home?

A. My mother and father's home, and the question came up as to whether Father would invest a certain amount of money in this piece of property in Chester County, and he decided that it would be very disadvantageous to my brother, for the reason that it was a fifty-fifty proposition, share and share alike, he invested so much money to put these hothouses back into condition, and then they would share fifty per cent.

Q. What was the conversation, tell us that.

A. That it would be detrimental to my brother to invest in a share-and-share proposition where he had to produce all the labor and the money.

Q. In other words, your brother was simply buying an interest in that property?

A. Yes, sir.

Q. And your father advised him against it?

A. Yes.

Q. What did your brother reply to your father in response to that?

A. He never had very much to say to Father's criticism.

A. The statement that my mother made was that he should take this material and put it in Mays Landing and see if it was possible to make any money on it, and from the money that he could make in planting the material on her property he would be able to buy this cherished piece of ground or a cherished piece of ground in

Chester County where the soil conditions would be considered better for the growing of both peony and iris.

Q. Was there anything at all in that conversation, Mr. Danenhauer, with regard to a promise by your mother or father that they would leave this property to him after their death?

A. No."

George E. Danenhauer further testified as follows:

"Q. Just tell us what the conversation was between you and your mother.

A. Mother, as we were leaving the property to get to the train and boat, Mother said, 'That was a rather peculiar remark to make to you.' I said, 'Yes, it is rather odd for my sister-in-law to be inviting me to my home.' And she said, 'Well it will never be her home. It will belong to both of you jointly.'

Upon cross-examination, George E. Danenhauer testified as follows:

"Q. Now you just told us that your mother made this suggestion, I want to know what the father said.

A. That he could use the land in Mays Landing to develop the bulbs and plants that he was securing from abroad, and that if he could make a go of it, if he could get enough experience and make enough money there, he could buy the piece of ground or buy a piece of ground in Chester County where he preferred the soil conditions."

We next have the testimony of Mrs. Margaret Danenhauer:

"A. Mother then turned to Lee and she said,

'Son why don't you, since you know nothing about growing flowers and it is a venture, anyway, why don't you go down and use Mays Landing? The ground is there and it can't cost you anything, and if you make a success of it then you can buy a piece of ground that you want,' and he mentioned that he didn't think soil conditions would be very good there for raising iris and peonies, and Father, says, 'I have very good success with them, I have some down there.'''

Mrs. Margaret Danenhauer also testified as follows:

"A. As we were leaving, my sister-in-law said, 'Well come down again and see us,' and nobody said anything, and as we were going across in the boat, Mother said, 'You might think it was Katherine's place, that was rather an odd remark to make' and just before we got on the train, my husband said, 'I don't sort of like the idea of my sister-in-law inviting me to my own home, I am entitled to go any time I feel like.' Then nothing more was said about it until we got on the train."

She also testified as to the following conversation with her mother-in-law:

"A. She wanted to build a place for us, she said, 'I will build another property on the place,' and she said, 'We will let the folks live in the house that was there, then and we will live in the other house, and you come down and live in that, and then at our death that place will be yours.' And I said, 'Why, Mother, that is so foolish * * *'"

Upon cross-examination, Margaret Danenhauer testified as follows:

“Q. Then your mother-in-law suggested that Lee go down to Mays Landing?”

A. She suggested that the place was there and it would cost him nothing to go down if he wanted to develop this proposition.”

She also testified as follows on cross-examination:

“A. ‘Katherine will never own that property, it is for the boys.’ She went on further to say, ‘I have never made any distinction between the two and I don’t expect to now.’”

Q. She said the property is for the boys?

A. Yes.

Q. Are those her words?

A. She said, ‘I am going to make my will,’ she said, ‘Katherine will never own that property,’ She said, ‘Everything is for the boys.’”

We then have the testimony of Mrs. Shallcross, who was a cousin of Nettie Lee Danenhauer and who testified to various conversations at the time when the complainant started to experiment in Mays Landing with the raising of flowers. The statement made by Nettie Lee Danenhauer to Mrs. Shallcross was to the effect that Lee and Katherine were experimenting with flowers in Mays Landing and if they were successful, they were going to buy a place of their own.

Mrs. Shallcross also testified, very definitely, that she spoke to her cousin a few days prior to her death; Nettie Lee Danenhauer made the statement that everything she had would go to her two boys jointly.

