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New Jersey State Library

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New Jersey State Library

Notice of Appeal.
(Filed April 26, 1928.)

To:

GEORGE D. HENDRICKSON,
Solicitor of the Complainant.

SIR:

TAKE NOTICE that the defendants Frank N. Warker and Emma Warker, hereby appeal from the interlocutory decree made by the Chancellor, on the advice of Vice-Chancellor Bentley, in the above named cause, and filed on the 5th day of April, 1928; and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 10

Dated, April 14th, 1928.

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INSLEY, VREELAND & DECKER,
Solicitors for and of Counsel
with the Defendants Frank N.
Warker and Emma Warker.

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

WILLIAM E. DECKER,
Of Counsel with the Defendants, 30
Frank N. Warker and Emma Warker.

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Petition of Appeal.

(Filed April 26, 1928.)

To the Honorable the Court of Errors and Appeals, in the last resort in all causes.

The petition of Frank N. Warker and Emma Warker, appellants, in the above entitled cause, respectfully shows that:

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1. Petitioners find themselves aggrieved of an interlocutory order made in the Court of Chancery by the Chancellor of the State of New Jersey, filed the 5th day of April, 1928 in a certain cause pending in said Court of Chancery, wherein the said Josephine Warker is complainant, and the said Frank N. Warker and Emma Warker, are defendants, in this respect to wit: that the said decree adjudges

20 (1) that the solicitor of the complainant shall continue to prosecute the suit and shall not consent to the dismissal of the bill of complaint; (2) and further that David A. Nimmo be and he hereby is continued as receiver of the real and personal property of the complainant of whatever kind and description, and wheresoever situated, and is authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become a party

30 to such suits, actions or proceedings at law, or in equity, in the State or Federal Court, in this or any other state or territory of the United States of America, as may in his judgment be necessary or proper for the protection maintenance, preservation, recovery or collection of the property and assets of the complainant; (3) and further that it was adjudged that these appellants forthwith deliver to the said David A. Nimmo, the receiver the

40 personal property described in the said order, and all other personal property in their possession, or

Petition of Appeal.

under their control, and also deliver to the said receiver a statement showing all the income and disbursements made therefrom.

2. And the petitioners appeal from the said order of the Chancellor, which decrees as aforesaid, upon the grounds that the same is erroneous in that neither the facts set forth in the bill of complaint, nor the proof thereof, nor the law of the State of New Jersey authorizes the making of the said order. 10

Petitioners therefore pray that the said order of the Chancellor filed April 5th, 1928 should be in the whole reversed, set aside and for nothing holden, and that the petitioners may have such other relief in the premises as to this court shall seem proper.

INSLEY, VREELAND & DECKER, 20
Solicitors and of Counsel
with the Appellants.

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Answer to Petition of Appeal.

The answer of Josephine Warker, the above named appellee, to the petition to the appeal of Frank N. Warker and Emma Warker, the above named appellants.

10 This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admits that an order was, on July 5th, 1928, made and entered in the Court of Chancery of New Jersey in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order this appellee begs leave to refer thereto when the same shall be produced.

20 This appellee is advised and believes that the said order is agreeable to equity; and she prays that the same may be affirmed with costs to be fixed in favor of this appellee.

GEORGE D. HENDRICKSON,
Solicitor for and of Counsel
with Appellee.

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Bill of Complaint.

(Filed Aug. 10, 1927.)

TO THE HONORABLE EDWIN ROBERT WALKER,
CHANCELLOR OF THE STATE OF NEW JERSEY.

Complainant, Josephine Warker, residing in the Village of Cliffwood, Township of Matawan, in the County of Monmouth and State of New Jersey, complaining against Frank N. Warker and Emma Warker, his wife, the above named defendant, says: 10

(1) Complainant, at the time of the transfers and conveyances of real and personal property hereinafter stated, was and is a maiden lady of the age of over sixty-five years, subject to the infirmities of advanced age, with frequent loss of memory and unexperienced in business affairs.

(2) Defendant, Frank N. Warker is related as a distant cousin to complainant and is not now actively engaged or employed in business. The above named defendant, Emma Warker, is the wife of Frank N. Warker. Both of these defendants reside at York, Pennsylvania. 20

(3) At the time of the conveyance of real estate hereinafter set forth, these defendants were living with complainant in the home furnished and owned by complainant in the Village of Cliffwood, Monmouth County, New Jersey. 30

(4) That on October 2nd, 1925, your complainant's brother, Edward H. Warker, died intestate, and leaving this complainant as his only heir at law; that he died seized and possessed of the following real estate:

ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, 40

Bill of Complaint.

situate lying and being in the Village of Cliffwood in the County of Monmouth and State of New Jersey, in the Township of Matawan.

10 COMMENCING at a point on the westerly side of Ninth Street at a point distant two hundred feet northerly from the northwesterly corner of Ninth Street and Third Avenue running thence northerly along the westerly side of Ninth Street, two hundred and fifty feet; thence westerly and at right angles to Ninth Street, two hundred feet to Tenth Street; thence southerly along Tenth Street two hundred and fifty feet to a point two hundred feet northerly from the northeasterly corner of Third Avenue and Tenth Street; and thence easterly and at right angles to Tenth Street and parallel with
20 Third Avenue two hundred feet to the westerly side of Ninth Street, at the point or place of beginning.

In addition thereto the following described valuable personal property:

	100 shares Common Stock, Chandler Motor Co. represented by certificates #O-847, for 60 shares, #O-5516, for 20 shares, and #O-18925, for 20 shares. At $26\frac{1}{2}$	\$3650.00
30	1 share Preferred Stock, Chicago Great Western R. R. Co., represented by certificate #A-91416. At $24\frac{7}{8}$	24.85
	5 shares Common Stock, Kennecott Copper Corporation. Represented by certificate #B-52696. At $54\frac{1}{4}$	271.25
	35 shares Common Stock. Caddo Central Oil & Refining Corporation. Represented by certificate #03737. At $\frac{7}{8}$	30.00

Bill of Complaint.

10 shares Common Stock, Sinclair Consolidated Oil Corp'n. Represented by certificate #015561. At 19	190.00	
10 shares Preferred Stock. International Mercantile Marine Co. Represented by certificate #15671. At 31 $\frac{1}{4}$	312.50	10
10 shares Preferred Stock, Pressed Steel Car Company. Represented by certificate #A-28385. At 80	800.00	
5 shares Common Stock, some corporation, Certificate #C-047597. At 108	540.00	
40 shares Common Stock, Famous Players-Lasky Corp'n. Represented by certificate #C-017631. At 108	1080.00	
20 shares Preferred Stock, Famous Players-Lasky Corp'n. Represented by certificate #P-05919, for 10 shares, and certificate #P-06664, for 10 shares. At 115 $\frac{1}{4}$	2350.00	20
20 shares Preferred Stock, National Lead Co. Represented by certificate #B-30434, for 10 shares. At 116	2320.00	
40 shares Common Stock, F. W. Woolworth Co. Represented by certificate #WO-1782. At 172	6800.00	
	<hr/>	30
	\$18323.60	

(5) That on October 6th, 1926, complainant was the owner in fee simple of the above described real estate, free and clear of all encumbrances, which she then occupied and still occupies.

(6) Complainant, at the times hereinafter mentioned did not own any other property, real or per-

Bill of Complaint.

sonal, except furniture in her home at Cliffwood aforesaid, and was dependent upon said property upon said property for her maintenance and support.

10 (7) That Frank N. Warker, was the administrator of the estate of said Edward H. Warker, deceased, and that so far as she now knows or remembers, she only received from said Frank N. Warker, administrator of the estate of Edward H. Warker, deceased, the sum of \$1,000.00, but believes that said Edward H. Warker has obtained her signature to the certificates of stock representing the shares hereinbefore mentioned and described.

20 (8) Shortly prior to October 6th, 1926, Frank N. Warker and Emma Warker came to Cliffwood, New Jersey, and visited complainant, and in some manner which your complainant does not now remember, obtained her signature to a deed dated October 6th, 1926, and recorded October 7th, 1927, in the Monmouth County Clerk's office and your complainant is now informed that the deed signed by her as aforesaid, conveyed to said defendants all the above described real estate in consideration of One (\$1.00) Dollar; with covenants of seizen, right to convey, quiet possession, free of encumbrances and general warranty; that said deed purports to be acknowledged before one Arthur S. Van Buskirk, an attorney at law of the State of New Jersey, and is recorded in book #1372, page #62, of deeds for Monmouth County and was recorded on October 7th, 1926.

40 (9) Complainant alleges that the value of her property, personal, was of the value of \$18000.00,

Bill of Complaint.

and the value of her property, real, was of the value of \$10000.00; that complainant has no other property except a small deposit in bank and some household goods and furnishings of small value and was wholly dependent upon said property for her support and maintenance; that she has always resided on said real property but that recently Frank N. Warker has told her she must go to York, Pennsylvania with him, that she no longer owns the property; that said assignments and stock certificates, if signed by her, were so executed wholly without independent advice and without knowledge of the contents thereof or what she was doing; that said deed, if executed by her at all was executed wholly without independent advice and without knowledge of the contents thereof and without knowledge that she thereby was divesting herself of all property. Complainant did not receive any consideration whatever for the alleged assignments, bills of sale, or conveyance of deed; that from the date of the death of her brother, Edward H. Warker, up until a very recent period of time she has continued to occupy and enjoy the benefits of said real estate without any claim of ownership, being made by either Frank N. Warker or Emma Warker, his wife.

(10) Complainant was first informed of the alleged execution by her of the aforesaid deed of conveyance, transferring her ownership in the aforesaid premises, only a few weeks ago when she was so advised by the Clerk of Monmouth County in response to an inquiry made by her of him and thereupon demanded of said Frank N. Warker and Emma Warker, a cancellation of the alleged assignments, bills of sale and conveyances and a reassignment and reconveyance to complainant of all her

Bill of Complaint.

interest under said instruments but that defendant has declined and refused and still declines and refuses to comply with said requests.

10 (11) Complainant alleges that the aforesaid assignments, bills of sale or conveyance made by her, if made at all, were procured by fraud and misrepresentation and are wholly void.

Complainant further alleges that said instruments of assignment and conveyance, if executed by her at all, were procured by undue influence and without independent advice and wholly without consideration and are improvident and voidable or void.

20 (12) Complainant is without adequate remedy at law, and therefore prays for relief as follows:

(1) That the defendants, Frank N. Warker and Emma Warker make answer to this bill of complaint but without oath as fully as though the several allegations thereof were here repeated.

30 (2) That the aforesaid bills of sale, assignments or deeds of conveyance made, be adjudged to be void and that the same be set aside and that the defendants decreed to reconvey said premises to the complainant and return to her said certificates of stock hereinbefore set forth, or their value in money.

