INDEX

	Page
Notice of Appeal	1
Petition of Appeal	2
Answer to Petition of Appeal	7
Complaint	8
Answer and Counterclaim in Lieu of Plea	16
Schedule A	21
Answer of Defendant George E. Paul to Counterclaim of Defendant Hudson County National Bank of Jersey City	24
Answer of Defendant Edwin M. Farrier to Counterclaim of Defendant Hudson County National Bank of Jersey City	26
Answer and Counterclaim of Woodhouse, Executor, *et al.*	30
Answer of Defendant George E. Paul to Counterclaim of Defendant Lorenzo E. Woodhouse, Executor, etc., and Benjamin S. Harmon	37
Answer of Defendant Edwin M. Farrier and Lincoln Trust Company of New Jersey to Counterclaim of Defendant Lorenzo E. Woodhouse, Executor, etc., and Benjamin S. Harmon	39
Replication to Answer to Counterclaim	47
Order of Reference	48
Decree of Foreclosure	49
Execution	52
Sheriff's Sale	52
Assignment of Bid	52
Deed	52
Notice of Application for Leave to File Supplemental Answer	53

Page

Supplemental Answer of Defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey to Counterclaim of Defendant Hudson County National Bank 54

Supplemental Answer of Defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey to Counterclaim of Defendant Lorenzo E. Woodhouse, Executor, etc., and Benjamin S. Harmon 56

Supplement to Counterclaim of Woodhouse, *et al.*, against Lincoln Trust Company, *et al.* 58

Answer Lincoln Trust Company and Farrier to Supplement to Counterclaim of Woodhouse, *et al.* 60

Order of Reference 62

Order for Substitution of Parties 63

Order 64

Order Dismissing Counterclaim 67

Order Allowing Taxation of Stenographer's Fees and Costs 68

Final Decree on Counterclaim of Lorenzo E. Woodhouse, Executor, etc., *et al.* 70

Testimony 73

Stipulation 376

WITNESSES

Defendants':

George R. Beach,

Direct 74

Re-called:

Direct 205

Cross 207

Page

Edward I. Edwards,
Direct 79
Re-called:
Direct 208
Cross 213
Re-direct 215
Re-cross 215
Raymond Davison,
Direct 94
Edwin B. Goodell,
Direct 96
Israel Lipschitz,
Direct 104
Charles R. Partridge,
Direct 107
Cross 123
Cornelia M. Partridge,
Direct 126
Cross 131
Oscar Wiren,
Direct 132
Cross 133
George E. Hendrickson,
Direct 144
Olden H. Hetrick,
Direct 164, 202
Edwin M. Farrier,
Direct 173
Re-called:
Direct 216, 232
Cross 226, 238
Re-called:
Re-direct 302
Re-cross 303

	Page
Re-called:	
Direct	318
Cross	319
Re-called:	
Direct	328
Saebly Goldenborn,	
Direct	192
Cross	195
Harry Lane,	
Direct	201
Mabel Mc Murray,	
Direct	246
Robert M. Hening,	
Direct	286
Seth B. Robinson,	
Direct	287
Cross	298
Re-direct	299
George E. Paul,	
Direct	312
George H. Gould, Jr.,	
Direct	322
Louis Sherwood,	
Direct	323

EXHIBITS

Defendants':	Offered Page.	Printed Page.
Exhibit—Exemplified copy of the probate of the will of Charles F. Mathewson	74	
Exhibit—Proof of claim of the Lincoln Trust Company with notes annexed	75	329
Exhibit—Proof of claim of the Hudson County Bank	78	

	Offered Page.	Printed Page.
Exhibit D-1—Memorandum agreement dated December 12, 1914	90	332
Exhibit D-2—Note, dated February 26, 1912, for $2,000	96	338
Exhibit D-3—Note, dated April 25, 1912, for $4,500	96	339
Exhibit D-4—Note, dated March 12, 1912, for $1,500	96	339
Exhibit D-5—Agreement, dated August 3, 1912, between Cornelia M. Partridge and the Lincoln Trust Company	96	339
Exhibit D-6—Envelope	96	
Exhibit D-7—Letter, dated June 17th, 1915, from Edward M. Farrier to Stanley R. Soverel	97	340
Exhibit D-8—Letter, dated September 3, 1915, from E. M. Farrier to E. B. Goodell	98	341
Exhibit D-9—Letter, dated May 26, 1913, from E. M. Farrier to Benjamin S. Harmon	98	342
Exhibit D-10—Agreement, dated June 1912	102	343
Exhibit D-11—Agreement, dated April 16, 1912	103	353
Exhibit D-12—Agreement annexed to agreement of June, 1912	104	354
Exhibit D-13—Deed, dated July 31, 1912, from Cornelia M. Partridge and Charles R. Partridge to George E. Paul	106	356
Exhibit D-14—Deed, dated August 5, 1912, from George E. Paul to Edward M. Farrier	106	357

	Offered Page.	Printed Page.
Exhibit D-15—Deed, dated January 22, 1916, from Ralph B. Schmidt to the Lincoln Trust Company	107	357
Exhibit D-16—Letter, dated May 25, 1913, from Cornelia M. Partridge to Harmon & Mathewson	115	359
Exhibit D-15—Bill of Sale from the South Georgia Lumber Company, dated January 2, 1915	138	
Exhibit D-17—Bill of Sale from the Interstate Lumber Company, dated January 2, 1915	154	
Exhibits D-18, 19, 20—Three leases ...	155	
Exhibit D-21—Assignment of Accounts, dated January 2, 1915	174	
Exhibit D-22—List of notes produced by Mr. Lane	286	
Exhibit D-23 for Identification—Memorandum from Ledger of Interstate Lumber Company	296	367
Exhibit D-23—Pages from Ledger of the Interstate Lumber Company ...	295	369
Exhibit D-24—Four notes, signed by Cornelia M. Partridge	303	372
Exhibit D-25—Sixteen notes	305	
Exhibit D-1 of January 16, 1918—Letter, dated August, 1915, to George E. Paul from Richard Boardman ..	314	
Exhibit D-2 of January 16, 1918—Letter, dated August 6, 1915, from George E. Paul to Richard Boardman	317	372
Exhibit D-3 of January 16, 1918—Deed, dated May 25, 1915, from Edward M. Farrier to blank grantee ..	320	373

	Offered Page.	Printed Page.
Exhibit D-4 of January 16, 1918—Letter	322	
Exhibit D-5 of January 16, 1918—Letter	322	
Exhibit D-6 of January 16, 1918—Letter	322	
Exhibit D-7 of January 16, 1918—Copy of rule for judgment	328	
Harmon's:		
Exhibit A of February, 1920—Deed, dated April 19, 1906, between Eveline A. Ellingwood and Cornelia M. Partridge		378
Lincoln Trust Company's:		
Exhibit 1—Nine checks drawn on Lincoln Trust Company, signed by George H. Gould, Treas.	223	360
Exhibit 2—Two checks drawn on Lincoln Trust Company, signed by Gould, Jr., Treas.	223	361
Exhibit 3—Check, dated February 26, 1912, for $1969.67	223	362

New Jersey Court of Errors and Appeals

Notice of Appeal

(Filed April 6, 1920)

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Bill, etc.

Lorenzo E. Woodhouse, Executor of the Last Will and Testament of Charles F. Mathewson, deceased, and Helen K. Harmon, individually and as Executrix of the Last Will and Testament of Benjamin S. Harmon, deceased, defendants and counter-claimants, appeal from the final decree made in this cause on the 23d day of March, 1920, and from each and every part thereof, and from the order allowing taxation of stenographer's fees and costs, to the Court of Errors and Appeals in the last resort in all causes.

Dated, March 31, 1920.

RICHARD BOARDMAN,
Sol'r for Appellants.

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

RICHARD BOARDMAN,
Of Counsel with Appellants.

New Jersey State Library

Petition of Appeal

(Filed April 16, 1920)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Appeal of Executors of Harmon and Mathewson.

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

The petition of Lorenzo E. Woodhouse, Executor of the last will and testament of Charles F. Mathewson, deceased, and Helen K. Harmon, individually and as executrix of the last will and testament of Benjamin S. Harmon, deceased, defendants and counter-claimants.

The appellants in the above stated cause find themselves aggrieved by a final decree made by his Honor, Edwin Robert Walker, Chancellor of of New Jersey, bearing date the 23d day of March, 1920, wherein the said Lorenzo E. Woodhouse, Executor as aforesaid, and Helen K. Harmon, individually, and as executrix as aforesaid, were counter-claimants and Lincoln Trust Company, Edwin M. Farrier and George E. Paul were defendants to the counterclaim. The said decree adjudges that the counterclaim of these appellants be dismissed wtih costs, and that the title of the Lincoln Trust Company of New Jer-

sey to the property particularly described in complainant's bill of complaint is absolute and valid against all claims of Cornelia M. Partridge and of the appellants herein, and that the appellants pay to the above named defendants their costs of this suit to be taxed, and that there be paid by the counterclaimants to the solicitors and counsel of the answering defendants, Edwin M. Farrier and Lincoln Trust Company of New Jersey, the sum of One Thousand Dollars and for a reasonable allowance for their counsel fees in this cause, which should be included in and taxed with their said costs, and that the defendants therein named have execution for the collection of their respective taxed costs.

And your petitioners humbly appeal from the said decree and from every part thereof upon the ground that the same is erroneous in the following respects:

(1) The counterclaim of the counter-claimants should not have been dismissed for want of equity. (2) The title of the Lincoln Trust Company is not and was not absolute and valid against the claim of the appellants herein for the reason that the Lincoln Trust Company, in taking the assignment of the bid of the complainant for the property at Sheriff's sale, did, after Sheriff's sale, merely that which it was obligated to do before the foreclosure action was begun, to wit: paid the mortgage debt pursuant to the covenant contained in the deed of Cornelia M. Partridge to George F. Paul. (3) Costs should not have been awarded against the appellants as executors of the last will and testament of Charles F. Mathewson and Benjamin S. Harmon, even though the

decree went against them, for the reason that the said executors were prosecuting their counterclaim in the right of their testators. (4) No counsel fee should have been awarded against appellants as executors of Charles F. Mathewson and Benjamin S. Harmon, even though the decree went against them, for the reason that they were executors prosecuting their counterclaims in the right of their testators. (5) The counsel fee was excessive in amount and the allowance of One Thousand Dollars, under the circumstances of the case, was without warrant of law or equity. (6) The said decree is further erroneous in this, that it should have been decreed that the Lincoln Trust Company took and held the mortgaged premises under Sheriff's deed as well as before Sheriff's sale, in trust for the uses and purposes specified in said counterclaim, subject only to the right of the said Lincoln Trust Company to be reimbursed the amount paid by it in satisfying the principal and interest of complainant's mortgage. Or (7) in the alternative, it should have been decreed that the Lincoln Trust Company account for and pay over to these appellants the difference between the price for which it finally sold the said property and the amount for which it rightfully held the said property as security. (8) The said decree is erroneous in its recitals and in its findings in that it does not recite and find: that the property in suit was conveyed by Cornelia M. Partridge to George E. Paul, who was acting for and in behalf of the Lincoln Trust Company, by deed bearing date July 31, 1912, wherein and whereby the said Paul, in behalf of the Lincoln Trust Company, assumed and agreed

to advance the money to take up and pay off, for the protection of Cornelia M. Partridge's said property, the Ten Thousand Dollar mortgage held by the complainant, being the mortgage under foreclosure in this cause; that said Paul and Lincoln Trust Company agreed to reconvey the premises to Cornelia M. Partridge, or her nominees, upon the signing of a certain contract (Exhibit D-11) as appellants' claim, or upon the Lincoln Trust Company being paid $18,600, as it claims; that said Paul and Lincoln Trust Company, in violation of their agreement, permitted or caused said mortgage to be foreclosed and the property to be sold to the Montclair Savings Bank, and pursuant to an agreement (ante-dating said sale) between the Lincoln Trust Company and the Montclair Savings Bank, the Montclair Savings Bank assigned its bid to the Lincoln Trust Company and the Sheriff of the County of Essex thereupon conveyed said property to the Lincoln Trust Company, and the Lincoln Trust Company took and again held said premises under its original agreement to reconvey them to Cornelia M. Partridge or her nominees; that the contract, upon the signing of which the property was to have been reconveyed to Cornelia M. Partridge, was, in fact, signed before the filing of the bill in this cause, or the $18,600 to secure which the Lincoln Trust Company claimed to hold the said premises, had, in fact, been paid to it, either in whole or in part, and if the Court found in part, then it should have determined in what part and that the appellants as nominees of Cornelia M. Partridge were entitled to a conveyance of the premises from the Lincoln

Trust Company upon the reimbursement of the Lincoln Trust Company for the amount advanced by it in payment of the principal and interest of the mortgage held by the Montclair Savings Bank and the amount, if any, remaining unpaid of the $18,600, which the Lincoln Trust Company claims the deed to Paul was given to secure. (9) And these appellants further appeal from an order made in this cause on the 15th day of March, 1920, directing that the sum of $41.45, expended for one-half of the fees for the transcript of testimony furnished for the use of the Court, should be allowed against these appellants and the said sum included in the taxed bill of costs of the said Lincoln Trust Company of New Jersey. Said order is (1) with warrant of law, and (2) said order should be reversed together with and as being in effect a part of the final decree above mentioned because of error contained in said decree.

RICHARD BOARDMAN,
Solicitor for and Of Counsel
With Appellants.

Answer to Petition of Appeal

(Filed April 24, 1920)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Appeal of Executors of Harmon and Mathewson.

The answer of Lincoln Trust Company, Edwin M. Farrier and George E. Paul, respondents, to the petition of appeal of Lorenzo E. Woodhouse, executor of the last will and testament of Charles F. Mathewson, deceased, and Helen K. Harmon, individually and as executrix of the last will and testament of Benjamin S. Harmon, deceased, appellants.

These respondents, not acknowledging all or any of the matters 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-third day of March, last, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated, and that an order was made in the same cause on the fifteenth day of March, last past, as is therein stated; but as to the substance and form of said decree and order, these respondents pray to refer thereto when the same shall be produced. And these respondents are ad-

vised and believe that the said decree and said order are agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

Carrick & WORTENDYKE,
Solicitors and of counsel with
respondents.

Complaint

(Filed July 15, 1915)

IN CHANCERY OF NEW JERSEY

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

The complainant, The Montclair Savings Bank, a corporation of the State of New Jersey, having its principal office in the Town of Montclair, respectfully shows that:

1. On December 8th, 1905, Eveline A. Ellingwood and Charles H. Ellingwood, being indebted to the Essex Title Guaranty Company in the sum of $11,000, executed to that corporation a bond of that date to secure that sum, payable on December 8th, 1906, with interest at the rate of 5% per annum, payable semi-annually from the date of the bond.

2. To secure the payment of the said bond Eveline A. Ellingwood, a widow, executed to the Essex Title Guaranty Company a mortgage of even

date with the bond, and thereby conveyed to it in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage having been first duly acknowledged and the certificate of acknowledgment endorsed thereon, was recorded in the Register's Office of the County of Essex in Book E 19 of Mortgages at page 425.

3. The mortgaged premises are described as follows:

All those two tracts or parcels of land and premises, situate, lying and being in the Town of Montclair in the County of Essex and State of New Jersey, bounded and described as follows:

First Tract: Beginning at a point on the center line of Clinton Avenue which point is distant South 29 degrees 4 minutes West, 63 feet 10½ inches from a point which is the intersection of the center line of Clinton Avenue with the center line of Porter Place; running thence North 60 degrees 56 minutes West, being along the line of land of E. B. Colby, 233 feet; thence South 29 degrees 4 minutes West, 112 feet 5½ inches and to the land of James Freeman; thence South 64 degrees 30 minutes East 233 feet 5⅜ inches to the center line of Clinton Avenue; thence North 29 degrees 4 minutes East 97 feet 11½ inches to the point or place of beginning.

Being the same premises conveyed to said Eveline A. Ellingwood by Charles H. Ellingwood and wife by deed dated May 8th, 1896 and recorded in Book U 29 of Deeds for Essex County on page 412.

SECOND TRACT: Beginning at a gas pipe driven at the Northerly corner of a lot owned by said Eveline A. Ellingwood, situated on the Westerly side of Clinton Avenue distant 200 feet North 60 degrees 56 minutes West from said gas pipe in the westerly line of Clinton Avenue; thence South 29 degrees 4 minutes West, 112 feet 6 inches; thence North 64 degrees 30 minutes West 19 feet 3¾ inches; thence North 29 degrees East 113 feet 11 inches; thence South 60 degrees 56 minutes East 19 feet 2½ inches to the beginning.

Being the same premises conveyed to said Eveline A. Ellingwood by Edward G. Burgess and wife by deed dated March 1st, 1920, and recorded in Book E 33 of Deeds for Essex County on pages 148-150.

4. The bond contained an agreement that if any installment of interest should remain unpaid for thirty days after the same should fall due, then the whole principal sum with all unpaid interest should at the option of the mortgagee, its representatives or assigns, become immediately due.

5. The mortgage also contained an agreement that the mortgagor, her heirs and assigns, should keep the buildings erected and to be erected upon the lands conveyed insured against loss or damage by fire in some responsible insurance company or companies in an amount not less than $11,000, and that she would assign the policy or policies to the mortgagee, its successors or assigns, and in default thereof that the mortgagee, its successors or assigns, should be entitled to effect such insurance and that the premiums paid for effecting the same with interest at 6% per annum

should be a lien on the mortgaged premises added to the amount of the mortgage debt and secured by the mortgage, but payable on demand.

6. On January 8th, 1906, the Essex Title Guaranty Company, by written assignment, assigned all its right, title and interest in the said mortgage to one Caroline F. Davis, which assignment, duly proven and bearing the certificate of proof, was recorded in the Register's Office of Essex County in Book 75 of Assignments of Mortgages at page 385.

7. On April 19th, 1906, the said Eveline A. Ellingwood conveyed said land, by deed of that date, to Cornelia M. Partridge, in fee, which deed was on April 24th, 1906, recorded in the Register's Office of Essex County in Book Y 39 of Deeds as page 426.

8. On April 23d, 1906, the said Cornelia M. Partridge and Charles R. Partridge, her husband, conveyed the said land to the said Eveline A. Ellingwood in fee, the said conveyance, however, being given to secure a bond for $5,000 of even date with the mortgage, and was conveyed on the express condition that such conveyance should be void if payment should be made according to the terms of the said bond of $5,000. This mortgage was recorded in the Essex County Register's Office on April 24th, 1906, in Book R 19 of Mortgages, at page 449.

9. This last mentioned mortgage was discharged by a written discharge of mortgage made by Eveline A. Ellingwood, dated April 23d, 1910, and addressed to Cornelia M. Partridge

and recorded in the office of the Register of Essex County on June 11th, 1915.

10. Thereafter, and before December 8th, 1906, the said Cornelia M. Partridge, or someone in her behalf, paid to the said Caroline F. Davis the sum of $1,000 on account of the principal secured by the said mortgage and interest thereon to December 8th, 1906.

11. On December 28th, 1906, by a written assignment, the said Caroline F. Davis assigned to complainant the said mortgage, reduced to $10,000, with the interest paid to December 8th, 1906, which said assignment was recorded in the Register's office of Essex County in Book 78 of Assignments at page 508.

12. On December 28th, 1906, Cornelia M. Partridge and Charles R. Partridge entered into a written agreement with complainant whereby the said Cornelia M. Partridge and Charles R. Partridge agreed that they had no valid defense in law or equity to the said mortgage, that they would from the date of the agreement pay interest upon the said mortgage upon the 1st days of June and December in each year, beginning with the 1st day of June, 1907, instead of on the days mentioned in the bond, that the sum of $10,000 due upon the bond should become due and payable principal and interest in gold coin of the United States of the then standard weight and fineness, on December 28th, 1907, and in the said agreement the complainant agreed to extend the debt secured until December 28th, 1907, and both parties agreed that except as modified the bond and mortgage remain in force and effect accord-

ing to the terms thereof, which agreement was acknowledged, and the certificates of acknowledgment attached, on January 3d, 1907, and is in complainant's possession.

13. On July 31st, 1912, Cornelia M. Partridge and Charles R. Partridge, her husband, conveyed the said land, by deed of that date, to George E. Paul of Jersey City, in fee, subject to the mortgage of $10,000, which the said George E. Paul assumed and agreed to pay, and which deed was on August 3d, 1912, recorded in the Register's Office of Essex County in Book K 51 of Deeds at page 277.

14. The complainant is informed that the conveyance to the said George E. Paul was not an absolute conveyance, but was a conveyance to him in trust. Of the terms of the trust complainant is not informed but alleges that the interests of the *cestuis qui trustent* are subject to complainant's mortgage.

15. On August 5th, 1912, the said George E. Paul, a single man, conveyed the said land, by deed of that date, to Edwin M. Farrier of Jersey City, in fee, which deed was on June 11th, 1915, recorded in the Register's Office of Essex County. Any interest which the said Edwin M. Farrier has in the said land is subject to the lien of complainant's mortgage.

16. The said Cornelia M. Partridge and Charles R. Partridge continue to reside in the house standing on the mortgaged premises and to occupy the same exclusively, but by what claim or right complainant is not informed.

17. Any interest which the said Cornelia M. Partridge or Charles R. Partridge may have in the said lands is subject to the lien of complainant's mortgage.

18. On August 6th, 1912, the Hudson County National Bank of Jersey City entered judgment in the Supreme Court of this State against Cornelia M. Partridge and Charles R. Partridge in the sum of $17,113.75. Any interest which the said Hudson County National Bank of Jersey City may have in the mortgaged premises is subject to the lien of complainant's mortgage.

19. The complainant was on July 9th, 1915, given notice and informed that Benjamin S. Harmon, and Lorenzo E. Woodhouse, Executor of the Estate of Charles F. Mathewson, deceased, claim a substantial interest in the mortgaged premises, but what their interest is the complainant has no knowledge. Any interest which the said Benjamin S. Harmon and Lorenzo E. Woodhouse, Executor of the Estate of Charles F. Mathewson, deceased, may have in the mortgaged premises is subject to the lien of complainant's mortgage.

20. The said Eveline A. Ellingwood, Cornelia M. Partridge, Charles R. Partridge, George E. Paul and Edwin M. Farrier or one of them has always been in possession of the mortgaged premises.

21. Ten thousand dollars of the principal with interest thereon from December 1st, 1914, is due upon the complainant's bond and mortgage.

22. Complainant is without adequate remedy in the courts of law and therefore prays:

1. That the said Cornelia M. Partridge and Charles R. Partridge, George E. Paul, Edwin M. Farrier, Hudson County National Bank of Jersey City, Benjamin S. Harmon, and Lorenzo E. Woodhouse, Executor of the Estate of Charles F. Mathewson, deceased, who are the defendants to this suit, may answer this bill of complaint without oath and each statement made therein.

2. That an account may be taken of the amount due on complainant's mortgage.

3. That the defendants or one of them may be decreed to pay complainant the amount so found due, with interest and costs, by a short day to be appointed by this Court, and that in default of such payment that they and each of them be debarred and foreclosed of all equity of redemption in said lands; or

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on its mortgage, with interest and costs.

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

PHILIP GOODELL,
Solicitor and Counsel with Complainant.

Answer and Counter-Claim in Lieu of Plea

IN CHANCERY OF NEW JERSEY

(Filed Aug. 27, 1915)

Between
MONTCLAIR SAVINGS BANK,
Complainant,
and
CORNELIA M. PARTRIDGE, *et al.*,
Defendants.

On Bill.

The Answer and Counterclaim of the defendant, Hudson County National Bank of Jersey City.

This defendant, Hudson County National Bank of Jersey City, answering the Bill of Complaint, says that:

1. It has no knowledge or information sufficient to form a belief as to the statements in paragraphs one to six, inclusive.

2. It admits paragraph seven.

3. It has no knowledge or information sufficient to form a belief as to the statements in paragraphs eight to twelve, inclusive.

4. It believes that on August 31, 1912, Cornelia M. Partridge and Charles R. Partridge, her husband, conveyed the land referred to in the Complaint, by deed of that date, to George E. Paul, of Jersey City, in fee, so alleged in paragraph

thirteen of the Complaint but for greater certainty it calls for proof thereof.

5. It has no knowledge or information sufficient to form a belief as to the statements in paragraph fourteen.

6. It believes that on August 5, 1912, George B. Paul, a single man, conveyed the said land by deed of that date, to Edwin M. Farrier, of Jersey City, in fee, as alleged in paragraph fifteen of the Complaint, but for greater certainty it calls for proof thereof.

7. It believes the allegations of paragraph sixteen to be true.

8. It has no knowledge or information sufficient to form a belief as to the statements in paragraph seventeen.

9. It admits that on August 6, 1912, it entered judgment in the Supreme Court of this State against Cornelia M. Partridge and Charles R. Partridge, defendants herein, in the sum of $17,115.75, as alleged in paragraph eighteen of the Complaint. As to the remaining statements in said paragraph, it has no knowledge or information sufficient to form a belief.

10. It has no knowledge or information sufficient to form a belief as to the statements in paragraph nineteen.

11. It believes the allegations of paragraph twenty to be true.

12. It has no knowledge or information sufficient to form a belief as to the statements in paragraphs twenty-one and twenty-two.

Answer and Counterclaim in Lieu of Plea

By way of counterclaim against the complainant, The Montclair Savings Bank, and Cornelia M. Partridge, Charles R. Partridge, George E. Paul and Edwin M. Farrier, co-defendants herein, this defendant says that:

1. On July 15, 1912, this defendant instituted suit in the Supreme Court of this State, against the defendants, Cornelia M. Partridge and Charles R. Partridge, on five promissory notes, copies of which are hereto annexed, and marked Schedule "A."

2. On said date the defendant, Cornelia M. Partridge was and had been since April, 1906, the owner in fee of the land and premises described in paragraph three of the Bill of Complaint herein.

3. On July 31, 1912, the defendants, Cornelia M. Partridge and Charles R. Partridge, her husband, conveyed the said land and premises by deed of that date to the defendant, George E. Paul, of Jersey City, in fee, which said deed was, on August 3, 1912, recorded in the Register's Office of Essex County, in Book K-51 of Deeds, at page 277.

4. On August 5, 1912, the said defendant, George E. Paul, a single man, conveyed the said land and premises by deed of that date to the defendant, Edwin M. Farrier, of Jersey City, in fee, which deed was, on June 11, 1913, recorded in the Register's Office of Essex County.

5. On August 6, 1912, this defendant recovered judgment against the defendants, Cornelia M. Partridge and Charles R. Partridge, in the suit

referred to in paragraph one hereof, for the sum of $17,113.75.

6. The said conveyances from the defendants, Cornelia M. Partridge and Charles R. Partridge, her husband, to the defendant George R. Paul and from the defendant, George E. Paul to the defendant, Edwin M. Farrier, referred to in paragraphs three and four hereof, were contrived in fraud, covin and collusion with intent to hinder, delay and defraud this defendant from recovering the amount due in satisfaction of said judgment referred to in paragraph five hereof.

7. The said fraud, covin and collusion upon the part of the said defendants, Cornelia M. Partridge, Charles R. Partridge, George E. Paul and Edwin E. Farrier, consisted of this—that the said two conveyances were made voluntarily by the said defendants, Cornelia M. Partridge and Charles R. Partridge her husband, and George E. Paul, without consideration, or for a mere nominal consideration, said consideration, if any being totally inadequate and not at all representing the true value of said land and premises, which were greatly in excess of said consideration.

This Defendant, Therefore, Prays:

1. That the said complainant, The Montclair Savings Bank, and the said defendants, Cornelia M. Partridge, Charles R. Partridge, George E. Paul and Edwin M. Farrier, may answer this counterclaim without oath, and each statement herein made.

2. That the said deeds from the defendants, Cornelia M. Partridge and Charles R. Partridge, her husband, to the defendant, George E. Paul, dated July 31, 1912, and from the defendant, George E. Paul, to the defendant, Edwin M. Farrier, dated August 5, 1912, may be decreed to have been voluntary conveyances made without consideration, or for a more nominal consideration not representing but being much less than the real value of said land and premises.

3. That the said deeds from the defendants, Cornelia M. Partridge and Charles R. Partridge, her husband, to the defendant, George E. Paul, dated July 31, 1912, and from the defendant, George E. Paul, to the defendant, Edwin M. Farrier, dated August 5, 1912, may be decreed to be utterly void and of no effect.

4. That the said judgment recovered by this defendant against the defendants, Cornelia M. Partridge and Charles R. Partridge, in the Supreme Court of this State, on August 6, 1912, for $17,113.75, may be decreed a lien against the said lands and premises.

5. That it may have such other relief as may be equitable and just.

COLLINS & CORBIN,
Solicitors and of counsel with defendant
Hudson County National Bank
of Jersey City.

Schedule A

Annexed to answer

Jersey City, N. J., February 29, 1912.

$3,500.00

Three months after date I promise to pay to the order of Charles R. Partridge Lumber Company Three Thousand and five hundred Dollars at Hudson County National Bank, Jersey City, N. J., and for the benefit of my personal and separate estate which I hereby expressly charge with payment of this note.

Value received.

No. Due

CORNELIA M. PARTRIDGE.

(*Endorsed*)

Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.

Charles R. Partridge.

Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.

Protest Fees $1.66.

Jersey City, N. J., March 1st, 1912.

$3,200.00

Three months after date I promise to pay to the order of Charles R. Partridge Lumber Company Three Thousand and two hundred Dollars at Hudson County National Bank, Jersey City, N. J., and for the benefit of my personal separate estate which I hereby expressly charge with payment of this note.

Value Received.

No. Due

CORNELIA M. PARTRIDGE.

Answer—Schedule A

(*Endorsed*)
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Charles R. Partridge.
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Protest Fees $1.64.

Jersey City, N. J., March 6th, 1912.

$3,400.00

Three months after date I promise to pay to the order of Charles R. Partridge Lumber Company Three Thousand and four hundred Dollars at Hudson County National Bank, Jersey City, N. J., and for the benefit of my personal and separate estate which I hereby expressly charge with payment of this note.

Value received

CORNELIA M. PARTRIDGE.

(*Endorsed*)
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Charles R. Partridge.
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Protest Fees $1.64.

Jersey City, N. J., March 13th, 1912.

$3,400.00

Three months after date I promise to pay to the order of Charles R. Partridge Lumber Company Three thousand and four hundred Dollars at Hudson County National Bank, Jersey City,

N. J., and for the benefit of my personal and separate estate which I hereby expressly charge with payment of this note.
Value Received.
No. Due

CORNELIA M. PARTRIDGE.

(*Endorsed*)
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Charles R. Partridge.
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Protest Fees $1.64.

Jersey City, N. J., March 21st, 1912.

$3,400.00

Three months after date I promise to pay to the order of Charles R. Partridge Lumber Company Three thousand and four hundred Dollars at Hudson County National Bank, Jersey City, N. J., and for the benefit of my personal and separate estate which I hereby expressly charge with payment of this note.
Value Received.
No. Due

CORNELIA M. PARTRIDGE.

(*Endorsed*)
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Charles R. Partridge.
Charles R. Partridge Lumber Co.,
Charles R. Partridge, President.
Protest Fees $1.64.

Answer of Defendant George E. Paul to Countr Claim of Defendant Hudson County National Bank of Jersey City

(Filed, Sept. 23, 1915)

IN CHANCERY OF NEW JERSEY

Between The Montclair Savings Bank, a corporation, Complainant, and Cornelia M. Partridge and others, Defendants.	On Bill &c.

This defendant George E. Paul, answering the counter claim of the defendant Hudson County National Bank of Jersey City, says:

1. He has no knowledge or information, sufficient to form a belief, as to the allegations of fact contained in paragraph 1 and in paragraph 5 of said counter claim.

2. He is informed and believes that paragraphs 2, 3, and 4 of said counter claim, correctly state the facts therein alleged.

3. He denies the statements of fact contained in paragraph 6 and paragraph 7 of said counter claim, and says that he is informed and believes that the conveyances therein referred to were bona fide, and rested upon a full and adequate consid-

eration, and were not made with intent to hinder, delay and defraud the defendant or other creditors of the said Cornelia M. Partridge and Charles R. Partridge.

4. This defendant has no personal knowledge of the consideration upon which said conveyances rest, but accepted the conveyance of the premises described in the bill of complaint to himself at the request of Edwin M. Farrier, president of the Lincoln Trust Company of New Jersey, who is a personal friend of this defendant, and held the title to the premises in question for the use and benefit of the Lincoln Trust Company of New Jersey, represented by said Edwin M. Farrier, as president, until on or about August 5, 1912, when, at the request and direction of said Edwin M. Farrier, he conveyed said lands and premises to the latter.

5. This defendant as to said counter claim prays to be dismissed, with his reasonable costs and charges.

CARRICK & WORTENDYKE,
Solicitors and of Counsel with
defendant George E. Paul.

Answer of Defendant Edwin M. Farrier to Counterclaim of Defendant Hudson County National Bank of Jersey City

(Filed, Sept. 23, 1915)

IN CHANCERY OF NEW JERSEY

Between
MONTCLAIR SAVINGS BANK, a corporation,
Complainant,
and
CORNELIA M. PARTRIDGE, and others,
Defendants.

This defendant Edwin M. Farrier, answering the counterclaim of the defendant Hudson County National Bank of Jersey City, says:

1. He has no knowledge or information sufficient to form a belief as to the allegations of fact contained in Paragraph 1 and Paragraph 5 of the said counterclaim.

2. He admits the truth of the allegations of fact contained in Paragraph 2, Paragraph 3 and Paragraph 4 of said counterclaim.

3. He denies the allegations of fact contained in Paragraph 6 and Paragraph 7 of said counterclaim, and on the contrary avers that the conveyance therein referred to were bona fide, and for a full and valuable consideration, and were not intended to hinder, delay or defraud the defendant

Hudson County National Bank of Jersey City, or other creditors of said Cornelia M. Partridge and Charles R. Partridge. The consideration for the making of said conveyances is hereinafter particularly and at length set out.

4. This defendant says that at the time of the conveyances by the defendants Cornelia M. Partridge and Charles R. Partridge, of the land described in the bill of complaint to George E. Paul, as set forth in Paragraph 4 of said counterclaim, he was, and for several years theretofore has been, and now is, president of Lincoln Trust Company of New Jersey, a banking institution of this State, and was by virtue of his office, the chief active executive officer of said banking corporation; that prior thereto and beginning on or about April 20, 1910, the Lincoln Trust Company had loaned to said Cornelia M. Partridge various sums of money to evidence which she had delivered to said banking institution her promissory notes made to the order of Partridge Lumber Company, and endorsed by said Lumber Company and by Charles R. Partridge, her husband; that at the time of the making of the conveyance aforesaid, the said Cornelia M. Partridge was indebted upon the said loans and the renewals thereof so made by the Lincoln Trust Company to her, in the sum of $18,600.00, and upon all of said notes, the Partridge Lumber Company, as well as Charles R. Partridge, individually, is also liable to the Lincoln Trust Company; that in order to secure payment to the Lincoln Trust Company of such part of the notes of the said Cornelia M. Partridge held by said Trust Company as she might be able to pay, this defendant, acting in behalf of said Lincoln

Trust Company negotiated with said Cornelia M. Partridge and Charles R. Partridge to secure a transfer to said Trust Company, or on its behalf to some person to be designated by it, of the equity of said Cornelia M. Partridge in the premises described in the bill of complaint; that it was agreed between this defendant and said Cornelia M. Partridge and Charles R. Partridge, that the value of said equity was about $8,000.00, and this defendant acting in behalf of the Lincoln Trust Company, agreed to accept a conveyance of said equity, and to give up and surrender to said Cornelia M. Partridge $8,000.00 of the past due notes made by her and so held by the Lincoln Trust Company In pursuance of said agreement, this defendant as president of the Lincoln Trust Company, did give up and surrender to said Cornelia M. Partridge three certain promissory notes, made by the said Cornelia M. Partridge to Partridge Lumber Company, endorsed by the Partridge Lumber Company and by Charles R. Partridge, individually, of the following dates and amounts:

Note dated February 26, 1913, payable 3 months after date,	$ 2,000.00
Note dated March 12, 1912, payable 3 months after date,	1,500.00
Note dated April 25, 1912, payable 1 month after date,	4,500.00

The indebtedness of said Cornelia M. Partridge to the Lincoln Trust Company was thereupon reduced to the principal sum of $10,500.00.

5. This defendant avers that the price which was then and there agreed upon between the said Cor-

nelia M. Partridge and Charles R. Partridge and this defendant, as president of Lincoln Trust Company, and which was paid by the surrender of said promissory notes, was a full and fair consideration for the value of said equity of redemption which was then and there transferred to the nominee of said Lincoln Trust Company.

6. This defendant further says that upon the surrender of the said notes held by the Lincoln Trust Company so made by Cornelia M. Partridge, the title was conveyed at this defendant's request to George E. Paul, to hold the same for the use and benefit, and subject to the direction and control of the Lincoln Trust Company.

7. Shortly thereafter, on or about August 5, 1912, the defendant George E. Paul, at the request of this defendant as president of the Lincoln Trust Company, conveyed the title to said land and premises in fee to this defendant, to hold the same for the use and benefit of Lincoln Trust Company, for the consideration aforesaid.

8. This defendant now holds, and has since the conveyance of said title to him, held the said land and premises, in trust for the Lincoln Trust Company, subject to the disposition and control of said Lincoln Trust Company.

This defendant, as to said counterclaim, prays to be dismissed from this Court, with his costs and charges by him sustained.

CARRICK & WORTENDYKE,
Solicitors and of Counsel with
defendant Edwin M. Farrier.

Answer and Counterclaim of Woodhouse, Executor, et al.

(Filed Sept. 15, 1915)

IN CHANCERY OF NEW JERSEY

Between THE MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Bill to foreclose.

The answer of the defendant, Lorenzo E. Woodhouse, Executor of the Last Will and Testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, and the counterclaim of the said defendants against George E. Paul and Edwin M. Farrier, defendants, and the Lincoln Trust Company, a third party.

(1) The allegations of fact contained in the first seventeen paragraphs of said bill and in paragraphs 19, 21 and 22 are admitted.

(2) Paragraph 18 is denied.

(3) These defendants admit that the defendants Cornelia M. Partridge and Charles R. Partridge, her husband, have always been, up to the filing of the bill herein, in possession of the mortgaged premises, and deny that Edwin M. Farrier or George E. Paul ever has been in possession of the mortgaged premises.

These defendants, by way of counter-claim

against George E. Paul, Edwin M. Farrier, defendants, and the Lincoln Trust Company, a corporation of the State of New Jersey, a third party, say:

(1) On July 31, 1912, Cornelia M. Partridge and Charles R. Partridge, her husband, conveyed the mortgaged premises described in the third paragraph of the bill of complaint, and herein below more specifically described, to George E. Paul, in trust, to secure the discharge of the collateral liability of the said Cornelia M. Patridge and Charles R. Partridge, her husband, as accommodation makers and endorsers of certain notes, which were in fact the obligations of the C. R. Partridge Lumber Company, and owned by the Lincoln Trust Company, a corporation of the State of New Jersey, and as a part of said trust it was agreed, that if certain banks, creditors of the said C. R. Partridge Lumber Company, should sign a certain contract, negotiations for which were then pending, the said property should be reconveyed to the said Cornelia M. Patridge or her nominees.

(2) The said mortgaged premises are described as follows:

ALL those two tracts or parcels of land and premises, situate, lying and being in the Town of Montclair, in the County of Essex and State of New Jersey, bounded and described as follows:

First Tract: Beginning at a point on the center line of Clinton Avenue which point is distant South 29 degrees, 4 minutes West 63 feet 10-½ inches from a point which is the intersection of the center line of Clinton Avenue with the center line of Porter Place; running thence North 60 degrees

56 minutes West, being along the line of land of E. B. Colby, 233 feet; thence South 29 degrees, 4 minutes West, 112 feet 5-½ inches and to the land of James Freeman; thence South 64 degrees, 30 minutes East 233 feet 5-3/8 inches to the center line of Clinton Avenue; thence North 29 degrees, 4 minutes East 97 feet 11-½ inches to the point or place of beginning.

Being the same premises conveyed to said Eveline A. Ellingwood by Charles H. Ellingwood and wife by deed dated May 8th, 1896 and recorded in Book U 29 of Deeds for Essex County on page 412.

Second Tract: Beginning at a gas pipe driven at the Northerly corner of a lot owned by said Eveline A. Ellingwood, situated on the Westerly side of Clinton Avenue, distant 200 feet North 60 degrees, 56 minutes West from said gas pipe in the Westerly line of Clinton Avenue; thence South 29 degrees, 4 minutes West 112 feet, 6 inches; thence North 64 degrees, 30 minutes West 19 feet 3-3/4 inches; thence North 29 degrees, East 113 feet 11 inches; thence South 60 degrees, 56 minutes East 19 feet 2-½ inches to the beginning.

Being the same premises conveyed to said Eveline A. Ellingwood by Edward G. Burgess and wife by deed dated March 1st, 1900, and recorded in Book E. 33 of Deeds for Essex County on pages 148-150.

(3) That Edwin M. Farrier, is, and at all times herein mentioned was a Director and President of the said Lincoln Trust Company; that the said Edwin M. Farrier had full knowledge and information of the terms and conditions of the afore-

mentioned conveyance and the terms of said agreement and was an active party in the negotiation and consummation of the same.

(4) That in and by said deed and the acceptance thereof, the said George E. Paul convenanted to pay the mortgage debt of Ten Thousand Dollars which the bill in this case was filed to foreclose.

(5) That on the 5th day of August, 1912, the said George E. Paul, without the consent and knowledge of Cornelia M. Partridge and Charles R. Partridge, or of either of them, made and delivered a deed conveying the said property to Edwin M. Farrier. The said deed was made without any consideration moving from the said Farrier or to the said Paul and was not recorded until June 11, 1915. The said Farrier thereby took and held the legal title to said property subject to the same trusts and for the same uses and purposes as the said Paul had taken and held it.

(6) That on or after the 5th day of August; 1912, the defendant, Edwin M. Farrier, without the consent or knowledge of the said Cornelia M. Partridge and Charles R. Patridge, or of either of them, executed and delivered a deed of the said mortgaged premises to the Lincoln Trust Company, a Corporation of the State of New Jersey, of which Company the said Edwin M. Farrier is and then was a Director and President. That the said deed had never been recorded and was executed and delivered without any consideration whatever moving from the Lincoln Trust Company or to the said Farrier. That the said Trust Company accepted said deed with full notice of all the facts hereinbefore alleged and took, by reason of the

premises and now holds the legal title to said property subject to the same trusts and for the same uses and purposes as the said Paul and the said Farrier respectively had taken and held it.

(7) That all the banks mentioned in the first paragraphs herein, shortly after July 31, 1912, signed the proposed agreement which is mentioned in the said first paragraph. That by reason of the premises of the said Cornelia M. Partridge was and thereupon became entitled to have the said property re-conveyed to her or to her nominees, pursuant to the provisions of the trust mentioned in the first paragraph hereof.

(8) That on or about the 26th day of May, 1913, the defendant, Cornelia M. Partridge, for valuable consideration, executed and delivered in the State of New York, to Benjamin S. Harmon and Charles F. Mathewson, these defendant's testators an assignment and transfer of all her right, title and interest in the said premises and directed the holder of the title thereof to deed the property to the said Charles F. Mathewson or in case of his decease, to Benjamin S. Harmon, to be held and disposed of for certain uses and purposes therein expressed, with full power of sale to said Mathewson or Harmon as grantee.

(9) That Charles F. Mathewson departed this life on the 24th day of March, 1915, in the City and State of New York, testate of a certain Will; that the said Will has been admitted to probate by the Surrogate of the County and State of New York, and that letters testamentary have been issued on the said Will to the defendant, Lorenzo E. Woodhouse.

(10) That the defendant, Cornelia M. Partridge, at all times hereinbefore mentioned, has been in possession of the said property, residing thereon with the said Charles R. Partridge, her husband, and has paid the taxes falling due thereon, and has not paid any rent for the said property to any one. That heretofore, defendant, Benjamin S. Harmon, took and now holds possession of said property pursuant to said agreement with Cornelia M. Partridge.

(11) That the defendant, Benjamin S. Harmon and Lorenzo E. Woodhouse, as such executor, have made demand upon the said George E. Paul, Edwin M. Farrier and the Lincoln Trust Company, and upon each of them, to pay and discharge the said mortgage debt and to convey the said property to the said Benjamin S. Harmon, which they have heretofore neglected and refused to do.

The defendant therefore prays:

(1) That the said George E. Paul, Edwin M. Farrier and the said Lincoln Trust Company may answer this counter-claim without oath, and each statement made herein.

(2) That it may be decreed that said George E. Paul, Edwin M. Farrier and the Lincoln Trust Company respectively took and held, and the said Trust Company now holds the legal title to the mortgaged premises, in trust, for the used and purposes hereinabove specified.

(3) That the said Lincoln Trust Company may be decreed to cause the said deed to be recorded in the office of the Register of Deeds of Essex Coun-

ty, and to convey the mortgaged premises by deed sufficient in law to the said Benjamin S. Harmon.

(4) That the said George E. Paul may be decreed to pay the mortgage debt pursuant to the terms of his convenant above set forth.

(5) That these defendants may have such other and further relief in the premises as may be equitable and just.

(6) That a writ of subpoena may issue commanding the defendant, the Lincoln Trust Company, to answer this counterclaim and abide by such decree as this Court may make in the premises.

CONDICT, CONDICT & BOARDMAN,
Sol'r for and of Counsel with
Lorenzo L. Woodhouse, Exr. &
Benj. S. Harmon, defts.

Answer of Defendant George E. Paul to Counterclaim of Defendant Lorenzo E. Woodhouse, Executor, etc., and Benjamin S. Harmon

(Filed, Oct. 9, 1915)

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, a corporation, and CORNELIA M. PARTRIDGE and others, Defendants.	On Bill &c.

This defendant, George E. Paul answering the counterclaim of the defendant Lorenzo E. Woodhouse, executor of the last will and testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, says:

1. He admits the conveyance to him on July 31, 1912, by Cornelia M. Partridge and Charles R. Partridge, her husband, of the premises referred to in paragraph (1) of the counterclaim, but denies that said conveyance was made to him for the purposes alleged in said counterclaim. On the contrary he says that said conveyance was made to him at the request of Edwin M. Farrier president of the Lincoln Trust Company of New Jersey, who is a personal friend of this defendant, to hold the title to the premises in question for the use and benefit of said Trust Company.

2. He admits that the mortgaged premises are correctly described in paragraph (2) of the counterclaim.

3. He admits that Edwin M. Farrier was, and is, director and president of the Lincoln Trust Company, and is informed and believes that he was fully acquainted with the terms and conditions of the said conveyance made to this defendant.

4. He admits that in the conveyance to him he assumed the payment of the mortgage upon the premises in question.

5. He admits that on August 5, 1912, he conveyed the said premises to Edwin M. Farrier. He has no knowledge nor information sufficient to form a belief as to the knowledge of Cornelia M. Partridge and Charles R. Patridge of the making of said conveyance, but admits that no consideration was paid him for the making of said conveyance, and is informed that the deed was not recorded until June 11, 1915. Said conveyance was made by him at the instance and request of Edwin M. Farrier, acting for and in behalf of the Lincoln Trust Company of New Jersey.

6. He has no knowledge sufficient to form a belief as to the facts alleged in paragraphs 6, 7, 8, 9, 10 and 11 of said counterclaim.

This defendant, as to said counter-claim, prays to be dismissed with his reasonable costs and charges.

CARRICK & WORTENDYKE,
Solicitors and of counsel with
defendant George E. Paul.

Answer of Defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey to Counter-Claim of Defendant Lorenzo E. Woodhouse, Executor, etc., and Benjamin S. Harmon

(Filed, Sept. 23, 1915)

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Bill &c.

These defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey, answering the counterclaim of the defendant Lorenzo E. Woodhouse, executor of the last will and testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, say:

1. They admit the conveyance on July 31, 1912, by Cornelia M. Partridge and Charles R. Partridge, her husband, of the mortgaged premises to George E. Paul, but deny that the said conveyance was in trust for the purpose set forth in the counterclaim. The grantee in said deed was the nominee of these defendants, and accepted title in his name at the request of the defendant Edwin M. Farrier to hold until he should be directed by said Edwin M. Farrier to convey the same. The

circumstances attending the transfer, are hereinafter particularly set forth.

2. They admit that the mortgaged premises are correctly described in the second paragraph of the counter-claim.

3. The defendant Edwin M. Farrier is and was at the times mentioned, a director and president of Lincoln Trust Company, and had knowledge of the terms and conditions of the said conveyances; but no such agreement as is stated in paragraph (1) of the counterclaim was made by and between the parties to said conveyance.

4. They admit that the grantee George E. Paul assumed the payment of the complaintant's mortgage, in accepting the deed to the property.

5. They admit that on August 5, 1912, George E. Paul conveyed the mortgaged premises to this defendant Edwin M. Farrier. They deny that such conveyance was without the consent or knowledge of Cornelia M. Partridge and Charles R. Partridge, or either of them, but on the contrary, aver that it was the express intention of Cornelia M. Partridge and Charles R. Partridge that the conveyance made by them July 31, 1912, should be for the use and benefit of Lincoln Trust Company of New Jersey, and the conveyance was made to said George E. Paul at the instance and direction of this defendant Edwin M. Farrier, as president of said Trust Company, for the use and benefit of Lincoln Trust Company of New Jersey. These defendants admit that no consideration was given therefor by said Edwin M. Farrier personally to said George E. Paul, but the conveyance was made

at the instance of this defendant Edwin M. Farrier as President of Lincoln Trust Company of New Jersey, for the use and benefit of said Trust Company. They admit that the deed to this defendant Edwin M. Farrier was recorded June 11, 1915, and that he took and held the legal title to the property, subject to the same trusts, and for the same uses and purposes as the said Paul had taken and held it; but deny that the said trusts, uses and purposes are as set forth in said counterclaim.

6. They admit that after the conveyance of the title by said George E. Paul to this defendant Edwin M. Farrier, he delivered a deed therefor to said Lincoln Trust Company of New Jersey, which has never been recorded, and that said conveyance was made without consideration given by the Lincoln Trust Company to this defendant Edwin M. Farrier. These defendants do not know whether said Cornelia M. Partridge and Charles R. Partridge had knowledge of the making of said conveyance, but deny that the same was without their consent, and aver that the purpose of the conveyance of the mortgaged premises by them to George E. Paul, was, by the express consent and to the knowledge of said Cornelia M. Partridge and Charles R. Partridge, for the benefit of this defendant Lincoln Trust Company of New Jersey. This defendant Lincoln Trust Company of New Jersey took said deed, with full notice of the consideration and the circumstances attending the giving of said deed, and holds the title for the uses and purposes for which the same was conveyed to the said George E. Paul, and to the

said Edwin M. Farrier, respectively; but they deny that such uses and purposes were as stated in said counter claim.

7. They deny that there was any such agreement by any banks as mentioned in paragraph (1) and paragraph (7) of the counter-claim. They deny that said Cornelia M. Partridge ever was, or now is, entitled to have the property conveyed to her or her nominees, as claimed in paragraph (7) of said counter-claim.

8. They have no knowledge or information sufficient to form a belief as to the facts alleged in paragraph (8) and paragraph (9) of said counter-claim.

9. They admit that the said Cornelia M. Partridge was, until recently, in possession of the mortgaged premises, residing there with her husband, without payment of rent for the said property, but are not informed as to whether or not she paid the taxes falling due thereon. They deny that the defendant Benjamin S. Harmon took and now holds possession of the said property, pursuant to any agreement with Cornelia M. Partridge or otherwise, or that he now has, or has ever had, possession of the said premises.

10. They admit the demand made upon them alleged in paragraph (11) of the counter claim.

11. They say that at the time of the conveyance by the defendants Cornelia M. Partridge and Charles R. Partridge of the lands described in the bill of complaint to George E. Paul, as set out in paragraph (1) of said counter-claim, and of the conveyance by said Paul to this defendant Edwin

M. Farrier, set out in paragraph (5) of the counter-claim, and of the conveyance by this defendant Edwin M. Farrier to said Lincoln Trust Company of New Jersey, as set out in paragraph (6) of said counter-claim, the defendant Edwin M. Farrier was, and for several years therefore had been and now is president of Lincoln Trust Company of New Jersey, and was, by virtue of his office, the chief executive officer of said banking corporation.

Prior thereto and beginning on or about April 20, 1910, the Lincoln Trust Company had loaned to said Cornelia M. Partridge various sums of money to evidence which she had delivered to said banking institution her promissory notes made to the order of Partridge Lumber Company, and endorsed by said Lumber Company and by Charles R. Partridge her husband; that at the time of the making of the conveyance to George E. Paul aforesaid, the said Cornelia M. Partridge was indebteded upon such loans and the renewals thereof so made by the Lincoln Trust Company to her, in the sum of $18,600.00, and upon all of said notes the Partridge Lumber Company, as well as Charles R. Partridge individually, was also liable to the Lincoln Trust Company; that in order to secure payment to the Lincoln Trust Company of such part of the notes of the said Cornelia M. Partridge held by said Trust Company as she might be able to pay, this defendant Edwin M. Farrier, acting in behalf of said Lincoln Trust Company negotiated with said Cornelia M. Partridge and Charles R. Partridge to secure a transfer to said Trust Company, or on its behalf to some person to be designated by it, of the equity

of said Cornelia M. Partridge in the premises described in the bill of complaint; that it was agreed between this defendant and said Cornelia M. Partridge and Charles R. Partridge, that the value of said equity was about $8,000.00, and this defendant acting in behalf of the Lincoln Trust Company, agreed to accept a conveyance of said equity, and to give up and surrender to said Cornelia M. Partridge $8,000.00 of the past due notes made by her and so held by the Lincoln Trust Company. In pursuance of said agreement, upon the conveyance to George E. Paul, this defendant Edwin M. Farrier as president of the Lincoln Trust Company, did give up and surrender to said Cornelia M. Partridge thre certain promissory notes, made by her to Partridge Lumber Company, endorsed by the Partridge Lumber Company and by Charles R. Partridge individually, of the following dates and amounts:

Note dated February 26, 1913, payable 3 months after date,	$2000.00
Note dated March 12, 1912, payable 3 months after date,	1500.00
Note dated April 25, 1912, payable 1 month after date,	4500.00

The indebtedness of said Cornelia M. Partridge to the Lincoln Company was thereupon reduced to the principal sum of $10,600.00.

It was then and there orally agreed by and between this defendant, Edwin M. Farrier, acting as president of Lincoln Trust Company of New Jersey, and the said Cornelia M. Partridge and Charles R. Partridge, that if the Partridge Lum-

ber Company, after paying the balance of $10,600.-00 of said notes remaining unpaid, should also fully pay and discharge the three notes made by said Cornelia M. Partridge, and endorsed by the Partrdige Lumber Company, and so surrendered to said Cornelia M. Patridge, the property so conveyed by her to George E. Paul, should, upon her payment to Lincoln Trust Company the principal of the notes surrendered to her, with interest, be re-conveyed to her; but said Lumber Company has never paid the remaining indebtedness, nor reduced the principal upon which it is liable on said notes to the amount of $8,000.00.

12. At the time of the transfer by Cornelia M. Partridge and Charles R. Patridge of the premises in question to George E. Paul, it was agreed by this defendant Edwin M. Farrier, as president of the Lincoln Trust Company, that said Cornelia M. Partridge might retain the possession of the premises, provided that she should, while in possession, pay the interest accruing upon the mortgage and discharge the property from municipal taxes, or other liens, and keep the same in repair; that some time after the complaint filed its bill to foreclose its mortgage, the defendant Cornelia M. Partridge abandoned the premises, and defendant Lincoln Trust Company, by its agent, has taken possession and is now in charge thereof.

13. They aver that the price of the equity in said premises which was agreed upon between the said Cornelia M. Partridge and Charles R. Partridge and this defendant Edwin M. Farrier as president of Lincoln Trust Company, and which was paid by the surrender of said promissory

notes, was a full and fair consideration for the equity of redemption which was so transferred to the nominee of the Lincoln Trust Company.

14. They further say that upon the surrender of the said notes held by the Lincoln Trust Company so made by Cornelia M. Partridge, the title was conveyed at the request of this defendant. Edwin M. Farrier, to George E. Paul, to hold the same for the use and benefit, and subject to the direction and control of the Lincoln Trust Company.

15. Shortly thereafter, on or about August 5, 1912, the defendant George E. Paul, at the request of this defendant Edwin M. Farrier, as president of the Lincoln Trust Company, conveyed the title to said land and premises in fee to this defendant Edwin M. Farrier, to hold the same for the use and benefit, and subject to the direction and control of the Lincoln Trust Company.

These defendants, as to said counterclaim, pray to be dismissed from this Court with their costs and charges by them sustained.

CARRICK & WORTENDYKE,
Solicitors and of counsel with
Edwin M. Farrier and Lincoln
Trust Company of New Jersey,
defendants.

Replication to Answer to Counter-Claim

(Filed Oct. 1915)

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PATRIDGE, *et al.*, Defendants.	On Bill &c.

The defendants, Lorenzo E. Woodhouse, Executor &c., and Benjamin S. Harmon join issue on the answers of Edwin M. Farrier and Lincoln Trust Company to counterclaim of said defendant and of George E. Paul to said counter-claim.

CONDICT, CONDICT BOARDMAN,
Solr's for and of Counsel with
Lorenzo E. Woodhouse,
Executor.

Order of Reference

(Oct. 16, 1915)

Order of reference to Master to determine amount due to Complainant containing clause: "and the questions raised by the answers and counterclaims of the answering defendants are also hereby reserved."

Letter appearing in files:

October 16, 1915.

Philip Goodell, Esq.,
Counselor-at-Law,
Montclair, N. J.

Dear Sir:

I have signed the order of reference in Montclair Savings Bank v. Partridge (40-199), first striking out the words,

> "except such as in the opinion of the Court may be properly referred to the master,"

and adding a clause

> "And the questions raised in the answers and counterclaims of the answering defendants are also hereby reserved."

I am sending a copy of this letter to the various counsel who have written me.

Very truly yours,

E. R. WALKER.

Decree of Foreclosure

(Filed Nov. 9, 1915)

This cause coming on to be heard in the presence of Philip Goodell, of counsel with the complainant, and it appearing that the complainant's bill has heretofore been taken as confessed against the defendants, Cornelia M. Partridge and Charles R. Partridge and Edwin M. Farrier, and it further appearing from the bill of complaint herein that the said bill was filed to foreclose the equity of redemption of certain lands and premises described in a certain mortgage held by the complainant, and that the defendant, the Hudson County National Bank of Jersey City, although it has filed its answer in this cause claiming to be the holder of a judgment against the said Cornelia M. Partridge and Charles R. Partridge, admits the complainant's lien and the priority thereof, and it further appearing that the defendants, Lorenzo E. Woodhouse, Executor, and Benjamin S. Harmon have filed their answer to the bill of complaint, admitting therein the complainant's lien and the priorty thereof, both of the said answering defendants, by way of cross-bill in their answers, claiming however rights against one another and the remaining defendants, and it appearing that the complainant's lien and the priority thereof are undisputed, and it further appearing that by order of this Court made October 16th, 1915, it was ordered, that the cause be referred to William R. Barricklo, one of the masters of this Court, to ascertain and report the amount due to the complainant for principal and interest upon the said mortgage held by it on the

premises mentioned and described in the bill of complaint, and whether the said mortgaged premises should be sold together or in parcels, and if in parcels in what order (the said order of reference reserving all questions raised in the answer and counter-claim of the answering defendants), and upon reading a report on file made by the said William R. Barricklo, dated November 1st, 1915, from all of which it appears that there was due to the said complainant on the day of the making of said report for principal and interest on its said mortgage the sum of $10,458.75, and the master having reported further that it is necessary and advisable that the mortgaged premises be sold as a whole and in one parcel to raise and pay the money so due as aforesaid and no cause being shown or appearing against confirming the said report.

It is on this 9th day of November, 1915, ordered, adjudged and decreed by Edwin R. Walker, Chancellor of the State of New Jersey, and the said chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said report and all matters and things therein contained do stand ratified and confirmed and that the said mortgaged premises be sold to raise and satisfy the sum of money due to the said complainant, that is to say, the sum of $10,458.75, together with lawful interest thereon to be computed from November 1st, 1915, being the date of the master's report, with costs to be taxed; and it is further ordered that a writ of *fieri facias* do issue for that purpose out of this Court to the sheriff of the County of Essex, commanding him to make sale according to law of

the said mortgaged premises, and that out of the money arising from such sale he pay to the complainant or its solicitor said debt, interest and costs. And in case more money should be raised by said sale than should be sufficient to answer such payment to the complainant that such surplus be brought into this Court to abide the further order of the Court unless otherwise previously disposed of by the order of this Court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ.

And it is further ordered, adjudged and decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid, by virtue of this decree, and that the answering defendants have leave to apply to this Court for such relief as they may be advised is equitable and just to the end that the issues raised in their several answers and cross-bills may be determined herein and that the said surplus moneys, if any, be held by this Court pending the determination of said issues.

And it is further ordered, adjudged and decreed that the sum of $76.00 be allowed and paid to the solicitor of the complainant instead of the retaining fee now allowed to counsel by statute, and the same be included in the taxed bill of costs and collected with the other items of the said bill.

E. R. WALKER,
C.

A true copy.

JESSE R. SALMON.

Execution

November 27, 1915—Execution issued to sheriff.

Sheriff's Sale

January 11, 1916—Sheriff's sale to complainant for $7500.

Assignment of Bid

Complainant assigns bid to Lincoln Trust Company.

Deed

January 22, 1916—Deed of mortgaged premises, sheriff to Lincoln Trust Company.

Notice of Application for Leave to File Supplemental Answer

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Bill, etc., On Counter Claim of Lorenzo E. Woodhouse, Executor, etc., and Benjamin S. Harmon, Defendants.

To Messrs. Condict, Condict & Boardman, Solicitors of Defendants Lorenzo E. Woodhouse, Executor of the last Will and Testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, GENTLEMEN:

PLEASE TAKE NOTICE, that on Tuesday, the 25th day of April, 1916, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the State House in Trenton, we shall apply to the Chancellor for leave to file a further answer by way of supplement, setting up that since the filing of the answer of the defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey, to the counterclaim of Lorenzo E. Woodhouse, Executor of the last Will and Testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, defendants, the amount due to the complainant has been ascertained by report of a Master in Chancery, a decree thereon has been entered in the cause, and execution issued to the Sheriff of Essex County, who has sold the property for

an amount less than the sum decreed to be due to the complainant; and for such other relief as may be proper and in accordance with the practice of this Court.

Dated, April 20, 1916.

CARRICK & WORTENDYKE,
Solicitors of Defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey.

Supplemental Answer of Defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey to Counter Claim of Defendant Hudson County National Bank

(Filed, April 25, 1916)

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Bill, etc.,

These defendants, Edwin M. Farrier and Lincoln Trust Company of New Jersey, by leave of

Supp'l Ans. E. M. Farrier & Lincoln Trust Co.
to Hudson County National Bank

Court further answering the counterclaim of the defendant Hudson County National Bank, by way of supplement to the answer heretofore filed by these defendants, say:

1. Since the filing of the answer of these defendants an order of reference was made by the Chancellor in the above entitled cause, referring it to a Master in Chancery to ascertain the amount due the complainant for principal and interest upon its mortgage, reserving the questions raised in the answers and counterclaim of the answering defendants. Upon the coming in of the master's report, a decree was entered in said cause November 9, 1915, whereby it was ordered that the mortgaged premises be sold to pay and satisfy unto the complainant $10,458.75, being the amount ascertained to be due by the master's report, with lawful interest thereon from November 1, 1915, until the same should be paid and satisfied, and also the costs of the complainant which were thereafter taxed at the sum of $239.50.

2. On November 27, 1915, execution issued upon said decree to the Sheriff of Essex County, directing sale of the mortgaged premises, and the same after due advertisement in accordance with law, were struck off and sold to the complainant on January 11, 1916, for the sum of $7,500.00, which sheriff's sale was confirmed by order made in this cause on January 22, 1916.

3. By virtue of said sale, the equity of redemption of the defendants in the said premises was forever barred and foreclosed, and no part of the proceeds arising from the sheriff's sale has come to the hands of these defendants.

4. These defendants, as to said counterclaim, renew their prayer to be dismissed from this Court, with their costs and charges by them sustained.

CARRICK & WORTENDYKE
Solicitors and counsel with Edwin M. Farrier and Lincoln Trust Company of New Jersey, Defendants.

~~Supplemental Answer of Defendants~~ Edwin M. Farrier and Lincoln Trust Company of New Jersey to Counter-Claim of Defendant Lorenzo E. Woodhouse, Executor, etc., and Benjamin S. Harmon

(Filed, April 25, 1916)

Between
MONTCLAIR SAVINGS BANK,
Complainant,
and
CORNELIA M. PARTRIDGE, *et al.*,
Defendants.
} On Bill, etc.,

These defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey, by leave of Court further answering the counterclaim of the defendant Lorenzo E. Woodhouse, executor of the last will and testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, by way of supplement to the answer heretofore filed by these defendants, say:

~~1. Since the filing of the answer of these de-~~

fendants an order or reference was made by the Chancellor in the above entitled cause referring it to a Master in Chancery, to ascertain the amount due the complainant for principal and interest upon its mortgage, reserving the questions raised in the answers and counterclaims of the answering defendants. Upon the coming in of the master's report, a decree was entered in said cause November 9, 1915, whereby it was ordered that the mortgaged premises be sold to pay and satisfy unto the complainant $10,458.75, being the amount ascertained to be due by the master's report, with lawful interest thereon from November 1, 1915, until the same should be paid and satisfied, and also the costs of the complainant, which were thereafter taxed at the sum of $239.58.

2. On November 27, 1915, execution issued upon said decree to the Sheriff of Essex County, directing sale of the mortgaged premises, and the same after due advertisement in accordance with law, were struck off and sold to the complainant on January 11, 1916, for the sum of $7,500.00, which sheriff's sale was confirmed by order made in this cause on January 22, 1916.

3. By virtue of said sale, the equity of redemption of the defendants in the said premises was forever barred and foreclosed, and no part of the proceeds arising from the sheriff's sale has come to the hands of these defendants.

4. These defendants, as to said counter claim, renew their prayer to be dismissed from this Court, with their costs and charges therein sustained.

CARRICK & WORTENDYKE,
Solicitors and of counsel with Edwin M. Farrier and Lincoln Trust ~~Company of New Jersey, Defend~~ ants.

Supplement to Counterclaim of Woodhouse, et al., against Lincoln Trust Co. et al.

(Filed, May 6, 1916)

(12) That the filing of the original bill in this cause was brought about at the request and instance of the defendants, Edwin M. Farrier and the Lincoln Trust Company, in defiance and breach of their duties as Trustees as above set forth, and for the purpose of ending such trust relationship and for the benefit of said Lincoln Trust Company and to the detriment of these defendants.

(13) The questions raised in the answers and counterclaims of the answering defendants being reserved, this cause has proceeded to decree of foreclosure, execution and sale of the mortgaged premises described in the bill of complaint.

(14) At the Sheriff's sale held under execution issued in this cause as aforesaid, the complainant, pursuant to an agreement thereto, made between it and said Lincoln Trust Company, bid in the mortgaged premises for the sum of $7,500, which was, and is in fact, much less than the actual value thereof, and shortly thereafter, pursuant to said agreement, assigned such bid and its rights as purchasers thereunder to the Lincoln Trust Company, and pursuant to said assignment, the Sheriff of Essex County has executed a deed of conveyance of the said property to the Lincoln Trust Company, which now as formerly holds the legal title to the said property.

That the agreement between the said Trust

Company and the complainant included an agreement that the Trust Company should pay to the complainant the full amount of its judgment, amounting to $10, 458.75, and costs amounting to $239.58. That this amount these defendants charge has been paid. That the amount of said judgment and costs was far less than the true value of said property. The true value of said property being about $22,000.

(15) These defendants respectfully show that the said foreclosure proceedings were ineffective to terminate the trust relationship existing among the parties to this action and to terminate the trusts under which the Lincoln Trust Company held legal title to the property at the time of the filing of the bill in this cause, and these defendants charge that the Lincoln Trust Company took title, if in fact any title passed thereby, under its deed from the Sheriff of Essex County and holds title to the premises described in the bill of complaint subject to the same uses, purposes, trusts and duties as are in this counterclaim above stated and set forth.

Answer Lincoln Trust Co. and Farrier to Supplement to Counter-Claim of Woodhouse, et al.

(Filed April 25, 1916)

16. They deny the allegations of fact contained in paragraph (12) of the supplement to the counterclaim, and say that after the interest upon the complainant's mortgage which came due June 1, 1915, was in default, the complainant applied to the defendant Lincoln Trust Company to pay said interest, and upon the refusal of said defendant to the interest in default, the foreclosure suit was begun.

17. These defendants say that the circumstances under which the defendant Lincoln Trust Company became purchaser at the Sheriff's sale are not accurately set out in paragraph (14) of the said supplement to the counterclaim, but state the fact to be that the defendant Paul, to whom the mortgaged premises were conveyed subject to the complainant's mortgage, had in and by the deed of conveyance assumed the payment of the complainant's mortgage, and the defendant Lincoln Trust Company, at whose instance the said Paul took and held the property, was advised that it was under a legal obligation to protect the property to the extent of the complainant's claim. In order to avoid excessive commissions upon the sale, the defendant Lincoln Trust Company arranged with the complainant that the letter should bid in the property at the foreclosure sale, and that the Lincoln Trust Company would thereafter take an assignment of the bid upon payment to the complainant of the full amount due for its decree, in-

terest and costs. After the complainant had bid in the property at the Sheriff's sale, it did, pursuant to such agreement, assign its bid to defendant Lincoln Trust Company, and at the same time, the Lincoln Trust Company paid to the complainant on January 13, 1916, the sum of $10,878.49, in full for the complainant's decree, interest and costs. These defendants conceive that the true value of the property is in the neighborhood of $16,000.00.

These defendants, as to said supplement to said counterclaim, renew their prayer to be dismissed from this Court with their costs and charges by them sustained.

CARRICK & WORTENDYKE,
Solicitors and of counsel with Edwin M. Farrier and Lincoln Trust Company of New Jersey, Defendants.

Order of Reference

(Filed, May 16, 1916)

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.		On Bill, etc. On Counter Claim.

IT IS, on this 16th day of May, nineteen hundred and sixteen, on motion of Condict, Condict & Boardman, solicitors for Lorenzo E. Woodhouse, Executor of the Last Will and Testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, counter claimants,

ORDERED, that the above stated cause be and it hereby is referred to Hon. Eugene Stevenson, one of the Vice Chancellors, to hear the same for the Chancllor, upon all questions reserved in the order of reference to the Master, heretofore made in this cause, and all questions raised on the amended pleadings, and to report thereon to him, and advise what order or decree should be made therein.

E. R. WALKER,
C.

We consent to the making of the above order.

COLLINS & CORBIN,
Solicitors of Defendant,
Hudson County National Bank.

Order for Substitution of Parties

(Filed, Jan. 10, 1917)

It appearing to the Court that Benjamin S. Harmon, one of the parties defendant to this action, and a cross-claimant, has died since the filing of the bill, testate of a Will whereby he leaves, after the payment of debts of his estate, to his wife, Helen K. Harmon, his entire estate, and whereby he constitutes the said Helen K. Harmon his Executrix;

And it further appearing that the said Helen K. Harmon has duly qualified as such Executrix, the said petition being so suggested on the record;

It is, on this 10th day of January, 1917, on motion of Condict, Condict & Boardman, solicitors,

Ordered, that this cause, in so far as not terminated by the decree of foreclosure, shall stand revived, and that the said Helen K. Harmon, individually and as Executrix of the Last Will and Testament of Benjamin S. Harmon, shall be inserted in said cause as a defendant and cross-claimant in the place and stead of said Benjamin S. Harmon, deceased, and she is hereby at liberty to proceed in the said cause.

E. R. WALKER.
C.

Respectfully advised.
Eugene Stevenson,
V. C.

Order

(Filed, November 19, 1917)

IN CHANCERY OF NEW JERSEY

Between
MONTCLAIR SAVINGS BANK,
Complainant,
and
CORNELIA M. PARTRIDGE, *et al.*,
Defendants.
} On Bill, etc.,

The bill in this cause having been filed for the foreclosure of a mortgage, and the answers of the answering defendants not appearing to set up any defence to the complainant's mortgage, an order of reference was made to a Master, to determine the amount due on the complainant's mortgage, with a further provision that the "questions raised in the answers and counterclaims of the answering defendants are also hereby reserved."

The defendant, The Hundson County National Bank, having filed a counterclaim against the defendants, Charles R. Partridge, Cornelia M. Partridge, George E. Paul and Edwin M. Farrier, and the defendants, Harmon, and Woodhouse, Executor of Mathewson, having filed a counterclaim against George E. Paul and Edwin M. Farrier, two of the defendants, and against the Lincoln Trust Company as a further defendant; and the cause having gone to decree on the Master's Report and Sheriff's sale, and the Lincoln Trust Company having received a deed of the mortgaged premises from the Sheriff of Essex County, given

pursuant to the proceedings in this cause, and this cause having been referred to the Vice-Chancellor, upon motion of solicitors for said Harmon and Woodhouse, Executor, on the consent of the Hudson County National Bank, whereby it was referred to the Vice-Chancellor to hear the cause for the Chancellor "upon all the questions reserved in the order of reference to the Master, heretofore made in this cause, and all questions raised on the amended pleadings"; and the cause having been brought on for hearing on notice, not only to the defendants named in the counterclaim of Harmon and Woodhouse, Executor, but also on notice to the Hudson County National Bank, and counsel appearing at the first day of the hearing of this cause, for the Hudson County National Bank as well as other counsel for the counterclaimants, Executors of Harmon and Mathewson, and still other counsel for the defendants who had answered the two counterclaims, and the cause as referred to the Vice-Chancellor, having gone to final argument on Wednesday, October 15th, 1917, and Friday, October 19th, 1917, on which latter day it was interrupted by the Vice-Chancellor, on his own motion, because he had received a letter from Messrs. Collins & Corbin, of counsel with the defendant, The Hudson County National Bank, from which letter it appeared that counsel for the Hudson County National Bank were under a misapprehension of the true status of the cause, and the Court being of the opinion that all the claims which the Hudson County National Bank may have in this cause, which are presented by their counterclaim, are on trial before him, and that those claims should be disposed of upon the evi-

dence before him; and the further hearing of the cause having been set over until the 22d day of October, 1917;

It is, on this 22d day of October, 1917, in the presence of Messrs. Condict, Condict & Boardman, of counsel with the Executors of Harmon and Mathewson, counterclaimants, and of Messrs. Carrick & Wortendyke, solicitors for George E. Paul, Edwin M. Farrier and Lincoln Trust Company;

Ordered, that the further hearing and argument of this cause stand over and be continued until Thursday, the 13th day of December, 1917, at the Court House in Paterson, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, and that a copy of this order, which need not be certified, be served upon the defendant and counterclainants, the Hudson County National Bank, within ten days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,
Eugene Stevenson,
V. C.

Service of copy hereof acknowledged October 26, 1917.

COLLINS & CORBIN,
Solicitors of Defendants,
Hudson County National
Bank.

Order Dismissing Counter-Claim

(Filed, December 13, 1917)

IN CHANCERY OF NEW JERSEY

Between THE MONTCLAIR SAVINGS BANK, a corporation, Complainant, and CORNELIA M. PARTRIDGE, *et als.*, Defendants.	On Bill, etc.,

On motion of Messrs. Collins & Corbin, solicitors for and of counsel with the defendant, Hudson County National Bank of Jersey City, a corporation, it is, on this thirteenth day of December, Nineteen hundred and seventeen,

ORDERED, that the counterclaim filed by said defendant in the above entitled cause be and it hereby is dismissed without costs, said defendant to have no recourse against the lands and premises mentioned and described in the bill of complaint in said cause upon the judgment recovered by it against the defendants, Cornelia M. Partridge and Charles R. Partridge, on August 6, 1912, set forth in said counterclaim, in case the defendants, Lorenzo E. Woodhouse, Executor of the last Will and Testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, succeed in establishing any claim to or interest in the said lands and premises upon the counterclaim filed by them in said cause.

EUGENE STEVENSON,
V. C.

Order Allowing Taxation of Stenographer's Fees

Consent is hereby given to the making of the foregoing order.

CONDICT, CONDICT & BOARDMAN,
Solicitors for and of counsel with Executors Messrs. Harmon and Mathewson, Defendants.

Order Allowing Taxation of Stenographer's Fees and Costs

(Filed, March 15, 1920)

IN CHANCERY OF NEW JERSEY

Between
THE MONTCLAIR SAVINGS BANK,
Complainant,
and
CORNELIA M. PARTRIDGE, *et als.*,
Defendants.
} On Bill, etc.,

This matter being opened to the Court by Carrick & Wortendyke, solicitors and of counsel with the defendant, Lincoln Trust Company of New Jersey; and it appearing that notice of this application has been given to the solicitor of the counterclaimants; and it further appearing that the applying defendant has paid to the official stenographer for one-half of the transcript of the testimony taken upon the hearing furnished for the use of the Court, the sum of $41.45,

Order Allowing Taxation of Stenographer's Fees

It is, on this fifteenth day of March, 1920, ordered that there be allowed to the said applying defendant, as against the counterclaimants, Lorenzo E. Woodhouse, Executor of the last Will and Testament of Charles F. Mathewson, deceased, and Helen K. Harmon, individually and as executrix of the last Will and Testament of Benjamin S. Harmon, deceased, the said sum of $41.45, so expended for one-half of the fees for the transcript of testimony furnished for the use of the Court, such amount to be included and taxed in the bill of costs of Lincoln Trust Company of New Jersey, against the counterclaimants.

E. R. WALKER,
C.

Respectfully advised,
Eugene Stevenson,
V. C.

Final Decree on Counterclaim of Lorenzo E. Woodhouse, Executor etc., et al.

(Filed, March 23, 1920)

IN CHANCERY OF NEW JERSEY

Between
THE MONTCLAIR SAVINGS BANK,
Complainant,
and
CORNELIA M. PARTRIDGE, CHARLES R. PARTRIDGE, GEORGE E. PAUL, EDWIN M. FARRIER, HUDSON COUNTY NATIONAL BANK OF JERSEY CITY, BENJAMIN S. HARMON and LORENZO E. WOODHOUSE, executor of the estate of Charles F. Mathewson, deceased, HELEN K. HARMON, individually and as executrix of Benjamin S. Harmon, deceased, and LINCOLN TRUST COMPANY OF NEW JERSEY,
Defendants.

