

New Jersey Court of Errors and Appeals.

ANNGENETTE K. LAWSHE, Complainant-Respondent, and THE TRENTON BANKING COM- PANY, Defendant-Appellant.	}	On Appeal.
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Brief for Respondent.

On April 30th, 1915, complainant, Anngenetete K. Lawshe, was the owner of a certain mortgage, and on that date she executed an assignment of the mortgage to the defendant, the Trenton Banking Company. This suit was instituted by the complainant to set aside this assignment, because the complainant lacked independent advice in the nature of undue influence.

Alfred W. Lawshe, husband of the complainant, was the owner of one-half the stock of the Trent Tile Company; the latter company being in poor financial condition, Mr. Lawshe surrendered an insurance policy on his own life, in which his wife, the complainant, was beneficiary, and from the proceeds of this policy advanced more than \$12,500 to the Trent Tile Company. During August, 1914, Charles Lawshe, the son of the complainant, shot himself, leaving

an estate of \$25,000, represented by money on deposit in a bank. This money he bequeathed to his parents, Alfred W. Lawshe and the complainant. Mr. Alfred W. Lawshe immediately gave his share of his son's estate to his wife to compensate her for the loss of the insurance policy, which he had previously cashed in and used. Prior to December 21st, 1914, Alfred W. Lawshe had from time to time taken \$20,500 of this money which belonged to his wife, and without her knowledge advanced it to the Trent Tile Company, 10 that company executing a mortgage in favor of his wife, Anngenetie K. Lawshe, in the sum of \$20,500 for the money advanced. He put this mortgage in the safe unrecorded.

At a later date, wishing to raise more money for the Trent Tile Company, Alfred W. Lawshe took this mortgage to the defendant bank, and asked the bank to advance money on this security. Mr. Lawshe was informed that a new mortgage would have to be drawn, as that one was not properly authorized by the board of directors of the Trent Tile Company. A new mortgage was drawn to Anngenetie K. 20 Lawshe, and on April 30th, 1915, the assignment was made by her to the Trenton Banking Company. On the strength of this assignment, the Trenton Banking Company discounted notes for the Trent Tile Company, amounting to \$8,775, and also claimed to hold the mortgage as security for some so-called Rambow notes which were old debts and had been running and past due for almost a year before this time. Rambow was a customer of the Trent Tile Company, and the Trenton Banking Company had discounted some of Rambow's notes. The bank never asked for any 30 security for the Rambow notes, but now claim to hold this mortgage to secure them. The bank made no extension of time for the payment of the Rambow notes, discounted no new notes, and changed their position in no way with reference to them when they took this mortgage, which they now claim to secure them. Complainant received no consideration from anybody for the assignment to the Trenton Banking Company.

Complainant, Anngenetie K. Lawshe, had no property aside from this mortgage, with the exception of a house 40 with an equity of \$5,500, subject to a mortgage of \$9,500.

She knew nothing about business affairs, her husband transacting all her business. Alfred W. Lawshe looked after all her business, as he thought she was incompetent. Complainant was sixty-six years of age at the time of this assignment, April 30th, 1915. Complainant was taken sick April 5th, 1915, and was seriously ill until May 10th, 1915. She was attended during this time by a trained nurse and a physician. The physician says that April 30th, 1915, the day she signed the assignment in question, was the first day she was out of bed; that he attended her until May 10th, 1915; 10 that she suffered from an acute attack of high fever, excessive nervousness, pleurisy, and a cold involving the whole respiratory tract and bronchial tubes. Because of this she was also very deaf. Her mental condition had been bad since her son's death by suicide. She was in no condition to transact business on April 30th, 1915. She could not maintain sustained thought. She had received opiates in large quantities as part of the treatment, and opiates impair the judgment. Her condition was such that on April 30th, 1915, the day of the signing of the assignment, she could 20 not possibly have understood any business affair unless a long explanation had been made. No explanation at all was made to her with reference to this assignment. She signed her name and did not understand the effect of what she did.

Mr. Huston Dixon took her acknowledgment to the assignment. He was the administrator of the estate of Benjamin F. Lee, which estate owned one-half the stock of the Trent Tile Company, Alfred W. Lawshe owning the other half. Mr. Dixon's wife was one of the beneficiaries of the 30 Lee estate. Mr. Dixon made no explanation to the complainant as to what the assignment was or as to its legal effects. He merely asked her if she signed it of her own free will and voluntarily. The only explanation anyone gave her was when her husband told her that it would be to her interest to sign the assignment. The assignment was dated April 30th, 1915. On July 9th, 1915, the Trent Tile Company went into the hands of a receiver, and paid about 26 per cent. dividend to its creditors and nothing to its stockholders.

The lower court decided that Alfred W. Lawshe had exercised undue influence on Anngenetie K. Lawshe, the complainant, in order to obtain this assignment; that the assignment in question was really for the benefit of Alfred W. Lawshe, or at least to his use, and that for money advanced on the strength of this assignment, the defendant, the Trenton Banking Company, was a bona fide purchaser for value, and could enforce the mortgage as to those moneys; that the amount so advanced, less dividends received from the Trent Tile Company, was \$8,775; that as to the Rambow notes, they were past due at the time of the assignment, and as there was no change of position, there was no consideration with reference to them, and therefore the defendant bank was not a bona fide purchaser for value as to them and could not hold the mortgage to secure them; therefore, of the mortgage and interest, amounting to \$23,036.55, the Trenton Banking should keep \$8,775 and return the balance, \$14,261.55, to the complainant.

Since the commencement of this suit the company which bought the Trent Tile Company at the receiver's sale has paid the mortgage, and the Trenton Banking Company now holds cash in place of the mortgage.

The questions involved are:

1. Did the complainant own the whole mortgage, or did Alfred W. Lawshe own half of it?
2. Was the assignment in question the product of undue influence of Alfred W. Lawshe?
3. Should the Trenton Banking Company be permitted to retain out of the proceeds of the mortgage the amount of the Rambow notes, a past indebtedness—that is, is one who takes a mortgage to secure a past debt a bona fide purchaser for value?

ARGUMENT.

First Question—Anngenetie K. Lawshe owned the whole of the \$20,500 mortgage.

The testimony in this case shows that the complainant's son died leaving at least \$20,500 on deposit in bank; that he left it to his parents, Anngenetie K. Lawshe, the com-

plainant, and Alfred W. Lawshe, her husband. (Testimony, page 47.) The testimony further shows that Alfred W. Lawshe canceled an insurance policy on his own life, in which Anngenetette K. Lawshe was the beneficiary, and that he gave the money to the Trent Tile Company (page 47); that the money obtained from the insurance policy amounted to more than Mr. Lawshe's interest in his son's estate (testimony, page 48); that when he used this insurance money, he told his wife that he would give her his interest in the son's estate in compensation for her loss of his canceling the 10 insurance policies (testimony, page 47); page 46 Mr. Lawshe says: "I advanced it for her." Letter from the Trent Tile Company offered in evidence and marked Exhibit D 10 (testimony, page 140), reads as follows:

Dec. 21, 1914.

Honorable Huston Dixon, Secy. Trent Tile Company, Trenton, N. J.:

DEAR SIR—Mrs. Anngenetette K. Lawshe advanced to Trent Tile Company:

1914, Aug. 18, cash.....	\$2,000.00	20
" Sept. 17, "	5,875.00	
" " " "	6,000.00	
" " " "	480.61	
" " " "	144.39	
1914, Nov. 9, Trenton bonds annexed to note of \$5,000. Discounted Trenton Bank. Said note going to credit of Trent Tile Co.....	6,000.00	
	\$20,500.00	

The cash advances were used to pay off the Davis, Reid, and Alexander judgment. The \$6,- 000 City of Trenton bonds were sold by Mr. Lawshe in New York City. Proceeds were deposited by Mr. Lawshe to his individual account and note of \$5,000 was paid by being charged to his account and is now in my possession. The balance of \$6,- 30

000, viz., \$1,000, was paid by Mr. Lawshe in December.

My books now show the advances by Mrs. Lawshe, being \$20,500.00 and mortgages account being credited with that amount. If this is not quite clear to you, I will call at your office with books at your appointment.

Yours very truly,

E. H. SWEENEY,

Book-Keeper.

10

Also letter marked Exhibit D 1. (Testimony, page 123.)

Jan. 13, 1915.

Mr. Robert W. Howell, Cashier Trenton Banking Co., Trenton, N. J.:

MY DEAR MR. HOWELL:—

My impression is that I told you to-day Mrs. Lawshe and myself had loaned the Trent Tile Company \$26,000. I was in error as the amount is \$23,500.

20

Got my figures confused. I don't want to be anything but accurate.

Yours very truly,

A. LAWSHE,

Treasurer Trent Tile Company.

This shows that the Trent Tile Company owed Mrs. Lawshe \$20,500, and Mr. Lawshe \$2,000; these two letters proving that the Trent Tile Company owed Mrs. Lawshe \$20,500.

30 The Trent Tile Company gave Mrs. Lawshe a mortgage for \$20,500 to cover the amount it owed her. (Testimony, page 49.)

MR. LAWSHE HAD THE POWER TO MAKE A GIFT TO HIS WIFE.

The date on the above letter, Exhibit D 10 (page 140), is December 21st, 1914. Therefore, Mr. Lawshe gave the complainant, his wife, this money (his share in his son's estate) before December 21st, 1914. There is no evidence in this case to show that at that time Mr. Lawshe owed anyone a cent; nor is there any evidence in this case of a

fraudulent intent on his part to hinder, defraud or delay his creditors; therefore, he could give this money away at will.

Haston v. Castner, 4 Stew. 697 (at pages 702 and 705, Errors and Appeals, 1879).

Hagerman v. Buchanan, 45 N. J. Eq. 292 (Errors and Appeals, 1889).

Washington National Bank v. Beatty, 77 N. J. Eq. 252 (Errors and Appeals, 1910).

Martin v. Bowen, 51 N. J. Eq. 452.

From the exhibits offered in evidence and marked Exhibits 10 D 10 and D 1 (the above letters), it clearly appears that the Trent Tile Company owed Mrs. Lawshe the amount covered by this mortgage. However, if it is claimed that Mr. Lawshe had an interest in this money, it might be further said that he gave the money to the Trent Tile Company and took a mortgage in his wife's name. A mortgage is a conveyance.

Wilbur v. Jones, 80 N. J. Eq. 520 (page 524, Errors and Appeals, 1912).

Where a husband pays the money and takes a title in his 20 wife's name a gift to the wife will be presumed.

Leslie v. Leslie, 53 N. J. Eq. 275 (Chancery, 1895).

Moran v. Neville, 56 N. J. Eq. 326 (Chancery, 1897).

Read v. Huff, 40 N. J. Eq. 229 (Errors and Appeals, 1885).

Lister v. Lister, 35 N. J. Eq. 49 (Chancery, 1882).

Therefore, the presumption, together with the convincing 30 testimony, is that whatever interest Mr. Lawshe had in the money was given to Mrs. Lawshe, and outside of presumptions the convincing and undenied statement that the Trent Tile Company owed Mrs. Lawshe \$20,500 (Exhibit D 10, testimony, page 140), shows beyond a shadow of doubt that Mrs. Lawshe owned the whole mortgage.

Second Question—Was the assignment in question the product of undue influence of Alfred W. Lawshe?

1. A fiduciary relation is presumed between husband and wife.

The only one who according to the testimony exercised any influence over the complainant in this case was her husband. He told her to sign the assignment of mortgage to the Trenton Banking Company (testimony, pages 19, 31), which she did. The relation of husband and wife is a fiduciary relation.

Hemenway *v.* Abbott, 97 Pac. 190 (Cal.), quoting and 10 adopting 1 Story Eq. Jur. 218, says:

"Fiduciary relation is a peculiar relation which undoubtedly exists between client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, trustee and cestui."

In Hall *v.* Otterson, 52 N. J. Eq. 522 (1894) (affirmed 53 Eq. 695), on page 527, the court says:

20 "The relation of husband and wife is so close, the trust of the wife so absolute, her dependence so entire, it may be her fear so abject while the dominion of her husband is so controlling, that equity regards all such transactions with a jealous care and subjects them to the severest scrutiny.

30 "Page 530—In this class of cases it has been considered necessary to show that the donor had independent advice and was removed from the influence of the donee when a gift to him was made. See, also, *Prideaux v. Lonsdale*, 1 De G., J. & S. 433; *Savery v. King*, 5 H. L. Cas. 627; *In re Garnett*, 31 Ch. Div. 1; *Dolliver v. Dolliver*, 94 Cal. 642; *Leech v. Fare*, cited in 13 Am. L. Reg. (N. S.) 350."

Also in *Anderson v. Benschel*, 85 N. J. Eq. 391, on page 394, the court enumerates the relation of husband and wife as a fiduciary relation (affirmed).

2. However, the facts of the case at bar show that a fiduciary relation existed between Mr. Lawshe and respondent,

irrespective of the marital relation, and that undue influence was used.

(a) The mortgage in question was the bulk of Mrs. Lawshe's estate.

The testimony (page 52) shows that Mrs. Lawshe had title to the house where she lived; testimony (page 52) also shows that this house had a \$9,500 mortgage on it, and was worth only \$15,000 as a high estimate. Outside of this house and the Trent Tile mortgage for \$20,500, Mrs. Lawshe owned nothing (testimony, pages 20, 56); this mortgage was the bulk of her estate, so that for purposes of this suit it may be said that when she gave away this mortgage she was giving away the bulk of her estate. In *Ware v. Mulford*, 79 N. J. Eq. 470, where a bill was filed similar to this, the court in setting aside the conveyance, said: "The gift did not include all the donor's property, but the gift comprised the bulk of the donor's property."

(b) Respondent knew nothing about business.

Furthermore, the testimony shows that the complainant, Mrs. Lawshe, knew nothing about business; on page 25 of 20 the testimony, when asked if her husband discussed his business affairs with her, she said, "Not very often, occasionally." When asked about the Rambow paper (page 25) and if her husband spoke to her about it, she said: "Well, not often, husbands don't always tell all the news, you know." Further (page 25), "Yes, I heard him talking over the 'phone, but it didn't interest me that way, you know." All during complainant's cross-examination, as quoted in defendant's brief, she answered "yes" to everything asked by counsel for defendant, but her redirect examination, on page 19, shows 30 that she did not really understand about the transactions asked on cross-examination, but had just heard them mentioned.

On page 30 Mrs. Lawshe says, on redirect examination:

Q. Mrs. Lawshe, in regards to these patent suits that the title company had, do you remember them?

A. Oh, I remember hearing them talking of them, but I couldn't give you any information whatever.

Q. Do you know what they were about?

A. I heard them talking over them, but, of course, I 40 didn't feel so very much interested at the time and I can't give you any information.

Q. Did you discuss, as a general thing, the business of the Tile Company with Mr. Lawshe?

A. Not very often, occasionally.

Even on the day of the trial Mrs. Lawshe's mental condition was not good (page 40); Mr. Lawshe said she was incompetent (page 59), and the Vice Chancellor, who heard her testimony, appreciated these facts.

(c) Mr. Lawshe looked after all the complainant's business affairs.

10 Furthermore, the testimony of Mr. Lawshe shows that he looked after all Mrs. Lawshe's business affairs. When asked, on page 46, if his wife advanced money to the Trent Tile Company, he said, "I remember I advanced it for her." On page 58:

Q. And as such executor, what did you do with the moneys of your son's estate?

A. Loaned it to the Trent Tile Company.

Q. Did you talk about this matter with Mrs. Lawshe?

A. Not a word.

20 Q. Never said anything to Mrs. Lawshe?

A. Not a word.

Q. And you loaned it without ever having received her consent then?

A. Yes.

Q. And you embezzled the estate?

A. If you put it that way.

As a reason for transacting all Mrs. Lawshe's business, Mr. Lawshe says, page 59:

A. I don't think that Mrs. Lawshe is competent.

30 Furthermore, showing her lack of business experience, she resigned as her son's executrix (page 57).

From this testimony it is clear that Mr. Lawshe transacted all Mrs. Lawshe's business, and beyond a doubt shows that there was a fiduciary relation existing between Mr. and Mrs. Lawshe.

(d) Complainant was sixty-six years of age, in poor health, and her nerves and mind were shattered on April 30th, 1914, when she signed the assignment in question.

Mrs. Lawshe at the time of the signing of this assignment,

April 30th, 1915 (page 51, page 90, page 152), was sixty-six years of age (page 20). She had been attacked by a severe illness on April 7th, 1915 (testimony, page 33), and this became worse, and by the fifteenth of April, 1915, she was in a critical condition (page 33, testimony). As to her mental and physical condition on April 30th, 1915, when the assignment in question was signed by complainant, Doctor Lawrence Rogers, the family physician, says (testimony, pages 33 and 34):

A. This was April, the middle of April, 1915. She 10
had a great deal of pain from the fifteenth of April until about the twenty-ninth or thirtieth, attended by high fever, and suffered a great deal of course from the effects of the pain and the fever, and her condition during part of that time was very, very critical. On the fifteenth or sixteenth day of April, particularly, she was in a very, very critical condition, and I made daily calls from the fifteenth of April to the first of May, and on two of those occasions, two of those dates, her condition was such that I made two calls a day, and in ad- 20
dition to her pain from her pleuritic condition that she was suffering from, she had a cold involving the whole respiratory tract, the nose and down through the bronchial tubes, and as a result of the cold in her head and condition, she was partially deaf all during this illness.

Q. How about her mental condition during this time?

A. Well, her mental condition had not been very good since the time of her son's death.

Q. I did not understand, Doctor, when the last that you saw her was during that illness? 30

A. I saw her during that illness, the last call that I made was on the tenth of May. I attended her continuously from the fifth of April to the tenth of May, 1915.

On testimony, page 35:

Q. On the thirtieth of April, 1915, Doctor, in your opinion was Mrs. Lawshe in condition to transact business?

A. I attended her on the day in question, on April 30th, 1915, and it was the first day that she had been

10 allowed to be out of bed; I believe that I gave the nurse instructions to allow her out of bed for a short time. I believe one hour, if her condition would permit her to remain up that long, and her physical and mental condition were certainly impaired, and I do not believe that she had physical strength to enable her to consider any matter of any great importance; in addition to her mental trouble, I am sure that she could not understand anything that she had explained to her orally because her hearing was very, very poor, and she was being treated in addition to the pleuritic trouble that she had, she was being treated for deafness, so that unless someone had explained to her in writing the nature of any business, I doubt very much whether she could have passed any judgment on any matter that she might be considering.

On page 40, Doctor Rogers says that Mrs. Lawshe had received opiates during her illness and that impaired her judgment.

20 On page 38 he continues:

Q. In regard to any instructions which you happened to give her, Doctor, if you had known that anybody was coming there to transact business with her, would you have advised her to have seen the person?

A. I would not have advised her or I would not have permitted her to have transacted any business.

The doctor, who is a graduate of New York University, and has practised nine years (page 32), later says that if a lengthy and careful explanation had been made, Mrs. Lawshe might have understood, but the record shows that no such explanation was made. All that her husband said to her was to sign the mortgage, as it was to her interest (page 19; page 52, top). All that Mr. Dixon asked her when she signed was if it was her voluntary act; there was no explanation of its legal effect (page 52, page 92). Therefore there was no such lengthy explanation as in the doctor's opinion was necessary to make Mrs. Lawshe understand what she was doing.

Therefore the convincing testimony shows that when

complainant signed this assignment to the Trenton Banking Company, she was in no condition to transact business.

(e) No explanation was made to complainant as to legal effects of signing the assignment.

No one explained the legal effects of her signing the assignment (testimony, p. 20). As said above, her husband told her to sign it, as it was to her interest to do so (page 19 and page 52, top), and Mr. Dixon just stayed a few minutes and asked if it was her voluntary act, but made no explanation of its legal effects (page 92). No one else spoke to 10 her or explained the results of her act in signing the assignment (pages 19 and 20). Mr. Huston Dixon, who took the acknowledgment to the assignment, was as much interested in having it signed as was Mr. Lawshe, as he, Huston Dixon, was the administrator of the estate of B. F. Lee, who owned a one-half interest in the Trent Tile Company, a corporation, and whose wife was a beneficiary of the Lee estate (testimony, bottom page 95, top of 96). To further prove that undue influence was used on Mrs. Lawshe, the testimony of Miss O'Regan, who was nursing complainant at this time, on 20 page 44, shows:

A. During the time that I was in Mrs. Lawshe's home, she was very ill and very, very nervous, and on that day in question (the day of the assignment, April 30th, 1915) she was exceedingly nervous, and I remember a gentleman calling at her home and I asked Mrs. Lawshe if she felt able to see him, and she said "I am very tired, but perhaps I had better go," and beyond that I did not know anything, only that she was in a very weakened condition, very nervous all the time that 30 I was at her home.

This shows that there was something forcing Mrs. Lawshe to do what she did not want to do. Further, on page 45, the nurse says:

Q. Mrs. Lawshe had told you that there was a gentleman coming, did she not?

A. She asked me to help her to the library; she said, "I have to attend to a little business," and I did not think she should go.

This shows that in the opinion of the nurse, who had 40

charge of Mrs. Lawshe in the absence of the doctor, Mrs. Lawshe was in no condition to transact any business.

Respondent, when she signed the assignment in question, took an acknowledgment; she went through the forms of law, but she did not know or understand the true nature of the transaction (testimony, page 19), therefore the mere acknowledgment does not interfere with recovery on grounds of undue influence.

In *Troxell v. Silverthorn*, 45 N. J. Eq. 330 (Err. & App., 10 1889), Bird, V. C., in his opinion, which was unanimously upheld by the Court of Errors, on page 339 (middle of page), says:

“In order to enforce this view, counsel also calls attention to the case of *Homeopathic Mutual Life Insurance Co. v. Marshall*, 5 Stewart 103-111, in which the court says, ‘The impolicy of admitting such evidence to countervail the official certificate is obvious. If such testimony were admitted, the danger to titles depending on deeds of married women would be great indeed, especially where the officer by whom the acknowledgment was taken had died, or as in this case had gone beyond reach, so that his testimony could not be obtained. The stability of such titles would manifestly often depend on the memory or integrity of those whose interest it would be to nullify them.’ I have already intimated sufficiently clearly, I think, that the difficulty in this case is not whether the instrument was read to the married woman, or whether she acknowledged it according to the forms required by law, but whether she had such understanding of the true nature of the transaction as she was entitled to have in order that the execution of the instrument might be binding on her according to its legal import and effect. I have yet to learn that equity will allow one person to acquire a profit at the hands of another under such circumstances without any consideration.”

Therefore, in view of the evidence in this case, we maintain that the complainant, even though she acknowledged the assignment, did not have sufficient understanding to be bound by it.

(f) Complainant received no consideration from anybody for this assignment.

The evidence shows (pages 20, bottom; 21, top; page 51) that Mrs. Lawshe received no consideration for this assignment; in other words, as far as she was concerned, it was a gift.

While the assignment was made direct to the Trenton Banking Company, it was really a gift by Mrs. Lawshe to Mr. Lawshe, or at least for his use. Mr. Lawshe owned one-half the stock in the Trent Tile Company (page 56). He 10 was an officer in the company (page 46), and he practically owned it (page 58); he wanted to use this mortgage to borrow money at the Trenton Banking Company for the Trent Tile Company (page 107). Therefore, while the assignment was made by Mrs. Lawshe to the Trenton Banking Company, it was really a gift for the use of Mr. Lawshe.

Defendant says in his brief that it is not shown that Mr. Lawshe intended to defraud his wife. Yet, under cross-examination, Mr. Lawshe says, on page 58, that he was embezzling his wife's money. 20

(g) Having shown a fiduciary relationship, it is not necessary to show that in the particular act of signing the assignment to the Trenton Banking Company, the will or mind of the complainant was overcome. That may be necessary in cases involving wills, but in cases *inter vivos* the confidential relation itself is enough to raise a presumption of undue influence. In *re Cooper's Will*, 75 N. J. Eq. 177 (aff. in *Harrison v. Axtell*, 76 N. J. Eq. 614), on page 181, says:

"IN TRANSACTIONS *INTER VIVOS*, THE LAW 30
IS SO JEALOUS OF THE RIGHTS OF THE
DONOR THAT THE PRESUMPTION OF UN-
DUE INFLUENCE IS AT ONCE RAISED
SOLELY BECAUSE OF THE DEPENDENT
CONFIDENTIAL RELATION, AND WHEN
ONCE RAISED IS VERY DIFFICULT TO OVER-
COME BECAUSE OF THE RULE NEVER AP-
PLICABLE IN TESTAMENTARY CASES, RE-
QUIRING THAT INDEPENDENT ADVICE MUST

BE SHOWN." In the Sparkes case, 63 N. J. Eq. 242, it was held by the Prerogative Court that:

10 "THE CONFIDENTIAL RELATION EXISTING BETWEEN A TESTATOR AND HIS SPIRITUAL AS WELL AS SECULAR ADVISER WHO WAS MADE RESIDUARY LEGATEE, IS NOT ALONE SUFFICIENT TO RAISE A PRESUMPTION OF UNDUE INFLUENCE. THE RULE WHICH RAISES SUCH A PRESUMPTION IN TRANS-
ACTIONS *INTER VIVOS* DOES NOT APPLY TO TESTAMENTARY GIFTS."

Therefore, the case at bar being *inter vivos*, we do not have to show that the complainant's will was overpowered, although the testimony certainly goes that far, but we merely have to show a confidential relation and the law, in the lack of independent advice, presumes undue influence.

Under the evidence in this case as shown above, we maintain that the lower court was justified in holding that undue influence was used on complainant in order to obtain
20 her signature to the assignment in question

Fritz v. Fritz, 80 N. J. Eq. 56.

Albert v. Heberly, 71 N. J. Eq. 587 (aff. 74 Eq. 451).

Slack v. Rees, 66 N. J. Eq. 447 (Err. & App. 1903).

Bensel v. Anderson, 85 N. J. Eq. 391 (aff. Err. & App.).

Ryle v. Ryle, 41 N. J. Eq. 582 (Err. & App. 1886).

30 Defendant in his brief says that the Vice Chancellor made the following mistakes as to the facts on this point.

1. That the Vice Chancellor says Mrs. Lawshe owned the whole mortgage, whereas Mr. Lawshe owned a one-half interest.

The Vice Chancellor was right as we have shown under argument of point one on page 4 of this brief.

2. Defendant's brief states that the Vice Chancellor held that Mrs. Lawshe did not know of the advances

to the Trent Tile Company, whereas Mrs. Lawshe says that she did know.

As explained on page 9 (*b*) of this brief, Mrs. Lawshe on cross-examination said "Yes" to everything. Mr. Lawshe, on page 58 of testimony, says that he advanced the money to the tile company without Mrs. Lawshe's knowledge. The Vice Chancellor heard the witnesses and it was his duty to weigh the evidence of fact, and if he decided to believe Mr. Lawshe, taking into consideration Mrs. Lawshe's mental condition, defendant cannot say that the Vice Chancellor made a mistake of facts. Defendant really means that the Vice Chancellor did not take the view of the facts that defendant took. 10

3. Defendant says that the Vice Chancellor was wrong when he decided that no one explained the transaction to Mrs. Lawshe.

The Vice Chancellor is fully supported by the testimony as shown on page 13 (*e*) of this brief.

4. Defendant says that the Vice Chancellor should have decided that Mrs. Lawshe had more than the 20 equity in the house; that Mrs. Lawshe had the difference between \$25,000, the amount of her son's estate, and \$20,500, the value of the mortgage in question.

There is no evidence to show that at the time of the assignment in question Mrs. Lawshe had this \$4,500; as a matter of fact both Mr. and Mrs. Lawshe say that she had nothing except the equity in the house and this mortgage. (Testimony, page 20 and page 56.) As to Mrs. Lawshe's having the balance of this mortgage after the defendant takes what it wants: after she assigned the mortgage to the Trenton Bank, how can it be said that she still had it? That is what this suit was started for: to get the mortgage back. If she succeeds in this suit she will have this mortgage; but at the time this suit was started, the Trenton Banking Company refused to return the mortgage or any part of it to her, so how can it be said that any part of the mortgage was part of her estate? 30

5. Defendant tries to show that Mrs. Lawshe was in sound physical condition at the time of the assignment.

Testimony (pages 33 and 34 and 35, 38 and 20) shows that she was a woman old in years, racked with disease, and on the day in question unable to transact business.

Defendant also says that signing this assignment was a simple matter; it seems to us that giving away the bulk of one's estate and getting mixed up in such a matter as giving security for notes of a company about to be declared insolvent, is not a simple matter for the person in question.

Third Question—Should the Trenton Banking Company
10 (defendant) be permitted to retain out of the proceeds of the mortgage the amount of the Rambow notes, a past indebtedness, that is, is one who takes a mortgage as security for a past debt a *bona fide* purchaser for value?

"We maintain that the great weight of authority, both in New Jersey and elsewhere, supports the lower court in holding that one who takes a mortgage as security for a past debt is not a *bona fide* purchaser for value.

The testimony shows on pages 97, 98, 107 and 115 that at the time of the assignment of the mortgage to the Trenton
20 Bank the Rambow notes were past due, in other words they were a pre-existing debt. On page 98 Mr. Campbell speaks of a conversation concerning the Rambow notes which took place in January, 1915, the assignment taking place April 30th, 1915. All through the testimony it is stated that the Rambow notes were in existence long before the assignment in question. On page 105 of the testimony Mr. Howell says:

"* * * It was some time in April I should say
that he made the definite proposition that this mortgage would be assigned to the bank as collateral security
30 for some loans already made by the bank. * * *"

And further on the same page he says:

A. Well, he said that Mrs. Lawshe had this mortgage and that she would assign it to the bank as security for these matters that I have already mentioned—loans, old and new.

On page 107 he says:

A. This bond and mortgage and the assignment thereof were held as security for a note of the Trent

Tile Company endorsed by A. Lawshe of \$2,200 and one of \$450, and as security for the ultimate payment of the M. Rambow & Co. notes. Mr. Lawshe distinctly said to me that it was to secure the Rambow notes, "those Rambow notes," and it was offered as collateral security for loans to be made further loans to the Trent Tile Company.

On page 108 he says:

Q. Well, now did the Trenton Banking Company advance new money on the faith of this mortgage? 10

A. Undoubtedly; yes, sir.

Q. Now, what amounts did they advance and what new notes have you? Have you a list of them?

A. Yes, sir.

Then Mr. Howell gave a list of the money advanced on the strength of this mortgage. The list amounts to \$9,597.11, including interest, and when the dividend received from the Trent Tile Company is deducted it leaves \$8,775. This is the amount which the lower court decreed should be paid out of the mortgage. 20

In other words, this list includes all money advanced on the strength of the assignment, all the rest was past due at that time. Therefore the Rambow notes were a pre-existing debt.

The Rambow notes were not renewed when this mortgage was given; no new consideration of any kind was given as far as the Rambow notes were concerned. Defendant bank had never asked for any security for the Rambow notes (testimony, pages 101, 116). The defendant bank changed their position in no way in regards to the Rambow notes 30 when this assignment was taken from the complainant.

Defendant argues that in the light of this security the bank was lulled to sleep, and did not enforce its rights against Rambow and the Trent Tile Company. However, there is no evidence to support this contention; nothing to show that the bank changed their actions or position in regard to the Rambow paper at all. Defendant endeavors to presume that the bank did not press judgment of the Ram-

bow notes because of this security. In the first place there is no evidence to show that they did not, and it was their duty to the surety (the mortgage) to enforce all their rights against the principal debtors; and we think that the defendant is taking a step too far in the way of presumption when it presumes the renewal of a note when there is no evidence of a renewal.

The defendant suggests that the assignment was made April 30th, 1915, and the complainant did not file her bill
 10 until March, 1916; therefore the complainant is guilty of laches. However, on July 9th, 1915, the Trent Tile Company was declared insolvent and a receiver appointed. If the receiver had satisfied all the obligations of the Tile Company in full, this mortgage would have reverted to the complainant without the necessity of this suit. Therefore the complainant waited until it was determined what the receiver would pay before filing her bill. Furthermore, the Trenton Bank never refused absolutely to return this mortgage until shortly before this bill was filed; therefore the
 20 complainant is not guilty of laches. However, the defense must stand on issues made by the pleadings; laches was not pleaded, therefore it cannot be raised now.

Myers v. Steel Machine Co., 67 N. J. Eq. 300 (p. 313); aff. 68 N. J. Eq. 795.

Bannister v. Miller, 54 N. J. Eq. 121; aff. 54 N. J. Eq. 701.

Furthermore there is nothing in the testimony to show that the Trenton Banking Company did not endeavor to enforce the Rambow notes, or that they delayed in enforcing
 30 them because of this mortgage. There is absolutely no evidence in the testimony to show that the defendant was prejudiced by any delay of complainant in bringing suit. Therefore there is no laches.

Farr v. Hauenstein, 69 N. J. Eq. 740.

Cawley v. Leonard, 28 N. J. Eq. 467 (Err. & App.).

Daggers v. Van Dyke, 37 N. J. Eq. 130.

Therefore, it seems only equitable and just that as appellant gave no consideration, they should take the mortgage subject to its equities, one of which was the undue influence exercised by Mr. Lawshe on the respondent. It makes no difference whether the appellant knew of these equities or not. They really took the assignment as a gift, and therefore they should take subject to prior equities. The assignment in question was a chose in action, a bond and mortgage, but not a negotiable instrument. It is admitted that one who takes a negotiable instrument before maturity, even for a 10 past debt, is a *bona fide* purchaser. This is by statute, however, and does not apply to non-negotiable choses. If it should be held that the rule as laid down by statute for negotiable instruments applied to non-negotiable choses, there is no reason why it should not apply to all personal property, and such a rule would certainly upset the law and create a terrible disturbance in business. In the business world negotiable instruments often pass as money and are used as such, but bonds and mortgages do not pass as money, and there is no reason for making the rule in non-negotiable choses the 20 same as statute has made negotiable instruments.