40 (3) That the defendants be enjoined and restrained from mortgaging, conveying, or in any manner charging or dealing with said premises and from interfering with the complainant in the possession and enjoyment thereof; that the defendants or one or both be enjoined and restrained from as-

Bill of Complaint.

signing, selling or transferring any of the certificates of stock hereinbefore set forth which are still in their possession, or under his, her or their control, and that they set forth in full, the moneys received by either or both of them from the sale of such stock, if sold.

(4) That a Receiver be appointed to take care of and rent, collect rents, etc. of the real estate of said Cliffwood premises and take possession of the certificates of stock hereinbefore numerated, pending the final hearing thereof. 10

(5) That complainant have such other and further relief as may be equitable and just.

(6) That the State's writ of subpoena issue out of and under the seal of this court, directed to the defendants, pursuant the course and practice of this court. 20

GEORGE D. HENDRICKSON,
Solicitor of and of Counsel
with Complainant.

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Bill of Complaint.

STATE OF NEW JERSEY, }
 COUNTY OF MONMOUTH, } ss.:

JOSEPHINE WARKER, being duly sworn, according to law, on her oath deposes and says:

10 That she has no property except a few dollars in the bank and her household goods and furnishings; that the annexed bill of complaint has been read to her and that so far as she knows or is able to remember, the allegations therein set forth are true.

That the defendants, Frank N. Warker and Emma Warker, his wife, reside at York, Pennsylvania.

JOSEPHINE WARKER.

20 Sworn and subscribed to before me }
 this 9th day of August, 1927. }

JAMES A. HENDRICKSON,
 Master in Chencery
 of New Jersey.

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Bill of Complaint.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss. :

LINCOLN SCOTT KEMPER, of full age, being duly sworn according to law, on his oath deposes and says:

That he knows Josephine Warker and Frank N. Warker and Emma Warker; that he has personal knowledge of the estate of Edward H. Warker, the brother of Josephine Warker. 10

Deponent further says that Edward H. Warker died intestate on October 2nd, 1925, leaving him surviving as his sole heir at law, his sister, Josephine Warker.

Deponent further says that he has read the bill of complaint hereto annexed; that said Edward H. Warker died possessed of the personal property described in the bill of complaint hereto annexed and of the real estate described in the said bill of complaint hereto annexed. 20

Deponent further says that to his knowledge Frank N. Warker has been endeavoring to obtain possession all of the property, both real and personal, which came to Josephine Warker.

Deponent further says that he knows the values of said properties and that the value of the personal property is about \$18000.00 and the value of the real estate is about \$10000.00 to \$12000.00. 30

LINCOLN SCOTT KEMPER.

Sworn and subscribed to before me }
 this 10th day of August, 1927. }

DAVID McCUA,
 Master in Chancery
 of New Jersey.

Bill of Complaint.

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } ss. :

NATHAN EWIN, being duly sworn according to law, on his oath deposes and says:

10 That he is a practicing physician of the State of New Jersey, residing at Matawan, New Jersey, and has practiced his profession for over thirty years.

Deponent further says that he has personally known for upwards of five years, Josephine Warker and has been her physician at intervals for such period of time.

20 Deponent further says that in 1925, Josephine Warker suffered a cerebal hemorrhage, that it left its effect on her mind, that since then her mental faculties have been weakened to a marked degree and that she has suffered and is suffering an almost continuous loss of memory.

NATHAN EWIN.

Sworn and subscribed to before me }
this 9th day of August, 1927. }

30 JAMES A. HENDRICKSON,
Master in Chancery
of New Jersey.

Ex parte Order Appointing Receiver.

(Filed Aug. 10, 1927.)

It appearing to the court from the bill of complaint and affidavits annexed thereto, filed in the above entitled cause this day, that the defendants, Frank N. Warker and Emma Warker, are residents of the State of Pennsylvania; that the complainant, Josephine Warker is a resident of the State of New Jersey; that the complainant became the owner of certain valuable real estate in the Village of Cliffwood, Matawan Township, Monmouth County, New Jersey, and personal property of large value, by inheritance from a deceased brother, who departed this life on October 2nd, 1925; that the defendants or one or both of them have obtained title to such property without consideration being paid therefor and that there is danger that said real estate will be sold or transferred and said assets or the proceeds thereof diverted from the State of New Jersey and away from the rights of the complainant in this State and that immediate and irreparable injury will result therefrom and that it is necessary for the protection and preservation of the rights of the complainant that the real estate in this State be preserved and administered by a Receiver to be appointed by this court, and that a Receiver of the properties, real and personal, of the complainant, described in the bill of complaint filed herein, should be appointed herewith with powers herein granted.

Now, THEREFORE, upon motion of George D. Hendrickson, Solicitor for and of counsel with the complainant,

IT IS on this 10th day of August, 1927, ORDERED that David Minimo of Red Bank be and he hereby

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Ex parte Order Appointing Receiver.

is appointed Receiver of the complainant, Josephine Warker, and of the properties of the said complainant, real, personal or mixed, of whatever kind and description, including all lands, real estate and buildings, particularly described in said bill of complaint filed herein, together with all rents, issues and profits accrued or to accrue therefrom, and all
 10 assets and property of the complainant, Josephine Warker, of any and whatever kind, character and description whatsoever and wheresoever situate.

FURTHER ORDERED that said Receiver before entering upon his duties give bond to the Chancellor of this State in the sum of \$1000. (to be increased if assets come into his hands) conditioned that he will well and truly perform the duties of his appointment and duly account for all moneys and
 20 properties which may come into his hands and abide by and perform all orders of this court, which may be made herein, with sufficient surety or securities, which said bond shall be approved as to form and sufficiency by one of the Special Masters of this court and to be filed in the above entitled cause.

FURTHER ORDERED that the said defendants, Frank N. Warker and Emma Warker and any other person acting under his, her or their direction, and all
 30 other persons, firms or corporations, upon presentation of a certified copy of this order, and which may be certified by the solicitor of the complainant, shall deliver to said Receiver, any and all properties of the complainant, real and personal, in his, her or their possession or in his, her or their control, and that all persons by and they hereby are enjoined from in any wise disturbing the possession of the said Receiver and from commencing or
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Ex parte Order Appointing Receiver.

prosecuting any actions or suits which may affect the properties of the complainant.

FURTHER ORDERED that until further order of this court, the said Receiver be and he hereby is authorized forthwith to take over complete and exclusive control, possession and custody of the assets and properties, mentioned and described in the bill of complaint filed herein, and all persons, firms and corporations, including defendants, shall forthwith deliver to said Receiver, all properties in their possession, and particularly described as follows, wheresoever located, to wit:

ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Village of Clifford, in the County of Monmouth and State of New Jersey, in the Township of Matawan.

COMMENCING at a point on the westerly side of Ninth Street at a point distant two hundred feet northerly from the northwesterly corner of Ninth Street and Third Avenue running thence northerly along the westerly side of Ninth Street, two hundred and fifty feet; thence westerly and at right angles to Ninth Street, two hundred feet to Tenth Street; thence southerly along Tenth Street two hundred and fifty feet to a point two hundred feet northerly from the northeasterly corner of Third Avenue and Tenth Street and parallel with Third Avenue two hundred feet to the westerly side of Ninth Street, at the point or place of Beginning.

FURTHER ORDERED in the event that the said Frank N. Warker and Emma Warker cannot be served with a copy of this order within the State of

Ex parte Order Appointing Receiver.

10 New Jersey, that a true copy of the same, certified by complainant's solicitor, be served within one day of the date hereof upon such defendants as cannot be served within the State of New Jersey, by mailing to such defendants, at York, Pennsylvania, and with such copy also a true copy of the bill of complaint and affidavits thereto annexed similarly certified, with postage prepaid and registered and return receipt demanded.

20 FURTHER ORDERED that the defendants, Frank N. Warker and Emma Warker show cause before the Chancellor, at the Chancery Chambers, in the City of Jersey City, on the 15th day August, 1927, at the hour of 10 o'clock in the forenoon (Daylight Savings Time) why the Receiver above appointed and the said Receivership should not be continued or made permanent, and this order shall, in the meantime, continue in full force and virtue until the return day and for such longer time to which it may be extended.

30 FURTHER ORDERED that said Receiver be and he is authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become party to such suits, actions or proceedings at law or in equity, in State or Federal Courts as may in his judgment be necessary or proper for the protection, maintenance, preservation, recovery or collection of the property and assets of the complainant or the carrying out of the terms of this decree.

Respectfully advised.

40 JOHN BENTLEY,
V. C.

E. R. WALKER,
C.

Answering Affidavits.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

FRANK N. WARKER, being duly sworn according to law on his oath deposes and says:

I am one of the defendants in the above named suit. I am a cousin of the complainant; when the complainant's brother died in October, 1925; he died at my home in York, Pennsylvania, where he had lived for about four years since his retirement from business; his heir-at-law was Josephine Warker, the complainant in this suit; she did not want to undertake the administration of her brother's estate (he having died intestate) and her principal reason for not doing so was the distance that she would have to go from time to time from York, Pennsylvania to New York City, N. Y. I was appointed administrator and I employed Charles M. Beattie, of New York City as my attorney, who attended to such legal matters as were necessary to attend to in New York. Upon the death of my cousin his sister, the present complainant, came to live with my wife at York, Pennsylvania, where she lived during the winter of 1925 and where she also lived during the winter of 1926, and we came to an arrangement whereby she was to live with us during the winter, and we were to go from time to time to visit her home at Cliffwood, during the summer.

My cousin Edward H. Warker had stated to me, as he had stated to the complainant that he wanted her to have the house and his property during her lifetime and upon her death he wanted the property to go to me. During the early fall of 1926, the complainant told me that she wanted to convey to myself and to my wife the house and lot at Cliffwood,

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Answering Affidavits.

because she wanted to carry out her brother's intentions and it was this statement by her, and her wish that this property be conveyed to me, that brought about our trip to Keyport where we employed a lawyer to prepare the deed and where she signed the deed, which was subsequently recorded.

10 I had no idea whatever that she wanted the property conveyed back to her and wanted the title of the property in her name until I received a copy of the bill of complaint and the order to show cause in this case, and upon receipt of it and after reading it I asked her what she meant by beginning this proceeding and she told me that she wanted her house and lot back, whereupon my wife and I went to a lawyer in Keyport, New Jersey, who prepared the deed and recorded the deed conveying the property back to her, the deed being dated August 22nd, 20 1927, and complainant has had possession of the deed since then.

I have not profited in any way from the property that belongs to my cousin. I always regarded the property at Cliffwood as her property, and the stocks and bonds as her stocks and bonds; I turned over to her all of the cash which her brother had at the time of his death and deposited to her credit in a savings bank, which amounted to a little less 30 than two thousand dollars (\$2,000) and I have expended on the upkeep of the property at Cliffwood, which was badly in need of repair, such dividends as were received from the stocks which she inherited from her brother.