We then have the testimony Mr. Livezey who

remembers distinctly the occasion of his visit because of the fact that it happened to fall upon a Jewish holiday on which holiday, he took advantage to visit the farm of the Danenhauer's. He states there were some proposed improvements which Frank Danenhauer was contemplating and during the course of the conversation, Frank Danenhauer, in the presence of his wife said that each of the boys would have one of the houses and Mrs. Nettie Lee Danenhauer made the statement that "When we go, the two boys will have the place."

An examination of all the testimony set out to this time does not in any way disclose any agreement which as the cases held, is clear, convincing, definite and certain and inasmuch as the burden of proof is upon the complainant, it does not appear to us that that burden has been carried to such an extent that the Court can decree specific performance.

If the Court, however, feels that there is an agreement before it, we next come to the question of consideration.

In order that there be consideration, there must be shown some benefit flowing to the promissor and some detriment to the promisee.

It seems to us that the testimony does not disclose any particle of benefit to Nettie Lee Danenhauer, nor does it disclose any detriment to the complainant.

The complainant testified that he had a property in Philadelphia which is as follows:

"A. It was my intention to dispose of that property and purchase a property at Paoli, Pennsylvania for the intention of raising and hybridizing plants such as iris and peonies, narcissus and dahlias.

Q. Now did you go through with your intention of selling the property and buying property in Chester, Pennsylvania?

A. I did not.

Q. As the result of conversation with your mother and father, you did not buy the property in Chester, Pennsylvania?

A. That is right."

On cross-examination, H. Lee Danenhauer testified as follows:

"A. Yes, sir, insisted that I abandon the proposition of purchasing the property at Paoli, and put all my investment in the Mays Landing property.

Q. What was your investment in the Mays Landing property?

A. To put all my future investment in the Mays Landing property.

Q. Your future investment?

A. Yes, sir."

It is to be remembered at this point that the house which the complainant intended to sell was in fact not sold until two years after this alleged agreement and after the complainant entered into the property.

The complainant further testified upon cross-examination:

"Q. Now, coming back for just a moment, Mr. Danenhauer, to that place up in Chester County, how much was the purchase price of that place, do you recall?

A. \$13,000.

Q. How much cash did it require?

A. That was never developed, the arrangements were being made to finance the proposition by Mr. Francis Lambert, real estate man on 63rd St.

Q. You don't know how much cash you were required to put in?

A. It was never concluded, no, sir.

Q. Were you in a position to comply with the limited amount of money you had on hand?

A. I felt sure arrangements could have been made.

Q. But you don't know whether they would actually have gone through or not, do you?

A. Never went that far."

Wife of the complainant corroborates the testimony of her husband as to what is claimed to be a consideration for this agreement by relating that they wanted to go to Paoli because the soil conditions were better and she said, "I think we could have gotten it very cheap."

From the above testimony touching upon consideration, it does not appear to us that there is such consideration shown as to support this alleged contract. The best that can be said is that the complainant had intended to purchase a property in Paoli, but never went through with that intention, not going even as far as to determine upon what basis this property could be purchased by him or whether he could actually have purchased this property with the assets which he then had on hand.

We next come to the question of performance on the part of the complainant and there can be no doubt about the fact that the complainant exerted some effort in improving the lands, the benefit of which he himself received by selling the flowers and in improving the home in which he himself was living.

It is necessary only to refer to the testimony of the complainant, on the one hand, where he says that

he expended \$10,000.00 in cash and \$11,000.00 for his own services, and on the other hand, the testimony of his wife, who with great definiteness says that the only money expended by her husband for labor was paid to a man for hanging the doors on the porch.

This testimony by the wife is repeated on four different occasions throughout the examination. She certainly was in a position to know how much money her husband had expended. If he actually spent the amount that he said he did, she would have known about it. The testimony is full of contradictions by the complainant as to the money he expended and as to the improvements he made on the ground.

Let me quote the complainant as follows:

“Q. Now, what improvements did you make at your expense?

A. I cleared about fifteen acres, probably more, and brought about three acres into finished cultivation, paid for plowing, I would say about four or five acres, paid for brushing out the road, trimming the brush in various locations around the property, general labor on the premises, such as care and cultivation, fertilizer, bills.

