

STATE OF NEW JERSEY }  
COUNTY OF PASSAIC } ss:

Agnes T. Stewart, being upon her oath duly sworn, says that she is the Assistant Secretary of the Hobart Trust Company; that she has been in the employ of said Company for more than five years last past; that she has charge of the accounts on deposit in said company; that on March 30th, 1918 an account was opened in said Company in the name of August Thies, Maria Vonder Heyden, Trustee; that the following deposits were made to said account:

March 30, 1918 .....	\$150.00
April 24, 1918 .....	150.00
May 29, 1918 .....	100.00
July, interest .....	1.31
July 5, 1918 .....	25.00
August 1, 1918 .....	175.00
October 1, 1918 .....	25.00
October 29, 1918 .....	25.00
December 4, 1918 .....	55.00
January, 1919, interest .....	9.19

that there were no withdrawals from said account until June 3, 1919, when the total sum amounting to \$715.50 was withdrawn; deponent says that withdrawal was by means of a withdrawal check or receipt signed August Thies, Maria Vonder Heyden, Trustee and the said Maria Vonder Heyden, Trustee, executed same by affixing her mark. On June 3, 1919 the said sum of \$715.50 was deposited in said Company to a new account opened on the same day in the name of August Thies; deponent says that the said account of August Thies was closed out on May 31, 1921.

Sworn and subscribed to before me

this 6th day of March, 1923.

AGNES T. STEWART

RUTH TROY, Notary Public. of N. J.



I N D E X

1. Introduction ..... 1  
 2. The History of the ..... 2  
 3. The Development of the ..... 3  
 4. The Role of the ..... 4  
 5. The Importance of the ..... 5  
 6. The Future of the ..... 6  
 7. The Conclusion ..... 7  
 8. The Appendix ..... 8  
 9. The Bibliography ..... 9  
 10. The Index ..... 10

# I N D E X

## PLEADINGS, ETC.

Notice of Appeal .....	1
Petition of Appeal .....	2
Answer to Petition of Appeal .....	6
Bill of Complaint .....	8
Answer .....	17
Replication .....	23
Order of Reference .....	25
Opinion of Vice Chancellor .....	139
Final Decree .....	146

## TESTIMONY

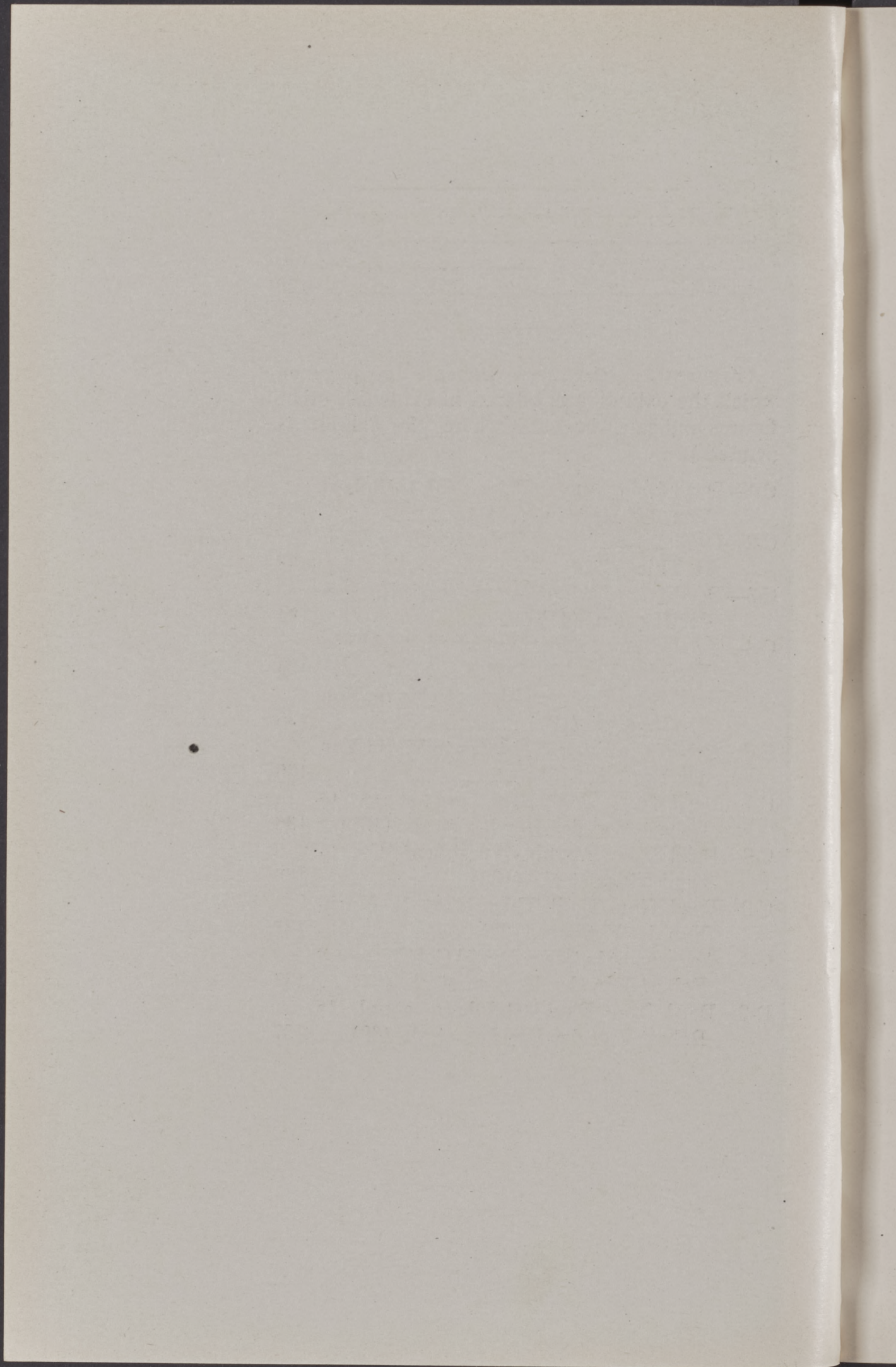
August Thies, direct .....	26
cross .....	33
re-direct .....	40
recalled, direct .....	126
cross .....	128
Emil Thies, direct .....	42
cross .....	48
re-direct .....	56
re-cross .....	57
recalled, direct .....	129
cross .....	131
Irene Thies, direct .....	59
cross .....	60
William H. Kruitbosch, direct .....	61
cross .....	63
Robert Von der Heyden, direct .....	66
cross .....	91
re-direct .....	108
re-cross .....	113

James A. Crowley, direct .....	114
cross .....	116
Josephine R. Von der Heyden, direct .....	117
cross .....	119
Louis A. Cowley, direct .....	120
cross .....	122

### EXHIBITS

(Figures in parentheses indicate the page on which the exhibit was offered in evidence; other figures indicate the page where the exhibit is printed.)

C-1—Deed from August Thies et al. to Robert Von der Heyden, (31) .....	133
C-2—Deed from August Thies et al. to Emil H. Thies, (31) .....	133
C-3—Deed from Realty Estates to Maria Von der Heyden, (41) .....	134
C-4—Deed from Arthur Axt et al. to Maria Von der Heyden, (41) .....	134
C-5—Deed from Passaic Estates to Maria Von der Heyden, (131) .....	135
C-6—Deed from Passaic Estates to Maria Von der Heyden, (131) .....	135
C-7—Deed from David Goldberg et al. to Robert Von der Heyden et al., (132) .....	136
C-8—Deed from Passaic Investment Co. to Emil Thies et al., (132) .....	136
C-9—Deed from Emil Thies et al. to Maria Von der Heyden, (132) .....	137
D-1—Agreement between David Goldberg and Robert Von der Heyden et al., (67) .....	137
D-2—Deed from David Goldberg et al. to Robert Von der Heyden, et al., (68) .....	137



(Filed January 4, 1923)

## In Chancery of New Jersey

Between

August F. Thies and Emil  
H. Thies,

Complainants,

and

Robert Von Der Heyden,  
and Josephine Von Der  
Heyden, his wife,

Defendants.

Notice of Appeal

10

The defendants hereby appeal from the whole and every part of the final decree made in this Court in the above-stated cause to the Court of Errors and Appeals in the last resort in all causes.

Louis A. Cowley,

Solicitor and of Counsel for  
the Defendants.

20

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

Louis A. Cowley,

Of Counsel with the  
Defendant.

Dated December 29, 1922.

30

**Petition of Appeal**

(Filed January 12, 1923.)

**NEW JERSEY COURT OF ERRORS AND  
APPEALS**

	Between	}	On Appeal
	August F. Thies and Emil		
	H. Thies,		
	Respondents,		
	and		
10	Robert Von Der Heyden and		
	Josephine Von Der Hey-		
	den, his wife,		
	Appellants.		

**PETITION OF APPEAL**

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

20 The petition of Robert Von Der Heyden and Josephine Von Der Heyden, the appellants in the above stated cause hereby respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty sixth day of December, 1922, wherein the said August F. Thies and Emil H. Thies were complainants and the said petitioners were defendants, in this respect, to wit:

30 That the said decree adjudges that a deed made by the said complainants to the said Robert Von Der Heyden, bearing date the 28th day of July, 1919, and recorded in Book Q-27 of Deeds for Passaic County, on page 230, for the premises in the

## Petition of Appeal

said pleadings and proofs mentioned, is and was at the time of the execution and delivery of the same null and void, and,

That the said Robert Von Der Heyden upon the service of a copy of said decree and upon the complainant August Thies, bringing into the personal estate of Maria Von Der Heyden the sum of One Thousand (\$1,000.00) Dollars, with interest, or so much thereof as he would be entitled to, as his distributive share as the next of kin of his mother Maria Von Der Heyden, deliver up said deed to the complainants to be cancelled, and, 10

That he do also deliver up to the said complainants possession of the said premises now held by him, together with all deeds, muniments of title and writings in his custody or power relating to the said premises, and,

That said defendants Robert Von Der Heyden and Josephine Von Der Heyden, his wife do also reconvey said premises to the said complainants free and clear and from all encumbrances done by them, or any claim by, from, or under them. 20

That the said decree further adjudges that the said Robert Von Der Heyden do make an accounting of all the rents, issues and profits derived by him from the said land and premises and that he pay over to the said complainants the balance remaining due to them as shown by the said accounting.

That the said decree further adjudges that the said Robert Von Der Heyden, as administrator of the estate of Maria Von Der Heyden, deceased, do render an accounting of all the personal estate of Maria Von Der Heyden showing all the assets which came into his hands as an administrator, and all disbursements made by him as administrator, and 30

**Petition of Appeal**

that he pay over to the complainants the distributive shares to which they are entitled as next of kin of the said Maria Von Der Heyden, deceased.

That the said decree further adjudges that the defendants pay to the said complainants their costs in this cause to be taxed.

That the said decree further adjudges that the said complainants may be at liberty to apply to the Court of Chancery for execution and further  
10 direction as they may be advised.

And your petitioners humbly appeal from that part of the decree as aforesaid upon the ground that the same is erroneous, for that: the said deed to the said Robert Von Der Heyden was executed and delivered by the said complainants to the said Robert Von Der Heyden for a good and valuable consideration with full knowledge of the nature and effect of said deed and in furtherance of a settlement agreed upon by the said complainants  
20 and the said Robert Von Der Heyden, defendant, in the matter of the Estate of Maria Von Der Heyden.

And your petitioners humbly appeal from that part of the decree which decrees that the said Robert Von Der Heyden do make an accounting of all the rents, issues and profits derived by him from said land and premises and that he pay over to the complainants the balance remaining due to them as shown by said accounting, for that, he is  
30 the owner of the premises under the deed before mentioned free and clear of any right, title or interest of the said complainants.

And your petitioners humbly appeal from that part of the decree which orders that the said Robert Von Der Heyden as administrator of the

## Petition of Appeal

Estate of Maria Von Der Heyden do render an accounting of all the personal estate of the said Maria Von Der Heyden for the reason that a settlement or arrangement was made between the said complainants and the said Robert Von Der Heyden, by which the said August Thies received \$1,000.00 and a diamond earring and the said Emil Thies received a tract of land in the City of Clifton and a diamond earring and other personal effects in full settlement of the share of August Thies and Emil Thies in the Real and Personal Estate of the said Maria Von Der Heyden. 10

And your petitioners humbly appeal from that part of the decree which decrees that the said defendants do pay to the said complainants their costs to be taxed in the Court of Chancery, for that, the said complainants should pay the costs of defendants.

And your petitioners humbly appeal from that part of the decree which decrees that the complainants may be at liberty to apply to the Court of Chancery for execution and further direction as they may be advised, for that, so to do would be contrary to equity and good conscience. 20

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And your petitioners may have such further relief in the premises as to this Honorable court shall seem meet. 30

Louis A. Cowley,  
Solicitor and of Counsel  
with Appellants.

**6**  
**Answer to Petition of Appeal**

(Filed February 3, 1923)

NEW JERSEY COURT OF ERRORS  
AND APPEALS

	Between		
	August F. Thies and Emil		
	H. Thies,		
10		}	
	Respondents,		
	and		
	Robert Von Der Heyden,		} On Appeal
	and Josephine Von Der		
	Heyden, his wife,		
	Appellants.		

**ANSWER TO PETITION OF APPEAL**

20     The answer of the above-named respondents to the petition of appeal of the above-named appellants.

30     These respondents, not acknowledging all or any of the matter which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the twenty sixth day of December last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe, that the said decree is agreeable to equity, and they

**Answer to Petition of Appeal**

pray that the same may be affirmed, with costs to be adjudged to these respondents.

John D. Craven,  
Solicitor of Respondents.  
L. Edward Herrmann,  
Of Counsel.

10

20

30

**Bill of Complaint**

(Filed November 12, 1921)

**BILL OF COMPLAINT****IN CHANCERY OF NEW JERSEY**

To Hon. Edwin Robert Walker,  
Chancellor of the State of New Jersey:

10. Complainants, August F. Thies, of Brooklyn,  
New York, and Emil H. Thies, of Passaic, County  
of Passaic and State of New Jersey, respectfully  
show:

1. That Maria Von der Heyden, late of Athenia,  
in the County of Passaic, on or about the 5th day  
of June, 1919, died intestate, leaving her surviv-  
ing, as her only heirs at law and next of kin, her  
husband, Robert Von der Heyden, and your com-  
plainants aforesaid, her sons by a previous mar-  
riage. There was no issue of the marriage of the  
20. said Maria Von der Heyden and Robert Von der  
Heyden.

2. Said Maria Von der Heyden died seized of  
considerable real and personal estate in the County  
of Passaic aforesaid in this State. The personal  
estate consists of money in bank, furniture and  
other property to a considerable value, the items  
of which are set forth in "Schedule A" hereto an-  
nexed and made a part hereof.

30. The said Maria Von der Heyden died seized of a  
dwelling house and several lots and parcels of  
land described as follows:

(a) All that certain tract of land and  
premises, situate in the City of Clifton in the  
County of Passaic and State of New Jer-

### Bill of Complaint

sey, more particularly described on a map entitled "Map of property of Suburban Homes Company, Athenia, Acquackanonk Township, New Jersey, surveyed by Wise and Watson, Engineers, Passaic, New Jersey, September 1907" which said map was filed in the office of the Register of Deeds of the County of Passaic as map No. 352 on 30th day of November, 1907, said land and premises hereby conveyed being designated on said map and known particularly as Lots Nos. five hundred and fourteen (514) and five hundred and fifteen (515) being fifty (50) feet in front on the southeasterly side of Orono Street by one hundred (100) feet in depth, together with the improvements thereon. 10

Being the same premises conveyed to Maria Von der Heyden by Arthur Axt and wife, by deed dated September 21st, 1919, and recorded in Book Q-26 of Deeds for Passaic County on page 511. 20

(b) All that certain parcel of land and premises, situate, lying and being in the Township of Acquackanonk, in the County of Passaic and State of New Jersey, known and described on a certain map entitled "Map of Property of Suburban Homes Company, Athenia, Acquackanonk Township, New Jersey, surveyed by Wise and Watson, Engineers, Passaic, New Jersey, September 1907," which said map was filed in the office of the Register of Deeds of the County of Passaic as Map No. 352 on the 30th day of November, 1907, said land and premises 30

**Bill of Complaint**

hereby conveyed being designated on said map and known particularly as lot No. five hundred and sixteen (516), being twenty-five (25) feet in front on the southeasterly side of Orono Street by one hundred (100) feet in depth,

and at the time of making of the deeds of conveyance hereinafter mentioned, your complainants  
10 charge and believe said real property had a value of nine thousand (\$9000) dollars or upwards.

3. Complainants further show that just previous to the death of the said Maria Von der Heyden, i.e. the last of May, 1919, your complainants had been discharged from service in the United States Army, and complainant Emil H. Thies was at that time twenty-six (26) years of age, and complainant August F. Thies twenty-four years of age.

4. Complainants further show, that soon after  
20 the death of their mother, Maria Von der Heyden, the said Robert Von der Heyden suggested to them, that their mother's estate ought to be settled up, that the estate did not amount to much, and that complainants had little or no interest in the said estate, but that he would see to it that they should get not only what was lawfully due to them, but also an amount greater than that. In pursuance of this, the said Robert Von der Heyden informed complainants that he would give to  
30 August F. Thies one thousand dollars in cash, and to Emil H. Thies the title to lot number five hundred and sixteen (516) before mentioned.

5. Confiding in the honesty, probity and integrity of their stepfather, and relying upon his representations that they, complainants, had but a

**Bill of Complaint**

small interest in and to their mother's estate, and complainants having just been relieved from the hardships and penury incident to military service, and being without any business experience whatsoever, they were, as a consequence, induced by the said Von der Heyden to assent to his proposal of settlement of their mother's estate.

6. That said Robert Von der Heyden informed complainants that to complete the arrangement of settlement it was necessary to prepare deeds of conveyance to the premises before mentioned, so that complainants could release to him the slight interest which they had in the said real property, and also to convey to complainant Emil H. Thies the premises known as lot No. 516 before mentioned.

Complainants further show that they were informed several times during June and July 1919 by the said Robert Von der Heyden that he had visited a lawyer, Mr. Cowley, in reference to settling up matters connected with their mother's estate. That on or about the 28th day of July, 1919, they, together with said Robert Von der Heyden, went to the office of Louis A. Cowley, Counsellor-at-law of this state, having his place of business at Passaic, New Jersey, where they found the deeds hereinafter mentioned prepared for execution, all arrangements for the same having been made by the said Robert Von der Heyden. That at that time the said Robert Von der Heyden fraudulently and without conscience, and upon a totally inadequate and mere colorable consideration procured from the said complainants a deed and conveyance in fee simple of the premises known as lots five hundred and fourteen and five hundred

10

20

30

**Bill of Complaint**

and fifteen (514 and 515) before mentioned, which deed is dated July 28, 1919, and recorded in Book Q-27 of Deeds for Passaic County on page 230, and purports to be executed by August F. Thies and Emil H. Thies and Irene, his wife, as parties of the first part, to the said Robert Von der Heyden, as party of the second part, and the consideration therein expressed, is "for and in consideration of the sum of one dollar and other valuable  
10 consideration to them in hand well and truly paid by said party of the second part before the ensembling and delivery of these presents."

That at the same time said August F. Thies and Robert Von der Heyden executed what purports to be a conveyance of all their right, title and interest in and to lot five hundred and sixteen (516) before mentioned, to Emil H. Thies, which deed is dated July 28, 1919, and recorded in Book Q-27 of Deeds for Passaic County on page 231, the original of which is in the possession of your complainants. Said lot number 516 is unimproved property and worth about six hundred dollars, but said lots numbers five hundred and fourteen (514) and five hundred and fifteen (515) have a large dwelling house and other buildings erected thereon, worth about nine thousand dollars.

8. Complainants further show that at the time the said conveyances were made, your complainants did not have the benefit of proper independent  
30 advice as to their rights and interest in said matters, and in their ignorance thereof and relying on the integrity and representations of the said Robert Von der Heyden, they did not seek the advice or counsel of anyone who was not only competent to inform them correctly as to the legal ef-

**Bill of Complaint**

fect of said conveyancing and alienation but was also so disassociated from the interests of said Robert Von der Heyden, as to be in a position to advise your complainants properly, in respect of the consequences to themselves of such transaction. That the said Mr. Cowley was the attorney of said Robert Von der Heyden, and did not advise your complainants of the legal consequences of their act further than to tell them where to sign on the deeds.

10

9. Complainants further show that soon after the said Robert Von der Heyden procured the said deed, he took possession of all the real property of the said Maria Von der Heyden, and he has ever since taken the rents and profits thereof amounting, as your complainants believe and charge, to several hundred dollars.

10. Complainants further show that on June 18, 1919, letters of administration were granted to the said Robert Von der Heyden on the rights, goods and chattels of the said Maria Von der Heyden, as shown by an order recorded in Book B of Surrogate's Records, Passaic County, page 233. That as such administrator he has taken possession of all the personal estate of the said Maria Von der Heyden, but has never rendered an accounting thereof, though frequently requested so to do.

20

11. And complainants further show that the said complainants, or one of them, have in a friendly manner applied to the said Robert Von der Heyden, and requested him to deliver up to them the real estate so as aforesaid fraudulently procured from them.

30

12. That on or about the 26th day of January

**Bill of Complaint**

1921, the said Robert Von der Heyden was married to one Josephine Randall, and they are now residing in the premises before mentioned. The said Josephine Randall Von der Heyden may claim to have a right of dower in the premises before mentioned.

13. Complainant August F. Thies has been and still is ready and willing to return to the said Robert Von der Heyden the sum of one thousand  
10 (1000) dollars, which he received as, and what he was induced to believe, was, the value of his interest in all the real and personal property of his mother.

Complainants are without adequate remedy in the Courts of law, and therefore pray:

(1) That said Robert Von der Heyden and his wife, Josephine Von der Heyden, who are defendants in this suit, may answer this bill of complaint, without oath, and each statement made therein.

20 (2) That the deed of conveyance from complainant to the said Robert Von der Heyden hereinabove set out, may be set aside and declared and decreed to be null and void, and to have been fraudulently or unduly obtained.

(3) That the said defendant may be enjoined and restrained from encumbering or conveying the said lands and premises during the pendency of this suit.

30 (4) That the title to the said lands and premises may be decreed and declared to be in the complainants as the heirs at law of said Maria Von der Heyden, and that the said Robert Von der Heyden and Josephine R. Von der Heyden may be decreed or compelled to re-convey or re-

**Bill of Complaint**

lease to complainants all the said lands and premises so held by them as aforesaid.

(5) That the said Robert Von der Heyden may be compelled to make an accounting of all rents, issues and profits derived by him from the said lands and premises and also, as administrator, to render an accounting of all the personal estate of the said Maria Von der Heyden deceased.

(6) That complainants may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience. 10

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

John D. Craven,  
Solicitor for Complainants.

Alfred K. Moe,  
Of Counsel. 20

## Schedule A

## Schedule A.

	Cash on deposit Hobart Trust Co., of Passaic, N. J. book 5330 .....	\$1,745.85
	Estimated interest from June 1918 to date, not set out in inventory in Surrogate's office of Passaic County, about	225.00
10	Estimated value of cabinet, tools, cases, desks, chairs, dishes, mirror, bed room suite, dining room suite, victrola, rugs, stove, kitchen utensils, personal effects not set out in inventory in Surrogate's office of Passaic Co. about .....	1,000.00
	Estimated value of policy of insurance in Metropolitan Insurance Company, not set out in inventory in Surrogate's office of Passaic County about .....	250.00
		<hr/>
		\$3,065.85

20

30

**Answer**

(Filed December 13, 1921)

## IN CHANCERY OF NEW JERSEY

---

 August F. Thies and Emil H.  
 Thies,

Complainants,

and

 Robert Von der Heyden and  
 Josephine Von der Heyden,  
 Defendants.
 

---

On Bill

10

**ANSWER**

Robert Von der Heyden and Josephine Von der Heyden, both of the City of Clifton, County of Passaic and State of New Jersey, answering, say;  
 Paragraph 1 of the complaint is admitted.

20

Defendants admit that said Maria Von der Heyden died seized of the real estate described in paragraph 2 of the complaint, and that at the time of her death she had a bank account in her name in the Hobart Trust Company of Passaic, New Jersey, as set forth in Schedule (a) of said complaint, but deny that she had any furniture or other property of considerable value as is set forth in said paragraph.

Paragraph 3 of the complaint is admitted.

30

Defendants deny that said Robert Von der Heyden informed complainants that they had little or no interest in their mother's estate and that he would see to it that they should get not only what was lawfully due them, but also an amount greater than that. They admit discussing the matter of settling up Maria Von der Heyden's estate and further admit that to effectuate said settlement

## Answer

August F. Thies was to receive \$1000.00, in cash and Emil H. Thies was to receive the title of lot No. 516 as set forth in said paragraph 4.

Paragraph 5 of the complaint is denied.

10 Paragraph 6 of the complaint is denied insofar as it says that defendant Robert Von der Heyden spoke of the slight interest of complainants in said real property and is admitted insofar as it states that to complete or carry out the arrangement of settlement it was necessary to prepare deeds of conveyance, the said Robert Von der Heyden being of the opinion that that was all that was necessary to complete the arrangement of settlement between him and said complainants.

Defendants admit that the said deeds were executed in the office of Louis A. Cowley as set forth in paragraph 6, but deny that they were fraudulently and without conscience procured, and that the consideration was inadequate.

20 Defendants deny that the house mentioned in paragraph 7 and the two lots on which it stands is worth about \$9,000.00, as is stated in paragraph 7 of the complaint, and aver that the said house and two lots is worth somewhere between \$4500.00 and \$5000.00, it having been purchased in the year 1917 for the sum of \$3700.00.

Defendants say that lot 516 is valued at about \$500.00.

3) Defendants say that as to the matters set forth in paragraph 8 they have no knowledge or information concerning same and therefore required complainants to prove same according to law, except that when the complainants signed said deeds they were fully advised by Mr. Cowley and by defendant that they were conveying all their right, title and interest to the house and two lots on

## Answer

which it stands to staid defendant Robert Von der Heyden.

Paragraph 9 is denied.

Paragraph 10 is admitted insofar as it states that the said Robert Von der Heyden was appointed administrator of the estate of Maria Von der Heyden and has not accounted therefor, but denies that he has ever been requested so to do, and avers that the arrangement of settlement made between complainants and said Robert Von der Heyden made it unnecessary for him to file such an account. 10

Paragraph 11 of the complaint is denied.

Paragraph 12 of the complaint is admitted.

Paragraph 13 of the complaint is denied.

Defendants further answering say:

Said defendant, Robert Von der Heyden said that he was married to Maria Thies in September, 1907. She was a widow with two children, Emil H. Thies, then 14 years and August F. Thies, then 12 years of age, the complainants in this case. 20

Said defendant, Robert Von der Heyden, says that the said Maria Thies was possessed of no real estate at the time of her marriage to defendant, had no income, no personal property except her wearing apparel, some household furniture of slight value and about \$300.00 in money, and defendant says that at the time of the death of his wife, Maria, the only articles of furniture left which were hers at the time of her marriage, was a bureau of slight value, an old fashioned wardrobe and some family portraits, and two diamond earrings, and defendant says that in the arrangement of settlement of said estate the said complainants each received a diamond earring which they 30

## Answer

converted into rings. This defendant retained the said articles of furniture which were of slight value, and the family portraits were taken by said complainants.

10 Said defendant, Robert Von der Heyden, says that in 1917, he and his said wife, Maria, sold the property situate on Dan Street, of the said City of Clifton, to the Magor Car Corporation, for the sum of \$6000.00. Said property consisted of the house, in which defendant and his wife and complainants lived, and five (5) lots. Title to said premises, with the exception of one (1) lot was in the name of this defendant and his wife, Maria, Title to the said one (1) lot was in the name of Maria Von der Heyden alone, or together with her son, Emil H. Thies. The said \$6000.00 realized, as hereinbefore stated was applied as follows: 20 \$3700.00 was used to purchase the house and two lots, being the first tract described in the bill of complaint, and \$350.00 was applied for the purchase of lot described as the second tract in the bill of complaint, \$800.00 was used to satisfy an encumbrance on the Dan Street Property, and the balance was deposited to the account of Maria Von der Heyden, this deponent's wife, in the Hobart Trust Co., of Passaic, New Jersey. Title to said premises was taken in the name of Maria Von der Heyden, and the bank account was placed in her name, because this defendant was then 30 owner of an automobile and had recently had a slight collision and wanted to protect said property and bank account in the event of any further accidents.

