

INDEX

PLEADINGS, ETC.

Bill of Complaint	1
Order to Show Cause	17
Answer of Christian A. Bruning	19
Affidavit of Christian A. Bruning	26
Answering affidavit	39
Order permitting amendment	41
Order changing title of solicitor	42
Amendment to bill	43
Replication	45
Answer of Defendant Johanna Bruning	49
Opinion	145
Final decree	147
Notice of Appeal	153
Petition of Appeal	154
Acknowledgment of service of preceding	167
Answer to petition of appeal	168

TESTIMONY

Louisa Dele, direct	56
cross	68
redirect	77
Alexander McLeod, direct	78
Christian Bruning, direct	80
cross	90
redirect	103
A. Lawrie Young, direct	106
cross	111
redirect	115
Johanna Bruning, direct	115
cross	116

EXHIBITS

Printed

- C-1—Note for three thousand dollars, dated July 14, 1923, by R. B. Marshall to Louise Dele. In evidence on page 62118
- C-2—Letter, dated September 11, 1923, from O. P. Marshall to Louise Dele. In evidence on page 63118
- C-3—Letter, dated October 27, 1923, from O. R. Marshall to Louise Dele. In evidence on page 63118
- C-4—Letter, dated November 24, 1923, from O. R. Marshall to Louise Dele. In evidence on page 63119
- C-5—Note, dated July 7, 1923, for two thousand dollars, from R. B. Marshall to Louisa Dele. In evidence on page 78119
- C-6—District Court record of suit between Louisa Dele and Henry Hella. In evidence on page 120
- D-1—Bond for five thousand dollars, dated July 13, 1922, from Louisa Dele to Robert B. Marshall. For identification on page 69. In evidence on page 106122
- D-2—Contract for sale of property, dated June 20, 1923, from Robert B. Marshall to Johanna Bruning. In evidence on page 83123
- D-3—Deed, dated July 5, 1923, from Robert B. Marshall to Johanna A. Bruning. In evidence on page 84125
- D-3½—Check, dated July 5, 1923, for sixty-two and sixteen dollars from Johanna Bruning to Clifton Trust Co. In evidence on page 88 ..126
- D-4—Check dated July 5, 1923, for twenty-seven hundred and seventy-one dollars and seven cents from Johanna Bruning to Robert B. Marshall. In evidence on page 88126

D-5—Check, dated July 5, 1923, for six hundred and fifty-five dollars, from Johanna Bruning to William Karl, Jr. In evidence on page 88 ..	127
D-6—Check, dated July 6, 1923, for twenty-seven hundred and fifty-nine dollars and seven cents from Johanna Bruning to Passaic Builders Supply Co. In evidence on page 89	127
D-7—Statement of passing of title from Robert B. Marshall to Christian A. Bruning. In evidence on page 89	127
D-7½—Mortgage, dated October 17, 1922, for six thousand dollars from Alice C. Aldred and James Herbert Aldred, her husband, to Clifton Trust Co. In evidence on page 104	128
D-8a—Lease, dated July 31, 1917, from Louisa Dele to Lambertus C. Bobbink and Frederick L. Atkins. In evidence on page 104	129
D-8b—Deed, dated October 10, 1922, from Louisa Dele, to Alice C. Aldred and James Herbert Aldred, her husband. In evidence on page 103 ..	129
D-8c—Mortgage, dated July 13, 1922, for twenty-five hundred dollars, from Louisa Dele to Robert B. Marshall. In evidence on page 105	130
D-8e—Deed, dated October 20, 1922, from Alice C. Aldred and James Herbert Aldred, her husband to Robert B. Marshall. In evidence on page 104	130
D-9—Mortgage, dated October 20, 1922, for \$2,725, from Robert B. Marshall to Alice C. Aldred and Henrietta Verhagen. In evidence on page 105	131
D-9½—Cancellation appearing on face of preceding. In evidence on page 105	131
D-10—Assignment of mortgage, dated April 26, 1923, from Alice C. Aldred and Henrietta Verhagen to Harry Simon. In evidence on page 105	131

D-11—Assignment of mortgage, dated May 11, 1923, from Harry Simon to Passaic Builders Supply Co. In evidence on page 105	132
D-12—Mortgage, dated December 15, 1916, for \$4500, from Louisa Dele and Emanuel Dele, her husband, to German-American Trust Co. In evidence on page	132
D-13—Mortgage, dated July 5, 1923, for \$13,000, from Christian A. Bruning to Johanna Bruning. In evidence on page 106	133
D-13½—Abstract of title of Robert B. Marshall made for Christian A. Bruning. In evidence on page 110	134
D-14—Assignment of mortgage from Robert B. Marshall to William Karl, Jr. In evidence on page 106	144

Bill of Complaint

(Filed January 18, 1924.)

IN CHANCERY OF NEW JERSEY

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

Louisa Dele, of Clifton, in the County of Essex
and State of New Jersey, respectfully shows unto
your Honor:

1. That prior to on or about the 10th day of
July, 1922, she was the record owner of the prop-
erty hereinafter described, to wit:

10

"Beginning at the point where the south-
westerly line of lot of land formerly of R. S.
Speer now Henry Bruning intersects the mid-
dle of the public road which leads from Ac-
quackanok to the Little Falls now known as
the Telegraph Road or Grove Street and run-
ning; from thence (1) along said Bruning's
line and also the center line of a road now
known as Almond Avenue south 41 degrees
and 30 minutes east 7 chains and 7 links to
the line of land formerly of Daniel Schoon-
maker; thence (2) along said line south 48
degrees and 30 minutes west 7 chains and 99
links to the line late of Daniel Paxton; thence
(3) along said line late of Daniel Paxton and
others, 7 chains and 60 links to the center
line of Grove Street and thence (4) along the
same north 48 degrees east to the place of
beginning.

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2. She was also the true and equitable owner of
said property and said property was worth in value
approximately \$12,000.00. It consists of a farm of
approximately 6 acres, with a dwelling house and
barns erected thereon and complainant has been

Bill of Complaint

living in said house for approximately 8 years and had been renting said farm out for nursery purposes and had been occupying the house as a residence. On or about the 10th day of July 1922, she was approached by one Robert B. Marshall and he asked complainant if she would sell the place. Complainant did not desire to sell and so stated and thereupon the said Robert S. Marshall told her that she could make good money on the place and could have a steady income if she would sell the place to him upon the terms and in the manner desired and he said he would pay for the place \$12,000.00 and in order to assure complainant a steady income he would give complainant \$7,000.00 worth of stock of a corporation known as the Rice Products Company, which he said would net to complainant an income of 12%. There was a \$2500.00 mortgage on the property, and he would give complainant a mortgage for \$2,000.00 and \$500.00 was to be paid in cash.

10

20 Complainant is 34 years old. She is a widow, her husband having died in 1917. She is wholly uneducated and she has never done any business except that of being a farmer's wife. She has three children whose ages are 17, 15 and 8. She was wholly uneducated with business and business methods and she had had a hard time since the death of her husband and was obliged to go out working every day in order to keep herself by doing general housework.

30 The said Robert B. Marshall is a man about 45 years old, educated and engaged in the business of selling stocks and representing all kinds of companies and various enterprises. He realised the position complainant was in and continued to talk to complainant and persuade her that if she would accept the proposition made by him she could be assured of a fixed

Bill of Complaint

net income which would put it within her power to make her living more easy than she had been making it and secure her so that she would not have to worry continuously without being obliged to live from hand to mouth.

3. The said Robert B. Marshall knew the position of complainant and knew the complainant had no business experience whatever and was unable to comprehend what was the proper thing for her to do and knew that she relied upon him and deliberately, knowing that she relied upon him, made the proposal to complainant and urged complainant to accept it knowing and realizing that he did not intend to carry out his promise and that the result would be if complainant parted with her property upon the agreement that he proposed she would part with everything and would get nothing back. 10

4. At the time the said Robert B. Marshall induced complainant to consent to this agreement, at the request of Robert B. Marshall, she handed over to him the old deed of the property and he said he would prepare the papers. Two days later he came to the farm of complainant with another man and presented to complainant a paper which he said was the deed of the property and which complainant at his request signed. He also presented to her a paper which he said was the mortgage for \$2,000.00 and told her that she was to hold this without doing anything with it. He also gave her certificates for 300 shares of the Rice Products Company at a par value of \$40.00 a share, representing \$3,000.00 and said that he would hold the other 400 shares as security. Complainant did not know and does not know now what he meant by holding the said 400 20 30

Bill of Complaint

shares as security. He did not give complainant the balance of \$500, nor was his failure to give complainant this \$500.00 explained to her. He told complainant that because of the increased value of the shares of the Rice Products Company stock she owed him \$300.00 and thereupon induced by his representations she drew out of the German American Trust Company where she had her savings account \$300.00 and gave him the said \$300.00. He also said that she would get \$1.00 a share per month on the stock and that would give her \$70 a month. Complainant further shows that as an inducement to get the complainant to enter into said bargain the said Robert B. Marshall told the complainant that she might stay in said house for three years or until July 1925, without the payment of rent and said that inasmuch as he was going to buy the property she would have her rent free and he would pay taxes and other carrying charges. Thereafter and monthly complainant received \$30.00 a month from the Rice Products Company and the other \$40.00 was paid by Robert B. Marshall, he bringing it to the house every month. After the deed was made by complainant, complainant had heard that she should not have entered into the agreement and when Robert B. Marshall came to her house she told him so and said she wanted her money back. The said Robert B. Marshall thereupon again went over the same argument he had before and told complainant that she was making a mistake, that she would have her net income and that she would not have to work and would not have to worry and continued to impress upon complainant the production that she would have if she left the bargain and he

Bill of Complaint

also said that he would see to it that she was paid the full amount of the consideration within three years and that he would see that cash was paid to her in place of the stock and mortgage, etc., and again told her that she could remain in the property until three years had expired and until the whole amount had been paid in cash.

5. On or about the 14th day of July, 1923, O. Percy Marshall and Ernest P. Marshall, brothers of the said Robert B. Marshall and they themselves being in the same business with Robert B. Marshall, came to complainant and said that they wanted the stock saying that the company would not pay her the dividend every month and if she would let them, they would personally see that it was paid. Complainant never had but the 300 shares of stock and trusting in the honesty and integrity of the said Robert B. Marshall and O. Percy Marshall and Ernest P. Marshall, and not understanding at all what she was doing, surrendered to them the 300 shares of stock and took in exchange therefor a note dated July 14th, 1923, a copy of which is annexed hereto and marked Exhibit 1. Complainant had, in accordance with the instructions of Robert B. Marshall, never recorded the paper, which is said to be a mortgage. Complainant does not know what a mortgage is and does not know whether she ever in fact, had a mortgage. It was a paper which they said represented the \$2000. Robert B. Marshall stated that it was not necessary to record it and complainant has lost this paper. A few days after the 14th of July 1923, complainant heard thru talk from outside people that Christian A. Bruning had bought complainant's property. Complainant thereupon be-

Bill of Complaint

came worried and consulted with Alexander M. MacLeod as her lawyer and thereupon an investigation was put under way which disclosed that no mortgage was ever recorded to the complainant. The 300 shares of the Rice Products stock which had been obtained from her upon the 14th day of July, 1923, had been transferred to various persons and there were never any additional 400 shares in complainant's name in the company, 300 shares being the only amount which was transferred to complainant. The authorization of the transfer of the 300 shares out of complainant's name was signed by Robert B. Marshall and it was also discovered that the deed made by complainant to Robert S. Marshall thru Alice C. Aldred as intermediary was recorded in the office of the Clerk of Passaic County in Book X-29 page 580, which deed was to Alice C. Aldred. Deed from Alice C. Aldred to Robert B. Marshall was recorded in Book I-30 page 374, and deed from Robert B. Marshall to Christian A. Bruning was recorded in Book O-30, page 566. Christian A. Bruning is the son of a sister of complainant and lives immediately across the street from complainant. There has been bitterness between the complainant and complainant's sister, the mother of Christian A. Bruning, for the past several years.

6. Complainant shows that she believes that no consideration was paid for said property and she further says that if in fact any consideration was paid, she was in possession of said property and no inquiry whatever was made to her with respect to her rights in said property and she says that she believes and therefor charges that the said Christian A. Bruning or those for whom he bought said property or with whom he was associated in the

7
Bill of Complaint

purchase of said property knew the circumstances and knew that complainant had been deprived of her property by fraud and false representations and that if in fact they did not know, she charges that they deliberately closed their eyes for the purpose of not knowing and she charges that the said Christian A. Bruning is not a bone fide purchaser for value without notice but that the property in his hands is charged with the same rights and equities that the complainant would have were it in the hands of Robert B. Marshall. 10

7. Complainant charges that she does not understand anything with respect to registry or recording laws and she did not believe and was not advised that she was putting it within the power of the said Robert B. Marshall or anyone else to transfer said property without her rights being protected.

8. Complainant further shows that on or about the 11th day of September 1923, she received a letter purporting to be signed by O. P. Marshall, Box 15, Passaic, New Jersey, a copy of which is annexed hereto and marked Exhibit 2. The said letter was registered and there was inclosed \$70.00 in cash. 20

9. Complainant further shows that on or about the 27th day of October 1923, she received a letter, a copy of which is annexed hereto and marked Exhibit 3. That although said letter states that there is \$70.00 inclosed there was in fact but \$60.00 inclosed. This money complainant has and is ready to make such disposition of it as this court may direct. 30

10. Complainant further shows that she has received no benefit whatever from the pretended sale of her property except only the \$70.00 which has

Bill of Complaint

been paid her monthly. She has nothing to represent the value of said property except only the note, a copy of which is annexed hereto and marked Exhibit 1.

10 11. Complainant further shows that a suit has been started in the Passaic County Circuit Court by the said Christian A. Bruning against her in ejectment. That an answer has been filed to said suit denying the statements therein contained, a copy of which summons and complaint and answer being
annexed hereto and marked Exhibit 4. Complainant further shows that the said suit is at issue but cannot be noticed for trial until the January term of Court.

20 12. Complainant further shows that if she is not entitled to have the conveyance made by her as aforesaid set aside, she is entitled to have a lien imposed upon said premises for the amount of the purchase price thereof, to wit: the sum of \$12,000.00 or so much of such sum as this Court may hold to be in fact unpaid, and that if she is not so entitled, then she is entitled to have a lien imposed upon said premises for the amount of the unrecorded mortgage, to wit: the sum of \$2000.00 and she says that she is entitled to have these liens imposed as aforesaid as against the present owner of said property, to wit: the said Christian A. Bruning, for the reasons hereinbefore set forth and because she was in
30 possession of said premises to the knowledge of the said Christian A. Bruning and no inquiry whatsoever was made to her with respect to her rights.

Complainant is without remedy at common law and therefore prays:

1. That the defendants to this suit, who are

Bill of Complaint

Christian A. Bruning, Robert B. Marshall, O. Percy Marshall, and Ernest P. Marshall, may answer this bill and each statement therein contained but without oath.

2. That the conveyance made by the said complainant to Robert B. Marshall, thru Alice C. Aldred as intermediary dated October 10th, 1922 and recorded in Passaic County, Book X-29, page 580 and Book I-30, page 374, for the lands and premises referred to herein be set aside. 10

3. Or that it be declared that she have a lien and charge upon said lands and premises for the amount of the purchase price thereof, to wit: the sum of \$12,000.00 or that so much thereof as this court may find to be unpaid.

4. Or that it may be decreed that she have a lien and charge upon said premises for the amount of \$2,000.00 representing the amount of an unrecorded mortgage with interest. 20

5. And that it may be adjudged and decreed that her rights and interests are prior to any rights and interests of any of the said defendants.

6. That until the determination of this suit, the said defendants and each of them, be enjoined from prosecuting any suits at law designed to interfere with the possession of said lands and premises of complainant.

7. That complainant may have such other and further relief as may be proper. 20

8. That the process of subpoena may issue to the said defendants, Christian A. Bruning, Robert B. Marshall, O. Percy Marshall and Ernest P. Marshall

Bill of Complaint

to appear, abide by and perform such order and decree as may be made herein.

And complainant will ever pray, etc.

Alexander M. MacLeod,

Solicitor for Complainant.

State of New Jersey }
County of Essex } ss.

10 Louisa Dele, of full age, being duly sworn, according to law, upon her oath, deposes and says:

I am the complainant named in the foregoing bill. I know the contents of the foregoing bill. The matters and things therein set forth with respect to my own acts and deeds, my possession of the lands and premises referred to in the bill, my conversations with the Marshalls and the agreements made between us and with respect to Christian A. Bruning and all of the other statements contained in the said bill except statements made upon information and 20 belief, are true and the statements made upon information and belief I believe to be true.

Louisa Dele, L.S.

Sworn and Subscribed to before me

this 14th day of January, 1924.

Frank Van Cleve,

Master in Chancery of New Jersey.

30 State of New Jersey }
County of Passaic } ss.

Alexander M. MacLeod of full age, being duly sworn, according to law, upon his oath deposes and says:

I am an attorney-at-law. I have examined the records in the Passaic County Register's Office and

Bill of Complaint

I find the following deeds on record: Louisa Dele to Alice C. Aldred, dated Oct. 10th, 1922, and recorded in Book X-29, page 580. Alice C. Aldred and James H. Aldred her husband to Robert B. Marshall, dated Oct. 20th, 1922, and recorded in Book I-30, page 374, and Robert B. Marshall (single) to Charles A. Bruning, dated July 5th, 1923, and recorded in Book O-30, page 566.

I have read the foregoing bill of complaint and the statements therein set forth with respect to the ejectment suit and with respect to the records are true. 10

Alexander M. MacLeod.

Sworn and subscribed to before me
this 14th day of January, 1924.

Frank Van Cleve,
Master in Chancery of New Jersey.

EXHIBIT ONE

\$3,000.00 Passaic, N. J., July 14, 1923. 20

One year after date I promise to pay to the order of Louisa Dele, Three Thousand Dollars at the Peoples Bank and Trust Company, Passaic, N. J.

Value received.

No. Due R. B. Marshall.

This note is given in consideration of loan of 300 shares American Rice Products Company stock and to be paid either in stock of the above named company or in cash with interest of six per cent. 30

Bill of Complaint

EXHIBIT TWO

Paterson, N. J.

September 11th, 1923.

Mrs. Louisa Dele,
Richfield, N. J.

Dear Madam:

Inclosed please find Seventy dollars (\$70.00)
monthly interest as per your agreement with R. B.
Marshall.

10 Kindly mail receipt to address below.

Yours very truly,

O. P. Marshall,

Box 15, Passaic, N. J.

EXHIBIT THREE

October 27th, 1923

Mrs. Louisa Dele,
Richfield, N. J.

Dear Madam:

20 Inclosed please find seventy dollars \$70.00 month-
ly interest as per your agreement with R. B. Mar-
shall.

Kindly mail receipt to address below.

Yours very truly,

O. P. Marshall,

Box 15, Passaic, N. J.

EXHIBIT FOUR

30 State of New Jersey, ss.

The State of New Jersey to the sheriff of the
County of Passaic, Greeting:

We command you to summon Louisa
(L. S.) Dele to appear before the Passaic County
Circuit Court at Paterson, to answer to
the complaint of Christian A. Bruning who demands

Bill of Complaint

of her the possession of the house on the premises situate in the City of Clifton, County of Passaic and State of New Jersey, and which are more particularly described as follows:

Beginning at the point where the southwesterly line of lot of land formerly of R. S. Speer new Henry Bruning intersects the middle of the public road which leads from Acquackanonk to the Little Falls now known as the Telegraph Road or Grove Street and running; from thence (1) along said Bruning's line and also the center line of a road now known as Almond Avenue south 41 degrees and 30 minutes east 7 chains and 7 links to the line of land formerly of Daniel Schoonmaker; thence (2) along said line south 48 degrees and 30 minutes west 7 chains and 99 links to the line late of Daniel Paxton thence (3) along said line late of Daniel Paxton and others, 7 chains and 60 links to the center line of Grove Street and thence (4) along the same north 48 degrees east to the place of Beginning.

Contains 6 acres, more or less.

And take notice that unless you file your answer to said complaint with the Clerk of the said Circuit Court, at Paterson, within twenty days after service upon you of this writ and of the annexed complaint, judgment will be entered against you and you will be turned out of possession of said house.

Witness, Honorable Clifford L. Newman, Judge of said Court, at Paterson this 13th day of August, 1923.

John McCutcheon,
Clerk.

Young & Randall,
Attorneys.

Bill of Complaint

PASSAIC COUNTY CIRCUIT COURT

Christian A. Bruning, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> Louisa Dele, <div style="text-align: right;">Defendant.</div>	}	Action At Law
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- 10 Passaic County Circuit Court of Paterson, County of Passaic ss.

Christian A. Bruning, the plaintiff in this action, by Young & Randall, his attorneys, demands of Louisa Dele, the defendant therein the possession of the house situated on the premises in the City of Clifton, County of Passaic and State of New Jersey, and more particularly described as follows:

- 20 Beginning at the point where the south-westerly line of a lot of land formerly of R. S. Speer now Henry Bruning intersects the middle of the public road which leads from Acquackanonk to the Little Falls now known as the Telegraph Road or Grove Street and running from thence (1) along said Bruning's line and also the center line of a road now known as Almond Avenue south 41 degrees and 30 minutes east 7 chains and 7 links to the line of land formerly of Daniel Schoonmaker; thence (2)
- 30 along said line south 48 degrees and 30 minutes west 7 chains and 99 links to the line late of Daniel Paxton; thence (3) along said line late of Daniel Paxton and others, 7 chains and 60 links to the center line of Grove Street and thence (4) along the same north 48 degrees east to the place of beginning.

Bill of Complaint

And the plaintiff says that his right to the possession of the same accrued on the fifth day of July 1923, and that the defendant wrongfully deprives him of the possession thereof, to his damage of One Hundred Dollars (\$100.).

Young & Randall,
Attorneys for Plaintiff.

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Order to Show Cause

at his usual place of abode and upon his attorney in
the law suit.

Edwin Robert Walker,
Chancellor.

Respectfully advised,
Vivian M. Lewis,
V. C.

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Answer of Christian A. Bruning

(Filed Feb. 7, 1924)

IN CHANCERY OF NEW JERSEY

Between
Louisa Dele,

Complainant,

and

Christian F. Bruning, et als.,

Defendants.

} On Bill, &c.

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ANSWER OF CHRISTIAN A. BRUNING

Te answer of Christian A. Bruning, one of the defendants, to the bill of complaint of Louisa Dele, complainant:

(1) This defendant admits paragraph (1).

(2) This defendant has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (2), except that he believes it to be true that complainant on and before July 10th, 1922, was the owner of the lands and premises referred to and that the same were worth about \$12,000.00, and that said lands consist of about six acres with dwelling house and barns thereon and that complainant had lived in said house for about eight years then past and that said farm lands were occupied partly by tenants.

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(3) He has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (3).

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(4) He has no knowledge or information suffi-

Answer of Christian A. Bruning

cient to form a belief as to the matters and things alleged in paragraph (4).

(5) He has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (5), except that he believes it to be true that deeds of conveyance for said premises appear of record as stated in said paragraph.

10 (6) He denies the matters and things alleged in paragraph (6).

(7) He has no knowledge or information sufficient to form a belief as to the matters and things set forth or alleged in paragraph (7).

(8) He has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (8).

20 (9) He has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (9).

(10) He has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (10).

(11) He admits the matters and things alleged in paragraph (11).

(12) He denies that complainant is entitled to have a lien imposed upon said premises for the sum of \$12,000.00, or any other sum.

30 (13) This defendant, answering said bill of complaint says that sometime in the month of June, 1923, he desiring to purchase the lands and premises described and mentioned in said bill of complaint and knowing complainant to be in possession of part of the dwelling house of said lands and supposing her to be the owner thereof, applied to her

Answer of Christian A. Bruning

to purchase said lands and premises. That thereupon said complainant informed this defendant that she was not the owner of said lands, that she had sold the same sometime ago, the precise date which she did not mention.

(14) That this defendant, after complainant had informed him that she was no longer the owner of said lands but had sold the same, made further inquiry respecting the owner of said lands and learned that one Robert B. Marshall claimed to be the owner thereof and on or about June 20th, 1923, his mother, Johanna Bruning, entered into contract, in writing with said Robert B. Marshall, whereby said Robert B. Marshall agreed to convey said lands and premises to this defendant's mother for the sum of \$13,000.00, \$500.00, of which was then and there paid, the receipt whereof was thereby acknowledged, as by said contract, which is in this defendant's possession, reference being thereunto had, will more fully appear.

(15) That after the making of said contract between Robert B. Marshall and this defendant's mother, this defendant caused a search to be made of the records of the Office of the Register of Deeds of the County of Passaic, and said records disclose that complainant on October 10, 1922, by her deed containing covenants of seizen, of good right to sell and convey, for quiet enjoyment and of warranty, which deed was duly acknowledged on the same day and recorded on October 21, 1922, in Book X-29 of Deeds for said County on pages 580, conveyed said lands and premises to Alice C. Aldred and James Herbert Aldred, her husband.

(16) That on October 17, 1922, said Alice C. Al-

Answer of Christian A. Bruning

dred and James Herbert Aldred, her husband, by their mortgage dated on that day, acknowledged October 19, 1922, and recorded on October 21, 1922, in Book R-12 of Mortgages on pages 217, &c., mortgaged said lands and premises to the Clifton Trust Company, of Clifton, New Jersey, to secure the payment of the sum of \$6000.00, in one year with interest at six per cent per annum, to be paid semi-annually.

10 (17) That on October 20th, 1922, the said Alice C. Aldred and James Herbert Aldred, her husband, by warranty deed dated and acknowledged on that day and recorded on March 19, 1923, in Book I-30 of Deeds on pages 374, &c., conveyed said lands and premises to Robert B. Marshall.

20 (18) Said Robert B. Marshall on October 20, 1922, by his mortgage dated and acknowledged on that day, and recorded in the said Register's Office on March 27, 1923, in Book Y-12 of Mortgages on pages 11, &c., mortgaged said lands and premises to Alice C. Aldred and Henrietta Verhagen, to secure the payment of the sum of \$2725.00, in one year with interest at the rate of six per cent per annum, payable semi-annually.

30 (19) That on April 26, 1923, by assignment dated and acknowledged on that day and recorded in said Register's Office on May 18, 1923, in Book A-4 of Assignments of Mortgages, on pages 237, &c., the said Alice C. Aldred and Henrietta Verhagen assigned said mortgage to Harry Simon.

(20) That on May 11th, 1923, by assignment dated on that day, acknowledged on May 15th, 1923, and recorded in said Register's Office, on May 18,

Answer of Christian A. Bruning

1923, in Book A-4 of Assignments of Mortgages, on pages 238, &c., said Henry Simon assigned said mortgage to the Passaic Builders Supply Company.

(21) That relying upon the title to said lands and premises, as disclosed by said records, and without any knowledge of any claim whatsoever with respect to said property by complainant, and believing that said Robert B. Marshall was seized of and entitled to the said lands and premises, free from any claim or demand of the said complainant in and to the same, this defendant purchased said lands and premises from said Robert B. Marshall, on July 5th, 1923, on which day said Robert B. Marshall executed and delivered to this defendant a warranty deed for the same and this defendant then and there paid to the said Robert B. Marshall the sum of \$3,431.07, and on the following day paid to the Clifton Trust Company, of Clifton, Newt Jersey, the sum of \$6216.00, for the principal and interest of the mortgage held by it and to the Passaic Builders and Supply Company the sum of \$2759.07 for the principal and interest of the mortgage held by it on said lands, \$65.86 was allowed to this defendant upon an apportionment of taxes for the year 1923, and \$28.00 on an apportionment of rents accrued, making in all the sum of \$13,000.00, actually paid by this defendant, in consideration of said conveyance.

(22) And this defendant further answering says that the said sum of \$13,000.00, the consideration for the sale of said lands and premises, was actually paid by this defendant to the said Robert B. Marshall at the time the said deed to this defendant bears date and as set forth in the last preceding

Answer of Christian A. Bruning

paragraph; and that at or before the respective times of the execution of the said deed, and of the payment of the said purchase money, he, this defendant, had no notice whatever of the claim of said Louisa Dele, the complainant, or of any other encumbrance whatsoever, that in anywise affected the said lands and premises so purchased by this defendant, or any part thereof, except as disclosed by the records of the title to said lands and premises in the Register's Office of the County of Passaic.