My attention has been called to the fourth paragraph of the affidavit of Lincoln Scott Kemper, attached to the bill of complaint which states "deponent further says that he has knowledge that Frank N. Warker has been endeavoring to obtain posses- 40

Answering Affidavits.

sion of all of the property, both real and personal, which came to Josephine Warker"; I have had no intention whatever, nor have I any intention at this time of taking her property or property of anyone. I have means of my own ample to support me, having accumulated them as a result of my business which I sold ten years ago, having since that time been retired. Kemper was an employee in the office of Mr. Beattie, the attorney who represented me as I said above in the administration of the estate in New York. 10

It is untrue, as stated in the sixth paragraph of the bill of complaint that the complainant was entirely dependent on the real estate for her livelihood. She lived at my home at no cost or expense whatever. It is not true that she received but one thousand dollars (\$1000) from the estate, she having received almost two thousand dollars (\$2000). The real estate at Cliffwood was conveyed to myself by the complainant on her own volition, and without any suggestion on my part. She stated that she wanted to be sure that the property would reach me in the event of her death. I deny that there was any fraud, undue influence, improvidence, or mis-representation in the making of the deed aforesaid. Everything that was done was done openly with the knowledge of the complainant and for one purpose alone, that is, for the purpose of enabling me to take title to the property only after her death. 20 30

After the commencement of this suit and before the return day of the order to show cause, I went to the solicitor of the complainant and told him that by reason of the shortness of the time, and by reason of having guests at the house at Cliffwood, we could not get ready for the 15th of August, and he arranged for a continuance of it until the 19th of 40

Answering Affidavits.

September. Subsequently on Monday, the 15th of August I went with the complainant to the solicitor of the complainant and I heard her request him to drop this suit and he made no answer whatever, other than to indicate that it was in the hands of the court and would have to stay there.

10 It is entirely unnecessary for the complainant to begin this suit, had she have requested conveyance to the property back to her it would have been done immediately for in spite of the fact that my wife and I held legal title to the property, we regarded her as the actual owner thereof and the same is true as to the stocks that I hold, the title of the property having been conveyed to me and the stock certificates having been made out in my name both at the direction of and at the request of the complainant.

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FRANK N. WARKER.

Sworn and subscribed to before me }
 this 16th day of September, 1927. }

CHARLES W. SYMANSKI,
 Attorney at Law
 of New Jersey.

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Answering Affidavits.

STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss.:

EMMA WARKER being duly sworn according to law on her oath deposes and says:

I am one of the defendants in the above named suit and I am the wife of Frank N. Warker. I have read the bill of complaint. For the past three winters the complainant has lived with my husband and myself, at our home in York, Pennsylvania, where she has lived without cost or expense to her; prior to that time she has visited at our home. Her brother died there in 1925, and he had lived with us for four years prior to his death. I have heard the late Edward H. Warker, during his lifetime state that he wanted the complainant to have his property, during her life and upon her death, he wanted it to go to my husband, who was, aside from the complainant, his only living relative. I was not at Cliffwood on October 6th, 1926, the time the deed was made conveying the property there to my husband and myself, and I knew nothing whatever of that deed until later on in the month when the complainant came to York, Pennsylvania, and when my husband said to me, in her presence, that the property had been conveyed to us and the complainant stated that it was a fact that title had been vested in us. I practiced no fraud or mis-representation or undue influence on the complainant to obtain said conveyance and as I stated, I did not know it was made until after it had been made.

During the early part of June, 1927, my husband had gone to Cliffwood and had written back home at York, Pennsylvania, that the ceilings in the house at Cliffwood had fallen down and would have to be replaced and stated a number of other repairs that

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Answering Affidavits.

would have to be made; I told the complainant about it and she said that if she knew the house would have required so much money to be spent on it, she would have sold it, and I told her that she could not sell it because she had already sold it to my husband and myself. Nothing further was said and I knew nothing more about the matter until the
 10 bill of complaint was served on us. Upon receipt of the bill of complaint I joined in the execution of a deed conveying the property back to her.

I was with her in August, 1927, when we went to the complainant's solicitor and she requested him to drop the suit and said that she did not want to go on with it or do anything further.

EMMA WARKER.

20 Sworn and subscribed to before me }
 this 16th day of September, 1927. }

CHARLES W. SYMANSKI,
 Attorney at Law
 of New Jersey.

30 STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss.:

JOSEPHINE WARKER, being duly sworn according to law on her oath deposes and says:

I am the complainant named in the foregoing bill of complaint and I am making this affidavit to be used on behalf of the defendants Frank N. Warker and Emma Warker. I am making this affidavit not at their request, but of my own volition and I have
 40 volunteered to them to make this affidavit in order

Answering Affidavits.

to correct the charges made against them in the bill of complaint, which charges are in the particulars hereinafter set out below unfounded and unjust.

My brother, the late Edward H. Warker, who died on the 2nd of October, 1925, owned the lot of land which is described in the fourth paragraph of the bill of complaint, and which is situated at Cliffwood, Monmouth County, New Jersey, and on which is built a brick and frame dwelling house. This belonged to him during his lifetime and was used by him as a summer residence; I have lived there for the past seventeen years with the exception of the time during the winter that I spent in York, Pennsylvania. My brother also had personal property consisting of cash and shares of stock in various companies. At the time of his death I became possessed of the house and lot aforesaid and of the cash and shares of stock as his heir-at-law, he having died intestate.

About four years prior to my brother's death he retired from his business and during that entire period lived with Frank N. Warker, at the latter's home in York, Pennsylvania. Frank N. Warker is a cousin of my deceased brother and myself, and he is the only relative that we have in the world so far as we know.

Prior to my brother's death he had stated to me on a number of occasions that he wanted me to have the house and lot at Cliffwood and the income from his personal property for as long as I lived and upon my death he wanted both the house and lot and the personal property to go to our cousin Frank N. Warker. That was my deceased brother's wish, which he expressed to me, and which was well known to my cousin and to our intimate associates.

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Answering Affidavits.

When my brother died he was a resident of New York, but he died at my cousin's home in York, Pennsylvania, where, as I said above, he had lived for four years. At the time of his death I was at Cliffwood, New Jersey, and I went to York, Pennsylvania where I lived until June of 1926 when I returned to Cliffwood and stayed there for the summer of 1926 returning to York, Pennsylvania for the winter. It became necessary to have an administrator appointed for my brother's estate. I am seventy-five years of age and while I am in good health and was in good health at that time I did not feel like undertaking the administration of the estate because I understood it would be necessary for me to go to New York City from time to time and I did not feel like taking the journey of two hundred (200) miles from York, Pennsylvania, to New York City, consequently I requested my cousin to become administrator of the estate and he, at my request undertook the administration. I understood from him that he had employed a lawyer named Charles M. Beattie, to represent him in the Probate proceedings in New York City.

During the latter part of the summer of 1926, I became ill and felt that I had but little longer to live. The reason for my state of mind was the attitude of the doctor who was attending me. I felt that in order to carry out my brother's wishes I should convey the house and lot at Cliffwood to my cousin. With this in mind my cousin and I went to Keyport to the office of Arthur S. Van Buskirk, who, at my direction, prepared a deed conveying the property at Cliffwood to my cousin and to his wife; the deed was dated the sixth of October, 1926, and recorded on the next day at the office of the Clerk of Monmouth County. During the winter

Answering Affidavits.

of 1926 I stayed at York, Pennsylvania, and came to Cliffwood, June 10th, 1927, with my cousin and his wife.

During the early part of the summer of 1927, upon returning to the house at Cliffwood, I observed that it needed considerable repairs and I said to Emma Warker the wife of my cousin that had I realized the house required so much money to be spent on it that I would have sold it, and she replied to me that I could not sell it because I had already sold it. This remark bothered me because I knew I did not sell the property in the sense that I had completely parted with the possession of it, and without asking my cousin's wife or my cousin for any further information, and without saying anything more to them I wrote to Mr. Charles M. Beattie, the attorney in New York, who had attended to the legal matters in connection with the administration of my brother's estate, for information. Mr. Beattie did not answer my letter. Mr. Gillig, an attorney, who is associated with Mr. Beattie in the practice of law in New York, and whom I had met some time previously, came to Cliffwood and said that he would be back and bring another lawyer with him. Attached hereto is a copy of the letter that I sent to Mr. Beattie and that apparently brought Mr. Gillig to Cliffwood.

The next night a man came to my house in his automobile and I went with him to Mr. Gillig, a distance of about ten blocks where Mr. Gillig was standing along the road. He stopped and they both questioned me. Their questions were all about what property I had and where it was located, and what it consisted of. The next night he came back again and I went with him to about the same place, where there was still another man. They handed

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Answering Affidavits.

me some papers and asked me to sign them. I signed them, the only place where I could rest the papers to sign them was on the straw hat of one of these gentlemen. I did not read the papers and I did not know what I had signed, only a copy of the bill of complaint was served on my cousin and they showed it to me and I read it over. The foregoing
10 is the story of how this suit was brought. After my cousin received the papers, Frank N. Warker came to me and asked me what it was about and I told him I wanted my house back. He asked me why I did not ask him to convey it back and he arranged, and within the next few days he and his wife signed a deed dated the 22nd day of August, 1927, recorded in the Office of the Clerk of Monmouth County, conveying back the property at
20 Cliffwood.

I went to the complainant's solicitor on August 15th, 1927, to his home and asked him to withdraw the suit as I did not want it to go on.

I have gone over the bill of complaint since it was served on my cousins and the following statements contained therein are not correct: (1) I am not subject to frequent loss of memory; (2) at the time the real estate was conveyed to the defendants in October of 1926 they were not living
30 with me, they were guests at my home, having come there for a visit; (6) I was not dependent alone on the property at Cliffwood for my maintenance and support; I had received from my cousin one thousand nine hundred eighty-five (\$1985) since the death of my brother in cash, which money came from his savings bank account. The home at York, Pennsylvania, that I lived in was supported and maintained by my cousins and I paid no board and
40 lived there without expense and the living expense

Answering Affidavits.

at Cliffwood was borne by my cousin and his wife, and I had little need for money, the cash that was received by me having been ample and since the death of my brother I have always had money deposited to my account in a savings bank, which I can withdraw at any time; (7) I never signed certificates of stock as referred to in this; (8) irrespective of what may have been my recollection at the time I have a very clear recollection now of the manner in which the property was transferred at Cliffwood; (9) the statement that my cousin told me that I was obliged to go to York, Pennsylvania, is not so; I have lived with my cousin during the winter at York, Pennsylvania, since the death of my brother, and I have gone there voluntarily and I regard their home as my home during the winter months; as I stated above I knew what I was doing when I conveyed the property to my cousin and my reason for so doing is set out above; (10) I never demanded of my cousin a cancellation of the deed or a return of the real estate until after the bill of complaint in this suit was served on them and they immediately reconveyed to me the real estate; (11) there was no fraud or misrepresentation practiced on me by my cousins nor was there any undue influence used.

The shares of stock that I inherited from my brother never stood in my name. They were transferred directly from my brother's estate to the defendant Frank N. Warker, by my written order. I know that the money that he has received for dividends from that stock has been expended on the property at Cliffwood, and I am perfectly satisfied and contented to let the shares of stock remain in his name.

