

## New Jersey Court of Errors and Appeals

Between  
JOHN DIMLER,  
Complainant-Appellant,

and

CAROLINE CALDWELL, *et als.*,  
Defendants-Respondents.

} On Appeal.

### BRIEF OF APPELLANT.

The Bill was filed in this cause to declare lands heretofore conveyed to Barbara Dimler, the wife of John Dimler, to be held in trust for the husband and for such other relief that the Court might grant.

Dimler and his wife came from Germany and shortly after and in January, 1864, were married. They were both poor but by thrift in the baking business the husband was enable to buy property and from successive sales accumulated a fund with which he purchased a farm in Westfield, N. J., which was afterwards traded for a house in Newark, N. J., at a value of \$4,000. The consideration of the Westfield property being \$6,000 part of the consideration being the Newark house and the assumption of a mortgage for \$1,000 on the farm and \$1,000 in cash (see pp. 24 and 25 of printed case). Later on Dimler bought the property in controversy from one Bacon for \$2 200, paying down \$50 in cash of his own money to bind the bargain and later on meeting Bacon at the office of one Morrell, a lawyer at Westfield, where a typewritten deed was drawn and the name of John Dimler was inserted, and \$650 in cash was paid by Dimler, and

he assumed a mortgage of \$1,500 on the property which had before then been given to the Mutual Benefit Life Insurance Company of Newark, N. J., and this \$1,500 mortgage was afterwards paid off by Dimler from the proceeds of a mortgage of \$2,000 he negotiated on the Newark property owned by him. (See Dimler's testimony, p. 26, lines 14-18).

The testimony shows that the whole transaction was carried on by Dimler at Morrell's office, where only Bacon, Morrell and Dimler were present. (See 26th and 27th pages of printed book.) Dimler's wife knew nothing of the transaction and the lawyer recorded the deed which was afterwards given to Dimler, who put it in his tin box.

Dimler says that while they were talking, from what was said, he told the lawyer to put his wife's name in too, that is her name with mine, as he says, and the reason was, that if he died his wife would have it, and if she died before he died he would have it, and that there was no intention to give the property to her (see page 30 and fol.). That his wife never saw the deed, and he paid all taxes, assessments, insurance and repairs; that he wasn't aware, but that he had an interest in the same until some years after his wife's death, when he made application to Levi E. Hart, a lawyer of Westfield, for a small loan on the property, who informed him that the property was in his deceased wife's name and he would have to see a lawyer, and he at once consulted his present counsel, who confirmed what Judge Hart had said, and his counsel at once filed the bill in this cause. (See Dimler's testimony, page 25 and fol.) That it appears that the lawyer who drew the deed instead of inserting the wife's name with the husband's, erased the husband's name without informing Dimler, and then the lawyer recorded the deed without informing Dimler what had been done.

Mr. Dimler's testimony as to the facts is confirmed by Mrs. Caldwell, his wife's niece, one of the defendants, who said that the first that her uncle knew that there was any trouble about the title was when he saw Mr. Hart (see page 81 of printed book). Mrs. Dimler never knew the property was in her name, because when Mr. Holmes, the real estate agent, went to see her for the purpose of getting her signature for the payment of commissions if the property should be sold, she told him, that it belonged to her husband and that she had nothing to do with it, as it was bought with his money and she had no money, and that it was bought from the money from his farm. The whole testimony shows that while Mrs. Dimler had title in her name, yet she had no valid right to the same, and it was the scrivener's fault who prepared the deed. All the testimony of Dimler shows that the money was his, and that he wanted the title in the names of himself and his wife, so that in case of the death of either, the survivor would take. Mrs. Dimler never knew the title was in her name, because she told Holmes, the real estate agent, that it was her husband's property and was bought with the money received from the farm that was in Dimler's name. (See Holmes testimony, p. 70 and fol.)

## I.

### **A Court of Equity has power to correct a mistake.**

The Court will reform where a party acted under a mistake and misapprehension of his rights, as Dimler did in this case. Courts of Equity now go on the broad principle that when a mistake is manifest they will, in the exercise of their ordinary juris-

diction, correct it and hold the party according to his original intention.

*Skillman v. Temple*, Saxton, 245.

*Hendrickson v. Ivins*, Saxton 562.

So also in *Cummins v. Bulgin*, 10 Stewart 476, the Court said: A mistake in a legal sense, is the doing of an act under an erroneous conviction, which act, but for such conviction, would not have been done.

Cases of plain mistake or misapprehension of right though not the effect of fraud or continuance, are entitled to the interposition of a Court of Equity, where there has been no negligence on the part of the applicant.

*Swedesboro Loan Association v. Gans*, 20 Dick 132.

The lawyer who prepared the deed was instructed to put the names of John Dimler and his wife in the deed so that an estate by the entirety would be created, and the survivor would take. This must have been so, because the wife never knew that the title was in her, because when Holmes, the real state agent, went to see her, she told him that the property was John's and was bought with the money from the farm.

## II.

### **As to Consideration.**

When the consideration of lands conveyed to the wife is paid by the husband the presumption is, that the transaction is a settlement on the wife, but such presumption may be overcome by proof of facts accompanying the transaction and showing the intention of the parties to have been that

the husband should have an interest therein notwithstanding the conveyance to her.

*Duvale v. Duvale*, 11 Dick. 375.

The testimony shows that John was to share with his wife. So also in the case of *Yetman v. Hedge-man*, 88 Atlantic Rep. 207, in the opinion of Vice-Chancellor Backes, he said: "Where land was purchased and paid for by a husband, was conveyed to his wife, evidence held to require a finding that a resulting trust for the husband's benefit was intended, and not a gift to the wife. And he also held that in a suit by a husband to enforce a resulting trust of land purchased by him and conveyed to his wife, evidence that after such conveyance she acknowledged by words and acts that she held the land in trust, and that it was not the intention of the parties that the deed should operate as a gift to her, was admissible.

In the same case we find the Vice-Chancellor stating also: Where a husband purchased real estate paying a portion of the consideration money, contracting to pay the balance, and assuming mortgages thereon, and had the title conveyed to his wife, he not intending a gift to or settlement on her, he being bound to make the subsequent payments of the purchase price, such payments after the legal title vested in the wife, took effect by relation as of the time the title passed, and were available to establish a resulting trust.

### III.

#### Declarations as to One's Title.

Mrs. Dimler, the wife, denied that she had title to the premises in question and stated to Holmes that the same belonged to her husband. Her dec-

larations are of binding force and overcomes the views of Vice-Chancellor Emery that the property was a gift from husband to wife.

Subsequent acknowledgment and recognition by words or acts may be given in evidence.

*Duvale v. Duvale*, 56 N. J. Eq. 375.

*Yetman v. Hedgeman*, 88 Atl. Rep. 207.

So also in *Boylan ads Meeker*, 4 Dutcher 274, the Court said, that the declaration of a tenant in possession adverse to his title and relating to facts which may be proved by parol may be given in evidence against him. These are admitted in evidence upon the ground that they are against the interest of the party making them and that they affect his estate.

#### IV.

**Equity looks to the intent rather than to the form, is a fundamental principle.**

No one is presumed to give something for nothing, and no one can in reason and conscience expect to receive something for nothing. Whenever a person parts with a consideration he is presumed to intend to acquire whatever that consideration pays for, and he who acquires the legal title to property for which this money has paid, is bound in reason and conscience to hold it subject to the orders of the person whose money went into it. Reduced to the last analysis the property acquired by another's money is only that money in another form and property conveyed without receiving, and the money therefore continues in equity, the property of the conveyer.

So also in the case of *Bennett v. Finnegan* 33 Atl. Rep. 401, where a bill was filed by a husband against the heirs of his deceased wife to establish

a lien on land of which she died seized alleging that he gave his sole bond for a balance due for the purchase money of such land, secured by a mortgage on the land which he afterward paid, and which was cancelled under a mistake and misapprehension of his legal and equitable relation to the property and indebtedness of his wife, and that the debt for which the bond was given was actually the debt of his wife, being a part of the consideration money due from her to the vendor of the conveyance, the Court held: That the bill was good.

And also in the case of *Haggerty v. McCanna*, 10 C. E. Green 48, held: That where one who married the widow of a deceased owner of realty paid off a mortgage debt of nearly \$700, assuming from the widow's having administered on the estate that she was the owner of the real estate, the money so paid on the mortgage with the interest thereon was an equitable lien on the land and will be so declared on a bill by him to enjoin a daughter of the deceased from maintaining ejectment against him to recover possession of the premises or to require her to account and reimburse him.

This money was paid to the use of the wife of John Dimler, the complainant, and all the circumstances showing that he was justified in making the payment without express assent, the law is said to imply a request or promise.

So one who under the mistake or supposition that he is a Trustee pays money for the estate may be entitled to reimbursement, and one who by mistake or ignorantly pays defendant's debts may recover if defendant had notice and suffered it to be done.

*Bancroft v. Abbott*, 3 Allen (Mass.) 524.

*Whitney v. Aldrich*, 117 Mass. 582.

*Morrison v. Bowman*, 29 Cal. 337.

*Ely v. Norton*, 2 Abb. Ct. App.

The Vice-Chancellor also passed upon the fact of \$1,500 being put into the property by Dimler and that by reason of this fact he had an equitable lien or interest in one-half of it to be charged against the wife's estate.

If this Court decrees that the land in question belongs to the husband then the above will not have to be considered.

The complainant in this case conceived and understood the law to be from what was stated to him at the time of making the deed, that if the deed for the said premises should be made to himself and wife the enjoyment of the said premises would be secured to both, and in case of the death of either the title would be vested in the survivor. Acting under the belief that both names were in the deed, the Court can grant him the relief prayed for in his bill of complaint.

Respectfully submitted,

WILLIAM R. WILSON,  
Sol'r. &c., of Appellant.

[9108]

## New Jersey Court of Errors and Appeals

BETWEEN  
JOHN DIMLER,  
Complainant-Appellant,

and

CAROLINE CALDWELL, *et al.*,  
Defendants-Respondents.

On Bill, &c.  
Brief for  
Respondents.

The respondents are the heirs at law of Barbara Dimler, the wife of the complainant. (Case, p. 1, lines 19 to 29; p. 7, l. 39 & 40; p. 15, l. 10 & 11.)

Barbara Dimler died in February, 1908, intestate, seized of the premises described in the Bill of Complaint, which were conveyed to her by deed of James B. Bacon, dated April 1, 1896, (Exhibit, p. 94) for Twenty-two hundred Dollars, subject to a mortgage of Mutual Benefit Life Insurance Company for Fifteen hundred Dollars.

The complainant claims that the name of Barbara Dimler was inserted in the deed above mentioned by mistake, that it was intended that the names of both husband and wife should appear in it as grantees; that he paid the consideration for the conveyance and paid off the mortgage of the Mutual Life Insurance Company and always supposed that the title to the property stood in the names of himself and wife and did not know the contrary to be true until shortly before the filing of the Bill of Complaint, which was some time in December, 1912.

The bill prays "that the said deed may be corrected and made to conform to the agreement made so as to express the real contract between the parties, especially that the mistake so alleged to have

been made be corrected, so that your orator may be decreed to be the owner in fee of said premises, as it was understood and agreed he should be" (Case, p. 6, l. 1 to 11; also l. 31 to 38, inclusive).

The case was heard by Vice Chancellor Emery, who wrote an opinion (p. 82) upon the main branch of the case denying the complainant the relief of reformation, and suggesting that the complainant might be entitled to relief by reason of the payment of the mortgage encumbrance which he alleged was made in ignorance of the true status of the title.

A further opinion was filed upon this last mentioned subject (Case, p. 84), in which an allowance to the complainant was made of one-half of the monies paid in satisfaction of the mortgage and declared to be a lien upon the premises in question, together with interest from the date of Barbara Dimler's death, the complainant to account, however, for the rents, &c., of the premises from the date of his wife's death.

Subsequently and after the death of Vice Chancellor Emery, a re-hearing was granted the complainant by the Chancellor, who filed an opinion (Case, p. 5) reviewing the whole case and sustaining the Vice Chancellor's findings. Afterward this appeal was taken.

There is no evidence to support the material allegations of the Bill of Complaint.

### **The Necessary Parties are not before the Court.**

The effort is to reform a deed of conveyance. The grantor is not before the Court, and he is a necessary party (*De Groot v. Wright*, 9 Eq. 55; *Vanderbeak v. Perry*, 28 Eq. 367).

### There is no Evidence of Mistake.

To justify the relief of reformation the mistake must be mutual or there must be mistake on one side and fraud or inequitable conduct on the other.

*Doniol v. Commercial Fire Insurance Company*, 34 Eq. 30.

*Herron v. Mullen*, 56 Eq. 839.

*Gough v. Williamson*, 62 Equity, 526.

*Whelen v. Osgoodby*, 62 Eq. 571.

The testimony produced by the complainant upon the subject of the alleged mistake is very meagre. In reply to a question as to whether at the time the purchase was consummated there was any conversation about the deed, complainant answered (Case, p. 28, l. 25, &c.), "No not so far, until he read it; he had my name on then. It said John Dimler, and when it came down by Mr. Bacon and Mr. Bacon and Mrs. Bacon then I said put my wife's name in."

Q. He read that deed and that had your name. Recall what was said if you can, when you heard that. A. When he read the deed.

Q. And that was made to you. What did you say to anybody about it? A. I said nobody until he read it Mrs. Bacon—Sarah Bacon her name was called, and then I said put my wife's name on.

Q. Was your name in the deed then? A. it was on top.

Q. As near as you recall that is just what you said to him. Put my wife's name on. A. Yes.

Q. (By the Court.) Was anything further said about your name. Was anything said about taking your name out? A. No."

Q "yes"

(Case, p. 29, line 31, &c.):

“Q. Do you recall anything else that was said? A. No.

“Q. When you said put your wife’s name in the deed, what else did you say with relation to her name? A. Nobody said anything.”

(Case, p. 30, line 1, &c.):

“Q. What did you say. Did you say anything else? A. I said put my wife’s name in. It was all right to have everything good.”

At the time of the conversation related by the witness and the consummation of the purchase, the deed was complete and had the name of John Dimler inserted as grantee. From an inspection of the deed itself it appears that the name of “John” was erased and “Barbara” substituted and the pronouns changed throughout.

No disclosure was made by Dimler as to his intention, which he now claims he had, namely: To create a tenancy by the entirety and after the deed was prepared, executed and delivered he did not inquire as to whether it conformed to his alleged intentions and instructions. Practically all of the conversation had at the time of taking title has been referred to above and when the witness was asked the question “When you said put your wife’s name in the deed, what else did you say in reference to her name” the witness answered “Nobody said anything” (Case, p. 29, l. 39-41).

To the further question put by the Court “He is asking you now, the deed was read to you and had your name in only; you said ‘Put my wife’s name in’; now, the question is, why did you want your

wife's name in; what did you think at the time that made you say 'I want my wife's name in?' " The answer was "She always said that if I should die, so she want something too" (Case, p. 30, l. 28 to 36).

It is difficult to discover just what the mental condition or attitude of the witness was at this time, but one thing is certain, namely: that he did not disclose it to the lawyer or to the grantor. It is more reasonable to conclude from what the witness then said and also from what he now declares his intention to have been, that his real intention was that his wife should become the owner of this property. In this connection it must be remembered that up to this time all deeds and other instruments had been taken in the complainant's name alone (Exhibit, p. 98, &c.). And it does not appear how he discovered that by inserting both names in a deed to husband and wife, the survivor would take the property. It is a fair inference to be drawn from the fact that the proofs do not conform to the allegation of the bill, that Dimler's first knowledge upon the subject of tenancy by the entirety came from the solicitor who prepared his Bill of Complaint.

Assuming that there is some evidence that there was a mistake it is not clear and reliable enough to form the basis of a decree.

Vice Chancellor Emery in his opinion (Case, p. 83, lines 2 to 10) says of the evidence produced:

"The utmost effect of it, if believed, is to show a misapprehension of the directions he (Dimler) then gave, or when led to give, not a mistake of all the parties to the execution of the deed."

Assuming that there is some evidence of a mistake it does not conform to the quality required to establish it which the Courts have held in a number of cases must be clear, convincing and establish such mistake beyond a reasonable doubt.

*Hupsch v. Resch*, 45 Eq. 657.

*Firmstone v. De Camp*, 2 C. E. Gr. 317.

*Burgin*, 11 C. E. Gr. 72.

*Rowley v. Flannolly*, 3 Stew. Eq. 612.

*Durant v. Bacot*, 2 McCarter, 411.

*First National Bank v. Fessler*, 92 Atl. 914.

*Pomeroy's Equity Jurisprudence*, Section 859.

It is contended that the complainant has failed to produce any evidence of a mistake that may be rectified by the Court of Chancery or that if any exists the proof thereof is too meagre, unsatisfactory and doubtful to form the basis of a Decree.

### **There is no Resulting Trust.**

The complainant having failed to convince the Court that the deed of Barbara Dimler was a mistake, can only rely for his belief upon the theory of a resulting trust. The bill is not drawn to permit of such a Decree. Assuming, however, that the complainant paid for the premises in question, still there is no proof in the case that he and his wife had any agreement at the time of the taking of the title, which would overcome the presumption that he intended the conveyance as a gift to his wife. The fact is that the testimony of Dimler plainly shows that before the deed was made to her she had called to his attention the fact that all of their property was in John Dimler's name and nothing in her name, and suggested that something be given her so that if he died she would have something. (Case, p. 30, l. 11-19; l. 38-39; p. 59, l. 25-33.)

The proof seems to substantiate rather than rebut the presumption of a gift. It does not directly appear that Dimler had any reason for putting this

title in his wife's name, except to comply with her request. Dimler says in his Bill of Complaint (Case, p. 2, par. 5) that he wanted the title so placed that the survivor would take it, and that he was informed that the deed had been so prepared; that the lawyer who prepared the deed told him that if the title was thus taken there would be no need for a will, as upon the death of one the property would go to the other. Then again (Case, p. 5, par. 13) he says that he and his wife were unacquainted with the laws of this country, yet it nowhere appears in the case that John Dimler knew the effect of placing the title to real estate in the names of husband and wife. Mr. Morrell the lawyer who prepared the deed so far as the evidence shows, gave him no information upon this point.

In fact, the proof so far departs from the allegations of the bill as to make irresistible the belief that Dimler never heard of an estate by the entirety and the right of survivorship as an incident of the holding of title in the names of husband and wife until the time that he filed his Bill of Complaint.

Dimler very reluctantly admits that he told his wife about having put her name in the deed (Case, p. 57, l. 39-40; p. 58, l. 1-20) and there was apparently no conversation between them upon the subject of this transfer. The testimony of the complainant is open to the suspicion that much of it is purely a mental creation.

When casting about for some reason for his instructions to the scrivener, to put his wife's name in the deed, Dimler says that when the deed was read to him he heard the names of Mr. and Mrs. Bacon, mentioned, Sarah Bacon, he thinks her name was, and then he said, put my wife's name in, intending that it should be inferred that as Bacon and his wife had joined in the deed, so he wanted his wife to participate with him in the

transaction. (Case, p. 28, l. 23-29; 38-40; p. 57, l. 37-38.)

From an inspection of the deed (Case, p. 94) it is apparent that the name of Mrs. Bacon does not anywhere appear in the paper, the fact being that the deed is made by James B. Bacon, who was at the time of the making thereof a widower, and it appears from the recital in the deed that James B. Bacon acquired title from the Insurance Company.

Then again, the witness makes contradictory statements concerning the bond and mortgage of Knapp to Barbara Dimler, his wife. At one time he says that he did not know how Barbara Dimler's name got into this mortgage of Eight Hundred Dollars. (Case, p. 50, l. 19-27; p. 51, l. 20-22.) and then again saying that he told the scrivener, John Marsh, to put his wife's name in (Case, p. 51, l. 8-9; l. 23-28) and then again saying that he knew nothing about the mortgage until Mr. Eckel told him how it stood after this litigation was started (p. 53, l. 11-29). Unconsciously the witness applies the possessive pronoun to both himself and wife, when speaking of property to which, upon the promptings of counsel he claims ownership (Case, p. 35, l. 24-25; p. 41, l. 24-29; p. 42, 38-40; p. 43, l. 1-14; p. 46, l. 10-25; p. 59, l. 1-2), Dimler is the only living witness to the transaction which forms the basis of this suit, and apart from being unsatisfactory and unconvincing, his testimony is open to a suspicion that it is colored to meet the exigencies.

The witness, Holmes, is worthy of little or no credit. He had hardly more than a speaking acquaintance with Dimler and his wife (Case, p. 76, l. 24-40). They were people who kept their affairs to themselves (Case, p. 77, l. 31-38), and yet this witness has the boldness to assert under oath that he called upon Mrs. Dimler to have her sign an

authorization to him to sell the property; that as she was the owner it was necessary for him to have such an authorization; that she disclaimed any interest in the property (Case, p. 70, l. 39-40; 73, l. 1-10; 19-23), saying that the property belonged to her husband, that he got the money from the farm. It was not the purpose of the witness Holmes to determine the legal question that has now arisen and her mere statement that she had or had not an interest in the property would have been sufficient. Mrs. Dimler did sign the authorization (Case, p. 72, l. 1-2) which the witness says he has lost or destroyed.

The complainant finds no corroboration by this witness, because if Dimler is to be believed he told his wife that her name was in the deed; that it was there because she wanted it there, and it is hardly likely that she would disclaim all interest in the property to the said witness Holmes.

The evidence must conform to the standard fixed by the case of *Reed v. Huff*, 40 Eq. 229, decided in 1885 by the Court of Errors and Appeals, in which it is said:

“Where a parent or husband pays the consideration of the purchase of lands, and has the conveyance made to a child or wife, no resulting trust will arise from the payment of the consideration. In such cases the presumption is that an advancement or settlement was intended, and a resulting trust will not arise unless the presumption that the transaction was intended to be a gift be overcome by proof.”