In *Reeves v. Evans*, 34 Atl. Rep. 477 (1896, Chancery), Reed, V. C., says (page 477): "But was the mortgage also taken for value? Now it appears that the amount secured was in part a then existing debt of the mortgagor's son. These, therefore, were antecedent debts, and the rule is settled by the great weight of authority that a mortgage taken for a precedent debt does not constitute the mortgagee a purchaser for value."

Jones on Mortgages, Seventh Edition (1915), Vol. 1, Par. 30 460, says: "The mortgage or deed made to secure a pre-existing indebtedness does not constitute the grantee a purchaser for value in good faith. The former, although given up on a valid consideration as between the parties, is not regarded as a purchaser for valuable consideration which will entitle the mortgagee to protection against prior equities, although he had no notice of them when he took the mortgage."

Jones also cites cases from other states, showing that the great weight of authority is this way.

Other New Jersey authorities in point are:

Pancoast v. Duval, 24 N. J. Eq. 445.

Martin v. Bowen, 51 N. J. Eq. 462-468.

Mingus v. Condit, 23 N. J. Eq. 313.

Tate v. Security Trust Co., 63 N. J. Eq. 559.

Wheeler v. Kirtland, 26 N. J. Eq. 552-555 (Err. & App., 1873).

- 10 Therefore the defendant should not be permitted to hold the mortgage in question to cover the Rambow notes.

Under "Point 3" of the defendant's brief, the defendant makes the novel argument that as to the pre-existing debt, the Rambow notes, Mr. Lawshe received no benefit, and therefore he used no undue influence on Mrs. Lawshe. The defendant's conclusion is unsound. If Mr. Lawshe received no benefit from that part of the assignment, what proof is that, that he did not obtain the assignment by undue influence? He may have thought he was going to be bene-

- 20 fited, and so have used undue influence. Furthermore, as far as Mrs. Lawshe is concerned, Mr. Lawshe by undue influence obtained the assignment of the whole mortgage. He could have used it in all kinds of ways: he might have borrowed the full value of the mortgage or even have sold it to the Trenton Banking Company. He had it in his power, if he saw fit, to use it in a way which would only partly benefit him; how could that affect the manner in which he obtained the assignment from Mrs. Lawshe? Mr. Lawshe obtained the mortgage from Mrs. Lawshe in order
30 to use it in a manner most beneficial to himself and the Trent Tile Company. He obtained the assignment, there is no question of that, and if he was mistaken in the way he later used the assignment, that fact can in no way alter the manner in which he first obtained it from Mrs. Lawshe.

There remain only two points merely mentioned by defendant in his conclusions under Nos. 4 and 5.

Under conclusion 4 he says that the contract of assignment is good as to part of the consideration, and therefore must stand as inadequacy of consideration, is not sufficient

to shock the conscience. In other words, the assignment is good as to moneys advanced on the strength of it; therefore, it is good as to the Rambow notes, a past indebtedness. Defendant here treats the transaction from the view of the consideration necessary to make a contract. The case at bar is not such a case. The question here is one of a pledge. If the mortgage was assigned to secure a certain debt, when that debt is paid the mortgage reverts to the grantor. There is no question of adequacy of consideration here. Defendant is a pledgee for value of this mortgage, for money advanced on the strength of the assignment, and can enforce the pledge for that; as to the past indebtedness, defendant is not a pledgee for value and cannot hold the mortgage as security for the past debt. This principle is well settled and has nothing to do with adequacy of consideration in a contract.

Under conclusion 5, defendant says that the assignment was for the benefit of the Trent Tile Company, not Mr. Lawshe, and therefore Mr. Lawshe used no undue influence on Mrs. Lawshe. Here again, as said above, defendant overlooked the fact that Mr. Lawshe had control of this mortgage and could use it as he saw fit. If he saw fit to use it for the benefit of the Trent Tile Company and not himself directly, that can have no bearing on the manner in which he obtained the assignment from Mrs. Lawshe.

In conclusion we maintain that—

1. Long before the assignment in question, Mr. Lawshe had given the complainant his interest in his son's estate; that Mr. Lawshe had the power to make this gift to his wife; that if he did not give it to her, the law will presume a gift from the fact that the mortgage was taken in her name.

2. The evidence shows that undue influence was exercised by Mr. Lawshe on the complainant in order to get this assignment.

3. That there was a fiduciary relation between Mr. and Mrs. Lawshe.

4. That the mortgage in question was the bulk of Mrs. Lawshe's estate.

5. That Mrs. Lawshe knew nothing about business, and her husband looked after all her affairs.

6. That at the time of this assignment, Mrs. Lawshe was sixty-six years of age, in poor health, her nerves and mind were shattered, and because of the use of opiates her judgment was impaired.

7. That no explanation was made to Mrs. Lawshe as to the legal effect of signing the assignment.

8. That Mrs. Lawshe received no consideration from any-
10 one for this assignment.

9. That as far as the Rambow notes are concerned, the assignment was taken to secure a past indebtedness, and, therefore, the Trenton Banking Company was not a *bona fide* purchaser for value, but took subject to the undue influence exercised by Mr. Lawshe on Mrs. Lawshe, and that, therefore, the amount of the Rambow notes cannot be retained by the Trenton Banking Company, but must be returned to Mrs. Lawshe.

For these reasons, we maintain that the decree of the
20 lower court should be affirmed.

Respectfully submitted,

GERAGHTY & WEELANS,

Solicitors for Respondent,

ANNGENETTE K. LAWSHE.

NEW JERSEY COURT OF ERRORS AND
APPEALS

Between

ANGENETTE K. LAWSHE,
*Complainant-
Respondent,*

and

THE TRENTON BANKING
COMPANY,
*Defendant-
Appellant.*

ON APPEAL.

BRIEF FOR APPELLANT.

This is an appeal by the Trenton Banking Company from a decree of the Court of Chancery advised by Vice-Chancellor Leaming and based upon conclusions filed by him.

The following are the facts of the case: The complainant below was Angenette K. Lawshe. The defendant below was the Trenton Banking Company. From 1882 to the year 1915, Alfred W. Lawshe, husband of the complainant, had owned substantially a half interest in the corporation known as the Trent Tile Company, formed by the late Benjamin F. Lee and the said Alfred W. Lawshe. On August 22, 1914, Charles P. Lawshe, a son of Alfred W. Lawshe and Angenette K. Lawshe, who was also

engaged with the Trent Tile Company, died, leaving a will in which he bequeathed equally to his father and mother an estate composed of \$25,000 in cash on deposit with the Trenton Saving Fund Society and the Mechanics' National Bank of Trenton. About this time the Trent Tile Company was engaged in litigation over the payment of royalties for the use of patented inventions. This litigation terminated adversely to the Trent Tile Company and it became necessary to pay the judgment rendered against it.

During the months immediately following the death of Charles P. Lawshe, \$20,500 of the moneys left by him to his parents was loaned to the Trent Tile Company. On November 30th, 1914, the Trent Tile Company, at the instance of Alfred W. Lawshe, executed a bond secured by a second mortgage on its property for \$20,500 to Angenette K. Lawshe. The mortgage was not recorded.

For many years the Trent Tile Company had been a customer and borrower of the Trenton Banking Company. The bank had, amongst other notes, discounted for the Trent Tile Company the notes of M. Rambow and Company, a customer of the Trent Tile Company. M. Rambow and Company during the year 1914 had been making small payments on these notes and the president of the Trenton Banking Company, Mr. John A. Campbell, had interviewed Mr. Lawshe on this subject and urged that greater reductions in this line of paper be made. Shortly after this interview and in the month of January, 1915, Mr. Lawshe informed Mr. Campbell that he intended to take care of the bank in the Rambow matter; that he would put up a second mortgage on the Trent Tile Company as collateral security for the Rambow paper and for advances which he

might want for the Trent Tile Company (p. 98); that the mortgage had been given by the Trent Tile Company for the money advanced by Mrs. Lawshe and himself which had been left them by their son and loaned to the Trent Tile Company to clear up the judgment in the patent suit (p. 100). Mr. Lawshe made the same statements to the cashier of the Trenton Banking Company (p. 105). Shortly after these interviews, Mr. Lawshe delivered the bond and mortgage of November 30th, 1914, to the cashier, Mr. Howell, stating that Mrs. Lawshe would assign them to the bank (p. 106). Inquiry developed that the bond and mortgage had never been authorized by the board of directors of the Trent Tile Company. On April 30th, 1915, the board of directors of the Trent Tile Company authorized the execution of a new bond and mortgage to Mrs. Lawshe for the sum of \$20,500. This mortgage was executed and on the same day Mrs. Lawshe executed an assignment thereof to the Trenton Banking Company. The assignment was executed before Mr. Huston Dixon, a counsellor at law of this state, who witnessed the execution and took the acknowledgment of Mrs. Lawshe to the assignment, at her home in Trenton. Mr. Dixon was not acting for the bank in this matter. This bond, mortgage and assignment were delivered to the Trenton Banking Company. The Trenton Banking Company held it as collateral security for the Rambow and Company paper, which amounted to \$10,988.08, and for new money advanced to the tile company, amounting to \$8,775.

About this time the Trent Tile Company had obtained a loan upon its property for \$35,000 from the Trenton Saving Fund Society, which would have paid off the mortgage of \$20,500 and the first mortgage of \$9,000 and left a balance. Differences arose

between Mr. Lawshe and Mr. Dixon over this matter (p. 72), and in the month of July, 1914, a temporary receiver was appointed for the Trent Tile Company and the company went into liquidation. Mr. Ram-bow and Company also subsequently failed. The property of the Trent Tile Company was sold. The purchaser paid off the \$20,500 mortgage held by the Trenton Banking Company to that bank.

The bill in this cause was filed March 25, 1916, (eleven months after making the assignment) by Mrs. Lawshe to set aside the assignment of the mortgage to the Trenton Banking Company, on the ground that the assignment was void because procured through the undue influence of her husband, of which the Trenton Banking Company was chargeable with notice.

Vice-Chancellor Leaming held—

1st. That the assignment was the result of the undue influence of Mr. Lawshe upon Mrs. Lawshe, and Mrs. Lawshe as between herself and Mr. Lawshe was entitled to relief from the operation of the assignment.

2nd. That as the Trenton Banking Company had delivered to it the bond, mortgage and the assignment executed by Mrs. Lawshe, with all the formalities and safeguards provided by law, it was not chargeable with notice of the dominating influence of Mr. Lawshe and had a right to retain the proceeds of the mortgage to the extent of reimbursing itself for the new money advanced to the Trent Tile Company.

3rd. That as the evidence disclosed no change of position upon the faith of the mortgage with refer-

ence to the M. Rambow and Company paper, the bank is not entitled to the protection of the mortgage to the amount of this paper, \$10,998.88.

This appeal is taken for the purpose of reversing the opinion and decree in the part which holds that the Trenton Banking Company is not entitled to retain from the avails of the mortgage the amount of the Rambow and Company paper.

POINT ONE.

THERE IS NO EVIDENCE TO SUPPORT THE CONCLUSION OF THE VICE-CHANCELLOR THAT THE ASSIGNMENT OF THE MORTGAGE WAS PROCURED BY THE UNDUE INFLUENCE OF MR. LAWSHE, THE HUSBAND, UPON HIS WIFE, THE COMPLAINANT.

The opinion of the Vice-Chancellor that the Trenton Banking Company is not entitled to the security of the mortgage assigned to it for the paper of Rambow and Company discounted by it for the Trent Tile Company is based upon the proposition that the assignment was void because procured by the undue influence of Mr. Lawshe upon Mrs. Lawshe.

It is conceded in the opinion that a married woman may transfer her property to her husband or to another for the benefit of her husband, without consideration moving to her and that such transfer is presumed valid.

Walker vs. Dixon Crucible Co., 47 N. J. E. 343;

Warwick vs. Lawrence, 43 N. J. E. 179.

If, therefore, there is no evidence of undue influence which warrants the conclusion that the assignment of the mortgage by Mrs. Lawshe to the Trenton Banking Company is void, then it follows that the assignment was valid and the bank is entitled to avail itself of the benefit thereof.

The Vice-Chancellor, on this branch of the case, stated his conclusions in the following language:

“It will be observed that while the assignment of the mortgage was made by complainant to the bank, it was, so far as her interests were concerned, in effect a gift by her to, or for the use of, her husband. If the present controversy were alone between complainant and her husband I think it clear that she would be entitled to reclaim the mortgage. The evidence fully disclosed that complainant was without business experience and that she implicitly relied upon her husband in all matters relating to her pecuniary affairs. Indeed, this very mortgage was, I am convinced, procured for complainant by her husband without her knowledge, to secure the payment to her of money which she had inherited from her son and which money her husband had, also without her knowledge, loaned to the business concern already referred to. When complainant’s husband subsequently needed the use of that mortgage for the benefit of his business, he asked complainant to execute an assignment of it to defendant bank and she assented. He merely stated to her that it was for their interest for her to do so and made no explanation whatever of the proposed transaction. She was not apprised of the nature of the transaction by any one. When she executed the assignment before an acknowledging officer,

who had been sent to her home for that purpose, she had not even been informed whether the assignment was absolute or merely to secure some indebtedness. She knew that the assignment was to defendant bank and knew nothing more about the matter except that it was her husband's wish that she should execute it, and her confidence in her husband obviously impelled her to comply with that wish on his part. The mortgage was \$20,500 in amount and represented all complainant was worth except a certain residence property which was worth about \$5,000 above encumbrance. She was sick at the time and according to the testimony of her physician was physically unable to maintain sustained thought adequate to comprehend any business transaction which was not a simple affair, had it been explained to her. I think it clear that as between complainant and her husband, complainant would be entitled to relief from the operation of the assignment."

The testimony does not support this conclusion. Mrs. Lawshe testified as follows (pages 21 to 27):

"Q. Now, the son you spoke of had died during what year?

A. About 1914.

Q. 1914?

A. Yes.

Q. And he had left a will in which he left to Mr. Lawshe and yourself all of his estate?

A. Yes.

Q. And he had on deposit at the Trenton Saving Fund Society a very considerable sum of money, had he not?

A. Yes.

Q. As much as \$20,000, or more than that?

A. \$20,500.

Q. \$20,500?

A. Yes.

Q. Now, then, your son also had been a stockholder in the Trent Tile Company, and had been during his life actively engaged in the business, had he not?

A. Yes.

Q. And your husband, Mr. Lawshe, had been engaged for many years with the Trent Tile Company—in fact, was the president of the company, wasn't he?

A. Yes, president of the company.

Q. You knew that the stockholding interest of Mr. Lawshe and yourself was a half interest in the Trent Tile Company, did you not?

A. Yes.

Q. The Trent Tile Company had been successful, had it not?

The Vice-Chancellor: The interest of her husband was one-half, or did you say her husband and her?

Q. Your husband originally owned a half interest with Mr. Benjamin F. Lee?

A. Yes, with Mr. Lee.

Q. And then, when your son took an active interest in the business, his father, and your husband, gave to him certain shares of stock of the Trent Tile Company?

A. Yes.

Q. So that the interest of your husband and your son was a half interest?

A. Yes.

Q. And then, under the will of your son, you became entitled to a half interest in the stock that he held in the Trent Tile Company?

A. Yes.

Q. So that at the time that this mortgage was assigned you had an interest in the Trent Tile Company as a stockholder and Mr. Lawshe did, too?

A. Yes.

Q. Now, since Mr. Lee's death, Mr. Lawshe, your husband, and your son, had almost exclusive control of the Trent Tile Company, had they not?

A. Yes.

Q. Now, Mrs. Lawshe, you were familiar with this patent litigation or suit for royalties, of course, that the Trent Tile Company had been litigating, were you not?

A. Yes.

Q. And Mr. Lawshe had told you from time to time how that suit had progressed, had he not?

A. Yes.

Q. And it was shortly after the death of your son that Mr. Lawshe told you about the judgment that had been recovered in this suit, didn't he, for royalties?

A. Yes.

Q. You knew about that?

A. Yes.

Q. And you had discussed that with Mr. Lawshe, had you not?

A. Yes.

Q. And you knew that money was required to pay this judgment, did you not?

A. Yes.

Q. And it was that talk and the circumstances of that judgment that made Mr. Lawshe and yourself loan these moneys of your son, that

your son had left, along in September, of 1914, and October, 1914, to the Trent Tile Company for getting rid of this litigation, and that had all been gone over between Mr. Lawshe and yourself, so that you were familiar with it?

A. Yes.

Q. And you recall distinctly about how much money you advanced, you and Mr. Lawshe, at that time to the Trent Tile Company, don't you?

A. Yes.

Q. How much was it?

A. How much we advanced?

Q. Yes, how much money was it? I mean altogether, not the different advances, but you altogether advanced \$20,500?

A. Yes, \$20,500.

Q. Which was the money that your son had left and had on deposit in the Trenton Saving Fund Society?

A. Yes.

Q. So that you and Mr. Lawshe had advanced this money to the Trent Tile Company?

A. Yes.

Q. And then you knew about the Trent Tile Company giving this mortgage to you to secure this \$20,500?

A. Yes.

Q. Now, this mortgage, the first mortgage, dated on November 30th, 1914, I think?

A. I think so, I can't recall.

Q. You can't recall the exact date?

A. I can't recall the exact date.

Q. But it was about that date?

A. I think it was about that time.

Q. You were apprised of the fact, and, of course, knew that this mortgage had been given you?

A. Yes.

Q. And so the matter rested in that shape for some little time, did it not?

A. Yes.

Q. And then, you, of course, knew that business had not been very good in the fall of 1914?

A. Yes, I knew something about that.

Q. And Mr. Lawshe talked that over with you?

A. Some, yes.

Q. So that about that time you knew that the Trent Tile Company would need some money to carry on this business, would it not?

A. Yes.

Q. And you had often heard Mr. Lawshe telling you about Rambow and all these other customers—you knew about them?

A. Well, not often. Husbands don't always tell all the news, you know.

Q. But he had spoken about it sometimes to you?

A. Yes, he did speak about Mr. Rambow.

Q. That is, he spoke about Mr. Rambow and the fact that Mr. Rambow was pretty slow in his payments?

A. Yes, I heard him talking over the phone, but it didn't interest me that way, you know.

Q. Well, of course, you were always interested in the business?

A. Oh, not particularly in that at that time.

Q. But still you did know about the Rambow paper?

A. Yes, I knew about it.

Q. And, of course, you knew the Trent Tile Company had been dealing with the Trenton Banking Company for a long time?

A. Yes.

Q. So that along about—in the early part of 1915, or we will say, on down about the month of April, 1915, Mr. Lawshe spoke to you about the fact that this mortgage that had been given you was not a correct mortgage, didn't he?

A. Yes.

Q. He told you about that?

A. Yes.

Q. And that the matter would have to be corrected?

A. Yes.

Q. And that he had been advised of that, and that you should have proper protection, Mr. Lawshe and yourself—that you knew?

A. Yes.

Q. And did you know about the meeting of the directors of the Trent Tile Company which passed the resolution authorizing this new mortgage to you? Mr. Lawshe told you about that, didn't he?

A. Yes.

Q. And about the new bond and mortgage that either was given or would be given to you?

A. Yes.

Q. Now, he also talked with you about getting some little additional money, did he not, for the purposes of the business along about that time?

A. I don't recollect.

Q. You don't recollect that?

A. I don't remember.

Q. Now, this mortgage of April 30th, 1915—what did Mr. Lawshe tell you about this new mortgage—what he thought it would be best for you and him to do with it? Oh, I don't ask

for the exact words, but just about what did he say along that line?

A. Why, nothing; I can't remember anything any more than I told you, it was for our interest.

Q. That it was for your interest?

A. Yes.

Q. And that this mortgage should be assigned over to the Trenton Banking Company?

A. Yes.

Q. And then after you had had that talk with Mr. Lawshe you recall, of course, Mr. Dixon coming out there to the house, do you not?

A. Yes.

Q. Well, now, then, Mr. Dixon called, and, of course, you had known Mr. Dixon for some time?

A. Oh, yes.

Q. And Mr. Dixon called at the house and you weren't in bed at all, were you?

A. I had just been sitting up about a day.

Q. You had been sitting up?

A. A little at a time.

Q. Did you come downstairs to see Mr. Dixon?

A. Oh, no; I came from my bedroom, had just been sitting up a little while before that, and I went into—the nurse took me into the library and sat me in a chair.

Q. You were in the library upstairs when Mr. Dixon called?

A. Yes, he came upstairs to the library.

Q. And you and Mr. Dixon were there in the room alone?

A. Yes; yes.

Q. And so Mr. Dixon came there and told you what he had come for, didn't he?

A. Yes; yes.

Q. And spoke about this assignment?

A. Yes, mortgage assigned.

Q. This assignment of the mortgage?

A. Yes.

By the Vice-Chancellor:

Q. Did you know that he was coming? Had your husband told you that he would come?

A. Yes; he told me he would be there that day.

By Mr. Katzenbach:

Q. That is, Mr. Lawshe had told you that Mr. Dixon —

A. Yes, sir; said he would be here this morning to sign the mortgage.

Q. Mr. Lawshe had told you that?

A. Yes; that is all he said.

Q. Therefore, you were not surprised when Mr. Dixon came at all?

A. No, he had told me—asked me if I would sign the mortgage.

Q. Yes; so that when Mr. Dixon came you went into the library and Mr. Dixon came upstairs in the library?

A. Yes.

Q. And produced the assignment of the mortgage?

A. Yes.

Q. And he spoke of it as an assignment of mortgage to the Trenton Banking Company, did he not?

A. Yes.

Q. And, of course, you knew what mortgage it was?

A. Yes.

Q. And then after Mr. Dixon had spoken to you and told you about this mortgage and assigning it, you put your name to the assignment, I suppose, of the mortgage, didn't you?

A. Yes.

Q. And you would recognize, of course, your signature, Mrs. Lawshe, wouldn't you?

A. Yes.

Q. And this is your signature (exhibiting paper to witness)?

A. That is my signature.

Q. That is the signature that you made that day in the library?

A. Yes.

Q. And then you said that Mr. Dixon asked you the usual questions. Now, just about what would you call the usual questions?

A. I can't remember.

Q. Well, he asked you if that was your signature?

A. Yes.

Q. You remember that?

A. Yes.

Q. And you said that it was?

A. Yes.

Q. And then he had previously told you that it was the assignment of the mortgage to the Trenton Banking Company?

A. Yes.

Q. And then he also, I suppose, asked you whether you did it as your voluntary act and deed?

A. Yes.

Q. You remember that?

A. Yes. Of course, I cannot say myself the words, but when you recall it, of course, I recall that.

Q. You recall that he did ask you that?

A. Yes.

Q. And you said that it was your voluntary act and deed?

A. Yes.

Q. And that you signed the paper for the purposes therein expressed?

A. Yes."

Mr. Lawshe said (p. 71, l. 8): "My recollection is I told Mrs. Lawshe probably that it would be to our interest to sign that assignment for this reason: there was pending a loan for \$35,000 ——" and on page 72, line 3, "I simply said to her I thought it would be to our benefit for her to sign the assignment. That is all the conversation we had. Q. Now, then, why did you give her that advice? A. Because there was a loan made to the Trent Tile Company by the Trenton Saving Fund of \$35,000, which, if Mr. Dixon, as secretary of the company, had attested to my signature as the treasurer of the company the loan would have been perfected and all this trouble would have been avoided. He declined, he did not obey the board of directors, and he simply refused to attest my signature and therefore the company lost the loan. It went so far that the company employed Mr. Scammell to draw the mortgage the Trenton Saving Fund, for which they had to pay. If Mr. Dixon had attested my signature the loan would have been perfected and all of this receivership would have been avoided."

Comparing this testimony with the conclusions of the Vice-Chancellor, it will be seen that the Vice-Chancellor makes many misstatements as to the facts in his conclusions. The following are some of the more important variances:

First: The Vice-Chancellor says that the mortgage in question was to secure the payment to Mrs. Lawshe of money she had inherited from her son. The fact was, as admitted by both Mrs. and Mr. Lawshe, that the son had left his money equally to his mother and father, so the mortgage equitably was as much Mr. Lawshe's as Mrs. Lawshe's.

Second: The Vice-Chancellor said that Mr. Lawshe had loaned the money to the Trent Tile Company without the knowledge of his wife and that the mortgage was procured by her husband without her knowledge. Mrs. Lawshe said she knew about the advances and the giving of the mortgage (p. 24).

Third: The Vice-Chancellor says Mrs. Lawshe was not apprised of the nature of the transaction by any one. Mrs. Lawshe knew of the financial needs of the Trent Tile Company. She knew that she was assigning the mortgage to the bank and that in the opinion of her husband that was for their best interests. It was not necessary for her to know anything more to make the assignment valid.

Fourth: The Vice-Chancellor says that the mortgage represented all she was worth except a residence which was worth about \$5,000 above encumbrances. The testimony was that the residence was worth \$5500 above encumbrance and the mortgage was not all the money the son left. His estate was \$25,000. Moreover all the proceeds of the mortgage would not be required to pay the Rambow and Company paper, and the new money advanced to the Trent Tile Company was secured by endorsements of notes which require the endorsers to pay them. The decree provides for the assignment of

these notes to the complainant, so that Mrs. Lawshe would in part be reimbursed for the amount of these notes, which the decree below directed should be paid out of the avails of the mortgage.

Fifth: The Vice-Chancellor says: "She was sick at the time and according to the testimony of her physician was physically unable to maintain sustained thought adequate to comprehend any business transaction which was not a simple affair had it been explained to her." This is not a fair statement of the physician's testimony which is found on page 39. He said (line 23): "I think probably if the matter had been a very simple affair and could have been explained in a very short time, I think probably she might have known what she was doing." The Vice-Chancellor had just called the assignment of the mortgage a simple affair by asking the following question to which the above answer was a part of the reply: "Q. A business transaction so simple in its form and scope as assigning over a security which she owned to the Trenton Banking Company to secure an indebtedness of her husband, or some other person—would you think that she could not understand the nature of a transaction of that kind at that time, if properly explained to her?" To this question the physician replied as quoted above to the effect that Mrs. Lawshe would know what she was doing.

Mrs. Lawshe knew what she was doing. She told the nurse that she desired to go to the library as she had a little business to attend to (p. 45, l. 27) before executing the assignment.

Mr. Dixon said (p. 93) that there was nothing in her appearance or in her actions which would indicate that she did not understand the act which she

was doing. Mrs. Lawshe herself relates everything which occurred at the time and does not say she did not understand (pp. 27 to 29).

A reading of the full testimony of the physician, Dr. Rogers, (p. 32), will show that he was a young and inexperienced physician and that his examination was largely conducted by the Vice-Chancellor by the use of leading questions; that he had attended Mrs. Lawshe first on April 7th; that she then had a cold and some fever (p. 37) but on April 30th, which was the date she executed the assignment, was convalescent and could go, fully dressed, from one room to another; that he had prescribed opiates and he said he would have to leave it to the nurse whether she was under the influence of opiates on the day of executing the assignment.

The nurse was called as a witness by the complainant and testified that she had not given Mrs. Lawshe on that day (the day of executing the assignment) any opiates (p. 44, l. 35).

From this testimony it appears that the Vice-Chancellor characterized the assignment of the mortgage as a simple business transaction; that her physician said she was able to understand such a transaction if not under the influence of opiates; that her nurse said no opiates had been administered. Mrs. Lawshe was therefore mentally capable of executing the assignment. The statement contained in the Vice-Chancellor's conclusions is so stated that it would appear that Mrs. Lawshe was not able to understand the transaction, whereas from the testimony above quoted it is clearly established that Mrs. Lawshe understood the act which she was doing; that she understood the circumstances which led up to the assignment of the mortgage and that she had the mental capacity to execute the assignment.

Mrs. Lawshe having thus the mental capacity to execute the assignment, was she unduly influenced by Mr. Lawshe in making the assignment, so that the assignment, as between Mr. Lawshe and Mrs. Lawshe, was null and void as held by the Vice-Chancellor?

Mrs. Lawshe testified that Mr. Lawshe told her that it would be for their interest for her to assign the mortgage to the Trenton Banking Company (p. 27, lines 1-10). Mr. Lawshe said (p. 71, l. 8) that his recollection was that he had told Mrs. Lawshe that it would be to their interest to sign the assignment. He gave as his reason for this advice (p. 72, l. 8) that a loan had been made to the Trent Tile Company by the Trenton Saving Fund Society of \$35,000, which would have been perfected and all this trouble avoided had Mr. Dixon as secretary of the company attested Mr. Lawshe's signature; that Mr. Dixon declined to obey the board of directors and simply refused to attest the signature of Mr. Lawshe and therefore the company had lost the loan; that had Mr. Dixon attested his signature the receivership would have been avoided.

From this statement of Mr. Lawshe it appears that all that was done by Mr. Lawshe was to advise his wife that it was for their best interests for her to assign the mortgage to the Trenton Banking Company.

It must be remembered that Mr. Lawshe owned a one-half interest in the Trent Tile Company and that from this business his family had been for many years supported. The Trent Tile Company at this time needed funds temporarily. It was to secure a permanent loan of \$35,000 upon its property from the Trenton Saving Fund Society which would have been accomplished had it not been for the

disagreement between Mr. Lawshe and Mr. Dixon which followed. Believing that the assignment to the Trenton Banking Company would give to the Trent Tile Company temporary relief, and that the principal of this mortgage would soon be paid out of the avails of the mortgage to the Trenton Saving Fund Society, Mr. Lawshe, undoubtedly, was giving to his wife the best advice for their mutual interests he was capable of. By the making of the assignment the Trent Tile Company would be relieved from its temporary embarrassment by further loans which would be immediately obtained from the Trenton Banking Company. Mrs. Lawshe probably viewed the matter in the same way as did her husband.

There is no evidence of any coercion, importunity, threats or any improper action whatsoever on the part of Mr. Lawshe. The fact is that his wife, probably believing as he did, merely accepted the advice which he gave, namely, that it was for their best interests, as it undoubtedly was at the time, that this mortgage should be assigned to the Trenton Banking Company. It could not have been foreseen that Mr. Dixon and Mr. Lawshe would have a disagreement; that Mr. Lawshe would become ill; that a temporary receiver of the Trent Tile Company would be appointed; that the Trent Tile Company would go into liquidation; or that within a year Rambow & Company would become bankrupt and fail to meet the obligations which this mortgage had been in part assigned to protect.

Under such circumstances as the foregoing, can it be said that a husband unduly influences his wife when he merely tells her what he feels is for her best interests, and the wife believing in the advice of her husband, voluntarily executes an assignment

of a mortgage? Moreover, this mortgage was equitably as much Mr. Lawshe's mortgage as it was Mrs. Lawshe's. Mr. Lawshe had written (p. 123) to the Trenton Banking Company that the mortgage was for moneys advanced by Mrs. Lawshe and himself from their son's estate, so that this undoubtedly played a part in the acquiescence of Mrs. Lawshe to the suggestion and advice of her husband.

There is no presumption from the relationship of husband and wife that the assignment of the mortgage to the Trenton Banking Company was made as the result of the undue influence of Mr. Lawshe upon Mrs. Lawshe. While it is true that Courts of Equity will examine transactions between husband and wife with anxious care and dread of undue influence when they involve the bestowal of property upon the husband by the wife by gift, there is no presumption of invalidity in a transfer of property between husband and wife. *Farmer vs. Farmer*, 12 Stew. 211.

It is also to be remembered that this was not a transaction between Mr. and Mrs. Lawshe, but a transaction between Mrs. Lawshe and the Trenton Banking Company.

The undue influence which is necessary to set aside a transaction is that which destroys free agency and constrains the person whose act is brought in judgment to do that which is against his will and which he would not have done if left to himself, whether the control be exercised by physical force, threats or importunity, or any other species of physical or mental coercion. *Earle vs. Norfolk and New Brunswick Hosiery Co.*, 9 Stew. 192.

How can it be said in this case that anything was done by Mr. Lawshe which amounted to force or

importunity which destroyed the free agency of Mrs. Lawshe? He merely suggested that it would be for their best interests that the assignment to the Trenton Banking Company be made. Has not a husband the right to state what he believes with reference to what should be done even with property of his wife? And it is to be remembered, as already said, that the mortgage was as much Mr. Lawshe's as it was Mrs. Lawshe's. Mrs. Lawshe probably did in part rely upon the advice given by her husband, but she also probably felt from the knowledge of the business which she testified she had, that it was for their best interests that the mortgage be assigned. If Mr. Lawshe's holdings in the Trent Tile Company could be made the more secure by what both Mr. and Mrs. Lawshe believed at the time was a temporary advance through the medium of the assignment of the mortgage to the Trenton Banking Company, it is but natural, because of the large stockholding of Mr. Lawshe, that Mr. Lawshe should desire to have it safeguarded, and that Mrs. Lawshe should have the same desire.

Because the advice given by Mr. Lawshe to Mrs. Lawshe would, it was believed, indirectly benefit Mr. Lawshe, does this fact of itself constitute the exercise of undue influence? Mrs. Lawshe perfectly understood that her husband had a large holding of stock in the Trent Tile Company, and that it was for their interests that the Trent Tile Company should not be embarrassed for the want of funds. If the mere fact of his indirect interest in having Mrs. Lawshe assign the mortgage constitutes the exercise of undue influence, it is almost impossible to conceive of any case where a husband could advise his wife without exercising undue influence over her in any matter in which he had an indirect

interest, notwithstanding that the wife, with full knowledge of the interests of the husband, acquiesced in and believed that their joint interests demanded and justified the contemplated action on her part.