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Answering Affidavits.

I am satisfied and it is my desire that this suit be dropped.

I am competent to manage my own affairs and as I said above I am satisfied with the way my affairs are and I do not want any receiver or anyone else to take charge of my affairs and manage them other than the defendant Frank N. Warker.

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JOSEPHINE WARKER.

Sworn and subscribed to }
before me this 16th day }
of Septemebr, 1927. }

CHARLES W. SYMANSKI,
Attorney at Law
of New Jersey.

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Answering Affidavits.

Keyport, New Jersey.

July 20, 1924.

Mr. Moitland Beattie, Esq.

Dear Sir:—

Enclosed please find reply to my inquirer made to the "Franklin Savings Bank". 10

Mr. F. N. Warker refused three times to show me "Bank Book" as well as my brother's deed of 1925.

He spent considerable money on house and tells people the property is his.

To my knowledge I signed no paper except my "Will" signed in the presence of Mr. Gillig.

Could my "Will" have acted as a "Deed"? I'm told I have no more right to the property, cannot sell it, I feel like doing. 20

Pardon my taking up your valuable time, also awaiting your kind reply, I remain,

Yours truly,

JOSEPHINE WARKER.

c/o Mrs. L. Teisler

Box F1

Keyport

New Jersey. 30

Reply to Answering Affidavits.

STATE OF NEW JERSEY, }
 COUNTY OF MONMOUTH, } ss. :

CARRIE BEDDEN, being duly sworn according to law on her oath deposes and says that I have known Josephine Warker intimately for three years.

10 During the summer 1927 she told me that Emma Warker and Frank Warker treated her very badly, that she had to take care of herself and do her own cooking, she was poorly dressed and looked badly. I know when this action was started and since then Frank and Emma Warker have been treating her extremely nice taking her out in their automobile and Josephine Warker only a few days ago told me they were now treating her all right. I live at Cliff-wood, N. J., with my husband in the summer time.

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CARRIE HEDDEN.

Sworn and subscribed to }
 before me this Septem- }
 ber 22nd, 1927. }

JAMES A. HENDRICKSON,
 Master in Chancery of New Jersey.

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Reply to Answering Affidavits.

Cliffwood, N. J.

Sept. 19, '27.

Dear Willie:

Your ever welcome letter of the 11th inst., reached me this A. M.

I was so glad, gladder, gladest to hear once more from you, after this long silence! I went back last Oct. 1926 stayed until last June, 1927, am here since, if possible will remain here until Christmas. I imagined all sorts of things to have happened to you. As regards the trouble I had about my possessions I never asked for another lawyer, did not ask for one. From my N. Y. lawyer the Mr. Hendrickson new I have the property, also some money and stocks. I asked him that I wanted the complaints dropped, twice, he gave no answer on that. He is a slick, smoth tongued villain, he went around here, calling on all the people that knew me, made me out feeble minded, asked the Court to have a Receiver appointed and controll all my possessions.

The District Attorney of "York" took my case in hand, wrote to this Mr. Hendrickson. Of course being in the state of Penn. he could not go to N. J. to fight for me, He gave us the address of a Corporation Counsellor of Jersey City;

We called on him, heard some news. The bill of "complaint" was full of wrong statements; I wrote them down gave them to the "Jersey" lawyer, one of a company of three. I can tell you better and explain when I see you, which I hope will be soon! This Mr. H. thought I was void of friends with brains. Mrs. Gulden taught him different. She also advised me to write to you. I knew you had troubles of your own, knew also of having a true friend and adviser. Mr. H. took you in as he took

Reply to Answering Affidavits.

Mrs. Gulden in. Try hard to cone down soon, tell me about yourself and your mother; hope she is well. Do you still live in the same place in Plainfield?

10 Come down and see how Cliffwood Beach has improved Have you had a vacation? if not, come and spend it here. Mrs. Davis, Edith, Douglass, Jessie, and sister called on me last July. Do take care of yourself, for so much depends upon you. Give my love to your mother, as well to the rest of your relations. Best wishes and regards to you.

J. WARKER.

P. S. Monday P. M.

20 My case was to come up in Chancery Chambers this morning, Monday, September 19th, The case took its usual turn, before it was reached, it was 4.30 Oclock. Therefor it was adjourned until next Monday, Sept. 26.

J. W.

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Reply to Answering Affidavits.

THE PLAINFIELD TRUST COMPANY
Plainfield, New Jersey.

Charles W. McCutchen
Chairman of the Board
Harry H. Pond, President.
Augustus V. Heely, Vice Pres. 10
DeWitt Hubbell, Vice Pres.
Arthur E. Crone, Vice Pres.
F. Irving Walsh, Secretary.
H. Douglas Davis, Treasurer & Trust Officer.
Russell C. Doeringer, Asst. Sec'y-Treas.
Marjorie E. Schoeffel, Asst. Sec'y-Treas.
David M. Runyon, Asst. Sec'y-Treas.
Frederick H. Stryker, Asst. Treasurer.
Harry H. Coward, Asst. Treas.
Frederick I. Wilson, Asst. Trust Officer. 20

September 23, 1927.

Mr. George D. Hendrickson,
75 Montgomery St.,
Jersey City, N. J.

My dear Mr. Hendrickson:

I am very glad to know that you have taken charge of the case of Miss Josephine Warker. I hope that you will be successful in having her property restored to her. 30

My mother has known Miss Warker for the past fifty years and my recollection of her goes back as far as I can remember. Her father and mother and her brother were also known to the members of my family.

Miss Warker was always very reticent concerning her private affairs and we never had any know- 40

Reply to Answering Affidavits.

ledge of her personal finances. Her father at one time was a wealthy man, but lost his fortune trying out inventions of his own. We never knew of the Mr. Warker who lives in York, Pa., and never heard of him until very recently. I have seen him only one and that was nearly one year ago when we called upon Miss Warker at Cliffwood and at that time he stayed in the room all the time that we were there.

Last July I saw Miss Warker once alone and at that time she said that her cousin was not treating her well and that he told her that the property at Cliffwood was no longer her own. She could not remember having signed a deed and seemed to have a hazy recollection of all that she had done, so that it was impossible to find out anything definite or even to decide whether she had been defrauded. From all that was transpired since, it would seem her relatives are trying to get her estate away from her and I hope that you will be able to prevent that.

If there is any way in which I can be of assistance, I should be glad to help, although I feel there is very little information I can give you.

Yours very truly,

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HDD/F

(Signed) H. D. DAVIS.

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Reply to Answering Affidavits.

C. W. ALBERT ROCHOW
 Attorney-at-Law
 Ex-District Attorney
 Rooms 21-22 Central National Bank Bldg.
 York, Pa.

August 31, 1927.

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George D. Hendrickson, Esq.,
 Attorney-at-law,
 75 Montgomery St.,
 Jersey City, N. J.

Dear Sir:

On August 10, 1927 a bill was filed by you as solicitor for Josephine Warker who resides in the Village of Cliffwood, New Jersey.

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The bill is directed against Frank N. Warker and Emma, his wife, who are friends and clients of mine, and who live in the City of York.

Through some friends of mine who are interested they have come to see me, and I see that the matter was graciously continued by you until September 19.

I think as I read the papers that the Chancellor will hear this matter in the Court House in Trenton, New Jersey. Am I correct about this, and will you kindly correct me if I am wrong.

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Since being notified of this and having had handed to me the complaint and orders etc., Josephine Warker, the complainant states that she does not desire to have this matter taken up by the Chancellor, and desires that the entire proceedings be dropped.

She states as I am reliably informed that the deed about which she made original complaint has been

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Reply to Answering Affidavits.

executed and delivered to her and that the stocks should remain as they are now because Frank N. Warker one of the defendant is acting for her and will deliver over to her the income from the various securities during her lifetime.

10 Of course I deem it that Josephine Warker desires that the proceedings be dropped, and that no further hearing be had upon the matter, and that she would probably be compelled to file a petition stating those facts.

Am I right in my conclusions?

Would you kindly write me immediately as to this matter referring particularly of course to the fact that Josephine Warker does not desire to have anything further done in the matter.

20 Of course if there are any charges or legal fees should have to be responsible for them.

I would appreciate a letter immediately from you as the time is getting short and possibly other proceedings may have to be started.

Thanking you in advance for your courtesy I am,

Truly yours,

CWAR/M (Signed) C. W. ALBERT ROCHOW.

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Reply to Answering Affidavits.

STATE OF NEW JERSEY, }
 COUNTY OF MONMOUTH, } ss. :

OTTO A. GILLIG, being duly sworn, says: I am a practicing attorney of the State of New York, engaged in such practice since 1905. I reside at Red Bank, New Jersey, and share law offices with Charles Maitland Beattie at 220 Broadway, Manhattan, New York City. Mr. Beattie also lives at Red Bank, New Jersey.

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I have read the answering affidavits of Frank N. Warker and Josephine Warker.

To my personal knowledge Mr. Beattie had been a close, personal friend of Edward H. Warker for over thirty years, as well as having advised him in a professional capacity, and I know that this was also known to Josephine Warker.

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Upon Mr. Warker's death Frank N. Warker called on Mr. Beattie at his residence in Red Bank. I was present. Mr. Warker told us of Edward H. Warker's death, and said he knew Edward H. Warker would want Mr. Beattie to attend to his affairs; that was before the funeral. Mr. Beattie said that he would be glad to take care of any matters connected with Mr. Warker's estate, but that I would do the actual work for him, and he told Mr. Warker to bring Miss Warker to our office after the funeral.

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The day after the funeral Miss Warker and Frank N. Warker came to our office. I asked them both whether Mr. Warker had left a will; Mr. Warker said he did not think so; I told them that that would be nothing less than astonishing, for Mr. Waker had been an executive in the New York County Sheriff's office for over thirty years, and was a very methodical man; Mr. Warker said he was certain no will had been left, but when he returned to his home at

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Reply to Answering Affidavits.

York, Pennsylvania, he would make another search and advise me. We then discussed what to do in the event no will could be found. I told Miss Warker that she was entitled to apply for letters of administration; Mr. Warker said it would be better for him to be appointed administrator, for she was an elderly, feeble woman; I told them that
10 whatever would have to be done by the administratrix or administrator would be purely formal, and could be attended to by her as well as by Frank N. Warker; in fact, better, for she lived at Cliffwood, New Jersey, near my home, while Frank N. Warker lived at York, Pennsylvania. However, he virtually insisted that he be appointed administrator, and Miss Warker said that she would acquiesce. Accordingly, I prepared papers by which
20 Miss Warker renounced and Mr. Warker was appointed administrator.