“The proof which shall raise a resulting trust, or rebut the presumption of a gift or settlement in the case of a child or wife, must be of facts antecedent to or contem-

poraneous with the purchase, or else immediately afterwards, so as to be in fact, part of the same transaction; *a resulting trust cannot be raised from matters ex post facto.*"

"It is also well settled that the proof which shall rebut the presumption of a gift in favor of a child or wife, shall be equally satisfactory and explicit with the proof required to establish a resulting trust; the circumstances relied upon must be convincing, and leave no reasonable doubt as to the intention of the party." Citing *Peer v. Peer*, 3 Stockton 432.

The case last quoted from was cited and approved in the case of *Down v. Down*, Eq. 68, page 76.

In *McGee v. McGee*, 81 Eq. 190, decided by the Court of Errors and Appeals, there is a discussion of the quality of the evidence required to rebut the presumption of gift to the wife, the court concluding as follows:

"The rule in this state is well settled that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her, and while such presumption may be rebutted, *the proof offered to accomplish it must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties.*"

To the same effect are the cases of:

*Midmer v. Midmer's Executors*, 26 Eq. 299.

*Lister v. Lister*, 35 Eq. 49.

*Beck v. Beck*, 78 Eq. 544.

*Duvale v. Duvale*, 56 Eq. 375.

*Kraith v. Thiele*, 45 Eq. 417.

*Ostheimer v. Single*, 73 Eq. 539.

The rule is finally fixed in the cases last referred to that the presumption of gift to the wife in the present case cannot be overcome by anything that happened after the title was placed in the wife's name, so the payment of the mortgage encumbrance by the complainant, taxes, repairs and other incidental expenses, cannot have any probative force to establish a resulting trust in the complainant's favor.

The cases cited by the complainant upon this subject do not enunciate any new doctrine.

In the case of *Yetman v. Hedgman*, 88 Alt. Rep. 206, which is strongly relied upon by the complainant, it was shown that the complainant and his wife frequently talked about the prospective purchase and they concluded that because he had children and she had none, if the conveyance were to be made to him, the children could after his death put her out of doors, and because of this they arranged that the title should be taken in her name for her protection, upon the understanding that after they were both dead, the property was to pass to his children; that it was to be a home for both, as long as they lived, and then it was to go to his children, and that by the deed taken in her name he thought he was accomplishing this result. After the sale was completed, the wife made various admissions concerning this transaction, they being set forth at length in the Vice Chancellor's opinion, and in view of all this testimony and the fact that upon the death of the wife the property would pass to those unrelated to the husband, strangers to his household, that the property constituted

practically all that he had, the Vice Chancellor was satisfied and convinced that the presumption of gift in her favor had been rebutted and that the estate given was only a life estate. There is no analogy between the case before the Court and that just mentioned. Dimler was giving but a small fraction of his entire estate. There is no reason alleged for placing the title in the wife's name, except her request, and finally upon the death of Barbara Dimler the property passes to a niece, who stood in the position of child to the deceased, and to her own brother.

Assuming, but not admitting, that it was the money of John Dimler that made the initial payment on account of the property in question, the evidence is not sufficient to establish a resulting trust in his favor.

### **Barbara Dimler's Money Paid for the Property.**

To this point the argument has proceeded upon the theory that John Dimler's money paid for the property in question. Vice Chancellor Emery found that it was Mrs. Dimler's money that made the initial payment on the purchase and it is submitted that the finding is correct. When Dimler and his wife, who for a number of years had conducted a bakery on Fulton Street, in the City of Elizabeth, New Jersey (Case, p. 35, l. 2-20, etc.), the wife cooking and tending to the store and Dimler doing the baking, their savings were \$900 (Case, p. 42, l. 38-40), which Dimler says reluctantly was the property of himself and wife (Case, p. 42, l. 38 and 40, p. 43, l. 1 to 15). It was invested in the farm in Westfield (Case, p. 41 and 42), title to which was taken in Dimler's name (Case, p. 46, l. 10-21). When the farm was sold, Dimler re-

*sold the business*

ceived property to the value of \$5,000 (Case, pp. 47-48), \$4,000 thereof represented by Newark property (Case, p. 48, l. 7 to 15), deed<sup>ed</sup> to John Dimler, and \$1,000 represented by cash (Case, p. 48, l. 18 and 20). The farm had been purchased with the joint savings of the husband and wife, and in view of the fact that real estate cannot be controlled and possessed as money could, it was but natural that Mrs. Dimler wanted her share of the proceeds of this sale, and for her husband to recognize her requests and place in her name the Knapp mortgage (Case, p. 50<sup>2.18 p. 108-</sup>). Up to the time, although Dimler participated in a great many real estate transactions (see Exhibit, p. 98, etc.) all titles were taken in his name alone, and when the Knapp mortgage was made he held the unencumbered title to the Newark property appraised at \$4,000.

No effort has been made by the complainant to fasten a trust on the monies secured by this mortgage. Neither Dimler nor anybody else has attempted to explain the reason for placing this mortgage in the name of Mrs. Dimler. The only inference is that Mrs. Dimler advanced the money upon it or acquired it by gift. That Mr. Dimler sold the mortgage to Eckel and obtained the money therefor does not change the ownership of the proceeds of sale (Case, p. 53, l. 26 to 30). It is significant that on the day after the sale of the mortgage (see Exhibit, p. 108, l. 25 to 40) the payment of \$650 was made on account of the premises in question and the deed altered so that the title thereto should vest in the wife. In fact, the complainant concedes that it was the proceeds of sale of the mortgage that provided him with funds to complete the contract with Mr. Bacon (Case, p. 56, l. 1 to 10).

The complainant in his own case shows that the

initial payment on account of this property was made with the money to Barbara Dimler.

**The Mortgage was Paid with the Money of Barbara Dimler.**

When Barbara Dimler acquired the Knapp mortgage it was the first time her name appeared on the records as the owner of any title or security. It was the first step in a division of property which she and her husband had earned together. When the mortgage was converted into cash and the proceeds applied on account of the Elmer Street property Barbara Dimler became the owner of a property purchased for \$2200 subject to a mortgage for \$1500 and John Dimler held title to a property in Newark purchased at a valuation of \$4000 free of all encumbrances. The mortgage of \$1500 covering the property in question had been assumed by Barbara Dimler (see Exhibit p. 94). The property was occupied by the husband and wife for a number of years without the payment of rent to her. (Case, p. 56, l. 19-20.) Finally it was decided to pay off the mortgage of \$1500, and in order to do it, John Dimler mortgaged his Newark property for \$2000, (Case, p. 26, l. 15-17), using the proceeds of such mortgage to pay the mortgage covering the Elmer Street property and to purchase another property on Elmer Street to which he took title in his own name. (Case, p. 16, l. 18-25.) At this time Mrs. Dimler was the owner of unencumbered property purchased for \$2200 and John Dimler was the owner of property in Newark in which he had an equity of \$2000, and of another property on Elmer Street, Westfield, in which he had an equity of \$500. (Case, p. 26, l. 18.)

It will be seen from the foregoing that the divi-

sion of their property was about as equal as it could be made.

John Dimler does not admit, and he could not without destroying his case, that he and his wife had attempted a division of their property, but it is quite apparent that she had protested on more than one occasion that everything was in John Dimler's name, that if he died she wanted to have something, and his subsequent conduct with respect to the various properties is sufficient to sustain the claim of the defendants, that in reality the mortgage covering the Elmer Street property was paid with monies belonging to and set aside for the wife.

**The Mortgage was not Paid by the Complainant under a Mistake.**

The Decree appealed from allows the complainant for one-half of the principal of the mortgage covering the property in question, which complainant claims to have paid on the theory that John Dimler paid it with his own monies and under a mistaken belief that the title to the premises stood in the name of husband and wife. It has already been shown that the money of John Dimler did not pay the mortgage and it is now contended that he knew full well how the title to this property stood.

John Dimler dealt with the grantor (case, p. 27), had the deed read to him by Henry W. Morrell, the lawyer who prepared it, (Case, p. 28, l. 22-29; p. 29-30-31), asked that his wife's name be inserted, received the deed upon its return from the County Clerk's Office probably in 1896 (Case, p. 31, l. 10-12), put the deed away among several other papers in a box (Case, p. 51), which he must several times have subsequently entered to obtain papers and for the purpose of depositing others

therein, (Case, p. 52, l. 1-31), informed the wife that he had put her name in the deed, (Case, p. 57, l. 29-40; p. 58, l. 1-20), something that he had never done before, obtained insurance on the property, (Case, p. 31, l. 10-25; p. 65-66), gave to the insurance agent the name of the owner of the property insured, paid tax bills which were made out for a long while to John Dimler and then before his wife's death to Barbara Dimler, and subsequently for many years to the Estate of Barbara Dimler, and yet, (Case, p. 113-66-67), although reading English (Case, p. 66, l. 41), did not know that the deed which he possessed contained only the name of his wife and that she was the real owner of the premises according to the records, until November, 1912, (Case, p. 32), just before the Bill of Complaint in this case was filed when Mr. Hart informed him that the title stood in the name of the wife. Under all the facts in this case his story is highly incredible, quite as incredible as his story that he did not know that the Knapp mortgage was made out to his wife, although he admits having instructed the scrivener so to prepare it.

Then again, Dimler knew that his wife's money paid for the property.

In his further memoranda, (Case, p. 84), Vice Chancellor Emery justifies the allowance to the Complainant of one-half of this mortgage on the theory that the evidence of Holmes the real estate man (Case, p. 69, etc.), satisfactorily shows that Mr. and Mrs. Dimler both thought that the title to the premises in question was in both names. It is evident that the Vice Chancellor overlooked the fact that Holmes testified that Mrs. Dimler disclaimed all interest in the premises in question, saying "I don't own the place. It is in Mr. Dimler's name." (Case, p. 70, l. 19 to 23.)

The presumption attaching to the payment of this mortgage by the husband is that the money employed was a gift to the wife, and is not overcome except by clear and satisfactory evidence such as is necessary to overcome the presumption of a gift when real estate is transferred to the wife, the consideration therefor being paid by the husband.

See cases above cited, and *Andreas v. Andreas*, 94 Atl. 415.

The payment by Dimler of this mortgage was entirely voluntary and should be governed by the rules relating to such payments.

It has been held that improvements by the husband on property held by the wife, are presumed to be a gift to her in the absence of proof to the contrary.

*Selover v. Selover*, 62 Eq. 761, Court of Errors and Appeals.

*Black v. Black*, 3 Stew. Eq. 215.

*Lister v. Lister*, 8 Stew. Eq. 49. Affirmed 10 Stew. Eq. 331.

*Hood v. Hood*, 93 Atl. Rep. 797. Court of Errors and Appeals.

In *Whitley v. Ogel*, 47 Eq. 67, the facts were similar to those in the present case, but the Vice Chancellor left open the question as to whether the husband should be reimbursed for monies expended in the payment of a mortgage.

In *Bacon v. Devinney*, 55 Eq. 449, a case somewhat similar to the one in hand, relief was denied the complainant.

The case last referred to are not in point, nor has any been found, although diligent search has been made among New Jersey authorities for them.

It is submitted that the complainant has failed

to prove that his payment of the mortgage covering his wife's property was not voluntary. He knew full well that it was her money that paid for the property, a fact which was very properly found against him by the Vice Chancellor.

Even if the truth be that John Dimler really believed title to the premises to be in himself and wife, he falls under the rule laid down in *Haggerty v. McKenna*, 25 Eq. 48, in which Vice Chancellor Runyon says:

"An error which is the result of inexcusable negligence is not a mistake from the consequences of which equity will grant relief."

**The Decree Properly Allows only One-half of the Monies paid in Discharge of the Mortgage.**

Assuming, but not admitting that John Dimler did pay this mortgage under a mistake as to the facts, still he paid what he thought was a joint obligation of himself and wife and what he thought was necessary to protect the interests of both in the property in question. Had the deed been drawn to husband and wife, the burden of paying the mortgage would have rested equally upon both, he being responsible for one-half and his wife for the other half. This obligation might arise irrespective of the express assumption appearing in the deed, for although the estate is one by the entirety, husband and wife are virtually tenants in common, each entitled to one-half of the rents, each burdened with one-half the costs of maintenance and the discharge of one-half of the mortgages and other liens against the property.

*Kip v. Kip*, 33 Equity, 213.

*Schultz v. Ziegler*, 80 Eq. 199.

*Buttlar v. Rosenblath*, 42 Eq. 651.

*Collins v. Babbitt*, 67 Eq. 165.

Dimler's intention when paying this mortgage must be determined as of the time payment is made and when he paid it, he necessarily intended to relieve himself and his wife from liability. If he thought himself liable and paid under that mistaken belief, then he is entitled perhaps to subrogation or to have a lien for what money he expended, but as he knew that his wife was also bound with him and he paid her debt there is a strong presumption that he intended the payment to be a gift to her or for her benefit. There can be no subrogation.

If we consider that Mr. Dimler might well have compelled his wife to pay one-half of the mortgage monies and have kept the mortgage alive against her for that purpose, but having failed to do so and having canceled the mortgage of record, collected the rents of the property, apparently without accounting to his wife for her one-half thereof, it was a fair conclusion that he intended to give his wife the benefit of one-half of the monies used in discharging this encumbrance. Under the circumstances to the extent that he discharged his own obligation and protected his present interest in the real estate under a mistaken belief that the title thereto stood in the name of husband and wife, Dimler may possibly be entitled to the \$750 allowed him by the Final Decree.

*Kinkead v. Ryan*, 65 Eq. 726.

### **The Complainant is Guilty of Laches.**

This alleged mistake was made on the 1st day of April, 1896, and the present suit was started in

December, 1912. Between these dates, Henry W. Morrell, the lawyer who prepared the deed from Bacon to Dimler, Luther Whittaker, who wrote the insurance on the property in question, John M. Marsh, who drafted the Knapp mortgage for Mr. Dimler, and Barbara Dimler, have died. (Case, p. 65, l. 35-36; p. 68, l. 36-40; p. 69, l. 17-19). John Dimler is the only living witness to the transaction in question. To avoid the effect of this delay in instituting suit it was necessary for Mr. Dimler to assert his ignorance of the real condition of the title to the Westfield property. He knew that the proceeds of his wife's mortgage paid for the property. He had the scriviner read the prepared deed over to him, and gave instructions as to the change to be made, the deed differed from every other deed he had ever received; he got the deed back from the County Clerk, put it away in a tin box where it remained for more than fifteen years, without having been inspected by him. Dimler knew how every other title which he acquired stood of record, examined the papers to find out that they were correctly drawn to him (Case, p. 62), he obtains fire insurance on the building, pays for it, gave the agent the name of the owner, pays the tax bills submitted to Barbara Dimler for the years 1907 and 1908, and yet he never knew that the title to the property was in his wife's name and did not know that the title was in his wife's name alone until November, 1912, when Mr. Hart told him so. His story is unbelievable.

After he started the case it lay without substantial prosecution for over a year, all of which time the complainant was in possession of the premises in question, and collecting the rents thereof and he has adopted the policy of delay ever since the litigation was begun.

John Dimler was not unfamiliar with business

practices. He had for years engaged in real estate enterprises. He was not the ignorant foreigner described in the Complainant's Brief.

In *Halstead v. Davidson*, 10 Eq. 290, it is held that an equitable lien can be lost by negligence and unreasonable delay.

In *Le Gendre v. Burns*, 44 Eq. 372, it was held that a bill will not be dismissed on demurrer on the ground of laches, unless it appears on the face of the bill that complainant has delayed suing for so long a time after his cause of action arose as to deprive the Court of the power of ascertaining with reasonable certainty what the truth is respecting the matter on which rests his right to a decree or that he has by his delay placed himself in a position where he has gained an unfair advantage over his adversary. "Lapse of time alone is deemed by the authorities to be a sufficient ground of estoppel, in cases like the present when the court cannot feel competent of its ability to ascertain the truth now as well as it could when the subject for investigation was recent and before the memories of those who had knowledge of the material facts have become faded and weakened by time."

"To constitute estoppel of this description it is not essential that any actual loss of testimony through death or otherwise, or means of proof or changed relations to the prejudice of the other party should be proved to have been occasioned, but the estoppel arises because the Court cannot after so great a lapse of time, rely upon the memory of the witnesses to reproduce the details that entered into the final execution of the instrument of settlement."

*Lutjen v. Lutjen*, 64 Eq. 773, 781.

See *Tinan v. Warren*, 8 Dick. 313.

*DeGrauw v. Mechan*, 48 Eq. 219-224.

Citing Lord Camden in *Smith v. Clay*, 3 B. C. C. 639-640, and also *Doughty v. Doughty*, 2 Scott, 349.  
*Shipman v. Cook*, 1 C. E. Gr. 251.  
*Cooper v. Carlisle*, 2 C. E. Gr. 525.  
*Brown v. Mutual Benefit Life Insurance Company*, 5 Stew. Eq. 809.

“Nor is the rule different where the delay is in the prosecution of a cause commenced.”

*Sebring v. Sebring*, 16 Stew. Eq. 59, 61.

It is respectfully submitted that for the reasons above given the final decree of the Court of Chancery on appeal should be sustained.

LOUIS A. ZIEGLER and  
 SIDNEY W. ELDRIDGE,  
 Of Counsel with Respondents.

[9094]

## Index.

	PAGE
Bill of Complaint.....	1
Answer of Caroline Caldwell and William H. Caldwell .....	7
Answer of Gottfried Sohns and Christine Sohns .....	14
Testimony .....	22
Memorandum .....	82
Further Memorandum .....	84
On Motion for Reargument.....	85
Final Decree .....	87
Notice of Appeal.....	89
Petition of Appeal.....	90
Answer of Caroline Caldwell.....	92
Answer to Petition of Appeal of Gottfried Sohns and Wife.....	93
Exhibit on Part of Complainant.....	94
Exhibit on Part of Defendant.....	98

### WITNESSES.

John Dimler:

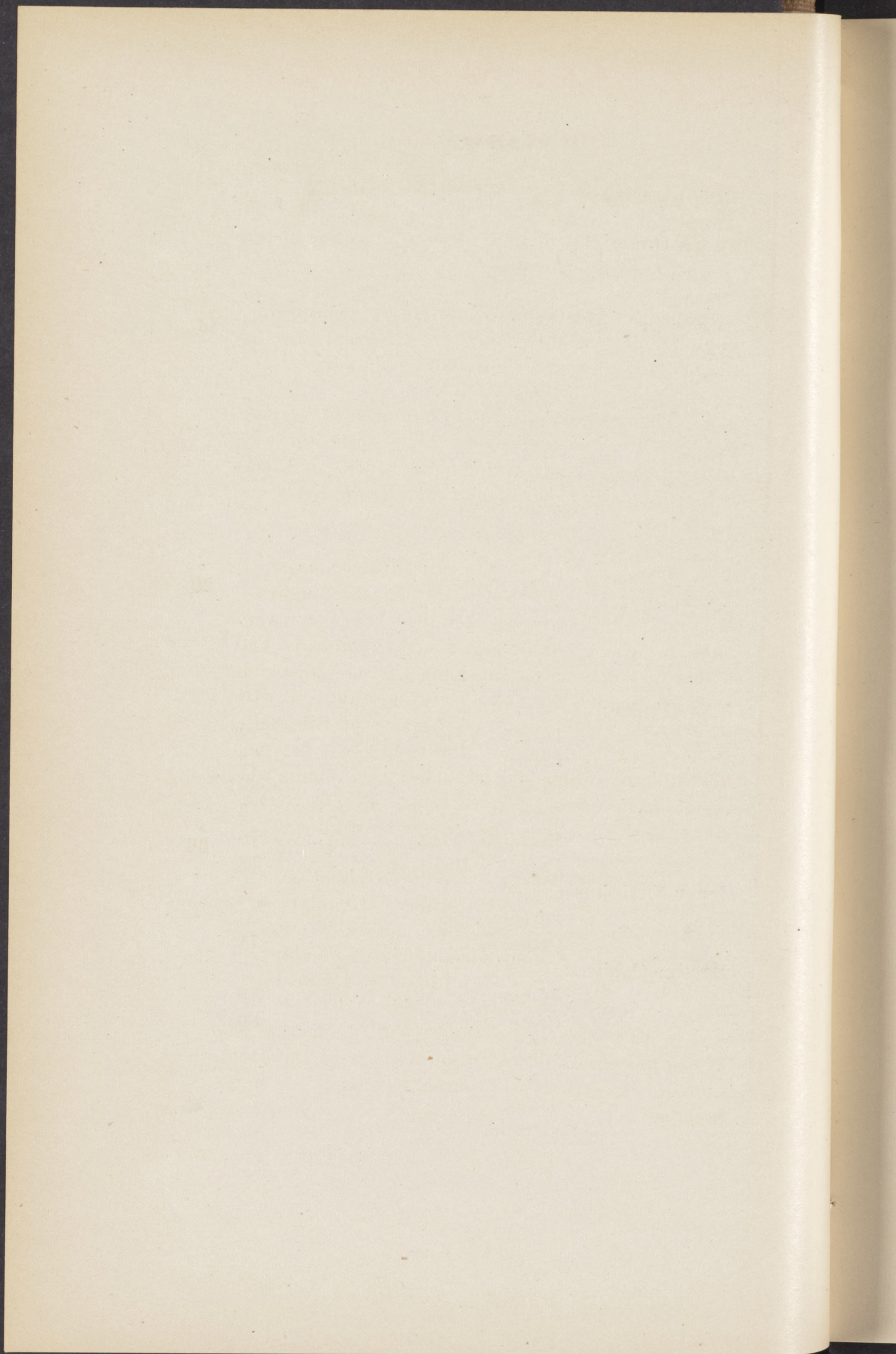
Direct .....	22
Cross .....	32
Redirect .....	68-69
Recross .....	69
Recalled Cross .....	78
Recalled Redirect .....	78

Henry J. Holmes:

Direct .....	69
Cross .....	71

Caroline Caldwell:

Direct .....	79
Cross .....	80



## Bill of Complaint.

### IN CHANCERY OF NEW JERSEY.

To his Honor Edwin R. Walker, Chancellor of the  
State of New Jersey :

Respectfully shows unto your Honor, your orator,  
John Dimler of the Town of Westfield, in the  
County of Union and State of New Jersey : 10

1. That on the ninth day of January, in the year  
eighteen hundred and sixty-four, your orator was  
married to one Barbara Sohns in the City of Eliza-  
beth, in the said County and State, by the Reverend  
Y. O. Lohr.