In all of the cases where gifts and assignments have been set aside because of the exercise of undue influence by the husband over the wife, there is existent on the part of the husband a dishonest desire to take something away from his wife. In this case there was no desire on the part of Mr. Lawshe to defraud his wife. He expected that this mortgage would soon be paid off out of the proceeds of the mortgage upon the property of the Trent Tile Company to be advanced by the Trenton Saving Fund Society. He wanted in the meantime to keep the credit of the Trent Tile Company good. Perhaps one of the reasons why he did not want the credit of the Trent Tile Company impaired was that it might interfere with the obtaining of the loan from the Trenton Saving Fund Society. In this case the unexpected happened, namely, the difference between Mr. Lawshe and Mr. Dixon which interfered with the securing of the loan from the Trenton Saving Fund Society, and then the illness of Mr. Lawshe and the temporary receivership.

Attention is called to the fact that Mr. and Mrs. Lawshe are now by their testimony making the circumstances appear as adverse as possible to the Trenton Banking Company. The complainant now proposes that there shall be taken from the Trenton Banking Company the proceeds in part of this mortgage, and that this benefit be restored to her. This is sought to be accomplished in part by the testimony of Mr. Lawshe, her husband. He is now seeking to show by his testimony that his wife was

defrauded by himself, and this wrong he proposes to right by depriving the Trenton Banking Company of the security which was delivered to it, a security which caused the bank to take no action upon the paper of Rambow and Company at a time when such action would have been prejudicial to the Trent Tile Company. In other words, after having had the benefit of this assignment, which was given to protect his interest in the Trent Tile Company, Mr. Lawshe and Mrs. Lawshe now seek by their testimony to get back for Mrs. Lawshe the very security which lulled the bank into inaction upon the paper of M. Rambow and Company until it was too late to protect itself against that company and the Trent Tile Company upon this paper.

Testimony of this kind is to be carefully scrutinized. A witness is not entitled to credit when his testimony is inconsistent with the common principles by which the conduct of mankind is usually governed. *Earle vs. Norfolk and New Brunswick Hosiery Co.*, 9 Stew. 188.

The reports are filled with cases where a wife has voluntarily surrendered her property for the benefit of her husband without any pecuniary consideration whatsoever moving to her, the act being done solely with the view of aiding her husband financially. No better instance of this can be cited than the case of *Walker vs. Dixon Crucible Company*, 2 Dick. 342. In this case Mrs. Cleveland transferred to the receiver of the Dixon Crucible Company 330 shares of the capital stock of that company in order to liquidate the debt of her husband. She received no consideration for the transfer. She made the transfer voluntarily, and the Court held when she sought to avoid the transfer that a transaction so entered into could not be avoided.

It is respectfully insisted that this transaction of Mrs. Lawshe's is one that she voluntarily made, and is one that she cannot now avoid, and that the Trenton Banking Company is entitled to so much of the proceeds of the mortgage as will protect it on the Rambow and Company paper.

POINT TWO.

THE VICE-CHANCELLOR'S DECISION THAT THE EQUITIES OF COMPLAINANT WERE SUPERIOR TO THOSE OF THE DEFENDANT WITH REFERENCE TO THE PRE-EXISTING INDEBTEDNESS IS NOT SUPPORTED BY THE EVIDENCE, NOR BY THE AUTHORITIES.

The theory that one who takes an assignment as security for a preexisting debt does not take it free from latent equities outstanding in third parties rests upon the ground that there has been no change of position on the part of the assignee of the security, and the assignee has as full rights in the matter of the preexisting debt after taking the security as before. In some instances this may be so, but it is not always so and was not so in this case. The bank had been insistent that the Rambow and Company paper be reduced. The assignment of the mortgage had the effect of quieting the bank. It was lulled to sleep by the action of Mr. and Mrs. Lawshe. If they were willing to protect the bank by this security, would it not seem that they had faith in the Rambow and Company paper, or at least were willing to carry it along and make it easy for Rambow and Company? If a bank were

pressing a customer for payment of business paper discounted for the customer and the customer came in and voluntarily gave ample security for the payment of the paper, would not a bank without making any agreement to extend the time of payment, in effect extend the time by not pressing for payment?

In the present case, the bank relying on the security did not press for the payment of the Rambow and Company paper. The Trent Tile Company, the discounter and endorser, was liquidated through a receivership and the maker, Rambow and Company, went into bankruptcy. After these events and eleven months after the assignment was made, Mrs. Lawshe filed a bill claiming she was unduly influenced by Mr. Lawshe, and Mr. and Mrs. Lawshe, through their testimony, get back the greater part of the proceeds of the mortgage and the bank loses the amount of the Rambow and Company paper which it had been vigilant in pressing for payment before the assignment of the mortgage had been given. Is this equitable? Was not Mrs. Lawshe in laches in delaying her action?

It is submitted that the equities, because of Mrs. Lawshe's negligence and delay, are at least equal, and therefore the law should prevail.

It is further urged that the bank did give valuable consideration for the portion of the assignment of the mortgage which secured the preexisting indebtedness, by extending the time for payment and not further pressing for payment, which extension was in accordance with the arrangement implied from the circumstances above set forth.

POINT THREE.

IF THE VICE-CHANCELLOR BE SUSTAINED IN HOLDING THAT AS TO THE SECURITY FOR THE PREEXISTING INDEBTEDNESS THERE WAS NO CONSIDERATION GIVEN BY THE BANK, AND THAT THE BENEFIT TO THE HUSBAND FROM THE ASSIGNMENT OF THE WIFE SHOWS UN-DUE INFLUENCE, THIS FINDING OF FRAUD SHOULD NOT AFFECT THAT PART OF THE ASSIGNMENT FROM WHICH THE HUSBAND DERIVED NO BENEFIT.

The Vice-Chancellor holds in the third section of his opinion that the Trenton Banking Company is not entitled to the benefit of the avails of the mortgage for payment of the preexisting debt, referred to as the paper of Rambow and Company. This position is taken as the result of the testimony of Mr. John A. Campbell, the president, and Mr. Robert W. Howell, the cashier, of the Trenton Banking Company, to the effect that the assignment of the mortgage as security for the Rambow and Company paper was voluntary, and that no agreement to extend the time of payment was made with the Trent Tile Company by reason of the assignment to the bank of the security, and the Vice-Chancellor holds that under such circumstances the bank cannot be accorded the rights of a purchaser for value as to the preexisting debt, against what he holds to be the superior equities of Mrs. Lawshe. An authority cited by the Vice-Chancellor to sustain his opinion is *Bigelow on Fraud*, p. 406, which text purports

to be supported by the case of *Smith vs. Osborne*, 33 Mich. 410.

An examination of this case shows that a mortgage was given by the wife upon her property to secure the purchase price of other property being conveyed to her husband, and that in the mortgage was included, without the knowledge of the wife, a preexisting debt due by the husband. The Court held that the mortgage was good for the property conveyed to the husband but void as to the preexisting debt, because a fraud had been practiced by the husband upon the wife in including the preexisting debt in the mortgage without her knowledge.

In the present case, the Vice-Chancellor holds that the assignment of the mortgage as between Mr. and Mrs. Lawshe is void because Mrs. Lawshe was transferring her property for the benefit of her husband. If the assignment of the mortgage to the Trenton Banking Company did not alter the position of the bank with reference to what is termed the preexisting debt, namely, the paper of Rambow and Company, then it follows that there was no benefit derived by Mr. Lawshe through the assignment of the mortgage to the Trenton Banking Company for this purpose. It then follows that if there was no benefit to Mr. Lawshe in this transaction and the assignment of the mortgage was wholly for the benefit of the bank, no undue influence is found to have been brought to bear upon Mrs. Lawshe with reference to this part of the transaction.

The case of *Smith vs. Osborne, supra*, holds that the Court can examine into and separate from a single transaction that part which is fraudulent and sustain that part in which there is no fraud. Therefore, it is proper to hold that part of the

transaction now under consideration is voidable for fraud, while the balance is valid and unavoidable because the fraud does not enter into.

The result is that the whole transaction must stand against Mrs. Lawshe. The transaction is clearly divisible into two parts: 1st, that part of the assignment given to secure the new advances, and, 2nd, that part given to secure the preexisting indebtedness. In fact, the Vice-Chancellor so divided the transaction and sustained it as to the new money advanced because the bank occupied the position of a *bona fide* purchaser for value. He refused to sustain the transaction as to the preexisting indebtedness of the Trent Tile Company because he said the bank showed no extension of time for payment and therefore gave no consideration to the Trent Tile Company and consequently none indirectly to Mr. Lawshe. But his finding of undue influence is based on the fact that the transaction was indirectly for the benefit of Mr. Lawshe. It is clear that the second portion of the transaction, namely, the part of the assignment given to secure the preexisting indebtedness, if the Vice-Chancellor's finding as to lack of consideration is sound, did not benefit Mr. Lawshe and therefore as to that part the finding of undue influence does not apply.

The case of *Smith vs. Osborne*, cited above, is an authority for the proposition here urged on behalf of the Trenton Banking Company, which is that where part of a contract is induced by fraud and the balance is not, only that part which is induced by the fraud can be avoided. As the assignment as to the preexisting debt is, as stated by the Vice-Chancellor, devoid of benefit to the husband and consequently not within his finding of undue influence, it must stand as a valid and unavoidable transaction between Mrs. Lawshe and the Trenton Bank-

ing Company. As to the part of the proceeds of the assigned mortgage which secure the new advances by the bank, the bank occupies the position of a *bona fide* purchaser for value, as the Vice-Chancellor finds, and is not affected by the fraud of Mr. Lawshe practiced upon his wife, assuming that he did so defraud her.

It is, therefore, respectfully submitted that should this Court approve the finding of the Vice-Chancellor that Mr. Lawshe's interest in the Trent Tile Company, for whose benefit the assignment in question was made, makes the assignment the product of undue influence upon Mrs. Lawshe, and that the bank gave no consideration for the security given for the preexisting indebtedness, still the bank is entitled to retain the security of the mortgage for both the new advances and the preexisting indebtedness, for the reasons given under this point.

CONCLUSION.

The following is a summary of the points urged on behalf of the appellant bank:

1. The Vice-Chancellor's finding of undue influence is not supported by the evidence, there being in fact no evidence of undue influence shown by the record.

2. The Vice-Chancellor's decision that the equities of complainant were superior to those of the defendant with reference to the portion of the assignment which secured the preexisting indebtedness is not supported by the evidence, nor by the authorities. At least, the equities are equal and the law should prevail, the bank having the legal title.

3. If the Vice-Chancellor be sustained in holding that as to the security for the preexisting indebtedness there was no consideration given by the bank, and that the benefit to the husband from the assignment of the wife shows undue influence, this finding of fraud should not affect that part of the assignment from which the husband derived no benefit and as to which, therefore, no fraud has been shown.

4. If the assignment in question is the product of undue influence, still, as the bank gave a valuable and substantial consideration (the new advances of approximately \$10,000) and had no knowledge of the fraud, the assignment contract cannot be set aside for mere inadequacy of consideration, as the inadequacy is not such as to shock the conscience. The entire contract should stand.

5. The assignment, though for the benefit of the Trent Tile Company, cannot be held to be for the benefit of complainant's husband, as a corporation is a distinct entity in the law. Therefore, no benefit to the husband from which to presume undue influence is shown.

It is respectfully submitted that the decree of the Court of Chancery should be reversed in so far as it holds that the Trenton Banking Company is not entitled to the benefit of the assignment as security for the indebtedness of the Trent Tile Company to the appellant bank existing at the time the assignment was made.

Respectfully submitted,
FRANK S. KATZENBACH, JR.,
Solicitor for Appellant, The Trenton Banking Company.

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BILL.

(Filed March 25, 1916)

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

Humbly complaining shows unto your Honor, your
oratrix, Angenette K. Lawshe, of the city of Tren- 10
ton, in the county of Mercer, and state of New Jer-
sey, as follows:

1. Your oratrix is the wife of Alfred W. Lawshe,
who was until a short time ago a large stockholder
and officer of the Trent Tile Company, a corporation
of Trenton, New Jersey.

2. That during the month of September or Oc-
tober, nineteen hundred and fourteen, your oratrix, 20
at the special instance and request of the said Alfred
W. Lawshe advanced to the said Trent Tile Company
the sum of \$20,500 and took as security for said
loan the bond of said company secured by its mort-
gage covering the following described lands: Lying
in the City of Trenton, County of Mercer, and state
of New Jersey, and more particularly bounded and
described as follows:—Tract No. 1—Bounded on the
west by Plum Street; on the south by Klagg Avenue;
on the east by lands of the said Trent Tile Com- 30
pany; and on the north by Railroad Avenue, having
a frontage of one hundred feet on Klagg Avenue
and running through to Railroad Avenue, the dis-
tance of two hundred feet, being the same premises
conveyed by Harris Manufacturing Company to the
Trent Tile Company, by deed dated August 10, 1901,

- and recorded in Book 247, page 383. Tract No. 2—Beginning at a point on northerly side of Klagg Avenue at the distance of one hundred feet easterly from the easterly line of Plum Street and running thence (1) easterly along northerly side of Klagg Avenue two hundred and fifty feet to point; running thence (2) at right angles to Klagg Avenue northerly two hundred feet more or less to line of Pennsylvania Railroad; thence (3) along said railroad
- 10 land northwesterly to the south side of Railroad Avenue; thence (4) westerly along south side of Railroad Avenue two hundred and fifty feet more or less to a point distant one hundred feet from the easterly side of Plum Street; thence (5) southerly and parallel to Plum Street two hundred feet to Klagg Avenue and the place of beginning. Being the same premises conveyed to Benjamin F. Lee and wife to the Trent Tile Company by deed dated January 8, 1887, and recorded in Book 152 of Deeds,
- 20 pages 238, etc. Subject to the same right reserved to said Enterprise Land Company to carry the stream of water over the northeasterly corner of said lot of land along the southerly line of said Railroad Company's land as is contained in the deed before referred to. Tract No. 3. Beginning at a point on the northerly side of Klagg Avenue at the distance of three hundred and fifty feet easterly from the corner of Plum Street corner of land
- 30 late of the Harris Manufacturing Company and now of the Trent Tile Company, and running (1) northerly along the easterly line of land late of the Harris Manufacturing Company now of the Trent Tile Company about two hundred feet to a point where it meets the line of land of the United New Jersey Railroad Company's land and thence (2) in a straight course southeasterly to a point on Klagg

Avenue forty-two feet distant easterly from the place of beginning; thence (3) easterly along Klagg Avenue forty-two feet to the place of beginning. Being the same premises conveyed to the Trent Tile Company by the Harris Manufacturing Company by deed dated June 19, 1900, and recorded in Mercer County Clerk's office in Book of Deeds, pages 394 etc. Tract No. 4. Beginning at a Point in the northerly line of Klagg Avenue as shown on a plan of lots of the Enterprise Land Company duly filed in the Clerk's office of Mercer County, said point being distant easterly four hundred and two feet from the northwest corner of Klagg Avenue and Plum Street as shown in said plan of lots and on the easterly side of a stream of water and from thence running (1) in a northeasterly direction along said northerly line of Klagg Avenue two hundred and forty three feet more or less to a point in the southerly line of lands of the United New Jersey Railroad and Canal Company; thence (2) along the said line of lands of said Railroad Company on a curve of fifteen hundred and twenty-three feet radius deflecting to the west three hundred and forty four feet more or less to a point corner to lands of the Harris Manufacturing Company; thence (3) in a southeasterly direction along lands of said Harris Manufacturing Company twenty feet more or less to a point in said easterly side of said stream; thence (4) southeasterly along said easterly side of said stream the several courses thereof to the point of beginning. Tract No. 5. Beginning at a point in the southerly line of the aforesaid Klagg Avenue, said point being distant four hundred and twenty-one feet easterly from the southeast corner of said Klagg Avenue and Plum Street as shown on said plan of lots, said point being on the easterly side of a stream of water

and from thence running (1) in a northeasterly direction along the southerly line of said Klagg Avenue two hundred and seventy-four feet more or less to a point in the southerly line of lands of the United New Jersey Railroad and Canal Company; thence (2) in a southeasterly direction along said line of said Railroad Company land three hundred and twenty feet more or less to the center of the Assanpink Creek; thence (3) in a southwesterly direction
10 by the middle line of said creek four hundred feet more or less to a point opposite the easterly side of said stream of water; thence (4) northwesterly along said easterly side of said stream of water the several courses thereof to the point of beginning, being the same premises conveyed by the Enterprise Land Company to the Trent Tile Company by deed dated June 24, 1887, and recorded in Mercer County Clerk's office in Book 179 of Deeds, pages 458 etc. Also, all the right, title, and interest of the party
20 of the first part in and to a strip tract, or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the City of Trenton, in the County of Mercer, and State of New Jersey as follows, to wit: Being all that certain strip of land lying between (and binding thereon) a lot of land on the northerly side of Klagg Avenue east of Plum Street which was conveyed by the said Enterprise Land Company November 16, A. D. 1885 to the Harris Manufacturing Company and another lot of land (and binding thereon) first described in a deed of conveyance made by the said
30 Enterprise Land Company to the Trent Tile Company and dated June 24, A. D. 1887. The said strip of land being now or formerly used in whole or in part as a water course running between the two lots above described. Being the same premises con-

veyed by deed from the Enterprise Land Company to the Trent Tile Company, dated June 11, 1901, and recorded in Book 247 of Deeds, pages 321 etc. Also all that portion of Klagg Avenue beginning at a point in the southerly line of said Klagg Avenue, corner to lands of the Trent Tile Company and lands now or late of Edward Sutton, and running thence (1) northerly across said Klagg Avenue at right angles to said southerly line, fifty feet to a point in the northerly line of said Avenue; thence 10 (2) easterly along the northerly line of said Avenue two hundred nineteen feet more or less to a point in the southwesterly line of lands of the United New Jersey Railroad and Canal Company; and thence (3) southeasterly along said last mentioned line seventy five feet more or less to a point where the southerly line of said Klagg Avenue intersects said last mentioned line; thence (4) westerly along the southerly line of said Avenue, two hundred seventy six and three tenths feet more or less to the point 20 of beginning.

3. That during the month of November, nineteen-fourteen, your oratrix at his special instance and request delivered the said bond and mortgage to her said husband, Alfred W. Lawshe, he telling your oratrix that he was going to take said bond and mortgage to the Trenton Banking Company, a banking institution of Trenton, New Jersey, the defendant in this suit, and pledge the same as collateral 30 security for a loan of \$12,000 for the Trent Tile Company, which was in financial difficulties; and that in doing so the interests of your oratrix would be protected, and your oratrix implicitly and absolutely believed said statement.

4. That during the month of May, nineteen hundred and fifteen, Huston Dixon, a counsellor at law of New Jersey, representing clients who were large stockholders in the Trent Tile Company and he himself secretary of said company, came to the residence of your oratrix with a deed of assignment of said bond and mortgage to the said Trenton Banking Company; that your oratrix was ill at the time and under the care of a trained nurse, who remonstrated with her for seeing the said Huston Dixon as she was in no condition at that time to see or talk to any one; that your oratrix signed said deed of assignment to the Trenton Banking Company, and the said Huston Dixon departed from her home with the said deed of assignment.

5. That your oratrix is sixty-eight years of age and has been in ill health ever since the death of her son, Charles W. Lawshe, which occurred August twenty-second, nineteen hundred and fourteen, and has been under the care of a physician and nurse the greater part of the time since her said son's death; that the bond and mortgage now in the possession of the said Trenton Banking Company represents practically all the moneys left to her by her said son and was all the property she had when assigned to the said Trenton Banking Company. That when your oratrix delivered the bond and mortgage to her said husband, Alfred W. Lawshe, and at the time she signed the deed of assignment for the said Huston Dixon, she positively asserts that she had no notice or information that she was transferring the said bond and mortgage in such a way that she could not again get possession of it, or that she was encumbering it in any way; and that she had no advice on the subject except that her husband said it would

protect their interests, and she believed implicitly that the whole transaction was for the purpose of protecting the interests of your oratrix as told her by her said husband; that your oratrix never received any money or other consideration from the Trenton Banking Company, the Trent Tile Company, or any other corporation or person for her assignment of said bond and mortgage.

6. And your oratrix through her attorneys has requested the said Trenton Banking Company to reassign and deliver said bond and mortgage to her, but that the said Trenton Banking Company refused to do so. 10

In tender consideration whereof, and for as much as your oratrix can only be relieved in this court; that the said Trenton Banking Company may answer the premises without oath and that it may be decreed by this Honorable Court that the said Trenton Banking Company should forthwith assign and deliver unto your oratrix the said bond and mortgage aforesaid; that it may be decreed that the said Trenton Banking Company may be enjoined forever from selling or assigning the said bond and mortgage to any third person or persons until it has fully answered the premises and the matter herein determined. And that your oratrix may have such further and other relief as may be agreeable to equity and good conscience. 20

May it please your Honor, the premises considered to grant unto your oratrix the state's writ of injunction issuing out of and under the seal of this Honorable Court directed to the said Trenton Banking Company, enjoining it from selling or assigning the said bond and mortgage to any third person or persons, and also that the state's writ of subpoena 30

may issue out of and under the seal of this Honorable Court, directed to the said Trenton Banking Company, commanding it on a certain day therein named to be and appear before your Honor in this Honorable Court to answer the premises and to stand to, abide by, and perform such decree as your Honor shall make, and as shall be agreeable to equity and good conscience.

10 And your oratrix will ever pray, &c.

GERAGHTY & WEELANS,
Solicitors of and of Counsel
with Complainant.

STATE OF NEW JERSEY,
COUNTY OF MERCER,

} ss.

20

ANGENETTE K. LAWSHE, being duly sworn according to law, upon her oath, deposes and says that she is the complainant in the above bill of complaint; that she is the wife of Alfred W. Lawshe, who was until a short time ago a large stockholder and officer of the Trent Tile Company, a corporation of Trenton, New Jersey.

30 The deponent further says that during the month of September or October, nineteen hundred and fourteen, deponent at the special instance and request of the said Alfred W. Lawshe, advanced to the said Trent Tile Company the sum of \$20,500, and took as security for said loan the bond of said company, secured by its mortgage covering its plant at Trenton, N. J., as is alleged in the above bill of complaint.

That during the month of November, nineteen hundred and fourteen, deponent at his special instance and request delivered the said bond and mortgage to her said husband, Alfred W. Lawshe, he telling deponent that he was going to fake the said bond and mortgage to the Trenton Banking Company, a banking institution of Trenton, New Jersey, the defendant in this suit, and pledge the same as collateral security for a loan of \$12,000, for the Trent Tile Company, which was in financial difficulties; and the said Alfred W. Lawshe further told her that the interest of the deponent would be protected, and deponent implicitly and absolutely believed said statement. 10

That during the month of May, nineteen hundred and fifteen, Huston Dixon, a counsellor at law of New Jersey, representing clients who were large stockholders in the Trent Tile Company, and he himself secretary of the said company, came to the residence of the deponent with a deed of assignment of said bond and mortgage to the said Trenton Banking Company; that deponent was ill at the time and under the care of a trained nurse, who remonstrated with her for seeing the said Huston Dixon, as she was in no condition at that time to see or talk to any one; that deponent signed said deed of assignment to the Trenton Banking Company and the said Huston Dixon departed from her home with the said deed of assignment. 20

That deponent is sixty-eight years of age and has been in ill health ever since the death of her son, Charles W. Lawshe, which occurred August 22, 1914, and has been under the care of a physician and nurse the greater part of the time since her son's death; that the bond and mortgage now in the possession of the Trenton Banking Company 30

represents practically all the moneys left to her by her said son, and was all the property she had when assigned to the said Trenton Banking Company. That the deponent delivered the said bond and mortgage to her said husband, Alfred W. Lawshe, and at the time she signed the deed of assignment for the said Huston Dixon, she positively asserts that she had no notion of information that she was transferring the said bond and mortgage in such
10 a way that she could not again get possession of it, or that she was encumbering it in any way, but believed implicitly that the whole transaction was for the purpose of protecting the interests of deponent as told by her said husband; that deponent never received any money or other consideration from the Trenton Banking Company, the Trent Tile Company, or any other corporation or person for her assignment of said bond and mortgage.

Deponent further says that she has read the bill
20 of complaint in this cause and the contents thereof are true to the best of her knowledge and belief.

ANNGENETTE K. LAWSHE.

Sworn to and subscribed before me this 17th day of March, 1916.

WM. J. CONNOR,
M. C. C. of N. J.

30

STATE OF NEW JERSEY,
COUNTY OF MERCER,

} ss.

ALFRED W. LAWSHE, being duly sworn according to law, upon his oath, deposes and says that he is the husband of Anngenetete K. Lawshe, plaintiff in the

above bill of complaint, and that he was stockholder and officer in the Trent Tile Company. That the said Trent Tile Company was in financial difficulties and that he told his wife, the said Anngenetie K. Lawshe, that if she signed the deed of assignment, assigning a certain bond and mortgage of \$20,500 being made by the Trent Tile Company as mortgagor to the said Anngenetie K. Lawshe as mortgagee, that it would protect their interests.

Deponent further says that at the time the deed 10
of assignment from Anngenetie K. Lawshe to the
Trenton Banking Company was signed, the said
Anngenetie K. Lawshe was under the care of a
physician and a nurse; and he further says that he
himself was ill, suffering from the effects of his
son's death, which occurred shortly before that time,
and was in such a condition, both mental and physi-
cal, that he hardly knew what he was doing; and
that he told his wife nothing concerning the deed of
assignment, except that it would protect their in- 20
terests; that at the time the said deed of assign-
ment was signed the deponent was on account of his
condition unable to be present.

ALFRED W. LAWSHE.

Sworn to and subscribed before me this twentieth
day of March, 1916.

WILLIAM J. CONNER,
M. C. C. of N. J.

RULE TO SHOW CAUSE.

IN CHANCERY OF NEW JERSEY.

10	Between ANNGENETTE K. LAWSHE, <i>Complainant,</i> and THE TRENTON BANKING COMPANY, <i>Defendant.</i>	}	ON BILL, &c. RULE TO SHOW CAUSE.
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20 Upon reading the bill of complaint in this cause and the affidavits thereto annexed, and on the motion of Geraghty & Weelans, solicitors of complainant:

It is on this 25th day of March, nineteen hundred and sixteen,

30 Ordered that the defendant show cause before the Chancellor at the State House in Trenton, on Tuesday, Apr. 4th, prox. instant, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard why an injunction should not issue according to the prayer of said bill.

And it is further ordered, that the said defendant, its agents and servants, in the meantime and until further order of this Court desist and refrain from selling or assigning the said bond and mortgage to any third person or persons.

It Is Ordered that a copy of the said bill and affi-

davits and of this order be served on the said defendant, The Trenton Banking Company, or its agent, within five days from date.

E. R. WALKER,
C.

ANSWER.

10

(Filed June 2nd, 1916)

IN CHANCERY OF NEW JERSEY.

ANNGENETTE K. LAWSHE,	}
Complainant,	
vs.	
THE TRENTON BANKING	
COMPANY,	}
Defendant.	

ON BILL.
ANSWER.

20

The answer of the defendant, The Trenton Banking Company.

This defendant, answering the bill of complaint, says:

30

1. Paragraph 1 is admitted.

2. This defendant has no knowledge or information sufficient to form a belief as to whether the complainant at the instance and request of Alfred W. Lawshe, her husband, advanced to the Trent Tile

Company the sum of \$20,500, as alleged in paragraph 2 of the bill of complaint, but admits that said sum was advanced to said Trent Tile Company by either the complainant or the complainant and the said Alfred W. Lawshe jointly, and the bond and mortgage executed to the complainant as set forth in paragraph 2.

10 3. This defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 3.

20 4. This defendant admits that during the month of May, 1915, an assignment of said bond and mortgage mentioned in paragraph 2 of the bill was executed by the complainant to the defendant before Huston Dixon, a master in chancery and counsellor at law of the state of New Jersey; but this defendant has no knowledge or information sufficient to form a belief as to the illness of the complainant or any remonstrances made by the nurse of the complainant with reference to the complainant seeing the said Huston Dixon.

30 5. This defendant has no knowledge or information sufficient to form a belief as to the age, illness or financial condition of the complainant as alleged in paragraph 5 of said bill, but denies each and all of the other allegations contained in said paragraph 5.

6. Paragraph 6 is admitted.

7. This defendant further says that the said Alfred W. Lawshe was a large stockholder in the said Trent Tile Company; that the said Trent Tile

Company was indebted to the defendant; that upon some of the obligations of the said Trent Tile Company the said Alfred W. Lawshe was an endorser; that the said Alfred W. Lawshe was also indebted to the defendant personally; that the said Alfred W. Lawshe, during the latter part of the year 1914, or the early part of the year 1915, desired to secure further loans for the said Trent Tile Company from the defendant, and informed the defendant that the complainant desired that the defendant should be 10
protected not only for the proposed loans to be made to the Trent Tile Company but for the personal obligations of the said Alfred W. Lawshe to the defendant; that at the direction of the complainant he would deliver to the defendant the bond and mortgage referred to in paragraph 2 of the bill; that subsequently the said Alfred W. Lawshe did deliver to the defendant said bond and mortgage for the purposes hereinbefore mentioned; that afterwards a formal assignment of said mortgage was executed by 20
the complainant to the defendant; that the complainant had full knowledge of the delivery of said bond and mortgage to the defendant and was fully advised and understood and comprehended her act in causing said bond and mortgage to be delivered to the defendant and in the making of said assignment to the defendant; that said assignment was made for the purpose of protecting the interests of her said husband as a stockholder in the said Trent Tile Company; that upon the faith of said assignment 30
of said bond and mortgage the defendant advanced to the Trent Tile Company further large sums of money; that the total of the moneys due from the said Trent Tile Company exceeded in amount the said bond and mortgage; that the assignment of said bond and mortgage by the complainant to the de-

fendant was valid and cannot be avoided by the complainant.

FRANK S. KATZENBACH, JR.,
Solicitor for and of Counsel
with the Defendant.

[ENDORSED]

10

Consent to the filing of the within
answer as within time is hereby granted
this 2nd of June, 1916.

Geraghty & Weelans,
Sol'rs for Compl't.

STIPULATION.

(Filed May 11, 1916)

20

IN CHANCERY OF NEW JERSEY.

Between
ANNGENETTE K. LAWSHE,
Complainant,
and
THE TRENTON BANKING
COMPANY,
Defendant.

ON BILL, &C.
STIPULATION.

30

Whereas, the mortgage described in the bill of complaint in this cause, and made by The Trent Tile Company to Anngenetette K. Lawshe, the complainant herein, dated April 30, 1915, and recorded June 29, 1915, in Book 233 of Mortgages for Mercer County,

in the office of the county clerk of said county, being to secure the payment of the sum of \$20,500 with interest at 5 per cent. within one year from the date thereof, is due; and

Whereas, The Trent Tile Company, Inc., the present owner of the lands and premises described in and covered by said mortgage, desires to pay the principal and interest due on said mortgage, and to have said mortgage cancelled of record.

It Is Hereby Stipulated, by and between Ann-
nette K. Lawshe, by her solicitors, Geraghty & Wee-
lans, and Trenton Banking Company, by its solicitor,
Frank S. Katzenbach, Jr., that the amount of the
principal and interest due upon said mortgage may
be paid to the defendant, Trenton Banking Company,
the holder of record of said mortgage, and that the
moneys so paid to it, for principal and interest, upon
said mortgage be held by said Trenton Banking Com-
pany, subject to the order of this Court heretofore
made, and to such orders and decree as may here-
after be made in this cause, in the place and stead
of said mortgage; and that upon payment of the
amount due for principal and interest on said mort-
gage, said Trenton Banking Company is hereby
authorized to cause said mortgage to be cancelled of
record.

Stipulated and Agreed, this eleventh day of May,
nineteen hundred and sixteen.

ANNGENETTE K. LAWSHE,
Complainant.

By GERAGHTY & WEELANS,
Solicitors.

TRENTON BANKING COMPANY,
Defendant.

By FRANK S. KATZENBACH, JR.,
Solicitor.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10	Between ANNGENETTE K. LAWSHE, Complainant, and THE TRENTON BANKING COMPANY, Defendant.	}	On Bill, &c., to Set Aside Assignment of Mortgage. FINAL HEARING.
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20 Before his Honor, E. B. LEAMING, Vice-Chancellor,
at the State House, Trenton, N. J., on Thursday,
September 14th, 1916.

APPEARANCES:

GERAGHTY & WEELANS, ESQS., for complainant.
FRANK S. KATZENBACH, JR., for defendant.

30 ANNGENETTE K. LAWSHE, the complainant, being
duly sworn according to law, on her oath, says:

By Mr. Weelans:

Q. Mrs. Lawshe, you are the complainant in this
suit?

A. I am.

Q. You are the wife of Mr. Alfred Lawshe?

A. Yes, sir.

Q. Who was a large stockholder in the Trent Tile Company?

A. Yes.

Q. Do you remember during the month of September, 1914, advancing some money to the Trent Tile Company on a second mortgage?