Q. How about actual construction, what did you do?

A. The cost of the actual construction?

Q. Now, what did you do in the line of construction on the premises, construction of houses or parts of houses?

A. Construction and demolition?

Q. Yes.

A. There were two old buildings demolished and removed, a number of old trees cut down and removed. There was one two-story building about 16 by 36, two rooms downstairs, stairway, and three rooms upstairs, with basement,

and foundation was dug for that, foundation walls built and building completed.

Mr. Sacks: Did I understand him to say he did all of this?

The Court: Yes.

Q. Go ahead.

A. Front porch was constructed on the house, there was a side cellar dug, walls built, and sun parlor erected, bathroom over that, making an additional wing to the house. The entire interior of the house was refinished, banisters constructed.

Q. Any outbuildings or shops?

A. The outbuilding was the shop that I just described."

Upon cross-examination, although the above answers of the complainant were made with the intention and for the purpose of leading the Court to believe that everything mentioned as having been done by the complainant was done at his expense, the complainant testified that his father paid for the lumber, plumbing bills, plumbing fixtures, cement, heater and "things of that nature," and that he, the complainant also spent some money for the same sort of things. It is to be recalled that there is in the testimony an exhibit from the Egg Harbor Lumber Co. showing the entire account in the name of the father, as well as an exhibit from the Mays Landing Department Store, showing the entire food account in the name of the father.

It seems to us that such a deliberate attempt to mislead on the part of the complainant certainly warrants and justifies the belief that the rest of his testimony is not wholly truthful.

The attention of the Court is also called to what

seems to us is a most important exhibit and that is the one which was marked Exhibit D2. This paper written by the complainant himself sets out his idea of the value of the land and buildings in question as \$1200.00 at the time of the death of the father and mother of the complainant. There was no denial on the part of the complainant, nor any attempt to explain why such a valuation was fixed by him. Therefore, the testimony regarding this exhibit must be taken to be admitted and the figures set out thereon must be taken as being the value fixed by the complainant himself of this property. There is certainly a great inconsistency between the testimony of the complainant that the improvements placed upon the land and buildings cost him \$10,000.00 plus his own services which were worth \$11,000.00 and his admitted statement in writing that together the lands and buildings were worth \$1200.00.

We come next to the testimony of the complainant that the money which he received from the sale of his Philadelphia property, he spent upon improving the Mays Landing property and that this money was spent during the first few months after he had taken possession.

He later admits that his Philadelphia property was not sold until two years after he entered upon the Mays Landing property, so that certainly here again we have evidence of an attempt to keep the Court in the dark as to what the truth was.

I again call the Court's attention to the testimony of the complainant as set out on page 20 of the brief in which he said that he brought three acres of ground into finished cultivation.

Upon cross-examination of the complainant, he says:

“Q. So in those two years you developed and

were ready to produce flowers from fifteen acres of ground.

A. And probably more."

We have the complainant mentioned as one of the items of labor that he paid for, the work of his brother-in-law, he also testified that he was paid about once a month for about a period of a year while working for complainant. As against that, we have the definite and direct testimony of the wife of the complainant in reply to the question of the cost of the erection and repairs of the house, "my brother helped with that free of charge."

The complainant testified that his father had borrowed money from him on any number of occasions and yet when asked to show how he had loaned his father this money, he was able to produce only two checks totaling \$31.00.

There are so many glaring examples of discrepancies in the testimony of the complainant as well as in the testimony of his witnesses that there can be no question that this complainant did not carry the burden of proof as required by the cases.

I will touch only in passing upon the invasion of the rights of the children who have an interest under the Will, in this property and it seems to me that should this complainant be successful in this suit, the rights of the children who are entirely innocent in this transaction will be invaded.

The entire question as to whether or not, the mother of this complainant had promised to convey this property to the complainant can be settled by her own answer in accordance with the terms of her Will. We also have the strongest kind of corroboration from the testimony of the wife of the complainant who made the following statement in court:

“Mother Danenhauer always made the remark that everything she had, she had two children, two boys, everything would go to those two boys.”

There can be no question about what she herself thought regarding the disposal of this property and it seems to me that this Will made by her, and it is not claimed anywhere that there was undue influence upon her, in effect denies that she had made any agreement with the complainant. It does not seem to me that the complainant has proven an agreement or any consideration for an agreement, nor has the complainant carried that burden of proof which is required of him by the cases.