10 (23) This defendant further answering says that said sum of \$13,000.00, paid by him as consideration for the conveyance of said lands and premises was loaned and advanced to this defendant by Johanna Bruning, his mother, and that on the same day that said deed of conveyance was delivered to him and the consideration moneys paid as aforesaid, and contemporaneously therewith did execute and deliver to his said mother a bond in the penal sum of 20 \$26,000.00, with condition to pay the said sum of \$13,000.00, and a mortgage on said lands and premises to secure the same, which said mortgage bears date the said fifth day of July A. D. 1923, and contains a recital that the same was given to secure the purchase price of said premises, and was recorded in the Office of the Register of Deeds and Mortgages of the County of Passaic, on July 7th, 1923, at 8:26 o'clock in the forenoon, in Book E-13 of 30 Mortgages for said County on pages 158, &c.

(24) And this defendant further answering says that said Johanna Bruning, by virtue of her said mortgage, is a necessary party to this suit.

And this defendant prays to be hence dismissed

Answer of Christian A. Bruning

with his costs and charges herein most wrongfully sustained.

Young & Randall,
Solicitors, of defendant
Christian A. Bruning.
Gustav A. Hunziker,
Counsel.

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Affidavit

(Filed Feb. 26, 1924)

IN CHANCERY OF NEW JERSEY

Between Louisa Dele, and Christian F. Bruning, et als., Defendants.	}	On Bill, &c.
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AFFIDAVIT

State of New Jersey, } ss:
 County of Passaic.

Christian A. Bruning, being duly sworn according to law, upon his oath deposes and says:

20 I am one of the defendants in the above entitled cause. I have read that bill of complaint and the affidavit thereto annexed, filed by the complainant.

I know the complainant in this suit. She is my aunt, being a sister of my mother.

30 I reside on Almond Road, Clifton, in Passaic County, New Jersey, with my mother Johanna Bruning. The complainant has during all the time of the occurrences mentioned herein, lived in the house located on the land described in the bill of complaint near where I live. The complainant occupies three rooms on the second floor of said house while the lower floor and one room and bath on the second floor is in the occupation of a tenant, whose name is Heller. The land, except for a small portion around the house, has been rented and occupied by Bobbink and

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Affidavit

Atkins, florists.

In the month of June, A. D. 1923, I contemplated getting married and was looking around for a house where I could go to live with my wife. I also wanted to acquire some land with my house to use in my business. I am engaged in growing horse-radishes and putting them up in containers to sell to dealers. One day in June, 1923, I met the complainant on the street. I stopped and talked with her. I told her I was thinking about getting married and needed a house to live in and land for my business. I remarked that rents were high and I wanted a place of my own. I asked complainant whether she would sell her property. She thereupon told me that she had already sold it. I asked her what price she had got for it and she said she had sold it for \$12,000.00. Complainant then said that it was too bad she had not sold the property to me. The same day, after I had returned home, I told my mother I had met the complainant and that she had told me about selling her property. My mother then told me she had heard the Clifton Trust Company, of Clifton, New Jersey, had a mortgage on the property. She said a real estate man of Passaic, New Jersey, had come to our home by mistake, to inspect the Dele property for the purpose of placing a mortgage loan on it. The following day I went to Clifton Trust Company, of Clifton, N. J., and inquired who was the owner of the property and was informed that Mr. Marshall owned it and that he had an office in the Hudson Building, corner Main and Ellison Streets, in the City of Paterson, New Jersey. I left the Clifton Trust Company and went to Paterson to the office of Mr. Marshall but found it closed. The following day I

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Affidavit

was visited at my home by William E. Karl, Jr., a real estate broker, who said he had heard I was interested in the Dele property. He told me he had the property for sale and offered it to me for \$18,000.00. I refused to pay so much and we bargained for a while and I finally agreed to pay \$13,000.00 in cash for the property. I paid Mr. Karl \$500.00 as a deposit. I believe he gave me a receipt but I have been unable to find it. On June 20th, 1923, a formal contract was prepared by Mr. Karl by which Robert B. Marshall agreed to sell the property to my mother for \$13,000.00, in which the receipt of \$500.00, on account of the purchase price, was acknowledged and the balance was agreed to be paid on delivery of the deed at the office of my attorneys, Young & Randall, of Paterson, New Jersey, on or before July 10th, 1923. I have the contract in my possession and am ready to produce it whenever it may be required. The contract was taken in the name of my mother as purchaser because she had agreed to advance the purchase money for me. Later, however, it was arranged between my mother and myself that the deed should be made to me because she does not live with my father, so we concluded it was best to put the title in my name and that I should give my mother a purchase money mortgage for the whole consideration, which she was to advance.

After making the contract I instructed my attorneys, Young & Randall, of Paterson, New Jersey, to make a search of the title to the property. During the time my attorneys were making a search of the title they reported to me they had found of record a lease made by complainant to Bobbink & Atkins, for a certain term with the privilege of renewal of

Affidavit

2, 4, or 6 years, as they might desire. My attorneys advised me to see Bobbink & Atkins and learn what the term they held was. I went to see Mr. Bobbink, of the firm of Bobbink & Atkins, at his home in Rutherford, New Jersey, and asked him about their lease. Mr. Bobbink told me they intended to vacate the place on August 1st, 1924. I told him the reason I inquired was that I was about to buy the property and wanted to know all about it. He said they paid their rent quarterly in advance and that it was paid until August 1st, 1923. I asked him to pay the next quarter's rent, which was to become due on August 1st, 1923, to me, which he said he would do. After this interview I went to Green Pond, New Jersey, to remain for a few weeks. While there I was notified by my attorneys they had arranged to complete the purchase of the property and on July 5th, 1923, I attended at the office of my attorneys, Messrs. Young and Randall, at Paterson, New Jersey, for that purpose. My mother, Johanna Bruning, and a Mr. Garret E. Gould, who acts as my mother's manager of business, were with me. Mr. Karl, the real estate agent, Mr. Robert B. Marshall, the owner of the property, and a man who was introduced as Mr. Marshall's brother, were also present. My attorneys, together with Mr. Karl, the real estate agent, calculated the amount of money which was due to Mr. Marshall and presented to me and my mother a statement thereof as follows:

Dr.	
To purchase price of property	\$13,000.00
Cr.	
By deposit paid to Mr. Karl, agent, on account	\$ 500.00

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Affidavit

	“paid first mortgage on the property held by Clifton Trust Company, of Clifton, N. J. . .	6,000.00
	“paid interest on first mortgage held by Clifton Trust Company	216.00
	“paid amount due on second mortgage held by Passaic Builders Supply Co.	2,725.00
10	“paid interest on second mortgage held by Passaic Builders Supply Co.	34.07
	“paid apportionment of taxes of 1923	65.86
	“paid allowance for rent	28.00
	“paid cash to Robert B. Marshall .	2,771.07
	“paid drawing deed	5.00
	“paid revenue stamp	5.00
20	“paid commissions to Mr. Karl, agent	650.00
		—————\$13,000.00

Te items of \$2771.07, \$5.00, \$5.00 and \$650.00 were then and there paid in cash by me to and on behalf of Robert B. Marshall, the seller, and I then received a warranty deed from Robert B. Marshall, single, dated July 5th, 1923, duly executed and acknowledged conveying the said premises to me and at the same time Mr. Marshall, or his agent, delivered to me the deed whereby complainant and her husband (who was then deceased) acquired title to said lands and premises. Said deed is dated January 3st, 1914, and is recorded in the Register's Office of Passaic County in Book C-24 of Deeds on pages 497, &c. I thereupon executed an delivered to

Affidavit

my mother Johanna Bruning a bond and mortgage to secure the payment of the sum of \$13,000.00, in three years with interest at six per cent per annum, payable semi-annually, which represented the purchase money for said lands and premises which my mother had advanced to me.

On the day following my mother and my attorneys, or one of them, paid to the Clifton Trust Company, of Clifton, New Jersey, its mortgage of \$6000.00, and \$216.00 interest thereon, and received said mortgage receipted for cancellation and same was on July 7th, 1923, duly cancelled of record, and also on or about the same day paid to Passaic Builders Supply Company its mortgage of \$2725.00, and \$34.07, interest, and received the mortgage duly receipted for cancellation, and same was on July 7th, 1923, duly cancelled of record. 10

I had at that time no knowledge whatsoever of any transactions between the complainant and Robert B. Marshall with respect to the purchase by the latter of the said lands and premises, or otherwise, except as was disclosed by the records of the Office of the Register of Deeds and Mortgages of Passaic County, as shown by the abstract of title made by my attorneys. Young & Randall. 20

Said records disclose that:

(a) On October 10, 1922, the complainant, by warranty deed dated and acknowledged on that day and recorded on October 21, 1922, in Book X-29 of Deeds on pages 580, etc., conveyed said lands and premises to Alice C. Aldred and James Herbert Aldred, her husband. 30

(b) On October 17, 1922, said Alice C. Aldred and James Herbert Aldred, her husband, by their

Affidavit

mortgage dated on that day, acknowledged October 19th, 1922, and recorded on October 21, 1922, in Book R-12 of Mortgages on pages 217, &c., mortgaged said lands and premises to the Clifton Trust Company, of Clifton, New Jersey, to secure the payment of the sum of \$6000.00, in one year with interest at six per cent per annum, to be paid semi-annually.

10 (c) On October 20th, 1922, the said Alice C. Aldred and James Herbert Aldred, her husband, by warranty deed dated and acknowledged on that day and recorded on March 19, 1923, in Book I-30 of Deeds on pages 374, &c. conveyed said lands and premises to Robert B. Marshall.

20 (d) Said Robert B. Marshall on October 20, 1922, by his mortgage dated and acknowledged on that day, and recorded in the said Register's Office on March 27, 1923, in Book Y-12 of Mortgages on pages 11, &c., mortgaged said lands and premises to Alice C. Aldred and Henrietta Verhagen, to secure the payment of the sum of \$2725.00, in one year with interest at the rate of six per cent per annum, payable semi-annually.

(e) On April 26, 1923, by assignment dated and acknowledged on that day and recorded in said Register's Office on May 18, 1923, in Book A-4 of Assignments of Mortgages on pages 237, &c., the said Alice C. Aldred and Henrietta Verhagen assigned said mortgage to Harry Simon.

30 (f) On May 11th, 1923, by assignment dated on that day, acknowledged May 15th, 1923, and recorded in said Register's Office on May 18, 1923, in Book A-4 of Assignments of Mortgages, on pages 238, &c., said Henry Simon assigned said mortgage to the Passaic Builders Supply Company.

Affidavit

After this transaction was completed on July 5th, 1923, I returned to Green Pond, New Jersey, and remained there about a week or ten days and then returned to my home at Clifton, New Jersey. Upon my return home I called upon Mr. Heller, the tenant in the house on said premises, to inform him I had bought the property and that rent thereafter becoming due should be paid to me. I then learned from Heller that complainant had begun dispossess proceedings against him in the Paterson District Court and I had caused my attorneys to make an inspection of the affidavit on file in such proceedings and learned that one Walter Duddleston had drawn the affidavit in behalf of the complainant. My attorneys then interviewed Mr. Duddleston and learned from him that Mrs. Dele, the complainant, claimed to be entitled to remain on the property until August 1st, 1925. A short time later my attorneys were invited to meet complainant at the office of George Mills, Esq., an attorney, and did so and complainant then and there informed my attorneys that she claimed the right to live on the property until August 1st, 1925, saying she had a paper from Mr. Marshall to whom she had sold the property, to that effect, but that she had lost the paper. Complainant also then informed my attorney that she had received \$12,000.00 for the property, of which \$2500.00 was cash, \$7000.00 in stock and that \$2500.00 had been deducted for a mortgage on the property. That she was receiving \$70.00 a month on the stock. Complainant made no claim with respect to the property except the right to live there free of rent until August 1st, 1925.

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On or about August 13th, 1923, I instituted a suit

Affidavit

in ejectment in the Passaic Circuit Court against the complainant to recover possession of the property, in which suit the defendant filed an answer denying my right to possession.

I had no knowledge of any claim on the part of the complainant to the property in question at any time before receiving the warranty deed for same from said Robert B. Marshall and the payment of the purchase money as hereinbefore stated.

10 I had no knowledge of any claim by complainant that she had a right to remain on said premises, sold by her as aforesaid, until August 1st, 1925, until about a week or ten days after I had received said deed for the property and paid the purchase money.

I had no knowledge of any claim by complainant that her sale of the property as hereinbefore stated was invalid until the filing of the bill of complaint in this cause, and the service thereof upon me.

20 On August 1st, 1923, Bobbink & Atkins paid the rent under their lease of said lands for the quarter ending October 31, 1923, to me. On or about October 31st, 1923, Bobbink & Atkins informed me that it was their purpose to vacate the property on or about January 1st, 1924, and that they would pay any rent accruing at the time they vacated. On December 31st, 1923, Bobbink & Atkins did vacate said lands and then paid to me the rent for the months of November and December, 1923. I went
30 into possession of the said lands on January 1st, 1924, and have since been in open possession thereof.

On August 1st, 1923, Heller, the then tenant of part of the dwelling house of said lands paid to me the rent for the month of August, 1923, and has

Affidavit

since paid the rent to me monthly. The complainant at no time claimed to me to be entitled to such rents or objected to my receiving them.

Christian A. Bruning.

Sworn to and subscribed before me
this 2nd day of January, A. D.
1924.

Emma C. Fox,

A Notary Public of New Jersey.

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Affidavit

IN CHANCERY OF NEW JERSEY

Between Louisa Dele. and Christian F. Bruning, et als., Defendants.	}	On Bill, &c.
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AFFIDAVIT

State of New Jersey, }
 County of Passaic. } ss:

Johanna Bruning, being duly sworn according to law, upon her oath deposes and says:

20 I am the mother of Christian C. Bruning, one of the defendants in this cause. I live on Almond Road, in the City of Clifton, New Jersey, with my said son. My residence is opposite the premises formerly owned by Louisa Dele, the complainant.

30 Sometime in June, 1923, my son told me that he had met the complainant and asked her whether her property was for sale and that she had told him she had sold it sometime before. I then remembered that sometime before a man came to my house saying that he had wanted to inspect the property for a loan which had been applied for to Clifton Trust Company, of Clifton, New Jersey, and that when I had told him I had applied for no loan I then understood from him that he was looking for the Dele property. I told my son that he could probably find out who owned the property from the Clifton Trust Company, who were going to put a mortgage on it.

Affidavit

I did not know that Mrs. Dele, the complainant, had sold the property until then. I do not know and have never met Robert B. Marshall who was then the owner of the property, except on July 5th, 1923, when the purchase of the property by my son from him was completed, at the office of Young & Randall, attorneys, of Paterson, New Jersey. When my son first concluded to buy the property it was arranged between us that I would advance the money and take title in my name, but afterward upon consideration we decided that title should be taken in his name. At the time of the consummation of the sale I advanced \$13,000.00 to my son about \$7000.00, of which I drew from the Paterson Savings Institution, and \$6000.00, I borrowed on mortgage on my own farm. I was present at the time of the consummation of the sale and my son then and there paid to Mr. Marshall, or to his agent, for him, \$3431.07. He had before that time paid a deposit of \$500.00 to the agent of Mr. Marshall. On the day following I advanced \$6216.00 to pay the principal and interest on the mortgage on the property held by the Clifton Trust Company and \$2759.07 to pay the principal and interest of the mortgage on the property held by the Passaic Builders Supply Company. \$65.86 was allowed upon an apportionment of the taxes and \$28.00 upon an apportionment of rent accrued. Said Marshall then and there, on July 5th, 1923, delivered to my son a warranty deed for said lands and premises and my son executed and delivered to me a bond and mortgage to secure the re-payment or \$13,000.00, the purchase money for said premises, which I had advanced.

I had no knowledge whatsoever concerning any

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Affidavit

transactions with respect to said property or otherwise between complainant and Robert B. Marshall, or any other person, except such as was disclosed to me by my son's attorneys as appearing of record in the Register's Office of Passaic County.

Johanna Bruning.

Sworn to and subscribed before
me this 2nd day of February,
A. D. 1924.

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Emma C. Fox,

A Notary Public of New Jersey.

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Answering Affidavit

(Filed Feb. 26, 1924)

IN CHANCERY OF NEW JERSEY

Between
Louisa Dele,

Complainant,

and

Christian A. Bruning, et als.,
Defendants.

} On Bill, &c.

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ANSWERING AFFIDAVIT

State of New Jersey

County of Passaic

} ss.

Louisa Dele, being duly sworn according to law, upon her oath says that in answer to the affidavit made by Christian A. Bruning on January 2nd, 1924, that she denies that in the month of June, 1923, she told the defendant that she was not the owner of the land; that she had sold the same some-time ago; she says that as a matter of fact the defendant Christian A. Bruning was informed prior to the making of any contract by him for the purchase of said lands and premises that she, the said complainant was entitled to the possession of said lands and premises and claimed the right of possession of said land and premises; that she had informed the defendant, Christian A. Bruning that she had not received her money for the said premises and that Robert B. Marshall desired to purchase her said property for the sum of Twelve Thousand (\$12,000.00) Dollars but that he had not paid her the said money and that she had a right to remain

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Answering Affidavit

in possession until the said money was paid to her in full; and deponent further says that the said Christian A. Bruning told deponent sometime in June that she should not give up her property until she received all of her money.

Louisa Dele.

Sworn and subscribed to before
me this 23rd day of February,
1924.

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Alexander M. MacLeod,
Master in Chancery of New Jersey.

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Order Permitting Amendment

(Filed Feb. 26, 1924)

IN CHANCERY OF NEW JERS9Y

Between Louisa Dele, Complainant, and Christian A. Bruning, et als., Defendants.	}	On Bill, &c.	10
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ORDER PERMITTING AMENDMENT

This matter being opened to the court by Alexander McLeod, of counsel with the complainant,

It is, on this 26th day of February, 1924, Ordered that the complainant have leave to amend her bill of complaint by filing the amendment herewith presented making Johanna Bruning a party to the suit and that a copy of said amendment which need not be certified be served upon the solicitors for the defendant, Christian A. Bruning, within five days of the date hereof and that process issue to the said Johanna Bruning.

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Edwin Robert Walker,
C.

Respectfully advised,
Vivian M. Lewis,
V. C.

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Order

(Filed Feb. 26, 1924)
 IN CHANCERY OF NEW JERSEY

Between Louisa Dele, Complainant, and Christian F. Bruning, et als., Defendants.	}	On Bill, &c.
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ORDER

20 This matter being opened to the court by Alexander McLeod, of counsel with the complainant, in the presence of Gustav A. Hunziker, of counsel with defendant, and it appearing that although the bill as filed herein was signed of counsel by inadvertence the designation of counsel was omitted from said bill:

It is, on this 26th day of Feb., 1924, Ordered that the designation of the office of Alexander McLeod signing the said bill as solicitor be and the same is hereby changed as of the date of the filing of said bill to "solicitor and of counsel with complainant."

30 And it is further Ordered that a copy of this order, which need not be certified be served upon the solicitor for the defendant, Christian A. Bruning, within five days of the date hereof.

Edwin Robert Walker,
 Chancellor.

Respectfully advised,
 Vivian M. Lewis,
 V. C.

Amendment to Bill

(Filed Feb. 28, 1924)

IN CHANCERY OF NEW JERSEY

Between Louisa Dele, Complainant, and Christian F. Bruning, et als., Defendants.	}	On Bill Etc.
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AMENDMENT TO BILL

By leave of court the complainant amends her bill by inserting the following allegations.

1. It is claimed and insisted that the said Christian A. Bruning, defendant, paid for said lands and premises the sum of \$13,000.00 and that to raise such moneys he borrowed the sum from Johanna Bruning, his mother, and that he did execute and deliver to his said mother, the said Johanna Bruning, to secure the payment of said sum, a bond in the penal sum of \$26,000.00 with condition to pay the said sum of \$13,000.00 and a mortgage on said lands and premises to secure the same bearing date the 5th day of July, 1923, and recorded in the office of the Register of Deeds and Mortgages of the County of Passaic on July 7th, 1923, in Book E-13 of Mortgages for said County on page 158.

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2. Complainant says that it is claimed and insisted that the full consideration for said purchase was the sum of \$13,000.00 and the said Christian A. Bruning did not therefore invest any moneys in said lands and premises and was not a bona fide

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Amendment to Bill

10 purchaser for value without notice and she further says that the said Johanna Bruning, the mother of the said Christian A. Bruning, had full and complete knowledge of the circumstances set forth in the bill of complaint and of the rights of the complainant and knew that the complainant had been deprived of her property by fraud and false representation and if she did not, then she deliberately closed her eyes for the purpose of not knowing and she charges and insists that the purchase was made in the manner it is claimed to be made in order to defeat the rights of complainant although the said Johanna Bruning, as well as the said Christian A. Bruning had knowledge of those rights and she claims that the mortgage, if in existence, held by the said Johanna Bruning, is subject and subordinate to the rights of said complainant in said premises and should be cancelled.

20 Insert in the prayer for relief the name of Johanna Bruning as the defendant and in the prayer for process and insert the following prayer in the prayer for relief: "That it may be adjudged and decreed that the mortgage given by Christian A. Bruning to Johanna Bruning hereinbefore set forth is subject and subordinate to the rights of complainant and that said mortgage be delivered up to be cancelled."

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Alexander M. MacLeod,
Solr. and of Counsel with
Complainant.

Replication

(Filed Feb. 28, 1924)

IN CHANCERY OF NEW JERSEY

Between
Louisa Dele,

Complainant,

and

Christian A. Bruning, et als.,

Defendants.

On Bill, &c.

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REPLICATION

The complainant, by leave of court, in reply to the matters set up in the answer, not anticipated by the bill, says that:

1. Answering paragraph 13 she denies that in the month of June, 1923, she told the defendant that she was not the owner of the land; that she had sold the same some time ago. She says that as a matter of fact the defendant was informed prior to the making of any contract by him for the purchase of said lands and premises that she, the said complainant, was entitled to the possession of said lands and premises and claimed the right to possession of said lands and premises.

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2. Answering paragraph 14 complainant says that she has no knowledge of the making of the contract referred to in paragraph 14 except from the statements contained in the answer, nor of the payment of any moneys on account of any contract, and she leaves the defendant to make such proof thereof as may be necessary. She further says that if such contract was made it was made with full knowledge of the rights of complainant as set

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Replication

forth in the bill or with information sufficient to put the said defendant upon inquiry and the proper inquiry was not made.

3. She has no knowledge of the contents of paragraph 15 except from the statements contained in the answer and she leaves the defendant to prove the same. She says that whatever the records may have disclosed the defendant and the defendant's representatives had full and complete knowledge of
10 the rights of complainant or information sufficient to put them upon inquiry, which inquiry was not made.

4. She is without knowledge of the contents of paragraph 16 except from the statements contained in the answer but she says that if such a mortgage was made, the parties to said mortgage had full and complete knowledge of the rights of complainant or information sufficient to put them upon in-
20 quiry, which inquiry was not made.

5. She is without knowledge of the contents of paragraph 17 except such information as is contained in the answer and she says that the parties to the transaction, if such transaction took place, had full and complete knowledge of the rights of complainant or information sufficient to put them upon inquiry, which inquiry was not made.

6. She has no knowledge of the contents of paragraph 18 except as contained in the answer and she leaves defendant to prove the same and she
30 further says that all of the parties to the transaction, if such transaction took place, had full and complete knowledge of the rights of complainant or information sufficient to put them upon inquiry, which inquiry was not made.

Replication

7. She has no knowledge of the statements contained in paragraph 19 except as contained in said answer and she says that if said transaction took place, the parties thereto had full and complete knowledge of the rights of complainant or information sufficient to put them upon inquiry, which inquiry was not made.

8. She has no knowledge of the contents of paragraph 20 except the statements contained in said answer and she says that if said transaction did in fact take place the parties thereto had full and complete knowledge of the rights of complainant or information sufficient to put them upon inquiry, which inquiry was not made,

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9. Answering paragraph 21 she denies that the said defendant purchased the lands and premises from said Robert B. Marshall as therein stated without knowledge of any claim of complainant and believing the said Robert B. Marshall was seized and entitled to said premises free from any claim or demand of said complainant and she says that defendant in fact knew that the purchase price of said premises had not been paid and that complainant claimed and insisted that she was entitled to the absolute possession of said lands and premises and she denies that the said defendant paid any moneys upon the faith of the record and she says that the defendant had information sufficient to put him upon inquiry and that said inquiry was not in fact made. She denies that the said defendant made the payments stated in said paragraph.

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10. She denies the statements contained in paragraph 22.

Replication

11. She denies the statements contained in paragraph 23.

12. She denies that the said defendant is a bona fide purchaser of said property for value without notice.

Solr. for complainant.

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Answer of Defendant Johanna Bruning

(Filed Mar. 8, 1924.)

IN CHANCERY OF NEW JERSEY.

Between
Louisa Dele,

Complainant,

and

Christian A. Bruning, et als.,
Defendants.

On Bill Etc.

10

ANSWER OF DEFENDANT JOHANNA BRUNING

The answer of Johanna Bruning, one of the defendants to the bill of complaint, as amended, of Louisa Dele, complainant:

(1) This defendant admits paragraph (1).

(2) This defendant has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (2), except that she believes it to be true that complainant on and before July 10th, 1922, was the owner of the lands and premises referred to and that the same were worth about \$12,000.00, and that said lands consist of about six acres with dwelling house and barns thereon and that complainant had lived in said house for about eight years then past and that said farm lands were occupied partly by tenants. 20

(3) She has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (3). 30

(4) She has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (4).

Answer of Defendant Johanna Bruning

5. She has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (5), except that she believes it to be true that deeds of conveyance for said premises appear of record as stated in said paragraph.

(6) She denies the matters and things alleged in paragraph (6).

10 (7) She has no knowledge or information sufficient to form a belief as to the matters and things set forth or alleged in paragraph (7).

(8) She has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (8).

(9) She has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (9).

(10) She has no knowledge or information sufficient to form a belief as to the matters and things alleged in paragraph (10).

20 (11) She admits the matters and things alleged in paragraph (11).

(12) She denies that complainant is entitled to have a lien imposed upon said premises for the sum of \$12,000.00, or any other sum.

(13) She admits paragraph (1) of the amendment to the bill of complaint.

(14) She denies paragraph (2) of the amendment to the bill of complaint.

30 (15) This defendant further answering said bill of complaint says that sometime before July 5, 1923, her son Christian A. Bruning negotiated with the then owner of the lands and premises described in the bill of complaint for the purchase thereof, in behalf of this defendant, her said son not having

Answer of Defendant Johanna Bruning

the money with which to make such purchase. That on or about June 20, 1923, this defendant entered into contract in writing with Robert B. Marshall, the then owner of said premises, whereby said Robert B. Marshall agreed to convey said lands and premises to the defendant for the sum of \$13,000.00, \$500.00 of which was then and there paid, the receipt whereof was thereby acknowledged, as and by said contract, when produced, reference being thereunto had, will more fully appear. 10

(16) That after the making of said contract between Robert B. Marshall and this defendant, her son, the said Christian A. Bruning caused a search to be made of the records of the Office of the Register of Deeds of the County of Passaic, and said records disclose that complainant, on October 10, 1922, by her deed containing covenants of seizen, of good right to sell and convey, for quiet enjoyment and of warranty, which deed was duly acknowledged on the same day and recorded on October 21, 1922, in Book X-29 of Deeds for said County on pages 580, conveyed said lands and premises to Alice C. Aldred and James Herbert Aldred, her husband. 20

(17) That on October 17, 1922, said Alice C. Aldred and James Herbert Aldred, her husband, by their mortgage dated on that day, acknowledged October 19, 1922, and recorded on October 21, 1922, in Book R-12 of Mortgages on pages 217 &c., mortgaged said lands and premises to the Clifton Trust Company of Clifton, New Jersey, to secure the payment of the sum of \$6000.00, in one year with interest at six per cent per annum, to be paid semi-annually. 30

(18) That on October 20th, 1922, the said Alice

Answer of Defendant Johanna Bruning

C. Aldred and James Herbert Aldred, her husband, by warranty deed dated and acknowledged on that day and recorded on March 19, 1923, in Book I-30 of Deeds on pages 374 &c., conveyed said lands and premises to Robert B. Marshall.