On Bill, etc.,

The issues joined upon the counterclaim filed in behalf of Lorenzo E. Woodhouse, executor of the last will and testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, having heretofore been referred to the Honorable Eugene Stevenson, one of the Vice-Chancellors, to hear the same for the Chancellor upon all questions reserved in the order of reference to the master

therefore made in the above entitled cause, and all questions raised on the amended pleadings, and to report thereon to him, and advise what order or decree should be made therein; and said cause so referred having come on for hearing before the Chancellor in the presence of Richard Boardman, Esquire, of counsel with the counterclaimants, and of Charles L. Carrick, Esquire, of counsel with the answering defendants Edwin M. Farrier, Lincoln Trust Company of New Jersey, and George E. Paul, and the Court having read the pleadings, and the proofs offered in behalf of the respective parties having been taken orally in open Court, and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments, and being of opinion that the conuter-claimants are not entitled to the relief sought and prayed in their counterclaim, but that the title to the property particularly described in the complainant's bill of complaint, which was conveyed to the Lincoln Trust Company of New Jersey, by the deed heretofore made and delivered by the Sheriff of the County of Essex to it, in the above entitled cause, upon the foreclosure of the complainant's mortgage, is absolute and valid against all claims of the defendant Cornelia M. Partridge, and of her assignees Charles F. Mathewson and Benjamin S. Harmon, and against their personal representatives and counterclaimants in this cause.

It is, thereupon on this twenty-third day of March, one thousand nine hundred and twenty, by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey,

Final Decree on Counterclaim of L. E. Woodhouse

ORDERED, ADJUDGED AND DECREED, that the said counterclaim of the defendants Lorenzo E. Woodhouse, Executor of the last Will and Testament of Charles F. Mathewson, deceased, and Benjamin S. Harmon, be and the same is hereby dismissesd with costs; and the title of the Lincoln Trust Company of New Jersey to the property particularly described in the complainant's bill of complaint conveyed to it by the Sheriff of Essex County under the foreclosure of the complainant's mortgage is hereby found and adjudged to be absolute and valid against all claims of Cornelia M. Partridge, and of Lorenzo E. Woodhouse, Executor of the last Will and Testament of Charles F. Mathewson, deceased, and Helen K. Harmon, individually and as executrix of the last Will and Testament of Benjamin S. Harmon, deceased, the counterclaimants herein.

And it is further ordered that there be paid by said counterclaimants Lorenzo E. Woodhouse, Executor of the last Will and Testament of Charles F. Mathewson, deceased, and Helen K. Harmon, as executrix of the last Will and Testament of Benjamin S. Harmon, deceased, to the solicitors of the defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey, their costs of this suit to be taxed; and to the solicitors of the defendant George E. Paul, his costs of this suit to be taxed.

AND IT IS FURTHER ORDERED, that there be paid by the said counterclaimants to the solicitors and counsel of the answering defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey, the sum of One Thousand Dollars, as and for a reasonable allowance for their counsel fees in

this cause, which shall be included in and taxed with their said costs.

AND IT IS FURTHER ORDERED, that the said defendants Edwin M. Farrier and Lincoln Trust Company of New Jersey, and George E. Paul, have execution for the collection of their respective taxed costs herein allowed in accordance with the practice of this Court.

E. R. WALKER,
C.

Respectfully advised,
Eugene Stevenson,
V. C.

Testimony

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainants, and CORNELIA M. PARTRIDGE, *et al.*, Defendants.	On Bill, &c.

Jersey City, N. J., Wednesday, January 10, 1917.

Before: HONORABLE EUGENE STEVENSON, Vice Chancellor.

Appearances:

For Mathewson's Executor, Harmon's Executor and Mrs. Harmon, Mr. Boardman (Condict, Condict and Boardman).

Mr. C. D. Francis (of the New York Bar) and Mr. George D. Hendrickson.
For Paul, Farrier and Lincoln Trust Co.
Mr. Carrick (Carrick and Wortendyke).
For Hudson County Bank, Mr. Bain (Collins & Corbin).

Mr. Boardman: I offer in evidence an exemplified copy of the probate of the Will of Charles F. Mathewson, in the Surrogate's Court of the County of New York and State of New York, which is marked "Filed January 10th, 1917" in the New Jersey Prerogative Court.

GEORGE R. BEACH, ESQ., sworn for the defendant, executors of Harmon and Mathewson:

Direct-examination by Mr. Boardman:

Q. You are one of the referees in bankruptcy? A. I am.

Q. You are here today under a subpoena *duces tecum?* A. I am.

Q. Was the matter of the bankruptcy of the Charles R. Partridge Lumber Company settled before you? A. It was.

Q. Can you tell us the date of the adjudication? A. July 2, 1912.

Q. Claims were filed before you? A. They were.

Q. In that matter did a committee of bankers act, and appear before you? A. Well, there were some gentlemen appeared before me.

Q. Who were they? A. Mr. Farrier—

Q. Mr. Edwin M. Farrier? A. Mr. Edwin M. Farrier and a Mr. Dunn, I do not recall his first name. I do not remember who else was on the

committee. They did not exactly appear before me, they were prospective buyers of the property and ultimately did buy it, as I recall it.

Q. Did the Lincoln Trust Company of New Jersey prove a claim before you? A. There were a great many banks that did, yes.

Q. Do you produce it? A. I do.

Mr. Boardman: I offer in evidence the proof of claim in this matter and also the notes annexed to this proof, being the proof of claim of the Lincoln Trust Co., of New Jersey, verified on the 15th day of July, 1912, by George H. Gould, Jr., President. The claim is for $20,040 of "Promissory notes purchased from the bankrupt." The first note is for $2,000 dated February 14, 1912, at three months, to the order of Charles R. Partridge Lumber Co., bearing the words, "I hereby charge my separate estate," signed, Cornelia M. Partridge, endorsed Charles R. Partridge Lumber Co., Charles R. Partridge, President. Charles R. Partridge, Mary P. Partridge, Charles R. Partridge Lumber Co., Charles R. Partridge, President.

The Vice Chancellor: Where was the note made?

Mr. Boardman: It is dated at Jersey City.

The Vice Chancellor: This is proof of endorsements, is it not?

Mr. Boardman: Yes.

The Vice Chancellor: Mrs. Partridge's notes to the Corporation, all endorsed by the Corporation, endorsed over to the pur-

chaser. The proof is that the Lincoln Trust Company purchased the notes?

Mr. Boardman: Yes. I want to make sure that the three notes mentioned in the cross bill are set out in the proof here. I would like to show that these are the identical notes.

The Vice Chancellor: Mentioned in what?

Mr. Boardman: Three of them are set up in their answer to our counterclaim.

The second note is for $4,400 dated at the same place, April 18, 1912, and similar in form and similarly endorsed except for the endorsement of Mary R. Partridge.

The third note is for $2,000 dated Jersey City, February 23, 1912, at three months, in similar form and similarly endorsed as the second.

The fourth note is for $4,500 dated Jersey City, April 25, 1912, at one month, similarly signed and similarly endorsed.

The fifth note is for $2,000 dated Jersey City, February 26, 1912, at three months, similarly signed and similarly endorsed.

The sixth note is for $2,200 dated Jersey City, February 29, 1912, at three months similarly signed and similarly endorsed.

The seventh note is for $1,500, dated Jersey City, March 12, 1912, at three months, similarly signed and similarly endorsed.

The next note is for $1,500 dated Savannah, Georgia, April 24, 1912, at four months payable at Savannah Trust Company, Savannah, Georgia, and signed "South Georgia Lumber Co., by M. A. Cheney,

President," endorsed by Chas. R. Partridge Lumber Company and Chas. R. Partridge.

The next note is for $500 dated at New Durham, New Jersey, February 7, 1912, at three months, payable at the Merchants National Bank, Jersey City, New Jersey, signed Robert Draper and endorsed by the Partridge Lumber Company, and Partridge.

The last note is for $440 dated West Hoboken, New Jersey, February 13, 1912, at three months, payable at the Commercial Trust Company, West Hoboken, N. J., signed Frederick Berke and Brother and endorsed by the Partridge Lumber Company and Partridge.

The Vice Chancellor: What is the aggregate amount?

Mr. Boardman: The proof is $20,040. There are $18,600 of the Partridge notes here and the others comprise other notes.

We offer these for the purpose of showing these were notes purchased from the Partridge Lumber Company, not money loaned to Mrs. Partridge.

Mr. Beach: I would rather they should not be marked.

The Vice Chancellor: There is no reason why they should be marked. They can be identified by describing them as papers being on file with the referee.

Mr. Beach: The case is No. 4360 and the folio mark is "July 16th, George R. Beach, Referee" and the file mark is "January 7th, 1915, George T. Cramer, Clerk."

Mr. Boardman: I will offer in evidence the proof of the Hudson County Bank, which the witness produces.

The Vice Chancellor: For what purpose?

Mr. Boardman: This committee which Mr. Beach has testified to represented all of these banks and among them the Hudson County Bank.

The Vice Chancellor: Mr. Beach did not testify as to a committee.

Mr. Boardman: Yes, he mentioned a committee.

The Vice Chancellor: He said two or three gentlemen were present with reference to the possible purchase of the property.

Mr. Boardman: We will prove there was a committee.

The Vice Chancellor: How is any statement, under oath or otherwise, of the Hudson County Bank competent here? The bank is not a party to your cross bill.

Mr. Boardman: I would like to have this identified and if it becomes material at any time I can use it without calling Mr. Beach again. Is there any objection to that?

Mr. Carrick: I have no objection. It all seems to be irrelevant.

The Vice Chancellor: Very well, by consent let it be admitted the same way as the other. It need not be marked in evidence.

EDWARD I. EDWARDS, sworn for the defendants executors of Harmon and Mathewson:

Direct-examination by Mr. Boardman:

Mr. Boardman: I call for the original of the contract dated on the blank day of June—

Mr. Carrick: I will have to send to my office for it. I thought I had it with me.

The Vice Chancellor: Do you want it for the purpose of examining this witness?

Mr. Boardman: Yes, I do. Perhaps we can get along without it. I would like to have it, though.

Q. You are President of the First National Bank of Jersey City? A. I am.

Q. And Comptroller of the State of New Jersey? A. I am.

Q. You are here under a subpoena *duces tecum?* A. I don't know whether it is *duces tecum* or not, but they gave me a subpoena.

Q. The First National Bank of Jersey City was one of the creditors of the Charles R. Partridge Lumber Co.? A. Yes.

Q. And there were a great many banks creditors of that company? A. Apparently.

Q. In June 1912, were there pending negotiations looking towards the signing of an agreement whereby the banks could act together? A. The banks met to protect their own interests and they appointed a committee to look after the matter.

Q. That was the first of June, 1912? A. I do not know the date. Whatever the date is, I presume.

Q. That was very shortly after the petition in

bankruptcy was filed? A. I presume it must have been.

Q. Who were the members of this committee? A. Mr. Farrier, Mr. Dunn and myself.

Q. And Mr. Robinson? A. No, I think not. I think Mr. Robinson was counsel for the committee. I am not sure. He may have been.

Q. He acted with you on the committee afterwards? A. I never attended any of the committee meetings that I know of. I did most of mine by telephoning. I don't want to say I never attended one, but I do not remember attending any.

Q. Did you have a sub-committee—a sub executive committee, of that committee? A. Not that I know of.

Q. Not Farrier & Dunn? A. Not that I know of.

By the Vice Chancellor: Q. Where did the bankrupt carry on business? A. In Jersey City, on the Lehigh Valley Railroad.

Q. Over by the Dodge Company? A. No, right here in Grand Street, in Jersey City; Woodward Street and Grand.

Q. Was it a large concern? A. A very large concern.

Q. And owned real estate as well as a stock of lumber? A. Yes, sir.

Q. Its assets were quite extensive then? A. Yes, sir; almost all lumber.

Further DIRECT-EXAMINATION:

Q. Was the plan of this committee to buy the assets of the Partridge Lumber Company? A. That I do not know and don't want to say, and I do not want to say because I don't know. This committee did buy the assets of the company, if

that is what you mean; they did buy them. I think that was at an auction, was it not? That is, I mean, open bidding, practically an auction.

Q. There was a somewhat elaborate agreement drawn up, was there not, between the—

Mr. Carrick: Have you a copy of it?

Witness: Well, you can see the agreement when it comes up. I don't know whether you would describe it as an elaborate one or not. You can see it when Mr. Carrick gives it to you.

Q. This committee acted under an agreement where the banks and trust companies who signed it were parties of the first part and Dunn & Robinson and Edwards and Farrier were called a committee and were parties of the second part, and the South Georgia Lumber Company, a corporation of the State of New Jersey, was party of the third part and Maynard Cheney was party of the first part? A. Yes, if that is the agreement, that is right.

Q. Yes. That was signed by the bank creditors of the Partridge Lumber Company and you acted under it. Is that right? A. I presume so.

Q. Do you know whether the Hudson County National Bank signed that? A. I presume they did.

Q. Your bank signed it? A. When you see the original—I presume they did.

Q. Can you tell us when that was signed? A. I suppose it was signed at that time, I cannot tell you from memory because that is only just an incident in the banking business; I cannot tell you unless I see the paper and see when I did sign it.

(Mr. Carrick stated the paper referred to was in the safe at his office and no one

was in the office at the present time who had access to it.)

The Vice Chancellor: There does not seem to be anything which the paper itself would not answer.

Mr. Boardman: I am asking dates now. That does not show when it was actually signed.

The Vice Chancellor: Mr. Edwards says, in effect, that he cannot remember the date or anything about it, but that when he sees the paper he will know what the paper shows—and so we all will.

Q. Will you look over Exhibit No. 3 annexed to a copy of a petition filed in the Chancery Court in a cause between the Interstate Lumber Company, by Merritt Lane, Receiver—look at that and see if that is a copy of the agreement in question. A. I cannot remember that. You might as well ask me to look at a letter book and ask me if that it right.

Q. Will you look it through and see if that is the general tone and effect of the agreement? A. I would not remember it, Mr. Boardman. But I can tell you this, that the figure of the First National Bank here is right.

By the Vice Chancellor: Q. Is there any question you can answer about the contract which you would not answer by just looking at the contract if it was here? A. I think not.

Q. You cannot give dates or any other facts outside of that contract? A. I happened to see this and I know our claim was $20,000, that is the First National Bank of Jersey City, and I know it was all contingent, there was no direct liability.

Further DIRECT-EXAMINATION:

Q. All the banks did ultimately sign it, did they not? A. I think so. That will show on the paper.

Q. That contract contemplated the formation of the Interstate Lumber Company? A. Oh, no, I don't think that the Interstate Lumber Company was ever thought of, I don't think it was ever thought of at that time; it might have been. I am saying this from memory.

Q. It seems to contemplate the formation of a new corporation which could take over assets of the Partridge Lumber Company. The Interstate Lumber Company was thereafter formed, was it not? A. Yes.

Q. And it did take over the assets of the Partridge Lumber Company from Mr. Dunn and Mr. Farrier, for the committee? A. I think they bought them from the bank—from the committee—and paid for them by notes which were not paid, but still they bought them. I think they were bought and paid for, that is paid off in the future, but actually never paid off. That is my memory. The First National Bank of Jersey City would not turn over about $20,000 worth of stuff for nothing.

Q. Will you look through the third section and see if that was the general scheme that was carried out? A. It says right here in this thing that it was paid for.

By the Vice Chancellor: Q. Did the First National Bank become a stockholder in the Interstate Lumber Company? A. I don't think so, I think we got those notes of the Interstate Lumber Company.

Q. Then the arrangement was not to have the

bank hold the property, but to turn over the assets to the new corporation, and take back proportionate shares of stock? A. Oh, no. All we were looking for was our own money and we put a lot of money in to make this thing go through and I guess we lost half of that.

Mr. Boardman: I would like to have that latter statement stricken out, as volunteered.

Witness: Well, I am not testifying. I was talking to the Vice Chancellor.

Further DIRECT-EXAMINATION:

Q. You did act, as a committee-man, under that agreement, did you not? A. I must have, because if I signed my name I had acted, that is all.

Q. Yes, you had acted. A. Whether I acted personally or not—

Q. I understand. But, for practical purposes, the agreement was signed by the bank and you acted under it; that is what I am getting at? A. Must have.

Q. And it is so? A. If I did sign it. There is the evidence of it, right there.

Q. The fact is that certain banks agreed with their interests to purchase the assets of the Partridge Lumber Company, and to that end, it was delivered to a corporation, which was the Interstate Lumber Company? A. The banks bought the property at auction to protect themselves. They thought there was enough lumber up there to cover it. They had nothing to do with the Interstate Lumber Company—the banks—as banks.

Q. The Bank Committee did that, didn't it? A. No, absolutely not. They received money from

us—if it was the Interstate Lumber Company, that is who it was, and then they were through.

Q. The assets were turned over to the Interstate Lumber Company? A. When they paid for them, they bought them, by these notes. But it was not turned over, it was sold out absolutely.

Q. Under that agreement? A. I presume it was under this agreement. But they were absolutely sold.

Q. What was done with the notes of your bank? A. I got them.

Q. As a committee-man? A. No, as the bank.

Q. Let us go back. I mean the Partridge Lumber Company. A. I filed those. I did not think I could collect by suing—there was no direct liability.

Q. When you say you filed them, what do you mean? A. In the Bankruptcy Court, against the estate.

Q. You proved them against the estate? A. Yes, sir.

Q. Did you deliver any of those notes to the committee, did the bank deliver the notes to the committee? A. The notes were all filed with the Referee in Bankruptcy, were they not?

Q. They were not filed, they were proved there? A. Didn't we have to file them when we proved them?

Q. No. A. Well, I don't know that.

Q. Do you know what became of those notes; did those notes go ultimately to the Interstate Lumber Company? A. I do not think they had anything to do with them. The Interstate Lumber Company never had anything to do with them.

By the Vice Chancellor: Q. What relation had

this Georgia Lumber Company to the transaction? A. The Georgia Lumber Company was a company that Cheney owned, the South Georgia Lumber Company, that he owned or pretended to own down in some southern state and I think they failed. I do not know if it was a southern state, I think it was.

Q. What relation did they have to this affair? A. Nothing, as far as I know—let me see if I can remember the transaction. Cheney was the president and principal owner of the South Georgia Lumber Company and took—when he took from the committee the assets of the Lumber Company, the lumber and the yard, he gave the bank notes signed by his new company, endorsed by the South Georgia Lumber Company as a guarantee. I think that was the situation, I am not positive.

Q. That is, he gave the notes of the Interstate Lumber Company endorsed by the South Georgia Lumber Company? A. Yes, sir; and by himself.

Q. And by himself? A. Yes, sir.

Q. To the bank? A. Yes, sir.

Q. And the committee transferred the lumber to him? A. Yes, I think that was the method; I am not absolutely certain, I think that was it.

Mr. Boardman: Can Mr. Hendrickson ask a few questions?

The Vice Chancellor: Yes.

By Mr. Hendrickson: Q. The South Georgia Lumber Company was also a creditor of the Partridge Lumber Company? A. I do not know.

Q. Has not Mr. Cheney so informed you? A. Well, if he did, I don't remember. It might have been, I don't know.

Q. The banks that are mentioned in this agreement decided that they would put in the assets of the Partridge Lumber Company? A. What's that?

Q. The banks who are parties to this agreement at some time came to an understanding among themselves in effect that they would put up the money necessary to purchase the assets of the Partridge Lumber Company from the Trustee in Bankruptcy? A. We had the property appraised—

Q. Will you please answer my question? A. I am trying to.

Q. (Former question read as follows): "The banks who are parties to this agreement at some time came to an understanding among themselves in effect that they would put up the money necessary to purchase the assets of the Partridge Lumber Company from the Trustee in Bankruptcy"? A. After the committee had advised them that they thought there was enough there to pay for it.

Q. Then your answer is "yes" to my question? A. Just exactly the way I put it; that is the way it was done if that is what you wanted to know.

Q. Then your answer is that they did come to that conclusion?

A. Well you don't need to answer the question.

Mr. Hendrickson: I ask the Court to strike out the answer and instruct the witness to answer the question.

The Vice Chancellor: I think, Mr. Edwards, you can answer that question categorically.

Witness: Yes.

Q. At that time had the banks contemplated some method of converting the assets into cash?

The Vice Chancellor: I do not see the bearing of this agreement on anything in the cause. But, proceed. No objection is made.

A. Yes.

Q. And that agreement was that some corporation should be formed?

The Vice Chancellor: Does not that all appear in the agreement? We have not got it here. You seem to have a copy of it.

Mr. Hendrickson: Yes, it does appear in the agreement. I thought it was only proper to put the interpretation of one of the committee.

A. Yes.

Q. The assets were bought by Mr. Dunn, acting for the banks? A. Acting for the committee, or for the banks.

Q. For $126,100? A. I don't know; you know the amount. About that, I don't remember the amount.

Q. That bid was assigned to Mr. Farrier? A. I don't know.

Q. And the Bill of Sale from the Trustee in Bankruptcy was to Mr. Farrier? A. I don't know.

Q. Do you know whether or not Mr. Farrier turned over those assets to a corporation known as the Interstate Lumber Company? A. I don't know actually. I presume, if that was the course, he did it, but I don't know exactly.

Q. Do you know at what price the assets were turned over to the Interstate Lumber Company? A. I do not know.

Q. Do you know it was $304,000 about—if I can refresh your memory? A. No.

By the Vice Chancellor: Q. I suppose it was a very substantial advance on what the assets cost? A. Really, Vice Chancellor, I don't know anything about that part of the transaction. When we bought these assets we had to put up money to buy them. That is what I meant by putting a lot of money into it—and we have not got them back.

Q. And you expected to get your money back and get an additional amount that would go on account of your notes? A. Well, we thought that was the best way for all hands to clear up.

By Mr. Hendrickson: Q. The total indebtedness to the banks who were parties to this matter, from the Partridge Lumber Company was $304,000? A. That may be, I don't remember.

By the Vice Chancellor: Q. The notes you took back from the Interstate Company guaranteed your account and what you had paid for the assets? A. I presume so, but I don't know anything about that for I did not see any part of that transaction.

By Mr. Boardman: Q. Can you tell how those figures were made up, that $304,000 of notes the Interstate gave? A. I don't know anything about it. I presume it is just exactly as the Vice Chancellor says. I have answered that.

Q. I show you a memorandum agreement dated December 12, 1914, between Edward I. Edwards, Edward J. Dunn, C. D. Robinson and Edward M. Farrier, a committee representing certain creditors of the Interstate Lumber Company under an agreement dated blank June, 1912, hereinafter called the committee; the Interstate Lumber Company, a corporation of the State of New Jersey, hereinafter called the Interstate; N. A.

Cheney, hereinafter called Cheney, and the South Georgia Lumber ompany, a corporation of the State of New Jersey, hereinafter called the South Georgia, and ask you about that signature? A. I signed it. That is my signature.

Q. I ask you whether those are the signatures of the other committeemen. A. I think they are. In fact I am sure they are.

Q. That was signed by the people who purport to have signed it? A. That (indicating) is Dunn's signature, that is Cheney's signature, that is Farrier's signature, that is Robinson's signature and that is my signature.

The Vice Chancellor: Is this the paper you called for?

Mr. Boardman: No. I offer that in evidence.

Mr. Carrick: I object, formally. I do not think any of these papers are relevant. I do not wish to restrict this examination excepting to keep it within some reasonable bounds.

The Vice Chancellor: It being a document and the objection being simply as to the relevancy of it I will admit it and deal with it later.

State what there is in it, Mr. Boardman.

Mr. Boardman: I will let Mr. Hendrickson state that; he is more familiar with it.

Mr. Hendrickson: This agreement was made between the committee, Mr. Edwards, Mr. Dunn, Mr. Robinson and Mr. Farrier, who represented certain creditors of the Interstate Lumber Company.

Witness: Not the Interstate.

Mr. Hendrickson: Certain creditors of the Interstate Lumber Company.

Witness: No.

Mr. Hendrickson: I am reading from this.

Witness: How can we be creditors of the Interstate Lumber Company?

Mr. Hendrickson: It says so here. Your memory is poor.

Witness: I don't see how we could be creditors.

The Vice Chancellor: Proceed in an orderly way. Read the document.

(Mr. Hendrickson then read the agreement dated December 12, 1914, and the same was received in evidence and marked Exhibit No. 1 for Defendant; January 10, 1917. H. W. K.)

By the Vice Chancellor: Q. I notice from the reading of this paper, that the Interstate Lumber Company seems to have been organized with a capital of $60,000 Common Stock and $60,000 Preferred Stock. Do you know how that was raised or who contributed the capital for the Company? A. I don't know anything about that.

Q. It was an enterprise outside of the bank? A. That was the company that was formed by Mr. Cheney to take this over.

Q. Mr. Cheney organized that and the bank did not subscribe to the stock directly or indirectly? A. Not to my knowledge.

Q. As far as you know? A. No, sir.

Q. Your bank did not? A. No, sir.

By Mr. Boardman: Q. But the banks were to have 55% of the stock assigned to them as collateral for these notes, were they not? A. Not that

I know of. I don't remember that. If that is in the agreement, that is so; but I do not know. I do not think we got any stock.

Q. And the banks were to have three directors?

The Vice Chancellor: Does that appear in the agreement?

Mr. Hendrickson: In some of the agreements, yes.

Q. I wish you would search your memory. The agreement speaks of having ten copies made and the copies to be sent around to facilitate the signing; there was some period of time occupied in getting this signed, was there not? A. What do you mean, the original?

Q. The agreement among the different banks. A. I think it was just a matter of getting them together, the representatives of the banks together in one place and if my memory is right they signed it at one place, just like a meeting; it didn't take any time to get them together.

Q. For instance, was it not sent to Boonton for the Boonton Bank to sign? A. No. I think Mr. Fisher—didn't Mr. Fisher sign it?

Q. Yes. A. I think he signed that in Jersey City.

Q. Why was it necessary to make ten copies and send them around? A. I presume they were sent to let them see them, I don't know about that; to let them digest it.

Q. You did not go to that meeting on the first of June authorized to sign a long and elaborate agreement like this, did you?

Mr. Carrick: You are now referring to the agreement of December—

Mr. Boardman: No, the agreement of June blank, 1912.

Witness: What agreement was that?

Q. The agreement whereby the banks were to appoint a committee; that committee was to purchase the assets, turn over all the notes and—well, these men who met there on the first day of June did not sign an elaborate agreement like that—A. It probably was not prepared, but they gave the power to the committee—

Q. To send it around and get it signed by the banks? A. No, to formulate the agreement or whatever you call it and they would sign it. The committee had full power.

Q. (Mr. Boardman read from the agreement.) Does not that refresh your memory that it took some time to accomplish the signing of it? A. My memory is that these men, every one outside of Treat—(Witness examines agreement), I can't tell you whether these things went around or not; these men are the only two men my memory does not tell me were at the meeting.

Q. Treat and Buckley? A. Yes, sir.

Q. Do you know where this agreement of the blank day of June was drawn? A. No. I do not know whether my brother Billy had anything to do with it or not.

Q. It had not been drawn formally before this meeting of the first of June? A. That is the first meeting of all?

Q. Yes. A. No, it could not have been. We were there to discuss what was the best interest—which was the best to do to protect ourselves.

By the Vice Chancellor: Q. This was prior to the bankruptcy? A. No; that is since the bankruptcy happened.

Q. After the petition had been filed? A. Yes, sir.

Q. And before the adjudication? A. Yes, sir.

Q. If I remember right the adjudication was July 2, 1912?

Mr. Carrick: Yes, sir.

By Mr. Boardman: Q. Was there more than one meeting of the representatives of the bank—I don't mean the bank but the committee, these gentlemen. A. Yes, I think there were several.

Q. That covered a period of how long? A. I really could not tell you, I do not know. It might have been a month and might have been three weeks.

Q. Or two months? A. No, it could not have been two months.

Q. As a matter of fact, you do not know how long it was? A. No.

Mr. Boardman: I would like to be able to examine Mr. Edwards after seeing the agreement.

The Vice Chancellor: You may reserve that right.

Mr. Carrick: I have no questions.

RAYMOND DAWSON, ESQ., sworn:

Direct-examination by Mr. Boardman:

Q. You are a lawyer? A. Yes, sir.

Q. You have an office in the First National Bank Building, Jersey City? A. Yes, sir.

Q. You are in Edwards & Smith's office? A. Connected with Edwards & Smith.

Q. They are the attorneys for the First National Bank, are they not? A. Yes, sir.

Q. You are here today under a subpoena *duces tecum?* A. Yes, sir.

Q. Have you brought here an envelope? A. I have, I have produced the envelope called for in the subpoena.

Q. Will you tell us how you got that envelope? A. It was some years ago, several years ago, I do not remember exactly the details of it, but to the best of my recollection Mr. Farrier came into my office with Mr. Edwards, Mr. Edwards said, "Mr. Dawson, I want to introduce Mr. Farrier," or "This is Mr. Farrier," and he said, "He wants you to act for him as a Trustee." Mr. Farrier took the matter up with me then and told me briefly there were some notes in dispute, and it had been agreed I could hold those notes in escrow pending some litigation, and I think I asked Mr. Farrier at the time—

Q. Never mind that. Will you tell us what is in the envelope?

Mr. Carrick: You can see what it is. He produces it.

The Vice Chancellor: The witness produces four papers embracing three promissory notes and a signed statement of some kind. Are there any questions you desire to ask in regard to it?

Mr. Boardman: Yes.

Q. Have these been in your possession ever since? A. Yes, sir.

Q. Can you fix the approximate date when you got those? A. I made no notation of it at the time, but I think it was about the time of the date of this agreement. This agreement is dated the 3d day of August, 1912. I am not positive as to that because I made no memorandum of it at the time.

Mr. Boardman: I would like to have the five papers and envelope marked for identification.

Three notes produced by this witness marked respectively 2, 3 and 4 for identification. Agreement produced by the witness marked No. 5 for identification. Envelope produced by the witness marked No. 6 for identification.

Q. Do you know Mrs. Cornelia M. Partridge? A. I know who she is. I am not personally acquainted with her.

Q. Have you met her? A. No, I think not.

Q. There was no one with Mr. Edwards and Mr. Farrier at that time? A. No, I am quite positive there was not.

Q. Whose handwriting is this. "Raymond Dawson, Trustee. Partridge notes."? A. That is my writing. After Mr. Farrier left that was on my desk and I made that notation for my own benefit and put the envelope in my safe.

By Mr. Edwards: Q. When you speak of Mr. Edwards you refer to Mr. Edward I. Edwards? A. Yes, sir.

Q. The witness who has just testified? A. Yes.

EDWIN B. GOODELL, ESQ., sworn:

Examined by Mr. Boardman:

Q. You are a lawyer practicing in Montclair? A. Yes, sir.

Q. You live in Montclair? A. Yes, sir.

Q. You are president of the Montclair Savings Bank? A. I am.

Q. You are here under subpoena? A. Unfortunately I am.

Q. Did you have charge of the foreclosure case, Montclair Savings Bank vs. Cornelia M. Partridge *et al.*, some time ago? A. Yes, sir. I was President of the Bank and directed it to be done.

Q. Under your subpoena did you bring any correspondence between your bank and the Lincoln Trust Company? A. No, I did not, not between our bank and the Lincoln Trust Company.

Q. Did you bring any correspondence? A. You ask me for correspondence, or letters rather, written by Mr. Farrier, or the bank or their agents?

Q. Yes. A. I did find some letters and brought them.

Q. Have you a letter from Mr. George E. Paul? A. I have a letter from Mr. George E. Paul, yes, sir.

Q. What is the date of that letter? A. December 14, 1914.

Q. Do you know how that came? A. That came by mail I understand. There is a stamp on it. It was before my time as president.

Q. Those are the only letters you have received? A. Yes, sir.

Mr. Boardman: I offer in evidence letter of Edward M. Farrier to Mr. Stanley R. Soverel, Treasurer Montclair Savings Bank, Montclair, N. J., dated June 17, 1915, on paper of the Lincoln Trust Company.

Marked Exhibit No. 7 for Defendant, January 10, 1917, H. W. K.

Mr. Boardman: I offer in evidence a letter dated September 3, 1915, from E. M.

Farrier, on paper of the Lincoln Trust Company, addressed to Mr. E. B. Goodell, President Montclair Savings Bank, Montclair, N. J.

Marked Exhibit No. 8, for Defendant, January 10, 1917, H. W. K.

Q. Do you know Mr. Farrier's signature? A. No, except as I have seen it attached to these letters. I never saw him write it.

Mr. Carrick: Let me see his signature. You do not have to prove it.

(Paper handed to Mr. Carrick.)

Mr. Boardman: I offer in evidence a letter dated May 26, 1913, addressed to Mr. Benjamin S. Harmon, 55 Wall Street, New York City, N. Y., and signed E. M. Farrier.

Marked Exhibit No. 9 for Defendant, January 10, 1917, H. W. K.

Q. What, if any talk did you have with Mr. Farrier about this matter? A. I saw Mr. Farrier about this matter on one occasion only as I remember. He came to the office of the Savings Bank somewhere about June 1, 1915, and introduced himself as the President of the Lincoln Trust Company and stated that the Lincoln Trust Company had an interest in the house No. 78 Clinton Avenue upon which the bank had a mortgage which then stood in the name of Mr. Paul. He said that Mr. Paul was employed, I think he said in the bank, and that they held the property as security for some indebtedness and that the Partridges were not living up to their contract and that they did not propose to pay any more interest on this mortgage and we told him—or I

told him—if no more interest was paid we would have to foreclose the mortgage.

By the Vice Chancellor: Q. He had been paying interest on the mortgage? A. Mr. Paul had been paying interest on the mortgage. We had been notified in one of these letters which Mr. Boardman took away from me that the property now stood in the name of Mr. Paul. This was in 1914. I was not president of the Savings Bank at that time, but after I became president we had an interest payment from Mr. Paul. Interest became due on the first of June, 1915. After this notification from Mr. Farrier that no more interest would be paid by them we waited the thirty days and then directed the foreclosure.

Q. The mortgage was not due then? A. Yes, I think the mortgage was past due, but it is our custom to give some grace.

By Mr. Boardman: Q. I do not quite get the force of that. Was that directed to the former—that the mortgage was due—or the latter?

The Vice Chancellor: Q. I do not understand that.

Mr. Boardman: Did the witness say whether that conversation was before or after the mortgage became due?

The Vice Chancellor: He thinks the mortgage was due, but in accordance with their custom they waited thirty days before starting foreclosure proceedings, because, evidently, the bank was willing to let the mortgage loan lay if the interest was paid, and, naturally, was not if the interest was not paid.

Q. Anything more? A. I think that is the sub-

stance; all that was said. I cannot remember the details now.

Q. That mortgage, as a matter of fact, had been on there a great many years had it not, the old Ellenwood mortgage? A. That mortgage was put on by Mrs. Ellenwood when she owned the property, perhaps six or seven years before, I do not remember exactly.

Q. It was not a question of whether the mortgage was due, but the interest? A. We were willing to let the mortgage remain as long as the interest was paid and the taxes and the house kept up.

Q. The mortgage was really long overdue? A. I think it was.

Q. This conversation with Mr. Farrier, was that before the interest became due or after? A. I cannot remember whether it was before or after. I think it was about the time interest became due, which was June 1, 1915.

Q. Was it not in May 1912? A. Oh, no. May 1912!

Q. May 1915. A. I have nothing to guide me on that. It was somewhere around that time. It might have been the end of May.

Q. Can you tell us the arrangement whereby the Montclair Savings Bank bought in the property at sheriff's sale? A. We did not buy it in under any arrangement, we bought it in to protect ourselves.

Q. Are you sure about that, Mr. Goodell? A. I have no knowledge of any arrangement. I think we were told—or asked what we would do at the sale and we said we would protect the property up to the amount—protect our decree up to the full amount of it.

Q. Did you not have some arrangement with Mr. Farrier that if you bid it in and paid the sheriff's fee he would take an assignment of your bid? A. No such arrangement as that was made with me, but I think that we had told Mr. Farrier that if we bid the property in, anyone who brought us the money could get the title, we only wanted our money. I am not sure whether Mr. Farrier had any—I am quite sure he did not have any conversation with me about it.

Q. Is there not a letter in existence whereby that arrangement is expressed? A. I cannot say what letters there may be in existence. There is no such letter in our files.

Q. Have you looked over the files in your law office? A. Oh, no, I did not, because the files to be looked over are in my son's office, but I asked him.

Q. You will not say there is no such letter in existence? A. How can I say what is in existence?

Q. I mean in the files in this case in your office. A. I can only say that I did not get track of any such letter yesterday. I asked him about it and he said there was none.

Q. Will you, when you go back to your office, make search for it, for such a letter? A. I will.

Q. Will you send it to us if you find it—you are in partnership with your son? A. I am in partnership with him, but not in this proceeding you understand. He is counsel to the bank, I am not. At the same time if there is such a letter in his possession I am quite sure he would be willing to have it produced here, if it is relevant.

Q. If you have such a letter will you send it down? A. Yes, I will send the letter down if there is such a letter. Let me understand. It is a let-

ter setting forth an agreement by which the Montclair Savings Bank is to bid in the property at the sale in order to save sheriff's fees and then sell it to Mr. Farrier afterwards?

Q. An agreement to that effect, or something of that general nature, having to do with what should be done at the sheriff's sale? A. Well, you want any letter that has to do with what was to be done at the sheriff's sale?

Q. Yes. A. Written by Mr. Farrier?

Q. Mr. Farrier or anyone concerned in the bank, or Paul, that is all. A. All right, sir.

Mr. Carrick: I have no questions.

Mr. Boardman: Have you that agreement?

Mr. Carrick: Yes, the agreement has just come. This is the original agreement (producing a paper).

Mr. Boardman: I offer this agreement in evidence and the annexed agreement.

The Vice Chancellor: State them in order, just describe them.

Mr. Boardman: I offer in evidence an agreement made this blank day of June, 1912, between the Merchants Exchange National Bank of York, Lincoln Trust Company of New Jersey, Hudson County National Bank of Jersey City, First National Bank of Jersey City, and other banks named as the other financial corporations as may become parties hereto by executing this agreement, &c., hereinafter called the Bank, parties of the first part.

The Vice Chancellor: Are they recited as creditors of the Partridge Lumber Company?

Mr. Boardman: Not in the recital.

The Vice Chancellor: Does it appear afterwards they were such creditors.

Mr. Boardman: Yes, it does.

The Vice Chancellor: How many signatures are there?

Mr. Boardman: It is a four-party agreement. That is just one group. There are seventeen bank signatures including the signature of Mr. E. F. Maguire, who I think the other side will admit is an officer of the Fidelity Trust Company of Newark.

Mr. Carrick: Of the Federal Trust.

The Vice Chancellor: Is the execution of this paper admitted?

Mr. Carrick: Yes.

Marked Exhibit No. 10 for Defendant, January 10, 1917, H. W. K.

Mr. Boardman: I offer what appears to be a further authorization from the bank to the committee, this agreement being dated April 16, 1912, with something written over, which must be a mistake.

The Vice Chancellor: Is it attached to the last agreement offered in evidence?

Mr. Boardman: Yes, sir.

The Vice Chancellor: Is there any objection?

Mr. Carrick: No objection.

The Vice Chancellor: Are the signatures admitted?

Mr. Carrick: As far as we know about it.

Marked Exhibit No. 11 for Defendant, January 10, 1917, H. W. K.

Mr. Boardman: I also offer a ratification

by the same banks of the purchase of the assets of the Partridge Lumber Company by Edward Dunn and an extension of the limit price named for the purchase of those assets as it appeared in the agreement of the blank day of June, 1912.

(Exhibit No. 10)

This agreement being annexed to the agreement of June blank, 1912.

Marked Exhibit No. 12 for Defendant, January 10, 1917, H. W. K.

ISRAEL LIPSCHITZ, sworn:

Direct-examination by Mr. Boardman:

Q. You are the stenographer for Elmer W. Demarest, one of the referees in bankruptcy? A. Yes, sir, I am.

Q. You are here under a subpoena addressed to Mr. Demarest? A. Yes, sir.

Q. And you have brought a transcript of the testimony taken on an order from Mr. Demarest? A. I have.

Q. In the matter of the Interstate Lumber Company, an alleged bankrupt, have you? A. I have.

Q. And it consists of six typewritten volumes, they are what you brought? A. Yes.

Q. How many of those volumes did you take? A. I think all with the exception of testimony taken on July 11th.

Q. 1915? A. 1915.

Q. Will you turn to the testimony of August 1, 1915, of Mr. Edward M. Farrier, at page 72?

The Vice Chancellor: I understand that Judge Carrick consents that these books shall be used to the extent that the testimony in them is competent and relevant, and that the stenographer need not testify to their correctness. Everybody knows that the stenographer simply reads what he has written.

Mr. Carrick: Yes; we can read it just as well as he can.

The Vice Chancellor: Let the books be identified. The five books which he said he took.

Q. And the other book came from the records in the Referee's office? A. Yes, sir.

The Vice Chancellor: He knows nothing about the other book. Let the other five be marked for identification. Or possibly your adversary will admit the sixth book.

Mr. Carrick: If you will tell me who it was that took it.

Q. The sixth book was taken by whom? A. By Miss MacMurray, clerk in Mr. Demarest's Bankruptcy Court.

Q. And is produced here from his record? A. Yes, sir.

Mr. Carrick: That may take the same course. I presume she was competent to take it.

Recess was then taken.

After recess, January 10, 1917.

Mr. Carrick: On the call of Mr. Boardman I produce a deed dated July 31, 1912 by Cornelia M. Partridge and Charles R. Partridge, her husband, to George E. Paul, recorded in Essex County August 1, 1916.

Mr. Boardman: I offer that deed in evidence.

Marked Exhibit No. 13 for Defendant January 10, 1917, H. W. K.

Mr. Boardman also offered in evidence a deed by George E. Paul to Edward M. Farrier dated August 5, 1912, recorded June 11, 1915 in the office of the Register of Essex County.

Marked Exhibit No. 14 for Defendant January 10, 1917, H. W. K.

Mr. Carrick: As to the deed referred to from Edward M. Farrier to the Trust Company, at the time the answer was drawn I was under the impression there was such a deed, although I have never seen it. Mr. Farrier has since looked for that deed and does not find it. Whether it has been mislaid or whether none was drawn he does not know, he has no deed now from Mr. Farrier to the Lincoln Trust Company and the allegation of the answer stating there was such a deed—the admission of the answer is apparently incorrect as to the fact.

The Vice Chancellor: I fail to see the materiality of this deed or the fact there was such a deed or there was no such deed.

From your answer, of course, we consider there was such a deed.

Mr. Boardman. I call for the deed from the Sheriff.

Mr. Carrick. On the call of Mr. Boardman I produce a deed from Ralph B. Schmidt, Sheriff of Essex County, to the Lincoln Trust Company, dated January 22, 1916, recorded February 24, 1916, in the Essex County Register's office.

Deed last referred to offered in evidence and marked Exhibit No. 15 for Defendant, January 10, 1917, H. W. K.

Mr. Boardman. I offer the assignment of the bid from the files in this cause, which is annexed to the fi fa, the assignment from the Montclair Savings Bank to the Lincoln Trust Company.

The Vice Chancellor: That is the fi fa in this cause?

Mr. Boardman: Yes. I will now read the agreement of the blank day of June, 1912.

The Vice Chancellor: You do not find it necessary to recall Mr. Edwards?

Mr. Boardman: No, sir, I think not.

Mr. Boardman then read Exhibits Nos. 10, 11 and 12 for defendant).

CHARLES R. PARTRIDGE, sworn.

Direct-examination by Mr. Boardman:

Q. You live in Montclair? A. Yes, sir.

Q. You are the husband of Cornelia M. Partridge, the defendant? A. Yes, sir.

Q. In 1912 you were President of the Partridge Lumber Company? A. Yes, sir.

Q. You are here today under subpoena? A. Yes, sir.

Q. Did the Partridge Lumber Company go into bankruptcy in 1912? A. Yes, sir.

Q. About what time? A. About May, I think.

Q. That was the time of the filing of the petition? A Yes, sir.

Q. Was it an involuntary proceeding? A. Involuntary, yes, sir.

Q. In that connection, do you know the members of the Committee representing the different banks? A. Yes, sir.

Q. Which ones and who were they? A. I knew them all, all those names that have been read over this morning, all except Robinson, I never met him.

Q. You knew Mr. Dunn, Mr. Edward I. Edwards and Mr. Farrier? A. Yes, sir I knew all of them.

Q. When did the last of these banks sign it, do you know? A. No, I don't know anything about it.

Q. Did they sign it after or before the first day of August, 1912, the date of the Paul deed?

Mr. Carrick: He says he does not know.

A. Well, they signed after, yes, they signed after that.

Mr. Carrick: After what?

Mr. Boardman: After the date of the Paul deed.

Q. Is that right? A. Yes, sir.

Q. At the time of the Paul deed were negotiations pending? A. I think so.

Q. You had had dealings with Mr. Edward I. Edwards before this? A. I was a customer of the bank, yes.

Q. You knew he was a member of this Committee, did you? A. Yes, I knew he was.

Q. Had you attended the meeting of the bank creditors about the first of June? A. No.

Q. Did you go, about the 31st of July—

Mr. Carrick: This is very leading, if the Court please, even if it is material at all.

Q. Did you have charge of the negotiations leading up to the giving of the deed by Mr. Paul to Mrs. Partridge or did Mrs. Partridge take charge of that herself? A. Yes, I handled that.

Q. Whom did you see about that? A. I saw Mr. Edwards.

Q. What agreement if any was made between you and Mr. Edwards as to the giving of this deed?

Mr. Carrick: I object. The deed was given to the Lincoln Trust Company. I do not know that any agreement between Mr. Edwards and Mr. Partridge is evidential against—

The Vice Chancellor: The deed was given by Mrs. Partridge to Mr. Paul. We have here a deed, absolute on its face, conveying the property to Mr. Paul and Mr. Paul assumes the existing mortgage for ten thousand dollars. You assert in your counter-claim the real object of that deed, what the bargain was between the parties when it was delivered. There is a very different object alleged in the other paper. I cannot see how an agreement made by Mr.

Edwards, the President of the First National Bank will affect this deed. But it is an agreement made at the time the deed was delivered, an agreement in pursuance of which the deed was delivered. I shall have to take it therefor. Proceed.

Q. What were the terms of the arrangement and agreement with Mr. Edwards under which this deed was made? A. The property was turned over. I told him we would turn over the property in trust. He did a good deal for me and I consulted him, and he said that would be returned when the banks all signed up this agreement. The property would be returned.

Q. What agreement was that? A. That was the verbal agreement between Mr. Edwards—

Q. No, I do not mean that. The agreement that the bank was to sign was this agreement which is offered in evidence and marked Exhibit No. 10 for defendants? A. Well, I don't know. I suppose that is the agreement. I never saw this agreement.

Q. It was an agreement among the banks. What agreement was that, what was the general nature of the agreement to be signed? A. He said that as soon as the banks signed this agreement whereby they were to accept the notes of the South Georgia Lumber Company endorsed by Mr. Cheney the property would be returned.

By the Vice Chancellor: Q. You were asked what the object of this agreement was. You have now told us what the agreement was as to returning the property. What was the object of this deed that was agreed upon or mentioned between you and Mr. Edwards? A. We thought we were going to lose the property.

Q. In what way? A. Well, they would take it away from us. They would attack the endorsers on this paper and take the property away from us and my idea was to turn it over to Mr. Edwards in trust and he said when the endorsers were relieved that would relieve Mrs. Partridge of course and the property would be returned; that the property would be returned after the banks had all signed this agreement.

Q. Let me see if I understand it. You had in view the outstanding notes of the Partridge Lumber Company bearing the endorsement of Mrs. Partridge? A. Yes, and I think in some cases my wife was the maker.

Q. And this was a large amount, was it not? A. Yes, sir.

Q. How much altogether? A. Three or four hundred thousand dollars.

Q. And you were afraid that judgment would be recovered against those endorsers? A. Maybe not as much as that. I do not remember the exact amount.

Q. Yes. What you feared was that judgment would be recovered against the endorsers? A. Yes, sir.

Q. And the property would be sold? A. Yes, sir.

Q. There would be more judgments, four times over or more, than the value of the property? A. Yes.

Q. So I understand you to say the agreement between you and Mr. Edwards was that your wife, Mrs. Partridge, would turn the property over to Mr. Paul? A. No, no; I did not know anything about Paul.

Q. To whom? A. To Mr. Edwards.

Q. And he would hold it and then when all the banks had signed this agreement which you thought would discharge the endorsers— A. He would return it.

Q. —the land was to be reconveyed? A. Yes, sir.

Q. Did you make any deed, or was any deed made, in pursuance of that agreement? A. Well, it did not work out that way. He turned it over to Mr. Farrier. He said Mr. Farrier was criticized by his Board of Directors for making these loans, that would placate the Board by having this property apparently as collateral. The Lincoln Trust Company cleared through the First National Bank and Mr. Edwards, was anxious to aid his friend. Mr. Edwards wanted to do all that he could for Mr. Farrier, and of course that was all right.

Q. What next occurred—this was in the second conversation, was it not? A. No, this was all in the first one.

Q. All in the first conversation? A. Yes, sir.

Q. Then the deed was to be made, not to Mr. Edwards, but to whom? A. Mr. Farrier, and Mr. Farrier appointed somebody as I don't suppose he wanted to hold the deed himself, and Mr. Edwards did not want it, and they appointed somebody in some capacity there in the bank, which was all right.

Q. Do you know Mr. Paul? A. No, I don't know Mr. Paul.

Further DIRECT-EXAMINATION:

Q. Was Mr. Farrier there at that time when you had this talk with Edwards? A. No he was not there.

Q. How soon after this was the deed to Paul executed? A. Oh, well, I can't tell you, I suppose in a few days, maybe a week, I don't know exactly. As soon as it could be—

Q. What happened then? A. Mrs. Partridge and I went down to the office of the Lincoln Trust Company and she signed the deed there.

Q. Where did the deed come from, who produced it? A. Well, I suppose Mr. Farrier and Mr. Edwards had it drawn up.

Q. It was not drawn by your attorney? A. We had no attorney at all, as I remember we had nobody representing us.

Q. Was there any conversation between you and Mr. Farrier at that time? A. No, I do not think so.

Q. Was the agreement that you made with Mr. Edwards in any way varied at that time? A. No. of course this was a verbal agreement we had with Mr. Edwards, or that I had personally with him.

Q. Yes, I understand. Mrs. Partridge did not make any agreement with Edwards or Paul, or anyone else as far as you know, did she? A. No, she never saw Mr. Edwards.

Q. Did she ever speak with Mr. Paul? A. No, I do not think so.

Q. She was not present at the conversation with Mr. Edwards? A. No, I just told you; no.

Q. Did you know that Paul made a deed of this property to Farrier, at the time? A. No, I did not know that.

Q. Did you ever consent to the making of such a deed? A. Well, I did not own the property, I had nothing to do with the property when I did not own the property. None of them saw my wife as to that.

Q. Where was the deed to Paul delivered, do you remember? A. Over in the office there, of the Lincoln Trust Company.

Q. Did you hear Mr. Dawson's testimony this morning? A. Well, in a way I did.

Q. Do you recall any arrangement whereby three notes made by Cornelia M. Partridge to— A. Well, I remember something about it, but I don't know any more about it than the man in the moon. I remember something about it in an indistinct sort of way. I remember that Paul was to hold those notes.

Q. You do not mean Paul? A. No, Dawson.

Q. Do you know what the trust was he was to hold them under? A. No, I do not.

Q. Was connected with the giving of the deed; did the deal to return the property upon the signing of the agreement by the banks depend in any way upon the giving of those notes to Dawson? A. I don't get that. Kindly read that please.

Q. (Last question read to witness) A. No, I don't think so; no.

Q. Do you know why those notes were given to Dawson? A. I have not any clear idea or recollection of that, no.

Q. Did Mrs. Partridge take those notes home with her at any time from that day when the Paul deed passed? A. No, I don't think so.

Q. I show you a paper addressed to Benjamin S. Harmon and Charles F. Mathewson, 55 Wall

Street, New York, and bearing date the 25th day of May, 1913, purporting to be signed by Cornelia M. Partridge. Is that your wife's signature? A. Yes.

Q. Do you know where that paper was given to Mr. Harmon and Mr. Mathewson? A. That was drawn by Mr. Mathewson and I took it home and Mrs. Partridge signed it and I mailed it over to him.

Q. You mailed it to New York? A. Yes, sir.

Mr. Boardman: I offer that in evidence. It is a letter from Mrs. Partridge to Harmon & Mathewson dated May 25, 1913.

Marked Exhibit No. 16 for Defendant, January 15, 1917, H. W. K.

The Vice Chancellor: (After discussion) I find nothing in this agreement of June blank, 1912 which contains an intimation that the obligation of Mrs. Partridge on her endorsements is affected by the execution of this paper or the carrying out of that paper. Where do you find anything that affects the continuing obligation of Mrs. Partridge as endorser on this paper? The banks did not seem to give it up. What is your view about that?

Is there something more to go in to show that the notes on which Mrs. Partridge was endorser were paid?

Mr. Boardman: Yes. The Interstate Lumber Company gave notes for every one of them. They were put in as direct obligations of the Partridge Lumber Company in the proof in bankruptcy.

The Vice Chancellor: What were put in?

Mr. Boardman: The $18,600 notes.

The Vice Chancellor: All those notes, aggregating three or four hundred thousand dollars it seems were among the obligations of the Lumber Company, on which amount there appeared the endorsement of Mrs. Partridge.

Mr. Boardman: No, there was only about $100,000. But we are not concerned though about them, we are concerned about the Lincoln Trust Company's notes. The Lincoln Trust Company's notes were put in this contract as the direct obligation of the Partridge Lumber Company to the Lincoln Trust Company. There were new notes of the Interstate Lumber Company.

The Vice Chancellor: You mean this, I suppose,—There was a large amount of paper of the Partridge Lumber Company held by these banks with various endorsements. A large quantity had the endorsement of Mrs. Partridge. These banks met and made a deal among themselves by which they agreed to buy these assets for fresh money, at first $125,000 and then $127,500. They made an agreement to buy the assets and turn them over to the new company that Mr. Cheney was especially interested in, and sell the assets for something like their value, and arranged among themselves that the price should be paid in a certain way to the banks. The banks were to have the notes of the new Company equal to the outstanding Partridge notes. Notes should also be given for the amount of their pro rata contribution

to the purchase price aggregating $127,-500. Then the agreement provides for a class of notes where the Partridge Lumber Company stood as endorser and where the claims in bankruptcy were not against the bankrupt as primarily liable, but as secondarily liable, and those notes were left in the hands of the holders for prosecution against the makers, and then the express provision is made that to the extent that those notes should not be collected out of the makers, the residue, which would be the obligation collectible out of the Partridge Lumber Company if the Company was solvent would be—to cut it short—added to the other amount, in the form of notes. I find nothing—and if I am wrong I want to be told so now—I find nothing in that agreement which affects the rights of the holders of the notes of the Partridge Lumber Company to collect out of the endorsers. I find nothing which affects the rights of the holders of the Partridge paper to hold that paper. They do not surrender that paper; there is nothing of that kind in the agreement that I have found. They hold the paper with that endorsement. Of course they cannot get anything on it out of the Company because they have bought the whole assets.

Mr. Carrick: They bought the tangible assets. The Trustee did actually collect and pay twenty-three per cent and the agreement specifically provides they shall collect from the Trustee in Bankruptcy.

The Vice Chancellor: Then the assets were not the subject matter of this purchase.

Mr. Boardman: No.

The Vice Chancellor: The $127,500 they paid was, of course, for assets and that must have been credited on the claim, and they still held the notes with the endorsement and the liability of the endorsers to resort to. Now, my question is (I am glad you spoke, Judge, for I want to be absolutely accurate) what is there in these papers or in this transaction that affected the title which these banks had to the notes of the Partridge Lumber Company on which a dividend of twenty-three per cent was credited, and what affected their right to resort to the liability of the endorsers for the balance?

Mr. Boardman: The trouble is your Honor is mislead in your facts, you have not got one fact. Just as you say there was the direct liability of the Partridge Lumber Company and there was the collateral, but those direct notes—these were put in by the Lincoln Trust Company, this $18,600; they put them in as a claim. The notes which were the direct obligation of the Partridge Lumber Company, we have testimony here that those notes were surrendered to the Interstate Lumber Company.

The Vice Chancellor: That is all outside of that agreement. I notice that there is no provision for the surrender of the notes of the Partridge Lumber Company to the In-

terstate Lumber Company or the South Georgia Lumber Company.

Mr. Boardman: I want the court's mind clear on this point, that Mrs. Partridge in that agreement is specifically taken out of the position of endorser, or obligor or anything else, and this $18,000—

The Vice Chancellor: Where do you find anything on that paper that takes her out of the position of endorser?

Mr. Boardman: On this $18,600.

The Vice Chancellor: Where?

Mr. Boardman: You have got to put two and two together. There is the $18,600—

The Vice Chancellor: Read anything that provides that her obligation as endorser is to be affected by carrying out that arrangement, and read anything that provides that the Partridge Lumber Company's notes on which these banks collected a dividend of twenty-two or twenty-three per cent which was paid out of the money they paid for the assets—that they surrendered the notes of the Partridge Lumber Company to anybody or agreed to surrender them to anybody.

Mr. Boardman: I do not know that that is here.

Mr. Francis: In this contract which was read in evidence this morning, the contract of December 12th, 1914, the committee agrees (Mr. Francis read from Exhibit No. 1 for defendant).

The Vice Chancellor: If that agreement is in evidence I would like to hear it now. It was not read when it was put in.

(Mr. Francis then read Exhibit No. 1 for defendant in full).

The Vice Chancellor: That agreement was actually performed.

Mr. Francis: Yes, sir.

Further DIRECT-EXAMINATION:

Q. Did you live on the property described in the Paul Deed? A. Yes, sir.

Q. At the time it was given? A. Yes, sir.

Q. Did you continue to reside there? A. Yes, sir.

Q. Were the taxes and interest paid by you and Mrs. Partridge from that time on? A. Yes, sir.

Q. You continued to pay that. When did you move out of the property? A. I cannot tell you.

Q. About when? A. Oh, I cannot tell you.

Q. What year was it? A. Mrs. Partridge can tell you about that better than I can.

Q. Do you know what became of the key when you moved out? A. No, sir.

Q. You do not know? A. No.

Q. What was the practice of the Lincoln Trust Company under this $18,600 of notes with the Partridge Lumber Company—A. I don't just get what you mean.

Q. What became of the money that was paid by the Lincoln Trust Company for those notes?

Mr. Francis: To clear up this transaction of the notes made by your wife to the order of the Partridge Lumber Company endorsed by the Partridge Lumber Company and then by you. First, Mrs. Partridge was an accommodation maker of those notes was she not?

Mr. Carrick: I object to that if your Honor please.

Witness: Oh well, of course they were, you know that.

The Vice Chancellor: One moment, Mr. Partridge, let the question be propounded in the proper way.

Mr. Francis: I withdraw the question.

Q. The note was made by whom? A. I can't tell you, they were different.

Q. They came from the Lincoln Trust Company did they not? A. Yes, sir.

Q. And were taken home by you to your wife and she signed them, did she not? A. I have forgotten how they read. She either signed them or endorsed them.

Q. It appears that she signed her signature to them. What I am getting at is that you took them to her and she signed them? A. Yes, sir, they were all signed.

Q. Then you took them back to the Lincoln Trust Company did you not? A. Either took them or mailed them, I suppose they were mailed to them.

Q. Then the money on those notes was turned over to whom? A. We deposited it in the Lincoln Trust Company.

Q. All of the money that was loaned on these notes was deposited in the Lincoln Trust Company? A. Yes, sir.

Q. And to the credit of whom? A. The Partridge Lumber Company.

Q. And it never went into Mrs. Partridge's hands at all, did it or not? A. No, sir.

Q. Do you recall whether they gave you the

money in the form of a check or in the form of cash? A. A check of course. Whether it was to the order of the Partridge Lumber Company or to Mrs. Partridge I do not remember. If it was to Mrs. Partridge she endorsed them and then reindorsed them and then deposited them in the Lincoln Trust Company.

Q. To the credit of whom? A. She had no account at the Lincoln Trust Company. Of course to the account of the Partridge Lumber Company.

Q. Then the money was borrowed through Mr. Farrier was it not? A. I presume he made all of these checks the same way He can tell you about that.

Q. When you went to him for these various loans he knew they went to your— A. I don't think I ever went with him, I don't believe I ever saw him but once.

Q. You told him you were borrowing the money for whom? A. He knew for the Partridge Lumber Company.

Q. They wanted to get the money? A. Yes, sir.

Q. And all the other transactions were made— A. I think by correspondence, I won't be sure but I don't think I ever went down to the bank but once in my life.

Q. And Mrs. Partridge never got the benefit of any of this money? A. No, sir, she never went to the bank she never got any of the money.

Q. That was the same with all the banks? A. Yes.

Q. She endorsed for the Partridge Lumber Company? A. Yes.

Q. She was an accommodation endorser on those notes? A. Yes, sir.

Q. And the money was deposited to the credit of the company?

The Vice Chancellor: Is the examining counsel testifying or the witness? It is perfectly easy to put these questions in a legal manner.

Q. Did you pay rent to Paul or the Lincoln Trust Company or anyone else? A. No, we never paid any of them.

CROSS-EXAMINATION by Mr. Carrick:

Q. Let me direct your attention to the time when you had your talk with Mr. Edwards with reference to the making of the deed for your wife's property. Do you not recall that you had a talk after you had seen Mr. Edwards with Mr. Farrier of the Lincoln Trust Company? A. No, I do not recall that.

Q. Let me ask you this further question, it is a long time ago, and probably the details have escaped you, but do you not consider that on that occasion you were represented by Mr. Goldenhorn whose office is at 14 Exchange Place and that there was a meeting in Mr. Goldenhorn's office—A. That is right, I remember that now.

Q. And he represented you and Mrs. Partridge in the transaction? A. Yes, I remember that now that you call my attention to it.

Q. I want to show you a paper which accompanied the three notes for eight thousand dollars which were shown you in the course of your direct examination and which were enclosed with the escrow agreement produced by Mr. Dawson. Will

you look at that paper and say whether you recall the signing of that paper by Mrs. Partridge? A. No, I do not.

Q. Won't you read it over; it is an important paper. A. She signed it all right. I did not think she signed anything but the deed, but she signed this paper all right (Witness peruses the paper handed him by counsel.)

Q. You have read over the paper have you? A. Yes, I think I have got the gist of it.

Q. Do you not recall that paper was handed to you in Mr. Goldenhorn's office and that you took it out to Mrs. Partridge's at Montclair and she signed it and you brought it back to Jersey City and gave it to Mr. Goldenhorn for delivery to Mr. Farrier? A. Let me see it (paper handed to witness who examines it) Well, I think I do, I think you are right on that.

The Vice Chancellor: Is this the paper produced by Mr. Dawson with the three notes?

Mr. Carrick: Yes.

The Vice Chancellor: The paper shown to the witness is marked No. 5 for identification. It has not been offered in evidence?

Mr. Carrick: No.

Q. You were examined as to your knowledge of the time when this paper, Exhibit No. 10, that is the agreement dated June blank, 1912, was executed by the banks. What knowledge have you on that subject? A. None.

Q. You never saw any of these papers signed? A. Never saw anything at all.

Q. Did you ever see this—A. No, sir.

Q. Wait a minute Did you ever see this original paper until it was exhibited to you today? A. No.

Q. Why did you say that you understood that it was not signed by the banks until after the delivery of the Paul deed? A. Well, because Mr. Edwards—we talked it all over down in the bank, Mr. Edwards and I, and this thing was in the air and was going to be signed in a few days or few weeks.

Q. You knew, did you not, that a meeting of the banks had been held away back in May 1912, shortly after—A. It had not been signed yet.

Q. No, it had not been signed yet. A. It had not been signed when the deed was given.

Q. Why do you say that? A. Because I would have known it.

Q. Did you know when it was signed? A. No, I did not.

Q. You did not see it signed by any of the parties? A. No. I did not know anything about it except what Mr. Edwards told me and anything he told me I believed, that is all.

By Mr. Francis: Q. When you used the term "return" a little while ago, testifying he probably would return it to Mrs. Partridge, that is what you meant by the use of the word "return"? A. Yes.

Q. This agreement that you have just been shown (No. 8 for identification). A. I know what you mean.

Q. That had no connection with the agreement that you made with Mr. Edwards about giving the property over and then having it returned on the assigning of this—that had no connection with that?

Mr. Carrick: I object to that. I think this method of examination is very improper.

The Vice Chancellor: Very improper indeed. The testimony has very little probative force even coming from such a witness as Mr. Partridge seems to be the force of it is entirely destroyed by the form in which it is brought out. For instance, just now counsel asked Mr. Partridge, not what he meant by the word "return" which he employed in answer to counsel, but said "You meant by the word 'return' so and so and so and so" and the witness said "Yes."

CORNELIA M. PARTRIDGE, sworn.

Direct-examination by Mr. Boardman:

Q. You are Cornelia M. Partridge, one of the defendants in this case? A. Yes, sir.

Q. Formerly the owner of this property 78 Clinton Avenue, Montclair, which is described in the deed to Mr. Paul? A. Yes, sir.

Q. You are here under subpoena? A. Yes, sir.

Q. Do you know Mr. Paul? A. No.

Q. Tell us what, if anything, you did, or was said when this deed was given? A At the time I signed it, do you mean?

Q. Yes. A. I do not know of any conversation at all.

Q. Where was it signed? A. At the Lincoln Trust Company.

Q. In Jersey City? A. Yes, sir.

Q. After you had given this deed to Mr. Paul did you continue to live in the property? A. We lived there until a year ago last August.

Q. When you moved out what did you do with the keys? A. I took them with me.

Q. Did you send them to anybody or give them to anyone? A. I did later.

Q. To whom did you send them or give them? A. To Mr. Harmon and Mathewson.

Q. (Handing witness keys) These are the keys, are they? A. Yes, sir.

Q. You left the house locked up did you? A. Yes, sir.

By the Vice Chancellor: Q. When was that? A. A year ago last August.

Mr. Boardman: August 15th.

Q. As far as you know is the property vacant now? A. No, I don't know.

Q. Who is in it? A. I don't know, I cannot tell.

Further DIRECT-EXAMINATION:

Q. Did you know Mr. Farrier before you signed this deed? A. No sir, I did not.

Q. Did you know Mr. Edward I. Edwards? A. I did not.

Q. I show you three promissory notes produced here this morning by Mr. Dawson are those your signatures? A. Yes.

Mr. Boardman: I offer those notes in evidence.

The Vice Chancellor: If there is no objection they will be received.

They need not be marked again.

Do you offer the accompanying memorandum?

Mr. Boardman: No, I do not want to be bound by it, that is the only thing. I shall be glad enough to have it go in.

The Vice Chancellor: Proceed.

Q. How much of the money represented by the eight thousand dollars, the face of those notes came to you? A. There did not any of it.

Q. Did any of it go to your personal estate? A. No.

Q. Did any money from the Lincoln Trust Company, and if so what, go to you or your personal estate? A. No.

Q. Of the whole $18,600 that they proved in Bankruptcy against the Partridge Lumber Company—did any of that money go to you? A. No.

Q. What about the note of the Hudson County National Bank that bore your name or endorsement did some of that money go to your personal account? A. No.

Q. Did you ever get any money for your personal account from the Hudson County National Bank? A. I did not.

Q. Or from any of the money of the claims, that were proved in Bankruptcy on which your name appeared—did any of it go to your private estate? A. No.

The Vice Chancellor: What is the force of that evidence. Mr. Boardman, what is your object in making that proof?

Mr. Boardman: Why—it is a fact!

The Vice Chancellor: Proceed.

Q. Did you know that the property 78 Clinton Avenue had been deeded by Mr. Paul to Mr. Farrier? A. No.

Q. Or by Mr. Farrier to the Lincoln Trust Company? A. No.

Q. Did you ever consent to any such conveyances? A. No.

Q. I show you a paper that has been marked Exhibit No. 14 which is the paper addressed to Messrs. Harmon and Mathewson. That is your signature? A. Yes, sir.

The Vice Chancellor: That is not disputed.

Mr. Boardman: Perhaps I might answer your Honor a little more fully. As I ununderstand it, as a matter of proof, these notes of the Partridge Lumber Company which were put in as the direct obligation of the Partridge Lumber Company except for these three were delivered up to the Interstate Lumber Company.

The Vice Chancellor: In pursuance of the agreement read a few minutes ago which provides for the delivery of these notes of the Partridge Lumber Company to the bankers by the committee. They obligated themselves—the committee had—to deliver these notes to the Interstate Lumber Company upon certain things being done by the Lumber Company. First of all things to be done by the Lumber Company are specified and then it says that thereupon certain stock is to be delivered up and also these notes were to be delivered up and then the provision appears that any money collected on the notes thereafter will be credited on the $80,000 showing that the notes were then outstanding, valid obligations.

Mr. Boardman: My real understanding

of the testimony—Mr. Farrier's testimony which will be produced is that the Partridge Lumber Company's notes were surrendered—

The Vice Chancellor: Yes. When I heard the agreement read I asked you if you were going to prove and you said you were going to prove, that the notes were actually delivered to the Interstate Lumber Co. I asked you whether the contract was performed and the answer that I received was that it was, and that included the delivery of these Partridge notes to the Interstate Lumber Company.

Mr. Francis: I made the statement that it was carried out. But I think we can show that all the things were done except perhaps the delivery of the notes.

The Vice Chancellor: I suppose counsel are going to show when this twenty-three per cent was paid in Bankruptcy I will, therefore, ask when it was paid.

Mr. Carrick: There was three different payments.

The Vice Chancellor: The inference is it was paid very shortly after the $127,500 was paid in, in 1912.

Mr. Francis: Yes.

Mr. Hendrickson: The first payment was fifteen per cent, the second five per cent and the third three per cent. The first dividend was paid very shortly—

The Vice Chancellor: When was the last dividend paid?

Mr. Hendrickson: I think possibly the

following—well we would have to wait for a year, practically a year goes by in bankruptcy before you make the final payment. I could inform the court but I have left the papers in my office. I had them here this morning.

The Vice Chancellor: Everything has been paid before this agreement of December 12th, 1914 was entered into.

Mr. Hendrickson: Oh, yes, and the estate was wound up.

The Vice Chancellor: Nothing more was secured on the notes?

Mr. Hendrickson: No, sir. I don't know what they did on the outside.

CROSS-EXAMINATION by Mr. Carrick:

Q. I presume your recollection of the making of these various notes, some of which you made and some of which you endorsed is not particularly clear as to each particular note? A. Not at all.

Q. You have said that, as I understand to be the fact, none of this money which came from the Lincoln Trust passed to your individual account. Do you recall whether you received checks from the Lincoln Trust Company which you endorsed and delivered to your husband for the Partridge Lumber Company? A. No, I do not recall any.

Q. You do not remember anything about that? A. No, sir.

Q. You were accustomed I presume to sign papers as they were presented to you by your husband which he required in the conduct of his business? A. Yes, sir.

OSCAR WIREN sworn.

Examined by Mr. Boardman:

Q. You are a lawyer of New York? A. Yes, sir.

Q. I believe you are not here under subpoena, you came voluntarily today? A. Yes, sir.

Q. You were formerly connected with the firm of Harmon and Mathewson? A. Yes, sir.

Q. At 55 Wall Street? A. Yes, sir.

Q. Did you, in 1912, have occasion to go out to the Partridge residence in Montclair? A. It was not 1912.

Q. I beg your pardon it was 1915. A. Yes, sir.

Q. When? A. September 14th.

Q. What did you do? A. I went out to Montclair and went to the house at 78 Clinton Avenue.

Q Did you have anything with you? A I took keys with me.

Q. Are they the ones I now have in my hands? A. I believe so as far as I can see from here, I think those are the ones.

Q. Well—A. I went to the house No. 78 Clinton Avenue and also inquired next door if that was the house where Mr. Partridge had been residing and I unlocked the door and went through the house and took possession and locked it up, and also unlocked the barn and took possession of it, and locked the barn again and came away with the keys.

Q. From whom did you receive the keys? A. From Mr. Harmon's office, I took possession on behalf of Mr. Harmon.

Q. To whom did you return them? A. To Mr. Harmon's office.

CROSS-EXAMINATION by Mr. Carrick:

Q. What do you mean by taking possession? A. I took physical possession of the premises.

Q. You went in, you opened the door and walked through the house and came out and locked it and went away? A. Locked it and came away?

Q. Did you do anything more than that in the way of taking possession? A. Brought the keys away with me.

Q. You went there with the keys and came back with the keys? A. Yes, that is about the size of it.

Mr. Boardman: I would like to know what the situation is in reference to the books of testimony in the Bankruptcy court. Are they in evidence or so much as we offer?

The Vice Chancellor: So much as you offer Judge Carrick has consented to instead of putting the stenographer on the stand, who, according to legal fiction would refresh his memory from this transcript and state what was said by the witness. He also pointed out the necessity of not calling the other stenographer and the books stand in the same position and you may point out what you desire to have in evidence.

Mr. Boardman: I offer Mr. Farrier's testimony taken August 1st, 1916.

The Vice Chancellor: Have you figured out the pages you desire to offer in evidence?

Mr. Boardman: Yes, and I will read it, if they want any amplification, we will am-

plify it, but I have taken the salient points. This is August 1st, 1916 in the matter of the Interstate Lumber Company in Bankruptcy before Elmer W. Demarest, referee and special Master at page 72 of that day.

The Vice Chancellor: This is the testimony of Mr. Farrier?

Mr. Boardman: Yes.

Mr. Carrick: Who is examining him?

Mr. Boardman: I think Mr. Merritt Lane, that is my recollection, it is very confused here it is either Mr. Lane or Mr. Hendrickson.

The Vice Chancellor: I want to shorten the case as much as possible and not occupy a great deal of time with irrelevant testimony. How is that competent testimony?

Mr. Boardman: I think the first question and answer will strike you as competent, and an admission against interest.

The Vice Chancellor: Whose admission?

Mr. Boardman: Mr. Farrier's who is testifying that he had full authority from the Lincoln Trust Company. He was President of the Lincoln Trust Company and was giving this testimony in behalf of the Lincoln Trust Company.

The Vice Chancellor: Is there any objection raised?

Mr. Carrick: I do not know what it is, I have not seen it and do not know anything about the testimony; I am not at all familiar with it. Of course, I shall object to any statements made by Mr. Farrier

unless they are relevant to this inquiry. But I do not know what it is he proposes to read now.

The Vice Chancellor: The objection being on the ground of relevancy, I will take it.

Mr. Boardman (reading):

"Q. The Interstate Lumber Company gave you notes to pay the amount of the indebtedness of the Partridge Lumber Company at your instance—

"Mr. I object.

"The Referee: It is proper.

"A. Yes.

"Q. Can you give that amount? A. Approximately $22,000.

"Q. Can you give me the amount your institution put into the deal that was made for the purchase of the asset of the Partridge Lumber Company? A. Approximately $15,000."

I do not think we need to go on with that, but if it is not perfectly clear that "your institution" means the Lincoln Trust Company I would like to read back and make it perfectly clear.

The Vice Chancellor: I do not think there is any doubt about that. The doubt is about the competency and probative force of the testimony. I do not suppose any such point as that would be raised.

Mr. Boardman: I read now from page 35 of the book of July 18, 1916, in the same matter. I think the examiner is Mr. Lane, as nearly as I can make out.

"Q. You said as I understand it that the notes

of $120,000 had been surrendered for the direct and contingent liabilities. Did that wipe out the entire notes, etc.? A. They were wiped out.

"Q. Were the notes of the Partridge Lumber Company surrendered or are they still held by the bank? A. They were surrendered."

The Vice Chancellor: Whose testimony is this?

Mr. Boardman: Mr. Farrier's.

"Q. They were surrendered. Are they still held by you as Treasurer of the Interstate Lumber Company? A. They are with one exception, of the one held by the Union Trust Company.

"Q. Do you know whether there is a balance of $83,000 of direct and contingent notes?

"Mr. Hendrickson: I object to the question as leading.

"Mr. : I withdraw the question.

"Q. Do you know whether there is any balance due?" etc.

The Vice Chancellor: Were not those three notes produced, amounting to $8,000, notes held by the Lincoln Trust Company.

Mr. Boardman: Yes, but not the Union.

The Vice Chancellor: Mr. Farrier testified to $8,000 being outstanding, also the note of the Union Trust Company. The testimony appears to be

"Q. Do you know whether there is any balance due on direct and contingent notes? A. Yes.

"Q. How much is it? A. $8,000."

Mr. Boardman: I will show where he apportions that.

The Vice Chancellor: Very well. Proceed. Are these the three notes mentioned

in the answer of the Lincoln Trust Company which they allege were delivered—

Mr. Carrick: Yes.

Mr. Boardman: You do not claim that the $8,000 referred to here (indicating testimony taken in the Bankrupt Court) has anything to do with these?

Mr. Carrick: I don't know anything about it. This is the first time I ever heard that testimony. You have subpoenaed Mr. Farrier, put him on the stand.

The Vice Chancellor: We will pause here and you can look through these books over night and be prepared to put in such portions as you desire to in the morning.

Mr. Boardman: Yes. I will put in the whole testimony if necessary to make it perfectly clear. I will put in the whole of Mr. Farrier's testimony to make it clear that this has nothing to do with these notes.

The Vice Chancellor: Have you picked out any portion of the testimony you desire to read, or have you still to do that?

Mr. Francis: We only got the testimony late last night and have not been able to digest it yet.

The Vice Chancellor: Have you any other witness here today?

Mr. Boardman: No.

Adjourned until Thursday, January 11, 1917, at 10 o'clock a. m., at Chancery Chambers, Jersey City, N. Y.

Argument

Jersey City, N. J., Thursday January 11th, 1917.

Trial resumed pursuant to adjournment.

Mr. Boardman: I offer in evidence a bill of sale from the South Georgia Lumber Company dated January 2d, 1915, produced by the Lincoln Trust Company.

The Vice Chancellor: What is the purpose of this.

Mr. Boardman: To show the purpose of the agreement of the 12th day of December 1914.

Mr. Carrick: The offer is objected to, if your Honor, please, but only on the ground of relevancy.

The Vice Chancellor: It will be received in evidence.

Marked Exhibit No. 15 for defendant, January 11th, 1917, H. W. K.

Mr. Boardman: I offer in evidence bill of sale from the Interstate Lumber Company to the committee of certain banks dated January 2d, 1917, purporting to convey lumber located at 110 Parker Street, Newark.

The Vice Chancellor: Is it a fact that after the execution of the agreement of December 12th 1914, the notes of the Partridge Lumber Company which had been under discount, on which the Partridge Lumber Company appeared as maker or endorser were surrendered by the holders

of the notes—the bank—to the Interstate Lumber Company.