Respectfully submitted,

ISADORE SACKS,
*Solicitor of and of Counsel with
Defendants-Appellants.*

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

HOWARD LEE DANENHAUER,
Complainant-Respondent,

and

GEORGE EDWARD DANENHAUER, *et als.,*
Defendants-Appellants.

ON APPEAL FROM CHANCERY.

BRIEF OF COMPLAINANT-RESPONDENT.

FACTS.

The complainant, Howard Lee Danenhauer, filed a bill in the Court of Chancery for the specific performance of a parole contract made with his mother to devise him certain lands and premises situate in Mays Landing, New Jersey. The premises consisted of what had been many years ago a farm upon which there were a dilapidated house about fifty years old (S. C., p. 89, l. 37), and other buildings. The father and mother occupied the premises as a summer home (S. C., p. 21, l. 18). They had two sons, the complainant and his brother,

George, who at the time the alleged contract was made, was in the hardware business in Philadelphia (S. C., p. 68, l. 4).

The complainant, desirous of entering into the horticultural business, was investigating property in Chester County, Pa., for the purpose of purchasing same, and had apparently approached his parents for advice (S. C., p. 67, l. 8), and financial assistance (S. C., p. 136, l. 3).

The mother and father suggested to him that the property in Mays Landing would be quite suitable for his purpose and if he would occupy the property and develop same in the manner in which he contemplated doing to such property as he intended to buy, that the mother would devise to him the premises in question and that upon the death of both parents, the same would be his (S. C., p. 42, l. 37; p. 43, ll. 1, 2; p. 47, ll. 17 to 24; p. 54, ll. 28 to 36; p. 73, ll. 11 to 22; S. C., pp. 113, 114, 115).

The complainants accepted his mother's proposition and moved upon the premises in question, made permanent improvements thereon (S. C., p. 32, ll. 3 to 22; p. 59, l. 18; p. 115 bot., 116 top), and developed it for horticultural purposes having thereon at the present time a beautiful iris plantation of national fame (S. C., p. 29, ll. 6, 19, 24).

The complainant and his wife, and his father and mother lived upon the premises apparently in complete harmony (S. C. p. 68, l. 20; p. 69, l. 1). The father and son rebuilt the dwelling-house, enlarging it (S. C., p. 32, ll. 3 to 22), putting in heat and sanitary conveniences (S. C., p. 53, ll. 14 to 29), and also erected other buildings (S. C., p. 21, l. 23; p. 32, l. 23). Both spent money on these improvements (S. C., p. 50, ll. 20, 36; p. 53, l. 15; p. 54, ll. 11 to 15; p. 60, l. 36; p. 61, ll. 1 to 4; p. 74, l. 35).

The complainant labored and paid for labor to

make a habitable home out of a fifty year old dilapidated shack (S. C., p. 60, l. 14). The complainant expended approximately ten thousand dollars \$10,000.00) (S. C., p. 36, l. 21), on this development and improvement besides giving his entire time to the venture (S. C., p. 116, l. 28; p. 117, l. 1). The complainant's mother died on or about December 20, 1927 (S. C., p. 37, l. 15). The father died on or about January 15, 1928 (S. C., p. 38, l. 2).

By the terms of the mother's will the father received the entire estate (after payment of the debts) for life. After the father's death the complainant and his brother were to receive a life interest, and after their death, to be divided in two parts, one-half to be given to the complainant's brother's children and the other half (after the payment of five thousand dollars (\$5000.00) to the complainant's son, to be given share and share alike to the children of the complainant's brother (S. C., pp. 212, 213).

QUESTION.

Does the testimony justify the decree allowing specific performance of the alleged verbal agreement to devise?

POINT I.

The complainant took possession of, labored and made permanent improvements on the land.

Of course the principal is well established, that equity will specifically enforce a parole agreement to devise where the complainant, relying on the promise to devise, has fully performed his part of

the agreement, taking possession and making permanent improvements on the land.

Vreeland v. Vreeland, 53 N. J. E. 389;

Cooper v. Colson, 66 N. J. E. 328.