10 (19) Said Robert B. Marshall, on October 20, 1922, by his mortgage dated and acknowledged on that day, and recorded in the said Register's Office on March 27, 1923, in Book Y-12 of Mortgages on pages 11 &c., mortgaged said lands and premises to Alice C. Aldred and Henrietta Verhagen, to secure the payment of the sum of \$2725.00, in one year with interest at the rate of six per cent per annum, payable semi-annually.

20 (20) That on April 26, 1923, by assignment dated and acknowledged on that day and recorded in said Register's Office on May 18, 1923, in Book A-4 of Assignments of Mortgages, on pages 237 &c., the said Alice C. Aldred and Henrietta Verhagen assigned said mortgage to Harry Simon.

(21) That on May 11th, 1923, by assignment dated on that day, acknowledged on May 15th, 1923, and recorded in said Register's office on May 18, 1923, in Book A-4 of Assignments of Mortgages, on pages 238 &c., said Henry Simon assigned said mortgage to the Passaic Builders Supply Company.

30 (22) That after the making of said contract, with said Robert B. Marshall for the purchase of said lands and premises this defendant was advised that if she should take the title to said lands and premises in her name she might be embarrassed in the event she desired to afterward sell or mortgage the same, by the fact that she was living separate and apart from her husband, who, in such case,

Answer of Defendant Johanna Bruning

might be unwilling to sign a deed or mortgage, and in consequence of such advice this defendant and her son agreed that he should become and be the purchaser of said lands and premises and this defendant would advance to him the moneys necessary to complete such purchase, and that her said son should secure the re-payment to her of said moneys by his bond secured by a purchase money mortgage upon said lands and premises.

(23) That relying upon the title to said lands and premises, as disclosed by said records, and without any knowledge of any claim whatsoever with respect to said property by complainant, and believing that said Robert B. Marshall was seized of and entitled to the said lands and premises, free from any claim or demand of the said complainant, in and to the same, this defendant's said son, Christian A. Bruning purchased said lands and premises from said Robert B. Marshall on July 5, 1923, on which day said Robert B. Marshall executed and delivered to her said son a warranty deed for the same, and this defendant then and there paid to the said Robert B. Marshall the sum of \$3,431.07, and on the following day paid to the Clifton Trust Company, of Clifton, New Jersey, the sum of \$6,216.00, for the principal and interest of the mortgage held by it and to the Passaic Builders Supply Company the sum of \$2,759.07 for the principal and interest of the mortgage held by it on said lands, \$65.86 was allowed to this defendant's said son upon an apportionment of taxes for the year 1923, and \$28.00 on an apportionment of rents accrued, making in all the sum of \$13,000.00, actually paid by this defendant, on be-

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Answer of Defendant Johanna Bruning

half of her said son, in consideration of said conveyance.

10 (24) And this defendant further answering says that the said sum of \$13,000.00, the consideration for the sale of said lands and premises, was actually paid by this defendant in behalf of her said son to the said Robert B. Marshall at the time the said deed to him bears date and as set forth in the last preceding paragraph; and that at or before the respective times of the execution of the said deed, and of the payment of the said purchase money, this defendant had no notice whatever of the claim of said Louise Dele, the complainant, or of any other encumbrance whatsoever, that in anywise affected the said lands and premises so purchased by this defendant, or any part thereof, except as disclosed by the records of the title to said lands and premises in the Register's Office of the County of Passaic.

20 (25) This defendant further answering says that on the same day that said deed of conveyance was delivered to said Christian A. Bruning and the consideration moneys paid as aforesaid, and contemporaneously therewith he did execute and deliver to this defendant a bond in the penal sum of \$26,000.00 with condition to pay the said sum of \$13,000.00, and a mortgage on said lands and premises to secure the same, which said mortgage bears date the said fifth day of July A. D. 1923, and contains a recital that
30 the same was given to secure the purchase price of said premises, and was recorded in the Office of the Register of Deeds and Mortgages of the County of Passaic on July 7th, 1923, at 8:26 o'clock in the forenoon, in Book E-13 of Mortgages for said County on pages 158 &c.

Answer of Defendant Johanna Bruning

And this defendant prays to be hence dismissed with her costs and charges herein most wrongfully sustained.

Young & Randall,
Solicitors of Defendant, Johanna Bruning.
Gustav A. Hunziker,
Counsel.

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Louisa Dele, direct

IN CHANCERY OF NEW JERSEY

Between Louisa Dele, Complainant, and Christian A. Bruning, et als., Defendants.	}	On Bill, &c.
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TESTIMONY

Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the sixth day of October, nineteen hundred and twenty-six, before Hon. Vivian M. Lewis, Vice Chancellor.

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Appearances:

Merritt Lane, Esq., for the Complainant;
 Gustav A. Hunziker, Esq., for the Defendants,
 (associated with Young & Randall, Esqs.).

MRS. LOUISA DELE, being duly sworn, testified as follows:

Direct Examination by Mr. Lane:

30

Q. Where do you live? A. Ridgefield, New Jersey.

Q. How old are you? A. 46.

Q. Are you married? A. I am a widow.

Q. When did your husband die? A. In 1917.

Q. What was his business? A. Farming.

Louisa Dele, direct

Q. What has been your occupation for your life?

A. After my husband died I did housework.

Q. Have you had any business experience of any kind? A. No, sir.

Q. How long were you married? A. I was married four years; I have three children; one is 20 and another 18, and another 12 years of age.

Q. Did you have any education at all? A. No, sir; I was brought up on a farm and had very little schooling. 10

Q. All during your life? A. Yes, sir.

Q. How long have you lived at the place where you now live? A. I have been there about 15 years. It is a farm with six acres—

Q. During your husband's life what did he do with that property? A. The property belonged to me.

Q. What did he do with it? A. It was farmed.

Q. What kind of a farm? A. Truck farming. 20

Q. Since your husband's death what have you been doing with it? A. I sold out, and rented to Bobbink and Atkins; I rented the whole place; I continued to live in it—

Q. What part of the property did you yourself occupy? A. I lived at the barn for five years.

Q. In 1922 what part of the property were you living in? A. I lived in the house then.

Q. Was any part of the property rented at that time? A. Yes, sir, the land was rented to Bobbink and Atkins. 30

Q. What was he doing with it? A. He was planting flowers on it.

Q. When was it you moved from the house to the barn? A. 1922.

Louisa Dele, direct

Q. Did you live in the barn first? A. When my husband died we were living in the house and I rented it out and moved to the barn for five years; and in 1922 I came back to the house—

Q. How long did you continue to stay in the house? Are you living in the house now? A. Yes, sir.

Q. You have been in the house ever since? A. Yes, sir.

10 Q. Do you know a man named Marshall? A. Yes, sir.

Q. When did you first see him? A. When he came to my house in 1922.

Q. Do you remember the date or the month? A. I don't exactly remember the day.

Q. Do you remember the month? A. I could not say; it was, I think, around May or June.

Q. What did he say to you? A. He asked me to sell the property to him.

20 Q. What was said between you and him? A. He asked me to sell the property and what price, and I told him \$12,000; and I told him I wanted my full amount of money, because I had not anything else to go out with to buy another place; and he said he would give me the full amount of money.

Q. Did you want to sell at that time? A. No, sir, but as long as I would get my money, I would sell.

30 Q. Did you tell him whether you wanted to sell or not? A. Yes, sir.

Q. What did you tell him? A. He asked me the price and I told him \$12,000.

Q. What did he say he would do? Tell us everything that was said between the two of you there.

Louisa Dele, direct

A. He said he would give me the full amount of money, \$12,000.

Q. And what did you say? A. He came the next day and said he would.

Q. When he came the next day tell us all that was said between you. A. He gave me an agreement for the money and the time to stay there.

Q. What kind of an agreement? A. That I could stay there until I got my full amount of money.

Q. Did he give you any writing? A. He gave me a writing, but I have not got it now; he gave that to me at the same time. 10

Q. Do you know what the writing said? A. That I was to stay there until I got my full amount of money.

Q. When was there anything, if ever, said about stock of the corporation? A. He was going to give me the stock at that time, but I told him I would rather have the money than the stock; he said he would give me the stock, \$3,000. 20

Q. Did he give you the stock? A. Yes, sir.

Q. Did he say anything about the amount of stock he was going to give you, and what the income would be? A. Yes, sir, 12%.

Q. Was anything said about \$7,000 worth of stock? A. I had three and he had four.

Q. Was anything said about a mortgage? A. The mortgage was \$2,000, that he let me have.

Q. Did he give you a mortgage for \$2,000? A. At that time, yes, sir. 30

Q. What did he give you; do you know whether it is a mortgage or not? A. I don't know; he gave me something, and he said it was a mortgage.

Louisa Dele, direct

Q. Was anything said about recording it? A. No, sir.

Q. Was any money paid in cash? A. No, sir.

Q. Did he say in the original talk with you anything about paying any money in cash? A. He said he would give me in time the full amount of money.

Q. You signed a deed for this property, didn't you? A. (No answer).

10 Q. Tell me how you came to sign the deed for this property? A. I did not sign any deed for the property.

Q. As a matter of fact, you did; you signed a paper; tell me how you came to sign the paper. A. I never signed any; I did not have any.

Q. You signed a piece of paper for him, didn't you, when he was at the house with another man? Do you remember signing the paper for him in your house? A. No, sir.

20 Q. Do you remember giving him the old deed of the property? A. I did not have any deed; it was in the bank.

Q. How many times did he come to your house? A. I could not tell you how many times; he was there pretty often; I don't know how many times.

Q. After you had your first talk with him, when he said he would give you \$12,000, etc., did he come to the house again with somebody else with some papers? A. Yes, sir.

30 Q. What did he say then, and what was done? A. He said he would buy the place and give me the full amount of money with stocks.

Q. Didn't you at that time sign a piece of paper for him? A. No, sir.

Louisa Dele, direct

Q. Are you sure of that? A. Yes, sir.

Q. When he gave you what he said was the \$2,000 mortgage, what did he say to do with that?

A. Not anything; but I had it for a while.

Q. Then what happened? A. Then he got away with that paper.

By the Court:

Q. How did he get it away? A. I don't know. 10
I got a dispossess, and I went to the City Hall. I had left them in my house, and they were gone when I got back.

Q. I show you a note signed by Mr. Marshall for \$3,000, a year later, July 14, 1923; did you get that paper from him? A. I don't think I did; I have not any.

Q. This paper you got, didn't you? A. I have not got it.

Q. You gave it to Mr. McLeod; who gave this to you? A. That I got from Marshall. 20

Q. When did you get it from Marshall? A. I don't remember the day.

Q. It was a year later; tell me how that came to you; how did you come to get that paper? A. He brought it.

Q. What did he say? A. He said he would give me the full amount of money—at that time.

Q. What did you give him when he gave you that? A. I did not give him anything. 30

Q. Didn't you give him the stock, the certificates of stock at that time? A. When the brothers came.

Q. Didn't you give him the 300 shares of stock when you got that note? A. Yes, sir.

Louisa Dele, direct

Q. Tell me all about it. A. They said they would not pay the interest any more; and they would pay me the interest, Marshall and his brother would.

Q. Who were there at that time? A. The two brothers.

Q. Tell me everything that was said? A. He said I would not get my interest from the Products Company any more; and that they would pay.

10 Q. Did they ask you then for the stock? A. Yes, sir.

Q. Did you give it to them? A. Yes, sir.

Q. Did they then give you this note? A. Yes, sir.

Mr. Lane—I offer it in evidence.

Marked "Exhibit C 1".

Mr. Hunziker—Let me see it, please.

20 Q. What did they say about this piece of paper that is marked "Exhibit C 1"? A. They did not say anything; they only said they would pay me my interest on it every month.

Q. Did they say how much they would give you every month? A. Yes, sir.

Q. How much? A. \$30.00 on three thousand, and \$40.00 on the other.

30 Q. After you got that piece of paper marked "Exhibit C 1," did he send you some money? A. Yes, sir.

Q. I show you a letter dated September 11, 1923, and ask you whether you received that letter from him? A. Yes, sir, from the post office.

Mr. Lane—I offer it in evidence.

Louisa Dele, direct

Market "Exhibit C 2."

Q. I show you letter dated October 27, 1923; did you get that from him? A. Yes, sir.

Marked "Exhibit C 3."

Q. I show you another letter, dated November 24, 1923, and ask you if you got that from him? A. Yes, sir.

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Q. There was \$70.00 in each of these other two letters? A. Yes, sir.

Q. Do you remember how much was in this letter of November 24, 1923? A. There were two together.

Q. Do you remember how much money there was in the last letter you got; was it \$70.00 or \$60.00? A. I don't remember; it was for the thirty and for the forty.

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Q. Was there ten dollars short at any time when you got money from him? A. Yes, sir.

Q. When was that? A. The last one.

Marked "Exhibit C 4."

Q. After you got that last letter, did you hear from him again? A. No, sir.

Q. Have you ever heard from him since? A. No, sir.

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Q. When you got this piece of paper, "Exhibit C 1," this note, you told me that Mr. Marshall and his two brothers were there? A. Not Mr. Marshall—just the two brothers; and Mr. Marshall was not there when I got the note.

Louisa Dele, direct

Q. How long were they in your house that day when you got that piece of paper? A. Just for a few minutes.

Q. Did you have all the papers out on the table? A. I had no papers.

Q. Mr. Marshall had given you—you told us—a piece of paper—that he said was a mortgage for \$2,000? A. Yes, sir, but that was before this time.

10 Q. Was that piece of paper there at the time the two brothers were in your house? A. I did not have it then.

Q. When did you first know you did not have that paper? A. When I had the dispossess.

Q. How did you find out you did not have it? A. The day before I went down to see what I could do; and I was too late; and I left it at home; and when I came back it was not there.

Q. Did you ever see that paper after it was given to you? A. No, sir.

20 Q. Where did you keep the paper? A. In a little safe box that I kept it in; but I did not have it in that day.

Q. Where did you have the certificates of stock? A. In this safe box.

Q. When you got this paper, this \$3,000 note, in July, 1923, from the two brothers, did you give them the certificates of stock for the 300 shares? A. Yes, sir.

30 Q. Where did you get it from? A. I had it in this box.

Q. You went to this box and brought that out? A. Yes, sir.

Q. Did you have the other papers that were in the box, too? A. No, sir.

Louisa Dele, direct

Q. Do you remember whether you saw the mortgage for \$2,000 that day or not? A. No, sir.

Q. Did you ever see the mortgage for \$2,000 after that day? A. No, sir, I did not look for it.

Q. Did you ever see that mortgage after the two brothers were at your house? A. No, sir, not before I got the dispossess.

Q. Did you see it when you got the dispossess? A. Yes, sir.

Q. Where did you leave it? A. In my house; and I came home late; I forgot to put it in my box. 10

Q. Do you know what a mortgage is? A. I did not have it at home.

Q. Do you know it has to be recorded to be good— A. When I bought the property I had it recorded.

Q. Whom did you buy it from? A. Hamilton.

Q. Who took care of that for you? A. Mr. Brunning, my brother-in-law; he helped me then. 20

Q. Who helped you in this transaction? A. I had nobody then.

Q. Who is Christian A. Brunning? A. My nephew.

Q. He is the son of Johanna Brunning? A. Yes, sir.

Q. Is she your sister? A. Yes, sir.

Q. Where do they live? A. Across the street.

Q. Are you on friendly terms with them? A. No, sir. 30

Q. Since when have you not been on friendly terms with them? A. Since 1917.

Q. Do you remember after this Marshall matter, do you remember meeting Christian A. Brunning on the street? A. Yes, sir.

Louisa Dele, direct

Q. Was anything said about this property? A. Yes, sir, he stopped me.

Q. What was said? A. He asked me to buy the place from me, and I said Marshall was buying it from me and that he would have to ask Marshall; and he asked me if I had my full amount of money, and I told him "No."

10 Q. What else was said? A. He said he was going to get married and would like to buy the place.

Q. Was anything said about your staying in the property? A. Yes, sir, I said I had full right to stay there until I had my full amount of money.

Q. Did you ever have any talk with Johanna Brunning about this property? A. No, sir.

Q. Did Johanna Brunning ever come to you and ask you any questions about the property? A. No, sir.

20 Q. After this talk that you had on the street with Christian A. Brunning, did Mr. Brunning ever see you again; did he ever come to you and ask you any questions about it? A. After a while he did.

Q. When was that? A. I could not tell you; it was in the fall; and he asked me to move up in the barn and he would give me everything free; and I told him "No," that I wanted my money and then I would move.

30 Q. That was after this suit was started? A. Yes, sir.

Q. Did Mr. Brunning ever come to you and ask you any questions about this property? A. No, sir, he did not.

Q. Before the suit was started? A. Yes, sir.

Q. Any other time? A. No, sir; that is the

Louisa Dele, direct

only time he said anything to me about the property at all at that time.

Q. When did you first have a lawyer? A. When I got this dispossess I looked for a lawyer.

Q. Have you got any of these stock certificates now? A. No, sir, I have not.

Q. Did you give any money to Mr. Marshall at one time? A. Yes, sir.

Q. Tell us about that. A. He said the stocks went up and that I had to pay more money. 10

Q. When was that; how long after you sold the property? A. I have not got the bank book with me; I have it at my home; it was about a month or two later.

Q. Tell us all about it. A. He said the stocks had gone up and that I had to pay \$300 more.

Q. And what did you do? A. I paid \$300 more.

Q. Whom did you give it to? A. To Mr. Marshall. 20

Q. Whom did you get it from? A. From the Trust Company.

Q. Did you have any other property than this farm? A. No, sir.

Q. You had a savings account? A. I had a few dollars down there.

Q. Do you know how much money there was in that account? A. About \$500.00.

Q. Is that all the property you owned? A. Yes, sir. 30

Q. And Marshall got the farm and he got \$300 of the bank account? A. Yes, sir.

Q. What are you doing now for a living? A. Doing housework.

Q. How much do you make? A. I worked in

Louisa Dele, cross

Paterson for a while and they only paid \$3.00 a day; but now in Montclair they pay me \$4.00 a day.

Q. What do you do? A. I scrub floors and things like that.

Q. You get \$4.00 a day? A. Yes, sir.

Mr. Lane—That is all.

The Court—If there is anything you have omitted, you may add it later on.

10

Cross Examination by Mr. Hunziker:

Q. You think it was in May or June that you first met Marshall, in 1922? A. Yes, sir.

Q. When did he first speak to you about buying your property? A. At that time when he came to the house.

Q. The first time he came to your house he talked to you about buying your property? A. Yes, sir.

Q. Did you have any other business transactions with him? A. No, sir.

Q. Did you borrow money from him before he offered to buy the house? A. No, sir.

Q. Did you ever borrow money from him? A. No, sir.

Q. Did you ever give him any mortgage on your property before you sold the house to him? A. No, sir.

30 Q. I show you what purports to be a bond made by you, dated July 13, 1922; is that your signature? A. I don't know; it looks like it.

Q. You don't remember this transaction when you gave a bond and mortgage to Mr. Marshall for

Louisa Dele, cross

\$2500.00? A. I had a \$3,000 mortgage at the bank.

Q. You did not give Robert B. Marshall a bond and mortgage on July 13, 1922? A. No, sir.

Mr. Hunziker—I ask that this bond be marked for identification at this time.

Marked "Exhibit D 1 for identification."

Q. At the time of the first interview with Mr. Marshall about buying the property, you told him you wanted \$12,000 for it? A. Yes, sir. 10

Q. At that time did he tell you he would pay you the \$12,000? A. Yes, sir.

Q. And that he would pay it to you partly in stock and partly in cash? A. Yes, sir.

Q. You were to get \$7,000 in stock, were you not? A. Yes, sir.

Q. That is, 700 shares of the Rice Products Company stock? A. Yes, sir. 20

Q. Did he tell you the name of the company at that time? A. Yes, sir.

Q. And there was then a mortgage on the property of \$2,500? A. \$3,000.

Q. Wasn't it \$2,500? A. I had in the bank a \$3,000 mortgage.

Q. Who made the mortgage that was in the bank that you say he got? A. My husband.

Q. What was that mortgage made for? A. When we built the house we were short of money; when my husband died I had a \$4,500.00 mortgage, and I paid it off to that time \$3,000. 30

Q. You were to get \$500.00 in cash. Now, \$7,000 in stock and \$500.00 in cash would make \$8,000, and

\$2,500 was on the property.

Mr. Lane—She has not said that.

Q. You were to get \$7,000 in stock and \$500 in cash and a mortgage for \$2,000, were you not? A. He said 700 shares of stock; and the three thousand I had.

10 Q. You say in your bill of complaint in this case: “\$12,000 was to be paid—\$7,000 in stock.” There was a \$2,500 mortgage on the property, and you were to get a mortgage of \$2,000 and \$500 in cash; is that right, or not? That makes \$12,000. A. (No answer.)

By the Court:

Q. Do you understand the question? A. No, sir.

20 Q. Can you answer it? A. No, sir.

Further Cross:

Q. You say in your bill of complaint in this case that you were to get \$12,000 for your property from Marshall; he was to pay you \$7,000 in stock; there was a \$2,500 mortgage on the property; he was to give you a mortgage for \$2,000; and \$500 was to be paid in cash; is that correct? A. How do you mean—a \$2,500 mortgage?

30 Q. There was a mortgage of \$2,500 already on the property you say here? A. There was \$3,000 in the bank.

Q. This conversation was in May or June, 1922? A. Yes, sir.

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

Louisa Dele, cross

Q. And was it at that time that an agreement was made between you and Marshall about the sale?

A. Yes, sir.

Q. You said you never got that agreement? A. No, sir.

Q. When did you last have it? A. At the time when I got the dispossess

Q. When was that? A. That was about the 13th or 14th of July, 1923.

Q. Was that after Mr. Brunning had bought the property? A. He had it bought when he sent me the dispossess. 10

Q. Where did you have the paper, and where did you see it last? A. I went down to Paterson to see about a lawyer; I did not have a lawyer then; and I was too late that day; and I came home; I had left it in my home; and when I came home they were gone; I had forgotten to put them away when I went out. 20

Q. After this agreement was signed, when did you actually sell the property to Marshall? A. At that time.

Q. In May or June? A. Yes, sir, when he first came.

Q. You did not give him a deed then, did you? A. I had it at the bank.

Q. And you did not sign a deed to him at that time? A. No, sir.

Q. When did you sign a deed to him? A. I did not know that I signed any deed at all. 30

Q. Don't you remember signing a deed by which you sold the property to Marshall? A. No, sir.

Q. Don't you remember that it was in October,

Louisa Dele, cross

1922, that you signed a deed? A. No, sir, I did not sign a deed.

Q. When did Marshall give you the stock, the 300 shares of Rice Products Company stock? A. At that time.

Q. At which time? A. When he gave me the agreement.

Q. Are you sure it was not in October when you gave him a deed for the property? A. No, sir.

10 Q. When did he give you this paper which you understood to be a mortgage? A. He did not give me any paper except the agreement.

Q. Didn't you ever get a mortgage from him of \$2,000, or what he told you was a mortgage for \$2,000? A. I did not get anything.

Q. You spoke about it to Mr. Lane, if I remember rightly; you don't remember getting any mortgage for \$2,000? A. No, sir.

20 Q. Did he give you any papers or money at any time, except when you got the 300 shares of stock? A. Only the interest.

Q. So that you don't remember getting any papers of any kind except the certificate for 300 shares of stock; is that right? A. Yes, sir.

Q. What did he say about the other 400 shares? A. He said he would hold them for security.

Q. Security for what? A. I did not understand any further.

30 Q. You understood he was holding them for you for some purpose or other? A. Yes, sir.

Q. And you were to get how much a month on the stock? A. I got \$30.00 sent to me from the Products Company, and he gave me \$40.00.

Louisa Dele, cross

Q. That is, a dollar a share a month? A. Yes, sir.

Q. When did you get the first \$70.00? A. When he had had it a month.

Q. Do you remember when that was? A. No, sir, I don't remember when that was.

Q. Are those the payments that are mentioned in these letters which are marked "Exhibits C 2, C 3 and C 4?" Are those the payments? A. Yes, sir,

Q. Are those the only payments which you got on the stock? A. No, sir. 10

Q. You got payments before those that are mentioned in these exhibits? A. Yes, sir.

Q. Do you remember how many? A. I got them every month until he got those 300 stocks.

Q. Do you remember how many times you got these monthly payments? A. Every month.

Q. For how many months? A. From the time that he had given me the stocks the first month. 20

Q. Did you get them in the month of June, 1922? A. Yes, sir.

Q. And July, 1922? A. Yes, sir.

Q. August, September, October and November? A. Yes, sir, right along up to these letters.

Q. You saw Marshall himself the last time, when—Robert B. Marshall? A. I saw him in March, 1923—February or March.

Q. What was the occasion of your seeing him then? A. He did not pay me and I left word; and I let him know; and then he came and paid me. 30

Q. You got payments, then, from June, 1922, until November, 1923; is that right? A. Yes, sir.

Q. That would be something over a year? A. Yes, sir.

Louisa Dele, cross

Q. And the last time you saw Marshall himself was in March, 1923? A. Yes, sir.

Q. July 14, 1923, is when you got this note? A. Yes, sir.

Q. And at that time you had been receiving your \$70.00 a month for some time—since June, 1922—over a year? A. Yes, sir.

Q. And when this note was given, you were visited by Marshall's two brothers? A. Yes, sir.

10 Q. You understood they were there for Robert B. Marshall? A. Yes, sir.

Q. And they told you that the company was not going to pay the dividends stock, and they would take care of it after that? A. Yes, sir.

Q. And you gave them the stock, and they gave you this \$3,000 note; is that correct? A. Yes, sir.

Q. And then, after that you still continued to get your \$70.00 a month until November, 1923; that is shown by this letter? A. Yes, sir.

20 Q. That is correct? A. Yes, sir.

Q. Now, you had leased this farm to Bobbink and Atkins? A. Yes, sir.

Q. And your lease included the whole property of the land and the dwelling house on it, and everything there was to it? A. Yes, sir.

Q. And they gave you permission to stay in the house as long as you did not disturb their possession in any way? A. Yes, sir. I was in the barn first, and when the five years were up, I gave them a new lease—

30 Q. During all this time while you were doing business with Marshall, and until the end of Bobbink and Atkins' lease you were simply there by

Louisa Dele, cross

permission of Bobbink and Atkins? A. They were my tenants.

Q. You were on the place simply with their permission? A. Yes, sir.

Q. You did not pay them any rent? A. No, sir.

Q. When did Bobbink and Atkins' lease end? A. The first lease ended in 1921.

Q. When did the three years' extension end? A. And then I gave them a three years' lease; that ended in 1924—three years later. 10

Q. When did you first learn that Mr. Brunning had bought this property? A. When I got dispossessed.

Q. And that was in July, 1923? A. Yes, sir.

Q. Didn't he come to see you first about giving him possession of the property, — after he had bought it? A. Who?

Q. Did not Christian Brunning, after he bought this property, come to see you about your getting out of the house? A. I just met him in the evening on the corner, and he asked me to buy the property from me. 20

Q. I mean after that; after that meeting he came to you and asked you to get out? A. He said he would let me live in the barn if I wanted to.

Q. Didn't he tell you to get out of the house?

A. No, sir, he asked me to move up in the barn.

Q. Was that after the dispossess proceedings?

A. Yes, sir. 30

Q. Christian started dispossess proceedings against you in the Paterson District Court? A. Yes, sir.

Q. That is the dispossess that you have mentioned several times? A. Yes, sir.

Louisa Dele, cross

Q. Well, whatever this suit was, you went down town to see a lawyer? A. Yes, sir.

Q. What lawyer did you see? A. I did not get a lawyer that day; I saw Mr. McLeod.

Q. Before you saw him in relation to possession of this property, didn't you go to see Mr. George Mills? A. Yes, sir, about the dispossession.

Q. Whom did you meet in Mr. Mills' office there? A. Mr. Young.

10 Q. Did you say then that you had a right to stay there for two years under your agreement with Marshall? A. No, sir; I said until I had my full amount of money.