Mr. Carrick: As to the eight thousand dollars of notes, which were the basis of this transfer, that is absolutely not so. As to the $10,600, I am not informed about it, I am not prepared to make a statement, it is new matter to me.

The Vice Chancellor: As I understand it, the eight thousand dollars of notes, set forth in the counter claim of the Lincoln Trust Company are these three notes delivered in the envelope to Mr. Dawson and which he produced here.

Mr. Carrick: Yes, sir.

The Vice Chancellor: Without drawing this conclusion myself, I will ask if there is any question that those notes in fact were not delivered to the Interstate Lumber Company, those particular notes?

Mr. Boardman: Those particular notes, according to the truth were in Mr. Dawson's possession, in his safe, that is my proof.

The Vice Chancellor: Then it seems to be admitted that this agreement of December 12th, 1914, was substantially performed on both sides and that all of the notes were delivered up, of the Partridge Lumber Company which had been under discount at the bank and which were held by the bank, with the exception of the three notes aggregating eight thousand dollars which were held by Mr. Dawson.

Mr. Boardman: One thing I want to call

your attention to, Mr. Farrier was not only President of the Lincoln Trust Company but, an officer of the Interstate and one of the committee of banks, and the delivery up of these notes to Mr. Farrier—he, Mr. Farrier, took them as treasurer of the Interstate when they were surrendered to the Interstate, Mr. Farrier got them. Mr. Farrier, as a member of the committee of banks, gave them to Mr. Farrier as Treasurer of the Interstate Lumber Company. Therefore, I presume that what he intended to do, and what his testimony must mean that he did when he said he surrendered the whole twenty-two thousand dollars of notes to the bank—

The Vice Chancellor: $22,000?

Mr. Boardman: $18,600. of the Partridge and about $4000 of the others. When he said he delivered them to the Interstate, I suppose he constructively in his own mind shifted whatever hold he had in the notes in Dawson's hands as a bank committee member, over to himself as Treasurer of the Interstate Lumber Company.

The Vice Chancellor: These notes were delivered to Mr. Dawson to be delivered to the maker, Mrs. Partridge?

Mr. Boardman: It does not say so.

The Vice Chancellor: That is the testimony of Mr. Dawson, and also we have the agreement.

Mr. Boardman: The agreement is not in evidence.

The Vice Chancellor: You are going into all this minutia of the purpose of the agreement of December 12th, 1914, when nine-tenths of it does not seem to aid us in the slightest degree. There is no dispute on the other side I take it that this agreement was substantially performed. The question is whether these three notes aggregating eight thousand dollars were delivered up to the Interstate Lumber Company. It is true that Mr. Farrier acted in a double capacity, but there was that agreement. Of course, the notes that he delivered for the bankers he delivered to himself as treasurer of the Interstate Lumber Company, and he swears he passed them over. The only question is whether these three notes passed.

Mr. Boardman: If they admit that, certainly we do not want to go into this proof. If they will admit this agreement was substantially performed, I am satisfied to take that.

The Vice Chancellor: Is there any question about that in view of Mr. Dawson's testimony?

Mr. Carrick: We are prepared to admit that the $10,600 notes were delivered by Mr. Farrier for the Lincoln Trust Company to himself as representing the Interstate Lumber Company, but as to the eight thousand dollars of notes, they never were delivered, they remained where they were.

The Vice Chancellor: Has it appeared in the testimony so far what the order of

events were. At the time of the delivery of the notes to Mr. Farrier as Treasurer of the Interstate in the performance of this contract had these three notes been delivered to Mr. Dawson?

Mr. Carrick: Yes. August 3d, 1914.

The Vice Chancellor: Two or three years before.

Mr. Boardman: Yes.

The Vice Chancellor: Is not the only matter of importance now, practically what the arrangement was when these notes were passed over to Mr. Dawson? The Bank by its answer alleges that they delivered, surrendered, the eight thousand dollars of notes and in consideration therefor, their title was agreed to be absolute to the land, with the further agreement on their part that if the rest of the notes were paid, they would reconvey back the land. The delivery of those notes is not questioned. That is your theory? Now, we have this, as yet, quite uncertain transaction, the nature of which Mr. Dawson does not fully know, in which he received these notes. Mr. Partridge and Mrs. Partridge were there and Mr. Farrier was there if I remember right, and the result was that those notes were delivered to Mr. Dawson and held by him under some arrangement.

Mr. Boardman: Mr. Dawson's testimony was that Mr. Farrier and Mr. Edward I. Edwards brought them and delivered them. The Partridges were not there at all. He testified they were delivered to him by

Mr. Edward I. Edwards and Mr. Farrier or Mr. Farrier introduced by Edward I. Edwards, but neither Mr. nor Mrs. Partridge were there.

The Vice Chancellor: There is a wide scope for testimony. It is very uncertain what this deal was. I do not pretend to describe it or have any definite idea what it was. I am only pointing out that so far as the testimony seems to be narrowed down, to the status of these three notes, and how they were delivered to Mr. Dawson, they were delivered to him under some kind of an arrangement and for some purpose and not in execution of this agreement of December 12th, 1914, and probably could not be affected by that agreement in any way whatever.

Mr. Boardman: I call your Honor's attention to this fact, that insofar as the Lincoln Trust Company or the committee of banks had any hold on them, they could be delivered. I do not want to be bound by that paper that Mr. Dawson held.

The Vice Chancellor: Suppose you go on with your proof as to the status of these notes and do not lumber up the case with a lot of proofs of the delivery of lumber and delivery of stock and matters we have nothing to do with, whatever—the performance of the other part of that agreement. I only make this suggestion. I do not intend to drive anybody to try a case according to my views. If counsel acquiesce, I would like to hear what proof

you can bring on both sides as to the status of these notes; what the arrangement was under which they were delivered to Mr. Dawson, what part the Lincoln Trust Company had in those notes after they were delivered to him, what rights were vested in Mr. Dawson by virtue of this delivery in escrow. Those are all matters that are open and they seem to me to be the only matters that are relevant.

You may make out one part of your case by showing the title to these notes all passed to the Interstate Company and the bank had no further interest in them. I do not think it is conclusive, but it may be important in your case.

Mr. Boardman: In order to show how these notes were treated after they were delivered to Mr. Dawson I will call Mr. Hendrickson.

GEORGE E. HENDRICKSON, ESQ., sworn.

Direct-examination by Mr. Boardman:

Q. You are a lawyer of this city? A. I am.

Q. Were you the trustee in Bankruptcy for the Partridge Lumber Company in 1912? A. I was.

Q. As such did you pay certain dividends? A. I did.

Q. Have you the dividend sheets with you? A. I have some of them with me.

The Vice Chancellor: For whom were you counsel?

Witness: I was trustee, Vice Chancellor.

Q. Were dividends paid? A. The first dividend of 15 per cent, a second dividend of five per cent and a third and final dividend of three per cent.

Q. Have you the dates of those dividends?

Witness: I have not the dates here. Do you mean the dates when the checks were mailed out.

Mr. Carrick: No, the dates when you declared the dividends.

Witness (Referring to papers): If this sheet which is torn away, is the first sheet on the order declaring the first dividend, which is marked as a true copy and filed October 19, 1912, which I think it is, I would say that the first dividend was declared around October 19th, 1912. To be really accurate I would have to look up other papers in my office.

Mr. Carrick: That is near enough, have you the others?

Witness: The second dividend I think was ordered paid around the first of May 1913, and the third dividend, the final dividend, was ordered paid about the sixth of November 1914. If there is reason for more definiteness on my part, I can get those from my records in the office, from my check book. Mr. Farrier possibly has, among his books there the receipts of those dividend checks.

Q. Was the dividend paid on the same basis each time, insofar as the Lincoln Trust Company is concerned? A I do not understand your question.

Q. Was the dividend paid on the same amount, was the dividend calculated on the same amount, as far as the Lincoln Trust Company is con-

cerned, each time. A. I have here a copy of the third dividend sheet.

Q. Upon what sum was the Lincoln Trust Company dividend paid? A. The Lincoln Trust Company of New Jersey, on the sum of $21,040.

By the Vice Chancellor: Q. Was that the first dividend? A. That was the second dividend at five per cent.

Q. What was the amount on which the first dividend was paid?

Mr. Carrick: There is no controversy, it was the same amount throughout.

The Vice Chancellor: Let me have it proved now.

Witness: The Lincoln Trust Co., of New Jersey $21,640.

Q. Now the last?

Mr. Boardman: How much was that dividend?

The Vice Chancellor: It is a mere matter of percentage.

Witness: Fifteen percent.

Q. The second was five per cent, the first was 15 per cent; now the other one. A. The third dividend of three per cent amounted to $631.20.

By the Vice Chancellor: Q Was the amount on which the dividend was paid the same all the way through.

A. It is the same throughout.

The Vice Chancellor: Did you prove these three notes?

Mr. Boardman: We did. It also included the identical notes, copies of the identical notes were annexed in that proof of claim.

The Vice Chancellor: You mean the original notes?

Mr. Boardman: Copies of the three notes that Mr. Dawson procured were annexed to the proof of claim.

Further DIRECT-EXAMINATION:

Q. Did Mr. Farrier ever tell you, or serve any notice on you, or bring to your attention in any way an allegation, that $8,000 of their claim had been paid by an outside person? A. No, sir.

Q. Were the dividends returned by the Lincoln Trust Co.? A. To me?

Q. Yes, sir. A. No, sir.

Q. Or to anybody else, as far as you know? A. I do not know of any.

Q. Was any part of the dividend returned to the bankrupt estate? A. No, sir.

By the Vice Chancellor: Q. You paid out those dividends by check I suppose? A. Yes, sir.

Q. And the checks were all returned paid through the bank, were they? A. Yes, sir, they were. I do not like to say "yes, sir" without the checks in front of me, but the estate is closed and there is no money left in the bank, and I know they got their money or they would have been after it a long while before this.

Further DIRECT-EXAMINATION:

Q. I asked you merely if Mr. Farrier told you. Did anybody else connected with the Lincoln Trust Co., ever tell you that any portion of this indebtedness that they had proved had been paid by an outside party? A. No, sir.

No cross-examination.

Mr. Boardman: I offer, as bearing out this theory, and along the same line, a resolution of the board of directors of the Interstate Lumber Co. passed on Friday, September 13, 1912, which appears on pages 38, 39 and 40 of the minute book of the Interstate Lumber Co. as follows:

"After discussion and upon motion duly made and seconded it was unanimously resolved that in accordance with the resolution of the stock-holders and directors of this company passed at their meeting held on the 29th of August, 1912, this corporation purchase all the assets and property formerly belong to the Partridge Lumber Co., and accept the transfer thereof from Edward M. Farrier and deliver to said Farrier therefor the promissory notes of this company endorsed by Minas A. Cheney and said South Georgia Lumber Co., all dated September 13, 1912 and payable at the respective banking offices of the payees, at four months as follows:"

I do not propose to read the list; I will let your Honor look it over to see just what it does cover, but I do propose to read items 18, 19 and 20.

"Item 18. Lincoln Trust Co., of New Jersey, Jersey City, N. J. $18,600.

Item 19. Lincoln Trust Co. of New Jersey, Jersey City, N. J. 2,440.

Item 20. Lincoln Trust Co., of New Jersey, Jersey City, N. J. $15,246.41"

The Vice Chancellor: Those are the notes to be given by the Interstate Lumber Co., to be delivered to Farrier?

Mr. Boardman: Yes, to be delivered to Farrier Notes to them to be delivered to Farrier.

The Vice Chancellor: Notes from the Interstate Lumber Co. to the Lincoln Trust Co.?

Mr. Boardman: Those three go to the Lincoln Trust Co., and were to be delivered to Farrier.

The Vice Chancellor: Is that not covered by the admission that this whole deal was carried out?

The only question is whether these three notes were delivered and transferred to the Interstate Lumber Co., so that the banks and the Lincoln Trust Co. lost title to them.

Mr. Boardman: Perhaps I do not understand you, or perhaps you do not understand me. This is September 13, 1912, at the time of the incorporation of the Interstate Lumber Company.

The Vice Chancellor: Why are we concerned with that?

Mr. Boardman: To show that Mr. Farrier and the Lincoln Trust Company treated this whole $18,600 as belonging to them. If they had no string on the notes they still had a string on the fund that the notes represented.

The Chancellor: This was September 13, 1912.

Mr. Boardman: Yes, sir.

The Vice Chancellor: What was the date of the deposit of the notes with Mr. Dawson?

Mr. Boardman: August 3, 1912.

The Vice Chancellor: Are you sure, Mr. Boardman, that those are not the notes of the Interstate Lumber Co. that were to be given?

Mr. Boardman: These are the notes of the Interstate Lumber Co. Item No. 18 is this— It is the note of the Interstate Lumber Co. given to the Lincoln Trust Co. for $18,600 for the amount of the direct indebtedness of the Partridge Lumber Co., to it. According to the proof in bankruptcy this was—

The Vice Chancellor: How does that bear on this? The banks bought in all the assets, they became the absolute owner of all the assets. They bought in pro rata. The Lincoln Trust Co. as I understand it paid in $11,000 in fresh cash?

Mr. Boardman: Yes, sir.

The Vice Chancellor: They stood like any other buyer, they bought the assets, and then they turned them over to the Interstate Lumber Company at a price?

Mr. Boardman: Yes, sir.

The Vice Chancellor: Why had they not a right to receive their pro rata share of the price without regard to notes which they held against the Partridge estate?

Mr. Boardman: They set up that the indebtedness here was $18,600 on Mrs. Partridge's notes moneys that they had paid to her, and she actually paid off $8,000. If the whole $18,600 should be paid by the Partridge Company, then they were to return the property and—

The Vice Chancellor: But these notes, until the agreement of December 12, 1914, about which I say nothing—until that time certainly there is nothing in the evidence to show there was any connection between the notes against the Partridge Company which were the basis of dividends paid by the trustee in bankruptcy and the notes of an equal amount which the Interstate Lumber Company was to pay to the banks which had united to put up the purchase price of the assets pro rata; according to their holdings of the Partridge notes.

Mr. Boardman: I do not quite follow that, your Honor.

The Vice Chancellor: When this resolution was passed I have not observed anything in the evidence to indicate that the Lincoln Trust Co. did not hold the Partridge notes. The Partridge notes did not go over to the Interstate Company, they never went over to the Interstate Lumber Company until the agreement of December 12, 1914. Every one of those banks had a right to receive from the Interstate Lumber Company notes pro rata, according to its holdings of the Partridge notes, and also had a right to collect the dividends on the Partridge notes and to enforce the liability of the endorsers.

Mr. Carrick: That is, expressly, in the agreement. The agreement says this (Mr. Carrick read from the agreement).

The Vice Chancellor: The amount they actually collected out of the bankrupt's es-

tate, in the shape of dividends, went to pay pro tanto, the notes of the Interstate Lumber Company which they received?

Mr. Boardman: There are two theories before your honor. If Mr. Farrier—

The Vice Chancellor: I do not care to have it argued. I am only dealing with this matter you are offering in evidence because I want to see what the force of it is.

I want you to see that. I claim it is very forcible, if the theory set up in the answer is true, then—

The Vice Chancellor: I think I would rather admit it than take further time.

Mr. Carrick: I object to it on the ground of relevancy. I do not want to appear to consent to all these matters going in the evidence.

The Vice Chancellor: I will admit it subject to objection.

Mr. Boardman: I am not satisfied with the form in which the admission is made. Your Honor asked them if they would admit the agreement was specifically carried out, and they said they would admit $10,600 of the notes were delivered by Farrier. If it is part of my case to show that the contract of December, 1914, was performed, here is the proof, and I want to put it in. If it is not part of my case I do not want to anticipate. But I do not want to be under the apprehension that they have admitted something, that they have only admitted that $10,600 of notes were delivered.

The Vice Chancellor: That they were delivered up in performance of that contract That seems to be the admission. And the contract shows for what purpose and to what effect the notes were to be delivered up. I do not think you want anything broader than that.

Mr. Carrick: I want to call your Honor's attention, while we are on this subject, to the fact that while the provision is that these notes, under the agreement of December, 1914, shall be delivered to the Interstate Lumber Company, it is not for the purpose of cancellation, and I call your Honor's attention to this clause in the fifth paragraph of that agreement: "The committee will also deliver to the Interstate Lumber Company the notes on which the Partridge Lumber Company appears as maker or endorser and for which the Interstate notes for direct and contingent liability were given, and any collections received thereon after the date of this agreement shall be credited as received on the $80,000."

The Vice Chancellor: Eighty thousand dollars.

Mr. Carrick: That is the new money. What I want to direct your Honor's attention to is that while they were delivered to the Interstate they were not delivered for cancellation, but in order that the Interstate if it received anything more might apply the money on certain indebtedness. They were considered as good notes in the hands of this committee.

The Vice Chancellor: I was considering that a little while ago. We have not reached that point yet. Now, the point that counsel is endeavoring to make is that the banks lost all title to that paper; that so far as the banks were concerned they were paid. I think that is the point we are at, is it not?

Mr. Boardman: Yes, and that Mr. Farrier's testimony was that these precise figures mentioned here—that they were the direct and contingent, and that is where these precise amounts are set out in the testimony I have just put in by the minute book.

Vice Chancellor: Very well, I have admitted it. Proceed.

Mr. Boardman: I offer in evidence a Bill of Sale from the Interstate Lumber Company to the committee of certain banks, dated January 2, 1915, covering all the lumber in the Jersey City yard.

Mr. Carrick: I object to it as irrelevant.

The Vice Chancellor: I will admit it subject to the objection.

Marked Exhibit No. 17 for the defendant, January 11, 1917. H. W. K.

Mr. Boardman: I offer in evidence three leases between Edward I. Edwards, Edward M. Farrier, E. J. Dunn and C. D. Robinson a committee representing certain banks, the Interstate Lumber Company and M. A. Cheney, dated December 2, 1915, one being for a lease of the Newark yard, one for a lease of the Brooklyn yard, and one for a lease of the Jersey City yard.

Mr. Carrick: Objected to on the ground of relevancy.

The Vice Chancellor: I will receive them in evidence subject to the objection.

Leases marked respectively Exhibits 18, 19 and 20 for defendants, January 11, 1917, H. W. K.

Mr. Boardman: I offer in evidence copy of assignment of accounts from the Interstate Lumber Company to the committee of certain banks, dated January 21, 1916.

Mr. Carrick: I object to it as not the original.

Mr. Boardman: I call upon Mr. Farrier, the Lincoln Trust Company, to produce the original of this.

Mr. Carrick: Put him on the stand if you want to call him.

Mr. Boardman: Does your Honor rule?

The Vice Chancellor: The objection is that the paper is not an original. The objection, plainly, is good.

Mr. Boardman: I woul like to have a direction that the witness shall produce it.

The Vice Chancellor: You can proceed in the regular legal way. If you have subpeoned Mr. Farrier *duces tecum,* put him on the stand and find out if he has brought it or not.

Mr. Boardman: I do not want to vouch for Mr. Farrier's accuracy nor general credibility. I offer in evidence copy of an indenture of mortgage between the Interstate Lumber Company of New Jersey and the Southern Seabord Lumber Corporation, dated December 2, 1915.

Mr. Carrick: Objected to as not an original.

Mr. Boardman: Vice Chancellor Lane will come here this afternoon and testify if we insist upon it, and the only way I can prove these copies, that I know of, is by his coming here.

OLDEN H. HETRICK, sworn for the defendants:

Mr. Boardman: I would like to have Mr. Francis make an offer of certain minutes of the Interstate Lumber Company.

Mr. Francis: I offer in evidence from the minute book of the directors and incorporators of the Interstate Lumber Company at page 1 the following:

"Minutes of first meeting of incorporators and subscribers to the capital stock of the Interstate Lumber Company.

The first meeting of the corporation was held on the 29th day of August, 1912 at four thirty o'clock, in the afternoon, at the registered office of the Company No. 70, Montgomery Street, Jersey City, N. J., pursuant to a written waiver of notice signed by all the incorporators, fixing said time and place. All the incorporators were personally present as follows:

John F. Hefferman	5 shares
Thomas F. P. Camera	5 shares
Guert G. Jackson	5 shares"

Reading of Minutes

I will read further from page 9

"The amount of the total authorized capital stock of this corporation is $150,000 divided into 1500 shares of the par value of $100 each."

Further reading from page 27 of the same minutes.

"The chairman called for subscriptions to the capital stock of the company and the following subscriptions were received.

John F. Hefferman	5 shares
Thomas F. P. Camera	5 shares
Guert G. Jackson	5 shares"
Ernest Dickman	494 shares
Charles L. Curtis	1 share"

The chairman then called for payment of subscriptions to the secretary which were made and the secretary thereupon reported that the entire capital stock of the company had been subscribed for and paid in full. Now, I will read from page 30, from the minutes of the first meeting of the directors of the Interstate Lumber Co., page 31.

"The first meeting of the Board of directors of the Interstate Lumber Company was held at the registered office of the company No. 70 Montgomery Street, Jersey City, New Jersey, on the 29th day of August, 1912, at 5:15 o'clock in the afternoon * * * The following gentlemen were duly unanimously elected officers of the company to serve for one year and until their successors were elected and qualified.

Reading of Minutes

President	Thomas F. P. Camera
Vice President	Guert G. Jackson
Secretary	Guert G. Jackson
Treasurer	Ernest Dickman."

I also read from the minutes of directors on page 37 as follows:

"The adjourned meeting of the directors of the Interstate Lumber Company was held at the office of The First National Bank, Jersey City, New Jersey, on Friday, September 13, 1912, at 3 o'clock in the afternoon * * * Mr. Jackson reported that the assets and property formerly belonging to the Charles F. Partridge Lumber Company a New Jersey corporation which had been purchased by Edward J. Dunn of Elmira, N. Y., have been transferred to Mr. Edward M. Farrier of Jersey City, N. J., and Mr. Farrier was ready and willing to transfer said assets and property."

I will read from page 56

"Minutes of meeting of the directors of the Interstate Lumber Company held at the office of the company, No. 11 Broadway, Manhattan, New York City on Tuesday, February 4, 1913, at three thirty o'clock in the afternoon. The President reported that pursuant to a resolution of the board at the meeting held January 8, 1913, the interest due the associated banks amounting on $33,030.19, on notes held by them, amounting to $5,691.65 was paid on that date and now notes dated January 13, 1913,

due May 13, 1913, amounting to $274,092.10 were issued to the associated banks in adjustment of all claims held by them against the Interstate Lumber Company. After discussion it was decided to make to the Commercial agency a rough statement of assets of the company and the following was adopted, 'our capital stock, fully paid, $150,000. The surplus and undivided profits amount to about $50,000. We carry a stock of hardwood lumber of about 4,000,000 feet, valued at $200,000. Accounts, bills receivable amounting to about $60,000 cash on hand and in banks averages about $10,000. We have real estate in Jersey City which we value at $90,000, which we purchased subject to a mortgage which has been reduced by us to $38,400. The equipment at the different yards amounts to about $15,000.' "

Referring back to page 56, I wish to also read that there were present at the meeting Minas A. Cheney, Edward M. Farrier, Edward J. Dunn, C. B. Robinson, and Guert G. Jackson, being all of the members of the Board at the time this statement to the Commercial agency was issued.

I new read from page 65

"Minutes of meeting of the Board of directors of the Interstate Lumber Company held at the office of the company No. 11 Broadway, Manhattan, New York, Friday, June 6, 1913, at 3:30 o'clock in the afternoon. The secretary reported that pursuant to a resolution of the Board of its

last meeting the company issued in adjustment of its notes held by the associated banks, due May 13, 1913, new notes, due September 13, 1913, as follows:

New Money	$95,721.77
Contingent Liabilities	71,015.65
Direct Liabilities	68,395.10
Making a total of	$235,132.52."

I will now read from pages 75 and 76

"Meeting of Board of directors of the Interstate Lumber Company, October 6, 1913. There being no quorum present the meeting adjourned until October 13, 1913, at three o'clock in the afternoon."

"Postponed meeting of the board of directors of the Interstate Lumber Company held at the office of the company No. 11 Broadway, Manhattan, New York. Monday, October 13, 1913, at 3:30 o'clock in the afternoon. The secretary further reports that pursuant to a resolution of this board at its last meeting the company issued the following notes in adjustment of the notes due September 13, 1913, held by the associated banks.

Direct Liabilities	$57,545.87
Contingent Liabilities	69,113.35
New Money	76,534.96."

I will also read from page 85

"Minutes of the meeting of the Board of Directors of the Interstate Lumber Com-

pany, held at the office of the Company No. 11 Broadway, Manhattan, New York, Tuesday, January 6, 1914 at three thirty o'clock in the afternoon. Present: Messrs. M. A. Cheney, Edward J. Dunn, E. M. Farrier, C. B. Robinson and Guert G. Jackson. The president reports the condition of the company as of December 13, 1913, as follows: 'After various expense items have been charged to, lumber account, also after inventory has been entered.' "

Then there are two or three long pages and I offer in evidence the statement on pages 86 and 87, showing the debit and credit items.

The Vice Chancellor: The pages are offered. It is hardly necessary to read them, unless Judge Carrick wishes to hear it.

Mr. Carrick: I object to it all as irrelevant. It does not seem to me it has any bearing on the issue.

Mr. Francis: We are going to show that these entire assets are now held by—

The Vice Chancellor: No matter, I will admit it subject to the objection.

Mr. Francis: I was going to show that the total assets at that time were $524,-405.60, according to their own representations.

I will now read from the minutes of January 19, 1914, at page 89

"The secretary further reports that pursuant to a resolution of the board of directors at its last meeting a five per cent dividend amounting to $6,305.62 was

paid to the associated banks, January 13, 1914, on the new moneys subscribed by them and $4,307.95, being the amount of interest due on the notes of the Interstate Lumber Company held by the associated banks, to January 13, 1914. That new notes were issued to the associated banks as follows in adjustment of their claims:

Direct Liabilities	$57,395.59
Contingent Liabilities	68,970.35
New Money	70,139.39."

Reading from pages 109, 111, and 112.

"Minutes as corrected, of the meeting of the Board of Directors of the Interstate Lumber Company, held at the Jersey City office of the Company, Van Horn Street, Jersey City, Tuesday, October 13, 1914, at 5 o'clock in the afternoon. Present: Messrs. Minas A. Cheney, President; Guert G. Jackson, Vice President and Secretary; Edward M. Farrier, Treasurer; Mr. C. B. Robinson and Mr. Edward J. Dunn * * * Neither Mr. Cheney nor Mr. Jackson offering any evidence to refute the charges they were severally removed from office upon a motion being made and seconded and regularly put and carried by the following vote: Aye, Messrs. Dunn, Robinson and Farrier. Nay, Messrs. Cheney and Jackson. The President of the company declined to put the foregoing motion and under the direction of the majority of the Board the Vice President took

the chair and put the motion and the motion was carried as stated above. The Company being without a President, Vice President and Secretary. Mr. Farrier nominated Mr. C. B. Robinson as President, which nomination was seconded by Mr. Dunn, and there being no further nominations the board proceeded to the election of a President which resulted in the election of C. B. Robinson by the following vote: Aye, Messrs. Dunn, Farrier and Robinson. Nay, Mr. Jackson. Mr. Farrier then nominated Mr. Edward J. Dunn as Vice President of the company which nomination was seconded by C. B. Robinson and there being no further nominations, Mr. Edward J. Dunn was elected vice president of the company by the following vote: Aye, Messrs. Robinson, Farrier and Dunn. Nay, Mr. Jackson. Mr. Robinson then nominated Edward M. Farrier as secretary of the company which nomination was seconded by Mr. Edward J. Dunn and there being no further nominations Mr. Farrier was elected secretary by the following vote: Aye, Messrs. Dunn, Robinson and Farrier. Nay, Mr. Jackson."

I will now read from page 119

"Meeting of the Board of Directors of the Interstate Lumber Co. held in the office of the Lincoln Trust Co., December 12, 1914. Present, President Robinson, Secretary Farrier, Messrs. Cheney, Dunn, and Jackson. All directors present signified their assent to waive notice of meeting. On

New Jersey State Library

motion of Mr. Dunn, seconded by Mr. Jackson, it was unanimously resolved that the proper officers do, and they are hereby authorized to, execute the following agreement, and to perform all acts on the part of the Interstate Lumber Company necessary to carry the same into effect."

Then follows a copy of the December 12, 1914, agreement on pages 119, 120, 121, 122, 123, 124 and 125.

Mr. Boardman: In order to fix a date I offer in evidence an order appointing Merrit Lane, Esq., receiver of the Interstate Lumber Company made in a cause wherein Edward B. Hamilton and others were complainants and the Interstate Lumber Company, defendant. Order advised on the 26th day of June, 1915 and filed June 28, 1915.

The Vice Chancellor: From the original files?

Mr. Boardman: From the original files. Also the oath of the receiver dated the 28th day of June, 1915 and filed the 30th day of June, 1915. They are received, are they?

The Vice Chancellor: Certainly.

DIRECT-EXAMINATION (of Mr. Hetrick) by Mr. Boardman:

Q. You were the bookkeeper of the Interstate Lumber Company at one time? A. Yes, sir.

Q. You are here today under a subpoena *duces tecum?* A. Yes, sir.

Q. That called upon you to produce the books of the Interstate Lumber Company. Did you produce any books of the Interstate Lumber Company? A. No, sir.

Q. Did you have any in your possession? A. No, sir.

Q. Or under your control? A. No, sir.

Q. Or any correspondence? A. No, sir.

Q. Or of the committee? A. No, sir.

Q. Or the banks. A. No, sir.

Q. What period did your services cover? A. As what?

Q. As bookkeeper of the Interstate Lumber Company. A. From sometime in the fall of 1912 until the latter part of June, 1915.

Q. You were there at the time Mr. Merritt Lane was appointed receiver? A. Yes, sir.

Q. And he came there and took possession while you were there, did he? A. Yes, he came there.

Q. Did you occupy any other position beside bookkeeper at any other time in the Interstate Lumber Co.? A. A short time.

Q. What position did you hold? A. Assistant treasurer.

Q. When was that? A. From some time early in January 1915, up until the receiver was appointed.

Q. Was that January the second? A. No, it was later than that, I could not tell you just exactly.

Q. As bookkeeper what books did you keep? A. We had regular lumber books, ledger—

Q. Well, never mind. Was there any change in your system, dating from January 2, 1915? A. In what way?

Q. In any way? A. Well, I don't just know that I understand your question.

Q. Did you act for the committee of banks after January 2, 1916, in conjunction with your services as the Interestate Bookkeeper? A. I was employed by the Interstate right along at that time.

Q. I did not ask you that (last question read to witness). A. In answering that question I might say that the accounts and the lumber had been assigned and kept on the books."

Q. How? A. The lumber that was sold, was entered on the books.

Q. Of the Interstate Lumber Company? A. Yes, sir.

Q. Was it entered on any book of the committee of banks? A. They were all books of the Interstate Lumber Company.

Q. Where was the money derived from the sale of lumber deposited? A. In the Lincoln Trust Company.

Q. To whose credit? A. To the credit of Edward M. Farrier, Secretary.

Q. Secretary of what? A. Of the bank committee.

Q. How did that account appear in the Interstate Lumber Company's books? A. Just under that heading.

Q. That is, the bank account appeared in that shape, did it? A. Yes, sir.

Q. Was there anything in the books to differentiate between lumber sold after January 2, 1915, for the credit of the Interstate, and lumber sold for the credit of the committee of banks? A. Yes, sir.

Q. Will you tell us what the system followed was? A. There were two different lots of books.

Q. There were two sets of books kept? A. Yes, sir.

Q. One for the bank committee and one for the Interstate Lumber Company? A. One that had the accounts of the committee in, together with other items, the other set had the sales of lumber of the Interstate Lumber Company only from that time on.

Q. After the last part of June when Mr. Lane came in, in whose employ was you? A. Of the bank committee.

Q. How long did that employment continue? A. That was I think up until September last year.

Q. September of what year? A. Last year.

Q. 1916. A. Yes, sir.

Q. Was any lumber transferred from the Interstate Lumber Company to the bank committee after the middle of June, 1916?

Mr. Carrick: I think I ought to interpose an objection. It does not seem to me that this examination, as developed now, has any bearing at all on the issues which we are here to try.

The Vice Chancellor: I have not been able to see any relation between the testimony that has been taken for some time past and anything we have on trial.

Why was it necessary to go into the history of these matters, the formation of the Interstate Lumber Company, the history of that company and its insolvency?

Proceed, however, so much time is wasted in talk that I would rather take the testimony than have so much argument about it. If counsel think they can base an argu-

ment on this testimony, I am inclined to let them go on without discussing the matter now.

Mr. Boardman: We are drawing evidence from every possible source and it is difficult and laborious.

The Vice Chancellor: It is not a question of the source of the testimony, but of its relevancy. The question is, what is the status of this land which was sold under the foreclosure decree of the Montclair Savings Bank, bought in by the Montclair Savings Bank and then, by an independent deal, transferred to somebody who thought he had an interest in the land and a right to make some money out of it. What relation to that matter all this history of these corporations has I cannot see. There is a slight relation between the status of the notes for $8000 and this land, and I do not express any opinion about that.

I do not limit the testimony at all, but this testimony does not seem to help us in determining the status of the notes of $8,000.

Mr. Boardman: I want to call your Honor's attention to this—

The Vice Chancellor: I am going to let you go on, I think that is the shortest way. If you base an argument on this afterwards I shall be glad to hear you with an open mind, and if you can show me I am in error, I will say so.

Q. (Last question read to witness as follows: "Was any lumber transferred by the Interstate Lumber Company to the Bank Committee after the middle of June, 1916?)" A. Not that I know of.

Q. Do the books show the transfer of any property by the Interstate Lumber Company to Mr. Farrier or Mr. Robinson, or the creditors committee, after June 17, 1915? A. Not that I know of.

Q. Did you give any different testimony before the referee, Mr. Demarest? A. I don't know as I did. Do you have reference to a dividend that was paid?

Q. What was that? A. There was some dividend paid along some time in June or July.

Q. After Mr. Lane came in? A. Nothing was transferred—no not by the Interstate Lumber Co., no.

Q. What was that dividend? A. Simply a dividend that was paid by the committee to the banks.

By the Vice Chancellor: Q. A dividend on what? A. Well on the payment of those notes.

Q. Who paid the dividends? A. Mr. Farrier, Secretary of the Bank Committee.

Q. I don't understand from what source that dividend came? A. This lumber that had been assigned was all deposited in the Bank Committee account; Mr. Farrier was secretary.

Further DIRECT-EXAMINATION:

Q. Now will you tell us what notes was surrendered about January 2, 1915, the Partridge notes? A. I do not know what notes really were surrendered.

Q. What notes were to be surrendered?

The Vice Chancellor: Is not that in the agreement?

Mr. Boardman: I suppose it is.

Q. Can you tell us what notes were surrendered?

A. I don't really know, no, sir.

Q. Can you give us the approximate figures?

Mr. Carrick: I object to that.

The Vice Chancellor: How is it competent?

Mr. Boardman: Well, perhaps not.

Q. What, can you tell us was done in relation to the original Partridge notes after the 12th of December, 1914, and about the 2d of January, 1916? A. No, sir; I cannot tell you that.

Q. That is not the question. A. What is the question?

Q. (Question read as follows: "What, can you tell us, was done in relation to the original Partridge notes after the 12th of December, 1914, and about the 2d of January, 1916?)" A. No, sir.

Q. Do you mean you cannot tell us anything about them? A. I do not know what was actually done with them for they were not in my possession..

Q. Did you ever see them? A. I don't think I did, I don't remember of ever seeing them.

Q. Did they appear on the books of the Interstate Lumber Company? A. No, sir, they did not.

Q. Did they appear on the books of the Committee of Banks? A. I don't know anything about the books of the Committee of Banks.

Q. On any books that you kept? A. No, sir.

Q. (Handing witness papers) Can you tell me what these papers are that I show you? A. Inventory of the lumber in the various yards.

Q. Made when? A. The date is on it; December 14, 1914.

Q. Do you know whether that inventory was taken at that time? A. I think it was, along that time.

Q. These were files of the Interstate Lumber Company, were they? A. Well they were when the inventory was taken.

Q. Can you tell us what the inventory value of the lumber was at that time.

Mr. Carrick: Does not the paper speak for itself?

Mr. Boardman: Yes, but I did not think it was worth while offering it. I will offer it if you say so.

Mr. Carrick: If you want it in you should offer it.

Mr. Boardman: I offer it in evidence.

Mr. Carrick: I object to it as irrelevant.

The Vice Chancellor: How is it irrelevant?

Mr. Boardman: It is one of the transactions about December 12th.

The Vice Chancellor: How is this an instrument of evidence? Here are three or four separate documents containing a large number of figures. I do not understand they are signed by anybody or are official papers. They appear to be somebody's memoranda.

Q. Are they signed? A. Per H. T. Stobel.

Q. Who is he? A. He is a man employed by us at that time.

By the Vice Chancellor: Q. And who took the inventory? A. He probably helped to take it.

Q. And made, or helped make, the valuations? A. Yes, sir.

The Vice Chancellor: How is it competent.

Further DIRECT-EXAMINATION:

Q. Does that inventory value appear on the books of the Interstate Lumber Company? A. No, sir.

Q. Does it appear on the books kept by you of the bank committee? A. No, sir, I do not think it does.

Q. On December 12, 1914, how many of the direct and contingent notes were still unpaid? A. I cannot recall the exact amount without referring to the books.

Q. Are the books here? A. No, sir.

Q. Is this one of the books, the ledger? A. Why that is not the ledger account.

Q. Do you mean the No. 1 ledger? A. Yes, sir.

Mr. Boardman: Have you No. 1 ledger?

Mr. Carrick: If you want to be certain about that you should call Mr. Farrier. These are all Lincoln Trust Company books.

Q. Did you take the books away from the bankruptcy court? A. I took them away from there at different times, yes, sir.

Q. Where did you take them when you took them? A. To the office of the Interstate Lumber Company.

Q. Where did you take them the last time? A. I think I took them up there.

Q. Where was that? A. Up at their office, the plant up there on Van Horn Street.

Q. Whose office is that now? A. I do not know whose office it is now, I am not connected with the concern in any way.

Q. Under whose direction did you act when you took those books away from the bankruptcy court? A. Well, Mr. Robinson, Mr. Farrier.

Q. Did he tell you to take them up to the Interstate Lumber Company? A. I do not know as they told me to take them there; that is where I got them from and that is where I took them back.

Q. Where did you last see the books? A. Up there.

Mr. Boardman: I will call Mr. Farrier, May I interrupt this examination?

EDWIN M. FARRIER, sworn for the above named defendants:

Direct-examination by Mr. Hendrickson:

Q. Do you know where the account books of the Interstate Lumber Company are? A. I do not know. I have a very good idea though.

Q. What is your good idea? A. In the office of Herbert Clark Gilson.

Q. Are the books of the business of the Committee showing the sales of lumber that they took from the Interstate Lumber Company in Mr. Gilson's office also? A. I believe so.

Q. Do you know how they got to Mr. Gilson's office? A. I think Mr. Gilson had them at the time we were before Mr. Demarest.

Q. Do you know how they got to Mr. Gilson's office? A. I think Mr. Hetrick took them there.

Q. At whose request? A. I cannot answer positively, but I presume Mr. Gilson's.

Q. Not yours? A. Not that I can recall.

Q. Not that you can recall? A. No.

Q. Don't you recall that that was your instruction? A. No, I do not recall that was my instruction.

By Mr. Boardman: Q. About January 2, 1915, was there an assignment of accounts made by the Interstate Lumber Company to certain banks? A. There was.

Q. You were subpoenaed to produce that, among other papers, today or yesterday? A. I was subpoenaed to produce it but I did not have it.

Q. Who had it? A. I presume Mr. Lane.

Q. (Handing witness a paper) Will you look at this; is that a copy of it? A. I believe it is an exact copy.

Mr. Boardman: I offer it in evidenoe.

The Vice Chancellor: There being no objection it will be received.

Mr. Carrick: The only objection is as to its relevancy.

Mr. Boardman: I offer in evidence an assignment of accounts from the Interstate Lumber Company to the Committee representing certain banks, dated January 2, 1915.

Marked Exhibit No. 21 for defendants January 11, 1917, H. W. K.

Q. On December 12, 1914, there remained due, or immediately after that, $13,000 of the direct and contingent notes issued by the Interstate Lumber Company. Is that right? A. I cannot an-

swer that without referring to records which I do not believe I have here.

Q. Did you testify in the bankruptcy proceedings that there were about $8,000 of those notes remaining unpaid as of that time, August 1915? A. No. What I think you have reference to is the amount due to the banks over and above $20,000— is that what you have reference to?

Q. And that was $8,000? A. That was about $8,000.

Q. And the Lincoln Trust Company's share of that would be a fraction whose numerator would be $15,246,41 and whose denominator would be the total amount contributed by the bank of new money? A. No, sir.

Q. What would be the fraction? A. The old money.

Q. That is, the Lincoln Company's share would be $21,040— A. Whatever proportion the $21,040 would bear to the total amount of the old indebtedness.

Q. Proved in bankruptcy? A. Yes, sir.

Q. That was about $178,000? A. I think it was.

Q. Roughly then the amount remaining due of that $8,000 was under $1,000 due to the Lincoln Trust Company? A. Well, I will admit that is so without figuring it.

By the Vice Chancellor: Q. What is it you are saying now, Mr. Farrier? A. Why, Vice Chancellor, on the adjustment back in December, 1914, when the adjustment was made with the Southern Seaboard Lumber Company, Minus A. Stewart (?) the Interstate and the Bank Committee.

Q. After this agreement of December 12, 1914? A. In pursuance of that agreement.

Q. Proceed. A. Cheney was to borrow from the Southern Seaboard Lumber Corporation $100,000 on what was known as Series C. Collateral Trust notes; Cheney was to turn those over to the Interstate Lumber Company; The Interstate Lumber Company, in turn, was to turn them over to the Bank Committee. The total indebtedness at that time was approximately one hundred and thirty or one hundred and twenty-eight thousand dollars.

Q. Indebtedness on what? A. On the default payments on the old Partridge paper. He only had $120,000 to pay the $128,000 with and this $8,000 that Mr. Boardman refers to now was that excess which the Series C. Notes would not take care of.

Q. Was this $121,000 contributed by the bank— A. It was held by the Committee.

Q. It finally got back? A. Not entirely. These Series C notes were to run for a period of six, seven, eight and nine years.

Q. That is, the new money? A. No, the old money, and they were to remain in the possession of the Committee and as each series was paid off, $24,000, at the expiration of six years, there would have been a distribution of the money made.

Q. After you made the contribution for the purchase of the assets, which as I recall amounted to upwards of $15,000, did the Lincoln Trust Company put any more money into this matter? A. No, sir.

Q. As I understand it they received back the whole $15,000? A. Oh no, there was some—now I won't say positively, but I think in the neighborhood of $3500 still unpaid.

Q. How much did they receive back of the $18,600, the Partridge notes? A. Yes, I know what you mean. The 23 per cent dividend declared by the Trustee in bankruptcy.

Q. Was that on $18,600 or on $20,000? A. On $21,040.

Q. All they received on that then was the dividend? A. Well, the odd amount, the difference between $18,600 and the $21,040. They were commercial bills receivable and some we collected and some we did not collect.

Q. Then altogether you received all of your $15,000 excepting about $3500 and you received on account of the twenty odd thousand the old indebtedness, of which $18,600 I understand was on the Partridge notes— A. Yes, sir.

Q. You received of that the 23 per cent dividend? A. That is correct.

Q. And some small portion of the three or four thousand dollars of bills you collected? A. Yes, sir.

Q. Is that the way this matter stands today? A. That is the way the matter stands at the present time.

Further DIRECT:

Q. You proportion the amount of the $8,000 for the direct and contingent notes, remaining after the $120,000 was taken out, as about, roughly, a thousand due the Lincoln Trust Company, do you not? A. Well you proportioned it; I assumed it without figuring of it.

Q. Did you testify in response to Mr. Lane's question on August 1, 1916, "Can you refresh your memory as to what portion of the $8,000 was

due to the Lincoln Trust Company? A. About $1,000." A. Well, I made the same admission there that I make here, if that is the figure. I never figured out what the proportion was.

Q. Then to apportion that to the Partridge share you would take 18/21sts? A. Of the $8,000?

Q. Of the $1,000. A. Whatever came to us of our interest, the entire thing.

Q. The $1,000 was what remained of the direct and contingent notes, that roughly, and then the other was the new money, notes, the balance, you said about $3500? A. About $3500 was the new money.

By the Vice Chancellor: Q. I do not understand you. I understood you a little while ago to say you had received on the new money, that is the $15,000, all but about $3500 and that on the notes, originally the Partridge notes and endorsements, and amounting to over $20,000 you had received a dividend of 23 per cent? A. Yes, sir.

Q. And some small portion you collected, in the neighborhood of two or three thousand dollars? A. That is all the cash we received.

Q. What is the amount of that? A. $21,040.

Q. Twenty-three per cent of that would be about what, less than $5,000 would it not?

Mr. Francis: If you will let me ask two or three questions I think I can clear this all up.

The Vice Chancellor: I will give you an opportunity a little later.

Q. How much did you collect on the bills receivable, about how much? A. You mean those which the bank held prior to the original sale—you see all those that was assigned—do you mean assigned under the agreement of December, 1914?

Q. No, I mean— A. What the banks originally claimed.

Q. What the banks originally claimed. You proved a claim for $21,040? A. Yes, sir.

Q. You got 23 per cent of that, which is about $5,000, and you got a little more on a portion of the claims that were collected, the Partridge Corporation presumably being secondarily liable. About how much did you get? A. I should say, without referring to the bank records, in the neighborhood of $1200.

Q. Then about $6,000 would be the total amount you received, that you have received up to date on your original claim of $21,050, would it? A. Yes, sir.

Q. There is still an indebtedness of upwards of $17,000? A. Well, in the neighborhood of $15,000.

Q. Unpaid? A. Yes, sir.

Q. Is there any cash anywhere that you have a lien on for the payment of that, anything in the hands of the Bank Committee or elsewhere? A. Yes, sir.

Q. How much.

Mr. Carrick: I might say to your Honor Mr. Farrier has here a statement.

The Vice Chancellor: I am only getting an idea of what the testimony was in regard to the $1,000, for I did not understand it.

You may take your own course, Mr. Farrier. I am proceeding of course more or less blindly. I would like to understand what you mean by testifying that about $1,000 is the present sum that remains due the Lincoln Trust Company.

Witness: Just $8,000 over the $120,000 of the

Southern Seaboard Company's notes eventually came to the Committee, yet the Committee's claim against the Interstate was $1,000.

Q. Did you collect $128,000 on the notes of the Southern Seaboard? A. No, the Southern Seaboard Lumber Company is now in bankruptcy.

Q. Yes? A. So that the excess $8,000 over the $120,000 which was due the Bank Committee was to be paid for out of lumber sold.

Q. You were testifying then that the share of the Lincoln Trust Company— A. Well, Mr. Boardman says that the share of the Lincoln Trust Company in this $8,000 would amount to $1,000 and I assumed, for the sake of argument, that figure was correct.

By Mr. Francis: Q. In December, 1914, or the date the Bank Committee agreed to cancel and surrender $120,000 of those direct and contingent notes—is not that right?

The Vice Chancellor: The agreement speaks for itself.

A. Why, no. No, I will have to take issue with you on that, Mr. Francis. The Committee would have absolutely no right to cancel the notes.

Q. After that contract was consummated the Interstate Lumber Company transferred this property pursuant to it, to the Bank Committee; there was left in your hands only about $13,000 direct and contingent notes unpaid due the bank, is not that correct? A. I don't know.

Q. Did you not testify to that before Mr. Demarest? A. I don't think I did.

Q. Don't you know the exact amount was a little over $13,000. Didn't you testify before Mr. Demarest that at the time you were testifying

there were about $8,000 of the direct and contingent notes still unpaid?

The Vice Chancellor: No objection is made to this testimony but it is a waste of time, and very improper, to ask this witness whether he testified to a certain thing or not.

Q. Well, is it true? A. No, I cannot admit that it is.

The Vice Chancellor: Unless the purpose is to contradict.

Q. Didn't you testify that all of your claim in the direct and contingent notes was about $1,000 at that time against the Interstate Lumber Company? A. The same as I testify, now, to Mr. Boardman.

Q. Answer my question. A. No, I cannot answer some of your questions, Mr. Francis.

The Vice Chancellor: Evidently this is not intended to contradict the witness. How can you ask him whether he testified so and so in another case, making his testimony in that case testimony in this case?

Mr. Carrick: I did not object to it but I must object to it now, your Honor.

The Vice Chancellor: It is overruled.

Q. Perhaps this will refresh your memory. In your testimony taken by stenographer— A. Now, before you do that—

Q. One minute, I am talking— A. I know you are, and I am interrupting you. I will not submit to anything that stenographer took in that hearing. In my judgment the stenographer was very incompetent.

Q. This is to see if I can refresh your memory

as to what portion of the $8,000 was due to the Lincoln Trust Company. I will not read the question put to you, but your answer is "About $1,000." Did you make any such statement as that down there?

Mr. Carrick: I object to that as improper.

The Vice Chancellor: How is it competent to ask this witness whether he testified to the Referee in Bankruptcy so and so?

Mr. Francis: I will ask him a further question, whether it is true or not.

The Vice Chancellor: How is it competent to ask him whether he testified to that? It is not claimed this is an admission of the Lincoln Trust Company, just an independent item of proof and your question does not tend to contradict the witness.

Mr. Boardman: This was read into the testimony yesterday: "Do you know whether there is a balance of $8000 on direct and contingent notes?"

That is the $8000 we have been talking about or that you have reference to.

Witness: No, it is not.

By Mr. Boardman: Q. What is that $8000? A. I have just explained that to the Vice Chancellor.

Q. That is what I say, the difference between $120,000 and the $128,000. A. Exactly.

Q. Will you explain the direct and contingent? A. The direct and contingent—there was paper held by the banks executed by the Partridge Lumber Company and Mrs. Partridge, to distinguish

that kind of paper from the usual commercial bills which Partridge had taken in, due for merchandise; that we called a contingent liability. Partridge was liable contingently, if the paper had not been paid by the maker the Partridge Lumber Company was liable.

By the Vice Chancellor: Q. The other which was discounted in your bank with the endorsement of Mrs. Partridge on, or where she was maker and the Partridge Company endorsed it— A. That we called direct.

Q. It made no difference which was the maker or which was the endorser, did it? A. No, sir.

Q. And that is classified as direct? A. Yes, sir.

By Mr Boardman: Q. That is classified as direct by the Lincoln Trust Company? A. By the entire community.

Q. I call your attention to the fact that the Hudson County National Bank put in $34,000 under the agreement of the blank day of June, 1912, in the contingent column. That was the same kind of paper, was it not? A. I never saw their paper.

By the Vice Chancellor: Q. According to your explanation, Mr. Farrier, may that $34000 of paper all have been the ordinary business paper taken by the Partridge Company from its customers and then discounted in the Hudson County Bank? A. It is my opinion, while I never saw the paper it is my opinion that they put down the lump sum and happened to get it down in the contingent column. Now, I think they had both kinds of paper.

By Mr. Boardman: Q. But the $18,600 in the direct column— A. That is mine.

Q. —of the Lincoln Trust Company—were those notes made by Mrs. Partridge? A. Yes, sir.

Q. Where Partridge was named as maker and the Partridge Lumber Company named as payee and endorser? A. Yes, sir.

By the Vice Chancellor: Q. There was some paper, was there not, where the Partridge Lumber Company was the maker and Mrs. Partridge the endorser? A. Not that I know.

Mr. Hendrickson: Mr. Gilson says the only account book of the Interstate Lumber Company he has in his possession is the book which is here and which I had yesterday. The receiver has not those books in his possession. I am inclined to think the books are in the safe still, up in the old plant of the Interstate Lumber Company, where Mr. Hetrick placed them. We do not know the combination of the safe.

The Vice Chancellor: They are in Mr. Lane's possession?

Mr. Hendrickson: No.

The Vice Chancellor: They are vested in him, presumably, he is only allowing them to remain in some place.

Mr. Hendrickson: The difficulty is that when the petition in bankruptcy was filed and the books and papers were taken down there and the banks wanted to examine the books and have their accountant take these books in their possession, as he did, with the consent of the parties, the books, or some of the books, disappeared somewhere and we cannot find them. The Receiver, Mr. Harry Lane, has not the books in his possession. He was subpoenaed to produce them. Mr. Farrier testified there that they

were in Mr. Gilson's office. I made inquiry of Mr. Gilson and he says they are not there. Mr. Gilson testified there that he last placed them in the old plant of the Lumber Company. That is an unfortunate circumstance arising out of the bankruptcy proceedings—that these books have been put somewhere where the complainant in this case cannot get his hands on them.

Mr. Boardman: I understood Mr. Farrier was to get them from Mr. Smith under directions from Mr. Lane.

Mr. Farrier: Mr. Lane spoke to me about the minute book and I have it here; he said nothing about the other books at all.

The Vice Chancellor: What effort did counsel make to get at these books?

This is not the time to investigate the question of the location of books which are necessary instruments of evidence.

Mr. Boardman: I subpoenaed everyone. My opinion was they were in Mr. Demarest's office. We go there and they are not there.

The Vice Chancellor: Is there any doubt that a competent man by inquiry among these gentlemen could have located these books?

Mr. Hendrickson: I think it is, likely, my fault to a degree.

The Vice Chancellor: You were bound to make inquiry.

Mr. Hendrickson: I have been very closely connected with the Interstate Lum-

ber Company and I made inquiry by Mr. Lane and asked Harry Lane if he could locate them, and he could not. Mr. Boardman spoke to me and I knew who he was going to subpoena to produce those books and I said they had them in their possession.

The Vice Chancellor: Who had?

Mr. Hendrickson: Mr. Farrier has those books in his possession; I will not say in his actual, physical possession, but they are under his control.

The Vice Chancellor: I understood him to say he has not. Do you want to interrogate him on that subject?

Mr. Hendrickson: I did interrogate him.

The Vice Chancellor: My recollection is he said he has not the books and does not know where they are.

Mr. Hendrickson: The testimony of the bookkeeper is that he took the books and had them last in the bankruptcy proceedings and put them somewhere.

The Vice Chancellor: It is perfectly plain that if these books are competent instruments of evidence on this trial it was the duty of counsel who wishes to produce them to make diligent search to find them.

Mr. Boardman: I did, and I will not recede a step. I have done everything any counsel ever did in a case.

The Vice Chancellor: Where did you trace them to?

Mr. Boardman: To Mr. Demarest's office. They have been there all summer and

I subpoenaed Mr. Demarest and Mr. Lane —

The Vice Chancellor: How did you trace them to Mr. Demarest's office?

Mr. Boardman: I think Mr. Hendrickson told me that.

The Vice Chancellor: You also subponaed Mr. Farrier to produce them?

Mr. Boardman: Yes. He has had more or less control over them.

The Vice Chancellor: Did you subpoena anyone else to produce them?

Mr. Boardman: I subpoenaed Mr. Gould, I subpoenaed Mr. Lane, and I think I subpoenaed Mr. Demarest, yes, I am sure I did.

The Vice Chancellor: You subpoenaed four or five different persons, having different offices, to produce those same books?

Mr. Boardman: I did.

The Vice Chancellor: That is not the proper way to prepare your case for trial. It is perfectly easy to get access to books if they are in the possession of another party, by an order of the Court.

Mr. Boardman: They were in the possession of a friendly party, the Receiver.

The Vice Chancellor: That makes no difference. He was not a party to this suit. What do you intend to do about this?

Mr. Boardman: It was my understanding that Mr. Harry Lane was going to ask Mr. Farrier and he was going to get them from Mr. Smith, whose office I think they are in.

The Vice Chancellor: Did you employ

any person or go yourself—did any person go and question these different parties and learn what they had to say about the location of the books? That is work counsel were bound to do in the preparation for trial.

Mr. Boardman: They are the property of the Receiver; they have been in his possession; they were in his possession; I understand he was to produce them. That was the arrangement. Mr. Lane is under subpoena. He is one of the Vice Chancellors and is willing to come in and witness and tell us what he knows about them, whenever we can get them in, at the afternoon session.

The Vice Chancellor: What other evidence do you wish to put in?

Mr. Boardman: I want to read some more of Mr. Farrier's testimony.

Mr. Carrick: Mr. Farrier is here under subpoena *duces tecum* and it says nothing of the books of the Interstate Lumber Company.

Mr. Boardman: I can read in three or four pages of this testimony which we had the other day.

The Vice Chancellor: Testimony of whom?

Mr. Boardman: Of Farrier.

The Vice Chancellor: In what aspect do you offer it?

Mr. Boardman: Under the arrangement of yesterday.

The Vice Chancellor: That was the book should take the place of the stenographer.

The question arises, how it is competent.

Mr. Boardman: As an admission against interest.

The Vice Chancellor: Do you think Mr. Farrier took the place of the Lincoln Trust Company and could make admissions for them?

Mr. Boardman: He came there representing them and was qualified for that very purpose by counsel.

The Vice Chancellor: I understand you offer these statements of Mr. Farrier which happen to be under oath. That does not affect their competency at all. You offer these statements made by Mr. Farrier as statements made by the Lincoln Trust Company?

Mr. Boardman: Yes.

The Vice Chancellor: How could Mr. Farrier at this time, in the summer of 1916, when placed on the stand as a witness and compelled to speak, make admissions for the Lincoln Trust Company of which he was an officer in regard to matters which occurred years before?

Mr. Boardman: He appeared voluntarily. He appeared to support a contention that the Lincoln Trust Company were agitating. He was there representing the Lincoln Trust Company and volunteered that his bank was willing to do certain things; therefore he was talking for the Lincoln Trust Company.

The Vice Chancellor: You say he appeared for the Lincoln Trust Company; what do you mean by that?

Mr. Boardman: For the Lincoln Trust Company; in behalf of the Lincoln Trust Company.

The Vice Chancellor: He was put on the stand as a witness was he not? Who put him on?

Mr. Boardman: After there had been some volunteering that the Lincoln Trust Company was willing to go in and take the place of the creditor who wanted to get out, Mr. Gilson put Mr. Farrier on to testify that the Lincoln Trust Company—and Mr. Smith co-operating, who was Mr. Farrier's and the Bank's attorney in the matter—put him on to prove, and to speak for the bank in that matter and to support that claim.

The Vice Chancellor: Is it not perfectly plain that this was a bankruptcy investigation, a proceeding *in rem* and this gentleman was put on the stand, whether he went on voluntarily or was placed on the stand, he was put on the stand to give testimony in regard to the issues in the matter and the question is how, because he happened to be the President of the Lincoln Trust Company in August, 1916, and also happened to be President of the Lincoln Trust Company at the time of the transaction now under investigation, in 1912, 1913 and 1914—how does it come that he could make admissions in 1916 that would bind the Lincoln Trust Company? Is it not perfectly well settled by an old, old rule of evidence that no agent of a party, however

complete his authority to represent the party, can make statements that are evidential against his principle? If they are made at the time of the transaction they are competent, but if they are made two years after they are not.

Mr. Farrier is here. If you want to prove the things you think he swore to on this occasion you can put him on the stand and get original testimony from him as to the facts. What he said in August 1916, is a matter of no consequence now, and you do not show that it binds in any way the Lincoln Trust Company.

Mr. Boardman: He was testifying as to a present condition for a present purpose. The question I want to lead up to is "Can you refresh your memory as to what proportion of the $8,000 was due to the Lincoln Trust Company," and that was a present condition there and then.

The Vice Chancellor: In other words you want to prove the fact that he testified to, is it not so?

Mr. Boardman: As to a present condition.

The Vice Chancellor: You want to prove the facts he testified to last August?

Mr. Boardman: Yes, sir.

The Vice Chancellor: Mr. Farrier is here now. What he testified to last August will not prove anything in this case. If, while on the stand, you asked him those same questions and he testified differently, the Court might allow you, even though

you put him on the stand and made him your own witness, to ask him whether he did not testify differently. That is all. Of course if the other side put him on the stand you could use this deposition in the way indicated, to contradict him. But before you did that counsel are well aware they would have to ask the witness if he did not so testify last August, and then produce the record.

Mr. Carrick: This, of course, will have to be by consent. I have Mr. Goldenhorn under subpoena. He is a short witness and I would like to produce him.

SAEBER GOLDENHORN, ESQ., sworn:

Direct-examination by Mr. Carrick:

The Vice Chancellor: Let it be noted that the taking of testimony on the part of the other defendants is suspended and the witness is called on behalf of the Lincoln Trust Company.

Q. You are a lawyer of how many years standing? A. I have been a counsellor since 1898.

Q. You have your office, and practice, in Jersey City? A. Yes, sir.

Q. Do you know Mr. and Mrs. Partridge? A. Yes, sir.

Q. Did you have any relations with them in July and August 1912? A. I did. They were both my clients.

Q. I show you a deed made by Cornelia N. Par-

tridge and her husband to George E. Paul, Exhibit 13, and ask you if you ever saw that before? A. Yes. I drew it.

Q. At whose direction did you draw it? A. At the request of Mr. Charles R. Partridge.

Q. Won't you tell what took place at that time when Mr. Partridge came to see you? A. On the next day preceding the date of this deed of July 30, 1912 Mr. Partridge came to my office late in the afternoon and brought with him a deed of the Montclair property which is described in this deed, from which he told me to make a deed from his wife and himself to some name that he had on a piece of paper, I think the name was George A. Paul. I then made out this deed. This is made on my typewriter and I told Mr. Partridge to bring Mrs. Partridge to the office at 9 o'clock the next morning to execute this deed. I spoke to him about what the deed was given for, I thought at that time the affairs of the Partridge Lumber Company in which he was interested were in mind, and he said he would bring Mrs. Partridge to the office the next morning. He told me there was due to the Lincoln Trust Company some $8,000 and that it was understood that when that $8,000 was to be paid, that then Mrs. Partridge was to get back the deed. "Well" I said "we will discuss that later on, you will have Mrs. Partridge at the office the next morning." The next morning I was not at the office, I was at one of the police courts, and, as is my custom, I telephoned the office and my clerk, Mr. Farrell, spoke to me and said Mr. and Mrs. Partridge were at the office and wanted to acknowledge the deed, what should he do. I said, "You had better get a Com-

missioner of Deeds to take the acknowledgment," and I recognize the handwriting here as the handwriting of Mr. Farrell which changed it from a Master in Chancery of New Jersey to a Commissioner of Deeds for New Jersey.

Q. In the acknowledgment? A. Yes sir, that is in the handwriting of Mr. Farrell, my clerk, as are also the words "Commissioner of Deeds" which is below the signature of Mr. Silverman. I told him to get Mr. Silverman to take the acknowledgment. When I returned to the office I found this deed on my desk with three promissory notes and an agreement. The next day, or that same day, July 31st, if that was the next day, Mr. Farrier or somebody called for this deed and took it away and somebody from Edwards & Smith's office took away the agreement and the promissory notes.

The Vice Chancellor: What agreement do you refer to?

Witness: There was some agreement that the notes were to be impounded with somebody.

Q. I show you a paper which has been marked Number 5 for identification, and also three promissory notes marked respectively Numbers 2, 3 and 4 for identification; are those the notes and the impounding papers that you spoke of? A. I recognize this agreement and these three notes as—well I don't recognize exactly the amount of the notes; I know there were three notes and they aggregated $8,000. May I see if these aggregate that amount?

Q. Yes. A. Yes, these are the three notes and that is the agreement and these were taken away from my office and I think sent over to Mr. Daw-

son in Mr. Edward's office. I won't be sure about it.

By the Vice Chancellor: Q. Did you draw the agreement? A. No, sir, I did not. That is not on my typewriter.

Q. But it was left with the notes? A. It was left with the notes at my office, I don't know by whom, but I know it was left there and I know I turned it over to somebody representing Edwards & Smith's office and I know the notes were to go to Mr. Dawson. I recall it. I see his name mentioned in here, Raymond Dawson. I am pretty sure that is the agreement and those are the notes.

Further DIRECT-EXAMINATION:

Q. Did you at that time, or just prior to that time, have any talk with Mr. Farrier or with Mr. Edward I. Edwards about it? A. I do not recall any.

Q. The only talk that you recall is with Mr. Partridge? A. I think Mr. Edwards or someone from his office took this deed away from my office, that is my recollection of it.

CROSS-EXAMINATION by Mr. Boardman:

Q. How much conversation did you have with Mr. Partridge? A. Oh, I had so much conversation with him; almost every hour of the day he was there for some time.

Q. Did not Mr. Partridge say to you something about a settlement agreement that was going around, that the banks were to sign? A. I do not recall any such conversation.

Q. But you knew there was a settlement proceeding at that time? A. No, I did not know there was any such settlement.

Q. Did you ever see Exhibit Number 10? A. No, sir.

Q. You did not know that there was a proposition of that sort then pending—will you glance through that—amoung the banks? A. (Witness examines paper) I do not recall of ever having seen such an agreement or possessing any knowledge on the subject at all.

Q. Did he tell you anything at all about a conversation that he had with Mr. Edwards? A. He told me of numerous conversations he had had with Mr. Edwards.

Q. I direct your attention to the afternoon where he asked you to draw the deed to Paul? A. He never mentioned Edwards to me then at all.

Q. Did he mention Farrier? A. No. He mentioned the Lincoln Trust Company. He said his wife owed the Lincoln Trust Company this money and was going to give a deed on her home in Montclair and wanted me to draw it.

Q. Didn't you know that the collateral obligation of the wife was unenforceable in this State? A. Well, I knew just at that time that that was so because I had tested out an action for Mrs. Partridge where the Hudson County National Bank sued her on a note which she had made but for which she had received no consideration and the matter had just been referred by Justice Swayze to a Commissioner and I had just won that case for her. But in this particular case, in this Lincoln Trust Company matter, I discussed the matter with her subsequent to the signing of that deed. She came to my office —

Q. Well, never mind, I don't think that is proper. You did not see Mrs. Partridge when she

came in there? A. Not when she executed the deed. I saw her subsequent to the execution of the deed.

Q. How clearly in your mind is the conversation you had with Partridge that afternoon? A. Well, I think it is quite clear in my mind.

Q. Did you know about a Committee of the Banks in existence at that time? A. No, I did not. I heard that there was some suggestion of some Committee being formed and I knew they were in negotiation with a man named Cheney who represented some large concern over in New York.

Q. What more did you know? A. All I knew was that they had not come together, that they were meeting, but there had not been any agreement arrived at.

Q. Did Partridge allude to Cheney at that conversation? A. Not that afternoon. He came in rather late in the afternoon, around half past five, and I know I was quite anxious to get away and he gave me the deed of his Montclair property and told me that his wife was to execute a deed to that name, which was on a yellow piece of paper, for money which she said she owed to the Lincoln Trust Company, some $8,000, and he wanted to know when she would get it back.

Q. Did he mention any other sum, $16,000? A. No, I do not recall any other figures that he mentioned.

Q. He did not mention $16,800? A. I never heard it.

Q. You did not know there were these other notes? A. I knew he owed a large sum of money to the Lincoln Trust Company, but what the amount was I cannot tell you.

Q. What did he say about getting it back? A. He wanted to know if he gave this deed whether he could ever get it back, and I said that under the agreement which he then showed me that the notes were to be impounded, that when those notes were paid Mrs. Partridge would get the deed back. She subsequently spoke to me about it.

Q. I thought the agreement came in the next day? A. I did not say that. I said I had the agreement, I did not say it came in the next day, I said I had the agreement and notes and I left them there. I had the agreement, notes, and this deed.

Q. When? A. I think on the 30th day of July, 1912, but the day before the deed was executed.

Q. When did you first see this agreement of the 3d of August, 1912? A. I saw that—I cannot say when I saw it exactly. I think about the time this deed was executed.

Q. About the time it was executed? A. Yes, sir.

Q. The day it was executed? A. I won't say that, if I did say so I want to correct my testimony because I do not recall exactly.

Q. Do you know why the deed itself is dated the 31st of July, the deed you say you drew up, and the agreement was dated the 3d of August? A. No. All I know is Mr. Dawson sent over to my office some time subsequent to the execution of that deed and took away the agreement and three notes. Who left them there I do not know; they must have been left when I was absent from the office. But I do recall Mrs. Partridge speaking to me about the agreement and asking when she would get the deed back.

By the Vice Chancellor: Q. I understood you to say a moment ago that you looked at this agreement and advised Mr. Partridge in regard to it, and in regard to Mrs. Partridge taking back the land, when you took instructions to draw the deed on July 30th. Is that correct or not? A. No, that is an error. I did not see the agreement at that time.

Q. Have you any reason to believe the agreement was in existence before the day of its date, August 3? A. No, sir. I recall his saying at the time I drew the deed that his wife owed the bank on these three notes $8,000 and they were going to impound the notes and an agreement with somebody in Edward's and Smith's office and I would hear from them later about it. That is my best recollection. Then subsequently, I don't know whether it was two or three days after the deed was executed, these papers were left at my office, the agreement and the three notes. After they were left there, when I got back to the office one day I found them there and they hadn't been there for more than an hour or two when somebody representing Mr. Dawson's office asked that they be delivered to him and I turned over the agreement and the three notes.

Q. You never, with that agreement before you, gave advice to Mr. Partridge in regard to Mrs. Partridge's rights? A. I will not say that, for I saw him almost every day and he spoke about it and it is very likely I did because I recall that subsequent to the delivery of the deed to Mr. Farrier and of this agreement and the notes to Mr. Dawson's office, Mrs. Partridge consulted me about it and wanted to know when she would get the deed back.

Q. Have you any recollection of advising either Mr. or Mrs. Partridge as to their rights under that agreement after you saw it the first time and before it went back to Mr. Dawson? A. I have a recollection; I advised Mr. Partridge at my office, but before that agreement left there. That is my recollection.

Further CROSS-EXAMINATION:

Q. What did you understand was the connection between this agreement and this deed? A. My understanding—

Q. One moment, I won't say that, I guess that is giving you too much latitude. How long did this lay in your office? A. I cannot tell that. It was some time during the same day that I turned it over to Mr. Dawson and it was during that day that Mr. Partridge spoke to me about it and before I delivered it to Mr. Dawson's office.

Q. Did Mr. Partridge, while this was lying in your office say anything to you that connected this paper with the deed? A. Yes.

Q. What did he say at that time? A. He said at that time "Now you remember the deed was delivered the other day?" And I said "yes," And he said "Suppose—" he said "Will the other creditors, the creditors of the Partridge Lumber Company get that property?" And I said "I don't see how they can very well get it."

Q. I didn't ask you that. A. I will tell you all the conversation, what it was and what led up to it, if you will allow me.

Q. Go ahead? A. He said "Will Mrs. Partridge ever get that back?" And I said "I take it from my cursory reading of the agreement that

when she pays the $8,000 the deed will come back to her."

Q. That is the conclusion you drew from the paper? A. Yes, sir, that is my best recollection of it.

A recess was then taken.

HARRY LANE, ESQ., sworn for the defense:

Direct-examination by Mr. Boardman:

Q. You are the Receiver of the Interstate Lumber Company? A. I am.

Q. Substituted in place of your brother Merritt Lane? A. Yes.

Q. You are here under a subpoena *duces tecum?* A. Yes.

Q. Calling upon you to produce the books of account and other books of the Interstate Lumber Company? A. Yes, sir.

Q. Have you the books of account of the Interstate Lumber Company in your possession? A. I have not.

Q. What efforts have you made in response to the subpoena to get them? A. I was served with a subpoena three days ago, I think. Immediately upon receiving it I called up Mr. Farrier and was informed by him that he had several books which he would see were in Court yesterday morning. What the books were I did not know. I called up Mr. Merritt Lane, who was the former Receiver, and he told me that the only persons who would have books would be either Mr. Farrier or Mr.

Edwin S. Smith. That Mr. Edwin S. Smith had obtained minute books from him which were to be returned to him upon his demand. I believe they were to be in Court here this morning.

Q. Did you get any line on where the other books—I might say the minute book and ledger No, 1 have been produced—did you get any lines on any other books? A. I did not.

OLDEN H. HETRICK:

Further examination by Mr. Boardman:

Q. Can you tell us how much of the direct and contingent liability of the Interstate Lumber Company to the banks remained unpaid in December, 1914? A. That question was asked me this forenoon, and I told you that I could not tell.

Q. Can you fix any time when you could ascertain that amount, that fact? A. What is that question?

Q. (Question read to witness.) A. You mean any time in the future?

Q. What do you mean by that? A. Well, I don't understand your question.

Mr. Carrick: I do not think your question is intelligible.

Q. Can you fix at any time the amount to which the direct and contingent notes, liability had been reduced? How much is the direct and contingent liability on the notes today?

Mr. Carrick: He said he did not know.

A. I cannot remember the exact amount.

Q. About how much?

Mr. Carrick: I object.

The Vice Chancellor: How is it competent?

Mr. Boardman: It is the best evidence obtainable.

The Vice Chancellor: You have not shown why the books are not introduced.

Q. Will the book you have before you, ledger No. 2, show that? A. No, sir.

Q. What will ledger No. 2 show? A. That shows certain transactions, notes and things, of the Interstate Lumber Company, during the year 1916.

Q. It will show the amount of money that the bank committee obtained after the assignment of the lumber to them? A. No, that book does not show that.

Mr. Boardman: I would like an opportunity to have those books here, and I would like to have the case continued to such time as I could have them here. I am willing to put them in in rebuttal, and let the other side out in their case. I do not think it is my fault or that it should be visited on my client's head; if it is the fault of anyone else it certainly should not be.

The Vice Chancellor: Is there any objection to allowing the case on behalf of this defendant to be rested subject to the introduction of this proof hereafter if it be shown to be competent?

Mr. Carrick: I have no objection, but I had hoped that we might close the session without any long adjournment.

The Vice Chancellor: I do not wish there to be any long adjournment. I put aside

another case which was set down for today in order to try this case to a finish. If it is laid down now and postponed until next week, I shall lose the grasp I have upon it, for I shall be engaged tomorrow and the rest of the week in an intricate and complicated case. I have no notes and must rely upon my memory. I can deal with the case promptly if you close it promptly.

I understand there is no objection and therefore the other side may proceed. When you rest it will be subject to your having an opportunity, after the other side has rested, to offer this testimony and then the question of its competency will come up.

Mr. Boardman: Very well.

By Mr. Francis: Q. At the time of the giving of the $20,000 mortgage on the property of the Interstate Lumber Company, the mortgage in evidence here, a note of the Seaboard Southern Company, was obtained and given to the banks for $120,000, was it not? A. I don't know.

By the Vice Chancellor: Q. Do you know anything about it? A. I know a transaction like that took place or was supposed to take place.

Q. How do you know it. Were you an actor in it or do you know it because you saw the note. A. No, I was not an actor in it.

By Mr. Francis: Q. At that time there were $120,000 of the direct and contingent notes given by the Interstate to the Banks—they were cancelled at that time, were they not? $120,000 of those notes? A. The agreement as I understand it states something to that effect; whether they were actually cancelled or not I do not know.

Q. Were not $120,000 principal and about $13,000 interest notes cancelled as a matter of fact?

The Vice Chancellor: Now counsel is testifying and not the witness. These questions are very leading and the witness is simply, apparently, testifying to his recollection of the report.

Mr. Boardman: We rest subject to producing testimony about the books.

GEORGE R. BEACH, ESQ., re-called:

Direct-examination by Mr. Carrick:

Q. You are here today under my subpoena? A. I am.

Q. Have you here your records as referee in bankruptcy, your docket, showing whatever your docket does show with reference to the bankruptcy proceedings of the Charles R. Partridge Lumber Company? A. Yes, sir, I have.

Q. What does your record show, your docket show, with reference to any application that was made for leave to purchase assets of the Charles R. Partridge Company? A. This is docket Number 1 and the Partridge case is page 179. Does your Honor wish to have any record of how it was kept?

The Vice Chancellor: It depends whether counsel want it.

Mr. Carrick: I do not think that will be necessary.

Witness: Under the head of "Proceeding, July 19, 1912" on the 25th of July there is an entry of

a petition for hearing to consider sale of assets, filed.

Q. Where is that petition now? A. Trenton.

Q. That is, after the cases have been closed the papers are forwarded by you to the Clerk's office in Trenton? A. Yes, sir.

Q. Can you say from your recollection what petition that was which was presented to you, whose petition? A. Why, I have had the matter looked up and I find it is a petition made by the Trustee on a bid made by four gentlemen, Mr. Farrier, Mr. Edwards, Mr. Dunn and Mr. Robinson.

Q. And that petition was presented to you on that date, on the 25th of July? A. The bid, a copy of the bid, was annexed to it.

Q. What was the next proceeding that was had with reference to that bid? A. On the 30th of July I made an order to show cause why the sale should not be made.

Q. And that was returnable when? A. That was returnable on the 12th of August.

Q. On the 12th of August what do you find recorded? A. There is nothing recorded in this book.

Q. Have you any recollection of what was done? A. The minutes indicate that on the 12th this is what happened: There were four or five, oh there were a large number of people there, from the appearances which I have entered, and they objected to this first bid and one man by the name of Draybolt, I think his name was, and another man by the name of Shepard made higher bids than the original bid recorded on the 25th of July. The matter was discussed at length by all of the different attorneys and on my own motion I ad-

journed the matter for a week and directed that the Trustee advertise this property, in three of the New York papers, for further bids, and I continued it until the 19th.

Q. Of August? A. Of August. On the 19th the people all assembled again in the court room and a bid was then made by Mr. Dunn, and my records do not show that he was representing anybody but himself on that particular occasion and he bid $126,150; I think those were the figures but I cannot remember the exact figures; I am pretty sure it was $126,150, and after a good deal of discussion with the various attorneys who were present an order was signed by me and the sale was confirmed to Mr. Dunn at that figure.

Q. It was under that sale that the transfer of the bankrupt's assets was subsequently made? A. Yes, sir. I find that I did not actually sign the order until the 10th day of September; I rather suspect the reason of that was that I was on a vacation; I do not know but I rather imagine that is so.

The Vice Chancellor: Was that a sale of all the assets?

Witness: That was a sale of all of the assets excepting the cash in the hands of the Trustee.

CROSS-EXAMINATION by Mr. Boardman:

Q. Does your docket show any change in the amount, any reduction of the claim filed on behalf of the Lincoln Trust Company? A. I keep a claim docket, I can send down and get that if you wish it. We had a claim docket at the time of this docket.

Q. The books at present before you do not show that? A. No, they do not show that.

Mr. Boardman: When you go down stairs will you look at that docket and if any such reduction appears will you bring it up?

Witness: You mean by that whether it was reduced or something like that?

Mr. Boardman: Reduced by any endorsement of notice showing any reduction of the amount by way of payment by some outside party.