Defendant, Robert Von der Heyden, says that after his said wife's death he informed complain-

## Answer

ants that the property and bank account were in their mother's name, and told them the reason for it, stated as aforesaid.

Said Robert Von der Heyden further says that no representation was made as to the value of the property, because the said Emil H. Thies, complainant, well knew what it was worth, he having negotiated the sale to the said Maria Von der Heyden.

This defendant, said Robert Von der Heyden, further says that the said August F., and Emil H. Thies, were fully advised as to the amount of money in the bank and the only statement made in reference thereto was that Robert Von der Heyden said after paying \$1000.00, to the said August F. Thies there wouldn't be very much left. 10

Defendant, Robert Von der Heyden, further says that after the death of his said wife Maria, said premises were occupied by Emil H. Thies and his wife, who kept house, and defendant boarded with them and paid them \$10.00 a week for his board, furnished all the coal for said household and allowed them the use of the premises without rent, until this defendant remarried, January 26, 1921. From this last mentioned date said defendant and his wife, Josephine, Emil H. Thies and his wife, Irene, occupied said premises together. The household being managed by this defendant's wife, Josephine, and the said Irene Thies assisting in the household work. In February 1921, said Emil Thies got out of employment and from that time on he and his wife and child boarded with this defendant, but paid no board whatsoever, except the sum of \$10.00. The arrangement was that no board should be charged for Mrs. Thies, but Emil 20 30

## Answer

was to pay \$5.00 a week, which he failed to do and he left said premises April 30, 1921. The said August F. Thies boarded with his brother Emil on said premises until August, 1920, at which time he married. In October, 1920, the said August F. Thies borrowed from this deponent the sum of \$400.00 which he has never repaid, and which is now past due and owing with interest at six per cent.

- 10 Defendants say the said complainants never objected to the settlement that was made with them until the 5th day of April, 1921, when an argument arose over board money.

Defendants aver that the said Robert Von der Heyden never dominated complainants or exercised any influence over them after they reached their majority and that said settlement was fair and equitable in all its terms, and prays that said bill be dismissed with costs to defendants.

20

30

## Replication

(Filed December 20, 1921)

## IN CHANCERY OF NEW JERSEY

August F. Thies, and Emil H.  
Thies,

Complainants,

vs.

Robert Von der Heyden, and  
Josephine Von der Heyden,  
his wife,

Defendants.

On Bill

10

**REPLICATION**

Complainants August F. Thies and Emil H. Thies, join issue on the answer of the defendants, Robert Von der Heyden and Josephine Von der Heyden.

20

In reply to the further answer of defendants, Robert Von der Heyden and Josephine Von der Heyden, complainants, August F. Thies and Emil Thies, say that:

1. They admit the allegations contained in the first paragraph of defendants' answer.

2. They admit the allegations contained in the next or second paragraph, except the statements that the said Maria Thies had no personal property except her wearing apparel, some household furniture of slight value, and about three hundred dollars in money, and that at the time of the death of his wife Maria, the only articles of furniture left, which were hers at the time of her marriage, were a bureau of slight value, an old fashioned ward-

30

## Replication

robe and some family portraits; and also that the articles of furniture which were retained by defendant were of slight value.

3. They have no knowledge or information sufficient to form a belief as to the statements contained in the next or third paragraph, except that they heard that the property situated on Dan Street in the City of Clifton was sold to the Magor Car Corporation; and knew that it consisted of a  
10 house in which defendant and his wife and the complainants lived, and five lots.

4. They deny the allegations contained in the next or fourth paragraph.

5. They have no information or knowledge sufficient to form a belief as to why no representations were made as contained in the next or fifth paragraph, and they deny the rest of the allegations in said paragraph.

6. They deny all the allegations contained in  
20 the next or sixth paragraph.

7. They admit the allegations contained in the next or seventh paragraph.

8. They admit the allegations contained in the next or eighth paragraph.

9. They deny the allegation contained in the last or ninth paragraph.

John D. Craven,  
Solicitor.

## Order of Reference

## IN CHANCERY OF NEW JERSEY

---

August F. Thies, and Emil H.  
Thies,

Complainants,

vs.

Robert Von der Heyden and  
Josephine Von der Heyden,  
his wife,

Defendants.

On Bill

10

**ORDER OF REFERENCE**

It is on this 10th day of January, 1922, on motion of John D. Craven, solicitor of complainant,

Ordered that the above stated cause be referred to Hon. John Griffin, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

20

E. R. Walker,  
C.

I hereby consent to the entry of the above order.

Louis A. Cowley,

Solr. for Defendant.

30



## August Thies—direct

Q. And he died when? A. 1902.

Q. After his death you continued to live with your mother? A. Yes, sir.

Q. Who were the other members of your family, brothers and sisters? A. My brother Emil, and there was a little sister, Marie, who died very young.

Q. There were no brothers or sisters who died leaving any children? A. No, sir.

Q. So that you and your brother Emil were the only children of Emil Von der Heyden? A. Yes, sir; the only children. 10

Q. Did she subsequently re-marry? A. Yes, sir.

Q. With whom? A. Robert Von der Heyden.

Q. When? A. 1907,—the latter part of the year.

Q. Were any children born of that marriage? A. No, sir; none, at all. 20

Q. Did you continue to live with your mother and Mr. Von der Heyden after their marriage? A. Yes, sir.

Q. When did your mother die? A. June 5, 1919.

Q. Did she leave a will? A. Not that I know of, no, sir.

Q. (By the Vice Chancellor) Well, none has ever been probated? A. No.

Q. Letters of administration have been granted, have they? A. They have been granted, yes. 30

The Vice Chancellor—Well, that, I think, is not disputed, that letters of administration were granted to Mr. Von der Heyden?

## August Thies—direct

Mr. Herrmann—That is not disputed, no.

Q. (By Mr. Herrmann) After your mother's death were you then living at the house of your mother? A. Yes; I was living at the house of my mother at that time.

Q. How long did you continue to live there?

A. Until August, 1919.

Q. That was about two months after your mother died? A. Practically, yes.

Q. Did your brother Emil continue to live there? A. He continued to live there until he was put out.

Q. (By the Vice Chancellor) When was he put out? When was Emil put out, do you know? A. He was ordered out by June, 1920—no, he was ordered out by the 1st of May, 1920.

Q. Did he leave then? A. He left, yes, on order.

20 Q. (By Mr. Herrmann): Now, after the death of the mother did you have any conversation with Mr. Von der Heyden with reference to your share of your mother's estate? A. No; we never had any talk about what our share should be; no, none, at all.

Q. Well, now, what talk did you have? A. The only talk that we did have is, one time at the supper-table, there was my brother, Emil, and his wife Irene, and father and I sitting at the supper-table; I had been back from the service about three weeks; and not having paid any board in those three weeks, or paying any money into the house, I thought it was about time I did pay something.

30 Q. How long had you been in the service? A.

## August Thies—direct

I had been in the service probably three and a half years.

Q. And during those three and a half years you did not reside at the house? A. No.

Q. So when you returned and had lived there three weeks, without paying anything, what did you say? A. I says to my father "Well, Pop, we will have to straighten this up some way, as I am living here and not paying any money," and I says (I will use the words I used then) "Suppose we all chip in and create a fund and let Emil take care of the books; he is used to keeping papers; and we will pay all the bills out of that, and if we are short we will make up the difference, and if there is anything left we will keep it as a fund." Right at that time Irene got up and went out to wash the dishes, and started to clear off the dishes; and Emil went out in the kitchen and started to work.

Q. They left you and Mr. Von der Heyden together? A. Entirely alone, yes. So he sat there talking a while, and then he says, "No, you get a thousand dollars; Emil will get a lot and the money in the bank" (that is the way he said it) "after we pay the bills and clear up all the expenses." "Well" I says, "all right, Pop; you know what you are doing, and you will do the right thing by me," and that was all. I got up and went out.

Q. Now, then, what next happened? A. The next thing, toward the end of July I came home from work one night—

The Vice Chancellor—What year?

## August Thies—direct

A. 1919—all in the same year of the death—I came home from work, and my father says, “We will go down to Lawyer Cowley to-night.” I says, “All right.”

Q. Then what happened? A. We went down to the lawyer—my brother Emil, and Irene his wife, and Mr. Von der Heyden and myself, went into Lawyer Cowley’s office and sat down, and Mr. Cowley had a number of papers in front of  
10 him, and he began to read; he read on, and after he read through the papers he said something about “personal property”—well, I was in doubt about exactly what “personal property” was—I was thinking of rings and clothing—and my brother looked at me, and then my father and Mr. Cowley said something about “jewelry”, and Mr. Von der Heyden then spoke up and said “One hundred dollars would cover it.” I said, “Oh, easy”  
20 —I was thinking of the jewelry and clothing. Then the next thing, Mr. Cowley says (he had a lot of papers in front of him) “You sign your name here and here”—I don’t know just how many times I signed my name, but I signed wherever he told me to sign; and I was through, and waiting for the others to get through, too, and right after that we went out and went home.

Mr. Herrmann—I call for the production of the deed. (And the same is produced by Mr. Cowley, and exhibited by examining  
30 counsel to the witness.)

Q. That is your signature, is it? A. Yes, that is my signature.

Q. And that is one of the papers you signed

## August Thies—direct

at the office that day? A. It must be; that is my name there.

Mr. Herrmann—Without formal proof, this is admitted by the answer, so I would like to offer it in evidence (referring to the deed just identified by the witness).

Mr. Cowley—Certainly.

(Deed admitted in evidence and marked Exhibit C-1.)

10

Q. I show you another paper and ask you if that is your signature? A. Yes, that is my signature?

Q. And is that another of the papers that you signed at the office that night? A. It must be.

Mr. Herrmann—Without formal proof, you will admit that?

Mr. Cowley—Yes.

20

(The paper was thereupon admitted in evidence and marked Exhibit C-2.)

Q. Now, then, Mr. Thies, did you know that when your mother died she died seized of the real estate described in these deeds? A. No; I suppose what you mean by “died seized of the real estate—

Q. (Interrupting): That it was in her name? A. No; I did not know that, at all.

30

Q. Did you know, at the time you signed the deeds, that, under the law, your mother having died intestate, you and your brother inherited the property subject to your father’s curtesy right, if any? A. No, sir; I did not know that.

August Thies—direct

The Vice Chancellor—He has no curtesy right; there were no children born.

Mr. Herrmann—No curtesy right, no; that is so; I will take that out.

Q. Did your father ever explain to you that, by law, you and your brother were the owners of this property? A. No, sir; he did not.

10 The Vice Chancellor—That is, the real estate.

Mr. Herrmann—The real estate.

Q. Did your father give you a thousand dollars? A. He did give me a thousand dollars.

Q. What did you think you were receiving the thousand dollars for? A. Why, I thought I was getting a fair share of the estate; I trusted that he would give me all that was coming to me; I left everything up to him, and he gave me a thousand dollars, which I really believed was all I was to get.

Q. Your father qualified as administrator of the personal estate of your mother? A. “Qualified?” You mean, did he settle up the personal property?

Q. Yes. A. No, I never heard anything about “personal property,” only the one hundred dollars.

30

The Vice Chancellor—Well, he was appointed administrator, was he?

Mr. Herrmann—That is admitted by the answer, that he was appointed.

## August Thies—cross

Q. And that personal estate has not been settled up? A. No, it has not.

Cross Examination by Mr. Cowley:

Q. How old were you at the time you were in my office? A. 24 years old.

Q. 24? A. Yes.

Q. Had you ever bought property before? A. Yes, I did.

Q. Had you ever sold any? A. No, I haven't sold; I haven't owned any to sell. 10

Q. Didn't you know, at the time you signed the deed to your brother Emil, that you were conveying all your right, title and interest in that lot to your brother Emil? A. I didn't really understand what I was conveying, or anything.

Q. In this deed to Emil didn't you know that you were conveying a lot upon Orono Street to him? A. No; I didn't understand I was conveying him any lot; I understood my father was giving him a lot. 20

Q. But you signed it? A. I might have signed it, yes.

Q. And you were not informed that you were conveying real estate to him, at the time? A. No; I was not informed that I was conveying any real estate to him, no.

Q. You were not? A. No.

Q. And you did not know what you signed? A. No; I must admit I did not know what I signed. 30

Q. Even when you signed it to Emil? A. When I signed it to Emil I didn't know what I did sign.

Q. How long after did you find out—when you conveyed this property to Emil, how long after

did you know what you had signed? A. Why, I didn't know what I had signed until there was a time my brother and my father had an argument, and I was called up to the house; then I came and found out what I had signed, because, when I came in the room my brother had some deeds there which told me what happened.

Q. Well, now, after this deed was returned from record didn't you ever see it in possession  
10 of your brother Emil? A. No. I never seen any of Emil's papers, or my father's papers.

Q. Do you know, as a fact, that this deed has always been in the possession of Emil? A. Of Emil?

Q. Yes. A. Why, I don't know; I couldn't say whether it was, or wasn't; I wouldn't know.

Q. You say that in this deed from you and Emil and Emil's wife you were not informed that you were conveying the real estate to your father?

20 A. No.

Q. You were not? A. No, I was not.

Q. What did you suppose you were doing when you signed this deed? A. Why, I supposed we were settling up—this is what my father said: "You are going to get a thousand dollars, Emil is going to get a lot and the money that is left in bank."

Q. How did your father come to state the particular sum of a thousand dollars to you, and Emil a lot—how was that arrived at? A. As I said  
30 before, I was not paying as a boarder, I was not giving any money to keep myself, in the first place, and I did want to make some arrangement whereby I would pay board, at least; so, as I said, I offered that we would all chip in, and my brother

## August Thies—cross

would keep the books, and we would pay all the bills out of the fund, and if we were short we would make it up; and, as I said before, Irene and Emil left, and my father says "No," he says (he just started abruptly, like that) and he says, "No; you get a thousand dollars, Emil will get a lot and the money that is left in the bank.

Q. Emil would get a lot and the money that was left in the bank? A. Yes, "the money that is left in the bank"—that is what he said to me. 10

Q. Didn't you have a general discussion about what your mother left? A. No; I knew absolutely nothing that my mother left; I did not know what personal property my mother left until Mr. Craven told me what she left.

Q. Or what real estate she left? A. I didn't know that she had left any, at the time; I know now. At the time I did not know who owned the real estate; I was not in a position to know, because I was away from home three and a half years, and when I left home we were living in Dan Street, and while I was in the Service this new place was bought, and they were pretty well settled when I came home—that is from 1917, when the place was bought, until 1919, when I came home; and my mother was on her deathbed when I did get home. 20

Q. So you say there was no discussion about your mother's estate, excepting that you suggested paying board, and that your father then said "No, you will get a thousand dollars and Emil will get a lot and the money that remains in the bank?" A. Yes. 30

Q. That is all? A. That is all that was spoken to me about the whole estate.

## August Thies—cross

Q. And wasn't there any discussion about your going down to my office to sign papers? A. No; I just came home, and I was told that we would go down to Lawyer Cowley's tonight, and I says, "All right," and after supper we did get in the auto and went down.

Q. Weren't you told that the house on Orono Street, where your stepfather had lived, was in your mother's name? A. No; I didn't know who  
10 owned the house.

Q. And you did not inquire? A. I didn't inquire, no; I had no reason to look up anything; I trusted my father; we got along fine; we were like two buddies; we could go out together and have a good time together, out in the car, and enjoy ourselves fine; and when he said what I was to get I thought, "Well, I guess that is all I am getting; Pop is all right."

Q. Didn't he tell you that your mother, before she died, expressed the wish that you should  
20 receive a thousand dollars, and that Emil should receive a lot? A. No.

Q. You married when—in 1920? A. In August.

Q. 1919? A. 1919, in August.

Q. Your mother died in June, 1919? A. June, 1919.

Q. You married in August, 1919? A. Yes.

Q. And then you left the home? A. Yes,—the first week in August.

Q. And, in the Fall of 1919, you borrowed four  
30 hundred dollars from your father? A. Yes.

Q. Have you ever paid it back? A. No; that was a business dead; I borrowed \$400 at 6%.

Q. Have you paid the interest on it? A. No, I haven't paid anything.

## August Thies—cross

Q. Where did you live since August, 1919? A. I boarded in Passaic until February, and after that I lived at my present address, 431 East Twenty-first Street.

Q. Where were you in May of 1920? A. May, 1920?

Q. At the time you were called to come up to Emil's house? A. Oh, at 431 E. Twenty-first Street, in Brooklyn.

Q. Oh, you were living in Brooklyn then? A. Yes. 10

Q. Then you came, in response to Emil's call, to the house on Orono Street? A. Yes, I was working in Passaic at the time; I was called from my work.

Q. You say that was in 1920? A. 1921.

Q. 1921? A. I might be mixed up with these dates a little.

Q. As a matter of fact, you stayed in the house up there a year and about two months after your mother died, didn't you? A. No. 20

Q. You left two months after your mother died? A. I was married in August, and—wait now, I will get this straight—I came home in 1919, and I was married August 4, 1920.

Q. And up to a short time before your marriage, and, as matter of fact, up to just immediately after your marriage, you lived at this same house, didn't you? A. Yes, yes; that is right.

Q. And then you never lived at the house since then—after your marriage you went and kept house for yourself? A. Yes. 30

Q. In 1921 you called at the house, and what happened then? A. That was the time my brother had this argument with my father. I came in the kitchen, and Emil and Irene and my father

## August Thies—cross

and Mrs. Von der Heyden were all in the kitchen, and I came in, and my brother was sitting there, and he says "What did my father say about settling up this thing?" "What was I to get?" "Why," I told him, "my father said 'I am going to give you a thousand dollars, and Emil will get a lot and the money that is left in the bank.'" Shall I keep on?

Q. Yes, tell the whole story? A. Then Emil  
10 says "Why dcn't you give me what is coming to me?" and then he handed me a paper; he was standing there with some papers in his hand; and he said "Here,—the property was my mother's; there is the deeds to it."

Q. Who said that? A. Emil.

Q. He said what? A. He said "The property  
20 was my mother's; there is the deeds to it." He showed me the deeds that were made when we bought the property, or when they bought the property; and he had them in his hands there; and he said "This is my mother's property." I said, "My mother's?" He said, "Yes." Well, I don't remember just what we did say. I says, "Why, we didn't get nothing out of this"; I says, "you do the right thing by Emil and by me, or I will see a lawyer," and, well, I suppose there was some more talk, a lot of small talk, and I took the papers and I left.

By the Vice Chancellor:

30 Q. What papers? A. Them old deeds for the time my mother bought the property; and I also took Emil's deed; in fact, I took practically all the legal papers, my brother Emil's, and those pertaining to this case.

## August Thies—cross

By Mr. Cowley:

Q. Didn't you say, at that meeting, that you were satisfied with what you received, but you did not think that Emil got a square deal? A. Yes; I said that afterwards; that is one of the other things; I didn't say I "was satisfied," I said, all of a sudden, "How is it I got a thousand dollars and Emil only gets a lot?" I said, "I suppose you thought, at that time, that Emil was a poor slob" (as I said) "and you would have to give me more?" 10  
 so I says "Why don't you do the right thing by Emil, after all Emil has done around this place? Do you mean to say he got enough by getting a lot—a lot that was bought for practically nothing at the time—and I got a thousand dollars?" I says, "We are not satisfied; you do the right thing by Emil; and, yes, I want more, too; I didn't know that was my mother's estate."

Q. You did not know even them? A. I didn't know then; that is why I demanded what I wanted. 20

Q. But you said then **you** were satisfied, and you wanted him to do the right thing by Emil?

A. No, I did not say I was satisfied.

Q. Didn't you notice the discrepancy between what you got and what Emil got, at the time you got it? A. Well, Emil was to get a lot and the money that was left in the bank; I didn't know what money he got that was left in the bank; I didn't know whether it was one dollar or five thousand; in fact, I didn't know if Emil got the lot, really. 30

Q. You used a little more heated words at that time, didn't you? A. Oh, I was mad; why shouldn't I be?

## August Thies—cross-redirect

Q. You told your father then that if he did not do the right thing by you, you would go to Weinberger & Weinberger? A. I don't know whether I mentioned any particular lawyer.

Q. And you told him if you did not succeed there that you would kill him? A. I did not say I would kill him.

Q. And didn't you tell him he "would not be the first Dutchman you had killed"? A. No; I might have said "I have killed men before." I was referring to my Army days.

Q. Now, what did you do then in regard to this matter, between April or May of 1921 and November or December of the same year? A. I went to a lawyer, stated the case, and he advised me what to do; and got in touch with Mr. Craven, and he started proceedings.

Q. So you did not take any action for six months after that? A. Oh, well, I don't know just how long it was; but first I seen a New York lawyer, and he handled the case for quite a few months; he was rather slow, to my estimation; and after he had things so he had them together he referred me to Mr. Craven. It was a long-winded affair. I was trying to push them; but, seemingly, you cannot push the law, or lawyers.

## Re-direct Examination by Mr. Herrmann:

Q. At this row that you had, when Emil handed you some papers, that you found, are these the papers that you refer to (showing the witness two papers)? A. (After examining the papers) Yes; them are the two.

Q. And you also saw, at that time, this deed to Emil for the lot? A. Yes; that is one of the

**August Thies—redirect**

papers that Emil handed to me at the time I came up to the house.

The Vice Chancellor—The witness refers to what exhibits now?

Mr. Herrmann—Exhibit C-2.

Q. And you say that that was the first time that you knew that your mother died seized of this real estate, or that it was in her name? A. 10  
That is the first time.

Mr. Herrmann—I offer in evidence the two deeds identified by the witness, one made by the Realty Estates of Passaic to Maria Von der Heyden, dated June 28, 1917; the other, from Arthur Axt and wife to Maria Von der Heyden, dated September 21, 1917. (Admitted without objection, and marked Exhibits C-3 and C-4 respectively.) 20

Q. You say you were very angry at this time—why were you angry? A. Yes, sir, I was.

Q. Why? A. Why, I seen that I was defrauded. My brother says “There, there is the property that is on my mother’s name,” and there, like a fool, I trusted him; I let him do everything his own way; he gave me just what he seen fit to give me, and I didn’t take the trouble to ask anybody if I had any rights, or who owned the thing; I never asked was there a will, or anything, at all about it; and then, all of a sudden, I find out that this thing was owned by my mother, and I did not get anywheres near what I should have gotten. 30

Q. When did you go to the lawyer after that—how soon? A. Well, inside of two weeks.

## Emil Thies—direct

EMIL THIES, sworn.

Direct Examination by Mr. Herrmann:

Q. Where do you live? A. 277 Summer Street, Passaic, N. J.

Q. How old are you? A. I will be thirty this month.

Q. You are a son of Maria Von der Heyden?  
A. Yes, sir.

10 Q. And a brother of the last witness? A. Yes, sir.

Q. After your father's death did you continue to live with your mother? A. Yes, sir.

Q. When was your mother married to Mr. Von der Heyden? A. In September, 1907.

Q. When did your mother die? A. June 5th, 1919.

20 Q. At the time of your mother's death were you married? A. Yes, sir.

Q. Were you then living with her? A. Yes, sir.

Q. And Mr. Von der Heyden? A. Yes, sir.

Q. After your mother's death did you continue to live there? A. Yes, sir.

Q. Did you have any talk with Mr. Von der Heyden with reference to your interest in your mother's estate? A. No; only as explained by my brother, at the time the arrangements were made. I got up and walked out.

30 Q. So you did not hear what arrangements were made? A. No; I didn't know what arrangements were made; in fact, I didn't really know anything about them until my brother told me that he got a thousand dollars and I got a lot; and my wife told me that my father said "Oh, give

**Emil Thies—direct**

Emil two hundred and fifty dollars, and call it square." He came out and told my wife that.

Q. Who did—Mr. Von der Heyden? A. Mr. Von der Heyden, yes, sir.

Q. When was this said? A. Well, this was right after he gave my brother the thousand dollars.

Q. Did he ever give you the two hundred and fifty dollars? A. No, sir.

Q. Now, then, you were present and signed this deed, did you, at Mr. Cowley's office (showing the witness Exhibit C-1)? A. That is my signature, yes, sir. 10

Q. Was your wife present with you? A. Yes.

Q. How did you happen to go to Mr. Cowley's office that night? A. Well, in the Mill my father says to me, "To-night we will go down to Mr. Cowley, and we will sign the papers." I said, "All right, Pop, we will go down." 20

By the Vice Chancellor:

Q. You worked in the Mill with your father? A. I worked in the Mill with my father; yes, sir.

By Mr. Herrmann:

Q. And you and your wife and father and brother went down to Mr. Cowley's office? A. Yes.

Q. At that time did you know that your mother was the owner of property when she died? A. No, sir; I didn't know that she was the owner. 30

Q. Did your father ever explain to you that your mother was the owner of this property? A. Never explained to me. The only thing I know

## Emil Thies—direct

was the few words my brother said when he said "How about the board? I will pay the board, and let Emil keep the books; and if there is anything over, or anything more needed we will chip in and make up the balance"; and I got up and walked out.

Q. So you did not know what arrangement had been made? A. I really didn't know what arrangement had been made; I left everything in trust to my father, that he would do the right thing.

Q. How long did you continue to live at the house after that, with your father? A. Up until I was ordered out of the house.

Q. When was that? A. May 1st, 1921.

Q. '21? A. '21, yes.

Q. Now, then just what led up to that, and what happened? A. Well, you see, we worked in the Mill together, and the Mill closed down in January; well, I had no work, neither did my father; we were all laid off; so I painted a house next door, and I got sixty dollars; and arrangements were never made with me to pay board; it was made with my wife and his wife, if I remember correctly, or with Mr. Von der Heyden and my wife, that I was to pay five dollars, now that he was married, and that she would not have to pay because she would do the work and take care of the house.

Q. When was Mr. Von der Heyden married, after your mother's death? A. In the latter part of January, in 1921. So, well, I worked and I finished this work over here, and I got sixty dollars; and so, as my wife told me I was going to pay five dollars a week, I gave thirty dollars to my

**Emil Thies—direct**

wife to give to his wife; so right at the time she refused it, and she said "Where is your wife's?" meaning where was my wife's board and the baby's board. Well, my wife didn't know what to say. She would not take it; so when I came home that evening she told me; so I couldn't get him—he went up in his room—and in the morning I couldn't get him, either, because he slept until I went out; I was doing a little work. So I got home at noon-time, and I asked him, I said, "Say, Pop, what is all this?" He wouldn't answer. I says, "What is the matter; aren't you satisfied?" No answer. And one thing led on to another; I couldn't get head or tail out of the whole thing, so I got real mad, and I said "I suppose you want me out of here"—because I couldn't see them, both of them would stay in their room until I went out in the morning, and be grumbling at everything I put in my mouth, and so forth. So I said, "What do you want me to do—get out? If you do, give me what is coming to me." 10 20

Q. What did you mean by that—the two hundred and fifty dollars that he had promised you?

A. Yes, that he said that that "would be square." Well, I thought that that was my fair share of the property—and the lot; that is what I thought I was entitled to.

Q. What did he say when you asked for the two hundred and fifty dollars? A. He said "I have got nothing to give." With that, I said to my wife to call up my brother, August. 30

Q. What was your purpose in calling him? A. Because of I not knowing the arrangement made, and not being exactly sure about the arrangements made, I called my brother up to ask him. While

## Emil Thies—direct

my wife was at the 'phone I went in the drawer and got all the papers, where we kept our deeds, and I grabbed up some of the papers, and as I looked down I seen in one of the deeds "Maria Von der Heyden."

Q. How many deeds did you get, do you know?

A. Well, I don't remember how many deeds, but it was a bunch of papers.

Q. I show you two papers, marked C-3 and C-4,  
10 respectively, and ask you if those are papers that you saw? A. This is one I saw (referring to C-4), but that I really saw was this "Arthur Axt to Maria Von der Heyden." When I saw that I said nothing; I waited until my brother came up.

By the Vice Chancellor:

Q. He is asking you, Is that one of the deeds that you found—C-4? A. I am not sure of this  
20 one.

Mr. Herrmann—He is not sure of C-3, but he is sure of C-4.