2. That your orator's said wife, above mentioned,  
was born on the fourth day of November, eighteen  
hundred and thirty-seven, and died February twen-  
tieth, nineteen hundred and eight, intestate and  
without issue, leaving surviving her, her husband,  
your orator, and her niece, Caroline Caldwell, wife  
of William H. Caldwell, of the City of Elizabeth,  
New Jersey, a daughter of her deceased brother,  
John Sohns, and her brother, Gottfried Sohns, who  
resides in Roxberg, Duchy of Baden, Empire of Ger-  
many, her only heirs at law and next of kin. 20

3. That on February first, eighteen hundred and  
ninety-three, one James B. Bacon of Brooklyn, New  
York, became the owner of the premises, hereinafter  
described, subject to a mortgage dated on the said  
February first and made by him to the Mutual Bene-  
fit Life Insurance Company of Newark, New Jer-  
sey, to secure to them the payment of the sum of  
fifteen hundred dollars, in one year from the date  
thereof, as part of the purchase money of said  
premises. 30 40

*Bill of Complaint*

4. That on or about the first day of April, eighteen hundred and ninety-six, your orator purchased for the sum of twenty-two hundred (\$2200) dollars from the said James B. Bacon, who was a widower at that time, the premises above mentioned and particularly described as follows:

10

BEGINNING at the Northeasterly side of Elmer Street at a point therein distant fifty-five feet Northwesterly from the corner of the same and North Avenue; thence running along said side of Elmer Street, North, forty-two degrees, twenty-three minutes West, sixty-five feet; thence North forty-seven degrees, thirty-seven minutes East, one hundred and twenty-five feet; thence South, forty-two degrees twenty-three minutes East, sixty-five feet to line of land of Robert Woodruff, Jr.; thence along his line South forty-seven degrees, thirty-seven minutes West, one hundred and twenty-five feet to said line of Elmer Street, and place of beginning. For the sum of twenty-two hundred (\$2200) dollars; seven hundred dollars thereof by paying to said James B. Bacon that amount in cash upon the delivery of the deed and fifteen hundred dollars by taking a deed of said premises, subject to a mortgage of that amount then on said premises made by James B. Bacon to the Mutual Benefit Life Insurance Company of Newark, New Jersey. That the said deed was acknowledged on the same day and recorded on April 8th, 1896, in Book 306 of Deeds for Union County on page 1, etc.

20

30

5. That at the time of purchase of the same your orator, having no children and having only his wife, directed the lawyer who prepared the deed for Mr. Bacon, the grantor, to put the property in the name of himself and wife, so that in case of the death of

40

*Bill of Complaint*

either, the survivor would take the whole property; and he was informed that that course had been taken and that the property was in the name of both husband and wife and left the said deed with the lawyer to be recorded and supposed that that course had been pursued, until he was informed very lately by Mr. Levi E. Hart, a lawyer of Westfield, that the deed was in his wife's name alone and no mention was made of him. That your orator's reason for having the deed in the names of himself and wife was, because they had no children, and the lawyer who prepared the deed said that if that course was taken there would be no necessity for a will to be made by either; that by the death of one the property would go to the other. 10

6. That your orator further says, that although the said deed was made out in the name of his said wife, Barbara Dimler, as he is informed, yet she wasn't present at the time of the completion of the purchase, nor did she ever pay any money for the said premises, nor in any way interest herself in the same, but that your orator took absolute possession and control. 20

7. And your orator further says, that at the time of the purchase of said premises by him he paid the sum of seven hundred (\$700) dollars down as part payment of the purchase price and assumed the payment of the fifteen hundred (\$1500) dollars mortgage heretofore given by the said Bacon to the Mutual Benefit Life Insurance Company; and later on and on October 21, 1901, paid the said mortgage above from his own funds. And that the said property, from the time of the purchase of the same and until the death of your orator's said wife, has always been treated, regarded and held as the prop- 30 40

*Bill of Complaint*

erty of both; and since the death of your orator's said wife, as his property.

10 8. And your orator further says, that his said wife has frequently said that her husband had the same right to the property as she had, and after her death the same was to be his.

9. And your orator further says, that after the said purchase your orator and his said wife occupied a part of said premises and rented out the other part thereof until her said death; and since then your orator has resided on the said premises claiming and exercising ownership.

20 10. And your orator further says, that after the death of his said wife he continued to live in a part of said premises the whole of which consisted of the lot of land and a double house, and rented the other part thereof; that the same was in a dilapidated condition and needed considerable repairs to make it fit for occupancy; that your orator believing himself to be the owner of the same, after the death of his said wife, spent large sums of money in putting said premises in a tenantable condition and keeping them so, and in paying the taxes and assessments upon said premises and insuring the same.

30

11. And your orator further says, that in the month of November of this year, desiring to get a loan on the said property, he applied to one Levi E. Hart, a member of the bar of this State, living at the Town of Westfield, aforesaid, for the same, and was later informed by said Hart that, after an examination of the records of Union County, made

40 by him, he found that your orator's name did not

*Bill of Complaint*

appear in the deed as recorded, and that by the records he did not appear to be the owner of the premises; and that afterwards your orator consulted Mr. William R. Wilson, a member of the bar of this State, who, after examination, also informed him that his examination revealed the fact that his name had not been mentioned in the deed.

10

12. And your orator further shows that it was never intended, between his said wife and your orator, that his wife should become the absolute owner of the same, but that the said deed should be in both their names and after the death of one the survivor should take all; and that the said property was not conveyed to said wife as a gift or advancement to her, nor was there, at the time of said purchase or afterwards, any agreement or understanding between your orator and his said wife, that said property was to be the property of his said wife, or that the same should be a gift or settlement upon her but that it was to be held by them jointly so that in case one died the other was to have it.

20

13. And your orator further says, that his said wife was a German, as he himself is, and were unacquainted with the laws of this country regarding the holding of land; and your orator relying on the statement as to the law by the lawyer who prepared the conveyance, at the time of making the same that the said deed would be made out in the joint names of himself and wife, and that the same was in their joint names, paid the purchase money and every other payment that was made on the property from his own funds, and did not know, until informed by Mr. Hart, as above stated, but that he was the owner of the said property and that the deed was in the joint names of himself and wife.

30

40

*Bill of Complaint*

10 And your orator prays that the said deed may be corrected and made to conform to the agreement made so as to express the real contract between the parties and especially that the mistake so alleged to have been made be corrected so that your orator may be decreed to be the owner in fee of said premises as it was understood and agreed he should be.

All which actings and doings and pretences are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises.

20 In consideration whereof and for as much as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable.

30 To the end therefore that the said Caroline Caldwell and William H. Caldwell, her husband, and Gottfried Sohns and Mrs. Gottfried Sohns, his wife, may, without oath, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid and that as fully and particularly as if the same were hereby repeated, and they and every of them distinctly interrogated thereto and that the said deed may be corrected and made to conform to the agreement made at the time of the purchase of said property by said John Dimler, your orator, so as to express the real contract; and especially that the mistake be corrected so that your orator may be decreed to hold the said land and premises in fee.

And that your orator may have such further and other relief in the premises as to your Honor shall

*Answer of Caroline Caldwell and William H. Caldwell*

seem meet and agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Caroline Caldwell and William H. Caldwell, her husband, and Gottfried Sohns and Mrs. Gottfried Sohns, his wife, commanding them and each of them by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, to stand to, abide by and perform such order and decree herein, as to his Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator will ever pray, etc.

WILLIAM R. WILSON,  
Solicitor for and of Counsel  
with Complainant.

**Answer of Caroline Caldwell and  
William H. Caldwell.**

The joint answer of Caroline Caldwell and William H. Caldwell, her husband, to the bill of complaint of John Dimler, the complainant.

These defendants answering the bill of complaint of the complainant say:

1. They admit the matters and things set fourth in paragraph one of said bill.

2. They admit the matters and things set forth in paragraph two of said bill of complaint.

*Answer of Caroline Caldwell and William H. Caldwell*

3. They admit the matters and things set forth in paragraph three of said bill of complaint.

10 4. They deny that on or about the first day of April eighteen hundred and ninety-six, or at any time, the complainant purchased the premises described in paragraph four of said bill of complaint as therein alleged, from said James B. Bacon or any other person, but they admit that a deed of conveyance bearing date on the first day of April, eighteen hundred and ninety-six, was made and executed by the said James B. Bacon to Barbara Dimler, the ancestor of the said Caroline Caldwell, which was duly acknowledged on the same day and  
20 on the eighth day of April, eighteen hundred and ninety-six was recorded in the Register's office in book 306 of deeds for Union County on pages 1 &c.

5. They deny all the matters and things set forth in paragraph five of the complainant's bill of complaint, except so far as it alleges that the said complainant and his wife, Barbara, had no children, and insist that ever since the acquisition of said lands and premises by the said Barbara Dimler the said John Dimler knew that the title thereto  
30 was, by the deed of conveyance of James B. Bacon hereinabove mentioned, vested in the said Barbara Dimler.

6. They deny the matters and things set forth in the sixth paragraph of the complainant's bill of complaint, and insist that the said Barbara Dimler, as hereinafter mentioned, purchased the said premises with her own separate and private estate.

*Answer of Caroline Caldwell and William H.  
Caldwell*

7. They deny all and singular the matters and things set forth in the seventh paragraph of the complainant's bill of complaint.

8. They are informed, and verily believed it to be true, that the said Barbara Dimler claimed to be the sole and absolute owner of the said property and, therefore, they deny the matters and things set forth in the eighth paragraph of the complainant's bill of complaint. 10

9. They admit that after the purchase of the premises mentioned in the bill of complaint, Barbara Dimler and the complainant occupied a part thereof and rented the balance, and that since the death of the said Barbara Dimler the complainant has continued in possession of said premises as alleged in the ninth paragraph of the complainant's bill of complaint, but the other matters and things therein set forth they deny. 20

10. They admit that after the death of his wife the complainant continued to live in a part of the premises mentioned in the bill of complaint, which consisted of a lot of land and a double house situated thereon, and that he rented the other part, but they deny that the property was in a dilapidated condition and needed considerable repairs to make it fit for occupancy, and that the complainant spent large sums of money to put it in a tenantable condition and keep it so, and in paying taxes and assessments upon said premises, and insuring the same, as alleged in the tenth paragraph of the complainant's bill of complaint. 30

*Answer of Caroline Caldwell and William H. Caldwell*

10 11. As to the matters and things set forth in the eleventh paragraph of the complainant's bill of complaint, the defendants have not sufficient knowledge whereon to found a belief and, therefore, neither expressly admit nor deny the same, but leave the complainant to such proof thereof as he is advised is proper.

20 12. They deny all of the matters and things contained in the twelfth paragraph of the complainant's bill of complaint, and insist that the complainant was in no wise concerned in the purchase or acquisition of the said premises by the said Barbara Dimler, but that she, as hereinafter set forth, purchased the same with her own funds and separate estate, and became and was and continued at her death to be the sole, absolute and unconditional owner in fee simple of the said premises, subject to no claims and demands whatsoever of the said complainant, John Dimler.

30 13. They admit that the complainant and his wife, Barbara Dimler, were Germans, but deny that they were unacquainted with the laws of this country regarding the holding of land and they deny all the other matters and things set forth and alleged in the thirteenth paragraph of the complainant's bill of complaint, including the statement therein that the complainant paid the purchase money for said premises and made every other payment on the property from his own funds and that he was ignorant until informed by Mr. Hart as in said bill of complaint set forth, that the title to the premises above mentioned was in the name of Barbara Dimler.

40

*Answer of Caroline Caldwell and William H. Caldwell*

And these defendants further answering say that on or about the first day of April, eighteen hundred and ninety-six, Barbara Dimler, the ancestor of the said Caroline Caldwell, purchased the premises particularly described in the bill of complaint from the said James B. Bacon, paying therefor the sum of twenty-two hundred dollars in the manner following:

Seven hundred dollars (\$700.00) upon the delivery of the deed of conveyance hereinafter mentioned, and fifteen hundred dollars (\$1,500.00) by the assumption of a mortgage for that amount, covering said property and made and executed by the said James B. Bacon, and that by his deed of conveyance bearing date on the first day of April, eighteen hundred and ninety-six, recorded in the Register's office of the County of Union, in book 306 of deeds for said County on pages 1 &c., said James B. Bacon did grant and convey unto the said Barbara Dimler, her heirs and assigns forever, the premises mentioned and described in the bill of complaint; and thereupon the said Barbara Dimler became the sole and absolute owner of said premises in fee simple.

These defendants further answering say that the said sum of seven hundred dollars (\$700.00) so paid by the said Barbara Dimler on account of the purchase money of said premises was taken from her separate estate and was her money and the aforementioned mortgage, which was on or about the twenty-first day of October, nineteen hundred and one, paid and satisfied was so paid and satisfied out of her own funds and separate estate, and that after the delivery of said deed of conveyance to the said Barbara Dimler, she entered into and took posses-

*Answer of Caroline Caldwell and William H. Caldwell*

10 sion of said premises and from then on until the time of her death always received and collected the rents, issues and profits thereof, paid the taxes and assessments levied against the same by the Town of Westfield, paid for the proper insuring of said premises against loss by fire, the interest on the mortgage aforementioned, and for all repairs made thereon out of her own separate estate and was by the complainant and all other persons considered to be the sole, absolute and unconditional owner of said premises.

20 These defendants further answering say that the said John Dimler knew that the said Barbara Dimler was about to purchase the said premises and knew that she paid for the same and received a deed therefor in her own name and that ever since the execution and delivery of said deed of conveyance, said John Dimler knew that the title to said premises was vested in his said wife, Barbara Dimler, that he was not mentioned in said deed of conveyance, and that he had no interest in said premises.

30 Defendants further answering say that if said John Dimler ever had any equitable claim to the ownership of any interest in the said premises, and any right to have the deed of conveyance hereinabove mentioned from the said James B. Bacon to the said Barbara Dimler reformed so as to create a tenancy by the entirety in favor of him and Barbara Dimler, such rights have been lost through the laches of the said John Dimler and he ought not now to be heard to assert them.

40 And these defendants further answering deny that there was any understanding or agreement between the said Barbara Dimler and John Dimler,

*Answer of Caroline Caldwell and William H. Caldwell*

complainant, whereby the latter was to become the owner of the premises mentioned in the bill of complaint on the death of the said Barbara Dimler, or whereby he, the said complainant was to have any right or interest in the said premises of any character during the life time of the said Barbara Dimler or after her death, and insist that the said premises were at all times free of all claims and demands of any character in favor of the said John Dimler, and that at the time of the decease of the said Barbara Dimler, the said John Dimler had no right title or interest in and to the said premises, and insist that the said premises descended by reason of the intestacy of the said Barbara Dimler, to this defendant, Caroline Caldwell, and the defendant, Gotfried Sohns as tenants in common, the interest therein of the defendant Caroline Caldwell, being subject to the right of courtesy initiate of the defendant, William H. Caldwell, her husband.

These defendants further answering say that they deny that there was any agreement or understanding between the said James B. Bacon, Barbara Dimler and John Dimler, or any two of them whereby the deed of conveyance from the said James B. Bacon hereinabove mentioned was to be so drawn as to grant the premises mentioned and described in the bill of complaint to the said John Dimler and Barbara Dimler and that said deed was so to be drawn, that the title passing thereunder upon the decease of one of the grantees should vest in the survivor, but insist that the understanding and agreement for the transfer of said premises was fairly and truly executed by the delivery of the deed hereinbefore mentioned.

These defendants further answering say that the

*Answer of Gottfried Sohns and Christine Sohns*

10 complainant seeks a reformation of the deed made and executed by James B. Bacon to the said Barbara Dimler in accordance with the prayer in his bill of complaint set forth and insist that the said James B. Bacon, or such person as shall represent him if he be deceased, should be made a party defendant to this suit, and that without the joinder of the said James B. Bacon, or his representative, this court cannot decree the relief sought by the complainant.

20 These defendants further answering say that since the death of the said Barbara Dimler, the said John Dimler has been in the occupation and possession of the said lands and premises and has received and collected the rents, issues and profits thereof, and they pray that the said John Dimler may be compelled by the order of this court to account to them for the same, and to pay to the defendant, Caroline Caldwell, so much thereof as by law she is entitled to.

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

30 SIDNEY U. ELDRIDGE,  
Solicitor and of Counsel with  
defendants, Caroline Caldwell  
and William H. Caldwell.

---

**Answer of Gottfried Sohns and Christine Sohns.**

40 The joint answer of Gottfried Sohns and Christine Sohns, his wife, to the bill of complaint of John Dimler and complainant.

*Answer of Gottfried Sohns and Christine Sohns*

These defendants answering the bill of complaint of the complainant say :

1. They admit the matters and things set forth in paragraph one of said bill.

2. They admit the matters and things set forth in paragraph two of said bill of complaint. 10

3. They admit the matters and things set forth in paragraph three of said bill of complaint.

4. They deny that on or about the first day of April, eighteen hundred and ninety-six, or at any time, the complainant purchased the premises described in paragraph four of said bill of complaint as therein alleged, from said James B. Bacon or any other person, but they admit that a deed of conveyance bearing date on the first day of April, eighteen hundred and ninety-six, was made and executed by the said James B. Bacon to Barbara Dimler, the ancestor of the said Caroline Caldwell, which was duly acknowledged on the same day and on the eighth day of April, eighteen hundred and ninety-six, was recorded in the Register's office in Book 306 of Deeds for Union County on page, 1, etc. 20 30

5. They deny all the matters and things set forth in paragraph five of the complainant's bill of complaint, except so far as it alleges that the said complainant and his wife, Barbara, had no children, and insist that ever since the acquisition of said lands and premises by the said Barbara Dimler the said John Dimler knew that the title thereto was, by the deed of conveyance to James B. Bacon here- 40

*Answer of Gottfried Sohns and Christine Sohns*

inabove mentioned, vested in the said Barbara Dimler.

10 6. They deny the matters and things set forth in the sixth paragraph of the complainant's bill of complaint, and insist that the said Barbara Dimler, as hereinafter mentioned, purchased the said premises with her own separate and private estate.

7. They deny all and singular the matters and things set forth in the seventh paragraph of the complainant's bill of complaint.

20 8. They are informed, and verily believe it to be true, that the said Barbara Dimler claimed to be the sole and absolute owner of the said property and, therefore, they deny the matters and things set forth in the eighth paragraph of the complainant's bill of complaint.

30 9. They admit that after the purchase of the premises mentioned in the bill of complaint, Barbara Dimler and the complainant occupied a part thereof and rented the balance, and that since the death of the said Barbara Dimler the complainant has continued in possession of said premises as alleged in the ninth paragraph of the complainant's bill of complaint, but the other matters and things therein set forth they deny.

40 10. They admit that after the death of his wife the complainant continued to live in a part of the premises mentioned in the bill of complaint, which consisted of a lot of land and a double house situated thereon, and that he rented the other part, but they deny that the property was in a dilapidated condition and needed considerable repairs to make

*Answer of Gottfried Sohns and Christine Sohns*

it fit for occupancy, and that the complainant spent large sums of money to put it in a tenantable condition and keep it so, and in paying taxes and assessments upon said premises, insuring the same, as alleged in the tenth paragraph of the complainant's bill of complaint.

10

11. As to the matters and things set forth in the eleventh paragraph of the complainant's bill of complaint, the defendants have not sufficient knowledge whereon to found a belief, and, therefore, neither expressly admit nor deny the same, but leave the complainant to such proof thereof as he is advised is proper.

12. They deny all of the matters and things contained in the twelfth paragraph of the complainant's bill of complaint, and insist that the complainant was in no wise concerned in the purchase or acquisition of the said premises by the said Barbara Dimler, but that she, as hereinafter set forth, purchased the same with her own funds and separate estate, and became and was, and continued at her death to be, the sole, absolute and unconditional owner in fee simple of the said premises, subject to no claims and demands whatsoever of the said complainant, John Dimler.

20

30

13. They admit that the complainant and his wife, Barbara Dimler, were Germans, but deny that they were unacquainted with the laws of this country regarding the holding of land, and they deny all the other matters and things set forth and alleged in the thirteenth paragraph of the complainant's bill of complaint, including the statement therein that the complainant paid the purchase money for said premises and made every other pay-

40

*Answer of Gottfried Sohns and Christine Sohns*

ment on the property from his own funds, and that he was ignorant until informed by Mr. Hart as in said bill of complaint set forth, that the title to the premises above mentioned was in the name of Barbara Dimler.

10 And these defendants further answering say that on or about the first day of April, eighteen hundred and ninety-six, Barbara Dimler, the ancestor of the said Caroline Caldwell, purchased the premises particularly described in the bill of complaint from the said James B. Bacon, paying therefor the sum of twenty-two hundred dollars in the manner following:

20 Seven hundred dollars (\$700) upon the delivery of the deed of conveyance hereinafter mentioned, and fifteen hundred dollars (\$1,500) by the assumption of a mortgage for that amount, covering said property, and made and executed by the said James B. Bacon, and that by his deed of conveyance bearing date on the first day of April, eighteen hundred and ninety-six, recorded in the Register's office of the County of Union, in Book 306 of Deeds for said County on pages, 1, etc., said James B. Bacon did grant and convey unto the said Barbara Dimler, her heirs and assigns forever, the premises mentioned and described in the bill of complaint; and thereupon the said Barbara Dimler became the sole and absolute owner of said premises in fee simple.

30

These defendants further answering say that the said sum of seven hundred dollars (\$700) so paid by the said Barbara Dimler on account of the purchase money of said premises was taken from her separate estate and was her money and the aforementioned mortgage, which was on or about the twenty-first day of October, nineteen hundred and

40

*Answer of Gottfried Sohns and Christine Sohns*

one, paid and satisfied, was so paid and satisfied out of her own funds and separate estate, and that after the delivery of said deed of conveyance to the said Barbara Dimler, she entered into and took possession of said premises and from then on until the time of her death always received and collected the rents, issues and profits thereof, paid the taxes and assessments levied against the same by the Town of Westfield, paid for the proper insuring of said premises against loss by fire, the interest on the mortgage aforementioned, and for all repairs made thereon out of her own separate estate and was by the complainant and all other persons considered to be the sole, absolute and unconditional owner of said premises, and that being so the owner of said lands and premises and no provisions or agreements alleged to have been made by the said Barbara Dimler can be effective or valid or in anywise binding upon these defendants, except only in so far as they are in writing in the manner provided for by the statute of frauds.