The complainant cleared about fifteen acres of land, brought about three acres into finished cultivation, paid for plowing four or five acres, paid for brushing out a road and paid for general labor about the premises (S. C., p. 31, l. 26); he built a two-story building (S. C., p. 32, l. 5); he constructed the front porch on the house; dug the side cellar and added a wing to the house, putting in a sun parlor and bathroom (S. C., p. 32, l. 18).

From an uncultivated piece of land, largely grown up in brush, with a dilapidated house, broken sluice and impassable roadway (S. C., p. 21, ll. 7, 12), the complainant made a veritable paradise which was the delight of his aged parents (S. C., p. 81, l. 5; p. 97, l. 11).

Is there any wonder that the parents expressed their delight and satisfaction in what the complainant had wrought about the premises, when their son, their first born (S. C., p. 115, l. 8), was good enough to give up the idea of establishing himself in Paoli, Pa., where the soil was much better, and settling down with them and with his wife on a place that had no home, but practically a barn? (S. C., p. 113, l. 34). Is there any wonder that the parents pleaded with the complainant to come down to Mays Landing? (S. C., p. 114, l. 1). Is there any wonder at the parents' delight when the son created an iris and peony development that even attracted the attention of Cornell University? (S. C., p. 29, l. 25). Who but aged parents whose children are married and making a living for themselves in distant places

can appreciate the solace of these parents when the complainant was making such a veritable garden out of the premises?

The complainant was planting stock from England and France (S. C., p. 42, l. 28). It was a real development. Does it not seem natural that the parents induced the complainant to give up the idea of going to Paoli, Pa., and to come on their own land and he with them during their few remaining days? Does it not seem natural that the parents promised the complainant these premises for his labor and association?

POINT II.

The complainant's agreement with his mother resulted in a change in the whole course of complainant's life and work.

From 1919 to 1921, due to soil conditions in Mays Landing, the complainant was not encouraged with his experiments and wanted to go to Paoli, Pa., to engage there in a horticultural development (S. C., p. 44, ll. 18 to 20).

The complainant was selling road machinery and was receiving money thereby (S. C., p. 48, ll. 21 to 25). It was in 1921 that the complainant was finally induced to give up his idea of going to Paoli and to settle down in Mays Landing, thus giving all of his time to this project and also giving up his interest in the sale of road machinery.

The complainant and his wife put the best years of their lives and savings in this proposition (S. C., p. 121, l. 20). They are now comfortably settled with a baby daughter (S. C., p. 38, l. 15).

“Where it appears that the result of the performance of the labor and service under the

agreement has been such as to change the whole course of the life or work of the complainant, on the faith of the contract to devise or convey, the case is one which is within the same rule as to part performance, as where possession of the land has been taken or improvements made thereon.”

Cooper v. Colson, 66 N. J. E. 328 at 332.

POINT III.

The complainant's mother agreed to devise unto the complainant the premises in question.

While as far back as 1919 there was an agreement whereby the complainant could make use of the premises for his plants and improve the place and that the premises would finally become his (S. C., p. 42, l. 36; p. 43, ll. 1, 9), it was not until November, 1921, that the complainant had the agreement on which he bases his claim (S. C., p. 73, l. 5; p. 77, l. 1). The agreement was that the complainant should sell his property in Philadelphia, come to Mays Landing, put in his plants and develop his horticultural business there, spending his efforts on the premises and that eventually the property would become his after the death of the parents (S. C., p. 73, ll. 10 to 20).

There was nothing definite as to who should pay for each particular board or nail that was put into the newly constructed parts. This was altogether reasonable and proper. The parties to the agreement were not strangers. When the father felt like improving a portion he paid for it. Whoever had the money at the time paid the expenses (S. C., p. 74, ll. 34 to 36).

The agreement was clear, definite and certain.

The complainant was to give up any idea of going to Paoli; he was to settle down with his family in Mays Landing, grow his iris and peonies and develop the premises in general. This he did. Besides laboring about ten years about the premises he spent approximately ten thousand dollars (\$10,000.00). George admits most reluctantly that the improvements were worth at least three thousand dollars (\$3,000.00) (S. C., p. 161, l. 20).

POINT IV.

Ample corroboration of complainant's testimony.

The complainant was unusually fortunate in being able to produce a very creditable array of disinterested witnesses to substantiate his testimony. Dr. Wm. Thomas, an honorable gentleman and a Presbyterian minister in Mays Landing, testified to the pleasure that Father Danenhauer manifested in his son's improvement of the premises (S. C., p. 80, l. 5) and to the father's realization of what it meant for Lee's future (S. C., p. 81, l. 7).