The Witness—C-4 is the one that led me to go on further, because, on the strength of this, I thought "Why, it is all on my mother's name!" I said, "Why, I ought to get more." So my brother came up, and I said to him, "What were the arrangements that were made at the supper-table that time?" and he repeated that he was  
30 to geth a thousand dollars and I would get at lot and the money that was left in the bank. "Well," I says, "there you are." Well, my brother said, as he stated here, and explained to him, "Do you think this

## Emil Thies—direct

is the right thing you done by him—just giving him a lot and giving me a thousand dollars?" He said, "No." My father was crying at the time, too. "Well," I said, "Here, August, here is the deeds"; I said "See, this one is marked 'Maria Von der Heyden.'" I said "Take this down to the lawyer," and I mentioned Lawyer Cowley, because he was our family lawyer; I said "to take it down to him and see that they are all in my mother's name, and find out what is what." 10

Q. Now, then, until that time did you know that this property was in your mother's name?

A. Not until I got the papers, at the time of the argument, in my hands; because the real feeling between myself and my father and the family was all right; we trusted him; what was the use of going through all the— 20

Q. (Interrupting) You were in the service, were you? A. Yes, sir.

Q. For how long? A. For nineteen months.

Q. And when did you return from the service?

A. In May, 1919.

Q. Just before your mother's death? A. Yes, just before my mother's death.

Q. So you were home but a few weeks when she died? A. Two weeks before my mother died. 30

Cross Examination by Mr. Cowley:

Q. You are familiar with real estate transactions, Mr. Thies? A. Some of them, not all of them—as far as buying a lot and so forth; that is all.

## Emil Thies—cross

Q. You knew, when you signed this paper in my office you signed a deed? A. I didn't know that I signed a deed, no; I just, as my brother said, and as the arrangements, from what I understood, were made, that we were to sign the papers, and my father was to take care of us, that he would do the right thing by us.

Q. What paper did you think you were signing? A. Well, to settle up the estate.

10 Q. What settlement did you have in view—what did you think was the settlement? A. I didn't have no settlement; the arrangements were made between my brother and father.

Q. And you did not know what you were signing? A. I didn't know what I was signing; I left everything to my brother; I put my trust and my faith in my father.

Q. Didn't you know you were getting a deed for a lot? A. Well, I knew that, yes; but where 20 it came from I didn't know; I didn't question it.

Q. Don't you know that August signed it? A. I remember August signed it, and I remember my wife signed it.

Q. No, your wife signed the deed to your father. Didn't you know you were transferring that property to your father, Robert Von der Heyden? A. Well, we were transferring it; we signed it, transferring the property to my father, yes; but that he would take care of us; we trusted him.

30 Q. You knew the house he lived in at the time you lived in yourself? A. I lived in it, yes; but I didn't know that it was in my mother's name.

Q. You did not? A. I did not.

Q. Did you know Mr. Axt, the man that sold the house? A. I know Mr. Axt, yes.

**Emil Thies—cross**

Q. At the time that sale was made you had been employed in the Equitable Life Insurance Company? A. Yes, sir.

Q. How long had you been in their employ?

A. From April, 1907, to November 15, 1917.

Q. What was your position? A. Well, from office boy right up to assistant head of the forwarding desk.

Q. You are familiar with writings? A. Yes.

Q. And you can read very well? A. I can read, yes. 10

Q. And you have enough business experience to know that when you sign your name you ought to know what kind of paper you are signing? A. Well, as I said, I trusted you and my father, that you would do the same thing.

Q. Do you mean to say there was any discussion on my part, so far as to your signing that deed? A. Well, no; but now I found out that that should have been explained to us, all about it; if it had been it wouldn't have happened. 20

Q. Do you mean to say I did not explain to you that you were conveying all your property there, all your right, title and interest in those two lots, to your father? A. No; you did not.

Q. And you did not inquire? A. I did not inquire, no.

Q. The deed made to you, how was that returned to you—did I mail it to you, or did you call and get it—when the deed came back from record? A. I don't remember; I remember I was down there one time—whether that was for my deed, or for the deed for the father, I don't remember which it was. 30

Q. Well, do you think it might have been for

## Emil Thies—cross

both? A. Well, I have an idea it was. We both came back together.

Q. And that both of these deeds were delivered to you? A. To me?

Q. Yes. A. No, not to me.

Q. Well, you said you were down for them? A. Well, I went down with my father; because I didn't pay your bills.

Q. I mean, if you went down for your father  
10 the deeds were delivered to you? A. If I went down for my father the deeds was delivered to me, yes, sure; but I am sure he went with me.

Q. You had bought property in 1916 up there? A. My mother bought the property for me.

Q. But you had taken a lot in your own name?

A. In 1916, on Van Houten Avenue, yes.

Q. And you bought property in 1917? A. 1917,—alongside of the house.

Q. And you bought property in 1918, didn't  
20 you? A. 1918? No.

Q. In all, during or since the year 1916, how many real estate transactions have you had up there, in the vicinity of this house? A. Well, the one on Van Houton Avenue, and the one alongside of the house—two, that is all.

Q. You formerly took the deed in your and your mother's name, didn't you? A. Yes.

Q. And then you came to my office and transferred that property to your mother? A. To my mother.

30 Q. You knew at that time what you were transferring? A. Well, it was the same kind of case as this now; I left everything to my mother.

Q. You mean to say I did not explain to you

**Emil Thies—cross**

that you were transferring the property to your mother? A. You did not, at that time.

Q. I did not? A. No, sir.

Q. Didn't you know that it was necessary, because in the first deed to you your mother was described as your "wife"? A. As my wife?

Q. Didn't you know that it was made necessary, because in the deed to you and your mother, originally made, your mother was mistakenly described as your "wife"? A. I don't remember that, no. 10

Q. You have since sold, in the year 1919, properties up there to the Board of Education of the City of Clifton? A. Yes.

Q. You knew what you were signing then? A. Well, that deed there, yes.

Q. Here is a copy of Deed dated March 20, 1916, Passaic Investment Company to Emil Thies and Marie Thies, his wife—that was intended to be you and your mother, wasn't it? A. Yes. 20

Q. And later you conveyed that property to your mother? A. To my mother.

Q. You knew what you were signing then? A. Well, my mother took care of it, and I left it to her.

Q. Well, you were familiar with the transaction? A. I was not at that time.

Q. You were familiar with the form of a deed when you saw it? A. Well, I wouldn't know the difference between one paper and another; I didn't at that time. 30

Q. Now, this property that your mother and stepfather occupied at the time of your mother's

**Emil Thies—cross**

death, was purchased from Harry Axt, wasn't it?

A. Axt, yes.

Q. You used to commute to New York with Mr. Axt? A. Yes.

Q. You negotiated that deal, didn't you? A. Well, he spoke to me, and I knew it was for sale, and I went to my mother and told her "There is a nice house," and I went up and looked at it, and from then I had nothing to do with it.

10 Q. But you were practically the intermediary—you fixed the price? A. I did not fix the price; I said, "Mr. Axt, what do you want for the property?" He said, "So much," and my mother dealt with him after that; it was taken out of my hands.

Q. Now, prior to your father and mother coming to live on Orono Street, where did they live?

A. On Dan Street.

20 Q. At the time they lived in Dan Street did they have an automobile? A. Yes.

Q. Your father had a little accident at that time, hadn't he? A. Yes.

Q. There was a suit in the Passaic District Court? A. Yes.

Q. You are familiar with that? A. Well, I don't know only what I heard from my mother or father at that time.

30 Q. Well, you know that it was because of that experience in that suit that the property on Orono Street was taken in your mother's name?

Mr. Herrmann—I object, if the Court please.

## Emil Thies—cross

A. I do not.

The Vice Chancellor (To Mr. Cowley)  
What are you going to try now—the question of the right of the father in this property of the wife, where he made a gift of it to the wife?

Mr. Cowley—Well, we are not going to say it was a gift to the wife.

The Vice Chancellor—Why, there is the deed, of record, and your own statement of the thing—that he put the property out of his name to defeat creditors. 10

Mr. Cowley—Oh, no, your Honor; I do not say that.

The Vice Chancellor—Well, there was a suit.

Mr. Cowley—No, the suit came afterwards; it was not done at the time; it was not put in his wife's name then. The circumstances were that before he owned this property he had had that experience, and then, acting with ordinary prudence to protect the home, in case of any future accident—not to defeat any existing creditor, but in order to protect their home from the result of any future accident—they put it in the wife's name. 20

The Vice Chancellor—Well, that was a gift.

Mr. Cowley—Well, it may be construed as a gift. 30

The Vice Chancellor—I will sustain the objection.

**Emil Thies—cross**

Q. Now, at the time that this transfer was made you were twenty-four years old?

The Vice Chancellor—Which transfer?

Q. At the time you went, or came to my office?

A. Twenty-six.

Q. Twenty-six years old? A. Yes.

10 The Vice Chancellor—Twenty-five.  
The Witness—Well, twenty-five.

Q. And you were married? A. Yes.

Q. And you had one child? A. No—which transfer do you mean—to my mother, at the time we bought it from Axt?

Q. No, at the time you came to my office? A. Oh, yes, yes.

20 By the Vice Chancellor:

Q. Did you have a child then? A. Yes, sir.

By Mr. Cowley:

Q. Now, after that, what arrangement was made between you and your wife and your step-father? A. Well, the arrangements were then that they were to pay board—that is, my father and my brother—and I and my wife were to take care of the house.

30 Q. How much was your father to pay? A. Well, at the time there I didn't really know; the arrangements were not made with me, they were

## Emil Thies—cross

made with my wife. They said "We will pay board." So my brother gave in the first week, I believe, fifteen dollars; and my father came along and I said "How much will it cost me,—fifteen?" "We will only take ten." So my wife took it for granted that is what they wanted us to pay, ten dollars a week.

Q. And you gave him ten dollars a week until he remarried? A. Until he remarried; yes, sir.

Q. And he also bought the coal? A. The coal, 10  
yes.

Q. And he did not charge you any rent? A.  
No.

Q. Now, that arrangement continued up until he remarried—until January, 1921? A. Yes.

Q. Then what arrangement was made? A. I don't know the arrangement that was made between my wife and him; as I said before, five dollars a week I was to pay.

Q. Five dollars a week was to be paid by you? 20  
A. By me.

Q. And your wife was not to pay anything?  
A. Was not to pay, because she was doing the work.

Q. She was assisting the new Mrs. Von der Heyden? A. She was doing the work; she was not assisting her.

Q. And she was not to pay anything? A. She was not to pay.

30

Mr. Herrmann—I have not objected to this line of cross-examination, unless it is to be considered as a part of the arrangement or consideration for this settlement.

**Emil Thies—cross-redirect**

The Vice Chancellor—I do not see how it is material.

Mr. Herrmann—It is not material, so far as I can see; the witness has stated it all before, though; it is just repetition; I think it came out in direct examination.

10 Q. Now, when did you first learn that it was a deed transferring all your right, title and interest in the property to your father? A. When I saw this deed here.

Q. And that was the date that the quarrel took place? A. The day the quarrel took place; yes, sir.

Q. And that was in March or April, 1921? A. The beginning of April.

Q. 1921? A. 1921.

Re-direct Examination by Mr. Herrmann:

20 Q. How long were you at Mr. Cowley's office this night the settlement took place? A. Why, I should say, about two minutes—not more than five minutes. We came in, and he read some papers, and something was said about "personal estate," and my brother looked at me, and I looked at my brother—I didn't know what "personal estate" meant—so my father or Mr. Cowley said something about "jewelry and clothes," and I did not then understand it. My father says "One hundred dollars; that is all right." That is what I  
30 remember. And then he said "Sign here, and here and here," and we went out.

Q. You said Mr. Cowley had always been your family attorney? A. Yes, sir.

Q. Did you pay Mr. Cowley for his services in

**Emil Thies—redirect-recross**

this settlement? A. No, sir; I didn't have no money when I came out of the Army; I was not working at that time.

Q. Did you receive any bill from Mr. Cowley for any services? A. No, I believe he added it all on the estate—that is, in the bill to my father.

Re-cross Examination by Mr. Cowley:

Q. What was the one hundred dollar reference? A. To personal property. You made a question about personal property, and I looked at my brother, and my brother looked at me, I had no idea what "personal property" was; I had an idea it was "Jewelry and clothes"; and we didn't have time to think or discuss any more. My father says "One hundred dollars was all right," and that is what I thought "personal property" was at that time,—that one hundred dollars would cover it. 10

Q. Was there anything said by your father to you that it was your mother's wish that your brother should receive a thousand dollars? A. No, sir; I did not know anything about the arrangement; as I said, I got up and walked out. 20

By the Vice Chancellor:

Q. I notice, on the margin of Exhibits C-1 and C-2, the words "Consideration less than \$100, L. A. C.," were those words on the deeds when you signed them? A. They were put on at that time. 30

Q. They were put on at the time you signed them? A. Yes, sir.

Q. Did you read over what was written there? A. Well, I know that, because my father says

## Emil Thies—recross

“One hundred dollars,” and Mr. Cowley wrote it down.

Q. And that was the time the deed was signed and before delivery, or at the time of the signing of the deed? A. Yes, sir.

The Vice Chancellor—I suppose that is for the purpose of explaining the situation, on account of the Stamp Tax, is it not?

10 Mr. Herrmann—I don't know what the purpose was.

The Vice Chancellor—Well, I think it is quite apparent. I have not read the Act, but I assume that was intended to show that the transfer was not subject to the Stamp Tax Act, that no stamps were required.

Mr. Cowley—Well, there was a settlement made between themselves; they were restoring really to this party—

20 The Vice Chancellor—No, you are missing what I am talking about.

Mr. Cowley—To avoid the tax, yes.

The Vice Chancellor—There is no tax assessment unless it is over \$100.

Mr. Cowley—Over one hundred dollars.

The Vice Chancellor—Then that indicated that the consideration for that transfer—for each of these transfers—was less than One hundred dollars.

30 Mr. Cowley—Well, yes; it was not really a bargain and sale deed, it was a restoration of ownership.

The Vice Chancellor—But, in the deed to Mr. Von der Heyden it was recited or stated

## Irene Thies—direct

there to indicate that the consideration paid was less than one hundred dollars?

Mr. Cowley—Yes, sir.

MRS. IRENE THIES, sworn.

Direct Examination by Mr. Herrmann:

Q. You are the wife of the last witness, Emil Thies? A. Yes. 10

Q. When were you married? A. In June, 1917.

Q. And you lived with him at the home of his mother until her death? A. Yes, sir.

Q. While he was abroad in the service did you live there alone with the mother? A. Yes, sir.

Q. And his return was how long before the mother's death? A. Why, two weeks before she died.

Q. After her death were you present at a conversation between Mr. Von der Heyden and Mr. Emil and Mr. August? A. No, sir; I was not, being as I was in the kitchen, washing dishes. 20

Q. And you did not hear that? A. No, sir.

Q. Were you present at the time the row occurred between Mr. Von der Heyden and your husband? A. Yes, sir.

Q. Just tell us, briefly, what happened then, with reference to these deeds, without going over the whole trouble? A. To the deeds? 30

Q. Yes—did you see your husband find the deeds? A. No, I did not, being as I went out to call up my brother-in-law.

Q. (Showing the witness a paper) Is this your

## Irene Thies—direct-cross

signature to this paper, Exhibit C-1? A. Yes, sir.

Q. "Irene Thies"? A. Yes.

Q. Did you sign that? A. Yes, sir.

Q. Where was that signed? A. In Mr. Cowley's office, in Passaic.

Q. How did you happen to go there? A. I went there being as my husband told me to go down to Cowley's office and sign some papers.

10 Q. Did you know, at that time, that Mrs. Von der Heyden had been the owner of this property, and that you were signing away your dower right in your husband's interest? A. No, sir, I did not.

Q. How long were you at Mr. Cowley's office? A. Just a few minutes.

Q. Was it explained to you by anyone—by Mr. Von der Heyden or Mr. Cowley—that you were releasing your dower in your husband's interest in  
20 his mother's estate? A. No, sir; they did not.

## Cross Examination by Mr. Cowley:

Q. What did you think you were signing? A. I signed, being as my husband told me to sign, trusting everything was all right.

Q. Didn't you know you were signing a deed? A. No, sir; I did not.

Q. Didn't I say anything to you? A. You did not; you just told us to sign.

30 Q. Didn't explain to you what you were signing? A. No, sir.

Q. Didn't explain to either of you, or anybody there? A. Why, no; if I had heard it I would have said it.

Q. Did you look at the paper you signed? A.

**William H. Kruitbosch—direct**

Why, I just signed it, and that is all; I just signed what you told me to sign.

By the Vice Chancellor:

Q. Well, did not Mr. Cowley read the paper over to you? A. Not that I remember; he read, yes, but all I remember hearing him say was about the "personal property."

Q. Well, before you signed the deed, did not Mr. Cowley read over the deed to you? A. He read some papers; I will admit he read some papers; but I never stopped to think, being that I trusted that everything was all right, and that was the way it was supposed to be done. 10

Q. Did Mr. Cowley ask your husband to leave the room while you signed the deed? A. No, sir; not that I remember.

Q. Well, were your husband and you in the room during all the time that these papers were signed? A. Yes, sir; we were all there. 20

Q. All there? A. Yes, sir.

Q. Don't you recall that your husband left the room? A. No, sir; I do not.

Q. Don't you recall that Mr. Cowley asked you if you had signed this paper as your voluntary act and deed, without any fear, threats or compulsion of your husband? A. No, sir; I don't remember.

30

WILLIAM H. KRUITBOSCH, sworn.

Direct Examination by Mr. Herrmann:

Q. What is your business, please? A. Real estate and insurance.

## William H. Kruitbosch—direct

Q. How long have you been in the real estate business? A. Two years.

Q. And where are you located? A. At 19 Howe Avenue, Passaic, N. J.

Q. Have you, during those two years, bought and sold properties in Passaic? A. I have.

Q. Have you knowledge of other sales that have been made in Passaic, other than those that you have directly participated in? A. I have.

10 Q. Do you know the premises known as 49 Orono Street? A. Yes, sir.

Q. What does that property consist of? A. A house and about 75 feet of property, I believe.

By the Vice Chancellor:

Q. 75 feet front? A. 75 feet frontage.

Q. And what is the depth? A. I don't know, sir.

20 Q. What appears to be the depth? A. 100 feet.

By Mr. Herrmann:

Q. Have any sales taken place in the immediate vicinity of 49 Orono Street within the last two years? A. Not to my knowledge.

Q. Have you knowledge of values—as to what owners are asking for their properties there? A. I have three properties, which are registered by The Realtor Organization, on the same street.

30 Q. What are lots worth on that street? A. The price I have is \$600 a lot.

Q. For this particular property? A. No, on the same street; I have no knowledge of this particular property.

## Wm. H. Kruitbosch—direct-cross

Q. What did you appraise this particular property at?

The Vice Chancellor—That is, the lot?  
Mr. Herrmann—The lots.

A. Why, at \$1000.

Q. \$1000 a lot? A. \$600 a lot—and this is two and a half lots—three lots.

Q. What would you appraise the land at? A. 10  
At about fifteen to eighteen hundred dollars.

Q. For the three lots? A. For the three lots.

Q. What is the house worth? A. \$7000.

Cross Examination by Mr. Cowley:

Q. You do not know of any sales within the last two years? A. I do not, sir.

Q. Then you are basing your valuation on what somebody has asked for it? A. I am basing my valuation on the asking price for three houses, one next door, and two right in the vicinity, according to my records. 20

Q. Don't you know, as matter of fact, that 30 lots were recently sold there for \$200 a lot? A. At an auction?

Q. No, I say, don't you know, as a matter of fact, that 30 lots were recently sold there for \$200 at lot? A. I do not, sir.

The Vice Chancellor—I suppose the value should be ascertained as of the date of the deed, and not with reference to what has happened to it since. The property may have augmented or decreased in value since then. 30

## Wm. H. Kruitbosch—cross

The Witness—Property has increased in value within the last six months, on account of the jitney service and the new school; I think it has increased the property considerably in the last six months.

Q. You were not in the real estate business in July, 1919, were you? A. Only as a side line.

10 Q. But you had not made any sales up in that neighborhood at that time? A. Not in that neighborhood.

Q. And you did not know of any? A. I did not know of any.

By Mr. Herrmann:

20 Q. Well, the property to-day is worth what, do you think? A. The property today is worth as much as the house next door, or more than the house next door, because it has 25 feet more property; and that is listed at \$8500.

By the Vice Chancellor:

Q. Without any takers? A. It has not been sold.

30 Q. But, apart from all this, based on your general experience as a real estate agent, and comparing it with other properties that have been sold, what, in your judgment, is the fair market value of the building and three lots?

Mr. Cowley—There are only two lots, your Honor.

The Vice Chancellor—Oh, well, the building and the two lots of land?

## Wm. H. Kruitbosch—cross

A. Well, I think a fair price is \$8500.

Q. For the building and two lots? A. Yes, sir.

Q. And a fair price for the single lot—what would you regard that to be? A. \$600.

Q. How do you make it out, then, that it is worth \$8500.00, when you say the place is worth \$7000, and the two lots are worth \$1200.00? A. Well, for the property and building—vacant property and buildings on property would vary the price of the property. 10

Q. It would vary the price of the property, but would it vary the price of the lot? A. Yes, sir.

By Mr. Herrmann:

Q. What would you say, from your experience, that same property would have been worth in May, 1919? A. I was not in the real estate business at that time, but the property has increased, well, 25%. 20

Q. 25%? A. At least—that is, during that time.

By the Vice Chancellor:

Q. Then, on that basis, this property, in May, 1919, would be worth about \$2100 less than it is to-day—that would make it then worth about \$6400.00? A. Yes, I think that is the fair value at that time. 30

The Complainants rest.

The Case for the Defendants

## Robert Von der Heyden—direct

ROBERT VON DER HEYDEN, sworn.

Direct Examination by Mr. Cowley:

Q. Mr. Von der Heyden, you were the husband of Maria Von der Heyden? A. Yes, sir.

Q. And you were married in 1907? A. Yes, sir.

Q. Mrs. Von der Heyden died in 1919? A. 1919.

10 Q. At the time you married Mrs. Von der Heyden she had two sons by a former marriage? A. Yes, sir.

Q. Emil and August? A. Yes.

Q. Where did you live at that time? A. When I married Mrs. Thies we moved to Summit Avenue, in West Hoboken; that was our first living quarters.

Q. Did you have any money of your own at the time of your marriage? A. No, sir.

20 Q. Did Mrs. Von der Heyden have any property—real estate? A. No real estate; no, sir.

Q. Did she have any money? A. I believe she had a few hundred dollars in the bank.

Q. A few hundred dollars in the bank? A. About \$300, as far as I know; I don't know exactly how much she had.

Q. Now, when did you go to live in Passaic, or Clifton? A. That was in March, 1909.

30 Q. Did you get employment in one of the factories in Passaic? A. Yes, sir.

Q. What factory? A. Brighton Mills.

Q. What is your trade, or occupation? A. My trade is machinist and tool-maker.

Q. Did you buy a piece of property on Dann Street? A. Yes, sir.

**Robert Von der Heyden—direct**

Q. How much did you pay for that?

Mr. Herrmann—I object, if the Court please. Is that relevant?

The Vice Chancellor—Oh, I think I will permit it. It is going to lead up to a dead end, I suppose, but I am going to let it in.

A. \$1600.

Q. How much down did you pay—how much did you pay down? A. \$100. 10

Q. And how was the balance to be paid?

The Vice Chancellor—Haven't you got the contract?

Mr. Cowley—Yes.

The Vice Chancellor—Show him the contract.

Q. (Showing the witness the paper) Is this the contract you made, between David Goldberg and yourself? A. Yes. 20

(The contract is offered in evidence by Mr. Cowley, admitted without objection, and marked Exhibit D-1.)

Q. Now, did you complete the terms of that contract—the contract calls for the payment of ten dollars a month on the balance? A. Yes. 30

Q. Did you pay that? A. Yes, sir.

Q. And finally you took a deed for the property? A. Yes, sir.

Q. I show you a deed from David Goldberg

**Robert Von der Heyden—direct**

to Robert Von der Heyden and Marie, his wife—  
is that the deed? A. Yes, sir.

Q. That was sold subject to two mortgages  
amounting to \$1200? A. Yes, sir.

Q. So the total amount of your investment at  
that time was \$400? A. Yes, sir.

Mr. Herrmann—What is the date of the  
deed?

10 Mr. Cowley—March 12th, 1910.

(The deed was thereupon offered in evi-  
dence by Mr. Cowley, admitted without ob-  
jection, and marked Exhibit D-2.)

Q. What was the number of this house on Dann  
Street? A. 17.

Q. 17? A. 17.

Q. How long did you live there on Dann Street?  
A. I lived on Dann Street up to September or  
20 October, 1917.

Q. Did you acquire any other properties ad-  
joining this house on Dann Street, from the time  
that you got this deed which has been introduced  
in evidence, until later when you sold to the Magor  
Car Corporation? A. Yes, sir.

Q. How many other lots did you acquire? A.  
One.

Q. You and your wife, I mean? A. Oh, there  
was five, all together.

30 Q. Five lots? A. Yes.

Q. With whose money was those lots pur-  
chased? A. With mine.

Q. Was there any income into the house ex-  
cepting your earnings? A. No, sir.

Q. Now, you sold, did you, to the Magor Car

**Robert Von der Heyden—direct**

Corporation, this property on Dann Street? A. Yes, sir.

Q. What price did you receive? A. \$6000.

Q. Had you, in the meantime, paid off these mortgages—

The Vice Chancellor—That property stood in the name of the husband and wife?

Mr. Cowley—Stood in the name of the husband and wife—not all of the lots, if your Honor please, just the house and one lot stood in their names, and some of the other lots were in Mrs. Von der Heyden's name. 10

The Vice Chancellor—Which house?

The Witness—The Dann Street house.

The Vice Chancellor—The Dann Street house and certain lots stood in the name of husband and wife?

Mr. Cowley—Yes, sir. 20

The Vice Chancellor—And some, you say, stood in the name of the wife alone?

Mr. Cowley—Of the wife alone, yes.

The Vice Chancellor—There were no lots, then, that stood in the name of Mr. Von der Heyden alone?

Mr. Cowley—None, at all.

Q. Who negotiated the purchase of those lots on Dann Street—who bought those lots? A. My wife and I. 30

Q. Whose money paid for them? A. Mine.

Q. Why were some of the lots taken in your wife's name? A. Why, on account of getting the commission.

## Robert Von der Heyden—direct

Q. You acted as the agent, and received the commission? A. Yes.

Q. But it was your money, in each case, that bought the property? A. Yes, sir.

Q. Now, you say you had paid off these two mortgages amounting to \$1200 before you bought the Orono Street property? A. No, sir; there was on mortgage of \$800 on the house when we bought the Orono Street property.

10 Q. Well, how much did you receive, net, from the sale of the Dann Street property? You sold it to the Magor Car Corporation for how much? A. \$6000.

Q. And there was a mortgage of \$800 on it? A. Yes.

Q. So you received \$5200? A. Yes, sir.

Q. That was right? A. Yes, sir.

Q. Now, what was done with that money? A. The Orono Street home was bought.

20 Q. How much was paid for that? A. \$3700.

Q. And the title was taken in your wife's name? A. Yes, sir.

Q. Why? A. Why—

By the Vice Chancellor:

Q. Well, the money used to buy the Orono Street property was that which came out of the Dann Street property? A. Yes, sir.

30 Q. The Dann Street property stood in your name and your wife's, and the Orono Street property was taken in the name of your wife alone? A. Yes, sir.

## Robert Von der Heyden—direct

By Mr. Cowley:

Q. Why was that done? A. On account of an automobile accident which we had previous to that. We spoke about it, and Mr. Axt, the former owner of the Orono Street property, offered that suggestion; he said that was what he was going to do; he had an automobile, also—that it would be the safest way; he said “You cannot depend on insurance any more,” and we decided to put it over on the wife’s name.

10

Q. Well, now, was there anything said as to the future disposition of the property? A. Why, yes.

Q. What was said? A. That even if it was on my wife’s name, that I would have just as much share in it as she had, as we both worked it together from the time we got married up to the time she died.

Q. Now, you say you paid \$3700 for that? A. Yes.

20

Q. Cash? A. Yes.

Q. And the balance of the money was put in bank? A. No, there was one lot bought alongside of it—513.

Q. An additional lot was bought? A. Yes.

Q. 513? A. Yes.

Q. In whose name was that bought? A. My name and my wife’s name—both of us.

30

By the Vice Chancellor:

Q. Was that bought at the same time? A. Practically at the same time.

Q. Then you had Lots 513, 514, 515 and 516? A. No,—513, 514 and 515.

Q. Well, also 516? A. That went to Emil.

Q. Well, were the lots 514, 515 and 516 bought

## Robert Von der Heyden—direct

with the money from the Dann Street property, and with one deed for the one transaction? A. No, sir; one deed was for 514 and 515, the original Mr. Axt property.