A. Yes.

Q. Do you remember what was done with that 10 mortgage during November, 1914?

A. No; I have no recollection.

Q. Do you remember giving it to your husband?

A. No, I remember nothing about it; I was very, very ill.

Q. Do you remember on April 30th, signing an assignment of mortgage from yourself to the Trenton Banking Company?

A. Mr. Dixon?

Q. Yes. Do you remember that Mr. Dixon was 20 out there?

A. Yes; I remember signing it, that is all. I remember nothing more about it.

Q. You don't remember what the paper was that you signed?

A. No, only a mortgage, and it would be for our interest.

Q. Who told you that it would be for your interest?

A. Mr. Lawshe said to me that it would be to our 30 interest, and that is all I knew and signed it. I know nothing more about it. I was so weak I really didn't know what I was doing.

Q. What was the condition of your health at this time, Mrs. Lawshe?

A. Well, I had pleurisy and was very, very ill, under the care of Dr. Rogers and a trained nurse.

Q. How old are you, Mrs. Lawshe?

A. 67.

By the Vice-Chancellor:

Q. Now or then? Now? You mean you are 67 at this time, do you?

10 A. Yes.

By Mr. Weelans:

Q. That would make you 66, then, at that time?

A. Yes.

Q. Did you have any other money except this money that you had on this mortgage?

A. No.

Q. Any other property?

20 A. No.

Q. And you had no attorney representing you to advise you as to what you were doing?

A. Not at all, except Mr. Dixon came to the house and I signed the mortgage; he asked me the usual questions and I signed it and that was all; nothing was said to me, nobody came to my house to explain anything to me about it.

By the Vice-Chancellor:

30

Q. Didn't Mr. Dixon make any explanation?

A. None whatever; none whatever; he gave me no explanation at all, said nothing, nothing excepting the regular questions, that it was my signature, I swore to it.

Q. Did you receive anything for this assignment

of mortgage? When you signed this paper and gave this mortgage to the Trenton Banking Company, did you receive any money or anything for it?

A. No, not any at all.

Q. Whose money was this \$20,500 that was given to the Trent Tile Company?

A. It belonged to the Charles P. Lawshe estate and he left it to his parents.

Q. Then, was it all your money or did your husband have an interest in it?

10

A. Well, of course, he had an interest in it, it was left by my son to pay to his father and me.

Cross-examination.

By Mr. Katzenbach:

Q. Mrs. Lawshe, at the time that this assignment was made and Mr. Dixon witnessed your signature and took your acknowledgment you were living 20 where?

A. Living where?

Q. Yes.

A. At 928 West State.

Q. That is your home?

A. That was our home.

Q. And you own that property?

A. Yes.

Q. That is, you yourself do?

A. We own the property, yes.

30

Q. Well, I mean to say, the title to it is in you?

A. Oh, yes, in my name, yes.

Q. Now, the son you spoke of had died during what year?

A. About 1914.

Q. 1914?

A. Yes.

Q. And he had left a will in which he had left to Mr. Lawshe and yourself all his estate?

A. Yes.

Q. And he had on deposit at the Trenton Saving Fund Society a very considerable sum of money, had he not?

A. Yes.

Q. As much as \$20,000 or more than that?

10 A. \$20,500.

Q. \$20,500?

A. Yes.

Q. Now, then, your son also had been a stockholder in the Trent Tile Company, and had been during his life actively engaged in the business, had he not?

A. Yes.

Q. And your husband, Mr. Lawshe, had been engaged for many years with the Trent Tile Company —in fact, was the president of the company, wasn't he?

A. Yes, president of the company.

Q. And you knew that the stockholding interest of Mr. Lawshe and yourself was a half interest in the Trent Tile Company, did you not?

A. Yes.

Q. The Trent Tile Company had been successful, had it not?

30 The Vice-Chancellor: The interest of her husband was one-half, or did you say her husband and her?

Q. Your husband originally owned a half interest with Mr. Benjamin F. Lee?

A. Yes, with Mr. Lee.

Q. And then, when your son took an active interest

in the business, his father, and your husband, gave to him certain shares of stock of the Trent Tile Company?

A. Yes.

Q. So that the interest of your husband and your son was a half interest?

A. Yes.

Q. And then, under the will of your son, you became entitled to a half interest in the stock that he held in the Trent Tile Company?

10

A. Yes.

Q. So that at the time that this mortgage was assigned you had an interest in the Trent Tile Company as a stockholder and Mr. Lawshe did, too?

A. Yes.

Q. Now, since Mr. Lee's death, Mr. Lawshe, your husband, and your son had almost exclusive control of the Trent Tile Company, had they not?

A. Yes.

Q. Now, Mrs. Lawshe, you were familiar with this patent litigation or suit for royalties, of course, that the Trent Tile Company had been litigating, were you not?

20

A. Yes.

Q. And Mr. Lawshe had told you from time to time as to how that suit had progressed, had he not?

A. Yes.

Q. And it was shortly after the death of your son that Mr. Lawshe told you about the judgment that had been recovered in this suit, didn't he, for royalties?

30

A. Yes.

Q. You knew about that?

A. Yes.

Q. And you had discussed that with Mr. Lawshe, had you not?

A. Yes.

Q. And you knew that money was required to pay this judgment, did you not?

A. Yes.

Q. And it was that talk and the circumstances of that judgment that made Mr. Lawshe and yourself loan these moneys of your son, that your son had left, along in September, of 1914, and October, 1914, to the Trent Tile Company for getting rid of this litigation, and that had all been gone over between
10 Mr. Lawshe and yourself, so that you were familiar with it?

A. Yes.

Q. And you recall distinctly about how much money you advanced, you and Mr. Lawshe, at that time to the Trent Tile Company, don't you?

A. Yes.

Q. How much was it?

A. How much we advanced?

Q. Yes, how much money was it? I mean altogether, not the different advances, but you altogether
20 advanced \$20,500?

A. Yes, \$20,500.

Q. Which was the money that your son had left and had on deposit in the Trenton Saving Fund Society?

A. Yes.

Q. So that you and Mr. Lawshe had advanced this money to the Trent Tile Company?

A. Yes.

30 Q. And then you knew about the Trent Tile Company giving this mortgage to you to secure this \$20,500?

A. Yes.

Q. Now, this mortgage, the first mortgage, dated on November 30th, 1914, I think?

A. I think so, I can't recall.

Q. You can't recall the exact date?

A. I can't recall the exact date.

Q. But it was about that date?

A. I think it was about that time.

Q. You were apprised of the fact and, of course, knew that this mortgage had been given you?

A. Yes.

Q. And so the matter rested in that shape for some little time, did it not?

A. Yes.

Q. And then you, of course, knew that business had not been very good in the fall of 1914?

A. Yes, I knew something about that.

Q. And Mr. Lawshe talked that over with you?

A. Some, yes.

Q. So that about that time you knew that the Trent Tile Company would need some money to carry this business along, would it not?

A. Yes.

Q. And you had often heard Mr. Lawshe telling you about Rambo and all these other customers—you knew about them?

A. Well, not often. Husbands don't always tell all the news, you know.

Q. But he had spoken about it sometimes to you?

A. Yes, he did speak about Mr. Rambo.

Q. That is, he spoke about Mr. Rambo and the fact that Mr. Rambo was pretty slow in his payments?

A. Yes, I heard him talking over the phone but it didn't interest me that way, you know.

Q. Well, of course, you were always interested in the business?

A. Oh, not particularly in that at that time.

Q. But still you did know about the Rambo paper?

A. Yes, I knew about it.

Q. And, of course, you knew the Trent Tile Company had been dealing with the Trenton Banking Company for a long time?

A. Yes.

Q. And that Mr. Lawshe had dealt at the Trenton Banking Company?

A. Yes.

Q. So that along about—in the early part of 1915, or, we will say, on down about the month of April,
10 1915, Mr. Lawshe spoke to you about the fact that this mortgage that had been given you was not a correct mortgage, didn't he?

A. Yes.

Q. He told you about that?

A. Yes.

Q. And that the matter would have to be corrected?

A. Yes.

Q. And that he had been advised of that, and that
20 you should have proper protection, Mr. Lawshe and yourself—that you knew?

A. Yes.

Q. And did you know about the meeting of the directors of the Trent Tile Company which passed the resolution authorizing this new mortgage to you? Mr. Lawshe told you about that, didn't he?

A. Yes.

Q. And about the new bond and mortgage that either was given or would be given to you?

30 A. Yes.

Q. Now, he also talked with you about getting some little additional money, did he not, for the purposes of the business along about that time?

A. I don't recollect.

Q. You don't recollect that?

A. I don't remember.

Q. Now, this mortgage of April 30th, 1915—what did Mr. Lawshe tell you about this new mortgage—what he thought it would be best for you and him to do with it? Oh, I don't ask for the exact words, but just about what did he say along that line?

A. Why, nothing; I can't remember anything any more than I told you, it was for our interest.

Q. That it was for your interest?

A. Yes.

Q. And that this mortgage should be assigned 10 over to the Trenton Banking Company?

A. Yes.

Q. And then after you had had that talk with Mr. Lawshe you recall, of course, Mr. Dixon coming out there to the house, do you not?

A. Yes.

Q. Well, now, then, Mr. Dixon called, and, of course, you had known Mr. Dixon for some time?

A. Oh, yes.

Q. And Mr. Dixon called at the house and you 20 weren't in bed at all, were you?

A. I had just been sitting up about a day.

Q. You had been sitting up?

A. A little at a time.

Q. Did you come downstairs to see Mr. Dixon?

A. Oh, no; I came from my bedroom, had just been sitting up a little while before that, and I went into—the nurse took me into the library and sat me in a chair.

Q. You were in the library upstairs when Mr. 30 Dixon called?

A. Yes, he came upstairs to the library.

Q. And you and Mr. Dixon were there in the room alone?

A. Yes; yes.

Q. And so Mr. Dixon came there and told you what he had come for, didn't he?

A. Yes; yes.

Q. And spoke about this assignment?

A. Yes, mortgage assigned.

Q. This assignment of the mortgage?

A. Yes.

By the Vice-Chancellor:

10

Q. Did you know that he was coming? Had your husband told you that he would come?

A. Yes; he told me he would be there that day.

By Mr. Katzenbach:

Q. That is, Mr. Lawshe had told you that Mr. Dixon —

20 A. Yes, sir; said he would be here this morning to sign the mortgage.

Q. Mr. Lawshe had told you that?

A. Yes; that is all he said.

Q. Therefore, you were not surprised when Mr. Dixon came at all?

A. No, he had told me—asked me if I would sign the mortgage.

Q. Yes; so that when Mr. Dixon came you went into the library and Mr. Dixon came upstairs in the library?

30 A. Yes.

Q. And produced the assignment of the mortgage?

A. Yes.

Q. And he spoke of it as an assignment of mortgage to the Trenton Banking Company, did he not?

A. Yes.

Q. And, of course, you knew what mortgage it was?

A. Yes.

Q. And then after Mr. Dixon had spoken to you and told you about this mortgage and assigning it, you put your name to the assignment, I suppose, of the mortgage, didn't you?

A. Yes.

Q. And you would recognize, of course, your signature, Mrs. Lawshe, wouldn't you?

10

A. Yes.

Q. And this is your signature (exhibiting paper to witness)?

A. That is my signature.

Q. That is the signature that you made that day in the library?

A. Yes.

Q. And then you said that Mr. Dixon asked you the usual questions. Now, just about what would you call the usual questions?

20

A. I can't remember.

Q. Well, he asked you if that was your signature?

A. Yes.

Q. You remember that?

A. Yes.

Q. And you said that it was?

A. Yes.

Q. And then he had previously told you that it was the assignment of the mortgage to the Trenton Banking Company?

30

A. Yes.

Q. And then he also, I suppose, asked you whether you did it as your voluntary act and deed?

A. Yes.

Q. You remember that?

A. Yes. Of course, I cannot say myself the words, but when you recall it, of course, I recall that.

Q. You recall that he did ask you that?

A. Yes.

Q. And you said that it was your voluntary act and deed?

A. Yes.

Q. And that you signed the paper for the purposes therein expressed?

A. Yes.

10 Q. I suppose you and Mr. Dixon conversed a little while?

A. Had no conversation whatever.

Q. There wasn't any conversation about anything at all?

A. No conversation whatever; that was all, and he said "good morning" or "good afternoon," I can't tell which it was, I can't remember, and went away; that was all that was said.

Q. And that was all that was said?

A. All that was said.

20

By Mr. Weelans:

Q. Mrs. Lawshe, in regard to these patent suits that the tile company had—do you remember them?

A. Oh, I remember hearing them talking of them but I couldn't give you any information whatever.

Q. Do you know what they were about?

30 A. I heard them talking over them, but, of course, I didn't feel so very much interested at the time and I can't give you any information.

Q. Did you discuss, as a general thing, business of the tile company with Mr. Lawshe?

A. I beg your pardon?

Q. Did you discuss very often the business affairs of the tile company with Mr. Lawshe, your husband?

Mr. Katzenbach: That is objected to as not re-direct examination.

The Vice-Chancellor: I think counsel may direct her attention to anything he wishes to bring out that was not brought out on direct examination. Answer the question.

(Question repeated.)

10

A. Not very often, occasionally.

By the Vice-Chancellor:

Q. I want to ask you, Mrs. Lawshe, to state again—I think perhaps you have already stated it—what your husband told you about this mortgage when he told you that he wanted you to assign it to the banking company, and told you that Mr. Dixon would call and take your acknowledgment. How 20 nearly can you remember just what he told you?

A. I can remember just this: He said, "Will you sign this mortgage? It will be for our interest, it will be for our interest."

Q. "Will you assign it over to the bank?" did he say?

A. Yes.

Q. Did you know who he was to assign it to?

A. Well, no, I couldn't tell you anything more than that, that is all; he just asked me if I would 30 sign this mortgage, you know, and for him, but I don't remember—I couldn't tell, I remember that much and that is all, I was in a very weakened state and I don't remember.

Q. What did he say about Mr. Dixon?

A. What is it?

Q. What did he say about Mr. Dixon?

A. What did he say about Mr. Dixon?

Q. Yes, about his calling.

A. Oh, he said Mr. Dixon would call that morning or afternoon, I don't recollect which it was, for me to sign, witness my signature, that is all he said.

Q. Didn't he tell you what it was to be done for?

10 A. That was all—any more than it would be for our interest.

Q. He didn't tell you, so far as you can remember, who it was to be assigned over to?

A. I cannot remember.

Q. Mr. Dixon told you that, of course?

A. Yes, but I can't remember anything else that Mr. Lawshe said to me.

20 The Vice-Chancellor: Is it conceded that she was the owner of real estate at the time of this transaction of some value?

Mr. Weelans: I will explain that by Mr. Lawshe's testimony. He will go on the stand later.

DR. LAWRENCE H. ROGERS, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath, says:

30 By Mr. Weelans:

Q. Dr. Rogers, you are a physician practicing in Trenton?

A. Yes, sir.

Q. Where did you graduate? From what medical school?

A. New York University.

Q. When did you graduate?

A. 1908.

Q. How long have you been practising?

A. Since that time.

Q. Do you know Mrs. Lawshe, the complainant in this suit?

A. I do.

Q. Have you ever attended her professionally?

A. I have.

Q. Do you remember whether you attended her during the months of April and May, 1915? 10

A. I did.

Q. At that time will you explain what her condition was, her physical condition?

A. I was called to see Mrs. Lawshe —

Q. By the way, Doctor, what are those slips you are using?

A. They are simply my office records of visits made.

Q. All right. 20

A. I was called to attend Mrs. Lawshe on the 7th of April. At that time she was suffering from a slight cold and very excessive nervousness, and on the 15th of April the cold from which she was suffering became worse and an acute attack of high fever set in, her condition was such that she was sent to bed; she had been in bed a great part of the time from the 7th to the 15th, but her condition became suddenly worse on the 15th and she was sent to bed and I advised that a nurse be sent for. 30

The Vice-Chancellor: This was May, 1914?

Q. April, you said, Doctor?

A. This was April, the middle of April, 1915. She had a great deal of pain from the 15th of April until

about the 29th or 30th of April, attended by high fever, and suffered a great deal, of course, from the effects of the pain and the fever, and her condition during part of that time was very, very critical, and on the 15th and 16th of April, particularly, she was in a very, very critical condition, and I made daily calls from the 15th of April to the first of May, and on two of those occasions, two of those dates, her condition was such that I made two calls a day, and
10 in addition to her pain from her pleuritic condition that she was suffering from she had a cold involving the whole respiratory tract, the nose and down through the bronchial tubes, and as the result of the cold in the head and congestion she was partially deaf all during this illness.

Q. How about her mental condition during this time?

A. Well, her mental condition had not been very good since the time of her son's death.

20 Q. When was that? Do you remember about when?

A. As I remember, it was in the summer of 1914; I am not absolutely sure about that, but it was sometime during the summer of 1914.

By the Vice-Chancellor:

Q. I did not understand, Doctor, when the last that you saw of her was—the last period during that
30 illness.

A. I saw her during that illness—the last call that I made was on the 10th of May; I attended her continuously from the 5th of April to the 10th of May.

Q. 1915?

A. 1915.

By Mr. Weelans:

Q. On the 30th of April, 1915, Doctor, in your opinion, was Mrs. Lawshe in condition to transact business?

Mr. Katzenbach: That is objected to. It seems to me he is not competent to testify to that. He was not present at the time of this transaction, and he has not described her condition on that day or even 10
said he saw her on that day.

The Vice-Chancellor: I will permit it to be answered, providing the doctor will say that from his attendance he is able to answer the question as to what her mental condition was and her physical condition on that day.

A. I attended her on the day in question, on April 30th, and it was the first day that she had been 20
allowed to be out of bed, I believe that I gave the nurse instructions to allow her out of bed for a short time, I believe one hour, if her condition would permit her to remain up that long, and her physical and mental condition were certainly impaired, and I do not believe that she had physical strength to enable her to consider any matter of any great importance, in addition to her mental trouble; I am sure that she could not have understood anything that she had explained to her orally, because her 30
hearing was very, very poor, and she was being treated—in addition to the pleuritic trouble that she had, she was being treated for deafness, so that unless some one had explained to her in writing the nature of any business, I doubt very much whether she could have passed any judgment on any matter that she might be considering.

By the Vice-Chancellor:

Q. When you say in writing, do you mean on account of her deafness?

A. On account of her deafness.

Cross-examination.

By Mr. Katzenbach:

10

Q. Doctor, then you think that on April 30th, 1915, any business transaction or communication should have been addressed to Mrs. Lawshe in writing—that is your idea?

The Vice-Chancellor: That is the date of the acknowledgment, is it?

Mr. Katzenbach: Yes.

20

Q. That is your idea?

A. Yes, sir; I do.

Q. And that was because of Mrs. Lawshe's poor hearing?

A. Yes, sir.

30

Q. Well, of course, if Mrs. Lawshe herself stated that she had heard the attorney tell her that this was an assignment of a bond and mortgage, of which she had knowledge, to the Trenton Banking Company, it must have been a matter of fact that she did hear it—didn't she?

A. Why, yes, if she said so; she wasn't absolutely deaf.

Q. And if she also said that she acknowledged her signature before him, why, of course, she must have known that she wrote her signature and must

have known the purpose of his interview—would you not think so?

A. I should judge so.

Q. And if she says that she recalls that she was asked whether that was her voluntary act and deed, for the uses and purposes therein expressed, and she said yes, that it was, she must have heard the question asked of her—wouldn't you think so?

A. Well, she may have.

Q. Well, you would say that if she said that she did that she did? Now, are you familiar with Mrs. Lawshe's signature? 10

A. No, sir.

Q. You don't know her signature?

A. No, sir.

Q. And you have never seen her signature to the instruments in question?

A. No, sir.

Q. Now, then, as I recall it, you were called in on April 15th, which I think was the first date, was it not? 20

A. 7th of April.

Q. And Mrs. Lawshe had a cold and had some fever subsequently, but she was convalescent in the latter part of April, was she not?

A. Yes, sir.

Q. And on the day in question you had said that she could sit up?

A. Yes.

Q. And be fully dressed? 30

A. Yes.

Q. And go from her own room to other rooms of the house?

A. Yes.

Q. And then she was not violating, at least, any of your instructions when she did all those things?

A. No, sir.

By Mr. Weelans:

Q. In regard to any instructions which you happened to give her, Doctor, if you had known that anybody was coming there to transact business with her, would you have advised her to have seen the person?

10 Mr. Katzenbach: That is objected to. I think it is immaterial and irrelevant, what he would have done.

Mr. Weelans: The question has just been asked, your Honor, whether what was done was contrary to the doctor's orders. I want to show that the doctor made no order in that regard.

20 The Vice-Chancellor: It may be responsive to that. It may cast light upon his other answer concerning the privileges he gave her. I will let it be answered.

(Question repeated.)

A. I would not have advised her or I would not have permitted her to have transacted any business.

By Mr. Katzenbach:

30

Q. Doctor, Mrs. Lawshe, according to your record on May 1st, had continued to improve, hadn't she?

A. Yes.

Q. From your notes?

A. Yes.

Q. So that the transaction of any business on

April 30th was not deleterious to her health or condition?

A. No.

By the Vice-Chancellor:

Q. Will you say, from your knowledge of her condition on April 30th, that she was unable to comprehend the nature of a business transaction that was explained to her?

10

A. Yes, sir; I would.

Q. A business transaction so simple in its form and scope as assigning over a security which she owned to the Trenton Banking Company to secure an indebtedness of her husband, or some other persons—would you think that she could not understand the nature of a transaction of that kind at that time, if properly explained to her?

A. Well, it would be very difficult for me to express what my opinion would be on that. I think it would depend largely on the amount of time that would have been needed to have explained the transaction to her. I think probably if the matter had been a very simple affair and could have been explained in a very short time—I think probably she might have known what she was doing, but if it had been anything that required any extended explanation, involving any amount of time, I do not think that she could have comprehended what she was doing.

30

Q. By reason of the fact that her physical condition did not enable her to maintain sustained thought?

A. Yes, sir; exactly.

Q. She was too weak for that, was she?

A. She was too weak for it.

Q. Could she have understood a transaction at that time as well as she could today? How is she normally? What is her mentality, as you have seen her?

A. Well, her mentality today, of course, is very much better than it was on that day. Of course, during the period that she was ill she had needed opiates from time to time.

Q. And had received them?

10 A. And had received them.

Q. On that day was she in any way under the influence of opiates?

A. I couldn't tell you that; I leave that to the judgment of the nurse. I couldn't testify to that; I don't remember.

Q. You know that she had had opiates prior to that time, do you?

A. Yes, sir.

Q. To what extent?

20 A. Well, during the course of her illness at night she had had occasional doses. I suppose that during the course of her whole illness she had probably had opiates on about eight different occasions.

Q. In minor doses, I suppose?

A. Yes, in minor doses.

Q. I have little knowledge, Doctor, of what the effect might be of such treatment, giving opiates in small quantities to relieve the suffering of nervous strain on mentality, and I am absolutely dependent
30 on such information as you give me on that subject. I wish you would explain to me about the extent to which that might affect the normal mentality of a patient in her condition.

A. Well, the effect of an opiate on the mind is certainly to impair the judgment.

Q. For the time being?

A. For the time being. I would consider that a person who undertook any transaction while under the influence of an opiate was not in a normal state of mind. I think that the effect is very much similar to a man transacting or a woman transacting business under any other narcotic poison, such as alcohol.

Q. But if she had not had any opiate on that day—you do not know whether she had or not, as I understood you—the opiates which had been administered on prior occasions would not have any influence? 10

A. No, sir, because she hadn't had enough to impair her thought.

By Mr. Katzenbach:

Q. Doctor, you have known people that have been for years under the influence of stimulants, have you not, that have been exceedingly good business men and women,—at least so far as the success of their transactions have been concerned? 20

Mr. Weelans: I object to that; I do not think it is cross-examination.

The Vice-Chancellor: I think it is proper cross-examination. I would not want my own examination to be left undisturbed by counsel if he wishes to be enlightened on it.

30

A. I do not quite understand that question.

Q. Well, haven't you known of men who have been successful in business that have been more or less under the influence of stimulants during their entire business career?

The Vice-Chancellor: In other words, haven't you known men who could not make a good bargain unless they were half shot?

A. Well, I have known people who have indulged in alcoholics who are reputed to have been very successful; I don't recall——

Q. I am not asking you whether you advised or would advise it, don't misunderstand the question,
10 I just want to know whether you know of such cases.

A. I know of such people by repute, that is, where they have indulged in alcohol. I don't know any one that ever has been confined, who has been addicted to opiates, that ever had such a reputation.

HELEN O'REGAN, a witness produced in behalf of the complainant, being duly sworn, according to law,
20 on her oath says:

By Mr. Weelans:

Q. You are a trained nurse?

A. Yes.

Q. Are you a graduate nurse?

A. Yes.

Q. From what hospital did you graduate?

A. St. Francis.

30 Q. How long have you been nursing?

A. Three years, private nursing.

Q. Do you know Mrs. Lawshe, the complainant in this suit?

A. Yes.

Q. Were you ever nursing at her house,—nursing Mrs. Lawshe?

A. I have nursed Mrs. Lawshe, yes.

Q. Do you remember nursing Mrs. Lawshe during the months of April and May, 1915?

A. Yes.

Q. What was her condition or what was the trouble with her during that illness?

A. Why, she had pleurisy and had some nervous trouble.

Q. Do you remember when she got out of bed?

A. I do.

10

Q. When was that? Do you remember the date—the exact date?

A. I don't recall the exact date.

Q. Was it about the first of May?

A. Around there.

Q. Do you remember Mr. Dixon coming to the house to see Mrs. Lawshe?

A. I remember a gentleman coming one morning, the morning I got her out of bed, and I took her to a room.

20

Q. Did you know what he wanted?

A. No, I didn't know what he wanted.

Q. Did you have any orders from Dr. Rogers about permitting persons to visit Mrs. Lawshe?

Mr. Katzenbach: That is objected to; it would be hearsay, it would seem to me.

The Vice-Chancellor: I doubt whether the orders given by him testified to by her would be of any value. He is here and he can testify for himself on that subject.

30

Mr. Weelans: I withdraw the question.

Q. You said that you didn't know what Mr. Dixon wanted to see Mrs. Lawshe about?

A. No, I didn't know.

Q. If you had known that he was going to transact some business with Mrs. Lawshe would you have permitted him to see her?

Mr. Katzenbach: That is objected to.

The Vice-Chancellor: I think she can probably testify to what Mrs. Lawshe's condition was positively better than negatively; it would seem so. I doubt whether the test is a very good one,—as to what she would have done under certain assumed conditions.

Q. Mrs. O'Regan, you remember the 30th day of April, 1915, when Mr. Dixon was there: Will you just state as near as you can what Mrs. Lawshe's physical and mental condition was on that day?

A. During the time I was at Mrs. Lawshe's home she was very ill and very, very nervous, and on that day in question she was exceedingly nervous, and I remember a gentleman calling at her home, and I asked Mrs. Lawshe if she was able and she said, "I am very tired but perhaps I had better go," and beyond that I didn't know anything about it, only she was in a very weakened condition, very nervous, and very nervous all the time that I was at her home.

Q. When did you leave Mrs. Lawshe's? When did you stop nursing her? Do you remember?

A. I think about the 7th of—or 10th of May sometime.

Q. Do you remember whether you gave Mrs. Lawshe any opiates on that day?

A. No, I didn't give her any that day.

Cross-examination.

By Mr. Katzenbach:

Q. Do you recall, Mrs. O'Regan, the day, the date of the month that you went to Mrs. Lawshe's?

A. I think on the 15th of April.

Q. And the most serious part of her illness was immediately after you got there, was it not?

A. Yes.

10

Q. And then, during the latter part of April she was convalescent, was she not?

A. Yes.

Q. And do you recall the day of the month that Mr. Dixon called? Do you know Mr. Dixon? Did you see him there?

A. Well, I saw the gentleman coming through the hall but I wouldn't know him if I saw him. I knew there was a gentleman calling but I didn't notice.

Q. Mrs. Lawshe had told you that there was a gentleman coming, did she not?

20

A. She asked me if I would help her to the library, she said, "I have to attend to a little business," and I didn't think that she should go.

Q. Well, no, what did she say to you? Not what you thought but what did she say to you?

A. "Help me to the library, I have a little business to attend to."

Q. And did she say anything else?

A. Nothing more than that.

30

Q. And then she went in the library?

A. Yes.

Q. And you were not present?

A. No; I left her in the library, sitting on a chair.

Q. You thought it was perfectly proper to leave her alone?

A. Yes.

By Mr. Weelans:

Q. How long was Mr. Dixon there,—do you know?

A. I couldn't tell you; I don't know.

ALFRED W. LAWSHE, a witness produced in behalf
of the complainant, being duly sworn according to
10 law, on his oath says:

By Mr. Weelans:

Q. Mr. Lawshe, you are the husband of the complainant in this suit?

A. I am.

Q. You are a large stockholder and officer of the Trent Tile Company?

A. I was.

20 Q. Do you remember requesting your wife to advance some money to the Trent Tile Company on a mortgage?

A. I never requested her.

Q. You never requested her?

A. No.

Q. Well, do you remember that she did advance some money to the Trent Tile Company?

A. I remember that I advanced it for her.

Q. You advanced it for her?

30 A. For her.

Q. Well, will you just explain how that situation arose,—how you came to advance it?

A. Do you want me to go into the entire history?

Q. Yes.

A. My son committed suicide on the 22d day of August, —

Q. What year?

A. 1914, shot himself. He left an estate of about \$25,000, as near as I can remember, as all my books were destroyed during the receivership or when I was in the hospital myself. His money was entirely in cash in the Trenton Saving Fund and in the Mechanics' National Bank.

Q. To whom was this money left?

A. The money was left to his parents.

10

By the Vice-Chancellor:

Q. That is, you and your wife?

A. I and my wife, but prior to that I had about \$15,000 of insurance which I had been carrying for the benefit of Mrs. Lawshe,—the language of his will was to his parents.

By Mr. Weelans:

20

Q. Yes?

By the Vice-Chancellor:

Q. Well, I don't understand about this insurance, Mr. Lawshe. This was insurance on your own life?

A. This was insurance on my own life and Mrs. Lawshe was the beneficiary.

Q. That had nothing to do with his estate, had it?

A. Yes; I am going to explain that. I sold all of that insurance and gave the proceeds to the Trent Tile Company to help it financially. So then, when the will was that the money went to the parents I said, "Mrs. Lawshe, now I have deprived you of the benefit of my insurance and it is no more than right, in case of my death, that all the money that Charley has left shall be yours."

30

Mr. Katzenbach: That is objected to. It seems to me it can be scarcely relevant.

Mr. Weelans: Our bill alleges Mrs. Lawshe had this money in the bank, it is part of her —

The Vice-Chancellor: I will let the testimony stand for what it is worth. I will not undertake at this time to determine whether the title to the
10 money passed by his statement; it will be a matter to be passed on later.

By Mr. Weelans:

Q. Just explain how that money was advanced to the Tile Company.

By the Vice-Chancellor:

20 Q. What was the amount of the insurance which you said?

A. About \$15,000, as near as I can remember. I had \$10,000 in the Penn Mutual Life and I forget whether my policy was \$5,000 in the —

Q. Do you remember what you got for it?

A. I can't tell you.

Q. How much was it cashed in for?

A. Well, the premium had been carried for a good many years, and the premium of the Penn Mutual
30 Life was a thousand dollars a year.

Q. Can you remember how much you got for it when you sold it?

A. No, I can't.

Q. Was it as much as \$10,000?

A. Yes, more than half of what his estate would amount to.

Q. More than her share of the estate?

A. Yes, more than my share of the estate.

By Mr. Weelans:

Q. Well, just continue, Mr. Lawshe. Explain how this money was advanced to the Tile Company, will you please,—how this \$20,500 came to be advanced on a second mortgage to the Trent Tile Company.

A. Well, it was advanced at different periods, 10 some I can't recall now because since then I passed through a severe illness.

Q. But it was advanced to the Trent Tile Company, \$20,500, and a mortgage given to your wife to cover it?

A. Yes, given to my wife.

By the Vice-Chancellor:

Q. Who was the executor of the will?

20

A. Myself and Mrs. Lawshe, and she resigned from the executorship.

Q. Did this money, or any part of it, that was left by your son ever come into her actual possession?

A. No.

Q. In her hands, I mean?

A. No, never in her hands.

Q. Did she know that you were letting the Trent Tile Company have it?

A. No, sir.

30

By Mr. Weelans:

Q. What was done with this mortgage when you received it, Mr. Lawshe?

A. The mortgage was made in November, 1914.

I kept that in the safe. Mrs. Lawshe hadn't any knowledge of the existence of the mortgage.

Q. Yes.

A. None whatever. I carried that unrecorded.

Q. Well, what happened to it next?

A. It went along until I think either in March or—February or March, I took that into the Trenton Bank and gave it to the cashier, Mr. Howell. I asked him if he thought the Trenton Bank would
10 loan me \$12,000 on that mortgage, on a note made by the Trent Tile Company with me as individual endorser, accept the mortgage as collateral security. I heard nothing from Mr. Howell regarding the action—he said he would present it to the board of directors; I never heard anything from Mr. Howell nor did I ever hear anything from the officers of that bank until, I think, in April.

Q. Yes.

A. I was told that the mortgage that had been
20 drawn by Mr. Dixon was improperly drawn and that the bank would have a new mortgage drawn.

Q. Yes?

A. I never had any controversy or any question or argument with the officers of the Trenton Bank until I was called out of my bed, a very ill man, to the telephone in my residence, who told me—somebody, I can't recall who it was now,—

Q. Well, just one minute, Mr. Lawshe. Will you just explain right along the line what happened to
30 that mortgage? A new mortgage was drawn, wasn't it?