With respect to pars. 1, page 2, of Frank N. Warker's affidavit; shortly after Mr. Warker's appointment as administrator Mr. Warker and his wife brought Miss Warker to my office and said she wanted to make a will leaving everything to them. I asked Miss Warker whether Edward H. Warker had ever indicated to her what he wanted done with the Cliffwood property in the event that he died
30 before her, and she said he had never mentioned that because he expected to outlive her. I then asked her whether she wanted to leave everything to Mr. and Mrs. Warker, and she said that as she did not have any living friends, and knew of no other relatives in this country than Mr. and Mrs. Warker, she wanted to leave her estate to them. Accordingly, I prepared a will by the terms of which Miss Warker's estate was left to Mr. and
40 Mrs. Warker.

Reply to Answering Affidavits.

Shortly after the execution of the will Frank N. Warker called on me at my office and said that Miss Warker wanted to deed the Cliffwood property to him. I told him that I would not do that, but would advise her against doing so, as it was against her interest to part with the property during her lifetime, particularly as by her will she had left everything to him and his wife. He said she was willing to transfer the property to him then, and that if I would not prepare a deed he would have some other attorney do so. I told him it appeared to me he was taking advantage of her and that he was nothing but a thief at heart.

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Shortly after that I received a letter from Miss Warker, dated November 9, 1925, written from Frank N. Warker's home at York, Pennsylvania, where he had taken her from Cliffwood; a copy of which letter is hereto annexed. I immediately brought the letter to Mr. Beattie's attention, and on November 13, 1925, he wrote her a letter, a copy of which is hereto annexed. I sent this to Miss Warker by registered mail, enclosing a self-addressed stamped envelope for reply, and on November 15, 1925, Mr. Beattie received a return receipt from the P. O. Department #1581 signed by Miss Warker giving the date of delivery as November 14, 1925.

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This return envelope was mailed to Mr. Beattie by Miss Warker with a letter from her in which she said, among other things:

"I think I understand and appreciate your valuable advice, and the interest you take in my affairs, and your intention to protect Mr. and Mrs. Warker sets my mind at rest. I told Mr. Warker that I shall not execute any papers

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Reply to Answering Affidavits.

unless they are passed upon by you. * * * Is preparing a will and deeding property one and the same thing?"

10 During a period of about a year following Mr. Warker's appointment as administrator I saw him frequently in my office, and several times I asked him whether Miss Warker had deeded the property to him, but he told me she had not, because Mr. Beattie had written to her advising her against that.

20 The first intimation I had that Miss Warker had deeded the property to Mr. Warker was when Mr. Beattie turned over to me a letter received by him from Miss Warker, dated July 24, 1927, in which she enclosed a reply she had received from the Franklin Society, a copy of both of which is hereto annexed.

30 At Mr. Beattie's request I went to Cliffwood and saw Miss Warker. She told me Mr. Warker was living there with her, while his wife was living at their home in York, Pennsylvania; she said that at the moment he was down at the beach front, and she hoped to be able to tell me of her trouble before he returned, as he had been treating her very badly, and she did not have any mail come direct to her home, but in care of Mrs. Geisler, a neighbor. I asked her what caused her to write to Mr. Beattie and she said that Mr. Warker claimed to own the property; that he was trying to sell the property and when he did she would have to return to York, Pennsylvania, with him. She said that she did not want to return to York, as when she was there she was very unhappy. I asked her whether she had signed any papers without my knowledge, and she said Mr. Warker had taken her to Keyport to sign
40 some papers, which he told her were necessary to

Reply to Answering Affidavits.

close up her brother's estate; she said she had written to the County Clerk at Freehold, asking whether she still owned the property, and that he had answered her saying that she had deeded the property to Mr. Warker. I asked her what she wanted to do, and she said she wanted to get her property back, and I told her it would be necessary for a New Jersey attorney to attend to that for her, and she asked me if I would recommend one to her; I told her I would speak to George D. Hendrickson, a New Jersey attorney also living in Red Bank, and if he would take her case I would bring him over to see her. I also asked Miss Warker what became of the cash and securities her brother had left, and she said that Frank N. Warker had only given her a little over \$1,000.00 and said that was all that was coming to her, and that when on several occasions she again asked him about the remaining cash and securities he pounded on the table and terrorized her into silence.

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I spoke to Mr. Hendrickson about the matter the following day and the day after that he and I went to Cliffwood and spoke to Miss Warker; she told me, when I called on her at Mr. Beattie's request, that if I brought anyone to see her to do so about 7:30 P. M., as Mr. Warker always went to the beach-front after supper and she would be able to speak to us without having him know it. When Mr. Hendrickson and I got there that evening Miss Warker said she preferred to get away from the house, lest Mr. Warker return unexpectedly, and accordingly, we three got into Mr. Hendrickson's automobile and drove down the road to confer with her.

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Sworn to before me this }
23rd day of September, 1927. }

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Reply to Answering Affidavits.

November 13, 1925.

Miss Josephine Warker,
766 West Market St.,
York, Pennsylvania.

Dear Miss Warker :

10 Mr. Gillig has shown me your letter of November 9th, asking him to prepare a deed to the Cliffwood property from yourself to Mr. Frank N. Warker for the nominal consideration of \$1.

20 Now, you know I was a very close friend of your brother Ed for many years, and as such I want to give you the best advice I can, and in fact, do everything I can for you. I understand that all you have in the world is what he left you, the Cliffwood property, the stocks, the money in bank, and the life insurance money, as the things in storage would not bring anything much if sold. Consequently I would advise you to keep everything you have in your own name, as that is the only way you could be protected in case of need. Mr. Gillig tells me that he prepared a will for you, by which you have left everything you have to Mr. and Mrs. Warker, and in view of the fact there is no reason why you should turn the property over to him so long as you live.

30 I don't know what understanding you have with Mr. Warker for deeding the property to him, but the fact is that once property is deeded to anyone, that person can dispose of it, even tho he may not have agreed to. Furthermore, the possible death of Mr. Warker before you would prevent him from fulfilling any promises he might make to you. It would be different if you had a lot of money to support yourself, but the Cliffwood property represents a large part of all you have, and you will need all

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Reply to Answering Affidavits.

your brother left you in order to live comfortably. If you feel obligated to Mr. Warker because you are temporarily living with him, and because you are related to him, you have done all that is necessary to show your feelings by willing everything to him. So I advise you to leave matters stand as they are, and not execute a deed to anyone until you are ready to sell the property for actual cash. You should tell Mr. Warker that you must not execute any papers unless they are passed upon by me. I am very desirous of protecting Mr. Warker and his wife, and expect to do so, but I do not feel that I would be doing what your brother would have expected me to do is I do anything or countenance your doing anything that may leave you stranded.

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Please acknowledge receipt of this letter so I will know you understand what my advice is, and that you are going to follow it.

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Yours very truly,

CHAS. MAITLAND BEATTIE.

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Opinion.

(Filed March 5, 1928)

BENTLEY, V. C.:

On bill to set aside conveyance.

10 The complainant is a very aged, feeble, and infirm woman who makes the unusual application that a receiver be appointed to take over and manage her own property. The bill sets forth that for
10 sometime past, and especially since a rather recent illness, her memory has been affected so as to make it difficult for her to recall events that have transpired even in the very recent past; that she has reason to believe that she has executed voluntary conveyances and assignments to the defendants of all her property, real and personal, without independent advice. It is not denied that this is so. The defendants are residents of the State of Pennsylvania
20 *where some of the land conveyed is located*, and jurisdiction of them was obtained by service while they were temporarily within this state.

Upon the return of the order to show cause, complainant's solicitor represented to the court that after this bill was filed and the order to show cause had been served, the defendants reinstated themselves in the good graces of the complainant and that the latter had notified her solicitor that she no longer wished to be represented by him, and desired
30 that the bill should be dismissed upon her motion and the consent of both the defendants. Upon presenting this aspect of the situation the solicitor prayed the judgment of the court as to his proper conduct in his delicate and embarrassing position.

The defendants have filed a brief attacking the supporting affidavits of the bill, which are not drawn with the particularity that is ordinarily to be expected; but this is a most unusual case, and
40 one that is absolutely novel so far as I have any

Opinion.

knowledge. This complainant is not and does not pretend to be *non compos mentis*, and yet is laboring under a disability that renders it impossible for her to instruct her counsel as clients who are *sui juris*, and to meet whose cases rules of pleading and practice are formulated, ordinarily can and do. It is true that the affiant Kemper should have stated facts rather than the allegation "that he has knowledge that Frank N. Warker has been endeavoring to obtain possession of all of the property both real and personal which came to Josephine Warker." But even eliminating such portions of the affidavits other than the complainant's, there is sufficient shown to spell out a proper statement of the facts as they appear above. The complainant's physician says that since a stroke of apoplexy, prior to the stripping herself of all her property, her memory has been almost destroyed. His affidavit is attacked upon the ground that he has not been in constant attendance upon her, but I am completely at a loss to understand how that weakens his testimony in any appreciable degree.

It is elementary that when ordinary litigants all agree to a termination of a suit pending between or among them, and the public interest is not affected, there is nothing for the court to do but permit them to withdraw and go about their respective affairs. But what is to be said where one of them is under a disability, not amounting to insanity or infancy and yet sufficient to put him at such a disadvantage in dealing with his own affairs as to make him utterly incapable of protecting himself and his property against the inroads and ravages of the others? It seems to me that this rhetorical sentence almost answers itself. If the disability were complete, as in the case of one who was insane, it is almost banal

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Opinion.

to say that for the purposes of the suit through which the Court of Chancery has obtained jurisdiction, such a party becomes a ward of the court acting as the agency of the state in its capacity of *parens patriae*. In the case entitled "In re Rhodes", 136 Atl., 408, a somewhat similar problem was presented where a petitioner in a lunacy inquisition directed her counsel, after the proceeding had been instituted, to dismiss it. The Chancellor held that it could not be done, partly for the reason that I have already indicated. It is true there was a distinction in that case because of the clear interest of the public in safeguarding its insane citizens and providing for the care of their property. However to a less extent, it seems to me that the public are not without interest in instances such as is presented in the case at bar. The matter being dealt with is discussed and the discussion sustains this decision, in 3 Pomeroy's Jurisprudence, Section 1314 (4th ed.). The consent of the court will not be given to the dismissal of the bill, and the solicitor who filed it should continue to prosecute the suit.

The propriety of the appointment of a receiver is also attacked on behalf of the defendants. No one should have the slightest difficulty in coming to an agreement with the law they cite. It is, of course, elementary, as said in *Leddel v. Starr*, 19 N. J. Eq., 159, that a receiver is rarely appointed before answer filed, and no answer has been filed in this case. But the opinion just cited goes on to say, "There are a few exceptional cases where a receiver has been appointed upon petition; but these are in the cases of infants, whose position as wards of court gives them the right to apply by petition, *or in cases similarly situated*" (Italics mine). It seems to me that in view of what has already been said no further comment is necessary.

Opinion.