These defendants further answering say that the said John Dimler knew that the said Barbara Dimlar was about to purchase the said premises and knew that she paid for the same and received a deed therefor in her own name and that ever since the execution and delivery of said deed of conveyance said John Dimler knew that the title to said premises was vested in his said wife, Barbara Dimler, that he was not mentioned in said deed of conveyance, and that he had no interest in said premises.

Defendants further answering say that if said John Dimler ever had any equitable claim to the ownership or any interest in the said premises, and any right to have the deed of conveyance hereinabove mentioned from the said James B. Bacon to

10

20

30

40

*Answer of Gottfried Sohns and Christine Sohns*

the said Barbara Dimler reformed so as to create a tenancy by the entirety in favor of him and Barbara Dimler, such rights have been lost through the laches of the said John Dimler and he ought not now to be heard to assert them.

10 And these defendants further answering insist that if the said John Dimler did in fact make any payment in connection with the purchase and maintenance of the said lands, such payments were made by him for his wife and as an unconditional gift to her.

20 And these defendants further answering deny that there was any understanding or agreement between the said Barbara Dimler and John Dimler, complainant, whereby the latter was to become the owner of the premises mentioned in the bill of complaint on the death of the said Barbara Dimler, or whereby he, the said complainant, was to have any right or interest in the said premises of any character during the lifetime of the said Barbara Dimler or after her death, and insist that the said premises were at all times free of all claims and demands of any character in favor of the said John Dimler, and that at the time of the decease of the said Barbara Dimler, the said John Dimler had no right, title or interest in and to the said premises, and  
30 insist that the said premises descended by reason of the intestacy of the said Barbara Dimler, to this defendant, Caroline Caldwell, and the defendant, Gottfried Sohns, as tenants in common, the interest therein of the defendant, Caroline Caldwell, being subject to the right of courtesy initiate of the defendant, William H. Caldwell, her husband.

40 These defendants, further answering, say that they deny that there was any agreement or understanding between the said James B. Bacon, Barbara

*Answer of Gottfried Sohns and Christine Sohns*

Dimler and John Dimler, or any two of them whereby the deed of conveyance from the said James B. Bacon hereinabove mentioned was to be so drawn as to grant the premises mentioned and described in the bill of complaint to the said John Dimler and Barbara Dimler, and that said deed was so to be drawn, that the title passing thereunder upon the decease of one of the grantees should vest in the survivor, but insist that the understanding and agreement for the transfer of said premises was fairly and truly executed by the delivery of the deed hereinabove mentioned.

10

These defendants further answering say that the complainant seeks a reformation of the deed made and executed by James B. Bacon to the said Barbara Dimler in accordance with the prayer in his bill of complaint set forth and insist that the said James B. Bacon or such person as shall represent him if he be deceased, should be made a party defendant to this suit, and that without the joinder of the said James B. Bacon, or his representative, this court cannot decree the relief sought by the complainant.

20

These defendants, further answering, say that since the death of the said Barbara Dimler, the said John Dimler has been in the occupation and possession of the said lands and premises and has received and collected the rents, issues and profits thereof, and they pray that the said John Dimler may be compelled by the order of this court to account to them for the same, and to pay to these defendants, Gottfried Sohns and Christine Sohns, his wife, so much thereof as by law they are entitled to.

30

And these defendants humbly pray to be hence

40

*John Dimler—Direct*

dismissed with their reasonable costs and charges  
in this behalf most wrongfully sustained.

LOUIS F. ZIEGLER,

Solicitor and of counsel with  
defendants Gottfried Sohns and  
Christine Sohns, his wife.

10

**Testimony.**

IN CHANCERY OF NEW JERSEY.

20

Between JOHN DIMLER, Complainant,  and  CAROLINE CALDWELL, <i>et als</i> , Defendants.
---

Transcript of shorthand notes of testimony and  
proceedings taken in the above entitled cause be-  
fore Hon. John R. Emery, Vice Chancellor, at the  
Chancery Chambers, Newark, New Jersey, on June  
23, 1914.

30 Appearances:

MR. WILLIAM R. WILSON for complainant.

MR. SIDNEY W. ELDRIDGE for defendant,  
Caroline Caldwe.l.

MR. LOUIS A. ZIEGLER for defendants Gott-  
fried Sohns and wife.

JOHN DIMLER, sworn for complainant.

*Direct examination by Mr. Wilson:*

40 Q. Where do you live? A. 235 Elmer Street,  
Westfield, New Jersey.

*John Dimler—Direct*

Q. You have been married A. Yes, sir.

Q. What was the name of your wife? A. Barbara Dimler.

Q. Is she alive or dead? A. She is dead.

Q. What was her maiden name? A. Barbara Sohns.

Q. When were you married to her? A. 1864.

Q. In this country? A. Yes, in Elizabeth, New Jersey.

Q. You are a native of what country? A. Windenburg, Germany.

Q. And your wife? A. Baden, Germany.

Q. When did you go to live at Westfield, before or after you were married? A. After, 1888; I moved out there in November, when the blizzard was.

Q. Were you the owner of any property in Elizabeth before you moved to Westfield? A. Yes, I owned a bakery there.

Q. On what street? A. Fulton street.

Q. That is at Elizabethport? A. Yes.

Q. How long did you own that building? A. I owned that building until 1889.

Q. Do you recall when you bought it; how long had you owned it about? A. '65 or '66 I bought the place.

Q. You owned that up to the time you sold it. What year did you sell that bakery in Elizabethport? A. 1889, about that time.

Q. And at the time of the sale of the bakery, where were you living? A. In Westfield, on the farm.

Q. And to whom did the farm belong? A. E. G. Brown.

Q. Did you own it or rent it? A. I bought it; it was in the hands of—he was dead and the heirs sold it—the lawyer sold it to me.

10

20

30

40

*John Dimler—Direct*

Q. What did you pay for it? A. \$3,300 or \$3,400.

Q. How much did you pay down on it? A. \$900.

Q. Where did you get that money from? A. From the bakery.

10 Q. From the sale of the bakery? A. We had that. I saved it.

Q. How much mortgage was left on the farm? A. \$2,000; that makes \$2,900 I paid altogether; 18 acres I bought extra; \$2,900 I paid for the farm and the 18 acres should go with it, so they put it down to me for \$400, made \$3,300 altogether.

Q. How much altogether? A. About 49 acres.

Q. Then, Mr. Dimler, how long did you live on the farm? A. Six years.

20 Q. Did you or not dispose of the farm afterwards? A. Not right away; I lived on the farm six years and then I sold it in April.

Q. About what year? A. 1895.

Q. How much money did you get for it? A. \$6,000.

Q. How did you get that money; how was it paid to you? A. I traded a house and \$2,000 cash.

Q. You got a house? A. Then on Livingston street here in Newark, and \$2,000—\$1,000 mortgage and \$1,000 cash.

30 Q. You mean there was a mortgage of \$1,000 where? A. I took a house for \$4,000 and \$2,000 cash, but there was a thousand dollar mortgage on the farm.

Q. And what became of the mortgage on the farm; who paid that off? A. Them folks paid it off and paid me a thousand dollars cash, certified check.

40 Q. You traded your farm off for that house in Newark on Livingston street for \$4,000; was that free and clear? A. That was clear.

*John Dimler—Direct*

Q. And the man that took your farm took it subject to the mortgage for \$1,000 and paid you \$1,000 in cash? A. Yes.

Q. After you sold the farm where did you go to live? A. I went over to Ezra Miller's one year.

Q. Then where did you go to live? A. Then I bought this house. 10

Q. The double house in question? A. Yes.

Q. Where is that located? A. In Elmer street, 235 and 237.

Q. From whom did you buy that house? A. From Mr. Bacon.

Q. How much did you pay him for the house? A. \$2,200.

Q. How did you pay it? A. I paid him \$50 when I bought it and \$650 I paid down when he made the deed. 20

Q. That makes \$700? A. Yes.

Q. And the balance of the property? A. Was mortgaged for \$1,500.

Q. Who held the mortgage? A. The Benefit Life Insurance Company in Newark.

Q. You bought it for \$2,200, you paid \$700 down in two payments, and the mortgage of \$1,500, that was on the property at the time? A. Yes.

Q. Did you afterwards live in this property in question? A. Yes. 30

Q. The \$700 you paid on account to Mr. Bacon at the time you bought the property, where did you get that money from? A. The thousand dollar check, certified check I had in the bank.

Q. What bank? A. Westfield Trust Bank; then my wife wanted a monument that summer, so I made a——

Q. How did you get the money to pay Bacon; where did you get that from? A. I had \$800 in the bank. 40

*John Dimler—Direct*

Q. That was the balance of the money you got from the sale of your farm; was that in your name?

A. Yes.

Q. Was the mortgage of \$1,500 held by the Mutual Benefit Life Insurance Company paid? A. Not at that time.

10

Q. Was it afterwards paid? A. Yes.

Q. By whom? A. By me and my wife.

Q. By you? A. By me.

Q. Where did you get that money? A. I borrowed \$2,000 on the Livingston street house in Newark.

Q. What did you do with that \$2,000 you got?

A. I paid the \$1,500 mortgage off.

20

Q. What did you do with the balance of the money; you kept that yourself? A. No, I bought another house; of course my wife didn't want to live in the double house and she wanted to live single, so I said I buy another house, so I paid \$500 down on that house.

Q. Where was that? A. In Elm street, farther up, three houses farther up.

Q. When you bought the double house, as you say, from Mr. Bacon, did you know where Mr. Bacon lived? A. No; he lived in Brooklyn, I think.

30

Q. Where did you see Mr. Bacon? A. We was out sleighriding and we come back to Westfield and I stopped in the store and there was Mr. Bacon and wanted to sell the property and we wanted to buy one in Westfield, so Mr. Bacon offered the property for sale to Mr. Darsch for \$2,100 if he get the customer—he had advertised all over by all the people, but it was all rotten, no one wanted it, and he said, "Mr. Darsch, if you sell it, but you get more. \$2,100 I want." I went home and told my wife and I said, "I know the property so and so." I went to Darsch again——

40

*John Dimler—Direct*

Q. Did you see Bacon? A. No, I went home and told my wife. I went to Darsch to see if I could buy it off him, and he said, "You had better go down; Mr. Bacon is patching up the holes, and you can buy it off him; I don't want anything to say that you say 'Well, I don't like it,' so it is better you go down and buy it." So I went down and saw Mr. Bacon and he wanted \$2,200. 10

Q. That is, in Westfield, at the house? A. Yes. I said, "Won't you come down?" I heard he want to sell it for \$2,100. He said, "No, I paint everything and had expenses and I don't sell it less than \$2,200." I said, "All right, you give everything in, the water and insurance, fire insurance, too——"

Q. (By the Court) Did you have any written bargain; did you sign any paper? A. No. 20

Q. Then did you and Bacon agree as to the price? A. Yes.

Q. Then what did you do? Did you give Bacon any money? A. Not any then, but I went home and got the \$50.

Q. What did you do when you got the \$50? A. He gave me a receipt, and I paid it. He didn't live at—he came over from Brooklyn and did the work there. 30

Q. And after you paid him the \$50, how soon after that did you pay him the \$650? A. The house was empty; he said, "You can come in it," so we moved in, and then Bacon came over and we went up to that lawyer. 30

Q. Mr. Morrell? A. Yes.

Q. When you went up who went with you? A. Only me and Mr. Bacon.

Q. Did you have a talk with Mr. ——? A. Bacon had everything settled. 40

*John Dimler—Direct*

Q. Was the deed drawn? A. After I paid the money down he drew the deed.

Q. And to whom was the deed drawn? A. The deed was made out to John Dimler.

Q. Who is John Dimler? A. Myself.

10 Q. When the deed was made out, how much money did you say you paid Bacon then? A. \$650.

Q. Was there any talk between Bacon and Morrell and yourself about the thing?

Mr. Eldridge: I object to any transaction with Bacon. It may appear later that Bacon is dead. I want to reserve my right to object if the evidence is incompetent.

20 Court: I will overrule it now. I will admit it subject to your objection.

Q. The time you paid the \$650, was that the day the deed was drawn? A. I guess so, sure.

Q. And was there any conversation about the deed? A. No, not so far, until he read it; he had my name on and then it said "John Dimler," and when it came down by Mr. Bacon, and Mr. Bacon and Mrs. Bacon, then I said, "Put my wife's name in."

30 Q. Put your wife's name in with yours?

Court: That won't do. Tell what you said.

Q. He read that deed and that had your name? A. Yes.

Q. Recall what was said, if you can, when you heard that. A. When he read the deed?

40 Q. And that was made to you; what did you say to anybody about it? A. I said nobody until he read it Mrs. Bacon—Sarah Bacon her name was

*John Dimler—Direct*

called—and then I said, “Put my wife’s name on.”

Q. Was your name in the deed then? A. It was on top.

Q. As near as you recall, that is just what you said to him, “Put my wife’s name on”? A. Yes.

Q. (By the the Court) Was anything further said about your name; was anything said about taking your name out? A. No. 10

Q. What was to become of your name?

Court: You will have to restrict him to what took place, and what was said in the office at the time.

Q. You three were there; what were you led to believe with regard to the deed? 20

Objected to. Objection sustained.

Court: Let him go on and state as fully as he can just all he recalls about it. I think you are entitled to ask him what he supposed when he executed the deed, as to his name still being in. Let him first give as clearly as he can everything that was said about any kind of change in the deed when it was read, and it read his name alone. 30

Q. Do you recall anything else that was said? A. No.

Q. When your name was read out, what was said; was your wife’s name mentioned?

Court: He said, “I told him to put my wife’s name in.”

Q. When you said put your wife’s name in the deed, what else did you say with relation to her name? A. Nobody said anything. 40

*John Dimler—Direct*

Q. What did you say; did you say anything else?

A. I said, "Put my wife's name in"; it was all right to have everything good.

Q. Did you tell the lawyer at that time that you had any children? A. No. I don't know if I told him or not; he didn't ask me.

10

Q. Why did you want the deed put in your name and your wife's name?

Mr. Eldridge: Objected to. He hasn't said he wanted it so.

Court: You may ask him why he wanted his wife's name in the deed.

Witness: She always said, then if anything happen, that her name be in, too.

20

Q. If anything happened, what? A. If I should die.

Q. If you should die what would become of the property? A. Both names be in then.

Q. Why did you want your wife's name in the deed with yourself?

Mr. Eldridge: Objected to.

Court: I will let him answer it. He is asking you now, the deed was read to you and had your name in only; you said, "Put my wife's name in." Now, the question is, why did you want your wife's name in; what did you think at the time that made you say, "I want my wife's name in"?

30

Mr. Eldridge: May I object to that?

Court: Yes.

A. She always said that if I should die, so she want something, too.

40

*John Dimler—Direct*

Q. When the deed was prepared finally and the money was paid over, what became of the deed; whom did you leave it with? A. The lawyer, and told him to search it.

Q. And do what with the deed when he searched it? A. Record it.

Q. (By the Court) He had it put on record; did he give it back, did you get that? A. Yes.

Q. Did you sign the mortgages? A. No, nothing signed.

Q. Then when you had made this deed and given it to the lawyer to have it recorded you were in possession of the property, were you; you were living in the property? A. Yes.

Q. From that time who paid the taxes on the property? A. I did.

Q. Who paid the insurance on the property? A. I did.

Q. Who paid for the repairs on the property? A. I did.

Q. Did your wife ever pay anything at all? A. Not a cent.

Q. Did your wife have any money at all when you married her, to any amount? A. No. I guess we both were stuck.

Q. Then I understand you to say that all the money that went into this property 235 and 237 Elmer Street was your money? A. My money and nobody else.

Q. Do you know Judge Levi Hart who is a resident of Westfield? A. Yes.

Q. When did you find out that the deed was not in your name and your wife's name? A. I wanted to draw a mortgage for \$800 on the house and Mr. Hart made it out.

Q. You went to see Mr. Hart with reference to

*John Dimler—Cross*

getting the money? A. I don't know if I seen Mr. Hart with Mr. Darsch right away; Mr. Darsch told me I can have it.

Q. Did you see Mr. Hart after that? A. Then I told Mr. Hart to make it out.

10 Q. Did Mr. Hart say anything to you about the title at that time? A. Not before he came——

Q. Mr. Hart afterwards told you the title wasn't in your name? A. Yes.

Q. And after Hart told you that, did you see any lawyer? A. I saw you.

Q. Did you ask me to look into the matter for you? A. Yes.

Q. When was that? A. Two years, November, 1912.

20 Q. Was that after your wife died or before? A. My wife was dead. I didn't know anybody that come up and take any hold of me, because I always paid everything.

Q. You were informed by me that the title was not in your name alone? A. Yes.

Q. And you instructed me to file a bill? A. Yes.

*Cross examination by Mr. Eldridge:*

30 Q. You thought because you and your wife didn't have any children you would inherit what property she had, didn't you? A. What I want to inherit property from her? We had it together, the way I thought; we had it together and no one can take hold of it.

Q. You thought that what property your wife owned, you would inherit from her because you had no children; isn't that so? A. I always thought it was mine and I could do what I want.

40 Q. Did you know before your wife's death where

*John Dimler—Cross*

any real estate that stood in her name would descend—would pass on her death?

Mr. Wilson: Objected to; there is no evidence that she had any property in her own name.

Objection overruled.

10

A. I didn't know.

Q. You didn't know where property that stood in her name would go by law? A.—No.

Q. Did you ever ask any lawyer where the property would go if it stood in her name? A. If I asked anybody I would find out, but I didn't ask anybody.

Q. You say you paid off this \$1500 mortgage on the property? A. Yes.

20

Q. Why did you pay it off? A. I lend this, and Bacon always said when he sent the receipts—he never mentioned our names; we only had to take receipts in Mrs. Bacon on my mortgage—"Interest on your mortgage is due, so and so," but never mention our names; so we got kind of mad and I going to loan \$2000, maybe I can sell this property better if I get \$2,000 mortgage on it and paid this off.

Q. Did you tell the Insurance Company that you owned the property mentioned in the bill? A. Mr. Bacon told them that John Dimler is going to buy it and they should sign it over that way.

30

Q. You didn't pay this money yourself, did you? A. The lawyer paid it out of that \$2,000 mortgage what I made.

Q. Paid it to the Insurance Company? A. Yes; I loaned it from the bank downstairs and then he got a check and I told him he shall go there and pay it, and he paid it. I signed the \$2,000 mortgage.

40

*John Dimler—Cross*

Q. Do you recall the lawyer's name? O. Over the bank, Colie & Duffield.

10 Q. Mrs. Dimler had some money when you were married to her? A. Not more than I had—a couple of cents; she had a bed and some white clothes, linen and such things, and I had \$49 and bought a couple of old chairs and a table and a stove, and she bought a light.

Q. How much money did she have? A. I didn't count it.

Q. You didn't know how much she had? A. No, of course not; when we was four weeks married I got out of work and before I got work I owed \$70 to the grocer; how much money she could have for that time, anything? What they want to put such things in for?

20 Q. You bought a little property down on Fulton Street, Elizabeth? A. I paid \$25 down; I should pay \$50.

Q. How much did the property cost you? A. A thousand dollars.

30 Q. Where did you get the thousand dollars to pay for the property? A. I worked for it and paid \$10 a month and the interest and the insurance, and on the Central Railroad I worked five years, and when I had it down to \$500 I add the foundation and raised the house back and put a bakery in front and made \$1500 mortgage.

Q. Do you recall how much money in cash you had paid altogether before you got the mortgage; how much of that had you paid off? A. \$500 I had paid off.

Q. Then you put the bakery up and borrowed how much? A. \$1500 for a whole year and then I had \$1000 notes.

40 Q. Besides the \$1500? A. Yes, \$3000 altogether.

*John Dimler—Cross*

Q. You paid the notes? A. Yes.

Q. You went into the bakery business at that time? A. Yes.

Q. Did your wife help in the business? A. Sure.

Q. What did she do; what part of the work did she do? A. Cooking and attending the store. 10

Q. She did that up to the time you sold the business, didn't she? A. Yes.

Q. Did you have a bank account in those days? A. No.

Q. Who had charge of the money that belonged to the partnership, from the business? A. We counted it every night, both of us.

Q. Who had possession of it? A. Both of us had charge; I was in the bakery and she attended the store and did the cooking. 20

Q. You were virtually partners in this business?

Objected to. Objection sustained.

Q. You both were working in the business and the money belonged to both of you? A. Sure.

Q. Did you ever make any division of the money you made in this bakery business;; did you ever divide it with your wife? A. No, never did.

Q. So long as you kept that bakery there did you keep any bank account? A. No, not at that time. 30

Q. Mrs. Caldwell lived with you for a time, didn't she? A. Yes, I had her come from Germany.

Q. For how many years? A. She was eleven years old, and she was there and two boys that came from Germany; I sent the ticket out.

Q. What was her name? A. Sohns before she was married, a daughter of my wife's brother.

Q. You sent for her to come from Germany? A. Yes, and her two brothers. 40

*John Dimler—Cross*

Q. What was her age when she come over? A. About twelve years.

Q. How about the boys? A. One was sixteen, the humpback, and the other was six years old.

10 Q. They all came to live with you? A. Yes, and I charged nothing.

Q. How long did Mrs. Caldwell live with you? A. A while until she got a little fixed up and then she lived out in Elizabeth.

Q. Went out to work? A. Yes, lived out; she thought that she could learn English.

Q. She lived with you about five years? A. No.

20 Q. How many years did she live with you? A. She lived there awhile, then she lived out, and then by and by we went in the bakery again, and then she came back three years with us in the bakery again.

Q. How long altogether did she live with you? A. I don't know how long she lived out there; she came right after from Germany and she lived up there.