Q. You did not say for two years? A. No, sir.

Q. At that time did you tell Mr. Young and Mr. Mills—the terms under which you had sold your property? A. At that time, yes, sir.

20 Q. You told him that you were to get \$3,000 in stock, and a \$7,000 mortgage, among other things; you told them that at that time? A. Yes, sir.

Q. Did you also tell them you had a \$2,000 or a \$2,500 mortgage but had lost it— A. I did not know about the mortgage; I knew about the agreement.

Q. Did you say that to Mr. Young and Mr. Mills that day? A. No, sir.

Q. You met Christian quite often, didn't you? A. I met him often, but I did not speak to him.

30 Q. You and he were not bad friends, were you? No, sir; he would bid me the time of day.

Q. You never said anything to him about this property except on this one occasion when you met him on the street, and he asked you about buying it? A. That is all.

Louisa Dele, redirect

Q. This is the time when Christian came to you and asked you to move into the barn; that was after he had started suit against you to get possession of the property, wasn't it? A. Yes, sir.

Q. And that proposition was made with an idea of settling the whole matter, wasn't it? A. Yes, sir.

Q. And he told you that if you would move into the barn he would allow you to stay in there rent free? A. Yes, sir. 10

Q. For how long? A. He said he would give me a paper for as long as I would like to do so.

Q. And he said he would give you work? A. Yes, sir.

Q. To help you out? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. And you would not agree to that? A. I said if I got my full amount of money I would move; and he came again and asked me if I was satisfied, and I told him "No". 20

Redirect Examination by Mr. Lane:

Q. When you were talking with Mr. Marshall, did he tell you you should sell, or anything of that kind; did he tell you you would have a steady income? A. Yes, sir.

Q. Tell me what he said. A. He said I could stay there without any expense, and he would pay me the full amount of money. 30

Q. I show you the paper which has been marked "Exhibit D 1 for identification;" it seems to be a bond made by you to Robert B. Marshall, and ask you whether you know anything about that paper at all; do you remember anything about it?

Alexander McLeod, direct

Mr. Hunziker—I object; she said she did not.

Q. Do you remember anything about that piece of paper at all? A. No, sir.

Q. Did you ever get any money from Marshall on which you gave him a mortgage? A. No, sir, except the interest.

10 Q. Did you ever get any \$2,500 from Marshall, or anything like that? A. No, sir.

Q. I have just found among the papers a note which I had not seen before, July 6, 1922, to your order for \$2,000, signed by Marshall; do you know anything about that piece of paper? A. I don't understand about that \$2,000.

Q. Do you know anything about it? It is dated about a week before the other note; do you know anything about that? A. No, sir.

20 Q. Do you know whether Mr. Marshall ever gave you any other paper than this paper, which he said was a mortgage; or is this the paper that is supposed to be a mortgage? A. I don't know anything about it.

Q. Do you know anything about this piece of paper? A. No, sir.

Market "Exhibit C 5."

30 ALEXANDER McLEOD, being duly sworn, testified as follows:

Direct Examination by Mr. Lane:

Q. When were you retained in this matter? A.

Alexander McLeod, direct

A folder was made in this case August 13, 1922; I was probably retained that day, or the day before.

Q. Did you make an inspection of the records of Passaic County to find out what the record titles show? A. I made an inspection; I did not make a regular search.

Q. Did you make an examination to ascertain anything with respect to this stock that has been referred to? A. Yes, sir, I did.

Q. Tell me what the result of your examination was? A. I telegraphed immediately to the American Rice Products Company, and told them not to transfer any stock; believing she might have signed a transfer authority on the back of some of the stock; and they wrote me back on August 15th—

Mr. Hunziker—I don't know the materiality of this line of testimony; it is not binding on the defendant in this suit.

The Court—I will take it and deal with its admissibility later.

A. The American Rice Products Company wrote a letter directly to Mrs. Dele and stated they had received my wire, but that it was too late; that Marshall had already brought the certificates in person to the office of the American Rice Products Company and had them transferred to various people; the full amount of 300 shares was not transferred to one person, but to various people; that they were sorry they could not do anything for her.

Q. Did you make an investigation and find out how much stock Marshall ever had in that company?

A. I don't think he had any stock in the company;

Christian Bruning, direct

he kept it transferred in his brother's name—they tell me—and also in the name of Mrs. Aldrid.

Q. Did Marshall himself have any stock? A. So far as I heard, he did not; he had 300 shares of this stock in Mrs. Dele's name; and that 300 shares he transferred between July 14 and August 15.

Q. Did you ascertain whether or not there were any more shares of stock of that company in the name of Mrs. Dele? A. I found out there was none
10 in the name of Mrs. Dele.

No Cross Examination

Mr. Lane—We rest.

CHRISTIAN BRUNNING, being duly sworn, testified as follows:

20 Direct Examination by Mr. Hunziker:

Mr. Hunziker—We have no knowledge of any of the transactions between Marshall and the complainant in this case until the filing of the bill; and what information we have we have learned from them. (Continues opening.) Our defence is, that we are bona fide purchasers without notice.

30 Q. You are the defendant in this suit? A. Yes, sir.

Q. Where do you live? A. Ridgefield, New Jersey.

Q. Where do you live in reference to this prop-

Christian Bruning, direct

erty which is in dispute in this case? A. Across the street from it.

Q. Whom do you live with? A. I lived with my mother at that time.

Q. Johanna Bruning? A. Yes, sir.

Q. In the year 1922, did you see Mrs. Dele and have any conversation with her about the sale of her property? A. Yes, sir.

Q. When did you meet her and when was it?
A. Some time in June, 1923. 10

Q. What was the conversation you had with her?
A. I told her I was interested in the property, and intended to get married, and that I thought it was a desirable place for my business, and I asked her if she wanted to sell the property, and she said she had sold it.

Q. Did she say to whom? A. No, sir.

Q. Did she say anything else except what you have now said? A. No, sir. 20

Q. Was anything said about the payment of the money for the property? A. She said she received \$12,000 for the property.

Q. Did she say anything about whether she had actually received the money or not? A. No, sir.

Q. Did she say anything about staying on the property? A. No, sir.

Q. Did she say anything about having a right to stay there for any length of time without paying rent—at that time? A. No, sir. 30

Q. And you have repeated now the whole conversation? A. Yes, sir.

Q. How long did you stop and talk with her at that time? A. I would say no more than five minutes.

Christian Bruning, direct

Q. What did you do, if anything? A. I went to my mother's and explained it to her.

Q. What was the result of that conversation? A. She advised me there had been some men up there from the Clifton Trust Company that had a mortgage on the place.

Q. In consequence of that what did you do? A. I went to the Clifton Trust Company for information as to who owned the place.

10 Q. What kind of information? A. To find out who the owner was.

Q. Did you find out? A. They told me Mr. Marshall owned it.

Q. Did you see Mr. Marshall? A. No, sir, I went to his office and he was not in.

Q. Did you ever see him? A. I met him the day of the closing of the sale.

20 Q. When was it you made these inquiries at the Clifton Trust Company? A. The next day after I met her on the street.

Q. That was in what month and what year? A. That was in 1923, in June.

Q. What was the next thing that happened with regard to buying this property? A. The next day a real estate man came up and said he had the property for sale for Mr. Marshall; that man was Mr. Karl, of Clifton, who told me that.

30 Q. As a result of your conversation with Mr. Karl, did you reach an agreement? A. Yes, sir, we agreed on \$13,000 as the price, and a contract was made.

Q. I show you a paper signed by Robert B. Marshall and Johanna Bruning, and ask you whether

Christian Bruning, direct

that is the contract for the sale of the property? A. Yes, sir.

Q. So the contract was made with Johanna Bruning in the first instance? A. Yes, sir.

Mr. Hunziker—I offer this contract in evidence at this time.

Marked "Exhibit D 2."

Q. This is a contract dated the 20th of June, 1923, between Robert B. Marshall, of Paterson, and Johanna Bruning, of Clifton, whereby Marshall agrees to sell to Johanna Bruning the property situate in the City of Clifton, comprising a tract of six acres, for \$13,000; \$500 of which was paid at the execution of the contract, and \$12,500 to be paid in cash on the delivery of the deed.

10

Q. Why was the contract made in the name of Mrs. Bruning? A. My mother intended to take it over at first.

20

Q. Why was the plan changed, and you took it over? A. She decided she could take up a mortgage on the house and raise \$13,000; she had \$7,000 in cash, and she gave me a mortgage.

Q. She decided to loan you the money and let you take the property? A. Yes, sir.

Q. After the contract was made, what did you do with reference to the further consummation of the deal? A. I went to Mr. Young's office to have it searched.

30

Q. And did he report to you anything about the title before you paid the money? A. He said he had searched and the title was perfect.

Christian Bruning, direct

Q. On what day did you conclude the purchase?

A. On the 5th of July, 1923.

Q. And on that day what did you do? A. I paid out the mortgagee and Mr. Marshall.

Q. Where did you meet him? A. I met him, Mr. Marshall, the first time in Mr. Young's office.

Q. Did you then receive the deed for the property? A. Yes, sir.

10 Q. I show you this deed, made by Robert B. Marshall to Christian A. Bruning, dated July 5, 1923, recorded July 7, 1923, in Book O-20 of Deeds, on page 566, in the Passaic County Register's Office, and ask you whether that is the deed that you received? A. Yes, sir.

Mr. Hunziker—I offer this deed in evidence.
Marked "Exhibit D 3."

20 Q. After your conversation with Mrs. Dele on the street that you have told us about, when did you see her again after that? A. I saw her in November, 1923.

Q. Did you go to the property after you bought it, for any purpose, before you saw Mrs. Dele? A. Yes, sir.

Q. When? A. I went over there in August.

30 Q. Whom did you see? A. I saw the Bobbink and Atkins real estate man, or some man from Bobbink and Atkins, in regard to the rent.

Q. Who collected the rent after you bought the property, from Bobbink and Atkins? A. I did.

Q. Did anyone—did Mrs. Dele—protest against your getting the rent? A. Yes, sir.

Q. What was done, if anything, about it? A.

Christian Bruning, direct

I spoke to Bobbink and Atkins' man; they left it go for some time; and I understand they looked up the records and found out I was the owner; and they decided to pay me; and they did pay me.

Q. When did you first get any money from them for rent? A. In August, 1923.

Q. Did Mrs. Dele do anything, or say anything, to you about demanding the rent? A. No, sir.

Q. When did you learn that Bobbink and Atkins had a lease on the property? A. Before the final sale; I went over to Bobbink and Atkins' office. 10

Q. Who notified you there was a lease on the property? A. I think my attorney notified me.

Q. What did you do, if anything, that morning after? A. I went to Bobbink and Atkins, and saw Mr. Bobbink and asked him what rights he had on the property.

Q. As a result of that conversation, what did you learn about the lease? A. I understood that they had to the end of the year to go; they had up to the first of 1924 to stay there. 20

Q. Did they pay you the rent on that up to that time? A. No, sir, they did not stay there the full length of time.

Q. Was the lease terminated before its term—
A. Yes, sir.

Q. Why was that done? A. They agreed to leave that property in order to get the piece of property on my mother's place; they were to get that. 30

Q. Was that done by any arrangement with you in order to enable you to get possession? A. Yes, sir.

Q. Now, when did you see Mrs. Dele after you

Christian Bruning, direct

bought the property; you said in November? A. Yes, sir.

10 Q. What was the occasion of your seeing her then? A. I was up in the place doing some repairing, and I met her in the place, and the conversation was brought up about these ejectment proceedings; and she said she wished to know what had been settled; that she would like me to make some suggestion; and I suggested that she could live in the rooms where she had been living before—three furnished rooms in the barn; and I said I could use her for working in the place.

By the Court:

Q. Why did you do that? A. In order to gain time, because I wanted to get in the house.

Further Direct:

20 Q. What came of that conversation? A. Nothing.

Q. Did she decide whether to accept your suggestion? A. She did not say she would take it.

Q. Did she afterwards tell you what she would do? A. No, sir; she told me she did not make any decision at all.

Q. She never told you whether she would do that or not? A. No, sir; I told her to let me know.

30 Q. When did Bobbink and Atkins actually vacate? A. I don't remember what month it was.

Q. When did you take actual possession of the house? A. Sometime in the fall of 1923.

Q. Have you since been in possession of the land? A. Yes, sir.

Christian Bruning, direct

Q. And the whole place, except that part occupied by Mrs. Dele? A. Yes, sir.

Q. Has anybody else, other than Mrs. Dele, occupied the house? A. Yes, sir.

Q. Who was that? A. A man by the name of Mr. Heller.

Q. Was he there at the time you bought the property? A. Yes, sir.

Q. And continued there ever since? A. He has not been there for some time, but he continued there for several months. 10

Q. Did he pay rent? A. Yes, sir.

Q. To whom? A. To me.

Q. Since when? A. About a month or two after I bought the property he paid it to me.

Q. Did you ever come in contact with Mrs. Dele in reference to any dispossess proceedings in the District Court? A. Yes, sir.

Q. When was that? A. I think that was about September. 20

Q. What dispossess proceedings were they? A. To have her move out of the house.

Q. Did you institute dispossess proceedings in the District Court? A. Yes, sir.

Q. Did you meet Mrs. Dele during the progress of that proceeding? A. Not until that time in November when I met her in the house.

Q. So that you had no conversation with her direct during the progress of that dispossess proceeding? A. No, sir. 30

Q. I want to show you the checks here and ask you what they represent: Check dated July 25, 1923, payable to the Clifton Trust Company by Johanna Bruning, for \$6,216.00 and ask you what that

Christian Bruning, direct

check was for? A. They had a mortgage on the property for that amount.

Q. Did you deliver that check then in payment of the mortgage? A. Yes, sir.

Marked "Exhibit D 3½."

Q. I show you check dated July 5, 1923, made by Johanna Bruning to the order of Robert B. Marshall, for \$2,771.07, and ask you what that check was for? A. That was the amount of money he was to receive after the two mortgages had been paid off.

Marked "Exhibit D 4."

Q. I show you check dated July 5, 1923, made by Johanna Bruning to the order of William Karl, Jr., for \$655.00; what was that check for? A. That was a real estate man's commission.

Q. On account of what? A. On account of the \$13,000 sale of this property.

Q. That check was delivered and later cashed? A. Yes, sir.

By the Court:

Q. Why did you pay commission? A. It was paid out of the purchase price.

Mr. Hunziker—We offer it in evidence.
Marked "Exhibit D 5."

Q. I show you check dated July 6, 1923, of Johanna Bruning, to the order of Passaic Builders'

Christian Bruning, direct

Supply Company, for \$2,759.07, and ask you what that check was for? A. They also had a mortgage on the property.

Q. And that check was delivered to the holder in payment of the mortgage? A. Yes, sir.

Marked "Exhibit D 6."

Q. They were present at the time this money was paid to Marshall? A. Yes, sir. 10

Q. And the deed delivered? A. Yes, sir.

Q. At that time was there a statement made up of the amount of the purchase money? A. Yes, sir.

Q. And how it was to be paid? A. Yes, sir.

Q. Was that made up in your presence and delivered to you then? A. Yes, sir.

Q. That shows the disbursements which make up the \$13,000 purchase money; is that right? A. Yes, sir. 20

Mr. Hunziker—I offer this in evidence.

Marked "Exhibit D 7."

Q. Did Mrs. Dele at any time make any statements to you concerning her transactions with Marshall, other than you have told us on the witness stand this morning? A. No, sir.

By the Court:

30

Q. Did you tell Marshall what she had told you?

A. I never met him until the day of the sale, and never spoke to him.

Q. Didn't you speak to him when the transaction was going through, as to what Mrs. Dele had said to you? A. No, sir.

Christian Bruning, cross

Q. Didn't you tell him? A. No, sir.

Cross-examination by Mr. Lane:

Q. Is it correct, as indicated by this statement, "Exhibit D 7," that you paid \$650.00 commissions to the real estate man? A. Yes, sir.

Q. To whom? A. To William Karl; I don't remember exactly the amount.

10 Q. How old are you? A. 27.

Q. What is your business? A. I am a grower and packer of horse radish.

Q. How long have you been in business for yourself? A. About four or five years.

Q. Why did you go to Bobbink and Atkins to inquire as to what rights they had in the property; who told you to do that? A. My attorney advised me that they had a lease on the property.

20 Q. He also told you the lease was recorded, didn't he? A. Yes, sir.

Q. Why did you go to Bobbink and Atkins then? A. I wanted to see if I could make some arrangement with them as to vacating the property.

Q. Then you did not go for the purpose of finding out their rights? A. Yes, sir, I did.

Q. Why didn't you depend on the records? A. I thought it was my place to find out every right they had on the property.

30 Q. How long have you known it was a burden put on a purchaser to find out what the rights of a person in possession of property were? A. I knew that for some time.

Q. How many years before you had this transaction? A. I cannot say that, but I knew it.

Christian Bruning, cross

Q. You knew it before you had this transaction?

A. Possibly.

Q. I understand you accidentally met Mrs. Dele on the stret in June, 1923. Was that just accidental? A. Yes, sir.

Q. Pure acident? A. Yes, sir, I met her on the street; I saw her coming; and so I came out of my place to met her.

Q. Then it was not accidental? A. When I saw her coming I went out to meet her.

10

Q. And your purpose was to ask her about this property? A. Yes, sir.

Q. And had you ever asked her anything about the property before that? A. No, sir.

Q. That is the first time you had ever spoken to her about the property? A. That is right.

Q. Can you tell me about how long it was before that, that you had last met her and talked to her about anything? A. I don't know that I met her for quite some time before; she goes out to work every day.

20

Q. As I understand your testimony, you asked her if she cared to sell? A. Yes, sir.

Q. And she replied "No," that she had sold. A. Yes, sir.

Q. Was that the whole conversation? A. No, sir.

Q. Tell us the rest that was said. A. I asked her how much she got for the property, and she told me \$12,000.

30

Q. Nothing more was said? A. Not regarding the property.

Q. And you did not ask her any more questions? A. No, sir.

Christian Bruning, cross

Q. You did not ask her to whom she sold it? A. No, sir.

Q. Why not? A. Because I had not spoken to my mother up to that time about the property; and I did not go too far into it because I did not know if my mother could back me.

Q. That is the only reason you did not ask her to whom she sold it? A. Yes, sir.

10 Q. Did you ask her whether she had been paid \$12,000? A. No, sir, she told me she had been paid \$12,000; she told me she got \$12,000 for it; I said, "What did you get for the place?" and she said, "I got \$12,000."

Q. Did you ask her how she had ben paid? A. No, sir.

20 Q. When your mother finally concluded she could help you out in this transaction, as I understand it, you found out who had purchased the property—from the Clifton Trust Company? A. Yes, sir.

Q. Why didn't you ask Mrs. Dele at that time? A. Mother said there had been two men from the Clifton Trust Company, and they had a mortgage on it; and mother advised me that they could give me information.

Q. Mrs. Dele could give you information; she lived across the street? A. I went down to the Clifton Trust Company.

30 Q. Why din't you go to Mrs. Dele's? A. I took my mother's advice.

Q. So you did not go to Mrs. Dele, although she had told you a few days before that she had sold the property, to find out to whom she had sold it, because you took your mother's advice to go to the

Christian Bruning, cross

Clifton Trust Company? A. I thought that I could get more information from the Clifton Trust Company than from Mrs. Dele.

Q. As a matter of fact, you never approached Mrs. Dele from June 12th, 1923, until after this transaction was wholly completed; is that right?

A. Yes, sir.

Q. Did you ask Bobbink and Atkins to whom they paid the rent? A. I knew whom they paid it to. Before I had purchased it they had been paying it to Mrs. Dele. 10

Q. You knew at the time of the transaction, didn't you? A. That they had been paying the rent to Mrs. Dele? A. Yes.

Q. Yes. A. Yes, sir.

Q. And you knew she was occupying part of the premises? A. Yes, sir.

Q. Why didn't you ask Mrs. Dele under what right she was occupying part of the premises? A. I believed when I saw my attorney to have the search, that the search would reveal any rights that anyone would have. 20

Q. You knew the law to be, that when a person is in possession of property, it is necessary to find out what his rights are; you tell me now that you knew they were paying the rent to Mrs. Dele; now, why didn't you ask her what right she had to receive that rent and remain in that property? A. I inquired of the Clifton Trust Company, because I thought it could give me more information. 30

Q. Do you consider that an answer to my question? A. Yes, sir.

Q. What I am trying to get you to tell me is why you were so careful to go to Bobbink and Atkins,

Christian Bruning, cross

who had a recorded lease, to find out what their rights were; and did not depend on the record title; and you did not go to Mrs. Dele, who was getting the rent, and who was in possession of the property, and inquire of her, but depended on the record title? A. I went to Bobbink and Atkins with the idea of having them vacate the property.

10 Q. Do you want to take back what you have already said, when you said you went to them for the purpose of finding out what their rights were?

A. I say that, too.

Q. I want to know from you why in one case you went and did not depend on the record title, and in the other case you did not, but depended on the record title? A. I knew if I went up to people I would get more information than in any other way.

20 Q. You are an intelligent man. I want to know why you went to Bobbink and Atkins to find out what rights Bobbink and Atkins had under their recorded lease, and you did not go to Mrs. Dele to find out what rights she had—when you knew she was collecting the rents, and when you knew she was in possession of part of the property, and with respect to her you depended on the record title; why did you make the distinction? A. If I went to Bobbink and Atkins I could make some arrangement for them to leave the property before their lease was up, so that I could get in.

30 Q. You knew Mrs. Dele had been collecting the rent; how did you think she was collecting the rent after having sold the property; what right had she to collect those rents? A. I believed she owned it before I bought it.

Q. I thought you said you found out that Mar-

Christian Bruning, cross

shall—A. I was under the impression that she owned the property before I inquired.

Q. You knew from October, 1922, when she gave a deed for the property, that she had been collecting the rent, and she was in possession; by what right did you think she was in possession and collecting the rent—up till the time you went into possession, or tried to—by what right did you think she was collecting the rent and in possession; you did not know, did you? A. I did not know if she was collecting the rents or not; I never questioned her about that. 10

Q. Did you question her as to why she was in possession of part of it? A. I had no other conversation with her at that time.

Q. Why not? A. Because I went to the Clifton Trust Company and inquired, and found out she was no longer the owner.

Q. You knew you had to get her out of that property? A. Yes, sir. 20

Q. Did you make any efforts to find out how you were going to get her out of the property? A. Yes, sir.

Q. From whom did you inquire about that? A. My attorney.

Q. Who was your attorney? A. Mr. Young.

Q. Did he tell you he did not know how to get her out of the property unless he knew what right she had there; or did Mr. Young tell you he could get her out of the property, no matter what her rights were? A. We believed she had no rights. 30

Q. Did you know? A. At that time I was confident she had no rights.

Q. Why didn't you step across the street some morning and ask her what rights she had? A. Because I knew that she no longer owned the proper-

Christian Bruning, cross

ty; and a search revealed that she had been paid—that she had signed the deeds, I mean.

Q. And although you knew she was in possession, and although you knew the law with respect to notice and of a person's rights who is in possession, you deliberately refrained from going over and asking her? A. I did not ask her.

Q. You knew you could have found out if you did ask her, and you did not ask her? A. I did
10 not think it was necessary.

Q. You know that an owner of property usually collects the rents, don't you? A. Yes, sir.

Q. How did you explain to your own mind how Mrs. Dele, from October, when she had sold this property, until July, when you got it, collected the rent; how did you explain that to your own mind? You have told me you knew that Mrs. Dele was collecting the rents; you knew she had sold the property in October; you knew she had been collecting
20 the rents from October, 1922, until July, 1923, when you became owner of the property— A. I did not know that she collected the rents after she had sold it.

Q. You told me in the beginning, that you knew at the time the transaction was put through, that you thought Mrs. Dele was collecting the rents—
A. I believed when she owned the place before she sold it, that she was collecting the rents, but I did
30 not know who was collecting the rents after she had sold it.

Q. You said you knew at the time of the transaction that she was collecting the rent; and if you

Christian Bruning, cross

said that before, that is a mistake— A. I did not know that.

Q. As I understand, you did not know who was collecting the rents? A. No, sir.

Q. Why didn't you find out? A. Because I was only interested in the rent from the time I purchased it.

Q. But why didn't you find out who was collecting the rents, so that you might determine who was interested in that property except the record holder; when you were down at Bobbink and Atkins' office, why didn't you ask them "Who are you paying the rent to?" A. I saw nothing of the rent until the time when I was to collect it. 10

Q. Why didn't you ask Marshall if he was collecting the rent or not? A. I was not interested in the rent proposition.

Q. So that you did not know who was collecting those rents; is that right? A. No, sir, I did not know who was collecting them from the time she sold it until the time I got them. 20

Q. Now, when you had this talk with Mrs. Dele on the street, why didn't you ask her, "Why, if you sold the property, how is it you are living there?" A. I did not know what arrangements she had made; I did not know whom she had sold it to; I was under the impression that she owned the property.

Q. You knew she was in possession of part of it; and you now say you did not know what arrangements were between her and the person who had purchased the property; is that right; you have just stated that you did not know what the arrangements were between Mrs. Dele and the person who pur- 30

Christian Bruning, cross

chased the property in June of 1923—which would warrant her in retaining possession. Now, if you did not know, why didn't you ask? A. As I explained before, I did not ask because I did not know whether I was in a position to buy the property or not.

10 Q. When you found you were in a position to buy it, why didn't you go back and ask? A. Because I went to the Clifton Trust Company and asked them who the owner was, and I got all the information I could get from them.

20 Q. As I understood your counsel's opening, he said that at this talk you had with Mrs. Dele, she told you that she was entitled to possession for two years, rent free; he was mistaken in that; that was a mistake on his part; she did not tell you at this June, 1923, talk, that she was entitled to possession for two years, rent free? A. She told me nothing but what I have said.

Q. How long have you known Mr. Marshall? A. The only time I met him was at the office when we closed the deal on the property.

Q. Had you ever heard of him before? A. No, sir, not until the time that we found out who had owned it; I never knew him before.

By the Court:

30 Q. Had you ever seen him? A. No, sir.

Further Cross:

Q. Give me the date in June when you saw Mrs. Dele? A. No, sir, I cannot.

Q. How many days before you signed this contract, "Exhibit D-2," was it that you made the

Christian Bruning, cross

agreement with Mr. Marshall; or was it all done at one time?

Mr. Hunziker—I object to the form of the question.

Q. How many days before you signed the deed did you take up negotiations for the purchase of this property? A. I met Mrs. Dele one day on the street, and I spoke to my mother the same day; and the next day I went down to the Clifton Trust Company; and the day following the real estate man came to my place. 10

Q. And then what? A. My mother signed the contract.

Q. That day? A. It was either that day or a day or two after; I don't recall if she signed the contract that day.

Q. At any rate, this whole transaction between the time you first saw Mrs. Dele, until the time you closed this contract, was within a period of five days? A. Yes, sir. 20

Q. One following the other? A. Yes, sir.

Q. And the real estate man just happened to come? A. Yes, sir, he came; my impression is, that the Clifton Trust Company advised him that I was in the market for the property; that is my impression. 30

The Court—That is a conclusion.

Q. No one told you that? A. No, sir.

Q. You just think that? A. Yes, sir.

Christian Bruning, cross

Q. So far as you were concerned, he just came that day? A. Yes, sir

By the Court:

Q. How long have you known Mrs. Dele? A. As long as I can remember.

Q. How long has she lived at this place, so far as you know? A. About ten years; and before that, she lived on Long Island.

Further Cross:

Q. And the title was closed; the contract was signed June 20th—and when was the title closed?

A. July 5, I believe it was.

Q. Although it is fixed upon to be closed July 10th—do you know why it was advanced?

Mr. Hunziker—I object to the form of the question.

Mr. Lane—Question withdrawn.

Q. Why was it you did not wait until July 10th, and why did you close it on July 5th; was there any object in that haste? A. I was advised by my attorney that the search would be ready by that time; and he advised me to be down there on July 5; there was no special reason.

Q. Now, did your attorney say that Mrs. Dele—oh, by the way, did the Clifton Trust Company tell you to whom Mrs. Dele had sold this property? A. Yes, sir, they told me that Mr. Marshall owned it.