A. A new mortgage was drawn.

Q. And what was done with the new mortgage?

A. The Trenton Bank got it.

Q. You took the new mortgage to the Trenton Bank?

A. No; I can't tell anything about the new mortgage, I haven't any knowledge of it, because I was a very sick man at the time.

By the Vice-Chancellor:

Q. I understood you to say they had the new mortgage drawn, and, inferentially, had it executed?

A. Yes, I presume it was executed by me, but I was a very sick man at that time.

10

By Mr. Weelans:

Q. And you say that when you went to the Trenton Bank, in the first place, you asked them whether they would lend the Trent Tile Company \$12,000 on your endorsement, with this mortgage as security?

A. With that mortgage as collateral security.

Q. That is the only reason to your knowledge 20 why they had the mortgage?

A. That is the only reason.

Q. Did Mrs. Lawshe receive any consideration for that assignment?

A. None whatever.

Q. Do you remember when the assignment was signed,—when Mrs. Lawshe signed the assignment to the Trenton Bank, April 30th, 1915?

A. I recollect Mr. Dixon coming to the house, and I recollect that she signed it, and my memory is very 30 particular on that score, for at that time the Trenton Saving Fund was about to loan the Trent Tile Company \$35,000 on a mortgage, and I supposed when Mr. Dixon came up there with the assignment that the Trenton Banking Company were going to loan me the \$12,000, therefore I said to her that it would

be for her benefit if she signed that mortgage, signed that assignment. Now, the Trenton Bank never loaned me the \$12,000, nor they never loaned the Trent Tile Company the \$12,000.

Q. Did you explain to your wife anything about this assignment,—the legal effect of it?

A. None at all. The fact of the matter —

By the Vice-Chancellor:

10

Q. You mean, Mr. Lawshe, that they didn't loan you or the Tile Company anything on this mortgage?

A. Nothing at all.

Q. As collateral?

A. Nothing at all. Bear in mind, the tragic death of my son was a terrible shock to both his mother and myself, and we neither of us recovered from that shock and haven't to this day; in fact, during
20 the entire period of the latter part of 1914, Mrs. Lawshe was in such a mental condition that she couldn't talk.

By Mr. Weelans:

Q. Who owns the house in which you live, Mr. Lawshe?

A. Mrs. Lawshe.

Q. Any mortgage on it?

30 A. \$9,500.

By the Vice-Chancellor:

Q. What is its value above the mortgage?

A. Well, that is hard to tell, Chancellor. It is in a block where there are a half dozen for sale—

half dozen big houses and half of them are for sale. If any man would come along and offer me \$15,000 for the house today he could have it.

Q. And the mortgage is how much, did you say?

A. \$9,500.

By Mr. Weelans:

Q. You didn't endorse any notes for the Tile Company after this date, did you, Mr. Lawshe? 10

A. How is that?

Q. Did you endorse any notes for the Tile Company after April 30th, 1915?

A. Well, that I can't tell, for this reason: I commenced with an abscess on my brain, and I went to Dr. Blackwell for the first time on the 17th day of April. On the 28th day of April he told me that the abscess would have to be opened and the only way for him to open it was to cut the drum of the ear, which he did, and from the 28th day of April until 20 June 11th I was in the bed with instructions from the doctor not to transact any business.

By the Vice-Chancellor:

Q. From the middle of April, did you say?

A. From the 28th day of April, when he made the incision in my ear drum.

Q. Then you were confined to bed at the time this assignment was made? 30

A. Yes. On the 29th day of April he put me to bed—on the 28th day of April, and I think the day that Mr. Dixon came to the house contrary to the advice of Dr. Blackwell I got out of bed and went and sat on my piazza until he arrived. I am giving these dates because I want to show to the Chancel-

lor that I was a very sick man. On the 6th day of June my two doctors came in and took me to the University Hospital, the hospital in New York, for the operation which I declined to have.

Q. How long were you in the hospital?

A. That was on June 6th when they took me to—until—on June 11th, I went in the hospital and I had the operation, so from —

10 Q. When did you come home again,—do you remember?

A. What say?

Q. When did you come home again,—do you remember?

A. I went on one Friday and I came back on the next Friday to my home.

Q. Around the middle of June, then?

A. On the 11th day of June was the operation and I was back in my home I guess about the 18th of June.

20

By Mr. Weelans:

Q. When did the Tile Company go in the hands of receivers,—do you know?

A. July 9th, I think, the temporary receiver.

Q. July 9th?

A. Yes.

Q. You didn't come home from being sick in the hospital until June 18th?

30 A. June 18th.

Q. And you don't remember endorsing any notes during those dates?

A. I haven't any recollection of transacting any business from the 28th day of April until the company went into the hands of a receiver.

Q. You remember some Rambo notes?

A. Yes; Rambo was a large customer of the Trent Tile Company.

Q. Was anything said about those notes when you delivered this mortgage?

A. No, sir, none whatever. There was no controversy on the question of—except whether the bank would loan me \$12,000 on the note made by the Trent Tile Company and endorsed by me individually with this mortgage as collateral security. Now, I haven't heard a word from the bank only, as I 10 said a while ago, some one called me up over the phone and told me that Mr. Dixon had told them that—the Trenton Bank, that he had—Mrs. Lawshe had given him the cancellation of that mortgage. I called up Mr.—I got up out of the bed and went to my phone and I called up Mr. Howell and asked him if the bank knew of such a transaction, he said he would look, to hold the phone, which I did, and he came back and he said, “no.”

Q. What were you going to do with this \$12,000, 20 Mr. Lawshe?

Mr. Katzenbach: That is rather immaterial.

Mr. Weelans: Well, I withdraw the question.

Cross-examination.

By Mr. Katzenbach:

Q. Mr. Lawshe, you had been connected with the Trent Tile Company for about how many years? 30

A. From the date of its organization until it was sold.

Q. Well, when was it organized?

A. Oh, I think in 1882, 1883.

Q. 1880 or 1882?

A. 1882. That is quite a while to remember.

Q. And you had been actively engaged in the business, had you not, during all those years?

A. Well, from 1882 to 1897, I was deputy clerk here of The Supreme Court and that business was run by other people.

Q. Then after 1897, did you give up your entire time to the business of the Trent Tile Company?

10 A. Entire time; yes, sir.

Q. And you and your son, Charles P. Lawshe, owned a half interest in it, did you not?

A. No. At the beginning Benjamin F. Lee and myself owned the entire factory. He owned one hundred and thirty-five thousand and I owned one hundred and thirty-five thousand. I gave my son \$30,000 worth of this stock gratuitously. When Frank Lee died he came to me and said, "Father, I am not well; I am going to re-transfer my stock
20 back to you," which he did, so when he died he hadn't any interest whatever in the Trent Tile Company.

Q. Do you mean to say that when your son died that he wasn't a stockholder in the Trent Tile Company?

A. Yes, sir.

Q. You were then a half owner, you had a half interest in the Trent Tile Company, then, didn't you?

30 A. Yes.

Q. And Mr. Lee's estate had a half interest in it?

A. Yes.

Q. And you continued to be actively engaged in the business of the Trent Tile Company during the years 1914, and 1915?

A. Yes.

Q. In the years 1914 and 1915?

A. Yes.

Q. Now, your son died on August 22d, 1914?

A. August 22d, 1914.

Q. He had about \$25,000 in cash in the Trenton Saving Fund Society and the Mechanics' National Bank?

A. Yes.

Q. And he left a will in which that was left to you and Mrs. Lawshe?

10

A. Yes.

Q. So that substantially you had an interest in his estate of \$12,500 and Mrs. Lawshe of \$12,500?

A. Yes.

Q. And he had appointed Mrs. Lawshe and yourself as the executors of his will?

A. Yes.

Q. You say that Mrs. Lawshe renounced in your favor?

A. Yes.

20

Q. Mrs. Lawshe renounced in your favor?

A. Yes.

The Vice-Chancellor: I do not understand how each got \$12,500 under the will. There was only \$20,000, wasn't there?

Mr. Katzenbach: He said \$25,000.

Q. The moneys on deposit, you said, in these two banks was \$25,000?

A. Somewheres near it, I can't tell; as I said before, all my records while I was in the hospital were destroyed.

Q. Well, your recollection is that the money in the two banks was \$25,000?

A. Yes.

Q. And then you became sole executor of your son's will?

A. Yes.

Q. And as such executor what did you do with the moneys of your son's estate?

A. Loaned it to the Trent Tile Company.

Q. You loaned it yourself as executor of the estate to the Trent Tile Company,—is that it?

A. That is it exactly.

10 Q. Did you talk about this matter with Mrs. Lawshe?

A. Not a word.

Q. Never said anything to Mrs. Lawshe?

A. Not a word.

Q. And you loaned it without ever having received her consent, then?

A. Yes.

Q. And you then embezzled the estate?

A. If you put it that way.

20 Q. Well, is that what you did? Is that it?

A. I loaned it to the Trent Tile Company because I was practically the owner of the Trent Tile Company.

Q. Well, I am asking you whether you did or did not?

A. Yes.

Q. You did loan it to the Trent Tile Company?

A. Yes.

30 Q. And how did you have the entries of those loans made on the books of the Trent Tile Company,—in whose name?

A. Mrs. Lawshe's.

Q. You had it all done in Mrs. Lawshe's name, then?

A. Yes.

Q. And you then loaned how much to the Trent Tile Company?

A. \$20,500.

Q. And this was in the fall of 1914, was it not?

A. All along in 1914.

Q. And you recall that, then, perfectly well, do you?

A. Yes.

Q. And you recall also that you signed as an officer of the company a mortgage under date of November 30th, 1914?

A. I do.

10

Q. And what did you tell Mrs. Lawshe about this mortgage?

A. I didn't tell her anything.

Q. Well, who did tell her, then?

A. Nobody that I know of.

Q. You don't know, then, who told her about this mortgage of November 30th, 1914?

A. Nobody told her about the mortgage of November 30th.

Q. How did she know about it, then?

20

A. She didn't know about it.

Q. Well, but she says she knew about it. How do you account for that, then, if you didn't tell her?

A. I don't think Mrs. Lawshe is competent.

Q. I am not asking you that, I am asking you did you tell her?

A. I did not.

Q. Then you took her money and loaned it to the Trent Tile Company—her interest in it?

A. I did, yes.

30

Q. And never told her anything about it?

A. Right.

Q. And then you took a mortgage?

A. Yes.

Q. Now, then, when you got a mortgage what, if anything, did you do with the mortgage?

A. I kept it locked up in the safe, it wasn't recorded.

Q. Did you have it recorded?

A. I didn't. It is a fortunate thing for me that I didn't.

Q. Well, you just locked it up in the safe?

A. Yes.

Q. And never told Mrs. Lawshe anything about it?

10 A. No.

Q. And then when did you ever get the mortgage out of the safe, if at all?

A. The day that I went to the Trenton Bank.

Q. When was that?

A. That I can't tell you; I don't remember.

Q. What is the best of your recollection?

A. Either in February or March.

Q. In February or March of what year?

A. 1915.

20 Q. 1915?

A. 1915.

Q. February or March, 1915?

A. Yes. I took the mortgage there unrecorded and unassigned.

Q. And who did you see at the Trenton Bank?

A. Mr. Howell.

Q. Yes. What did you say to Mr. Howell?

A. I said to Mr. Howell, "Will the Trenton Bank on a note made by the Trent Tile Company for
30 \$12,000, with my personal endorsement, with this mortgage as collateral security, loan me \$12,000?" He said he would present the matter to the board.

Q. Well, did you show him the bond and mortgage?

A. He took it.

Q. Well, did he look at it?

A. Yes.

Q. Was there anything said about the bond and mortgage being made to Mrs. Lawshe?

A. Not a word.

Q. Not a word?

A. Not a word. We didn't have five minutes' conversation.

Q. Well, in the five minutes' conversation you say that not a word was said with reference to that?

A. Not that I can recall.

Q. Well, is it that there was nothing said or that 10
you can't recall anything being said?

A. I can't recall that anything was said.

By the Vice-Chancellor:

Q. Do you remember his saying he would put it up to the board?

A. What say?

Q. Don't you remember his saying that he would pass it up to the board? 20

A. Yes; he said he would pass it up to the board for their consideration.

By Mr. Katzenbach:

Q. Well, when did you next see Mr. Howell, or anybody connected with the Trenton Bank, in connection with this matter?

A. I don't recall that I ever saw them. I relied upon their informing me. 30

Q. You mean to say that you never heard from or saw Mr. Howell or Mr. Campbell of the Trenton Banking Company with reference to this matter?

A. I say I can't recall it, if I did.

Q. You can't recall it?

A. No.

Q. Well, now, you said that you were apprised that this mortgage was not valid. Who told you that?

A. I think the bank got me word in some way or another.

Q. Well, then, if you didn't have any interview with the bank or anybody, as you claim, how could the bank, then, have told you?

A. I say, I can't recall what followed after my
10 placing that mortgage in the hands of the bank.

Q. Well, now, you can't recall anything?

A. I cannot.

Q. Well, now, as a matter of fact, Mr. Lawshe, you say you received word or heard that the mortgage was not a valid mortgage? Isn't that what you heard? What did you hear?

A. I got information from some source.

Q. Well, from what source?

A. I can't tell you, because, as I told you, Mr.
20 Katzenbach, I was a very sick man during all that time.

Q. Well, now, Mr. Lawshe, what was told you? If you can't remember who told it to you, what was said about the mortgage, then?

A. I had some information from some one, who I can't tell you, or I can't tell you the time, that that mortgage was improperly drawn. Now, my memory is so faulty after this operation that I can't tell when I signed the new mortgage, although I
30 suppose I did.

Q. Well, do you recall whether or not you were told that the mortgage had ever been passed upon by the board of directors?

A. No, I cannot.

Q. You don't recall anything about that?

A. I do not.

Q. Well, you were attending to the business of the Trent Tile Company all this time, were you not?

A. No, I was in my sick bed.

Q. Well, when did you go to bed, then?

A. I went to bed on April 28th.

Q. And you were in bed on April 29th?

A. I was in bed on April 29th.

Q. And you were at your house on April 30th?

A. Yes.

Q. You didn't leave your house on that day? 10

A. No.

Q. You are positive about that?

A. As near as I can recollect.

Q. That was the day that you got up and sat on the front porch and saw Mr. Dixon come in?

A. No, I think that was April 30th.

Q. I am asking you where you were on April 30th,—at your house?

A. At my house.

Q. And you didn't leave your house on that day? 20

A. No.

Q. And you weren't at Mr. Dixon's office on that day?

A. No.

Q. And you didn't ask Mr. Dixon to take an assignment of this bond and mortgage to Trenton Banking Company and have Mrs. Lawshe execute it on that day?

A. No.

Q. Well, now, were you able to write your name 30 on April 30th, do you think?

A. I believe I was.

Q. What is that?

A. Probably I was able.

Q. Well, do you recall a meeting of the board of directors of the Trent Tile Company on that day?

A. I do not.

Q. Well, now, I show you the book of minutes of the Trent Tile Company, dated "Trenton, N. J., April 30th, 1915. A meeting of the board of directors of the Trent Tile Company was held at the office of the secretary, First National Bank Building, Trenton, N. J., on April 30th, 1915, at ten a. m., pursuant to the following waiver: We, the undersigned, directors of the Trent Tile Company, a corporation under the laws of New Jersey, hereby
10 waive notice of the time and place of a meeting of the board of directors and of the business to be transacted at said meeting, and designate the 30th day of April, 1915, at ten o'clock in the forenoon, as the time, and the First National Bank Building as the place of said meeting. (signed) A. Lawshe." Is that your signature?

A. Yes.

Q. And signed by—who is this next signature?
"F. M. Walker"?

20 A. Yes.

Q. "Huston Dixon"?

A. Yes.

Q. And "Marguerite L. Dixon"?

A. Yes.

Q. That was the wife of Judge Dixon, and the daughter of Mr. Benjamin F. Lee?

A. Yes.

Q. Now, do you recall that at that meeting this resolution was adopted: "Whereas, Mrs. Annette K. Lawshe has advanced to the Trent Title
30 Company in cash the sum of twenty thousand five hundred dollars, therefore, be it resolved that the officers of this company be and they are hereby authorized to execute a bond of the company to Mrs. Annettenette K. Lawshe in the penal sum of forty-one thousand dollars, conditioned to pay the sum of

twenty thousand five hundred dollars, and to secure the same by executing a mortgage upon the real estate of the company for the sum of twenty thousand five hundred dollars." Do you recall that resolution?

A. I do not.

Q. "And on motion, &c., the meeting adjourned. Huston Dixon, secretary."

A. Yes.

Q. Well, Huston Dixon, Judge Dixon, was secretary of the company, was he not? 10

A. He was.

Q. And you say that you were not there on April 30th, and did not participate in the transaction?

A. There was a meeting held at my residence. I don't know anything about that.

Q. You don't know anything about it?

A. No. The fact is, I signed it.

The Vice-Chancellor: Where do the minutes 20 show the meeting was held?

Mr. Katzenbach: The First National Bank Building, which is the office of Judge Dixon.

The Vice-Chancellor: Do the minutes show whether Mr. Lawshe was present?

Mr. Katzenbach: It has his waiver of notice—his signature. Doesn't show that he was present. 30

The Vice-Chancellor: The waiver of notice of the meeting is signed by him?

Mr. Katzenbach: Yes.

The Vice-Chancellor: But it doesn't show who was present?

Mr. Katzenbach: No, it doesn't show who was present.

10 Q. Now, then, did you ever tell the Trenton Banking Company that this mortgage given by the Trent Tile Company was for money that had been advanced by you and Mrs. Lawshe to the Trent Tile Company?

A. I don't recall that I made any remark concerning it.

Q. Well, did you ever write to them to that effect?

A. I don't know that I did; I can't recall it.

Q. You don't know whether you ever said that to them or not?

A. I do not.

Q. Or ever wrote it to them?

20 A. I do not.

Q. I show you a letter, which I will ask to have marked D1 for identification, and ask you whether that is your signature on that letter?

(Said paper marked Exhibit D1 for identification.)

A. Yes, that is all right; that shows that I —

Q. Well, now, wait a minute.

30 A. What is the date of that letter, Mr. Weelans?

Mr. Weelans: January 13th, 1915.

Q. Now, let me read you this letter: "Trenton, N. J., January 13th, 1915. Mr. Robert W. Howell, Cashier, Trenton Banking Company, Trenton, N. J.

My dear Mr. Howell:— My impression is that I stated today Mrs. Lawshe and myself had loaned the Trent Tile Company \$26,000. I was in error, as the amount is \$23,500. Got my figures confused. I don't want to be anything but accurate. Very truly yours, A. Lawshe, treasurer of the Trent Tile Company." That is your signature?

A. That is my signature.

Q. And you wrote that letter?

A. I did.

10

Q. Now, can you state or not whether you had any conversation at any time between the date of this letter, January 13th, 1915, and April 30th, 1915, with either Mr. Howell, the cashier, or Mr. Campbell, the president of the Trenton Banking Company, with reference to the paper of Rambo & Company?

A. I cannot.

The Vice-Chancellor: Between what dates did the question include, Mr. Katzenbach?

20

Mr. Katzenbach: January 13th, 1915, and April 30th, 1915.

Q. You don't recall any conversations that you had?

A. No.

Q. Now, do you recall any conversations had with them with reference to the Rambo paper?

A. I cannot recall any.

30

Q. With reference to any other paper of the Trent Tile Company that was in the bank?

A. I cannot.

Q. Do you recall whether you asked the bank to advance any new moneys and discount new paper upon the assignment of this mortgage?

A. No, sir, I did not.

Q. You did not?

A. No.

The Vice-Chancellor: After the assignment was made, do you mean?

Mr. Katzenbach: About the time of the assignment and after the assignment was made.

10 Q. Do you recall that on April 26th, 1915, you requested, on the strength of this assignment being made, a new loan for \$1,250?

A. No, sir.

Q. You don't recall anything about it?

A. No, sir, for that \$1,250 was endorsed by Edward C. Lee and myself.

Q. Well, you say you don't recall anything about it and yet it was endorsed by you?

A. I got a note discounted but no reference to the

20 Rambo paper.

Q. Wasn't it a new note?

A. Yes.

Q. And discounted on the strength —

A. Yes.

Q. —of this mortgage being assigned to the bank?

A. No, not on that at all.

Q. Not on that at all?

A. Not at all.

30 Q. But you admit having endorsed the note on that date?

A. On that date? What date is that?

Q. Now, then, on the very date of the assignment of this mortgage, April 30th, 1915, did you get \$1,500 of new money at the Trenton Banking Company, on a note endorsed by you?

A. I don't remember.

Q. Well, I show you a note dated April 30th, 1915, made by the Trent Tile Company, to your order, for \$1,500, and ask to have that marked for identification, and ask you whether that is your signature upon that note?

(Said paper marked Exhibit D2 for identification.)

A. Yes.

Q. And that is your endorsement upon the note? 10

A. Yes.

Q. And the note is dated April 30th, 1915?

A. Yes.

Q. Now, do you recall on May 21st, 1915, of getting on your endorsement \$1,625?

A. I do not.

Q. Well, then, I show you a note, which I will ask to have marked Exhibit D3 for identification, and which is a note made by the Trent Tile Company, signed by you as treasurer, and drawn to your order 20 and endorsed by you,—

(Said note marked Exhibit D3 for identification.)

A. Yes.

Q. And I ask you whether that refreshes your recollection?

A. Yes, I recollect that note. Mr. Sweeney brought that note to my house. I can't recall anything about it, I can't recall anything about the transaction.

30

Q. But that is your signature?

A. That is my signature, yes.

Q. Now, on June 7th, 1915, did you sign a note as treasurer of the Trent Tile Company, and endorse the same? Do you have any recollection of that?

A. I have not.

Mr. Katzenbach: I will ask that that be marked for identification.

(Said note marked Exhibit D4 for identification.)

Q. I show you Exhibit D4 and ask you whether those are your signatures,—whether you have any recollection of that?

A. I haven't any recollection of that at all.

10 Q. Well, you would say that those were your signatures?

A. Oh, yes, they are my signatures.

Q. And you wouldn't say the Trent Tile Company did not get the money?

A. No. That note is endorsed by Mr. Jamieson and Mr. Silvers.

Q. How do you know that?

A. How do I know that? Because I have it here on my memorandum.

20 Q. Well, if it was on a memorandum of yours then you must have known something about it?

A. I got this memorandum from the claim filed by the Trenton Banking Company.

Q. You are a prior endorser on the note?

A. Yes. What date is that?

Q. June 7th, 1915. Well, now, do you recall on June 25th, 1915,—have you any memorandum of any note of that date?

A. What is the amount of it?

30 Q. \$3,400.

A. No, sir, that note I have never seen.

Q. Have you heard about it?

A. I have heard that Mr. Dixon and Mr. Silvers and Mr. Jamieson made a note for \$3,400 and it was signed by Mr. Silvers as assistant treasurer.

Q. Well, now, on April 21st, 1915, you recall a

note of \$2,200,—have you got that down on your memorandum,—endorsed by you?

A. Yes.

Q. You recall that, then?

A. I recall that.

Q. Now, what did you tell Mrs. Lawshe about Mr. Dixon's coming up to the house on April 30th?

A. My recollection is I told Mrs. Lawshe probably that it would be to our interest to sign that assignment for this reason: There was pending a loan for \$35,000— 10

By the Vice-Chancellor:

Q. Are you telling now your reason or the reason that you told her?

Mr. Katzenbach: The reason that he told her.

A. I said I thought it would be to our benefit. 20

Q. You are going on and I don't know whether you are telling now as you proceed what you said to Mrs. Lawshe or whether you are telling the reason you said to her what you did say to her.

A. The reason I did say to her, what I said.

By Mr. Katzenbach:

Q. You told her about the pending loan of \$3,500?

A. \$35,000, which if Mr. Dixon, as secretary of the company, had— 30

The Vice-Chancellor: He was testifying in a manner indicating that he had made all that explanation to Mrs. Lawshe. I know he did not intend it so.

The Witness: No; I didn't tell her this last.

Q. Just tell me, won't you please, what you said to Mrs. Lawshe?

A. I simply said to her I thought it would be to our benefit for her to sign the assignment. That is all the conversation we had.

Q. Now, then, why did you give her that advice?

A. Because there was a loan made to the Trent Tile Company by the Trenton Saving Fund of \$35,000, which if Mr. Dixon, as secretary of the company, had attested to my signature as the treasurer of the company the loan would have been perfected and all this trouble would have been avoided. He declined, he did not obey the board of directors, and he simply refused to attest my signature and therefore the company lost the loan. It went so far that the company employed Mr. Scammell to draw the mortgage for the Trenton Saving Fund, for which they had to pay. If Mr. Dixon had attested my signature the loan would have been perfected and all of this receiver-ship would have been avoided.

Q. Well, now then, in other words, at this time practically, you say, this loan had been completed, this transaction by which the Trent Tile Company was to get \$35,000 from the Trenton Saving Fund Society?

A. Yes.

Q. So that these loans that you obtained from the Trenton Banking Company about this time, and the new moneys, would have been repaid out of this \$35,000 loan?

A. That was my idea.

Q. That was your idea, and that was the reason why you got the Trenton Banking Company to make these advances——

A. No.

Q. ——because they would be repaid out of this \$35,000?

A. That wasn't stated to the Trenton Bank at all.

Q. What say?

A. That wasn't stated to the Trenton Bank at all.

Q. I am not saying it was, but that was your reason for getting this new money, it would be only temporary,—that was your idea, was it?

A. Yes.

Q. And that these new loans would be paid out of the \$35,000 that was to come from the Trenton Saving Fund Society?

10

A. Yes.

Q. And then difficulties arose, as you say, between the officers of the company, by reason of which that was never executed, and the company went ultimately into the hands of a receiver,—is that right?

A. Yes.

Q. Now, then, how did you tell Mr. Dixon that you wanted him to go up there and present this matter to Mrs. Lawshe?

A. I can't recall that.

20

Q. Well, how would he have been likely to have gone there, then?

A. I don't know.

Q. You said that you expected him because you got out of bed and went down on the front porch?

A. I say I can't recall it. He came there.

Q. But you did get out of bed and go down on the front porch because Mr. Dixon was coming, didn't you?

A. Yes.

30

Q. And you told your wife that Mr. Dixon was coming and that it would be for your interests, that is, the interests of Mrs. Lawshe and yourself, to assign this mortgage to the Trenton Banking Company?

A. Yes.

Q. Now, what conversation did you have with Mr. Dixon which brought Mr. Dixon up there to the house?

A. I can't recall that I had any.

Q. Well, would you say that you hadn't any?

A. No, I wouldn't say that, because he might have called me over the telephone.

Q. Well, you might have called him over the telephone?

10 A. No, I wouldn't call him over the telephone. You can bet all the money you will ever have I wouldn't.

Q. Well, do you say that you didn't have any conversation with Mr. Dixon about coming out there to the house?

A. I won't say that.

Q. Now, you spoke of \$10,000 insurance,— in the Penn Mutual, was it?

A. Yes.

20 Q. What was the surrender value of that policy?

A. I can't recall.

Q. Well, approximately?

A. I can't tell you. I carried it several years and the premium was \$962.

Q. Well, you say you carried it for several years?

A. Yes; I can't recall. As I have told you, everything was——

Q. I am just trying to get the best of your recollection?

30 A. I haven't any recollection.

Q. You don't know whether it was \$500 or \$1,000?

A. No.

Q. Or \$2,000?

A. No, I can't tell you anything about it.

Q. Now, in what company was the \$5,000 policy?

A. I think that was in the Berkshire Life.

Q. What did you get for that?

A. That I can't tell you.

Q. You don't know?

A. I don't know.

Q. And you gave those moneys—who did you give the surrender money to?

A. The Trent Tile Company.

Q. To the Trent Tile Company?

A. Yes.

Q. And you don't have any recollection of what it was? 10

A. No, I haven't.

Q. What part of the year 1915 did you do this?

A. Oh, right after Charley's death, I think.

Q. And that was just simply money that you loaned to the Trent Tile Company?

A. Yes, I can't recall exactly.

Q. You just surrendered the policies and loaned the money to the Trent Tile Company?

A. With the expectation of sometime getting it back. 20

By the Vice-Chancellor:

Q. Why didn't you have it included in this mortgage?

A. Well, that I can't tell you, because, as I said before, the death of my son was such a terrible shock I can't recall much that occurred after August 22nd.

Q. The first mortgage, the one that was not authorized by the board, might have been made before you loaned this insurance money? 30

A. No, made afterwards, I think; I won't say, Chancellor.

Q. November, 1914?

A. I won't say.

Q. When did your son die?

A. August 22nd, 1915. As Dr. Rogers said, he had neurasthenia for years.

Q. You feel sure, do you, Mr. Lawshe, that at the time you left the mortgage with the bank,—I refer now to the mortgage that was not used, the old mortgage,—that your request was for them to make you a loan of the amount of the mortgage, with the note and endorsement and mortgage as collateral, and it
10 was not as a security or not to be a security for money that was already due, past due and owing, by the Trent Tile Company?

A. My recollection is that I handed the mortgage to Mr. Howell and asked him if he thought the bank would loan \$12,000 on a note made by the Trent Tile Company and my personal endorsement, with that mortgage as collateral security.

Q. And nothing was said about prior indebtedness?

20 A. Nothing at all, because there was then hanging in the Trenton Bank a note of mine, with my endorsement on, for \$2,000, and attached to that note was \$4,000 of collateral security.

Q. Wasn't there some Rambo paper there also?

A. Oh, there was some customers' paper there, they were all the time discounting customers' paper, you know.

Q. Did the discounted Rambo paper have your endorsement on it?

30 A. Yes, sir.

Q. Personal endorsement?

A. Personal endorsement.

Q. Now, between that time, the time you left the old mortgage and the time that you got the new mortgage, you appear to have made some endorsements?

A. Yes.

Q. Was nothing said about the mortgage at any of those times?

A. None at all.

Q. The mortgage matter had simply laid quiescent up until the time it was assigned?

A. Yes, sir. I think that is clearly proven by the fact that I asked them to discount a note for a thousand dollars, I can't tell the date of that note.

Q. Well, this I don't understand, Mr. Lawshe: When this mortgage was assigned, when you told 10 your wife that Mr. Dixon would be up there to get her acknowledgment to the new mortgage, that the old mortgage had not been properly executed, why didn't you at that time get the \$12,500 which you understood the mortgage was to be pledged for?

A. The bank never tendered it to me, never told me that they would loan me the \$12,000.

Q. You knew that they got the new mortgage executed?

A. I expected when they got the new mortgage 20 that the \$12,000 loan was to follow, which it never did follow.

Q. Then you claim that you never have received the money that this pledge was for?

A. I never did.

Q. Not a dollar of it?

A. Not a dollar of it.

Q. They got the mortgage and didn't make the loan?

A. Didn't make the loan. 30

Q. But they made some loans after that, didn't they?

A. Yes.

Q. On your endorsement?

A. Yes, but collateral security other than the mortgage. For instance, they made a loan of a thousand

dollars with the collateral security of John J. Kane's note for \$2,300. That note they have, the Trenton Bank has.

Q. Are you positive that the mortgage was not turned in there as a collateral against whatever indebtedness you were responsible for?

A. No, sir; I have no recollection at all.

Q. Well, are you positive that it was not?

A. I am positive of it because I am positive there
10 was nothing said at all except that I wanted to borrow \$12,000.

By Mr. Weelans:

Q. Then, Mr. Lawshe, these notes mentioned by Mr. Katzenbach, one for \$1,500, dated April 30th; \$1,625, dated May 21st, and \$1,000, June 7th, and one for \$2,200, April 21st, with your endorsement on,
20 were given with other security than this mortgage,—is that your idea? Is that what you say?

A. Yes.

By Mr. Katzenbach:

Q. All of those notes were?

A. Yes. Just say that again, please.

By Mr. Weelans:

30 Q. I say these notes that Mr. Katzenbach has marked here as exhibits——

The Vice-Chancellor: Did he offer the notes?

Mr. Katzenbach: I did not but I will offer them.

Q. I say, these notes which have been marked, one April 30th, 1915, and the others mentioned,—my question is, do you claim that these notes—the money was advanced on those notes on other security, other collateral, rather than this \$20,500 mortgage?

A. I didn't say that all of them were, I say that some of them.

By the Vice-Chancellor:

10

Q. What of those that were not?

A. The mortgage was not held security for those notes. The mortgage was not put up for security for any notes that I was endorser on. That was not the understanding when I presented the mortgage to Mr. Howell.

The Vice-Chancellor: Do the notes that are used by this bank contain a collateral clause stating 20 specifically what the collateral is for which the note is given?

Mr. Katzenbach: No, not all of them.

By Mr. Weelans:

Q. This note marked D4 for identification, dated June 7th, 1915, and made by the Trent Tile Company, endorsed by you,—was there any collateral with 30 that note?

A. I don't know anything about this note, Mr. Weelans. I went in the hospital for this operation on June 11th. I don't know where that note was made, anything about it. In fact, I endorsed it, that is sure, my signature is there.

The Vice-Chancellor: Does the note show any collateral on its face?

Mr. Katzenbach: No, just a plain note.

Q. Well, then, these other notes; you say that whatever money was advanced, if there was any advanced, was advanced on other securities,—is that your idea?