Q. What did she do in your household, did she do any work there? A. What a girl can do of 12 years.

30 Q. She helped your wife with the housework? A. A little.

Q. When you moved to the farm in Westfield she went with you? A. Yes.

Q. And one of the brothers went along with you? A. One was dead and one went along. The two of them went to Hilton.

40 Q. Then one died afterward? A. Yes; we was then five years on the farm, and Caroline got married about this time. Then we went into the bakery again, me and the two boys, and that was in 1888, when the boy got in the blizzard; he got consumption and died; I had seven doctors for him.

*John Dimler—Cross*

Q. Which was this, the oldest or youngest? A. He was nineteen years old when he died.

Q. What has become of the other one? A. He was the humpback and he was sick, he always had trouble with the weather; he died out there in West-field; he is also dead.

Q. Did they die before or after your wife? A. Both before.

Q. One of those boys worked on the farm for you? A. Sure, what he could do.

Q. Who else helped you on the farm; did you have any other man there? A. Sometimes.

Q. Didn't you leave this farm for the reason that one of the boys had died, and you thought the work was too heavy without his help? A. I could do the work all the same what he done before; what I want to do, me and my wife on the farm alone?

Q. You didn't want to be out there alone? A. No.

Q. When you sold the bakery business did you sell the building along with it? A. No, only sold out.

Q. Sold the business first? A. Three times I was in the bakery business.

Q. When you first acquired this property on Fulton Street, when you turned it into a bakery shop, you ran the business there until what time? A. Three years I ran it myself. I had no one; the children were not there, and then I sold out the bakery, the business.

Q. How much money did you get for the business? A. \$400.

Q. What did you do with this \$400? A. Paid my debts for flour.

Q. Did you use it all to pay your debts? A. I didn't have enough.

10

20

30

40

*John Dimler—Cross*

Q. Then that was not a good business venture?

A. No.

10 Q. How long were you out of the business? A. I was three years out of the business until the lease was up for the three years, then we went in again, when the children was here.

Q. After you went in the business the second time how long did you continue in it? A. Three years every time—no, two years and a half.

Q. Then the second time, after running it for two years and a half, you sold it again? A. Yes.

Q. Whom did you sell it to? A. Jacob Reider, he had a hotel in Elizabeth.

Q. How much did he pay you for it? A. \$400.

20 Q. The same as the man paid you the first time? A. Yes.

Q. What did you do with that? A. All the same—paid my debts.

Q. Didn't you have anything left after paying the bills? A. No.

30 Q. How long were you out of business the second time; you didn't go in the business again until after you went to the farm? A. Three years first; when they were up we went in again, then we went on the farm four years and a half—four years November; April would be five years, but we went in in November.

*By the court:*

Q. Did you go three times to the same bakery?

40 A. The last time we moved out here; the second time we moved to Hilton; the first time I worked in the stove foundry; I worked on the railroad five years and I thought I could work there, but I couldn't get any work, then I went to the stove foundry again and learned moulding so I could go

*John Dimler—Cross*

there any time and get a job, and I went there and we lived in Elizabeth, and by and by the children came, I sent the money, or I borrowed the money on a note, you know, while the children was here; by and by then Caroline went out and got \$2 a month—I guess that is what she got—and in the spring or August we moved in the bakery again; in Hilton we were five years, not quite five years, but Caroline got married about this time, so I went in with the two boys. 10

*By the Court:*

Q. You went in with the two boys in the bakery?  
A. Yes.

Q. Was it at this same place where you carried it on before? A. All the time. 20

Q. You owned that property? A. Yes.

Q. Then the third time you carried it on with the boys in the same place? A. Yes.

Q. How long did you carry it on the third time with the boys? A. Pretty near—over three years.

Q. What happened then? A. Then the boy wanted to go out to the farm. Then I had a chance to buy this; we went out and looked at it and I bought it. 30

*Further examination by Mr. Eldridge:*

Q. You all went out on the farm? A. No, the boy died before we went on the farm, the one boy.

Q. You went on the farm about the time you bought it from the Estate; that was in 1888? A. Yes.

Q. And after that you never went again into the bakery business? A. I sold the bakery out there.

Q. You sold out the building when you went to 40

*John Dimler—Cross*

buy Brown's farm? A. No; I never went in the bakery business again.

10 Q. And after you had been on the farm you sold this place in Fulton street? A. When I went on the farm I had it rented to Mr. Reider, and Mr. Reider was in there and he paid me \$400; he was in there a while, a year and a half; then Mr. Geisler came and asked me how much I want for the property; he want to buy it; I said, "I don't want to go out of my word; I said one time I sell it for \$3,000, and I sell it for \$3,000." It was giving it away.

Q. You three times sold the bakery business. A. Yes.

Q. And the third time to whom did you sell it? A. To Anton Geisler; he is there yet; he paid me \$3,000 for it.

20 Q. That included the business and the building? A. The business was sold; Reider carried on the business and Geisler came and bought the place, and he wouldn't let Geisler in; he got mad and he built then another bakery.

Q. Had you moved at the time you sold the property? A. We were already on the farm; a year after we were on the farm.

30 Q. First did you rent the farm? A. No, I bought it.

Q. How much cash did you get out of the sale of your store on Fulton street A. \$400.

Q. The whole property A. The business was sold and I got out of the whole property \$3,000.

Q. In cash? A. \$1,500 in cash and \$1,500 on mortgage.

40 Q. You only got \$1,500 in cash? A. I think I only got \$1,000; I ought to have had, but when I came up to settle, I didn't have a thousand dollars hardly.

*John Dimler—Cross*

Q. Then there was a mortgage of how much?  
A. \$1,500 on the bakery.

Q. The third time you sold the business you got \$400? A. Yes.

Q. What did you do with that \$400? A. We went on the farm and bought stock for it.

Q. When you say "we," whom do you mean? A. Me and my wife.

Q. That money belonged to you and your wife?  
A. Yes; I got it out of the bakery, it was my own.

Mr. Wilson: That is what he wants to know; had your wife any interest in this money?

Witness: Not as I know of.

Q. Didn't you regard her as a part owner of that money?

Objected to Objection sustained.

Q. Did you and your wife discuss the ownership of this money at all or speak of it. A. We had it together and that is all.

Q. You both worked for it and you both had an interest in it? A. Yes.

Q. You both consulted together before you bought the Westfield farm, isn't that so, you and your wife? A. I want to go on the farm and I say "I buy a farm."

Q. You bought it with the idea that this farm should belong to both of you?

Objected to.

Court: What was done?

Q. You paid \$1,300 in cash for the farm? A. No, \$900.

*John Dimler—Cross*

Q. Did you pay anything for the eighteen acres?

A. I sold it a year after for \$70 less—I should pay \$400, and I found it wasn't worth anything, so Hubert Sayre came over and bought it for \$330.

10 Q. Whom did you pay for the 18 acres; you paid for it? A. Never.

Q. How did you get the deed for it? A. I got it; I give a note, I guess.

Q. Whom did you give the note to? A. Ryder; he sold it to me. He says, "Take the 18 acres"; I said, "I don't want it"; he said, "it is with the property and you had better take it."

Q. Whom did you give the note to for this \$400? A. To Ryder.

20 Q. Then did you pay this note off after you sold the 18 acres? A. No, I sold it; I don't know who paid it.

Q. Who paid the note to Mr. Ryder? A. I don't know how we settled it at that time; he give me \$330 and it was \$400, so I supposed balanced up, and he give it to me without interest for a year and a half; I couldn't pay it, I had nothing.

30 Q. You paid \$900 for the farm you moved onto, and you had \$1,000 in cash that you got clear on the Fulton street property—the bakery and everything— A. When I sold it.

*By the Court:*

Q. Did you buy the farm when you went on it? A. Yes.

*By the Court:*

40 Q. Where did you get the \$900 cash to pay for the farm? A. We had it from money we had saved from the bakery.

*John Dimler—Cross*

Q. Then you had saved that money from the business, you and your wife? A. Yes.

Q. Who had that money; was it in the bank; where was the money; was it in cash or in the bank? A. In gold, all in gold.

Q. You had it with you? A. Yes.

Q. Who had it, who kept the money? A. That was in our bed and I could get it any time and she could get it.

Q. Was it there all the time? A. Sure.

Q. When you sold the Fulton Street property and got \$1,000 in cash, what did you do with that? A. I paid the thousand dollar mortgage off; there was \$2,000 mortgage on the farm.

Q. That was held by Mr. Kingsbury? A. I don't know; some man in New York, in the Drexel Building.

Q. That left you an investment of \$1,900 in the farm? A. Yes.

Q. Beside the \$900 in cash that you had at the house and paid on account when you originally bought the farm—you had some more money beside this \$900? A. I don't know if we had it in gold; I paid it in gold. I had some more, what we lived on from November until spring and bought a cow and horse.

Q. You bought some farming utensils and implements? A. Yes.

Q. And you bought a horse? A. And carriage.

Q. And wagon? A. Yes.

Q. And plow? A. Yes.

Q. And a cow? A. A cow, yes.

Q. And some other things, didn't you? A. Yes, and some hay and straw.

Q. What did all those things cost? A. I don't know how much it cost; I had two horses; I guess the two horses cost me \$60 in Newark.

*John Dimler—Cross*

Q. About how much did all these cost you, do you remember? A. I bought it cheap; I always bought it second-hand; I had to buy it over and over again.

10 Q. Can you recall how much money you paid out that winter and before spring in getting ready to farm? A. I guess we had a couple of hundred.

Q. Your wife did all the housework while you were on the farm? A. When she wasn't sick; she was sick a good deal.

Q. Did you have any hired help in the house? A. No.

20 Q. How many were there in your family while you were living on the farm? A. Only me and my wife and them two boys; sometimes I had a man.

Q. When you first went on the farm how old were these boys? A. One was eleven and the other twenty-two.

Q. Did the boys do anything on the farm? A. Not much; went to Newark with me to sell butter and eggs and such things.

Q. Mrs. Caldwell used to come up there and visit you? A. Sometimes, yes.

30 Q. When she was there did she help with the household work? A. Very little; once in awhile, if my wife was sick; I don't know if she did any housework, because Jacob did all the cooking when my wife was sick, the humpback fellow.

Q. One of her brothers did cooking? A. Yes, and milked the cows. Then I had on the farm a brother of hers; he was on the Poor Farm out in Hilton, in Union, and I had him over the summer, to keep him there.

40 Q. Did you make any money while you were on

*John Dimler—Cross*

the farm? A. No, sir, I did not; I lost money, with all my work. That is, I had none to lose; at the same time, when you count it over, I didn't make none. What I made was on selling—

Q. Did you make a contract to buy this farm in writing? A. There was a gentleman there and he came out and he came down to Elizabeth and sold the farm to us. 10

Q. You didn't sign any paper to buy it? A. No.

Q. When it came time to draw the deed, did you tell the lawyer who was drawing the deed how it should be made out? A. I don't know anything about that.

Q. Do you remember who the lawyer was that made the deed? A. Wasn't that Reider himself? He had some one there; it was in his office; me and Freddie bought it together. 20

Q. Do you remember how you told them to make out the deed? A. No.

Q. Do you remember how the deed was made out? A. I didn't look after that; I trust the man.

Q. Who received the deed after you paid the money; you paid the \$900 to Reider? A. Yes.

Q. After you paid it to Reider who got the deed for the farm? A. I cannot tell you. 30

Q. Did you get the paper, did you get the deed? A. I suppose I had it.

Q. Do you recall whether you examined it or not? A. I didn't look after it.

Q. Did you have a lawyer to look after this matter for you? A. No.

Q. You attended to it yourself? A. I don't know if Mr. Benjamin Ogden looked after it or not, but I cannot say now if he looked after it or I looked after it; I don't know anything about it, who looked after it. 40

*John Dimler—Cross*

Q. How long afterward did you get the deed? A. I don't know.

Q. You did get the deed, didn't you? A. Yes.

Q. Did you look at it after you got it? A. No, not as I know.

10 Q. Did you know to whom the deed was made, in whose name? A. Sure, it was to be made to John Dimler.

Q. Did you examine the paper to find out? A. Not as I know; I cannot tell you if I did or not.

Q. Did you mention your wife's name at the time you bought this farm; did you tell them you wanted the deed made to both of you? A. No, the farm was in my name.

20 Q. It was your understanding with your wife that you both were to have that farm?

Objected to.

Court I will take the evidence.

A. Yes; that was the understading.

Q. Did you looked to see whether that agreement had been carried out when they made the deed? A. What I understood at that time; I didn't understand so much to look after such things; I thought the lawyer does that.

30 Q. You say you didn't have any lawyer? A. I mean that one that draws up the papers, and then have a search made; I had search made, anyhow I guess I must have, I paid \$34.

Q. Do you recall whom you paid \$34 to? A. I think that was Mr. Ogden.

40 Q. Did you make known to Mr. Ogden what you and your wife had agreed upon about this property? A. I didn't make nothing known; I gave him the papers and that is all.

*John Dimler—Cross*

Q. You made a number of mortgages and received a number of deeds in your lifetime, haven't you?

A. Quite some, I guess.

Q. You made a mortgage in 1875 to the Harmony Building and Loan Association for \$600 on the Fulton Street property, and in 1871 you and your wife made a mortgage to William J. Magie and others for \$1,500 on the same property? A. Yes.

10

Q. In 1872 you and your wife made a mortgage to John Rangis for \$600 on the same property, the Fulton Street property? A. That was the flour man, for flour.

Q. You got a deed from the executors of Brown, dated October 15, 1888, to you, for this farm in Westfield? A. Yes.

20

Q. And the eighteen acres? A. Yes.

Q. On April 18, 1889, you and your wife made a mortgage to Benjamin Ogden for \$1,000 on the farm property? A. Yes.

Q. And the proceeds of this mortgage for \$1,000 and the \$1,000 that you got when you sold the Fulton Street property, you used to pay off the \$2,000 mortgage covering the farm; isn't that so? A. I had \$2,000 mortgage on the farm and I paid off \$1,000 with the bakery; I paid the other thousand off when I sold the farm.

30

Q. You paid off the whole mortgage to the New York man of \$2,000 and got some money from Mr. Ogden to help you? A. To help me; I paid the \$2,000 and Ogden took a thousand dollar mortgage.

Q. In 1889 you and your wife conveyed the eighteen acres to Hobart Sayre? A. Yes.

Q. For how much? A. \$330; I lost \$70.

Q. And in 1895 you and your wife conveyed the Westfield farm to Robert Koenig? A. Yes.

40

*John Dimler—Cross*

Q. For \$6,000? A. Yes.

Q. And the date of your deed was May 1, 1895?

A. Yes.

10 Q. In May, 1895, you had a deed from Robert Koenig and wife to yourself for the Livingston Street property in Newark for \$4,000; I understand that this \$4,000 you received on account of the purchase price of the Westfield farm that you conveyed to him at the same time? A. Yes.

Q. Did you get \$4,000 in cash? A. No, a house and \$2,000.

Q. The house was valued at \$4,000 and he gave you \$2,000 in addition? A. Yes.

Q. After you had disposed of the Westfield farm you had \$1,000 in cash? A. Yes.

20 Q. To whom did that money belong? A. I got it.

Q. Did your wife have any interest in that money? A. Not as I know.

Q. Wasn't it money that you and she owned together? A. She owns it?

Mr. Wilson To whom did the money belong?

Witness: It belonged to me.

30 Q. What did you do with the money? A. Put it in the bank.

Q. Did you open your account with this thousand dollars? A. Yes.

Q. In what bank? A. In the Westfield Trust Company.

Q. That was as soon as you got the money? A. I got a certified check for the thousand dollars.

40 Q. And you took it right down to the bank? A. No, I took it up to the bank.

*John Dimler—Cross*

Q. And deposited it? A. Yes.

Q. Whom was this check drawn to? A. To me.

Q. To John Dimler? A. Yes.

Q. Was there any other name in it? A. Not as I know.

Q. You got a bank book? A. I didn't have any; I got one then. 10

Q. How long did you keep the money in the bank? A. A couple of months.

Q. Then what did you do with it? A. I loaned it to Mr. Knapp.

Q. Did he give you a mortgage for it? A. Yes.

Q. How much did you loan to him? A. \$800.

Q. He gave you a mortgage for \$800, did he? A. Yes.

Q. On what property? A. He was building a house. 20

Q. And he gave you a mortgage on a house that he was building? A. Yes.

Q. And did you pay the money over to him at one time? A. No, by checks.

Q. By checks and several payments? A. Yes, four or five payments.

Q. Your own checks? A. Yes.

Q. Who searched the title for you? A. Mr. Morrell. 30

Q. Who searched the title of Mr. Knapp's property so you would know your mortgage was good; did you have a lawyer to look after your loan? A. I don't know.

Mr. Wilson: Who looked after the business for you with the Knapps?

Witness: I did.

Q. Who prepared the papers? A. John Marsh. 40

*John Dimler—Cross*

Q. Did you ask him to prepare the papers? A. Mr. Knapp can tell you; he engaged him, I guess.

Q. Did you see Mr. Marsh making the papers?

A. Me and Mr. Knapp was there together.

10 Q. And John Marsh sat down and wrote the papers up for you? A. Yes.

Q. Did you tell him how you wanted this mortgage made? A. I suppose so.

Q. What did you tell him about it? A. Of course I wanted the mortgage made for \$800.

Q. To whom? A. To Mr. Knapp.

Q. Who was to receive the mortgage? A. Me.

Q. The mortgage was to be put in your name? A. It wasn't put in my name; I didn't know it.

20 Q. Whose name was it put in? A. It was put in Barbara Sohns' name and I didn't know it until——

Q. It was put in Barbara Dimler's name? A. Yes.

Q. Did you tell John Marsh to put that in Barbara Dimler's name? A. That I cannot tell you if I put it in or not, because I never know it was in that name.

Q. How many papers did John Marsh prepare at that time? A. I don't know.

30 Q. Did he prepare a mortgage? A. A mortgage.

Q. And a bond? A. And a bond, I guess.

Q. After he had prepared them what was done with the papers? A. I cannot tell you if it was sent down to court or not.

Q. Did Mr. Knapp sign them while you were there? A. Did he ever sign anything? I don't know.

Q. Did you see Mr. and Mrs. Knapp sign the paper? A. Yes, Mr. Knapp was there, that is so.

40 Q. That was the time that John Marsh prepared

*John Dimler—Cross*

them; he wrote them out while you were there and Mr. and Mrs. Knapp signed them? A. I know Mr. Knapp was there.

Q. Did you tell John Marsh or Mr. Knapp that the mortgage was to be made out to Barbara Dimler, your wife? A. I must have told him.

10

Mr. Wilson: Did you?

Witness: I didn't know at all until this thing came up; I went out and asked if this was in her name or in my name, I didn't know.

Mr. Wilson: What thing came up; this trouble?

Witness: Yes.

Q. You mean you didn't know in whose name the mortgage was until this trouble came up? A. I thought it was in my name.

20

Q. Did you or didn't you tell Mr. Marsh to draw that to your wife? A. I must have told him.

Q. You think you must have told him to draw it to your wife? A. Yes.

Q. You knew that the bond didn't have to be recorded, didn't you? A. I didn't know that.

Q. (Question repeated.) A. No.

30

Q. Did'nt John Marsh give you these papers after he had prepared them and had them signed by Mr. Knapp? A. I suppose he did.

Q. Don't you remember? A. No, I don't remember; he must have given it to me.

Q. You had a place to keep all your papers? A. In a little box.

Q. A tin box? A. Yes.

Q. You kept all your papers together? A. Yes.

40

*John Dimler—Cross*

Q. You opened the box occasionally to look at your papers? A. Sometimes, yes.

Q. Did you keep your money in this box, too? A. No, I didn't keep any money in there.

10 Q. And your wife could go to the box any time she wanted to? A. Sure.

Q. And so could you? A. Yes.

Q. Don't you think that it is likely that John Marsh gave you these papers and you took them home and put them in the box? A. The same night?

Q. Yes. A. Maybe I did.

Q. Who had this mortgage recorded at Elizabeth, do you know? A. I guess John Marsh had it done.

20 Q. Did you take this mortgage to the Clerk's office yourself? A. I think John Marsh; I didn't take it.

Q. Did you have a policy of insurance on this Knapp property? A. I guess he gave me the insurance.

Q. Did you have the policy of insurance? A. I didn't look over it; I didn't know if I had it or not.

Q. You made a good many mortgages before this one was made? A. But none that I give away.

30 Q. You knew that the one who held the mortgage held the insurance policy? A. He gave me the insurance policy, I guess.

Q. Do you recollect whether you examined these papers after John Marsh had drawn them and after they had come into your possession? A. Maybe that was three years before I looked at them. If there was not anything wanted I didn't look after it at all.

Q. Who attended to all the business you were in; you personally attended to it? A. Yes.

40 Q. You had no lawyer to look after this Knapp

*John Dimler—Cross*

business for you? A. John Marsh did; I didn't have any regular lawyer; he went to John Marsh and he drew it.

Q. Tell me, wasn't there some understanding with your wife that she was to have this money that accumulated from the farm? A. No, I guess not. 10

Q. Why was this mortgage put in her name? A. That was a funny thing; I didn't know he put it in her name until I found out myself when Mr. Eckel told me.

Q. When did Mr. Eckel tell you that this mortgage was in your wife's name? A. When this trouble commenced, and then I wanted to see if this mortgage was in my wife's name; I didn't know. 20

Q. You mean to say that you didn't know that this mortgage was in your wife's name until this trouble arose and you discovered that the title to the property in this suit was in your wife's name? A. I went out and looked after that mortgage, to see if it was in her name.

Q. What became of this mortgage of \$800 that Mr. Knapp gave to your wife? A. I sold it to Mr. Eckel.

Q. Emanuel Eckel? A. Yes, and put it in the bank; I put it in my own name in the bank. 30

Q. How long after you got the mortgage did you sell it to Mr. Eckel? A. He paid me twice interest and then I sold it to Mr. Eckel.

Q. Did you hand the papers to Mr. Eckel? A. Yes, I guess so.

Q. He paid you the money personally, didn't he? A. He gave me a check.

Q. And bought the bond and mortgage; did you have the insurance policy there, too? A. Yes. 40

*John Dimler—Cross*

Q. What other paper did you have to give him?

A. I don't know if I had any other paper except what belonged to it.

10 Q. Did you have a paper to transfer the bond and mortgage to Mr. Eckel; did you sign a paper to sell it to him; do you recall whether you signed a paper in order to sell it, or your wife signed a paper? A. No, she didn't sign any paper.