Witness: We make record of all assignments or reductions or disallowances. Of course if some outside party paid and we did not get notice we would not have anything of that kind.

The Vice Chancellor: If these three notes, for instance, aggregating $8,000, which are a part of the claim as proved by the Lincoln Trust Company, subsequently were paid would you make any entry of that fact or would it come to your knowledge?

Witness: Not unless the Trustee called it to my attention or some creditor requested the Trustee to do it.

Mr. Boardman: If any such notation appears in your record will you let us have it?

Witness: Yes, sir.

Mr. Carrick: And I would like the claim of the Lincoln Trust Company.

Mr. Boardman: Yes, and will you send up the claim of the Hudson County National Bank?

EDWARD I. EDWARDS, re-called:

Examined by Mr. Carrick:

Q. After you left the Court room yesterdey Mr. Partridge was examined in reference to some con-

versation that he had with you about the making of the deed by his wife to Mr. Paul. Will you not state what your recollection is of the conversation which you had with Mr. Partridge upon that subject? A. This is the Montclair property you are talking about? I don't want to get mixed up with these two different things.

Q. The Montclair property. A. I always tried to help Mr. Partridge in his business. I thought Mr. Partridge in some ways was more sinned against than sinning. I think he always had a pretty friendly feeling for me, and he came down to me and told me—this is my recollection and I think it is absolutely so because it was impressed on me very forcibly at the time—he wanted to help the First National Bank. He told me his wife had this property in Montclair and was about to lose it, I don't remember now how. I told him that was not any good to me, that I could not take that property in payment of his claim, that I had not any notes with Mrs. Partridge's endorsement, or Mrs. Partridge's notes, and I understood it was Mrs. Partridge's property and I advised him —I knew that Mr. Farrier had such notes; I told him so. I knew that because I remarked a good deal about a lot of these people having notes with Mrs. Partridge on them. Mr. Partridge's mother who come from Elmira, and the wife's notes. I never had any of those notes. I had them a good many years ago but I did not have any in the windup and my recollection is that he wanted me at that time, if this whole transaction came out all right and we had received our money in full, if I would allow him the difference that we got above—from this property in Montclair. I told

him I surely would, but I could not take the property and I suggested he go to Mr. Farrier, and I understand, and am pretty certain, that some arrangement was made with Mr. Farrier.

Q. Did you introduce him to Mr. Farrier or talk to him in Mr. Farrier's presence? A. Yes, I think he called up Mr. Farrier right away, or I did, I don't know which; at any rate Mr. Farrier came down and the thing was transacted.

Q. At this time, when this conversation was held, what is your recollection with reference to the agreement which has been marked Exhibit No. 10, of June 1912, made by the banks and so forth; was or was not that paper completed before your conversation with Mr. Partridge? A. Well, I don't know, I can't remember that. But I was thinking about this last night. You asked me something yesterday about how long this was done. I think this was after the agreement was made; I think this was done very fast. My memory is a man named Jackson, I think he is the man who went around with these papers, I think he went around and got these signatures on all of them.

Q. These are subsequent agreements? A. Yes, sir.

Q. This one begins here and goes to the end. The question is was that completely executed as far as you can recall?

Mr. Boardman: Do you know, Mr. Edwards? You did not know yesterday.

Witness: I do not know. You asked me yesterday to think about this thing.

Mr. Boardman: Yes, I asked you the precise question.

Witness: I have been trying to think about it.

Mr. Boardman: I did not ask you to think about it, I asked you the fact.

Witness: Didn't you ask me to think about this? You certainly did; you asked me to search my memory and see if I could not remember it. I think you will find that in the record—or else you asked me outside, but that is immaterial I suppose.

Q. What is your best recollection? Was this paper which is before you now, this agreement of June 1912, completely executed before the time you had this talk with Mr. Partridge? A. I cannot tell because I do not remember the date I had the talk with Mr. Partridge. If it was a case of this paper being in existence two or three months before I had the talk with Mr. Partridge I would say this paper was executed; if it was not I do not know. I think this paper was executed in the course of three or four weeks after it was drawn. That is my recollection.

Q. I show you the deed in question from Mrs. Partridge to Mr. Paul, which is marked Exhibit No. 13 in this case and bears date July 31st. With that before you, as indicating about the time of the conversation with Mr. Partridge, what would you say?

The Vice Chancellor: Have you ever seen that deed before?

Witness: Never.

Mr. Carrick: I am simply calling his attention to the fact that a deed was made at that time. He knows about the making of the deed.

The Vice Chancellor: That does not ap-

pear. You can ask him whether he heard that the deed had been made and whether he had received that notice—heard that the deed had been made—before or after the completion of this contract or whatever it is.

Q. I will ask that question. Did you hear about the making of the deed by Mr. and Mrs. Partridge to Mr. Paul, or the Lincoln Trust Company? A. Yes, sir.

Q. At that time had the agreement of June 1912 which has been marked Exhibit No. 10, been completed? A. Well, from the date of this deed I will say it was. Otherwise I cannot tell; I would not remember.

Q. Did you have any talk with Mr. Partridge when he called on you with reference to Exhibit No. 10, this agreement of June 1912? A. Well, I don't know. I had so many talks with Mr. Partridge that I do not remember specifically if that was talked of at that particular time.

Q. Did you talk of that agreement in connection with the Montclair property? A. No, because we could not take the Montclair property. He offered me the Montclair property.

By the Vice Chancellor: Q. Do you recollect whether when Mr. Partridge came to see you and offered you the Montclair property you spoke about this agreement which was yet to be signed by some of the banks? A. I do not remember that.

Q. As I understood your testimony a little while ago you said the offer of Mr. Partridge was that this land of Mrs. Partridge should be conveyed to your bank as security and then if you

got your money out of the deal which was on the land should go back? A. If there was anything left.

Q. I understood from that that you meant to say that at that time the deal had not been consummated? A. No, I didn't mean that.

Q. You meant it had not been carried out? A. It had not been finished, we could not tell.

CROSS-EXAMINATION by Mr. Boardman:

Q. Do you remember, yesterday morning, my asking you if you had any recollection of the Paul transaction? A. It was not Paul, I don't remember Paul in it at all.

Q. Didn't I ask you if you had anything to do with the deed of the property in Montclair and didn't you say your memory was absolutely blank? A. On the stand, or over there by the window?

Q. Over by the window. A. I told you I did not know anything about this proposition at that time. I would have told you all about the Partridge matter, his coming to me, and told you he came to me.

Q. Didn't I ask you if you had anything to do about the giving of the property to the Lincoln Trust Company, to Mr. Farrier, and bringing Mr. Farrier into the transaction? A. If you did I did not understand you so.

Q. How do you remember or recall our conversation? A. You asked me what I knew about this and I said absolutely nothing. I thought it was the case of an estate when I came in here and I did not understand the Montclair proposition at all. I think my subpoena calls for the Montclair

Savings Bank or something and I did not know what you were after.

Q. Have you your subpoena with you? A. No, I put it on my desk and filed it this morning.

Q. That subpoena called for the original of this June— A. Yes. I have not any of those papers at all.

Q. And didn't that suggest to you it was something to do with the old Partridge cases? A. Over here?

Q. No, when you received your subpoena? A. I knew it was that, but I could not understand what it was.

Q. You knew it had something to do with the Montclair property, you knew this suit involved that title? A. Surely I did.

Q. You spoke to Mr. Mathewson about it? A. He called me up many times, I told you that.

Q. You knew this was a Mathewson suit? A. I presumed it was. I didn't know it until I went down stairs and talked with your partner and he told me it was.

Q. You told me then you didn't know anything about this matter? A. Well, I didn't, I was not there when this deed was drawn.

Q. But you did put Mr. Partridge in touch with Mr. Farrier? A. Absolutely.

Q. And the thing was done in your presence at the First National Bank? A. The talk was made there. There was no arrangement definitely there.

Q. Oh, no, the deed was not delivered there. A. No, and I don't know whether the deed was made that day or not.

RE-DIRECT-EXAMINATION:

Q. You were a member of this Committee of the Banks? A. Yes, sir.

Q. You recall the offer that was made to the Trustee in Bankruptcy to purchase the assets of the Partridge Lumber Company? A. I don't quite know—what do you mean, by whom?

Q. Do you recall the making of the offer to purchase from the Trustee in Bankruptcy the assets of the Partridge Lumber Company? A. Yes, I know about that.

Q. Are you familiar with what was done at that time—the making of that offer? A. That was made by Mr. Dunn, and Mr. Farrier I think had most to do with that. I suppose I knew all about it at the time.

Q. At the time when that offer was made to the Trustee in Bankruptcy to purchase the assets of the Partridge Lumber Company, had or had not this agreement of June 1912 been signed by the various banks? A. It must have been signed by the various banks before we could make the offer. It must have been signed for that was our right to do it.

RE-CROSS-EXAMINATION:

Q. Let me refer you to what you testified to yesterday. As I recall it you were very positive today that the Committee got its authority from that meeting which was held the first day of June, and that is when the original was made. Was not that your testimony? A. It might have been. The banks met at the First National Bank, the representatives of the banks.

Q. That was the first day of June? A. I don't

know what date it was. They met seven or eight times I suppose, perhaps not so many times, but a number of times.

Q. Yes. A. And at the second meeting every man who attended had the right to vote for his bank, for the interest which he represented, and that is where they got the power to enter into this agreement.

E. M. FARRIER, re-called, for the defendant, The Lincoln Trust Company:

Direct-examination by Mr. Carrick:

Q. You are the President of the Lincoln Trust Company of New Jersey? A. I am.

Q. And were such for some time prior to the year 1912? A. I was.

Q. You acted in obtaining from Mrs. Partridge the execution of this deed in 1912 to George E. Paul, Exhibit 13? A. I did.

Q. Will you tell what communication you had with Mr. Partridge prior to the making of this deed, with reference to it? A. Mr. Edwards called me on the telephone one morning and asked me to go down to the First National Bank, that he wanted to see me. Just what day that was I cannot tell, but it was about the time this deed was executed, one or two days before. I went to the First National Bank and Mr. Edwards told me that the offer had been made to him by Mr. Partridge but that inasmuch as he did not hold any of Mrs. Partridge's paper he could not accept the property but he knew that I did have some and

here was an opportunity for me to protect myself. I got in touch with Mr. Partridge.

Q. You say you got in touch; how did you do that? A. He was in the office of Mr. Goldenhorn and I was sent in there.

Q. Did you talk with Mr. Partridge then? A. At Mr. Goldenhorn's office.

Q. What was said at that time? A. I cannot give you the exact words. The idea was, and the understanding was, that Mrs. Partridge would execute a deed. We, that is the Lincoln Trust Company, were to surrender her notes to the amount of the estimated equity in the property and we arrived at the figure of $8,000 inasmuch as I had formerly had her house in Montclair appraised. I was going to start suit against Mrs. Partridge. After arriving at the figure of $8,000 the deed was ordered drawn. I stipulated that if the bank were paid out in full the property would be returned to Mrs. Partridge and if not he could not expect to get the property back again.

Q. What was done after that? A. I delivered the $8,000 of notes to Mr. Goldenhorn as her attorney. I drew the agreement, which I have called an escrow agreement, I drew that myself and took it to Goldenhorn's office.

Q. And you now refer to this paper which has been marked No. 5 for identification? A. That is correct.

Q. That was produced by Mr. Dawson? A. Yes, sir.

Q. You drew that you say? A. I drew that myself.

Q. Where did you leave it? A. At Mr. Goldenhorn's office. He was to have it executed.

Q. What else was there? A. The notes were left at the same time for the estimated equity in the property.

Q. What happened next? A. When I was notified that the deed was executed I either went to Mr. Goldenhorn's office or sent for him, sent for the deed, and sent it out for recording.

Q. What was done with reference to this paper, No. 5, which you left at Mr. Goldenhorn's office; when did you see that again? A. I am not certain whether I got it from Mr. Goldenhorn and delivered it to Mr. Dawson or whether somebody else did; I am not clear about it.

Q. But you did see it executed signed, by Mrs. Partridge? A. I saw that it was executed by her.

Q. Do you have any recollection of the matter, with Mr. Dawson? A. Yes, sir.

Q. What is your recollection about that? A. It is quite evident from the way this is signed that Mrs. Partridge signed it before the Lincoln Trust Company signed it.

Q. What was done about delivering it to Mr. Dawson? A. I say I do not know whether I delivered it to him or somebody else delivered it to him.

Q. After the making of the agreement of June 1912 which has been marked Exhibit No. 10, you acted as one of the Committee? A. I did.

Q. Can you fix with any degree of certainty when that exhibit was completed by having upon it the signatures of all the banks which now appear upon it? A. I cannot tell when it was actually completed. The Committee met from time to time in the offices of the First National Bank for quite some time, to draft it into shape, to get

it whipped into the condition that we wanted it in and the Committee were having meetings almost every week I should say before we could make a bid for the property, that it must have been completed, signed by everybody in interest, otherwise we would have had no authority to make that deed.

By the Vice Chancellor: Q. What is the date of the bid? A. July 25th.

Mr. Carrick: That is the date of the deed. The petition was presented to the Referee in Bankruptcy on July 25th(?)

Further DIRECT-EXAMINATION:

Q. After the bid of the Committee was accepted and the property transferred and the Interstate Lumber Company organized you continued to act as a member of that Committee and were so right down to the close of any business in connection with it? A. The Committee is still in existence.

Q. You are Treasurer of that Committee? A. Secretary of the Committee.

Q. Who was the Treasurer? A. There was no Treasurer.

Q. What money has been received by the Lincoln Trust Company on account of the part of the Partridge indebtedness which was proved in bankruptcy? A. The 23 per cent from the Trustee and probably $1200 from the commercial bills.

Q. Have you the accurate figures, can you give us that in precise amounts? A. No, I cannot.

Q. Have you not anything that will fill that? A. I may have with my papers there on the desk.

Q. Just look at them.

(Witness leaves the stand, examines papers and resumes the stand.)

A. We recovered from the Bankruptcy Trustee—

Mr. Boardman: What are you testifying to?

Witness: The amount of money we had, the Lincoln Trust Company.

The Vice Chancellor: Do you object, Mr. Boardman?

Mr. Boardman: I object to the use of this paper. He has the books here, under subpoena which have to do with all of this and if he is going to refresh his memory I think he should do it from the books and not from a letter head.

Mr. Carrick: This is merely a convenient way.

Q. Can you refer to the books? A. No, because the books that I got that information from are about half a dozen different books.

Q. The books of the bank? A. Yes, sir, bank books.

Q. Now in use? A. Yes, sir, now in use; in daily use.

Q. You can produce them here? A. I can produce them.

Q. Will you have them sent over, the ones that will show that?

The Vice Chancellor: What is the question?

Mr. Carrick: I want to show what the bank has received on account of this indebtedness and the original entries of that are in a great many books of the bank. Witness has a statement here which he made up from the books, but counsel object to it.

The Vice Chancellor: It is rather a nice

question whether the witness cannot testify himself, looking at that paper as a memorandum. I do not suppose the books contain entries he himself personally made.

Q. Were they made by you? A. No, they were not made by me; they were made under my direction.

Mr. Carrick: Do you want the books?

Mr. Boardman: We want the books.

The Vice Chancellor: The witness has testified there is due altogether about $15,000. No objection has been made to that. Do you want to go any further? I would suggest it is advisable to keep as much documentary evidence out of this case as possible.

Witness: The dividends as received were applied on the notes of the Interstate Lumber Company.

By the Vice Chancellor: Q. These three notes which we have to deal with particularly, notes of Mrs. Partridge endorsed by Partridge Lumber Company, do I understand they were discontinued in your bank for the benefit of the Partridge Lumber Company? A. Yes, sir.

Q. The proceeds went to the credit of the Partridge Lumber Company? A. The proceeds of some of the notes.

Q. I refer to those three which are now before you? A. I cannot tell without looking into the records.

Q. Do you know whether Mrs. Partridge got the benefit of the money represented in those three notes? A. In some instances Mrs. Partridge had the checks for some of the papers which

she had, in other cases she did not. Whether she did for these particular three I cannot tell without looking at the records.

Q. Do you know whether it was the invariable custom when she got a check, as to the disposition of it— A. When she got the check the custom was that she turned it over to the Partridge Lumber Company.

Q. She endorsed the check and it was deposited to the credit of the Partridge Lumber Company- A. Yes, sir.

Q. Have you any reason to believe Mrs. Partridge was not an accommodation maker of those three notes? A. No.

Further DIRECT:

Q. I show you a check of the Lincoln Trust Company to the order of C. M. Partridge, dated April 26, 1910 in the sum of $4,924.17, and eight subsequent checks, some of which are to the order of C. R. Partridge and some to the order of the C. R. Partridge Lumber Company, the last of said checks being dated April 25, 1912, to the order of the C. R. Partridge Company, for $4,476, the said checks being fastened together, with a typewritten notation; does that show the history of the note which was due July 25, 1912, for $4,500 and which is Exhibit No. 2 in this case? A. That shows the history of the original loan down to this note.

Q. And this check to which I have directed your attention particularly, namely that of April 26, 1910, was given for the first note in the transaction of which this note, Exhibit C-2 is the final one? A. Yes, sir.

Batch of checks just shown witness offered in evidence and marked Exhibit No. 1, for the defendant Lincoln Trust Company, January 11, 1917, H. W. K.

Q. I notice that the first of these checks, namely, that of April 26, 1910, to the order of C. M. Partridge is cancelled Paid with a stamp and has no endorsement upon it. A. The note was purchased from Charles R. Partridge and the proceeds paid to his credit.

Q. I show you a check dated December 11, 1911, to the order of the C. R. Partridge Lumber Company for $1,969.67, to which is fastened another check of March 12, 1912, to the order of Cornelia M. Partridge for $1,477, together with a typewritten statement showing these to be connected with the note for $1,500 which has been marked No. 3. Does that statement and check show the transaction which resulted in the possession by the bank of the note of Mrs. Partridge, Exhibit No. 3? A. It does.

Batch of checks last shown witness offered in evidence and marked Exhibit No. 2 on behalf of Lincoln Trust Company January 11, 1911, H. W. K.

Q. I show you a check dated February 26, 1912, to the order of Cornelia M. Partridge for $1,969.-67 to which is annexed a typewritten statement. Is that the check which was given in purchase of the $2,000 note which has been marked No. 4 in this case? A. It is.

Q. Do you recognize the endorsement of Mrs. Partridge on the back of that? A. I do.

Check of February 26 1912 last shown witness offered in evidence and marked in

evidence Exhibit No. 3, for Lincoln Trust Company, January 11, 1917, H. W. K.

Q. Do you know of other assets which are in the hands of the Committee or under the control of this bank Committee which could be made applicable to further reduce the indebtedness to the Lincoln Trust Company as well as the indebtedness of the other banks? A. For what we call new money.

Q. What other assets are there that might be applicable for that purpose? A. May I refer to a memorandum in my pocket?

Q. If the other side does not object. A. To refresh my memory.

Mr. Boardman: What is the question?

Mr. Carrick: I want to see what other assets there are applicable to reduce the indebtedness, beyond what has already been received.

Mr. Boardman: I have no objection to that, if I can see it first.

The Vice Chancellor: No; it is a memorandum; it is not offered.

Witness: There is in my possession as Secretary of the Committee $4,833.48; there is in possession of Mr. Merritt Lane as Receiver, and myself $7,764.18.

Q. Let me ask you about that. That is the fund which is in dispute as to whether it should go to the Committee or to the Receiver? A. Yes, sir.

Q. What else is there? A. There is in the account, the old bank account, entitled "Interstate Lumber Company" $762.50. That of course belongs to the Receiver. There is deposited with the American Surety Company—

Mr. Boardman: Your only interest in that would be a dividend from the Receiver, if any.

Witness: Yes, I hope so.

Q. What else? A. There is a deposit with the American Surety Company as security for a bond in a suit started by a man named Goble, $3500 in cash. There is real estate of an estimated value of $40 000.

Q. In Jersey City? A. In Jersey City, on which there is a mortgage for $13,500, leaving an estimated equity of $26,500. All of those items, totaled together, make $43,360.16.

Q. That is assuming they were all to be applied in reduction of indebtedness they would amount to how much? A. $43,360.16.

By the Vice Chancellor: Q. Do I understand that that figure practically includes all the assets of the Interstate Lumber Company? A. Yes, sir.

Q. Applicable to the payment of the different classes of notes? A. Yes, sir.

Further DIRECT-EXAMINATION:

Q. Have you allowed in that estimate for any commissions for the sale of real estate? A. No, there has been no allowance made for commission.

Q. Or for the expenses of closing up the Receivership? A. No expenses whatever.

Q. What is there outstanding of new money at this time? A. $36,135.43.

Q. As a matter of fact in the administration of this money which came into the hands of the Committee what obligations of the Interstate Lumber Company were paid? A. All classes of notes— there were payments made on all classes of notes,

but the dividends from the Trustee in Bankruptcy was applied on the direct and contingent liabilities while the money realized from the sale of the assets, sale of merchandise on hand, was applied to the payment of the new money notes.

By the Vice Chancellor: Q. Do you consider that your notes representing new money have all been paid now? A. No sir.

Q. Very nearly? A. There is about $36,000 outstanding.

Q. I mean from the Lincoln Trust Company? A. No, there is about $3500 due on them.

Further DIRECT-EXAMINATION:

Q. From what time does that $36,000, speaking of the aggregate of new money, bear interest? A. From November 13, 1914.

Q. Have you computed what that amounts to? A. Yes, sir.

Mr. Boardman: I object to that as immaterial.

Mr. Carrick: Of course we can all compute it, but—

Witness: Four thousand one hundred and fifty-seven dollars and seventeen cents.

CROSS-EXAMINATION by Mr. Boardman:

Q. Is it your recollection that this agreement of June, 1912, had been signed at the time of this deed to Mr. Paul? A. I am very certain it had been.

Q. You acted then as one of the Committee representing this group of banks? A. Yes.

Q. You had had your original authority to act as such Committee from the first day of June,

1912, had you not? A. I cannot say, Mr. Boardman, just when the Committee was formed, but it was formed immediately, or very shortly, after the failure in May, 1912. A meeting of all the bank creditors was called.

Q. The instrument itself recites "Whereas the party of the second part were at a meeting of the duly accredited representatives of all of said banks held in the office of the First National Bank of Jersey City, N. J., on the first day of June, 1912, unanimously constituted a Committee on behalf of the banks to assist said Cheney and said Lumber Company in carrying out" &c? A. Yes, sir. From the time of the failure early in May, until June we were looking into the advisability of purchasing the assets and trying to protect our interests and it is very evident that the Committee was not formed until the first of June.

Q. Since June you had been acting on the Committee? A. Yes, sir.

Q. And from that meeting you obtained your authority to act in the premises for the several banks, as their representatives? A. Yes, sir.

Q. And, as I recall the testimony, some time before the last part of July you and your co-committeemen had made an offer, representing the several banks to purchase the assets of the Charles R. Partridge Company? A. Such a bid was made in our behalf.

Q. You were practically acting as an attorney in fact, were you not, for them? A. As their agents.

Q. Did you consult with any of your co-committeemen before the taking of the Paul deed except Mr. Edwards? A. I did not.

Q. Did you tell your co-committeemen of the taking of the Paul deed afterwards? A. They knew of it afterwards.

Q. Did you tell them afterwards? A. I did.

Q. When? A. I cannot tell you when.

Q. Had you reported it, before the deed from Paul to you was recorded? A. Yes, sir, before the deed from Paul to Farrier was recorded.

Q. How long before? A. That I do not remember.

Q. Did you bring to the attention of the Hudson County National Bank the fact that you had taken this Paul deed? A. No, I did not, I told my committeemen. There was nobody from the Hudson County Bank on the committee.

Q. Can you fix the time when you told your co-committeemen? A. No, I cannot.

Q. Did you tell any of the banks who were not represented on the committee about this? A. I don't believe so, but most of the Essex County banks knew about it.

Q. Did you credit the notes, either direct or contingent, or new money notes, that you held of the Interstate Lumber Company with $8,000 on account of this Paul transaction? A. Not as yet.

Q. Did you tell or bring to the attention of the Referee in Bankruptcy, or the Trustee in Bankruptcy, that $8,000 of the promissory notes, of which you had made proof in bankruptcy had been paid? A. No, because they have not been paid yet.

Q. The giving of this deed was not to act as the payment of $8,000? A. To act as security.

Q. Only as security? A. Until the banks were paid in full.

Q. When you came to my office this summer didn't you tell me this was the payment of that $8,000? A. I did not.

Q. Was that not the theory upon which your answer was filed? A. I don't think so.

Q. Has not that been your theory since that date, or had not that $8,000 of the note paid and the notes delivered to Mrs. Partridge by surrender and the only element in which you hold this in trust was the balance of $10,600? A. What is that question again?

Q. (Question read.) A. To me that question is so complicated that it not subject to an answer.

Q. Won't you have it read once more and see if you cannot understand it?

(Question again read.)

A. No, sir.

Q. Your theory was that you held this in trust to return it to her upon the payment of $16,800? A. No, sir.

Q. Will you explain what your theory was? A. Upon the receipt by the Lincoln Trust Company of $21,140, together with the payment in full of all the other banks. That was the understanding with Mrs. Partridge at the time, through her husband.

Q. Did Mrs. Partridge sell the Lincoln Trust Company her property? A. She sold the property to us for the estimated equity over and above the mortgage with the distinct understanding that there were certain matters pending in court at that time which were not settled and when the banks were paid in full the property would be returned to her.

Q. Then it was to protect all the banks, do I

understand? A. The Lincoln Trust Company primarily, the others secondarily.

Q. Were the $8,000 of notes surrendered to Cornelia M. Partridge? A. They were delivered to her attorney.

Q. Who was her attorney? A. Mr. Goldenhorn.

Q. How do you know that? A. Because he acted in her behalf.

Q. Were they absolutely surrendered? A. They were.

Q. Were they surrendered to Mrs. Partridge in payment for her equity in the property in Montclair? A. They were.

Q. That was the consideration of the deed to Paul? A. Exactly.

Q. Then if I understand it she sold the property to the Lincoln Trust Company, the Lincoln Trust Company surrendered the notes to her, $8,000 of notes to her—that is right? A. That is correct.

Q. After that did you have any interest in the $8,000 of notes? A. I did.

Q. What interest? A.The Trustees' dividend.

Q. In what form was any such trusteeship expressed? A. It was not expressed in form.

Q. Where was the understanding that you should be trustee for those dividends? A. In the June 12th agreement.

The Vice Chancellor: How does the witness understand counsel?

Mr. Boardman: I do not know.

The Vice Chancellor: I do not understand the question.

Mr. Boardman: I do not either, I do not

think it was finished, but I was interested to get the answer nevertheless. I will put another question.

Q. When and how was any trusteeship that you undertook in reference to the dividends on this $8,000 expressed?

Mr. Carrick: He has referred to the Trustee dividend to him, not being the Trustee for dividends.

The Vice Chancellor: That is the way I understand it.

Q. What were you Trustee for, what was the trusteeship? A. There was no trusteeship.

Q. Then what interest did you have, did the Lincoln Trust Company have, in those notes after they were surrendered to Mrs. Partridge, these $8,000 of notes? A. Under the terms of the agreement of June, 1912, the various banks were to collect, from whatever source is possible, money due on the notes. When the dividend came from the Trustee in Bankruptcy it was applied on the total indebtedness.

Q. As between you and Mrs. Partridge what interest did you have in this $8,000 of notes that you surrendered? A. What interest did I have in the $8,000 of notes?

Q. Yes. A. I had the interest for the benefit of all of the banks. I had filed my claim, I had proven my claim, in bankruptcy.

Q. In which this $8,000 was included? A. In which this $8,000 was included.

Q. When you assigned the notes and surrendered the notes to Mrs. Partridge did you surrender therewith a proportionate part of the proof of claim that you made in bankruptcy? A. I did not.

Q. You kept that? A. I did.

By the Vice Chancellor: Q. Was it for that reason the escrow arrangement was made? A. That and other things incidental to the entire deal.

Q. You had to be left free to collect—A. I had to be left free to collect and apply it.

Q. And was made the owner of the notes practically for that purpose? A. No, because I had $10,000 worth of notes at that time.

Q. In this agreement which you drew providing for the deposit of these notes, these three notes, in which "It is hereby agreed by the party of the first part"—that is, Mrs. Partridge—"that she will place the aforesaid promissory notes in the possession of Raymond Dawson * * * No. 1 Exchange Place, Jersey City to be held by him until the settlement of the above mentioned action or until mutually agreed upon by both parties to this agreement." I did not begin to read quite soon enough. Prior to that the agreement recites "Whereas the said party of the second part"—that is the bank—"for the better protection of its interest requires that the said promissory notes be held in escrow for a period of time to be determined or until certain matters now pending are settled." A. Exactly.

Q. I ask you whether or not it was the agreement that the Lincoln Trust Company should be practically the owner of notes for the purpose of collection, to see whether they could not get the amount out of these various bills and vouchers first. A. They were not to be the owners of the notes, no.

Q. But they would have the right to collect?

A. They would have the right to collect anything on them they possibly could and apply it on the indebtedness.

Q. They would stand as the owners? A. They might act as owners, but they were not owners; they had surrendered what belonged to them.

Further DIRECT-EXAMINATION:

Q. What did they get under the deal? A. They got the property.

Q. To secure the payment of this $304,000 of indebtedness which afterwards took expression in notes of the Interstate Lumber Company? A. And that Montclair property to secure $300,000.

Q. What was it to secure? A. What?

Q. The whole thing. A. The paper that I held.

Q. How much was that? A. Of Mrs. Partridge, $18,600.

Q. That was all? A. That was all I held.

Q. That was all it was to secure? A. No.

Q. What else? A. The property was to remain vested in me until the entire indebtedness was paid off, 100 cents on the dollar, including the $18,600 which I held.

Q. And the—A. Yes, the entire indebtedness.

Q. And you also said I think the indebtedness to the other banks. A. Yes, sir. But an $18,000 property cannot stand as collateral for $304,000.

Q. What was the order of priority in this trust relationship? A. There was no order of priority.

Q. Who was it to secure first? A. It was to secure me first.

Q. That is, your bank? A. Yes, sir.

Q. It was to secure first the $8,000? A. No, the $8,000 had been surrendered.

Q. It was to secure first the—A. The entire $21,040.

Q. Eight thousand dollars being surrendered, it left $8,000 out. A. Very well. When $21,000 had been recovered the property was to be turned back to Mrs. Partridge. I could not get my $21,000 until all the banks had theirs at the same time.

Q. Let me understand. Do you understand that these other banks had any interest in this property? A. No.

Q. The only people that Paul would be Trustee for would be the Lincoln Trust Company and Mrs. Partridge. A. Paul was not a Trustee.

Q. Waiving that for a moment, the only people having any interest in the equity conveyed to Paul would be Mrs. Partridge and the Lincoln Trust Company? A. Mrs. Partridge had no interest in it after she conveyed it to Paul.

Q. You saw this agreement of August 3d executed? A. This escrow agreement?

Q. Yes? A. Yes, sir, I drew it.

Q. And you saw Mrs. Partridge sign it? A. No, I did not see her execute it.

Q. Can you tell us what pending actions are to be settled? A. The bankruptcy suit, the bankruptcy case and all cases incidental thereto.

Q. Among them the carrying out of the agreement of the blank day of June, 1912? A. Exactly.

Q. Who did you anticipate was to pay the indebtedness of $21,040? A. We expected to realize it out of the Interstate Lumber Company.

Q. Do you know why Mrs. Partridge was to secure the $2,200 of contingent notes? A. No, sir. There was nothing said about $2200 of contingent notes at that time. The only agreement that was had with Mrs. Partridge was that when the banks were paid in full—there was nothing said particularly about her paper or the contingent paper, but when the banks were paid in full.

Q. All the banks? A. The word "bank" was made use of. No one bank would be paid in full.

Q. Let me ask you, Mr. Farrier, how explicit was this arrangement which I understand you made with Partridge, how explicit was it? A. Well, it was just a verbal conversation coming to an agreement.

Q. You heard Mr. Partridge testify yesterday? A. Yes.

Q. Do you think that he—well, I will withdraw that. Did you pay Goldenhorn for drawing this deed? A. No, sir.

Q. Why is the check of April 26, 1910, for $4,925.17 drawn to the order C. M. Partridge? A. It was drawn that way by mistake. It was intended for Charles R. Partridge.

Q. Why would it have been drawn to Charles R. Partridge? A. Because the note was purchased from him.

Q. Purchased from Charles R. Partridge? A. Yes, sir. Back in 1910 he was trading in his own individual capacity. The Partridge Lumber Company was formed later on.

Q. Why was the check of February 26, 1912, drawn to the order of Cornelia M. Partridge? A. Because I gave instructions that it be drawn that way.

Q. Why? A. Because I wanted her endorsement on the back of the check.

Q. For what purpose? A. To show that the checks had been in her possession.

The Vice Chancellor: Because it was a married woman's note?

Witness: Yes, sir.

Q. Was this deed to Paul to benefit the First National Bank? A. To some extent.

Q. The situation, if you were successful in this suit, is that you get the benefit of this property, a benefit which the other banks do not get. Is that right? A. I don't think I should be compelled to answer that question.

Q. You spoke of the real estate remaining—the equity of $26,500—as an asset from which you might hope to collect, the bank might hope to collect; that is the real of the Interstate Lumber Company? A. Yes, located here in Jersey City where they were transacting business.

Q. Will you state what your estimate of that real estate value is? A. Our estimate of its value is $40,000.

Q. And the mortgages? A. $13,500.

Q. On your books you carried it at $90,000, didn't you? A. We did. If you will get me a purchaser for forty I will deliver it for forty.

Q. What control have you over the Interstate Lumber Company property? A. I have not any.

Q. You spoke of $4,833.48 in the hands of the Committee; that is for lumber sold since January 2, 1915? A. And prior to June 6th, 1915.

Q. Is there any challenge made, or any claim made on that by the Receiver, that that should be returned to the Receiver of the Interstate

Lumber Company? A. Yes, he has made such a contention. The Receiver's contention was that the bills of sale of January 2, 1915, were of no effect.

Q. Made when the Company was insolvent, is that the theory? A. Well, that is to be determined yet.

Q. But what is his claim? A. Well, the record shows what his claim is; I cannot pretend to go into the legal phases of it.

Q. This $7,764.18 that you have in bank now, what is that for? A. That is the proceeds of lumber sold since he has been Receiver.

Q. And the theory on which he claims that is practically the same theory on which he claims the other? A. We do not set any claim that he has no title to that, but at the present time title to that $7,000 is vested in the Receiver and myself as co-trustees pending the determination of the other suits.

Q. How much was still owing to them on January 1, 1915, by the Inter-State? A. May I refer to some of my records?

Q. Yes. A. On January 1, 1915?

Q. Yes.

(Witness leaves the stand, refers to record and resumes the stand.)

A. Now, do you want the direct, contingent and new money?

Q. Yes, divide it in that way. A. Do you want them separated?

Q. Yes, you can give it separately. A. I have a trial balance here dated May 31, 1915. I cannot give you January 1st.

Q. Now, the direct? A. The direct is $67,395.-

39; the contingent $68,970.35; new money, $44,769.49.

By the Vice Cancellor: Q. Does that item of contingent money include the claim of the Hudson County Bank of $34,000? A. Yes, sir.

Q. Then that much should be transferred, to be accurate? A. I don't know, Vice Chancellor, whether all of their paper was direct or whether it was all contingent, or part was; they just put the total amount down of $34,000.

Q. You think they may have held a large amount of the regular business paper of the corporation? A. I don't know whether they did or not, but I think so.

Q. Do you know whether they held, as part of that total, any notes on which Mrs. Partridge stood as an accommodation maker? A. I believe they did.

Q. As to those notes, then—A. They should have separated them.

Q. There should be a transfer here? A. They should have separated them into direct and contingent.

Further CROSS-EXAMINATION:

Q. That is they should have done so in the institution of the claim? A. Yes, sir, but they just put the total of the note down, $34,000.

Q. And all the other banks that held paper should have followed your practice and not the practice of the Hudson County Bank? A. Some of them did. No, the Hudson County did not.

Q. Can you give us any later date at which you can tell what the direct and contingent and new liabilities were?

(Witness again leaves the stand, to consult records and returns.)

A. I have a trial balance here dated February 29, 1916, in which the direct and contingent liability—

Q. That is not separated? A. It is the same as the previous figures, but the new money is $31,978.26.

Q. How did it happen, Mr. Farrier, that you after giving of the other notes of the Southern Seaboard Lumber Company, that you kept separated the direct and contingent notes, obligations? A. I don't get you.

The Vice Chancellor: Giving, or receiving, do you say?

Witness: We did not give any.

Q. Well, receiving, which came from the Interstate and went to the bank? A. Yes. In less than six months after the $120,000 of C notes of the Southern Seaboard Lumber Corporation were received by the Company, that Company went into bankruptcy.

Q. And then you re-established the old direct and contingent? A. We never wiped it off the books until a short time ago.

Q. What is the latest condition of the direct, contingent and new money that you have? A. That is the latest that I have, the last that I can find.

Q. Did you testify on the first of August before Mr. Demarest as follows: "Have you an additional claim outside of the secured amount? A. Yes. Q. What account is that? A. $8,000 from the $120,000. Q. What do you mean by that? A. The note issued by the Interstate Lumber Company

for direct and contingent liability is about $8,000. Q. The Interstate Lumber Company gave you note to pay the amount of the indebtedness of the Partridge Lumber Company to your institution? A. Yes, sir. Q. Can you give that amount? A. Approximately $22,000. Q. Can you give the amount of money your institution put into the deal that was made for the purpose of the assets of the Partridge Lumber Company? A. Approximately $15,000. Q. What items are included in the approximate amount of $15,000? A. That was in the deal to purchase the assets of the Partridge Lumber Company." Did you testify like that? A. I presume I did.

Q. And, continuing, "Q. How much money of the Lincoln Trust Company was used as the share of the Lincoln Trust Company in purchasing the assets of the Partridge Lumber Company? A. Approximately $15,000. Q. That was included in what you called the new money loan? A. That was the new money loan. Q. The total amount of creditors representing banks was about $300,000? A. Yes." Is that right, you testified that way? A. I don't know whether I did or not.

Q. Is that correct? A. Approximately correct.

Q. Did you testify as follows: "Q. Is there any portion of your debt that you do not hold security for in some form or other? A. I cannot tell, it will have to be figured out, it would be my portion of the $8,000. When this $120,000 was given to the committee, the deposits from the banks, there was $8,000 which was not secured by the $123,000 of notes. It would be my portion of the $8,000, in addition to the new money notes." You testified that way? A. I did.

Q. (Reading): "Q. With respect to this portion of the $8,000 that is represented by notes of the contingent liabilities at the time the Southern Seaboard notes were issued didn't you hold as security the assignment of the account to the Interstate Lumber Company or was it entirely unsecured? A. The assignment of the lumber and the account was to protect us after new money notes were paid. Q. Is it all secured? A. New money notes were not paid. By the Referee: Q. What security did the Lincoln Trust Company receive either directly or indirectly to secure this indebtedness? A. The accounts receivable and certain lumber. Q. Has the lumber been disposed of? A. The lumber has been disposed of. Q. All of it? A. All of it. Q. Have the accounts receivable been disposed of? A. Not all of them. Q. Does the bank still hold some? A. The committee holds some. Q. The committee representing the bank? A. Yes, sir. Q. Are they still in process of collection? A. Some of them are. Q. Has it, representing the Lincoln Trust Company, in its possession any securities by way of lumber or accounts receivable which are in process of collection? A. A number of accounts receivable are not collectible. Q. Are not all of them collectible or possibly collectible. A. Some of them are now being sued upon. By Mr. Lane: Q. Mr. Farrier, there were a great many more of these accounts receivable not collected since the 25th of October, 1915? A. There are more. Q. You hold more now than you did in October? A. Yes, sir, the original bills receivable. What I had in mind of the accounts receivable that have been created from the sale of lumber since the 26th of June. Did you

include that? Q. Both. A. I should say more. By Mr. Gilson: Q. Can you refresh your memory as to what portion of the $8,000 was due to the Lincoln Trust Company? A. About $1,000. Q. That appears on what page of the ledger of the Interstate Lumber Company? A. Page 354." Did you testify like that? A. I think I did.

Q. What ledger is referred to there? A. I don't know whether it is Number 1, 2, 3 or 4. It is the ledger which was taken before the Referee in Bankruptcy.

(A discussion then arose as to adjournment and all counsel agreed that the testimony of Mr. Farrier should stand as testimony in the cause even though it shall be impossible to complete his cross-examination at the next hearing.)

Adjourned until Tuesday, September 11, 1917, at Chancery Chambers, Jersey City, N. J., at 10 o'clock, a. m.

Jersey City, N. J., Sept. 11, 1917.

Trial resumed pursuant to adjournment.

Mr. Carrick (Carrick and Wortendyke) for the complainant.

Mr. Boardman (Boardman, Condict and Boardman) and

Mr. Frances (N. Y. Bar) for the defendant.

The Vice Chancellor: Mr. Boardman sent me yesterday the redrafted pleadings. Are these (indicating) copies?

Mr. Boardman: Your Honor will recall that as the case developed there were amendments or supplemental answers and the pleadings were in such shape it was not convenient to handle them. I therefore had them typed for your convenience in this shape.

The Vice Chancellor: These papers are all on file?

Mr. Boardman: Yes, but not exactly in that form. Let me show you how this is done. When you come to a paper like that "Supplemental matter, pursuant to order of blank date" there is a heading there and it is so entitled.

The Vice Chancellor: Is this on file in the cause?

Mr. Boardman: Yes, everything that is in there is on file.

The Vice Chancellor: And I understand that all the supplements or amendments or whatever which are here are on file?

Mr. Boardman: Yes, sir.

The Vice Chancellor: You have simply gotten them together and compiled them for convenience?

Mr. Boardman: Yes, sir.

The Vice Chancellor: Are there any separate amendments to the pleadings or have the original pleadings been redrafted so as to include the amendments?

Mr. Boardman: Everything is in there

and the amendments are put in as separate papers and everything is in that compilation there, amendment, supplements, answers, the amendments to answers and everything are in there.

The Vice Chancellor: Did I not suggest at the last hearing that new pleadings be drawn so as to incorporate the amendment?

Mr. Boardman: I will file that, that paper is an original.

The Vice Chancellor: This is a compilation. Where you have an answer and there is an amendment to the answer in a separate paper I must have suggested that the proper practice in my judgment would be to redraft the answer and incorporate the amendment in it.

Mr. Carrick: I think, if your Honor please, it would be impossible to do that. The supplemental answer contains different facts as the case progressed.

The Vice Chancellor: Oh, yes, if it is an answer by way of supplement, setting up something that occurred since the filing of the original pleadings that is a separate pleading by itself under the rule, but if you have amendments to the pleadings a very bad practice has grown up here in New Jersey in reference to that.

(There was further discussion along this line.)

The Vice Chancellor: Are the pleadings complicated? The case is somewhat complex.

Mr. Carrick: I do not think so excepting for the fact that something happened during the progress of the suit which is set out. I do not think they are complicated.

The Vice Chancellor: What stage have you reached. Is the defendant, represented by Mr. Boardman, putting in proof?

Mr. Boardman: Yes, sir, and I will put in some further proof.

Mr. Carrick: The situation when we adjourned was this, that Mr. Boardman was on his proof, on the second day, but did not have the material to proceed with and in order to save time, or use up the time that had been set for the case, Mr. Farrier was re-called on behalf of the defendant, the Lincoln Trust Company and his examination in chief was completed and he was being cross-examined and your Honor will recall there is a stipulation at the end of the case concerning it. Whether Mr. Boardman wishes to resume that cross-examination or call other witnesses, I do not know.

Mr. Boardman: I have two or three witnesses—

The Vice Chancellor: Perhaps you had better conclude your cross-examination.

Mr. Boardman: I have two or three witnesses who are in a hurry.

The Vice Chancellor: Is your main cross-examination of Mr. Farrier finished?

Mr. Boardman: No, but it will be very short.

The Vice Chancellor: It is better to complete his examination so that the record

will be complete. Is there any special reason why you should not do that.

Mr. Boardman: There are two or three people who want to get away and Mr. Farrier is interested in the case financially.

The Vice Chancellor: Very well, proceed.

MABEL McMURRY, sworn for the defence:

Direct-examination by Mr. Boardman:

Q. You are clerk for Mr. Elmer Demarest, the Referee in Bankruptcy? A. Yes, sir.

Q. Is the matter of the Interstate Lumber Company, a bankrupt pending? A. Yes, sir.

Q. And you are here today under subpoena? A. Yes, sir.

Q. You have brought with you the proofs of claim filed in that matter? A. Yes, sir.

Q. And these are the originals that I hold in my hand? A. Yes, sir.

Mr. Boardman: I offer in evidence claim No. 29 and claim No. 30, filed against the Interstate Lumber Company in behalf of the Lincoln Trust Company of New Jersey, No. 29 being for $3,811.61 and No. 30 being for $980.83, both marked "Filed" as of March 8th, 1917.

Q. You have brought here the testimony on file in that case, a record in your office? A. Yes, sir.

Q. And they are the volumes that I have before me? A. Yes, sir.

Mr. Carrick: Are those the books that were here before?

Mr. Boardman: No, these are new ones. I offer these in evidence.

Mr. Carrick: I object to them as irrelevant.

The Vice Chancellor: I will admit them probably that will save time. The objection is merely to the relevancy of the papers and I will admit them subject to objection.

Of course the testimony is not offered.

Mr. Boardman: Oh, no.

Mr. Carrick: The two proofs of claim are all.

The Vice Chancellor: Yes, but Mr. Boardman referred to certain books of testimony.

HARRY LANE, ESQ., re-called for the defendant:

Direct-examination by Mr. Boardman:

Q. You are the Receiver, appointed by the Court of Chancery of the Interstate Lumber Company? A. Yes, sir.

Q. And you are trustee in bankruptcy elected and appointed in the Bankruptcy Court for the same company? A. Yes, sir.

Q. Have you, since the last hearing, received from Mr. Farrier, the old Partridge Paper-promissory notes? A. Yes, sir.

Q. As trustee in bankruptcy? A. As trustee in bankruptcy I demanded from Mr. Farrier any notes he had and I received a bunch of notes.

Q. Will you produce them? A. (Producing

paper), there is a list of the notes that I am producing with the notes.

Q. And that was furnished to you—A. That was furnished to me by Mr. Farrier and the notes were checked off with the list.

Q. And two additions made? A. There were two additions made. It appears that when the list was made out there were two notes that must have been together and must have slipped the attention of whoever made out the list and I added them on. There are sixty-nine notes.

By the Vice Chancellor: Q. All of the same character? A. Yes, sir, they are all the same—they are Partridge Lumber Co. notes to different individuals showing the old indebtedness I presume, of the Partridge Lumber Co.

Further DIRECT-EXAMINATION:

Q. Have you examined these to find whether the Lincoln Trust Company paper is amongst those? A. I understand from Mr. Farrier that all of the notes are there with the exception of the three notes that are in the hands of Mr. Dawson, I believe, and were offered in evidence in this case.

Q. Have you, yourself, verified that? A. I have nothing to verify it from.

Q. Have you looked through these notes? A. I find they are not in there.

Q. You do not find those three. Do you find more than one note of the Lincoln Trust Co.? A. Only one.

Q. And that is for how much? A. $2000 dated April 8th, 1912.

Q. At one month? A. Payable one month after date at the Lincoln Trust Co.

Q. And endorsed? A. It is by Charles R. Partridge Lumber Company to the order of Charles R. Partridge, endorsed by Charles R. Partridge, Cornelia M. Partridge, Charles R. Partridge Lumber Company, Charles R. Partridge, President. Do you want the notation that appears on the bottom also?

Q. Yes. A. May 9th, 1912. Balance of account of Charles R. Partridge Lumber Company amounting to $21.25 applied on the within note.

Mr. Carrick: Apparently it is the Lincoln Trust Company of New York.

Witness: It has been called to my attention by Judge Carrick that this is the Lincoln Trust Company of New York City and has nothing to do with the Lincoln Trust Company of New Jersey on its face. I therefore amend my statement and say there are no notes here payable at the Lincoln Trust Company of New Jersey.

Q. Did Mr. Farrier give you any reason why he produced $10,600 in value of other Partridge paper held by the Lincoln Trust Company besides that which Mr. Dawson held. A. No, he did not.

Q. Did you make a demand on him for the $120,000 of Interstate notes given for direct and contingent liabilities? A. I did.

Q. Did he give you those notes? A. He did not.

Q. What explanation did he give as to that? A. He stated to me those notes were a considerable number of notes aggregating a large amount, over $120,000 on which sum $120,000 had been credited. That that had been credited on the notes, that had been credited pro rata among the notes, and on each of the notes there were cer-

tain balances still due and therefore the notes were still held in the possession of Mr. Farrier or the bank committee; that they were subject to no use that I might properly make of them as trustee in bankruptcy and could be gotten at any time.

Q. You understood $120,000 had been credited on the notes as paid? A. Yes, sir, some such amount, I will not say $120,000 exactly.

Q. Somewhere in that neighborhood as you recall it? A. Yes, sir.

Mr. Boardman: I offer in evidence this bundle of Partridge paper.

Mr. Carrick: I object to it if your Honor please. It seems to me absolutely irrelevant to the issue we are trying before your Honor. I do not understand how it has any bearing at all on this question of the transactions between the Lincoln Trust Company and Mr. Partridge which were about August 1st, 1912 and which were completed about that time. These transactions were all years afterwards.

The Vice Chancellor: It is very difficult for me to rule on the question of the relevancy of any papers offered in evidence in this very complicated case.

I have not read the testimony which is quite extensive and all of which was taken more than six months ago. I have merely read a memorandum, coming down on the train, from notes that I dictated last January in order to be able to refresh my memory when the case should be continued. As I understand it, I may be wrong, but as I understand it what is left in this case for

litigation is the status of this property at Montclair which the Lincoln Trust Company bought from the Montclair Bank. That is my understanding. Is there any litigation in this case except the litigation between the representatives of Mathewson and Harmon in New York as practically mortgagees of the equity of redemption and the Lincoln Trust Company—is there any other controversy here, that is the sole controversy is it not? On various grounds the representatives of Messrs. Mathewson and and Harmon or the represenatives of the survivor of them claim to hold by assignment what amounts to a second mortgage, following the Montclair Bank Mortgage on this property in dispute, to secure Mathewson and Harmon against a contingent liability as endorsers of the notes on which Mrs. Partridge's son was principal.

Is that right; is that the way you understand it?

Mr. Boardman: No, I think not.

Mr. Carrick: I think that is absolutely correct if your Honor please.

The Vice Chancellor: I will ask Mr. Boardman to state briefly what additional litigation we have here.

Mr. Boardman: What I object to in your statement is that I do not think we stand in the position of a mortgagee; I think we stand in the position of an assignee and nominee of Mrs. Partridge. I do not think we stand in any position as a mortgagee.

But the only controversy, if that is what

the question is, which is asked, is a controversy between Harmon and Mathewson and Lincoln Trust Company over this property and we claim that under our theory we have title to the property.

The Vice Chancellor: I would like to inquire here, since you object to the term "mortgagee" do you not admit that whatever right the representative of Mathewson and Harmon has to hold this property, is to retain it as security, or do you claim that they hold it absolutely, that they are the owners?

I thought that was perfectly clear that they held it to secure them against liability so that if this young Mr. Partridge satisfied the note they would have no claim. That is the way I understood it as you presented it to me.

Mr. Boardman: What I object to is this: As far as the bank is concerned, we are in the position of taking the property absolutely; as to Mrs. Partridge we may have to account for that later? As far as the Lincoln Trust is concerned we are in the position of her nominee and we are pursuing this property in the hands of this trustee under her permission to do so. I do not think it is any part of our claim against them what our relationship with Mrs. Partridge is; we are her nominee to recover this property. We may have to account to her for it, but we are absolute assignees of her equity.

The Vice Chancellor: Very well, pro-

ceed. Now, we have the question of the relevancy of this great pile of notes of one of these bankrupt companies, what has that to do with this controversy.

Mr. Boardman: They say that when the Partridge paper was paid that we would have the property re-conveyed to us—Mrs. Partridge. Here, we show that only $120,000 of this Partridge paper, under the agreement of December 12th, 1914, has been surrendered to the Interstate Lumber Company and has become the property of this other bank represented by the Bank Committee. Of course, the omission of the paper of the Lincoln Trust Company—there must be some explanation of that. Under the agreement of December 1914, the Interstate Lumber Company, which you will remember took over the assets of the Partridge Lumber Company and gave its notes for the notes of the Partridge Lumber Company, they left in the hands of the bank committee the old paper of the Partridge Lumber Co. So, to that extent, the bank had both the Partridge paper and the Interstate paper for what they called direct and contingent notes, and it was something like $125,000 whatever it was. It was over $100,000.

The Vice Chancellor: Do I understand you to say that this bunch of notes which Mr. Lane, the trustee in Bankruptcy, presented, are the notes of the Partridge Lumber Company which were surrendered?

Mr. Boardman: Yes.

The Vice Chancellor: And substituted by the notes of the Interstate?

Mr. Boardman: No, they were not, not originally. Under the agreement of June 1912, these Partridge notes were left—and you will recall that when $18,000 of the Partridge Notes which the Trust Company held on which Mrs. Partridge's name appeared, were paid they were to re-convey the property to Mrs. Partridge. Now, those notes, and your Honor called our attention to that, were left in the possession of the bank or the bank committee, but new notes were also given for the same amount by the Interstate Lumber Company and—

The Vice Chancellor: Are these $8,000 of notes which were put in escrow with Mr. Dawson in this bunch of notes?

Mr. Boardman: They are not. They should be under the contract of December 1914. There was no distinction there. The Lincoln Trust Company's claim against the Partridge Lumber Company was $21,040; the notes on which Mrs. Partridge's name appeared was $18,600; $8,000 of those were put up with Mr. Dawson under that agreement. After that, in the subsequent history no distinction was ever made between that $8,000 and the $10,600, in every respect the Lincoln Trust Company was treated as a creditor of the Interstate to the full amount and it received from the Interstate, $21,040. That was direct and contingent notes. Therefore,

they held, or the committee held for them, the $21,040 of the Partridge paper of which $18,600 Mrs. Partridge was on, and they held $21,040 of direct and contingent notes of the Interstate Lumber Company. In December 1914 it was agreed that the committee from the bank should surrender all the Partridge Paper.

The Vice Chancellor: Was that after the $8,000 had been put in escrow?

Mr. Boardman: Yes. But, as I say, the Lincoln Trust Company held absolute control over that and there was never any distinction made between that $8,000 and the $10,600 of notes on which Mrs. Partridge appeared, or the whole $21,040 which was the total claim of the Lincoln Trust Company against the Partridge Company and it had these two sets of notes, evidently the same indebtedness, the same amount.

The Vice Chancellor: Were notes of the Interstate company given to take the place of the $8,000 of notes in escrow.

Mr. Boardman: They were; they were given for the same amount. That is my conclusion that they were given to take the place—let us be perfectly clear on what did happen. The bank committees held these $21,040 of old Partridge paper.

The Vice Chancellor: They did not hold that $8,000.

Mr. Boardman: As far as anybody else except Mr. Dawson and Mr. Goldenhorn and the two or three men knew they did.

The Vice Chancellor: One moment, you say the bank held. Did they hold the $8,000 or did Mr. Dawson hold that $8,000? The testimony as I understand it, was that $8,000 of notes was delivered to Mr. Dawson and he put them in his safe. Those notes were held by Dawson and held subject to the rights of at least two parties. The Lincoln Trust Company did not hold them.

Mr. Boardman: They had some string on them, they treated them just as if they did have them.

The Vice Chancellor: A man may treat somebody else's property as his own, that does not make it his own. Tell me what that has to do with the question of the title of the Lincoln Trust Company to the Montclair property.

Mr. Boardman: Their statement and their pleadings is that if the ten thousand six hundred dollars which was the balance after the $8,000 was taken out and the $8,000 should be repaid, they would reconvey the property to Mrs. Partridge. They held this paper all except the $8,000 and they treated the $8,000 as if they had it, and—

The Vice Chancellor: Do you say the Lincoln Trust Company offers in its answer to convey this property to your client or to somebody upon receipt of the balance due them on the Partridge Notes for $18,600?

Mr. Boardman: They say that was the agreement.

The Vice Chancellor: How about the $10,000 they paid the Montclair Bank?

Mr. Boardman: That was all subsequent to that. That was already so, and they were dealing with—

The Vice Chancellor: Then your proposition is that upon receiving the balance due them on the $18,600 in notes they will convey the property subject to the $10,000 mortgage to which they are subrogated.

Mr. Boardman: That is the effect of their pleadings as I read them.

The Vice Chancellor: They waive, therefore, any right, if they have any right, in respect of the difference between $18,600 and $21,040.

Mr. Boardman: What they will claim under their proof I do not know. At one time Mr. Farrier says one thing on that proposition and at other times I understand him to say something different.

The Vice Chancellor: What did they say in their pleadings is the amount due them on the $18,600?

Mr. Boardman: They do not say, I think they make the general statement that the whole thing has never been paid.

Now, we are tracing down. As I say, each of the banks went in under the agreement of June 1912, for a certain amount which was called direct and contingent. They took from the Interstate Lumber Co., $21,040 on direct and contingent, and they held all this Partridge Paper. Nothing was said about the $8,000 not being in

their hands. Time ran on to December 1914, and then an agreement was made that the Bank Committee was to take from the Interstate Company practically all its assets, that is what it amounts to. Lumber and other things, and they were to credit on the direct and contingent note, $120,000, and they were to surrender to the Interstate Company all the Partridge Paper.

The Vice Chancellor: The Partridge Company was in bankruptcy at the time?

Mr. Boardman: Yes. This litigation began and—

The Vice Chancellor: When did the Interstate Lumber Company surrender the paper of the Partridge Company—was that surrendered as an asset?

Mr. Boardman: I do not believe that was worth anything. I will read from the agreement—"The committee will also deliver" etc., (read from agreement) the $80,000 referred to was this: From time to time assets, lumber, had been sold by the Interstate and the direct and contingent notes had been reduced to about $13,000 and new money notes to about $67,000 so that at that time there was due on this bunch of paper which the committee held more than $240,000.

The Vice Chancellor: What bunch of paper?

Mr. Boardman: The Interstate, direct and contingent notes given for the Partridge Notes. They had, roughly, about

$120,000 of the old Partridge paper, and given to secure the claim and indebtedness was the same amount of the direct and contingent notes of the Interstate Lumber Company of $120,000. So that they held practically $240,000—this committee on banks—and the Interstate had been paying that off by selling lumber—

The Vice Chancellor: Paying what off?

Mr. Boardman: That indebtedness of $120,000, and it reduced it to about $13,000 for the direct and contingent liability. When the Interstate went into this business they had no money and they borrowed from the bank enough money—$126,000—to buy the assets of the old Partridge Lumber Company and besides the direct and contingent notes they gave the new money notes. Those new money notes had been reduced to $67,000 in December 1914, the direct and contingent to $13,000. So this paper that was surrendered had only at that time a value of $13,000. The direct and contingent notes of the Interstate, and the old Partridge paper together had been practically reduced to $13,000, and this paper was surrendered to the Interstate Company with the understanding that if they could pick up anything from any of the makers—of course they could not from the endorsers—it should be credited on the $80,000, that is the $13,000 of direct and contingent and $67,000 of the new money notes.

The Vice Chancellor: You say $13,000 of the direct and indirect.

Mr. Boardman: Yes, sir.

The Vice Chancellor: And $67,000 of the new money?

Mr. Boardman: Yes, sir.

The Vice Chancellor: That made $80,000 in all.

Mr. Boardman: Yes, sir.

The Vice Chancellor: What about the status of that $8,000 at the present time?

Mr. Boardman: That has been reduced —the new money we are not concerned in practically, there is no pretense we can follow that down. The direct and contingent has been reduced to $8,385.

The Vice Chancellor: You said it had been reduced to $13,000.

Mr. Boardman: That was in December 1914. Now it has been reduced to $8,385 and the Lincoln Trust Company's share as evidenced by its proof of claim No. 30 which is for the direct and contingent notes is reduced down to $982.83, what the Lincoln Trust Company had remaining due on $21,040, according to their proof of claim. Of that, of course, only $18,600 of the $21,040, Mrs. Partridge was on.

The Vice Chancellor: Now go on and connect this with what we are litigating.

Mr. Boardman: My proposition is—my idea would be—the most they could claim would be the fraction I have indicated and that we are entitled to the property. I will go even further, that this committee of Banks had in their hands Lumber that they got under this agreement of Decem-

ber 1914, more than sufficient to wipe out even that remaining indebtedness. They have received assets which had been valued a little while before in the neighborhood of—Well, they received a great many assets and had in their hands a very considerable sum of money applicable to the reduction of this very debt.

The Vice Chancellor: What was the date of the foreclosure sale under the Montclair Bank mortgage.

Mr. Boardman: January 1916.

The Vice Chancellor: What was the status of this indebtedness then?

Mr. Boardman: It was somewhere between the $13,000 which I mentioned as its having been reduced to in December 1914, and $8,385.

The Vice Chancellor: How much was the Lincoln Trust Company holding against Mrs. Partridge, anything?

Mr. Boardman: Not more than a thousand or eleven hundred dollars. I do not see how it could have been more.

The Vice Chancellor: You claim that has been paid.

Mr. Boardman: Yes, and in fact they have other assets; they got some property under that old original agreement and that is sufficient to wipe out the debt.

The Vice Chancellor: Assuming that is true and that was the situation of affairs at the time of the foreclosure sale in January 1916, how can you make the purchaser of that property from the Mont-

clair Bank surrender this title except upon its own terms?

You say the Lincoln Trust Company offers in these pleadings to turn over the property to your client on receiving certain moneys, turn it over subject to the first mortgage.

Mr. Boardman: What I say is this: That Paul is a trustee on the one hand for Mrs. Partridge and on the other hand for the Lincoln Trust Company; that Paul is a mere dummy for the Lincoln Trust Company and they arranged for the foreclosure.

The Vice Chancellor: Did the Lincoln Trust Company pay that interest?

Mr. Carrick: Partridge was in possession after the deed was given and lived in it under an agreement to keep the property in repair and pay the interest, that he refused to pay the interest and went out of the property.

The Vice Chancellor: Do not the proofs show the Lincoln Trust Company paid the interest for a time?

Mr. Boardman: No, there is proof Mr. Paul paid it.

Mr. Carrick: It was paid by Mr. Paul and Mr. Goodell testified that when it became due Mr. Farrier told him they would not pay the interest any further.

The Vice Chancellor: What foundation is there for the claim that the Lincoln Trust Company instituted the foreclosure suit?

Argument

Mr. Boardman: On May 20th, Mr. Farrier of the Lincoln Trust Company wrote this letter to Mr. Harmon: "Mr. Wallace H. Partridge called at our office today and requested us to write to you relative to the status of the house #78 Clinton Avenue, Montclair, formerly owned by Mrs. Cornelia M. Partridge.

This house, together with the land and appurtenances was purchased by the writer some years ago and title is still vested in me.

While Mr. Partridge is now living in the house, steps have been taken by me to get physical possession of the property and after consultation with my lawyer, I do not see that any of the Partridge family have any interest whatever in the premises.

Yours very truly,"

The Vice Chancellor: I do not see the relationship of that to my inquiry.

Mr. Boardman: The whole chain does not appear from a single link of course.

The Vice Chancellor: I do not see that this is a link. According to your theory he was practically a trustee and a trustee out of possession, and he says "I do not think the Partridges have any more interest; the matter is now between you and me; we have claims and I am going to take possession." If he had gone and taken possession then, the case would be entirely different, but he did not take possession and it seems that the first mortgagee started foreclosure.

Mr. Boardman: Let me go on and show what he did do. He claims that he took possession in his answer and pleadings.

The Vice Chancellor: The particular point I wanted to have light on is what evidence there is that the Lincoln Trust Company is making the foreclosure.

Mr. Boardman: (Mr. Boardman here read from the testimony of Mr. Goodell.)

The Vice Chancellor: Then at the end of the thirty days or sometime after July 15th, the bank directed a foreclosure?

Mr. Boardman: Yes.

The Vice Chancellor: Is there any doubt then that the Montclair Bank instituted the foreclosure suit?

Mr. Boardman: Yes. On June 15th, Farrier recorded the deed from Paul to him. You will remember a deed was given to Paul and then one from Paul to Farrier, which was not recorded for a long time.

On June 17th, 1915, Mr. Farrier wrote the Montclair Savings Bank as follows:

"Your letter of June 16th relative to the unpaid bill for insurance on what was formerly known as the Partridge House has been received and I am today sending a check in payment of the same. I assume that you have turned the papers over to your counsel for the foreclosure of the mortgage on the same property. I have not yet been served with any papers and do not know if any bill has been filed, but I will accept service by mail and do anything else to hasten the matter along as

the longer the matter is delayed the longer Partridge will have rent free and we cannot put him out until we have title. I suppose you know his business in Hoboken is now in the Bankruptcy Court."

I want to call your attention to one thing which is in our cross bill and admitted in our answer. Paul, in the deed from him, covenanted he would pay this $10,000. Farrier admits and they say that they were under obligation to pay the mortgage.

The Vice Chancellor: The bank?

Mr. Boardman: Yes.

The Vice Chancellor: While Paul assumed to pay the mortgage I think there is no such assumption in the deed from Paul to Farrier.

Mr. Boardman: No, but they admit they were in the same position as Paul, whatever the legal effect may be. They admit they were under an obligation to pay this mortgage.

(At this point Mr. Boardman read from the typewritten brief.)

Mr. Carey: They deny there are any such trusts as you claim.

Mr. Boardman: We charge Paul with being a trustee and the trust coming down, and a trustee who has assumed to pay an encumbrance cannot permit a foreclosure to be brought and thereby rid the property of any trust or equities that were in there before, and a second mortgagee who takes upon himself a covenant to pay, cannot, by himself, get in any better position.

The Vice Chancellor: Do I understand that you admit that the bank was entitled to hold the property for $10,800?

Mr. Boardman: I cannot avoid the equity that they had. It seems to be quite obvious that must be paid.

The Vice Chancellor: Then the basis of your claim is this deed to Paul whom you say is a trustee—

Mr. Boardman: Yes.

The Vice Chancellor: Is that deed in evidence?

Mr. Boardman: Yes, sir.

The Vice Chancellor: I would like to see it, what is the form of it?

Mr. Carrick: (Handing deed to the Vice Chancellor) It contains the ordinary assumption of mortgage.

The Vice Chancellor: What you read a moment ago is from the answer of the Lincoln Trust Company?

Mr. Boardman: Yes.

The Vice Chancellor: I will take any evidence going to show the actual state of the account between the Lincoln Trust Company and Mr. Partridge on these notes.

Mr. Carrick: If your Honor will permit me to make one suggestion—

The Vice Chancellor: Certainly.

Mr. Carrick: I think some confusion has arisen because counsel on the other side have imported into the relations between the Partridges and the Lincoln Trust Company an agreement made two and one-half years later between the committee of

banks and the Interstate Lumber Company to which, of course, the Partridges were no parties, whatever.

The course of events, chronologically, was this: In June 1912 an agreement was made by these various creditors, mainly banks, and the Partridge Lumber Company that there should be a pooling of their issues, a bid made for the assets and if the assets were bought by this committee representing the creditors they were to be turned over to a corporation to be organized, the Interstate Lumber Company, which company was to issue to the various creditors, its own notes for what were called the direct and contingent liabilities of the Partridge Lumber Company.

The Vice Chancellor: The direct liability as I understand it, were the notes which had been discounted and the proceeds of which had gone to the Partridge Lumber Company and the indirect were the notes which the Partridge Lumber Company held of various parties.

Mr. Carrick: Yes, that their customers had given and they had turned over to the various banks.

The Interstate Lumber Company, when incorporated, was to give notes for both classes of the liabilities, what they called the direct and contingent.

In addition they were to give notes for the new money which was to be contributed by the bank in certain proportions agreed on, to purchase the assets, that

money going into the hands of the Trustee in Bankruptcy and being the source from which the dividends were afterwards paid by him.

The Vice Chancellor: That was in 1912?

Mr. Carrick: Yes, June 1912.

The Vice Chancellor: Is that agreement in evidence?

Mr. Carrick: That agreement is in evidence.

The Vice Chancellor: Did it provide for, or was the effect of it that the notes of the Partridge Company should be cancelled?

Mr. Harris: No, sir.

The Vice Chancellor: Surrendered?

Mr. Carrick; Not even surrendered. It was expressly provided that the creditors who were parties to this agreement, the bank and who held the notes of the Partridge Lumber Company, were to prove their claims and they were to give credit on the notes of the Interstate Lumber Company for whatever they might receive.

The Vice Chancellor: How about the indirect liability, that is paper on which the Partridge Company were only secondarily reliable, paper of customers.

Mr. Carrick: As they collected they were to give credit.

The Vice Chancellor: They were to give credit on the notes they received from the Interstate Lumber Company for any amount which they collected from the Partridge Lumber Company's paper whether through the Bankruptcy proceedings or by collections from the makers?

Mr. Carrick: Yes, but it was expressly provided in that agreement that the creditors were to prove their claims and get what they could out of the Bankruptcy Court.

The Vice Chancellor: It contained a provision they should also get what they could from the customers on the so called indirect liabilities?

Mr. Carrick: Yes, sir, and whatever they collected was to be credited on this indebtedness.

That being the situation, shortly after that, in the very last of July, this agreement having been made sometime in June and having been consummated as we shall show in our evidence before the first of July, in the latter part of July, all of the bank and all of the creditors still holding these Partridge Notes under this agreement, a deal was made between Mr. and Mrs. Partridge and the Lincoln Trust by which, upon the giving up of the Eight Thousand Dollars—

The Vice Chancellor: Was this before or after the agreement between the banks you have described?

Mr. Carrick: One month after the agreement.

The Vice Chancellor: Then the agreement among the bankers included an agreement on the part of the Lincoln Trust Company to surrender all the Partridge notes that they held.

Mr. Carrick: There was no agreement of

that kind to surrender the notes, there was nothing said about surrendering the notes at that time.

The Vice Chancellor: That came up afterwards.

Mr. Carrick: That was later, that was two and one-half years later, that the agreement for the surrender and cancellation of the Partridge notes was made.

The Vice Chancellor: At that time in 1912, do I understand the bankers provided for the organization of the Interstate Lumber Company?

Mr. Carrick: Yes, sir.

The Vice Chancellor: And the giving of those notes?

Mr. Carrick: Yes, sir.

The Vice Chancellor: To the holders of the Partridge paper on the terms you have mentioned?

Mr. Carrick: Yes, sir.

The Vice Chancellor: And they continued to hold the Partridge Paper?

Mr. Carrick: Yes, sir.

The Vice Chancellor: Now let me see if I have the subsequent agreement accurately, that was in 1914.

Mr. Carrick: That was in December 1914.

The Vice Chancellor: Then they agreed they would surrender these notes.

Mr. Carrick: Yes, sir, then there was an agreement made by this committee of the banks and the Interstate Company and Cheney and some others, by which there

was to be a cancellation of $120,000 of the Interstate notes and then there was to be, by that agreement, a surrender of the original Partridge Notes which up to that time were in the possession of the banks.

The Vice Chancellor: A surrender to whom?

Mr. Carrick: The Interstate Lumber Co.

The Vice Chancellor: For cancellation?

Mr. Carrick: For cancellation.

The Vice Chancellor: Why, to the Interstate Lumber Company?

Mr. Carrick: The Interstate Lumber Company had procured—the business relations were quite complicated, but the Interstate Lumber Company had secured from the Southern Sea Board Lumber Company what they call a series C loan notes to the extent of $120,000 and they agreed, in this agreement of 1914, that they should turn over $120,000 of the Series C notes of the Southern Sea Board Company.

The Vice Chancellor: Who would?

Mr. Carrick: The Interstate Lumber Company. At this time it was in business. The Interstate Lumber Company agreed in 1914 that they would surrender to the committee representing the bank, these various holders of the Interstate notes and Partridge notes, $120,000 of series C notes in payment for a corresponding amount of the indebtedness of the Interstate Lumber Company represented by the notes which they had given. Those notes were to be

returned for cancellation. Also, in the same agreement, the committee representing the banks agreed that they would restore to the Interstate Company the original Partridge notes.

The Vice Chancellor: Including the $8,000?

Mr. Carrick: That was not said. Of course, the Lincoln Trust Company was not a party directly to this agreement. The Committee representing the banks made this agreement and apparently without any reference to the fact that the Lincoln Trust Company in the mean time or prior to this time, very shortly after the original agreement was made, had disabled itself from carrying out the surrender of $8,000 of those notes because they had been delivered to Mr. Dawson in escrow.

The Vice Chancellor: They were delivered to Mr. Dawson in escrow when Mrs. Partridge conveyed the property to Paul.

Mr. Carrick: Yes, sir.

The Vice Chancellor: Was there a written agreement under which that transaction was made?

Mr. Carrick: Yes, sir. I will read the agreement, it is very brief and it was delivered at the same time, with the notes, to Mr. Dawson: "This agreement made this third day of August 1912 between Cornelia M. Partridge, party of the first part, and the Lincoln Trust Company of New Jersey a corporation in the State of New Jersey, party of the second part.

Whereas, the party of the first part has sold to the party of the second part all that plot of ground with the buildings erected thereon, more particularly described as follows: (See attached description).

And whereas the party of the second part has delivered to the party of the first part certain promissory notes issued by said party of the first part in payment of the above mentioned premises, and

Whereas the said party of the second part, for the better protection of its interests, requires that the said promissory notes be held in escrow for a period of time to be determined or until certain matters now pending are settled. It is hereby agreed by the party of the first part, that she will place the aforesaid promissory notes in possession of Raymond Dawson whose address is 1 Exchange Place, Jersey City to be held by him until the settlement of the above mentioned actions or until mutually agreed upon by both parties to this agreement.

I take it that the Lincoln Trust Company, when it placed these three notes, surrendered them to these parties, had only the further rights in them, or in their possession, which is indicated by this agreement.

The Vice Chancellor: Taking this whole transaction do you, or do you not, think that what, in equity, was done was to give the Lincoln Trust Company a mortgage

upon the Montclair Property to secure the payment of these notes aggregating $8,000?

Mr. Carrick: I should certainly say that was the indication from this paper.

The Vice Chancellor: Paul is appointed as recipient of the title, then he, Paul, acting for the Lincoln Trust Company, assumed to pay the mortgage of the Montclair Bank.

Mr. Carrick: He took the property exonerating Mrs. Partridge, making himself primarily liable to the Montclair Bank. The contract was with Mrs. Partridge and she had a right to say "Before I shall be called upon to pay this mortgage to the Montclair Bank, you, Paul, must at least protect me."

The Vice Chancellor: If you take the paper just as it stands would it not seem that the Lincoln Trust Company, through its agent or dummy, Mr. Paul, assumed to pay this mortgage of the Montclair Bank, and made itself primarily responsible?

Mr. Carrick: I think it did as between Mrs. Partridge and Mr. Paul. I think before she could be called upon by the Bank to respond to her bond, she had a right to see that Paul exonerated her. There is other testimony as your Honor may recall. Mr. Farrier has been partly examined and he says that the oral conversations at the time when this transaction took place was that Mrs. Partridge was to

pay not only this eight thousand dollars before she should have her property back, but that she should pay the entire amount upon which she was liable, that is, $18,600 although that seems to be in conflict with the natural inference which would be drawn from this paper itself; but whatever rights were acquired by the Lincoln Trust Company were acquired and fixed on this third day of August 1912, and the three notes aggregating eight thousand dollars were then delivered to Mr. Dawson and have since then been in his possession held by him under the terms of this escrow agreement, and Mr. Dawson's office has sent those papers up here this morning— he is away at Trenton, he was to have been here himself. They have sought in some way to change the character of whatever property rights and relations had been made between the parties by that contract of 1912, by producing evidence that under an agreement made two and one-half years later by the Committee of banks with the Interstate Lumber Company and to which neither Mrs. Partridge or Mr. Partridge were at all parties or in any way interested —that this committee, purporting to represent the various banks including the Lincoln Trust Company agreed that certain paper should be surrendered for cancellation including the paper held by the Lincoln Trust Company, and without any exception being made in that agreement of the eight thousand dollars which was act-

ually not in their possession, but which was delivered to Mr. Dawson, under this agreement, by Mrs. Partridge and the Lincoln Trust Company.

The Vice Chancellor: Suppose you lay aside that agreement for the moment. Were not these notes part of the proof which goes to show the amount now due?

Of course, the subsequent agreement could not affect the rights of the parties under the prior agreement—a subsequent agreement to which they were not parties at all. But no matter how it came about, whether by agreement between all the creditors or by any other instrumentality, if a large portion of this indebtedness was paid, if the $8,000 indebtedness had been wiped out or reduced, must we not consider that here?

Mr. Carrick: Certainly, I do not contest that.

The Vice Chancellor: Then why are the notes not relevant?

Mr. Carrick: For this reason. This agreement which was made by the Interstate Lumber Company and the committee of banks in December 1914, provided that the Interstate Lumber Company was to deliver to these creditors—that committee representing among others the Lincoln Trust Company—$120,000 of notes, for which it, the Interstate Lumber Company, was to receive credit as so much cash. That was an agreement between the Interstate Company and this committee repre-

senting the bank, and, of course, as between them, it was absolutely binding. As a matter of fact those notes were delivered to the Southern Seaboard Company. The maker of those notes went into bankruptcy and was wiped out and there was not a cent paid on—

The Vice Chancellor: Did the Lincoln Trust Company accept its share?

Mr. Carrick: It took its share and was credited—but the Interstate Lumber Company did not release anybody else.

The Vice Chancellor: Whatever was paid on account of the notes of the Interstate Lumber Company is equally applicable to the Partridge Notes?

Mr. Carrick: As far as the Interstate was concerned, but it did not release some other person who was liable.

The Vice Chancellor: As I understand it we are getting at the amount due particularly on the eight thousand dollars of Mrs. Partidge's notes and if by these subsequent deals there was a large credit made upon all the Partridge notes held by the Lincoln Trust Company why is not this proper?

Mr. Carrick: It was not that. It was a deal made by the Interstate which had given its own notes to the Lincoln Trust Company among others.

The Vice Chancellor: Notes, as I understand it, which corresponded with the eight thousand dollars of notes held by Mr. Dawson in escrow.

Mr. Carrick: Yes, sir.

The Vice Chancellor: The Lincoln Trust Company accepted those notes?

Mr. Carrick: Yes, sir.