10 A. I don't understand that question.

Q. What I mean to say is this: These notes that are endorsed by you after the date when this mortgage was assigned to the Trenton Bank——

A. They were discounted on the strength of the endorsement.

By Mr. Katzenbach:

Q. Well, Mr. Lawshe, how is it that you never
20 asked for what you said was due you? How was it that you asked Mr. Dixon to have this assignment to the Trenton Banking Company executed?

A. On the strength we were going to get a loan of \$35,000, which would have taken care of all this business.

Q. That is all true enough but ——

A. And if that loan had been perfected I wouldn't have let Mrs. Lawshe sign that assignment, but it was the understanding when she did sign it we was
30 to get the \$35,000 loan.

Q. Yes, but in the meantime you wanted to get temporary loans, didn't you, from the Trenton Banking Company?

A. I don't recall it, probably we did.

By the Vice-Chancellor:

Q. When you had the mortgage assigned to them why didn't you call or send and get the \$12,000 they were to loan? Why didn't you at least demand it? You needed it, didn't you?

A. Yes, but I was too sick a man at that time to go into these things,—because I was relying upon the integrity of Mr. Dixon and other people.

Q. If you needed money and there was \$12,000 10 coming to you, I don't quite see why you didn't tell Mr. Dixon or somebody else who could go there and get it or have it placed to the credit of your company. Can you remember why you did not?

A. I cannot; I cannot recall anything at that time.

Q. Usually when any one has money coming to them which they very much need they are pretty active in wanting to get their fingers on the money, and I cannot quite see why if \$12,000 was coming to you you were getting other discounts or loans with- 20 out making any demand for the \$12,000. Can you give any explanation of that?

A. I can't; I can't recall it. I was too sick a man for two months to recall anything that took place, besides I had a very sick wife who had given me a great deal of concern.

By Mr. Weelans:

Q. Mr. Lawshe, in your direct examination you said that the surrender value of these two insurance 30 policies in your estimation, as you remember it now, amounted to more than one-half of your share of the estate?

A. More than my share of my son's estate.

Q. Did you ever intend to tell your wife anything about this assignment,—take that question up with her?

A. If the Trenton Bank had sent me word or got me word that they were going to loan the \$12,000 I proposed to go to outside parties, or Mr. Katzenbach and Mr. Howell of the Trenton Bank, and take them up to the house and have Mrs. Lawshe give her written consent for the deposit of that mortgage as collateral security. That was my purpose, but I hadn't any advice at all. I didn't get the \$12,000, therefore it wasn't necessary.

10 By the Vice-Chancellor:

Q. You knew what Mr. Dixon was coming there for, didn't you, that morning?

A. Yes, I think I do, but that was far from the controversy or the negotiation pending for the \$35,000 loan from the saving fund.

Q. No, no,—this assignment which your wife signed on April 30th; and acknowledged before Mr. Dixon,—you understood at that time that that was for the Trenton Banking Company?

20 A. Oh, yes.

Q. And didn't you understand it was to carry out the arrangement you had already made with them?

A. My idea was if she would sign it I would get the \$12,000.

Q. Why didn't you make some kick because you did not get it?

A. Too sick a man.

Q. But you signed other notes afterwards?

30 A. Oh, I did, notes and checks they would bring me and I would get out of bed and sign them.

By Mr. Weelans:

Q. When was it the Trent Tile Company went in the hands of the receiver, did you say?

A. July 9th.

COMPLAINANT RESTS.

HUSTON DIXON, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Katzenbach:

Q. Judge Dixon, you are a member of the bar of the state of New Jersey?

A. I am.

Q. And an attorney and counsellor at law of the 10 Supreme Court?

A. Yes, sir.

Q. And have been such for how many years?

A. Since 1898, when I was admitted.

Q. You know Mrs. Lawshe, the complainant in this case?

A. I do.

Q. How long have you know Mrs Lawshe?

A. It would be pretty hard to say, but a number of years, a large number of years. 20

Q. And you know Mr. Alfred Lawshe?

A. Yes, sir.

Q. Did you have any connection with the Trent Tile Company during the years 1914 and 1915?

A. I was a director and secretary of the company.

Q. And how long had you been a director and secretary prior to 1914?

A. Why, I think since sometime in 1909, after the death of Mr. Benjamin F. Lee. I was one of the administrators of his estate and as such was made a 30 director and elected secretary of the company.

Q. And you were familiar with the affairs of the Trent Tile Company from the time of your becoming a director on down through the years of 1914 and 1915, were you not?

A. Well, I was familiar with them as they were

presented to me in the board of directors' meetings each month, but I didn't take any active part in the affairs of the company beyond that.

Q. Well, now, there were statements that were presented to you of the financial condition of the Trent Tile Company month by month, were there not?

A. Yes, sir.

10 Q. I show you statements for the months of January and February and March and April, 1915, and ask you whether those are the reports of the financial condition of the Trent Tile Company for those months as presented to you as the secretary and a director of the company?

A. Yes, sir.

Mr. Katzenbach: I will ask that those be marked for identification.

20 (Said papers marked Exhibits D5, D6, D7 and D8, respectively, for identification.)

Q. During the year 1914 did anything occur by which it was necessary for the Trent Tile Company to pay a considerable sum of money as the result of litigation over royalties on patents?

A. I was so told.

Q. And by whom?

A. Mr. Lawshe.

30 Q. And did Mr. Lawshe suggest how that money would be paid,—any method to pay the money?

Mr. Weelans: I object to that. I do not see that that is relevant.

The Vice-Chancellor: It may be competent or

relevant, of course, if it is connected with something else.

Mr. Katzenbach: I am going to connect it.

Q. Did he suggest anything to you with reference to where this money could be obtained?

A. Why, he suggested, as I recollect it, that either he or his wife, or both of them, would advance it.

Q. Advance it?

10

A. Yes.

Q. Now, were there advances made, as a result of this conversation, to the Trent Tile Company, so far as you know?

A. I believe there were.

Q. I show you a paper that I will have marked D9 for identification, and ask you whether that was on or about its date, November 24th, 1914, presented to you as what appeared to be the amount loaned?

20

(Said paper marked Exhibit D9 for identification.)

A. It was.

Q. And what was that amount?

A. \$20,500.

Q. Now, as a result of that statement, will you state whether the Trent Tile Company executed any bond?

30

The Vice-Chancellor: I do not understand this statement, Mr. Katzenbach. This seems to be a statement made up of a number of items, including bonds and some interest. What did the witness say this was?

A. Why, that was a statement sent to me. It is in the handwriting of the bookkeeper of the company, Mr. Sweeney, and it was for my information that those moneys had actually been advanced or paid into the company.

By the Vice-Chancellor:

Q. This was the basis of the November mortgage,
10 was it?

A. It was one of the bases, yes, that paper and one other.

Q. Well, this is the amount, \$20,500?

A. Yes, that paper and one other was the basis of my information as to the paying in of the money.

By Mr. Katzenbach:

Q. Now, you have spoken of one other paper. I
20 will ask to have this paper marked D10.

(Said paper marked Exhibit D10 for identification.)

Q. (Resuming.) Now, I ask you whether you received as the secretary of the Trent Tile Company this Exhibit 10 from Mr. Sweeney, setting forth the same amount, \$20,500?

A. Yes, sir.

30 Q. Now, after the receipt of the November 24th, 1914, statement did the company do anything in the way of executing a bond or mortgage?

A. At Mr. Lawshe's request I drew a bond and mortgage to Mrs. Lawshe.

Mr. Katzenbach: I ask to have this bond marked.

(Said paper marked Exhibit D11 for identification.)

Q. I show you Exhibit D11 and ask you whether that is the bond that you refer to?

A. That is.

By the Vice-Chancellor:

Q. What is its date?

A. November 30th, 1914.

10

Mr. Katzenbach: Now, I ask to have this mortgage marked.

(Said paper marked Exhibit D12 for identification.)

By Mr. Katzenbach:

Q. I show you D12 and ask you whether this is the mortgage which accompanies the bond?

20

A. Yes, sir.

Q. Now, I call your attention to the proof of the mortgage, which is made by you as secretary, and which bears date the 22d day of December, 1914. Has the date of that any reference to the letter of December 21st, 1914, marked Exhibit D10?

A. Yes, I think I took the acknowledgment after receiving that letter of December 21st.

30

Q. Now, after the execution of this bond and mortgage when next to your recollection did you hear anything about this transaction involving this amount of \$20,500?

A. Well, I can't fix any definite time of hearing any further in the matter, but it was sometime later, some months later, I suppose.

Q. And was anything communicated to you with reference to whether there should be any action by the board of directors in reference to this matter?

A. In reference to this matter of the mortgage?

Q. In reference to a bond and mortgage to Mrs. Lawshe.

A. It came up, according to my recollection, by reason of the fact that Mr. Lawshe wanted to use a mortgage with the Trenton Bank, and as this mortgage was given at his request somewhat in the nature of a memorandum between us, and was not put on the record at his request, no action of the board of directors had been taken authorizing it, and and I think he reported to me that the bank said that if they wanted a mortgage of this kind it would have to be duly authorized by the board of directors, and I told him that that had not been done, he had best have such action taken.

Q. Now, as the result of that, did the directors of the Trent Tile Company on April 30th, 1915, hold a meeting?

A. They did.

Q. And where was that meeting held?

A. My best recollection on that is that some of the members of the board met at my office and then went out to the house of Mr. Lawshe. I am inclined to think that all of us, all four of us, met finally at Mr. Lawshe's, though some of us met first at my office.

Q. Well, was the resolution referred to in these 30 minutes, by which this mortgage was authorized, passed by the board of directors on that day?

A. It was.

Q. And you were secretary of that meeting?

A. I was.

Q. And signed these minutes as secretary?

A. I did.

Q. Now, then, in pursuance of the resolution did the officers of the company execute a bond and mortgage?

A. They did.

Q. Bearing date on that day?

A. Yes.

Q. Now, I show you a document that I will ask to have marked D13, and ask you whether you recognize that document and what it is?

10

(Said paper marked Exhibit D13 for identification.)

A. That is a bond of the Trent Tile Company, in the sum of \$20,500, dated April 30th, 1915.

Q. Now, I show you another document, which I will have marked D14, and ask you whether you recognize that?

(Said paper marked Exhibit D14 for identification.) 20

A. That is the mortgage accompanying it.

Q. And was that executed by you as the secretary and Mr. Lawshe as the president of the company?

A. It was.

Q. And that was on April 30th, too, was it not?

A. It was.

Q. Now, this action was taken, as you say, by reason of the request of Mr. Lawshe to you?

30

A. Yes, sir.

Q. In the conversations with Mr. Lawshe on this subject was anything said with reference to a loan with the Trenton Banking Company on this mortgage of \$12,500?

A. I don't recollect that sum. I understood from

him, of course, that it was to be used at the Trenton Bank in loans of money.

Q. Well, now, what did Mr. Lawshe tell you was to be the use of this mortgage?

A. It was to be used as collateral at the Trenton Bank for the obligations of the Trent Tile Company.

Q. Now, did you on that day, on April 30th, 1915, see Mrs. Lawshe, and will this document, this assignment, which I will have marked D15, refresh your
10 recollection on that subject?

A. Yes, I did.

Q. Now, will you state just what caused you to go to the residence of Mrs. Lawshe on that day?

A. At Mr. Lawshe's request.

Q. What did Mr. Lawshe say to you?

A. Well, I don't recollect the language but he said simply that he wanted me to go out and take this assignment to the bank for this mortgage, which I did.

20

By the Vice-Chancellor:

Q. Was he at the office that day? I understood him to say he was confined to the house at that time.

A. I am not sure that it was on this date that he said that to me. In fact, I am rather inclined to think it was not. It may have been.

(Said assignment of mortgage marked Exhibit
30 D15 for identification.)

By Mr. Katzenbach:

Q. Well, but you do recollect him asking you to go to the house?

A. Oh, yes, sir; there is no doubt about that.

Q. Now, by reason of that request of Mr. Lawshe, will you just state what you did and what transpired?

A. I went out to the house of Mr. Lawshe on West State Street and I saw Mrs. Lawshe there, and I am not clear whether she was upstairs or down; she says she was upstairs, that is probably correct.

By the Vice-Chancellor:

10

Q. Did you see him?

A. Mr. Lawshe on that day?

Q. Yes.

A. I am inclined to think I did but I am not positive.

Q. I mean at the house at that time.

A. I say, I am inclined to think I did but I am not positive about that. I certainly saw Mrs. Lawshe.

By Mr. Katzenbach:

20

Q. Now, was there any one in the room with Mrs. Lawshe when you saw her?

A. I can't recollect that positively.

Q. Now, just state what transpired between Mrs. Lawshe and yourself with reference to this paper?

A. I simply told her that this was the assignment of her mortgage to the bank, and I asked her the usual questions of an officer taking the acknowledgment: "You acknowledge that you sign, seal and deliver this paper as your voluntary act and deed?" 30

Q. Well, now then, state when you told Mrs. Lawshe that that was the assignment of the mortgage to the Trenton Banking Company what Mrs. Lawshe said, if you recollect. Did she say anything about knowing of your coming?

A. I don't recollect having any talk with her. I don't say there was no talk but I don't recollect any talk other than what I have said.

Q. Well, now, the assignment was produced, was it not?

A. Yes.

Q. And was there a desk or table in the room or pen and ink?

A. I am not positive about that but I assume there
10 was. I have no special recollection about it.

Q. Well, now, then, you told Mrs. Lawshe what, with reference to this document?

A. I told her this was an assignment of mortgage, of her mortgage, to the Trenton Banking Company.

Q. Yes.

A. And I saw her sign her signature.

Q. What did she do?

A. She signed her name at the bottom of it there, in my presence.

20 Q. That was done in your presence?

A. It was.

Q. Now, then, after that was signed what did you ask her with reference to how she did it?

A. I asked her if she acknowledged she signed, sealed and delivered this paper as her voluntary act and deed, the usual question.

Q. And what did she say?

A. She expressed her assent to that.

Q. And then what occurred?

30 A. I went away, I think.

Q. Now, what was the appearance of Mrs. Lawshe on that day, as you recollect? Was she wholly clothed? Did she appear like an invalid, or what is your recollection as to her appearance?

A. I have no special recollection of that at all, Mr. Katzenbach. She was certainly sitting up in the

room, I remember that, but I don't remember how she was clothed.

Q. I don't mean the character of the dress but whether she was in an invalid's dress or not?

A. I can't say as to that; I have no recollection.

Q. Well, was there anything in her appearance that gave you the impression that she did not know what she was doing?

A. Certainly not. I wouldn't have gone ahead and done any business with a person of that kind. 10

Q. And you had known Mrs. Lawshe for at least ten or fifteen years, had you not?

A. Yes.

Q. And you had met her during those years from time to time?

A. Yes.

Q. And was there anything in her appearance or in her actions which would indicate that she did not understand the act which she was doing?

A. Nothing whatever. 20

By the Vice-Chancellor:

Q. Who drew this assignment?

A. I did, sir, or my stenographer.

Q. Whose writing is that immediately above your name touching the interlineation?

A. That is mine.

Q. Then you probably prepared the assignment yourself? 30

A. I think I did. I think I dictated it to my stenographer.

Q. How did it happen that you drew that?

A. How did I come to draw it?

Q. Yes. Do you remember?

A. At Mr. Lawshe's request.

Cross-examination.

By Mr. Weelans:

Q. You didn't represent Mrs. Lawshe previously, did you?

A. Oh, no.

Q. You went out there more as representing the Tile Company than anything else to get this assignment executed, didn't you?

A. Oh, I went there primarily as the officer taking an acknowledgment would go to any place. I was also, of course, an officer of the tile company.

By the Vice-Chancellor:

Q. Did you know anything about the transaction that was proposed to be based upon this assignment?

20 A. Not directly, except what Mr. Lawshe told me. I had no dealings with the bank myself.

Q. Can you at this time remember what he told you?

A. I beg your pardon?

Q. Can you at this time remember what he told you in connection with this assignment? What he told you the assignment was for,—what it was to be used for, why it was to be made?

30 A. For the obligations—as security for the obligations of the Trent Tile Company at the Trenton Banking Company. It needed new money and it already had obligations there which I understood needed further securities.

Q. Can you remember what he told you in that respect?

A. I haven't any definite recollection of any con-

versation, particular conversation, except he gave me that information.

By Mr. Katzenbach:

Q. Mr. Dixon, Mr. Lawshe said that the Trent Tile Company wanted new money, did he not? That is what he told you?

A. I so understood; yes, sir

Q. And of course you knew afterwards that the 10 Trent Tile Company did get new money?

A. Oh, yes, sir.

Q. On the strength of this mortgage?

A. Yes, sir.

Q. And your going out to Mrs. Lawshe's house was not any act of the Trent Tile Company, but was the personal request of Mr. Lawshe, was it not?

A. I went there primarily, as I say, as an officer taking an assignment such as this would go.

20

By Mr. Weelans:

Q. Do you remember when Mr. Lawshe requested you to go out to take this acknowledgment, Judge?

A. As to the day?

Q. Yes.

A. No.

Q. Do you remember where it was?

A. I can't remember where he and I were when he spoke to me of it. That is what you mean?

30

Q. Yes.

A. I don't recollect that now.

Q. As a matter of fact, you were just as much interested in having that mortgage assigned as Mr. Lawshe was, weren't you?

A. Indirectly, yes. That is to say, I was one of

the administrators of the estate of Benjamin F. Lee and that estate was interested.

By the Vice-Chancellor:

Q. One of what?

A. One of the administrators of the estate of Benjamin F. Lee, and that estate was the owner of stock, my wife was one of the beneficiaries of the
10 estate.

At this point a recess was taken until two o'clock P. M.

Hearing of the cause resumed after recess, in the presence of the counsel for the respective parties heretofore noted.

20 JOHN A. CAMPBELL, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Katzenbach:

Q. Mr. Campbell, are you connected with the Trenton Banking Company?

A. Yes, sir; I am a member of the board of directors and president of the Trenton Banking Com-
30 pany.

Q. And how long have you been so connected?

A. Well, I have been president something over ten years and board of directors fifteen.

Q. And all that time a member of the board of directors?

A. Yes, sir.

Q. Was the Trent Tile Company a customer of the Trenton Banking Company during this period?

A. Practically continuously during the period I was there, yes, sir.

Q. Did you personally know and have you known during all that period Mr. Alfred Lawshe?

A. Yes, sir, I know Mr. Lawshe.

Q. Did the Trenton Banking Company hold any notes that had been discounted for the benefit of the Trent Tile Company known as the M. Rambo Company notes? 10

A. Yes, sir; they had always had some, more or less.

Q. In the year 1914, did you have any conversations with Mr. Lawshe with reference to that paper?

A. I had one or two conversations with him during the year 1914.

Q. Just state what conversations you had with reference to that.

A. On looking over their account I noticed that 20 the paper discounted for Rambo, not only on his own individual name but on his endorsement, was increasing in amount, and I had a conversation with Mr. Lawshe regarding that. Mr. Lawshe assured me that they were good, Rambo, but that conditions in New York were such that they could not get the money, but I said in his own interest, no less than the interest of the bank, that paper ought to be cut down and we would ask him to commence to cut it down, because at that time it was something in the 30 neighborhood of \$20,000. And I had two conversations with him, possibly three, during the year along this line, with reference to Rambo.

Q. Now, in these conversations was there anything said with reference to the desire of the Trent Tile Company to secure this Rambo & Company

paper, or with reference to the loan of any new money to the Trent Tile Company?

A. Not during the year 1914. I had asked for no security from the Trent Tile Company, but simply asked that they insist on Rambo cutting down their line of paper, and Mr. Lawshe wrote Rambo, I know, a letter and brought me in and showed me a copy of it, in which he had insisted upon their cutting down their line. He brought Rambo over to see me
10 and I was away the day he came, he made no appointment with me and I didn't see him, but it was in the spring, and along in January, Mr. Lawshe came in there and referred to this mortgage that is under dispute.

Q. Now, what statement did Mr. Lawshe make to you with reference to any mortgage?

A. My talk with Mr. Lawshe had been principally in regard to the Rambo paper, as I felt that it was increasing in amount, and I was a little uneasy about
20 it for their own sake; while I felt they were solvent yet they were short of ready capital, and with the large amount under discount if anything should happen to Rambo I thought it would probably cripple them somewhat for ready cash, and I talked with him in regard to that. So sometime in January he came in one day and talking about it he said, "I intend to take care of the bank in the matter of Rambo. I have a second mortgage on the Trent Tile Company which I will put up here as collateral se-
30 curity for the Rambo paper and for advances which I may want for the Trent Tile Company." He said, "We will need some more money later on and if satisfactory to you I will put this mortgage up as security for the Rambo paper and also for any additional advances that the Trent Tile Company may want in the way of fresh capital."

By the Vice-Chancellor:

Q. May I inquire at this time whether there was other paper than the Rambo paper that you were carrying for him at that time?

A. Yes, sir; there was other paper under discount but this was the large amount.

By Mr. Katzenbach:

10

Q. Now did you see this bond and mortgage at all?

A. No, I did not.

Q. Did he present it to you?

A. As a matter of fact, this was in January and it was some couple of months later before this thing came to a head, because I said, "We will better take the matter under consideration and talk to you about it later on." He said he didn't want the money just then and that he would let it rest until 20 I could bring it up before the board, which I did.

Q. Well, now then, did you have any talk subsequent to the second interview with Mr. Lawshe with reference to this bond and mortgage?

A. I had another talk when he —

By the Vice-Chancellor:

Q. I beg your pardon; I haven't it clear in my mind—you may have stated, but I don't recall— 30 whether at this interview he spoke of the nature of the security he was to give you?

A. He did; he said it was—he spoke of the nature of it and how he happened to obtain it.

Q. What did he say with reference to that?

A. He said, "You recall a suit that we had in re-

gard to a patent tool machine and the fact that the suit went against us?" and I said, "Yes." "Well," he said, "in order to clean that matter up, why, Mrs. Lawshe and myself had some money left to us by our son and we took this money and loaned it to the Trent Tile Company for the sake of cleaning up this judgment against the tile company, and she received a second mortgage for that purpose of \$20,500." Well, the reason I didn't —

10 Q. And that mortgage he proposed to assign to you in this conversation?

A. That mortgage he proposed to assign to us, because he wanted some additional capital and to secure us on this Rambo paper, concerning which I was uneasy at the time, because I knew that it was increasing in amount and it was too large.

Q. Did he leave the mortgage with you at the time?

20 A. No, he did not. He did not leave the mortgage with me at any time, because the details of the transaction were taken care of by the cashier.

By Mr. Katzenbach:

Q. Now, after telling you this—did you have any further conversations with him about any new money?

30 A. Well, only that he spoke about it a little later on, he said he would like to have that matter fixed up I told him then that he could see Mr. Howell in regard to the details of it and arrange with him. That was the last conversation I had with him directly.

Q. Was there anything said about this mortgage being pledged for a loan of \$12,500 to you?

A. No, he didn't mention any specific sum.

The Vice-Chancellor: Not for \$12,500, \$12,000.

Q. \$12,000?

A. No, he didn't. I wouldn't loan him \$12,000 on the mortgage, fresh capital.

Q. And that was the last conversation you had?

A. Yes, sir.

Cross-examination.

10

By Mr. Geraghty:

Q. What time during the year of 1914 did you first have the conversation with Mr. Lawshe, Mr. Campbell?

A. It was either the spring or the summer, somewhere along there.

Q. And you sought him at that time?

A. How?

Q. You sought him at that time, did you not?

20

A. I saw him.

Q. With reference to these Rambo notes?

A. Yes, I saw him and talked to him about it.

Q. And did you tell him that you wanted additional security for these notes?

A. I did not. I never asked Mr. Lawshe for any security at any time; I asked him to reduce the notes.

Q. Then you say he offered to secure the bank by giving this mortgage?

30

A. Not at that time, no, sir; that I think occurred in the—early in the year 1915.

Q. That was in January, 1915?

A. Yes, sir. He in the meantime, I suppose, had found it impossible to get Rambo to reduce his notes to any extent, because we told him in his own interest he should get Rambo to reduce the paper.

Q. Was Rambo, as a matter of fact, reducing the notes?

A. Very slightly. If he reduced—made a payment on some notes there would be another one come in later on to overcome the difference, and it was that that caused me to talk to Mr. Lawshe, and Mr. Lawshe wrote a very strong letter to Mr. Rambo on the subject.

Q. Did the bank have any security at all for these
10 Rambo notes?

A. Not at that time.

Q. And the only security the bank did get was this \$20,500 mortgage?

A. Yes, that is all it had.

Q. And at the same time Mr. Lawshe asked you to advance additional funds?

A. Yes.

Q. Upon the pledge of this mortgage?

A. He said he would want some additional capital
20 from time to time, yes.

Q. And wasn't that the reason that the mortgage was pledged there?

A. Well, possibly, it may be possible he realized otherwise he could not get the money, but he said that, in order to make the bank easy on the Rambo matter and at the same time get some additional capital, as he might need it, he was going to put up this mortgage as collateral security in the bank for these advances from time to time that might be
30 made to the Trent Tile Company, and also to secure the bank in case there might be any loss in the Rambo paper; he seemed to be perfectly confident there would be none in the Rambo paper.

Q. At the time you had the conversation in January, 1915, you said that the mortgage wasn't pledged at that time because he said he didn't want any money then?

A. I asked him if he wanted the money immediately, he said not immediately, so I said, "I will take the matter up and talk it over with the board."

Q. So there was nothing done with reference to this mortgage until he asked for more money?

A. That is all,—later on.

Q. Do you know, Mr. Campbell, what amount was advanced to him under the pledge of this mortgage?

A. I don't know. It is stated here. I am not familiar with the details of the transaction. I only 10 know that advances were made to him.

Q. And at no time during your conversations with Mr. Lawshe did you insist upon any additional security being pledged with the bank?

A. I didn't ask Mr. Lawshe for security, he volunteered that, he agreed to put this up.

By the Vice-Chancellor:

Q. Did you know what the amount of the mortgage was that was ahead of this \$20,500 mortgage? 20

A. About \$9,000.

By Mr. Geraghty:

Q. Do you know the amount of the Rambo notes on April 30th, 1915?

A. No, I don't. They varied more or less, but they were up one time, I imagine, as high as \$20,000.

Q. They were considerably less, then, at the time this mortgage assignment was made?

A. Very likely, because he had been requested to 30 cut them down.

Q. And he had been cutting them down?

A. And he was endeavoring to cut them down, and trying to get Rambo to cut them down. I don't know how much it was done. We were asking to have those reduced because we thought it was too large an amount for people of that standing.

ROBERT W. HOWELL, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Katzenbach:

Q. Mr. Howell, you are connected with the Trenton Banking Company in what capacity?

A. As cashier, sir.

10 Q. And how long have you been cashier of that bank?

A. A little over eleven years.

Q. During that time has the Trent Tile Company been a customer of the Trenton Banking Company?

A. Yes.

Q. During all of that time have you known Mr. Alfred Lawshe?

A. Yes, sir.

20 Q. And do you recall Mr. Lawshe calling upon you at any time in the latter part of 1914, or the early part of 1915, with reference to the Rambo & Company paper, and also with reference to the obtaining of any new loans from the Trenton Banking Company?

A. Yes; I recall very distinctly that he did speak to me, call on me and speak to me with regard to those matters. As to the exact date I am not certain. I should say that perhaps the first interview may have been in January, and there may have been a
30 talk in February and in March, and perhaps in April.

By the Vice-Chancellor:

Q. 1915?

A. 1915, yes, sir.

By Mr. Katzenbach:

Q. Now, what was said by Mr. Lawshe to you and by you to Mr. Lawshe during these interviews?

A. Well, before the matter came to a definite proposition I think that Mr. Lawshe spoke to me in a general way or casually several times about the tile company owing him and Mrs. Lawshe money, and it was sometime in April, I should say, that he made the definite proposition that this mortgage would be assigned to the bank as collateral security for some loans already made by the bank, especially a note of \$2,200 and one of \$450, each of which notes was endorsed by Mr. Lawshe personally and made by the company, and he further offered it as collateral security for the payment of the Rambo notes, and further for to secure further loans on the part of the bank to the tile company direct. 10

Q. Well, now, did Mr. Lawshe ever have any conversation with you as to any loans made by himself and Mrs. Lawshe to the Trent Tile Company? 20

A. No, I think not, sir, simply that they were—the fact that Mrs. Lawshe had loaned the tile company money and that he had, and that the tile company did owe them both money, that is all.

Q. What was said with reference to any mortgage?

A. Well, he said that Mrs. Lawshe had this mortgage and that she would assign it to the bank as security for these matters that I have already mentioned, loans, old and new. 30

Q. Now, did you receive a letter from Mr. Lawshe, which has been marked Exhibit D1, on or about January 13th, 1915?

A. I did, sir.

Q. And is that the letter (exhibiting paper to witness)?

A. Yes.

Q. When did Mr. Lawshe call, to the best of your recollection, at the bank and leave with you, if he did, any mortgage and bond?

A. Well, as near as I can recollect, Mr. Katzenbach, it was in March, 1915, or the early part of April, 1915, that the first mortgage was left with me.

Q. Yes, and who brought that in?

A. He did.

10 Q. And did he say at that time anything with reference to Mrs. Lawshe's attitude with reference to this mortgage?

A. Well, he said that she would assign the mortgage to the bank.

Q. And I show you Exhibits D11 and D12 and ask you whether that is the bond and mortgage which Mr. Lawshe first left with you?

A. Yes.

20 Q. Now, at the time of leaving that, or at any time subsequent thereto, was there any definite agreement between the Trenton Banking Company, made with you, and Mr. Lawshe that \$12,000 should be loaned to the Trent Tile Company on the strength of that mortgage?

A. I believe not, sir, not any such definite thing as to—as for the bank to loan the tile company \$12,000 directly on this collateral.

30 Q. Now, was there anything done subsequently with reference to that bond and mortgage, D11 and D12?

A. Well, if you refer to a new mortgage being drawn up, because this first one was faulty, I know that that was done, because we subsequently received the new mortgage properly authorized.

Q. Yes. Well, now then, do you recall the date when you received the new mortgage properly authorized?

A. Yes; April 30th, 1915.

Q. And did you at that time receive an assignment of the mortgage made by Anngnette K. Lawshe to the Trenton Banking Company, and which has been marked D15?

A. Yes, sir.

Q. Now, then, will you state for what that bond and mortgage was held by the Trenton Banking Company by agreement with the Trent Tile Company made through Mr. Lawshe?

10

A. This bond and mortgage, and the assignment thereof, were held as security for a note of the Trent Tile Company, endorsed by A. Lawshe, of \$2,200, and one of \$450, and as security for the ultimate payment of the M. Rambo & Company notes,—Mr. Lawshe distinctly said to me that it was to secure the Rambo notes, or “those Rambo notes,”—and it was offered as collateral security for loans to be made, further loans to be made to the Trent Tile Company. I don’t recall that there was any such 20 specific amount as \$12,000 mentioned.

By the Vice-Chancellor:

Q. Was any amount mentioned?

A. Well, sir, I should say that I know, at least, that at one time in one conversation Mr. Lawshe spoke of \$10,000, out of which, however, he was to pay off \$2,650 already running, so you can see that that would mean \$7,400 new money, but that is as 30 near as I can get to exactly the amount. I must say that the bank and I regarded it as collateral security for whatever money in the way of accommodation the tile company should get.

By Mr. Katzenbach:

Q. Well, now then, did the Trenton Banking Company advance new money on the faith of this mortgage?

A. Undoubtedly, yes, sir.

Q. Now, what amounts did they advance, and what new notes have you? Have you a list of those?

A. Yes, sir.

10 Q. I might ask whether there was a note made about four days prior to the date of this mortgage that was made in contemplation—or the loan made in contemplation of the assignment of this mortgage?

A. Yes; a note of \$1,250, which I hold in my hand, dated April 26th, three days after date, \$1,250, Trent Tile Company, was loaned in contemplation of the expected deposit with the bank of this mortgage.

20 Q. Now, on what date after April 26th, 1915, was the next advance made to the Trent Tile Company?

A. On April 30th, \$1,500.

Q. And by whom was that note endorsed?

A. Endorsed "A. Lawshe."

Q. And have you that note?

A. Yes, sir.

Q. Will you please produce those two notes of April 26th and April 30th, 1915?

A. (Witness complies.)

30 Mr. Katzenbach: The note of April 26th I will ask to have marked as an exhibit.

(Said paper marked Exhibit D16.)

Mr. Katzenbach: And the note of April 30th has already been marked as an exhibit, D2.

Q. Now, what was the next date that any new money was advanced to the Trent Tile Company?

A. On May 21st, 1915, \$1,625, endorsed by A. Lawshe.

Q. Have you that note?

A. Yes, sir (producing paper and handing to counsel).

Mr. Katzenbach: This note has already been marked as Exhibit D3. 10

Q. Now, what was the date of the next advance to the Trent Tile company?

A. June 7th, 1915, \$1,000.

Q. And will you produce that note?

A. I have it (producing paper and handing to counsel).

Mr. Katzenbach: That has already been marked Exhibit D4. 20

Q. When was the date of the next advance?

A. June 25th, 1915, \$3,400.

Q. Well, was there a note of June 11th, 1915, of \$800?

A. I ought to have it here, if there was, but I don't just recall it and it doesn't seem to be here. Let me see. That may have been paid off by a subsequent note, subsequent advance.

Q. All right; you haven't it. Now, you say you 30 have one of June 25th of \$3,400?

A. Yes.

Q. Will you produce that?

A. \$3,400 (producing paper and handing to counsel).

Mr. Katzenbach: I will ask to have this marked.

(Said paper marked Exhibit D17.)