Q. Then you bought 513 afterwards in your wife's name and yours? A. Yes, sir.

Q. How did you get 516? A. That was bought, too, the same way.

Q. Afterwards? A. Yes, sir.

10

By Mr. Cowley:

Q. This is the deed of 513 (showing the witness a deed); that is in both your names? A. Yes, sir.

The Vice Chancellor—513 is not involved in this transaction?

Mr. Cowley—No, sir; not involved in this transaction.

20

The Vice Chancellor—Only 514 and 515?

Mr. Hermann—514 and 515, yes, sir.

By Mr. Cowley:

Q. Now, Mr. Vonder Heyden, you say the only moneys that came into the house for the purchase of these properties was your own? A. Yes, sir.

Q. Did Emil and August live in the house? A. Yes, sir; practically.

30 Q. Was August married at the time you purchased the Orono Street property? A. Yes, sir—no, he was not married at the time of the purchase.

Q. When did he marry? A. Emil married in 1917.

Q. Well, you bought in 1917, too? A. Yes, in June, 1917 he married.

## Robert Von der Heyden—direct

Q. When did he marry? A. In June, 1917, the 9th of June, I believe.

Q. I show you a deed that, while the deed is erroneously dated "1919", shows that the property was bought from Axt about the 21st of September, 1917? A. Yes.

Q. Well, was Emil married then? A. Yes, sir.

Q. Was he paying any money into the house at that time? A. Simply board.

Q. He was paying his board? A. Yes, sir. 10

Q. August was not living with you at that time? A. In 1917? No, sir.

Q. He was away in the Service? A. Yes, sir.

Q. Was he sending any allotment home? A. Not at that time; no, sir.

Q. Not in 1917? A. No, sir.

Q. Did he ever send any allotment to the home? A. Yes, sir.

Q. What became of that money? A. It was put in the bank. 20

Q. For whom? A. For August Thies.

Q. And when he returned what was done with it? A. I believe he got it.

Q. Now, how long was Mrs. Vonder Heyden sick? A. A year and one month.

Q. What was the nature of her illness? A. Cancer.

Q. She did not leave a will? A. No, sir.

Q. Did she make, or give you any instructions in regard to the disposition of the property? 30

Mr. Herrmann—I object.

The Vice Chancellor—On what theory is that admissible?

Mr. Cowley—I want to show that he later

## Robert Von der Heyden—direct

communicated those expressions to the sons, and, in accordance with that, this adjustment was made. They stated they were not informed as to any of the conditions—we are going to show that he did inform them of her requests.

10 The Vice Chancellor—Well, in so far as that conversation is concerned, to affect the title to real estate it is inadmissible. The only thought I had in my mind is this, that if he communicated what the mother said to the sons, and the sons, to conform to their mother's wish, did something, it might be evidential.

Mr. Herrmann—It might be evidential to that extent.

The Vice Chancellor—That is the only extent to which I will admit it.

20 Mr. Herrmann—If it is limited to that, I have no objection.

The Vice Chancellor—If the stepfather told these young men that their mother had said thus and so, and, on the faith of that, they conveyed, why, to that extent that he told them, I think it is admissible. What effect it would have on the validity of the deed, in view of their doing it in compliance with the mother's wish (if it was the mother's wish) is another question.

30 Question repeated. A. Yes, sir.

Q. Tell what those instructions were, having reference to what you communicated to her children?

Mr. Herrmann—If the Court please, I of

**Robert Von der Heyden—direct**

course object to what the instructions were; I will permit that he tell what he told to the sons.

The Vice Chancellor—Just let him tell first what he told the sons; and I suppose that is as far as he can go.

Mr. Herrmann—Yes, what he told the sons; because, unless the sons were present when the instructions were given, of course it is inadmissible.

The Vice Chancellor—(To the witness):  
Tell what you told the sons.

10

A. After my wife's death I got the two boys together, and I says to them "I suppose, boys, you know what the conditions were"—August not as much as Emil, but Emil knew it perfectly, because he was there when the property was purchased and the transactions was made, that the property was on their mother's name—that is, the house and one lot.

20

Q. That is, the house and one additional lot?

A. Yes, sir; and that their mother's wish was—

By the Vice Chancellor:

Q. (Interrupting) Did you say all this to them?

A. Yes, sir—that August was to have \$1000 cash, and Emil the lot, so he would have 50 foot front on Orono Street.

Q. Who would have 50 foot front? A. Emil.

30

By Mr. Cowley:

Q. He did own one lot? A. Yes.

Q. And this was to give him the adjoining lot?

A. Yes.

## Robert Von der Heyden—direct

Q. So he would have fifty feet front? A. Yes, sir.

Q. Now, did they know that this house and lot was in your mother's name?

Mr. Herrmann—I object, if the Court please to “did they know.”

The Vice Chancellor—I will sustain the objection.

10

Q. Who negotiated the sale from Mr. Axt to Mrs. Vonder Heyden for the Orono Street property?

A. Emil.

Q. Was he present when the deed was made?

A. Yes, sir.

Q. Did he know that it went into your mother's name?

Mr. Herrmann—I object.

20

The Vice Chancellor—I will sustain the objection. I will permit him to state what conversation the father had with Emil, or whether he examined the deed; but to tell what knowledge this other young man possessed the witness cannot say.

Q. Do you know whether Emil ever saw the deed from Mr. Axt to his mother? A. Yes, sir.

Q. He did? A. Yes, sir.

30

Q. Where? A. At his home.

Q. At his home? A. Yes, sir.

Q. What was the occasion? A. Why, his mother showed it to him.

Q. His mother showed it to him? A. Yes, sir.

Q. What was the occasion upon which she

## Robert Von der Heyden—direct

showed him the deed—what prompted her to show it? A. Why, I do not exactly recollect now, but the occasion was that he spoke to me about it.

Q. Who, Emil did? A. Yes.

Q. What did he say? A. Well, he spoke to me about how the property was laid out, how nice it would be later on for us to be in such circumstances.

Q. What did he say about in whose name the title was? Did he say anything about in whose name the title was? A. Yes, sir; he says it was in his mother's name, he knew it. 10

Q. Was he present when Mr. Axt made the suggestion as to who should take the title? A. I don't remember.

Q. You stated a while ago that it was at Mr. Axt's suggestion that the title was put in your wife's name? A. Yes, sir.

Q. Do you know whether or not Emil knew of that? A. There was talk about it at home.

Q. And was there any family conversation in regard to the automobile accident and the need for protecting the property? A. Yes, sir. 20

Q. Was Emil present at those conversations? A. Yes, sir.

Q. So you say it was a matter of common family knowledge as to in whose name the title stood? A. Yes, sir; the same as all our other business.

Q. Now, after your wife died, according to Emil's and August's testimony, a conversation arose in regard to the payment of board by August, and it was stated that you suddenly said "No, you get a thousand dollars, and Emil gets a lot"—is that true? A. No, sir. 30

Q. Will you tell us how it was you communicated this information about the thousand dollars and the lot to the two boys? A. After their mother's

## Robert Von der Heyden—direct

death I got the boys together and spoke to them on the subject, and told them again that they knew that this was on their mother's name, and that their mother's wish was that August should have a thousand dollars and Emil have a lot adjoining his on Orono Street.

Q. And what did you say in regard to the property that you lived in? A. And the house was supposed to go over to me.

10 Q. Well, what did they say to that? A. They said "All right."

Q. Then, what further was said? A. Then I says, "If you boys are satisfied I will go down to Mr. Cowley and have him make out the papers to this effect", and they agreed, they said "All right"; and it was several days, if not a week, later when we went down to Mr. Cowley's office, after he notified me that the papers were ready—we went down to sign our papers.

20 Q. Now, did Mrs. Thies, Emil's wife, know about it? A. Yes, sir.

Q. She did? A. Yes, sir; more than once she spoke about it.

Q. Now, the deeds were signed in my office? A. Yes.

Q. How was delivery made of those deeds after they came from record, do you know? A. I don't exactly remember whether they were sent to your office, or up to our house; I know I gave you instructions to put on them record and send me the bill.

31 Q. Now, when they came to my office were they informed what they were signing? A. Yes, sir.

Q. Can you recall what statement was made to them by me? A. I recall that you asked them did they know what they were signing, and instructed

## Robert Von der Heyden—direct

them, or told them to read it over if they had any doubt about anything.

Q. Well, did I inform them of the contents of the deed? A. Yes, sir.

Q. Did they acknowledge that they signed it of their own free will? A. Yes, sir.

Q. And did I ask them whether they signed it of their own free will? A. Yes, sir.

Mr. Herrmann—I object to any further leading, because this is rather important. 10

The Vice Chancellor—I do not suppose this is necessary, because the acknowledgment itself is, I presume, in the absence of fraud, conclusive.

Mr. Cowley—Well, they say they did not understand it.

The Vice Chancellor—I know; but it is a very difficult thing to dispute an acknowledgment; it has the force and effect, almost, of a judgment roll. Bear in mind that I am not stopping you from letting you describe what transpired in your office when that deed was signed. Your question, though, was absolutely leading. 20

Q. Tell, if you can remember, what transpired in my office at the signature of those deeds—who were present? A. Mrs. Emil Thies; Mr. Emil Thies; August Thies; myself and Mr. Cowley. 30

Q. Tell what was said, if anything, about “jewelry”? A. Why, Mr. Cowley questioned both of us,—all of us, in fact—about how much jewelry or what jewelry there was.

Q. Why would I ask about “jewelry”—how did

## Robert Von der Heyden—direct

that come into the transaction? A. Because I spoke to your that “another thing the boys were supposed to get was a diamond earring which their mother owned.”

Q. That was another part of the settlement?

A. Yes.

Q. Did they get it? A. Yes, sir.

Q. What did Emil get in addition to the lot?

A. Emil got the diamond earring, which was converted into a ring.

10 Q. And he converted it into a ring? A. Yes, sir.

Q. What else did he get—any articles of furniture? A. Well, he had his furniture, his own furniture—that is, his bedroom furniture, that is all. All the other furniture, of course, belonged to us.

Q. Well, did he get anything except a ring? A. A ring and the lot.

Q. And the lot? A. Yes.

20 Q. What did August get in the way of jewelry, if anything? A. A thousand dollars, and a diamond out of the earring, which he converted into a ring.

By the Vice Chancellor:

Q. That is, each son got a diamond earring? A. Yes, sir; and that was also their mother's will, or wish.

By Mr. Cowley:

30

Q. Did you tell the sons that it was their mother's wish that they should get these earrings? A. Yes, sir.

Q. Now, the amount that August received was considerably more in value than the amount that Emil received? A. Yes, sir.

## Robert Von der Heyden—direct

Q. Do you know of any reason why that should have been so? A. Well, at the time of his marriage we paid all his expenses.

Q. At the time of Emil's marriage? A. Yes; and their mother figured that August was to be married soon, and that is why he got the thousand dollars.

Q. Do you know whether or not Emil's mother assisted him in the purchase of the other lot? A. Yes, sir.

10

Q. She did? A. Which lot was that, please?

Q. The other lot, adjoining the one he subsequently bought? A. Why, he was in France, or he was in the service—in fact, his wife was in a condition not to work any more, and, at the same time, they had to pay off this lot—this lot was bought on the installment plan.

By the Vice Chancellor:

Q. He did not ask you that question, he asked you whether his mother assisted him in buying this lot adjoining Lot 516? A. We had to assist him; the wife was not able to work.

21

The Vice Chancellor—No; answer the question.

By Mr. Cowley:

Q. Did she pay any of the moneys for the purchase of that lot? A. Did she pay any of the money?

30

Q. Did your wife pay any of the money that went for the purchase of the lot which Emil bought? A. That I don't know of otherwise, only through helping at home.

## Robert Von der Heyden—direct

Q. You took care of Emil's wife while he was in the service? A. Partly; yes, sir; she lived in my house.

Q. Now, after the deeds were signed, and you left my office, was there any further discussion in regard to what had transpired in my office, on the way home? A. No, sir.

Q. How did you go home from my office—all together? A. Yes, sir.

10 Q. Was there no talk, at all, as to what had been done? A. Everyone seemingly was satisfied.

Mr. Herrmann—That is not responsive.  
The Vice Chancellor—No.

A. There was nothing further said.

Q. Now you lived together there in the house on Orono Street—you and Emil and August and Emil's wife—until August of 1919, when the youngest son,  
20 August, left? A. 1920—August of 1920.

Q. 1920—when he left; now, was there any further discussion about the property during that time? A. No, sir.

Q. Was there any inquiry in regard to the estate of the mother? A. No, sir.

Q. At the time that they came to my office were they informed by you as to how much money there was in bank? A. Yes, sir.

Q. How much did you tell them? A. About  
31 five hundred dollars. After August's thousand dollars was drawn out, and the funeral expenses paid there was about five hundred dollars left.

Q. Now, tell me the details of the conversation in regard to the money in bank—how did you inform them as to how much money there was in

## Robert Von der Heyden—direct

bank? A. Those were the remarks their mother made when she told me about this will—she spoke about this will—that “if August gets a thousand dollars, there won’t be much left in the bank for you.”

Q. You told them that? A. She spoke to me—that is the way she said to me—and I told them word for word what their mother said to me, more than once, during the period of time those boys were away.

Q. Did they ever see the bank book? A. That I don’t remember.

Q. Did the thousand dollars which was paid to August come from this bank account? A. Yes, sir.

Q. Do you know whether Emil or August knew that you had those separate bank accounts? A. Whether August and Emil had separate bank accounts?

(Question repeated.)

The Vice Chancellor—A bank account in your own name.

A. Oh, we didn’t have no separate bank account.

Q. You had no bank account in your own name?

A. No, sir.

Q. All your earnings went into this account?

A. Yes, sir.

Q. Now, you remarried in January, 1921? A. Yes, sir.

Q. At that time, you and Emil, and your wife and Emil’s wife, were living together at Orono Street? A. Yes, sir.

Q. And you and your new wife went to live there? A. Yes, sir.

## Robert Von der Heyden—direct

Q. What was the arrangement between you and Emil and his wife in regard to board? A. Well, I made the arrangement, being that he was out of work—I said he should pay me five dollars a week board.

Q. That he should? A. Yes.

Q. You took over the management of the house?

A. Yes, sir.

10 The Vice Chancellor—That was after the deed was given, was it?

Mr. Herrmann—Yes, sir.

20 The Vice Chancellor—Are not the rights of the parties fixed and established at the time this deed was given, or delivered, and unless you can show acquiescence in it subsequently, and knowledge of it subsequently, with laches, what difference would it make what arrangement they may have made—how does that affect the title to the lands? The complainants were relying on the fact that this defendant was their foster father; it appears that they lived with the stepfather after their own father's death, from the time they were thirteen and fifteen years of age; that the new father stood to them as the natural father, almost, and, relying upon that situation, they did not deal with their stepfather at arms-length, as they would otherwise; that

30 the stepfather concealed from them the fact that this property stood in the name of the mother, took them to a lawyer's office, and, these boys, confiding in him, and in ignorance of the fact, without having the thing fully explained to them, signed away property

## Robert Von der Heyden—direct

valued at six or seven thousand dollars for the sum of a thousand dollars in cash to one son, and a lot worth five hundred dollars to another, which lot belonged to the mother and stood in the mother's name; and he reserved to himself this property, by conveyance from these children, worth seven or eight thousand dollars; and all that really came from him as consideration was the thousand dollars which he paid to one son and the two diamond earrings of the mother, which these boys converted into rings. Now, of course, under the law as I understand it (and I do not think there is a change in the statute) all the personal property passed to the husband—

Mr. Herrmann—Not where there are children; where there are children one-third goes to the husband.

The Vice Chancellor—Is that the new statute? 20

Mr. Craven—One-third to the husband, and two-thirds to the children.

The Vice Chancellor—When was that changed?

Mr. Herrmann—1919; the new Statute of Distribution was in 1919.

The Vice Chancellor—When did the mother die?

The Witness—1919—in June, 1919.

Mr. Craven—It is 1918—the Laws of 1918. 30

The Vice Chancellor—I have a notion there was a change.

Mr. Herrmann—Yes,—1918.

The Vice Chancellor—But, apart from all

## Robert Von der Heyden—direct

that, they say that this step-parent was charged with the duty of making known fully to these young men what the true state of affairs was, so that they could act intelligently upon it for the protection of their own interest, and that they relied solely on this step-father to deal fairly with them; they had no independent advice—of course they were old enough not to require it—but they did not have counsel; they did not have the thing explained to them. Now, I do not see that what transpired since that deed was made and the transaction closed alters the situation which existed at the time of the actual transaction, excepting this—anything you can show to negative the idea that they did not know the facts, or, in other words, to show that they did know all the facts, and signed voluntarily, with knowledge of the facts, you can show; and you can show whether knowledge was acquired, perhaps, with the idea of showing that they were in laches; but this thing about agreements as to board, and all that kind of thing, I think is entirely foreign to the matter in controversy.

Q. Well, now, Emil moved away from the house in May of 1921? A. Yes, sir.

Q. And you had a quarrel during the previous month? A. Yes, sir.

30 Q. Tell what happened at that quarrel? A. Well, I was down cellar, and Emil came down at noon-hour, and he says, "What is this all about, this board here?" I said, "What is the matter now?" "Wel", he says, "Irene gave her thirty five dollars

## Robert Von der Heyden—direct

and she says 'That is only for you', she said 'Where does your board come in?' " I said "What is the matter with you?" I says, "You never was treated wrong yet; why should you be treated wrong now?" "Well," he says, "that is all right; we will find out; I will call up August and we will find out right away what is what." I did not know what was coming off; so about fifteen minutes later came in August.

Q. Where was August—where had he been, do you know? A. He looked as if he had been working; he had his working clothes on. He came up on a motor-cycle. 10

Q. Then tell what happened? A. And he wanted to know what was what; he said "What is all this about, this board?" and then he talked about so many things that he jumped from one thing to another, a lot of trash from years ago, different little things that happened, probably, in the household; and finally he says "I am satisfied, but," he says. "I am fighting for Emil; he ain't the same type of fellow that I am"; he said "I am going to fight for him." "Well," I said "what is all the fighting about?" "Well, he didn't get what was coming to him." I says, "He never made a claim to me, or said anything to me about it, that he was not satisfied." "Well," he says, "you want to come across; otherwise, we will take you to court; and if we lose out there, you won't be the first Dutchman I killed." I didn't know what struck him; it was unexpected from them boys; I always treated them right and fair— 20 30

The Vice Chancellor—Never mind; just tell what the conversation was.

## Robert Von der Heyden—direct

A. (Resuming)—and I was dumb-founded, I didn't know what to say; so I let them talk; and then Emil started in about different things what happened, and finally they went out, saying that I "had better come across and don't be thickheaded about it." So my wife was standing alongside of me, shivering; she didn't know what to do. And after they were gone, why, I said to my wife, I said "This will never do—

10

The Vice Chancellor—Never mind.

A. (Resuming)—so I went to Mr. Cowley and got him to write what I call a dispossess, saying—

Q. Never mind that; now, was there any charge made at that time that they did not know what they signed when they had been in my office? A. No, sir.

Q. Was there any conversation between August and Emil in regard to the property, in your presence, at that time? A. In regard to the property?

Q. Yes. A. Not that I remember.

Q. Did Emil go to the drawer and take out the deed and show it to August? A. He pulled out two deeds—his own deed, as I know of—and he says, "Here, you better take care of them," he says, "they are not safe in this house any more"—that is the very words he said to August when he gave August the two deeds, that I thought was his two deeds for his two lots, the one that was transferred to him, and the one he got before—that is, the lots on Orono Street, 516 and 517.

Q. What was their specific claim on that morning—what did August want, and what did Emil want? A. Why, they didn't seem to claim

## Robert Von der Heyden—direct

anything, they just couldn't get to any conclusion of what they wanted.

Q. Did August say whether or not he was satisfied? A. August said he was satisfied, but he came up to fight for Emil.

The Vice Chancellor—Don't you see, right there, Mr. Cowley, these two young men say, at that time, they did not know that this property belonged to the mother; and that the substance of one of the son's remarks (I think it was August) was that the agreement with the father was that he was to pay \$250 and give a five hundred dollar lot, and it was after that they learned about it, when they took these deeds away—is not that right?

10

Mr. Herrmann—That is right, yes.

Q. Was there any agreement to give Emil \$250, in addition to the lot? A. Not that I remember; no, sir.

20

Q. Did you communicate anything like that to the boys, as being the request of your wife? A. No, sir.

Q. Now, Mr. Von der Heyden, all the money that you have earned since you married Maria Von der Heyden had gone in to these properties? A. Yes, sir.

Q. You have no property of any sort, excepting these? A. No, sir; that is all.

Q. They represent your earnings entirely? A. Yes, sir.

30

Q. Do they represent any of the earnings of either of these boys?

## Robert Von der Heyden—direct

The Vice Chancellor—What difference does it make?

Mr. Cowley—Well, I should think it would make this difference, if your Honor please: If, after the death of Maria Von der Heyden, the boys (no quarrel then having arisen which would embitter them in any way) make what I think any fair-minded man would consider an equitable distribution of the property—

10

The Vice Chancellor—Oh, if it was a family settlement and voluntary agreement, with knowledge of the facts, it stands; but the question is, Did these young men have the knowledge requisite to enable them to make this kind of settlement? Their theory is that the father, with knowledge of the facts, concealed everything; and they, relying on their relations with the father, signed this instrument without knowledge of the facts—in other words, it was the father's duty to disclose the truth to them so that they could intelligently act.

20

Q. Did you conceal anything from these boys in regard to the property?

Mr. Herrmann—I object to it.

The Vice Chancellor—I sustain the objection.

30

Q. Did you inform these boys of everything in connection with the property?

Mr. Herrmann—I object to it.

**Robert Von der Heyden—direct-cross**

The Vice Chancellor—I will sustain it. Let him tell what he said to them.

Q. Have you stated the entire conversation with the boys in regard to your wife's estate? A. Yes.

Q. You have stated it? A. Yes, sir.

Q. There is nothing further that you can say in regard to your conversation with them? A. No.

Cross Examination by Mr. Herrmann:

10

Q. Now, will you tell me, exactly, again, what you said to the boys, and when you said it, and where you said it, and who were present, with reference to your wife's wishes concerning her estate after her death? A. Why, that was right in our dining room, and those present were Emil, August and Irene Thies.

Q. When was it? A. I do not recall exactly the date it was.

Q. How soon after your wife's death was it? A. Probably within a week. 20

Q. How did the subject happen to come up? A. I told them I knew how the property was standing, that the property was on my wife's name; and I told them, I said "Here, boys, so-and-so is the case."

Q. Did you say "So-and-so is the case"? A. "The property,—this house and this lot—is on your mother's name." I says "That lot" (mentioning the 513) "is on my and your mother's name, and Lot 516 is on your mother's name." 30

Q. Did anyone say anything to that—that they knew that that was the fact? A. Well, August was sort of ignorant of that part, being that he was away.

Q. Now, what did August say that led you to

## Robert Von der Heyden—cross

believe that he was ignorant because he was away?

A. Why, he says "I don't know," he says, "Emil knows all about it."

Q. He told you then that he did not know, did he? Just one minute—when this property was acquired didn't you know that Mr. August was away and did not know it was in his mother's name? A. Yes, sir; that is what I am saying.

Q. And he told you so, didn't he? A. Yes.

10 Q. Now, then what did you say after that? A. Why, I told them just the way the case was; I explained it to them.

Q. Well, what did you tell them? A. I told them just as I told you before, that the house was on their mother's name—the house and lot, in fact—it was the property purchased from Mr. Axt—was on their mother's name, and Lot 516.

Q. And he said, "I did not know that, and I am glad, Father, you told me," did he? A. No, sir; 20 he did not.

Q. What did he say? A. He didn't say anything.

Q. All right; what next did you say? A. I said, "Emil knows all about it, so he can vouch for it."

Q. So that then you think the boys knew that the property was in their mother's name? A. Yes, sir.

30 Q. What else did you say? A. I said, "You know how the case is now"; I says, "there is no use of us dragging this thing around courts."

By the Vice Chancellor:

Q. That was a week after your wife died? A.

**Robert Von der Heyden—cross**

Yes, sir; about that;—"because, as there is in so many families, I was—

The Vice Chancellor—No, no.

The Witness—Well, I am continuing my talk.

The Vice Chancellor—Tell your story.

The Witness—Yes, sir; that is my story; I am sticking right to my story, and not going out of my story.

10

Q. Go ahead. A. I said, "As it is in so many families," I said, "you know I worked hard for this little property, and" I says, "you know both your mother and I worked hard, and your mother and I worked hard and saved up this property."

By Mr. Herrmann:

Q. You told them this, did you? A. Yes, sir.

Q. And you said "And, by all the rules of the game, I am entitled to this property," did you?

20

Mr. Cowley—I object to that.

A. No, I told them their mother's will.

Q. Let us hear what you told them about the will? A. That their mother told me that August should get one thousand dollars cash money, and Emil should get the lot adjoining his lot to make it fifty feet front for him.

30

Q. And this was one week after your wife died?

A. Yes, sir, about; I don't know exactly whether it was one week, but at least one week.

Q. Was it more than one week? A. Not much, no.

## Robert Von der Heyden—cross

Q. Was it ten days? A. I couldn't exactly tell you how long it was after.

By the Vice Chancellor:

Q. You would say it was less than a month? A. Yes, it was less than a month.

By Mr. Herrmann:

10 Q. What date did your wife die? A. On the 5th day of June.

Q. June 15th? A. 5th.

Q. Now, you don't know then exactly how much was in the bank, do you? A. No, sir.

Q. You didn't know whether there was \$100 or \$500 or a thousand dollars, did you? A. Not exactly; no, sir.

Q. So that you say that you told the boys that the wife said "Give August a thousand dollars, and  
20 Emil one lot, and then there will be very little left for you"? A. Yes, sir.

Q. Now, did you tell these boys, at that time, that, under the law, they would be entitled to get the real estate of their mother because it was in her name? A. I explained it to them.

Q. You told them that they could get the property if they wanted it? A. I explained it to them, that it was on their mother's name.

Q. Now, did you tell them that, under the law, they inherited their mother's property? A. Well,  
3) it was in her name; I don't remember.

Q. Well, that was important to you, wasn't it—why can't you remember that? Did you know that the boys inherited the property that was in their mother's name? A. Partly.

## Robert Von der Heyden—cross

Q. You thought they did, partly? A. Yes, sir.

Q. How much? A. I didn't know exactly whether it was two-thirds or one-third; I never had no dealings with such things as that before.

Q. Well, then, you did not instruct the boys, if you did not know what their share was, did you?

A. No, sir.

Q. You did not tell them what their share was?

A. No, sir; I just told them what their mother's will was.

Q. You told them that that was what the mother desired to have done—to give August a thousand dollars, and Emil a lot? A. Yes, sir.

Q. Well, now, this thousand dollars came out of the moneys of the estate, didn't it? A. Out of the bank.

Q. Yes—it was your money? A. It certainly was, partly; I worked for it.

Q. It was in your wife's name, wasn't it? A. Yes, sir.

Q. You knew that it was in your wife's name? A. Yes, sir.

Q. And you know that you qualified as administrator of your wife's estate? A. Yes, sir.

Q. And you knew that, under the law, you would be obliged to administer it as your wife's estate, and that two-thirds of the money went to these sons—you knew that, didn't you? A. I don't know exactly whether I did, or not, at that time.

Q. Well, now, didn't you know, when you qualified as administrator, that two-thirds of the money in the bank, or in all banks, and all of her real property went to your sons? A. I don't remember.

10

20

30

## Robert Von der Heyden—cross

Q. You knew that, by law, they would be entitled to some part of the money, and that they would be entitled to some part of the real estate? A. Yes, sir.

Q. Did you consult Mr. Cowley to find out what part of that they would be entitled to? A. Yes.

Q. And Mr. Cowley told you they would get all of the real estate? A. Yes, sir.

Q. And Mr. Cowley told you they would get  
10 two-thirds of the personal estate? A. Yes, sir.

Q. Did you communicate that fact to your sons? A. Yes, sir.

Q. When, and where? A. Before we went down to Mr. Cowley.

Q. You had not told us of that, then, on your direct examination; now, then, how long before you went down to Mr. Cowley's office did you tell these boys "Now, you are entitled to all of this real estate, and you are entitled to two-thirds of the personal  
20 estate, and the personal estate amounts to about eighteen hundred dollars, which is the amount in the bank"—when, and where, and who was present, when you told them that? A. Both of them—both of the boys.