Q. Did they tell you to whom Mrs. Dele had sold it? A. No, sir, they said that Mr. Marshall owned it.

Christian Bruning, cross

Q. Did you ascertain, that so far as the record was concerned, Mr. Marshall did not purchase it from Mrs. Dele—according to the records? A. The search revealed that.

Q. So that you knew that, at the time of the search? A. Yes, sir.

Q. Did you ask Mr. Marshall how he happened to get the property? A. I never spoke to him except when I was introduced to him in my attorney's office.

10

Q. Did you ever find out who Alice C. Aldred and James Herbert Aldred were? A. No, sir, my search showed me who they were in regard to the property—

Q. Did you make any inquiry as to why the deed was kept off the record until the 19th of March, 1923; was anything said about that? A. Nothing was said to me about that; I did not know anything about that.

20

Q. Now, after you had purchased the property, how long was it before you went to see Mrs. Dele, or did you go to see her at all? A. Not until that time in December, or November, when I met her in the place there.

Q. So that, from July, 1923, until November— from the time you took possession until November, 1923, you did not see Mrs. Dele? A. No, sir.

Q. Didn't you go to see her before you started ejectment proceedings, to ask her to get out, or something of that kind? A. Did I go to see her?

30

Q. Yes. A. No, sir.

Q. Why didn't you, before you started suit to get her out? A. Because she claimed she had a right to stay there; she told my lawyer she had a right to stay there until 1927, I believe.

Christian Bruning, cross

Q. When was it she told your lawyer that? A. At the time Mr. Young was in Mr. Mills' office.

Q. At the time you started the dispossess proceedings? A. I don't recall if they had been started or not.

Q. I think the record will show they had been. Now, I ask you why you started dispossess proceedings before you asked her to get out? A. Because my attorney was taking care of it.

10 Q. As I understand it from the opening of counsel, your attorney did not see Mrs. Dele at all until she came down in response to these dispossess proceedings; if that is so, I ask you why you instructed your attorney to commence dispossess proceedings before you even asked the lady to quit? A. I believe my attorney had knowledge to the effect that she was not going to get out of the place.

Q. Did your attorney tell you how he got that knowledge? A. Yes, sir.

20 Q. How? A. I believe it was from a man from Bobbink and Atkins.

Q. Did your attorney tell you she claimed some rights? A. He told me about it.

Q. When did you have any talk with your attorney in which you spoke about some information which your attorney got from some real estate man from the Bobbink and Atkins outfit, that Mrs. Dele had some rights? A. I don't remember the date.

30 Q. Was it before you started the dispossess proceedings? A. Naturally, it would be.

Q. Did you ask your attorney what rights Mrs. Dele claimed? A. Yes, sir.

Q. What did your attorney say? A. I believe

Christian Bruning, redirect

she said something about having a right to stay in the house.

Q. I am asking you to tell me what your attorney told you; the information that he got from some real estate man representing Bobbink and Atkins.

A. Stating that she had a right to stay in the house for a certain period.

Q. Did your attorney tell you how it was that the real estate man should know this? A. Because he had been taking care of her affairs, I understand.

10

Q. Before you told your attorney to institute these dispossess proceedings? A. Yes, sir.

Q. Why didn't you go over to Mrs. Dele and ask her what it was all about before you started suit against her; why didn't you ask her to please get out? A. She is very hard to explain anything to.

By the Court:

Q. She is stupid? A. Yes, sir.

20

Redirect Examination by Mr. Hunziker:

Q. Did your attorney tell you about Mrs. Dele having any right or privilege under her lease with Bobbink and Atkins, about staying in this place—any privilege under the lease with Bobbink and Atkins? A. No, sir, not that I know of.

Mr. Hunziker—I will offer some records in evidence now.

30

I offer in evidence the records of a lease made by Louise Dele to Bobbink and Atkins, dated July 31, 1927, and recorded in Book Q-26 of Deeds, page 302, of Passaic County.

I also offer in evidence the record of a

Christian Bruning, redirect

deed from Louise Dele, widow, to Alice C. Aldred and James Herbert Aldred, her husband, dated October 10, 1922; and recorded October 21, 1922, in Book X-29 of Deeds, on pages 580 &c., in the Register's office of Passaic County.

10

I also offer in evidence record of a mortgage made by Louise Dele to Robert B. Marshall, dated July 13, 1922, and recorded July 18, 1922, in Book N-12 of Mortgages, on page 542, in the Register's office of Passaic County, and which contains on the face of the record a satisfaction of the mortgage, dated October 21, 1922; signed by William J. Karl, who is the assignee.

20

I also offer in evidence the assignment of a mortgage made by Robert B. Marshall to William J. Karl, Jr., dated July 15, 1922, recorded July 18, 1922, in Book Y-3 of Assignments of Mortgages, on page 8, in the Register's office of Passaic County.

30

I also offer in evidence a mortgage made by Alice C. Aldred and James Herbert Aldred, her husband, to the Clifton Trust Company, dated October 17, 1922, recorded October 21, 1922, in the Register's office of Passaic County, in Book R-12 of Mortgages, page 217, given to secure the payment of \$6,000.

Also the record of a deed made by Alice C. Aldred and James Herbert Aldred, to Robert B. Marshall, dated October 20, 1922, recorded March 19, 1923, in the Register's office of Passaic County in Book I-30 of Deeds, on page 374.

Marked "Exhibit D 8."

Christian Bruning, redirect

Also a mortgage made by Robert B. Marshall to Alice C. Aldred and Henrietta Verhagen, dated October 20, 1922, recorded March 27, 1923, in the Register's office of Passaic County in Book Y-12 of Mortgages on pages 11, &c.; and ask that that be marked.

Marked "Exhibit D 9."

Also the cancellation appearing on the face of it.

Marked "Exhibit D 9½."

10

Also an assignment of mortgage made by Alice C. Aldred and Henrietta Verhagen to Harry Simon, dated April 26, 1923; recorded May 18, 1923, in the Register's office of Passaic County in Book A-4 of Assignments on page 237; and ask that it be marked.

Marked "Exhibit D-10."

An assignment from Harry Simon to Passaic Builders Supply Company, dated May 11, 1923; recorded May 18, 1923, in the Register's office of Passaic County, in Book A-4 of Assignments, page 238, and ask that that be marked.

20

Marked "Exhibit D 11."

And a deed from Robert B. Marshall to Christian A. Bruning, dated July 5, 1923; recorded July 7, 1923, in the Register's Office of Passaic County in Book O-30 of Deeds, page 566.

30

A mortgage made by Christian A. Bruning to Johanna Bruning, dated July 5, 1923, and recorded in the Register's Office of Passaic

A. Lawrie Young, direct

County on July 7, 1923, in Book E-13 of Mortgages on page 158.

Mortgage marked "Exhibit D 13."

I also offer in evidence "Exhibit D 1 for identification."

Marked "Exhibit D 1."

10 I also offer in evidence an assignment of Mortgage from Robert B. Marshall to William Karl, Jr., dated July 15, 1922, and recorded in the Register's office of Passaic County on July 18, 1922, in Book Y-3 of Assignments, page 8.

Marked "Exhibit D-14."

Recess to 2 P. M.

After Recess

20

A. LAWRIE YOUNG, being duly sworn, testified as follows:

Direct Examination by Mr. Hunziker:

Q. You are an attorney and solicitor of the Bar of this State? A. Yes, sir.

Q. How long have you been practising law? A. Since 1920.

30 Q. Do you know Mr. Bruning, the defendant in this case? A. Yes, sir.

Q. Is he a client of yours? A. Yes, sir.

Q. In 1923 did you receive Mr. Bruning's instructions about examining the title of any property? A. Yes, sir.

A. Lawrie Young, direct

Q. Did you make an examination of the title?

A. Yes, sir.

Q. Of what property? A. Property on Grove Street, Almond Road, Clifton.

Q. Whom did you find to be the owner of the property? A. Robert B. Marshall.

Q. Did you make an extract of the record relating to this property? A. Yes, sir.

Q. I show you this abstract; is that the one you made in your examination of the records? A. Yes, sir. 10

Q. Did you make an examination of the records personally? A. Yes, sir.

Q. The result of your examination is this abstract which you had typewritten in your office?

A. Yes, sir.

Q. How did you find the title to be with reference to any incumbrance on it? A. I found two mortgages and a lease; the Clifton Trust Company and the Passaic Builders Supply Company; the Clifton Trust Company mortgage was \$6,000, and the other was \$2500 and a little more—\$2725, to be precise. 20

Q. Did you find any other incumbrance on the property? A. A lease made between Mrs. Dele and Bobbink and Atkins.

Q. Have you, in brief, the terms of the lease in your abstract? A. Yes, sir.

Q. For how long a period was the lease? A. 20
The lease was given for a period of five years; the lease was for five years from August 1, 1917, with the privilege of two-four, or six years' renewal.

Q. That would be 1922 it would expire? A. Yes, sir.

A. Lawrie Young, direct

Q. And when you made your examination, that term, the first term, had expired? A. Yes, sir.

Q. Did you know how long the Bobbink and Atkins people had availed themselves of any renewal in that lease? A. I did not know at that time.

Q. Did you know they were in the occupation of the property at that time? A. Yes, sir.

Q. Did you know whether they had availed themselves of this right of renewal? A. I presume
10 from the clause in the lease that they had.

Q. Is there something in that lease with reference to Mrs. Dele occupying any part of that property? A. Yes, sir.

Q. Did you note that there? A. Yes, sir.

Q. Did you make a report of it in your abstract? A. Yes, sir; "The party of the first part has the privilege to use and occupy, free of rent, the three rooms in the Northwesterly end of the barn, situate
20 on said premises, so long as she or her children do not molest or interfere with the rights of the caretaker to be placed in charge of the premises by the party of the second part. In case she or her children should molest said caretaker, then this privilege to cease, and the party of the first part is to move and vacate said premises."

Q. Did you report to Mr. Bruning the condition of the title to the premises, as appearing on record, after you had concluded your abstract? A. Yes,
30 sir.

Q. Was anything done by him upon your suggestion, if you know, with reference to this suit? A. I told Mr. Bruning that I had found a lease on record, and that it appeared to me that inasmuch as they were still operating the farm, they must have

A. Lawrie Young, direct

had some renewal of the lease. I asked Mr. Bruning to find out just what the terms were under the renewal, and he reported to me that he had been down to see Bobbink and Atkins.

Q. After making your abstract, when was the transaction closed? A. On the 5th of July, it was closed in my office, I was present; I participated in the transaction.

Q. I show you this exhibit, "D 7," and ask you whether you prepared that statement at the time of this transaction? A. I prepared this statement. 10

Q. And what was the price at which the property was purchased? A. \$13,000.

Q. How was that paid? A. The deposit was \$500—the amount due on the first mortgage—

Mr. Lane—This is mere repetition.

Q. There is an item here of \$65.85; what is that for? A. That was an apportionment of the tax for the year 1923. 20

Q. There is an item of \$28.00? A. That was for part of one month's rent, which the purchaser was allowed by the vendor.

Q. And there is an item here of \$650.00 commission; is that the commission paid to the agent? A. Yes, sir.

Q. Out of the purchase money? A. Yes, sir.

Q. At whose request? A. By Mr. Marshall's request, and charged to his account. 30

Q. Do you recall, Mr. Young, at any time after this transaction meeting Mrs. Dele? A. Yes, sir.

Q. When did you meet her? A. That was towards the latter part of July, 1923.

A. Lawrie Young, direct

Q. Where did you meet her? A. In the District Court Room in the City Hall; Mr. George Mills was there at the time.

Q. What was the occasion of your meeting her?

A. Mrs. Dele—I learned that Mrs. Dele had a right to stay there a certain length of time and had been sent to Mr. Mills, and Mr. Mills spoke to me about it; and I said, “That is news to me;” and he said, “I will arrange to have her come down and talk it over;” which we did; I said to her, “Did not Mr. Bruning speak to you in reference to buying the property from you?” and she said, “Yes, he did, but I told him it was sold, and I had the right to stay there until August 1, 1925.” I asked her what she got for the property; and she said “\$12,000.” I said, “You got it all in cash?” and she said “No.” She said, “I got \$3,000 in stock;” and then she said, “No, I got \$7,000 in stock and the balance of \$4,000 which they held;” and she also received a mortgage she claimed, on the property, but had sold it that very day or around that time when I saw her.

Q. Was anything said about Mr. Bruning getting possession of the house that she then occupied?

A. She merely claimed she had this right to stay there until August 1, 1925.

Q. Did she make any claim then that she had been defrauded out of her property? A. No, sir, not at that time.

Q. At any time until this suit was started? A. Only through Mr. McLeod; he told me afterwards, but Mrs. Dele never did.

Mr. Hunziker—I offer this abstract in evidence.

Marked “Exhibit D 13½.”

A. Lawrie Young, cross

Cross-Examination by Mr. Lane:

Q. Did she explain why it was that she was to be permitted to remain in the property? A. No, sir.

Q. Did you ask her? A. I don't recall whether I did or not.

Q. You had arranged this appointment in order to get some information? A. Yes, sir.

Q. When she said she was permitted to stay there until August 1, 1925, didn't you ask her how it came about? A. I think she said at that time that she was supposed to get her money by then, or words to that effect. 10

Q. Didn't she say that she was to stay there until she got her money; and that she was supposed to get her money in 1925? A. That might have been it.

Q. The two statements are quite different, are they not, in your mind as a lawyer? A. Somewhat. 20

Q. But you made no inquiry of her at that time as to how it came about; you made no further inquiry as to how it came about that she was to be permitted to stay there? A. No, sir, I don't think I did.

Q. How long did you talk with her that day? A. Maybe 10 miuntes or 15 minutes.

Q. Did you ask her how it was that she was supposed to get her money by August 1, 1925, when she had sold her property for something which was not money— A. I think it was this mortgage that she had that was to come due at that time; the mortgage that she claimed to have lost, I think became due in 1925. 30

A. Lawrie Young, cress

Q. Did she say that the mortgage became due in August, 1925? A. I think so.

Q. Had you instituted a suit in dispossess proceedings against her? A. No, sir.

Q. How is it you came to send for her? A. As I said before, Mr. Duddleston had told me that she had this privilege of staying there for a certain time; and she afterwards went to see Mr. Mills, and Mr. Mills communicated with me and asked me to come
10 over, and he would make an appointment to have Mrs. Dele come down.

Q. When was it that Mr. Duddleston told you? A. About a week after we had closed this deal of Mr. Marshall with Mr. Bruning, Mrs. Bruning came into my office with Mrs. Heller and said she had been ordered to vacate some property, that is, the room she was occupying in Clifton at Mrs. Dele's house, for non-payment of rent; and that she had until that
20 day in which to pay the rent or be dispossessed. I did not understand why Mrs. Dele had started dispossess proceedings against Mrs. Heller, and I went to the District Court and found the records, and also learned that Mr. Duddleston had drawn the affidavit; after that I called Mr. Duddleston on the telephone and told him Mr. Bruning had purchased the property and I could not understand why Mrs. Dele had started dispossess proceedings. At that time he told me of her right to stay there for some time—
30 Duddleston told me that.

Q. Can you tell me when that was that you had that conversation? A. That was about a week after the deed was passed.

Q. Who is Mr. Mills? A. Clerk of the District Court in Paterson.

A. Lawrie Young, cross

Q. When did you start your dispossess proceedings? A. I started ejectment proceedings.

Q. Not dispossess proceedings? A. No, sir.

Q. Do you know how long it was after the commencement of the dispossess proceedings against this woman by Mrs. Dele that you had this talk with this agent? A. It was the same day that I learned of the dispossess proceedings.

Q. How long had you known Mr. Marshall? A. I never met him until he came to my office to close this transaction; Mr. Karl introduced him to me; I never met Mr. Karl until this contract was signed. 10

Q. You never met Mr. Karl or Mr. Marshall until you met both of them? A. That is right.

Q. And it was upon that introduction of Marshall by Karl that you took the acknowledgment of the deed? A. Yes, sir.

Q. Did you have anything to do with the signing of this agreement, "Exhibit D 2," from Marshall to Bruning? A. No, sir. 20

Q. Did you have anything to do with the drawing up of it? A. I think I drew the contract.

Q. At whose request did you draw the contract? A. Mr. Bruning's.

Q. He came into your office? A. He brought that blank contract with him and gave me the necessary information.

Q. All the information you got from your own client, Bruning? A. Yes, sir. 30

Q. You observed in the lease the provision that Mrs. Dele was to be permitted to occupy the barn?

A. The three rooms in the northwesterly end of the barn.

A. Lawrie Young, cross

Q. Did your client tell you she was occupying the house at that time? A. No, sir.

Q. Of course, I suppose if you had had knowledge of that, you would have found out why it was? A. I imagine I would, yes, sir.

By the Court:

10 Q. Did Marshall tell you where he lived? A. He lived in Passaic at that time; he did not say where.

Further Cross:

Q. You found a mortgage had been made by Mrs. Dele to Marshall? A. Yes, sir.

20 Q. Just about the same time that this deed was made from Mrs. Dele to Aldred? A. The mortgage was made three or four months prior to this transaction and was cancelled; I believe it was cancelled around the 21st of October, 1922.

Q. That is about the same time that the deed was recorded? A. Yes, sir.

By the Court:

Q. Did you ever see Marshall after that? A. No, sir.

Further Cross:

30 Q. How long were Marshall and Karl in this office at the time the transfer was actually made? A. I should judge possibly half an hour or so, maybe more.

Mrs. Johanna Bruning, direct

By the Court:

Q. Who paid the bill for your services in the office at the closing of the transaction? A. Mr. Bruning paid for making the search.

Further Cross:

Q. Did Marshall talk at all about his transaction with Mrs. Dele? A. No, sir.

Q. You did not ask him how it was that Mrs. Dele was occupying the property, did you? A. No, sir, I did not ask him. 10

Q. Nothing was asked him about the transaction at all? A. I did not ask him about the transaction.

Q. Nor did Bruning in your presence? A. No, sir.

Re-Direct Examination by Mr. Hunziker:

Q. You did not know at that time that Mrs. Dele was occupying the house on the property? A. No, sir. 20

Q. And you knew she had a right to occupy the barn under the terms of the lease? A. Yes, sir.

MRS. JOHANNA BRUNING, being duly sworn, testified as follows:

30

Direct Examination by Mr. Hunziker:

Q. You are the mother of Christian Bruning? A. Yes, sir.

Q. And you are the holder of this mortgage which is in evidence? A. Yes, sir.

Mrs. Johanna Bruning, cross

Q. For \$13,000 on this property that your son brought from Mr. Marshall? A. Yes, sir.

Q. And these checks representing part of the consideration money for the property were your checks? A. It was my money, yes, sir.

Q. At the time you paid this money did you know of any transactions between Mrs. Dele and Mr. Marshall? A. No, sir.

10 Q. Did you know that an examination of the title to this property was made in behalf of your son? A. Yes, sir.

Q. And was any report made to you before you paid this money as to the condition of the title?

A. The report was made to me that the title was clear.

Cross-Examination by Mr. Lane:

20 Q. You left the matter, more or less, to your son? A. Yes, sir.

Q. You apparently contracted to buy this property from Mr. Marshall? A. Mr. Karl came there and I gave him \$500.00.

Q. This contract for the sale of the property, "Exhibit D 2," was that signed in your house? A. Yes, sir.

Q. Was Mr. Marshall there? A. No, sir, his real estate agent, Mr. Karl, was there.

30 Q. And you knew you were buying the property? A. I was buying it for my son.

Q. Why did you change and have the deed put in his name when you put up all the money? A. He asked me, and I thought I would keep it in my control; but after he asked me I said, "All right, you can have it." He got married.

Mrs. Johanna Bruning, cross

By the Court:

Q. Is he living with his wife? A. Yes, sir.

Further Cross:

Q. How long have you known Mr. Marshall? A. I met him in the office.

Q. How long have you known him? A. I did not know him at all.

Q. Didn't you know him by sight? A. No, sir, 10
he was introduced to me; my trustee and Mr. Karl introduced him to me.

Q. Where were you introduced? A. In Mr. Young's office.

Q. Is that the only time you saw Mr. Marshall?
A. Yes, sir.

Q. Has Mr. Marshall ever been to your house?
A. No, sir.

Both Sides Rest.

20

30

Exhibit C-1, C-2, C-3

EXHIBIT C-1

\$3000.00

Passaic, N. J., July 14, 1923

One year after date I promise to pay to the order of Louise Dele, Three thousand Dollars at the Peoples Bank and Trust Company, Passaic, N. J.

This note is given in consideration of loan of 300 shares American Rice Products Co. stock, and to be paid either in stock of the above named company or in cash with interest of six per cent.

10

Value received.

No. Due

R. B. Marshall.

EXHIBIT C-2

Paterson, N. J., Sept. 11th, '23.

Mrs. Louisa Dele,
Richfield, N. J.

Dear Madam:

20 Enclosed please find Seventy dollars (\$70.), monthly interest as per your agreement with R. B. Marshall.

Kindly mail receipt to address below.

Yours very truly,

O. R. Marshall,

Box 15, Passaic, N. J.

EXHIBIT C-3

Oct. 27th, 1923.

Mrs. Louisa Dele,
Richfield, N. J.

30

Dear Madam:

Enclosed please find seventy dollars (\$70.) monthly interest as per your agreement with R. B. Marshall.

Kindly mail receipt to address below.

Yours very truly,

O. R. Marshall,

Box 15, Passaic, N. J.

Exhibit C-4, C-5

EXHIBIT C-4

Hotel Vendig, Philadelphia.

Nov. 24, 1923.

Mrs. Louisa Dele,
Richfield, N. J.

Dear Madam:

On Oct. 29th I mailed you seventy dollars as interest for my brother and up to the present time have not received the Return Card which was requested at the time I registered the letter.

10

Am about to make demand upon the post office at New York City for this letter, but before doing so, would like to know if you received the letter with cash enclosed O. K.

Please let me hear from you at once, as I wish to mail you your interest for the month of November.

Yours very truly,

O. R. Marshall,
Box 15, Passaic, N. J.

20

EXHIBIT C-5

\$2000.00

Passaic, N. J., July 6th, 1923.

Six months after date I promise to pay to the order of Louisa Dele, Two thousand Dollars at the Peoples Bank and Trust Company, Passaic, N. J., with interest at six percent.

Value received

No. Due

R. B. Marshall.

30

Exhibit C-6

EXHIBIT C-6

State of New Jersey }
 County of Passaic, } ss:
 In the District Court of the City of Paterson.

Louisa Dele,		Plaintiff	}	In an Action
	vs.			L. & T.
10 Henry Hella,		Defendant		Demand
				\$100. 5 mo.

Plaintiff's Costs

	Summons	\$2.10
	Additional Deft.	
	Mileage56
	Listing Fee	
	Witness Fee	
	Warrant	2.60
20	Mileage56
	Attorney's Fee	
	Total Cost	
	Execution	
	Statement	

3 rooms on 1st floor, & 1 room on 2nd floor, Almond Road, Clifton, N. J.

30 July 3rd, A. D. 1923, A summons was issued in the above stated cause, returnable July 10, A. D. 1923, at ten o'clock in the forenoon and was returned as follows:

Exhibit C-6

Served this summons July 5, 1923, by reading the same to the defendant and delivered to him a copy thereof.

Lewis Burling, Serg't-at-Arms.

The within named defendant not being found. I served this summons 192 by leaving a copy thereof at place of abode, in presence of of the defendant, a person of the family, of the age of fourteen years, who was informed of the contents thereof Serg't-at-Arms.

10

The plaintiff filed the affidavit July 3, 1923.

July 10, 1923 the plaintiff appeared ready for trial. The defendant appearing, and it further appearing by the return endorsed that the summons was duly served, the Court proceeded to hear and determine the cause in the presence of the defendant. Plaintiff offered affidavit on file.

July 21, 1923. Defendant paid into Court the sum of One hundred five and 82-100 dollars in settlement of above cause.

20

Received of the Clerk the sum of One Hundred five and 82-100 Dollars in settlement.

Louisa Dele, Plaintiff.

The evidence being closed and submitted to the Court, judgment was rendered by the Court and is here entered in favor of the plaintiff and against the defendant for the sum of dollars debt, and Five 82-100 dollars cost of suit.

192 ..Execution issued

192 ..Execution returned Satisfied, Judgment, Costs, Execution.

30

Jul. 18, 1923. A warrant of removal was issued and returned as follows: I return this writ, July 30, 1923, duly executed having removed all persons

Exhibit D-1

from the said premises and put the claimant into full possession thereof, but having found no goods or chattels of defendant on which to levy and make the costs thereof.

Lewis Burling, Serg't-at-Arms.

State of New Jersey }
County of Passaic, } ss:

10 I, George Mills, Clerk of the District Court of the City of Paterson, do hereby certify that the foregoing is a true and correct copy of the record in the above case as the same appears in Docket No. 108 on Page 33.

In testimony whereof, I have hereunto set my hand and seal of office this sixth day of October, A. D. 1926.

Geo. Mills, Clerk.

(Seal of the District Court of the City of Paterson.)

20

EXHIBIT D-1

30 Know all Men by these Presents: That I, Louisa Dele (widow) of the City of Clifton in the County of Passaic and State of New Jersey, held and firmly bound unto Robert B. Marshall, of the City of Passaic, in the County of Passaic and the State of New Jersey in the sum of Five thousand (5000) dollars lawful money of the United States of America to be paid to the said Robert B. Marshall, or to his certain Attorney, Executors, Administrators or Assigns; To which payment well and truly to be made I bind myself, my Heirs, Executors and Administrators, firmly by these presents.

Sealed with my seal and Dated the Thirteenth

Exhibit D-2

day of July in the year of our Lord One Thousand Nine Hundred twenty-two.

The Condition of the above Obligation is such, That if the above bounden Louisa Dele, her heirs, Executors and administrators, shall well and truly pay, or cause to be paid, unto the above named Robert B. Marshall, his Executors, Administrators or Assigns, the just and full sum of twenty-five hundred (2500) dollars lawful money aforesaid Within three (3) years from date hereof. The sum of one hundred (100) dollars is to be paid on the principal of this mortgage every six (6) months from date hereof with interest at the rate of six per centum, payable semi-annually without any fraud or other delay then the above Obligation to be void, otherwise to remain in full force and virtue.

10

Louisa Dele.

Signed, Sealed and Delivered in the Presence of
James H. Penn.

20

64—Ordinary condition. Bond.

Louisa Dele (widow) to Robert B. Marshall.

Amount, \$5000. Date, July 13, 1922. Due, July 13, 1925. Interest Payable semi-annually.

Canc. Oct. 21, 1922.

James H. Penn, Counsellor at Law, Lawyers' Bldg.,
899 Main Ave., Passaic, N. J.

EXHIBIT D-2

Agreement, made this Twentieth day of June, 1923, Between Robert B. Marshall of the City of Paterson in the County of Passaic and State of New Jersey hereinafter described as the seller, And Johanna Bruning of the City of Clifton in the County of Passaic and State of New Jersey hereinafter described as the purchaser,

30

Witnesseth, That the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot of land, with the buildings and improvements thereon, situate in the City of Clifton, County of Passaic and State of New Jersey, described as follows:

Beginning at a point where the southwesterly line of a lot of land formerly of R. S. Speer now Henry Bruning intersects the middle of the public road which leads from Acquackanonk to the Little Falls now known as The Telegraph Road or Grove Street and running from thence; (1) along said Bruning's line and also the center line of a road now known as Almond Avenue south 41 degrees 30 minutes east 7.07 chains to the line of land formerly of Daniel Schoonmaker; thence (2) along said line south 43 degrees 30 minutes west 7.99 chains to the line late of Daniel Paxton; thence (3) along said line late of Daniel Paxton et als 7.60 chains to the center line of Grove Street and thence (4) along same north 48 degrees east to the place of beginning.

20 Containing six acres more or less.

The price is Thirteen Thousand Dollars payable as follows: Five Hundred Dollars on the signing of this contract, the receipt of which is hereby acknowledged. Twelve Thousand Five Hundred Dollars in cash on delivery of the deed as hereinafter provided.

All Board of Health and tenement house violations or complaints must be rectified or removed by the seller before closing title.