The Vice Chancellor: I understand it is conceded by both parties there was no other acquired indebtedness. The Interstate notes were given to strengthen the Partridge notes. There was no original agreement for any surrender. Any moneys that were paid on the Interstate notes were to be credited on the Partridge Notes. If fifty per cent of the Interstate notes were paid in cash to the various holders, pro rata, that would leave the Partridge Notes. If fifty per cent of the Interstate notes was paid in cash to the various holders, pro rata, that would leave the Partridge notes, standing as one-half paid, would it not?

Mr. Carrick: Yes, sir.

The Vice Chancellor: If the Interstate received notes corresponding to the eight thousand dollars and subsequently got a payment on account of the Interstate notes which represented the eight thousand dollars is not that a matter to be proven here.

Mr. Carrick: If it was payment, I concede that is so. Of course, if that debt is discharged, or partially discharged, that is a proper subject of inquiry.

The Vice Chancellor: I understand Mr. Boardman's statement to be that the agreement made by these creditors, this committee, which did not necessarily bind their principals—it might—it does not

appear it did—they made the agreement among themselves which acknowledged the substitution of these Seaboard notes, the turning over of those notes, in payment of a corresponding among of the Interstate notes. Assuming that was not binding upon anybody else, it is alleged that in fact the Lincoln Trust Company assented to it and took its share of those notes in payment of a corresponding amount of notes of the Interstate Company.

Did not that affect the amount due on the Partridge notes?

Mr. Carrick: It was not payment of Partridge notes if your Honor please. They had the security of the Partridge Lumber Company and they had the security of Mr. Partridge individually and of Mrs. Partridge.

The Vice Chancellor: But you say the original agreement was that all moneys collected on the Partridge notes whether by proceedings in Bankruptcy or proceedings against the makers, of the regular commercial paper, business paper, that the bank held, were to be credited on the amount of the Interstate notes?

Mr. Carrick: Yes, sir.

The Vice Chancellor: That is true, is it not?

Mr. Carrick: Yes, sir.

The Vice Chancellor: Finally that went in part payment of the Interstate notes to diminish the amount collectible on the Partridge notes, did it not?

Mr. Carrick: It would, if there had been payments. But the acceptance by a contract between the Interstate Company and—Suppose it was the Lincoln Trust Company direct, of something which they said should be considered in lieu of so much cash, was of course binding upon the Lincoln Trust Company as between them and the Interstate. But if it turned out, as it did turn out and has been mentioned in the testimony, that not a cent was paid on the Southern Sea Board notes, the additional liability, that is the liability under that agreement, I contend remained unaffected by that agreement which was an agreement between the committee of banks representing the Lincoln Trust Company among others, and the Interstate.

Then there is this further consideration. Whatever may be the agreement that was made, as a matter of fact these notes were actually delivered to Mrs. Partridge and were in Mrs. Partridge's possession. She had the prior right. No agreement was made to affect her rights in those notes and the notes were delivered to Mr. Dawson with certain rights in the Lincoln Trust Company, but they were primarily notes surrendered to and held by Mrs. Partridge in consideration of the conveyance which she made to Paul at that time. Now it seems to me, coming back to the specific question we are dealing with, to take this great batch of notes in evidence, sixty nine notes which are produced here, is going to take us very far afield.

Argument

I have not touched on the question your Honor suggested and which it seems to me is the vital question in the case; the foreclosure suit, and sale under liens conceded by everybody to be prior, in which all these parties were made defendants—

The Vice Chancellor: The other side does not dispute the priority of that first mortgage and they do not take the inequitable, if at all tenable, view that under this deal between the banks and Mrs. Partridge, the bank, through Paul, was bound to pay off this first mortgage, and hold it as a mere security for the amount of the notes, the eight thousand dollars. They do not take that view. They admit the effect of this deal was that Paul—or rather the bank acting through Paul—was bound to take care of this mortgage, bound to pay it. When they made the deal with Mrs. Partridge, Mrs. Partridge said "Yes, I will give you a conveyance of the property which you may hold as security for the amount that will in the end be remaining due on the $8,000 of notes. We will collect what we can out of the bankrupt estate and you can hold the property, the equity, that is, as security and when I pay you all that is due upon this note you are to turn the property back to me. Upon your part you must take care of the first mortgage and take it up if necessary to protect the property; you cannot allow it to go to foreclosure." Taking the matter in that aspect are we bound to find out just what is due on these notes?

Mr. Carrick: Of course your Honor has in mind that at this foreclosure sale to which all these parties were—where they were all brought in, there was a sale of the property which was bought in by the Montclair Savings Bank for less than the face of their degree, there was no surplus money.

The Vice Chancellor: Bought in, as I found in my notes this morning for $7,500 by the bank, and turned over to the Lincoln Trust Company upon receiving the full amount due.

Mr. Carrick: The full amount of the decree.

The Vice-Chancellor: Manifestly in pursuance of an arrangement made before the sale.

Mr. Carrick: Yes, that is found in the pleadings.

The Vice Chancellor: Ordinarily then, the bank would have an independent title. But it is alleged that the bank, by virtue of this conveyance to Paul was bound to take up that mortgage, was bound to protect Mrs. Partridge and prevent the foreclosure. That is the position I think. I do not intimate any opinion about it but that appears to be the position taken.

Mr. Carrick: All your Honor has before you in the way of evidence is the ordinary assumption that is made in a conveyance to one who assumes payment as part of the consideration. We all know that as far as the enforcement of the bond is concerned, the mortgagor becomes the primary debtor.

The Vice Chancellor: The other side has the right to have the case in such shape that they can argue their point for whatever it is worth.

Mr. Carrick: Perhaps I have taken too much time to make my point clear.

The Vice Chancellor: No neither counsel has taken too much time. This is a very complicated case and I have nothing to aid me except the notes which I made six months ago. I think I will admit the promissory notes, I am going to let it all in and the case will be in shape for argument. If I exclude anything it will be in bad shape for final hearing either in this Court or the Court above, if it should be appealed.

I will take the proof as to the amount due on the Partridge notes. The amount due on the $8000 of notes and while we are at it we will have also the proof as to the additional notes, aggregating $18,600. That would be $10,600 in addition.

Judge Carrick says he stands on the verbal agreements that were testified to. Is there anything in the agreement Mr. Carrick about returning the property?

Mr. Carrick: No, sir, there is not.

(Agreement referred to handed to the Vice Chancellor.)

The Vice Chancellor: Do counsel agree (this paper does not seem to cover the whole agreement between the parties at the time) that it was understood and agreed that the $8000 of Partridge notes should

be held in escrow and that they should be collected as far as possible out of the Bankrupt Estate.

Were these notes of customers or—

Mr. Carrick: We have the notes here. They are all notes of Mrs. Partridge to the order of the Charles R. Partridge Company and discounted.

The Vice Chancellor: Then do counsel agree that a part of this arrangement and agreement was that these notes should be collected as far as possible out of the Bankrupt Estate and the amount so collected then be credited upon them and the balance would be the amount for which the Lincoln Trust Company would hold the property under the deed to Paul.

I will leave out the question whether it was eight thousand dollars or $18,600 that really the bank got security for. But were these notes to be held and collected out of the bankrupt estate and the proceeds then credited on the notes leaving the bank holding the equity of the deed to Paul for the diminished principal?

Mr. Carrick: I do not like to admit that states it accurately because it is the result of a lot of testimony that Mr. Farrier has given.

As I remember he testified that he was to hold this property primarily for the Lincoln Trust Company, for this $18,600 upon which Mrs. Partridge was liable, on the paper, to them but that in any event, in case the Lincoln Trust Company was paid was not to

surrender the property until the other banks were paid. That, I understand it, is his testimony and I do not wish to make any admission contrary to that.

The Vice Chancellor: We will leave that out. It is agreed that the amount for which the Lincoln Trust Company through Mr. Paul should hold this property would be diminished by anything that would be collected against the bankrupt estate against the $800 of notes.

Mr. Carrick: Yes, we agree to that.

Mr. Boardman: Our theory—

The Vice Chancellor: Never mind the theory. Do you admit that?

Mr. Boardman: I thought I had made that admission.

The Vice Chancellor: I suppose you admit it Mr. Boardman, because it is in your favor. Are you not prepared to admit it.

Mr. Boardman: I want to call your attention to one feature of the case not discussed this morning. Mr. Partridge testified that when this agreement of June 1912, was actually entered into, the whole property was to be conveyed, and I did say that these, "above mentioned actions" referred to entering into the arrangement the agreement between the banks, not the payment of debts. That was the theory of it.

The Vice Chancellor: You do not admit then that the arrangement was that the notes were to be collected as far as possible out of the Bankrupt estate and the amount so collected should be credited on the

amount that the bank held the property for?

Mr. Boardman: Well, that is what it amounts to all right.

The Vice Chancellor: That will be regarded as an admission. I will remit the notes in evidence.

Mr. Boardman: I suggest that the list of the notes be marked in evidence.

The Vice Chancellor: Yes, they are all listed there.

List of notes produced by Mr. Lane marked Exhibit D. 22, September 11th, 1917, H. W. K.

Q. Then none of the Lincoln Trust Company of New Jersey paper was turned over to you? A. No, sir, none of it was turned over to me.

No cross-examination.

ROBERT M. HENING, sworn for the defense.

Direct-examination by Mr. Boardman:

Q. You are a real estate builder and agent? A. Yes, sir.

Q. In Montclair? A. Yes, sir.

Q. You have been in the real estate business about how long? A. About twenty seven years.

Q. All that time in Montclair? A. Yes, sir.

Q. Have you had occasion to deal in property there? A. Yes, sir.

Q. And know values generally? A. Yes, sir.

Q. Do you know the property No. 78 Clinton Avenue, Montclair? A. Yes, sir.

Q. What was that property worth in January 1916?

Mr. Carrick: I object because in the view I take of the case I think the value of the property is immaterial.

The Vice Chancellor: I will take it.

A. $16,000.

Q. What was its rental value at that time? A. Well, I did not rent it, but I should say about $1,500.

Q. What was it worth for say six months before that—practically the same price? A. I should say so.

Q. For a year before that there was no change was there? A. No.

Q. If that was the value, is it worth more now? A. No, sir.

Q. Practically the same now? A. Plus what has been done to it.

Q. What is the value at the present time—the rental value. A. About the same.

Q. $1500 a year? A. Yes, sir.

Q. In October of 1915, the value would have been about the same would it? A. I think so.

No cross-examination.

SETH B. ROBINSON, sworn for the defense:

Direct-examination by Mr. Boardman:

Q. You were a member of the committee of banks which undertook the winding up of the Partridge Lumber Co. matter? A. I am a member, yes.

Q. You became an officer and director of the

Interstate Lumber Company? A. I was a director and then for a few months an officer.

Q. What were those few months? A. I think October, November and December 1914.

Q. You have been familiar with the affairs of the bank committee? A. I have.

Q. And with the affairs of the Interstate Lumber Co? A. I have.

Q. To its bankruptcy? A. Yes, sir.

Q. What did you have to do if anything in making up the statements from which the proofs of claim in the Interstate matter were drawn? A. I do not think I had anything to do with the proof of claim.

Q. I show you a proof of claim filed by the Lincoln Trust Company, No. 29, for $3,811; will you tell me if that is a new money note or a direct or contingent note? A. I do not know; there is nothing there to show me. If I saw the books I could tell.

Q. The ledger of the Interstate Lumber Company? A. Yes, sir.

(Witness shown book.)

A. This is new money, so called new money.

Q. I show you proof of claim No. 30 for $980.83.

A. That is the so called contingent and direct.

Q. Can you tell us from the books what notes were originally issued to the Lincoln Trust Co? But before I put that question, what pages did you refer to in your previous testimony? A. On the so-called new money note to page 347, as to the so-called direct and contingent to page 354 of the general ledger of the Interstate Lumber Co.

Q. Was that ledger used by the Committee of Banks as well? A. After January second, 1915, it was.

Q. Will you tell us what paper was originally issued to the Lincoln Trust Company of New Jersey? A. One note for $18,600, a second note for $2,440, a third note for $15,246. 41.

Q. The $18,600 would be for direct. A. The larger note would be for direct.

Q. $18,600 for direct? A. Yes, sir.

Q. And $2,440 for contingent. A. Yes, sir.

Q. And the $15,246.41— A. For the so-called new money.

Q. That is money actually put in at that time? A. The new money—by the banks.

Q. From time to time during the life time of the Interstate Company distribution was made to the holders of this note. A. On the so-called new money notes, yes.

Q. How about on the direct and the contingent during the life of the Interstate Company? A. Nothing on the direct and contingent.

Q. Was the indebtedness of the direct and contingent liability reduced to $13,000, according to the records of the company at one time? A. It was to about that.

Q. How was it reduced so that in December, 1914, the contingent liability had— A. Under the agreement of June, 1912.

Q. How had it been reduced? A. Various dividends received in the Charles R. Partridge Lumber Company Bankruptcy matter were to be applied, and were applied as credits on that note.

Q. They did not reduce the whole amount to $13,000, did they? A. I think so, about that—or $15,000.

By the Vice Chancellor: Q. What was the original amount which you say was reduced to thirteen

or fifteen thousand dollars? A. The original principal was the sum of $18,600 and $2,440, making a total of $21,040, and on May 13, 1914, the direct liability had been reduced to $14,514, and the contingent to $712.43, a little over $15,000.

Further DIRECT-EXAMINATION:

Q. Did it all come from dividends from the Bankruptcy Court? A. Possibly they had made some collection—they had made some collections on the contingent; otherwise I think it was practically all from the Bankrupt Estate.

Q. You say there was $14,000 in 1914—what is the date of that? A. May 13th.

Q. On May 13th, 1914, there was $14,514, owing to the Lincoln Trust Company? A. Alone, yes, sir.

Q. In December 1914, the agreement recites there is only thirteen thousand dollars due on the whole direct and contingent obligations, how was that reduction affected? A. The total amount of May 13th, was $15,226.43; the Lincoln Trust Company received a dividend of three per cent amounting to $586.20 and that makes the amount you refer to; it received a final dividend from the Charles R. Partridge Company Bankruptcy.

Q. The agreement of December 1914 recites that there is $13,000 of direct and contingent liabilities remaining due from the Interstate Lumber Company to all the banks. A. $13,000?

Q. Yes. A. Oh, there is much more than that.

Q. Where does that statement come from? A. You mean on the contingent—

Q. It says there, there is about $133,000 due, and if they applied this $120,000 of the series C.

notes that will leave a balance still of Thirteen thousand and some odd dollars.

Q. It was about $133,000. A. $133,000.

Q. And then there would be $120,000 of the C. notes? A. Yes.

Q. That left a balance of about $13,000? A. Yes, sir.

Q. That is where the $13,000 came in? A. Yes, sir.

Q. After the giving of the C. notes of the South Georgia Lumber Company? A. Yes, sir.

Q. That was all done? A. Yes, sir.

Q. And the Partridge notes were turned over to the Interstate Lumber Company? A. We turned over the Partridge Company notes which represented $120,000. In other words, we turned over a little over $120,000; the balance of the Partridge notes was not to be turned over until the balance of $13,000 was paid and that I guess has never been paid.

Q. This turning over was the turning over by Mr. Farrier as Treasurer or Secretary of your committee to Mr. Farrier who was then the Treasurer of the Interstate Lumber Company was he not? A. A little more than that. That was actually done, but the President of the Interstate Company was present and took possession of them and put them up in a bunch and put them in different envelopes and then turned them back to Mr. Farrier as treasurer.

By the Vice Chancellor: Q. Have you a list of those notes which were so turned over? A. You have the list which was presented today by Mr. Lane.

The Vice Chancellor: Does that list show the eight thousand dollars, in notes.

Mr. Carrick: I do not see how it can.

The Witness: It does not. We still hold in our possession this eight thousand dollars and other notes besides which are not surrendered and will not be surrendered until the thirteen thousand dollars is paid.

Q. Where is this eight thousand dollars of notes? A. In the possession of—well part of them I think are in escrow and part are in our possession—not of the eight thousand but the Partridge notes which we held.

By the Vice Chancellor: Q. The eight thousand dollars I understand are in the possession of Mr. Dawson in escrow? A. Yes, sir.

Q. You never had them? A. No, sir.

Further DIRECT-EXAMINATION:

Q. When did you first discover that there was eight thousand dollars of these notes in escrow? A. Personally?

Q. Yes. A. In the year 1913 or 1914.

Q. What brought it to your attention? A. I think Mr. Farrier in some way gave me the information.

By the Vice Chancellor: Q. When the Partridge notes were turned over I understand they were all entered in your book which has been produced here? A. I think not. These Partridge notes were held all the time by the bank as collateral and were not surrendered until this arrangement of 1914 was made and then all the notes were returned to us except the eight thousand dollars which was still in escrow.

Further DIRECT-EXAMINATION:

Q. Was the whole eighteen thousand dollars of Lincoln Trust Company Partridge Paper withheld at the time this surrender was made to the Lincoln Trust Company? A. I don't know that. We made no distinction. We just turned over as a committee, $120,000 of Patridge paper.

Q. And you treated the Partridge Paper as a unit and what you intended to do was to credit the one hundred and twenty thousand dollars? A. That is what we did.

Q. And did the same thing in reference to the Interstate paper? A. That was different because there we endorsed on the paper the credit of $120,000; I don't know whether each bank endorsed it on them, I had nothing to do with that but we entered it on our books.

Q. You spread the $120,000 evenly between all the banks? A. Proportionately.

Q. And the proportion of the Lincoln Trust Co. was that? A. $14,024.48.

Q. That was direct? A. That was on both direct and contingent.

By the Vice Chancellor: Q. Did you include the $8000 which were in escrow in figuring out the proportionate share of the Lincoln Trust Co? A. I did.

Q. You did? A. Well, let me explain. We applied that, not on the Partridge paper; we did not apply that on the Partridge paper, we applied that on the Interstate paper, and the Partridge paper if the agreement had been carried out would have no credit on it at all.

Q. The Partridge paper you considered in your hands as for collection and to be dealt with as a unit? A. Yes, sir.

Q. And you distributed or allotted and gave to the Lincoln Trust Company such share of those notes, and in arriving at the proportionate share which belonged to the Lincoln Trust Company you took into account the eight thousand dollars? A. Had nothing to do with the eight thousand dollars we took into account only the Interstate paper. The Partridge notes had nothing to do with that at all.

Q. But the Lincoln Trust Co at that time held its proportionate share of the Interstate Co. notes? A. Yes, sir.

Q. And the proportionate share included the eight thousand dollars of notes, the Partridge notes which the Lincoln Trust Company held? A. In the original notes which the Lincoln Trust Co. received from the Interstate this $8000 was considered, but in this matter of the C notes they had nothing to do with it.

Q. Did the holders of the Partridge paper who went into this deal get the note, dollar for dollar? A. Dollar for dollar.

Q. Then the Lincoln Trust Company received $21,000? A. Yes, sir.

Q. Of Interstate notes? A. Interstate notes. You understand that the Partridge Lumber paper did not receive and benefit from that?

Q. If there had been anything collected on the Partridge paper the Interstate notes did receive the benefit.

Further DIRECT-EXAMINATION:

Q. Will you look at Page 354 of the general ledger to which you have referred and tell us the balance, the total balance owing by the Interstate

Lumber Company on its direct and contingent liability? A. To the Lincoln Trust Co.

Q. To the Lincoln Trust Co. of New Jersey? A. $980.83.

Mr. Carrick: On what date is that?

Witness: January 2d, 1915.

Q. On that entry on page 354 how much of the C. notes was credited? A. $14,024.48.

Mr. Boardman: I offer that book and the pages that have been read from in evidence.

The Vice Chancellor: Describe the book.

Mr. Boardman: The general ledger of the Interstate Lumber Company pages 354, and 347; page 200 and page 15.

Mr. Carrick: I make the same objection as to relevency.

The Vice Chancellor: I will take it subject to your objection.

(It was agreed the book need not be marked as an exhibit.)

Q. Have you totaled up the balance due now for direct and new money obligations due to all the banks? A. I have.

Q. How much is this new money? A. As of January 2d, 1915, the amount due on the direct and contingent notes of the Interstate Lumber Company to all the banks amounted to $8,385.53; on so-called new money $31,978.26.

Q. You have a list or memorandum you have made from the book? A. Yes, sir.

Q. Set opposite on the right hand side is the direct and contingent liability and on the left the new money liability? A. Yes, sir.

Mr. Boardman: I offer that in evidence just as a convenience.

Mr. Carrick: I suppose you really want it marked for identification.

Mr. Boardman: No, I want to put it in evidence.

The Vice Chancellor: I understand it is a transcript of figures from the book which is in evidence?

Mr. Boardman: Yes, sir.

The Vice Chancellor: Then it is not an instrument of evidence but can be marked for identification and can be referred to in order to aid court and counsel in getting up what the books show.

Memorandum from Ledger of Interstate Lumber Company marked Exhibit D 23 for identification.

Q. The direct and contingent obligations totaled in December 1914, $13,000 and now in January 1915 you testify they were eight thousand three hundred and eighty-five dollars and fifty-three cents, what effected that reduction? A. This is after the reduction is made.

Q. Yes, but how was it made? A. At that time there was about $133,000 and the reduction was made by crediting on the notes of the Interstate Lumber Company the face value of $120,000 C. notes of the Southern Sea Board Corporation which was delivered by Mr. Cheney or the Interstate rather—and the Interstate to the Bank Committee.

Q. Has any reduction been made on the amount of the direct and contingent liabilities through the sale of lumber by the committee? A. No, we have not realized enough yet to pay off the so-called new money notes, and will not be able to.

Q. How is your committee proceeding in that respect? A. Under the agreement we applied the money realized from the sale of this lumber first to New Money notes, and if there is any balance it is to be applied on the direct and contingent.

Q. Under what agreement is that? A. December 12th, 1914.

Q. All your proceedings now are under that agreement are they? A. Yes, sir.

Q. How much money has the committee in hand now? A. I cannot tell you, but I know there will not be enough to supply anything on account—

Q. No, I did not ask you that. Approximately how much? A. I cannot tell you exactly.

Q. But approximately? A. I think there is about $10,000 in cash.

Q. Have you got any lumber there? A. No.

Q. Won't you once more tell us just how you got the direct and contingent indebtedness reduced from $13,000 to $8300. The direct in December was reduced to $13,000 and the figures here total $8300; cannot you tell us how that reduction was effected, how it was paid off? A. There were certain credits which the various banks had not notified us of prior to January 2d, 1915, and when we adjusted these various credits we discovered that there was about five thousand dollars more credits than they had told us of and the notes were thereby reduced to that extent.

Q. You are a lawyer, Mr. Robinson? A. Yes, sir.

Q. A member of the New York Bar? A. The New York Bar.

Q Did you act as adviser to the committee of which you were a member? A. No, I was not their attorney.

The Vice Chancellor: Are the proofs in the Partridge Bankruptcy Proceedings in evidence?

Mr. Boardman: Yes, the proofs are. The Lincoln Trust Company Proof is in and the Hudson County National Bank Proof was offered and I think it was received.

Mr. Carrick: Yes, those two claims are in.

Q. You are here under subpoena? A. I am.

CROSS-EXAMINATION by Mr. Carrick:

Q. The ten thousand dollars that you speak of as being in the hands of committee is that all free money or is that in dispute? A. Some of it is in dispute.

Q. That is to say a claim for some of it is made by the Receiver of the Interstate Lumber Co? A. It was made by the Receiver and is now made by the trustee in bankruptcy.

Q. How much does that amount to? A. About eight thousand dollars.

Mr. Carrick: If I may I would like to ask Mr. Robinson a question which is not cross-examination. It will save bringing him here again.

Mr. Boardman: Oh, yes, he is a friendly witness to you.

Mr. Carrick: He is friendly to you too.

Q. Were you a member of the committee which was appointed under the agreement of June blank 1912? A. Yes, sir.

Q. This agreement is marked Exhibit 10 on the part of the defendant. When did you first get in touch with the meeting of that committee? A. The first was January 10th, 1912.

Q. I show you Exhibit No. 10, the agreement of June 1912, and ask you if you can tell us when that agreement was completely executed as it is now shown to you. A. I can. It was prior to June 27th, 1912.

Q. How do you fix that date? A. On June 10th we had a meeting; we had prepared this and finished it up and on June 12th we had a meeting on which we prepared it and June 13th we finished it and those who were present signed it. We then gave this agreement into the hands of Mr. Jackson and Mr. Hefferman to get the signatures of the other banks who were not present at the meeting and they returned it with all the signatures to our meeting on June 27th.

Q. On June 27th it was completed as it now stands? A. It was signed by all.

RE-DIRECT-EXAMINATION:

Q. There is an action pending by Merrit Lane, Receiver in the Court of Chancery against the bank and Farrier and others to secure the payment of $150,000 assessment on the stock. A. Yes, and no. There was an action pending, and it possibly may be considered as pending now, for the appointment of a Receiver and in that action he made what we call in New York a motion to get all this relief which you speak of. But there is no action pending and the Committee is not a party of it. But I understand that some such action was intended.

Q. There is a petition on file by Merrit Lane in the Court of Chancery. A. I think that is what they call it.

Q. And Mr. Harry Lane is applying to Mr.

Demarest the Referee in Bankruptcy for leave to prosecute that proceeding? A. Yes.

The Vice Chancellor: Do I understand it is a proceeding to collect the unpaid stock subscription of the stock of the Interstate Lumber Co?

Mr. Boardman: Yes.

By the Vice Chancellor: Q. Do you know what the basis of that stock issue was? A. In a general way, yes.

Q. What was the total amount of stock? A. $150,000.

Q. And that stock was distributed pro rata among the banks? A. The banks had nothing to do with it.

Q. To whom was it distributed? A. That corporation was organized by Mr. Cheney, President of the South Georgia Lumber Company. He and the South Georgia Lumber Company were endorsers on a large part of this Partridge Paper held by the banks.

Q. What was the name of the corporation. A. Of which he was President?

Q. Concerning the stock of which this proceeding was brought. A. The Interstate Lumber Company, and he organized this corporation.

Q. The Sea Board? A. The Interstate Lumber Co.

Q. He organized that? A. Yes, sir. And the stock was issued—it was organized on the basis of a cash payment.

Q. Then that company was organized and the stock had been issued before the deal was made by which the assets of the Partridge Lumber Company were turned over to it. It was organized

about that time, just exactly when I do not know, but it was organized about that time and the point they raise is that this $150,000 for cash payment of stock was given back to Mr. Cheney for his endorsement of this paper which was given by the Interstate. That I did not know of at the time.

Further RE-DIRECT-EXAMINATION:

Q. The Interstate was organized pursuant to this agreement of the blank day of June 1912? A. Yes, sir.

Q. And the bank held fifty-five per cent of the stock? A. They did not.

Q. They were to have held it under the agreement? A. No, sir. Fifty one per cent of the capital stock was given the committee to hold so that they could control the corporation pending the payment of the bank by the Interstate Lumber Co.

Q. And they nominated three of the directors and two others were nominated? A. Not exactly. They had a right to submit ten names to Mr. Cheney and out of those ten names Mr. Cheney selected three.

The Vice Chancellor: I would like to see the agreement that went with the escrow notes.

Mr. Carrick: (handing paper to the Court) That is it.

By the Vice Chancellor: Q. Do you know anything of the proof that was made by the Lincoln Trust Company of its claim before the trustee of $21,040? A. I had nothing to do with that.

Q. You had nothing to do with the notes that were made by Mr. Partridge for the accommodation of the Partridge Company. A. I did not.

A recess was then taken.

After recess.

September 11th, 1917.

EDWIN M. FARRIER, re-called for further cross-examination:

By Mr. Boardman: Q. The Lincoln Trust Company have been in possession of this property since the date of the Sheriff's deed under the foreclosure proceedings. A. Up to what time.

Q. You went into possession under the Sheriff's deed? A. We did.

RE-DIRECT-EXAMINATION:

Q. I think in your testimony at a former hearing you referred to the proportion of the C. notes of the Southern Sea Board Lumber Company which came into the hands of the Lincoln Trust Company. Has anything been paid on those notes?

Mr. Boardman: I object to that as immaterial?

The Vice Chancellor: I will take it subject to the objection.

A. The C notes?

Q. Yes, the C notes. A. Nothing has been paid.

By the Vice Chancellor: Q. Do I understand that when the "C" notes were distributeded to the holders of the notes of the Interstate Lumber Company credits were endorsed on the back of the Interstate notes? A. No, credits were not endorsed on the notes, credits were given on the books of the Interstate Lumber Company.

RE-CROSS-EXAMINATION:

Q. I asked you to produce here the direct and contingent notes. Have you produced them? A. (Witness produces a number of notes and hands them to Mr. Boardman.)

Q. I also asked you for the $10,600 of Partridge notes, are they here? A. I have them here (producing notes and handing them to Mr. Boardman).

Q. You produce here four notes of Cornelia M. Partridge endorsed by Charles R. Partridge Lumber Company and Charles R. Partridge which notes aggregate $10,600? A. I do.

Q. And these, together with the eight thousand dollars held by Mr. Dawson are the $18,600 of notes which you proved in the Bankruptcy proceedings in the matter of the Charles R. Partridge Co. Bankrupt? A. They are.

Mr. Boardman: I suppose there is no use putting them in evidence.

Mr. Carrick: No you have called for them and they are produced and I presume they are in evidence?

The Vice Chancellor: Yes.

Batch of four notes above referred to offered and received in evidence and marked Exhibit D-24, Sept. 11th 1917, H. W. K.

The Vice Chancellor: What is the meaning of this singular document attached to the regular proof of the claim of the Lincoln Trust Company amounting to $21,040 which is in the form of the affidavit and recites the fact that the Lincoln Trust Company came before the officer by George H. Gould, Jr., Treasurer and made affidavit that the Partridge Lumber Company was indebted

to the holder in the sum of $19,554 on notes, copies of which are not attached or referred to. This proof being signed "Lincoln Trust Company of New Jersey, George H. Gould Jr.," Can counsel explain what that is.

Mr. Carrick: I do not know anything about it.

The Vice Chancellor: I see that the proof is correct. It recites that George H. Gould, Jr. came and made an oath and says he is Treasurer of the Lincoln Trust Company a corporation, etc. and that the Charles R. Partridge Lumber Co., is indebted to said corporation, etc. One is sworn to on the 12th of July and the other on the 15th.

Mr. Carrick: I see that someone has marked that "void" in red ink across the face of it.

The Court: Perhaps Mr. Farrier can tell us about that.

Witness: May I see it.

The Vice Chancellor: (Handing paper to witness.) Here is a complete proof with copies of the notes and here is an earlier proof which is marked "void."

Witness: I cannot recall now Vice Chancellor why it is, but this is made up in my writing, I made this up and it is quite evident I have written the word "void" in here twice.

The Vice Chancellor: Then you do not recall about it.

Witness: I do not recall it.

Mr. Boardman: That is all.

Mr. Carrick: Mr. Boardman has called for the production of some notes and they have been produced.

The Vice Chancellor: If counsel calls for them and sees them that puts them in evidence.

Mr. Boardman: Yes, I offer in evidence a bundle of sixteen notes of the Interstate Lumber Company to the various banks which were produced by Mr. Farrier under a call for the direct and contingent notes. The note payable to the Lincoln Trust Company of New Jersey appears to be dated May 13th 1914, and it is for $14, 514; above those figures in red ink appears "$299.95," and also in red ink the figures are totaled $14,813.95.

Batch of 16 notes above referred to received in evidence and marked as one Exhibit D. 25, September 11th, 1914, H. W. K.

The Vice Chancellor: I will ask you this question Mr. Farrier, although your testimony may already cover this point.

Were these papers, Exhibit No. 3 for identification being the so-called escrow agreement, dated August 3d, 1912, and the deed from Mrs. Partridge to George E. Paul, dated and acknowledged July 31st, 1912, but recorded August 12th, 1912, a part of a single transaction which included also the delivery of the notes in escrow to Mr. Dawson?

Witness: Yes, sir.

By the Vice Chancellor: Q. All one transaction, was it? A. One transaction.

Q. And all these different things were they negotiated as one agreement, one settlement? A.

Under the agreement of June blank 1912, whatever any of the banks realized from any source would have to be applied on the indebtedness, this was in following out that same general idea.

Q. Do I understand then that whatever you might recover from the Montclair property goes for the benefit of all the creditors? A. No, that would have gone to my own particular benefit because the other banks were not concerned in the transfer of the property although this agreement with Mrs. Partridge was that when the banks were paid in full this property was to be returned to her.

Q. You negotiated this arrangement did you not? A. I did.

Q. What was said about the first mortgage? A. There was nothing said about the mortgage whatever. We just purchased—we surrendered eight thousand dollars for the estimated equity in the house.

Q. That estimate was eight thousand dollars? A. Eight thousand dollars. Nothing was said about assuming—

Q. Do you know how this clause came to be inserted in the deed to Paul—that the property was subject to a mortgage of ten thousand dollars held by the Montclair Trust Company which the party of the second part, that is Paul, assumed? A. I presume that deed was copied from the deed given to Partridge.

Q. Can you say positively whether there was any agreement that Paul or the Bank should assume this mortgage? A. There was not.

Q. Was anything said about the mortgage? A. Nothing was said about the mortgage whatever.

Q. You referred to it I suppose in calculating the value of the equity? A. Oh, yes, we made allowance for it.

By Mr. Boardman: Q. Mr. Goldenhorn the attorney for Mrs. Partridge drew the deed? A. I do not know who drew it but I presume so.

Q. That was the testimony here, was it not? A. Well, if that was the testimony I guess that is so.

Mr. Boardman: We rest.

Mr. Carrick: I only wish to offer some of the papers in bankruptcy for the purpose of fixing beyond any question the fact that the paper, Exhibit No. 10 on the part of the defendant, dated June 1912, was actually completed before the transactions which is the basis of the claim of these defendants here, and I have in my hand now, coming from the custody of Mr. Beach the Referee in Bankruptcy a petition by George Hendrickson Trustee in Bankruptcy which is verified by him July 22, 1912 and has annexed to it a copy of a bid for the assets of the Charles R. Partridge Lumber Company signed by Messrs. Dunn, Robinson, Farrier and Edwards, bearing date July 10, 1912. The petition just filed bears the file mark of Referee George R. Beach as of July 24th, 1912, and the file mark of the clerk of the Court as of January 7th, 1915.

Also a further petition by Mr. Hendrickson as trustee in bankruptcy verified July 26, 1912, and which has annexed to it a copy of a further offer by the same gentleman, a committee of certain creditors, bearing date July 25th, 1912. That petition now of-

fered bears the file mark of George R. Beach referee of July 24, 1914 and of the clerk of the Court of January 7th, 1915.

Also the report of George R. Hendrickson, Trustee to the Referee in Bankruptcy verified September 3d, 1912 and marked "Filed" September 3d, 1912, George R. Beach Referee, and marked "Filed" by the clerk on Jan. 7th, 1916.

This petition recites on the 3d page 16, the making of the offer by the committee of creditors for the purchase of the assets, July 10th, 1912 and also the later modified offer.

I also offer the order confirming the sale by the referee which bears date September 9th, 1912, signed by the referee, and which is marked "Filed" by the referee September 9th, 1912, and marked "Filed" by the clerk January 7th, 1913.

This order recites both offers of the committee of July 10th and the later modified offer which was accepted and in pursuance of which this order was made.

I described these papers because the referee has requested that they be not marked if your Honor please.

The Vice Chancellor: No, it is necessary to mark public records.

Mr. Carrick: That is all.

Testimony closed.

The Vice Chancellor: We have here a case to foreclose a mortgage. The case has gone to final de-

cree and we are not litigating over surplus money. What are we litigating over? As stated by Mr. Boardman the proceeding before me seems to be one in which the representative of the Mathewson and Harmon assignment is the actor and the Lincoln Trust Company is the defendant and the proceeding is in the nature of a suit to redeem. Counsel for the complainant, as I understand it, admits that the Lincoln Trust Company has a right to hold the land, the Montclair Parcel of Real Estate as security for the amount it paid to the Montclair Bank, ten thousand and some odd dollars, the amount of their decree with costs. That item of the amount is agreed upon there is no dispute about it I understand. It is admitted in a variety of ways I think counsel on each side have stated that such is the case and I see no possible escape from the conclusion that the Lincoln Trust Company can hold this property for the ten thousand dollars and over it paid to the Montclair Bank. The matter in dispute is therefore how much if anything in addition to that the Lincoln Trust Company has the right to receive from the actor whom I described, the representative of the Mathewson and Harmon Estate, who represents also Mrs. Partridge—how much in addition to the ten thousand dollar item this actor must pay to get that conveyance of the property. The contention on the part of the Actor is that there is nothing more to pay that it has all been paid by this transaction.

Is that right, gentlemen?

Mr. Boardman: That is right on one branch of the case.

The Vice Chancellor: Is there anything else in the case?

Mr. Boardman: Yes. When this agreement of June was actually entered into then the property was to be conveyed and we only got into this other position, on their theory of the case and we took the bull by the horns and said it had been paid off and—

The Vice Chancellor: Then you stand your right to redeem on two different theories. The first is that the land was to be turned over to you when this agreement of June 1912 was entered into?

Mr. Boardman: Yes.

The Vice Chancellor: And that Mr. Harmon had the right to call upon the bank or upon Mr. Paul its representative to make a conveyance to him.

Mr. Boardman: Yes.

The Vice Chancellor: And he has held it for his own security primarily and secondary for the benefit of Mrs. Partridge. And the second proposition is that if that is not true, all the bank has a right to hold the property for is the amount which it paid to the Montclair Bank plus whatever, if anything, was owing on the eight thousand dollars of notes?

Mr. Boardman: Yes.

The Vice Chancellor: Of course, on the first theory you will admit the bank should not be obliged to transfer the property until they got the amount of their ten thousand dollars entered. Which ever theory might be sustained by the evidence it would include the payment of that item as a condition of your having a right to have a re-conveyance. I think the pleadings are in somewhat novel shape to draw that kind of an issue. We draw that issue in a suit which is gone to final decree and execu-

tion. Was this proceeding commenced before the sale?

Mr. Carrick: Yes, these answers were originally filed in the foreclosure and claims were made with regard to the surplus.

The Vice Chancellor: I will look through these pleadings but I will not be at all surprised that upon looking them through I shall suggest to counsel they had better provide new pleadings.

Mr. Boardman: We are willing to be advised, it is never too late to mend.

The Vice Chancellor: It seems to be a suit to redeem.

Mr. Boardman: It seems to me to be a suit to enforce a trust.

The Vice Chancellor: Very well, you may call it that. A suit to redeem is often in the nature of suit to enforce a trust. But I wish counsel would look into it themselves. You may be quite embarrassed whichever way this case goes if the defeated party wants to take it to the Court of appeals by such pleadings. It is always well to have a case which is finally decided in the Court of Chancery to rest on perfectly clear pleadings.

Were amendments filed after the sale?

Mr. Carrick: Yes, a supplemental answer was filed.

Adjourned for argument until Wednesday, October 17th, 1917, at Chancery Chambers, Paterson, N. J.

Wednesday, January 16, 1918.

GEORGE E. PAUL, sworn.

Examined by Mr. Boardman:

The Vice Chancellor: I understand that Mr. Paul is produced by Judge Carrick at the request of Mr. Boardman?

Mr. Carrick: Simply saving a subpoena. He wanted to examine Mr. Paul and asked if I would produce him here.

The Vice Chancellor: He is a witness produced by Mr. Boardman.

Mr. Boardman: He is produced in rebuttal, really.

Q. You are one of the defendants in this case? A. A defendant? I do not know that I am a defendant.

Q. You are the George E. Paul to whom a conveyance of the Montclair property was made by Mr. and Mrs. Partridge in July or August 1912? A. I accepted title on Mr. Farrier's behalf as a friendly act to a deed that I believe was given by Mr. and Mrs. Partridge.

Q. And Mr. Farrier was the president of the Lincoln Trust Company? A. The president of the Lincoln Trust Company but I did not know that had any connection with the matter. I was simply asked to act in a friendly capacity.

Q. Papers were served upon you in the Chancery action, were they not, when the mortgage was foreclosed. A. They were not.

Q. Did Judge Carrick represent you in the case? A. I do not quite understand the question.

Q. There are two answers filed in this case in

behalf of George E. Paul a defendant; they were filed by Carrick and Wortendyke; you are the George E. Paul and Judge Carrick had authority to file these answers for you. A. Yes, Judge Carrick did have that authority.

Q. You had some conferences with Judge Carrick before those answers were drawn? A. I do not gather your question. Conferences?

Q. You had some talk with Judge Carrick before those answers were drawn? A. Judge Carrick asked me in what capacity I acted in this matter and I told him I simply had acted in a friendly capacity.

By the Vice Chancellor: Q. Did you know anything about the object of that conveyance? A. I did not.

Q. Was Mr. Farrier a friend of yours? A. Mr. Farrier has been a personal friend of mine for twenty years.

Q. Did you know anything about the transaction until he gave you the deed, if he gave you the deed? A. He did not give me the deed; I accepted title to the deed and executed a deed to him, I do not recall whether the same day or within a few days afterwards.

Q. I understand you had no knowledge at all of the transaction. A. I know nothing about the transaction whatever.

Mr. Boardman: Have you here the letters I called for, Judge Carrick?

Mr. Carrick: I have one letter. That is the letter of August 23d.

Q. Did you see the deed which Mr. and Mrs. Partridge executed to you, did you see it handled? A. No, sir.

Q. Did you know its contents? A. I did not, your Honor.

Q. Did you know that in addition to conveying a piece of land to you the deed contained a covenant on your part to assume a mortgage. A. I did not.

By Mr. Boardman: Q. In August 1915 you received a letter from Mr. Richard Boardman? A. I did.

Q. Have you that letter with you? A. I have not.

Q. (Handing witness letter copy book). Will you look that letter through and see if that is a copy of the letter you received? A. (Witness does as requested.) To the best of my recollection that is the letter.

Mr. Boardman: I offer that letter in evidence.

The Vice Chancellor: Is there any objection?

Mr. Carrick: I think it is irrelevant. That is the only objection I have.

The Vice Chancellor: I can only tell if it is relevant or not by hearing it. You may read it.

(Letter read by Mr. Boardman and marked Exhibit No. 1 of January 16th, 1918.)

The Vice Chancellor: What is the relevancy of that?

Mr. Boardman: I have his answer to it. Having one letter I think we ought to have the entire correspondence.

The Vice Chancellor: How is this correspondence competent?

Mr. Boardman: It is to show the whole situation. We are not offering this testimony except at the direction of the Court.

The Vice Chancellor: Not at all. The only question left open was whether a deed had been made to the Trust Company by Mr. Farrier, that is the only question. What has this correspondence between counsel and Mr. Paul to do with what we are trying, how can it bear on any issue in the cause?

No relief is sought in the case against Mr. Paul.

Mr. Boardman: I will go one step further.

Q. You finally came to my office for a conference did you not? A. Mr. Farrier and I came to your office.

Q. And it was stated by Mr. Farrier, in your presence, that you had acted in a friendly capacity towards him, and that you had given the deed to him and he had given the deed to the Lincoln Trust Company. Is not that so? A. I did not understand the latter part. I did not hear anything about any deed to the Lincoln Trust Company. Mr. Farrier told you I had accepted the deed in his behalf; that is all I recall.

Q. You would not say no such conversation took place? A. The time is a long time ago, Mr. Boardman, and I would not say it did not take place, but not to my recollection.

Q. You did not know the Partridges? A. I knew nothing of them, no, sir.

Q. You had no relationship with them? A. I do not know the parties at all.

Q. You were acting, were you, for the Lincoln Trust Company in this transaction? A. I did not know the Lincoln Trust Company was concerned in it. Mr. Farrier asked me simply to act as a friend; he asked me if I would accept title and convey the deed to him which I did.

Q. Were the answers filed in your behalf read over to you by Judge Carrick before they were filed do you know, do you remember. A. That I do not recall. I recall that I had a conversation with Judge Carrick at the time, but as to the answers my mind is hazy.

Q. (Handing witness paper) I show you a letter dated August 6th, that is your letter, is it? A. That is my letter, yes, sir.

Mr. Boardman: I offer that in evidence.

Mr. Carrick: I object to that.

The Vice Chancellor: How is it competent. Any statement made by this witness, Mr. Paul? Of course a statement made by Mr. Paul, a party to this suit, is evidence against him, but no relief is prayed for against Mr. Paul. He is a proper party, not a necessary party, as I recall the situation and his statement is only evidence against him, and there is nothing being tried against him. His written statement cannot be evidence as against other defendants, whose cases are entirely separate from his.

Mr. Boardman: I think the witness should be withdrawn. It was only to oblige Judge Carrick that I examined him.

Mr. Carrick: It is not to oblige me. I never would have had him here except that

Mr. Boardman asked me if I would produce him or he would subpoena him and I said if possible I would produce him and I got him to come here.

The Vice Chancellor: The question is on the competency of this letter. I cannot see that it is competent evidence in this cause. If you can suggest any aspect of the case in which a statement in writing by this witness is competent, on the trial of issues against other defendants, I will hear you.

Mr. Boardman: He is the person to whom the original deed was given and I think any evidence that ties him up with Farrier and the Lincoln Trust Company—

The Vice Chancellor: I will admit the letter and deal with it on the argument. I have not heard it read and will not hear it read now.

Letter last above referred to marked Exhibit No. 2 of January 16th, 1918.

Q. In your answer it is alleged that you held the title to the premises in question for the use and benefit of the Lincoln Trust Company. Have you any reason to suppose that is not the truth? A. That I held it for the benefit of the Lincoln Trust Company?

Q. Yes. A. Not that I know of.

By the Vice Chancellor: Q. Did you ever read your answer, Mr. Paul, or did Judge Carrick draw it as far as you know? A. Judge Carrick drew it as far as I know.

Q. Did you read it after he drew it? A. No, sir.

The Vice Chancellor: The relation of this gentleman to the affair is perfectly plain.

Q. You received a letter from me under date of August 23d in reference to this matter which I now show you.

The Vice Chancellor: Is that a letter produced by Judge Carrick?

Mr. Boardman: At my call yes.

Witness: I recall receiving two letters, I am not sure that is the letter, I presume it is.

EDWARD B. FARRIER re-called for the defendant.

Direct-examination by Mr. Carrick:

Q. At the last hearing which was had before the Court in this cause the question came up as to whether or not you had actually executed a deed for this Partridge Property to the Lincoln Trust Company. Have you since last Friday made a search for any unrecorded deeds or deed made by you to the Lincoln Trust Company on this property? A. I have.

Q. What has been the result of that search? A. I have not been able to find any.

Q. Have you found any deed made and executed by you concerning this property? A. I have.

Q. What is that deed? A. That is a deed executed by me in blank.

Q. Have you that deed with you now? A. I have.

Q. Will you produce it? A. (Witness produces a paper.)

Mr. Carrick: Witness produces a form of deed bearing date May 25th, 1915, from Edward M. Farrier, unmarried, to blank, grantee. Describing the Partridge Property signed Edward M. Farrier, L. S. Witnessed by George H. Gould, Jr., and unacknowledged and unrecorded.

Q. Have you found any other deed? A. I have not.

Q. Affecting or concerning this property? A. None whatever.

By the Vice Chancellor: Q. Have you any recollection of executing any deed of the Partridge property other than this deed executed in blank? A. No, sir.

Q. Have you any reason to suppose that you ever did? A. I have no reason to suppose that I ever did.

Q. The custom of the bank would warrant the supposition would it not that you did not make any deed to the bank direct? A. Yes, sir.

Q. Banks do not usually accept deeds for real estate in matters like this? A. Not as a usual thing, no, sir.

By Mr. Carrick: Q. The purpose of executing this deed was in case any accident or death should come to you, there would be evidence that you did not claim the property as your individual property. A. Most assuredly.

CROSS-EXAMINATION by Mr. Boardman:

Q. You held it for the bank? A. I held it for the benefit of the bank.

Mr. Boardman: Is this deed in evidence?

Mr. Carrick: Yes, I offer it in evidence.

Marked Exhibit No. 3 of January 16th, 1918.

Q. You recall coming to my office in August 1912? A. I was in there with Mr. Paul; I do not remember just when it was.

Q. At that time you mentioned this deed as a deed to the Lincoln Trust Company did you not? A. I could not because that deed was not executed until 1915.

Q. I should have said it was in August 1915 you came to my office with Mr. Paul? A. I don't know when it was I was in your office, it was after you wrote the letter to Mr. Paul.

Q. That you came to my office? A. What the date of that letter is I don't know.

Q. That date was August 4th. A. It was sometime shortly after that.

Q. Sometime shortly after that? A. Yes, sir.

Q. That was August 4th, 1915, and this deed is dated May 1915. So that this deed had been signed at that time? A. It had been signed at that time.

Q. Don't you remember telling me you had made a deed and it was in your desk at that time, from yourself to the Lincoln Trust Company? A. No, sir.

Q. Do you recall receiving a letter under date of August 23d, 1915, which I now show you (handing letter to witness). A. Yes, I received that letter.

Q. In this letter it says "And we are further notified that the said Edward M. Farrier has signed an instrument purporting to be a deed of said property and made to said Lincoln Trust Company" do you recall how we could have been

notified that you had signed a deed purporting to be a deed of the Lincoln Trust Company? A. I cannot answer how you got your information, Mr. Boardman.

Q. Don't you remember, having your attention called to that clause of my letter, does it not bring it back to you now that you told me at that conference that you had executed a deed of this property to the Lincoln Trust Company and it was in your desk at that time? A. I never told you that I had executed a deed to the Lincoln Trust Company because I had been in hopes right along that if the property was sold that the property would not pass through the company.

Q. Did you not tell Judge Carrick the same thing? A. What is that?

Q. Didn't you tell Judge Carrick that you had executed a deed of this property to the Lincoln Trust Company? A. I did not.

Q. Do you know how it was written down in the answer that such a deed had been executed? A. Presumably because Judge Carrick knew that I had executed a deed which was for the benefit of the Lincoln Trust Company.

Q. And that is the deed which you produce here? A. That is the deed I have reference to.

Q. The one you produced this morning? A. Yes, sir.

Q. Do you recall telling me anything about that deed at that conference in August 1915? A. No, I do not any more than I told you a deed had been executed.

Mr. Boardman: I offer that letter in evidence.

Mr. Carrick: I object to it as irrelevant.

The Vice Chancellor: That is a letter from Mr. Boardman to the Lincoln Trust Company.

Mr. Boardman: There is one from me to the Lincoln Trust Company and one to Mr. Farrier, and I offer the letter to—

The Vice Chancellor: In what respect are those letters competent in this case. Letters written by a lawyer?

They can be marked and I will hear anything that may be said later.

Letters referred to marked respectively Exhibits 4 and 5 of January 16th, 1918.

Q. (Handing witness paper) Is that your letter? A. Yes, that is a letter from me.

Letter last shown witness marked No. 6 for identification, January 16th, 1918.

Q. Throughout this transaction Mr. Paul was subject to the direction and control of the Lincoln Trust Company? A. Mr. Paul was acting in my personal and individual behalf. Mr. Paul has no connection whatever with the Lincoln Trust Company and never did have.

Q. Did you have any financial or personal interest in this matter? A. None whatever.

Q. Then you both were acting for the Lincoln Trust Company? A. Absolutely.

GEORGE H. GOULD, JR., sworn for the defense.

Direct-examination by Mr. Carrick:

Q. You are an officer of the Lincoln Trust Company? A. Yes, sir.

Q. What office do you hold? A. Secretary and Treasurer.

Q. You have held that office for how long? A. Eleven years.

Q. Have you, at my request, made a search among the papers and files of the Lincoln Trust Company for any deed which might have been executed by Mr. Farrier to the Lincoln Trust Company for the Partridge property in Montclair? A. I have.

Q. When did you make that search? A. Yesterday.

Q. With whom did you make it, who was with you at the time it was made. A. Mr. Farrier was there. I searched around and was not able to find any.

Q. You found no deed? A. No, sir.

Q. You did see this deed in blank which has been signed by Mr. Farrier and produced here? A. Yes, sir.

Q. You found no other deed? A. No, sir.

By Mr. Boardman: Q. When did you first see this deed? A. Well, I signed it, I presume it was on the date it was drawn.

The Vice Chancellor: You mean you signed as a witness?

Witness: I signed as a witness, yes, sir.

LOUIS SHERWOOD, sworn for the defense.

Direct-examination by Mr. Carrick:

Q. You are vice-president of the Lincoln Trust Company? A. Yes, sir.

Q. And have been for how many years? A. Several years, I do not recall just how many.

Q. At my request did you make a search for a deed which might have been executed by Mr. Farrier? A. I did.

Q. To the Lincoln Trust Company for the Montclair property? A. Yes, sir.

Q. When did you make that search? A. I think it was the latter part of last week or the early part of this week, several days ago.

Q. Were you able to find any such deed? A. Unable to find any such deed except the one exhibited here today which I presume is the one I saw at that time.

Q. That is the deed signed in blank? A. Yes, sir. I saw no other deed.

By Mr. Boardman: Q. Have you ever seen that deed before? A. Not that I recall.

By the Vice Chancellor: Q. Have you any reason to believe that Mr. Farrier made at any time a conveyance vesting this Montclair property in the Lincoln Trust Company. A. No, sir, I have not.

Q. From your experience with this bank and with other banks is that the way the business is usually done when property is taken for the benefit of the bank.

Q. They avoid taking conveyance in their own title every time.

Mr. Carrick: If your Honor please I have here—at your Honor's suggestion I wrote to the clerk of the Supreme Court and I have here the certified copy of the record of the judgment entered by the Hudson County National Bank against

Cornelia M. Partridge and Charles R. Partridge August 6th, 1912, in the sum of $17,072.71.

The Vice Chancellor: Have you got the assessment?

Mr. Carrick: The assessment is here.

The Vice Chancellor: What does the assessment exhibit.

Mr. Carrick: The assessment exhibits five notes, one for $3,500, and three for $3,400 and one for $3,200, and the judgment is against Cornelia M. Partridge and Charles R. Partridge. There are no copies of the notes, they are stated in the assessment.

The Vice Chancellor: Who appears as the maker?

Mr. Carrick: The notes do not show that except that the names are in order of Cornelia M. Partridge and Charles R. Partridge. The assessment does not show, I thought it might contain copies of the notes.

The Vice Chancellor: The Partridge notes held by this bank were offered in evidence were they not.

Mr. Carrick: Yes, sir.

The Vice Chancellor: Can you not pick out the notes to correspond with those dates?

Mr. Carrick: I think I can do that.

The Vice Chancellor: So that the Court may assume that Mrs. Partridge was the maker of these three notes on which the judgment was entered.

Mr. Carrick: The five notes, yes, sir.

Mr. Boardman: As a convenient way we might check it up with the schedule in the answer of the Hudson County Bank.

The Vice Chancellor: Perhaps counsel can agree that those notes are the notes on which Mrs. Partridge stood as an accommodation maker.

Mr. Carrick: Yes. I want to call your Honor's attention to the recital in the rule for judgment.

That Cornelia M. Partridge having filed an answer to the declaration of the plaintiff and his Honor Justice Swayze having adjudged such answer has directed that final judgment be entered. So that in this case there was a pleading—I guess it was just after we adopted our form under the act, and that the answer was stricken out as sham. I do not know what that answer set up.

The Vice Chancellor: As the case was presented to me there did not seem to be any possible enforcible obligation against Mrs. Partridge. She was a married woman and it was accommodation paper. I do not know on what ground the pleading was stricken out. It might be that the answer by Mrs. Partridge did not set up that defense.

Mr. Carrick: It is such an obvious defense I should imagine that would be the one thing set up if there was any defense made.

The Vice Chancellor: Does it appear who filed the answer?

Mr. Carrick: No, it does not appear.

We find the notes were all signed by Mrs. Partridge as maker.

The Vice Chancellor: If that is admitted—

Mr. Boardman: Those are the notes.

The Vice Chancellor: If there is no objection the certificate from the clerk will be received in evidence and I understand that counsel admit that the notes on which this judgment was recovered of seventeen thousand dollars were all notes on which Mrs. Partridge stood as maker.

Mr. Boardman: I don't know about that.

Mr. Carrick: These particular five.

Mr. Boardman: Oh, yes, beg pardon, those are the five notes set out in the schedule annexed to the answer of the Hudson County National bank in this case.

The Vice Chancellor: Does the Hudson County Bank in its answer set out the notes on which they recovered their judgment.

Mr. Boardman: Yes, sir.

The Vice Chancellor: Then that can be stricken out and put in this form:

That counsel admit the five notes, copies of which appear in the answer of the Hudson County National Bank, are the notes on which this judgment was recovered against Mrs. Partridge and others on August 6th, 1912.

Mr. Boardman: Yes, and of course we claim that on those notes she was an accommodation maker.

The Vice Chancellor: Yes, that is admitted I suppose.

Mr. Carrick: Well, I don't know.

The Vice Chancellor: You need not make any admission on that point at all.

Mr. Carrick: I offer the copy of the rule for judgment.

Marked Exhibit No. 7 January 16th, 1918.

EDWARD M. FARRIER re-called.

By Mr. Boardman: Q. The Lincoln Trust Company has sold this property? A. It has.

Q. For how much? A. Sixteen thousand dollars.

Q. And the date of the sale, of the deed? A. I cannot tell from memory.

Q. Approximately? A. I cannot tell you from memory.

Mr. Carrick: I have in my papers somewhere the precise date.

Q. It was in the spring of 1916?

Mr. Carrick: I have a reference that the contract for sale was made on January 24th, 1916, I think the deed was delivered either in the latter part of June or the early part of 1916.

Q. Does that correspond with your recollection? A. Oh, I cannot tell from recollection, Mr. Boardman. That is why we have books of record.

Mr. Boardman: Will you stipulate the date?

Unmarked Exhibit

Mr. Carrick: You can get it from the record and put in what the actual date is.

Mr. Boardman: I will put the date in.

Judge Carrick finds from his papers, I understand that the title was passed on June 26th.

Mr. Carrick: I find a letter in which I stated to the bank title would be closed that morning and I have no doubt that is correct.

The Vice Chancellor: It is admitted then a conveyance from the Lincoln Trust Company for the consideration of sixteen thousand dollars was made June 26th, 1916.

Unmarked Exhibit

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY

In the Matter of CHARLES R. PARTRIDGE LUMBER COMPANY, Bankrupt.	In Bankruptcy.

At Jersey City, in said district of New Jersey, on the fifteenth day of July, A. D. 1912, came George H. Gould, Jr., Treasurer of the Lincoln Trust Company of New Jersey, of Jersey City,

in the County of Hudson, and State of New Jersey, and made oath and says that he is Treasurer of the Lincoln Trust Company of New Jersey, a corporation incorporated by and under the laws of the State of New Jersey, and carrying on business at Jersey City, in the County of Hudson and State of New Jersey, and that he is duly authorized to make this proof, and says that the said Charles R. Partridge Lumber Company, the company by whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of Twenty-one Thousand and Forty Dollars ($21,040); that the consideration of said debt is as follows: Promissory notes purchased from the bankrupt; that no part of said debt has been paid; that no note has been given therefor except that there are no set-offs or counterclaims to the same; that no judgment has ever been recovered thereon except on note of Robert Draper, $500, but the judgment has not been satisfied, and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

LINCOLN TRUST COMPANY OF NEW JERSEY,
George H. Gould, Jr.,
Treasurer of said Corporation.

Subscribed and sworn to before me this
15th day of July, A. D. 1912.
Edgar R. Alpaugh,
Notary Public,
New Jersey.

Unmarked Exhibit

$2000.	Feb. 14, 1912	3 mos.)	Cornelia M. Part-
4400.	Apr. 18, 1912	1 mo.)	ridge maker
2000.	Feby. 23, 1912	3 mos.)	Charles R. Part-
4500.	Apr. 25, 1912	1 mo.)	ridge Lumber
2000.	Feb. 26, 1912	3 mos.)	Co., payee.
2200.	Feb. 29, 1912	3 mos.)	Charles R. Part-
1500.	March 12, 1912	3 mos.)	ridge, endorser

$18600.

Form of note:

$2000. Jersey City, February 26, 1912.

Three months after date I promise to pay to order of Charles R. Partridge Lumber Company Two Thousand Dollars

Payable at Lincoln Trust Company of New Jersey.

Value Received

I hereby charge my separate estate.

CORNELIA M. PARTRIDGE.

Also notes:

$1500.	Savannah Georgia of South Georgia Lumber Company by M. A. Cheney, Pres.	Apl. 24. 1912
$ 500.	New Durham Robert Draper	Feby. 7, 1912
$ 440.	West Hoboken Fredk Burke Bros.	Feby. 13, 1912

$2440.

Exhibit D-1

THIS MEMORANDUM OF AGREEMENT, entered into this Twelfth day of December, 1914, by and between Edward I. Edwards, Edward J. Dunn, Seth B. Robinson and Edwin M. Farrier, a committee representing certain creditors of the Interstate Lumber Company, under a certain agreement, dated June, 1912, hereinafter called "The Committee," The Interstate Lumber Company (a corporation of the State of New Jersey), hereinafter called "The Interstate," M. A. Cheney, hereinafter called "Cheney," and the South Georgia Lumber Company (a corporation of the State of Georgia), hereinafter called "The South Georgia," WITNESSETH:

The South Georgia will sell at invoice price to the Interstate all the lumber now in the yards of the Interstate consigned to the Interstate by the South Georgia less freight charges and demurrage paid by the Interstate.

The Interstate will deliver to the South Georgia its notes in payment of said lumber and also for any balance that may be found to be due for consigned lumber already sold and not yet paid for less any countercharges in favor of the Interstate, the amount and nature of such countercharges to be determined by the Committee; the said notes to be in such amounts as the South Georgia may request, but for a period of time not less than 125 days from their date.

The Interstate will convey to the Committee as Trustee for the Associated Banks all the lumber now on hand in its yards owned by it or acquired as above from the South Georgia with insurance to cover same, all cash on hand, all bills receivable

and all other claims of whatever nature it now has except the open accounts which came to the Interstate among the assets of the Charles R. Partridge Lumber Company.

Cheney will deliver to the Committee $120,000, par value of the Series "C" Notes of the Southern Seaboard Lumber Corporation payable $24,000 annually on October 1st of each year for five years beginning October 1st, 1920, all of such notes to be endorsed by Cheney and to bear interest at the rate of six per cent per annum payable semi-annually on the first day of April and October. He will also deliver at the same time to the said Committee $60,000, par value of the six per cent cumulative preferred stock and $60,000, par value of the common stock of the Southern Sea Board Lumber Corporation.

The Committee on receipt of the above "C" notes and property, will deliver to Cheney 825 shares of the stock of the Interstate held by it under the agreement of June, 1912, and will deliver to the Interstate for cancellation $120,000 (including interest to October 1st, 1914), of the notes of the company now held by the parties to such agreement for "direct" and "contingent" liability, amounting with interest to about $133,000, and the said notes shall at once be cancelled; and will deliver to the Interstate for cancellation as the same are paid out of the assets as conveyed to them the balance of said notes for "direct" and "contingent" liability, amounting to about $13,000, and the notes of that company now held by the parties to such agreement for "new money" amounting to about $67,000 (the two amounting to about $80,-

000), and the said notes shall at once be cancelled. The Committee reserves the right to sell all or any part of the said "C" notes; and if they sell any during the time Cheney has the right to redeem the said stock of the Southern Sea Board Lumber Corporation, such notes so sold shall be treated as so many "C" notes paid by Cheney and he will comply with his part of the agreement by paying those still in the possession of the Committee and the Committee will comply with their part of the agreement by delivering those still in their possession. The Committee will also deliver to the Interstate the notes on which the Charles R. Partridge Lumber Company appear as maker or endorser and for which the Interstate notes for "direct" and "contingent" liability were given, and any collections received thereon after the date of this agreement shall be credited as received on the said $80,000.

The Interstate will lease to the Committee the use of the portion of its yards now occupied by lumber on hand for a period of one year at a rental of one dollar for the storage of lumber so conveyed to said Committee and on the completion of the payment of said $80,000, said Committee shall cancel said lease. The Interstate agrees to sell said lumber and collect the accounts receivable at the earliest possible moment and turn over to said Committee all checks and other proceeds received in payment thereof and for the said services and all other services necessary in connection with the sale and delivery of said lumber and the collection of said accounts to receive in full payment ten per cent of the amount as collected on the present accounts and bills receivable and fifteen per cent of

the amount as collected on the sales of lumber hereafter made. The lumber is not to be sold by the Interstate at a concession of more than ten per cent below its current retail selling prices without the approval of the Committee and the Committee reserves the right to pass on credits of purchasers, but without assuming any responsibility therefor. The said Committee reserves the right to sell the said lumber and to collect said accounts whenever it deems it advisable so to do, but said Committee will not sell said lumber during 90 days from the date of this agreement at less than 10% below the current retail prices without the approval of said Cheney. In the case of all such sales, the Interstate agrees to make deliveries at cost.

The Committee will place a representative in the office of the Interstate for the purpose of looking after and protecting its interests, and that Company will pay his salary not to exceed $500 per month and expenses until such time as the sales of said lumber so conveyed to the Committee shall amount to $55,000, sale price, or said $80,000 has been paid in full, such payment to the Committee's representative to be at the expense of the Interstate, but to be made by the Committee out of the moneys received from the accounts and bills receivable and new sales of lumber now on hand and is additional to $80,000 to be paid out of said accounts and bills receivable and lumber.

The Committee will deliver to Cheney the resignations of Mr. Farrier, Mr. Dunn and Mr. Robinson, as officers and members of the Executive Committee of the Interstate and shall cause them to vote for such officers as Cheney may designate

and as soon as the notes for the "new money" and the balance of the "direct" and "contingent" notes over and above the $120,000 are paid, their resignation as Directors, and Cheney will agree to retain them as directors until said "new money" notes and the "direct" and "contingent" notes as above stated and the other items to be paid under this agreement by the Committee out of the proceeds of the lumber and accounts and bills receivable are paid in full.

The Committee, as soon as all the notes for "new money" and the balance of "direct" and "contingent" liability amounting in the aggregate to about $80,000 have been paid in full, and the other items to be paid under this agreement by the Committee out of the proceeds of the lumber and accounts and bills receivable, agree to reconvey to the Interstate any and all lumber, uncollected accounts and bills receivable and all other claims referred to in paragraph "THREE" hereof, not yet collected at the time of such final payment.

If Cheney pays or causes to be paid within two years from December 1st, 1914, the $120,000 of "C" notes and at the same time pays to the Committee the sum of $20,000 towards the expenses of the Committee, the Committee will deliver to Cheney the $60,000, part value of the six per cent cumulative preferred stock and $60,000, par value of the common stock of the Southern Sea Board Lumber Corporation. If Cheney requests an extension of the time for these payments, the Committee will agree to grant an extension of one year upon the payment to the Committee of the sum of $2000, for that privilege and if he asks for further extension the Committee will agree to ex-

tend the time of payment for another year upon a like payment for such privilege and if he asks for a third extension, the Committee will agree to a further extension of one year upon a like payment for the privilege, but if the above option to redeem said stock as herein provided is not exercised within the said two years from December 1st, 1914, or within any extension thereof as herein provided, the said stock shall become at once the absolute property of the Committee.

The Interstate may continue to carry on its business of buying and selling new lumber without interference or control on the part of the Committee.

The Interstate shall not make any mortgage on its property other than the mortgage of Real Estate referred to in the proposal by Cheney made to the Southern Sea Board Lumber Corporation at the meeting of the Board of Directors of the Southern Sea Board Lumber Corporation, held November 17th, 1914, until the payment in full of the "new money" obligations and the balance of "direct" and "contingent" liabilities, over and above the $120,000.

The litigation instituted by the Interstate against the South Georgia and against Mr. Cheney and Mr. Jackson shall be discontinued and the Committee agrees for itself and the Banks that all measures which are practicable shall be taken forthwith to bring about the termination of all litigation now pending against those parties, instituted by the Committee or any of the Associated Banks. All expenses of such litigation not to exceed $500 shall be paid by the Committee out of moneys received on accounts and bills re-

ceivable and new sales of lumber now on hand and the amount thereof added to the total amount to be paid out of said accounts and bills receivable and lumber.

In Witness Whereof, the parties hereto have hereunto set their hands and seals all as of the day and year first above written at Jersey City in the State of New Jersey.

The transfers herein provided for are to be made at the earliest possible date, but in no event later than December 31st, 1914.

E. J. EDWARD, JR.)
EDWARD J. DUNN)
SETH B. ROBINSON) Committee.
EDWIN M. FARRIER)
INTERSTATE LUMBER CO.,
By Seth B. Robinson, President.
Maynard A. Cheney.
SOUTH GEORGIA LUMBER CO.,
By M. A. Cheney.

Witness to all the above signatures,
Edgar R. Alpaugh.

Promissory notes mentioned in agreement as held in escrow.

Exhibit D-2

Dated Feby. 26, 1912, payable three months after date $2000.00.

Exhibit D-3

Dated April 25, 1912, payable three months after date 4500.00.

Exhibit D-4

Dated, March 12, 1912, payable three months after date 1500.00

$ 80,000

Exhibit D-5

THIS AGREEMENT made this third day of August, 1912, between Cornelia M. Partridge, party the first part, and the Lincoln Trust Company of New Jersey, a corporation in the State of New Jersey, party of the second part.

WHEREAS, the party of the first part has sold to the party of the second part all that plot of ground with buildings erected thereon, more particularly described as follows: See attached description.)

AND WHEREAS the party of the second part has delivered to the party of the first part certain promissory notes issued by said party of the first part in payment of the above mentioned premises, and

WHEREAS the said party of the second part, for the better protection of its interests, requires that the said promissory notes be held in escrew for a period of time to be determined or until certain matters now pending are settled. It is hereby agreed by the party of the first part, that she will place the aforesaid promissory notes in possession

of Raymond Dawson, whose address is 1 Exchange Place, Jersey City, to be held by him until the settlement of the above mentioned actions or until mutually agreed upon by both parties to this agreement.

CORNELIA M. PARTRIDGE,
LINCOLN TRUST COMPANY OF NEW JERSEY,
by E. M. Farrier, Pd.

Exhibit D-7

LINCOLN TRUST COMPANY
OF NEW JERSEY

Jersey City, N. J., June 17th, 1915.

Mr. Stanley R. Soverel, Treasurer,
Montclair Savings Bank,
Montclair, N. J.

Dear Sir:

Your letter of June 16th relative to the unpaid bill for insurance on what was formerly known as the Partridge house, has been received, and I am today sending a check in payment of the same.

I assume that you have turned the papers over to your counsel for the foreclosure of the mortgage on the same property.

I have not yet been served with any papers and do not know whether any bill has been filed, but I will accept service by mail and do anything else to hasten the matter along as the longer the matter is delayed, the longer Partridge will have rent free and we cannot put him out until we get title.

I suppose you know his business in Hoboken is now in the Bankruptcy Court.

Yours very truly,

(Signed) E. M. FARRIER.

Exhibit D-8

LINCOLN TRUST COMPANY
OF NEW JERSEY

Jersey City, N. J., Sept. 3-1915.

Mr. E. B. Goodell, Pres't.
Montclair Savings Bank,
Montclair, N. J.

Dear Sir:

It has just come to my attention that Chas. R. Partridge has vacated the house No. 78 Clinton Avenue, Montclair.

Will you please advise me whether he vacated the premises because of any action taken by you, or did he leave voluntarily.

I have received a letter from Mr. Robert M. Hening, a Real Estate Agent of 314 Bloomfield Avenue, asking if the property is in the market either for sale or rental; if so, what the selling price is, and what the renting price would be.

I think it a very good thing that Partridge has moved, as it will do away with ejecting proceedings.

I will appreciate it if you will give me your idea of the market value of the property, also your idea as to what rental should be asked.

An early reply to the above will be greatly appreciated.

Yours very truly,

(Signed) E. M. FARRIER.

Exhibit D-9

EDWIN M. FARRIER, PRESIDENT

LINCOLN TRUST COMPANY

Jersey City, N. J., May 26th, 1915.

Mr. Benjamin S. Harmon,
55 Wall St.,
New York City, N. Y.

Dear Sir:

Mr. Wallace H. Partridge called at our office today and requested us to write you relative to the status of the house #78 Clinton Avenue, Montclair, formerly owned by Mrs. Cornelia M. Partridge.

This house, together with the land and appurtenances, was purchased by the writer some years ago and title is still vested in me.

While Mr. Partridge is now living in the house, steps have been taken by me to get physical possession of the property and after consultation with my lawyer, I do not see that any of the Partridge family have any interest whatever in the premises.

Yours very truly,

E. M. FARRIER,
President.

Exhibit D-10

AGREEMENT, made this day of June, 1912, by and between The Merchants Exchange National Bank of New York, German Exchange Bank of New York, The Fifth National Bank of New York, Lincoln Trust Company of New York, Metropolitan Bank of New York, West Side Bank of New York, The Boonton National Bank of Boonton, N. J., The Bergen-Lafayette Trust Company of Jersey City, N. J., Lincoln Trust Company of Jersey City, N. J., The Hudson County National Bank of Jersey City, N. J., The Essex National Bank of Montclair, N. J., The Second National Bank of Hoboken, N. J., Bank of Montclair, Montclair, N. J., The First National Bank of Jersey City, N. J., and such other financial corporations as may become parties hereto by executing this agreement (for the sake of brevity hereinafter called the "Banks"), parties of the first part; and Edward J. Dunn of the Chemung Canal Trust Company of Elmira, N. Y., Edwin M. Farrier of the said Lincoln Trust Company of Jersey City, N. J., Seth B. Robinson, attorney for the said The Merchants Exchange National Bank of New York, and Edward I. Edwards of the said The First National Bank of Jersey City, N. J. (hereinafter called the "Committee"), parties of the second part; The South Georgia Lumber Company, a corporation of the State of Georgia (hereinafter called the "Lumber Company"), party of the third part; and Maynard A. Cheney, individually and as president of said Lumber Company, party of the fourth part.

WHEREAS, said banks and said lumber company

respectively, are creditors in a large amount of the Charles R. Partridge Lumber Company, a New Jersey Corporation now in the hands of a receiver in Bankruptcy (hereinafter called the "Bankrupt"); and

WHEREAS, it appears, from the peculiar nature of the assets of said Bankrupt, that if said assets be sold at forced sale by a receiver or trustee in bankruptcy a great and unnecessary loss and damage will be suffered by said Banks and Lumber Company and the other creditors of said Bankrupt and much less will be realized therefrom than if the same be taken over by a going concern and disposed of in the regular course of its business; and

WHEREAS, said Banks and their Committee propose to purchase from said Receiver or the Trustee of said Bankrupt all the assets and property of said Bankrupt, and

WHEREAS, said Lumber Company and said Cheney propose to purchase from the Banks or from the Committee all of such assets and property according to the terms hereinafter set forth; and

WHEREAS, it appears to be for the best interest of all concerned that said offer of said Lumber Company and said Cheney be accepted; and

WHEREAS, the parties of the second part were at a meeting of the duly accredited representatives of all said Banks held in the office of the First National Bank of Jersey City, N. J., on the first day of June, 1912, unanimously constituted a Committee in behalf of the Banks to assist said

Cheney and said Lumber Company in carrying out their said proposal and to do such other acts and things in and about the premises as will protect the interests of the Banks;

Now, Therefore, in consideration of the premises and of the benefits to accrue to each and all of the parties hereto, through the faithful performance of this agreement, and in further consideration of the separate execution hereof by all the said corporations and individuals who shall join herein on or before June 2, 1912, as parties as aforesaid, all of the said parties executing this agreement have agreed and do hereby jointly and severally agree each with the other as follows:

First: The Banks will immediately commence negotiations for the purchase of the assets and property of the Bankrupt at the price at which the same may be obtained and, upon making with the Receiver or Trustee a contract for such purpose, to be approved by the Court, will at once notify said Cheney, who will thereupon immediately cause to be organized under the laws of the State of New Jersey a new corporation to take over said assets and property. The Board of Directors of said new corporation, at all times until the notes or obligations given hereunder are paid in full with interest as herein provided, shall consist of at least five members, two-fifths of whom shall be named by said Cheney and three-fifths of whom shall be chosen by said Cheney from a list of ten names proposed for that purpose by the Committee. In case said Cheney shall neglect or refuse to name said two-fifths or to choose three members from the list submitted, then the Committee

shall have full power to select the same. To insure the faithful performance of this agreement and until the fulfilment thereof 55 per cent of the stock of said new corporation shall be deposited with the Committee or the voting power of the same shall be placed in the hands of three (3) voting Trustees approved by the Committee.

SECOND: The Banks executing this agreement promise and agree, each for itself and not one bank for any other bank, to contribute the money necessary to carry into effect such purchase of said Bankrupt's assets and property and to pay for the same sum not exceeding $125,000, each of said Banks to contribute pro rata such proportionate amount of said purchase money as the amount of its claim against said Bankrupt to be paid or guaranteed hereunder bears to the aggregate amount of the claims of the Banks so to be paid or guaranteed, but any Bank executing this agreement may withdraw therefrom before the Committee shall have contracted to purchase said assets and property, unless Banks holding at least 75 percent of the direct and at least 25 percent of the contingent obligations of the Bankrupt held by all the Banks named herein shall have joined in the execution hereof.

THIRD: The Lumber Company and said Cheney promise and agree that said new corporation will receive said assets and property from the Committee and will pay therefor in the following manner:

(*a*) By making and delivering to each of the contributing Banks its promissory notes for the full amount of the unpaid promissory notes of the

Bankrupt now held by each of the contributing Banks and hereinafter set forth by them, respectively, in the list of direct and contingent liabilities of said Bankrupt;

(*b*) By guaranteeing to each of the contributing Banks the payment of such commercial paper endorsed by the Bankrupt as it shall be impossible for said Banks to enforce payment of from the respective makers thereof, such guarantee to be limited to the amount stated by said Bank in said list of contingent liabilities, said new corporation to make and deliver to each of said contributing Banks, as security for such guarantee, its promissory notes for the amount of such uncollectible commercial paper held by each contributing Bank respectively, as set forth under the head of contingent liabilities in said list of direct and contingent liabilities of said Bankrupt;

(*c*) By making and delivering to each contributing Bank its promissory notes for the amount of money contributed by such Bank toward the said purchase of the assets and property of the Bankrupt.