Q. How long before you went to Mr. Cowley's office? A. I don't exactly remember how long it was before.

Q. A day? A. Probably a few days.

Q. Well, where were you, and what brought the  
30 subject up then? A. Home.

Q. Home? A. Yes.

Q. What brought the subject up then? A. Just general talk about different things, about the estate.

Q. Do you remember who brought the question up? A. I do not, exactly.

## Robert Von der Heyden—cross

Q. Well, how do you remember specifically, however, that, before you went to Mr. Cowley's office, you told these boys that they were entitled to all the real estate and that they were entitled to two-thirds of the personal estate, and that, regardless of that, your wife's wish was that they take a thousand dollars and this lot and then sign this property over to you? A. That was after I came from Mr. Cowley's office; I knew about this, and I told them.

Q. You had been down to consult Mr. Cowley, hadn't you? A. After I consulted the boys; yes, sir. 10

Q. That is, after you made this arrangement with the boys, to give them the thousand dollars and the lot, you consulted Mr. Cowley? A. Yes.

Q. Didn't consult him before that? A. No, sir.

Q. When you married Mrs. Thies these boys were how old? A. Probably Emil was about fourteen and August twelve, I believe.

Q. Both going to school? A. August was going to school. 20

Q. And Emil was working, wasn't he? A. He was going to work as an office boy.

Q. Now, did not Emil work all during the time that you were married to Mrs. Thies? A. Yes, sir.

Q. What did he do with his earnings? A. Well, he gave it to his mother for his board.

Q. When did August begin to work? A. That was about 1911, I think.

Q. When he was about fourteen or fifteen years old, wasn't he? A. Yes, about fifteen. 30

Q. He did not get very far in school, either, did he, when he had to go to work? A. He didn't have

## Robert Von der Heyden—cross

to, no, sir; that is what he wanted, because he wanted to go to work.

Q. What did he do with his earnings? A. He turned it in.

Q. Turned it into the house, as well, didn't he? A. Yes.

Q. How do you know how much his mother used of their earnings to put into this property? A. How do I know?

10 Q. Yes. A. Because the money they earned wasn't big enough to cover anything else but their board, most of the time.

Q. You had three children by a former wife, hadn't you? A. Yes.

Q. And you supported Irene, didn't you? A. Yes, sir, up to a certain time.

Q. How much did you make a week? A. About twenty-one or twenty-three dollars a week.

20 Q. And out of that twenty-one or twenty-three dollars a week you supported these three children?

A. Yes, sir.

Q. Supported your wife? A. Yes, sir.

Q. And bought all this property? A. Yes—that is, I didn't stay earning only twenty-three a week, I increased it in the length of time I was working in the mill—got it increased.

Q. You also bought some stock in the Brighton Mills, didn't you, out of these earnings? A. Yes.

Q. How much? A. A thousand dollars.

30 Q. And you saved that, besides, didn't you, out of your earnings? A. Yes, sir—on the installment plan.

Q. Now, what was the maximum you have earned, a week—what was the most? A. The most I earned, a week, during what time, do you mean?

Q. During the entire time you were married—tell me the most you ever earned? A. The most was about \$2300 a year.

## Robert Von der Heyden—cross

Q. And how many years did you make that? A. For several years; I don't know exactly.

Q. And you know, don't you, that August sent home every dollar of his allowance in the army? A. Well, that is what I heard of, yes, sir.

Q. And you said, in your direct examination, that it was put in an account in his name—don't you know that is not true? A. That is what I was told, yes.

Q. Do you know it? A. It was not put on his name, his mother put it away for him. 10

Q. Where did his mother put it away for him? A. Why?

Q. Where was it put away? A. Put in the Hobart Trust Company.

Q. Any part of this estate comprise that money? A. No, I don't believe so.

Q. Do you know whether it does not? A. No, sir.

Q. Do you know whether it does, or not? A. No, sir. 20

Q. Don't you know that he sent to the home six hundred dollars, alone, and that that is part of this money? A. That is what I heard afterwards; I didn't know it.

Q. What did Emil do with his remittance from the other side? A. Sent it to his wife.

Q. Did not his wife pay board to you all the time he went away? A. No, sir.

Q. No part of the time? A. Yes, sir. 30

Q. What part of the time did she pay board? A. Up to August, 1920, I think.

Q. So that all during the time that he was abroad she paid board to you? A. Up to the time she worked; yes, sir.

## Robert Von der Heyden—cross

Q. Now, when you told these boys that, under the law, your wife dying intestate, they inherited all of this real estate, but that your wife had requested them to sign the same off to you, what did they say?

The Vice Chancellor—I do not think he said that.

Mr. Herrmann—I understood that to be his testimony.

10 The Vice Chancellor—No, his testimony was that the wife said it was her desire that August receive a thousand dollars and Emil get the 516 Lot; he did not say anything, so far, that I recall, about his wife saying that he should hold the balance.

Mr. Cowley—I think, your Honor, that he did say that “I should get the house and lot.”

The Vice Chancellor—All right. (To Mr. Herrmann): Your question is permitted.

20 Q. What did the boys say to that? A. They were satisfied.

Q. Well, cannot you tell us what they said—did they say “We are satisfied”? A. “All right.”

Q. “All right”, they said. Now, then, at that time had you disclosed to them how much money was in the bank? A. **No, sir.**

Q. Had you disclosed to them the fact that you had another lot in both your and your wife’s name?

30 A. Yes, sir.

Q. You told them that, too, did you? A. Yes, sir.

Q. How long were you at Mr. Cowley’s office that night? A. What night was that?

Q. The night the paper was signed? A. I don’t

## Robert Von der Heyden—cross

know, exactly—probably about half-an-hour, or a little over a half-an-hour, or three-quarters of an hour.

Q. Now, during all that time did you say anything in the presence of Mr. Cowley to your sons with reference to this wish of the mother? A. Not that I remember.

Q. Well, do you say you did, or you did not? What did you talk about during all that time you were there? A. Mr. Cowley gave them the deeds to look over, and instructed them on what they were signing, etc.

Q. Whom did he hand the deed to? A. Emil and August.

Q. What did he say to Emil when he handed the deed to him? A. He says, "I suppose you know what you are signing? You know what this means?" and he asked him was he—I don't know exactly the expression he used.

Q. "Was he" what? A. That he was not forced to do this by anyone.

Q. Did he ask him whether he was willing to release his right in the homestead property? A. Yes, sir.

Q. He said that, did he? A. Yes, sir.

Q. And he told him that, under the law, he was the owner of it, and that by this deed he was conveying it to you? A. Yes, sir.

Q. He told him that? A. Yes, sir.

Q. Now, what did he tell to August about that? A. Practically the same thing.

Q. Practically the same thing. Now, you signed a deed, didn't you? A. Yes, sir.

Q. Conveying some property to Emil? A. Yes, sir.

Q. What did Mr. Cowley say to you about that

## Robert Von der Heyden—cross

thing? A. He practically spoke about the same thing, about all three deeds; that is, one was transferred to the other, only the different names was mentioned.

Q. I know, but why were you signing the deed to Emil? A. I believe I had, partly, a right in the lot.

Q. What right had you in the lot? A. The lot which my wife owned.

10 Q. What legal title did Mr. Cowley tell you you were conveying? A. Because I knew it was by my support these lots were bought.

Q. I am not asking you what you knew—won't you tell me what Mr. Cowley said to you when he said "You sign this deed"—what did he tell you your interest was in that property?

The Vice Chancellor—Did he tell you what interest you had in the lot?

20

A. Why, I don't exactly remember.

By the Vice Chancellor:

Q. Well, didn't you ever inquire what interest you had in the lot? A. Yes.

Q. When did you inquire? Didn't you inquire, right after your wife's death, what your interest was in this property? A. Why, no, not exactly; that is, I thought that the—

30

Q. (Interrupting) No, I am getting at what you did—didn't you make inquiries, right after your wife's death, almost immediately, as to what your interest was in this property—what your legal interest, your right in law, was in this property?

## Robert Von der Heyden—cross

Didn't you make that inquiry right after your wife's death? A. Yes, sir.

Q. And of whom did you make the inquiry?

A. Probably, Mr. Cowley.

Q. Then, within less than a month after your wife's death you knew that you had absolutely no interest in this land which stood in the sole name of your wife? A. Yes, sir.

Q. Did you then communicate that fact to these boys? A. Yes, sir. 10

Q. How soon after you learned the fact? A. Several days after, or a week.

By Mr. Herrmann:

Q. Now, the last day that Emil lived at the house, or when the row took place, you say you were in the cellar? A. Yes.

Q. And Emil came downstairs, and what did he say? A. He asked me what the row was.

Q. About the board, you mean? A. Yes. 20

Q. Then he said "Now, give me what is coming to me"? A. Yes, sir.

Q. What did you say? A. I didn't know what to say. I said "What is coming to you?"

Q. And what did he say was coming to him? A. He didn't say; he didn't say what was coming to him; he even talked about "six hundred dollars", and then he talked about "two hundred and fifty dollars." I didn't know what he was talking about, to tell you the truth. 30

Q. So that August then came in, and he said what—what did August say? A. That was in August's presence.

Q. Well, then, while he said that what did August say about it? A. He says that he was satis-

## Robert Von der Heyden—cross

fied, he says "only that he was fighting for Emil."

Q. What did he say he was satisfied with? A. With the thousand dollars.

Q. Well, who suggested that anyone was dissatisfied? A. Nobody; it was his own suggestion; he came out with that, without anyone speaking to him about it; he says, "You know I am satisfied, but I am coming up here to fight for Emil; he didn't get what was right."

10 Q. What did he mean by that? A. I don't know.

Q. You didn't know what he meant by that, do you? A. No.

Q. You hadn't made any agreement with these boys that you did not carry out, did you? A. Sir?

Q. You did not agree, as Mr. August said, to give him a thousand dollars, and give Emil that lot and the money in the bank, did you? A. Did I agree to that?

20 Q. Yes? A. I agreed on it, certainly I did; we all agreed.

Q. Did you agree to give Emil some money in the bank? A. No, not that I know of.

Q. So that when August says "I am satisfied, but I want you to carry out your agreement with Emil", what did you say? A. I didn't know what it was.

30 Q. Did you tell him "I don't know what it is"? A. No, because they was so hasty that I couldn't talk to them at all about anything.

Q. Did you tell them "I don't know what you mean about this agreement"? A. Yes—probably not in those words.

Q. Well, tell us what you said, then? A. Well, I don't exactly recall.

## Robert Von der Heyden—cross

Q. Well, did you say "I don't know what you mean"—was that all? A. Yes, sir.

Q. What did you mean by that, that you didn't know what they meant? A. What they were driving at—what they were getting at.

Q. Well, now after that August said "But I want you to carry out your agreement with Emil"? A. Well, that wasn't all; he said so much he don't remember it himself, I don't think.

Q. Well, did he say that? A. Yes, that is one point he said. 10

Q. And you said "What agreement"?—is that right? A. I believe so.

Q. And he said what? A. He says that Emil didn't get his right share.

Q. What was said when Emil found the deeds? A. Found the deed?

Q. Yes. A. What deed?

Q. The deeds he took away with him? A. Those deeds were in Emil's possession all the while. 20

Q. Do you mean they were in his possession before that day? A. Yes, sir.

Q. How long before that? A. When he received them from the Paterson Court House.

Q. When did you first see them that day? A. Just when he handed them over to August.

Q. What did he say when he handed them to August? A. He said, "Here, you had better take them along; I don't think they are safe in this house any more."

Q. Now, then, did you know what deeds he handed to August? A. Well, I couldn't exactly swear; they must have been his deeds, because he did not have any other deeds. 30

Q. Where were these deeds, C-3, C-4, and C-5—where did you keep those deeds—this deed made

## Robert Von der Heyden—cross

by Arthur Axt to Maria Von der Heyden, that was your deed, wasn't it? A. Yes, sir.

Q. Now, where did you keep that? A. I kept it in a tin box.

Q. Where was the tin box? A. Upstairs.

Q. How did he get that deed, do you know? A. I don't know.

Q. Did you know that he then had that deed?

A. No, sir.

10 Q. Didn't he tell you that morning that he had it? A. No, sir.

Q. And is not that the reason he said "Here, take these away; they are not safe here"? A. No, sir.

Q. Now, is not that the deed that he meant? A. I don't remember; no, sir.

Q. But he did use those words, didn't he? A. Those were all brand new deeds he had in his hands; he had two deeds.

20 Q. But he did use that language to August—"Take care of these deeds; they are not safe in this house"? A. Yes, sir; I admit that.

Q. Well, where was the deed, C-3?

The Vice Chancellor—Where was it kept?

A. That was in the same place.

Q. In the steel box, upstairs? A. Yes.

Q. In whose room—in your room? A. Yes, sir.

Q. Did you ever show these deeds to the boys?

3) A. Well, Emil and I went over all our deeds at one time.

Q. How did Emil get possession of that deed?

A. I don't know.

Q. Now, then, wasn't that one of the deeds of

## Robert Von der Heyden—cross

which he said, when he handed them to August, "Here, take care of these; they are not safe in this house"? A. I don't know; I couldn't say. The deeds he handled there was brand new deeds.

Q. How could you see what deeds he had in his hands? A. Because they were new, and in perfectly new envelopes.

Q. They were in an envelope? A. Yes; that is, he put them in an envelope—took them out of the envelope, and put them back in the envelope. 10

Q. Well, did you examine them, to see what they were? A. I was close enough by him.

Q. And you knew there were only two deeds? A. Yes, sir.

Q. One of those deeds belonged to you? A. I don't know.

Q. Those are the only two deeds he got from Mr. Cowley? A. I don't know who they belonged to.

Q. Didn't you want to find out whether it was your property or his property he was taking away? 20

A. No, sir; I did not.

Q. Why didn't you try to do it? A. I didn't think of it, at the moment.

Q. The boys had been away for a couple of years, hadn't they? A. August had.

Q. Well, hadn't the other one been away nearly as long? A. No; nowheres near as long.

Q. Did you tell the boys the value of this land and this house? A. Emil knew it. 30

The Vice Chancellor—Why don't you answer the question—he asked you if you told them?

A. No, I did not tell them.

## Robert Von der Heyden—cross-redirect

Q. You did not tell them? A. No.

Q. And did you tell August, "Now, this house is worth seven thousand dollars, with these lots"?

A. No, sir.

Q. "And, under the law, you and your brother get it, but it is really my money, and I want it"?

A. No, sir.

Q. What did the boys say to you when you told them that "this house and all this money are my  
10 hard-earned savings, with your mother's"—you told them that, didn't you? A. Yes, sir.

Q. What did the boys say to you then about their savings—anything at all? A. No.

Q. They did not say that any of their savings were in there? A. No.

Q. But they agreed with you that the property was bought with your savings alone—now, you are sure of that? A. I didn't hear any of them say anything in regards to that.

20 Q. Emil did not say, "Why, some of that money in the bank must be mine, because I sent mother six hundred dollars?" A. No, sir.

Q. Nothing like that was said? A. No.

Q. And those boys submitted, and agreed with you that this property was accumulated through your hard-earned savings? A. Yes, sir.

## Re-direct Examination by Mr. Cowley:

30 Q. As a matter of fact, this property was accumulated with the profits that you made on the Dann Street sale, wasn't it? A. Yes, sir.

Q. How much did that Dann Street property cost you, all together? A. About three thousand dollars.

Q. And you sold it for six? A. Six; yes, sir.

**Robert Von der Heyden—redirect**

Q. So the moneys that were realized from the profits of that Dann Street sale went into this property of yours? A. Yes, sir.

Q. Now, you stated here, on cross examination, that both Emil and you went over these deeds—is that true? A. Yes, sir.

Q. When did you go over the deeds? A. Oh, about a little while after their mother's death; I don't know exactly when it was.

Q. Did Emil see the deed from Mr. Axt, at any time prior to his mother's death? A. I think he did, yes. 10

Q. Now, when Emil and you went over these deeds after the mother's death, was there anybody present? A. No.

Q. Just you two? A. Just us two.

Recess until two o'clock, p.m.

Afternoon Session. 20

Hearing of the cause resumed at two o'clock, p.m.

ROBERT VON DER HEYDEN, recalled.

Re-direct Examination resumed by Mr. Cowley:

Q. And where did this take place—where did you and Emil go over these deeds? A. At our house, 49 Orono Street.

Q. And how long before you went to my office? 30  
A. A few months before.

Q. What? A. About a few months; I don't know the exact time.

Q. Two months? A. A few months.

Q. Well, there was not two months elapsed

## Robert Von der Heyden—redirect

between the date of your wife's death and the time the deed was signed? A. The time **you** looked over the deeds—a few months elapsed since I had been in your office, and the time **you** looked over these deeds.

Q. We are speaking of the deed from Axt—after your wife bought, you stated that you and Emil went over the deeds? A. Several months after, yes, I think—not right away.

10 Q. Why did you go over them several months after? A. We were looking for something, some papers belonging to Emil, which was among these deeds.

Q. Well, did both of you examine the deeds?  
A. Yes, sir.

By the Vice Chancellor:

20 Q. Well, that was after the deed from Emil and August to you, wasn't it? A. Yes, sir.

By Mr. Cowley:

Q. Where did you keep these deeds? A. Upstairs, in my bedroom.

Q. And in a box, I believe you testified? A. In a box.

Q. An iron box? A. A tin box, or iron.

Q. Had it a lock on it? A. No, sir.

Q. And where did you keep the box? A. In the wardrobe, or in the chiffonier, they call it.

30 Q. In a drawer in the chiffonier? A. Yes, it is a sort of a cabinet we used for medical purposes, sometimes.

Q. And was that drawer kept locked? A. No, sir.

## Robert Von der Heyden—redirect

Q. Well, do you know whether or not Emil knew where those deeds were kept? A. Yes, sir; he did.

Q. When you and he looked over them did you have the iron box out? A. Yes, sir.

Q. Now, there was some testimony that part of your earnings went for the support of children by a prior marriage—when you married Mrs. Von der Heyden were those children living with you?

A. Yes, sir. 10

Q. How many? A. Three.

Q. How long did they live with you? A. The oldest one left in 1912.

Q. That left two living with you? A. Yes, sir.

Q. When did the next one leave? A. About a year later.

Q. 1913? A. Yes, sir; 1913, I should say.

Q. And how long did the other one continue to live with you? A. He lived with us up to 1917. 20

Q. Did he live with you at any time while you were on Orono Street? A. Yes, sir.

Q. How old was that child then? A. Sixteen years old.

Q. In 1917—sixteen years old? A. Yes; he is twenty now.

Q. Twenty now—were you supporting that child, or was he working? A. He was working.

Q. What became of his money? A. He gave it to his mother. 30

Q. That is, to Mrs. Von der Heyden? A. Yes, sir.

Q. Now, were the boys apprised of the amount of money that was in the bank?

## Robert Von der Heyden—redirect

Mr. Herrmann—I think the witness, on the direct, said they were not.

The Vice Chancellor—That is my recollection of it.

Q. Did you understand the question? A. Yes—were they surprised—

Q. No, were they informed of the amount of money in bank? A. No, sir—at what time?

10 Q. After their mother's death? A. No, sir.

Q. At the time the settlement was made? A. Until after it was transferred to my name.

Q. What did you tell them then? A. I told them about five hundred dollars—that is, after August got his thousand,—after August got his thousand dollars and I paid all the mother's funeral expenses there was about around five hundred dollars left in the bank.

Q. Now, did they know of that?

20

Mr. Herrmann—I object, if the Court please.

Q. Well, did you tell them? A. I believe so, yes.

Q. Did August ask you where he was to get his thousand dollars from?

30

Mr. Herrmann—I object to that, as leading.

The Vice Chancellor—I sustain the objection. What real difference does it make? This husband, I assume, was bound to pay the funeral expenses, and the wife's money in bank was hers, to be distributed accord-

**Robert Von der Heyden—redirect-recross**

ing to law. What difference does it make where he was going to get the money from?

Mr. Cowley—Well, it is just going to show that they knew about the whole affair.

## Re-cross Examination by Mr. Herrmann:

Q. How long was your wife ill before her death? A. A year and one month.

Q. Was she in bed all that time? A. No, sir.

Q. What did she die of? A. Cancer.

Q. And how long did you know that she had cancer? A. A year and one month.

Q. How long did she know she had cancer? A. She never knew.

Q. Never knew? A. No, sir—according to the Doctor's advice; he told me not to let her know.

Q. Did you ever suggest to her, when she expresses to you, as you have testified, that you give a thousand dollars to one son, and a lot to another son, that she make a will providing for that? A. No, sir; I never encouraged her to that effect; I always encouraged her that she would be better, according to the Doctor's advice.

## By the Vice Chancellor:

Q. Well, did you think, when she told you that a thousand dollars should be given to one son, and a lot to another son, didn't you think then that she was contemplating death—that she should say it? A. I don't understand; "contemplating"—what does that mean?

Q. Well, supposed she was going to die—when she told you that a thousand dollars should be given to one son, and a lot to another son, didn't you think then that she supposed she was going

Robert Von der Heyden—recross  
James A. Crowley—direct

to die? A. In fact, I knew, right along, that she had to die.

Q. I am not asking you that, I am asking you, when she made that suggestion, if she did not think she was going to die? A. I don't think so; no, sir.

Q. Then why do you think she told you to give a son a thousand dollars and another a lot, if she  
10 thought she might survive either of them? A. In case something would happen.

Q. And didn't she think something was going to happen to her? A. Well, she probably felt that way.

Q. Well, then, what was there improper, at that time, in your asking her, if she wanted to do these things, to make a will and settle her estate? A. I tried to do everything to encourage her always, to keep up her courage.

Q. You are not answering my question: You  
20 had the wife say to you in substance, "In case anything happens to me, give a thousand dollars to one son, and a certain lot to another"—she was intending that as a will—didn't you so understand it? A. Yes, I understood so.

Q. Well then, why didn't you tell her to make a writing of it, and have it drawn up properly, to carry out her views? A. I don't know why I did not.

39

JAMES A. CROWLEY, sworn.

Direct Examination by Mr. Crowley:

Q. Where do you reside? A. In Passaic, New Jersey.

## James A. Crowley—direct

Q. What is your business? A. Real estate.

Q. How long have you been in this business in Passaic, New Jersey, as a real estate agent? A. About fourteen years.

Q. Are you familiar with the values of property on Orono Street and Van Houten Street, and in that vicinity? A. I am.

Q. Have you bought and sold any property there during the last two or three years? A. The last year, yes, I have bought property. 10

Q. How much did you buy? A. Why, I bought eleven lots there in 1921, between this particular house and Van Houten Avenue.

Q. On that same street? A. Same street.

Q. Are you familiar with the sales of any other properties? A. Why, yes; I know of a property that has been sold there since.

Q. Have you examined this property at 49 Orono Street? A. I have.

Q. When did you make your examination? A. 20 I think it was last Thursday.

Q. And you saw it again this morning? A. Yes, sir.

Q. What is the value of the lots on which this house was built? A. About \$375.

Q. A lot? A. Per lot, yes.

Q. Describe the house, if you can, that is erected on that lot? A. Why, it is a six-room house, with a foundation of about 20x28, with an enclosed front porch, and a little one-story extension in the rear, 6x9. It has steam heat, and a little reception hall. 30

Q. What is the value of that house? A. The value of the house, alone, as it stands, is \$4800.

## James A. Crowley—direct-cross

Q. You say that you bought eleven lots there during the present year? A. During 1921.

Q. Are they as well situated, in regard to values, or as far as values are concerned, as these lots? A. More desirable, because they are closer to the school and to Van Houten Avenue, a main artery.

Q. What was the price of those lots? A. \$315 a lot.

10 Q. Is that value you have given the present value of the house, as you estimate it? A. Of the house itself, yes.

Q. Of the house and lot? A. No, there is also a little garage on the property.

Q. What is the size of the garage? A. Well, the garage is about 12x14; has a board floor; no driveway leading to it; tarpaper roof; no heat, not steel.

20 Q. What would you say is the value of that? A. \$300.

Q. So the total value of the entire property, the two lots, the house and the garage, would be what? A. Would be \$5850.

## Cross Examination by Mr. Herrmann:

Q. What do you say your total value, then, of this house, with the two lots on which it stands, is? A. And the garage—including the garage—  
30 \$5850.

Josephine R. Von der Heyden—direct

MRS. JOSEPHINE R. VONDER HEYDEN,  
SWORN.

Direct Examination by Mr. Cowley:

Q. Mrs. Von der Heyden, you are the present wife of Robert Von der Heyden? A. Yes, sir.

Q. And you live at 49 Orono Street, Clifton?  
A. 49; yes, sir.

Q. You were married in January, 1921? A.  
January 26, 1921. 10

Q. And you went to live at 49 Orono Street?  
A. Yes.

Q. With Mr. Emil Thies and wife, and your husband? A. Yes; we all lived there together.

Q. In April 1921, a quarrel arose between your husband and Mr. Emil Thies? A. Why, yes, due to, I think it was a board bill—a misunderstanding, really.

Q. Will you tell what was said there in reference to Mrs. Von der Heyden's estate? A. Well, first there was an argument about the board, and eventually this argument came up about Emil not being treated right; and August said he was speaking for Emil, that there was a great difference between the two of them—that he was taking Emil's part in the matter—in fact, that really Emil could not speak for himself, I presume. 20

Q. Now, when the quarrel was first started was August present? A. Why, no; Mr. Emil just told his wife to go and call up August in his place of business. 30

Q. What was said, before August arrived, by Emil? A. Well, the argument really arose in the cellar.

## Josephine R. Von der Heyden—direct

Q. You were not present there? A. I was not there.

Q. When the argument arose in your presence, what was first said—or while the argument was carried on in your presence? A. Well, I think they were quarrelling about board; and then, when they were quarrelling about board Emil told his wife to call up August; and then, when August arrived, why, the matter was taken up about the  
10 property.

Q. Well, what was first said? A. What was first said about the property?

Q. About the property? A. Well, they claimed that Mr. Von der Heyden had made them sign, and they didn't know what they were signing; that is all; and August said he was really satisfied with the thousand he got; he was perfectly satisfied, he told him. He said he did not say that, but he did; I heard him; I was there.

20 Q. He said he was satisfied? A. He certainly did.

Q. Go ahead? A. And they said if Mr. Von der Heyden didn't come across willingly, without any trouble, they would take it to court. They mentioned Weinberger & Weinberger, which they said they didn't mention, and he said if they lost out then he would take Mr. Von der Heyden's life; he said he "was not the first Dutchman he killed"—I heard him say that.

30 Q. Now, did they say anything as to what they wanted? A. Why, no; I believe that is why Mr. Von der Heyden came to you, for them to make a settlement, if they wanted anything.

Q. No, I mean, at that time? A. At that time? Not that I recall, no.

## Josephine Von der Heyden—cross

Q. You say that they said they did not know what they were signing when they signed the papers? A. Yes; they said they didn't know what they were signing; that he took advantage of them, according to that.

Cross Examination by Mr. Herrmann:

Q. Just one minute, Mrs. Von der Heyden—you say Mrs. Emil Thies telephoned for Mr. August Thies to come up? A. Yes, sir. 10

Q. And when Mr. August Thies arrived he joined in the argument with your husband? A. Yes.

Q. Now, then, did he say to your husband that he was satisfied with his thousand dollars, but that he did not carry out his agreement with reference to Emil? A. I don't remember anything about "agreements" being said; but he said he did not think that Emil was treated fairly, that was all. 20

Q. That "Emil was not treated fairly"? A. That is what August said.

Q. Did you see Emil get the deeds, and say "Here," to his brother, "take these with you; they are not safe here"? A. I did not see any deeds, at all.

Q. You did not see them? A. No.

Q. You were not there then, when Emil left the house with the envelope containing the papers? A. Well, I couldn't see what he had; I know he was all fussed up; he was "out for blood, and anything he went after he would get," he said. 30

Q. How did the altercation arise about "being compelled to sign papers that they did not under-

## L. A. Cowley—direct

stand''—can you tell us more exactly what was said, and by whom it was said, and what Mr. Von der Heyden said? Give us the complete conversation. A. Well, the only thing is that after he was sent for, why, they started saying that Mr. Von der Heyden took advantage of them, because they were two poor soldiers that came from the other side, and they didn't know really what they were signing. That is all I understood of the case.

10 Q. Was that before or after these deeds were found? A. I don't know anything about deeds; I did not see any deeds.

Q. But you are sure that was said—that they told him that they did not know what they were signing when they signed those papers? A. Why, they said as much as that, yes, sir.

20 Mr. Cowley—If your Honor please, I am, unfortunately counsel in this case, and I know, of course, the situation in regard to a lawyer testifying in his own case, and that it is not encouraged in the Court of Chancery—

The Vice Chancellor—Well, you are privileged to testify, if you want to.