30 All fixtures and personal property appurtenant to or used in connection with said premises are included in this sale.

The deed shall be delivered upon the receipt of said payments at the office of Young & Randall, 146-

Exhibit D-3

148 Market Street, Paterson, New Jersey, on or before July 10th, 1923, at 2 o'clock afternoon.

The deed shall be a full covenant warranty deed in proper form, and shall be duly executed and acknowledged by the seller, at the seller's expense, to convey to the purchaser, or the purchaser's assigns, the absolute fee of the above premises free of all incumbrances, except as above stated.

All instruments to be given hereunder are to be in the statutory short form. 10

Rents, water rents, taxes and interest on mortgages, if any, are to be apportioned.

The risk of loss or damage to said premises by fire, until the delivery of the deed, is assumed by the seller.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

The purchaser binds himself to pay the consideration in the manner aforesaid. 20

The purchaser is to pay all assessments levied and imposed after the date of the delivery of the deed.

Witness, the hands and seals of the above parties:

Robert B. Marshall (L. S.)

Johanna Bruning (L. S.)

In presence of: William Karl, Notary Public of N. J.

EXHIBIT D-3

Robert B. Marshall, single, to Christian A. Bruning. 30

Warranty Deed. Dated July 5, 1923, Acknowledged July 5, 1923, Before A. Lawrie Young, An Attorney at law of N. J., Recorded July 7, 1923, at

Exhibit D-3½, D-4

8:25 A. M., Book O-30 of Deeds on pages 566, etc., Register's Office, Passaic County, New Jersey.

Consideration \$1.00, and other valuable considerations.

Conveys to grantee, his heirs and assigns, the lands and premises described in the bill of complaint in this cause.

10 Recites: Being the same premises conveyed to the party of the first part hereto by Alice C. Aldred and James Herbert Aldred, her husband, by deed dated October 11, 1922, and recorded on the 19th day of March, 1923, in Book I-30 of Deeds for Passaic County on page 374.

Signed: Robert B. Marshall, in the presence of A. Lawrie Young.

Revenue stamps, \$4.50.

EXHIBIT D-3½

Paterson, N. J., July 5th, 1923.

20

The Paterson Savings Institution

Pay to the order of Clifton Trust Company or bearer, Sixty-two hundred sixteen and 00-100 Dollars, \$6216.00 and charge Book No. 190065.

Johanna Bruning.

Endorsed: Clifton Trust Co.

EXHIBIT D-4

Paterson, N. J., July 5, 1923.

30 United States Trust Company of Paterson, New Jersey.

Pay to the order of Robert B. Marshall \$2771.07 Twenty-seven Hundred Seventy-one and 07-100 Dollars.

Johanna Bruning

Endorsed:

Robert B. Marshall

O. R. Marshall

Exhibit D-5, D-6, D-7

EXHIBIT D-5

Paterson, N. J., July 5, 1923.

United States Trust Company of Paterson, New Jersey.

Pay to the order of William Karl, Jr., \$655.00, Six Hundred Fifty-five and 00-100 Dollars.

Johanna Bruning

Endorsed: William Karl, Jr.

10

EXHIBIT D-6

Paterson, N. J., July 6th, 1923.

United States Trust Company of Paterson, New Jersey.

Pay to the order of Passaic Builders Supply Co \$2759.07, Twenty-seven Hundred Fifty-nine and 07-100 Dollars.

Johanna Bruning

Endorsed: Passaic Builders Supply Co.

20

EXHIBIT D-7

Statement of Passing of Title from Robert B. Marshall to Christian A. Bruning, Block 354, Clifton, N. J., as of July 5, 1923.

Charges

By Purchase Price as per agreement \$13,000.00
 Gross Amount Due Seller \$13,000.00

Credits

To amount of deposit	\$ 500.00	
To amount due on first mortgage to which conveyance is subject	6,000.00	30
Int. due on first mortgage from Dec. 31, '22 to July 5, 1923	216.00	
To amount due on second mortgage to which conveyance is subject	2,725.00	
Int. due on second mortgage from Apr. 20, '23 to July 5, 1923	34.07	

Exhibit D-7½

To apportionment of taxes for 1923	65.86
Rents: Part of 1 month	28.00
To cash (or check) paid at closing	2,771.07
Other credits, drawing deed	5.00
Revenue stamps	5.00
Commissions	650.00
Total	\$13,000.00
\$6216.00 Pat. Savings.	

10

EXHIBIT D-7½

Alice C. Aldred and James Herbert Aldred, her husband, to Clifton Trust Company.

Mortgage. Dated October 17, 1922, Acknowledged Oct. 19, 1922, Before George F. Schmidt, Master in Chancery of N. J., Recorded October 21, 1922, at 11:24 A. M., Book R-12 of Mortgages, pages 217, etc., Register's Office, Passaic County, New Jersey.

20

Mortgages the lands described in the bill of complaint in this cause, to secure \$6,000.00.

Recites: Being the same premises conveyed to the said parties of the first part by Louisa Dele, widow, by deed dated October 10, 1922, to be recorded.

Endorsed: The Within mortgage having been this day fully paid and satisfied, the Register of Deeds and Mortgages of the County of Passaic is requested to cancel and discharge the same of record.

30

Clifton Trust Co.

W. E. Hughey, Pres.

Adrian Wentink, Treas.

(Seal)

Endorsed: Cancelled of record, July 7, 1923, John R. Morris, Register.

Exhibit D-8A, D-8B

EXHIBIT D-8a

Louisa Dele, widow, to Lambertus C. Bobbink and Frederick L. Atkins.

Lease. Dated July 31, 1917, Acknowledged Aug. 2, 1917, Acknowledged Aug. 3, 1917, Recorded August 11, 1917, Book Q-26 of Deeds, pages 302, etc., Register's Office, Passaic Co., N. J.

Demises the lands described in the bill of complaint in this cause, for a term of five years, from August 1, 1917, at the annual rent of \$400.00, payable in quarterly installments of \$100.00. 10

Contains an agreement that at the expiration of three years from the date of this lease, the party of the first part shall notify the party of the second part that she desires possession of said premises at the end of said term of five years, and if the party of the second part do not receive notice of such desire for termination thereof, this lease may be renewed for a further term, two, four or six years, at the option of the party of the second part. 20

Party of the first part to have the privilege to use and occupy, free of rent, the three finished rooms in the northwesterly end of the barn situate on said property, so long as she or her children do not molest or interfere with the rights of the care-taker to be placed in charge of said premises by the party of the second part. In case she or her children should so molest said caretaker, then this privilege to cease and the party of the first part is to move and vacate said rooms and premises. 30

EXHIBIT D 8-B

Louisa Dele, widow, to Alice C. Aldred and James Herbert Aldred, her husband.

Warranty Deed. Dated October 10, 1922, Ac-

Exhibit D-8C and D-8E

(knowned Oct. 10, 1922, Recorded October 21, 1922, Book X-29 of Deeds on pages 580, etc., Passaic County Register's Office.

Consideration \$1.00, and other valuable considerations.

Conveys the lands described in the bill of complaint in this cause.

EXHIBIT D-8c

10

Louisa Dele, widow, to Robert B. Marshall.

Mortgage. Dated July 13, 1922, Acknowledged July 13, 1922, Before James H. Penn, M. C. C. of N. J., Recorded July 18, 1922, Book N-12 of Mortgages, page 542, etc., Passaic County Register's Office.

Satisfaction endorsed on said mortgage by William J. Karl, Jr., assignee, witnessed by Adrian Wentink.

20

Also endorsed: Cancelled of record, October 21, 1922, John R. Morris, Register.

Mortgages the lands described in the bill of complaint in this cause, to secure \$2500.00.

EXHIBIT D-8E

Alice C. Aldred and James Herbert Aldred, her husband, to Robert B. Marshall.

30

Warranty Deed. Dated October 20, 1922, Acknowledged Oct. 20, 1922, Before James H. Penn, Master in Chancery of N. J., Recorded March 19, 1923, at 3:15 P. M., Book I-30 of Deeds, pages 374, etc., Register's Office, Passaic County, New Jersey.

Consideration \$1.00, etc.

Conveys the lands described in the bill of complaint in this cause.

Exhibits D-9, D-9½, and D-10

Recites: "Subject to a first mortgage of \$6000.00 now on said premises.

EXHIBIT D-9

Robert B. Marshall, to Alice C. Aldred and Henrietta Verhagen.

Mortgage. Dated October 20, 1922, Acknowledged Oct. 20, 1922, Before James H. Penn, Master in Chancery of N. J., Recorded March 27, 1923, at 11:45 A. M., Book Y-12 of Mortgages, page 11, etc., Register's Office Passaic County, N. J. 10

Given to secure the payment of \$2725.00, on October 20, 1923, with interest at the rate of six per cent per annum, payable semi-annually.

Mortgages the lands described in the bill of complaint in this cause.

Recites: It is thoroughly understood that this mortgage may be paid off at any time before expiration date. 20

EXHIBIT D-9½

Endorsed: Cancelled of record July 7, 1923, John R. Morris, Register.

EXHIBIT D-10

Alice C. Aldred and Henrietta Verhagen, to Harry Simon.

Assignment of Mortgage. Dated April 26, 1923, Acknowledged April 26, 1923, Recorded May 18, 1923, Book A-4 of Assignments of Mortgages, pages 237, etc., Register's Office, Passaic Co. 30

Consideration \$1.00, etc.

Assigns the mortgage made by Robert B. Marshall to the assignors, dated October 20, 1922, recorded in Book Y-12 of Mortgages, page 11.

Exhibits D-11 and D-12

EXHIBIT D-11

Harry Simon to Passaic Builders Supply Company.

Assignment of Mortgage. Dated May 11, 1923, Acknowledged May 15, 1923, Recorded May 18, 1923, Book A-4 of Assignments of Mortgages, pages 238, etc., Register's Office, Passaic Co.

Consideration \$1.00, etc.

- 10 Assigns the mortgage made by Robert B. Marshall to Alice C. Aldred and Henrietta Verhagen, dated October 20, 1922, recorded in Book Y-12 of Mortgages, page 11, etc., and assigned to the assignor by assignment recorded in Book A-4 of Assignments on pages 238, etc.

EXHIBIT D-12.

Louisa Dele and Emanuel Dele, her husband, to German American Trust Company, a corporation of New Jersey.

- 20 Mortgage. Dated December 14, 1916, Acknowledged Dec. 14, 1916, Before Clara Hamilton, Commissioner of Deeds of N. J., Recorded December 15, 1916, Book M-10 of Mortgages, pages 341, etc., Passaic County Register's Office.

Given to secure the payment of the sum of \$4,500.00, on January 1, 1917, with interest on the same at the rate of six per cent per annum, payable on January 1, 1917, and semi-annually thereafter.

- 30 Covers the lands described in the bill of complaint in this cause.

Recites: Being the same premises conveyed to the parties of the first part hereto by Josef Dele and Marie, his wife, by deed dated January 31st,

Exhibit D-13

1914, and duly recorded in the Register's Office of Passaic County in Book C-24 of Deeds for said County on pages 497, etc.

Endorsed: This mortgage, given by Louisa Dele, al. to German American Trust Co., is this 21st day of October, A. D. 1922, cancelled of record, the same being produced before me cancelled, the seals removed and satisfaction endorsed thereon by United States Trust Company of Paterson, N. J.

Paul A. Kievit, Asst. Sec'y. 10

Edward R. Weiss, Pres.

John R. Morris,
Register of Deeds and Mortgages.

EXHIBIT D-13.

Christian A. Bruning, single, to Johanna Bruning.

Mortgage. Dated July 5, 1923, Acknowledged July 5, 1923, Before A. Lawrie Young, Attorney at Law of New Jersey, Recorded July 7, 1923, at 8:26 A. M., Book E-13 of Mortgages, page 158, etc. Register's office, Passaic County, New Jersey. 20

Given to secure the payment of \$13,000.00, on July 5, 1926, with interest at the rate of six percent per annum, payable semi-annually.

Mortgages the lands described in the bill of complaint in this cause.

Recites: Being the same premises this day conveyed to the party of the first part hereto by Robert B. Marshall, and this mortgage is given to secure the purchase price of the above described premises. 30

Exhibit D-13½

EXHIBIT D-13½

Abstract of the Title of Robert B. Marshall made for Christian A. Bruning.

All that certain lot, or parcel of land, premises, hereinafter particularly described, situate, lying and being in the Township of Acquackanonk, County of Passaic and State of New Jersey.

10 Beginning at the point where the southwesterly line of a lot of land formerly of R. S. Speer now Henry Bruning intersects the middle of the public road which leads from Acquackanonk to the Little Falls now known as the Telegraph Road or Grove Street and running; from thence (1) along said Bruning's line and also the center line of a road now known as Almond Avenue south 41 degrees and 30 minutes east 7 chains and 7 links to the line of land formerly of Daniel Schoonmaker; thence (2) 20 along said line south 48 degrees and 30 minutes west 7 chains and 99 links to the line late of Daniel Paxton; thence (3) along said line late of Daniel Paxton and others, 7 chains and 60 links to the center line of Grove Street and thence (4) along the same north 48 degrees east to the place of beginning.

Contains 6 acres, more or less.

Being also one of the tracts devised by Henry Hamilton to said William H. Hamilton by his will on probate in the Passaic County Surrogate's Office.

30

1

Henry Hamilton and Margaret, his wife, to Hartman A. Vreeland.

Warranty Deed. Dated Sept. 26, 1857, Acknowledged Sept. 26, 1857, Recorded Oct. 5, 1857, Book C-2 page 107, Cons. \$400.

Exhibit D-13½

Conveys premises by the following description:

Beginning at a point where the southwesterly line of a lot of land late of R. S. Speer now of Oliver and Tinkey intersects the middle of the public road which leads from Acquackanonk to Little Falls; running thence (1) along Oliver and Tinkey's line south 41 degrees and 30 minutes east 7 chains and 67 links to the line of Daniel Schoonmaker; thence (2) along said line south 48 degrees and 30 minutes west 7 chains and 99 links to the line south of Van Winkle and Glass to the line of John Paxton 7 chains and 60 links; thence (4) north 48 degrees east to the beginning.

10

Contains 6 acres, more or less.

2

Hartman A. Vreeland and Rebecca, his wife, to Henry Hamilton.

Warranty Deed. Dated Aug. 13, 1864, Ack'd: Aug 13, 1864, Rec'd: Aug. 15, 1864, Book: S-2 page 356, Cons.: \$600.

20

Conveys premises in question by the same description set forth in Deed C-2 page 107.

3

Henry Hamilton died on March 8, 1887 seized of the premises in question and leaving the following heirs at law and next of kin: William Hamilton, Susan Hamilton, Margaret Hamilton and Bridget Hamilton who are of full age and all reside in Acquackanonk Township, Passaic County, State of New Jersey and also leaving the following:

30

Last Will and Testament of Henry Hamilton: Dated Apr. 21, 1886, Proved Mar. 23, 1887, Book K, page 111.

Exhibit D-13½

Testator among other things provides as follows:

7. I give, devise, and bequeath unto my son William Hamilton the tract of land containing about 6 acres lying next to the Telegraph Road purchased by me from Hartman Vreeland, the tract of land containing about 4 acres purchased by me from Herman Hillman and so much of the easterly side of the old Vreeland farm as will be necessary to make
 10 together with the two lots above mentioned, 25 acres in all to him, his heirs and assigns forever.

Lastly. I hereby revoke all wills by me heretofore made and I do hereby make, constitute and appoint my son William Hamilton, Executor and my daughter Susan Hamilton, Margaret Hamilton and Bridget Hamilton executors of this my last will and testament.

Executors duly qualify.

20

4

William H. Hamilton (devisee under the last will and testament of Henry Hamilton, deceased) and Catherine A. Hamilton, his wife, to Louise Eichner.

Warranty Deed. Dated May 1, 1913, Ack'd May 1, 1913, Rec'd May 1, 1913, Book P-23, page 532; Cons. \$1.00 etc.

Conveys premises in question by the same description as set forth at the head of this abstract.

30

5

Louisa Dele (formerly Louisa Eichner) and Emanuel Dele, her husband, to Josef Dele.

Bargain and Sale. Dated Jan. 30, 1914, Ack'd Jan 31, 1914, Rec'd Feb. 2, 1914, Book C-24 page 499, Cons. \$1.00.

Exhibit D-13½

Conveys premises in question by the same description set forth at the head of this abstract.

6

Josef Dele and Marie, his wife, to Louisa Dele and Emanuel Dele, her husband.

Bargain and Sale. Dated Jan. 31, 1914, Ack'd Jan 31, 1914, Rec'd Feb. 2, 1914, Book C-24 page 497, Cons. \$1.00 etc.

Conveys premises in question by the same description set forth at the head of this abstract.

10

Recites: Being the same premises conveyed to the said Josef Dele by parties hereto of the second part by deed dated Jan. 30, 1914.

7

Louisa Dele (widow) to Lambertus C. Bobbink and Frederick L. Atkins.

Lease. Dated July 31, 1917, Ack'd Aug. 2, 1917, Ack'd Aug 3, 1917, Rec'd Aug. 11, 1917.

20

Leases premises in question by the same description set forth at the head of this abstract for the term of 5 years to commence on August 1, 1917 at the yearly rent of \$400 payable in quarterly payments of \$100, said payments to be due and payable on the first day of August, November, February and May of each year during the term of this lease.

It is agreed that at the expiration of 3 years from the date hereof, the party of the first part shall notify the party of the second part that she desires possession of said premises at the end of the above demised term, and if the party of the second part do not receive notice of said desire for termination thereof this lease may be renewed for a further term of two, four or six years, at the option of the party of the second part hereto.

30

Exhibit D-13½

Party of the first part has the privilege to use and occupy free of rent the three finished rooms in the northwesterly end of the barn situate on said premises so long as she or her children do not molest or interfere with the rights of the caretaker to be placed in charge of said premises, by the party of the second part.

10 In case she or her children should so molest said caretaker then this privilege to cease and the party of the first part is to move and vacate said rooms and premises.

8

Louisa Dele (widow) to Alice C. Aldred and James Herbert Aldred, her husband.

Warranty Deed. Dated Oct. 10, 1922, Ack'd Oct. 10, 1922, Rec'd Oct. 21, 1922, Book X-29 page 580, Cons. \$1.00 etc.

20 Conveys premises in question by the same description set forth at the head of this abstract.

9

Alice C. Aldred and James Herbert Aldred, her husband to Clifton Trust Company, a corporation.

Mortgage. Dated Oct. 17, 1922, Ack'd Oct. 19, 1922, Rec'd Oct. 21, 1922, Book R-12 page 217.

30 Given to secure the payment of the sum of Six Thousand Dollars in one year with interest at the rate of six per cent per annum and to be paid semi-annually and covers the premises in question by the same description set forth at the head of this abstract.

Cancelled July 7, 1923.

Young & Randall.

10

Alice C. Aldred and James Herbert Aldred to Robert B. Marshall.

Warranty Deed. Dated Oct. 20, 1922, Ack'd Oct. 20, 1922, Rec'd Mar. 19, 1923, Book I-30 page 374, Cons. \$1.00 etc.

Conveys premises in question by the same description set forth at the head of this abstract subject to a first mortgage of Six Thousand Dollars now on said premises.

10

11

Robert B. Marshall to Alice C. Aldred and Henrietta Ver Hagen.

Mortgage. Dated Oct. 20, 1922, Ack'd Oct. 20, 1922, Rec'd Mar. 27, 1923, Book Y-12 page 11.

Given to secure the payment of the sum of Two Thousand Seven Hundred and Twenty-five Dollars in one year with interest at the rate of six per cent per annum payable semi-annually and covers the premises in question by the same description set forth at the head of this abstract.

20

Cancelled July 7, 1923.

12

Alice C. Alred and Henrietta Ver Hagen to Harry Simon.

Assignment. Dated Apr. 26, 1923, Ack'd Apr. 26, 1923, Rec'd May 18, 1923, Book A-4 page 237, Cons. \$1.00 etc.

30

Assigns a certain mortgage bearing date October 20th, 1922 made by Robert B. Marshall to us on lands in the City of Clifton, Passaic County, State of New Jersey which mortgage is recorded in

Exhibit D-13½

the Register's Office of the County of Passaic in Book Y-12 of mortgages, pages 11 etc.

Amount due, Two Thousand Seven Hundred and Twenty-five Dollars with interest from April 20, 1923.

13

Henry Simon to Passaic Builders Supply Company, a body corporation of the State of New Jersey.

10

Assignment. Dated May 11, 1923, Ack'd May 15, 1923, Rec'd May 18, 1923, Book A-4 page 238, Cons. \$1.00 etc.

Assigns a certain mortgage bearing date October 20th, 1922 made by Robert B. Marshall to Alice C. Aldred and others on lands in the City of Clifton, Passaic County, State of New Jersey to secure the payment of the sum of Two Thousand Seven Hundred and Twenty-five Dollars which mortgage is recorded in the Register's Office of the County of Passaic in Book Y-12 of mortgages pages 11 etc. and which mortgage was assigned by Alice C. Aldred and others to me by assignment dated April 26, 1923.

20

Amount due Two Thousand Seven Hundred and Twenty-five Dollars with interest from April 20, 1923.

This is to Certify, that we have examined the indices to the records in the offices of the Register of Deeds and Mortgages, Surrogate and Clerk of the County of Passaic, from 1857 to the date hereof, respecting the title to the premises described at the head of this abstract, and find nothing of re-

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Exhibit D-13½

cord affecting the title of the same, except as above set forth.

Dated: June 29th, 1923.

Young & Randall,
Attorneys at Law of New Jersey.
New Jersey Supreme Court

Samuel N. Rhoads, et als, vs. Robert T. Marshall.

In Debt on bond and warrant, Horace F. Nixon,
Atty.

Amount	\$1433.53		10
Costs	4.50	\$1438.03	
Penalty	5000.00	5438.03	

Judgment signed March 28, 1904.

Judgment docketed Circuit Court March 28, 1904.

Judgment docketed in Supreme Court May 14,
1904.

I, Charles Jones, an Attorney-at-Law, of the Supreme Court of the State of New Jersey, hereby certify that I have searched the records of said Court, and do not find made up of record or docketed therein, any Judgment, Attachment, Decree from Chancery, or other lien against

Henry Hamilton, William H. Hamilton, from June 28, 1903 to May 1, 1913.

Josef Dele, from June 28, 1903 to Feb. 2, 1914.

Louisa Eichner (Dele), Emanuel Dele, from June 28, 1903 to Oct. 21, 1922.

Alice C. Aldred, James Herbert Aldred, from June 28, 1903 to Mar. 19, 1923.

Robert B. Marshall, for twenty years last past.

Except as above shown.

Exhibit D-13½

In Testimony Whereof, I have hereunto set my hand this Twenty-eighth day of June, Nineteen Hundred and Twenty-three A. M.

Fees, \$8.00

(Seal)

Charles Jones.

I hereby certify that I have examined the records in the office of the Collector of Taxes for the City of Clifton, New Jersey respecting the taxes assessed against the premises above described and find them all paid except as follows:

Second half of the year 1922, \$69.96. Int. \$3.35.

First half of the year 1923, \$65.36. Int. \$.50.

T. M. Thorburn,

Attorney at Law for New Jersey.

Dated June 25th, 1923.

State of New Jersey }
County of Passaic, } ss:

Robert B. Marshall, being duly sworn, says, that
..... he is a citizen of the United States, twenty-one years of age and upwards; and that he is now in possession, and the owner in fee simple, of the premises situated on southeast corner of Grove Street and Almond Avenue in the City of Clifton, County of Passaic, State of New Jersey in said City of Clifton, this day to be conveyed by him to Christian A. Bruning.

Deponent further says that the said premises have been held by him for three months last past, and that his possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed or questioned to his knowledge, nor does deponent know of any facts by reason of which

Exhibit D-13½

said possession or title might be disturbed or questioned, or by reason of which any claim to said premises, or any part thereof, might arise or be set up adverse to deponent; and that he is informed and believes that his grantors, and those previous held the said premises for more than twenty years prior to the transfer to him; and that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated; and that the same are now free and clear of all taxes, incumbrances or liens by mortgage decree, judgment or by statute, or by virtue of any proceeding in any court, or filed in the office of the clerk of any County or Court in this State, and of all other liens and claims of every nature or description. 10

Deponent further states that he is not married and that he has never been married to any other person now living; and that there are no judgments, or decrees, or attachments, orders of any court or officer for the payment of money against him, or to which he is party, unsatisfied or not cancelled of record in any of the courts, or before any officer of the United States, or of this State, or any suit or proceeding anywhere affecting said premises, to his knowledge, information or belief, and that any judgments found of record against him are not against deponent but against another of similar name; and that no proceedings in bankruptcy have ever been instituted by or against deponent. 20 30

Deponent makes this affidavit to induce Christian A. Bruning to accept a warrantee deed for said premises, and pay the consideration therefor, know-

Exhibit D-14

ing that said Christian A. Bruning relies upon the truth of the statement herein contained.

Robert B. Marshall.

Sworn to before m this 5th day of July, 1923.

A. Lawrence Young,

An Attorney at Law of N. J.

EXHIBIT D-14

Robert B. Marshall, to William Karl, Jr.

10 Assignment of Mortgage. Dated July 15, 1922, Acknowledged July 17, 1922, Recorded July 18, 1922, Book Y-3 of Assignments, page 8, etc., Passaic County Register's Office.

Consideration \$1.00.

Assigns the mortgage dated July 3, 1922, made by Louisa Dele, widow, to Robert B. Marshall, recorded in Book N-12 of Mortgages, page 542, etc.

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145
Opinion

(Filed June 17, 1927.)
IN CHANCERY OF NEW JERSEY

Between

Louise Dele,

Complainant,

and

Christian Bruning, et al.,

Defendants.

On Bill, &c.,
on pleadings
and proofs.

10

OPINION

Mr. Alex. M. MacLeod, and Mr. Merritt Lane, for
the complainant.

Messrs. Young and Randall, and Mr. Gustav A.
Hunziker, for the defendants.

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Lewis, V. C.:

I am satisfied from the proofs in this case, that
the complainant was induced by unjustifiable means
to execute a conveyance of her property, and for
which she received no substantial consideration.
She, thereafter, continued to live on the premises
for a long time, in the expectation of receiving her
money, which, it had been represented to her, she
was to receive for the sale of the property; but
which appears never to have been paid to her. The
property was eventually conveyed to the defendant,
Christian Bruning, who claims the right to hold it
as an innocent purchaser for value without notice.
He is, however, the nephew of the complainant, and
lived near her at the time he took title. She was

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Opinion

in physical possession of the premises, which, of itself, put him upon inquiry; and had he taken the precaution which the law exacts of an intending purchaser under such circumstances, he could have readily ascertained, from complainant, what her rights in the property were, had he seen fit to make an effective inquiry, in that respect, of her. This, in my opinion, he failed to do; and he is, therefore, not in a position to successfully defend against the relief sought by complainant in this suit. Counsel for complainant contends that complainant is entitled either to set aside the whole transaction and retain the land; or to assert a vendor's lien for the entire purchase price; and they concede that the defendants should be given the right to elect either to surrender the property to complainant, or to pay the full amount of the price which the purchaser from her agreed to pay.

I will, therefore, advise a decree setting aside the entire transaction, accordingly, unless within a reasonable time, to be determined upon the settling of the decree, defendants shall elect to pay the full purchase price agreed upon with complainant.

Final Decree

Filed Oct. 9, 1928.

IN CHANCERY OF NEW JERSEY

Between:

Louisa Dele,

Complainant,

and

Christian A. Bruning, et als,

Defendants.

On Bill, &c.