Of course, this cause cannot rest here. There is a justiciable issue between the complainant's representative on the one hand and the defendants on the other, any one of a number of defenses may be pleaded and, perhaps, proved. Subpoena should be taken out immediately, if that has not already been done, and the cause should be brought to final hearing. In the meantime, the receiver appointed on the filing of the bill will be continued until the determination of the cause, and the appointment of a permanent receiver if one is appointed, will be considered at that time when, perhaps, it may be considered advisable if the bill is retained to consider the substitution of some gentleman in whom the complainant had expressed, in writing, her unbounded confidence and trust before this litigation was commenced.

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Order Continuing Receiver.

(Filed April 5, 1928.)

This matter being opened to the court by George D. Hendrickson, solicitor for and of counsel with the above named complainant, and in the presence of William E. Decker, of Insley, Vreeland & Decker, solicitors of defendants, and an order having been made in this cause on the tenth day of August, 1927, wherein, among other things, Frank N. Warker and Emma Warker were directed to show cause before the Chancellor at the Chancery Chambers, Jersey City, New Jersey, on August 15th, 1927, at 10 o'clock in the forenoon (Daylight Saving Time) or as soon thereafter as this matter could be heard, why David A. Nimmo, the receiver heretofore appointed in this cause and said receivership should not be continued or made permanent; and proof of service of a true copy of said order and a true copy of the bill of complaint upon each defendant, as required by said order, having been duly filed,

And it appearing from the receiver's report and affidavits filed herein, that since the filing of the bill of complaint herein and the appointment of a receiver herein and service of true copies of the bill of complaint and order appointing receiver upon each of said defendants, and his demand upon them for all real and personal property belonging to said Josephine Warker, that they have reconveyed to the complainant, Josephine Warker, the real estate mentioned and described in complainant's bill of complaint,

And it further appearing by the report of David A. Nimmo, the receiver, that the said defendants have refused to deliver to him the personal property, mentioned and described in the bill of complaint or any part thereof demanded by him of each of the defendants personally, although they admit such to be the property of complainant,

Order Continuing Receiver.

And it further appearing that the complainant is a lady seventy-five years of age and has suffered a stroke of paralysis with the result that her memory and business understanding is impaired and that the defendants herein, by reconveying to her said real estate, have caused her to believe that she is now fully protected and that thereupon she requested her solicitor. George D. Hendrickson, to discontinue this proceeding, all of which he has reported fully to this court, and it appearing to this court that the best interests of the complainant, Josephine Warker, would not be subserved by the withdrawing of this suit and that the solicitor of the complainant should proceed with the action,

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IT IS on this nineteenth day of September, 1927, ORDERED that George D. Hendrickson, solicitor of the complainant, shall continue to prosecute the suit and shall not consent to a dismissal of the bill of complaint.

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IT IS FURTHER ORDERED that David A. Nimmo, be and he is hereby continued as Receiver of the real and personal property of the complainant, Josephine Warker, of whatever kind and description and wheresoever situated and is hereby authorized and empowered to institute, prosecute and defend, compromise, adjust, intervene in or become party to such suits, actions or proceedings at law or in equity, in State or Federal Court, in this or any other state or territory of the United States of America, as may in his judgment be necessary or proper for the protection, maintenance, preservation, recovery or collection of the property and assets of the complainant.

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Order Continuing Receiver.

IT IS FURTHER ORDERED that Frank N. Warker and Emma Warker forthwith deliver to said David A. Nimmo, the receiver herein, all the following described personal property, to wit:

Shares

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|----|-----|---|
| 10 | 100 | Common Stock, Chandler Motor Car Co. represented by certificate #0-847, for 60 shares, #0-5516, for 20 shares, and #0-18925 for 20 shares. At $36\frac{1}{2}$. |
| | 1 | Preferred Stock, Chicago Great Western R. R. Co. Represented by certificate #A-9141. At $24\frac{7}{8}$. |
| | 5 | Common Stock, Kennecott Copper Corporation. Represented by certificate #B-52696. At $54\frac{1}{4}$. |
| 20 | 35 | Common Stock, Caddo Central Oil & Refining Corporation. Represented by certificate #03737. At $\frac{7}{8}$. |
| | 10 | Common Stock, Sinclair Consolidated Oil Corp. Represented by certificate #0-105561. At 19. |
| | 10 | Preferred Stock, International Mercantile Marine Co. Represented by certificate #15671. At $31\frac{1}{4}$. |
| 30 | 10 | Preferred Stock, Pressed Steel Car Co. Represented by certificate #Z28385. At 80. |
| | 5 | Common Stock, Pressed Steel Car Co. Represented by certificate #0-047597. At 108. |
| | 40 | Common Stock, F. W. Woolworth Co. Represented by certificate #WO-1782. At 170. |
| 40 | 10 | Common Stock, Famous Players Lasky Corp. Represented by certificate #c-017631. At 108. |

Order Continuing Receiver.

- 20 Preferred Stock, Famous Players Lasky Corp. Represented by certificate #p-05919, for 10 shares, and certificate #P-0664, for 10 shares. At 115 $\frac{1}{4}$.
- 20 Preferred Stock, National Lead Co. Represented by certificate #b-30433, for 10 shares, and certificate #B-30434, for 10 shares. At 116. 10

And all other personal property in his, her or their possession and/or under his, her or their control and also deliver to him, statement showing all income and disbursements made therefrom.

IT IS FURTHER ORDERED that the time within which the defendants, Frank N. Warker and Emma Warker shall file answer to the bill of complaint herein be extended to April 24th, 1928, and that otherwise the bill of complaint filed herein shall be taken as confessed and decree forthwith entered by the solicitor of the complainant. 20

E. R. WALKER,
C.

Respectfully advised.

JOHN BENTLEY,
V. C. 30

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New Jersey Court of Errors and Appeals

JOSEPHINE WARKER,
(Complainant) Respondent,

vs.

FRANK N. WARKER and EMMA
WARKER,
(Defendants) Appellants.

BRIEF FOR APPELLANTS.

This appeal is by defendants from an order of the Chancellor, dated September 19th, 1927, and filed April 5th, 1928, directing that the solicitor of the complainant continue to prosecute the above suit, and ordering that the receiver *pendente lite* of the real and personal property, who had heretofore been appointed *ex parte* on August 10th, 1927, be continued.

Statement of Facts.

Josephine Warker, respondent, filed her bill of complaint against Frank N. Warker and Emma Warker, his wife, the appellants. She alleged that she was over sixty-five years of age, and subject to the infirmities of advanced age, had frequent loss of memory, and was inexperienced in business affairs; that on October 6th, 1926, she conveyed to the respondents her real estate at Cliffwood in Monmouth County, New Jersey, and certain stock certificates, substantially all of her property; that she received no consideration for the conveyance; that the conveyance was made without independent ad-

vice, and without knowledge of what she was doing. The bill further alleged that the conveyance of the real and personal property was procured by appellant's undue influence, fraud and misrepresentation but did not set forth the particulars thereof. The bill further stated that she had made a demand for cancellation of the conveyance and the appellants had refused her request.

Attached to the bill of complaint was the respondent's affidavits stating only that the bill of complaint had been read to her and "that so far as she "knows, or is able to remember, the allegations "therein set forth are true." Also the affidavit of Lincoln Scott Kemper whose interest in the respondent is not set forth, and who stated the value of the property of the respondent, and further "that to his knowledge Frank N. Warker (one of the appellants) has been endeavoring to obtain possession of all of the property, both real and personal, "which came to Josephine Warker, the respondent," without stating the source of his knowledge, or any other facts in explanation of this remarkable statement. Nathan Ewin, a practicing physician of New Jersey, stated in an affidavit that he had personally known the respondent for upwards of five years, and had been her physician at *intervals*, and that in 1925 she had suffered a cerebral hemorrhage, and that it left its effect on her, and since then her mental faculties had been weakened to a marked degree; that she suffered, and is suffering almost continuous loss of memory. This affidavit was made in August, 1927; the physician did not set forth the means of knowledge as to her condition at that time.

On filing this bill of complaint with the affidavits the Vice-Chancellor advised an order to show cause and *ex parte* appointed a receiver *pendente lite* for all of the real and personal property of the respondent.

ent, and directed the receiver to take it into his possession.

This order to show cause was filed August 10th, 1927, and was returnable August 15th, 1927. It was continued until September 19th, 1927, when it was argued.

Upon service of the order to show cause, and without consulting counsel the appellants immediately reconveyed to the respondent the real estate at Cliffwood, and by arrangement between the appellants and the respondent's solicitor the argument on the order to show cause was continued until September 19th, 1927, when the appellants submitted their answering affidavits before the Vice-Chancellor. The respondent submitted additional affidavits, and the case was argued.

The answering affidavit of the appellant Frank N. Warker stated that he was the only living relative of the respondent, and her deceased brother; they were cousins; that the deceased brother of the respondent upon retiring from his occupation went to live with the appellant at the latter's home in York, Pennsylvania, where he lived for some time prior to his death; at that time the deceased brother of the respondent expressed the hope that upon his death his sister (the respondent) would have the use of his property for her lifetime, and upon her death it was to go to the appellant; however, the respondent's brother died intestate legally domiciled in New York; at the request of respondent, this appellant was appointed administrator of her brother's estate and employed the attorney of her deceased brother to attend the legal matters in connection therewith; that in the early fall of 1926 the respondent stated to the appellant that she wanted to convey to this appellant the real estate at Cliffwood, in order to carry out her brother's wish, and that the securities were kept in this appellant's

safe deposit box at York, Pennsylvania, at her wish and direction; that after doing so she occupied the home at Cliffwood during the summer months, and lived with him, at his home, in York, Pennsylvania, during the winter months; that she had made no complaint whatsoever of the arrangement, and that neither of the appellants knew, nor had it been intimated to them that she was dissatisfied with the arrangement she had made until they received a copy of the bill of complaint, and the order appointing the receiver; immediately upon receiving these papers the appellant inquired of the respondent, who was living in the same house with them at the time of the starting of this suit, and she said that she wanted her house and lot back, and the appellants re-conveyed the house and lot immediately; that the appellants have not profited to the extent of one penny by the property of the respondent, and they expended all the income for repairs on the real estate, which was in a deplorable condition at the time respondent inherited it; that they have always regarded the property as the respondent's property. He further denied the statement of Lincoln Scott Kemper, and denied that the respondent was dependent on this property as a means of income, and set forth that she had lived at his home at his expense. He further stated that he had no necessity for taking anyone's property, and that he was a man of independent means.

Emma Warker, wife of the appellant in her affidavit set forth that she knew nothing of the conveyance by the respondent to herself and her husband of the real estate at Cliffwood; that she was not there at the time the conveyance was made, and did not hear about it until some time afterward.

on September 19th, 1927, the respondent came to
Before the argument of the order to show cause the office of the appellants' solicitor and insisted

that she wanted to make an affidavit on their behalf, because she had done them an injustice by beginning the suit. This affidavit is printed commencing on page 24 and sets forth the circumstances of the making of the conveyance to the appellants and also the circumstances attended to the beginning of the suit, and contains a request that the suit be dropped.