LOUIS A. COWLEY, sworn.

30

The Witness—If counsel has no objection, I would like to state, in narrative, my testimony.

Mr. Herrmann—If you will, Mr. Cowley.

**L. A. Cowley—direct**

The witness—I am a practicing attorney, having offices in the City of Passaic: I was admitted in 1904, as an attorney, and in 1907, as a counsellor-at-law; and my main practice is in conveyancing and mortgage loans. I know Mr. Robert Van der Heyden, and I know Emil Thies, and I faintly recollect August Thies. They signed, in my presence, the deed marked Exhibit C-1. They acknowledged that they signed it of their own free will and deed; and I informed them of the contents of the deed. I particularly informed them, to the best of my recollection, of the paragraph following the description of the premises, that is “Being the same premises conveyed to Maria Von der Heyden by deed recorded in Book 226, page 511, Passaic County. The said Maria Von der Heyden died seized of said premises leaving as her only heirs the grantors herein named, and her husband, the grantee herein named.”

10

20

By the Vice Chancellor:

Q. Well, that recital was untrue—the husband was not an heir? A. Well, he was one of the heirs, or one of the parties in interest.

Q. Not in any sense was he an heir; he had no interest in the property? A. Well, at any rate, they were fully informed as to that point. They well knew what they were signing, and knew that they were parting with all their interest in that property.

30

## L. A. Cowley—cross

By the Vice Chancellor:

Q. What interest did they have in the property? A. Well, they were the entire owners of the property, after their mother's death.

Q. Well, then, why did you put in that the father was an heir, if he was not? A. Well, I do not recall that just particularly, any more than I recall particularly just why the father joined in the deed to Emil. It may have been, probably, in  
10 drawing the deed, that, for the moment, I thought he might have had an estate by the curtesy, just thinking that, possibly, those boys were his children—that is, at the time of the drawing of the deed there might have been an inadvertence in that respect.

Q. And was not that inadvertence carried in the information given to the grantors? A. No, I do not think so.

Q. Eh? A. I do not think so.

Q. You cannot say it was not, can you? A. No; there was no question, to me, as to the amount or share that they took by reason of their mother's death. There was no money passed in my presence, as I recall it. That transaction took place between themselves. The signing of the deed was done in my office, and they were informed that they were parting with the property which their mother acquired. August—I do not remember particularly addressing him; Emil, I remember  
20 particularly, just his attitude to the transaction.  
30

Cross Examination by Mr. Herrmann:

Q. You had been consulted by Mr. Von der

## L. A. Cowley—cross

Heyden after the death of his wife, with reference to his interest in the property, had you? A. I think so.

Q. Did you advise Mr. Von der Heyden that he had no interest in the property? A. I think I did, —that is, my knowledge of the law in regard to that would suggest that; I do not remember the exact words I used.

Q. That was before you prepared the deed?  
A. Before I prepared the deed. 10

Q. Did you attend at the Surrogate's Office with him when he took out the letters of administration? A. I may have; I don't remember that.

Q. Did you advise him as to the extent to which he would participate in the personal estate? A. I did.

Q. Neither Mr. Emil Thies, nor his brother August, were present? A. Not to my knowledge.

Q. When the deed was signed did you do anything more than read that clause at the end of the description? A. I don't remember, particularly, just what I did, excepting, that the usual custom would be to fully inform them of the contents of the paper. 20

Q. And the contents of that paper is that recited, in so far as the interest is disclosed, "being the same premises conveyed to Maria Von der Heyden by deed recorded," etc., "The said Maria Von der Heyden died intestate, seized of said property, leaving as her only heirs the grantors herein named, her husband, the grantee here in named" —now, as a lawyer, assuming that these parties had been discussing a probable settlement, would that clause indicate to these boys that they were 30

## L. A. Cowley—cross

parting with their entire interest to their father, who had no interest; or would not that clause, unless it was explained, indicate that it was a settlement that they had reached? A. Well, it indicated to me that the boys were parting to their father with their entire interest; that they were giving everything up.

Q. Did you tell them that, on the death of their mother, they inherited the real estate, and that  
10 they were conveying all the real estate to the father by this deed? A. I do not remember; I won't say that I did.

By the Vice Chancellor:

Q. Did you, in effect, though, go much beyond reading the deed and explaining the contents of it to them? A. Well, I think I told them "You know what you are signing." I probably told  
20 them (because I draw a great many deeds, probably more deeds than any lawyer, almost, in our City) I probably told them that they were turning over their property, of which their mother died seized, to their father.

Q. Did you tell them that was all of the whole estate, or did you tell them that it was two-thirds of the estate? A. Oh, I don't remember that I mentioned "two-thirds" or the "whole."

Q. Couldn't they get the idea from that deed that their father had an interest in that estate?  
30 A. Well, I don't know whether they did, or not; I don't think they did.

Q. You did not explain to them that the father had no interest in it? A. I do not recall that.

## L. A. Cowley—cross

By Mr. Herrmann:

Q. Did you, when you had the other deed executed, explain to them why you had joined the father in the deed as grantor? A. No, probably not.

Q. Why did you join him? A. Well, that was an inadvertence, I guess; probably, at the same time that these two deeds were drawn, there might have been an impression in my mind, based, probably, on a misapprehension of the fact, probably, when I gave it to the girl to draw up the deed, it might have been in my mind that Emil and August were his children—at the time the deed was drawn. But I remember distinctly advising Mr. Vonder Heyden that he had no interest in the property.

10

Q. And, having no interest in the property, nevertheless, you drew a deed for him to sign? The deeds were drawn after you had told him he had no interest in the property? A. Yes.

20

Q. You had always represented Mrs. Von der Heyden in her lifetime, hadn't you? A. I think I represented Mrs. Von der Heyden—this is the extent of my representation—I put a mortgage of eight hundred dollars, I think on the Dann Street property; and then I did not represent them, if I recall it right, on the sale of the Dann Street property. When they bought the Orono Street property I think I represented them. And I did represent them in the suit in the Passaic District Court when they were sued for a slight accident with the automobile.

30

Q. Did you know that the reason that Mr. Von der Heyden assigned for putting the property in his wife's name was that it was to avoid the con-

## A. Thies—direct

sequences of that suit? A. Well, I don't remember that, It was not to avoid the consequences of the suit, I know it was not, because the suit was prosecuted successfully; but it was to avoid any future accident that might occur.

Q. So that if he injured someone, he would not be responsible? A. So that if he injured some one the home would be secure—the same as any business man entering a venture does.

10

The Defendants Rest.

## COMPLAINANTS' REBUTTAL EVIDENCE

AUGUST THIES, recalled:

Direct Examination by Mr. Herrmann:

20 Q. Your father has testified that, shortly after the death of your mother, he appraised you of the fact that the title to the real estate was in your mother's name, and that, as such, you would inherit, and that he worked for it, and his money was invested in it, and that your mother's last wish was that, in the distribution of the estate, you should get only one thousand dollars, and your brother Emil a lot—did your father ever indicate to you that thought, in any words whatever? A. No; he never said anything, at all. I did not know  
3) it was my mother's property until my brother spoke up and handed me them deeds.

Q. Did he ever tell you that your mother had made such a wish, that you get a thousand dollars, and your brother Emil this lot? A. No, sir.

## A. Thies—direct

Q. Your father testified that during the time that you lived there you contributed your earnings to the house—what was the maximum that you made, and for how long a period did you make it?

A. I might safely say, from the year 1909, the time I started to work, until the mother's death, I turned in around \$6500.

Q. All together? A. All together.

Q. (By the Vice Chancellor) From when? A. From 1909, the time I started to work, until the time my mother died. I did well, being in the service practically three and a half years during that time. 10

Q. (By Mr. Herrmann) How much did you send home from the Service? A. I made an allotment. There was twenty-five dollars a month sent to my mother, which reached, approximately, six hundred dollars.

Q. Did your mother ever return that to you? A. No, sir. 20

Q. And then, in addition to that, before you left what was the maximum that you earned, a week? A. In 1916 was the maximum—that was just before I entered the service—I was earning around twenty-five dollars a week; that was a time when Mr. Von der Heyden was making either eighteen or twenty-one.

Q. Now, then, of what you earned, how much did you turn over to your mother? A. I turned over everything I earned, and my mother gave me some spending money. 30

Q. (By the Vice Chancellor) In 1916 you say you were making twenty-five dollars a week? A. About twenty-five, yes, sir.

## A. Thies—direct-cross

Q. (By Mr. Herrmann) Now, then, do you know whether your mother had any money when she married Mr. Von der Heyden? A. Yes, she would mention the fact to me that she had about five hundred dollars in the bank—in the German Savings Bank in New York,—Fourteenth Street.

Q. Your father testified that he purchased an automobile — do you know when that was? A. That was in 1915, we bought the automobile.

10 Q. What kind of a car was it? A. It is a Chevrolet Baby Grand—nine hundred dollars.

Q. Did you pay cash for it? A. Paid cash; yes, sir.

Q. Did your father have any other property, that you know of, that he paid for? A. Why, you mean at the time of my mother's death?

Q. Yes? A. Why, yes; he had two lots on Van Houten Avenue, in his name, I understand now; and he had his stocks. That was all the property  
20 he really owned, that I know of.

## Cross Examination by Mr. Cowley:

Q. Up to 1916 you turned in all your money —you received spending money back? A. Up until 1916, did you say?

Q. Yes. A. Yes; I turned in all my money until I entered the service, around April, 1916. I came back from the Border Trouble, and then I paid board; I was over twenty-one at that time; I  
30 paid board amounting to 15 dollars a week, and bought all my clothes and everything else—otherwise the fifteen dollars would cover my bed and board.

Q. How long did you continue paying board at

**E. Thies—direct**

the rate of fifteen dollars a week? A. Until I was called into the Service again in the World War.

Q. Well, how long was that? A. (Producing and referring to a memorandum book) That was about eight months, say.

Q. You paid that every month? A. Paid that right along, every month.

Q. You did not get any part of it back? A. Why, no, no. 10

Q. And you say you did not get your allotment money returned to you by your mother? A. No.

Q. Wasn't it complained of, by either Emil or his wife, about you getting a thousand dollars, that you had already received your allotment money? A. No; I don't know anything about that.

Q. Didn't they object to the division, because, in addition to the thousand dollars, you got the money which you had sent to your mother while you were away? A. No, sir. 20

EMIL THIES, recalled.

Direct Examination by Mr. Herrmann:

Q. You heard your father's testimony? A. Yes, sir.

Q. What have you to say with respect to that testimony to the effect that he had told you, after your mother's death, that the property was in your mother's name, and that you would inherit it by law, but that the property was really his because 30

**E. Thies—direct**

his hard-earned savings were in it, and that your mother's wish was that your brother August get a thousand dollars, and you get a lot—is that true, or not true? A. It is not true; that is, he never said anything. All that I know of is what I said this morning, that is, what was mentioned at the table, at the dining room table, that we would come to some settlement about the board, and then I got up and walked out; outside of that, I know  
10 nothing. I would never had signed it if I knew that was the condition.

Q. The first time you knew the title was in your mother's name was when? A. Was at the time I sent my wife to telephone for my brother; at that time I found out.

Q. Now, then, did your father, at any time between your mother's death and down to the time that you now refer to, when you had the row in May, 1921, ever tell you that the property, the real  
20 estate, was in your mother's name, and that you were the sole heirs at law? A. No, he did not.

Q. Did you father ever tell you that your mother had made a wish, before her death, that your brother was to get a thousand dollars, and you were to get a lot? A. No, he did not.

Q. During the time that you lived at the house, and until your marriage, how much did you earn, per week? A. Well, I would average about twelve dollars a week, in all the years that I have worked, that is, the average for the entire time; that is,  
30 from 1907 until 1917, in June, when I was married.

Q. What did you do with your money all during that time? A. I turned it all in to my mother.

**E. Thies—cross**

Q. Did your mother appropriate it to her own use, or the common use, or return it to you? A. Well, I didn't get no return of it, only clothes, and what I needed for food, and some spending money; that is all.

Cross Examination by Mr. Cowley:

Q. You say that you did not know that, when Mr. Axt deeded the property over to your mother, it was put in her name alone? A. I did not. 10

Q. And yet you negotiated the deal? A. Well, that didn't mean that I knew who had the property; I negotiated it, yes, for my parents.

Q. You never saw the deed during your mother's lifetime? A. I never saw the deed; no, sir. The first I saw the deed was when I had them in my possession at the time I called for my brother; then I saw it was in Maria Von der Heyden. 20

Mr. Herrmann—I now offer in evidence Certified Copies of the following deeds:

Deed dated the 8th of July, 1909, made by the Passaic Assets Company to Maria Von der Heyden, for one of the Dann Street lots, or two of them.

(Admitted and marked Exhibit C-5.)

Deed dated the 25th of Feb., 1909, made by the Passaic Assets Company to Maria Von der Heyden, for another of the Dann Street lots. 30

(Admitted and marked Exhibit C-6.)

Deed from David Goldberg and wife to Emil Von der Heyden and wife, conveying

**E. Thies—cross**

another Dann Street lot.

(Admitted and marked Exhibit C-7.)

Mr. Cowley—I think that is the house lot, is it not? The deed from David Goldberg conveyed the house.

Mr. Herrmann—All right, if you know that to be the fact; I don't know.

10 Deed made the 20th day of March, 1916, to Emil Thies and Marie Thies, his wife, from Passaic Investment Company, for another Dann Street lot.

(Admitted, and marked Exhibit C-8.)

Deed made by Emil Thies and Irene Thies, his wife, to Maria Von der Heyden, formerly Maria Thies, for the same property (date of deed not stated by counsel).

(Admitted and marked Exhibit C-9.)

20 Mr. Herrmann—I think, Mr. Cowley, we can agree that these deeds (referring to Exhibits C-8 and C-9) were the ones that you referred to as having been improperly made, conveying the property to "Emil Thies and Mary, his wife," Mary being his mother, instead of his wife, and it being the intention to have the title vested in Maria Von der Heyden of one of the Dann Street lots.

Both sides close.

30 The Vice Chancellor (After argument by counsel)—I will endeavor to give counsel my views within a few days.

**Exhibits C-, C-2****EXHIBIT C-1**

August F. Thies, single, and Emil H. Thies and  
Irene, his wife

to

Robert Von der Heyden

Deed, dated July 28, 1919.

Ack'd July 29, 1919, before Louis A. Cowley, a  
Master in Chancery.

Rec'd July 31, 1919.

10

Book Q-27, page 230.

Cons. \$1.00 and other valuable consideration.

Conveys property described in the bill of com-  
plaint.

Recites—Being the same premises conveyed to  
Maria Von der Heyden by deed recorded in Book  
Q-26 of Deeds, page 511, Passaic County. The said  
Maria Von der Heyden died intestate, seized of said  
premises leaving as her only heirs the grantors here-  
in named and her husband the grantee herein named.

20

Endorsement on margin, "Consideration less than  
\$100. L. A. C."

**EXHIBIT C-2**

August F. Thies, single and Robert von der Heyden  
widower

to

Emil H. Thies

Deed, dated July 28, 1919.

Ack'd July 29, 1919, before Louis A. Cowley, a  
Master in Chancery.

30

Rec'd July 31, 1919.

Book Q-27, page 231.

Cons. \$1.00 and other valuable consideration.

**Exhibits C-3, C-4**

Conveys lot 516 as shown on map entitled, "Map of Property of Suburban Homes Company, Athenia, Acquackanonk Township, New Jersey, known as map No. 352.

10 Recites—Being the same premises conveyed to Marie Von der Heyden by deed recorded in Book R-26 of Deeds, page 473, Passaic County. The said Maria Von der Heyden died intestate, seized of said premises leaving as her only heirs at law, her husband the said Robert Von der Heyden and her two children the said Emil H. Thies and August F. Thies.

Endorsement on margin, "Consideration less than \$100. L. A. C."

**EXHIBIT C-3**

Realty Estates of Passaic, N. J. a corporation

to

Maria Von der Heyden

20 Deed, dated June 28, 1917.

Ack'd June 28, 1917 before Robert F. Pratt, a Commissioner of Deeds.

Rec'd Nov. 7, 1917

Books R-26, page 473 &c.

Cons. \$1.00

Conveys lot 516 as shown on map entitled, "Map of Property of Suburban Homes Company, Athenia, Acquackanonk Township, N. Jersey, known as map No. 352

3)

**EXHIBIT C-4**

Arthur Axt and Ida, his wife

to

Maria Von der Heyden

Deed, dated Sept. 21, 1919.

**Exhibits C-5, C-6**

Ack'd Sept. 21, 1917 before Louis A. Cowley, a  
Master in Chancery.

Rec'd Sept. 24, 1917.

Books Q-26, page 511 &c.

Cons. \$1.00 and other valuable consideration.

Conveys lots 514, and 515 as shown on map en-  
titled, "Map of Property of Suburban Homes Com-  
pany, Athenia, Acquackanonk Township New Jer-  
sey, known as map No. 352.

10

**EXHIBIT C-5**

Passaic Estates Company

to

Maria Van der Heyden

Deed, dated July 8, 1909.

Ack'd July 14, 1909 before George F. Allen, a  
Commissioner of Deeds.

Rec'd July 29, 1909.

Book G-20, page 308.

20

Cons., \$1.00.

Conveys lot number 128 on map entitled, "Map  
of Passaic Estates Company, at Passaic and Ac-  
quackanonk Township, N. J."

**EXHIBIT C-6**

Passaic Estates Company

to

Maria Von der Heyden

Deeds, dated Feb., 25, 1909.

Ack'd Mar. 5, 1909 before George F. Allen, a Com-  
missioner of Deeds.

Rec'd Mar. 17, 1909.

Book V-19, page 566.

Cons. \$1.00

30

**Exhibits C-7, C-8**

Conveys lot number 126 on map entitled, "Map of Passaic Estates Company, at Passaic and Acquackanonk Township, N. J.

**EXHIBIT C-7**

David Goldberg and Ida Goldberg, his wife  
to  
Robert Von der Heyden and Maria Von der Heyden,  
his wife.

10

Deed, dated Mar. 12, 1910.

Ack'd Mar. 12, 1910 before Arthur S. Hughes, a  
Commissioner of Deeds.

Rec'd March 23, 1910.

Book T-20, page 528.

Cons. \$1.00

Conveys lot number 127 on map entitled "Map of Property of Passaic Estates Company at Passaic and Acquackanonk Townships, N. J."

20

**EXHIBIT C-8**

Passaic Investment Co., a corporation of the State  
of New Jersey

to

Emil Thies and Mary Thies, his wife.

Deed, dated March 20, 1916, before Arthur S  
Hughes, a Commissioner of Deeds.

Ack. March 22, 1916.

30

Rec'd March 25, 1916.

Book R-25, page 99

Cons., \$1.00.

Conveys lots numbers 143 and 144 on map entitled, "Map of Passaic Estates Co., at Passaic and Acquackanonk Township, N. J."

## Exhibits C-9, D-1, D-2

## EXHIBIT C-9

Emil Thies and Irene Thies, his wife

to

Maria Von der Heyden, formerly Maria Thies, wife  
of Robert Von der Heyden.

Deed, dated Sept. 6, 1917.

Ack'd Sept. 6, 1917, before Louis A. Cowley, a  
Master in Chancery.

Rec'd Sept. 10, 1917.

10

Book O-26, page 463.

Cons. \$1.00 and other valuable consideration.

Conveys lots 143 and 144 on map entitled, "Map  
of Passaic Estates Co., at Passaic and Aquackanonk  
Township, N. J."

## EXHIBIT D-1

David Goldberg

to

Robert Von der Heyden and Maria Von der Heyden,  
his wife 20

Agreement, dated Feb. 20, 1909.

Agrees to sell lot 127 on map entitled, "Map of  
Property of Passaic Estates Co., at Passaic and Ac-  
quackanonk Township, N. J." for \$1,600.00 \$100.00  
down; \$1200 by assuming mortgages for that amount  
now on the property; \$300.00 to be paid in monthly  
installments of not less than \$10. per month to apply  
on account of both interest and principal.

31

## EXHIBIT D-2

David Goldberg and Ida Goldberg, his wife

to

Robert Von der Heyden and Maria Von der Heyden,  
his wife

**Exhibit D-2**

Deed, dated March 12, 1910.

Ack'd March 12, 1910, before Arthur S. Hughes, a  
Commissioner of Deeds.

Rec'd March 23, 1910.

Book T-20, page 528.

Cons., \$1.00.

Conveys lot 127 as shown on map entitled, "Map  
of Property of Passaic Estates Company, at Passaic  
and Acquackanonk Township, N. J."

10

20

30

## Memorandum

## IN CHANCERY OF NEW JERSEY

Between

August F. Thies, and Emil  
H. Thies,

Complainants,

vs.

Robert Von der Heyden, et ux,  
Defendants.*On Bill, etc.*

10

## MEMORANDUM

Decided, December 8th, 1922.

Messrs. J. S. Craven and L. Edward Herrmann,  
for Complainants.

Mr. L. A. Cowley, for defendants.

Griffin, V. C.:

The bill in this cause is filed, among other things, 20  
to set aside a conveyance made by two stepsons to  
the stepfather under the following circumstances:  
The mother of the complainants, by her first mar-  
riage, had two sons, who are now twenty-eight and  
thirty years of age, respectively. The father of  
these sons died about the year 1902. In 1907 their  
mother married Mr. Von der Heyden (who will  
hereafter be called the defendant), and she died in  
1919. At the time of the marriage to the defendant  
these children were aged about thirteen and fifteen 30  
years, respectively. The relations between the step-  
father and the children appear to have been, at all  
times down to 1921, of such character as usually  
subsists between parent and child. When the de-  
fendant married complainants' mother the mother

## Memorandum

had a few hundred dollars. It does not appear that the husband had anything. The defendant worked, the children worked, and the earnings were thrown into hotchpot. Certain lands were bought in the name of the husband and wife, which were sold for about six thousand dollars, from which they received about fifty-two hundred dollars net, some thirty-seven hundred of which was used to purchase the premises in question, the title to which was taken  
10 in the name of the wife, since deceased. This was done voluntarily by the defendant because he had had an auto accident and was advised that it would be well to have the deed made to his wife, so that, in case of future accidents, he would be execution proof. (This is not the language used, but this is what it means.) Clearly, whatever came from the sale of this property in 1917, which ordinarily would become the share of the husband, constituted a gift to the wife in the purchase of this property, so that  
20 she took the premises free and clear of any interest of the husband in the premises. *Fretz vs. Roth*, 70 N. J. Eq., 764, unless he should become entitled to curtesy. This feature is entirely settled, because the wife died without issue by the defendant, born alive. Thus, the entire estate, at her death, vested in fee simple in the children.

Shortly after the death of the mother the father consulted Mr. Cowley, a member of the bar, and learned from him that he had no estate in the lands,  
30 and that, as to the personalty, he would be entitled to one-third, and the children to two-thirds. He then asked the children to settle up the estate, and took them to the office of Mr. Cowley, and, the deeds being prepared, the children signed a deed of the property to the defendant. At the same time

## Memorandum

\$1000 was paid to August, and a deed of Lot 516 was made by August and the father to Emil. This was done pursuant to a conversation had prior thereto, wherein it was suggested that the estate be settled up, and the father said that August would get a thousand dollars and Emil would get this lot and the balance of the money in the bank, which then consisted of about \$1800, out of which certain expenses were to be paid which would reduce the amount to about five hundred dollars was returned by the default. This balance was not paid to Emil. 10

The father's version of the story is this—that he told the boys of a conversation he had with their mother prior to her death in which the mother, (apparently recognizing the right of the father in the property which was the result of their joint earnings, and also the earnings of the children), said to make division by giving \$1000 to August and giving this lot to Emil. There was nothing said about his retaining the balance. It was evidently assumed by the husband and wife, if the story of the defendant is taken to be true, that the property was to be that of the husband upon her death. He did not, however, ask his wife to make a will, which would be the natural manner of disposing of the property; and he excused his failure to do this upon the ground that his wife was suffering from cancer and did not know that she was so seriously ill, and he did not want to discourage her. I fail to see the force of this story. If the wife made the suggestion of a post-mortem division of her property, she was evidently speaking in contemplation of death, and the most natural thing in the world for the husband to have 20 30

## Memorandum

done would have been to say, "Well, why don't you make a will?" This was not done.

The story of the sons that they knew nothing about the title to this property at the time when they made the conveyance is worth of more credence. At the time that the conveyance was made the defendant knew that he had no interest, in law, in this property and was only entitled to one-third of the personalty. He asked his stepsons  
10 (who reposed implicit trust and confidence in him) to exchange deeds which would enable him to hold Lots 514 and 516, with the building thereon, at the lowest estimate worth about six thousand dollars, while one son got a thousand dollars and the other a lot worth between three hundred and fifty and five hundred dollars. The sons testify that they did not know that the fee simple was  
20 vested in them free from any claim of the defendant; and this I believe to be the fact; and they also deny that any such conversation as the defendant testifies to was had between them and the defendant. In the deeds drawn, as I recall it, there is a recital that Mrs. Von der Heyden died intestate, leaving her surviving as her heirs at law the two sons and the defendant, which might convey the idea that the defendant had some interest in the property when he had none.

One son was married prior to his mother's death, and lived in the family of his mother and stepfather until the World War broke out when he  
30 entered the Service and was discharged about May, 1919, a few weeks before his mother died. The other son was unmarried, and served about three years in the Army on the Mexican border and in the World War, and came home about the same

## Memorandum

time as the other brother. The wife of one son, after the death of the mother managed the household, and the relations of all the parties were quite pleasant until about the Spring of 1921, when dissensions arose. It seems that the defendant took another wife, in, I think, 1921. One of the sons, August, after the marriage of the stepfather, resided part of the time in Brooklyn and worked in Passaic. Emil resided at the home of the father, with his wife, and they say that the understanding was that Emil was to pay five dollars a week board, and that there was no charge to be made for his wife's board, as she was the housekeeper. In April, 1921, Emil, having been out of work, obtained a job painting an adjoining house, for which he got sixty dollars, and his wife tendered, either to the defendant or his wife, a payment of thirty-five dollars on account of Emil's board. Some dispute then arose, whereupon Emil telephoned to August at the mill, and August came up, and they had rather a heated conversation, in which August took the deeds to his mother, and to Emil from the drawer, and they say then, for the first time, they learned that the property was the mother's property, although the deed itself recites the fact that it was the property of the mother.

I am inclined to the view that the father did not disclose to these children the fact that the property was their other's, and that he had no interest in it. I am also satisfied, by reason of the close relations that existed between the parties, that the sons paid very little attention to the matter, relying wholly upon what the defendant said.

Therefore, the question arises; taking the relationship existing, was the defendant bound to

## Memorandum

make a full disclosure of the situation to these children, so that they might judge for themselves whether they would make the conveyance? If, under the law, he was bound to make the disclosure, then he must re-convey, upon terms which will restore the *status quo*.

10 In *Hall vs. Otterson*, 52 N. J. Eq., 522; aff'd, 53 N. J. Eq., 695, Vice Chancellor Green, at p. 528, said, "In all transactions between persons occupying relations, whether legal, natural or conventional, in their origin, in which confidence is naturally inspired, is presumed, or in fact reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed and who had acquired an advantage, to show affirmatively, not only that no deception was practiced thereon, no undue influence used, and that all was fair, open and voluntary, but that it was *well understood*." (Citing Cases.)

20 The same doctrine was applied in *Slack vs. Rees* 66 N. J. Eq., 447, at p. 449.

30 In view of the doctrine of the law thus enunciated, it being quite plain to me that these children did not have the benefit of independent advice, and that the relation of trust and confidence existed quite as fully between these children and the stepfather as between a parent and child; that they were not informed as to their rights in the premises, and did not understand the purport of their act; and in view of the fact the burden of proof is cast upon the defendant, and he having failed, the decree should be for the complainants; but the *status quo* must be restored. That may be done, so far as the children are concerned by the son August bringing into the personal estate the

## Memorandum

thousand dollars, with interest, or so much thereof as he would not be entitled to as his distributive share. There may be other features on this point which counsel may point out. This is a mere suggestion of what now occurs to me as to one item in which the defendant may be interested.

I make no point, at this time, of the conveyance to the other son, Emil, of the vacant lot, because, as I recall it, that became vested in the two sons on the death of their mother, and the defendant has no interest in it. 10

On the point of laches, I do not find that there is any laches in this case. *Hall vs. Otterson, supra* p. 534.

The decree may be settled on five days' notice.

20

30

## Decree

## IN CHANCERY OF NEW JERSEY

---

 Between

 August F. Thies, and Emil  
 H. Thies,

Complainants,

and

 Robert Von der Heyden, and  
 Josephine Von der Hey-  
 den, his wife,

Defendants.