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FINAL DECREE

This cause coming on to be heard before the Chancellor, in the presence of Alexander MacLeod and Merritt Lane of counsel with the complainant and Young and Randall, and Gustave A. Hunziker, of counsel with the defendants, upon bill and amendment to bill and answer of defendants, Christian A. Bruning, and Johanna Bruning, and replications thereto; and testimony having been offered by the respective parties and the cause being argued and the Court having considered the pleadings, proofs and argument, and having reached the conclusion that complainant is entitled to relief, setting aside the deed made by complainant to Alice C. Aldred recorded in the office of the Clerk of Passaic County in Book X-29, page 580, and the deed from Alice C. Aldred and James H. Aldred, her husband to Robert B. Marshall dated October 20, 1922 and recorded in the Office of the Clerk of Passaic County in Book I-30 of deeds, for said County on page 374 and the deed from Robert B. Marshall to Christian A. Bruning dated July 5, 1923 and recorded in the office of

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Final Decree

the Clerk of Passaic County in Book O-30, page 566, and the mortgage made by Christian A. Bruning to Johanna Bruning and recorded in the office of the Register of Deeds and Mortgages for Passaic County in Book E 13 of Mortgages, on page 158, or that she is entitled to a vendors' lien upon said premises, for the entire purchase price unpaid, the defendants however to be given the right to elect within a reasonable time either to surrender the property to
10 complainant, or to pay the full amount which the purchasers from her agreed to pay;

It is on this ninth day of October, 1928, by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, both by virtue of the power and authority of this Court, hereby order, adjudge, and decree:

1. That the deed made by complainant to Alice C. Aldred and James H. Aldred, her husband, dated
20 October 10, 1922 recorded in the office of the Register of Deeds and Mortgages in Passaic County in Book X-29 of deeds, page 580, was obtained by fraud of defendant, Robert B. Marshall and that the deed from Alice C. Aldred, and James H. Aldred, her husband, to Robert B. Marshall dated October 20, 1922, and recorded in the office of the Register of Deeds and Mortgages in Book I-30, page 374, was without consideration, and an integral part of the fraud hereinbefore mentioned, and that the mort-
30 gage given by complainant to Robert B. Marshall dated July 13, 1922 and recorded July 18, 1922 in the office of the Register of Passaic County in Book N-12, Page 542 was without consideration and obtained from the complainant by the fraud of Robert

Final Decree

B. Marshall and that the assignment of said mortgage to William J. Karl, Jr., by assignment dated July 15, 1922 and recorded in Book of Assignments of Mortgages for Passaic County, page was without consideration, and an integral part of the fraud hereinabove mentioned, and that the said William J. Karl, Jr., was not an innocent purchaser for value; that the said Alice C. Aldred and James H. Aldred had no power to make a mortgage to Clifton Trust Co. dated October 17, 1922 and recorded October 21, 1922 in Book R-12 of Mortgages for Passaic County, page 217 to secure the payment of the sum of Six Thousand (\$6,000.00) dollars and that the said Robert B. Marshall had no power or authority to make a mortgage to Alice C. Aldred and Henry Hagerman, dated October 20, 1922 and recorded March 27, 1923 and assigned by Alice C. Aldred and Henry Hagerman to Harry Simon, by assignment dated April 26, 1923 and recorded May 18, 1923 and assigned by Harry Simon to Passaic Builders Supply Co. by assignment dated May 11, 1923 and recorded May 18, 1923 in the office of the Register of Deeds and Mortgages for Passaic County in Book A-4 of Assignments of mortgages, page 238.

2. That Robert B. Marshall had no right or authority to make a deed to defendant, Christian A. Bruning, dated July 5, 1923 and recorded July 7, 1923 in the Office of the Register of Deeds and Mortgages for Passaic County in Book O-30 page 566 and that the said Christian A. Bruning was not an innocent purchaser for value without notice; that Christian A. Bruning had no right or authority to make the mortgage to Johanna Bruning dated July 5, 1923 and recorded July 7, 1923 in the office of the

Final Decree

Register of Deeds and Mortgages for Passaic County in Book E-13 page 158 and that the said Johanna Bruning did not take said mortgage as an innocent purchaser for value, without notice;

10 3. That each and every of said deeds and mortgages hereinbefore set forth is null and void, as against complainant and that complainant has full right and title to said lands and premises, as if such deeds and mortgages had never been executed and delivered.

4. That said Christian A. Bruning and Johanna Bruning are not entitled to the repayment of any monies paid by them or either of them, except such monies as may have been paid for taxes, and except such monies as were paid by the defendants upon a mortgage upon said property made to the German American Trust Company recorded in book M-10 of mortgages of Passaic County on page 341.

20 5. That to evidence the right of the said complainant, the said Christian A. Bruning shall reconvey said premises to complainant within thirty days of the service of a copy of this decree upon her or her solicitor, and in case of the said failure of Christian A. Bruning to make such conveyance, then this decree may be recorded and shall act as a conveyance and such conveyance, if made, or the record of this decree, shall operate to confirm the title to complainant, free, clear and discharged of
30 and from any rights accruing under any of the instruments hereinbefore adjudged to be null and void; the rights of the parties to be as if such instruments had never been made and title never passed from the said complainant.

Final Decree

6. It is further ordered, that complainant pay to defendant, Christian A. Bruning, or defendant, Johanna Bruning, such amount as this Court may determine to have been advanced by either of said defendants to pay taxes upon said lands and premises, subject to the accounting hereinafter ordered.

7. That defendant, Christian A. Bruning and Johanna Bruning, they and each of their agents and attorneys, perpetually desist and refrain from prosecuting any suits at law designed to interfere with the possession of said lands and premises by complainant and desist and refrain from in any wise interfering with the possession of complainant.

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8. That the defendants, Christian A. Bruning and Johanna Bruning account to complainant for any rents, issues and proceeds of said lands and premises collected by them or either of them.

9. That defendants, however, be given the right to elect within thirty days of the making of this decree whether they will take the property and pay the full purchase price thereof and pay therefor the sum of \$12,000., less the amount which may have been due on the 20th day of October, 1922, for municipal liens and taxes, and less the amount then due upon a mortgage, a lien upon said property held by the German American Trust Company and recorded in book M-10, on page 341, said balance to be paid by the defendants as aforesaid, to bear interest from the 18th day of October, 1922, to the date of payment. No allowance is to be made to defendants for monies received by complainant purporting to be the proceeds of dividends on stock, such monies being considered as part repayment for monies advanced by complainant to the said Robert B. Marshall. That if defendants elect to take said property, as aforesaid, then within five days of such

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Final Decree

election they shall make such payment under the direction of John O. Benson, Esq., a Master of this Court, who shall fix a time and place within such period of five days and notify the solicitors of both parties to appear and attend before him to close the transaction, and if such payment be made, then the said Louisa Dele, complainant, shall execute and deliver a confirmatory deed of said property as directed by the defendants under the supervision of said
10 Master, and said Louisa Dele shall then have no further estate or interest in said lands and premises. Upon said transaction being closed, application may be made to this Court for such further decree or order as may be proper to evidence a determination of the rights of the parties; that in case of the failure of the defendants to elect within the time aforesaid, all of their right under this provision of the decree shall cease and determine. An applica-
20 tion may be made to this Court for such order or decree as may be necessary to evidence the failure of the defendants to elect.

10. That this cause be retained for the purpose of determining the amount due from defendants, Christian A. Bruning and Johanna Bruning for rents, issues and profits of said lands and premises, and for the purpose of determining the amount due from complainant to Christian A. Bruning or Johanna Bruning for monies paid by them or either of them
30 for taxes and on account of the mortgage referred to in paragraph four hereof upon said lands and premises, and that either party may apply to this Court for such further relief as they may be advised upon five days notice to the solicitor of the other party.

Respectfully advised,

Edwin Robert Walker, C.

Vivian M. Lewis, V. C.

Notice of Appeal

Filed Oct. 17, 1928.

IN CHANCERY OF NEW JERSEY

Between
Louisa Dele,

Complainant,

and

Christian A. Bruning, et als.,
Defendants.

On Bill, Etc.

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NOTICE OF APPEAL

The defendants, Christian A. Bruning and Johanna Bruning hereby appeal from the final decree made in the above entitled cause by the Chancellor on the advice of Vice-Chancellor Vivian M. Lewis, on October 9, 1928, and from the whole and every part thereof to the Court of Errors and Appeals, in the last resort in all causes.

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Dated October 15, 1928.

A. Lawrie Young,

Gustav A. Hunziker,

Solicitors for and of counsel with the
defendants, Christian A. Bruning
and Johanna Bruning.I conceive there is good cause for appeal in the
above entitled cause.

Gustav A. Hunziker,

Of counsel with defendants, Christian
A. Bruning and Johanna Bruning.

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Endorsed:

Service of a copy of the within notice is acknowledged this 15th day of October, 1928.

Alexander M. MacLeod, and
Merritt Lane,

Sols. for Complainant

Petition of Appeal

Filed Oct. 25, 1928.

NEW JERSEY COURT OF ERRORS AND
APPEALS

10	Louisa Dele, Complainant-Appellee, vs. Christian A. Bruning and Johanna Bruning, Defendants-Appellants.	}	On Appeal from the Court of Chancery
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PETITION OF APPEAL

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Christian A. Bruning and Johanna Bruning, the appellants in the above entitled cause, respectfully shows that:

- 20 (1) The petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Vivian M. Lewis, one of the Vice-Chancellors, bearing date October 9, 1928, in a certain cause in said Court of Chancery, wherein the said Louisa Dele was complainant, and the said Christian A. Bruning and Johanna Bruning, and others, were defendants, in this respect, to-wit, that the said decree adjudges that:
- 30 "1. That the deed made by complainant to Alice C. Aldred and James H. Aldred, her husband, dated October 10, 1922, recorded in the office of the Regis-

Petition of Appeal

ter of Deeds and Mortgages in Passaic County in Book X-29 of deeds, page 580, was obtained by fraud of defendant, Robert B. Marshall and that the deed from Alice C. Aldred, and James H. Aldred, her husband, to Robert B. Marshall, dated October 20, 1922, and recorded in the office of the Register of Deeds and Mortgages in Book I-30, page 374, was without consideration, and an integral part of the fraud hereinbefore mentioned, and that the mortgage given by complainant to Robert B. Marshall, dated July 13, 1922, and recorded July 18, 1922, in the office of the Register of Passaic County in Book N-12 page 542, was without consideration and obtained from the complainant by the fraud of Robert B. Marshall, and that the assignment of said mortgage to William J. Karl, Jr., by assignment dated July 15, 1922, and recorded in Book of Assignments of Mortgages for Passaic County, page was without consideration, and an integral part of the fraud hereinabove mentioned, and that the said William J. Karl, Jr., was not an innocent purchaser for value; that the said Alice C. Aldred and James H. Aldred had no power to make a mortgage to Clifton Trust Co., dated October 17, 1922, and recorded October 21, 1922, in Book R-12 of Mortgages for Passaic County, page 217, to secure the payment of the sum of Six thousand (\$6,000.00) dollars, and that the said Robert B. Marshall had no power or authority to make a mortgage to Alice C. Aldred and Henry Hagerman, dated October 20, 1922, and recorded March 27, 1923, and assigned by Alice C. Aldred and Henry Hagerman to Harry Simon, by assignment dated April 26, 1923, and recorded May 18, 1923, and assigned by Harry Simon to Passaic Builders Supply

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Petition of Appeal

Co., by assignment dated May 11, 1923, and recorded May 18, 1923, in the office of the Register of Deeds and Mortgages for Passaic County in Book A-4 of Assignments of Mortgages, page 238.

10 "2. That Robert B. Marshall had no right or authority to make a deed to defendant, Christian A. Bruning, dated July 5, 1923, and recorded July 7, 1923, in the Office of the Register of Deeds and Mortgages for Passaic County in Book O-30 on page 566, and that the said Christian A. Bruning was not an innocent purchaser for value without notice; that Christian A. Bruning had no right or authority to make the mortgage to Johanna Bruning, dated July 5, 1923, and recorded July 7, 1923, in the office of the Register of Deeds and Mortgages for Passaic County in Book E-13, page 158, and that the said Johanna Bruning did not take said mortgage as an innocent purchaser for value, without notice;

20 "3. That each and every of said deeds and mortgages hereinbefore set forth is null and void, as against complainant and that complainant has full right and title to said lands and premises, as if such deeds and mortgages had never been executed and delivered.

30 "4. That said Christian A. Bruning and Johanna Bruning are not entitled to the repayment of any monies paid by them or either of them, except such monies as may have been paid for taxes, and except such monies as were paid by the defendants upon a mortgage upon said property made to the German American Trust Company, recorded in Book M-10 of Mortgages of Passaic County on page 341.

"5. That to evidence the right of the said complainant, the said Christian A. Bruning shall re-

Petition of Appeal

convey said premises to complainant within thirty days of the service of a copy of this decree upon her or her solicitor, and in case of the said failure of Christian A. Bruning to make such conveyance, then this decree may be recorded and shall act as a conveyance and such conveyance, if made, or the record of this decree, shall operate to confirm the title to complainant, free, clear and discharged of and from any rights accruing under any of the instruments hereinbefore adjudged to be null and void; the rights of the parties to be as if such instruments had never been made and title never passed from the said complainant. 10

"6. It is further ordered, that complainant pay to defendant, Christian A. Bruning, or defendant, Johanna Bruning, such amount as this Court may determine to have been advanced by either of said defendants to pay taxes upon said lands and premises, subject to the accounting hereinafter ordered. 20

"7. That defendant, Christian A. Bruning and Johanna Bruning, they and each of their agents and attorneys, perpetually desist and refrain from prosecuting any suits at law designed to interfere with the possession of said lands and premises by complainant and desist and refrain from in any wise interfering with the possession of complainant. 20

"8. That the defendants, Christian A. Bruning and Johanna Bruning account to complainant for any rents, issues and proceeds of said lands and premises collected by them or either of them. 30

"9. That defendants, however, be given the right to elect within thirty days of the making of this decree whether they will take the property and pay the full purchase price thereof and pay therefor the

Petition of Appeal

sum of \$12,000., less the amount which may have been due on the 20th day of October, 1922, for municipal liens and taxes, and less the amount then due upon a mortgage, a lien upon said property held by the German American Trust Company and recorded in Book M-10 on page 341, said balance to be paid by the defendants as aforesaid, to bear interest from the 18th day of October, 1922, to the date of payment. No allowance is to be made to defendants for monies received by complainant purporting to be the proceeds of dividends on stock, such monies being considered as part repayment for monies advanced by complainant to the said Robert B. Marshall. If defendants elect to take said property, as aforesaid, then within five days of such election they shall make such payment under the direction of John O. Benson, Esq., a Master of this Court, who shall fix a time and place within such period of five days and notify the solicitors of both parties to appear and attend before him to close the transaction, and if such payment be made, then the said Louisa Dele, complainant, shall execute and deliver a confirmatory deed of said property as directed by the defendants under the supervision of said Master, and said Louisa Dele shall then have no further estate or interest in said lands and premises. Upon said transaction being closed, application may be made to this Court for such further decree or order as may be proper to evidence a determination of the rights of the parties; that in case of the failure of the defendants to elect within the time aforesaid, all of their right under this provision of the decree shall cease and determine. An application may be made to this Court for such order or decree as may be necessary

Petition of Appeal

to evidence the failure of the defendants to elect.

"10. That this cause be retained for the purpose of determining the amount due from defendants, Christian A. Bruning and Johanna Bruning, for rents, issues and profits of said lands and premises, and for the purpose of determining the amount due from complainant to Christian A. Bruning or Johanna Bruning for monies paid by them or either of them for taxes and on account of the mortgage referred to in paragraph four hereof, upon said lands and premises, and that either party may apply to this Court for such further relief as they may be advised upon five days notice to the solicitor of the other party."

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(2) And petitioners appeal from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that:

It does not appear, by the evidence in said cause, that the deed made by complainant to Alice C. Aldred and James H. Aldred, her husband, dated October 10, 1922, recorded in the Office of the Register of Deeds and Mortgages, in Passaic County, in Book X-29 of Deeds, page 380, was obtained by fraud of defendant, Robert B. Marshall, and that the deed from Alice C. Aldred and James H. Aldred, her husband, to Robert B. Marshall, dated October 20, 1922, and recorded in the office of the Register of Deeds and Mortgages, in Book I-30, page 374, was without consideration, and an integral part of the fraud hereinbefore mentioned, and that the mortgage given by complainant to Robert B. Marshall, dated July 13, 1922, and recorded July 18, 1922, in the office of the Register of Passaic County in Book N-12, page 542, was without consideration and obtained

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Petition of Appeal

from the complainant by the fraud of Robert B. Marshall, and that the assignment of said mortgage to William J. Karl, Jr., by assignment dated July 15, 1922, and recorded in Book of Assignments of Mortgages for Passaic County, page , was without consideration, and an integral part of the fraud hereinabove mentioned, and that the said William J. Karl, Jr., was not an innocent purchaser for value; that the said Alice C. Aldred and James H. Aldred
10 had no power to make a mortgage to Clifton Trust Co. dated October 17, 1922, and recorded October 21, 1922, in Book R-12 of Mortgages for Passaic County, page 217, to secure the payment of the sum of Six Thousand Dollars and that the said Robert B. Marshall had no power or authority to make a mortgage to Alice C. Aldred and Henry Hagerman, dated October 20, 1922, and recorded March 27, 1923, and assigned by Alice C. Aldred and Henry Hagerman to Harry Simon, by assignment dated April
20 26, 1923 and recorded May 18, 1923 and assigned by Harry Simon to Passaic Builders Supply Co. by assignment dated May 11, 1923 and recorded May 18, 1923, in the Office of the Register of Deeds and Mortgages for Passaic County in Book A-4 of Assignments of mortgages, page 238, but on the contrary, that said instruments were and are valid and subsisting conveyances, and that if any fraud was perpetrated upon complainant in the execution and delivery of said instruments, that no notice of
30 such fraud is chargeable to appellants.

(3) Said decree is erroneous in that it adjudges and decrees that Robert B. Marshall had no right or authority to make deed to defendant, Christian A. Bruning, dated July 5, 1923, and recorded July 7,

Petition of Appeal

1923, in the Office of the Register of Deeds and Mortgages for Passaic County in Book O-30, page 566, and that the said Christian A. Bruning was not an innocent purchaser for value without notice; that Christian A. Bruning had no right or authority to make the mortgage to Johanna Bruning dated July 5, 1923, and recorded July 7, 1923, in the Office of the Register of Deeds and Mortgages for Passaic County in Book E-13, page 158, and that the said Johanna Bruning did not take said mortgage as an innocent purchaser for value, without notice, whereas, it appears by the evidence in the said cause said deed above mentioned was and is a valid and subsisting conveyance, and that the said Christian A. Bruning was an innocent purchaser for value of the lands described in said deed, without notice of any right, title or interest of complainant-appellee, and that said Christian A. Bruning did have right and authority to make the mortgage to Johanna Bruning above mentioned, and that said Johanna Bruning did take said mortgage as an innocent purchaser for value, without notice.

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(4) Said decree is erroneous in that it adjudges and decrees that each and every of the deeds and mortgages set forth in Paragraphs (1) and (2) of the said decree are null and void as against complainant, and that complainant has full right and title to the lands and premises described in the bill of complaint, as if such deeds and mortgages had never been executed and delivered, whereas it appears by the evidence in said cause that said deeds and mortgages were and are valid and subsisting conveyances, and that the complainant has no right, title or interest in and to the lands and premises therein described.

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Petition of Appeal

10 (5) The said decree is erroneous in that it adjudges and decrees that said Christian A. Bruning and Johanna Bruning are not entitled to the repayment of any moneys paid by them or either of them, except such moneys as may have been paid for taxes, and except such monies as were paid by the defendants upon a mortgage upon said property made to the German American Trust Company, recorded in Book M-10 of Mortgages of Passaic County on page 341, whereas it appears by the evidence in said cause, that if for any reason the conveyance to said Christian A. Bruning is invalid, he is entitled to be reimbursed for all moneys expended by him in the satisfaction of existing encumbrances upon the said lands and premises, at the time of such conveyance.

20 (6) The said decree is erroneous in that it adjudges and decrees that to evidence the right of the said complainant, the said Christian A. Bruning shall re-convey said premises to complainant within thirty days of the service of a copy of this decree upon her or her solicitor, and in case of the said failure of Christian A. Bruning to make such conveyance, then this decree may be recorded and shall act as a conveyance, and such conveyance, if made, or the record of this decree, shall operate to confirm the title to complainant, free, clear and discharged of and from any rights accruing under any
30 of the instruments hereinbefore adjudged to be null and void; the rights of the parties to be as if such instruments had never been made and title never passed from the said complainant, whereas it appears by the evidence in said cause that said Christian A. Bruning is a purchaser of said lands and premises for value without notice of any right, title

Petition of Appeal

or interest of complainant-appellee, and therefore is not bound to reconvey said premises to complainant-appellee, as in said decree required.

(7) Said decree is erroneous in that it adjudges and decrees that complainant pay to defendant, Christian A. Bruning, or defendant, Johanna Bruning, such amount as this court may determine to have been advanced by either of said defendants to pay taxes upon said lands and premises, subject to the accounting hereinafter ordered, whereas, by the evidence in said cause it appears that appellants, Christian A. Bruning and Johanna Bruning, are purchasers for value without notice of any right, title and interest of the complainant-appellee, and that no accounting is due from them, or either of them, to complainant-appellee.

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(8) Said decree is erroneous in that it adjudges and decrees that defendant, Christian A. Bruning and Johanna Bruning, they and each of their agents and attorneys, perpetually desist and refrain from prosecuting any suits at law designed to interfere with the possession of said lands and premises by complainant and desist and refrain from in any wise interfering with the possession of complainant, whereas it appears by the evidence in said cause that said Christian A. Bruning and Johanna Bruning are purchasers for value without notice of any right, title and interest of the complainant-appellee in the said lands and premises, and ought not to be enjoined or restrained from instituting any action to recover possession of said premises, or any part thereof.

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(9) The said decree is erroneous in that it adjudges and decrees that the defendants, Christian A. Bruning and Johanna Bruning account to com-

Petition of Appeal

plainant for any rents, issues and proceeds of said lands and premises collected by them or either of them, whereas, it appears by the evidence in said cause that the said Christian A. Bruning and Johanna Bruning are purchasers for value, without notice of any right, title or interest of complainant-appellee in and to said lands and premises, or any part thereof, and not liable to account to complainant-appellee for any rents, issues and profits of said premises.

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(10) The said decree is erroneous in that it adjudges and decrees that defendants be given the right to elect, within thirty days of the making of this decree, whether they will take the property and pay the full purchase price thereof, and pay therefor the sum of \$12,000.00, less the amount which may have been due on the 20th day of October, 1922, for municipal liens and taxes, and less the amount then due upon a mortgage, a lien upon said property, held by the German American Trust Company and recorded in Book M-10 on page 341, said balance to be paid by the defendants as aforesaid, to bear interest from the 18th day of October, 1922, to the date of payment. That no allowance is to be made to defendants for monies received by complainant purporting to be the proceeds of dividends on stock, such monies being considered as part repayment for monies advanced by complainant to the said Robert B. Marshall. That if defendants elect to take said property, as aforesaid, then within five days of such election they shall make such payment under the direction of John O. Benson, Esq., a Master of this Court, who shall fix a time and place within such period of five days, and notify

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Petition of Appeal

the solicitors of both parties to appear and attend before him to close the transaction; and if such payment be made, then the said Louisa Dele, complainant, shall execute and deliver a confirmatory deed of said property, as directed by the defendants under the supervision of said Master, and said Louisa Dele shall then have no further estate or interest in said lands and premises. That upon said transaction being closed, application may be made to this Court for such further decree or order as may be proper to evidence a determination of the rights of the parties; that in case of the failure of the defendants to elect, within the time aforesaid, all of their right under this provision of the decree, shall cease and determine. That an application may be made to this Court for such order or decree as may be necessary to evidence the failure of the defendants to elect, whereas, by the evidence in said cause it appears that the said Christian A. Bruning and Johanna Bruning are purchasers for value without notice of any right, title or interest of complainant appellee in said lands and premises, and not liable to make such election to account or execute and deliver any deed as hereinbefore required. 10

(11) That said decree is erroneous in that it adjudges and decrees that this cause be retained for the purpose of determining the amount due from defendants, Christian A. Bruning and Johanna Bruning for rents, issues and profits of said lands and premises, and for the purpose of determining the amount due from complainant to Christian A. Bruning or Johanna Bruning for monies paid by them or either of them for taxes and on account of the 20

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Petition of Appeal

10 mortgage referred to in paragraph four hereof, upon said lands and premises, and that either party may apply to this Court for such further relief as they may be advised upon five days notice to the solicitor of the other party, whereas, it appears by the evidence in said cause that the defendants, Christian A. Bruning and Johanna Bruning are the purchasers for value without notice of any right, title or interest in said lands of the said complainant-appellee and are not required or liable to account as hereinbefore directed.

Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside, and for nothing holden, and that petitioner may have such other relief in the premises as to this court may seem proper.

20 A. Lawrie Young,
Gustav A. Hunziker,
Solicitors for and of Counsel with
Appellant.

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*Acknowledgment of Service*NEW JERSEY COURT OF ERRORS
AND APPEALS

Louisa Dele, Complainant-Appellee, vs. Christian A. Bruning and Johanna Bruning, Defendants-Appellants.	On Appeal From the Court of Chancery	10
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Service of a copy of the petition of appeal filed in the above entitled cause is acknowledged this 26th day of October, A. D. 1928.

Alexander M. MacLeod,
 and Merritt Lane,
 Solicitors of Complainant-Appellee.

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Answer to Petition of Appeal

Filed Nov. 9, 1928.

NEW JERSEY COURT OF ERRORS
AND APPEALS

Louisa Dele, Complainant-Appellee, vs. Christian A. Bruning and 10 Johanna Bruning, Defendants-Appellants.	}	On Appeal from Chancery
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ANSWER TO PETITION OF APPEAL

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

20 This respondent, not acknowledging all or any of the matters and things 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 9th day of October, 1928, 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
 30 costs to be adjudged to this respondent.

Alexander M. MacLeod,
Solicitor of respondent.

Merritt Lane, of Counsel.

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48 FEB. T. 1929

New Jersey Court of Errors and Appeals

Louisa Dele,

Complainant-Appellee,

vs.

Christian A. Bruning and Jo-

hanna Bruning,

Defendants-Appellants.

On Appeal from
Court of Chan-
cery.

Brief of Appellants

STATEMENT

This is an appeal from a decree of the Court of Chancery, made by the Chancellor upon the advice of Vice-Chancellor Lewis.

The decree sets aside a deed to the appellants, Christian Bruning, from one Robert B. Marshall, and the mortgage made by Christian Bruning to his mother, Johanna Bruning, for \$13,000.00, the whole purchase price of the property described in the deed, upon the ground that the appellants, Christian Bruning and Johanna Bruning, are charged with constructive notice of a fraud alleged to have been perpetrated by said Marshall upon the complainant, by means of which she was induced to convey her property to said Marshall, through an intermediary. The decree gives the appellants Bruning an election to pay to the complainant the purchase price agreed to be paid to her by said Marshall, or the balance thereof.

Appellants claim to be bona fide purchasers for value, without notice of any equities in the complainant.

THE FACTS

The complainant, during 1922, and before that time was the owner of a tract of land of six acres, situate at Richfield, in Passaic County. She had leased the farm some years before, to Bobbink and Atkins, florists. The lease was for five years, which term expired on August 1, 1922, and it contained a provision that unless, at the expiration of three years from the beginning of the term, the lessor should notify the lessee that possession would be required at the end of said term of five years, the lessee should have the option to renew the lease for a further term of two, four or six years. The lease also contained a provision that the lessor might occupy three finished rooms in the barn on the property, so long as she or her children should not molest or interfere with the rights of the caretaker of the lessee, and that in case there was molestation, such privilege should cease and said rooms vacated by the lessor. (Case, page 129, lines 1-30.)

Sometime in 1922, lessor, the complainant, moved from the barn to a dwelling house on said premises, and thereafter occupied the dwelling house, part of which she rented to a tenant.

On July 13, 1922, the complainant made her bond in the penal sum of \$5,000.00, with condition to pay the sum fo \$2500.00, to Robert B. Marshall, in three years from the date thereof, with lawful interest, and secured the same by mortgage on said land, of even date with the bond, duly acknowledged before one of the Masters in Chancery of New Jersey, and recorded July 8, 1922, in Book N-12 of Mortgages, page 542. Bond is Exhibit D-1, (Case, page 122) and the mortgage is Exhibit D-8C. (Case, page 130.)

On October 10, 1922, the complainant, by warranty deed dated on that day and acknowledged the same day, before a Master in Chancery of New Jersey, and recorded October 21, 1922, in Book X-29 of Deeds on page 580, in Passaic County Register's office, for an expressed consideration of \$1.00, and other valuable considerations, conveyed said lands to Alice C. Aldred and James Herbert Aldred, her husband. Exhibit D-8B. (Case, page 129.)