At the time of the argument reply affidavits were brought in, which are printed on pages 21 to 45 inclusive, and which contain a great deal of matter that is irrelevant and hearsay.

The appellants move to dismiss the order of August 10th, 1927, on the ground that the bill of complaint, and the affidavits attached thereto were insufficient to warrant the appointment of a receiver *pendente lite ex parte*, that there was no necessity for said appointment. The Vice-Chancellor, however, decided to continue the receiver and instructed the solicitor of the complainant to continue the prosecution of this suit.

I.

The Receiver was appointed *ex parte*—no notice of the application for the Receiver or opportunity to be heard thereon was given to the appellants.

Upon presenting to the Vice-Chancellor the bill of complaint the Vice-Chancellor made the order printed on page 15, without notice to the appellants, *ex parte*, which order transferred to the possession and custody of the receiver the real estate in Monmouth County, and the personal property.

This action we submit cannot be justified by the facts set forth in the bill of complaint and affidavits attached.

It is said 2 *Daniels Chancery Pleadings and Practice*, page 1735, dealing with the appointment of receivers that:

“Notice of the motion, or the summons, as
 “the case may be must be served on the oppo-
 “site party; the general rule of the Court being,
 “that an application for a receiver could not,
 “like a motion or injunction, be made without
 “notice.”

In *People vs. Norton*, 1 Paige (New York Chancery) page 17, the Chancellor said:

“As a general rule, a receiver should not be
 “appointed without notice to the opposite
 “party; that rule must be subject to excep-
 “tions in special cases, where irreparable in-
 “jury would be sustained by one or both parties
 “by said delay.”

Subsequently, in the case of *Verplanck vs. Mercantile Insurance Company*, 2 Paige (New York Chancery), at page 450 the Chancellor said:

“By the settled practice of the Court in ordi-
 “nary suits, a receiver cannot be appointed ex
 “parte, before the defendant has had an oppor-
 “tunity to be heard in relation to his rights,
 “except in those cases where he is out of the
 “jurisdiction of the court, and cannot be found,
 “or where, for some other reason it becomes
 “absolutely necessary for the court to interfere,
 “before there is time to give notice to the op-
 “posite party, to prevent the destruction or loss
 “of property. Formerly it was never done until
 “after answer.”

In *Tibbals vs. Sargeant*, 14 N. J. Equity, page 449, Chancellor Green denied an application for the appointment of a receiver stating:

“due notice of the application has not been
 “given. It is a special motion, of which the

“defendant is entitled to notice. The circumstances stated in the affidavit do not amount to an excuse for the omission.”

The rule is: The Chancellor has the power to appoint a receiver *ex parte*, but that such power will never be exercised unless there is an urgent necessity for its exercise in the particular case in which the application is made.

The settled practice of the court requires the complainant, who is about to invoke the appointment of a receiver *ex parte* to set forth in his petition for such appointment (or in this case the bill of complaint) the facts showing the urgent necessity of the appointment. *Verplanck vs. Mercantile Insurance Company*, 2 Paige (New York Chancery), at page 450; *Tibbals vs. Sargent*, 14 N. J. Equity, 449.

Ordinary fairness requires this to be done. Such rule is in line with the doctrine running through our law from the beginning of time that no person should be condemned with a hearing.

There were no facts set forth in the pleadings that justify the exercise of this extraordinary power. No necessity for the appointment of an *ex parte* receiver *pendente lite* is shown. The real estate, which is one of the subjects of the litigation is located in the State of New Jersey, and a *lis pendens*, filed in the office of the County Clerk, would have been an effectual bar to the transfer of the real estate. The personal property was not at that time in the State of New Jersey. However, the appellants were in the State of New Jersey, and had no intention of leaving the State of New Jersey, and an injunction restraining order on proper proof restraining the transfer of the stocks, with a notice to the corporations would have been a complete bar of their disposal.

Neither of these courses were followed, however, and the Court below on the meager affidavits at-

tached to the bill of complaint, without hearing the parties, brought into play this most extraordinary process of the Court of Chancery, transferring the control of this property to a receiver, and thereby subjecting it to the unnecessary expense of a receivership.

The only justification for doing this contained in the opinion of the Vice-Chancellor on page 46, at line 36, is the statement that the affidavits attached to the bill are not drawn with the particularity that is ordinarily to be expected "but this is a most unusual case. And one that is absolutely novel so far as I have any knowledge." This suit is the ordinary suit of a person who claims to have had her property taken away from her without independent advice, and by means of fraud and misrepresentation. There are reports of many such cases scattered through the New Jersey Equity Reports. There is no novelty that we can see in this case. Nor is the respondent a ward of the court as he intimates (p. 48, line 38).

II.

The bill of complaint and affidavits are insufficient to warrant the appointment of a receiver.

The bill of complaint (p. 5) after alleging that the respondent was the owner of the real and personal property therein described sets forth that the respondent parted with her title to her property without independent advice and without knowledge of the fact she was divesting herself of all of her property; without consideration and by reason of fraud and misrepresentation. There was no allegation in detail showing the facts and circumstances

leading to the conclusions drawn by the pleader.

Attached to this bill is the affidavit of the respondent in common form, also the affidavit of Lincoln Scott Kemper, which throws no further light on the material parts of the bill of complaint, and which contains the statement that the appellant Frank N. Warker "has been endeavoring to obtain possession of all of the property, both real and personal, which came to Josephine Warker." Also the affidavit of Nathan Ewin, a physician who stated that he had been the physician of the respondent at intervals for five years, and that in 1925, two years before the filing of the bill of complaint, the respondent had suffered a cerebral hemorrhage, and that since then her mental faculties had been weakened, and that she suffered, and is suffering almost continuous loss of memory. The physician does not state in detail his means of observation of the respondent, nor any other facts, other than two years prior to the bill of complaint she suffered the cerebral hemorrhage.

It has always been the rule in the Court of Chancery that where a receiver is applied for *pendente lite* the same practice applies to the issuance of an injunction *pendente lite* that applies to the appointment of such receiver. *Guangione vs. Guangione*, 97 New Jersey Equity, 303, at page 305.

The court will not issue an injunction *pendente lite*, nor will it appoint a receiver *pendente lite* where the affidavits attached to the bill of complaint are in common form. *Youngblood vs. Schamp*, 15 N. J. Equity 42; *McMahon vs. Pneumatic Transit Company*, 85 N. J. Equity, 544; *Guangione vs. Guangione*, 97 N. J. Equity 303.

The affidavits attached to the bill of complaint in this case were not sufficient to warrant the appointment of a receiver, and particularly a receiver *ex parte*.

III.**The suit should have been dismissed on the respondent's affidavit.**

Subsequent to the commencement of this suit and on September 16th, 1927, the respondent came to the office of the appellant's solicitors and insisted on making an affidavit to be used on the argument on the return of the *ex parte* order appointing a receiver. She came to the office of the solicitors of the appellants without the solicitation of either the appellants or their solicitors, and apparently after she had tried to obtain the dismissal of the suit. She stated in her affidavit that the purpose of making her affidavit is "to correct the charges made against them (appellants) in the bill of complaint, which charges are in the particulars hereinafter set out "unfounded and unjust" (p. 25, l. 1). She concludes her affidavit after setting forth the circumstances attending the commencement of the suit the facts that had occurred down to the time of the making of affidavit, with the statement, page 30, line 1:

"I am satisfied, and it is my desire that this suit be dropped, I am competent to manage my own affairs, and as I said above, I am satisfied with the way my affairs are, and I do not want any receiver or anyone else to take charge of my affairs and manage them, other than the defendant, Frank N. Warker."

The opinion of the Vice-Chancellor states (p. 47, l. 1) that the respondent did not pretend to be a lunatic "and yet is laboring under a disability that renders it impossible for her to entrust her counsel, etc." She is not a lunatic. She is not an infant. She is not one of those persons who come

within the ^{class} clause that the Court of Chancery extends its protection. What this disability is that she is laboring under does not appear from the record.

It is our contention that this affidavit should have been heeded and the case should have been dropped. Just because the Court of Chancery may conclude that it, through its receiver could manage the property of a person better than the owner, is no reason in the eyes of the law justifying the court taking that property into the custody of its receiver. Before courts can interfere with the property of the owners there must be some valid and sufficient legal reason which must be set out in the record of the suit.

The comment in the Vice-Chancellor's opinion (p. 46, l. 26) that after the institution of the suit the appellants had reinstated themselves in the good graces of the respondent is the comment of the court repeating the statement of the solicitor for respondent, and there is nothing whatsoever in the record to substantiate this. The fact is that the appellants never knew that the respondent was dissatisfied until they were served with the order appointing the receiver.

IV.

The opinion of the Court below.

There are some statements in the opinion of the Vice-Chancellor that we desire to call the attention of the court to.

On page 46, line 35, the statement is made that while the supporting affidavits of the bill of complaint are not drawn with the particularity that is ordinarily to be expected the case is unusual and

novel, and the complainant is laboring under a disability. What that disability may be, or how it affects the respondent does not appear in the record of the case. It should be shown on behalf of the person suffering from disability what the nature of the disability may be, and how it affects the person, and even then it is doubtful whether the ordinary rules of pleading and practice can be dispensed with.

At the time of the argument the appellants disputed the sufficiency of the affidavits, and insisted that the statement in Kemper's affidavit set forth on page 47, line 10, of the opinion to the effect that he knew appellants wanted to get respondent's property, should be eliminated. It is our contention that the elimination of that statement, which is obviously a conclusion, and which should not be considered, leaves the affidavit of Kemper without any particular force.

Apparently it is the opinion of the Vice-Chancellor that the public has such an interest in the affairs of a person, who is neither an infant, nor insane, but who is under some disability that it justifies the interference of the court of equity in the affairs of that person. Aside from the fact that in this case, as we said above, there is no proof whatever of the respondent being under any particular disability, such a conclusion we contend it not warranted by law. For a person to seek the aid of the Chancellor, that person must bring his case under one of the well known doctrines of equity, which allows the Chancellor to interfere. That has not been done in this case.

We cannot agree with the Vice-Chancellor's instructions in the case of *Ledell vs. Starr*, 19 N. J. Equity, 159. That case was cited for the purpose of showing to him that a receiver *pendente lite* was rarely appointed *ex parte*. In fact we can find no

reported cases in New Jersey, where this has been done. The words in his italics "or in cases similarly situated" obviously apply to cases of infants, or persons who are wards of the court.

The appellants in this case raise no question concerning the person appointed receiver by the Vice-Chancellor. They dispute the propriety of appointing a receiver and the suggestion contained in the last paragraph of the opinion (p. 49), "that perhaps someone in whom the complainant (respondent) has expressed her unbounded confidence might be substituted" is not acceptable to them. If this court decides that the order of the Vice-Chancellor appointing a receiver was properly made, then these appellants are perfectly willing to abide by the receiver selected by the Court of Chancery. Their concern is, as we said above, not the person of the receiver, but the propriety of a receiver in this case.