*On Bill &c.*

10

**DECREE**

This cause coming on to be heard at the regular term of the Court of Chancery, held at the Chancery Chambers in Jersey City, New Jersey, in the presence of John D. Craven, solicitor and L. Edward Herrmann, of counsel with the complainants, and Louis A. Cowley, of counsel with the defendants, and the pleadings and proofs having been read and taken, and the arguments of the respective counsel having been heard and considered and the court having duly considered said pleadings, proofs, and arguments, and it appearing to the court that complainants are entitled to the relief sought and prayed for by them in the Bill of Complaint.

It is on this 26th day of December, 1922, by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court does hereby Order, Adjudge and Decree, that the said deed so as aforesaid made

31

## Decree

by the said complainants to the said defendant, Robert Von der Heyden, bearing date the 28th day of July 1919 and recorded in Book Q-27 of Deeds for Passaic County on page 230, for the premises in the said pleadings and proofs mentioned, is and was from the time of the execution and delivery of the same, null and void and have no force or effect whatsoever in law or in equity and that the said defendant Robert Von der Heyden do, on service of a copy of this decree, and upon the complainant, August Thies bringing into the personal estate of the said Maria Von der Heyden the sum of one thousand (\$1000.00) dollars, with interest, or so much thereof as he would be entitled to, as his distributive share as the next of kin of his mother, Maria Von der Heyden, deliver up the said deed to the complainants to be cancelled and that he do also deliver up to the said complainants possession of the said premises now held by him, together with all deeds, muniments of title and writings in his custody or power relating to the said premises, and that the said defendants, Robert Von der Heyden and Josephine Von der Heyden, his wife, do also reconvey the said premises to the said complainants free and clear of, and from all encumbrances done by them, or any claiming by, from, or under them.

It is further Ordered, Adjudged and Decreed that the said defendant, Robert Von der Heyden, do make an accounting of all the rents, issues and profits derived by him from the said land and premises, and that he pay over to the said complainants the balance remaining due to them as shown by the said accounting.

And it is further Ordered, Adjudged and Decreed

## Decree

that the said Robert Von der Heyden, as Administrator of the Estate of Maria Von der Heyden, deceased, do render an accounting of all the personal estate of the said Maria Von der Heyden showing all of the assets which came into his hands as an administrator, and all disbursements by him so made as administrator, and that he pay over to the complainants the distributive shares to which they are entitled as next of kin of the said Maria Von der  
10 Heyden, deceased.

It is further Ordered, Adjudged and Decreed that the said defendants do pay to the said complainants their costs in this cause to be taxed.

It is further Ordered, Adjudged and Decreed that the said complainants may be at liberty to apply to this court for execution and further direction as they may be advised.

Respectfully advised,

John Griffin,

Vice Chancellor.

20

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

*Between*

AUGUST F. THIES and EMIL H. THIES,  
*Complainants-Respondents,*

*and*

ROBERT VONDER HEYDEN and JO-  
SEPHINE VONDER HEYDEN, his wife,  
*Defendants-Appellants.*

*On Appeal from  
Final Decree of  
Court of  
Chancery.*

### BRIEF FOR RESPONDENTS.

#### Argument.

The appellants stress the proposition that the deed sought to be set aside was the result of a family settlement. That said settlement was made in recognition by the respondents of a moral obligation.

We consider that family settlements made by the parties with full knowledge of their legal rights and complete information upon all facts, which must necessarily be the basis of such settlement, are valid. The appellants urged the same contention in the trial below. The learned Vice-Chancellor indicated clearly that the deed would stand if he was satisfied that the same was executed pursuant to such a settlement.

*“The Vice-Chancellor.* What difference does it make?

*Mr. Cowley.* Well, I should think it would make this difference, if your Honor please:

If after the death of Maria Vonder Heyden, the boys (no quarrel then having arisen which would embitter them in any way) make what I think any fair-minded man would consider an equitable distribution of the property.

*The Vice-Chancellor.* Oh, if it was a family settlement and voluntary agreement, with knowledge of the facts, it stands; but the question is, Did these young men have the knowledge requisite to enable them to make this kind of settlement? Their theory is that the father with knowledge of the facts, concealed everything; and they, relying on their relations with the father, signed this instrument without knowledge of the facts, in other words, it was the father's duty to disclose the truth to them so that they could intelligently act" (State of Case, p. 90, ll. 1 to 25).

We submit that the testimony clearly discloses that the deed was executed by the respondents in complete ignorance of the facts, both as to extent of their interest in their mother's estate, to which they were entitled by law, and the interest of the appellant. The facts were fully submitted to and considered by the learned Vice-Chancellor.

An examination thereof will convince this Court that the conclusions reached by him were consistent with the testimony. In *Carton v. Phelps*, 109 Atlantic, page 291, this Court indicated clearly that great weight is given to the findings upon question of fact, in considering appeals from decrees of the Court of Chancery, where it said:

"On appeal from a decree of the Court of Chancery, great weight is given to a finding upon a question of fact, because the Chancellor, who hears the case in the Court below and sees the witnesses and hears them testify, has better opportunities to judge their credibility than the reviewing Court."

#### POINT I.

The title to the premises conveyed by the deed sought to be set aside was absolute in the deceased. The personal estate was also in the name of the deceased.

Assuming that the entire purchase price of the real estate was paid by the appellant, and that he contributed

to the personal estate to a substantial amount no resulting trust is thereby established as between husband and wife.

In *Herbert v. Alvord*, 75 N. J. Eq., p. 428, Vice-Chancellor Leaming said:

“Where one purchases property and pays the consideration therefor, and the conveyance of the legal title is taken in the name of a stranger, a trust will be presumed to have arisen in virtue of the transaction in favor of the person who has paid the consideration. This principle results from the equitable theory that the consideration draws to it the beneficial ownership. Where, however, the conveyance is not made to a stranger, but is made to a person whom the purchaser is under a legal obligation to maintain, such as a wife or child of the person who pays the price, the good consideration of blood or love and affection will support the conveyance, and no resulting trust will arise from the payment of the consideration.”

The appellant urges that, before her death, his wife communicated to him her desire that respondent August Thies should have one thousand dollars of her entire estate and respondent Emil H. Thies a lot adjoining one which he personally owned.

“Q That is, the house and one additional lot?

A Yes, sir; and that their mother's wish was.

*By the Vice-Chancellor.*

Q (Interrupting.) Did you say all this to them?

A Yes, sir; that August was to have \$1,000 cash, and Emil the lot, so he would have 50 foot front on Orono street.

Q Who would have 50 foot front? A Emil”  
(State of Case, p. 75, ll. 21-30).

The learned Vice-Chancellor properly excluded testimony of this character for the purpose of establishing any resulting trust and permitted it to be offered for the purpose alone of indicating whether it was a basis for the settlement.

“Q She did not leave a will? A No, sir.

Q Did she make, or give you any instructions in regard to the disposition of the property?

*Mr. Herrmann.* I object.

*The Vice-Chancellor.* On what theory is that admissible?

*Mr. Cowley.* I want to show that he later communicated those expressions to the sons, and, in accordance with that, this adjustment was made. They stated they were not informed as to any of the conditions—we are going to show that he did inform them of her requests.

*The Vice-Chancellor.* Well, in so far as that conversation is concerned, to affect the title to real estate it is inadmissible. The only thought I had in my mind is this, that if he communicated what the mother said to the sons, and the sons to conform to their mother's wish, did something, it might be evidential.

*Mr. Herrmann.* It might be evidential to that extent.

*The Vice-Chancellor.* That is the only extent to which I will admit it.

*Mr. Herrmann.* If it is limited to that I have no objection.

*The Vice-Chancellor.* If the stepfather told these young men that their mother had said thus and so, and, on the faith of that, they conveyed, why to that extent that he told them, I think it is admissible. What effect it would have on the validity of the deed, in view of their doing it in compliance with the mother's wish (if it was the mother's wish) is another question" (State of Case, p. 73, ll. 28-35; p. 74, ll. 1-30).

## POINT II.

The respondents in making and executing the conveyance sought to be set aside did not have the benefit of independent, competent and disinterested counsel and advice.

The appellant was the step-father of the respondents. The testimony indicates that the relationship was equally strong between them, as if he had been the natural father. They had implicit faith and confidence in him,

and the necessity of making any independent investigation of their rights in making any settlement of the estate of their mother did not suggest itself to them. They relied upon his fairness and judgment in accepting the distribution he proposed.

“Q Did your father give you a thousand dollars? A He did give me a thousand dollars.

Q What did you think you were receiving the thousand dollars for? A Why, I thought I was getting a fair share of the estate; I trusted that he would give me all that was coming to me; I left everything up to him, and he gave me a thousand dollars, which I really believed was all I was to get” (State of Case, p. 32, ll. 16-23).

“Q What did you suppose you were doing when you signed this deed? A Why, I supposed we were settling up—this is what my father said: ‘You are going to get a thousand dollars, Emil is going to get a lot and the money that is left in bank’ ” (State of Case, p. 34, ll. 22-27).

“Q And you did not inquire? A I didn’t inquire, no; I had no reason to look up anything; I trusted my father; we got long fine; we were like two buddies; we could go out together and have a good time together, out in the car, and enjoy ourselves fine; and when he said what I was to get I thought, ‘Well, I guess that is all I am getting; Pop is all right’ ” (State of Case, p. 36, ll. 11-18).

The cases conclusively establish the proposition that:

“In all transactions between persons occupying relations whether legal, natural or conventional in their origin, in which confidence is naturally inspired, is presumed, or in fact reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed and who has acquired an advantage to show affirmatively not only that no deception was practised therein, no undue influence used, and that all was fair, open and voluntary, *but that it was well understood.*”

*Hall v. Otterson*, 52 N. J. Eq., page 528.

Citing cases:

See also,

*Horn v. Becker's Ex.*, 40 N. J. Eq., p. 411;

*Thornton v. Ogden*, 32 N. J. Eq., p. 728;

*White v. White*, 60 N. J. Eq., p. 115;

*Fritz v. Fritz*, 80 N. J. Eq., p. 59, 549;

*Slack v. Rees*, 66 N. J. Eq., p. 449;

*Post v. Hagan*, 71 N. J. Eq., p. 243.

The burden of proving that the deed was the consummation of a family settlement is upon the appellant, and we submit that the testimony conclusively shows that this burden has not been met. On the contrary a reading of the testimony emphatically shows that the proposals were made to the respondents by the appellant only in the vaguest manner. After the death of the mother, the appellant applied for and was granted letters of administration. No inventory was filed or prepared. The sons within a week after the mother's death proposed to the father that they would like to make arrangements with reference to their contribution toward the expenses of the household, in some manner similar to that which had existed before the mother's death; arrangements were made and then announced that in the distribution of the estate one of the sons should receive one thousand dollars, and the other a lot, and two hundred and fifty dollars. There is dispute concerning the latter item. During the making of this proposal Emil left the table where all had been seated, and August and the father remained. The conversation as related by all of the witnesses shows that the sons passively assumed that the proposal was the result of calculations of their interest made by the father and that what he proposed as each son's share was that to which they were entitled.

They completely relied upon their parent for fairness, and honesty and that by this method they were receiving all to which they were entitled.

“Q So when you returned and had lived there three weeks, without paying anything, what did you say? A I says to my father, ‘Well, Pop, we will have to straighten this up some way, as I am living here and not paying any money,’ and I says (I will use the words I used then) ‘Suppose we all chip in and create a fund and let Emil take care of the books; he is used to keeping papers; and we will pay all the bills out of that, and if we are short we will make up the difference, and if there is anything left we will keep it as a fund.’ Right at that time Irene got up and went out to wash the dishes and started to clear off the dishes; and Emil went out in the kitchen and started to work.

Q They left you and Mr. Vonder Heyden together? A Entirely alone, yes. So he sat there talking awhile, and then he says, ‘No you get a thousand dollars; Emil will get a lot and the money in the bank’ (that is the way he said it) ‘after we pay the bills and clear up all the expenses.’ ‘Well,’ I says, ‘all right, Pop; you know what you are doing, and you will do the right thing by me,’ and that was all. I got up and went out” (State of Case, p. 29, ll. 5-29).

“Q What did you think you were receiving the thousand dollars for? A Why, I thought I was getting a fair share of the estate; I trusted that he would give me all that was coming to me; I left everything up to him, and he gave me a thousand dollars, which I really believed was all I was to get.

Q Your father qualified as administrator of the personal estate of your mother? A Qualified? You mean, did he settle up the personal property?

Q Yes. A No. I never heard anything about ‘personal property’ only the one hundred dollars” (State of Case, p. 32, ll. 15-22).

“Q What did you suppose you were doing when you signed this deed? A Why I supposed we were settling up—this is what my father said: ‘You are

going to get a thousand dollars, Emil is going to get a lot and the money that is left in bank'” (State of Case, p. 34, ll. 22-27).

“Q Now will you tell me exactly again, what you said to the boys, and when you said it, and where you said it, and who were present, with reference to your wife’s wishes concerning her estate after her death? A Why, that was right in our dining room, and those present were Emil, August and Irene Thies.

Q When was it? A I do not recall exactly the date it was.

Q How soon after your wife’s death was it? A Probably within a week.

Q How did the subject happen to come up? A I told them I knew how the property was standing, that the property was on my wife’s name; and I told them, I said, ‘Here, boys, so and so is the case.’

Q Did you say ‘So and so is the case’? A ‘The property—this house and this lot—is on your mother’s name.’ I says, ‘that lot’ (mentioning the 513) ‘is on my and your mother’s name, and lot 516 is on your mother’s name.’” (State of Case, p. 91, ll. 11-32).

Subsequently they were requested by the father to attend the office of the family attorney to sign papers to which they acceded willingly. They were at Mr. Cowley’s office for a brief time during which they signed the deed. The most significant fact to indicate that there was no discussion of the rights or interest of the parties at this time appears in the recital at the end of the description in the deeds.

“Being the same premises conveyed to Maria Vonder Heyden by deed recorded in Book Q-26 of Deeds, page 511, Passaic County. The said Maria Vonder Heyden died intestate, seized of said premises leaving as her only heirs the grantors herein named and her husband the grantee herein named” (State of Case, p. 133, ll. 15-20).

What occurred at this time appears in the testimony as follows:

“A 1919 all in the same year of the death I came home from work, and my father says, ‘We will go down to Lawyer Cowley tonight.’ I says, ‘All right.’

Q Then what happened? A We went down to the lawyer, my brother Emil, and Irene, his wife, and Mr. Vonder Heyden and myself, went into Lawyer Cowley’s office and sat down, and Mr. Cowley had a number of papers in front of him, and he began to read; he read on, and after he read through the papers he said something about ‘personal property’—well, I was in doubt about exactly what ‘personal property’ was—I was thinking of rings and clothing—and my brother looked at me, and then my father and Mr. Cowley said something about ‘jewelry,’ and Mr. Vonder Heyden then spoke up and said, ‘One hundred dollars would cover it.’ I said, ‘Oh, easy.’ I was thinking of the jewelry and clothing. Then the next thing, Mr. Cowley says (he had a lot of papers in front of him) ‘You sign your name here and here’—I don’t know just how many times I signed my name, but I signed wherever he told me to sign; and I was through, and waiting for the others to get through, too, and right after that we went out and went home” (State of Case, p. 30, ll. 1-26).

“Q You knew, when you signed this paper in my office you signed a deed? A I didn’t know that I signed a deed, no; I just, as my brother said, and as the arrangements, from what I understood, were made, that we were to sign the papers, and my father was to take care of us, that he would do the right thing by us.

Q What paper did you think you were signing? A Well, to settle up the estate.

Q What settlement did you have in view—what did you think was the settlement? A I didn’t have no settlement; the arrangements were made between my brother and father.

Q And you did not know what you were signing? A I didn’t know what I was signing; I left everything to my brother; I put my trust and my faith in my father.

Q Didn't you know you were getting a deed for a lot? A Well, I knew that, yes; but where it came from I didn't know; I didn't question it.

Q Don't you know that August signed it? A I remember August signed it, and I remember my wife signed it.

Q No, your wife signed the deed to your father. Didn't you know you were transferring that property to your father, Robert Vonder Heyden? A Well, we were transferring it; we signed it, transferring the property to my father, yes; but that he would take care of us; we trusted him." (State of Case, p. 48, ll. 1-30).

"Q How long were you at Mr. Cowley's office this night the settlement took place? A Why, I should say about two minutes—not more than five minutes. We came in, and he read some papers, and something was said about 'Personal estate' and my brother looked at me, and I looked at my brother—I didn't know what 'personal estate' meant—so my father or Mr. Cowley said something about jewelry and clothes and I did not then understand it. My father says, 'one hundred dollars; that is all right.' That is what I remember. And then he said, 'Sign here, and here and here, and we went out'" (State of Case, p. 56, ll. 20-33).

"Q 'Irene Thies?' A Yes.

Q Did you sign that? A Yes, sir.

Q Where was that signed? A In Mr. Cowley's office in Passaic.

Q How did you happen to go there? A I went there being as my husband told me to go down to Cowley's office and sign some papers.

Q Did you know at that time, that Mrs. Vonder Heyden had been the owner of this property, and that you were signing away your dower right in your husband's interest? A No, sir; I did not.

Q How long were you at Mr. Cowley's office? A Just a few minutes.

Q Was it explained to you by anyone, by Mr. Vonder Heyden or Mr. Cowley, that you were releasing your dower in your husband's interest in his mother's estate? A No, sir; they did not.

*Cross examination by Mr. Cowley.*

Q What did you think you were signing? A I signed being as my husband told me to sign, trusting everything was all right.

Q Didn't you know you were signing a deed? A No, sir; I did not.

Q Didn't I say anything to you? A You did not; you just told us to sign.

Q Didn't explain to you what you were signing? A No, sir.

Q Didn't explain to either of you, or anybody there? A Why, no; if I had heard it I would have said it.

Q Did you look at the paper you signed? A Why, I just signed it, and that is all; I just signed what you told me to sign.

*By the Vice-Chancellor.*

Q Well, did not Mr. Cowley read the paper over to you? A Not that I remember; he read, yes, but all I remember hearing him say was about the 'personal property.'

Q Well, before you signed the deed, did not Mr. Cowley read over the deed to you? A He read some papers; I will admit he read some papers; but I never stopped to think, being that I trusted that everything was all right, and that was the way it was supposed to be done.

Q Did Mr. Cowley ask your husband to leave the room while you signed the deed? A No, sir; not that I remember.

Q Well, were your husband and you in the room during all the time that these papers were signed?

A Yes, sir; we were all there.

Q All there. A Yes, sir.

Q Don't you recall that your husband left the room? A No, sir; I do not.

Q Don't you recall that Mr. Cowley asked you if you had signed this paper as your voluntary act and deed, without any fear, threats or compulsion of your husband? A No, sir; I don't remember'' (State of Case, pp. 60-61).

Cowley had been the family attorney. The respondents did not consult him, however, and appeared at his office

for the first time after the death of their mother at the request of the father "to sign papers." They remained at the office but a short time, and signed such papers as were presented to them by Cowley.

"Q How long were you at Mr. Cowley's office this night the settlement took place? A Why, I should say, about two minutes—not more than five minutes. We came in, and he read some papers, and something was said about 'personal estate,' and my brother looked at me, and I looked at my brother—I didn't know what 'personal estate' meant—so my father or Mr. Cowley said something about 'jewelry and clothes,' and I did not then understand it. My father says, 'One hundred dollars; that is all right.' That is what I remember. And then he said, 'Sign here, and here and here,' and we went out.

Q You said Mr. Cowley had always been your family attorney? A Yes, sir" (State of Case, p. 56, ll. 20-35).

"Q Did you pay Mr. Cowley for his services in this settlement? A No, sir; I didn't have no money when I came out of the Army; I was not working at that time.

Q Did you receive any bill from Mr. Cowley for any services? A No, I believe he added it all on the estate—that is, in the bill to my father.

*Re-cross examination* by Mr. Cowley.

Q What was the one hundred dollar reference? A To personal property. You made a question about personal property, and I looked at my brother, and my brother looked at me. I had no idea what 'personal property' was; I had an idea it was 'jewelry and clothes;' and we didn't have time to think or discuss any more. My father says, 'One hundred dollars was all right,' and that is what I thought 'personal property' was at that time—that one hundred dollars would cover it.

Q Was there anything said by your father to you that it was your mother's wish that your brother should receive a thousand dollars? A No, sir; I did not know anything about the arrangement; as I said, I got up and walked out" (State of Case, p. 57, ll. 1-25).

An inquiry by the Vice-Chancellor as to a notation in the margin of the two deeds (C. 1 and C. 2) elicited the reason which Mr. Cowley believed that the deed to the appellant was prepared by him and signed by the respondents.

“Q I notice, on the margin of Exhibits C. 1 and C. 2, the words ‘Consideration less than \$100, L. A. C.,’ were those words on the deeds when you signed them? A They were put on at that time.

Q They were put on at the time you signed them? A Yes, sir.

Q Did you read over what was written there? A Well, I know that, because my father says, ‘One hundred dollars,’ and Mr. Cowley wrote it down” (State of Case, p. 57, ll. 26-35).

“Q And that was the time the deed was signed and before delivery, or at the time of the signing of the deed? A Yes, sir.

*The Vice-Chancellor.* I suppose that is for the purpose of explaining the situation on account of the Stamp Tax, is it not?

*Mr. Herrmann.* I don’t know what the purpose was.

*The Vice-Chancellor.* Well, I think it is quite apparent. I have not read the Act, but I assume that was intended to show that the transfer was not subject to the Stamp Tax Act, that no stamps were required.

*Mr. Cowley.* Well, there was a settlement made between themselves; they were restoring really to this party—

*The Vice-Chancellor.* No, you are missing what I am talking about.

*Mr. Cowley.* To avoid the tax, yes.

*The Vice-Chancellor.* There is no tax assessment unless it is over one hundred dollars.

*Mr. Cowley.* Over one hundred dollars.

*The Vice-Chancellor.* Then that indicated that the consideration for that transfer—for each of these transfers—was less than one hundred dollars.

*Mr. Cowley.* Well, yes; it was not really a bargain and sale deed, it was a restoration of ownership.

*The Vice-Chancellor.* But, in the deed to Mr. Vonder Heyden it was recited or stated there to indicate that the consideration paid was less than one hundred dollars?

*Mr. Cowley.* Yes, sir" (State of Case, p. 58, ll. 1-35; p. 59, ll. 1-3).

Cowley evidently believed that the sons were "restoring" the property to the father: that "it was not really a bargain and sale deed, it was a restoration of ownership." We submit that there is no testimony to support this theory and this statement of Mr. Cowley indicates that he was misinformed by the appellant of the actual arrangements made by him with the respondents. He presumably advised Mr. Cowley that the sons recognized him as the real owner of the property and were willing to restore the title to him. He does not suggest in his testimony that any such arrangement was made by him with his sons. He rests the settlement proposed by him entirely upon a request made by his wife before her death.

"A After my wife's death I got the two boys together, and I says to them 'I suppose, boys, you know what the conditions were'—August not as much as Emil, but Emil knew it perfectly, because he was there when the property was purchased and the transactions was made, that the property was on their mother's name—that is, the house and one lot.

Q That is, the house and one additional lot? A Yes, sir; and that their mother's wish was—

*By Vice-Chancellor.*

Q (Interrupting.) Did you say all this to them?

A Yes, sir—that August was to have \$1,000 cash, and Emil the lot, so he would have 50 foot front on Orono street.

Q Who would have 50 foot front? A Emil" (State of Case, p. 75, ll. 12-30).

“Q Will you tell us how it was you communicated this information about the thousand dollars and the lot to the two boys? A After their mother’s death I got the boys together and spoke to them on the subject, and told them again that they knew that this was on their mother’s name, and that their mother’s wish was that August should have a thousand dollars and Emil have a lot adjoining his on Orono street.

Q And what did you say in regard to the property that you lived in? A And the house was supposed to go over to me” (State of Case, p. 77, ll. 32-35; p. 78, ll. 1-10).

“A No, I told them their mother’s will.

Q Let us hear what you told them about the will? A That their mother told me that August should get one thousand dollars cash money, and Emil should get the lot adjoining his lot to make it fifty feet front for him” (State of Case, p. 93, ll. 23-30).

“Q You did not tell them what their share was? A No, sir; I just told them what their mother’s will was.

Q You told them that that was what the mother desired to have done—to give August a thousand dollars, and Emil a lot? A Yes, sir” (State of Case, p. 95, ll. 8-13).

A fair deduction from all of the testimony as to what occurred until this time is that the respondents relied implicitly upon the father’s fairness and honesty, and that they were receiving by his arrangement all that they were entitled to receive under the law. Later the appellant and respondent Emil had a controversy over the amount of board which he was paying. During the row that ensued, he demanded the two hundred and fifty dollars which he understood he was to receive in addition to the lot which he believed had been conveyed to him by his father. (While the father is named as a party to, and signed this deed he had no estate to convey in this lot.) The father denied that he was to receive the two hundred and fifty dollars and Emil telephoned to his brother

August to corroborate his understanding of the settlement. During the discussion that followed, the deeds to this property were for the first time discovered by the respondents and their inspection showed that the title was in their mother's name.

The respondents deny that the appellant ever communicated any such request of their mother or that such a request influenced them in making the settlement of making the deed:

“Q Your father has testified that, shortly after the death of your mother, he apprised you of the fact that the title to the real estate was in your mother's name, and that, as such, you would inherit, and that he worked for it, and his money was invested in it, and that your mother's last wish was that, in the distribution of the estate, you should get only one thousand dollars, and your brother Emil, a lot—did your father ever indicate to you that thought, in any words whatever? A No; he never said anything, at all. I did not know it was my mother's property until my brother spoke up and handed me them deeds.

Q Did he ever tell you that your mother had made such a wish, that you get a thousand dollars, and your brother Emil this lot? A No, sir”  
(State of Case, p. 126, ll. 19-34).

“Q What have you to say with respect to that testimony to the effect that he had told you after your mother's death, that the property was in your mother's name, and that you would inherit it by law, but that the property was really his because his hard earned savings were in it, and that your mother's wish was that your brother August get a thousand dollars, and you get a lot—is that true or not true? A It is not true; that is, he never said anything. All that I know of is what I said this morning, that is, what was mentioned at the table, at the dining room table, that we would come to some settlement about the board, and then I got up and walked out; outside of that I know nothing. I would never have signed it if I knew that was the condition.

Q The first time you knew the title was in your mother's name was when? A Was at the time I sent my wife to telephone for my brother; at that time I found out.

Q Now, then, did your father, at any time between your mother's death and down to the time that you now refer to, when you had the row in May, 1921, ever tell you that the property, the real estate was in your mother's name, and that you were the sole heirs at law? A No, he did not.

Q Did your father ever tell you that your mother had made a wish, before her death, that your brother was to get a thousand dollars, and you were to get a lot? A No, he did not" (State of Case, pp. 129-30).

The learned Vice-Chancellor with all of the facts before him, hearing and seeing the witnesses, and with full opportunity of judging their credibility, found that the father did not disclose the facts upon which the sons could base their judgment to execute the deed; that the sons did not have the benefit of independent advice.

During the hearing of the case he properly announced the law governing the issue presented.

*The Vice-Chancellor.* But, apart from all that, they say that this step-parent was charged with the duty of making known fully to these young men what the true state of affairs was, so that they could act intelligently upon it for the protection of their own interest, and that they relied solely on this step-father to deal fairly with them; they had no independent advice—of course, they were old enough not to require it—but they did not have counsel; they did not have the thing explained to them. Now, I do not see that what transpired since that deed was made and the transaction closed alters the situation which existed at the time of the actual transaction, excepting this—anything you can show to negative the idea that they did not know the facts, or, in other words, to show that they did know all the facts, and signed voluntarily, with knowledge of the facts, you can show; and you can show whether

knowledge was acquired, perhaps, with the idea of showing that they were in laches; but this thing about agreements as to board, and all that kind of thing, I think is entirely foreign to the matter in controversy" (State of Case, p. 85, l. 35; p. 86, ll. 1-26).

We submit that at the time the respondents made the deed decreed to be set aside, they were not fully informed as to their rights and interests; that they relied solely and entirely upon the action of the appellant in dealing fairly with them; that they did not seek nor obtain independent advice. That any settlement so made is voidable. The decree under review should be affirmed.