The minister's wife testified that she suggested to Mother Danenhauer that she wondered why she did not make certain improvements on the premises, to which Mother Danenhauer replied, "This is Son's place" (S. C., p. 84, l. 25), "Son" meaning Lee, the complainant. Mother Danenhauer called Lee "Son" he being her first-born (S. C., p. 84, l. 30). She always called the other son "George" (S. C., p. 115, ll. 6 to 10).

Captain Dotterer, who is too near his Maker to want to prevaricate, said that he heard Mother Danenhauer tell Lee, "Son, never mind, when we are gone this will be your place" (S. C., p. 89, l. 3).

Another witness says that father Danenhauer once said to Lee, "Why don't you load them up off *your* place?" "They (the pears) are going to waste on us" (S. C., p. 92, l. 29).

Mrs. Elliot tells how happy father Danenhauer was that the complainant had come down to live with them and in response to a question as to why he did not put in electricity Father Danenhauer said, "I don't think Lee can afford electricity now, but maybe some day when we are gone he will fix that all up" (S. C., p. 97, l. 20).

Another witness testified that, seeing Lee pollenizing his plants, Mother Danenhauer commented to her, "Lee is pollenizing (or working) at his plants." Mother Danenhauer told her that it would eventually be for his own benefit and later on it would be his own place (S. C., p. 101, l. 20).

To another witness Mother Danenhauer remarked "Lew, it is wonderful to think that my own son is going to live on this property and carry this property on due to the fact that we both have so much love for this place at Mays Landing and it certainly is wonderful to think that he is going to live on this property and develop his flowers and it is wonderful that he is interested in it" (S. C., p. 105, ll. 10 to 20).

To other witnesses Mother Danenhauer remarked in 1921, "What a wonderful opportunity there is to develop this place and how beautiful it might be if Lee would come down here and devote all his time to develop the place" (S. C., p. 108, ll. 5 to 10).

These are statements of disinterested, unbiased witnesses. How clearly they manifest the feelings of Mother Danenhauer toward Lee! How they all tend to prove that Mother Danenhauer delighted in her son's development and wanted the place to be

his after she and her husband were gone! And why not? George did nothing to develop the place, George had his own business in which he was given a start by his parents (S. C., p. 125, l. 11).

Of course, we have the testimony of the complainant's wife. She testified as to her unwillingness to go to Mays Landing. She knew the condition of the property. She knew the work involved. She knew that she was going to spend the best part of her life in attempting to develop abandoned property. But, loyal to her husband, she followed him. She heard Mother Danenhauer promise the land to Lee. Mother Danenhauer said that everything would go to the boys. Yes, but an equal division of the property does not mean an equal division of a particular property. One son could have one part of the estate and another son could have another part of the estate.

But of course we do not claim the property as a matter of moral right. We do not claim that we should have a decree because we improved a waste land. We do not claim that because a young couple, the complainant and his wife, spent the best part of their lives developing the land, that we should have a decree. We do not claim that we should have a decree because George did nothing to improve the land, but got angry and jealous and complained to his mother when Lee's wife hospitably and innocently invited him to "come again" (S. C., p. 176, l. 28). We do not claim that because George's children got the most valuable part of the parent's estate, to wit, the shares in the Mt. Sinai cemetery, that we should have a decree, but we do say that the complainant's testimony is entirely credible, extremely reasonable, and amply corroborated.

POINT V.

Cases cited in appellant's brief are not in point.

The cases cited by counsel for the appellant in his brief are not in point. In the Eyre case there was a delay of fifteen years in calling for specific performance. In the McTague case there was a written contract between the parties embodying the terms of their agreement and parol evidence was therefore not admissible to vary the terms thereof. In the Barbour case the complainant had proceeded for a divorce from her husband on the ground of his adultery and she alleged that upon his promise to amend and convey to her certain property she had returned to his bed and board and had withdrawn proceedings against him. The Court held that the assertions made by the husband were merely extravagant protestations and did not constitute a contract. Besides there was no corroboration.

It is therefore respectfully submitted that the decree of the Court of Chancery should be affirmed.

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