Q. Now, have any of those notes that you have produced, dated April 26th, April 30th, May 21st, June 7th and June 25th, been paid?

A. No, sir.

Q. Are they still due and owing to the Trenton
10 Banking Company?

A. They are, sir.

Q. Now, were there any other sums that had been advanced or notes endorsed by Mr. Lawshe for which this mortgage was held?

A. Yes, sir; a note dated April 26th, 1915, \$2,200, which I believe had been running quite some time but had been renewed at that time for three days only, making it mature April 29th.

Q. Will you produce that note?

20 A. That is the note (producing paper and handing to counsel.)

Mr. Katzenbach: I will ask to have it marked.

(Said paper marked Exhibit D18.)

Q. Now, is that note still due and owing?

A. Yes, sir.

Q. Now, is there any other note for which that
30 mortgage was specifically held, other than the Rambo & Company notes? I will come to those later.

A. No, I think not, sir, other than the Rambo notes.

Q. Well, now, what is the full amount of the Rambo notes?

A. The Rambo notes at the present time amount

to these: Notes of Rambo & Company, made by or endorsed by them, \$9,444.37, plus protest fees, \$31.03; and two notes of Rambo & Company, \$800 and \$975.13, respectively, which two notes were and are held as collateral security for another note of the Trent Tile Company of \$2,200, dated April 14th, 1915, drawn for one month, which note of \$2,200 has now been reduced to \$1,515.38 by the payment of other notes, or payments on account of other notes, which other notes were additional collateral security 10 with the Rambo notes for the payment of this \$2,200.

Q. Now, will you produce the note of \$2,200 upon which this balance is due?

A. (Witness complies.)

By the Vice-Chancellor:

Q. How much balance did you say was due on it?

A. \$1,515.38.

20

(Said paper marked Exhibit D19.)

By Mr. Katzenbach:

Q. Have you the Rambo & Company notes there?

A. Yes, sir.

Q. Will you produce them?

A. (Producing papers.) All of the Rambo notes are here.

30

Mr. Katzenbach: They can be put in one package and marked.

(Said package marked Exhibit D20.)

Q. During the early part of the year 1915 or about the first of the year was there any statement of the condition of the Trent Tile Company furnished to the Trenton Banking Company?

A. Yes; a statement of their condition as of December 31st, 1914.

Q. Have you that statement with you?

A. (Producing paper.) December 1st. I wish to correct that. December 1st, 1914. I received that in
10 a letter from Mr. Lawshe dated January, 1915.

Q. What date?

A. January 12th, 1915.

Mr. Katzenbach: I ask that those be marked.

(Said papers marked Exhibit D21.)

Cross-examination.

20 By Mr. Geraghty:

Q. Mr. Howell, this note of April 26th, for \$1,250, —wasn't that a renewal note?

A. No, sir; no, sir, I believe not; a new note.

Q. It was a new note?

A. Yes. Within that week they had had a note of \$450, and when they got the \$1,250 they paid the \$450 temporary accommodation off.

Q. The April 26th note, then, was a new note?

30 A. To the best of my belief; yes, sir.

Q. And there was no security given for it?

A. Not in our hands at the time.

Q. But you expected some?

A. Yes.

Q. And in what form?

A. Well, in the form of this mortgage assigned by Mrs. Lawshe.

Q. You knew that the mortgage was going to be assigned by Mrs. Lawshe?

A. Well, we knew because—we expected it to be because Mr. Lawshe was going to have that detail arranged.

Q. You left that to Mr. Lawshe to have done?

A. Yes.

Q. It was on his assurance that it would be done that you advanced this \$1,250?

A. Yes; but I don't wish to say, Mr. Geraghty, 10 that beyond a doubt the board would not have let them have the \$1,250 without the definite promise of that mortgage, but I believe that it was part of the consideration.

Q. You are not sure about that?

A. Not absolutely, no. As I say, I think probably the bank might have loaned the money, but that has always been my understanding.

Q. The note of June 30th, for \$1,500,—or April 20 30th: Was that a new note or a renewal?

A. A new note.

Q. And was that note discounted before the mortgage was assigned?

A. Well, it was on the same day; I believe—my belief is that it was made on account of our having the security of the mortgage.

Q. You already had the security at that time?

A. Well, I won't say positively as to the minute of the day that we got that mortgage, but I think we had the mortgage then assigned before they got that 30 \$1,500.

Q. Then the note of May 21st, \$1,625: Was that a new note or a renewal?

A. A new note, a new loan.

Q. And June 7th, \$1,000?

A. Same with that.

Q. That was a new note?

A. Yes.

Q. And June 25th, for \$3,400?

A. The same as to that, that was a new loan.

Q. That was a new loan. Mr. Lawshe, however, was not an endorser on that note?

A. No, I don't think he was.

Q. It was a note made by the Trent Tile Company and endorsed by Mr. Dixon and Mr. Silvers, I think?

10 A. Yes; but that was considered by the bank, as far as my knowledge and belief is concerned, as secured by the assignment of this mortgage.

Q. Then it was your understanding that all of these notes discounted after the assignment of the mortgage were to be protected by the mortgage?

A. Yes.

Q. That the mortgage was to be security for those advances?

A. Yes.

20

By the Vice-Chancellor:

Q. All the notes of the Trent Tile Company, whether Mr. Lawshe endorsed them or not?

A. Yes, sir.

Q. They were all to come in under this security?

30 A. Yes, sir. The fact that Mr. Lawshe personally was not on this note wouldn't—his endorsement would only be a moral factor, and the fact that he wasn't able to be about and endorse it had no effect as to the attitude of the bank in making the loan, because my belief is, as I said before, that it was made on the security of the mortgage. Of course, the endorsements are worth something; we know that.

By Mr. Geraghty:

Q. You say the endorsements are worth something?

A. Were worth something, presumably, in a moral way, principally, because—Mr. Silvers, I suppose, endorsed because he had become an officer of the company and in that way took the place as an endorser of Mr. Lawshe. Whether there was any intrinsic value or money value behind these endorsements I don't know. 10

Q. Mr. Dixon was also an endorser on that note?

A. The \$3,400, yes.

Q. And individual endorser, not as an officer of the company?

A. An individual endorser.

Q. Then your understanding was that Mrs. Lawshe's mortgage was to protect that note?

A. That with the other loans; yes, sir.

Q. The last note discounted was June 25th, 20 wasn't it?

A. Why, about that time. I have a memorandum here. I think that is right.

The Vice-Chancellor: That is the date you gave.

The Witness: June 25th.

Q. Now, then, as to the Rambo notes, they had been in the bank for some time, hadn't they? 30

A. Yes, for many years they had taken Rambo notes and we had discounted them. Those notes or the most of them I believe were renewals of notes, perhaps, for larger amounts, some of them new paper too, I suppose.

Q. So that they had been from time to time reducing them, had they?

A. Yes, I think they had been reduced somewhat.

Q. And they were not as large at the time that this assignment was made, on the 30th of April, as they had been prior to that time?

A. Well, prior to that time, but I don't just recall how much prior, how far back, the amount was larger. I don't know that—or, rather, I don't recall that there was any great reduction in the amount in the months of—early months of 1915.

10 Q. I understood you to say, I think, that Mr. Lawshe, in asking for the loan, at the time that he suggested his willingness to pledge this mortgage, said that he wished to protect the bank with reference to the Rambo notes?

A. I am sure he did, yes, sir.

Q. Had the bank made any suggestions to him that he do that?

A. No, not to my knowledge.

Q. It was voluntary on his part?

20 A. As far as I can recall; yes, sir.

Q. Now, the Trent Tile Company, or the receiver, has paid a dividend to the Trenton Bank, hasn't it, of some amount,—twenty per cent., wasn't it?

A. I think that is about it, yes, sir; we have received a dividend.

Q. Can you tell what that amount is, Mr. Howell?

A. I cannot, Mr. Geraghty, not without consulting the books.

Q. The books are not here?

30 A. No, sir.

Q. And some of those notes in the bank have been reduced, have they not?

A. Oh, yes; that is, a few of those notes have been paid.

Q. I mean the customers' notes?

A. Yes, that is what I refer to.

Q. And can you tell now just what the total indebtedness is to the Trenton Bank, not counting the dividend, of the Trent Tile Company?

A. This is only from recollection. I think the total claim at the present time is between twenty-six thousand and twenty-seven thousand.

Q. Between twenty-six thousand and twenty-seven thousand?

A. Yes.

Q. Now, can you tell the amount due the bank on 10 the Rambo notes, as they stand at the present time, in those notes that were secured by the assignment of this mortgage?

A. In regard to the Rambo notes, Rambo & Company notes, the amount is \$9,444.37, plus \$31.03 protest fees, and \$1,775.13. With regard to the \$1,775.13, they secure a note of the Trent Tile Company which is now, as I said, only \$1,515.38, so that there will be \$200 returnable.

Q. Mr. Howell, do you remember Mr. Lawshe's 20 going to the bank and taking the mortgage with him, this bond and mortgage, and asking you whether or not the bank would advance \$12,000 on it?

A. I remember his coming to the bank, Mr. Geraghty, with the mortgage the first time, but I don't recall that there was a definite figure of \$12,000 mentioned.

By the Vice-Chancellor:

30

Q. Pardon me a moment. I do not see where you get your figures. The Rambo paper you said was \$9,444.37.

A. Yes, sir.

Q. That would make \$11,250.53. The paper of the

tile company beginning April 26th, 1915, aggregates \$8,775 and \$2,200, that only makes \$10,075, doesn't it?

A. Yes, Vice-Chancellor, I referred to our whole claim against the Trent Tile Company. There are other notes, you know, discounted for the Trent Tile Company, other customers' notes, which I don't say that Mr. Lawshe offered the mortgage as collateral for.

10 Q. And they aggregate some eight or ten thousand,—seven or eight thousand?

A. Yes, or six or seven.

Q. That makes the difference between your figures and mine?

A. Yes.

By Mr. Geraghty:

Q. Mr. Howell, do you remember who conveyed
20 the information to Mr. Lawshe about this first mortgage being invalid? Was it you?

A. No, I think it was not I; I think it was not I.

Q. You don't remember who did it?

A. No, I don't.

Q. And the bank had a new bond and mortgage drafted?

A. Yes. As it came to us it was a new mortgage drafted. The bank, of course, would never have received the mortgage as it was made out formerly,
30 would not have taken it.

By the Vice-Chancellor:

Q. Did the bank have it done?

A. No, sir. That is, the new mortgage drawn?

Q. Yes.

A. No.

By Mr. Geraghty:

Q. You don't know, then, who did draft the new bond and mortgage?

A. I don't. I understood that Mr. Lawshe, when he found out that it was improperly drawn, felt that it was a very good thing for him to have found out through the negotiations, because he thought that Mrs. Lawshe had no security at all.

Q. You are positive, Mr. Howell, that Mr. Lawshe spoke to you about these Rambo notes when he came to you about the new loans? 10

A. Yes, sir; quite positive.

Q. You had other customers' notes there that had remained there for some time, had you not?

A. Yes.

Q. There wasn't anything said by him about securing those notes?

A. No, I think not.

20

By the Vice-Chancellor:

Q. Wasn't there a paper executed or memorandum made or collateral agreement drawn to accompany this mortgage to show what it was to secure?

A. There was not, sir.

Q. Don't the books of your bank anywhere disclose what is secured?

A. Not definitely. All the entry that I have in my books is this: That in my book which lists collateral I have a memorandum that on April 30th, 1915, this mortgage of \$20,500 was received and entered and held by us. There isn't any note in my books to show what it specifically secures. 30

Q. When a bank examiner comes and looks over your collaterals how can he ascertain what this is

collateral for—whether it is a collateral for a thousand or for the full amount of the mortgage debt?

A. Well, your Honor, in that case he couldn't tell from the books, he would have to question the officers, and if he couldn't be satisfied then he would have to question the other side.

Q. Isn't it usual to take something to show what your collateral covers?

A. Well, it is more usual in the case of a direct
10 loan. For instance, if a man comes to the bank and says, "I have fifty shares of Pennsylvania Railroad stock and want to borrow \$2,500 on it,—\$2,000 on it." Then the note would be drawn specifically pledging those shares for the payment of that note. But in this case, where it is the case of a mortgage put up not only for loans to be made, but those loans, some of them, temporary, for a few days, a month or a week, it is not, I should say, so usual to specifically state just what the collateral covers.

20 Q. There is a form of note in use which I have seen which has a collateral clause pledging for its payment all securities in the hands of the bank which have been received from the debtor, without enumerating them. Have you any such form?

A. No, sir. When we draw a note pledging collateral it is the invariable rule to name that collateral on the note, except where a man has a large amount of collateral, say, and he has already made loans on it, sometimes we note on a new obligation
30 "collateral already pledged." But it isn't our common practice to do what you said.

Q. I have also seen collateral clauses including a statement not only that all collateral shall apply to existing and future indebtedness but that the collateral may be changed and other substituted without interfering with the collateral pledged,—all those things embodied in the body of the note.

A. That is quite usual, I think.

Q. Well, you have nothing of the kind?

A. Our regular form of collateral note does state that these securities pledged are security for any other debt, for instance, and I think states that the borrower has the privilege of substituting collateral of like value, &c., but, as I say, in this case we had a mortgage that was to secure new loans, to secure discounted notes of Rambo & Company, and also to secure a note of \$2,200 of the Trent Tile Company. Now, perhaps for the purpose of plainness, directness, it would have been better to have it all in specific form of note, just showing, as you say, what it secured. But there is no question—there never was any question in my mind, for instance, that Mr. Lawshe made the statement that this mortgage would secure the Rambo notes. 10

Q. At the time you received this mortgage did you know Mrs. Lawshe was Mr. Lawshe's wife?

A. Yes, sir. 20

Q. Were you personally acquainted with Mrs. Lawshe?

A. Yes, sir.

Q. Did you know she was sick?

A. Well, I think that Mr. Lawshe had told me that she was ill, I don't know about how serious,—pleurisy, but he had told me that she was very much grieved at the death of her son. I don't know that I knew she was actually ill.

Q. You knew that she wasn't in business for herself, didn't you? 30

A. I did, sir, I did know that, that she wasn't in business for herself.

Q. You knew that this mortgage was an inheritance, in part, at least, of money that she had received from her son?

A. Yes; in a general way I knew that, and, of course,—and my attitude as far as I was concerned was, that they were all interested in the success of the Trent Tile Company, and I never had the slightest particle of doubt or wonder as to whether it would ever be disputed.

Q. Whether it would ever be what?

A. Disputed on the part of Mrs. Lawshe.

Q. I see. Your bank made no inquiries from her
10 at all?

A. No, sir.

Q. As to whether she understood the nature of the transaction?

A. No, sir.

By Mr. Katzenbach:

Q. I think you said that Mr. Lawshe had told you
20 that the moneys which were the consideration for this mortgage had been the moneys of himself and his wife?

A. Well, I think, rather, Mr. Katzenbach, that he said—that I said that in one or two conversations, casual or otherwise, he had mentioned to me that the Trent Tile Company did owe Mrs. Lawshe and him money, sums for money advanced.

Q. That was represented by this mortgage?

A. Well, let me see. That would be my natural
30 assumption. I don't know whether he actually told me that or not.

Q. Well, he wrote you to the effect that they had loaned moneys,—himself and his wife had?

A. Yes.

Q. This letter that you produced?

A. Yes, sir; and, of course, on the face of it this mortgage was given to secure her loans.

Mr. Katzenbach: I will offer in evidence these exhibits that have been marked for identification and the defendant rests.

(Said exhibits marked in evidence with the respective numbers as marked for identification.)

BOTH SIDES REST.

10

EXHIBIT D1.

All Orders Taken Subject to Strikes, Accidents or
Other Delays Beyond Our Control

Prices Subject to Change Without Notice

The Trent Tile Company

Trenton, N. J.

U. S. A.

20

Makers of Wall, Floor and Fireplace
Tiles

Architectural Faience, Ceramic Mosaics, Etc.

Trent.

(Design)

Trenton, N. J. Jan. 13th, 1915.

Mr. Robert W. Howell,

Cashier,

Trenton Banking Co.,

Trenton, N. J.,

30

My dear Mr. Howell:—

My impression is, that, I told you today, Mrs. Lawshe and myself had loaned the Trent Tile Company, \$26,000. I was in error as the amount is \$23,500.

Got my figures confused. I don't want to be anything, but accurate.

Very truly yours

A Lawshe Treas.
The Trent Tile Co.

AWL./TCE.

10

EXHIBIT D5.

THE TRENT TILE COMPANY

Balance Sheet

	Assets	Month of Jany 1915
	Property, Plant and Equipment,	290873 24
	Working Assets:	
	Manufactured Goods and Work in	
20	Process,	39007 04
	Flint, Spar and Stone,	131 =
	Coal and Wood,	960 =
	Colors and Chemicals,	7800 =
	Clay,	5497 =
	Packages,	978 71
	Insurance Premiums—Unexpired Pro- portion,	10146 10
	Catalogues,	515 =
	Miscellaneous Materials,	3025=
30	Saggers and Setters,	2416 30
	Total Working Assets,	69676 15
	Current Assets:	
	Cash, Over Draft	156 82
	Notes Receivable,	7535 =

Exhibits

125

Customers,	70499	51
Bonds,	500	=
Tile Manufacturers' Association Deposit,		
Total Current Assets,	78377	69
Total Assets,	\$ 438927	08
Liabilities		
Capital Stock,	270000	00
Mortgages Payable,	30300	00 10
	300300	00
Current Liabilities:		
Notes Payable,	28535	79
Sundry Creditors,	8597	90
Due Salesmen	2404	21
Accrued Taxes,	2190	95
Accrued Interest,	646	50
Due Anngnette K. Lawshe	1800	= 20
Accrued Wages,		
Due A. Lawshe	2247	95
Total Current Liabilities,	46423	30
Reserve for Bad Debts,	3203	26
Due Manfo's Finance Co	18857	26
	78377.69	
	68483.82	
	9893	87
		30
	68483	82
Profit and Loss—Surplus,	74143	26
Total Liabilities,	\$ 438927	08

Income and Profit and Loss

		Month of Jany 1915
	Gross Sales,	13022 93
	Less: Rebates and Allowances,	250 88
	Net Sales,	12772 05
	Cost of Goods Sold,	12502 72
10	Gross Profit on Sales,	269 33
	Selling Expenses:	
	Salaries Salesmen,	150
	Commissions,	517 75
	Traveling Expense,	
	Advertising,	10
	New York Office Expense,	70
	Association Dues,	
20	Total,	747 75
	Selling Profit, Loss	478 42
	General Expenses:	
	Salaries—Officers,	550 =
	Salaries—Office,	536
	Telephone and Telegraph,	46 44
30	Stationery, Printing and Postage,	96 90
	Charity and Donations,	
	Legal,	32 92
	Office Rent,	15 =
	Miscellaneous,	684 85
	Total,	1962 11

Net Profit Loss on Sales,	2440 53	
Other Income:		
Cash Discount on Purchases,		
Total,		
Gross Income, Loss	2440 53	
Deductions from Income:		
Cash Discount on Sales,	110 99	10
Interest and Discount,	385 04	
Taxes,	133 =	
Insurance,	1049 68	
Uncollectible Accounts Reservation,	150 =	
Total,	1828 71	
Net Income, Loss	4269 24	
Profit and Loss Credits:		20
Total,		
Gross Surplus, Loss	4269 24	
Profit and Loss Charges:		
Dividends,		
Total,		
Net Surplus Loss for the Period,	4269 24	
Surplus at Beginning of the Period,	74412 50	30
Surplus at End of the Period,	\$ 70143 26	

EXHIBIT D6.

THE TRENT TILE COMPANY

Balance Sheet

	Assets	Month of Feb'y 1915
	Property, Plant and Equipment,	290873 24
10	Working Assets:	
	Manufactured Goods and Work in Process,	43885 88
	Flint, Spar and Stone,	128 32
	Coal and Wood,	735 =
	Colors and Chemicals,	7800 =
	Clay,	4450 65
	Packages,	705 64
	Insurance Premiums—Unexpired	
20	Proportion,	10096 10
	Catalogues,	515 =
	Miscellaneous Materials,	2950 =
	Saggers and Setters,	1996 =
	Total Working Assets,	73262 59
	Current Assets:	
	Cash,	652 71
	Notes Receivable,	9550 75
30	Customers,	65059 52
	Bonds,	500 =
	Tile Manufacturers' Association Deposit,	
	Total Current Assets,	\$ 74457 56
	Total Assets,	\$ 438593 39

Liabilities	
Capital Stock,	270000
Mortgages Payable,	30300
	300300 ==
Current Liabilities:	
Notes Payable,	31630 03
Sundry Creditors,	7944 97
Due Salesmen	1810 73 10
Accrued Taxes,	2323 95
Accrued Interest,	646 50
Due Anngnette K. Lawshe	1900 ==
Accrued Wages,	
Due A. Lawshe	2872 95
Total Current Liabilities,	49129 13
Reserve for Bad Debts,	3353 26
	15267 53 20
	74457.56
	67749.92
	6707.64
	67749 92
Profit and Loss—Surplus,	70543 47
Total Liabilities,	\$ 438593 39
Income and Profit and Loss	30
	Month of
	Feby 1915
Gross Sales,	10691 00
Less: Rebates and Allowances,	25 30
Net Sales,	10665 70

	Cost of Goods Sold,	7375 74
	Gross Profit on Sales,	<u>3289 96</u>
	Selling Expenses:	
	Salaries Salesmen,	150
	Commissions,	306 52
	Traveling Expense,	42 60
	Advertising,	
10	New York Office Expense,	70 ==
	Association Dues,	
	Total,	<u>569 12</u>
	Selling Profit,	<u>2720 84</u>
	General Expenses:	
	Salaries—Officers,	550
20	Salaries—Office,	500 83
	Telephone and Telegraph,	118 08
	Stationery, Printing and Postage,	107 50
	Charity and Donations,	
	Legal,	
	Office Rent,	15
	Miscellaneous,	382 64
	Total,	<u>1674 05</u>
30	Net Profit on Sales,	<u>1046 79</u>
	Other Income:	
	Cash Discount on Purchases,	
	Total,	<u> </u>

Gross Income,	1046 79	
Deductions from Income:		
Cash Discount on Sales,	38 96	
Interest and Discount,	274 62	
Taxes,	133	
Insurance,	50	
Uncollectible Accounts Reservation,	150	
Total,	646 58	<u>10</u>
Net Income,	400 21	
Profits and Loss Credits:		
Total,		
Gross Surplus,	400 21	
Profit and Loss Charges:		
Dividends,		20
Total,		
Net Surplus for the Period,	400 21	
Surplus at Beginning of the Period,	70143 26	
Surplus at End of the Period,	70543 47	

EXHIBIT D7.

THE TRENT TILE COMPANY

Balance Sheet

Month of
March 1915

		Assets	
		Property, Plant and Equipment,	291023 24
10		Working Assets:	
		Manufactured Goods and Work in Process,	35890 28
		Flint, Spar and Stone,	150 ==
		Coal and Wood,	1725 50
		Colors and Chemicals,	7800 ==
		Clay,	4483 75
		Packages,	976 16
		Insurance Premiums—Unexpired Proportion,	10046 10
20		Catalogues,	500 ==
		Miscellaneous Materials,	1975 ==
		Saggers and Setters,	2377 70
		Total Working Assets,	65924 49
		Current Assets:	
		Cash,	58 02
		Notes Receivable,	9450 75
30		Customers,	70571 50
		Bonds,	500 ==
		Tile Manufacturers' Association Deposit,	
		Total Current Assets,	80580 27
		Total Assets,	\$ 437528 00

Liabilities	
Capital Stock,	270000 00
Mortgages Payable,	30300 =
	300300 =
Current Liabilities:	
Notes Payable,	31418 44
Sundry Creditors,	6385 86
Due Salesmen	2032 54 10
Accrued Taxes,	2456 95
Accrued Interest,	646 50
Due Angenette K. Lawshe	1900 =
Accrued Wages,	
Due A. Lawshe	2387 95
Total Current Liabilities,	47228 24
Reserve for Bad Debts,	3503 26
Due Manfo's Finance Co	19637 63 20
	80580.27
	70369.13
	10211.14
	70369 13
Profit and Loss—Surplus,	66858 87
Total Liabilities,	\$ 437528 00
Income and Profit and Loss	30
	Month of
	Mar 1915
Gross Sales,	15020 74
Less: Rebates and Allowances,	

	Net Sales,	15020 74
	Cost of Goods Sold,	13725 66
	Gross Profit on Sales,	1295 08
	Selling Expenses:	
	Salaries Salesmen,	150 =
	Commissions,	346 81
10	Traveling Expense,	
	Advertising,	15 =
	New York Office Expense,	70 =
	Association Dues,	
	Total,	
		581 81
	Selling Profit,	713 27
20	General Expenses:	
	Salaries—Officers,	550 =
	Salaries—Office,	461 05
	Telephone and Telegraph,	89 51
	Stationery, Printing and Postage,	129 90
	Charity and Donations,	
	Legal,	2 64
	Office Rent,	15 =
	Miscellaneous,	378 58
	Total,	
30		1626 68
	Net Profit Loss on Sales,	913 41

Other Income:

Cash Discount on Purchases,
Total,

Gross Income, Loss 913 41

Deductions from Income:

Cash Discount on Sales, 45 17
Interest and Discount, 1225 56
Taxes, 133 = 10
Insurance, 1217 46
Uncollectible Accounts Reservation, 150 =

Total, 2771 19

Net Income, Loss 3684 60

Profit and Loss Credits:

Total,

Gross Surplus, Loss

20

3684 60

Profit and Loss Charges:

Dividends,

Total,

Net Surplus Loss for the Period, 3684 60

Surplus at Beginning of the Period, 70543 47

Surplus at End of the Period, 66858 87 30

EXHIBIT D8.

THE TRENT TILE COMPANY

Balance Sheet

		Month of
Assets		Apr 1915
Property, Plant and Equipment,		291190 79
10	Working Assets:	
	Manufactured Goods and Work in	
	Process,	39032 53
	Flint, Spar and Stone,	177 =
	Coal and Wood,	913
	Colors and Chemicals,	7800
	Clay,	4137 50
	Packages,	1348 12
	Insurance Premiums—Unexpired	
	Proportion,	9996 10
20	Catalogues,	475
	Miscellaneous Materials,	1950
	Saggers and Setters,	2198 60
Total Working Assets,		68027 85
Current Assets:		
	Cash, over draft	101 01
	Notes Receivable,	10301 75
	Customers,	60539 91
30	Bonds,	500 =
	Tile Manufacturers' Association Deposit,	
Total Current Assets,		71240 65
Total Assets,		\$ 430459 29

Liabilities

Capital Stock,	270000 00
Mortgages Payable,	30300 =

	300300 =
--	----------

Current Liabilities:

Notes Payable,	34765 62
Sundry Creditors,	6811 39
Due Salesmen	1987 81 10
Accrued Taxes,	2589 95
Accrued Interest,	646 50
Due Angenette K. Lawshe	1900 =
Accrued Wages,	
Due A. Lawshe	2637 95

Total Current Liabilities,	51339 22
----------------------------	----------

Reserve for Bad Debts,	3653 26
Due Manfo's Finance Co	9597 47 20
Profit and Loss—Surplus,	65569 34

Total Liabilities,	\$ 430459 29
--------------------	--------------

Income and Profit and Loss

Month of
Apr 1915

Gross Sales,	9597 29
Less: Rebates and Allowances,	10 45
	30
Net Sales,	9586 84
Cost of Goods Sold,	7060 16
Gross Profit on Sales,	2526 68

Selling Expenses:		
	Salaries Salesmen,	150
	Commissions,	190 27
	Traveling Expense,	
	Advertising,	25
	New York Office Expense,	70
	Association Dues,	
	Total,	
10		435 27
	Selling Profit,	2091 41
General Expenses:		
	Salaries—Officers,	550
	Salaries—Office,	461
	Telephone and Telegraph,	76 34
	Stationery, Printing and Postage,	119 47
	Charity and Donations,	
20	Legal,	
	Office Rent,	15
	Miscellaneous,	276 87
	Total,	
		1498 68
	Net Profit on Sales,	592 73
Other Income:		
30	Cash Discount on Purchases,	
	Total,	
		592 73
Deductions from Income:		
	Cash Discount on Sales,	276 04

Interest and Discount,	1273 22	
Taxes,	133 =	
Insurance,	50	
Uncollectible Accounts Reservation,	150 =	
Total,	1882 26	
Net Income, Loss	1289 53	
Profit and Loss Credits:		10
Total,		
Gross Surplus, Loss	1289 53	
Profit and Loss Charges:		
Dividends,		
Total,		
Net Surplus Loss for the Period,	1289 53	
Surplus at Beginning of the Period,	66858 87	20
Surplus at End of the Period,	65569 34	

EXHIBIT D9.

Nov 24 1914

Angenette K. Lawshe
Advances.

30

5875
6000
480 61

12355.61

✓	2000.
✓	5875.
✓	6000.
✓	480.61
Bonds	6000.00
Int	144.39
	\$20,500.00

10 12355.61
 1143.16

 657.21

 14131.92
 Sep 17

20

EXHIBIT "D10."

Dec. 21, 1914.

Honorable Huston Dixon, Secy.,
 Trent Tile Company,
 Trenton, N. J.

Dear Sir:—

Mrs. Anngenetie K. Lawshe advanced to Trent
 Tile Company,

30	1914, Aug. 18, cash,	\$2000.00
	" Sept. 17, "	5875.00
	" " 17, "	6000.00
	" " 17, "	480.61
	" " 17, interest,	144.39
	" Nov. 9, Trenton bonds an- annexed to note of \$5000. Dis- counted Trenton Bank. Said	

note going to credit of Trent
Tile Co., 6000.00

\$20500.00

The cash advances were used to pay off the Davis, Reid, and Alexander judgment. The \$6000 City of Trenton bonds were sold by Mr. Lawshe with other bonds in New York City. Proceeds were deposited by Mr. Lawshe to his individual account and note of \$5000 was paid, by being charged to his account 10 and is now in my possession. The balance of \$6000. viz., \$1000 was paid by Mr. Lawshe in December.

My books now show the advances by Mrs. Lawshe, being \$20,500.00 and mortgages account being credited with that amount. If this is not quite clear to you, I will call at your office with books at your appointment.

Yours very truly,

E. R. Sweeney, 20
Bookkeeper.

EXHIBIT D13.

Know all Men by these Presents, That The Trent Tile Company is held and firmly bound unto Ann-genette K. Lawshe in the sum of forty-one thousand (\$41000) dollars lawful money of the United States of America, to be paid to the said Anngenetete K. 30 Lawshe or to her certain attorney, executors, administrators or assigns; for which payment well and truly to be made it binds itself and its successors firmly by these presents. Sealed with its seal and dated the thirtieth day of April in the year of our Lord one thousand nine hundred fifteen

The Condition of this Obligation is such, That if the above bounden The Trent Tile Company shall and do well and truly pay, or cause to be paid, unto the above mentioned Anngnette K. Lawshe or to her certain attorney, executors, administrators or assigns, the just and full sum of twenty thousand five hundred (\$20500) dollars lawful money aforesaid, in one year from the date hereof, with interest for the same, at the rate of five per centum per annum, payable semi-annually without any fraud or other delay, then this obligation to be void, or else to be and remain in full force and virtue; provided, if any default be made in the payment of any installment of interest for thirty days after the same becomes due and payable as aforesaid, then the aforesaid principal sum, with all arrearages of interest thereon, shall, at the option of the said Anngnette K. Lawshe, or her executors, administrators or assigns become due and payable immediately thereafter, although the time above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

The Trent Tile Company

(Seal)

By A Lawshe
President.

Signed, Sealed and Delivered
in the Presence of

30 Attest

Huston Dixon
Secretary.

(Endorsed on back)

BOND

By or to a Corporation

Trent Tile Company

to

Anngenetie K. Lawshe.

Received \$20500. principal & 1053.47
interest

R. W. Howell Cashier.

The Trenton Banking Co

10

EXHIBIT D14.

This Indenture, Made the thirtieth day of April in the year of our Lord one thousand nine hundred fifteen between The Trent Tile Company, a corporation of the State of New Jersey having its principal office or place of business at Trenton in said State, 20 party of the First part, and Anngenetie K. Lawshe of the same place, party of the Second part.

Witnesseth, That the said party of the First part, for and in consideration of the sum of twenty thousand five hundred (\$20500) dollars lawful money of the United States of America, to it 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 therewith fully 30 satisfied, contended and paid, has given, granted, bargained, sold, aliened, enfeoffed conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm, to the said party of the Second part, and to her heirs, executors, administrators and assigns forever:

All those certain lots, tracts or parcels of land situate, lying and being in the City of Trenton, County of Mercer and State of New Jersey and bounded and described as follows, to-wit:

10 Tract No. 1. Bounded on the west by Plum Street, on the south by Klagg Avenue, on the east by lands of the said Trent Tile Company and on the north by Railroad Avenue, having a frontage of one hundred (100) feet on Klagg Avenue and running through to Railroad Avenue the distance of two hundred (200) feet, being the same premises conveyed by the Harris Manufacturing Company to the Trent Tile Company by Deed dated August 10, 1901, and recorded in Mercer County Clerk's office in Book 247 of Deeds, pages 383 etc.