V.

Conclusion.

The order of the Vice-Chancellor should be set aside because: neither the facts set forth in the record, nor the law gives to the Court of Chancery the power and authority to appoint an *ex parte* receiver. The purpose could have been accomplished by other means. The appellants should have been heard in court before the receiver was appointed.

Respectfully submitted,

WILLIAM E. DECKER,
Counsel.

The first of these is the fact that the
 government has been unable to
 secure the necessary funds to
 carry out its policy of
 expansion. This is due to the
 fact that the government has
 been unable to raise the
 necessary funds through the
 sale of bonds or through
 the imposition of taxes. The
 government has also been
 unable to secure the necessary
 funds through the sale of
 foreign exchange. This is due
 to the fact that the
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 been unable to secure the
 necessary funds through the
 sale of foreign exchange.

Conclusion

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It is respectfully suggested

that the government should be
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 necessary funds through the
 sale of foreign exchange.

New Jersey Court of Errors and Appeals

JOSEPHINE WARKER,
(Complainant) Respondent,

vs.

FRANK N. WARKER and EMMA
WARKER,
(Defendants) Appellants.

BRIEF FOR RESPONDENT

This appeal is by defendants from an order of the Chancellor directing that the solicitor of the complainant continue to prosecute the above suit and continuing its Equity Receiver appointed at complainant's request for complainant's property.

Statement of Facts.

This is a suit by an old lady to compel the defendants, a distant cousin and his wife, to reconvey lands and redeliver securities of value (Case, pp. 6-7), transferred by the complainant to the defendants without consideration.

Mr. Maitland Beattie, of Red Bank, New Jersey, for over twenty-five years in the active practice of law in New York City, received a letter from complainant (Case p. 31). He turned this letter over to Mr. Otto Gillig, his son-in-law, who is associated with him in New York City in the practice of law. Mr. Gillig asked me to handle the matter and took me to Cliffwood and introduced me to Miss Warker with whom I talked

and from whom I obtained such information concerning her then trouble as she could furnish. She gave me the name of her physician.

Mr. Kemper is in the employ and has been so employed for many years in Mr. Beattie's office in New York City. He furnished me with his affidavit (Case, p. 130). Dr. Edwin of Matawan gave me his affidavit (Case, p. 14). Mr. Gillig gave me his affidavit (Case, p. 39) and Mr. Beattie's letter to Miss Warker of November 13th, 1925 (Case, p. 44). Mr. W. Wood Wilson, a prominent citizen of Plainfield and an old family friend of Miss Warker, in business at 22 William Street, New York City, gave me her letter to him dated September 19th, 1927 (Case, p. 33). I made some inquiry concerning the defendants of people who live in and who have summer homes at Cliffwood, New Jersey. Mrs. Hedden, who resides in Newark and has a summer home at Cliffwood, gave me her affidavit (Case, p. 32).

Miss Warker told me that she was living alone in one part of the house and that the other part of the house was occupied by the defendants and that she had to make her own bed, cook her own food and that the defendants had very little to do with her, and several people residing in the neighborhood informed me that they were delighted that there was someone to protect Miss Warker.

Upon the filing of the bill of complaint Vice Chancellor Bentley appointed an Equity Receiver, Mr. David A. Nimmo. On the same day the Receiver qualified, served certified copy of the order upon and made demand of the defendants that they turn over to him the real estate and personal property; they refused. Two or three days later Frank N. Warker and Emma Warker came to my home at Red Bank and told me they did not know

what they would do. Several days later they came back to my home with Miss Warker and told me they had reconveyed to Miss Warker the real estate and Miss Warker told me that she was satisfied and asked me to discontinue the proceedings. I told them I felt they should comply with the order. I then knew of defendant's change of conduct toward Miss Warker.

I concluded that the situation was one in which Miss Warker needed the protection of the Chancellor and upon the hearing of the rule to show cause I informed Vice Chancellor Bentley fully of the results of my investigations. I had received a letter from Mr. H. D. Davis, Treasurer and Trust Officer of the Plainfield Trust Co. (Case, p. 35).

To me it is a clear case of obtaining property by undue influence and after they were brought into court further influencing Miss Warker by re-delivery to her of the real estate and have caused her to believe that I was not and am not working for her best interest (Case, p. 33), her letter to Mr. Wilson.

It is alleged that the conveyance and assignments were voluntary and executed without independent advice and are improvident and fraudulent.

Complainant, in her bill of complaint advised the Court, that because of her advanced years and recent illness, she was not physically able to transact her own business for her own best benefit and was surprised to find, just prior to filing bill of complaint that she had transferred all of her property to the defendants or one of them (Case, p. 31) and this aged and infirm person asked this Court for relief and that a Receiver of her own property be appointed by this Court for her benefit.

Where an aged or infirm person or other person subject to dominence makes a voluntary transfer of a substantial part of the property of such person, without independent advice to another, who is in a confidential relation and the same is improvident, the Court will order the reconveyance thereof.

We believe the above rule thoroughly established in New Jersey and refer to Hall vs. Otterson, 52 N. J. Equity 522, at 528, affirmed 53 N. J. Equity, 695.

An alleged agreement of the grantee to support the donor or do other things which would relieve the transaction of the objection of improvidence, is insufficient unless it is contained in the instrument of transfer or in other binding legal instruments. The mere oral undertaking is insufficient.

We refer to the case of Mott vs. Mott, 49 N. J. Equity, at page 209.

The Court of Chancery of New Jersey has jurisdiction not only to set aside the deeds for the New Jersey property but to decree in personem that defendant reconvey the lands in another State and has the same jurisdiction covering personal property located or situated in another State.

We refer to Bullock vs. Bullock, 52 N. J. Equity, page 561 at 565.

The defendants in their answering affidavits admit that the real estate and securities mentioned and described in the bill of complaint are the property of the complainant and were transferred to them without consideration; and Frank Warker claims that the reason for the transfers

was for the purpose of enabling him to take title to the property after the death of Josephine Warker. (Possibly for the purpose of defrauding the State of New Jersey of inheritance tax and firmly believing that something in the hand is of real value.) The allegations in the bill of complaint are admitted in the answering affidavits and such have the same force as if admitted by answer filed. See Case, p. 20, l. 24.

In this case, at complainant's request, the Court appointed an Equity Receiver of her property; the Receiver appointed was not appointed in a suit arising out of a claim of an equitable interest in property, the subject of litigation.

The appointment of a Receiver is one of the prerogatives of a court of equity exercised in aid of its jurisdiction in order to enable it to accomplish complete justice. The application is always addressed to the sound discretion of the Court by exercise of an auxiliary to the attainment of the ends of justice. Each case necessarily depends upon its own peculiar features.

The defendants were personally served in this State and entered their appearance.

Upon the bill of complaint being filed and the Receiver appointed the Receiver made demand upon the defendants for a reconveyance of the real estate and a retransfer of the personal property. This was refused but two weeks later the defendants reconveyed the real estate to complainant. By that act they put themselves again in the good graces of this lady whom they had stripped of everything, with the result that she requested her solicitor of record to withdraw the action. This he refused to do unless the personal property was retransferred, because from his personal investigation he knew that the defendants after they had stripped Miss Warker of all

of her property treated her badly, did not furnish her with even the necessities that an old lady of her money and education is entitled to and so informed the Court and asked the Court's instruction. The Court continued the Receiver and directed her solicitor to continue the action.

The defendants have made Miss Josephine Warker believe that her attorney is attempting to prove that she is insane (Case, p. 53). Such is not so. Such acts on the part of the defendant is only additional proof of their willingness to stoop to anything to retain that which they have in hand.

A Court of Equity has the general power to protect the property of persons of unsound mind. In addition to such, in appropriate cases it has the power to protect the property of persons of weak mind who are not of unsound mind and who can not even be found to be non-compos mentis.

Pomeroy's Equity Jurisprudence, Third Edition, Vol. 3, par. 1314, says:

“These two jurisdictions are wholly distinct. The former especially; the latter is the general jurisdiction of equity exercised. (Not by reason of the incompetency but notwithstanding the incompetence.)”

In *Jones vs. Lloyd*, L. R. 18 Equity, 265, 374-375, cited by Pomeroy, the Court says:

“That a suit can be maintained for the purpose of protection, for the purpose of obtaining, as in this case, a Receiver, I should think there can be no doubt whatever.”

This court, in *re: Merry Roads*, Vol. 5, N. J. Advanced Reports, page 410, 413, the Chancellor said:

“And the petitioner may not dismiss the proceedings to the detriment of a lunatic who

is a ward of court, without the Chancellor's consent, and he will not consent unless it is for the best interest of the lunatic so to do."

There is the same inherent jurisdiction in this court, as in cases where this court is dealing with the rights of persons of unsound mind, to exercise its own discretion as to the advisability of whether or not a case of this kind and character should be permitted to be withdrawn or dismissed or should not be carried on for the benefit of the complainant.

The Chancellor of New Jersey is a successor in jurisdiction to the Chancellor of England and as such is *parens patriae* of all infants, idiots, those of incompetency, those in possession of pirates and those in prisons beyonds the seas.

This is one of the general jurisdictions of the Court of Chancery coming to it because the Chancellor is Chancellor and not because he has had jurisdiction given him by any specific statute.

If it was advisable for the Vice Chancellor to appoint "A Receiver" if properly appointed "to continue the Receiver," a common law Receiver in equity, then before the bill of complaint can be dismissed it is up to some court of equity at final hearing with full proofs adduced to hear and determine and decree as to whether the general power of the Chancellor as *parens patriae* shall be exercised to protect Miss Warker, from the probability or highly possible risk of being illegally or inadvisably deprived of her lands and her securities and her full income. Should the court determine at such final hearing that a Receiver was not the proper officer to appoint, before the proceedings can be dismissed it should appoint the person who was appointed Receiver or some other person or persons with proper bond and with proper safeguards to act as either

guardian or Chancery Trustee for the estate of Miss Warker, in this, that she has now become as her acts have shown, incompetent to protect herself against the bad advice from those who seek to advise her.

Before this Honorable Court can dismiss this bill it must first determine whether under the proofs adduced the Chancellor had a right to appoint some person called a Receiver, Trustee, Guardian of the person, Guardian of the estate, to protect Miss Warker in her ownership and possession of her property.

The Court may send the case back to the Vice Chancellor for him to determine in the Court of Chancery as to whether it is proper to have such custodial person of Miss Warker's property for her protection.

In the bill of complaint there is a prayer for general relief. It was moved that the suit be discontinued after the reconveyance and the solicitor of the complainant refused to do so until the Court had first had an opportunity to protect his client, the complainant, against the possibility of her thereafter being deprived of her property under circumstances of imposition.

It is called to the attention of the Court that this suit is now referred to Vice Chancellor Lewis for final hearing.

It is respectfully submitted that this appeal be dismissed.

GEORGE D. HENDRICKSON,
Solicitor for and of Counsel
with Complainant.