Q. Did you sign any, do you recall? A. I only give him the papers and then he asked the man in the bank, he said, "How is this so and so?" and I said because my wife's name was there and I didn't know, and then Mr. B. Stout from Plainfield was in the bank—the two brothers in the Westfield Trust Bank—he said, "That is all right"—so much as asked if my wife had anything to do with it.

20 Q. He told you the mortgage was drawn to your wife? A. No, he didnt say nothing, but he seen it in the paper.

Q. Who seen it in the paper? A. Eckel.

Q. Did Mr. Eckel say to you that it was drawn to your wife? A. No, they only talked together a little and then in the bank that man said, "It is all right," and he took and give me the money.

30 Q. What did Mr. Morrell have to do with this busines with Mr. Eckel—the lawyer? A. He didn't have nothing to do with it.

Q. Didn't Mr. Morrell draw that paper? A. He drew it but I had the money in the bank before that.

Q. What was done with the paper that Mr. Morrell drew to sell this mortgage to Mr. Eckel? A. Did he draw the paper? Not as I know.

Q. Didn't he draw the paper to transfer the mortgage to Mr. Eckel? A. That I don't know.

40 Q. You dont' know anything about it? A. No, I never knew he had anything to do with this Knapp mortgage.

*John Dimler—Cross*

Q. You knew that Mr. Morrell was representing you at the time—A. Not at that time.

Q. — at the time you bought the Bacon property on Elmer street, mentioned in this case? A. Yes, but this was later.

Q. And this was done at the same time, wasn't it, this transfer to Mr. Eckel? A. Yes. 10

Q. Don't you recall that Mr. Morrell prepared a paper to transfer this mortgage to Mr. Eckel? A. I cannot remember.

Q. You knew at the time that there had to be a paper transferring the mortgage to Mr. Eckel, didn't you? A. Very likely it was, I cannot say; I knew nothing about it.

Q. You knew you didn't sign any paper? A. I don't know if I did or not. I cannot tell you. 20

Q. Your wife never attended to any business herself? A. Not a bit.

Q. And all the business that was done, you did? A. Yes, but I cannot remember if it was just so or so.

Q. Don't you recall that your wife signed some paper at the time that this property on Elmer street was bought? A. She didn't sign nothing and I didn't either; that is just the trouble why we didn't sign anything. The mortgage was drawn and he drew the deed and everything was straightened out. 30

Q. Was Mr. Eckel present at the time that you got the deed for the Bacon property? A. No.

Q. Isn't it a fact that the lawyer, Mr. Morrell, paid out the money for the deed to your wife for the Elmer street property? A. I had it in the bank.

Q. And did you give Mr. Morrell the money to pay out? A. Pay to Mr. Bacon.

Q. You gave it directly to Mr. Bacon? A. \$650.

Q. Did Mr. Morrell get the money from Mr. Eckel for the mortgage? A. I got it. 40

*John Dimler—Cross*

Q. And the money that came out of this mortgage was the money that you paid on the house that now stands in your wife's name, that you are trying to get in this suit? A. Because it was my money out of the farm.

10 Q. At the time that this deed was made to your wife for the property in this suit, you owned in your own name the property on Livingston street in Newark, and that was taken at a valuation of \$4,000? A. Yes.

Court: Any mortgage on it at that time?

Witness: No.

Q. And the Elmer street property in this suit had a mortgage of \$1,500 on it? A. Yes.

20 Q. You always collected the rents of the property mentioned in the bill? A. Yes, sir.

Q. Did your wife ever have possession of this mortgage that Mr. Knapp made, so far as you know? A. She could have possession; it was in the box.

Q. Did she ever have it in her hands, as far as you know? A. Not as I know.

Q. Did you tell her that you had the mortgage drawn to her? A. How could I tell her, if I didn't know myself that it was drawn to her?

30 Q. When you made a sale to Mr. Eckel of this mortgage, did you talk it over with your wife? A. No, sir.

Q. You never said anything to your wife about selling the mortgage to Mr. Eckel? A. I think I told her.

Q. What did she say? A. She didn't say nothing; I could sell it.

Q. Did you ask whether she was satisfied to sell it? A. Anything at all.

40 Q. And she said "Anything at all?" A. Yes.

Q. You cannot remember anything about what

*John Dimler—Cross*

you and your wife said about that mortgage, or selling? A. No.

Q. You don't know whether you told her that it was made out to her or not? A. Yes, I must have told her, because I must know myself then that I made it out in her name.

Q. Who suggested buying this Elmer street property; was it your wife or you? A. Me.

Q. You and your wife talked about it? A. Talked about it after we went out to see the property.

Q. You both went down and looked it over? A. Yes.

Q. Did she like it? A. When we went out the cellar was full of water; I said, "How do you like this?" She said, "I don't like it at all, but then if you like it and can buy it, you can buy it, but I don't see why you want to buy it."

Q. You are speaking of the property in this suit where you now live? A. Yes.

Q. Did she afterwards change her ideas about this property? A. Not as I know; she said, "If you buy it, I am satisfied I get along."

Q. You were going to have that property go in her name, were you not? A. My name was on it first.

Q. You told her that you were going to have that property stand in her name? A. Not at that time.

Q. When did you tell her you were going to have it taken in her name? A. I never told her.

Q. When you said, "Not at that time"—A. I never told her; I didn't tell her anything of the kind until we come up there, when he read this paper—the deed, was it?

Q. Yes. A.—and he came to Mrs. Bacon and Mr. Bacon, then I said, "Put my wife's name in."

Q. Did you tell her that you had told them to put her name in the deed? A. Yes.

*John Dimler—Cross*

Q. You went home after you had this arranged and told your wife what you had done? A. I told her I had put my name in, but I never said "too," but my name was in there.

10 Q. You told her that you had had her name put in this deed for this property? A. Mine was in.

Q. What did you tell your wife about the names that were put in this deed; did you tell her anything? A. No.

Q. Did you tell your wife that you had taken the title in her name? A. In her name altogether you mean?

20 Q. That isn't what I mean; did you tell her that you had taken this title in her name? A. No, I didn't tell her; I told her I put her name in the deed.

Q. When you bought the property where were you living? A. Over there on the farm in Ezra Miller's.

Q. You paid \$50 when you made the bargain? A. Yes.

Q. You went and got that money from your wife? A. I had it in the bank.

*By Mr. Wilson:*

30 Q. Did you get that money from your wife? A. I got it out of the farm.

Q. Your wife gave it to you when you went home to get it, didn't she? A. No.

Q. Why did you say, when Mr. Wilson asked you, that you went home and got the \$50? A. That was before I got it.

Q. At the time you got it?

*By the Court:*

40 Q. Where did you get the \$50 in money from? A. From home.

*John Dimler—Cross*

Q. Your wife gave it to you, didn't she? A. We had it in the drawer, of course, in my pocketbook.

Q. You told your wife what you were going to do with it? A. Yes.

Q. When you paid out the rest of the money did you pay it out by a check? A. That I cannot tell you. 10

Q. The \$650? A. It is in the book, I guess; I don't know if I gave a check or took the whole \$650 over.

Q. You got it from the bank? A. Yes.

Q. You don't know whether you gave your check or went and got the money from the bank and then paid it in cash? A. No.

Q. Do you keep your old checks? A. I burned them all up; I thought I never needed them. 20

Q. When did you burn them up? A. I don't know how many years ago I burned them; I kept them around and then burned them.

Q. Two or three years ago? A. Yes, some longer.

Q. Wasn't it after you had this trouble? A. No, I had burned them up before; if I only had them.

Q. Your wife often referred to the fact that you had the Newark property and she ought to have property, too, didn't she? A. That is the reason I put it in her name, too. 30

Q. (Question repeated.) A. Yes.

Q. And wasn't it to satisfy her ideas that you put that title in her name? A. I suppose it was.

Q. After you raised the mortgage on the Newark property of \$2,000 you paid off the mortgage of \$1,500 on the property in this suit? A. Yes.

Q. And the other \$500 that you got you paid on account of the property that you bought from Mr. Aiken in 1901; that property was on Elmer street and the deed for that property was made out in your name? A. Yes. 40

*John Dimler—Cross*

Q. So that at that time you had the Newark property and this property purchased from Aiken on Elmer street, and your wife had the other property mentioned in this suit? A. Yes.

10 Q. You sold this Newark property some time after you made the mortgage, didn't you? A. Yes.

Q. How much did you sell it for? A. The Newark property \$3,000.

Q. There was a \$2,000 mortgage on it, was there? A. Yes.

Q. How much cash did you get? A. I got it all cash; they paid the \$2,000 mortgage and I got the thousand dollars.

Q. And that you sold in 1903 to Rosa Lipetz? A. I don't know who I sold it to. I sold it in 1903.

20 Q. Was this mortgage for \$2,00 made the year before? A. Yes.

Q. You sold the Elmer street property that you purchased from Mr. Aiken? A. Yes.

Q. You sold that in 1906 to Mr. Washington Sheldon? A. Yes.

Q. How much did you get for it? A. \$2,200.

Q. Wasn't it \$2,300? A. Yes, that is so; I counted the percentage off of \$2,300; I only got \$2,200.

30 Q. And Mr. Sheldon paid how much cash; how much cash did you get out of Mr. Sheldon; how much did you sell it for? A. I sold it for \$2,300.

Q. And Mr. Sheldon gave you how much money in cash? A. I don't know; he went up and paid the mortgage off and gave me \$700.

Q. You had a mortgage for \$1,300 yourself? A. It was on there for \$1,300.

40 Q. You paid that mortgage off and then you took a mortgage from him for \$1,300? A. I didn't pay it off.

*John Dimler—Cross*

Q. He paid it off then? A. He paid it off.

Q. And you took back a mortgage of \$1,300?

A. He had that mortgage?

Q. You took a mortgage from Mr. Sheldon for \$1,300? A. I guess it must be—I cannot remember; I guess that is the way. I don't know how it was at that time; tell me again. 10

Q. You got a mortgage that was paid about a year after you sold the property to Mr. Sheldon?

A. I don't know where that comes in.

Q. Do you remember that you did take a mortgage from Mr. Sheldon for \$1,300? A. There was a mortgage on it for \$1,300.

Q. Which was held by Sarah M. Brown? A. Yes.

Q. Sarah M. Brown wanted her money when you sold the property? A. No, Mr. Sheldon went up and paid it. 20

Q. Then Sheldon gave you a mortgage for \$1,300 to repay you for the Brown mortgage?

*By the Court:*

Q. Where did you get the money to pay Mrs. Brown? A. I don't know.

Q. Do you remember the amount of cash you got out of the sale to Mr. Sheldon? A. \$700. 30

*By the Court:*

Q. Did he give you a mortgage, too, or didn't you get a mortgage? A. \$700 is all I got out of it.

Q. The price was \$2,300? A. Yes.

Q. \$1,300 on the mortgage and \$700 makes \$2,000; where did the other \$300 come from? A. I bought two wagons and that cost me \$300.

Q. You are trying to tell what money you got 40

*John Dimler—Cross*

when you sold the property; you say you sold it for \$2,300, and it had a mortgage of \$1,300, and got \$700 in cash; that makes \$2,000? A. I didn't have a mortgage then.

10 Q. Whom did you get the other \$300 from, Mr. Sheldon? A. I got it from Mr. Brown.

Q. And later on, after you sold the property to Mr. Sheldon, you made a loan to Mrs. Caldwell on property in Elizabeth of \$800? A. Yes.

Q. And she gave you a mortgage? A. Yes.

Q. Do you know whose name that was made out to? A. In her name.

Q. Who was the mortgagee? A. Me.

Q. You examined the papers and saw that it was all right? A. Yes.

20 Q. When was that given? A. 1906.

Q. And along in July, 1908, you gave Mr. Osmun some money on a mortgage of \$330? A. Yes.

Q. Do you know whom that mortgage was made out to? A. To me.

Q. You examined the papers, did you? A. I got it down at the court and he paid me every month so much until it was paid.

30 Q. After you had acquired the Newark property and the property on Elmer street purchased from Mr. Aiken, did you ever hear Mrs. Dimler remark that you had two properties and she thought she could have one property? A. I don't know; she was talking maybe sometimes so like this, but then she didn't want it for to keep none of it; that is as much as I know.

Q. You were thinking of getting married after your wife's death, were you not? A. No.

40 Q. You are quite sure about that, are you? A. Sure; there was a talk around, but I didn't know nothing about it.

*John Dimler—Cross*

Q. One of the conditions that the lady made was that you turn over this property to her, wasn't it?

A. No, no.

Q. Don't you recall that she wanted you to turn over this property to her if she married you? A. No, she didn't want no property.

10

Q. This particular woman was pretty well fixed, wasn't she; she had property of her own? A. I suppose she had; I never asked her.

Q. Did you know a Mrs. Schmidt, the wife of a baker in Westfield; she lived on Elmer street, didn't she? A. Yes.

Q. And she was a friend of this particular woman that you were interested in?

Objected to. Objection sustained.

20

Q. Don't you recall that Mrs. Schmidt told this woman that I have referred to, that you couldn't make over the property in this suit because it was in your wife's name?

Objected to.

Court: That is not competent unless Mrs. Schmidt told him in her presence.

Q. Do you recall talking with Mrs. Caldwell after your wife's death about some woman that you were thinking of marrying?

30

Objected to.

A. Not as I know; if I said it, I said it for fun.

Q. You did say to her that there was a woman that was pretty well to do? A. She said she would marry me, somehow, for fun, had plenty, and I said to Mrs. Caldwell, "I can marry that woman," but

40

*John Dimler—Cross*

was never so said that I marry her; I can marry her today.

Q. You told Mrs. Caldwell that you wouldn't marry her unless she could keep you? A. She could keep me if I married her.

10 *By Mr. Wilson:*

Q. Did you ever tell Mrs. Caldwell? A. No, she had money enough to keep me.

Q. This is the talk between you and Mrs. Caldwell—didn't you tell Mrs. Caldwell that you wouldn't marry this woman unless she was able to keep you and would keep you? A. I wouldn't marry her; how can I marry?

20 Q. Did you tell that to Mrs. Caldwell? A. Not as I know.

Q. You did talk with her about this woman? A. I guess very likely I talked about the woman.

Q. Don't you recall telling Mrs. Caldwell that the woman wanted you to turn over the house there as a condition to marry? A. No, there was no such things talked.

30 Q. Didn't you say something of like effect at that time to her, that the woman wanted you to turn over this house to her? A. She never asked me to turn it over.

Q. This is about a talk between you and Mrs. Caldwell; did you tell Mrs. Caldwell in your talk with her that this woman wanted you to turn over this Elmer street house to her? A. No.

40 Q. Didn't you tell Mrs. Caldwell at this time that Mrs. Schmidt had told this woman that you couldn't turn the property over anyhow, because it was in your wife's name? A. We never talked such things.

*John Dimler—Cross*

Q. Have you got your old insurance policies with you covering this property on Elmer street?

Mr. Wilson: We have two of the recent ones and one old one.

Q. Have you brought your tax bills with you? 10  
A. Everything we could find; we brought as far as we could find.

## RECESS.

Q. Did you attend to getting insurance on this property? A. I attend to getting the property insured.

Q. Did you attend to that business yourself? A. Yes.

Q. Did you tell the Insurance Company in whose name the property was? A. That I cannot tell you. 20

Q. I show you a policy numbered 471,974 of the Royal Insurance Company and ask you whether that is the policy of insurance that you had on this property? A. For \$1500; I carry \$1500 insurance on one and \$1000 on the other; that is the way it was insured.

Q. This policy is made out to Barbara Dimler and dated November 20, 1909; was this policy to renew another policy that expired at the time? A. I suppose so. 30

Q. Who got the insurance for you? A. Mr. Whittaker.

Q. Is he an insurance agent in Westfield? A. He was; he is dead.

Mr. Eldridge: I ask that this be marked for identification.

(Marked Exhibit D 1 for identification.) 40

*John Dimler—Cross*

Q. Here is another policy for \$1500 numbered 10504115 of the Royal Insurance Company, and dated 12th of November, 1912; is this policy on that property? A. On the property.

10 Q. And it was to renew this policy that I just showed you, wasn't it? A. Yes.

Q. And on the outside of the policy is written "Paid by John Dimler. Fred C. Decker." When was that written on there? A. That is the last one, isn't it?

Q. Was it after the suit had been begun? A. Yes.

Q. And had you paid the premium before this was written on? A. No, I paid it after that.

20 Q. You paid it at the time this was written on? A. Yes, because some of them said I couldn't collect any insurance.

Mr. Eldridge: I ask that this be marked for identification.

(Marked Exhibit D 2 for identification.)

30 Q. Are these three policies—two by the Royal Insurance Company and one by the National Ben Franklin Fire Insurance Company—policies covering this property? A. This is \$500; that is furniture insurance.

Q. That is dated April 18, 1911; and the other two policies are for \$1,000 each? A. One is dated February 3, 1911, and the other is dated February 9, 1914, in the name of John Dimler.

Q. I have a lot of bills; are they all for taxes on this property?

40 Q. Mr. Dimler, I see one here charged to Barbara Dimler for the taxes of 1907; is that a bill that you paid? A. I paid.

Q. Do you read English? A. I read some, yes.

*John Dimler—Cross*

Q. You can read that bill, can't you, the name and what it is? A. That is Barbara Dimler.

Q. And there is another bill here for taxes of 1908 to Barbara Dimler; you paid that bill, too, did you? A. I paid that.

Q. And then there is another bill charged to the Estate of Barbara Dimler; for the taxes of 1909, and that one you paid? A. I paid that. 10

Q. There is still another, for the taxes of 1910, which are assessed against the Estate of Barbara Dimler; that one you paid? A. Yes.

Q. Were these bills left at your house? A. Yes, sent to my house.

Q. Then you took them over to the collector and paid them? A. Yes.

Mr. Eldridge: I ask that the bills be marked for identification — bills for 1910, 1909, 1908, 1907. 20

(Marked exhibit D 3 for identification.)

We cannot find two or three tax bills.

Q. Mr. Dimler, had your wife any relatives in this country besides Mrs. Caldwell? A. Yes.

Q. Where? A. In Union.

Q. Has she any other relatives in this country beside Mrs. Caldwell? A. Not now, that I know. 30

Q. Mrs. Caldwell's brothers are dead? A. Yes, my wife's brother.

Q. Did Mrs. Caldwell often visit you at Westfield? A. Not so often.

Q. How often? A. Sometimes three weeks, sometimes maybe once a week.

Q. Mrs. Caldwell was up there while your wife was sick? A. Yes.

Q. And she stayed for two or three weeks, didn't she? A. I cannot remember how long she stayed; we called her when she was sick. 40

*John Dimler—Redirect*

Q. Your wife was rather fond of Mrs. Caldwell, she liked her, didn't she? A. Yes.

*Redirect by Mr. Wilson:*

10 Q. Mr. Eldridge asked you before recess something about a woman and the conversation that you had with Mrs. Caldwell; was that conversation had before the commencement of this suit or after? A. After.

Q. Did you ever have any conversation with Mrs. Caldwell about the property or about this woman before this suit was commenced? A. We never said anything about it.

20 Q. Did you ever have any conversation with her about it before the suit was commenced? A. No.

Q. Did you ever talk to her about any woman before the suit was commenced, about marrying any woman? A. Not as I know.

Q. Not as you know; don't you know?

Court: He is giving his recollection.

Q. Who paid the Knapp mortgage money? A. Who gave me this money?

30 Q. Who paid the money back to you? A. Mr. Eckel give me the check in the bank.

Q. And then what did you do with that money? A. I put it in the bank.

Q. In whose name? A. In my name.

Q. Did your wife ever have a bank account? A. No.

Q. Mr. Dimler, is Mr. Morrell alive? A. No, sir; he is dead.

Q. John M. C. Marsh, is he alive? A. He is dead.

40 Q. At the time you met in the lawyer's office, at

*John Dimler—Recross—Redirect*  
*Henry J. Holmes—Direct*

the time of the deed here, did you state to the lawyer to put in your wife's name?

Mr. Eldridge: I object to that.

Court: Hasn't he already given his answer? 10

*Recross by Mr. Eldridge:*

Q. When did John Marsh die? A. I don't know.

Q. About a year ago? A. Was it?

(It is admitted that John Marsh died about a year ago.)

Q. Do you know when Mr. Morrell died? A. No, 20  
sir.

Q. How did you know he was dead, Mr. Dimler?  
A. That is what I cannot tell you; someone must have told me that he was dead; how I found it out, he used to live with Dorsch, and Dorsch told me that he is dead—something like that.

*Re-direct examination by Mr. Wilson:*

Q. I forgot to ask you how old are you? A. 1842 30  
I was born—72; I will be 72 in October.

HENRY J. HOLMES, sworn for complainant.

*Direct examination by Mr. Wilson:*

Q. You are a resident of where? A. Westfield.

Q. What business are you in? A. Real estate.  
A. Since 1888.

Q. How long have you been in that business? 40

*Henry J. Holmes—Direct*

Q. Do you know John and Mrs. Dimler? A. Yes.

Q. How long have you known them? A. I should think since about 1900.

Q. Do you know the property 235-237 Elmer street? A. I do.

10 Q. Was that property ever placed in your hands for sale? A. It was.

Q. By whom? A. By Mr. Dimler.

Q. Will you state the circumstances? A. He came there to my office and wanted to sell it, and I told him it was necessary for him to sign a paper, that is, agreeing to pay me the commission, as I had been skinned out of a good many commissions.

Mr. Eldridge: I object to this as incompetent.

20 Court: I will take it subject to objection, and you may move to strike it out.

Q. You had a talk with Mr. Dimler, and from what he said did you have occasion to see Mrs. Dimler? A. He came to the office and asked me to sell it.

Court: This is to lead up to the talk with Mrs. Dimler?

Mr. Eldridge: I object to it.