All said notes described under (*a*), (*b*) and (*c*), shall be made for periods of not exceeding 4 months each and shall bear interest at the rate of six per cent per annum, which interest shall be paid at the time of each renewal. Said notes to be endorsed by said South Georgia Lumber Company and said Maynard A. Cheney, respectively, and secured by a mortgage or deed of trust in the ordinary form to be approved by the Committee, to a Trustee satisfactory to the Committee, pledging all the assets and property so to be purchased

of the Bankrupt's estate as herein provided and all replacements and substitutions thereof, which mortgage or deed of trust shall in apt language insure to said new corporation the extension from time to time of the date of maturity of said promissory notes until the same shall be fully paid and for the payment thereof from time to time by the liquidation of said assets and property purchased as aforesaid, provided, however, that such renewals shall not extend the date of final payment of said notes for a period of more than two years from the date hereof without the written consent of the Banks then holding such notes secured under said mortgage or deed of trust. Said mortgage or deed of trust shall further provide that the moneys received by such proposed new corporation from the sale of any assets or property purchased as aforesaid and from replacements and substitutions shall be applied to the reduction of its promissory notes without preference or priority in payment of the claim of one Bank over any other Bank, and each Bank agrees that all dividends or payments on account of the indebtedness of the Bankrupt or on account of the notes specified under (*a*), (*b*) and (*c*), of this agreement, from whatever source received (except interest), shall be applied to the reduction of the indebtedness of said new corporation on said notes. Each of the Banks joining in this agreement shall prove its claim upon the notes now held by it against said Bankrupt and all endorsers and guarantors thereof, and the amounts as collected by said Banks shall by them be credited upon the notes of the said new corporation given to them for their direct liabilities and after the payment of

the portion of the contingent liability treated by them as collectible, to credit the balance to the notes of said new corporation given to guarantee their contingent liability. Each of said Banks parties hereto states and represents that the direct and contingent liabilities to it of the Bankrupt which it expects such proposed new corporation to assume or guarantee and which it uses as a basis for calculating its proportionate contribution to the purchase of the assets and property of the Bankrupt from the said Receiver as provided hereunder is as follows:

	Liabilities of Bankrupt.	
Banks.	*Direct*	*Contingent.*
The Merchants Exchange National Bank of N. Y.	None	~~$10,000.~~
German Exchange Bank of N. Y.		
Fifth National Bank of N. Y.	5,000.	4,490.47
Lincoln Trust Co. of N. Y.	1,978.75	440.00
Metropolitan Bank of N. Y.	1,500.	700.00
West Side Bank of N. Y.		
Boonton National Bank of Boonton, N. J.		5,800. ~~7,641.00~~
The Bergen-Lafayette Trust Co. of Jersey City, N. J.	3,500.	
Lincoln Trust Co of Jersey City, N. J.	18,600.	2,440.00
The Hudson County National Bank of Jersey City, N. J.		
The Essex National Bank of Montclair, N. J.	4,900.	
Bank of Montclair, N. J.	8,503.16	
The Second National Bank of Hoboken, N. J.	4,000.	3,641.29 ~~5,063.18~~

Exhibit D-10

The First National Bank of Jersey City, N. J.	none	approximate $20,000.
Union Trust Co. of Jersey City, N. J.	none	2,500.
W. S. M. Cord Chemung Canal Trust Co. of Elmira, N. Y.	~~$25,000~~.	~~2,475~~.
Merchants National Bank, Newark, N. J. President	1,000	500.
Hudson County National Bank, Jersey City, N. J.		34,000.
Hudson Trust Company, New York City	4,000.	
E. F. Maguire (Federal Trust)		4,250.
Bank of Montclair, T. W. Stephens, Prest.		8,503.16
B. Brobholtz		7,300.

and no Bank party hereto shall be compelled to contribute or shall receive in return for its contribution a greater proportion than the amount of its claim herein listed bears to the claims of all said Banks against the Bankrupt so listed.

FOURTH: Nothing herein contained shall be construed as requiring the Committee to purchase the assets of the Bankrupt unless they deem it advisable so to do.

FIFTH: In case the Committee shall deem it advisable for business purposes not to demand a trust deed or mortgage but instead to take an assignment of 55 per cent of the capital stock of the new corporation for the purpose of absolute control until the fulfilment of this agreement, the Committee is hereby authorized so to do.

Exhibit D-10

SIXTH: In the participation of the proceeds of sale of the assets and property of the Bankrupt to be purchased and disposed of by the new corporation as herein provided and in all matters pertaining to this agreement, any obligation which the South Georgia Lumber Company held against the Bankrupt's estate shall be subordinated to the rights of the Banks joining in this agreement, and all dividends or payment received by the said South Georgia Lumber Company from said Bankrupt's estate upon that portion of its claim against said estate in excess of $34,500, shall be applied pro rata in payment of said notes of said new corporation and the Committee shall thereupon out of the property purchased, return to said South Georgia Lumber Company the $50,000 of its capital stock and its promissory notes for $13,500, now in possession of said Receiver.

In order to facilitate the execution of this agreement the same may be simultaneously executed in ten counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the individual parties hereto, and the corporations parties hereto by their proper officers thereunto duly authorized have executed this agreement this day of June, 1912.

THE FIRST NATIONAL BANK OF JERSEY CITY, N. J.,
by E. I. Edwards, Cashier.
LINCOLN TRUST COMPANY OF NEW JERSEY,
by E. M. Farrier, Pres't.
LINCOLN TRUST COMPANY OF NEW YORK,
by Owen Ward, Vice President.

Exhibit D-10

MERCHANTS EXCHANGE NATIONAL BANK OF THE CITY OF NEW YORK,
by E. A. Cherrell, Vice Pres't.
THE BERGEN-LAFAYETTE TRUST CO.,
Wm. C. Heppenheimer, President.
MERCHANTS NATIONAL BANK,
NEWARK, N. J.,
J. S. Treat, Vice Pres't and Treasurer.
FIFTH NATIONAL BANK, NEW YORK,
W. S. Beckley, Cashier.
HUDSON COUNTY NATIONAL BANK, JERSEY CITY, N. J.,
N. J. H. Edge, Cashier.
SECOND NATIONAL BANK OF HOBOKEN,
A. N. Terbett, Cashier.
ESSEX NATIONAL BANK OF MONTCLAIR,
H. R. Simonson, Cashier.
W. S. MCCORD,
CHEMUNG CANAL TRUST CO. OF ELMIRA, N. Y.,
by E. J. Dunn, Sec'y & Treas.
SOUTH GEORGIA LUMBER CO.,
by Maynard A. Cheney, Pres't.
MAYNARD A. CHENEY,
UNION TRUST COMPANY OF NEW JERSEY, JERSEY CITY,
I. G. Hasking, Treas.
METROPOLITAN BANK,
A. C. Corby, Cashier.
BOONTON NATIONAL BANK,
E. A. Fisher.
HUDSON TRUST COMPANY OF NEW YORK CITY,
L. H. Holloway, President.
E. F. MAGUIRE,
BANK OF MONTCLAIR,
T. W. Stephens, Pres't.
B. GROBHOLZ.

Exhibit D-11

We the Undersigned banks being parties to a certain agreement, dated June, 1912, hereby authorize the committee to take all necessary steps to carry into effect the plan outlined in the letter of April 11, 1914, regarding the payment of the notes of the Interstate Lumber Co., given for money furnished to purchase the assets of the Charles R. Partridge Lumber Co., and for the indebtedness to the banks by the said Charles R. Partridge Lumber Co.

Dated, Jersey City, April 16, 1912.

Bank of Montclair, T. W. Stephens, Prest.
The First National Bank of
Jersey City, N. J., E. I. Edwards, Cashier.
Lincoln Trust Co., New York,
Owen Ward, Vice Pt.
The Boonton National Bank,
of Boonton, N. J., E. A. Fisher, Cashier.
The Second Natl Bank of
Hoboken, N. J., A. N. Terbell, Cashier.
Union Trust Co. of N. J.,
Jersey City, N. J., G. Hendrickson, Atty.
The Trust Company of New
Jersey, Joseph Harrison, 4th Vice-Pres.
Metropolitan Bank, N. Y.,
Henry Ottesheimer, (?) Pres.
Essex Natl Bank,
Montclair, N. J., H. R. Simonson, Cshr.
Fifth Natl Bank,
New York, E. E. Watt (?) Pres.
Chemung Canal Trust Co.,
Elmira, N. Y., by E. J. Dunn, Treas.
Merchants' Exchange National Bank
of New York City, by Seth B. Robinson.

Exhibit D-12

Hudson County National Bank
of Jersey City, N. J. H. Edge, Vice-Pdt.
Estate of B. Grobholz, Adam Grobholz, Admr.
Merchants' National Bank of
Newark, N. J., A. L. Phillips, Cashier.
Lincoln Trust Co. of New Jersey,
by E. M. Farrier, Prest.
Hudson Trust Co., N. Y.,
L. H. Keeney (?) Vice-Prest.

Exhibit D-12

WHEREAS, under the terms of an agreement between certain Banks and Trust Companies, party of the first part, Edward J. Dunn of Elmira, New York, Seth B. Robinson of New York City, N. Y., Edward I. Edwards of Jersey City, N. J., and Edwin M. Farrier of Jersey City, N. J., called the Committee, party of the second part, the South Georgia Lumber Company, a Corporation of the State of Georgia, party of the third part, and Maynard A. Cheney, party of the fourth part, the said party of the second part is limited to paying $125,000 for the assets of the Charles R. Partridge Lumber Company in Bankruptcy, and

WHEREAS, the said party of the second part, offered through Mr. Edward J. Dunn the sum of $126,150 for the assets of the said Charles R. Partridge Lumber Company, which offer was accepted by the Referee in Bankruptcy on August 19th, 1912, and

WHEREAS, the said Edward J. Dunn for good and sufficient reasons, purchased the said assets

in his own name and is willing to assign the purchase to certain parties for the protection of the parties of the first part;

Now, Therefore, be it known that we, the Banks and Trust Companies, subscribers to the original agreement, hereby ratify and confirm the purchase by the said Edward J. Dunn and authorize the amount stated as a limit in Section 2, page 3 of said agreement to be increased to $127,912.40.

Essex National Bank, Montclair N. J.,
H. R. Simonson, Cashier.
Lincoln Trust Co., of J. C.,
by E. M. Farrier, Pres't.
Hudson Co. National Bank, N. J.,
H. Edge, Cashier.
Second National Bank Hoboken,
by T. A. Eberhard, Att'y in fact.
Fifth National Bank, N. Y. City,
by Geo. A. Lacas, Jr.
Lincoln Trust Co. of N. Y.,
by Bowers & Sands.
South Georgia Lumber Co.,
by Maynard A. Cheney, Pres't.
Maynard A. Cheney,
First National Bank of J. C.,
Edward I. Edwards, Cashier.
B. Grobholz,
Union Trust Co., of N. J., Jersey City,
by I. G. Hasking, Treas.
Bank of Montclair,
T. W. Steffens, Pres't.
Metropolitan Bank,
A. C. Corby, Cashier.
E. F. Maguire,
Boonton National Bank,
E. A. Fisher, Cashier.
W. S. Mc Cord,
Chemung Canal Trust Co.,
by E. J. Dunn, Treas.

Exhibit D-13

Warrantee Deed, Cornelia M. Partridge, and Charles R. Partridge, her husband, of Montclair, Essex Co., N. J., To George E. Paul, of Jersey City, Hudson Co., N. J.	Dated—July 31, 1912. Acknowledged July 31, 1912, before Samuel Silverman, Commissioner of Deeds of New Jersey.

Recorded in Office of Register of Essex Co., August 3, 1912, at 11:07 o'clock a. m., in Book K.51 of Deeds for said County, pages 277-279.

Consideration $1.

Conveys mortgaged premises "Subject to a mortgage for the sum of Ten Thousand dollars ($10,000), held by the Montclair Trust Co., bearing interest at the rate of five per cent, which said party of the second part assumes."

Usual covenants.

Exhibit D-14

Bargain and Sale Deed	Dated, August 5, 1912.
George E. Paul (unmarried), of Jersey City, Hudson Co., N. J.,	Acknowledged Aug. 5, 1912, before Alexander Michel, Commissioner of Deeds.
	Recorded in Office of
To	Register of Essex Co. June 11, 1915, at 11:15 o'clock in the forenoon
Edwin M. Farrier, of Jersey City, Hudson Co., N. J.	in Book C-56 of Deeds, pages 234-236. Consideration $1.

Conveys mortgaged premises without assumption clause and without covenants.

Exhibit D-15

Ralph B. Schmidt,	Sheriff's Deed. Dated-January 22, 1916.
Sheriff,	Proved by customary Sheriff's affidavit, Feb. 2, 1916.
To	Recorded in the Register's Office of Hudson County, Feb. 24,
Lincoln Trust Company of New Jersey.	1916, at 9:50 a. m., in Book E.57 of Deeds for said County, at pps. 103-106.

Recites fi. fa. out of Chancery dated the 27th day of November, 1915, which fi. fa. recites decree

of the Court of Chancery dated Nov. 9, 1915, in a cause wherein Montclair Savings Bank is complainant and Cornelia M. Partridge and others are defendants, which directed the Sheriff to sell the mortgaged premises to pay and satisfy in the first place unto the said complainant, $10,458.75, together with lawful interest thereon, from the first day of November, 1915, until the same is paid and satisfied, and also the costs of said complainant, and a further recital that the costs had been taxed at $259.38.

The said deed further recites the recording of the said fi. fa. and the advertisement of the sale for Tuesday, the 11th day of January, 1916, at two o'clock of that day, by posting and in two newspapers.

And the deed further recites that the Montclair Savings Bank did bid for the same the sum of $7,500; that no other person bidding so much, the property was sold for $7,500 to the Montclair Savings Bank, "it being then and there the highest bidder for the same, and the said sale having been confirmed by an order of the said Court of Chancery, dated the Twenty-second day of January, A. D., nineteen hundred and sixteen, and said bid having been assigned by The Montclair Savings Bank to Lincoln Trust Company of New Jersey, a corporation, of the City of Jersey City, in the County of Hudson and the State of New Jersey." The Sheriff thereupon conveys the property for the consideration of $7,500 to the Lincoln Trust Company of New Jersey, a corporation, its successors and assigns, with habendum to the same, with covenants against acts of the Sheriff. $7.50 of Internal Revenue stamps, cancelled on Feb. 19, 1916, attached.

Exhibit D-16

BENJAMIN S. HARMON AND CHARLES F. MATHEWSON
55 Wall Street
New York

Dear Sirs:

In consideration of your indorsement of the note of my son Wallace H. Partridge, dated May 21, 1913, to himself for $5,500, I hereby assign and transfer to you all my right, title and interest in the premises at which I am now living in Montclair, New Jersey.

The title to said premises has been transferred by me to Geo. E. Paul as security for and until certain obligations against my husband Charles R. Partridge and myself as indorsers are discharged; and I direct the holder of said title thereupon to deed said property to Charles F. Mathewson (or in case of his decease to Benjamin S. Harmon) to be held and disposed of to secure them upon the indorsement of the above mentioned note and their indorsements upon any other notes of my son Wallace H. Partridge as now existing, and any renewals or extensions of said notes or any thereof or any part of said note or notes, with full power of sale to said Mathewson or Harmon as grantee to dispose of said property at any time as they may see fit and appropriate the proceeds to the payment of such obligations or any thereof or the reimbursement of said Harmon or Mathewson or either thereof for any payments which they may have made thereon.

Any surplus in case of such sale will be returned to me after all such obligations have been discharged and any expense in that connection paid and retained by such grantee.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of May, 1913.

(Signed) CORNELIA M. PARTRIDGE.

Exhibit 1 for Lincoln Trust Company

Nine checks drawn on Lincoln Trust Co., all signed Geo. H. Gould, Treas., and all except sixth counter-signed by E. M. Farrier. All dated at Jersey City, N. J.

(1) Dated, Apl. 26, 1910, for $4,924.17
payee C. M. Partridge.
Stamped "Paid 4-26-10"
No endorsement.

(2) Dated, July 25, 1910, $4,677.17
payee C. R. Partridge
Stamped "Paid 7-25-10"
No endorsement.

(3) Dated, Oct. 25, 1910, $4,529.47
payee C. R. Partridge Lumber Co.
Stamped "Paid 10-25-10"
No endorsement.

(4) Dated, Jan. 28, 1911, $4,432.50
payee C. R. Partridge Lumber Co.
Stamped "Paid 1-19-11"
No endorsement.

(5) Dated, Apl. 25, 1911, $4,431.75
payee C. R. Partridge Lumber Co.
Stamped "Paid 4-26-11"
Endorsed "Credited to account of Payee,
Geo. H. Gould, Jr., Treas."

(6) Dated, July 25, 1911, $4,431.
payee C. R. Partridge Lumber Co.
Stamped "Paid 7-27-11"
No endorsement.

Exhibit 2 Lincoln Trust Co.

(7) Dated, Oct. 25, 1911, $4,431.
payee C. R. Partridge Lumber Co.
Stamped "Paid 10-26-11"
Endorsed as (5)

(8) Dated, Jan. 25, 1912, $4,431.75
Payee C. R. Partridge Lumber Co.
Stamped "Paid 1-26-12"
Endorsed as (5)

(9) Dated, Apr. 25, 1912, $4,476.
Payee Not (Note?) C. M. Partridge
Stamped "Paid 4-27-21"
Endorsed as (5).

Exhibit 2 Lincoln Trust Co.

Two Checks Lincoln Trust Co.
Both dated Jersey City
Signed by Gould, Jr., Treas. and
Counter-signed by Farrier, Pres.

(1) Dec. 11, 1911, $1,969.69
TO C. R. Partridge Lumber Co.
Stamped "Paid 12-12-11"
Endorsed "Credited to account of Payee.
Geo. H. Gould, Jr., Treas."

(2) March 2/12 $1,477.
To Cornelia M. Partridge
Stamped " Paid 3-14-12"
Endorsed "Cornelia M. Partridge"
"Pay Lincoln Trust Co. of New Jersey
or order
Charles R. Partridge Lumber Co."

Exhibit 3 Lincoln Trust Co.

One check, dated Jersey City, Feb. 26, 1912, for $1,969.67.

Stamped "Paid 2-28-12"

Endorsed "Cornelia M. Partridge"

"Pay Lincoln Trust Co. of New Jersey or order

Charles R. Partridge Lumber Co."

Unmarked Exhibit

Claim 29 Filed with the Referee in Bankruptcy. (Offered, see page 246.)

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF

In the Matter of INTERSTATE LUMBER COMPANY, Bankrupt.	In Bankruptcy.

At Jersey City, in said district of New Jersey, on the eighth day of March, A. D. 1917, came Geo. H. Gould, Jr., of Jersey City, in the County of Hudson and State of New Jersey, and made oath and says that he is Treasurer of the Lincoln

Unmarked Exhibit—Claim 29

Trust Company of New Jersey, a corporation incorporated by and under the laws of the State of New Jersey, and carrying on business at Jersey City, in the County of Hudson and State of New Jersey, and that he is duly authorized to make this proof, and says that the said Interstate Lumber Company, the company against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of Thirty-eight Hundred Eleven 61/100 Dollars; that the consideration of said debt is as follows; promissory note, see copy annexed, for $8385.33 with interest, dated May 13, 1914 payments having been made on said note which reduces the amount due to $3811.61; that no part of said debt has been paid except as stated on the note; that no note has been given therefor; that there are no set-offs or counterclaims to the same; that the only securities held by this deponent for said debt is its proportionate interest in certain money and other property in the hands of Edward I. Edwards, Edward J. Dunn, Seth B. Robinson and Edwin M. Farrier, as a committee.

GEO. H. GOULD, JR.,
Treasurer of said Corporation.

Subscribed and sworn to before me this
8th day of March, A. D. 1917.
Edgar R. Alpaugh,
Notary Public,
New Jersey.

Unmarked Exhibit—Claim 29

173.28
8385.53

Jersey City, N. J., May 13, 1914.

INTERSTATE LUMBER COMPANY

September 13-1914 after date we promise to pay to the order of Lincoln Trust Company

Eighty-three hundred eighty-five dollars fifty-three cents Dollars

At Lincoln Trust Company, Jersey City, New Jersey.

Value received, with interest at 6%.

No. 263 INTERSTATE LUMBER COMPANY,
By Guert G. Jackson,
Vice President.

Countersigned:
E. M. Farrier, Treas.

(*Endorsed*)
South Georgia Lumber Company,
By M. A. Cheney,
Maynard A. Cheney.

Interest paid to Nov. 10-1914.

Payments on the within note

11/16/14	381.16
12/17/14	381.16
1/14/15	381.16
1/22/15	381.16
2/ 4/15	381.16
2/16/15	381.16
3/19/15	381.16
4/30/15	1525.64
	4573.92

Unmarked Exhibit—Claim 30

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF

In the Matter of INTERSTATE LUMBER COMPANY, Bankrupt.	In Bankruptcy.

At Jersey City, in said district of New Jersey, on the 27th day of February, A. D. 1917, came Geo. H. Gould, Jr., of Jersey City, in the County of Hudson and State of New Jersey, and made oath and says that he is Treasurer of the Lincoln Trust Company of New Jersey, a corporation incorporated by and under the laws of the State of New Jersey, and carrying on business at Jersey City, in the County of Hudson and State of New Jersey, and that he is duly authorized to make this proof, and says that the said Interstate Lumber Company, the company against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of Nine Hundred Eighty 83/100 Dollars; with interest from Oct. 1, 1914; that the consideration of said debt is as follows: promissory note for $14,514.00, with interest at 6%, the difference between the face amount of the note and the amount of this claim having been adjusted Oct. 1, 1914; that no part of said debt has been paid; that no note has been given therefor except ; that there are no set-offs or

counterclaims to the same; that no judgment has ever been recovered thereon except ; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

GEO. H. GOULD, JR.,
Treasurer of said Corporation.

Subscribed and sworn to before me this
27th day of Feby. A. D. 1917.
Edgar R. Alpaugh,
Notary Public,
New Jersey.

299.95
$14514.00

14813.95 Jersey City, N. J., May 13, 1914.

INTERSTATE LUMBER COMPANY

September 13-1914 after date we promise to pay to the order of Lincoln Trust Company.....
Fourteen thousand five hundred fourteen
No/..... Dollars
At Lincoln Trust Company, Jersey City, New Jersey.
Value received—with interest at 6%.

INTERSTATE LUMBER COMPANY,
Due .....
No. 289
By Guert G. Jackson,
Vice President.
Countersigned:
E. M. Farrier, Treas.

Exhibit D-23 for Identification Sept. 11, 1917

(*Endorsed*)
South Georgia Lumber Company,
By M. A. Cheney,
Maynard A. Cheney.

Amount due on this note is $980.83 with interest from Oct. 1, 1914, the balance having been adjusted as of that date.

E. M. F.

Exhibit D-23 for Identification Sept. 11, 1917

Present indebtedness, with interest from January 2d, 1915.

"New Money"		*"Direct & Contingent"*
1811.60	Merchants' Exchange Nat. Bank, N. Y. City	331.14
1719.30	Fifth Nat. Bank "	291.02
438.19	Lincoln Trust Co., "	120.97
398.52	Metropolitan Bank, "	111.99
1050.77	Boonton Nat. Bank,	254.49
634.05	Lincoln Trust Co. of New Jersey,	980.83
3811.61	Trust Co. of N. J.,	180.31
887.70	Essex Nat. Bank,	252.47
1540.49	Bank of Montclair,	439.29
1384.28	Second Nat. Bank of Hoboken,	393.38
3623.22	First Nat. Bank of Jersey City,	1030.65
452.90	Union Trust Co. of Jersey City	94.12
4977.34	Chemung Canal Trust Co.,	1395.49
271.75	Merchants' Nat. Bank,	51.38
6159.50	Hudson County Nat. Bank,	1656.51
724.65	Hudson Trust Co., of New York,	206.35
769.95	Federal Trust Co. of Newark,	219.34
1322.44	Estate of B. Grobholz,	375.80
31978.26√		8385.53√

Unmarked Exhibit (See page 295)

Page 200, Ledger of Interstate Lumber Co.
Notes payable to Banks under Purchase Agreement on "Direct."

1914

All Notes at 4 mos.

Dated May 13, 1914

Fifth National Bank	$3767.51
Lincoln Trust Co. of N. Y. C.	1560.75
Metropolitan Bank, N. Y. C.	1067.36
Trust Co. of N. J. (The Bergen & Lafayette Trust Co. Branch)	2799.55
Lincoln Trust Co. of J. C.	14514.00
The Essex National Bank	3919.75
The Second National Bank of Hoboken	3198.21
Chemung Canal Trust Co.	19924.30
Merchants National Bank	799.44
Hudson Trust Co., N. Y. C.	3203.48
Estate of B. Grobholz	5838.14
	$67,395.39

Unmarked Exhibit

P. 201

LEDGER INTERSTATE LUMBER CO.

Notes payable to Banks under Purchase Agreement on "Contingent."

1914

All Notes at 4 months

Dated May 13, 1914

Merchants Exchange Natl. Bank	$10,000.00
Fifth Natl. Bank N. Y. C.	765.35
Lincoln Trust Co. N. Y. C.	320.95
Metropolitan Bank N. Y. C.	700.00
The Boonton Natl. Bank	4,146.50
Lincoln Trust Co. of N. J.	712.43
The Second Natl. Bank of Hoboken	2,913.04
The First Natl. Bank	16,000.00
Union Trust Co.	1,931.75
Chemung Canal Trust Co.	1,980.00
Hudson County Natl. Bank	25,888.32
Federal Trust Co.	3,612.01
	$68,970.35

Ledger Interstate Lumber Co.

Notes Payable to Banks under Purchase Agreement Lincoln Trust Co. of New Jersey.

L/L%

1915							
Jan.	2	Interstate Co. Notes	$14,024.48	May	13	Note Contingent	$712.43
"	2	Trustees Dividend	586.20	"	13	" Direct	14,514.00
				1915			
"	2	Balance	980.83	Jan.	2	Int. Oct. 1/14	365.08
							15,591.51
				Jan.	2/15	Balance	980.83

Unmarked Exhibit

370

Exhibit D-24

Sept. 11, 1917 H. W. K.

Four Promissory Notes, all signed by Cornelia M. Partridge, all drawn to the order of Charles R. Partridge Lumber Company, all endorsed by the Charles R. Partridge Lumber Company. The first note is dated New York, February 14, 1912, and is for $2,000, and bears the additional endorsement of Mary P. Partridge.

The second note is dated Jersey City, February 23, 1912, and is for $2000.

The third note is date Jersey City, February 29, 1912, and is for $2200.

The fourth note is dated Jersey City, April 18, 1912, and is for $4400.

Exhibit 2 of January 16, 1918

Jersey City, Aug. 6th, 1915.

Mr. Richard Boardman,
15-21 Exchange Place,
Jersey City, N. J.

Dear Sir:

I have your letter of the 4th inst., relative to deed of certain property located in Montclair, N. J., executed by one Mrs. Cornelia M. Partridge.

Your understanding that the deed was executed to me in trust is, I beg to state, erroneous.

Mrs. Partridge did not ask me to accept the deed in trust, neither did I so agree to accept it for her.

Exhibit 3 of January 16, 1918

For valuable consideration received from the party in interest I accepted the deed and took title acting only as the nominee of Mr. Edwin M. Farrier, to whom I conveyed the property thereafter.

I shall be pleased to call as you request but in view of the above facts I do not see the necessity for so doing, unless it is your further desire, for the reason that I am extremely busy and out of town considerably.

Yours very truly,

GEO. E. PAUL.

Exhibit 3 of January 16, 1918

THIS INDENTURE, Made the twenty-fifth day of May, in the year of our Lord One Thousand Nine Hundred and Fifteen.

BETWEEN Edwin M. Farrier, unmarried, of the City of Jersey City, in the County of Hudson and State of New Jersey, of the First Part:

And
of the of in the County of
and State of of the
Second Part:

WITNESSETH, that the said party of the First Part, for and in consideration of one dollar and other valuable considerations, lawful money of the United States of America, to him in hand well and truly paid by the said party of the Second Part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the First Part

being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the Second Part, and to heirs and assigns, forever,

ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Town of Montclair, in the County of Essex and State of New Jersey, bounded and described as follows:

(Description of mortgaged premises contained in the deed are omitted in this printing.)

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the First Part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the Second Part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the Second Part, his heirs and assigns forever;

IN WITNESS WHEREOF, the said party of the First Part has hereunto set his hand and seal the day and year first above written.

EDWIN M. FARRIER (L.S.)

Signed, sealed and delivered
in the presence of
Geo. H. Gould, Jr.

Exhibit 3 of January 16, 1918

State of New Jersey, }
County of Hudson. } ss.:

Be it Remembered, That on this twenty-fifth day of May, in the year of our Lord One Thousand Nine Hundred and Fifteen, the subscriber, a Master in Chancery of New Jersey, personally appeared Edwin M. Farrier, who, I am satisfied, is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Master in Chancery of New Jersey.

(Endorsed)
"Void E. M. F."

Stipulation

IN CHANCERY OF NEW JERSEY

Between MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et als.*, Defendants.	On Bill, etc.

This Court having given leave to counsel for the executors of Benjamin S. Harmon and Charles F. Mathewson, to open the proofs for the purpose of introducing in evidence the deed of conveyance made April 19, 1906, by Eveline A. Ellingwood to Cornelia M. Partridge, Book Y39 of Deeds for Essex County, page 426, upon terms that counsel for the Lincoln Trust Company be permitted to put in evidence as to the assumption or non-assumption of the mortgage by Mrs. Partridge which it may have; and the parties desiring to avoid the delay incident to the taking of oral testimony, it is hereby stipulated as follows:

(1) That the said deed from Ellingwood to Partridge be, and it hereby is considered as in evidence and is marked "Harmon Exhibit A. February , 1920."

(2) That Edwin B. Goodell shall be considered as called as a witness in behalf of the Lincoln Trust Company and testifying, if permitted to do so over objection by counsel for the executors of Harmon and Mathewson, which objection is stated below, as follows:

Stipulation

"In reference to the deed between Ellingwood and Partridge, I find that in this case a record was made. The Essex Title Guaranty and Trust Company guaranteed the title and I acted personally for that company in settling the title. The memoranda of closing are in my handwriting. The contract price $20,000, was settled by the following items:

Paid in cash on signing the contract	$ 1000.00
Mortgage held by Davis	11000.00
Interest on the above mortgage	206.24
Purchase money mortgage given by Partridge to Ellingwood	5000.00
Balance paid in cash at the time of settlement	2793.76

"All these facts appear in my handwriting except the last. The balance is struck, but how the $2793.76 was paid does not appear. That it was paid in cash is my inference, but I don't remember and the memorandum does not show.

"I have no recollection about the contract. I do not know whether I saw it at the time the title closed or not, but if I did it was not left with the Title Company."

The objection made by counsel for the executors of Harmon and Mathewson to the foregoing testimony is that it does not prove, or tend to prove the assumption by Mrs. Partridge of the $11,000

mortgage on the property at that time; that the deed offered and marked as above stated, is the best evidence as to the contract between the parties, and in the absence of other contemporaneous writing, is the only proof admissible; that the contract of purchase was merged in the deed and performed on Mrs. Partridge's part, by the payment of the purchase price and the acceptance of the deed.

March 1, 1920.

RICHARD BOARDMAN,
Solicitor for Executors of
Harmon and Mathewson.
CARRICK & WORTENDYKE,
Solicitors of Defendants,
Lincoln Trust Company.

Exhibit A of February, 1920

THIS INDENTURE, made the nineteenth day of April in the year of our Lord, One Thousand Nine Hundred and Six.

BETWEEN Eveline A. Ellingwood, widow, of Town of Montclair, in the County of Essex and State of New Jersey, of the first part, and Cornelia M. Partridge of the Town of Montclair, in the County of Essex and State of New Jersey, of the second part;

WITNESSETH, that the said party of the first part for and in consideration of the sum of Twenty Thousand Dollars ($20,000) lawful money of the

Exhibit A of February, 1920

United States of America to her in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to her heirs, executors and assigns forever,

ALL those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Town of Montclair, in the County fo Essex and State of New Jersey, bounded and described as follows:

(Description omitted.)

Subject to a mortgage of Eleven Thousand Dollars ($11,000).

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever. And the said party of the first part does for herself, her heirs and executors, covenant and grant to and

with the said party of the second part her heirs and assigns that she the said party of the first part has not done, caused, suffered or procured to be done any act, matter or thing whereby the title of the said party of the second part, of, in and to the above granted, bargained, and described land and premises or any part thereof, can or may be changed, charged, altered or defeated in anyway whatsoever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal the day and year first above written.

EVELINE A. ELLINGWOOD (Seal)

Signed, Sealed and Delivered
in the presence of:
Edwin B. Goodell.

State of New Jersey, }
County of Essex. } ss.:

Be it remembered that on this Nineteenth day of April in the year One Thousand Nine Hundred and Six, before me, a Master in Chancery of New Jersey, personally appeared Eveline A. Elling wood, who I am satisfied is the grantor in the within Deed of Conveyance named and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.

EDWIN B. GOODELL,
Master in Chancery of New Jersey.

Received in the Office, April 24, A. D. 1906, at 3:35 p. m.

Opinion of Vice-Chancellor Stevenson—Memorandum dated June 16, 1919

IN CHANCERY OF NEW JERSEY

Between
MONTCLAIR SAVINGS BANK,
Complainant,
and
CORNELIA M. PARTRIDGE and CHARLES R. PARTRIDGE, her husband, GEORGE E. PAUL, EDWIN M. FARRIER, HUDSON COUNTY NATIONAL BANK OF JERSEY CITY, LORENZO E. WOODHOUSE, Executor of Charles F. Mathewson, dec'd, and BENJAMIN S. HARMON,
Defendants.

Memorandum of Conclusions.

On Counter-Claim.

Mr. Richard Boardman and Mr. Francis (of the New York Bar) for counter-claimants, Woodhouse, Executor of Mathewson, *et al.*

Mr. Charles L. Carrick for defendants, George E. Paul, Edwin M. Farrier and the Lincoln Trust Company.

Mr. Bain (Collins & Corbin) for the Hudson County National Bank of Jersey City.

STEVENSON, V. C.

The sole controversy to be disposed of in this cause is presented by the counter-claim of Wood-

house, Executor of Mathewson, *et al.*, and the answer thereto of the Lincoln Trust Company. Although the view which I take of the controlling facts in this case will, I think, enable me to exclude from consideration a large part of the mass of testimony and exhibits which constitute the evidence in this cause, nevertheless some statement of the history of the transactions to be dealt with seems to be necessary. A narration of the important facts for the purposes of this case may best be made, I think, by following their chronological order.

In 1912 the defendant, Mrs. Cornelia M. Partridge, owned a house and lot in Montclair, New Jersey, which was occupied by herself and her husband, the defendant, Charles R. Partridge, as a residence. The property was subject to a mortgage for $10,000 held by the Montclair Savings Bank, which institution still appears as the nominal complainant in this cause although its interest has long since been satisfied. This mortgage was on the property when Mrs. Partridge acquired it. The argument of this cause has been made upon the assumption that Mrs. Partridge assumed the payment of the mortgage and therefore was liable for the amount thereof.

We may assume, I think, that the value of Mrs. Partridge's equity did not exceed $8000. Mr. Farrier, the president of the Lincoln Trust Company, testifies that he and Mr. Partridge, who acted for his wife in all this business as her plenary agent, agreed upon this sum as the value of the equity. There is no satisfactory evidence that the equity was more than $8000 and the indications are quite positive that when the prop-

erty came to be sold by the sheriff the value of the equity was substantially below that figure. Subsequently the purchaser from the sheriff, the Lincoln Trust Company, sold the property for $16,000.

Mr. Partridge was the president of the Charles R. Partridge Lumber Company, a corporation located and doing business in Hudson County, New Jersey, which was adjudged a bankrupt on July 2d, 1912. The Lincoln Trust Company held eighteen thousand six hundred dollars of notes on which Mrs. Partridge appeared as maker, each note stating in substance that her separate estate was thereby charged. In fact Mrs. Partridge was probably a mere accommodation party, the notes having been discounted for the benefit of the Partridge Lumber Company. The indications are that Mrs. Partridge was also under large obligations, in form at least, upon other paper of the Partridge Lumber Company held by other banks.

However, this may be, Mr. Partridge went to his friend, Mr. Edwards, the president of the First National Bank of Jersey City, and called upon him for help, stating that Mrs. Partridge "had this property in Montclair and was about to lose it." It will be observed at the start that this whole transaction which we are to investigate, originated in an effort on the part of Mr. Partridge to have this valuable property placed in friendly hands so that the creditors of the Partridge Lumber Company and of himself and his wife could not reach it. Mr. Partridge corroborates Mr. Edwards in explaining the object of the arrangement which he made, or undertook

to make, with Mr. Edwards. He testifies: "We thought we were going to lose the property.

"Q. In what way? A. Well, they would take it away from us. They would attack the endorsers on this paper and take the property away from us, and my idea was to turn it over to Mr. Edwards in trust and he said when the endorsers were relieved that would relieve Mrs. Partridge, of course, and the property could be returned."

Mr. Partridge makes no effort to conceal the fraudulent purpose which he sought to accomplish. He admits that he feared that a judgment would be recovered against Mrs. Partridge, and that the property would be sold. He anticipated that there would be judgments amounting to four times the value of the property. As a matter of fact within a week after Mr. Partridge's interview with Mr. Edwards and his subsequent deal with Mr. Farrier, the Hudson County National Bank in a suit then pending, after striking out Mrs. Partridge's plea as a sham plea, entered judgment against her for over $17,000 which sum was about twice the value of the equity.

Mr. Edwards told Mr. Partridge that he could not take the property in payment or for the security of the claims of his bank because he did not have any notes of Mrs. Partridge or bearing her endorsement, and he informed him that Mr. Farrier (the Lincoln Trust Company) had such notes. The result was that Mr. Farrier was called up and brought into the transaction. Whether he was made acquainted with all that had passed between Mr. Partridge and Mr. Edwards does not appear. It is quite plain, how-

ever, that Mr. Farrier represented his bank only and while presumably intending to be just and fair he was looking out for the interests of his bank. Mr. Partridge forthwith consulted his counsel, Mr. Goldenhorn, who testified that both Mr. and Mrs. Partridge were his clients. Mr. Goldenhorn in pursuance of instructions from Mr. Partridge thereupon drew a deed bearing date July 31st, 1912, recorded August 3d, 1912, purporting to convey from Mr. and Mrs. Partridge to one George E. Paul the Montclair property of Mrs. Partridge. At the end of the description appears a brief clause as follows:

> "Subject to a mortgage for the sum of ten thousand dollars held by the Montclair Trust Company, bearing interest at the rate of five per cent, which said party of the second part assumes."

It is a somewhat remarkable fact that no party to this deal appears to have known at the time that the deed contained this covenant of assumption. There is not the slightest evidence that any agreement between Mr. Partridge and Mr. Edwards, or Mr. Partridge and Mr. Farrier in any way provided for the assumption of the mortgage. Mr. Goldenhorn was not interrogated in regard to the matter. Mr. Farrier thinks that the clause was inserted by a mistake by copying some other deed but this suggestion is entitled I think to very little weight. The presumption, it seems to me, is that Mr. Goldenhorn recognizing that the instrument was in form an absolute deed and might in the future stand as such, very properly required the grantee to

assume the outstanding mortgage. If the instrument was used in accordance with what Mr. Goldenhorn knew was the intention of the parties, as a mere security either absolute or conditional for certain notes, the covenant of assumption would do the grantee no harm, but if by forfeiture or otherwise the instrument was used in the future as a deed to save the expenses of a foreclosure, the covenant of assumption would have its just and proper force according to its terms. There is no dispute between the parties that in fact the deed which recites a consideration of "the sum of one dollar and other considerations" was intended as a mere security. The dispute between the parties is as to what was the nature and scope of the security affected or intended to be affected by the deed. When the deed was delivered apparently on August 3d, 1912, Mrs. Partridge and Mr. Farrier, acting for the Lincoln Trust Company, signed a paper which Mr. Farrier himself drew. This paper recites that Mrs. Partridge had "sold" to the Lincoln Trust Company the property and then proceeds as follows:

> "Whereas the said party of the second part, for the better protection of its interests, requires that the said promissory notes be held in escrow for a period of time to be determined or until certain matters now pending are settled. It is hereby agreed by the party of the first part, that she will place the aforesaid promissory notes in possession of Raymond Dawson whose address is One Exchange Place, Jersey City, to be held by him until the set-

tlement of the above mentioned actions or until mutually agreed upon by both parties to this agreement."

Below the signatures of the parties appears a note or memorandum in the handwriting of Mr. Farrier, setting forth the dates and amounts of three notes of Mrs. Partridge aggregating $8000. This incomplete and somewhat unintelligible so-called agreement was thereupon, together with the three notes referred to, deposited with Mr. Dawson who produced the papers for the purposes of this trial. It may be noted that the notes are the same in form, all payable to the Charles R. Partridge Lumber Company and signed by Mrs. Partridge, containing the clause attempting to charge her separate estate, and all three notes were discounted by the Lincoln Trust Company for the benefit of the Partridge Lumber Company.

The claim which has been referred to as that of Woodhouse, *et al.*, originally was held by a New York firm composed of Benjamin S. Harmon and Charles F. Mathewson, both of whom are dead and are now represented in this suit by their respective executors. The devisee of Mr. Harmon is also made a party. The instrument under which Messrs. Harmon and Mathewson claimed to have acquired an interest in the Montclair property reads as follows:

Opinion of Vice-Chancellor Stevenson—Memorandum dated June 16, 1919

"Benjamin S. Harmon and
Charles F. Mathewson

55 Wall Street

New York

Dear Sirs:

In consideration of your indorsement of the note of my son, Wallace H. Partridge, dated May 21, 1913, to himself for $5500, I hereby assign and transfer to you all my right, title and interest in the premises at which I am now living in Montclair, New Jersey.

The title to said premises has been transferred by me to George E. Paul as security for and until certain obligations against my husband, Charles R. Partridge, and myself as indorsers are discharged; and I direct the holder of said title thereupon to deed said property to Charles F. Mathewson (or in case of his decease to Benjamin S. Harmon) to be held and disposed of to secure them upon the indorsement of the above mentioned note and their indorsements upon any other notes of my son, Wallace H. Partridge, as now existing, and any renewals or extensions of said notes or any thereof or any part of said note or notes, with full power of sale to said Mathewson or Harmon as grantee to dispose of said property at any time as they may see fit and appropriate the proceeds to the payment of such obligations

or any thereof or the reimbursement of said Harmon or Mathewson or either thereof for any payments which they may have made thereon.

Any surplus in case of such sale will be returned to me after all such obligations have been discharged and any expenses in that connection paid and retained by such grantee.

In Witness Whereof, I have hereunto set my hand and seal this 26th day of May, 1913.

(Signed) CORNELIA M. PARTRIDGE."

It may be observed that there is not the slightest reference to any trust or any fiduciary relation of any kind existing between Mrs. Partridge on the one hand and Mr. Paul or Mr. Farrier or the Lincoln Trust Company on the other hand. The instrument sets forth that Paul holds title "as security for and until certain obligations against my husband, Charles R. Partridge and myself as endorsers are discharged." It is evident that there was nothing in the mind of the parties to this instrument inconsistent with the conviction that Mr. Paul held a mere mortgage in the common form of an absolute deed to secure the discharge of Mr. and Mrs. Partridge from their obligations. The discharge of these obligations would necessarily involve the satisfaction of the three notes above mentioned aggregating $8000. The language of the assignment, however, does not indicate that the deed stood as security only for the eight thousand dollars of notes.

Opinion of Vice-Chancellor Stevenson—Memorandum dated June 16, 1919

The claim of the Hudson County National Bank arises from the judgment heretofore referred to which it recovered on August 6th, 1912, against Cornelia M. Partridge and Charles R. Partridge for the sum of $17,113.75, being the amount of certain promissory notes on which the Partridges were liable. The suit in which this judgment was recovered was commenced July 15th, 1912, and was therefore pending at the time when Mr. Partridge sought help from Mr. Edwards and immediately thereafter made the conveyance to Mr. Paul.

In order to understand the controversy between Woodhouse, *et al.*, executors, on the one hand, and the Lincoln Trust Company on the other, a brief description of a situation which is disclosed by a vast mass of testimony and exhibits is necessary. The creditors of the Partridge Lumber Company consisted largely of banks. These banks were negotiating in 1912 for the purchase of the assets of the Partridge Lumber Company from its trustee in bankruptcy, with the expectation that they could handle these assets in such a way as to get back their new investment and a large part if not all of their claims against the Partridge Lumber Company. After some negotiation the banks contributed $127,000 and therewith bought these assets and had them vested in a new corporation called the Interstate Lumber Company. I do not think it necessary to go further into the history of the complications which followed in which one Cheeny and the South Georgia Lumber Company took part. No doubt the banks, including the First National Bank of which Mr. Edwards was

president, and the Lincoln Trust Company of which Mr. Farrier was president, negotiated for a considerable time before a sort of syndicate agreement was made providing for the contribution of the money for the purchase of the assets of the Lumber Company and the distribution of notes of the new corporation to the various parties interested.

With the foregoing facts in view I think that the statement of the conflicting views of the two parties now in this litigation, Woodhouse, *et al.*, executors and the Lincoln Trust Company, may well be deferred until the manner in which these claims have been presented is set forth.

Mrs. Partridge appears to have remained for some period of time occupying the Montclair property. The Lincoln Trust Company from time to time paid the interest on the mortgage of the Montclair Bank, and I think also the insurance premiums. The Lincoln Trust Company also paid taxes I think, although perhaps that was not until after the foreclosure sale.

On July 19th, 1915, the Montclair Savings Bank filed the bill in this cause to foreclose its mortgage making Mr. and Mrs. Partridge, George E. Paul, Edwin M. Farrier, Hudson County National Bank of Jersey City, Benjamin S. Harmon and Lorenzo E. Woodhouse, Executor of the Estate of Charles F. Mathewson, deceased, defendants.

On August 27th, 1915 the Hudson County National Bank filed an answer and a counter-claim. The counter-claim charged that the conveyance from Mr. and Mrs. Partridge to Mr. Paul was made with intent to hinder, delay and defraud

the defendant "from recovering the amount due in satisfaction of" its judgment, and prayed that the deed from the Partridges to Paul, and a later deed from Paul to Farrier, be decreed to be void and of no effect, and that its judgment be decreed a lien on the Montclair property. This counter-claim and the pleadings filed in reply thereto may be disregarded because by an order of this Court bearing date December 24, 1917, consented to by the parties interested, the counter-claim of the Hudson County National Bank was dismissed and thereby this bank disappeared from the present litigation.

An answer and counter-claim was also filed on behalf of Woodhouse, *et al.*, the counter-claim being presented against George E. Paul, Edwin M. Farrier and "the Lincoln Trust Company, a corporation of the State of New Jersey, a third party." The object of this counter-claim was to secure a re-conveyance of the Montclair property to Mrs. Partridge and to compel the payment of the mortgage for $10,000 by Mr. Paul. Inasmuch as the answers did not set up any defence to the complainant's mortgage, on the 16th of October, 1915 an order of reference to a master was made in the usual form. To this order, however, the Chancellor added a provision that the "questions raised in the answers and counter-claims of the answering defendants" were reserved.

The master having reported in the usual form the amount due to the complainant, a final decree was thereupon made dated November 9th, 1915, ordering sale to be made of the mortgaged premises, the Montclair property, for the satis-

faction of the mortgage debt ($10,458.75) with complainant's costs of suit. The property was thereupon advertised under the *fi. fa.* according to law and was sold by the sheriff of Essex County for a consideration recited as $7500 to the Lincoln Trust Company of New Jersey. The sheriff's deed bears date January 22d, 1916, and was recorded February 24th, 1916. The sheriff's deed recites that the property was struck off for said sum ($7500) to the Montclair Savings Bank, and then further recites an assignment of the bid by the Montclair Savings Bank to the defendant the Lincoln Trust Company, the conveyance then being made to the last named company. The Lincoln Trust Company paid the Montclair Savings Bank the full amount of its decree and costs. Shortly after receiving title, in the spring of 1916, the Lincoln Trust Company sold the property for $16,000 as hereinafter stated.

When the answers and counter-claims were filed the parties had an equity in view over and above the mortgage of the Montclair Savings Bank, and when the cause was referred in the usual way to a master so that prompt sale was practically inevitable, no doubt the parties contemplated the transfer of their claims from the land, the equity of redemption, to a possible or probable surplus that would be paid into Court. As a matter of fact the equity of redemption was foreclosed and no surplus materialized, no bidder being found willing to pay the amount due the complainant, the Montclair Savings Bank, on its mortgage.

In this situation of affairs on May 16th, 1916, the cause was referred to me as Vice-Chancellor

"to hear the same for the Chancellor upon all questions reserved in the order of reference to the matter heretofore made in this cause, and all questions raised on the amended pleadings."

The retirement of the Hudson County National Bank from the cause upon the disappearance of the equity of redemption in the land, and the non-appearance of any surplus representing such equity, left as the only litigants in respect of the above mentioned reserved matters, Woodhouse, *et al.*, as actors and the Lincoln Trust Company as defendant. The contentions of these parties *inter sese* are exhibited in a number of pleadings in the nature of counter-claims and answers and amendments and supplements thereto.

While under the order of reference the hearing before me is confined to the questions reserved and to "all questions raised on the amended pleadings," it would seem that counsel for Woodhouse, *et al.*, has undertaken to litigate some matters beyond the scope of the reservations. It is worth while to note that when the order of reference to me was made in order that the reserved matters might be determined, the mortgaged premises had been sold, the sale had been confirmed, and the proceeds of such sale had proved insufficient to satisfy the mortgage debt so that there was no surplus. And further it may be noted, that no attack upon the sale or attempt to open it has ever been made. Ordinarily counter-claims in a foreclosure suit introduce litigations between defendants in respect of the equity of redemption, and if, as is often the case, there being no defence to the complainant's foreclosure, the mortgaged premises are sold pending

the determination of the defendant's claims *inter sese*, those claims attach to the surplus money. If there is no surplus money ordinarily the functions of the counter-claims expire.

In this present case a perusal of the pleadings which exhibit the reserved matters seems to show that a great deal of what has been litigated before me was not and could not have been contemplated when these pleadings were filed. A large part of the testimony and argument before me relates to matters which arose after the sale of the mortgaged premises had been effected and the fact established that there was no surplus money. All of the matters calling for consideration might well have been presented to the Court in an original suit brought by Woodland, *et al.* In the last phase which the contention of these defendants presented before me the resale of the mortgaged premises by the Lincoln Trust Company appears as an important fact, and it is argued that the Lincoln Trust Company must be adjudged to have held the land in trust for these counter-claimants and that as trustees it should account for its profit. These seem to be matters rather far removed from the scope of the reservations and altogether foreign to the original foreclosure suit. It is true, however, that Messrs. Woodhouse, *et al.*, originally set up that the Lincoln Trust Company held the equity in this property in trust for them and they now claim that when the Lincoln Trust Company acquired title to the property under the sheriff's sale they took the same practically upon the original trust. How far this fact sustains the propriety of this somewhat peculiar course of

pleading I shall not undertake to determine. No question as to the form or sufficiency of these pleadings has been raised on either side. I shall endeavor to dispose of the matters in contention between the parties which were the subject of protracted arguments and voluminous briefs without much reference to the pleadings. Counsel for Messrs. Woodhouse, *et al.*, at the close of the case undertook to found a claim against the Lincoln Trust Company based on the allegation that it had been guilty of fraud in preventing Messrs. Woodhouse, *et al.*, from protecting their rights at the sheriff's sale. This claim is not in any way suggested in the pleadings and it certainly would be strange to allow it to be brought into this foreclosure suit. The proposition that a defendant in a foreclosure suit after the sheriff's sale can file a counter-claim or amended counter-claim against a co-defendant setting up that the co-defendant had fraudulently prevented him from protecting himself at the sheriff's sale and have such claim litigated in the foreclosure suit is, I think, a novelty in equity practice and pleading.

1. At first Woodhouse, *et al.*, the representatives of the estate of Mathewson, and Harmon, claimed that the Lincoln Trust Company should be required to perform its covenant to assume and pay the mortgage for $10,000, and then convey the land free from that mortgage to the defendant, Benjamin S. Harmon, survivor of Mathewson and Harmon, who would thereupon hold the same primarily for indemnification on account of the endorsement above mentioned, and secondarily, for the benefit of Mrs. Partridge.

This extreme claim subsequently was abandoned and the concession was made that the Lincoln Trust Company should be deemed subrogated to the rights of the Montclair Savings Bank as mortgagee. In the progress of the suit when the fact was disclosed that the Lincoln Trust Company had sold the property for $16,000, counsel for Woodhouse, *et al.*, defined their claim as the right to have an accounting from the Lincoln Trust Company, in which that company should account for the profit it made on sale of the property, and the usual method of accounting should be pursued in respect of taxes, rents, etc. This theory puts the Lincoln Trust Company in the position of a trustee who must be charged with having bought the property for the benefit of a *cestui que trust.*

The fundamental proposition upon which Woodhouse, *et al.*, base their claim that the conveyance originally made to Mr. Paul created him a trustee for Mrs. Partridge, in my judgment is without support in the evidence. A mortgagee is not a trustee. When a man accepts a deed absolute in form which in fact is a mortgage, he is in one sense at trustee—a dry trustee. There are, however, no elements of trust or confidence in the affair further than this that the grantor, mortgagor, confides in the grantee, mortgagee, in that he makes him appear as the absolute owner of the property and thereby clothed with power to convey.

The present case is singularly destitute of any circumstances indicating a fiduciary relation between Mrs. Partridge and Mr. Paul or his principal the Lincoln Trust Company. Mr. Partridge

acting for his wife, anticipating a judgment for over $17,000 against her which would sweep the property from her, appealed first to the First National Bank of Jersey City and his friend, Mr. Edwards, the president of that bank, offering the property to the bank as security with a right of redemption in order to protect the property from the pursuing creditor. Undoubtedly, at this time Mr. Edwards and Mr. Farrier and the other bank presidents, optimistically expected that the deal they were making for the purchase of the assets of the Partridge Lumber Company, would result in the payment of the entire Partridge Lumber Company indebtedness for a large portion of which Mrs. Partridge stood nominally liable. Inasmuch as Mr. Edwards' bank did not hold paper upon which Mrs. Partridge was liable, he turned his friend over to Mr. Farrier. The evidence does not distinctly show that the design of Mr. Partridge which was fully exposed to Mr. Edwards, was communicated to Mr. Farrier. How much Mr. Farrier knew of the real motive actuating Mr. Partridge as the representative of his wife, we are not informed. The fact however is distinct and plain that Mr. Farrier entered into no fiduciary relation with Mrs. Partridge except that which every man assumes who takes an absolute conveyance which in fact is a mortgage, obliging him as an honest man not to cheat the grantor-mortgagor by transferring his apparently absolute title to a stranger. Mr. Partridge betook himself after his conference with Mr. Edwards to his counsel Mr. Goldenhorn who represented him throughout the affair, drew the deed to Mr. Paul and examined the agreement

drawn by Mr. Farrier and advised Mr. Partridge in regard to the right of redemption which Mrs. Partridge would have. In brief, the evidence in this case in my judgment presents the common instance of a deed absolute in form, given however as a mortgage to secure the payment of a sum of money, with a verbal understanding that upon payment of the money the land is to be reconveyed. Men frequently give deeds of this character with the idea that if the money is not paid the grantee will stand as the absolute owner of the property and the expenses of a foreclosure suit will be saved. In this case the conveyance was made absolute in form, not in order to save the expenses of foreclosure, but to cover up the property where the creditors of the grantor who were rushing in with judgments would not be able to reach it. It is somewhat surprising that a grantor or assignee of a grantor should come into a Court of Equity seeking to enforce an alleged secret trust of this character.

2. Messrs. Woodhouse, *et al.*, claim that the bargain between Mr. Partridge acting for his wife, and Mr. Farrier acting for the Lincoln Trust Company, was that the land should be conveyed to Mr. Paul as the agent of the Lincoln Trust Company to secure the execution by the banks interested of a certain agreement providing for the purchase of the assets of the Partridge Lumber Company. In their counter-claims Messrs. Woodhouse, *et al.*, allege that "if certain banks, creditors of the C. R. Partridge Lumber Company, should sign a certain contract, the negotiations for which were then pending, the said property should be re-conveyed to the said Cornelia M. Partridge or her nominees."

Opinion of Vice-Chancellor Stevenson—Memorandum dated June 16, 1919

The claim on the part of the Lincoln Trust Company is that the so-called trust agreement was that the conveyance should secure to the Lincoln Trust Company the discharge and satisfaction of Mrs. Partridge's obligations to the Trust Company amounting to $18,600 and about two thousand dollars of notes which the Partridge Lumber Company had taken from its customers and transferred to the Lincoln Trust Company.

(1.) It seems to me that it is highly improbable that Mr. Partridge would offer, or Mr. Farrier would accept, a security which would perform its full function and expire when the bankers' agreement should be signed and become operative. There is no pretense that upon the mere execution of this bankers' agreement Mrs. Partridge's nominal or actual obligations on the paper discounted by the Partridge Lumber Company would be discharged. Mr. Partridge would naturally seek to cover up his wife's property until all peril to her from judgments on these notes had passed away. On the other hand, the important fact in the mind of Mr. Farrier was not the signature of the agreement by the banks but the accomplishment of its object, *viz:* the payment of the Partridge notes. It would indeed have been a strange result if in execution of the so-called trust alleged by Messrs. Woodhouse *et al.*, Mr. Paul or Mr. Farrier upon the signature of the bankers' agreement, had reconveyed the Montclair property to Mrs. Partridge and thereby had subjected it to the judgment for seventeen thousand dollars recovered by Hudson County National Bank.

(2.) Mr. Robinson, an unimpeached and uncontradicted witness, testifies positively that the bankers' agreement had been executed by all the parties thereto and had become operative before June 27th, 1912, more than a month before the deed from Mrs. Partridge to Mr. Paul was executed and the agreement and notes were placed in escrow with Mr. Dawson.

(3.) Mrs. Partridge made no claim for a reconveyance in the summer and winter of 1912 although she must have had notice that the agreement between the banks had been executed, but eleven months later she executed the assignment to Messrs. Harmon and Mathewson in which she recites that Mr. Paul holds title "until certain obligations" of her husband and herself "are discharged." It is evident that Mr. and Mrs. Partridge understood when this assignment to Messrs. Harmon and Mathewson was executed that the title of the property was still held as security for the discharge of other obligations to the Lincoln Trust Company.

The natural interpretation of the transaction in question accords with the testimony of Mr. Farrier. Partridge was eager to put the property of his wife in friendly hands in order that she might have it back in case the banks by their venture, involving the investment of $127,000 of new money, should succeed in getting out of the assets of the defunct Partridge Lumber Company three or four hundred thousand dollars of indebtedness for a large portion of which Mrs. Partridge was apparently liable. On the other hand, Farrier was looking out for the interests of his bank and wanted to get as much security as pos-

sible for the Partridge paper which his bank held. Whether he had notice of the fraudulent motive of Mr. Partridge is not, I think, a matter of importance in view of the conclusion which I have reached. These men plainly under any view of the evidence worked up what in fact was a sham sale. There was no absolute sale. There was no surrender of the eight thousand dollars of Mrs. Partridge's notes so as to discharge them. The notes were kept alive and it was understood that the Lincoln Trust Company should receive all dividends on them in the bankruptcy proceedings or from the syndicate proceedings of the banks.

3. Whether the agreement was that the Montclair property should be held by Mr. Paul as agent for the Lincoln Trust Company to secure the eight thousand dollars of notes, or to secure the entire amount of Mrs. Partridge's notes ($18,600) held by the Lincoln Trust Company, or to secure in addition the paper amounting to a little over two thousand dollars received by the Partridge Lumber Company from its customers and discounted by the Lincoln Trust Company, is not a question which we are obliged to solve. Undoubtedly eight thousand dollars of notes were selected as the consideration, or fictitious consideration, of a sale of the property because that sum represented the full value of Mrs. Partridge's equity. Although the deed recites the consideration of "one dollar and other considerations" it is plain that Mr. Partridge could at all times boldly declare to the Hudson County National Bank of Jersey City and other judgment creditors that Mrs. Partridge had sold her equity for its full value paid by the Lincoln Trust Com-

pany by the surrender of the eight thousand dollars of her promissory notes.

There is one consideration which I think strongly sustains Mr. Farrier's testimony to the effect that the deed was accepted as security for the entire indebtedness of $18,600 plus the $2,000 of business paper. Mr. Farrier and the other bankers contemplated the pro-rata payment of their claims including the Partridge notes, through the operations of the Inter-State Lumber Company. Mr. Partridge therefore was not in a position to sever eight thousand dollars of the Partridge paper which he held and accept a separate security for that amount. If he accepted the Montclair property as security for these particular notes aggregating eight thousand dollars, in the course of time dividends might be paid on the Partridge paper, the application of which perhaps he could not control. Such dividends might reduce the eight thousand dollars of notes to a comparatively small sum, while a substantially greater sum would remain due on the other part of Mrs. Partridge's obligations. Both parties contemplated that all Mrs. Partridge's obligations to all the banks would probably be discharged in the near future. The natural and probable transaction was to make the Montclair property stand as security for all the obligations of Mrs. Partridge which the Lincoln Trust Company held.

4. The testimony of Mr. Partridge himself greatly discredits the claim made on Mrs. Partridge's behalf that the property conveyed to Mr. Paul was to be reconveyed upon the execution of the bankers' agreement which, as we have seen,

had already been executed. Mr. Partridge appears to have transacted his business with Mr. Farrier and Mr. Paul and his counsel, Mr. Goldenhorn, under the controlling motive to get Mrs. Partridge's property in friendly hands where her creditors could not reach it, until her obligations were discharged and all else appears to have been of little importance in his view. When interrogated with reference to the three notes which were deposited with Mr. Dawson, Mr. Partridge testified:

> "Well, I remember something about it but I do not know anything more about it than the man in the moon. I remember something about it in an indistinct sort of way. I remember that Paul was to hold those notes."

Then follows this testimony:

> "Q. You do not mean Paul? A. No, Dawson.
>
> "Q. Do you know what the trust was that he was to hold them under? A. No, I do not."
>
> * * * * *
>
> "Q. Do you know why those notes were given to Dawson? A. I have not any clear idea or recollection of them. No."

Mr. Partridge does not undertake to testify or suggest that he repeated to Mr. Farrier the original proposition which he says he made to Mr. Edwards.

Mr. Partridge also testified that Mr. Mathewson drew the assignment which is the basis of

the claim of Woodhouse *et al.*, and that he (Partridge) took it home where Mrs. Partridge signed it and thereupon he mailed it to Mr. Mathewson. Presumably this instrument was drawn from information given by Mr. Partridge to Mr. Mathewson, and it will be observed that Mr. Partridge had abundance of opportunity to read and study the paper and that the paper makes no reference to any trust but states that the premises had been transferred by Mrs. Partridge to Paul "as security for and until certain obligations against my said husband, Charles R. Partridge, and myself as endorsers are discharged." This paper flatly contradicts the proposition that the deed to Paul was made as security merely until the bankers' agreement should be signed. The bankers' agreement did not "discharge" the obligation of Mr. and Mrs. Partridge as endorsers. Such discharge could only be effected when the Partridge Lumber Company paper should be paid by the operations of the Inter-State Lumber Company.

5. The question whether the obligations of Mr. and Mrs. Partridge upon paper held by the Lincoln Trust Company, have in fact been discharged may, I think, be left without consideration. There is a mass of testimony bearing upon this question which is difficult to understand. The Lincoln Trust Company held eighteen thousand six hundred dollars of paper upon which Mrs. Partridge was a party, about two thousand dollars of business paper which the Partridge Lumber Company had taken from its customers, and in addition to these amounts the Lincoln Trust Company had contributed about fifteen thousand dollars of fresh money toward the purchase for

$127,000 of the assets of the Partridge Lumber Company. The evidence is in an unsatisfactory condition in regard to the present status of these three classes of claims of the Lincoln Trust Company. I understand that a substantial portion of these sums of money has been repaid to the Lincoln Trust Company, but the evidence indicates that at least $980.83 remains unpaid. For all present purposes I think it is sufficient to find, as I do find, that when the sheriff's sale of the Montclair property was held in January, 1916, the Lincoln Trust Company had a *bona-fide* claim to an interest in the property. I do not say that the result would not be the same if the Lincoln Trust Company at that time had been paid in full the entire indebtedness for which Mrs. Partridge was responsible.

6. If there had been no foreclosure suit, or if the foreclosure sale had yielded a surplus which was paid into court, it would be necessary to ascertain precisely what moneys or what obligations to pay money the deed from Mrs. Partridge to Mr. Paul actually secured. The fact that the conveyance was made with intent to defraud creditors has not been set up as a defence to the claim which Mrs. Partridge might have made and which Messrs. Woodhouse *et al.* as her successors in interest by way of mortgage are now making. No such ascertainment or accounting in my judgment is necessary because of the fact that the Lincoln Trust Company acquired an absolute and unassailable title in fee to the premises by transfer from the Montclair Savings Bank.

It is most important I think to ascertain the precise relations *inter sese* of the Lincoln Trust

Company, Mrs. Partridge and her successors in title, Messrs. Woodhouse *et al.*, at the time of the foreclosure sale in January, 1916. All these parties were parties to the foreclosure suit; all had notice of the sale; all stood alike in respect of the opportunity to protect any interest which either of them had in the mortgaged premises and to make the mortgaged premises yield a surplus over and above the mortgage debt. All of these parties were absolutely foreclosed by the sale for $7,500. The Montclair Savings Bank had a vested right to receive a deed from the sheriff which would cut off forever any claim which the Lincoln Trust Company or Mrs. Partridge or Messrs. Woodhouse et al. could ever assert in respect of the mortgaged premises.

The Lincoln Trust Company had a right to make an agreement with the Montclair Savings Bank to the effect that in case the Savings Bank bought in the property for less than the amount of its decree, it, the Trust Company, would pay the amount of the decree and take an assignment of the bid. The situation was substantially the same as if the Trust Company had bid the amount of complainant's decree with costs. There was no outside bidder who was willing to bid the amount of the decree.

There are no circumstances in this case which support the theory that the Lincoln Trust Company bought in the property charged with a trust in favor of Mrs. Partridge or her assignees Messrs. Mathewson and Harmon. It is unnecessary to discuss the law pertaining to a covenant of assumption of a mortgage made by a second mortgagee or a party taking a deed absolute in

form but in fact as security for the payment of money.

A discussion of this subject with citations of numerous authorities may be found in *2 Jones on Mortgages, 7th Ed., sections 756 et seq.*

The Lincoln Trust Company in its pleading admits unconditionally that it assumed to pay the mortgage of the Montclair Bank so as to indemnify Mrs. Partridge. All the questions pertaining to this covenant of assumption, assuming that it was originally binding upon Mr. Paul and the Lincoln Trust Company, are disposed of I think by the proposition that the Lincoln Trust Company in fact did indemnify Mrs. Partridge. The Lincoln Trust Company makes no claim upon the decree for over ten thousand dollars upon which, according to the record, only seven thousand five hundred dollars was paid. The Lincoln Trust Company did not take an assignment of the decree: it paid the decree so as to completely discharge Mrs. Partridge from the mortgage debt which she seems to have assumed when she purchased the mortgaged premises. Assuming that the Lincoln Trust Company was liable to Mrs. Partridge to effect her indemnification, all methods were open to the Trust Company to accomplish that result. It could either pay the decree or buy it from the Montclair Savings Bank and release Mrs. Partridge therefrom, or it could bid up the property at the sheriff's sale to the full amount of the decree and costs. The covenant of the Lincoln Trust Company was not to protect Mrs. Partridge's equity but to protect Mrs. Partridge from liability for the mortgage debt.

The theory that the Lincoln Trust Company

could not acquire this property by purchase from the Montclair Savings Bank which acquired title at the sheriff's sale, involves the proposition that the Lincoln Trust Company was holding the equity of redemption in trust for Mrs. Partridge, or, to state the proposition more accurately, that there was actual trust and confidence in the relalation established by the deed to Paul. We have seen that at most Mr. Paul and his principal, the Lincoln Trust Company, were merely dry trustees holding title primarily for the security of the Lincoln Trust Company. A man who accepts a deed absolute in form for the payment of money, conveying property subject to a first mortgage which he assumes, certainly is not a trustee for the grantor in a sense which forbids him from attending the sheriff's sale in a suit to foreclose the first mortgage and buying in the property for his own benefit.

The claim of Messrs. Woodhouse *et al.* necessarily seems to lead to the result that the Lincoln Trust Company were bound to buy in the property, and more than that, to buy in the property for the benefit of Mrs. Partridge or her assignees. It has not been expressly argued that the Lincoln Trust Company was under any such extraordinary obligation but it is claimed that the Lincoln Trust Company was in some mysterious manner disqualified from acquiring title for its own benefit, either from the sheriff or from the Montclair Savings Bank. If the Montclair Savings Bank had taken a deed from the sheriff the further claim on behalf of Messrs. Woodhouse *et al.* would seem to follow that the Montclair Savings Bank could not sell the property to the Lin-

coln Trust Company. I see nothing in the evidence which restricted the market of the Montclair Savings Bank after it had acquired an absolute vested right to a deed from the sheriff as against all the parties to the suit including Messrs. Woodhouse *et al.*

The soundness of the argument in favor of Messrs. Woodhouse *et al.* may be tested by considering the situation in case the Lincoln Trust Company had bid the full amount of the complainant's decree and costs and had taken title from the sheriff. As we have seen, at the start, it was not conceded by counsel of Messrs. Woodhouse *et al.* that the Lincoln Trust Company upon payment of the amount of the mortgage or the purchase of the mortgaged premises at the sheriff's sale would be subrogated to the rights of the Montclair Savings Bank. Subsequently, however, counsel for Messrs. Woodhouse *et al.* frankly admitted that such subrogation would be effected. What, then, would be the position of the Lincoln Trust Company? Is it not plain that the Lincoln Trust Company being subrogated to the rights of the Montclair Savings Bank would have had a right at once to proceed to have a second foreclosure suit in which the Montclair property would be subjected a second time to a sheriff's sale? There are no facts in this case which limit the right of the Lincoln Trust Company to foreclose its mortgage or lien acquired as above stated by subrogation. It has not been claimed that the Lincoln Trust Company was bound to buy this property in and then hold it for one year or for two years, or for ten years, for the benefit of Mrs. Partridge or her assignees.

Opinion of Vice-Chancellor Stevenson—Memorandum dated June 16, 1919

It may be conceded that there is always an element of trust where a party accepts a deed absolute in form but actually intended as a security for money. The grantee in that case may not cheat the grantor by conveying the property to a bona-fide purchaser who relies upon the absolute form of the deed. The obligations, however, of a grantee mortgagee in such a case are extremely simple, and no one of those obligations was violated by Mr. Paul, Mr. Farrier or the Lincoln Trust Company. It is, I think, using the word "trust" in a misleading and illusory sense when the charge is made that the Lincoln Trust Company stood at the sheriff's sale as trustee for Mrs. Partridge. When the property was conveyed to Mr. Paul there was not present in the mind of Mr. Partridge or any other party to the transaction the slightest idea that Mr. Paul or the Lincoln Trust Company was assuming the duty of preventing a foreclosure of the first mortgage, or in case of such foreclosure, of acquiring title and holding the same for some indefinite period for Mrs. Partridge's benefit or protection.

If, as the resultff of fire or storm and invalidity or insufficiency of insurance the Lincoln Trust Company had met with a substantial loss as the result of its purchase of this property for over ten thousand dollars would Messrs. Woodhouse *et al.* as beneficiaries come to the relief of their so-called trustee? In fact they stood by and allowed the property to be sold for less than the decree, and now when it turns out that the Lincoln Trust Company has made a substantial gain on re-sale of the property they seek to have the entire amount of the gain turned over to them.

7. There is a feature of this case perhaps sufficiently disclosed, which, however, may well be made emphatic. The question whether the bankers' agreement had been fully executed so as to become operative when the deed to Paul was made and the agreement and the notes were put in escrow with Mr. Dawson, has been the subject of some testimony although finally, as above stated, Mr. Robinson who knew all the facts, positively testified that that agreement was completed before June 27th, 1912, and explained his reason for being certain in regard to this date. It follows that if the so-called trust is correctly described in the claim of Messrs. Woodhouse *et al.* Mr. Paul was under an absolute obligation to reconvey the property to Mrs. Partridge immediately after the deed was made to him, and this was the situation nearly a year later when Mrs. Partridge made her assignment to Messrs. Harmon and Mathewson, upon which the representatives of the estates of these gentlemen, Messrs. Woodhouse *et al.*, base their entire claim in this cause. For nearly a year therefore we find that Mrs. Partridge made no claim for a re-conveyance of the property and then she gave this instrument to Messrs. Harmon and Mathewson which they accepted and which recites that the title to the Monclair property had been transferred by Mrs. Partridge "to George E. Paul as security for and until certain obligations against my husband, Charles R. Partridge, and myself as endorsers are discharged." The instrument plainly indicates that the obligations secured by the deed to Mr. Paul were yet to be discharged, *i. e.* in the future. The language of this assign-

ment is, I think, inconsistent with the claim that Mr. Farrier on behalf of the Lincoln Trust Company accepted a deed in trust to stand as security for a few days until the bankers' agreement should be signed. On the contrary, the language of the instrument indicates plainly that it was the discharge of the obligation of Mr. and Mrs. Partridge under their endorsements by actual payment of the paper which was in contemplation.

8. An effort was made on behalf of Messrs. Woodhouse *et al.* to show that the Montclair property was sacrificed at the sheriff's sale. All claims growing out of the inadequacy of the price realized at this sale were cognizable in this foreclosure suit. The remedy of parties interested in an equity of redemption in a case like this is clearly defined in our law. No effort appears to have been made to oppose the confirmation of the sale in this case. Inasmuch as no effort was made to set aside the purchase effected by the Montclair Savings Bank at its foreclosure sale in this suit, in which such sale was made, the alleged inadequacy of the price realized at the sale and the alleged sacrifice of the property, are matters which have no possible bearing upon the controversy between Messrs. Woodhouse *et al.* and the Lincoln Trust Company.

A decree will be advised establishing the title which the Lincoln Trust Company acquired from the Montclair Savings Bank as absolute and valid against all claims of Mrs. Partridge or her assignees, Messrs. Woodhouse *et al.*, and dismissing the counterclaim of the last named party.

Opinion of Vice-Chancellor Stevenson—Memorandum dated December 12, 1919

IN CHANCERY OF NEW JERSEY

Between
MONTCLAIR SAVINGS BANK,
Complainant
and
CORNELIA M. PARTRIDGE *et als.*,
Defendants.

Memorandum of Conclusions.

On motions to open proofs and admit a deed in evidence, and for a re-argument of the cause.

Mr. Richard Boardman for the motions.
Mr. Charles L. Carrick *contra*.

STEVENSON, V. C.

1. I think that the application to open the proofs so as to admit in evidence the deed to Mrs. Partridge, and thereby to show that that deed contained no express assumption of the mortgage upon the property conveyed, should be granted. The parties interested in this controversy and their counsel at all times had access to this deed which was recorded, it was frequently referred to during the trial and argument and the Court inferred, in the absence of the deed, that it contained an assumption clause. So far as this court is concerned the absence of an express assumption of the mortgage in the deed to Mrs. Partridge would make no difference in the decision. The evidence exhibiting the circumstances

under which this covenant of assumption was inserted in the deed was left in a very unsatisfactory condition. The lawyer who drew the deed was not interrogated and made no statement in regard to the covenant of assumption. Whether in fact Mrs. Partridge rendered herself personally liable to pay this mortgage and relieve her grantor from its burden, in some way other than by an express assumption in her deed, is a question which was not the subject of either evidence or argument. She may have been liable notwithstanding there was no express assumption in her deed.

In case this cause should be reviewed in the Court of Last Resort I see no reason why counsel for Messrs. Woodhouse *et al.*, if he desires to base an argument upon the absence of any covenant of assumption in this deed, should not be able to exhibit the fact of such absence in the only possible legal way, *viz:* by the production of the deed.

The opening of the proofs, however, for the purpose of allowing counsel for Messrs. Woodhouse *et al.* to introduce this deed will only be allowed upon terms which will permit counsel for the Lincoln Trust Company to put in any evidence as to the assumption or non-assumption of the mortgage by Mrs. Partridge which he may desire to offer, and also permit him to correct or amend his pleadings in any reasonable way. I will hear counsel as to any other conditions which counsel for the Lincoln Trust Company thinks should be imposed.

2. The motion for a re-hearing, supported as it was by elaborate oral argument and by a brief

covering an important part of the cause, was in fact to a large extent a re-argument of the cause to meet and correct the conclusions set forth at length in the opinion of the Vice Chancellor which was furnished to counsel, but has not as yet been filed. I do not find that I made any material errors of fact or that counsel present any new matters of law which were not heretofore fully considered and disposed of. The case undoubtedly is complex and is presented by original and supplemental pleadings in a very peculiar way. It may be seriously questioned whether the litigation between these defendants, Messrs. Woodhouse *et al.,* and the Lincoln Trust Company should have been considered and decided by the Court of Chancery in this suit which was a foreclosure suit practically without defence, and in which the contentions of the defendants *inter sese* originally related to a possible surplus which never materialized. If either counsel desires to raise the question whether the cause which has been tried and decided so far as the Court of Chancery is concerned, should not be supplied with a new basis for the final decree to be made therein, in the shape of entirely new pleadings, the matter will be heard upon settlement of the decree.

While of course I may have been led into error in my effort to correctly analyze the case which has been presented for dcision, my conclusion is that the function of the Court of Chancery in settling this litigation has been accomplished and that the correction of any errors in the decision should be left to the action of our Court of Last Resort.

Opinion of Vice-Chancellor Stevenson—Memorandum dated December 12, 1919

Without undertaking to re-state the points presented by the opinion which counsel for Messrs. Woodhouse *et al.* undertakes to re-argue, I find one or two minor matters which I deem proper to notice.

(1) Counsel for Messrs. Woodhouse *et als.* in his brief states:

> "The contract to be signed by the banks was Exhibit No. D. 11 signed on or after the 19th day of August, 1912, after the deed to Paul was signed on July 31, 1912, instead of Exhibit No. 10 *erroneously emphasized* by the Vice Chancellor as being the agreement referred to by Mr. Partridge."

I do not stop to refer to the testimony on this subject. It may be conceded that the execution of the agreement among the banks which counsel for Messrs. Woodhouse *et al.* insists wholly discharged Mrs. Partridge's property from the mortgage deed made by her to Mr. George E. Paul for the security of the Lincoln Trust Company, took place a month after the mortgage deed was executed and not a month before. The paper executed by Mr. Farrier, acting for the Lincoln Trust Company, and Mr. Partridge contemporaneously with the execution of the mortgage deed to Paul, certainly indicates that whatever the object of the deed as a security to the Lincoln Trust Company may have been, such security should stand for the *future* protection of the Trust Company. We may acquit Mr. Farrier of taking the absurd position that the purpose of

this deed made in July had already been fully accomplished by the execution of an agreement during the prior month of June.