20 Tract No. 2. Beginning at a point on the northerly side of Klagg Avenue at the distance of one hundred feet easterly from the easterly line of Plum Street and running thence (1) easterly along the northerly side of Klagg Avenue two hundred and fifty feet to a point, thence (2) at right angles to Klagg Avenue northerly two hundred feet more or less to line of the Pennsylvania Railroad Company, thence (3) along the line of said Railroad Company's land northwesterly to the south side of Rail Road Avenue, thence (4) westerly along the south side of Rail Road Avenue two hundred and fifty feet more or less to a point distant one hundred feet from the easterly side of Plum Street, thence (5) southerly and parallel to Plum Street two hundred feet to
30 Klagg Avenue and the place of beginning, being the same premises conveyed by Benjamin F. Lee and wife to the Trent Tile Company by Deed dated January 8, 1887, and recorded in Book 152 of Deeds, pages 238, etc. Subject to the same right reserved to said Enterprise Land Company to carry the

stream of water over the northeasterly corner of said lot of land along the southerly line of said Rail Road Company's land as is contained in the deed before referred to.

Tract No. 3. Beginning at a point on the northerly side of Klagg Avenue at the distance of three hundred and fifty feet easterly from the corner of Plum Street, corner of land late of the Harris Manufacturing Company and now of the Trent Tile Company and running (1) Northerly along the easterly line of land late of the Harris Manufacturing Company now of the Trent Tile Company about two hundred feet to a point where it meets the line of land of the United New Jersey Railroad Company's land, and thence (2) in a straight course southeasterly to a point on Klagg Avenue forty-two feet distant easterly from the place of beginning, thence (3) easterly along Klagg Avenue forty-two feet to the place of beginning, being the same premises conveyed to the Trent Tile Company by the Harris Manufacturing Company by Deed dated June 19, 1900, and recorded in Mercer County Clerk's office in Book 247 of Deeds, pages 394, etc.

Tract No. 4. Beginning at a point in the northerly line of Klagg Avenue as shown on a plan of lots of the Enterprise Land Company duly filed in the clerk's office of Mercer County said point being distant easterly four hundred and two feet from the northeast corner of said Klagg Avenue and Plum Street as shown in said plan of lots and on the easterly side of a stream of water and from thence running (1) in a northeasterly direction along said northerly line of Klagg Avenue two hundred and forty-three feet more or less to a point in the southerly line of lands of the United New Jersey Rail Road and Canal Company, thence (2) along the said

line of lands of said Rail Road Company on a curve of fifteen hundred and twenty-three feet radius deflecting to the west three hundred and forty-four feet more or less to a point corner to lands of the Harris Manufacturing Company, thence (3) in a southeasterly direction along lands of said Harris Manufacturing Company twenty feet more or less to a point in said easterly side of said stream, thence (4) southeasterly along said easterly side of said stream the several courses thereof to the point of beginning.

10 Tract No. 5. Beginning at a point in the southerly line of the aforesaid Klagg Avenue said point being distant four hundred and twenty-one feet easterly from the southeast corner of said Klagg Avenue and Plum Street as shown on said plan of lots said point being on the easterly side of a stream of water and from thence running (1) in a northeasterly direction along the southerly line of said Klagg Avenue
20 nue two hundred and seventy-four feet more or less to a point in the southerly line of lands of the United New Jersey Rail Road and Canal Company, thence (2) in a southeasterly direction along said line of said Rail Road Company's land three hundred and twenty feet more or less to the center of the Assanpink Creek, thence (3) in a southwesterly direction by the middle line of said Creek four hundred and forty feet more or less to a point opposite the easterly side of said stream of water, thence (4) north-
30 westerly along said easterly side of said stream of water the several courses thereof to the point of beginning, being the same premises conveyed by the Enterprise Land Company to the Trent Tile Company by Deed dated June 24, 1887, and recorded in Mercer County Clerk's office in Book 179 of Deeds, pages 458, etc.

Also all the right, title and interest of the party of the first part in and to a strip, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Trenton in the County of Mercer and State of New Jersey, as follows, to-wit: Being all that certain strip of land lying between (and binding thereon) a lot of land on the northerly side of Klagg Avenue east of Plum Street which was conveyed by the said The Enterprise Land Company November 16, A. D. 1885 10 to the Harris Manufacturing Company, and another lot of land (and binding thereon) first described in a deed of conveyance made by the said Enterprise Land Company to the Trent Tile Company and dated June 24, A. D. 1887.

The said strip of land being now or formerly used in whole or in part as a water course running between the two lots above described. Being the same premises conveyed by Deed from the Enterprise Land Company to the Trent Tile Company dated 20 June 11, 1901, and recorded in Book 247 of Deeds, pages 321, etc.

Also all that portion of Klagg Avenue, beginning at a point in the southerly line of said Klagg Avenue corner to lands of the Trenton Tile Company and lands now or late of Edward Sutton and running thence (1) northerly across said Klagg Avenue at right angles to said southerly line, fifty feet to a point in the northerly line of said Avenue, thence 30 (2) easterly along the northerly line of said Avenue two hundred nineteen feet more or less to a point in the southwesterly line of lands of the United New Jersey Railroad and Canal Company, thence (3) southeasterly along said last mentioned line seventy-five feet more or less to a point where the southerly line of said Klagg Avenue intersects said last men-

tioned line, thence (4) westerly along the southerly line of said Avenue two hundred seventy-six and three tenths feet more or less to the point of beginning. Being the end of Klagg Avenue duly vacated by an ordinance of the Inhabitants of the city of Trenton passed January 19, 1904, and approved by the Mayor January 21, 1904.

Together with all and singular the profits, privileges and advantages, with the appurtenances, to the
10 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 or to every part and parcel thereof: To Have and to Hold all and singular the above-described tracts or lot of land and premises with the appurtenances, unto the said party of the Second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the Second part, her heirs and
20 assigns forever.

Provided Always, and it is agreed by and between the parties to these presents, that if the said The Trent Tile Company do and shall well and truly pay, or cause to be paid to the said party of the Second part, or to her certain attorney, executors, administrators or assigns, the sum of twenty thousand five hundred (\$20500) dollars in one year from the date hereof, with interest for the same, at the rate of five per centum per annum, payable semi-annually and
30 if default be made in the payment of any installment of interest for thirty days after the same becomes due and payable as aforesaid, then the aforesaid principal sum, with all arrearages of interest thereon, shall, at the option of the said Anngnette K. Lawshe become due and payable immediately thereafter, according to the condition of a certain Bond

bearing date herewith, executed by The Trent Tile Company without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever, then and from thenceforth, these presents and said obligation, and everything herein and therein contained, shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding: and the said The Trent Tile Company, party aforesaid of the First part, for itself, successors and assigns do covenant and grant to 10 and with the said party of the Second part, her heirs and assigns, that the said party of the First part, its successors and assigns, shall not nor will apply for or claim any deduction, by reason of this Mortgage, from the taxable value of the lands and premises above described. And that until the debt hereby secured be fully paid it the said party of the First part, its successors or assigns, shall and will from time to time pay to the person or persons authorized to collect and receive the same, all taxes, assessments 20 and other impositions which may at any time hereafter be assessed, charged or imposed upon the said lands and premises, or any part thereof, or upon the said party of the First part, its successors or assigns, in respect thereof; and shall and will, when thereunto requested, produce and show to the party of the Second part her heirs and assigns, proper receipts therefor.

And it is also agreed by and between the parties to these presents, that the said party of the First 30 part, its successors and assigns, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible insurance company or companies, to an amount not less than twenty thousand five hundred (\$20500) dollars, and

assign the policy and certificate thereof to the said party of the Second part and her assigns, as collateral security for the payment of the principal and interest aforesaid; and in default thereof it shall be lawful for the said party of the Second part, her heirs executors, administrators or assigns, to effect such insurance, and the premium or premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the
 10 said Bond or obligation, and secured by these presents, and payable on demand, with legal interest.

In Witness Whereof, the said party of the First part has caused these presents to be signed by its President, attested by its Secretary, and its common seal to be affixed the day and year first above written.

The Trent Tile Company,

(Seal)

By A Lawshe
 President.

20 Attest

Huston Dixon
 Secretary.

State of New Jersey, } ss
 County of Mercer, }

Be it remembered that on this thirtieth day of April one thousand nine hundred and fifteen, before me the subscriber, a Master in Chancery of the said
 30 State, personally appeared Huston Dixon who being by me duly sworn doth depose and make proof to my satisfaction that he is the secretary and well knows the corporate seal of the Trent Tile Company named in the mortgage hereto annexed; that the seal thereto affixed is the proper corporate seal of the said corporation; that the same was so affixed thereto and

the said mortgage signed and delivered by Alfred W. Lawshe who was at the date and execution thereof the President of said corporation in the presence of said deponent as the voluntary act and deed of the said corporation, and that deponent thereupon signed the same as a subscribing witness.

Huston Dixon

Sworn to and subscribed before me the 30th day
of April one thousand nine hundred and fifteen. 10

Richard S Wilson
M C C of N. J.

(Endorsed on back)

847

MORTGAGE.

Trent Tile Company
to

Anngenet K. Lawshe.

20

Satisfaction received and this mortgage surrendered for cancellation.

The Trenton Banking Co.

R W. Howell
Cashier

Received in the Clerk's Office of the
County of Mercer on the 29th day of
June A. D. 1915 at 11.20 o'clock in the
forenoon, and recorded in Book 233 of
Mtgs for said County, on pages 310
&c

30

Geo R Robbins
Clerk.

Cancelled of Record
May 10th A. D. 1916

Geo R Robbins
Clerk.

EXHIBIT D15.

Assignment of Mortgage.

Know All Men by these Presents, That I, Ann-
genette K. Lawshe of the First part, for and in con-
sideration of the sum of one dollar (\$1) lawful
money of the United States of America, to me in
10 hand paid by The Trenton Banking Company, a
corporation, organized under the laws of the State
of New Jersey, of the Second part, at and before
the sealing and delivery of these presents, the receipt
whereof is hereby acknowledged, have granted, bar-
gained, sold, assigned, transferred and set over, and
by these presents do grant, bargain, sell, assign,
transfer and set over, unto the said party of the
Second part, a certain Indenture of Mortgage, bear-
ing date on the thirtieth day of April in the year
20 of our Lord one thousand nine hundred and fifteen
Made by The Trent Tile Company, a corporation,
to me and about to be recorded in the office of the
Clerk of the County of Mercer in Book No. of
Mortgages, at page , on the thirtieth day of
April, in the year one thousand nine hundred and
fifteen covering all the real estate of said company
fronting on Klagg Avenue and Plum Street in the
City of Trenton, County of Mercer and State of
New Jersey and the mortgaged premises therein
30 described, with the appurtenances. Together with
the Bond or Obligation in said Indenture of Mort-
gage mentioned, and thereby intended to be secured,
and all moneys due and to grow due thereon with the
interest. To Have and to Hold the same, unto the
said party of the Second part, its successors heirs,
executors, administrators and assigns, to its and

their proper use, benefit and behoof for ever. Subject only to the proviso or condition of redemption in the said Indenture of Mortgage contained. And I do hereby authorize and appoint the said party of the Second part my true and lawful attorney, irrevocable, in my name or otherwise, but at its proper costs and charges, to have, use and take all lawful ways and means for the recovery of the said sum of money and interest, secured to be paid in and by the said bond and mortgage; and in case 10 of payment, to discharge and satisfy the same as fully as I might or could do if these presents were not made. And I do thereby covenant, promise and agree, to and with the said party of the Second part, that there is now secured to be paid by the said bond and mortgage the sum of twenty thousand five hundred (\$20500) dollars and cents, and interest thereon from the day of in the year one thousand nine hundred and

In Witness Whereof, I have hereunto set my 20 hand and seal the thirtieth day of April in the year of our Lord one thousand nine hundred and fifteen.

Anngnette K. Lawshe (Seal)

Signed, Sealed and Delivered
in the Presence of
words "heirs executors administrators" stricken out before signing

Huston Dixon

30

State of New Jersey,
Mercer County,

Be it Known, That on the thirtieth day of April in the year of our Lord one thousand nine hundred

and fifteen before the subscriber, a Master in Chancery of the State of New Jersey, personally appeared Anngenetie K. Lawshe who is I am satisfied, the grantor mentioned in the foregoing Deed of Assignment and the contents thereof being by me first made known unto her, she did thereupon acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

10

Huston Dixon
M. C. C. of N. J.

(Endorsed on back)

572

Assignment of Mortgage.
Anngenetie K. Lawshe
to

The Trenton Banking Company.

20

Received in the Clerk's Office of the
County of Mercer on the 29th day of
June 1915, at o'clock, and re-
corded in Book 26 of Assignment of
Mortgages, page 375, etc.

Geo R Robbins
Clerk.

30

EXHIBIT D21.

All Orders Taken Subject to Strikes, Accidents or
Other Delays Beyond Our Control
Prices Subject to Change Without Notice
Trent.
(Design)

The Trent Tile Company

Trenton, N. J.

U. S. A.

Makers of Wall, Floor and Fireplace
Tiles

Architectural Faience, Ceramic Mosaics, Etc.

Trenton, N. J. Jan. 12th, 1915.

Robert W. Howell, Cashier

Trenton Banking Co.,

Trenton, N. J.

10

My dear Mr. Howell:—

Enclosed find our Dec. 1st, 1914 balance sheet.

Very truly yours

The Trent Tile Co.,

A Lawshe Treas.

AWL./TCE.

Trent Tile Company

Balance Sheet	December 1st, 1914.	20
Property, Plant & Equipment	\$290,873.24	
Assest.		
Manufactured Goods	\$40,355.57	
Flint, Spar & Stone	115.00	
Coal & Wood	2,093.00	
Colors & Chemicals,	5,800.00	
Clays	4,202.75	
Packages	1,236.90	
Catalogues	535.00	
Miscellaneous Materials	3,234.00	30
Cash	1,309.97	
Notes Receivable	7,435.06	
Accounts Receivable	71,142.87	
Bonds	6,500.00	143960.12
	\$434,833.36	

Liabilities.		
Capital Stock	\$270,000.00	
Mortgage	9,800.00)	
Loan by Anngenettr K. Lawshe	20,500.00)	
Notes Payable	33,065.71)	
Sundry Creditors	12,211.80)	
Due Salesmen	1,982.86)	
Accrued Taxes	1,924.95)	
Accrued Interest	646.50)	
10 Due A. Lawshe	682.95)	80814.77
Reserve for Bad Debts	2,903.26	
Profit & Loss—Surplus	81,115.33	
		\$434,833.36

CONCLUSIONS.

(Filed November 25, 1916)

IN CHANCERY OF NEW JERSEY.

Between ANNGENETTE K. LAWSHE, <i>Complainant,</i> and THE TRENTON BANKING COMPANY, <i>Defendant.</i>	}	FINAL HEARING ON BILL TO SET ASIDE MORTGAGE. CONCLUSIONS.	10
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MESSRS. GERAGHTY & WEELANS, for complainant. FRANK S. KATZENBACH, JR., Esq., for defendant.	20
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LEAMING, V. C.:

April 30, 1915, complainant was the owner of a certain mortgage and on that date executed an assignment of the mortgage to defendant banking company. This suit has been brought by complainant to set aside that assignment. 30

Complainant's husband was at that time president and owner of one-half the capital stock of a certain manufacturing corporation known as the Trent Tile Company. That corporation had for some years dis-

counted its commercial paper at defendant bank and complainant's husband had uniformly endorsed the paper not only with the name of his corporation but also with his personal endorsements. The evidence fully establishes the fact that on the date above named the mortgage here in question, assigned to the bank by complainant in due form, was delivered to the bank by complainant's husband to secure the payment of the indebtedness then due to the
10 bank from the company above named and also to secure such additional indebtedness as might thereafter arise in the same manner.

The relief which is here sought in behalf of complainant is based upon the claim that the assignment of the mortgage was executed by complainant at the instance of her husband without consideration and without any knowledge upon her part of the purpose for which the assignment was made and without
20 independent counsel or knowledge touching the nature or consequences of her act and wholly as the result of undue influence upon the part of her husband and that the assignment in no sense represents complainant's voluntary or intelligent act.

1. It will be observed that while the assignment of the mortgage was made by complainant to the bank, it was, so far as her interests were concerned, in effect a gift by her to or for the use of her husband. If the present controversy were alone between complainant and her husband I think it clear
30 that she would be entitled to reclaim the mortgage. The evidence fully disclosed that complainant was without business experience and that she implicitly relied upon her husband in all matters relating to her pecuniary affairs. Indeed, this very mortgage was, I am convinced, procured for complainant by

her husband without her knowledge, to secure the payment to her of money which she had inherited from her son and which money her husband had, also without her knowledge, loaned to the business concern already referred to. When complainant's husband subsequently needed the use of that mortgage for the benefit of his business, he asked complainant to execute an assignment of it to defendant bank and she assented. He merely stated to her that it was for their interest for her to do so and made no explanation whatever of the proposed transaction. She was not apprised of the nature of the transaction by any one. When she executed the assignment before an acknowledging officer, who had been sent to her home for that purpose, she had not even been informed whether the assignment was absolute or merely to secure some indebtedness. She knew that the assignment was to defendant bank and knew nothing more about the matter except that it was her husband's wish that she should execute it, and her confidence in her husband obviously impelled her to comply with that wish on his part. The mortgage was \$20,500 in amount and represented all complainant was worth except a certain residence property which was worth about \$5,000 above encumbrance. She was sick at the time and according to the testimony of her physician was physically unable to maintain sustained though adequate to comprehend any business transaction which was not a simple affair, had it been explained to her. I think it clear that as between complainant and her husband, complainant would be entitled to relief from the operation of the assignment.

2. But the assignment was to defendant banking company and the rights of that company must be

considered. It is urged in behalf of complainant that the banking company cannot be accorded the status of a purchaser without notice. This contention is based upon the claim that officers of the banking company knew that the mortgage was assigned to the bank by complainant to secure obligations of others without valuable consideration moving to her, and also knew that complainant was the wife of the person from whom the bank received
10 the assigned mortgage and was without business experience, and also knew that complainant was at the time ill or had been ill. That knowledge, it is claimed, was operative to put the bank on inquiry to ascertain whether the assignment was the intelligent and voluntary act of complainant and free from any dominating influence of her husband.

Assuming defendant banking corporation to have been chargeable with knowledge of all the facts above suggested I am unable to reach the conclusion
20 that such information was operative to impose a burden of inquiry of the nature suggested. A transfer from a wife to her husband or for his use of property belonging to her, without pecuniary consideration moving to her or a pledge of property by a wife to secure an obligation of her husband without pecuniary consideration moving to her is sanctioned by law. The legal presumption is that such a transfer is valid. As the law imports validity
30 it necessarily recognizes the right of any person receiving the benefit of such transfer to act and rest upon the presumption of validity unless some other fact is brought to his knowledge to appropriately raise a suspicion or doubt. No fact of that nature was brought to the knowledge of defendant company. There was no knowledge of serious illness of complainant and no knowledge suggesting undue in-

fluence over her. On the contrary the bond and mortgage were delivered to defendant bank by the husband of complainant accompanied by an assignment executed by her with all the formalities and safeguards provided by law for the protection of the assignor against coercion and imposition by means of an acknowledged officer, as suggested in *Le Gendre vs. Goodridge*, 46 N. J. E. 419, and in *Fretz vs. Roth*, 70 N. J. E. 764, 766, and no circumstance existed to suggest a suspicion that fraud or 10 undue influence had been exercised or that in the execution of the assignment complainant had not been fully apprised of the nature and consequences of her act. Views of this nature are made the basis of decision in *Lougheed vs. Armstrong*, 84 N. J. E. 49. See also as to legal presumption of validity in a transfer of property by a married woman to secure the debt of another. *Warwick vs. Lawrence*, 43 N. J. E. 179, *Walker vs. Dixon Crucible Co.*, 47 N. J. E. 343. A series of English cases are to be 20 found in which conveyances made by children who have recently come of age to secure debts of their father have been set aside for want of independent advice, in instances in which the creditor has been apprised of the fact that the child had only recently come of age; but these cases proceed upon the presumption that such child is under the influence of his parent, or as there phrased, unemancipated. The following cases are of that class. *Bainbridge vs. Brown*, L. R. L8 Ch. Div. 188; *Kempson vs. Ashbee*, 30 L. R. 10 Ch. App. Cases 15; *Archer vs. Hudson*, 7 Beav. 551; *Baker vs. Bradley*, 7 De G. M. & G. 597; *Thornber vs. Sheard*, 12 Beav. 589; *Maitland vs. Irving*, 15 Sim. 437; *Maitland vs. Backhouse*, 16 Sims. 58. It will be observed that these cases chiefly relate to security for pre-existing debts as

distinguished from debts incurred by reason of the security. I am convinced that defendant must be accorded the status of a purchaser without notice.

3. It has already been stated that the evidence satisfied me that the mortgage was in fact given to defendant to secure the indebtedness then existing and thereafter to arise. A portion of the money now due defendant was advanced after the mortgage was assigned. As to that amount defendant is clearly
10 entitled to the protection afforded a purchaser for value without notice. See note to *Smith vs. Ward*, in 1 Am. Dec. 81; *Bigelow on Fraud*, 406. But as to the preceding debt a different rule obtains. The evidence discloses no change of position of defendant on the faith or credit of the mortgage with reference to the preceding debt; it does not even appear that any extension of time for payment of the preceding debt arose by reason of the mortgage security. In such circumstances defendant cannot be
20 accorded the rights of a purchaser for value as to the preceding debt as against the superior equity of complainant. This view had been adopted by this Court in *Reeves vs. Evena*, (Reed, V. C.) 34 Atl. Rep. 477, and *Martin vs. Bowen*, 51 N. J. E. 452. See also *Wheeler vs. Kirtland*, 23 N. J. E. 552, 555; *Mingus vs. Condit*, 23 N. J. E.; *Tate vs. S. T. Co.*, 63 N. J. E. 559; 1 *Bigelow on Frauds*, 406.

Defendant will accordingly be entitled to enforce the lien of the mortgage to the extent of the moneys
30 advanced in faith of that security; that amount I understand to be \$8,775.

I will advise a decree in accordance with the views herein expressed.

Submitted October 18, 1916.

Determined November 21, 1916.

FINAL DECREE.

(Filed January 2, 1917)

IN CHANCERY OF NEW JERSEY.

Between ANNGENETTE K. LAWSHE, <i>Complainant,</i> and THE TRENTON BANKING COMPANY, <i>Defendant.</i>	}	ON BILL, &C. 10 FINAL DECREE.
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This cause coming on to be heard in the Court
 of Chancery of the State of New Jersey, held at the
 State House in the city of Trenton, in the presence
 of Geraghty and Weelans, of counsel with the com-
 plainant, Anngenetie K. Lawshe, and of Frank S.
 Katzenbach, Jr., of counsel with the defendant, The
 Trenton Banking Company, and the pleadings hav-
 ing been read and proofs taken, and the arguments
 of the respective counsel having been heard and con-
 sidered, and the Court having duly considered the
 said pleadings, proofs and arguments, and it appear-
 ing to the Chancellor that the complainant is en-
 titled to the relief sought and prayed for in her bill
 of complaint, except as to the sums of money herein-
 after mentioned, advanced by the defendant to the
 Trent Tile Company subsequent to the assignment

of a certain mortgage, made by the Trent Tile Company to the complainant, dated April 30, 1915, upon the property of the Trent Tile Company and the bond which said mortgage secured.

And it further appearing to the Court that during the pendency of this suit and on May 31st, 1916, the principal sum of said mortgage was paid to the defendant, the Trenton Banking Company, with interest thereon to said date, amounting to the sum
10 of \$21,553.47: It is hereby on this 26th day of December, 1916, by his Honor, Edwin Robert Walker, Chancellor of the state of New Jersey, Ordered, Adjudged and Decreed:

1. That the said bond and mortgage were the property of the complainant and were assigned to the defendant by the complainant to secure the payment of the indebtedness then due to the defendant from the Trent Tile Company, and to secure such
20 additional indebtedness of the Trent Tile Company as might thereafter arise.

2. That the assignment bearing date the 30th day of April, 1915, of said mortgage made by the Trent Tile Company to the complainant, Anngnette K. Lawshe, dated April 30th, 1915, and the bond secured by the same, was the product of the undue influence of Alfred W. Lawshe, husband of the complainant, upon the complainant, and is null and void,
30 except as hereinafter stated.

3. That the assignment of said mortgage and bond by the complainant to the defendant was made without notice to the defendant of the said invalidity of said assignment made by the complainant, and that the defendant, the Trenton Banking Company, is

entitled to retain out of the proceeds of said bond and mortgage the amount of the promissory notes, with interest thereon, advanced to the Trent Tile Company subsequent to the assignment of said bond and mortgage by the complainant to the defendant, amounting to \$9597.11, less the dividends paid thereon by the receiver of the Trent Tile Company, amounting to the sum of \$2305.19.

4. That the defendant, the Trenton Banking Company, is not entitled to retain out of the proceeds of said bond and mortgage the amount of the indebtedness of the Trent Tile Company existing at the time of the assignment of said bond and mortgage by the complainant to the defendant. 10

5. That the defendant, the Trenton Banking Company, pay to the complainant, Anngenetie K. Lawshe, the balance of the proceeds of said mortgage, namely, \$14,261.55. 20

6. That the defendant, the Trenton Banking Company, assign and endorse without recourse to the complainant, Anngenetie K. Lawshe, the following promissory notes, made by the Trent Tile Company, and held by the defendant, the Trenton Banking Company, and representing, with interest, the said sum of \$9597.11:

Note dated April 26th, 1915, for	\$1250.00	
Note dated April 30th, 1915, for	\$1500.00	
Note dated May 21st, 1915, for	\$1625.00	30
Note dated June 7th, 1915, for	\$1000.00	
Note dated June 25th, 1915, for	\$3400.00	

E. R. WALKER,
C.

Respectfully advised,
E. B. LEAMING,
V. C.

NOTICE OF APPEAL.

(Filed January 4, 1917)

IN CHANCERY OF NEW JERSEY.

10	Between ANNGENETTE K. LAWSHE, Complainant and THE TRENTON BANKING COMPANY, Defendant.	}	ON BILL, &c. NOTICE OF APPEAL.
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20 The Trenton Banking Company, the defendant in the above-entitled cause, hereby appeals from so much of the final decree made in this court in the above-stated cause on the 26th day of December, nineteen hundred and sixteen, as declares

1. That the bond and mortgage made by the Trent Tile Company to the complainant, Anngenetie K. Lawshe, dated April 30, 1915, were the property
30 of the complainant.

2. That the assignment bearing date the 30th day of April, 1915, of said mortgage made by the Trent Tile Company to the complainant, Anngenetie K. Lawshe, dated April 30th, 1915, and the bond secured by the same, was the product of the undue influence

of Alfred W. Lawshe, husband of the complainant, upon the complainant, and is null and void, except as thereafter stated.

3. That the defendant, the Trenton Banking Company, is not entitled to retain out of the proceeds of said bond and mortgage the amount of the indebtedness of the Trent Tile Company existing at the time of the assignment of said bond and mortgage by the complainant to the defendant, for which 10
said bond and mortgage were pledged.

4. That the defendant, the Trenton Banking Company, pay to the complainant, Anngnette K. Lawshe, the balance of the proceeds of said mortgage, namely, \$14,261.55; to the Court of Errors and Appeals in the last resort in all causes.

Dated January 4th, 1917.

FRANK S. KATZENBACH, JR., 20
*Solicitor for and of Counsel with
Defendant, The Trenton Bank-
ing Company.*

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

FRANK S. KATZENBACH, JR.,
*Solicitor for and of Counsel with
Defendant, The Trenton Bank-
ing Company.* 30

**PETITION OF APPEAL OF THE TRENTON
BANKING COMPANY.**

(Filed January 24th, 1917)

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

10

	Between	}	
	ANNGENETTE K. LAWSHE,		PETITION OF APPEAL
	<i>Complainant and</i>		OF THE TRENTON
	<i>Respondent,</i>		BANKING COM-
	and		PANY.
20	THE TRENTON BANKING		
	COMPANY,		
	<i>Defendant and</i>		
	<i>Appellant.</i>		

*To the Honorable, the Court of Errors and Appeals
in the Last Resort in All Causes:*

30 The humble petition of the Trenton Banking Com-
pany, the appellant in the above-stated cause, re-
spectfully shows that your petitioner finds itself
aggrieved by a decree made in the Court of Chan-
cery by his Honor, Edwin Robert Walker, Chancellor
of the state of New Jersey, bearing date Decem-
ber 26th, 1916, wherein the said Anngenetie K.
Lawshe is complainant and your petitioner, the

Trenton Banking Company, is defendant, in this respect, to wit: That the said decree orders, adjudges and decrees:

1. That the bond and mortgage made by the Trent Tile Company to the complainant, Anngenetette K. Lawshe, dated April 30, 1915, were the property of the complainant.

10

2. That the assignment bearing date the 30th day of April, 1915, of said mortgage made by the Trent Tile Company to the complainant, Anngenetette K. Lawshe, dated April 30th, 1915, and the bond secured by the same was the product of the undue influence of Alfred W. Lawshe, husband of the complainant, upon the complainant, and is null and void, except as thereafter stated.

3. That the defendant the Trenton Banking Com- 20
pany, is not entitled to retain out of the proceeds of said bond and mortgage the amount of the indebtedness of the Trent Tile Company existing at the time of the assignment of said bond and mortgage by the complainant to the defendant, for which said bond and mortgage were pledged.

4. That the defendant, the Trenton Banking Com-
pany, pay to the complainant, Anngenetette K. Law-
she, the balance of the proceeds of said mortgage, 30
namely, \$14,261.55.

Your petitioner humbly appeals from the above final decree of the Chancellor which adjudge and decrees as aforesaid on the ground that the same is erroneous, (first) for that whereas the said Chancellor should have by his said decree of December 26,

- 1916, held that the bond and mortgage made by the Trent Tile Company to the complainant, Anngenetie K. Lawshe, dated April 30th, 1915, were the property of the complainant, Anngenetie K. Lawshe, and Alfred W. Lawshe her husband, and that the interest of the said Alfred W. Lawshe in said bond and mortgage, which were assigned to the appellant, the Trenton Banking Company, was held by the
- 10 Trenton Banking Company as collateral security for the payment of the obligations discounted for the Trent Tile Company and held or received by the said Trenton Banking Company, known as the "Rambo notes"; (second) for that whereas the said Chancellor should have by his said decree of December 26th, 1916, held that the assignment made by the said Anngenetie K. Lawshe, dated April 30th, 1915, of the said mortgage dated April 30th, 1915, made by the Trent Tile Company to the said Anngenetie K.
- 20 Lawshe, and the bond secured by the said mortgage, was the voluntary act and deed of the complainant, Anngenetie K. Lawshe, and was not the product or result of undue influence on the part of Alfred W. Lawshe, husband of the complainant, Anngenetie K. Lawshe, upon the said complainant, and was valid for the purpose of securing the payment of the said "Rambo notes"; (third) for that whereas the said Chancellor should have by his said decree of December 26, 1916, held that the appellant, the Trenton Banking Company, was entitled to retain out of
- 30 the proceeds of said bond and mortgage the amount of the indebtedness of the Trent Tile Company to the Trenton Banking Company, existing at the time of the assignment of said bond and mortgage to the appellant, the Trenton Banking Company, upon the obligations known as the "Rambo notes," for

which said mortgage and bond of the Trent Tile Company, dated April 30th, 1915, were pledged to the said Trenton Banking Company as collateral security; and (fourth) for that whereas the said Chancellor should have by his said decree of December 26, 1916, held that the Trenton Banking Company was not required to pay to the complainant, Anngenetie K. Lawshe, the balance of the proceeds of said mortgage, namely, \$14,261.55, and was entitled and had the right to retain out of the said sum of \$14,261.55 the amount due upon the said "Rambo notes." 10

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

FRANK S. KATZENBACH, JR., 20
*Solicitor for and of Counsel
with Appellant.*

ANSWER.

(Filed Feb. 1, 1917)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

	Between	
10	ANNGENETTE K. LAWSHE,	}
	<i>Complainant and</i>	
	<i>Respondent,</i>	
	and	
	THE TRENTON BANKING	
	COMPANY,	ON APPEAL.
	<i>Defendant and</i>	ANSWER.
	<i>Appellant.</i>	

The answer of the above-named respondent to the
20 petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of
the matters, which in said petition of appeal are con-
tained to be true, for answer thereto, nevertheless
says and admits that a decree was on the twenty-
sixth day of December, nineteen hundred and six-
teen, last past, made and entered in the Court of
Chancery in the cause for that purpose mentioned
in said petition, as is herein stated, but as to the
substance and form thereof, this respondent prays
30 to refer thereto when the same shall be produced,
and this respondent is advised and believes that said
decree is agreeable to equity and she prays that the
same may be affirmed with costs to be adjudged to
the respondent.

GERAGHTY & WEELANS,
Solicitors for and of Counsel
with Respondent.

STIPULATION.

(Filed May 10, 1917)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

ANGENNETTE K. LAWSHE,
*Complainant-
Respondent,*

and

THE TRENTON BANKING
COMPANY,
*Defendant-
Appellant.*

ON APPEAL.

STIPULATION.

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It is agreed and stipulated that the notes held by the Trenton Banking Company and offered in evidence in this cause need not be printed as exhibits in this record; that the amount of the "Rambow" notes, referred to in the testimony, is \$10,998.88; and that the amount of the notes payment of which was allowed by Vice-Chancellor Leaming was \$8,775.00.

GERAGHTY & WEELANS,
*Solicitors for Complainant-
Respondent.*

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FRANK S. KATZENBACH, JR.,
*Solicitor for Defendant-
Appellant.*