30 Court: And after the talk with him—

Q. Then what did you do? A. I told him it was necessary to sign a paper to pay me the commission, agreeing to pay the commission—I had printed forms—and I said, "Whose name is it in?" He said, "In mine and my wife." Then I said, "It is necessary for both to sign," so he signed the paper, and I went out to the house that night and his wife said, "I don't own the place, it is in Mr. 40 Dimler's name"; "No," he said, "it is in your name

*Henry J. Holmes—Cross*

and my name," and then she signed the paper, both of them.

Q. Was anything said at that time as to where the money came from to buy the Elmer street property? A. Yes, she said the money came out of the farm.

Q. What farm? A. The farm at Branch Mills. 10

Q. Called the E. G. Brown Farm? A. Yes, I am well acquainted with it and know the time they sold it.

Q. Did she say who owned the farm?

Court: What further was said?

A. She said that farm was in Mr. Dimler's name, the farm belonged to him.

Q. Was anything said as to who paid for the farm? 20

Court: This won't do at all. Let him give all that he recalls.

Q. What further was said? A. He said the farm belonged to him, he paid for it and it was his farm, and the money that came out of the farm bought the house; we had a long talk about it, because I was there until eleven o'clock that night.

30

*Cross examination by Mr. Eldridge:*

Q. Whom did you tell this story to? A. Mr. Hart.

Q. How did you happen to get in touch with him about it? A. I was in Mr. Hart's office—I used to have an office in his office—and he asked me about this, if I had that place for sale, and I told him I had.

Q. That was many years ago you had the talk 40

*Henry J. Holmes—Cross*

with Hart? A. Only recently here, probably within three months.

Q. You told him then that you had it for sale?

A. Yes.

Q. Did you at the time of this conversation have this property for sale? A. Yes.

10

Q. He asked you if you had the property for sale, is that it? A. Yes.

Q. You told him you did? A. Yes.

Q. And what else did you tell him at that time; what did he say to you? A. Just what I have told here.

Q. What did he ask you? A. He asked me about the property and if I had an agreement signed by Mr. and Mrs. Dimler.

20

Q. How did he happen to ask you that do you suppose? A. I don't know.

Q. And you told him that you did have an agreement signed by them? A. I did.

Q. You then had your office with him? A. No, I used to have my office with him many years ago.

Q. What did you tell Mr. Hart at that time? A. What I have related here.

30

Q. What did you tell him? A. I told him Mr. Dimler came into the office and put the property in my hands for sale, and I told him it was necessary for him to sign an agreement to pay me the commission, and I said whoever owns the property, whoever's name it is in, it is necessary to sign the paper; he said it is in his name and his wife's name.

Q. And he told you it was in both names? A. Yes.

Q. And he signed the paper in your presence, didn't he? A. Yes.

40

Q. And then he took it away and had his wife sign it? A. I met him at the house; I lived across the street from him and I went there that night.

*Henry J. Holmes—Cross*

Q. Did he come to you or did you go to him?  
 A. I went first; that is, I went there and he wasn't in when I went, and afterwards he came in and I told him what I wanted her to do, and she said the property wasn't in her name, it was in her husband's name.

10

Q. You spoke to her before he came in? A. Yes.

Q. And she didn't sign the paper at that time?  
 A. Not until he came in.

Q. What did you go there for? A. To have the paper signed.

Q. Had he at that time signed it? A. Yes, he had signed it.

Q. You came there to have it signed by her? A. I went there to have her sign it.

Q. And she refused to sign it? A. Yes, saying that it was in his name and not in her name; it was his property; she said he bought the place and the money came out of the farm.

20

Q. She voluntarily told you all this about where the money came from to buy the house, did she?  
 A. Yes.

Q. Did you ask her about it? A. I told her it was necessary for the one that owned the farm, whosever name it was in, to sign that paper.

Q. Did you ask her where the money came from to buy it? A. She told me herself without any asking.

30

Q. She volunteered the information that the money came from the farm? A. I asked her to sign the paper, as I said that Mr. Dimler and her had the property in their name, and she said, no, it was in Mr. Dimler's name.

Q. And she told you that the money came out of the Westfield farm? A. Yes, she knew I knew she had a farm there.

40

*Henry J. Holmes—Cross*

Q. You went to ask in whose name the Westfield farm was? A. Yes.

Q. And then she replied that that was in his name? A. Yes.

10 Q. And to make sure that he owned the farm, you asked her if he paid for that farm with his money and it was his property? A. All that was brought in.

Q. And she told you that that was so? A. Yes.

Q. How long ago did all this conversation happen? A. It happened somewhere along about 1904, or somewhere along there.

Q. What sort of a property is this where this conversation was had? A. Right across the street from my house.

20 Q. It was in the house that Aiken formerly owned? A. Yes.

Q. And the house in which they lived was the house they wanted to sell? A. No, it was the double house.

Q. You are sure about that? A. Yes, because I went there about it.

Q. Did you have permission to sell the Aiken house? A. Yes.

30 Q. You had a contract for that? A. I also had permission to sell that.

Q. Were the terms given at the same time? A. I don't think so; I think they wanted to sell the property, and what I say brought about that at that time.

Q. Did you make sale of the Aiken house? A. No.

40 Q. You know it was sold shortly after you got your authorization, don't you? A. I don't know how long it was; it is not so very long ago since it was sold.

*Henry J. Holmes—Cross*

Q. How many years ago do you suppose it is?

A. Probably four years, and it might be five years; I cannot tell about that exactly.

Q. Did anybody purchase this double house?

A. No.

Q. Did you make any effort to sell it? A. Yes.

10

Q. Did you in your business keep any books? A. I have cards with agreements on.

Q. And the cards were signed by the people who were placing property with you? A. Yes, with the description on the back.

Q. Isn't it true that both of these properties of the Dimlers were placed on the same card? A. No.

Q. Did you have separate cards for each property? A. Yes.

20

Q. Who signed these separate cards, do you remember? A. For the double house, Mrs. Dimler and Mr. Dimler signed, and Mr. Dimler signed the other one, for the Aiken house.

Q. How long have you been in the real estate business? A. Since 1888.

Q. You know, do you not, that it is necessary to have both the husband and wife sign a contract for sale, in order to get both signatures? A. When I make a sale of the property——

30

Q. In order to get a complete sale of this property? A. I am speaking of an agreement between an agent and owner.

Q. But this same agreement gave you authority to make sale of this property? A. Yes.

Q. Don't you know that the husband and wife must both join in a conveyance of property? A. I do.

Q. Isn't that the real reason why you had both of them sign the paper? A. The man that owns

40

*Henry J. Holmes—Cross*

the property—I have printed forms where they put it in my hands for sale, agreeing to pay me the two and a half or five per cent. commission.

10 Q. You considered Mr. Dimler good for any commission he agreed to pay? A. I wouldn't trust anybody; I have been beaten out of commissions by the best kind of men.

Q. The first time you related this conversation after it was had with Mr. and Mrs. Dimler was a short time ago, when you told it to Mr. Hart? A. Yes.

Q. And what did Mr. Hart suggest that you do to verify your statement, if anything? A. Simply asked me this and I told him what I knew about it.

20 Q. You told him the whole story what you said there? A. Yes, I didn't take long to do it.

Q. How long had you known the Dimlers; since 1900? A. I knew them when they were there on the farm.

Q. Were you intimate with them? A. No, I wasn't intimate with them; I knew them just to speak to them.

Q. Just to say "Hello"? A. Yes, I used to pass near by there.

30 Q. Had you ever had any conversation with Mrs. Dimler before this time? A. About selling?

Q. On any subject. A. I knew and was talking with her and often spoke to her.

Q. You have been engaged in conversation with her? A. Not particularly.

Q. Just say, "How do you do?" A. Yes, that is about all.

Q. Did she ever discuss her business with you before? A. No.

40 Q. Did you ever discuss with Mr. Dimler his business? A. No.

*Henry J. Holmes—Cross*

Q. Isn't this the first time you were in that house?

A. No.

Q. You were in it before? A. Yes.

Q. Why were you in it before? A. I don't know; I cannot tell; I cannot say; they lived just across the street and I had been there before.

10

Q. Isn't it true, Mr. Holmes, that this is probably the first time you were in that house? A. No.

Q. Do you recall any other instance when you were there? A. I cannot say the date or anything, but I had been there.

Q. What had you been there for; anything special? A. I don't remember; I cannot tell you.

Q. Did you go into the house after this conversation; were you in there after that time? A. I don't think so.

20

Q. That was probably the last time you were in the house? A. I might have been in the house; I think I was there when she was first taken sick down in the other house.

Q. Did you ever visit them when they were in this Elmer street house that is involved in this suit; did you ever call in there on them? A. I have been in there several different times; I cannot tell on what kind of an errand I have been there; the same as any neighbor would have been.

30

Q. Did you ever discuss business with them or either of them? A. No.

Q. Didn't you find them rather quiet and secretive about their affairs? A. Yes, both quiet.

Q. They didn't discuss their affairs with anybody, as far as you know? A. I don't know.

Q. Did you ever hear the history of the purchase of the Aiken house? A. No.

Q. How long have you known Mr. Hart? A. Thirty years.

40

*John Dimler—Recalled—Cross—Redirect*

Q. He is an attorney for Mr. Dimler in this suit?  
A. A witness, I guess.

Mr. Wilson: We offer in evidence the deed and rest.

10

JOHN DIMLER, recalled for further

*Cross examination by Mr. Eldridge:*

Q. Have you got any list of the rents that you collected from the property; what is the property rented for? A. Five, six or seven years I had it rented for \$12 and \$13, \$6 a floor, in one I lived myself, four floors.

20

Q. That was \$25 a month, figuring how much for your rent? A. \$6, three rooms, I got for six or seven years.

Q. You had another tenant in the other side of the house? A. Four tenants, four families, mine and three tenants.

Q. How much did the three tenants pay each month? A. \$18—\$6.

Q. And yours would be \$6? A. Yes.

30

Q. You have received more rent than that, haven't you, sometimes? A. Since the toilet was in I got on one house \$16, and on the other \$8.50.

Q. And you would allow about how much for your part? A. \$8 or \$9.

*Re-direct by Mr. Wilson:*

Q. Weren't some of those rooms vacant of that time? A. I lost through the years a lot of them.

40

Court: I won't go into the accounting now.

*Caroline Caldwell—Direct*

Witness: I had to work to pay the rent for the tenants..

Mr. Eldridge: I offer in evidence a transcript from the tax assessment books in the hands of the Collector of Taxes of the Town of Westfield in which this property is situated, showing the property in question, and the assessed values and ownership noted on the books, including 1896 to the end of 1913, and I offer the tax receipts and the various policies of insurance that have heretofore been identified by the witness. 10

(Insurance policies, heretofore marked D 1 and D 2 for identification, now marked Exhibits D 1 and D 2, and tax receipts, heretofore marked D 3 for identification, now marked Exhibit D 3. 20

---

CAROLINE CALDWELL, SWORN.

*Direct examination by Mr. Eldridge:*

Q. You are one of the defendants in this case?

A. I am.

Q. And you are a niece of Mr. John Dimler? A. 30  
I am of Mrs. Dimler.

Q. Were you in court when Mr. Dimler testified as to a conversation about some woman that he intended to marry or was talking about marrying?

A. I was.

Q. Will you relate that conversation as you remember it?

Mr. Wilson: I object. Let him fix the time. 40

*Caroline Caldwell—Cross*

Q. Do you recall about the time when this was?

A. It was before this was brought up.

Q. After your aunt died? A. It was.

Q. About how long before this suit was started?

10 A. It was just about, I think, when it first started; he told me before that, but just before this was brought up he told me that he could have married this woman, but he said he wasn't going to marry her if he had to work and keep her; if she was willing to keep him without working, it would have been all right.

Q. Was the trouble involved in this suit mentioned at all? A. He told me—I think he said Mrs. Schmidt had said to the woman that he couldn't turn this property over to her, because it was in his wife's name, and he said at the time to me,  
20 "Why didn't they tell me that before?"

Q. Whom did he refer to when he said that?

Court: That won't do.

*Cross examination by Mr. Wilson:*

Q. Mrs. Caldwell, who was the lady? A. That I don't know; I don't know her.

30 Q. It was the lady that Dimler said she was?  
A. I don't know who she is.

Q. Did he mention her name? A. He did, but I don't remember it.

Q. It didn't make much of an impression on you then? A. I didn't pay much attention to it.

Q. What led to that conversation? A. Nothing more than that.

Q. What was the woman, a maiden lady or a married woman? A. Married woman.

Q. Are you sure of that? A. Pretty sure.

40 Q. And the name? A. I don't know.

*Caroline Caldwell—Cross*

Q. How do you know that she was a married woman? A. I think he said that she had daughters.

Q. Is that as far as you can say? A. Yes.

Q. And did he say where she lived or anything of the kind? A. He told me, but I don't remember. 10

Q. You say it was about the time of the commencement of the suit? A. That is about the time when he told me that.

Q. And Mrs. Schmidt's name was mentioned at that time? A. Yes.

Q. Don't you know that the conversation that he is said to have had with Mrs. Schmidt, which he told you about, took place after the commencement of the suit? A. No, it was just starting the suit.

Q. The suit had started, hadn't it? A. He just went to Lawyer Hart's office at that time. 20

Q. And after he came from Lawyer Hart's office he told you that he had been to Hart's office? A. Yes.

Q. And he said that he learned from Hart that the property was in his wife's name? A. No, not at that time.

Q. But after that, he did, didn't he? A. After that he did, after the suit started.

Q. And didn't he tell you this, that the first he knew about the property being in his wife's name was when Judge Hart told him? A. Yes. 30

Q. He told you then, didn't he, that after he had this conversation with Hart, that he came down to see Mr. Wilson, the lawyer?

Mr. Eldridge: Objected to as not cross examination.

Mr. Eldridge: I offer in evidence abstract of these mortgages to which Dimler and his 40

*Memorandum*

wife are parties, appearing on the record, and the abstract is offered subject to verification.

DEFENDANTS REST.

10

**Memorandum.**

EMERY, V. C. In this case I conclude that the complainant has failed to establish satisfactorily that there was a mistake in the making of the deed in question to his wife, Barbara Dimler, as the sole grantee.

20 As to the mistake in the deed, according to complainant's own evidence, which is corroborated by the appearance of the deed itself, the deed was originally drawn to him as sole grantee, and by reason of directions given at the time of its execution, by himself to the lawyer who drew the deed, it was changed in respect to the party grantee. On the face of it, it appears to have been changed by the erasure of his Christian name (John) as grantee, both in the deed and its endorsement, and by writing over the erasure "Barbara," his wife's Christian name. The word "his" throughout the deed  
30 was also erased wherever used and "her" written over the erasure. Complainant's present statement, made years after the death of the lawyer who drew the deed and of all the other parties interested, is substantially that he directed the lawyer to put his wife's name in, but said nothing about taking his name out, and supposed both names were in.

40 His evidence at this time cannot, under the circumstances, be considered as sufficient to overcome

*Memorandum*

the effect of the transaction as actually carried out by the scrivener and by the grantor. The utmost effect of it, if believed, is to show a misapprehension of the directions he then gave, or when led to give, not a mistake of all the parties in the execution of the deed.

Nor has the complainant established that the cash paid at the time of the conveyance (\$700) was from his own money and was not the proceeds of property belonging to his wife. The deed therefore should not be reformed, according to the special prayer of the bill, neither should a resulting trust be declared as arising at the time of the conveyance from the payment by him of the purchase money, as was argued at the hearing.

But inasmuch as the evidence shows that the total purchase money (\$2,200), the amount of cash paid was \$700 (paid from the proceeds of money procured by the sale of a mortgage standing in the wife's name) and that for the balance of the purchase money the wife personally assumed a mortgage of \$1,500, for which the husband did not become at all responsible, but which he subsequently paid off, the further question arises whether the husband may not be entitled to a charge on the lands for the reimbursement of this payment in discharge of the wife's lands. The original transaction—the conveyance to the wife, was not, under the evidence, a gift by the husband, or a purchase upon a resulting trust, but a conveyance to the wife of property purchased by her own moneys and obligations, for which the husband was not responsible. Whether under the evidence in this case the husband's subsequent payment of the mortgage is to be considered as entitling him to a charge on the lands, is a question upon which I desire to hear counsel further.

10

20

30

40

*Further Memorandum*

10 The bill alleges this subsequent payment of the mortgage on the wife's lands by the husband, and that when it was paid, he supposed the title was in the name of both. The prayer for general relief would seem to be sufficient to cover the charge for the payment, if, under the evidence, he is entitled to it.

I will hear counsel on Wednesday, May 5th, 1915, at 10 A. M., at which time also the complainant must also submit statement bringing up to date his receipts and payments on account of the property.

**Further Memorandum.**

20 EMERY, V. C. The evidence of Holmes, the real estate dealer, in whose hands the property in question was placed for sale, shows satisfactorily, I think, that at that time both Mr. and Mrs. Dimler signed the agent's commission government under the belief that the title then was in the names of both. It also appears that the tax bills for a number of years were in Dimler's name alone up to a year or two before Mrs. Dimler's death, when they were in her name. And while the evidence for complainant was not sufficient to establish a mistake of all the parties executing the deed, so as to  
30 entitle him to a correction of the deed, this conclusion as to the effect of this subsequent evidence is consistent with the view that the directions complainant gave or intended to give for the deed were misapprehended, and that at the time of the payment of the mortgage he supposed the title was in the names of both.

40 On a claim for lien or subrogation he would not be entitled to be placed in any better position than if the title actually stood as he says he supposed it stood at the time of payment. The precise ques-

*On Motion for Re-argument*

tion is whether or to what extent he made a gift to his wife in the payment of the mortgage. This intention is to be made out by all the circumstances in the case, taken in connection with the presumption of law relating to payments made between persons standing in the relation of husband and wife, and if the husband admits that when making the payment he supposed his wife and he owned the property together, he proves that to this extent of their common interest he intended to make a gift to her, and this affirmative proof of his actual intention to benefit her will to that extent deprive him of the benefit of any presumption that the payment was not a gift that arises by reason of her sole liability to pay, imposed by the deed in the form actually given. .

10

I conclude that to the extent of one-half of the amount paid on the mortgage the complainant is entitled to a lien upon the premises, with interest, but subject to an accounting for the rents, both to run from the time of Mrs. Dimler's death.

20

---

**On Motion for Re-argument.**

IN CHANCERY OF NEW JERSEY.

30

MR. WILLIAM R. WILSON, for Complainant.

MR. SIDNEY W. ELDRIDGE, for Defendant,  
Caroline Caldwell.

MR. LOUIS A. ZIEGLER, for Defendant, Gottfried Sohns.

WALKER, C.

This cause was heard by the late Vice Chancellor Emery who filed two memoranda of conclusions,

40

*On Motion for Re-argument*

but retired from office without having advised a decree for the defendants in accordance with his first memorandum, with provisions for a certain payment to complainant to be charged on the lands described in the bill in accordance with his second memorandum.

10 Application was made to me by defendants to sign a decree conformably to the advice contained in the Vice Chancellor's memoranda, and the complainant applied for a re-hearing.

The ground on which a re-hearing is asked is that the findings of fact made by the Vice-Chancellor are erroneous and that the evidence discloses that the complainant should have prevailed. This is not a reason which should move the chancellor to review the decision of the Vice-Chancellor. In  
20 such a situation the aggrieved party's remedy is by appeal to the court of errors and appeals. *Gregory v. Gregory*, 67 N. J. Eq., 7. While this alone is dispositive of the matter I nevertheless read the testimony and went carefully over the briefs submitted after the oral argument and am clearly of opinion that a correct conclusion was reached by the late Vice Chancellor. He found that the deed in question should not be reformed, nor should a  
30 resulting trust be declared as arising *at the time* of the conveyance from the payment by complainant of the purchase money. And the authorities are uniform that nothing done after the consummation of the transaction can change its character. He also held that, to the extent of one-half of the amount paid on the mortgage, the complainant is entitled to a lien upon the premises with interest, but subject to an accounting for rents, both to run from the time of the wife's death.

40 I have signed the decree submitted on behalf of

*Final Decree*

the defendants, which adjudicates both questions decided by the Vice Chancellor, as above indicated. The decree has been lodged with the clerk for filing.

**Final Decree.**

10

This cause coming on to be heard upon Bill, Answer, Replication and Proofs, in the presence of William R. Wilson, Esquire, of counsel with the Complainant, and Louis A. Zeigler, Esquire, of counsel with the defendant, Gottfried Sohns, and Sidney W. Eldridge, of counsel with the defendant, Caroline Caldwell; pleadings and proofs having been read and the arguments of counsel heard and considered, and it appearing to the Court that the premises described in the Bill of Complaint were purchased with the monies of Barbara Dimler, who died seized thereof, on the twentieth day of February, 1908, intestate, leaving her surviving as her only heirs at law, the defendants, Caroline Caldwell and Gottfried Sohns, to whom the titles to said premises descended, and who became seized thereof as tenants in common, and that there was no mistake in the deed made and executed by James B. Bacon to the said Barbara Dimler, as alleged in the Complainant's Bill of Complaint.

20

30

And it further appearing to the Court that the mortgage made and executed by John B. Bacon to the Mutual Benefit Life Insurance Company, of Newark, New Jersey, covering the said premises to secure the payment of Fifteen Hundred Dollars, was paid by the complainant out of his own funds, and under the belief that the title to said premises was vested in himself and the said Barbara Dimler, in equal shares.

40

*Final Decree*

10 And it further appearing that since the death of the said Barbara Dimler, the said John Dimler has resided in and received and collected the rents, issues and profits of said mortgaged premises and has failed to account therefor to the defendants, and the Court being of the opinion that the complainant is not entitled to the main relief prayed for in his Bill of Complaint, but that he is entitled to be re-imbursed to the extent of one-half of the principal of said mortgage, together with interest thereon, from the date of the death of said Barbara Dimler, and having prayed for further relief; and that the defendants are entitled to an accounting from the complainant for the rents, issues and profits received and collected by him from the said premises from the date of said death.

20 It is thereupon, on this 10th day of April, A. D. 1916, by his honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainants' bill of Complaint in so far as it prays the reformation of the deed of Conveyance therein set forth, be and the same is hereby dismissed, and that the defendants, Caroline Caldwell and Gottfried Sohns, are the owners of the premises described in the Bill of Complaint, and that the complainant is entitled to a lien thereon for the sum of Seven Hundred and Fifty Dollars, together with the interest therein from the twentieth day of February, 1908, and the said complainant is hereby ordered and decreed to account to the said defendants, Caroline Caldwell and Gottfried Sohns for the rents, issues, and profits of the premises described in the Bill of Complaint, from the Twentieth Day of February, 1908.