The important matter to be considered, in connection with Mr. Partridge's claim that the whole object of the deed made in July was accomplished by the execution of the agreement in August, is that nine months after, when, according to his theory, the Montclair property was wholly discharged from the mortgage deed, the assignment under which Messrs. Woodhouse *et al.* base their entire claim was executed by Mrs. Partridge with the full knowledge of her husband, and that in this assignment it is distinctly stated that the property was then held by Paul as security for obligations of Mrs. Partridge which are plainly referred to as being at that time undischarged.

(2) I shall not undertake to further discuss the question as to the meaning and equitable effect of the covenant of assumption contained in the deed to Mr. Paul. The matter is, I think, sufficiently covered by the opinion and the extensive argument of counsel on this application for a rehearing with citation of many authorities, presents no new phase of the subject but merely attempts to show that the views expressed by the Court in the opinion are erroneous.

I will, however, briefly add to what is said in the opinion in regard to the exact meaning of the words "which the said party of the second part assumes" contained in the mortgage deed to Mr. Paul.

Whatever may have been held as to the force of such words in other cases I cannot find in this

case that with the aid of the meagre testimony pertaining to this covenant of assumption its true meaning can be reached by disregarding the whole force of the word "assumes." The Lincoln Trust Company admits in its pleading, and no attempt was made to amend that pleading so as to diminish the force of the admission, that Mr. Paul on its behalf assumed the payment of the mortgage in question. As the evidence stands my conclusion remains that the bargain amounted to this: Mrs. Partridge through her husband and agent, and by her deed, gave the Lincoln Trust Company her equity in the Montclair property as security for the discharge of debts due to the company for which she (Mrs. Partridge) was liable. She exacted, according to the hypothesis now assumed to be correct, an obligation on the part of Mr. Paul and the Lincoln Trust Company, who were obtaining title to and control of her equity in this property, that they would assume, *i. e.*, take upon themselves any obligation of Mrs. Partridge with respect to the payment of the mortgage. Mrs. Partridge, it is now alleged, had not assumed to pay the mortgage in the deed which conveyed the equity to her, but, as has been stated, and as is beyond controversy, I think, an obligation on her part to pay the mortgage, might have been in existence without any covenant of assumption in the deed to her. A covenant of a grantee to assume a mortgage for which the grantor in fact is not liable or for which the grantor thinks he is not liable. may often times be a thing of great importance and value to the grantor if in the future a liability on his part to pay the mortgage debt in fact is asserted.

Opinion of Vice-Chancellor Stevenson—Memorandum dated December 12, 1919

Here again I may be in error but I am unable to perceive that if we take this covenant in its widest possible meaning it should be regarded as anything more than the taking over by Messrs. Paul and the Lincoln Trust Company of any obligation which then rested on Mrs. Partridge with respect to the payment of the mortgage debt. As the evidence shows beyond all question the Lincoln Trust Company has fully discharged this obligation by discharging the mortgage debt in question.

The application for a re-argument is denied.

New Jersey Court of Errors and Appeals

MONTCLAIR SAVINGS BANK, Complainant, and CORNELIA M. PARTRIDGE, *et al.*, Defendants, and LORENZO E. WOODHOUSE, as Executor, etc., and HELEN K. HARMON, as Executrix and Individually, etc., Appellants, and LINCOLN TRUST COMPANY OF NEW JERSEY, GEORGE E. PAUL and EDWIN M. FARRIER, Respondents.	On appeal from Chancery

BRIEF FOR APPELLANTS

Questions Involved

This is an appeal from a decree of the Court of Chancery dismissing the counterclaim of appellants as assignees of Cornelia M. Partridge in an action brought by complainant to foreclose a mortgage which respondents had assumed. The Lin-

coln Trust Company, one of the respondents, was holding, either in its own name or in the name of Farrier or Paul, the legal title to the property in suit under an agreement to reconvey it to Cornelia M. Partridge.

(1) Mrs. Partridge had conveyed the property in question to Paul, who was admittedly a dummy for the Lincoln Trust Company. Admittedly too, this deed, although absolute in form, was in effect a mortgage. The deed contained a clause whereby Paul assumed the payment of the first mortgage. In its pleading, the Lincoln Trust Company, dealing with the effect of this clause, admits (p. 60):

> "The defendant Paul, to whom the mortgaged premises were conveyed subject to complainant's mortgage, had, in and by the deed of conveyance, assumed the payment of the complainant's mortgage, and the Lincoln Trust Company, at whose instance the defendant Paul took and held the property, was advised that it was under a legal obligation to protect the property to the extent of complainant's claim."

What the Lincoln Trust Company did was, not to advance the money and take up the mortgage, but to go to the complainant, urge it to foreclose its mortgage, employ it to buy in the property at Sheriff's sale at the lowest possible price, and to turn the property over to the Lincoln Trust Company at the amount of its mortgage, interest and costs, and then claimed to own the property discharged of its obligation.

This violated the well known equitable principle that a party cannot base a right upon its failure to perform a duty.

(2) The deed from Mrs. Partridge to Paul, which was in fact a mortgage containing a clause whreby the grantee assumed the first mortgage, was presented to the court for construction. The binding force of the clause in question was admitted by all parties. Nevertheless, the Vice Chancellor was inclined to be critical that no parol evidence to vary the accepted meaning of the language used was produced. At p. 418, he said:

> "Whatever may have been held as to the force of such words in other cases I cannot find in this case that *with the aid of the meagre testimony pertaining to this covenant of assumption* its true meaning can be reached by disregarding the whole force of the word "assumes." The Lincoln Trust Company admits in its pleading, and no attempt was made to amend that pleading so as to diminish the force of the admission, that Mr. Paul on its behalf assumed the payment of the mortgage in question."

Again, (at p. 385) he said:

> "At the end of the description appears a brief clause as follows:
>
> 'Subject to a mortgage for the sum of ten thousand dollars held by the Montclair Trust Company, bearing interest at the rate of five per cent, which said party of the second part assumes.'
>
> It is a somewhat remarkable fact that no party to this deal apepars to have known at the time that the deed contained this covenant of assumption. There is not the slightest evidence that any agreement between Mr. Partridge and Mr. Edwards, or Mr. Partridge and Mr. Farrier in any way provided for the assumption of the mortgage. Mr. Goldenhorn was not interrogated in regard to the matter. Mr. Farier thinks that the clause was inserted by a mistake by copying some other deed but this

New Jersey State Library

suggestion is entitled I think to very little weight.''

The construction of this clause, which the Vice Chancellor refused to follow, is this:

> ''But in the case of a party having the land merely as security, such an undertaking (an assumption clause) is simply a promise to advance money to pay the debt of his grantor or mortgagor, which money, when advanced, the junior mortgagee can collect under his mortgage.''

(3) Two questions of fact are presented—

(a) Appellants claim that the proofs show that respondents agreed to reconvey the premises when certain banks, creditors of the Partridge Lumber Company, should sign Exhibit D-12. Admittedly D-12 was signed by the banks in question long before the bringing of the foreclosure action.

Respondents claim (in their answer, p. 44) that they agreed to reconvey, upon Lincoln Trust Company being paid its notes for $18,600, upon which Cornelia M. Partridge was accommodation maker. (Farrier testified to at least six different theories as to what the deed was to secure but never to the one set out in the answer). Which claim is well founded?

(b) Even if the agreement was, that the property was to be returned when the Lincoln Trust Company was paid its notes, appellants claim (1) that that condition also was performed before the bringing of the foreclosure action, and (2) that Lincoln Trust Company, before action begun, sold the Partridge notes to the Interstate Lumber Company, the very party who, they claimed, was to pay the Partridge notes, which sale of itself constituted payment.

(4) Mr. Mathewson died before the foreclosure bill was filed. Mr. Harmon died before the trial was begun. The active litigation was conducted by the executors of Messrs. Harmon & Mathewson. They were unsuccessful. The decree not only found against them in costs but mulcted them $1,000 counsel fee allowed to solicitors for Farrier and the Lincoln Trust Company. Three grounds of appeal are based on these facts.

(5) An order for the taxation of the costs of a stenographic transcript of the testimony, to be charged against the executors, is the subject of a separate appeal.

(6) At the time Mrs. Partridge made the deed to Paul, she was being pressed by some of the banks, notably the Hudson County National Bank, upon notes of which she was an accommodation maker. The proceeds of these notes had gone to the Charles R. Partridge Lumber Company.

The Charles R. Partridge Lumber Company was in the hands of a Receiver. The banks, creditors of Charles R. Partridge Lumber Company, including the Hudson County National Bank, had met six weeks before and had constituted Edward I. Edwards and others a committee to look after the interests of the banks in reference to the Partridge claims. An ambitious plan had been made for the taking over of the Partridge assets by the banks and the conveying of these assets to a corporation to be organized.

Mr. Partridge, seeing his wife's property in jeopardy, knowing that she was merely an accommodation maker and that he had put her into the position in which she found herself, went to Mr. Edwards for counsel and advice. Mr. Edwards told Partridge of the plan for the purchase

and sale of the assets. This transaction, he assured Mr. Partridge, would relieve the accommodation parties to the Partridge paper. The deed to Paul resulted.

When the foreclosure bill was filed, the Hudson County National Bank filed a counterclaim in which it charged that this transaction was fraudulent. This charge, however, was withdrawn and an order made that the Hudson County National Bank should be precluded from renewing the charge if the executors of Harmon and Mathewson should be successful. No question of fraud was among the issues tried.

II

Grounds of Appeal

(1) The counterclaim of the counter-claimants should not have been dismissed for want of equity.

(2) The title of the Lincoln Trust Company is not and was not absolute and valid against the claim of the appellants herein for the reason that the Lincoln Trust Company, in taking the assignment of the bid of the complainant for the property at Sheriff's sale, did, after Sheriff's sale, merely that which it was obligated to do before the foreclosure action was begun, to wit: paid the mortgage debt pursuant to the covenant contained in the deed of Cornelia M. Partridge to George F. Paul.

(3) Costs should not have been awarded against the appellants as executors of the last will and testament of Charles F. Mathewson and Benjamin S. Harmon, even though the decree went against them, for the reason that the said execu-

tors were prosecuting their counterclaim in the right of their testators.

(4) No counsel fee should have been awarded against appellants as executors of Charles F. Mathewson and Benjamin S. Harmon, even though the decree went against them, for the reason that they were executors prosecuting their counterclaims in the right of their testators.

(5) The counsel fee was excessive in amount and the allowance of One Thousand Dollars, under the circumstances of the case, was without warrant of law or equity.

(6) The said decree is further erroneous in this, that it should have been decreed that the Lincoln Trust Company took and held the mortgaged premises under Sheriff's deed as well as before Sheriff's sale, in trust for the uses and purposes specified in said counterclaim, subject only to the right of the said Lincoln Trust Company to be reimbursed the amount paid by it in satisfying the principal and interest of complainant's mortgage. Or

(7) In the alternative, it should have been decreed that the Lincoln Trust Company account for and pay over to these appellants the difference between the price for which it finally sold the said property and the amount for which it rightfully held the said property as security.

(8) The said decree is erroneous in its recitals and in its findings in that it does not recite and find: that the property in suit was conveyed by Cornelia M. Partridge to George F. Paul, who was acting for and in behalf of the Lincoln Trust Company, by deed bearing date July 31, 1912, wherein and whereby the said Paul,

in behalf of the Lincoln Trust Company assumed and agreed to advance the money to take up and pay off, for the protection of Cornelia M. Partridge's said property, the Ten Thousand Dollar mortgage held by the complainant, being the mortgage under foreclosure in this cause; that said Paul and Lincoln Trust Company agreed to reconvey the premises to Cornelia M. Partridge, or her nominees, upon the signing of a certain contract (Exhibit D-12) as appellants' claim, or upon the Lincoln Trust Company being paid $18,600 as it claims; that said Paul and Lincoln Trust Company being paid $18,600 as it claims; that said Paul and Lincoln Trust Company, in violation of their agreement, permitted or caused said mortgage to be foreclosed and the property to be sold to the Montclair Savings Bank, and pursuant to an agreement (antedating said sale) between the Lincoln Trust Company and the Montclair Savings Bank, the Montclair Savings Bank assigned its bid to the Lincoln Trust Company and the Sheriff of the County of Essex thereupon conveyed said property to the Lincoln Trust Company, and the Lincoln Trust Company took and again held said premises under its original agreement to reconvey them to Cornelia M. Partridge or her nominees; that the contract, upon the signing of which the property was to have been reconveyed to Cornelia M. Partridge, was, in fact, signed before the filing of the bill in this cause, or the $18,600 to secure which the Lincoln Trust Company claimed to hold the said premises, had, in fact, been paid to it, either in whole or in part, and if the Court found in part then it should have determined in what part and that the appellants as nominees of Cornelia M. Partridge were entitled to a convey-

ance of the premises from the Lincoln Trust Company upon the reimbursement of the Lincoln Trust Company for the amount advanced by it in payment of the principal and interest of the mortgage held by the Montclair Savings Bank and the amount if any, remaining unpaid of the $18,600 which the Lincoln Trust Company claims the deed to Paul was given to secure.

(9) And these appellants further appeal from an order made in this cause on the 15th day of March, 1920, directing that the sum of $41.45, expended for one-half of the fees for the transcript of testimony furnished for the use of the Court, should be allowed against these appellants and the said sum included in the taxed bill of costs of the said Lincoln Trust Company of New Jersey. Said order is (1) without warrant of law, and (2) said order should be reversed together with and as being in effect a part of the final decree above mentioned because of error contained in said decree.

III

Facts and Argument

(Facts in Detail)

On June 1, 1912, some seventeen banks, creditors of the Charles R. Partridge Lumber Company, a New Jersey corporation then in the hands of a Receiver in Bankruptcy, met in the office of the First National Bank of Jersey City (p. 314) and appointed Edwin M. Farrier, President of the Lincoln Trust Company of New Jersey, Edward I. Edwards, President of the First National Bank of Jersey City, Seth B. Robinson, attorney for the Merchants Exchange National Bank of New York, and Edward J. Dunn, representing the Chemung Canal Trust Company of Elmira, New York, a Committee on behalf of the Banks, to purchase all the assets from the Receiver or Trustee of said Bankrupt. Thereafter, this Committee, the Banks, the South Georgia Lumber Company and Maynard A. Cheney entered into a written agreement dated June, 1912 (Exhibit D-10), wherein it was agreed (a) that the Banks would purchase the assets of the Bankrupt for $125,000 provided it could be secured at that price; (b) that said Cheney would immediately cause to be organized under the laws of the State of New Jersey, a corporation to take over these assets and property, and that 55 per cent of the capital stock of the new corporation was to be assigned (p. 350) to the Committee "for the purpose of absolute control until the fulfillment of this agreement"; and (c) that the South Georgia Lumber Company and Cheney

agreed that the new corporation would receive said assets and property from the Committee and would pay therefor (1) by making and delivering to each of the said Banks its promissory note for the full amount of the unpaid promissory notes of the Bankrupt then held by each of the contributing Banks and designated as direct liabilities; (b) by guaranteeing to each of the contributing Banks the payment of commercial paper endorced and discounted by the several Banks; and (3) by making and delivering to each of the Banks its promissory notes for the amount of new money contributed by each Bank toward the purchase of the assets and property of the Bankrupt.

In and by this contract (pp. 346-348) the Banks agreed (1) To contribute new money to purchase the assets in proportion to the amount of each bank's claim assumed or guaranteed by the new corporation;

(2) That all dividends or payments on account of the indebtedness of the bankrupt should be applied in payment of the notes of the new corporation;

(3) That each bank prove its claim against the bankrupt and all indorsers and guarantors; and

(4) Credit all amounts so received on the notes to be given by the new corporation for direct and contingent liabilities. Each bank further agreed in words as follows (p. 349) that

> "Each of said Banks parties hereto states and represents that the direct and contingent liabilities to it of the Bankrupt which it expects such proposed new corporation to *assume* or guarantee * * * is as follows:

BANKS	LIABILITIES OF BANKRUPT	
	Direct	Contingent
Lincoln Trust Company of Jersey City, N. J.	$18,600	$2,440

* * * * *"

The $18,600 put down as direct liabilities by the Lincoln Trust Company was in the form of notes, of which Cornelia M. Partridge, a married woman, was accommodation maker. She was in no way connected with the contingent claim of the Lincoln Trust Company of Jersey City for $2,440.

On July 15, 1912, the Lincoln Trust Company filed a proof of claim for $21,040 consisting of these same notes and the contingent liability of $2,440 in the matter of Charles R. Partridge Lumber Company, bankrupt (pp. 329, 330).

The Committee of Banks was unable to buy the assets of the Charles R. Partridge Lumber Company at $125,000 as planned, but negotiations were pending between it and the trustee in bankruptcy. Mr. Dunn, one of the Committee, subsequently purchased these assets for $126,150. It was for the purpose of approving this purchase D-12 (p. 234) was signed.

Agreement to Reconvey Property in Suit to Cornelia M. Partridge

About July 30, 1912, Charles R. Partridge, husband of Cornelia M. Partridge, had an interview (p. 110) with Edward I. Edwards, in which he told Mr. Edwards that he would turn the property in suit over to him in trust. Mr. Edwards stated that the property would be re-conveyed to Mrs. Partridge as soon as the Banks signed an agreement, whereby they were to accept the notes of the

South Georgia Lumber Company endorsed by Mr. Cheney. Charles E. Partridge testified (p. 110):

> "Q. It was an agreement among the Banks. What agreement was that, what was the general nature of the agreement to be signed?
>
> "A. He (Mr. Edwards) said that as soon as the Banks signed this agreement whereby they were to accept the notes of the South Georgia Lumber Company endorsed by Mr. Cheney the property would be returned."

and at p. 111:

> "Q. In what way?
>
> "A. Well, they would take it away from us. They would attack the endorsers on this paper and take the property away from us, and my idea was to turn it over to Mr. Edwards in trust and he said when the endorsers were relieved that would relieve Mrs. Partridge of course and the property would be returned; that the property would be returned after the Banks had all signed this agreement."

And at p. 125:

> "Q. Did you know when it was signed?
>
> "A. No, I did not.
>
> "Q. You did not see it signed by any of the parties?
>
> "A. No, I did not know anything about it except what Mr. Edwards told me and anything he told me I believed, that is all."

Mr. Edwards' bank, not having any notes of Cornelia M. Partridge, brought Edwin M. Farrier into the matter, stating that "Mr. Farrier was criticized by his Board of Directors for making these loans, that would placate the Board for having this property apparently as collateral" (p. 112). Farrier was called up and immediately joined them and "the thing was transacted."

Neither Mr. Edwards nor Mr. Farrier wanted to hold the deed and "*they appointed*" (p. 112 George E. Paul to hold the deed. Partridge testified (p. 112):

> "Q. Then the deed was to be made not to Mr. Edwards, but to whom?
>
> "A. Mr. Farrier, and Mr. Farrier appointed somebody, as I don't suppose he wanted to hold the deed himself, and Mr. Edwards did not want it, and they appointed somebody in some capacity there in the bank, which was all right."

George E. Paul and Edwin M. Farrier, throughout this transaction, were acting for and on behalf of the Lincoln Trust Company of Jersey City (p. 322).

On July 30, 1912 (p. 193) Mr. Partridge went alone to his attorney, Mr. Goldenhorn, and had him prepare the deed conveying the property to George E. Paul.

On July 31, 1912, Cornelia M. Partridge and Charles R. Partridge, her husband, pursuant to the arrangement had with Mr. Farrier and Mr. Edwards, executed the deed and delivered it to Farrier in the office of the Lincoln Trust Company (pp. 114, 126) and thereby conveyed the premises in suit to George E. Paul. Paul, Farrier and Lincoln Trust Company admit in their answers, that the property was conveyed to Paul on July 31, 1912 (pp. 37, 39).

Lincoln Trust Company, Paul and Farrier assumed the payment of the mortgage in suit

In and by said deed and the acceptance thereof, George E. Paul (on behalf of and for the Lincoln Trust Company and Farrier) (p. 322), assumed and covenanted to pay the mortgage debt of $10,000 which the bill in this case was filed to foreclose.

The contradictory testimony of Edwin M. Farrier

Edwin M. Farrier testified as follows (p. 216):

"Direct-examination by Mr. Carrick:

"Q. You are the President of the Lincoln Trust Company of New Jersey?

"A. I am.

"Q. And were such for some time prior to the year 1912?

"A. I was.

"Q. You acted in obtaining from Mrs. Partridge the execution of this deed in 1912 to George E. Paul, Exhibit 13?

"A. I did.

"Q. Will you tell what communication you had with Mr. Partridge prior to the making of this deed, with reference to it?

"A. Mr. Edwards called me on the telephone one morning and asked me to go down to the First National Bank, that he wanted to see me. Just what day that was, I cannot tell, but it was about the time this deed was executed, one or two days before. I went to the First National Bank and Mr. Edwards told me that the offer had been made to him by Mr. Partridge but that inasmuch as he did not hold any of Mr. Part-

ridge's paper he could not accept the property but he knew that I did have some and here was an opportunity for me to protect myself. I got in touch with Mr. Partridge.

"Q. You say you got in touch; how did you do that?

"A. He was in the office of Mr. Goldenhorn and I was sent in there.

"Q. Did you talk with Mr. Partridge then?

"A. At Mr. Goldenhorn's office.

"Q. What was said at that time?

"A. I cannot give you the exact words. The idea was, and the understanding was, that Mrs. Partridge would execute a deed. We, that is the Lincoln Trust Company, were to surrender her notes to the amount of the estimated equity in the property and we arrived at the figure of $8,000 inasmuch as I had formerly had her house in Montclair appraised. I was going to start suit against Mrs. Partridge. After arriving at the figure of $8,000 the deed was ordered drawn. I stipulated that if the bank were paid out in full the property would be returned to Mrs. Partridge and if not he could not expect to get the property back again."

and at pp. 228-230:

"Q. Did you tell or bring to the attention of the Referee in Bankruptcy, or the Trustee in Bankruptcy, that $8000 of the promissory notes, of which you had made proof in bankruptcy had been paid?

"A. No, because they have not been paid yet.

"Q. The giving of this deed was not to act as the payment of $8,000.

"A. To act as security.

"Q. Only as security?

"A. Until the banks were paid in full.

"Q. When you came to my office this sum-

mer didn't you tell me this was the payment of that $8,000?

"A. I did not.

"Q. Was that not the theory upon which your answer was filed?

"A. I don't think so.

* * * * *

"Q. Your theory was that you held this in trust to return it to her upon the payment of $18,600?

"A. No, sir.

"Q. Will you explain what you theory was?

"A. Upon the receipt by the Lincoln Trust Company of $21,140 together with the payment in full of all the other banks. That was the understanding with Mrs. Partridge at the time, through her husband.

"Q. Did Mrs. Partridge sell the Lincoln Trust Company her property?

"A. She sold the property to us for the estimated equity over and above the mortgage with the distinct understanding that there were certain matters pending in court at that time which were not settled and when the banks were paid in full the property would be returned to her.

"Q. Then it was to protect all the banks, do I understand?

"A. The Lincoln Trust Company primarily, the others secondarily.

"Q. Were the $8000 of notes surrendered to Cornelia M. Partridge?

"A. They were delivered to her attorney.

"Q. Who was her attorney?

"A. Mr. Goldenhorn.

"Q. How do you know that?

"A. Because he acted in her behalf?

"Q. Were they absolutely surrendered?

"A. They were.

"Q. Were they surrendered to Mrs. Partridge in payment for her equity in the property in Montclair?

"A. They were.

"Q. That was the consideration of the deed to Paul?

"A. Exactly.

"Q. Then if I understand it she sold the property to the Lincoln Trust Company, the Lincoln Trust Company surrendered the notes to her, $8,000 of notes to her—that is right?

"A. That is correct.

"Q. After that did you have any interest in the $8,000 of notes?

"A. I did.

"Q. What interest?

"A. The Trustees' dividend."

and at pp. 231, 232, 233, 234, 235:

"Q. Then what interest did you have, did the Lincoln Trust Company have, in those notes after they were surrendered to Mrs. Partridge, these $8,000 of notes?

"A. Under the terms of the agreement of June, 1912, the various banks were to collect, from whatever source is possible, money due on the notes. When the dividend came from the Trustee in Bankruptcy it was applied on the total indebtedness.

"Q. As between you and Mrs. Partridge what interest did you have in this $8,:000 of notes that you surrendered?

"A. What interest did I have in the $8,-000 of notes?

"Q. Yes.

"A. I had the interest for the benefit of all of the banks. I had filed my claim, I had proven my claim, in bankruptcy.

"Q. In which this $8000 was included?

"A. In which this $8,000 was included.

"Q. When you assigned the notes and surrendered the notes to Mrs. Partridge did you surrender therewith a proportionate part of the proof of claim that you made in bankruptcy?

"A. I did not.

"Q. You kept that?

"A. I did.

(By the Vice Chancellor):

"Q. Was it for that reason the escrow arrangement was made?

"A. That and other things incidental to the entire deal.

"Q. You had to be left free to collect—

"A. I had to be left free to collect and apply it.

"Q. And was made the owner of the notes practically for that purpose?

"A. No, because I had $10,000 worth of notes at that time.

"Q. In this ageement which you drew providing for the deposit of these notes, these three notes, in which 'It is hereby agreed by the party of the first part'—that is, Mrs. Partridge—'that she will place the aforesaid promissory notes in the possession of Raymond Dawson * * * No. 1 Exchange Place, Jersey City to be held by him until the settlement of the above mentioned action or until mutually agreed upon by both parties to this agreement.' I did not begin to read quite soon enough. Prior to that the agreement recites 'Whereas the said party of the second part'—that is the bank—'for the better protection of its interest requires that the said promissory notes be held in escrow for a period of time to be determined or until certain matters now pending are settled.'

"A. Exactly.

"Q. I ask you whether or not it was the agreement that the Lincoln Trust Company should be practically the owner of notes for the purpose of collection, to see whether they could not get the amount out of these various bills and vouchers first.

"A. They were not to be the owners of the notes, no.

"Q. But they would have the right to collect?

"A. They would have the right to collect

anything on them they possibly could and apply it on the indebtedness.

"Q. They would stand as the owners?

"A. They might act as owners, but they were not owners; they had surrendered what belonged to them.

* * * * *

"Q. What did they get under the deal?

"A. They got the property.

"Q. To secure the payment of this $304,000 of indebtedness which afterwards took expression in notes of the Interstate Lumber Company?

"A. And that Montclair property to secure $300,000.

"Q. What was it to secure?

"A. What?

"Q. The whole thing?

"A. The paper that I held.

"Q. How much was that?

"A. Of Mrs. Partridge, $18,600.

"Q. That was all.

"A. That was all I held.

"Q. That was all it was to secure?

"A. No.

"Q. What else?

"A. The property was to remain vested in me until the entire indebtedness was paid off, 100 cents on the dollar, including the $18,600 which I held.

"Q. And the—

"A. Yes, the entire indebtedness.

"Q. And you also said I think the indebtedness to the other banks.

"A. Yes, sir. But an $18,000 property cannot stand as collateral for $304,000.

"Q. What was the order of priority in this trust relationship?

"A. There was no order of priority.

"Q. Who was it to secure first?

"A. It was to secure me first.

"Q. That is, your Bank?

"A. Yes, sir.

"Q. It was to secure first the $8,000?

"A. No, the $8,000 had been surrendered.

"Q. It was to secure first the—

"A. The entire $21,040.

"Q. Eight thousand dollars being surrendered, it left $8,000 out.

"A. Very well. When $21,000 had been recovered the property was to be turned back to Mrs. Partridge. I could not get my $21,000 until all the banks had theirs at the same time.

"Q. Let me understand. Do you understand that these other banks had any interest in this property?

"A. No.

"Q. The only people that Paul would be Trustee for would be the Lincoln Trust Company and Mrs. Partridge.

"A. Paul was not a Trustee.

"Q. Waiving that for a moment, the only people having any interest in the equity conveyed to Paul would be Mrs. Partridge and the Lincoln Trust Company?

"A. Mrs. Partridge had no interest in it after she conveyed it to Paul.

"Q. You saw this agreement of August 3d executed?

"A. This escrow agreement?

"Q. Yes.

"A. Yes, sir, I drew it.

"Q. And you saw Mrs. Partridge sign it?

"A. No, I did not see her execute it.

"Q. Can you tell us what pending actions are to be settled?

"A. The bankruptcy suit, the bankruptcy case and all cases incidental thereto.

"Q. Among them the carrying out of the agreement of the blank day of June, 1912?

"A. Exactly.

"Q. Who did you anticipate was to pay the indebtedness of $21,040?

"A. We expected to realize it out of the Interstate Lumber Company.

"Q. Do you know why Mrs. Partridge was to secure the $2,200 of contingent notes?

"A. No, sir. There was nothing said about $2,200 of contingent notes at that time. The only agreement that was had with Mrs. Partridge was that when the banks were paid in full—there was nothing said particularly about her paper or the contingent paper, but when the banks were paid in full.

"Q. All the banks?

"A. The word 'bank' was made use of. No one bank would be paid in full.

"Q. Let me ask you, Mr. Farrier, how explicit was this arrangement which I understand you made with Partridge, how explicit was it?

"A. Well, it was just a verbal conversation coming to an agreement."

And at p. 236:

"Q. Was this deed to Paul to benefit the First National Bank?

"A. To some extent.

"Q. The situation, if you were successful in this suit is that you get the benefit of this property, a benefit which the other banks do not get. Is that right?

"A. I don't think I should be compelled to answer that question."

And at p. 305:

"Q. Were these papers, Exhibit No. 3 for identification being the so-called escrow agreement, dated August 3d, 1912, and the deed from Mrs. Partridge to George E. Paul, dated and acknowledged July 31st, 1912, but recorded August 12th, 1912, a part of a single transaction which included also the delivery of the notes in escrow to Mr. Dawson?

"Witness: Yes, sir.

"By the Vice Chancellor:

"Q. All one transaction, was it?

"A. One transaction.

"Q. And all these different things were they negotiated as one agreement, one settlement?

"A. Under the agreement of June blank 1912, whatever any of the banks realized from any source would have to be applied on the indebtedness, this was in following out that same general idea.

"Q. Do I understand then that whatever you might recover from the Montclair property goes for the benefit of all the creditors?

"A. No, that would have gone to my own particular benefit because the other banks were not concerned in the transfer of the property although this agreement with Mrs. Partridge was that when the banks were paid in full this property was to be returned to her."

And at p. 322:

"Q. Thoughout this transaction Mr. Paul was subject to the direction and con trol of the Lincoln Trust Company?

"A. Mr. Paul was acting in my personal and individual behalf. Mr. Paul has no connection whatever with the Lincoln Trust Company and never did have.

"Q. Did you have any financial or personal interest in this matter?

"A. None whatever.

"Q. Then you both were acting for the Lincoln Trust Company?

"A. Absolutely."

Edwin M. Farrier and Lincoln Trust Company allege (pp. 45, 44) in their answer to the counterclaim that the Lincoln Trust Company paid Cornelia M. Partridge $8,000 for the property by surrendering to her $8,000 of notes and that *her in-*

debtedness "to the Lincoln Trust Company was thereupon reduced to the principal sum of $10,-600" and that—

> "It was then and there orally agreed by and between this defendant, Edwin M. Farrier, acting as president of Lincoln Trust Company of New Jersey, and the said Cornelia M. Partridge and Charles R. Partridge that if the Partridge Lumber Company, after paying the balance of $10,600.00 of said notes remaining unpaid, should also fully pay and discharge the three notes made by said Cornelia M. Partridge, and endorsed by the Partridge Lumber Company, and so surrendered to said Cornelia M. Partridge, the property so conveyed by her to George E. Paul, should, upon her payment to Lincoln Trust Company the principal of the notes surrendered to her, with interest be reconveyed to her."

At the time of this alleged agreement the Partridge Lumber Company was bankrupt. It was obvious, therefore, that the parties did not contemplate an actual payment by it of the $10,600 which was a part of the debt of $21,040. As we have already seen, Farrier recognized this fact, for he testified:

> "Q. Who did you anicipate was to pay the indebtedness of $21,040?
>
> "A. We expected to realize it out of the Interstate Lumber Company.

The so-called escrow agreement of August 3, 1912

On August 3, 1912, four days after the deed had been delivered to Paul (pp. 37, 39, 200) Farrier drew up a so-called escrow agreement (Exhibit D-5) which Mrs. Partridge signed. This paper begins "This agreement made this 3d day of August, 1912."

Faeber Goldenhorn, called by the respondents, testified that this paper and three notes amounting to $8,000 were left at his office by somebody—by whom he did not know—*two or three days after the deed had been delivered* (pp. 200, 199). He had previously testified that this agreement, the three notes and the deed were there at the same time but he corrected this testimony pointing out that this was an error and that this agreement and the notes were left—by whom, he did not know—and the conversation concerning them had with Mr. Partridge two or three days after the deed was delivered (pp. 194, 199, 200). He testified that some one from Raymond Dawson's office called for the escrow agreement and notes (p. 200).

Raymond Dawson, called by the respondents, testified (pp. 94, 95) that he was associated with Edwards & Smith, attorneys for the First National Bank, and that Edward I. Edwards and Edward M. Farrier brought the escrow agreement and the notes to him, and that "Mr. Farrier came to my office with Mr. Edwards. Mr. Edwards said, 'Mr. Dawson, I want to introduce Mr. Farrier,' or 'this is Mr. Farrier' and he said 'he wants you to act for him as a trustee.' "

Paul secretly conveyed property to Farrier on August 5, 1912. Farrier's answer admits that he secretly conveyed Property to Lincoln Trust Company

On August 5, 1912, George E. Paul, without the knowledge and consent of Mrs. Partridge (pp. 128, 129) and without the knowledge and consent of her husband (pp. 113, 114) conveyed the property to Edwin M. Farrier by deed which was not recorded until June 11, 1915 (pp. 40, 41).

Edwin M. Farrier and Lincoln Trust Company, in their answer to the counterclaim allege that (p. 41):

> "They admit that the deed to this defendant, Edwin M. Farrier, was recorded June 11, 1915, and that he took and held the legal title to the property subject to the same trusts and for the same uses and purposes as the said Paul had taken and held it."

Thereafter, Edwin M. Farrier executed and delivered a deed conveying the property to the Lincoln Trust Company of New Jersey without the knowledge and consent of Mrs. Partridge and her husband, which deed was never recorded (p. 41).

Edwin M. Farrier and Lincoln Trust Company, in their answer to the counterclaim allege (p. 41):

> "They admit that after the conveyance of the title by said George E. Paul to this defendant, Edwin M. Farrier, he delivered a deed therefor to said Lincoln Trust Company of New Jersey, which has never been

recorded * * *. This defendant, Lincoln Trust Company of New Jersey, took said deeds * * * and holds the title for the uses and purposes for which the same was conveyed to the said George E. Paul and to the said Edwin M. Farrier, respectively."

The Committee purchased the assets of the bankrupt

On August 19, 1912, Edward J. Dunn purchased the assets of the bankrupt in his own name on behalf of the Committee (see Edward I. Edwards' testimony, p. 88) for $126,150 (p. 207).

The agreement which the Banks were to sign referred to by Charles R. Partridge was Exhibit D-12

After August 19, 1912, the Banks signed an agreement, Exhibit D-12, modifying their original agreement, Exhibit D-10. The fact that this agreement, Exhibit D-12 was signed after August 19, 1912, is established by the second clause thereof which reads "Whereas, the party of the second part (The Committee) offered, through Mr. Edward J. Dunn, $126,150, for the assets of the said Charles R. Partridge Lumber Company, which offer was accepted by the referee in bankruptcy on August 19, 1912."

Interstate Lumber Company was organized pursuant to agreement (Ex. D-10 and D-12) and issued to Lincoln Trust Company its notes for $18,600 in lieu of the notes for $18,600 of which Cornelia M. Partridge was accommodation maker

On August 29, 1912, the new corporation provided for in and pursuant to (p. 301) the agreement Exhibit D-10, as amended by the agreement Exhibit D-12, was incorporated as the *Interstate Lumber Company* (p. 156) with an authorized caiptal stock of $150,000, all of which was subscribed and paid for in cash (pp. 157, 159, 300). Edward J. Dunn having transferred the assets of the Bankrupt to Farrier (pp. 158-159), Farrier transferred these assets to the ILnterstate Lumber Company and the Interstate Lumber Company issued its notes to the Banks pursuant to the agreement of June 1912. (pp. 83-85).

Interstate Lumber Company issued to respondent Lincoln Trust Company of Jersey City one note for $18,600, in lieu of the notes amounting to $18,600, of which Cornelia M. Partridge was accomodation maker and endorser, and another note note for $2,440, representing the contingent liability of the Bankrupt, Charles R. Partridge Lumber Company. Seth B. Robinson, a member of the Committee and a director and officer of the Interstate Lumber Company, and attorney for the Merchants Exchange National Bank of New York, testified (p. 289):

> "Q. Will you tell us what paper was originally issued to the Lincoln Trust Company of New Jersey?

"A. One note for $18,600, a second note for $2,440, a third note for $15,246.41.

"Q. The $18,600 would be for direct?

"A. the larger note would be for direct.

"Q. $18,600 for direct? A. Yes, sir.

"Q. And $2,440 for contingent? A. Yes, sir.

"Q. And the $15,246.41?

"A. For the so-called new money.

"Q. That is money actually put in at the time?

"A. The new money—by the banks."

The Committee had absolute control of the Interstate Lumber Company

Pursuant to the June, 1912 agreement (Exhibit D-10) 825 shares of the Interstate Lumber Company were assigned and delivered to the Committee (p. 333), who thereby had absolute control over this Company from its organization until it was adjudged a bankrupt in 1915. Farrier, Dunn and Robinson, three members of the Committee, had themselves elected three of the five directors and they removed all officers and elected Robinson president, Dunn vice-president and Farrier secretary and treasurer (pp. 159, 161, 162, 163). The minutes of the Board of Directors of the Interstate Lumber Company on February 4, 1913, read, in part, as follows:

> "After discussion it was decided to make to the Commercial agency a rough statement of assets of the company and the following was adopted, 'our capital stock, fully paid, $150,000. The surplus and undivided profits amount to about $50,00. We carry a stock of hardwood lumber of about 4,-000,000 feet, valued at $200,000. Accounts, bills receivable amounting to about $60,000, cash on hand and in banks averages about $10,00. We have real estate in Jersey City

> which we value at $90,000, which we purchased subject to a mortgage which has been reduced by us to $38,400. The equipment at the different yards amounts to about $15,000,' totaling $536,600 of assets."

Interstate Lumber Company, under the absolute control of this Committee, paid out from time to time the cash on hand to the Banks on the notes until December 12, 1914, at which time the Committee, still being in absolute control, entered into an agreement with the Interstate Lumber Company, M. A. Cheney and South Georgia Lumber Company (pp. 163, 164, Exhibit D-1), whereby every vestige of the property owned by the Interstate Lumber Company, excepting the contingent claims bought from the Bankrupt, was assigned to the Committee for the benefit of the Banks. By this agreement of December 12, 1914, the Committee agreed (pp. 333-334) to

> "deliver to the Interstate for cancellation $120,000 (including interest to October 1st, 1914), of the notes of the company now held by the parties to such agreement (Exhibit D-10) for 'direct' and 'contingent' liability, amounting with interest to about $133,000, and the said notes shall at once be cancelled; and will deliver to the Interstate for cancellation as the same are paid out of the assets as conveyed to them the balance of said notes for 'direct' and 'contingent' liability, amounting to about $13,000 * * *."
>
> "The Committee will also deliver to the Interstate the notes on which the Charles R. Partridge Lumber Company appear as maker or endorser and for which the Interstate notes for 'direct' and 'contingent' liability were given, and any collections received thereon after the date of this agreement shall be credited as received on the said $80,000."

On January 2, 1915, Interstate Lumber Company's debt to Lincoln Trust Company of New Jersey on both direct and contingent notes was reduced to $980.83

On January 2, 1915, the amount of Interstate Lumber Company's notes given to and held by the Lincoln Trust Company of New Jersey for the $18,600 direct liability remaining unpaid was $14,514 and the amount of the Interstate Lumber Company's notes given to and held by the Lincoln Trust Company for the $2,440 remaining unpaid was $712.43 and interest on both items amounting to $365.08, which brought the Interstate Lumber Company's total indebtedness to the Lincoln Trust Company up to $15,591.51. On January 5, 1915, the agreement of December 12, 1914 (Exhibit D-1) was carried out and $13,024.48 of the $15,591.51 was paid by giving the Interstate Lumber Company credit for this amount, this being the Lincoln Trust Company's portion of the $120,000 of Interstate Lumber Company notes to be delivered by the Banks and cancelled (p. 263), and further payment of $586.20 was made by the trustee's dividends, which brought the Interstate Lumber Company's debt to the Lincoln Trust Company on both the direct and contingent notes on January 2, 1915, down to $980.83 (p. 371).

An attempt was made to treat this as a mere bookkeeping transaction, but that it not so, for there was actually sold and delivered to the Committee under this agreement of December 12, 1914, all the assets of the Interstate Lumber Company, which, as we have seen, very shortly before had been appraised by these very men at over $500,000.

The Lincoln Trust Company, by its treasurer, George H. Gould, Jr., filed proof of claim on this note of $14,514.00 in the matter of Interstate Lumber Company, bankrupt, in which he swore (p. 366), that the Interstate Lumber Company was only indebted to Lincoln Trust Company on this note, for $980.83, and that the Lincoln Trust Company *did not have any security for this debt.* Attached to his proof of claim (p. 365) is the Interstate Lumber Company's note on which is endorsed:

> "Amount due on this note is $980.83 with interest from October 1, 1914, the balance having been adjusted as of that date. E. M. F."

Seth B. Robinson testified that the amount due the Lincoln Trust Company from Interstate Lumber Company on direct and contingent notes combined was $980.83 and interest from January 2, 1915 (pp. 295, 296, Exhibit D-23).

Edwin M. Farrier after having testified differently, finally admitted that the amount due the Lincoln Trust Company on direct and contingent notes combined was approximately $1,000 (pp. 242, 370, 175).

The books of the Interstate Lumber Company which were under the absolute control of the Committee show a balance of $980.83 due the Lincoln Trust Company on the direct and contingent notes on January 2, 1915 (p. 370).

The Committee, by the agreement of December 12, 1914, took all the Interstate Lumber Company's property, enough to pay every dollar of the Interstate Lumber Company's indebtedness on January 2, 1915 to the banks, not only on the direct and contingent notes but on the new money notes as well

Seth B. Robinson testified (p. 295) that the total indebtedness of Interstate Lumber Company to all the banks on direct and contingent notes was, on January 2, 1915, $8,385.53 and on the new money notes was $31,978.26, or a total indebtedness of $40,363.79, to all the banks.

Edwin M. Farrier admitted that the Committee still held, in January, 1917 (pp. 74, 225) $43,360.16 in cash and assets a sum more than sufficient to pay all the banks every dollar of the Interstate Lumber Company's indebtedness to them on January 2, 1915.

Cornelia M. Partridge assigns equity to Harmon & Mathewson.

On May 26, 1913, Cornelia M. Partridge assigned her equity in the property in suit to Benjamin S. Harmon and Charles F. Mathewson (p. 115, Exhibit D-16). Although the deed to Paul had been made in July, 1912, Mrs. Partridge and her husband continued to live on the proeprty until August, 1915 (p. 127).

Lincoln Trust Company arranged with complainant to foreclose mortgage and have it buy in the property at Sheriff's sale, assign its bid to Lincoln Trust Company and have the Sheriff convey the property to it

George E. Paul paid the interest on the mortgage in suit until June, 1915 (p. 99). Prior to the institution of this action appellants demanded that Paul, Farrier and the Lincoln Trust Company pay the mortgage in suit and convey the property to Benjamin S. Harmon, which they refused to do (pp. 35-42).

On May 26, 1915, Farrier wrote Mr. Harmon denying that Mrs. Partridge had any interest in the property, and that he had taken steps to get possession of it (p. 342) as follows:

"Exhibit D-9

EDWIN M. FARRIER, PRESIDENT
LINCOLN TRUST COMPANY

Jersey City, N. J., May 26th, 1915.

Mr. Benjamin S. Harmon,
55 Wall St.,
New York City, N. Y.
Dear Sir:

"Mr. Wallace H. Partridge called at our office today and requested us to write you relative to the status of the house #78 Clinton Avenue, Montclair, formerly owned by Mrs. Cornelia M. Partridge.

"This house, together with the land and appurtenances, was purchased by the writer some years ago and title is still vested in me.

"While Mr. Partridge is now living in the house, steps have been taken by me to get physical possession of the property and after consultation with my lawyer, I do not see that any of the Partridge family have any interest whatever in the premises.

Yours very truly,

E. M. FARRIER,

President."

Immediately, in May, 1915, Farrier went to see (*and this is the only time he saw him,* p. 98) Edwin B. Goodell, President of the complainant, notified him that they would not pay any more interest on the mortgage (pp. 98-99) and arranged with him for a default in interest payment, a foreclosure of the mortgage, the buying in of the property at the foreclosure sale and assignment by the claimant of its bid to the Lincoln Trust Company (pp. 60, 61, 100, 191).

Farrier and the Lincoln Trust Company admit in their pleadings that (pp. 60-61):

'In order to avoid excessive commissions upon the sale the defendant Lincoln Trust Company arranged with the complainant that the latter should bid in the property at the foreclosure sale and that the Lincoln Trust Company would thereafter take an assignment of the bid upon payment to the complainant of the full amount due for its decree, interest and costs. After the complaint had bid in the property at the Sheriff's sale it did pursuant to such agreement assign its bid to defendant Lincoln Trust Company and at the same time the Lincoln Trust Company paid to the complainant on January 13, 1916, the sum of $10,878.49 in full for the complainant's decree, interest and costs."

Edwin B. Goodell admitted (p. 101):

> "I think that we had told Mr. Farrier that if we bid the property in anyone who brought us the money could get the title."

On June 17, 1915, Farrier wrote complainant (Exhibit D-7):

> "I assume that you have turned the papers over to your counsel for the foreclosure of the mortgage on the same property.
>
> "I have not yet been served with any papers and do not know whether any bill has been filed, but I will accept service by mail and do anything else to hasten the matter along, as the longer the matter is delayed the longer Partridge will have rent free and we cannot put him out until we get title."

Foreclosure proceedings begun

On July 15, 1915, the bill to foreclose the mortgage in suit was filed.

On August 27, 1915, the Hudson County National Bank filed its answer and counterclaim (p. 16).

On September 3, 1915, Edwin M. Farrier wrote E. B. Goodell (p. 341) for advice about the property, as to its value and rental value.

On September 15, 1915, appellants filed their counterclaim against Paul, Farrier and the Lincoln Trust Company.

On September 23, 1915, George E. Paul and Edwin M. Farrier filed their answers to the counterclaim of the Hudson County National Bank.

On September 23, 1915, Farrier and the Lincoln Trust Company filed their answer to the counterclaim of appellants (p. 39).

On October 9, 1915, Paul filed his answer to the counterclaim of appellants (p. 37).

On October 16, 1915, an order of reference was made to determine the amount due complainant, providing (p. 48):

> "and the questions raised by the answers and counterclaims of the answering defendants are also hereby reserved."

On November 9, 1915, decree of foreclosure was filed (p. 49).

Lincoln Trust Company Makes Profit of $5,121.51

On January 11, 1916, the property was sold at sheriff's sale to the complainant for $7,500 (p. 52). *The property at the time of this sale was worth $16,000.00* (p. 287). This is admitted by the Lincoln Trust Company's answer (p. 61).

On January 13, 1916, complainant, pursuant to the agreement between Goodell and Farrier, assigned its bid to the Lincoln Trust Company for $10,878.49 (p. 61).

On January 22, 1916, the sheriff conveyed the property to the Lincoln Trust Company (p. 52).

On January 24, 1916, Lincoln Trust Company sold the property on contract for $16,000 (p. 328).

On April 25, 1916, Farrier and the Lincoln Trust Company filed a supplemental answer, setting up the foreclosure sale as a defense (pp. 54-66).

On May 6, 1916, appellants filed supplement to counterclaim (p. 58) alleging the sale of the property to complainant, the assignment of the bid to the Lincoln Trust Company and the conveyance by the sheriff to the Lincoln Trust Company, and that these things were done pursuant to the agreement between complainant and the Lincoln Trust Company, and that the

> "Lincoln Trust Company took title, if in fact any title passed thereby, under its deed from the Sheriff of Essex County and holds title to the premises described in the bill of complaint subject to the same uses, purposes, trusts and duties as are in this counterclaim above stated and set forth."

Farrier and the Lincoln Trust Company answered appellants' supplement to counterclaim (p. 60).

On May 16, 1916, an order was made referring to

> "Hon. Eugene Stevenson, one of the Vice Chancellors, to hear the same for the Chancellor, upon all questions reserved in the order of reference to the Master, heretofore made in this cause, and all questions raised on the amended pleadings, and to report thereon to him, and advise what order or decree should be made therein" (p. 62).

On November 19, 1917, an order was made that the further hearing and argument of the cause stand over and be continued until the 13th day of December, 1917 (p. 66).

On December 13, 1917, an order was made dismissing the counterclaim of the Hudson County National Bank and providing that it

> "should have no recourse against the lands and premises mentioned and described in the bill of complaint in said cause upon the judgment recovered by it against the defendants, Cornelia M. Partridge and Charles R. Partridge on August 6, 1912, set forth in said counterclaim, etc." (p. 67).

On March 15, 1920, an order allowing taxation of stenographer's fees and costs for $41.45 was made.

On March 23, 1920, final decree was made dismissing the counterclaim of appellants and allowing a counsel fee of $1,000.00 against the Executors of Harmon & Mathewson.

POINT I

The assumption in the conveyance to Paul by Mrs. Partridge, which is in fact a second mortgage, is in legal effect an agreement by the Lincoln Trust Company to advance on the security of the property the money and pay off complainant's mortgage, and prevent its foreclosure, for which money the Lincoln Trust Company would have had a lien on the property under its second mortgage.

George E. Paul and Edwin M. Farrier throughout this transaction acted for and on behalf of the Lincoln Trust Compony (pp. 322, 39, 40).

The deed in form but in fact a second mortgage from Cornelia M. Partridge and her husband, conveyed the premises to George E. Paul

> "subject to a mortgage for the sum of $10,000 held by the Montclair Trust Company, bearing interest at the rate of 5 per cent, which said party of the second part assumes."

George E. Paul, in his answer to the counterclaim, admits that he assumed the payment of this mortgage in words, to wit (p. 38):

> "He admits that in the conveyance to him he assumed the payment of the mortgage upon the premises in question."

Edwin M. Farrier and the Lincoln Trust Company in their answer to the counterclaim, admit that Paul assumed the payment of the mortgage which this bill was brought to foreclose, in words, to wit (p. 40):

> "They admit that the grantee George E. Paul assumed the payment of the complainant's mortgage in accepting the deed to the property."

Edwin M. Farrier and the Lincoln Trust Company, in their answer to the supplement to the counterclaim of appellants, allege as an affirmative defense that the Lincoln Trust Compony, by taking a deed in Paul's name, had assumed the payment of the mortgage and was legally bound to pay it (p. 60):

> "These defendants say that the circumstances under which the defendant Lincoln Trust Company became purchaser at the Sheriff's sale are not accurately set out in paragraph 14 of the said supplement to the counterclaim, but state the fact to be that the defendant Paul, to whom the mortgaged premises were conveyed subject to complainant's mortgage had in and by the deed of conveyance assumed the payment of the complainant's mortgage, and the defendant, Lincoln Trust Company, at whose instance the said Paul took and held the property was advised that it was under a legal obligation to protect the property to the extent of the complainant's claim."

Furthermore, by the mere acceptance of this mortgage in the form of an absolute deed, it is implied by law that the mortgagee agreed to all the terms in it expressed.

Vreeland v. Van Blarcom, 35 N. J. E., 531;

Spartman v. Cove, 41 N. J. L., 311;
Finlay v. Simpson, 22 N. J. L., 311;
Huyler v. Atwood, 26 N. J. E., 504;
affirmed 28 N. J. E., 275;
Hagerty v. Lee, 54 N. J. L., 580.

The Vice Chancellor says (p. 419):

> "The Lincoln Trust Company admits in its pleadings, and no attempt was made to amend that pleading, so as to diminish the force of the admission, that Mr. Paul, on its behalf, assumed the payment of the mortgage in question."

The Vice Chancellor makes this remarkable statement in reference to the assumption clause (p. 385):

> "It is a somewhat remarkable fact that no party to this deal appears to have known at the time that the deed contained this covenant of assumption. There is not the slightest evidence that any agreement between Mr. Partridge and Mr. Edwards, or Mr. Partridge and Mr. Farrier in any way provided for the assumption of the mortgage. Mr. Goldenhorn was not interrogated in regard to the matter. Mr. Farrier thinks that the clause was inserted by mistake by copying some other deed but this suggestion I think is entitled to very little weight. The presumption, it seems to me, is that Mr. Goldenhorn, recognizing that the instrument was in form an absolute deed and might in the future stand as such, very properly required the grantee to assume the outstanding mortgage."

It was unnecessary to call witnesses to prove a fact admitted both in the deed itself and in the pleadings and by respondents' counsel repeatedly. Mr. Partridge was not interrogated with reference to this clause. Mrs. Partridge was not in-

terrogated with reference to this clause. Mr. Goldenhorn, their attorney, was not interrogated with reference to this clause. Mr. Edwards was not interrogated with reference to this clause. Neither was Mr. Farrier interrogated with reference to this clause, except by the Vice Chancellor and that, too, in September, 1917 (p. 306), nine months after all the other witnesses had testified during the previous January. Just how the Vice Chancellor reached the conclusion that "no party to this deal appears to have known at the time that the deed contained this covenant of assumption" does not appear. Certainly it is not based on any evidence.

Farrier and the Lincoln Trust Company, not only admit in their answers that they assumed the payment of the mortgage, but affirmatively allege (p. 60):

> "but state the fact to be that the defendant Paul, to whom the mortgaged premises were conveyed subject to the complainant's mortgage, *had in and by the deed of conveyance assumed the payment of the complainant's mortgage, and the defendant Lincoln Trust Company,* at whose instance the said Paul took and held the property, *was advised that it was under a legal obligation to protect the property to the extent of the complainant's claim.*"

The deed itself is the best evidence that the agreement was made. Instead of the presumption being that Mr. Goldenhorn inserted the assumption clause as the Vice Chancellor would hold, *the presumption and admission are that it was the agreement of the parties.*

The conveyance to Paul is admitted by respondents and appellants and held by the Vice Chan-

cellor to be a mortgage, although in the form of a deed.

Counsel for the Lincoln Trust Company, in his brief before the Vice Chancellor, states:

> "The conceded relation of Mrs. Partridge to the Lincoln Trust Company was that of mortgagor to mortgagee. That between them the land was subject to a lien for the payment of what, under their agreement, was due to the Lincoln Trust Company, and after the discharge of that obligation the property should revert to Mrs. Partridge."

The Vice Chancellor in his opinion (p. 399), holds:

> "In brief, the evidence in this case in my judgment presents the common instance of a deed absolute in form given, however, as a mortgage to secure the payment of a sum of money with the verbal understanding that upon the payment of the money the land is to be reconveyed."

Thus, we have a clause in a second mortgage assuming the payment of a prior mortgage, and this Court, for the first time, is called upon to construe and determine the legal effect of a clause in a second mortgage assuming the payment of a prior mortgage. As far as we are able to ascertain, this question has only been passed upon by the Court of Appeals of New York in five different decisions and by the Supreme Court of Connecticut. These Courts have construed such a clause in a second mortgage assuming a prior mortgage to be in legal effect an agreement to advance the money on the security of the property and pay off the prior mortgage, for which money when advanced the second mortgagee would have a lien on the property under his second mortgage.

In 2 *Jones on Mortgages,* 7th Ed. Sec. 756, in discussing the effect of a clause in a mortgage assuming a prior mortgage, it is said:

> "But in the case of a party having the land merely as a security, such an undertaking is simply a promise to advance money to pay the debt of his grantor or mortgagor, which money when advanced the junior mortgagee can collect under his mortgage."

In *Garnsey v. Rogers,* 47 N. Y., 233, the Court had under consideration the legal effect of a clause in a second mortgage assuming a first mortgage, and said:

> "But in the case of a party having the land merely as security, such an undertaking is simply a promise to advance money to pay the debt of his grantor or mortgagor, which money when advanced the junior mortgagee can collect under his mortgage (*Western Ins. Co. v. Village of Buffalo,* 1 Paige, 284). If Rogers had paid the liens in question, and on a foreclosure of his own mortgage the premises had not brought enough to satisfy it, together with the sums paid by him to discharge the prior liens, Hermance would have been liable to him for the deficiency.
>
> "Where a party, taking from his debtor a lien on property subject to prior liens, assumes and pays them off, he is certainly entitled to add the amounts so paid to his original debt; the payments, though made in pursuance of his agreement, are made for the benefit of the debtor, and upon his debts and to protect him and his property. It is obvious that an agreement of this character is a mere agreement to advance, and not a security in the hands of the grantor as surety, available to the parties in whose

favor the prior liens exist, on the ground of equitable subrogation. * * *

"But in the present case the agreement was not to apply money which the promisee delivered for the purpose, or which was due him from the promisor, to the use of a third party, but the promisor engaged to advance his own money for the purpose of protecting the property of the promisee, which advance when made would become a lien on the property of the promisee. Regarding the conveyance as a mortgage, the stipulation was in effect to advance to the promisee on the security of the property, to discharge prior liens, and was made for the benefit of the promisee only. * * *

"It must further be considered, that, where such an assumption is made on an absolute conveyance of land, it is unconditional and irrevocable. The grantor cannot retract his conveyance, or the grantee his promise or undertaking; but, when contained in a mortgage, the conveyance is defeasible. The grantor reserves the right to annul it by paying his debt, and, when he does so, he discharges the agreement to pay the prior mortgage. * * *

"It may be that constituting Rogers mortgagee in possession, of real estate exceeding in value the amount of his debt, was a consideration for the undertaking of Rogers to advance the money necessary to pay off the prior liens, and that while the mortgage remained in force, and Rogers continued in possession, Hermance could have compelled the performance of that agreement for the protection of his own estate. It is true that the giving of the security was less, so far as the defendant was concerned, than Hermance was already under a legal obligation to do. It was not so beneficial to the defendant as would have been the payment of his claim. But at the same time it was an act which Hermance

> was not legally bound to perform, and which might be prejudicial to him; and it was not unreasonable that when he parted with the possession of his property, and added to the previous incumbrances thereon, thus disabling himself from protecting it, he should exact of the party to whom he thus gave it as security, that he should protect it; and the latter may have been willing to bind himself to do that which, without any agreement, he might have been obliged to do to protect his own security. A stipulation by a mortgagee in possession to keep down prior mortgages, taxes, etc., might, perhaps, be enforced by the mortgagor."

In *Pardee v. Treat,* 82 N. Y., 385, the Court again had under consideration the effect of a clause in a second mortgage assuming a prior mortgage and said (pp. 388 and 392):

> "*Garnsey v. Rogers* established another exception. In that case the covenant was contained in a deed from Hermance to the defendant, Rogers, absolute in form, but which was in equity a mortgage, the deed having been given to secure a debt owing by the grantor to Rogers, upon a parol defeasance, that upon payment of the debt Rogers should reconvey the premises. The plaintiff was the owner of mortgages which were liens on the premises when the conveyance to Rogers was made. The question decided in *King v. Whiteley* did not arise. The grantor of Rogers was himself liable to pay the mortgage, and if Rogers had stood in the position of an absolute purchaser of the land his liability to the plaintiff of the plaintiff, although he might be could not, upon the authorities, have been questioned. But the Court held that the deed being in equity, a mortgage, the covenant by Rogers to pay the incumbrances

was, in legal effect, a covenant to make advances for the benefit of his grantor upon the security of the land. The promise was not, therefore, a promise made for the benefit of the plaintiff, although he might be benefited by its performance. It was not a case for equitable subrogation, because the mortgage debts remained the debts of the grantor who continued, in equity at least, the owner of the land. The refusal to enforce the covenant, did not proceed upon the ground of want of consideration. *There can be little doubt that the conveyance was a good consideration for the undertaking of Rogers to pay the mortgages.* But the Court, looking at the real purpose, pronounced the transaction a mortgage, and construed the covenant as one for advances merely for the benefit of the mortgagor, * * *.

"The obligation to pay the liens entered into by the defendants was, in substance, an agreement to make advances for the benefit of Gaylord, on the security of the land. If the defendants had made the advances they would have been entitled to be subrogated to the position of the lien creditors and to enforce the debts against Gaylord."

In *Root vs. Wright,* 84 N. Y., 72, the Court again had under consideration the effect of a clause in a deed absolute which was, in fact, a second mortgage assuming a prior mortgage, and said (p. 74):

"If it was intended as a security merely, the covenant therein to assume and pay the plaintiff's mortgage was in effect an agreement between Forster and the defendant that the latter should advance the amount of the prior lien upon the security of the land."

In *Cole vs. Cole,* 110 N. Y., 630, the Court again had under consideration the effect of a clause in a second mortgage assuming a prior mortgage, and said:

> "But the grant was not absolute. The deed was simply a mortgage and the covenant of assumption an agreement to make further advances upon the security of the land for the payment of the mortgagor's debt (*Garnsey v. Rogers,* 47 N. Y., 233; *Pardee v. Treat,* 82 N. Y., 385). If the defendants made the advances the debt of the land and of the mortgagor would remain, the creditor only having been changed, and if he did not make them, *his liabiliay would be to the mortgagor only and entirely personal in its character.*"

In *Newton vs. Evers,* 215 N. Y., 198, the Court again had under consideration the effect of a clause in a second mortgage assuming a prior mortgage, and said:

> "Regarding the conveyance of the mortgage, the stipulation was, in effect, to advance money to the promisee on the security of the mortgage, to discharge prior liens, and was made for the benefit of the promisee only. The covenant of assumption contained in a mortgage is an agreement to make further advances upon the security of the lien for the payment of the mortgagor's debt. If the defendant makes the advances the debt of the land and of the mortgagor would remain, the creditor only having been changed, and if he did not make them, his liability would be to the mortgagor only and entirely personal in its character."

In *Bassett vs. Bradley,* 48 Conn., 224, the Court enforced a clause in a mortgage assuming a prior mortgage.

Had respondents performed their contract, advanced the money and paid off complainant's mortgage and prevented the foreclosure thereof, the Lincoln Trust Company would have had for the money so advanced a lien upon the property under its second mortgage. *Garnsey v. Rogers, supra.*

The picture persists of a woman and her husband in financial distress turning over her home to one of her creditors as security for debts, thereby rendering herself helpless so long as this creditor held the property as such security, and it was very proper for the creditor the Lincoln Trust Company to agree and it did agree by the assumption clause to advance money and take up complainant's mortgage and prevent a foreclosure thereof in case the emergency arose while Mrs. Partridge was so rendered helpless to protect her property.

POINT II

The clause in the deed to Paul assuming payment of complainant's mortgage was not an agreement to indemnify Mrs. Partridge against a deficiency judgment on complainant's mortgage.

Counsel for appellants energetically urged before the Vice Chancellor (contrary to his statement) that Mrs. Partridge had not assumed and was not personally liable for the amount of complainant's mortgage.

Instead of the assumption clause being an agreement by the Lincoln Trust Company to indemnify Mrs. Partridge for a deficiency judgment on complainant's mortgage, Mrs. Partridge would have been personally liable to reimburse the Lincoln Trust Company if it had advanced the money.

In *Garnsey v. Rogers*, *supra*, the Court said:

> "If Rogers had paid the loans in question and on a foreclosure of his own mortgage the premises had not brought enough to satisfy it, together with the sums paid by him, to discharge the prior liens, Hermance would have been liable to him for the deficiency."

Furthermore, Mrs. Partridge was never personally liable to pay complainant's mortgage and there was no possible liability for the Lincoln Trust Company to indemnify her against. Complainant's mortgage was on the property at the time Mrs. Partridge bought it. Mrs. Partridge did not assume the payment of this mortgage when she bought the property and there was on

her part no liability for the mortgage to be indemnified against. The deed to her (Exhibit A of February 1920, page 378) conclusively shows that Mrs. Partridge did not in fact or by inference of law assume the payment of complainant's mortgage. The deed shows that Mrs. Partridge paid $20,000 in cash for the property and took it subject to complainant's mortgage. The deed reads:

> "Witness that the said party of the first part for and in consideration of the sum of Twenty thousand dollars ($20,000), lawful money of the United States of America, to her in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold * * * unto the said party of the second part, subject to a mortgage of $11,000."

Respondents attempt to prove that Mrs. Partridge assumed the payment of complainant's mortgage by the confused and uncertain testimony of Mr. Goodell, to which testimony appellants objected (page 377, l. 40), and which objection they now urge. This testimony is highly objectionable. The record from which he attempts to testify is not wholly in his handwriting. It does not appear on what kind of paper or book or just how such alleged record was kept. It does not appear who made the entries which are not in Mr. Goodell's handwriting. He does not know what the terms of Mrs. Partridge's agreement to purchase were. He does not attempt to say whether or not the facts found in the alleged record are true. He merely says:

> "I find a record was made in this case, and that I have no recollection about the contract."

His testimony is flatly contradicted by the deed which admits over the signature of the vendor that Mrs. Partridge paid and that the vendor received from her $20,000 in cash for the property and that Mrs. Partridge took the property subject to complainant's mortgage.

POINT III

The Lincoln Trust Company by the assumption clause having agreed to advance the money and pay complainant's mortgage, did not, by refusing to pay this mortgage and by permitting or causing its foreclosure, get a title by the sheriff's deed at such foreclosure sale free of its agreement to reconvey, and upon the sheriff's conveying the property to it, the Lincoln Trust Company again held the property under its original agreement to reconvey to Corneila M. Partridge.

Respondents held the legal title not as owners but as second mortgagees under an agreement to reconvey to Cornelia M. Partridge either upon the Banks signing the agreement Exhibit D-12, as appellants claim, or upon the Lincoln Trust Company being paid the notes of Cornelia M. Partridge aggregating $18,600, as respondent's claim. Under either theory it was Mrs. Partridge's property and respondents held the legal title in trust for her and had, by the assumption clause, agreed to advance the money on the security of the property and pay complainant's

mortgage. Respondents could not fail in their duty, permit or cause complainant's mortgage to be foreclosed and buy the property at the foreclosure sale, directly or indirectly, by arrangement with the complainant, as they admit they did, and get a deed from the sheriff at such foreclosure sale, free of their agreement to reconvey.

It is a well known principle of law that one whose duty it is to pay a debt which is a lien on property cannot fail to pay this debt and keep it alive, and permit or cause it to be foreclosed and buy in the property at the sale under such "wash foreclosure" and get a better title than he had before.

In *Foley v. Kirk*, 33 N. J. E., 170, the Court said:

> "Even if Stanton had intended to preserve the tax titles and that his payment to Thomas should have effect as a purchase and not as a payment in extinguishment of the taxes, the law would not permit him to accomplish his purpose, for the principle is universal that a purchase by one whose duty it was to pay the taxes should operate only as an extinguishment. One man can acquire no right against another by neglect of a duty which he owes to the other."

27 *Cyc.*, 1152:

> 'One whose duty it is to pay the taxes on land, subject to a mortgage, cannot, as against the mortgagee, acquire title thereto by purchase at tax sale or from the holder of a tax deed. And the rule is the same as to buying in an outstanding title to a judgment senior to the mortgage which the purchaser was bound to pay."

In *Birke vs. Abbott*, 103 Ind., 1, Kelley conveyed land to Witt. The deed contained a clause

whereby Witt assumed the payment of two outstanding judgments, liens on the property. There was an outstanding mortgage on the property to Abbott subject to the liens, of which Witt did not know when he bought it. Witt, instead of paying the judgments, as he had agreed to do, and in order to get a title free of Abbott's mortgage, permitted the property to be sold under the judgments and bought it in at the sale. The Court held that Witt being liable to pay the judgments, could not let the property be sold under them and buy in free of Abbott's mortgage, saying: "Having assumed the payment of these incumbrances, he had no equity to have them kept on foot (1 Jones on Mortgages §743)."

The Lincoln Trust Company could not refuse to take up and pay the mortgage and keep it on foot and alive for the purpose of its being foreclosed and by arrangement with complainant, have complainant bid it in and assign its bid to the Lincoln Trust Company in payment of the judgment instead of paying the mortgage and preventing the foreclosure, and thus get a title free of the agreement to reconvey.

Cooley on Taxaction, 3d Ed. pages 963-4:

> "A purchase made by one person whose duty it was to pay the taxes shall operate as a payment only; he shall acquire no rights as against the third party by neglect of his duty which he owed to the party. This principle is universal and is so entirely reasonable and just as scarcely to need the support of authority. Show the existence of a duty, and a disqualification is made out in every instance."

In *vs. Day*, 76 Maine, 83, the defendant having purchased land on which was a mortgage, attempted to defeat the foreclosure of

the mortgage by setting up a tax title, and the Court held that it was his duty to pay the taxes and that he could not defeat the purchase by such a title, saying, "The law will not allow him to derive an advantage from the non-performance of his duty."

Brown vs. Avery, 119 Mich., 384.
MacEwen vs. Beard, 58 Maine, 176.
Edgerton vs. Schneider, 26 Wis., 385.
Dana vs. Duluth Trust Co., 98 Wis., 663-670.
Leppo vs. Gilbert, 26 Kans., 138.
Fallass vs. Pierce, 30 Wis., 443.

From the foregoing authorities it is clear that the Lincoln Trust Company did not get a title by the Sheriff's deed, free of its agreement to reconvey; that it did indirectly, after foreclosure, only what it was under a contract duty to do in advance of foreclosure, and that the Lincoln Trust Company, upon the Sheriff conveying the property to it, took and held it as before, subject to its agreement to reconvey to Mrs. Partridge.

POINT IV

Appellants' Version of the Agreement to Reconvey.

Respondents agreed to reconvey the property to Cornelia M. Partridge as soon as the Banks signed the agreement Exhibit D-12.

Farrier repeatedly admitted that they agreed to reconvey the property (see his testimony set forth above).

In July, 1912, Charles R. Partridge Lumber Company was in bankruptcy, and Charles R. Partridge and his wife, Cornelia M. Partridge, were accommodation endorsers or makers of notes of that Company to a very large amount. In order to save his wife's home from the wreck, Partridge, about the end of July, 1912, went to Edward I. Edwards, a member of the Committee representing all the Banks, creditors of this Company, with his troubles. Partridge offered to convey the property in suit to Edwards in trust and Edwards assured him that the property would be reconveyed to Mrs. Partridge as soon as the Banks signed a "certain contract, negotiations for which were then pending," whereby they were to accept the notes of the South Georgia Lumber Company endorsed by Cheney. Partridge did not know anything about the agreement or what agreement it was, except what Edwards told him, and he says that whatever Edwards told him he believed (pp. 110, 111, 112, 125).

Edwards said his Bank had no notes of Cornelia M. Partridge, and instead of taking the property in his name Edwards brings in Farrier, who comes at once to Edwards' office in the First

National Bank and the matter was transacted in Edwards' presence (p. 210). Partridge states positively that the agreement as made with Edwards was not changed by him and Farrier (p. 113). Neither Edwards nor Farrier wanted to hold the deed, and "they appointed" (p. 112) George E. Paul to hold the title, and the deed conveying the property to Paul was executed and delivered to Farrier on July 31, 1912.

The agreement referred to by Edwards in his talk with Partridge was undoubtedly Exhibit D-12, which was signed by the Banks after August 19, 1912, because it refers to a transaction that took place on that date and before the Interstate Lumber Company issued its notes to the Banks, because this agreement D-12 modified the agreement of June, 1912. The Committee had no authority to purchase the assets at the price fixed by the Trustee in Bankruptcy until this agreement D-12 was signed by the Banks. The testimony of Partridge stands uncontradicted by anybody.

Edwards, if anything, corroborates Partridge's testimony. Edwards swears that he brought Farrier into the matter and that Farrier immediately came to his office in the First National Bank and that the matter was transacted in his presence (p. 210), and thereby proves false Farrier's statement that his talk with Partridge was in Goldenhorn's office (p. 217).

The agreement D-10, as modified by D-12, provides for the new corporation (Interstate Lumber Company) to assume and pay the notes held by the Banks by issuing therefor its notes endorsed by the South Georgia Lumber Company and Cheney. It might be contended that the Interstate Lumber Company notes under these

agreements constituted actual payment of the Lincoln Trust Company's and the other Banks' claims as a matter of law. Undoubtedly, Mr. Edwards thought the contemplated transaction, if carried out, would constitute payment of the Banks' claims, and that this would discharge Mr. and Mrs. Partridge as accommodation endorsers or makers of the notes. Farrier even testified (p. 240):

> "Q. The Interstate Lumber Company gave its notes to pay the amount of the indebtedness of the Partridge Lumber Company to your institution?
> "A. Yes, sir.
> "Q. Can you give that amount?
> "A. Approximately $22,000."

It is obvious, therefore, that Mr. Edwards told Partridge just what Partridge says.

This agreement D-12, modifying agreement D-10, having been signed long before the foreclosure action was begun, the Lincoln Trust Company, Farrier and Paul, were legally bound to reconvey the property to Mrs. Partridge or her nominees. This, they refused to do.

POINT V

Respondents' version of the agreement to reconvey. Assuming that the property was given to secure the payment of the notes of Cornelia M. Partridge aggregating $18,600, as respondents' counsel claimed at the trial, these notes were paid by the Interstate Lumber Company before this action was begun and appellants were entitled to a reconveyance of the property.

At the trial, respondents and their counsel deserted their pleadings, admitted that the deed to Paul was not a sale of the property to them, and took the position that the deed to Paul was a second mortgage given to secure $18,600 of Cornelia M. Partridge's notes and that Farrier agreed with Mrs. Partridge that the property was to be reconveyed to her upon the Interstate Lumber Company paying said $18,600 of her notes by paying its notes issued in lieu thereof.

Counsel for respondents stated (p. 284):

> "Mr. Carrick: * * * As I remember, he (Mr. Farrier) testified that he was to hold this property primarily for the Lincoln Trust Company for his $18,600 upon which Mrs. Partridge was liable upon the paper to them, but that, in any event, in case the Lincoln Trust Company was paid, was not to surrender the property until the other banks were paid. That, I understand it, is his testimony, and I do not wish to make any admission contrary to that."

The Vice Chancellor holds (p. 419):

> "As the evidence stands, my conclusion remains that the bargain amounted to this: Mrs. Partridge, through her husband and agent and by her deed gave the Lincoln Trust Company her equity in the Montclair property as security for the discharge of debts due to the Company, for which she (Mrs. Partridge) was liable."

Farrier, after having testified that the property was conveyed to Paul to secure $8,000 (p. 228), to secure the notes of Mrs. Partridge aggregating $18,600 (p. 233), to secure $21,040 (p. 234), and again having testified that it was not to secure the $2,440 of contingent commercial paper on which Mrs. Partridge was not liable (p. 235), and that the property was to be reconveyed to Mrs. Partridge (p. 234) when $21,040 had been paid to the Lincoln Trust Company, further testified (p. 234):

> "Q. Who did you anticipate was to pay the indebtedness of $21,040?
> "A. We expected to realize it out of the Interstate Lumber Company."

Counsel for respondents admits that the payment of the Interstate Lumber Company's notes constitutes payment of the notes of Mrs. Partridge. Thus, on page 278:

> "The Vice Chancellor. I understand it is conceded by both parties * * * any money that were paid on Interstate notes were to be credited on the Partridge notes. * * * If 50 per cent of the Interstate notes was paid in cash to the various holders *pro rata*, that would leave the Partridge notes standing as one-half paid, would it not?
> "Mr. Carrick: Yes, sir.
> "The Vice Chancellor: If the Interstate

received notes corresponding to the $8,000 and subsequently got a payment on account of the Interstate notes which represent the $8,000, is not that a matter to be proven here?

"Mr. Carrick: If it was payment, I concede that is so. Of course, if the debt is discharged, or partially discharged, that is a proper subject of inquiry."

Mr. Farrier testified that the other banks had no interest in this property, as follows (p. 306):

"Q. Do I understand then that whatever you might recover from the Monclair property goes for the benefit of all the other creditors?

"A. No; that would have gone to my own particular benefit, because the other banks were not concerned in the transfer of the property, although this agreement with Mrs. Partridge was that when the Banks were paid in full this property was to be returned to her."

The Interstate Lumber Company issued its note to the Lincoln Trust Company for $18,600 in lieu of the notes of Cornelia M. Partridge aggregating $18,600, and another note for $2,440 representing contingent liabilities of the Partridge Lumber Company commercial paper, endorsed by it (p. 289). A 23 per cent dividend was received from the Trustee in Bankruptcy of the Partridge Lumber Company and credited on the $18,600 note of the Interstate Lumber Company. The Interstate Lumber Company paid from time to time money on these notes and issued new notes for the balance, so that on January 2, 1915 the amount of the Interstate Lumber Company note given to and held by the Lincoln Trust Company for the $18,600 direct liability (Mrs. Partridge's notes) remaining unpaid, was

$14,514, and the amount of the Interstate Lumber Company's note given to and held by the Lincoln Trust Company for the $2,440 contingent liability (the commercial paper) remaining unpaid, was $712.43, and interest on both items was $365.08, which brought the Interstate Lumber Company's total indebtedness on direct and contingent claims to the Lincoln Trust Company down to $15,591.51. From this time on the notes representing direct and contingent liabilities were not kept separate and were treated as one item. On January 2, 1915, the agreement of December 12, 1914, Exhibit D-1, was carried out and $14,024.48 of the $15,591.51 was paid by giving the Interstate Lumber Company credit for this amount, this being the Lincoln Trust Company's portion of the $120,000 of Interstate Lumber Company notes to be delivered by the banks and cancelled (p. 293).

Counsel for respondents admits (p. 276):

> "Mr. Carirck: * * * This agreement which was made by the Interstate Lumber Company and the Committee of Banks in December, 1914, provided that the Interstate Lumber Company was to deliver to these creditors—that Committee representing, among others, the Lincoln Trust Company—$120,000 of notes, for which the Interstate Lumber Company was to receive credit *as so much cash.* That was an agreement between the Interstate Company and this Committee representing the Bank, and, of course, as between them it was absolutely binding."

A further payment of $586.20 was made by the trustee's dividends which brought the Interstate Lumber Company's debt to the Lincoln Trust Company on both the direct and contingent notes down to $980.83 on January 2, 1915 (p. 371).

The Lincoln Trust Company by its treasurer George H. Gould, Jr., filed proof of claim in the matter of Interstate Lumber Company, bankrupt, in which he swore (p. 366) that the Interstate Lumber Company was indebted to the Lincoln Trust Company on this note to the amount of $980.83 *and that the Lincoln Trust Company did not have any security for this debt.* Attached to this proof of claim (p. 365) is the Interstate Lumber Company's note on which is endorsed "amount due on this note is $980.83 with interest from October 1, 1914, balance having been adjusted as of that date. E. M. F." The letters "E. M. F." are undoubtedly the initials of Edwin M. Farrier, president of the Lincoln Trust Company and a member of the Committee.