Respectfully submitted,

L. EDWARD HERRMANN,  
*Of Counsel with Respondents.*

# New Jersey Court of Errors and Appeals

Between August F. Thies and Emil H. Thies, Complainants-respondents, and Robert Vonder Heyden and Josephine Vonder Heyden, his wife, Defendants-appellants.	}	On Appeal from Final Decree of Court of Chan- cery.
---	---	--

## Brief for Appellants

This is an appeal by Robert Vonder Heyden and Josephine Vonder Heyden, his wife, from a decree in the Court of Chancery setting aside a deed made by the complainants August F. Thies and Emil H. Thies, respondents, to the said Robert Vonder Heyden, one of the defendants, appellant.

August Thies, the father of the complainants, died in 1902. His widow, Maria Thies, contracted a second marriage. She married the defendant, Robert Vonder Heyden, in September, 1907. She will be hereinafter referred to as Maria Vonder Heyden. At the time of her re-marriage, she had two children (sons) living by her first marriage, namely, the complainants, Emil H. Thies, who was then fourteen years old, and August F. Thies, who was then twelve years old. At the time of said second marriage, Maria Vonder Heyden had about

three hundred dollars in the bank. Her husband, Robert Vonder Heyden, had at that time no assets, other than his earning capacity. There were no children born of the marriage of Robert Vonder Heyden and Maria Vonder Heyden.

Robert Vonder Heyden's two step-sons, Emil and August, resided with their step-father until August married in 1920. Emil continued to live with his step-father after August's marriage, until April, 1921.

In 1909, Robert Vonder Heyden and Maria Vonder Heyden, his wife, bought a piece of property in the City of Clifton. It was bought under contract. It consisted of a house and lot. The purchase price was sixteen hundred dollars, payable one hundred dollars down; twelve hundred dollars by assuming mortgages for that amount then on the property, and the balance, or sum of three hundred dollars, payable in monthly installments of not less than ten dollars per month, applicable on account of both principal and interest. When the principal was thus reduced to twelve hundred dollars, they took title (March 12, 1910) to the property in their joint names, subject to the mortgage encumbrance of twelve hundred dollars. This property is referred to in the testimony as lot 127 on map of property of the Passaic Estates Company. It is above referred to as the Dann street property.

Previous to this purchase, they had acquired title on February 25, 1909, to a lot designated as lot 126 on map entitled, "Map of Passaic Estates

Company," and on July 8, 1909, to lot 128 as laid down on said last mentioned map, and subsequent to said purchase, they also acquired title (June 28, 1917) to lot 516, as designated on map of "Property of Suburban Homes Company, Athenia," and on September 21, 1917, (the deed being erroneously dated September 21, 1919) to lots 514 and 515 as laid down on said last mentioned map. Title to these last mentioned five lots were all taken in the wife's name, (Maria Vonder Heyden), although the lots were all purchased by Robert Vonder Heyden, and with his own money. The present litigation has reference solely to lots 514 and 515, referred to in the testimony as lots 514 and 515 Orono Street, in the City of Clifton, title to which lots was acquired by the use of the husband's money, but put in the wife's name.

In 1916, August F. Thies entered the Army, and remained in service until about two weeks prior to his mother's death. At the time of entering such service, he was of full age, and emancipated of any control exercised by his mother or step-father, and his brother Emil was two years older than he was.

In 1917, Robert Vonder Heyden and Maria, his wife, sold the property known as lot number 127, on map of property of Passaic Estates Company, and referred to in the testimony as property situate on Dann Street, in the City of Clifton, to the Magor Car Co. for the sum of six thousand dollars. There was an eight hundred dollar mortgage on that property, and they received fifty-two hundred dollars in cash for their equity in it. This

sale netted them a profit of forty-four hundred dollars. They had paid for the property in cash, four hundred dollars, and had reduced the mortgage from twelve hundred dollars to eight hundred dollars, involving another payment of four hundred dollars, so that they paid altogether for it eight hundred dollars, and they received for it fifty-two hundred dollars, thus realizing a profit of four thousand, four hundred dollars.

In the same year, (September 21, 1917), Robert Vonder Heyden and his wife, Maria, bought a house and two lots on Orono Street, Clifton, New Jersey, (lots 514 and 515), as shown on map entitled, "Map of Property of Suburban Homes Company, Athenia" for thirty-seven hundred dollars cash. **Title was taken in the wife's name.** The balance of the money realized from the sale of the Dann Street property was deposited in Maria Vonder Heyden's name in a bank in Passaic.

In 1917, Emil who was then twenty-four years old, and fully emancipated from his mother's and step-father's control entered the Army, and remained in that service about nineteen months, and until about two weeks before his mother died. On June 15, 1919, Maria Vonder Heyden died intestate. She left a house and two lots on which it was built, namely, the two lots on Orono Street known as lots 514 and 515, as shown on map of lots of Suburban Homes Co., and one other lot on Orono Street, known as 516, as shown on said map. She also left about eighteen hundred dollars cash in bank.

July 28, 1919. Not quite two months after Mrs. Vonder Heyden's death, the two sons, Emil and August, and Irene, wife of Emil, conveyed the two lots on Orono Street (lots 514 and 515) to the stepfather, Robert Vonder Heyden. The remaining lot (lot 516) was conveyed by August and his stepfather to Emil. August received one thousand dollars in cash, and a diamond earring. Emil also received a diamond earring.

At the time this settlement was made, the stepfather, Robert Vonder Heyden, and his step-son Emil, and his wife, and his other step-son August, lived together in the Orono Street house (lots 514 and 515). Emil's wife kept house. The stepfather paid ten dollars a week board, and no house rent was charged. This arrangement continued until August's marriage, which occurred in the month of August, 1920. He then left his stepfather's home to reside elsewhere with his wife. The stepfather, Robert Vonder Heyden, Emil, and his wife, and the latter's child, lived together until January, 1921, when the stepfather re-married. He brought his new wife, Josephine Vonder Heyden, to the Orono Street house, and there they lived with Emil and his wife and child until April, 1921, when a quarrel arose about board. August was called in. The two deeds to his mother were produced for the property of which she died seized (lots 514, 515 and 516 Orono Street), and the stepfather was accused of deceiving both August and Emil. Suit was brought to set aside the deed to the father, and to compel the father to account as administrator of his wife's estate. From the de-

decree rendered in favor of the complainants, the defendants appeal.

### GROUND OF APPEAL

The appellants respectfully submit that upon the law and the evidence of the case, the decree should have been in favor of the defendants (appellants) and not (as it was) in favor of the complainants-respondents.

### THE ARGUMENT

The court below stated that the facts in this case brought it within the rule laid down in *Hall vs. Otterson*, 52 N. J. Eq. p. 522; aff'd 53 N. J. Eq. p. 695, and quoted from Vice Chancellor Green's opinion the following: (Page 144.)

“In all transactions between persons occupying relations, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, is presumed, or in fact reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed and who has acquired an advantage, to show affirmatively, not only that no deception was practiced therein, no undue influence used and that all was fair, open and voluntary, but that it was **well understood.**”

But the facts in that case were quite unlike the facts in the case now before this Court.

That was a suit to set aside a deed made by Mrs. Otterson, in trust for her husband. The court stated:

“This deed was executed at a critical period of Mrs. Otterson’s life; she was in extremely delicate health; it was doubtful if she would survive the peril of her approaching confinement. She was a refined lady, unacquainted with business, relying for its care first on her agents and then on her husband, who, after their marriage, became her agent and was entrusted by her with the entire management of her estate and exclusively of the property in question; in short, she was most dependent on him and devoted to his interests; her affection for and attention to him were marked, as was her anxiety to please him.”

The deed had complicated trust provisions and the Court in stating that the person in whom confidence was reposed must show that the transaction was well understood had reference to such trust provisions, for further on in the opinion the Court states:

“While in the case of an ordinary transfer of title it may be safely assumed that any man or woman of intelligence would entirely comprehend the effect of a deed whose contents have been made known to them, that presumption cannot, I think be indulged in with reference to a deed of trust with its complicated provisions; something

more than having the contents made known would be required in order that a man or woman of ordinary information should fully understand the force and effect of such a deed drawn in the technical verbiage of the professional conveyancer."

What was the relation that existed between Emil and August on the one hand and the stepfather on the other? It was neither legal nor natural. It may be said to have been conventional; but surely both Emil and August must be considered to have been emancipated from any control or influence of their stepfather. August was twenty-four years old. He had been away for about three and one half years, and until about two weeks before his mother's death. Emil was twenty-six years old and had been in the Army about two years.

On direct examination August testified: Q. How long have you been in the service? A. I have been in the service probably three and one half years. Q. And during those three and one half years you did not reside at the house? A. No. (Page 28, line 34; Page 29, lines 1 etc.) Further on he says I was away from home three and one half years. (Page 35, line 20.) There is no evidence in the case showing that during the three and one half years that he was away from home, he was in any way subject to the step-father's control or influence.

Emil married in June, 1917. He was married previous to his mother's death. (Page 42, line 18 et seq.) He left home in the Fall of 1917, and

was away for nineteen months. He returned two weeks before his mother died (Page 47, line 21, et seq.). He had a child. He bought property in his own name in 1916 and 1917. (Page 50, line 13, et seq.) He conveyed lots 143 and 144 on map entitled "Map of Passaic Estates Co." to his mother on September 6, 1917. Exhibit C-9, page 137.

The case is barren of any testimony showing that Emil on any occasion was directed or advised by his step-father, except the incident complained of. He was twenty-six years and eight months old at the time he made the deed. We therefore submit that the case is not within the rule as laid down in *Hall vs. Otterson*.

Nor does the case now before this Court fall within the rule of **undue influence** as laid down in *Haydock vs. Haydock*, 34 N. J. Eq., p. 570. There the donor whose estate amounted to a little less than \$16,300.00 made two gifts representing a value of \$9000.00. The gifts were set aside. The Court found that the donor was a man of weak mind and feeble body. The gifts were made in February and March, 1879, and he died in April of the same year. The Court stated:

"When a person whose mind is enfeebled by disease or old age, is so placed as to be subject to the influence of another person, and makes a voluntary disposition of property by gift in favor of such person, the court requires proof of the fact that the donor understood the nature of the act, and

that the act was not done through the influence of the donee.”

The Court below did not find that there was any **undue influence** in the instant case.

Nor does this case fall within the rule as to **independent advice** laid down in this Court in *Slack vs. Rees*, 66 N. J. Eq., p. 447 and again stated in *Post vs. Hagen*, 71 N. J. Eq., p. 234.

In *Slack vs. Rees* the essential facts referred to were thus stated.

“On the day before his death he (the father) executed a deed to his daughter conveying to her two houses and lots in the City of Trenton. He owned no other real estate, and his personal estate was insufficient for the payment of his debts.”

Justice Garrison, speaking for this Court in *Post vs. Hagen* stated that the rule of *Slack vs. Rees* has specific application to cases in which the gift, if valid, has the effect of stripping the donor of all or practically all of his property.

In the instant case August received \$1000.00 for the transfer and Emil the lot and according to August, Emil was to receive the money in bank.

Therefore the rule as to **independent advice** has no application to the case in hand.

The instant case, more agreeably to the rules of

Equity, comes within the doctrine laid down in this Court in *Fretz vs. Roth*, 70 N. J. Eq., 764. An opinion by Vice Chancellor Van Fleet affirmed in this Court, 48 N. J. Eq., 308, was quoted as follows:

“Without proof of incapacity, fraud or undue influence, a deed which appears to have been executed under all the safeguards provided by law for the protection of the grantor against coercion and imposition, though supported by no consideration but love and affection, is entitled to **stand on its own inherent strength.** \* \* \* **The grantee is not required to prove that it was fairly obtained.**”

In the instant case there was no proof of incapacity, fraud or undue influence.

While the complainants testified that they did not know that they signed deeds, there was no finding by the Court below to that effect. They must have known that they signed deeds.

Emil was asked:

Q. Didn't you know you were getting a deed for a lot?

A. Well, I knew that, yes; but where it came from I didn't know; I didn't question it.

Q. Don't you know that August signed it?

A. I remember August signed it, and I remember my wife signed it.

Q. No, your wife signed the deed to your father.

Didn't you know you were transferring that property to your father, Robert Vonder Heyden?

A. Well, we were transferring it; we signed it, transferring the property to my father, yes; but that he would take care of me; we trusted him. (Page 48.)

Q. The deed made to you, how was that returned to you—did I mail it to you, or did you call and get it—when the deed came back from record?

A. I don't remember; I remember I was down there one time—whether that was for my deed, or for the deed for the father, I don't remember which it was. (Page 49.)

Q. Well, do you think it might have been for both?

A. Well, I have an idea it was. We both came back together.

Q. And that both of these deeds were delivered to you?

A. To me?

Q. Yes.

A. No, not to me.

Q. Well, you said you were down for them?

A. Well, I went down with my father; because I didn't pay your bills.

Q. I mean, if you went down for your father the deeds were delivered to you?

A. If I went down for my father the deeds were delivered to me, yes, sure; but I am sure he went with me. (Page 50.)

He partly negotiated the deal for the sale of the house. (Page 52.)

They do not say that they were misled by the

recital in the deeds as to the extent of their father's interest.

The deed to Emil contains the same recital as the deed to the stepfather.

If this court finds that the complainants knew that they signed deeds then necessarily it would follow that the complainants must be charged with knowledge that the deeds which they signed, conveyed property of which Mrs. Vonder Heyden died seized.

It is difficult to believe that August who signed a deed which Emil did not sign would not have noticed that fact at the time the deeds were executed.

Assuming then that they knew they signed deeds there is no testimony that they made any inquiry or were told that the stepfather had any interest in the property. They could not have signed a deed to the stepfather unless to convey an interest they received from their mother. They could only have received an interest from their mother if she died owning the property. Had it been in Mr. Vonder Heyden's name alone or in his and his wife's name a deed from them would not have been necessary. Further on the story which August tells as to the arrangement made is hard to reconcile with any theory or understanding, except that the father was to get the house and two lots.

Admittedly the estate consisted of the house and

two lots, a single lot and about \$1800.00 cash in bank. August says the arrangement was "He was to get \$1000.00 and Emil will get a lot and the money in bank after we pay the bill and clear up all the expenses." (P. 29, l. 22 etc.)

Now if that were done the only thing that would be left would be the house and two lots, and as the father is the only one not provided for in the above division, it is natural to suppose he would get what was left. If the house was not in his wife's name he would have been making a gift of his share of the money in bank.

If it be stated that August and Emil may have known that they were signing a deed and that the property was in their mother's name, but did not know the extent of their interest then the answer is that according to their own statements as soon as they learned that the property was in their mother's name they appreciated the significance of that so far as it concerned them. See testimony of August on page 38 and of Emil on page 47.

Now there is no evidence that meanwhile they had acquired any knowledge as to the law of descent and when they found, as they say, that it was their mother's property, they started a row. And so it would appear that knowledge of the fact that it was their mother's property was also knowledge of their interest in said property by reason of that fact.

There was nothing unfair or inequitable in the transfer of the house and two lots to Mr. Vonder

Heyden in 1919. When the Dann Street house and three lots were acquired, the complainants were then respectively sixteen and fourteen years of age. In 1914 another lot was acquired. In 1916 two more lots were acquired. Title to these two lots were in Emil Thies and his mother. Emil conveyed his interest to his mother in these two lots in 1917. His wife joined in the deed. Clearly they would not have conveyed had they any real interest unless they received compensation. A young married couple of their means do not give property away. There is no allegation by Emil that this property was purchased with his money. The father was the purchaser in every transaction and the property was purchased with his money. (Page 68, line 31.) The total was \$2200.00 in cash. The house carried a mortgage of \$800.00.

While the earnings of Emil and August may have contributed something to the acquisition of two lots, they can hardly be considered as having given very much for the property that was purchased in 1909 and 1910.

Now these properties were sold in 1917 and \$5200.00 cash was realized. \$3700.00 of this was invested in a house and two lots which is the subject matter of this suit and \$1500.00 was deposited in bank.

There is nothing in the case to show whether this \$5200.00 was all the Vonder Heydens had in 1917, but when Mrs. Vonder Heyden died she had \$300.00 more in bank and another lot valued at \$350.00.

Mr. Vonder Heyden's earnings were about \$2300. a year for several years. Undoubtedly these properties were purchased mainly with the proceeds of his earnings and it was not unfair or undue or improvident for these two young men twenty-six and twenty-four years of age respectively to turn back to the father the larger part what he had generously and as he thought for the mother's protection put in her name during her lifetime.

If the testimony of the complainants as to the arrangement with Mr. Vonder Heyden be accepted as true then equity would be done if such arrangement be enforced.

August testified as above stated that the arrangement was he should get \$1000.00 and Emil should get a lot and the money in bank after the payment of the expenses. If the \$1000.00 to be paid to August was also to be deducted this would leave about \$500.00 to be paid to Emil. Upon payment of such sum to Emil equity would be satisfied because the arrangement which the complainants themselves testify was made would be effectuated.

August one of the complainants does not come into equity offering to do equity. He borrowed \$400. in October 1919 from his step-father on which he was to pay interest at 6%. No part of that loan has been paid and no offer of payment has been made. He should be decreed to pay said sum to his stepfather or bring same into court.

**ROBERT VONDER HEYDEN'S STORY**

Some of the lots purchased in addition to the dwelling house on Dann Street were taken in the wife's name, although purchased with the husband's money, in order that he might get a commission as an agent, but it was his money in each case that bought the property. He testified, "When we sold the Dann Street property to the Magor Car Corporation, there was a mortgage of eight hundred dollars on it. We sold it for six thousand dollars, and so we received five thousand, two hundred dollars. With that money we purchased the Orono Street home. We paid for that three thousand seven hundred dollars, and the title was taken in my wife's name." (Page 70.) The reason the property was taken in the wife's name was on account of an automobile accident which they had had previous to that. They spoke about it, and Mr. Axt, the former owner of the Orono Street property, offered that suggestion. He said that was what he was going to do. He had an automobile also. He said, "You cannot depend on insurance any more," and they decided to put it over in the wife's name. (Page 71.) The balance of the five thousand, two hundred dollars, over and above the three thousand, seven hundred dollars, was put in the bank, excepting a portion of it, which was utilized in purchasing lot 513 which was put in the husband's and wife's name (Page 71.) The only moneys that came into the house for the purchase of these properties was Robert Vonder Heyden's own money. (Page 72.)

While the deed from Axt is erroneously dated

1919, the property was in fact bought from Axt about September 21, 1917 (see acknowledgement, page 135.) Emil was married then. He was paying simply for board. August was not living with his father at that time. He was away in the service. (Page 73.) The witness proceeded. "After my wife's death, I got the two boys together and I said to them, 'I suppose, boys, you know what the conditions were. August not as much as Emil, but Emil knew it perfectly, because he was there when the property was purchased, and the transaction made, that the property was in their mother's name, that is, the house and one lot, and that their mother's wish was that August was to have one thousand dollars cash, and Emil, the lot, so that he would have fifty feet front on Orono Street.'" Emil did own one lot, and this was to give him the adjoining lot. (Page 75.)

Emil negotiated the sale from Mr. Axt to Mrs. Vonder Heyden, for the Orono Street property. He was present when the deed was made. He saw the deed from Mr. Axt to his mother in his home. His mother showed it to him. (Page 76.)

It was at Mr. Axt's suggestion, that the title was put in Mrs. Vonder Heyden's name, and it was talked about at home, and it was a family conversation in regard to the automobile accident, and the need of protecting the property, and Emil was present at the conversations, and it was a matter of common family knowledge as to in whose name the title stood, the same as was all their other business. (Page 77.)

After their mother's death, the witness testified, I got the boys together, and spoke to them on the subject, and told them again that they knew that this was in their mother's name, and that their mother's wish was that August was to have one thousand dollars, and Emil to have a lot adjoining his own on Orono Street, and the house was to go over to me. They said, "All right." Then I said, "If you boys are satisfied, I will go down to Mr. Cowley, and have him make out the papers to this effect, and they said, 'all right.' It was several days after, if not a week later, when we went down to Mr. Cowley's office, after he notified me that the papers were ready. Emil's wife knew about it. The deeds were signed in Mr. Cowley's office. When they came to Mr. Cowley's office, they were informed what they were signing. I recall that Mr. Cowley asked them, 'Did they know what they were signing,' and instructed them to read it over if they had any doubt about anything. (Page 78.) Mr. Cowley informed them of the contents of the deed, and Mr. Cowley asked them whether they signed it of their own free will. There were present at the time, Mrs. Emil Thies, Mr. Emil Thies, August Thies and Robert Vonder Heyden, and Mr. Cowley. Each son got a diamond earring. (Page 80.) I told my sons that it was their mother's wish that they should get these earrings. August received considerably more in value than the amount that Emil received. The reason was that at the time of Emil's marriage, we paid all his expenses and their mother figured that August was to be married soon, and that was why he got the one thousand dollars. (Page 81.)

We lived together in the house on Orono Street, Emil, and August, and Emil's wife, and myself, until August, 1920, when the youngest son, August left. He left in August of 1920. When they came to Mr. Cowley's office, they were informed by me as to how much money there was in the bank. I told them there was about five hundred dollars. That after August's one thousand dollars was drawn out and the funeral expenses paid, there would be about five hundred dollars left. (Page 82.) I was re-married in January, 1921. At that time, I and Emil, and his wife, and my wife, were living together at Orono Street. (Page 83.) The arrangement I made was that Emil should pay me five dollars a week board. Emil moved away from the house in May, 1921. We had had a quarrel during the previous month. The quarrel related to their board. (Page 86.) (It was evidently the result of a new step-mother being introduced into the scene.) The witness did not remember any agreement to give Emil two hundred and fifty dollars, in addition to the lot. He did not communicate anything like that to the boys as being the request of his wife. All the money that he had earned since he had married Maria Vander Heyden had gone into these properties. They represented his earning entirely. (Page 89.) The witness further testified, I made about twenty-one dollars or twenty-three dollars a week, and out of that I supported three children and my wife. My salary was increased, and I also bought some stock in the Brighton Mills. About one thousand dollar's worth. The most I earned was about twenty-three hundred dollars a year. And I earned that for several years. (Page 98 and 99.)

The deeds were in Emil's possession ever since he received them from the Paterson Court House. (Page 105.)

### AUGUST THIES'S STORY

When he returned from service, and had lived with his father about three weeks, without paying anything, he said to his father, "Well, Pop, we will have to straighten this up some way, as I am living here and not paying any money." And he said, "Suppose we all chip in and create a fund, and let Emil take care of the books, and we will pay the bills out of that, and if we are short, we will make up the difference, and if anything is left over, we will keep it as a fund." They left the witness alone with Mr. Vonder Heyden, and they sat and talked a while, and then Mr. Vonder Heyden said, "No, you get a thousand dollars. Emil will get a lot, and the money in the bank, after we pay the bills and clear up all the expenses." "Well," the witness, said, "All right, Pop, you know what you are doing, and you will do the right thing by me." And that was all. The witness got up and went out. (Page 29.)

Is it likely that that conversation could have arisen out of August's suggestion that he ought to pay board? Is not Robert Vonder Heyden's account of the interview very much more probable? The fact remains that the deed was executed by the two sons to their father, and they were both of age and they cannot be heard now to say that they signed the same in ignorance of the deed's contents.

Signing in ignorance of contents. (18 C. J.) p. 226.)

A person cannot avoid a deed executed by him on the ground that he signed the same in ignorance of its contents, where this is due to his own carelessness or negligence. So, a person may not plead ignorance of the covenants of a deed executed to him after it has been accepted and recorded, as a ground for defeating the force and effect of such covenants, in the absence of any fraud practiced by the grantor preventing the grantee from familiarizing himself with the deed, particularly where a considerable time has elapsed.

The complainants under any aspect of the case knew that they were signing instruments in which they were parting with valuable rights of one kind or another and therefore they are bound by the general legal rule, "that binds men by the import of documents signed by them and which they had ability and opportunity to read." (William vs. Leisen, 60 Atl. p. 1096; Alexander vs. Ferguson, 63 Atl., p. 998.)

American Digest, Century Edition, Vol. 37, page 2222.

No. 112. Conveyances by child to parent.

(a) (U. S. 1838) A deed by a child of full age to her parent will not be deemed prima facie void, on the ground of public policy growing out

of the relation of the parties.— *Jenkins v. Pye*, 37 U. S. (12 Pet.) 241, 9 L. Ed. 1070, reversing *Pye v. Jenkins* (1835) Fed. Cas. No. 11,487 (4 Cranch, C. C. 541.)

(b) (U. S. 1856) A conveyance to a parent by a child recently of age is prima facie valid, and it is incumbent on the party attacking it to show undue influence. Such a conveyance is not viewed as a sale but rather as a family arrangement, the validity of which does not depend on the adequacy of the price.—*Sullivan v. Sullivan*, Fed. Cas. No. 13,598 (Brunner, Col. Cas. 642).

American Digest, Century Edition, Vol. 16, page 262. No. 194 (g) (Iowa, 1888) Defendant in 1877, conveyed his farm to his three minor children, after the death of his wife, to avoid his creditors, without consideration. From 1878, having re-married, until suit brought, he lived on it, and improved and treated it as his own. During most of the time, until she came of age, one of his children lived with him, and was well treated. Four days after she came of age at her father's request, she conveyed her interest in the farm to him, without any threats or promises on his part. **Held**, that as plaintiff was intelligent, and was satisfied with her action until some time thereafter, and as the land deeded by defendant, conveyed to his children all he then owned, and was not meant as a gift, but merely to protect it from his creditors, the deed from the daughter to him would not be set aside.—*Knox v. Singmaster*, 75 Iowa, 64, 39 N. W. 183.

In the instant case, the deed from the two step-sons to their step-father was executed on July 29, 1919, and it was not until after the step-father remarried in the latter part of January, 1921, (Page 44), that any objection was made to the transaction. According to August's and Emil's testimony, the moment they ascertained that the property was in their mother's name, they realized that their step-father had no interest in it. Why, then, if they had believed when they executed the deed that the property was not in their mother's name, should they have conveyed that property to their father. It is not claimed that they were deceived in any way by the reference in the deed to their step-father being one of the heirs of their mother.

According to the step-father, Robert Vonder Heyden's story, the conveyance was made in pursuance of a family settlement, whereby it was agreed that August was to have one thousand dollars cash (which he got), and Emil a lot on Orono Street, (which he got), adjoining a lot which he already had on that street. The step-father's story was that this settlement was voluntarily agreed to by the two step-sons, it being told to them, and the fact so being that it was their mother's wish that such settlement should be made. According to the step-sons story (notwithstanding the fact that they admitted that they executed the deed), they said they did so in ignorance that the title to said property was in their mother's name at the time of her death.

It nowhere appears why there should have been any necessity of their executing any deed to their

father had the title not been in their mother's name. It nowhere appears why if they had not then known that the title was in their mother's name, that they should have executed a deed at all.

Neither step-son made any objection to the transaction, which as I have said, took place on July 28, 1919, until April 5, 1921, nearly two years afterwards. The first objection was made shortly after the step-father's marriage to his co-defendant, Josephine, now Josephine Vonder Heyden. A step-mother once removed was thus introduced into the case. Then a quarrel arose about board and Emil called in August, and the old deed from Axt to the mother was produced and the step-sons claim that they then for the first time discovered that their mother had died seized of the property, and that their father had no interest in it, but that it had descended to them as her heirs at law. It no where appears that between July 28, 1919 and April 5, 1921, these step-sons had learned that their step-father would not have any curtesy estate in lands of which his wife died seized in fee, because no children had been born of their marriage, but it does appear that on April 5, 1921, they knew that fact. It therefore follows that if they had not known that their mother died seized of the Orono Street property, there would have been no sense in thus executing the deed at all. If, when they had executed the deed, they had thought that this property had been in the joint names of the husband and wife, or in the husbands sole name, any deed executed by them to him, would have not enlarged his estate one particle. It would be only

if they knew that the property was in the wife's name, that is, their mother's name, and that a settlement was contemplated pursuant to her wishes, there would have been any sense in thus executing the deed at all.

It is true that by a mistake due to forgetfulness on the part of Louis A. Cowley, the lawyer who drew the deed, he inserted after the description these words: "The said Maria Vonder Heyden died intestate, seized of said premises, leaving as her only heirs, the grantors herein named, and her husband, the grantee herein named," but no pretense is made that the step-sons by reason of this language were deceived into believing that the step-father had an estate by curtesy in the property. On the contrary, the step-sons repudiated having listened to the contents of the deed at all, stating simply that they relied upon their step-father to do the right thing by them.

For the above reasons, it is respectfully submitted that the decree in the court below should be reversed, and the bill of complaint dismissed.

John B. Humphreys,  
Of counsel with the defendants.