40 And it is further ordered that such monies as may be due from the said John Dimler to the said

*Notice of Appeal*

defendants may be off-set against the lien of the said complainant, and the said lands relieved to that extent accordingly.

It is further ordered that it be referred to Hon. Foster M. Voorhees, one of the Masters of this Court, to ascertain the rents, issues and profits collected by the said John Dimler, from the premises described in the Bill of Complaint, and for which he should account to the defendants as aforesaid, and that he report thereon to the Chancellor with all convenient speed. 10

It is further ordered that the said John Dimler remove from the premises described in the Bill of Complaint within thirty days from the service upon him of a duly certified copy of this Decree and surrender the possession thereof to the said Caroline Caldwell and Gottfried Sohns. 20

And it is further ordered that the defendants have leave to apply to this Court for such further relief herein as may seem necessary and just.

E. R. WALKER,

C.

---

**Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

The complainant hereby appeals from the final decree made in this cause dated April Tenth, A. D., Nineteen Hundred and Sixteen, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 30

Dated April 18, 1916.

WILLIAM R. WILSON.

Sol. for and of Counsel with Complainant.

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

WILLIAM R. WILSON, 40  
Of Counsel with Complainant.

**Petition of Appeal.**

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

10 The petition of John Dimler, the appellant in the above stated cause respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the tenth day of April in the year of our Lord one thousand nine hundred and sixteen, wherein John Dimler was complainant and Caroline Caldwell and William H. Caldwell her husband, Gottfried Sohns and Christine Sohns, his wife, were defendants, in this respect to wit: that the said decree adjudged that the complainant's bill of complaint in so far as it prays the reformation of the deed of conveyance therein set forth be and 20 the same is hereby dismissed and that the defendant's Caroline Caldwell and Gottfried Sohns are the owners of the premises described in the bill of complaint, and that the complainant is entitled to a lien thereon for the sum of seven hundred and fifty dollars together with interest thereon from the twentieth day of February 1908, and the said complainant is hereby ordered and decreed to account to the said defendants Caroline Caldwell and Gottfried Sohns for the rents, issues and profits of the premises described in the bill of complaint from the 30 twentieth day of February, 1908.

And the said decree further adjudged that such monies as may be due from the said John Dimler to the said defendants may be set off against the lien of the said complainant, and the said lands relieved to that extent accordingly.

40 And the said decree further adjudged, that it be referred to Hon. Foster M. Voorhees, one of the Masters of this Court to ascertain the rents, issues

*Petition of Appeal*

and profits collected by the said John Dimler, from the premises described in the bill of complaint, and for which he should account to the defendants as aforesaid.

And the said decree further adjudged that the said John Dimler remove from the premises described in the bill of complaint within thirty days from the service upon him of a duly certified copy of this decree and surrender the possession thereof to the said Caroline Caldwell and Gottfried Sohns. 10

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the Court should not have dismissed the bill of complaint so far as it prays the reformation of the deed of conveyance therein set forth, and should not have decreed the premises to be the property of Caroline Caldwell and Gottfried Sohns, but should have decreed the premises to be the property of the complainant; and for that the Court should not have decreed that the complainant be entitled to a lien for the sum of seven hundred and fifty dollars; and that the said complainant should account to the said defendants, Caroline Caldwell and Gottfried Sohns for the rents, issues and profits of the said premises from February 20th, 1908; and that such monies as may be set off against the lien of the said complainant and the said lands relieved to that extent accordingly. 20 30

And for that the Court should not have decreed that the said matter be referred to Foster M. Voorhees, one of the Masters of this Court to ascertain the rents, issues and profits collected by the said complainant from the premises described in the bill of complaint and for which he should account to the defendants as aforesaid. 40

*Answer of Caroline Caldwell*

10 And for that the Court should not have decreed that the said John Dimler remove from the said premises described in the bill of complaint within thirty days from the service upon him of a duly certified copy of this decree and surrender the possession thereof to the said Caroline Caldwell and Gottfried Sohns.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such further and other relief in the premises as to this Honorable Court shall meet and just.

20 WILLIAM R. WILSON,  
Solicitor of Appellant,  
Of Counsel with Appellant.

**Answer of Caroline Caldwell.**

The answer of the above-named respondent, Caroline Caldwell, to the petition of appeal of the above-named appellant:

30 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was on the 10th day of April, 1916, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

40 SIDNEY W. ELDRIDGE,  
Solicitor and of Counsel with  
Defendant, Caroline Caldwell.

**Answer to Petition of Appeal of Gottfried Sohns and Wife.**

The answer of Gottfried Sohns and Christine Sohns, his wife, the above named respondents, to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was on the 10th day of April, 1916, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity and she prays that the same may be affirmed with costs to be adjudged to this respondent.

LOUIS A. ZIEGLER,  
Solicitor and of Counsel  
with Defendant, Gottfried Sohns and Christine Sohns, his wife.

30

40

**Exhibit on Part of Complainant.**

THIS INDENTURE, made the first day of April, in the year of our Lord One Thousand Eight Hundred and Ninety-six,

10 BETWEEN JAMES B. BACON (widower), of the City of Brooklyn, in the County of Kings, and the State of New York, of the first part;

AND BARBARA DIMLER, of the Township of Westfield, in the County of Union and State of New Jersey, of the second part:

20 WITNESSETH, That the said party of the first part, for and in consideration of Twenty-two Hundred Dollars, lawful money of the United States, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to her heirs and assigns, forever, ALL that certain lot, tract or parcel  
30 of land and premises, hereinafter particularly described, situate, lying and being in the Township of Westfield, in the County of Union, and State of New Jersey.

Beginning on the northeasterly side of Elmer Street, at a point therein distant fifty-five feet northwesterly from the corner of the same and North Avenue;

40 Thence, running along said side of Elmer Street, north forty-two degrees, twenty-three minutes west, sixty-five feet;

*Exhibit on Part of Complainant*

Thence, north forty-seven degrees, thirty-seven minutes east, one hundred and twenty-five feet;

Thence, south forty-two degrees, twenty-three minutes east, sixty-five feet to line of land of Robert Woodruff, Jr.;

Thence, along his line, south forty-seven degrees, thirty-seven minutes west, one hundred and twenty-five feet to said line of Elmer Street and place of beginning. 10

Being the same premises conveyed to the said James B. Bacon by deed from The Mutual Benefit Life Insurance Company, located at the city of Newark, in the county of Essex and State of New Jersey, bearing date the first day of February, eighteen hundred and ninety-three, and recorded in the Union County Clerk's office in Book 256 of Deeds, page 331, etc. 20

The above described premises are conveyed subject to a mortgage encumbrance of fifteen hundred dollars held by The Mutual Benefit Life Insurance Company, and which said mortgage the party of the second part hereby agrees to assume and pay as a part of the purchase money herein mentioned.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining: 30

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, 40

*Exhibit on Part of Complainant*

her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever:

10 AND the said JAMES B. BACON does for himself, his heirs, executors and administrators covenant and agree to and with the said party of the second part, her heirs and assigns, that he, the said JAMES B. BACON, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever; by which the title of the said party of  
20 the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

AND ALSO that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid;

30 AND ALSO, that JAMES B. BACON will WARRANT, secure, and forever defend the said land and premises unto the said BARBARA DIMLER, her heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

40

JAMES B. BACON.

*Exhibit on Part of Complainant*

Signed, Sealed and Delivered }  
 in the Presence of }

HENRY H. MORRELL.

State of New Jersey, }  
 County of Union, } ss.: 10

BE IT REMEMBERED, That on this first day of April in the year of our Lord One Thousand Eight Hundred and Ninety-six, before me, the subscriber, a master in Chancery of New Jersey, personally appeared JAMES B. BACON (widower), who, I am satisfied, is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 20

HENRY H. MORRELL,  
 M. C. C. of N. J.

3862

DEED.

JAMES B. BACON,

To

BARBARA DIMLER,

30

Dater, April 1st, 1896.

RECEIVED in the Clerk's Office of the County of Union, on the 8th day of April, A. D., 1896, at 8 o'clock in the forenoon, and recorded in Book 306 of DEEDS for said County, on pages 1 and 2.

WILLIAM HOWARD,

Clerk.

40

**Exhibit on Part of Defendant.**

Deed \$1000. War.

Dated August 27, 1868

Ack'd " 28, "

Rec'd Sept. 8, "

Book 31, p. 200

10

George Reichart and Elizabeth,  
his wife,

to

John Demler

Conveys in the City of Elizabeth, New Jersey,  
part of Lot No. 3 Block 61 being 25 feet front and  
20 rear by 68 feet deep, as laid down on E-port Map.

Subject to a mortgage of \$500 which Dimler as-  
sumes.

Mortgage \$500

Dated Nov. 2, 1868

Ack'd " 3, "

Rec'd " 3, "

Bk. 8 p. 155.

30

John Dimler and Barbara, his  
wife

to

Frank Van Emberg, Executor  
of the Estate of Harriet Van  
Emberg

Covers in Elizabeth, New Jersey:

40

Beginning on the Easterly side of Fulton Street  
at the Southwesterly corner of Lot No. 1 on Block

*Exhibit on Part of Defendant*

61 as laid down and designated upon the map entitled "Map of the New Manufacturing Town of Elizabethport, N. J." &c

The same premises described in deed above.

Cancelled of record February 20, 1871.

DEED \$1.

Dated May 30th, 1869.

Ack'd " 10th, "

Rec'd " 11 "

Bk. 36, p. 548.

10

John G. Demler

to

Peter Burger

20

Conveys a right of way for a sewer frain to Fulton Street as said sewer is now built across the following described land &c being the same premises described above.

Recites deed of Reichart above Book 31, page 200.

DEED \$1

Dated February 14, 1871

Ack'd " 16, "

Rec'd " 18, "

Bk. 53, p. 385.

30

Peter Burger

to

John Demler

Quit claims unto the party of the second part all rights acquired under deed last above.

40

*Exhibit on Part of Defendant*

## MORTGAGE \$600

Dated March 30, 1875

Ack'd April 10, "

Rec'd " 15, "

Bk. 36, p. 483.

10

John Dimler and Barbara, his  
wife

to

B. & L. Ass'n Harmonia

Covers in City of Elizabeth, New Jersey part of  
Lot 3, Block 61 Port Map.

20

Cancelled of record July 19th, 1886.

## MORTGAGE \$1500.

Dated February 1, 1871.

Ack'd " 16, "

Rec'd " 18, "

Bk. 16, p. 566.

30

John Dimler and Barbara, his  
wife,

to

William J. Magie, Ann F.  
Magie, and David Magie, Ex-  
ecutors

Covers in Elizabeth, the same premises above  
described.

40

Cancelled of record September 2, 1891.

*Exhibit on Part of Defendant*

MORTGAGE \$600.

Dated December 6, 1872.

Ack'd " " "

Rec'd " 17 "

Bk. 27, p. 340

John Dimler and Barbara, his wife,	}	10
to		
John Ranges and John E. Glinion.		

Covers in Elizabeth the same premises above described.

Cancelled of record April 14, 1875.

20

Lease

D. Nov. 17, 1888.

A. " " "

R. April 10, 1889

Bk. 208, p. 76.

John Dimler	}	30
to		
Jacob Rieder		

Leases to party of the first part No. 161—Fulton Street, Elizabeth, N. J., to be used and occupied as a dwelling house and bakery and for no other purpose without the written consent of John Dimler, for three years from Nov. 19, 1888, at monthly rent of twenty-five dollars to April 1, 1889, and afterwards at twenty-eight per month.

40

*Exhibit on Part of Defendant*

Deed #3000.

D. April 19, 1889.

A. " 19, "

R. May 18, 1889

Bk. 209, p. 8.

10 John Dimler and Barbara,  
his wife

to

Anton Giesler

Conveys in Elizabeth, New Jersey, to premises as described above Bk. 31, p. 200.

20 Subject to mortgage of \$1,500 held by Anna W. Oakley which party to the first part hereby assumes and agrees to pay off.

Subject to tax 1889.

## FARM

DEED \$3300.

D. October 15, 1888.

A. April 18, 1889

R. " 19, "

30 Seth B. Ryfer and Waldo Danforth Executors of the Last Will and Testament of Edward G. Brown, deceased

to

John Dimler of Elizabeth,  
N. J.

40 Conveys in the Township of Westfield, New Jer-

*Exhibit on Part of Defendant*

sey, two tracts of land and in Springfield Township one tract of land:

First, 67.72 Acres

Second, 31.08 Acres

Third, 18.75 Acres

10

Recites: Being the same premises conveyed to the said Brown by deed from John Hatfield and wife, dated April 9, 1877, and recorded in Book 166, page 171.

Subject to a mortgage held by Kingsland of New York upon which there is due Two Thousand Dollars, which mortgage the grantee hereby assumes and agrees to pay as part of the consideration hereof.

20

MORTGAGE \$1000.

Dated April 18, 1889.

Reg'd " 20, "

Bk. 84, p. 479

John Dimler and Barbara

Dimler, his wife  
to

30

Benjamin M. Ogedn, Guardian  
of Hannah C. Van Name, a  
lunatic

Cover in the Township of Westfield, New Jersey, the first and second tracts described in the deed last above.

Cancelled of record May 2, 1895.

40

*Exhibit on Part of Defendant*

DEED \$330.

Dated May 23, 1889

Ack'd " " "

Rec'd " 29, "

Bk. 208, p. 520

10 John Dimler and Barbara  
Dimler

to

D. Hobart Sayre and George  
W. Doty

20 Conveys in the Townships of Cranford and  
Springfield New Jersey 18.75, 16 square rods being  
part of the same premises described in deed above  
Book 208 page 148.

DEED \$6000.

Dated May 1, 1895

Ack'd " " "

Rec'd " 2, "

Bk. 291, p. 178

30 John Dimler and Barbara  
Dimler, his wife

to

Robert Koenig

Conveys in the Township of Westfield, New Jersey

First Tract: 6.72 Acres

40 Second Tract: 31.08 Acres

*Exhibit on Part of Defendant*

The above two tracts being a part of the same premises conveyed to the said John Dimler by deed recorded in Book 208 of Deeds for Union County, page 148.

NEWARK PROPERTY LIVINGSTON STREET. 10

DEED \$4000. War.

Dated May 1, 1895

Avk'd " " "

Rec'd " " "

Robert Koenig and Rosina Koenig, his wife 20

to

John Dimler of the Township of Westfield

Conveys in the City of Newark, Essex County, N. J. 30

Beginning on the Westerly side of Livingston Street &c.

Subject to the taxes of 1895.

Bk. Z-28, p. 295

40

*Exhibit on Part of Defendant*

## MORTGAGE \$2000.

Dated October 12, 1901

Ack'd " " "

Rec'd " " "

Bk. W-15, p. 556

10

John Dimler and Barbara Dimler,  
his wife,

to

Jacob Stout and Gideon Lee Stout,  
Trustees under the Will of John Stout, deceased.

20

Covers in the City of Newark, N. J., the same premises described in deed last above.

## DEED \$1. &amp; C.

Dated June 16, 1903

Ack'd " 30, "

Rec'd " 1, "

Bk. W-36, p. 176.

30

John Dimler and Barbara Dimler,  
his wife,

to

Rosa Lipetz, wife of Morris Lipetz.

Conveys in City of Newark, N. J. the same premises as deed above Book Z-28, p. 295.

40

Subject to taxes of 1903 and a mortgage for \$2000 held by Jacob Stout Et al.

*Exhibit on Part of Defendant*

PREMISES IN QUESTION.

DEED \$2200. War.

Dated April 1, 1896

Ack'd " " " 10

Rec'd " 8, "

Bk. 306, p. 1.

James B. Bacon, widower,

to

Barbara Dimler

20

Conveys in the Township of Westfield, New Jersey the premises in question and the same described in the Bill of complaint,

Recites: Being the same premises conveyed to the said James B. Bacon by deed from Mutual Benefit Life Insurance Company bearing date February 1, 1893, Book 256, p. 331.

The above described premises are subject to a mortgage encumbrance of Fifteen Hundred Dollars held by the Mutual Benefit Life Insurance Company, which mortgage the party of the second part hereby assumes and agrees to pay as part of the purchase money herein mentioned. 30

Acknowledged before Henry H. Morrell, Master in Chancery of New Jersey.

The mortgage above referred to Book 108, page 550, was cancelled of record October 22, 1901. 40

*Exhibit on Part of Defendant*

## MISCELLANEOUS INSTRUMENTS.

## MORTGAGE \$800.

Dated October 7, 1895.

Ack'd " " "

Rec'd November 11, 1895

10

Samuel W. Knapp and Mary A.  
Knapp, his wife,

to

Barbara Dimler, wife of John  
Dimler

20 Covers in Westfield, New Jersey, premises on  
Downer Street.

Cancelled of record April 3, 1907.

## ASSIGNMENT MORTGAGE \$800

Dated March 31, 1896

Ack'd " 31, "

Rec'd April 13, "

Bk. 30, p. 45.

30

Barbara Dimler, wife of John  
Dimler

to

Emanuel Eckel

Assigns the mortgage last above Knapp to Dim-  
ler Book 129, page 586.

40

*Exhibit on Part of Defendant*

Covenants that there is due \$800 and interest at 6% from April 7, 1896.

Assignment witnessed by and acknowledged before Henry W. Morrell, Master in Chancery of New Jersey.

MORTGAGE \$800.

10

Dated December 6, 1906

Ack'd " " "

Rec'd " " "

Bk. 229, p. 174.

Caroline Caldwell and William  
H. W. Caldwell, her husband

to

John Dimler

20

Covers in the City of Elizabeth, New Jersey, premises on Union Street.

Cancelled of record December 6, 1912.

MORTGAGE \$330.

Dated July 11, 1908

Rec'd " 14, "

Bk. 249, p. 590

30

Harry Osmun and Nora Osmun,  
his wife

to

John Dimler

Covers premises in Westfield, New Jersey.

Cancelled of record April 21, 1910.

40

*Exhibit on Part of Defendant*

## ASSIGNMENT MORTGAGE \$800.

Dated November 11, 1812

Ack'd " " "

Rec'd " 18, "

Bk. 52, p. 22

10

John Dimler

to

John Darsh

Assigns mortgage Caroline Caldwell and husband to Dimler Book 229, p. 174 above.

20

## ELMER STREET PROPERTY

## AIKEN.

DEED WAR. \$1850

Dated October 12, 1901

Ack'd " 12, "

Rec'd " 15, "

Bk. 388, p. 70

30

John L. Aiken and Ada Z.  
Aiken, of Westfield, N. J.

to

John Dimler

Conveys in the Town of Westfield, New Jersey:  
Beginning on the Northerly side of Elmer Street  
&c.

40

*Exhibit on Part of Defendant*

Recites deed of Sarah Adeline Simpson dated November 2, 1898, Book 342, page 588.

Subject to a mortgage of \$1300 held by Sarah A. Bown which mortgage forms part of the consideration in this deed expressed and the party of the second part assumes and agrees to pay the mortgage. 10

Deed Acknowledged before L. C. Hart.

Mortgage referred to in the foregoing deed is recorded in Book 167, page 263, of Mortgages for Union County and was cancelled of record June 5, 1906.

MORTGAGE \$300. 20

Dated August 20, 1904

Ack'd

Reg'd " 26, "

Bk. 206, p. 318.

John Dimler and Barbara Dimler, his wife,

to

Sarah A. Brown

30

Covers in Westfield, New Jersey, the same premises acquired from Aiken by deed above Book 388, p. 70.

Cancelled of record June 5, 1906.

Produced by L. E. Hart.

40

*Exhibit on Part of Defendant*

DEED \$2300. War.

Dated June 1, 1906

Ack'd " " "

Rec'd " " "

Bk. 467, p. 141

10

John Dimler and Barbara Dimler,  
his wife,

to

Washington Sheldon

Conveys the same premises as described in deed  
of Aiken Book 388, page 70 &c.

20

MORTGAGE \$1300.

Dated June 1, 1906.

Ack'd " " "

Rec'd " " "

Bk. 223, p. 194.

Washington Sheldon, widower

to

John Dimler

30

Covers Aiken property of Elmer Street.  
Cancelled of record June 20, 1907.

40

[8990]

**Exhibit O2 on Part of Defendants.**

Policy of insurance in the Royal Insurance Company dated November 20, 1909, for \$1500 on property 235 Elmer Street, Westfield, New Jersey, in name of insured, Barbara Dimler.

**Exhibit D3 on Part of Defendants.**

Policy of insurance dated November 27, 1915, on 235 Elmer Street, Westfield, New Jersey, insured Estate of Barbara Dimler.

**Exhibit D4 on Part of Defendants.**

Westfield, N. J., Nov. 7, 1816.

A true copy of the Tax Duplicates showing owner of property.

Year.

1896.	John Dimler H and L Elmer Street
1897.	John Dimler H and L Elmer Street.
1898.	John Dimler H. & L. Elmer Str.
1899.	John Dimler H & L Elmer Str.
1900.	John Dimler H & L " "
1901.	John Dimler H & L " "
1902.	John Dimler H. & L. " "
1903.	John Dimler H & L Elmer St. 65 feet
1904.	John Dimler H & L " " 65 "
1905.	John Dimler H & L " " 65 "
1906.	John Dimler H & L " " 65 "
1907.	Barbara Dimler H. & L. " " Block 214, 65 feet.
1908.	Estate Barbara Dimler H & L 235.239 Elmer St. Block 214, 65 feet.
1909.	Estate " " H & L 235.239 " " " 214, 65 "
1910.	Estate " " H & L 235.239 " " " 214, 65 "
1911.	Barbara Dimler H & L 235.239 " " " 214, 65 "
1912.	Barbara Dimler H & L 235.239 " " " 214, 65 "
1913.	Barbara Dimler H & L 235.239 " " " 214, 65 "

Westfield N. J.

Yours very truly,

ADDISON H. CLARK, Collector.