Seth B. Robinson referred to by the Vice Chancellor as an unimpeached witness testified that the amount due the Lincoln Trust Company from Interstate Lumber Company on direct and contingent notes combined was $980.83 on January 2, 1915 (pp. 295 296, Exhibit D-23). The ledger of the Interstate Lumber Company (p. 371) which was under the absolute control of the Committee shows a balance of $980.83 due the Lincoln Trust Company on January 2, 1915.

Farrier, after having testified differently trying to lead the Vice Chancellor to believe that a large amount, in fact almost all of these notes, had never been paid, finally admitted that the amount due the Lincoln Trust Company on direct and contingent notes combined was approximately $1,000.

The Committee being in absolute control of the Interstate Lumber Company by the agreement of December 12, 1914, took every vestige of the property of the Interstate Lumber Company

except the contingent claims purchased from the bankrupt. The assets of Interstate Lumber Company were $536,600 on February 4, 1913, or at least this is what the Committee were willing to represent them to commercial agencies. Just what the assets were on January 2, 1915, is not known. Farrier admitted that the Committee still had $43,360.16 of assets in January 1917 (p. 73-225). This $43,360.16 was more than sufficient to pay all the banks every dollar of indebtedness of the Interstate Lumber Company on direct, contingent and new money notes combined on January 2, 1915. Seth B. Robinson testified (p. 295) that the total indebtedness of Interstate Lumber Company to all the banks on direct and contingent notes was on January 2, 1915, $8,385.-53 and on the new money notes $31,978.26, or a total indebtedness of $40,363.79. Farrier admits that it is his purpose to apply these assets to the payment of the new money notes, the obvious purpose being to avoid the payment of the direct and contingent notes and thus leave unpaid the $980.83 balance due the Lincoln Trust Company on January 2, 1915.

While this agreement of December 12, 1914, is valid between the Interstate Lumber Company and the Banks, and neither of them can complain of their own conduct, certainly, the agreement between Farrier and Mrs. Partridge did not contemplate nor permit the Committee on behalf of the Banks to thus take all the property away from the Interstate Lumber Company and render it helpless to pay the balance of the $980.83 due the Lincoln Trust Company.

Farrier and his Bank, acting through the Committee, having thus wrongfully, so far as Mrs. Partridge is concerned, taken enough assets from

the Interstate Lumber Company to pay every dollar it owed all the Banks on its notes, should have applied such assets, as far as Mrs. Partridge was concerned, in payment of the Interstate Company's debts, which would have paid not only the $980.83 due the Lincoln Trust Company but all the Banks in full. Equity will not permit Farrier and the Lincoln Trust Company to take advantage of their own wrongful taking of the property, and will regard that as done which should have been done.

If this Court should hold that the $980.83 was not paid by the wrongful taking of the Interstate Lumber Company's property, then the $980.83 should be deducted from the amount due for use and occupation of the premises which is discussed in the following pages.

POINT VI

Lincoln Trust Company sold on December 12, 1914, all the notes for which it claims to hold the property as security, to the Interstate Lumber Company and thereupon the Lincoln Trust Company, if not before, was bound to reconvey the property to Cornelia M. Partridge or her nominees. The purchase of these notes by the Interstate Lumber Company, the very party respondents claim was to pay them, constitutes payment of these notes.

It is impossible from the evidence to determine whether the Lincoln Trust Company claims that it held the property as security for only $8,000 of Mrs. Partridge's notes or whether it claims that it held the property as security for all $18,600 of her notes.

It is true, however, at one stage of the trial counsel for respondents claimed "As I remember, he (Mr. Farrier) testified that he was to hold this property primarily for the Lincoln Trust Company for this $18,600, upon which Mrs. Partridge was liable, on the paper, to them" (p. 284).

Assuming that the property was given to secure the $8,000 of Mrs. Partridge's notes or the entire $18,600 of her notes, the Committee on behalf of the Banks by the agreement of December 12, 1914 (Exhibit D-1) sold not only these notes of Cornelia M. Partridge aggregating $18,600 but also the commercial paper, the contingent claims for $2,240, for which she was in no way liable, to the Interstate Lumber Company. Farrier, the President of the Lincoln Trust Company, was a member of the Committee which made the sale and was also Secretrry, Treasurer and a Director of the Interstate Lumber Company, the purchaser. This agreement provides (p. 334):

> "The Committee will also deliver to the Interstate the notes on which the Charles R. Partridge Lumber Company appeared as maker or endorser and for which the Intertate notes for 'direct' and 'contingent' liabilities were given and any collections received thereon after the date of this agreement shall be credited as received on the said $80,000."

The notes to be "delivered" or sold included the notes of Cornelia M. Partridge aggregating $18,-600 because the Interstate Lumber Company gave its notes therefor as one of the so-called "direct" liabilities. The notes to be "delivered" or sold also included the commercial paper, the contingent claim for $2,240 because the Interstate Lumber Company gave its note therefor as one of the so-called "contingent" liabilities.

By this contract all right, title and interest in these notes passed to the Interstate Lumber Company.

In *Shelton v. French,* 33 Conn., 489, the Court holds:

> "An agreement 'to deliver' imports a delivery which is to pass the title unless there is something in the character of the article or the attending circumstances to qualify the language."

To the same effect at the following cases:

Bowers v. Whitney, 88 Minn., 160;
Pierce v. Edwards, 150 Cal., 650.

See other cases cited in 18 *Corpus Juris* at page 476 as to the meaning of the word "deliver."

An attempt was made at the trial to make a point out of the fact that $8,000 of the $18,600 of Mrs. Partridge's notes were in the hands of Mr. Dawson and were not actually delivered by Farrier and the Lincoln Trust Company to the Interstate Lumber Company. The Interstate Lumber Company had bought and paid in full for the entire $18,600 of Mrs. Partridge's notes and it is wholly immaterial whether Farrier, as President of the Lincoln Trust Company, failed to actually deliver these $8,000 of Mrs. Partridge's notes to the Interstate Lumber Company of which he was Secretary, Treasurer and a Director.

By this sale of these notes to the Interstate Lumber Company the second mortgage held by the Lincoln Trust Company either *did or did not* pass to the Interstate Lumber Company.

27 *Cyc.,* 1303:

> "When a mortgage is given to secure the payment of several different notes or demands, it is an incumbrance upon the land for the security of all and each of the notes

> in whosesoever hands they may legally be, until all are paid. When a part of the notes so secured are assigned, it is a question whether the whole mortgage or a proportionate part of it or any interest therein is assigned, depending upon the intention and agreement of the parties."
>
> Maglaughlin v. Clark, 35 Ill. Appeal, 251;
> Anglo-American Land etc. Co. v. Bush, 84 Ia., 272;
> Bryant v. Damon, 6 Gray (Mass.), 564;
> Foley v. Rose, 123 Mass., 557;
> Langdon v. Keith, 9 Vt., 299.

If this second mortgage did not pass as security for the notes to the Interstate Lumber Company, then it was the imperative duty of the Lincoln Trust Company to immediately reconvey the property to Mrs. Partridge or her nominees, which it refused to do, but took steps to secure possession and title to the property, as Mr. Farrier states, which steps consisted of having complainant's mortgage foreclosed and buying in the property at the sale pursuant to previous arrangement, as Farrier and the Lincoln Trust Company admit (p. 60). Farrier even wrote Mr. Harmon on May 26, 1915, just before the foreclosure was begun, denying that Mrs. Partridge had any interest whatever in the property (Exhibit D-9 p. 342).

If this second mortgage did pass to the Interstate Lumber Company as security for these notes, then Mrs. Partridge must pay the Interstate Lumber Company the $18,600 of her notes instead of the Interstate Lumber Company paying her $18,600 of notes, by paying its notes issued in lieu thereof. The very purpose, as expressed

in the agreement Exhibit D-1 of the sale of these notes to the Interstate Lumber Company, was for it to enforce them to secure money to pay its notes held by the Banks. *But the whole contention of respondents in this case has been that Mrs. Partridge was to have her property reconveyed when the Interstate Lumber Company paid her notes by paying its notes issued in lieu of her notes (see Point V hereof).*

Thus, the Lincoln Trust Company finds itself in the absurd and impossible position of claiming that Mrs. Partridge was to have her property reconveyed when the Interstate Lumber Company paid her notes and of having sold these same notes to the Interstate Lumber Company to be enforced by it against her.

POINT VII

Lincoln Trust Company must account for the use and occupation of the property from January 22, 1916.

The Lincoln Trust Company has had the possession and use of the property since January 22, 1916, the day on which the Sheriff conveyed the property to it. The value of the use and occupation is $1,500 per year (p. 287).

Under appellants' version of the agreement to reconvey, respondents held the property as mortgagee for security only until agreement D-12 was signed, and the Lincoln Trust Company must account for the use and occupation since January 22, 1916.

Under respondents' version of the agreement to reconvey, respondents held the property as mortgagee for security only, and the Lincoln

Trust Company must account for the use and occupation of the property since January 22, 1916, the day the Sheriff conveyed the property to it.

In *Pugh vs. Davis,* 96 U. S., 332, Pugh conveyed property to defendant by a deed absolute, but in reality to secure money loaned. Davis took possession of part of the property some time after the deed was executed. The Court held the deed to be a mortgage and required Davis to account for the use and occupation of the property of which he had possession. The Court said:

> "We are of the opinion that the complainant never conveyed his interest in the property in controversy except as security for the loan, and that the deed is a subsisting security * * *. The defendant should be charged with a reasonable sum for the use and occupation of the premises from the time he took possession in 1865."

The amount now due appellants for use and occupation is over $7,000.

POINT VIII

Respondents brought about this foreclosure action for the purpose of taking the property away from Corneila M. Partridge or her nominees.

Respondents concealed the truth from appellants. Farrier did not disclose to them that he claimed that he held the property as security. He did not disclose that all the notes for which he now claims he held the property as security had been paid by the Interstate Lumber Company excepting $980.83, and this is assuming that Mrs. Partridge secured the $2,440 of commercial paper. He did not disclose that he and his Committee had

more property of the Interstate Lumber Company in their hands to pay not only the $980.83 but all the Banks in full. He did not disclose that on the 12th day of December, 1914, the Lincoln Trust Company, acting through him and its Committee, had sold the $18,600 of Mrs. Partridge's notes and the $2,240 of commercial paper to the Interstate Lumber Company, and that his Bank, the Lincoln Trust Company, no longer had any interest of any kind in the property. Farrier preferred to write Mr. Harmon on May 26, 1915 (p. 242) as follows:

> "This house, together with the land and appurtenances, was purchased by the writer some years ago and title is still vested in me. While Mr. Partridge is now living in the house, steps have been taken by me to get physical possession of the property, and after consultation with my lawyer I do not see that any of the Partridge family have any interest whatever in the premises."

Paul, as agent of the Lincoln Trust Company, had been paying, as he had contracted to do by the assumption clause, the interest on complainant's mortgage up to June 1, 1915 (p. 99), but about June 1, 1915, Farrier goes to see Mr. Goodell, president of complainant and notifies him that they, meaning Paul himself and the Lincoln Trust Company "did not propose to pay any more interest on this mortgage" and Mr. Goodell told him if no more interest was paid they would foreclose. Farrier arranged at this interview, the only interview he had with Mr. Goodell (p. 100) for the complainant to buy in the property at the foreclosure sale and assign its bid to the Lincoln Trust Company (p. 60). This interview by Farrier with Mr. Goodell undoubtedly took place before Farrier wrote Mr. Harmon on May 26, 1915 (Exhibit D-9) because Farrier in this letter states "steps have been taken by me to get physical possession

of the property'' undoubtedly referring to his conference with Goodell (p. 100). Goodell admits (p. 101) that they told Farrier that anyone who brought them the money could get the title.

Farrier, on June 17, 1912, wrote complainant (p. 340) and enclosed check for the insurance but did not enclose a check for the interest on complainant's mortgage. In this letter Farrier, in effect, complains because the mortgage foreclosure action had not been begun and offered assistance to hasten the action, saying, ''We cannot put him out until we get title.'' How was Farrier going to get possession and title? The only possible answer is that he was then bringing about the foreclosure ''to get physical possession of the property'' and ''to get title.'' This letter reads:

> ''I assume that you have turned the papers over to your counsel for the foreclosure of the mortgage on the same property. I have not yet been served with any papers and do not know whether any bill has been filed, but I will accept service by mail and do any thing else to hasten the matter along, as the longer the matter is delayed the longer Partridge will have rent free and we cannot put him out until we get title.''

Farrier, on September 3, 1915, wrote Goodell for advice about the property (p. 341). The letter reads:

> ''It has just come to my attention that Charles R. Partridge has just vacated the house No. 78 Clinton Avenue, Montclair. Will you please advise me whether he vacated the premises because of any action taken by you or did he leave voluntarily. I have received a letter from Mr. Robert Henning, a real estate agent of 314 Bloomfield Avenue, asking if the property is in the market, either for sale or rental; if so,

what the selling price is and what the renting price would be. I think it a very good thing that Partridge has moved, as it will do away with ejecting proceedings.

"I will appreciate it if you will give me your idea of the market value of the property, also your idea as to what rental should be asked. An early reply to the above will be greatly appreciated."

On January 11, 1916, the property was sold at foreclosure sale to complainant for $7,500. On January 13, 1916, complainant assigned its bid to the Lincoln Trust Company for $10,873.49, the amount of its judgment. On January 22, 1916, the Sheriff conveyed the property to the Lincoln Trust Company. On January 24th, the Lincoln Trust Company signed a contract (p. 328) to sell the property for $16,000, which was afterwards carried out, and the Lincoln Trust Company received $16,000 therefor, at a profit of $5,126.51.

Why was Goodell willing to sell the property for $10,873.49 which was immediately sold for $16,000? The only possible answer is that he had entered into arrangement with Farrier and was merely carrying out the prearranged plans.

Respondent's intentions to bring about this foreclosure for the purpose of taking this property from Mrs. Partridge and her nominees are clearly revealed by the fact that the moment the property was sold by the Sheriff at the foreclosure sale they set up the foreclosure judgment for $10,458.70 and $239.50 costs and the Sheriff's sale of the property for $7,500 to complainant as an affirmative defence to the counterclaim (pp. 54, 55). It is perfectly apparent that respondents have used this Court to get a foreclosure decree which they thought would be a defence and which they have actually set up as a defence to appellant's counterclaim.

POINT IX

The respondents, by setting up the foreclosure judgment and sale thereunder as a defense to appellant's counterclaim, have themselves submitted the effect of this sale for determination by the Court in this action. Appellants are not foreclosed as against respondents by the sale under the foreclosure judgment to complainant and by its assignment to the Lincoln Trust Company of its bid pursuant to a previous agreement and by the sheriff's conveying the property to the Lincoln Trust Company.

Before the foreclosure decree was entered, all the facts involving the rights of appellants against respondents were set forth in the pleadings. All questions raised by the pleadings between respondents and appellants were reserved in the order of reference of the Master to determine the amount due to complainant on the mortgage, in these words (p. 48):

> "And the question raised by the answers and counterclaims of the answering defendants are also hereby reserved."

An examination of the pleadings will show that the questions thus reserved were

(1) Whether respondents should be compelled to reconvey the property to Mrs. Partridge or her nominees;

(2) Whether respondents should be compelled to advance the money on the security of the property and take up the mortgage and protect the property;

(3) Whether respondents held the legal title to the property in trust;

(4) Whether the Lincoln Trust Company should not be ordered to record a deed to the property and convey it by sufficient deed to Benjamin S. Harmon; and

(5) Such other questions as were equitable, the premises considered.

These question are to be determined as of the date of the order by which they were reserved. It was respondents' risk when they let the foreclosure judgment be entered and the property be sold thereunder. They cannot escape their obligations by saying that the property is now sold and that it is too late for this Court to pass upon the foregoing questions.

Immediately after the foreclosure sale, Farrier and the Lincoln Trust Company filed a supplemental answer and set up the foreclosure sale as an affirmative defense to complainant's counterclaim (pp. 54-56) and they thereby submitted the effect of the sale under the foreclosure judgment for determination by the Court in this action. Thereupon, appellants filed a supplement to the counterclaim, alleging that the property had been bought in by an arrangement between complainant and the Lincoln Trust Company, that the complainant had bid in the property and assigned its bid to the Lincoln Trust Company and that the Sheriff had conveyed the property on January 22, 1916 to the Lincoln Trust Company (p. 58), and Farrier and the Lincoln Trust Company filed their answers thereto (p. 60) admitting the foregoing facts. Thus, Farrier and the Lincoln Trust Company have brought the sale under the foreclosure judgment, in effect, to

the Lincoln Trust Company, into this action for determination. All the facts being before the Court, respondents cannot now complain that this Court has no jurisdiction to finally dispose of all the questions involved.

Thereupon, the Chancellor made the following order (p. 62):

> "ORDERED, that the above-stated cause be and it hereby is referred to Hon. Eugene Stevenson, one of the Vice Chancellors, to hear the same for the Chancellor upon all questions reserved in the order of reference to the Master heretofore made in this cause and all questions raised on the amended pleadings, and to report thereon to him and advise what order or decree should be made therein."

The Vice Chancellor says: "Mr. Paul and his principal, the Lincoln Trust Company, were merely dry trustees, holding title primarily for security of the Lincoln Trust Company" (p. 409), and that Paul was obliged thereby "as an honest man, not to cheat" Mrs. Partridge (p. 398).

It was the imperative duty of respondents to fully and truthfully disclose to Cornelia M. Partridge or her nominees the exact balance, if any, for which they claimed to hold the property as security at the time the foreclosure action was begun. Farrier concealed the facts, wrote Mr. Harmon that he owned the property and denied that Mrs. Partridge had any interest in it (p. 342). Farrier persisted in concealing that the Interstate Lumber Company had paid all of Mrs. Partridge's notes on January 2, 1915 excepting $980.83, and tried to lead the Vice Chancellor to believe that Mrs. Partridge still owed about $15,000 on her notes.

1. Respondents neglected their duty to fully and truthfully disclose to Cornelia M. Partridge or her nominees the exact amount for which they claimed to hold the property as security, and did not disclose that the Committee of the Banks had in its possession more than enough property of the Interstate Lumber Company to pay the balance of the $980.83, and did not give Mrs. Partridge or her nominees an opportunity to protect the property.

2. Respondents refused to perform their duty and reconvey the property to Cornelia M. Partridge or her nominees.

3. Respondents, by falsely claiming to own the property and denying that Mrs. Partridge had any interest in it (pp. 342-44), and thereby forcing a foreclosure and sale for the admitted purpose of getting possession and title (pp. 340-42), did Mrs. Partridge and her nominees a great injustice.

4. The Lincoln Trust Company by selling the $18,600 of notes to the Interstate Lumber Company to be enforced by it against Mrs. Partridge, violated the agreement which they themselves claim was made with her, *i. e.*, that the Interstate Lumber Company was itself to pay Mrs. Partridge's $18,600 of notes.

5. Respondents failed to perform their duty under the assumption clause in the deed to Paul, to advance the money on the security of the property and pay and take up complainant's mortgage and protect the property.

Respondents, by refusing to perform the foregoing duties and by their wrongful acts, did not get any new rights as against Mrs. Partridge or her nominees by the Sheriff's deed.

As was said in *Foley vs. Kirk*, 33 N. J. E., 170:

> "One man can acquire no right against another by neglect of a duty which he owes to the other."

Or, as was stated in *Gilman v. Healy*, 49 Hun, N. Y., 374, where the defendant was under obligation to pay taxes but failed to do so and bought the property at tax sale:

> "That title never vested in the purchaser as against his co-owner. It was a purchase for them and not against them."

The Lincoln Trust Company, by arranging with complainant for it to bid in the property at the foreclosure sale and by paying complainant the amount of its decree and taking an assignment of complainant's bid and securing a sheriff's deed to the property, has only done indirectly what it was legally bound to do, and now holds the property subject to its original agreement with Mrs. Partridge.

Furthermore, the fact that appellants were parties to foreclosure proceeding, does not foreclose their right against respondents, irrespective of the reservations of the Chancellor. The only persons who could claim that appellants were foreclosed would be parties other than respondents.

In *Archer vs. Archer*, 164 App. Div., N. Y., 81, the plaintiffs had been defendants in a foreclosure action where the property was bought by one under obligation to protect it and who had failed in his duty. The Court held, notwithstanding that plaintiffs had been defendants in the foreclosure action, they had a right to compel the wrong-doer (the purchaser) to either account for the profits he had made out of the transaction or

have the sale set aside and the property resold.

There is no need of setting the foreclosure sale aside in the present case and ordering a new sale, because the Lincoln Trust Company bought the property in for and not against the appellants.

POINT X

Costs allowed against the Executors in favor of the Respondents.

Counsel fee allowed to Solicitors for respondents against the Executors.

Counsel fee excessive.

The rule as to the allowance of costs is laid down in this Court in the case of *Walton v. Taylor*, 78 N. J. Eq., 266:

> "Chief-Justice Green, sitting for the Chancellor, in the case of *Gifford v. Thorn*, 9 N. J. Eq. (1 Stock.), 702, said: 'The general rule in equity (as well as at law) is, that persons suing *in autre droit* are not responsible for costs. An executor or administrator, complainant in equity, will not be ordered to pay costs unless the suit be clearly groundless or vexatious.'
>
> "This statement lacks the precision that ordinarily characterizes the language of this jurist and would be actually misleading if it were not that the case of *Getman v. Beardsley*, 2 Johns. Ch., 274, which is cited as supporting it, states the correct rule. This is what Chancellor Kent said in that case: 'Ordinarily executors do not pay costs. * * * They are not supposed to know as plaintiffs the imbecility of their own suit. This is the reason of the *rule at law*. But in *this* Court where the costs are *discretionary* they seem to depend more upon the particular circumstances of each case.'

> This gives to the rule of practice its proper force. That such and none other is its status is shown by Chancellor Zabriskie in *Shepherd v. Mc Clain,* 18 N. J. Eq. (3 C. E. Gr.), 128: 'In this Court costs by statute are in the discretion of the Court. In general that discretion is exercised according to rules that have been fixed by practice. Courts of law by statute *cannot* award costs against executors and administrators when plaintiffs but *must,* if they are unsuccessful defendants. Courts of Equity are not within that statute and have not adopted it in practice. It is an arbitrary rule and if this Court adopts it, it cannot award costs as the act regulating its practice requires, *i. e.,* according to its discretion.' This places the matter precisely upon its proper footing and is amongst other things a demonstration that whatever may be the force accorded by the Court of Chancery to rules adopted by it in the exercise of a discretion that by statute it is required to exercise, a departure from such rules, unless it amounts to an abuse of such discretion, is not *ipso facto* ground for reversal upon appeal.''

A question is presented whether, in view of this statement of the law, the allowance of costs and a counsel fee of a thousand dollars can be sustained in the present case.

The deed from Mrs. Partridge to Paul was executed July 31, 1912, and recorded August 3, 1912. The deed from Paul to Farrier was executed August 5, 1912, but withheld from record for nearly two years. It was not actually recorded until after the date of the letter hereinafter mentioned.

On May 25, 1915 Farrier, the President of the Lincoln Trust Company, called into his office, Mr. Gould, the Secretary of the Trust Company, and in his presence signed the paper which is Exhibit

3 of January 16, 1918 (p. 373, Testimony p. 323). The exhibit referred to was a deed in form but with the name of the grantee left blank, and had an *habendum* clause "to the party of the second part, *his heirs and assigns.*"

In their answer (at p. 41) Farrier and the Lincoln Trust Company say:

> "They admit that after the conveyance of the title by said George E. Paul to this defendant Edwin M. Farrier, he delivered a deed therefor to the said Lincoln Trust Company of New Jersey, which has never been recorded, and that said conveyance was made without consideration, etc."

On the first day of the trial, June 10, 1917, the following colloquy took place (Testimony p. 106):

> "Mr. Carrick: As to the deed referred to from Edward M. Farrier to the Trust Company, at the time the answer was drawn I was under the impression there was such a deed, although I have never seen it. Mr. Farrier has since looked for that deed and does not find it. Whether it has been mislaid or whether none was drawn he does not know, he has no deed now from Mr. Farrier to the Lincoln Trust Company and the allegation of the answer stating there was such a deed—the admission of the answer is apparently incorrect as to the fact.
>
> "The Vice Chancellor: I fail to see the materiality of this deed or the fact there was such a deed or there was no such deed. From your answer, of course, we consider there was such a deed."

On September 11, 1917, taking of testimony in the case was closed (p. 308) and the case was adjourned for argument until Wednesday, October 17, 1917, at Paterson, New Jersey.

On January 16, 1918 (Case p. 312), the taking of testimony was resumed. At p. 318, Judge Carrick put Farrier on to the stand and inquired of him in reference to his deed to the Lincoln Trust Company, and this remarkable paper, Exhibit 3 of January 16, 1918, was put in evidence.

It is to be noted that the letter to Mr. Harmon (p. 342) is dated May 26, 1915. This so-called deed is dated May 25, 1915.

Mr. Farrier writes (p. 242):

> "The house together with the land and the apurtenances was purchased by the writer some years ago and title is still vested in me. While Mrs. Partridge is still living in the house, steps have been taken by me to get physical possession of the property and after consulting with my lawyer I do not see that any of the Partridge family have any interest whatever in the premises."

There was an air of mystery permeating this letter, which put Mr. Harmon and the executor of his dead partner on further inquiry.

On June 11, 1915, the deed from Paul to Farrier appeared on the records of Hudson County.

On August 6, 1915, Paul wrote to the solicitor of the executors (Exhibit 2 of January 16, 1918, p. 373):

> "For valuable consideration received from the party in interest I accepted the deed and took title, acting only as the nominee of Mr. Edwin M. Farrier to whom I conveyed the property thereafter."

Paul and Farrier called on the solicitor of the executors in August, 1915. What Farrier told the solicitor, is to be gleaned from testimony (p. 229 and at pp. 320-321).

Farrier finally admits that he told the solicitor that a deed (to the Lincoln Trust Company) had been executed.

On August 23, 1915, solicitor wrote to the Lincoln Trust Company, a letter which said:

> "And we are further notified that the said Edward M. Farrier has signed an instrument purporting to be a deed of said property and made to said Lincoln Trust Company" (p. 320).

The situation of the legal title was concealed from July, 1912, till January 16, 1918. From July, 1912, to June, 1915, Paul held the record title and Farrier held an unrecorded deed. From May 25, 1915 to January, 1918, Farrier held this unrecorded paper, which might or might not be a deed, according as expediency might dictate.

At the time that Farrier wrote his letter of May 26, 1915, the entire indebtedness of the Interstate Lumber Company, into which the Partridges' notes had been merged, had been reduced to $980.83, with interest from October 1, 1914. This fact was sworn to by George H. Gould and the note itself bears the endorsement of the fact, signed with the initials "E. M. F." (Edwin M. Farrier, pp. 365-367).

When Farrier, therefore, wrote to Mr. Harmon, that none of the Partridge family had any interest in the property, the property was held on his own theory as security merely for $980.83. Had he disclosed this fact to Mr. Harmon at that time, the property could then have been redeemd for a sum less than the counsel fee which this decree visits upon the executors.

The mystery that Farrier cast about the legal title to the property also enveloped the equitable estate. He testified (p. 229):

"Q. When you came to my office this summer, didn't you tell me this (the deed) was the payment of $8,000?

"A. I did not."

Yet in his answer filed in this cause, he had alleged among other things:

> "This defendant, acting in behalf of the Lincoln Trust Company, agreed to accept a conveyance of said equity and to give up and surrender to the said Cornelia M. Partridge $8,000 of past due notes made by her and so held by the Lincoln Trust Company" (p. 44).

The answer proceeded to allege such surrender and gave the date, terms and amount of each note and stated the reduction of Mrs. Partridge's indebtedness by $8,000.

If English words mean anything, we think this language meant that an actual sale of the property for $8,000 had been consummated. The answer, however, proceeded upon a second and absolutely inconsistent theory (Case pp. 44-45). In his testimony, Farrier stated:

"(1) (p. 228). Q. The giving of the deed was not to act as the payment of $8,000?

"A. To act as security.

"(2) (p. 234) Q. It (the deed) was to secure first the $8,000?

"A. No, the $8,000 had been surrendered.

"(3) (p. 234) Q. It was to secure first the—

"A. The entire $21,400.

"(4) (p. 235) Q. Do you know why Mrs. Partridge was to secure the $2,200 of contingent notes?

"A. No, sir. There was nothing said about $2,200 of contingent notes at that time. The only agreement that was had with Mrs. Partridge was that when the

banks were paid in full—there was nothing said particularly about her paper or the contingent paper, but when the banks were paid in full."

"(5) (p. 234) Q. Let me understand, do you understand that these other banks had any interest in this property?

"A. No.

"(6) (p. 236) Q. Was this deed to Paul to benefit the First National Bank?

"A. To some extent.

"(7) (p. 236) Q. The situation, if you were successful in this suit, is that you get the benefit of this property, a benefit which the other banks do not get. Is that right?

"A. I don't think I should be compelled to answer that question."

The mystery, therefore, remains uncleared to this time. We have, therefore, seven conflicting theories testified to by Farrier. But to add to the mystery the answer filed in his behalf, which stands in this respect unamended, gives us an eighth theory (Case pp. 44-45).

> "It was * * * orally agreed that if the Partridge Lumber Company, after paying the balance of $10,600, * * * should also pay * * * the three notes * * * so surrendered * * *the property * * * should, upon her payment to Lincoln Trust Company the principal of the notes surrendered to her with interest, be reconveyed to her."

There is no word of evidence to support this theory of the answer. Farrier testified to almost every other possible theory but never to this one.

The Partridge Lumber Company was insolvent at the time of giving the deed and in the hands of a Receiver. It was neither the Partridge Lumber Company nor Mrs. Partridge who was expected to pay this indebtedness but the Inter-

state Lumber Company, according to Farrier's own testimony (Case p. 234):

> "Q. Who did you anticipate was to pay the indebtedness of $21,040?
> "A. We expected to realize it out of the Interstate Lumber Company."

The Vice Chancellor admittedly did not follow the pleadings for he says (Case p. 396):

> "I shall endeavor to dispose of the matters in contention * * without much reference to the pleadings.
> "Counsel for Messrs. Woodhouse, *et al.*, at the close of the case, undertook to found a claim against the Lincoln Trust Company based on the allegation that it had been guilty of fraud in preventing Messrs. Woodhouse, *et al.*, from protecting their rights at the Sheriff's sale."

Counsel for the executors tried their case having always the allegations of the pleadings in mind. Their pleadings were prepared with the utmost care and precision. They accepted the admissions of the answers as proved facts in the case. They did not feel that it was necessary to prove by parole, the meaning of the Paul deed. Neither did they think it was necessary to prove that the Lincoln Trust Company held a deed from Farrier for the property. They also relied upon the allegations of the answer to prove the various dealings between Farrier and the Lincoln Trust Company on the one side and Mr. Goodell and the complainant on the other side.

The Vice Chancellor is mistaken in saying that the fraud of the respondents was relied upon for the purpose of founding a claim. It is true that, at the close of the case, the allowance of costs and counsel fees against appellant, was resisted

on the ground of the concealments by Farrier and the inconsistent stories that he told as to the purpose of the giving of the Paul deed. We think that the characterization of this concealment as fraud had its origin with the Vice Chancellor. We do not think that the "voluminous briefs," to which the Vice Chancellor refers, contain any charge of fraud. Neither in our pleadings nor in our briefs was that harsh word applied to the Lincoln Trust Company. The concealments of which they were guilty, were urged in argument as reasons why we should not be mulcted in costs and counsel fees. We think that this was a proper argument to be addressed to a court of equity. It is obvious that such matters could not be set up in pleadings, which were filed long in advance of the time of the discovery of the true situation in reference to facts which had been concealed.

The answer of the Lincoln Trust Company and Farrier (pp. 39-46), drawn no doubt from Farrier's garbled story, grossly misstated the facts. Paragraphs 11-14 inclusive, of the answer are, with minor exceptions, utterly false. Their statement that they surrendered to Mrs. Partridge $8,000 of her notes is glaringly false, now admitted to be false and held to be false by the Vice Chancellor. Their statement (p. 44) that the indebtedness of Mrs. Partridge to the Lincoln Trust Company was reduced to $10,600 at the time the property was conveyed to Paul is equally false. They now admit that the deed to Paul was merely a second mortgage. Had respondents alleged in their answer that the deed to Paul was a second mortgage securing $21,040 of notes, including $18,600 of notes of Cornelia M. Partridge, and had they alleged that the agreement was that the property was to be reconveyed upon the Inter-

state Lumber Company paying the $21,040 of notes of Mrs. Partridge, and had they admitted that this entire $21,040 of notes of Mrs. Partridge had been paid by the Interstate Lumber Company, excepting $980.83, as was proved out of their own records, the trial of this action would have been very simple and short.

Respondents preferred to conceal these facts and denied that Mrs. Partridge had any interest in the property and set up a misleading defence, which has led to this long litigation.

Furthermore, Farrier, in order to avoid admitting that the Interstate Lumber Company paid all of the $18,600 of Mrs. Partridge's notes, excepting $980.83, on January 2, 1914, falsely swore (pp. 237-9) that on January 29, 1916, the Interstate Lumber Company still owed $67,395.39 on the direct notes and $68,970.35 on the contingent notes, and that at the time of the trial in 1916, Mrs. Partridge still owed the Lincoln Trust Company about $15,000 on her $18,600 of notes (p. 279), when, as a matter of fact, all the $21,-040 of notes had been paid on January 2, 1915, by the Interstate Lumber Company, excepting $980.83.

Repeated efforts were made at the trial to get Farrier to disclose the truth as to what the Interstate Lumber Company still owed the Lincoln Trust Company. Farrier persisted in concealing the truth (see his entire testimony), which made it necessary to call numerous witnesses and introduce much documentary evidence. The truth did not come out until Seth B. Robinson, an attorney of New York City, a member of the Bank's Committee and an officer and director of the Interstate Lumber Company testified (pp. 287-301). He conclusively proved that only $980.83

was due the Lincoln Trust Company from the Interstate Lumber Comapny on both direct and contingent notes on and after January 2, 1915. It was respondents' duty to disclose to Mrs. Partridge and her nominee the true facts but they concealed them, denied that Mrs. Partridge had any interest in the property and made a false claim to it (p. 342). In fact, had appellants known that the Lincoln Trust Company had been paid by the Interstate Lumber Company, all of the $21,040, including the $18,600 of notes of Mrs. Partridge, excepting a balance of $980.83, they could have easily prevented the foreclosure and could have saved the property.

Since the deed to Paul was in fact a mortgage, it was the duty of the Lincoln Trust Company, the mortgagee, to fully disclose to appellants that all they claimed they held the property as security for was $980.83, and give them a chance to prevent the foreclosure, but they preferred to conceal the truth (p. 343). It was the duty of respondents to fully and honestly disclose these facts in their pleadings, but they did not do so.

In view of these facts, we submit neither costs nor counsel fees should have been awarded against them. Certainly an allowance of $1,000 is shockingly excessive and an abuse of discretion.

(b) At page 399, the Vice Chancellor placed this very uncharitable construction upon the agreement between Mrs. Partridge, who acted through her husband, and the Lincoln Trust Company, who acted through Edwin M. Farrier. The parties were brought together and the matter was transacted in the presence of Edward I. Edwards, President of the First National Bank:

> "In this case the conveyance was made absolute in form, not in order to save the

> expenses of foreclosure, but to cover up the property where the creditors of the grantor who were rushing in with judgments would not be able to reach it. It is somewhat surprising that a grantor or assignee of a grantor should come into a Court of Equity seeking to enforce an alleged secret trust of this character.''

If this view of the Vice Chancellor is the correct one, we have this situation—a banking corporation, entrusted with the funds of the public, accepting property from a debtor with the purpose of defrauding other creditors, rewarded not only with the property which it fraudulently accepted, but with an award of costs and a counsel fee of One Thousand Dollars against parties who were themselves admittedly innocent of any part of the original transaction, and who were also creditors seeking the payment of moneys due them.

POINT XI

The Paul deed not fraudulent.

As we have just seen, although there was no question of fraud in the case as tried, the opinion put a very uncharitable construction upon the transaction between the Partridges, Edwards, Farrier and the Lincoln Trust Company, which resulted in the giving of the Paul deed.

We recognize the fact that a court of equity can act on its own initiative to suppress fraud, wherever it discovers it. It requires no pleadings of the parties to point it out or to insist upon relief. We realize too that fraud is to be discovered from the acts of the parties. But giving fullest sway to the powers of the court, and appre-

ciating the importance of the court applying a strict rule, we respectfully submit that where there is no charge of fraud made by the parties and where the conduct of the parties is equally capable of a favorable construction, fraud is not to be presumed. Let us examine, then, the undisputed facts in respect to the transaction. In the first place, not one cent of the money represented by the paper on which Mrs. Partridge's name appeared, ever went into her personal account or to the benefit of her private estate (Testimony p. 128). Mrs. Partridge was merely an accommodation maker and endorser for the Partridge Lumber Company. When the banks classified their debts, they classified the paper on which Mrs. Partridge's name appeared as the direct obligations of the Partridge Lumber Company. Farrier testified that this was done (p. 183) and he says:

> "Q. That is classified as direct by the Lincoln Trust Company?
> "A. By the entire community."

Again (at p. 222) Farrier says:

> "When she (Mrs. Partridge) got the check, the custom was that she turned it over to the Partridge Lumber Company."

All the debts in question were the primary obligations of the Partridge Lumber Company and everybody concerned, including Farrier and Edwards and Partridge, understood this.

Mrs. Partridge, under the statute of New Jersey, was not legally bound by this paper. Mr. Partridge, realizing the situation in which his wife was placed, went to Edward I. Edwards, who was a member of the Committee, which represented all the banks holding Partridge paper. Without any

reflection upon other members of the Committee, we think it fair to say that Mr. Edwards was the most influential member of that Committee.

There was on foot at that time a very ambitious plan for the purchase of the assets of the Partridge Lumber Company from the Trustee in Bankruptcy, and to sell them again to a company to be organized, which company afterwards became the Interstate Lumber Company.

The agreement, which had been entered into in June, (D-10) authorized the Committee to buy these assets for $125,000. They could not be bought at that figure. The first offer by the Committee of $125,000 was made on July 10, 1912; the second (the Dunn offer) was made on July 25, 1912 (pp. 307-308), but accepted later. Mr. Dunn, one of the members of the Committee, purchased the assets for $126,160. When Mr. Partridge called on Mr. Edwards, (about July 31, 1912), it was still uncertain whether all the banks would extend the powers of the Committee and would ratify this act of Mr. Dunn's, which was, of course, the act of the Committee. Mr. Edwards told Mr. Partridge of this situation and explained to him that if the banks all came in under this agreement, that, that would relieve the endorsers on the notes, and that the Montclair property would be reconveyed to Mrs. Partridge (Case p. 111).

It is an unwarranted assumption to say that Mr. Partridge went to Mr. Edwards with a fraudulent scheme. It is a gross reflection on Mr. Edwards to assume that Mr. Partridge would come to him with a scheme to defraud any one, least of all a group of banks with whom he was on terms of intimate relationship. He was the President of one bank and he stood in the most sacred trust

relationship to the other banks. Mr. Edwards was not insulted by Mr. Partridge's approach. Apparently, he was rather pleased than otherwise by the appeal made to him. He made no concealment in reference to the situation. He called in Mr. Farrier who was also a member of the Committee, disclosed the situation to him and the transaction was put through.

It seems to us, it would be as reasonable to charge a debtor, who tries to negotiate with his creditors through their lawyer, with fraud because of such negotiation, as it is to charge Mr. Partridge, and indirectly Mrs. Partridge, with fraud in this proceeding. It is perfectly true that Mr. Partridge was trying to save for her, his wife's property, but that is not fraud, if honestly attempted.

The only charge of fraud in this case was made by the Hudson County National Bank. This was made very shortly after the bill to foreclose was filed. When the case came on for trial, Mr. Bain, from the office of Collins & Corbin, appeared but took no part in the trial. When finally he was forced to the point where it was necessary for him to produce his proof, and where he had to consult with his client as to the adducing of proofs in support of the pleadings, his answer was withdrawn (p. 65, l. 25 etc., p. 67).

The opinion puts one construction on these facts. We find a different one much more probable. We believe that the pleading put in by the lawyers when the foreclosure suit was begun, was put in as the natural conclusion to a lawyer's mind, drawn from the fact that a deed was made a few days before a judgment was entered, but when the case came ripe for trial and the matter was put up to the clients and the whole situ-

ation was canvassed and more fully understood, the charge of fraud was withdrawn.

We con see no element of fraud in the husband of an accommodation maker of paper, conferring with members of the Committee representing all the holders of such paper, asking their advice and following it. Mrs. Partridge had trusted her husband implicitly. He owed her a duty to protect her, if it honestly could be done. That a husband owes a duty to protect his wife's property from his other creditors, when she has entrusted him with it, has been recognized by this court.

In *Adoue v. Spencer,* 62 N. J. E., 782, property had been conveyed by a husband to his wife by a deed absolute in form but in fact a mortgage to secure the payment of money owed by him to her. The plaintiff, a creditor of the husband, brought an action to set aside the conveyance, alleging that it was made in fraud of him as a creditor. This court not only refused to hold the conveyance fraudulent but commended the action of the husband. Mr. Justice Fort said (at p. 785):

> "To the extent that he (the husband) received such funds, I think he could, and indeed in law and morals should, secure her, as he did by the conveyance of September 6, 1896" (see also p. 788, etc.).

There are cases in which it has been held that where a conveyance, which is in fact a mortgage, has been made to secure an honest debt, but at the same time intended to delay creditors, that the mortgagor, upon paying the debt, may recover the property notwithstanding the improper intent.

In *Taylor vs. Wells,* 5 Mass., 109, a deed was given, absolute in form but in fact a mortgage, to secure a debt. The deed was made in fraud of

creditors. The plaintiff, upon paying the debt secured, brought his action to recover possession and the Court held that he had a right to recover irrespective of the fraud. The same course was adopted by the courts in the following cases

Cowan v. Cowan, 30 Mo., 472;
Jones vs. Rahily, 16 Minn., 320;
Smith vs. Quartz Mining Co., 14 Cal., 242.

In *Over vs. Carolus,* 171 Ill., 552, Over owned property on which there was a mortgage for $6,000. Over deeded the property to Brown, to whom he owed $1,551. Brown agreed to reconvey upon Over paying the $1,551. Over was also indebted to other people at the time. The Court, holding that Over was entitled to equitable relief compelling a reconveyance, said:

> "Defendant in error contends that the conveyance of the Illinois land by Over to Brown, and his subsequent failure to schedule his interest in the property, and insolvency proceeding, was a fraud upon his creditors, and therefore he is not entitled to the relief prayed. It is a well settled principle that he who comes into a Court of Equity must do so with clean hands, and this principle is well illustrated by the rule that when a contract has been entered into through fraud or to accomplish any fraudulent purpose, a Court of Equity will not at the suit of one of the parties—*particeps doli*— while the contract is executory, compel its execution, or, after it has been executed, set it aside. The conveyances (p. 404a) says: 'The Court will not seek to enlarge the scope or legal effect of a transaction that is tainted with a design to defraud creditors, hence when property is pledged or mortgaged by a debtor, the

> pledgor or mortgagor will be permitted to redeem it through the design to defraud creditors may have been present in his mind when the pledge was made or the loan procured. Such a transaction does not, in itself, purport to vest an absolute title in the pledgee or mortgagee, and the Courts will not strive to enlarge or vary its operation merely to inflict punishment upon a fraudulent debtor by cutting off the right of redemption' (*Smith v. Quartz Mining Co.,* 14 Cal., 242; *Taylor v. Wells,* 5 Mass., 109; *Jones v. Rahily,* 16 Minn., 259; *Cowan v. Cowan,* 30 Mo., 472). Plaintiff in error is not barred from asserting his equity of redemption as against defendant in error, though it be conceded the original conveyance to Brown was made in contemplation of fraud of his creditors."

But Messrs. Harmon & Mathewson were something more than mere assignees of Mrs. Partridge. The assignment to them was to secure an indebtedness entirely independent of the Partridge Lumber Company. They had nothing to do with the Paul transaction and only after years of litigation have they been able to solve the mystery that, beginning with that event, Farrier had created in respect to this property.

These cases, we think, have no proper bearing on this case for it seems to us that this Court, with its strong common sense, will never hold that Mrs. Partridge was guilty of a fraud when her husband went to members of a Committee representing all the holders of her paper, laid before them the situation as he saw it, and in turn had explained to him the situation by them and took their advice and acted upon it. If such conduct is fraudulent, no man in financial straits is safe from such a charge in negotiating with his cred-

itors. If Mr. Partridge could not assume that Edward I. Edwards would give him sound, honest advice under the circumstances, how can one man deal with another? Mr. Edwards was a member of a committee created for the express purpose of adjusting just such matters. His own bank held Partridge Lumber Co. paper to the extent of $20,000 as we recall. Mr. Farrier was the President of another bank, also holding a large amount of Partridge paper. Did these men enter into a conspiracy to defraud the Lincoln Trust Company of New York, the Merchants Exchange National Bank of New York, the Bergen & Lafayette Trust Company, the Merchants National Bank of Newark, the Fifth National Bank of New York, the Hudson County National Bank of Jersey City, the Second National Bank of Hoboken, the Chemung Canal Trust Company, the Union Trust Company of New Jersey, the Metropolitan Bank, the Boonton National Bank, the Hudson Trust Company of New York and the Bank of Montclair? If not, Mrs. Partridge is equally innocent.

We do not find it necessary to characterize Farrier's dealings with the property after the Paul deed was given. The only bearing that Farrier's subsequent conduct has on this case, as we view it, is in the first place to indicate that Mr. Partridge's story of the agreement as to a reconveyance is the true one, and in the second place if all other issues are held against the executors, we think it should relieve them of the burden of costs and certainly of the penalty of the $1000 counsel fee awarded against them.

POINT XII

Mr. Partridge's testimony.

As we have seen, Farrier's answer sets up one story of the Partridge—Paul transaction. His testimony gives several other versions, none of them conforming to his answer. We think it fair to assume that Farrier's answer followed the story he told his Solicitor at the time it was drawn. We think, equally, that it may be assumed that the Harmon & Mathewson counterclaim was drawn after an interview with Mr. Partridge.

We invite a comparison of the pleadings filed in September, 1915, with the proof adduced in January, 1917. The counterclaim (p. 31) alleges:

> "(1) On July 31, 1912, Cornelia M. Partridge * * * conveyed the mortgaged premises * * * to George E. Paul in trust to secure the discharge of the collateral liability of said Cornelia M. Partridge and Charles R. Partridge, her husband, as accommodation makers and endorsers of certain notes which were in fact the obligations of the Charles R. Partridge Lumber Company and owned by the Lincoln Trust Company * * * and as a part of said trust it was agreed that if certain banks, creditors of the Charles R. Partridge Lumber Company, should sign a certain contract, negotiations for which were then pending, the said property should be reconveyed to the said Cornelia M. Partridge or her nominees."

Mrs. Partridge's assignment to Messrs. Harmon & Mathewson (Exhibit D-16, p. 359) says:

> "The title to said premises has been transferred by me to George E. Paul as security for and until certain obligations

against my husband Charles R. Partridge and myself as endorsers are discharged."

We submit that D-10 rendered effective by D-12 would operate to discharge an accommodation endorser such as Mrs. Partridge. But, whether it would or not, there is every reason to suppose that, that was the construction which Mr. Edwards placed on the transaction, and the Partridges got their information only from Mr. Edwards.

Mr. Partridge's testimony is brief. How closely it corresponds with the pleading, a reading of it will show. He supposed that D-10 was the agreement of which Mr. Edwards had spoken. He had never seen it nor D-12. D-10 confirms Mr. Partridge's testimony.

The South Georgia Lumber Company—Cheney notes were to be the notes of the new company to be incorporated (the Interstate Lumber Company) (D-10, p. 346, 31) "The (South Georgia) Lumber Company and the said Cheney promise and agree that the said new corporation will receive the assets and property from the Committee and will pay therefor" by giving three series of notes. The notes of one series were to correspond in amounts with the notes that Mrs. Partridge had signed. If we cull the wheat from the chaff in Farrier's testimony, we get a direct confirmation of Mr. Partridge's testimony. Farrier testified (p. 234): "We expected to realize it (the Lincoln Trust Co. debt) out of the Interstate Lumber Co."

As we have seen, Mr. Edwards told Mr. Partridge the signing of the agreement by the banks would relieve Mrs. Partridge *on all her paper.* Farrier testified (p. 235):

"The only agreement that was had with Mrs. Partridge was that when the banks were paid in full—there was nothing said about her paper or the contingent paper, but when the banks were paid in full—

"Q. All the banks?

"A. The word banks was made use of. No one bank would be paid in full."

As we have seen, even Farrier at one point admits (p. 240):

"Q. The Interstate Lumber Company gave you notes to *pay* the amount of the indebtedness of the Partridge Lumber Company to your institution?

"A. Yes, sir."

As a matter of fact, all the banks got Interstate Lumber Company notes at the same time to pay their claims.

If we take these three bits of Farrier's testimony together, and disregard the rest, we have Farrier in complete accord with Mr. Partridge.

(a) At p. 235, he says that the property was to be reconveyed when the banks were paid in full.

(b) At p. 234, he says that these debts were to be realized out of the Interstate Lumber Company.

(c) At p. 240, he admits that he had previously testified that the Interstate Lumber Company had given its notes *to pay* the indebtedness of the Partridge Lumber Company—to the Lincoln Trust Company.

We know from the proofs that the Interstate Lumber Company, at the same time and under the same circumstances, gave its notes to all the banks in the same way *to pay* the indebtedness of the Partridge Lumber Company, to them respectively.

This is in line with Mr. Partridge's testimony that Mr. Edwards said that the signing of the agreement, whereby notes were to be accepted by all the banks, would relieve Mrs. Partridge. No doubt, all three men understood that the acceptance of these new notes in place of the old Partridge paper, would, as far as Mrs. Partridge was concerned, constitute payment.

We think that the construction Mr. Edwards placed on D-10 as extended by D-12 was correct. But whether it was correct or not, this testimony of Farrier's confirms Mr. Partridge's testimony that it was upon the banks signing this agreement and thereby accepting the Cheney-South Georgia Lumber Company-Interstate Lumber Company notes, the property was to be reconveyed.

If this be the true statement of the agreement, Mr. Edwards and Mrs. Partridge acted in entire good faith towards the banks, and when the banks signed, Paul and Farrier should have reconveyed the property to Mrs. Partridge. As we have seen, Paul had already conveyed it, unbeknownst to Mrs. Partridge, to Farrier. This deed had not been recorded. When Farrier went to Mr. Goodell and urged him to foreclose the first mortgage, he held the title subject to a duty to reconvey it to Mrs. Partridge. At that time, Mr. Harmon was demanding a conveyance of the property. Farrier denied to Mr. Harmon that Mrs. Partridge had any interest in the property and urged Goodell to hasten the foreclosure.

See his letter to Mr. Harmon of May 26, 1915 (p. 312) and his letter to Goodell of June 17, 1915. In the latter he says: "I will accept service by mail and do anything else to hasten the matter along." It was on June 11, 1915, between the dates of these two letters that the deed from Paul

to Farrier was recorded. Such conduct on the part of a Trustee (and even the Vice Chancellor admits he was "a trustee—a dry trustee") is violative of his most fundamental duty as trustee.

Perry on Trust and Trustees,. 6th Edition, makes no such distinction among trustees. At paragraph 243, he says:

> "Again, if one receive a conveyance of lands or other property absolute in form, but really as security for a debt, he will hold the legal title in trust for the grantor after the payment of the debt, and before a reconveyance."

In *Staats v. Bergen,* 17 N. J. Eq., 554, at 559, Chief Justice Beasley, speaking for this Court said:

> "I think upon correct principles, a trustee, in no case, nor in any crisis, can become the purchaser of property, when the fact of his making such purchase, has a tendency to promote his own interest, at the expense of the *cestui que trust.*"

Did the sale in this case have a tendency to promote his own interest at the expense of the *cestui que trust?* Let Farrier himself answer. "I will * * * do anything else to hasten the matter along, as the longer the matter is delayed, Partridges will have rent free and we cannot put him out until we get title."

The title, according to the pleadings, before foreclosure sale, was in the Lincoln Trust Company. After the foreclosure sale, the title was still in the Lincoln Trust Company. The situation remained in essence unchanged. The trust relationship of the parties remained unchanged.

We think that a reading of the first thirty

pages of the testimony will disclose the fact that counsel for Harmon & Mathewson had never seen Exhibits D-11 and D-12 until they were produced at the trial (see pp. 102-103-104). They seem to have assumed early in the trial that D-10 was the contract in question of which Mr. Edwards had told Mr. Partridge and he in turn had told them. But D-10 had been signed in June. This was admitted in the briefs submitted in the Court of Chancery. Yet the opinion goes to great length to point out that D-10 had been signed before the Partridge-Edwards interview. D-10 limited the authority of the Committee to the sum of $125,000 as a price for which the assets of the Lumber Company might be bought. That price was insufficient and only a few days earlier, Dunn, for the Committee, had offered $126,150. The Banks had not ratified this act of the Committee. So the matter was still open. The pending agreement of which Mr. Edwards told Mr. Partridge was D-12. It was signed after August 19, 1912, for it recites the acceptance of the Dunn offer on that day (D-12, p. 384).

Mr. Partridge testified (p. 110):

> "He (Mr. Edwards) said that as soon as the banks signed the agreement whereby they were to accept the notes of the South Georgia Lumber Company, endorsed by Mr. Cheney, the property would be returned."

And at p. 111:

> "He (Mr. Edwards) said when the endorsers were relieved, that would relieve Mrs. Partridge of course and the property would be returned; and the property would be returned after the banks had all signed this agreement."

D-10, the effect of which was extended by D-12, did provide for the giving of notes bearing the names of the South Georgia Lumber Company and Cheney (p. 347).

In the original counterclaim, Mr. Harmon and the Executor of Mathewson asked: "(3) That it the said Lincoln Trust Company may be decreed * * * to convey the mortgaged premises by deed sufficient in law to the said Benjamin S. Harmon" (p. 35).

This was the relief sought and this was the relief to which counterclaimants were entitled. On May 26, 1913, Mrs. Partridge wrote "And I direct the holder of said title thereupon to deed said property to Charles F. Matherson (or in case of his decease to Benjamin S. Harmon" (p. 359).

In the opinion, much is made of the fact that Mrs. Partridge, at the time of writing this paper, did not claim that she was entitled to an immediate reconveyance. Is she to be charged with knowledge of all the transactions among the banks and their Committee? Even Farrier, it seems, was in some doubt about the matter, for exactly two years later he writes: "*After consultations with my lawyer,* I do not see that any of the Partridge family have any interest in the premises" (p. 342).

We respectfully submit that the decree should be reversed and the appropriate relief should be granted, and that the orders for payment of stenographer's fees and the provisions for counsel fee and costs should fall with the decree itself.

Rspectfully submitted,
RICHARD BOARDMAN,
Solicitor for and Of Counsel
with Appellants.

Charles D. Francis,
of the New York Bar,
Of Counsel.

New Jersey Court of Errors and Appeals

Between
MONTCLAIR SAVINGS BANK,
Complainant,

and

CORNELIA M. PARTRIDGE, et al.,
Defendants,
and

LORENZO E. WOODHOUSE, as Executor, etc., and HELEN K. HARMON, as Executrix and Individually, etc.,
Defendants, Appellants,

and

LINCOLN TRUST COMPANY OF NEW JERSEY, GEORGE E. PAUL and EDWIN M. FARRIER,
Defendants, Respondents.

On Appeal From Chancery.

BRIEF FOR RESPONDENTS.

Questions at Issue.

The decree from which this appeal is taken dismisses the counterclaim of Mathewson & Harmon, defendants in a foreclosure suit. They are assignees of Cornelia M. Partridge, formerly owner of the mortgaged property, and are asserting rights against the Lincoln Trust Company of New Jersey. The defendant Hudson County National Bank has

no present interest in the case, having dismissed its counterclaim before the entry of the decree (*Case,* page 67).

The Montclair Savings Bank, in July, 1915, began the foreclosure of a mortgage of $10,000.00 upon the Partridge residence in Montclair. The validity and priority of this lien is conceded by all parties. The controversy which was litigated between the Mathewson & Harmon interests, who filed the counterclaim on the one side, and the Lincoln Trust Company, equitable owner and beneficiary of the holder of the legal title, subject to a defeasance, on the other, was originally supposed to be a fight over surplus money. But the property was sold by the Sheriff, January 11, 1916, to the Montclair Savings Bank (which shortly thereafter assigned its bid to the Lincoln Trust Company) for $7,500.00. The amount of the mortgage claim and costs on November 9, 1915, had been ascertained by the final decree to be $10,698.25. Execution fees, interest and tax encumbrances are to be added to the prior charges upon the property. The sale was confirmed January 22, 1916, and a deed delivered by the Sheriff to the Lincoln Trust Company. By the sale, thus confirmed, all parties stand, in the language of the decree, "absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises."

In this situation, what was the issue which the Mathewson & Harmon interests brought before the Court below for adjudication?

The Counterclaim.

The counterclaim alleges (*Case,* page 31, paragraph 1) that the Partridges conveyed the premises July 31, 1912, to Paul, the nominee of the Lincoln Trust Company

"in trust, to secure the discharge of the collateral liability of the said Cornelia M. Partridge and Charles R. Partridge, her husband, as accommodation makers and endorsers of certain notes which were in fact the obligations of the C. R. Partridge Lumber Company, and owned by the Lincoln Trust Company, a corporation of the State of New Jersey, and as part of said trust it was agreed that if certain banks, creditors of the said C. R. Partridge Lumber Company should sign a certain contract, negotiations for which were then pending, the said property should be reconveyed to the said Cornelia M. Partridge or her nominee."

It is further alleged (*Case,* page 34, paragraph 7)

"that all the banks mentioned in the first paragraph herein, shortly after July 31, 1912, signed the proposed agreement which is mentioned in the first paragraph."

The counterclaim prays (*Case,* page 35) a decree that the Lincoln Trust Company holds the property in trust "for the uses and purposes hereinabove specified," and directing a conveyance to Harmon.

This is plainly an attempt to establish a trust against the equitable owner and the holder of the legal title, and to have the trust executed.

The respective rights of the parties, although greatly obscured in the record by the mass of irrelevant proofs, are determined by a few admitted instruments, and established principles, which free the decision from any serious doubt.

(1) The Partridges conveyed the mortgaged premises to George E. Paul, the nominee of Lincoln Trust Company, by deed dated July 31, 1912, recorded August 3, 1912, subject to the $10,000.00

mortgage held by the Montclair Savings Bank "which said party of the second part assumes" (*Case,* page 356). Paul conveyed to Edwin M. Farrier, president of the Lincoln Trust Company, by deed dated August 5, 1912, recorded June 11, 1915 (*Case,* page 357). Mr. Farrier executed a deed with grantee blank, dated May 25, 1915, unrecorded (*Case,* page 373).

At the time when the Partridges made their deed to Paul, the Lincoln Trust Company held past due notes upon which the Charles R. Partridge Co., a bankrupt, was liable, to the amount of $21,040.00 upon $18,600.00, of which Mrs. Partridge also was liable. At the time of the delivery of the deed to Paul, the three notes *D 2, D 3* and *D 4,* amounting to $8,000.00, were delivered in escrow to Raymond Dawson, Esquire, under an agreement *D 5,* prepared by Mr. Farrier and executed by Mrs. Partridge and the Lincoln Trust Co. (*Case,* pages 338-340).

The Lincoln Trust Company, in its answer to the appellants' counterclaim, admitted that the deed to Paul, while absolute in form, was held to secure Mrs. Partridge's indebtedness (*Case,* page 44, line 35 to page 45, line 18). It is respondent's claim that this indebtedness was never discharged.

(2) The Mathewson & Harmon rights in the property were assigned to the appellants by the letter of Mrs. Partridge, dated May 26, 1913 (*Exhibit D* 16, *Case,* page 359). The statements of this letter are in direct conflict with the claim set out in appellants' counterclaim that Paul was to reconvey when the banks should sign "a certain contract" (*Case,* page 31, line 23), later claimed to be *Exhibit D* 10 *Case,* page 343), dated "this day of June, 1912," and proved to have been fully executed before the giving of the deed by the Partridges to Paul.

(3) The sale of the mortgaged premises under the complainant's decree of foreclosure, and the delivery of the Sheriff's deed, after confirmation of the sale, to the respondent Lincoln Trust Company (*Case,* page 357, *Exhibit D* 15).

I.

Proofs show no trust; merely a defeasance.

The Mathewson & Harmon evidence, as well as that of the Lincoln Trust Company, disproves the trust alleged in the counterclaim, or any trust.

(a) *It is clear that the conveyance of July* 31, 1912, *Partridge to Paul, was taken by the Trust Company as security.*

The escrow agreement of August 3, 1912 (*Case,* page 339, *Exhibit D* 5) in Mr. Dawson's custody, is obviously incomplete. Mr. Farrier (*Case,* page 217, line 9 et seq.) talked with Mr. Partridge, in Mr. Goldenhorn's office, and drew the escrow agreement and left it at Mr. Goldenhorn's office to procure the signature of Mrs. Partridge (*Case,* page 229, line 25, et seq.) ; the deed was to be held until the payment of all the banks in full, besides the $21,140.00 debt due the Lincoln Trust Company. Mr. Goldenhorn (*Case,* page 193, line 26, et seq.) got a different statement from Mr. Partridge as to the debt for which the deed was to be security; but there is no question raised by any witness but that the deed was given as security for a debt.

The testimony of Mr. Partridge (*Case,* pages 107-126) is so hazy and elicited by a method of examination so leading, as to be without any prob-

ative force. He evidently depended upon a vague recollection of some talk he had had with Mr. Edward I. Edwards, who had no such relation to the Lincoln Trust Company as to make any statements he may have made evidential against it. Mrs. Partridge's testimony is wholly negative (*Case,* pages 126-131).

If there were any doubt as to the character of the rights created by the deed to Paul, it is cleared up by the production of the Mathewson & Harmon *Exhibit D* 16 (*Case,* page 359), which is the basis of their counterclaim. This paper signed by Mrs. Partridge alone, after assigning and transferring all her right, title and interest in the premises proceeds (line 16, et seq.),

> "the title to said premises has been transferred by me to George E. Paul, *as security for and until certain obligations* against my husband Charles R. Partridge and myself *as indorsers* are *discharged;* and I direct the holder of said title *thereupon* to deed said property," etc.,

to be held as security for their endorsements upon notes given and to be given by Mrs. Partridge's son.

Here is a statement in the very instrument under which Mathewson & Harmon claim, signed by Mrs. Partridge, and we may safely assume prepared by the careful lawyers for whose protection it was given, absolutely destructive of the trust theory upon which the counterclaim rests. This paper, drawn ten months after the rights of the Lincoln Trust Company were created by the deed to Paul, fully corroborates the claim of the Trust Company that it thereby acquired an equitable mortgage to secure a debt, but assumed no trust relation to Mrs. Partridge.

(b) *The words of assumption in the deed to Paul (in reality a mortgage) imposed no obligations on the grantee, or the Lincoln Trust Company.*

The rights of Mathewson and Harmon are derivative. By the assignment of May 26, 1913, Mrs. Partridge gave them only such interest in the property as she then had. The assignment was to stand as security for certain endorsements for her son. So far as the testimony shows, it was without consideration. It may well be that no liability was ever incurred by Mathewson & Harmon on occasion of their endorsements. The case is barren of any evidence that the assignment was other than voluntary. Mathewson & Harmon can support no claims against the Lincoln Trust Company which could not have been maintained by Mrs. Partridge herself. Their position before the Court is precisely the same as if Mrs. Partridge were here asserting in her own behalf the claim now made by them.

There is a well recognized distinction between the obligations created through the assumption of a prior mortgage by a grantee under a deed conveying to him the equity in the property, and by one who assumes the prior mortgage in a subsequent encumbrance. It is held that the junior mortgagee who assumes the payment incurs no liability.

2 *Jones, Mortgages* (*7th Ed.*) *sec.* 756.

The rule is the same where the assumption is made in a deed absolute in form, but which is in reality a mortgage.

Gaffney vs. *Hicks,* 131 Mass., 124 (1881), Endicott, J.

Here after finding that there was an agreement to reconvey upon payment of the debt to secure which the deed was given, the Court says that the

agreement to reconvey controls the terms of the deed, and that when the plaintiff redeems he must take a reconveyance subject to the prior mortgages, and proceeds:

> "It would be an extraordinary and inequitable construction of the agreement to reconvey, not to require of the plaintiff, on reconveyance, the same assumption of the prior mortgages; and the result would be to make the defendant pay a sum of money which the plaintiff would have to pay back when he seeks to redeem."
>
> *Arnaud* vs. *Grigg*, 29 N. J. Eq. (2 Stew.), 482 (1878), Runyon, Ch.

Here grantee in a deed absolute in form, but given as security for indebtedness, covenanted to assume the complainant's mortgage. That the transaction was a mortgage was established by a written instrument of defeasance, entered into by the grantor and grantee the day before the deed was recorded, about one year after its date. In this instrument the grantee agreed to pay the prior mortgage encumbrance.

The Chancellor (page 485):

> "If the deed was indeed a mortgage merely, the complainant has no claim to a personal decree for deficiency against Mayer. He is not, in that case, liable to Mrs. Lichtenstein on the assumption contained in the deed. Obviously, under such circumstances, he would not be bound to indemnify her against the complainant's mortgage." * * * (Page 486): The assumption in the deed from Mrs. Lichtenstein to Mayer was clearly not made for the benefit of the mortgagee. In *Garnsey* vs. *Rogers* (47 N. Y., 233) "It was held that a stipulation in a deed, absolute on its face, but intended as a mortgage, whereby the mortgagee assumes and

agrees to pay a prior mortgage on the premises, does not impose on the grantee a personal liability to pay the prior mortgage debt which can be enforced against him by the prior mortgagee."

The matter is lucidly discussed in *Jones on Mortgages* (7th Ed.), more at length than need here be quoted. The reason for the rule is thus stated:

"Moreover, in such a case, the grantee receives no money with which to pay a prior mortgage debt, nor any conveyance of the entire estate upon a consideration of which the amount of the prior mortgage debt formed a part. He receives merely a mortgage title, defeasible upon the payment of a debt or the performance of some obligation. Upon the performance of the condition he is obliged to release or reconvey the property to the grantor. He is to convey merely the title or interest conveyed to him. He received nothing from his grantor which is a consideration for undertaking to pay a prior mortgage debt; and therefore he is under no obligation either to his grantor or to the prior mortgagee to pay such debt" (*Sec.* 757).

At the conclusion of the first argument below, February 20, 1918, the Vice-Chancellor suggested to counsel whether the clause of assumption in the deed from Partridge to Paul might not be considered as imposing an obligation upon the grantee not only to discharge the mortgage debt, but also to prevent the property from being foreclosed, and asked that authorities upon this point be submitted, if found. There was later served upon the respondent's counsel a copy of "Trial Brief No. 4" in behalf of the Mathewson & Harmon interests, which had been prepared to meet this suggestion.

The brief submitted did not touch the point. It argued that the clause of assumption imposes upon

the grantee a primary obligation to pay the debt. This has always been conceded by the Lincoln Trust Company. Such obligation was discharged when the decree of the Montclair Savings Bank upon its bond and mortgage was paid in full by the Lincoln Trust Company. I have been unable to find any case which gives to the conventional clause of assumption in a conveyance, the effect suggested by the court below upon the argument. From the statements of the Mathewson & Harmon Trial Brief No. 4, and from the brief served upon this appeal, I take it that the investigations of opposing counsel have been equally fruitless. If any such doctrine had grown up in this branch of the law, which has been so often before the courts and so exhaustively treated, some statement of it would undoubtedly be found in the cases. The absence of any such statement is a certain indication that the extent of the liability of a grantee who accepts a deed containing a clause of assumption, is a primary personal obligation to pay the mortgage debt.

It is submitted that the utmost duty of the grantee which the law raises from a covenant of assumption in a deed, is to discharge the debt. The conceded relation of Mrs. Partridge to the Lincoln Trust Company was that of mortgagor to mortgagee. As between them, the land was subject to a lien for the payment of what, under their agreement, was due to the Lincoln Trust Company, and perhaps to the other banks also, and after the discharge of that obligation the property should revert to Mrs. Partridge. She had the right to redeem the property at any time upon payment of the amount due. If she had done so, the property would have been restored to her, subject to the prior rights conceded by all parties in the Montclair Savings Bank. No contention had been made by the Mathewson & Harmon interest, or by anyone, up to the close of the argument, when the suggestion came

from the Court, that the common well understood conventional agreement by a grantee to assume payment of an existing lien, charged him with any other duty than to protect the grantor against personal liability growing out of the prior obligation. The absence of any cases which raise such implied duty from the acceptance of a deed containing a clause of assumption, is, to my mind, conclusive that no such doctrine is known to the law. Evidently the Vice-Chancellor reached a like result before preparing his conclusions.

While it has been held that the grantor who has conveyed property subject to a mortgage which the grantee assumes, is not obliged to wait until he has been compelled to pay the mortgage debt before suing the grantee upon his covenant (*Sparkman* vs. *Gove*, 44 N. J. L. (15 Vr.), 252, S. C. Dixon, J., 1882), such holding rests upon the duty which the grantee assumes to completely exonerate the grantor from payment of the debt. There is no suggestion that he owes any further duty to the grantor, or that the purpose of the assumption clause is to save the property to the grantor. In fact, the whole theory of a valid assumption clause is that the grantor has parted with all his interest in the property.

It was submitted that to so extend the effect of the assumption clause in the Paul deed as to cast upon him, or the Lincoln Trust Company, the duty of saving the Partridge property from foreclosure, wholly unsupported by any evidence that such was the intention of the parties, would be without warrant in any law which has been brought to notice by the researches of counsel on either side.

(c) *The debt of Mrs. Partridge to the Lincoln Trust Company has never been discharged.*

It is clear that the banks' agreement of June , 1912 (*Ex. D* 10, *Case*, page 348, line 33, et seq.) not only did not contemplate the payment

and extinguishment of the Partridge notes, but expressly provides that each bank "shall prove its claim upon the notes now held by it against said bankrupt and all endorsers and guarantors thereof," and credit the amount so collected upon the notes of the new corporation.

With regard to the agreement of December 12, 1914 (*Case,* pages 333-338), it is to be observed that this was entered into over two years after the rights of the Lincoln Trust Company and the Partridges had become fixed by the transactions of July 31—August 3, 1912—the delivery of the deed Partridge to Paul, and the contemporaneous escrow agreement in possession of Mr. Dawson. The Partridges were not parties to the December 12, 1914 agreement, nor is it shown that the creditors' committee which represented the banks had power to bind the Lincoln Trust Company, except as the latter adopted and thus ratified their acts. If the Trust Company was actually paid in full, and the other banks were also fully paid (*Case,* page 229, line 24, et seq.) the condition of the equitable defeasance was satisfied, and Mrs. Partridge became entitled to demand a reconveyance.

But the proofs of Mathewson & Harmon show that the debt of the Lincoln Trust Company, as well as the debts of the other banks, are still unpaid. Treating the delivery by the Interstate Lumber Company to the Committee of $120,000.00 of the Series "C" notes of the Southern Seaboard Lumber Corporation, as payment at their full face of the Interstate Lumber Company's notes, and of the corresponding Partridge notes, there was still due January 2, 1915, to the Lincoln Trust Company $980.83 (*Robinson, Case,* page 295, line 6) and to all the banks $8,385.53 (*Case,* page 295, line 30).

But the agreement of December 12, 1914, did not provide for the cancellation of the *Partridge*

notes. It was an agreement primarily for the benefit of the Interstate Lumber Company, and provided for the surrender on receipt of the "C" notes of an equivalent amount of the Interstate notes, "which notes shall at once be cancelled." So far from contemplating the cancellation of the *Partridge* notes, they were, by the express terms of the instrument, to be kept alive and collected so far as possible. The clause covering this provides:

> "The Committee will also deliver to the Interstate the notes on which the Charles R. Partridge Lumber Company appears as maker or endorser, and for which the Interstate notes for 'direct' and 'contingent' liability were given, and any collections received thereon after the date of this agreement shall be credited as received on the said $80,000" (*Case,* page 334, line 16, et seq.).

If the Committee had authority to bind the Lincoln Trust Company by the terms of this agreement, it may be that the Trust Company assumed an obligation to the Interstate Lumber Company, which it had disabled itself, by the delivery of the $8,000 Partridge notes to Mr. Dawson, in escrow, to perform. But what we are now concerned with is that it was not contemplated by any of the parties that the acceptance of the "C" notes of the Southern Seaboard Corporation was to be considered as payment of the *Partridge* notes. On the contrary, the Partridge notes were to be kept alive and enforced so far as collectible. So far as the Interstate was concerned, the entries upon its books show cancellation of its notes to the extent which they had been taken by the Lincoln Trust Company and the other banks, and which they later exchanged for the "C" notes. It does not affect, nor does it purport to affect the status of the *Partridge* notes.

Correction

Particular attention is called to this provision of the agreement of December 12, 1914, because it was inadvertently stated otherwise by present counsel in addressing the court below on the hearing (*Case,* page 271, line 10, et seq.). The Partridge notes were to be surrendered as there stated, but not for cancellation, as erroneously conceded at the time. This correction was made on the brief submitted to the Vice-Chancellor.

(d) *But if the Partridge notes were paid, Mrs. Partridge was entitled to conveyance of equity of redemption only on request.*

The proofs show that the Interstate notes were not fully paid. $980.83, with interest from January 2, 1915, is still unpaid. We insist that the *Partridge* notes are unaffected by the agreement between the Committee and the Interstate. But if there were plenary evidence that the Partridge notes were paid in full, all that Mrs. Partridge or her assignee could require on demand—which was not made—would be a conveyance, subject to the lien of the first mortgage held by the Montclair Savings Bank, that is, of the equity of redemption only.

II.

Sale under first mortgage extinguished the rights of all parties. Lincoln Trust Company acquired by the purchase the title of the complainant and all defendants.

Assuming that the transactions between the Partridges and the Lincoln Trust Company were such that the latter's debt was extinguished, so that Mrs. Partridge was entitled to a reconveyance, and

that such right passed by assignment to the Mathewson & Harmon interests, did such right survive the sale by the Sheriff on foreclosure of the Montclair Savings Bank mortgage?

Both the Mathewson & Harmon interests and the Lincoln Trust Company were made parties and appeared in the foreclosure proceeding. The purpose of that foreclosure was to extinguish the right of all of the defendants to redeem. The effect of a sale under the decree was absolutely to bar and foreclose the defendants from all equity of redemption. The purchaser at the sale succeeded not only to the rights of the complainant, but as well to the rights of all the defendants, including, of course, the rights of the Mathewson & Harmon interest (*Wimpfheimer* vs. *Prud. I. Co. of Am.*, 56 N. J. Eq. (11 Dick.), 585, 591 [1898, Emery, V. C.]).

The decree for sale was made after answers had been filed by both Mathewson & Harmon and the Lincoln Trust Company, conceding the priority of the complainant's mortgage. The sale was properly advertised and conducted, reported and confirmed without objection. It is now too late for these appellants to claim that there was any right remaining in them, of, in and to the mortgaged premises in derogation of the statutory transfer to the purchaser of the rights of all parties, complainant and defendants. One cannot stand silent in such a proceeding and first assert claims, whatever their original validity, after sale, report and confirmation, in contravention of the rights of a purchaser. The complainant's rights were fixed upon confirmation of the sheriff's sale, and the assignment of the right to take the deed operated no otherwise than if the complainant had taken its deed from the sheriff, and subsequently conveyed to the Lincoln Trust Company by another deed.

If the appellants had any right of redemption, it was extinguished by the sale under the decree.

III.

Allowance of counsel fee and costs was within the discretion of the Court. Amount not excessive.

The practice on allowance of costs in cases where executors or administrators are complainants in the Court of Chancery was declared in this Court in

Walton vs. *Taylor,* 78 N. J. Eq. (8 Buch.) 266 (1910, Garrison, J.)

quoted at length in appellant's brief. The counterclaim was filed during the life time of one of the claimants, Harmon (*Case,* page 30), and the cause continued after his death by his executrix (*Case,* page 63). Their rights were, to their knowledge, such only as were derived from Mrs. Partridge's letter of May 26, 1913 (*Case,* Ex. D, 16 , page 359)' which explicitly recognizes the conveyance to Paul as security for obligations then held by the Lincoln Trust Company, upon which she was indorser. The question cannot arise at all as to the subjection of the Harmon interest to the payment of costs, in the discretion of the Court, because the claim was filed by Harmon in his life time. The executor of Mathewson, with the terms of the written instrument creating rights in his testator before him, was not, as supposed by Chancellor Kent in the language quoted in *Walton* vs. *Taylor,* unaware of "the imbecility of their own suit." On the contrary, he went into the litigation fully apprised of the subordinate character of the rights granted to his testator, and charged with the duty of investigating carefully before embarking in the attack. Had he made such preliminary examination, the holder of the prior lien, the Lincoln Trust Company, would have been saved the expense of this litigation, for which the costs are but a partial recompense. The claim itself we believe to be both groundless and vexa-

tious. The record on this appeal shows that the testimony introduced by the appellants was protracted beyond all reasonable limits, in very large part, by proofs of facts and transactions wholly irrelevant to the issues, allowed by the trial court in tender consideration of some argument or contention which counsel might wish to urge on an appeal (*Case,* page 152, line 17; page 167, line 27, *et seq.,* page 168). The case was argued before the Vice-Chancellor at great length, four trial briefs having been served by the appellants, and after the conclusion had been filed (*Case,* pages 381-413), it was re-argued on appellants' application (*Case,* pages 414-420).

The Mathewson & Harmon claim in its utmost extent, was that the Lincoln Trust Company was obligated to clear off the $10,000.00 mortgage held by the complainant, the Montclair Savings Bank, and then convey the land to them free from the mortgage (*Case,* page 396, Opinion of Vice-Chancellor). This claim was lated abated and changed from time to time, but the various claims asserted by the appellants were supported with great ingenuity and persistence, and required care and time to controvert.

It is submitted that the costs granted, including the counsel fee, were not excessive, having regard to the conditions, and were well within the discretion of the court.

The decree of the Chancellor should be affirmed.

CARRICK & WORTENDYKE,
Solicitors of Lincoln Trust Company, et als., Respondents.

CHARLES L. CARRICK,
of Counsel.