On October 17, 1922, said Alice C. Aldred and James Herbert Aldred, her husband, mortgaged said lands to Clifton Trust Company, for \$6000.00, by mortgage dated on that day, acknowledged October 19, 1922, and recorded October 21, 1922, in Book R-12 of Mortgages, page 217, in the Register's Office of Passaic County. Exhibit D-7 $\frac{1}{2}$. (Case, page 128.)

On October 20, 1922, by deed dated and acknowledged on that day, before a Master in Chancery of New Jersey, and recorded March 19, 1923, in Book 1-30 of Deeds on page 374, in the Register's Office of Passaic County, said Alice C. Aldred and James Herbert Aldred, her husband, conveyed said lands to Robert B. Marshall for an expressed consideration of \$1.00, and other valuable considerations, subject to the mortgage of \$6000.00. Exhibit D-8E. (Case, page 130.)

On October 20, 1922, by mortgage dated and acknowledged on that day, Robert B. Marshall, mortgaged said lands to Alice C. Aldred and Henrietta Verhagen, to secure the payment of \$2725.00, in one year, with lawful interest, payable semi-annually. This mortgage was recorded on March 27, 1923, in Book Y-12 of Mortgages on page 11, in the Register's

Office of Passaic County. Exhibit D-9. (Case, page 131.)

On July 5, 1923, by deed dated and acknowledged on that day, and recorded on July 7, 1923, in Book 0-30 of Deeds for Passaic County, said Robert B. Marshall conveyed said premises, by warranty deed, to the appellant, Christian A. Bruning, for an expressed consideration of \$1.00, and other valuable considerations. Exhibit D-3. (Case, page 125.)

On July 5, 1923, said Christian A. Bruning, single, mortgaged said lands to Johanna Bruning, by mortgage dated and acknowledged on that day, recorded July 7, 1923, in Book E-13 of Mortgages on page 158, in the Register's Office of Passaic County, to secure the payment of \$13,000.00, upon July 5, 1926, at six per cent per annum, payable semi-annually. Said mortgage recites that the same was given to secure the purchase price of the said premises. Exhibit D-13. (Case, page 133.)

The appellant, Christian Bruning, in 1923, was unmarried, and was living with his mother, who is a sister of complainant, in a house opposite the property complainant had conveyed to the Aldreds and by them to Marshall. Ill feeling had existed between the complainant and Mrs. Bruning and her son, for some years, and they had no relations with one another.

In June, 1923, appellant, Christian Bruning, was contemplating getting married, and acquiring a home and place of business. He met the complainant and asked her if she wanted to sell her property. She replied that she had sold it for \$12,000.00. (Case, page 81, lines 10-23. Case, page 91, lines 22-23, page 92, lines 1-15.)

Christian Bruning, after this conversation, upon the same day, mentioned to his mother that he had asked complainant regarding her property, and that he had been informed by her that she had sold it. His mother recollected that she had seen someone from the Clifton Trust Company about the complainant's property some time before that, and suggested to Christian that he inquire at the Clifton Trust Company, who the owner was. Christian did that and was informed that one Robert B. Marshall was the owner. A few days later a real estate broker came to the Bruning home and represented himself as the agent of Marshall for the sale of the property, and after some negotiation, a price was agreed upon and a contract was drawn on the 20th day of June, 1923, whereby Johanna Bruning agreed to purchase the property for \$13,000.00, of which \$500.00 was paid upon the execution of the contract, and \$12,500.00, was to be paid upon the delivery of the deed, which was to pass on or before July 10, 1923. (Exhibit D-2, case, page 123.)

After making the contract to purchase the property, Bruning employed counsel to make an examination of the title. Sometime before July 5, 1923, Bruning's attorneys advised him of the Bobbink and Atkins lease on the property, the five year term of which had expired on August 1, 1922. Bruning went to the property to ascertain from Bobbink and Atkins, whether they had renewed the lease for a two, four or six year term, as they had option to do. The result of his interview was that Bobbink and Atkins agreed to vacate the property about the end of the year. (Case, page 85, lines 10-32.)

Being satisfied with respect to the tenant, Bobbink and Atkins, Bruning was ready to consummate the purchase, and on July 5, 1923, Marshall, the vendor, attended at the office of Bruning's attorneys and the deed was then delivered and the purchase money paid. Of this, \$8,975.07, was paid to mortgagees for principal and interest on account of the \$6000.00 mortgage, and the \$2725.00 mortgage. (Case, page 84, lines 1-15.)

During the same month, July, 1923, Mr. Bruning's attorney heard that the complainant claimed the right to continue in the house on the property until August 1, 1925, and he then arranged a meeting with complainant, at which he asked her about such claim. In this conversation complainant stated she had agreed with Marshall at the time she sold the property she was to remain on the property until August 1, 1925. There is some difference in the evidence of complainant as to what the conversation was, which will be discussed later.

On August 13, 1923, the defendant, Christian A. Bruning, filed a suit in ejectment against the complainant in the Passaic County Circuit Court, to recover possession of the house on the premises, which he had purchased. (Case, page 12, line 30. Page 13, lines 1-3.)

Pending the suit in ejectment, the bill of complaint in this suit was filed and the further prosecution of the ejectment suit restrained. This suit resulted in the decree from which the present appeal is taken to this Court.

POINT I.

IF THERE WAS ANY DUTY UPON THE DEFENDANT-APPELLANT, BEFORE PURCHASING THE PROPERTY IN QUESTION, TO MAKE INQUIRY OF COMPLAINANT AS TO HER ALLEGED RIGHTS, THAT DUTY WAS PERFORMED.

At the time appellant first thought of buying the property in question, he supposed complainant was the owner. He met complainant on the road and asked her if she wanted to sell the property. The whole conversation, as he remembered it, appears on page 81 of the State of the Case, and is quoted:

“Q. When did you meet her and when was it? A. Sometime in June, 1923. Q. What was the conversation you had with her? A. I told her I was interested in the property, and intended to get married, and that I thought it a desirable place for my business, and I asked her if she wanted to sell the property, and she said she had sold it. Q. Did she say to whom? A. No, sir. Q. Did she say anything else except what you have now said? A. No, sir. Q. Was anything said about the payment of the money for the property? A. She said she received \$12,000.00, for the property. Q. Did she say anything about whether she had actually received the money or not? A. No, sir. Q. Did she say anything about staying on the property? A. No, sir. Q. Did she say anything about having a right to stay there for any length of time without paying rent—at that time? A. No, sir. Q. And you have repeated now the

whole conversation? A. Yes, sir. Q. How long did you stop and talk with her at that time? A. I would say no more than five minutes."

And in cross examination, on pages 91 and 92 of the State of the Case, as follows:

"Q. As I understand your testimony, you asked her if she cared to sell? A. Yes, sir. Q. And she replied 'No', that she had sold. A. Yes, sir. Q. Tell us the rest that was said. A. I asked her how much she got for the property and she told me \$12,000. Q. Nothing more was said? A. Not regarding the property. Q. And you did not ask her any more questions? A. No, sir. Q. You did not ask her to whom she sold it? A. No, sir. Q. Why not? A. Because I had not spoken to my mother up to that time about the property; and I did not go too far into it because I did not know if my mother could back me. Q. That is the only reason you did not ask her to whom she sold it? A. Yes, sir. Q. Did you ask her whether she had been paid \$12,000? A. No, sir, she told me she had been paid \$12,000; she told me she got \$12,000 for it; I said, 'What did you get for the place?' and she said, 'I got \$12,000.'"

The complainant was also questioned concerning this conversation. Her version of it appears on page 66 of the State of the Case, and is as follows:

"Q. Was anything said about this property? A. Yes, sir, he stopped me. Q. What

was said? A. He asked me to buy the the place from me, and I said **Marshall was buying it from me and that he would have to ask Marshall**; and he asked me if I had my full amount of money, and I told him, 'No.'

Q. What else was said? A. He said he was going to get married and would like to buy the place. Q. Was anything said about your staying in the property? A. Yes sir, I said I had full right to stay there until I had my full amount of money."

The difference in the two versions of this conversation is that complainant says she told appellant she did not have her full amount of money and that she "had full right to stay there until I had my full amount of money."

If the appellant did speak to complainant with reference to buying her property, as both say he did, and she told him she had sold it and inferentially that she could not deal with him, and did not then tell him of any claim she had with respect to the property, she should not be permitted to assert a claim thereafter when appellant had purchased the property from the record owner and paid a full consideration therefor.

Complainant says she told appellant she had not received her full amount of money and that she had full right to stay on the property until she had her full amount of money.

It is contended by appellants the complainant's statement cannot be true. It is contradicted by the undisputed facts and circumstances attending the sale by her of the farm and by her conduct and statements thereafter.

There is substantial agreement between complainant and appellant as to what he said to her on that occasion. "He said he was going to get married and would like to buy the place." "He asked me to buy the place from me." (Case, page 66, lines 1-10.) Appellant says she then told him she had sold it. Complainant says, "I said Marshall was buying it from me and that he would have to ask Marshall." (Case, page 66, lines 4-5.) Appellant says she told him she received \$12,000.00, for the property. (Case, page 31, lines 20-23.) She says he asked her if she had her full amount of money, and that she told him "no", and that she had full right to stay there until she had her full amount of money. (Case, page 66.) Appellant denies he asked her about having her money or that anything was said about her staying on the place until she had her money.

This conversation took place in June, 1923. She had sold the property in October, 1922, for \$12,000.00. By her own story she had received from Marshall, to whom she says she sold, as the consideration for the sale, certain shares of stock and a mortgage. (See bill of complaint, Case, page 3, paragraph 4, and Case, page 59, lines 20-35. On page 60 of Case, lines 27, et seq.)

Her evidence regarding the consideration she received for the property, is as uncertain and vague as

all of her other evidence. She does not know definitely the amount of stock she received, she says she got \$3,000.00 and \$4,000.00, was held for her as security for some reason that she does not know. She says she was to get \$500.00, cash, but that she did not get it. She says there was a \$3,000.00, mortgage on her property at the time of the sale, whereas the mortgage was \$2500.00 (Case, page 2, line 17). She denied any knowledge of a mortgage given by her which is Exhibit D-8C (Case, page 130). She denied any knowledge of the deed by which she conveyed the property, Exhibit D-8b. (Case, page 129) She claimed to have received a writing from her vendee respecting his purchase from her of the property, and concerning which she tells a most improbable story of its loss. (Case, page 59, lines 8-14.) She says that her vendee gave her a mortgage for \$2000.00. (Case, page 59, lines 29-34.) And she tells the same improbable story about losing that. (Case, page 64, lines 6-35. Case, page 65, lines 1-10.)

It appears, however, that at the time the appellant asked her whether he could buy her property, she had possession of the shares of stock which she accepted as part payment for her property, \$3000.00 worth herself and \$4000.00 worth held by Marshall for her. She had the \$2000.00, mortgage in her possession. A mortgage of \$2500.00, which she gave on July 13, 1922, about a year before the purchase of the property by appellant, was cancelled of record on October 21, 1922, which is the day after she conveyed the property. She was receiving \$70.00 monthly income upon the shares of capital stock,

which income had been paid to her from June, 1922, and was paid until November, 1923, after appellant purchased the property. (Case, page 73, lines 31-34.)

So that when the conversation occurred between appellant and complainant concerning the sale of her property, there was no reason why she should, as she says, say that she had the right to stay on the farm until she got her full amount of money. She had what she bargained for, and it would have been absurd for her to say that she was waiting for her money when she believed that \$7000.00, in shares of capital stock was held by or for her; that she had a \$2000.00 mortgage in her little box at home, and that, as she says, there was a \$3000.00, mortgage on the property, making the \$12,000.00, for which she had sold. All through the case the only thing that she says with any degree of certainty is that phrase, "I had the right to stay there until I got all my money." Her story is incoherent, improbable and manifestly untrue.

The finding by the Vice Chancellor who heard the cause, is not conclusive upon this court. As was said by this court in the case of *Cartan vs. Phelps*, 91 N. L. on page 314:

"However, the rule giving great weight in the Appellate Court to the Vice-Chancellor's finding on a question of fact, imposes no restraint on the power of the former to ascertain by full investigation and analysis of the evidence, what the facts are, and whether the general finding is consistent therewith."

It is respectfully submitted in this case that in view of the uncertain, vague, contradictory and improbable character of the evidence of the complainant, her testimony is unreliable and that it should be found as a fact that the appellant did inquire of her respecting the sale of her property, and that she informed him she was no longer the owner and that if any duty rested upon the appellant to make inquiry of her before purchasing the property, that duty was discharged when she answered him that she had sold the property to another. Many of the occurrences to which complainant testifies occurred after the purchase by appellant of the property. She returned to Marshall, or his brothers, as nearly as it can be made out from her testimony, 300 shares of stock on July 14, 1923. (Case, page 61, lines 14-35.)

She lost the \$2000.00, mortgage after she got the dispossess, as she calls the ejectment proceedings, some months after appellant purchased.

POINT II.

APPELLANT WAS UNDER NO DUTY TO MAKE INQUIRIES OF COMPLAINANT AND HER POSSESSION IS NOT NOTICE OF ANY RIGHTS SHE CLAIMED ANTAGONISTIC TO HER DEED.

Possession of itself is not always notice. It must be possession inconsistent with the record title.

In the present case, complainant was occupying part of the house on the lands by permission of the lessee, who, under its lease, was entitled to the pos-

session of the whole of the demised premises, which included the house. During the cross examination of appellant, Christian Bruning, it was positively made to appear that defendant did not know who was or had been collecting rent since the conveyance by complainant of the property in October, 1922. Notwithstanding all the discussion on this subject, **complainant was not asked whether, nor did she say she had collected the rent since her sale of the property.** When she conveyed the property she also conveyed the rents and profits, and presumably they were thereafter received by her grantees. The rent for the month of July, 1923, was apportioned between Marshall, the vendor, and Bruning, the purchaser, as appears by the settlement statement which is in evidence. (Exhibit D-7.) Thereafter the rent, including that for part of the house, was collected by Bruning, and no protest was made concerning the rent by the complainant. Inquiry of complainant would have disclosed that she had conveyed the property; as in fact it did. Further inquiry would have disclosed she was occupying the house, or part of it, by grace of the tenant, and that the tenant, Bobbink & Atkins, were paying the rent to the owner of record, and not to complainant. The title of the record owner being subject to the lease of Bobbink & Atkins, complainant's possession was entirely consistent with the ownership of Marshall.

“Possession, to give notice or to make inquiry a duty, must be open, notorious and unequivocal. There must be such an occupation of the premises as a man of ordinary pru-

dence, treating for the acquisition of some interest therein, would observe, and, observing, would perceive to be inconsistent with the right of him with whom he was treating, and so be led to inquiry." (Rankin vs. Coar, 46 N. J. E. on page 572.)

But on another ground, defendants were not required to make inquiry of complainant. She could not assert a title against her deed. She had conveyed her property by warranty deed, also containing covenants for quiet enjoyment of seizin, of good right to sell and convey.

It is the rule in the State of New Jersey, as enunciated by Pomeroy, Section 617, (Second Edition):

"Where a grantor, having executed a deed absolute on its face, which is put upon record, remains in possession of the land by virtue of some arrangement or relation between himself and his grantee dehors the deed and the record, which entitles him to the possession such as a collateral agreement, which really turns the deed into a mortgage, a lien for the unpaid purchase price, an unrecorded mortgage and the like. In England, if a grantor has signed the usual receipt for the whole purchase money indorsed upon his conveyance, his continued possession is not a constructive notice of any lien he may have for the unpaid price. The receipt in such a case is analogous to the record of the deed in the United States, and a subsequent purchaser from the grantee has a right to rely upon

it. There has been a direct conflict of opinion among the American courts in applying the rule to the condition of facts above described. In one group of decisions the possession of the grantor is held not to be a constructive notice of any right or interest he may have antagonistic to his deed, which has been put upon record; a subsequent purchaser, it is said, has a right to rely upon the information derived, or which would be derived, from the record, and to assume that the grantor's continued possession is merely by sufferance."

This rule has been followed and is the law in this State.

Van Keuren vs. Central Railroad Company of N. J., 38 N. J. L. on page 165.

In the above case, discussing the question of notice, it is said:

"If a person should purchase an estate from the owner, knowing it to be in the possession of tenants, he is bound to inquire into the estate which such tenants have. Having knowledge of the tenancy, he is bound to inform himself of the conditions of the lease. The general rule is, that possession of land is notice to a purchaser of the possessor's title. 4 Kent's Com. 179; 1 Story's Eq. No. 400; Meux vs. Maltby, 2 Swanst. 281.

"But this rule does not apply to a vendor remaining in possession so as to require a purchaser from his grantee to inquire whether he has reserved any interest in the land conveyed.

"So far as the purchaser is concerned. The vendor's deed is conclusive upon that subject, having declared, by his conveyance, that he makes no reservation, he is estopped from setting up any secret arrangement by which his grant is impaired.

"The well settled rule applies to this case, that a party is estopped from impeaching or contradicting his own deed, or denying that he granted the premises which his deed purports to convey. In the absence of express notice to the contrary, the plaintiffs could securely rely upon the allegation made by the Land Improvement Company in their deed to the plaintiff's grantor, that their conveyance was absolute and without reservation."

The above case was cited with approval by the Court of Errors and Appeals in the case of Bingham vs. Kirkland, 34 N. J. Eq. on page 236, where it is said:

"Howland's possession, therefore, was one existing at and subsequent to the deed by which he conveyed all his interest to her, down to the time when he made the mortgages in question.

"The inquiry which such possession would have suggested was answered by the record. The answer was, that he had no interest in the property, but had conveyed a fee to Louisa Hudson. That answer a subsequent purchaser had the legal right to rely upon as correct. Van Keuren vs. Central R. R. Co 9

Vr. 165; Newhall vs. Pierce, 5 Pick. 450; Scott vs. Gallagher, 14 Serg & R. 333."

See also:

Rankin vs. Coar, (Court Errors and Appeals) 46 N. J. Eq. on page 571, where the above rule is again referred to, with approval.

Groton Savings Bank vs. Batty, 30 N. J. Eq. on page 126. (Page 133.)

Cohn vs. Plass. 85 N. J. Eq. 153. (Page 158.)

In some jurisdictions where a vendor remains in possession after conveyance, such possession, unless long continued, is presumed to be subordinate to the title conveyed, and is not notice that the grantor claims any rights inconsistent with the conveyance he has made. This is especially true where the deed to the purchaser is recorded.

39 Cyc. page 1753, citing cases in many States, including New Jersey. Note 35 and on page 1754.

"Where one who has executed an absolute deed relies on his continuance in possession as notice of an unrecorded defeasance, or that the title is subject to a resulting trust. Such an instrument is an unequivocal declaration that the grantor has parted with his right, title and interest, and that third persons will be safe in buying from the grantee. A purchaser should not, under these circumstances, be required to look behind the deed for an equity which the parties have in effect concealed. The presumption in every such in-

stance is, that the grantor remains in possession as a tenant at sufferance; *The New York Life Ins. Co. vs. Cutler*, 3 Sandford, 176; and if this is open to rebuttal as between the parties it should be conclusive in favor of a purchaser who has no actual notice.

"The case is, if possible, still stronger when the deed is acknowledged and registered while the registry contains nothing to indicate that the grantor's interest subsists despite the conveyance; *Bloomer vs. Henderson*, 8 Michigan, 395. If a loss ensues, it should obviously be thrown on the grantor, who has contributed to mislead the purchaser; *Scott vs. Gallagher*; 14 S. & R. 333, 334; *Newhall vs. Pierce* 5 Pick. 449; *Wood vs. Farmere*, 7 Watts 382."

American notes, *LeNeve vs. LeNeve*, White & Tudor Leading cases in Equity, Volume 2, Part 1, on page 184.

And the rule applies notwithstanding the purchaser takes from the grantee of the grantee of the grantor remaining in possession. This was the fact in the case of *Van Keuren vs. Central Railroad Company of New Jersey*, 38 N. J. L., hereinbefore cited, which establishes the rule in New Jersey.

It is respectfully submitted that the appellant having made inquiry of the complainant before purchasing the property, and being informed by her that she had sold it as appears by what is believed to be the preponderance of the evidence, and because, even assuming the complainant's version of the

transaction to be the truth, appellant was under no duty to make inquiry of her, her possession not being open, notorious and unequivocal, and being consistent with the title of the record owner, and because under the rule discussed in Point II, herein, there was no duty upon the appellant to make inquiry of complainant, the decree of the Court of Chancery is erroneous, and that this court should remit the case to the Court of Chancery with direction that the bill of complaint be dismissed.

YOUNG & RANDALL,
Solicitors of Appellants,
GUSTAV A. HUNZIKER,
Of counsel.

New Jersey Court of Errors and Appeals

No. 48 February Term, 1929.

LOUISA DELE, <i>Complainant-Appellee,</i> and CHRISTIAN A. BRUNING and JOHANNA BRUNING, <i>Defendants-Appellants.</i>	}	<i>On Appeal from Court of Chancery.</i> <i>Sat Below:</i> LEWIS, V.-C.
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BRIEF OF RESPONDENT.

(Italics etc., ours except where otherwise noted.)

Statement.

Appellants argue the case as if the decree can rest *solely* upon the principle of constructive notice based upon *mere* possession by Mrs. Dele, complainant-respondent, which possession put appellants upon inquiry. The fact is that the evidence discloses *actual* knowledge of appellants of the rights of Mrs. Dele or, to say the best for appellants, that they believed that they were put upon inquiry as to her rights and made such inquiry as they thought would satisfy the *law*, deliberately closing their eyes to available sources of inquiry known to them for fear that, if they pursued the inquiry, they would ascertain what they suspected, *i. e.*, that Mrs. Dele was entitled to retain possession until the full consideration which was to be paid by her vendee had been paid and *that she had a vendor's lien.*

And the evidence showed much more to put appellants upon inquiry than *mere* possession

by Mrs. Dele. The cases of *Van Keuren v. C. R. R.*, 38 N. J. L. 165; *Cohn v. Plass*, 85 N. J. Eq. 153 at 158; and others of like nature; apply *only* when it is sought to impute knowledge because of failure to inquire, the *mere* continued possession of a grantor being the *only* item of evidence claimed to require the inquiry. Further *Mrs. Dele* was *not* the grantor of Marshall, defendants' grantor. That she had *once* been a grantor in the chain of title does not make the Van Keuren case applicable. But we reiterate, *the facts disclosed actual knowledge on the part of defendants-appellants* and it is not necessary to rest the decree upon the doctrine of constructive notice although it may well be rested thereon.

Assuming that the proofs show that appellants had actual or constructive notice of Mrs. Dele's interest, *no question is raised by appellants but that the decree below is right.*

The Facts.

Louisa Dele, complainant-respondent is an ignorant woman, forty-six years of age. She has never done anything else except farm and had but little schooling. Her husband died in 1917. She has three children. The property in question is a farm of approximately six acres. She had been in possession for fifteen years; the title was in her (p. 57). After her husband died she rented the farm to Bobbink and Atkins, florists, and, as a part of the consideration in the lease, she was permitted to occupy *the barn*. She occupied the barn until 1922 (p. 58). She then moved back into the *house*, and since 1922, she has been occupying the house.

It is argued by appellants that Mrs. Dele occupied the house under permission contained in the lease. That is *not* the fact. The permission contained in the lease was to occupy three rooms *in the barn*. She not only occupied the *house* for herself but she rented part of it and collected the rents and acted as the owner and landlord (p. 120).

In 1922, she does not remember the date, a man named Marshall asked her to sell the property, and she says “ * * * and I told him \$12,000; and I told him I wanted my full amount of money, because I had not anything else to go out with to buy another place; and he said he would give me the full amount of money”; the next day he gave her an agreement for the money and told her that she should stay there “*until I got my full amount of money*” (p. 59); he gave her some writing; she hasn't it, and does not know what it was although she says that it gave her permission to stay on the property until she got “her full amount of money” (p. 59). She says that he gave her a mortgage but then (p. 59)— “I don't know; he gave me something; and he said it was a mortgage.”

No money was paid to her. Marshall came to see her quite often. He gave her some shares of stock, promising that the income would be twelve per cent. (p. 59). She has no remembrance of signing a deed (p. 60). If there ever was a mortgage for \$2,000 it has disappeared (p. 61).

Marshall's brothers came to see her about a year later and got the stock which Marshall had given her away from her (p. 61). They stated that they would pay the interest (p. 62). In exchange for the stock they gave her a note Ex.

C. 1, and they paid the interest until November, 1923. See the letters Ex. C. 2, and C. 3, C. 4. Since then she had not heard from them (p. 63).

When she purchased the property the father of the defendant, Christian Brunning, helped her out (p. 65).

Marshall not only paid her nothing but inveigled her into giving him \$300 out of her small savings (p. 67). She only had \$500.

She works as a scrub woman and gets four dollars a day (p. 68).

The record shows that she gave a bond and mortgage to Marshall on July 13, 1922, apparently to secure \$2,500. She never borrowed any money from Marshall. There was no consideration for the paper. She has no remembrance of the transaction or how it came to be signed if it was signed (pp. 68, 69).

The record shows that: a deed was made by Mrs. Dele to Alice C. Aldred and James Herbert Aldred, dated October 10, 1922, recorded October 21, 1922; a deed was made by Alice C. Aldred and James Herbert Aldred to Robert B. Marshall, dated *October 20, 1922*, recorded *March 19, 1923*; a deed was made by Robert B. Marshall to Christian A. Brunning, dated July 5, 1923; recorded July 7, 1923; a mortgage was made by Christian A. Brunning, appellant, to Johanna Brunning, appellant, dated July 5, 1923, and recorded July 7, 1923; a mortgage, which had been apparently given by Mrs. Dele to Robert B. Marshall, dated July 13, 1922, and recorded July 18, 1922, was assigned to William J. Karl, Jr., (the broker who had knowledge of the fraud and who is not produced), by assignment dated July 15, 1922 and recorded July 18, 1922; a mortgage

was given by Alice C. Aldred and James Herbert Aldred, to the Clifton Trust Company, dated October 17, 1922, recorded October 21, 1922, to secure the payment of the sum of \$6,000; a mortgage was given by Robert B. Marshall to Alice C. Aldred and Henrietta Verhagen, dated October 20, 1922, recorded March 27, 1923, and assigned by Alice C. Aldred and Henrietta Verhagen to Harry Simon, dated April 26, 1923 and recorded May 18, 1923, and assigned by Harry Simon to the Passaic Builders Supply Company, dated May 11, 1923, recorded May 18, 1923.

Neither Mr. nor Mrs. Aldred, nor Karl, nor Verhagen nor Simon nor the Passaic Builders Supply Company nor the Clifton Trust Company were produced to show that they were bona fide purchasers or mortgagees or assignees of mortgages for value without notice.

The proof is clear that neither Mr. nor Mrs. Aldred, nor Marshall were, at any time, in possession of the property, or exercised any acts of dominion over it, and equally clear that Mrs. Dele was *always in possession exercising acts of dominion.*

No attempt was made to prove that any of these above mentioned persons made any inquiry of Mrs. Dele although William J. Karl, Jr. was the agent through whom Brunning bought the property (p. 82). *Karl was also the person who was agent at the time of the supposed sale from Mrs. Dele to Marshall, and the person who took, by assignment, a mortgage made by Mrs. Dele to Marshall, dated July 13, 1922, which mortgage was given wholly without consideration and was a deliberate fraud.*

Karl must have known of the fraud. He could not have been a party to the transaction to the

extent that he was without such knowledge. Although he was the agent who negotiated the sale from Marshall to Brunning, appellant, *he was not produced to corroborate Brunning that he did not know of the fraud.*

It must be conceded that, if the story told by Mrs. Dele as to her conversation with Christian Brunning, is the correct version as to what took place, he had *actual* knowledge of the rights of Mrs. Dele and appellants devote a considerable portion of their brief to an attempt to indicate that her story is false. The failure of defendants-appellants to produce Karl, a witness within their control, is a circumstance which has the effect of probative testimony corroborative of Mrs. Dele.

Corpus Juris, title "Evidence," p. 115, section 56, states the rule:

"Failure of a party to call an available witness possessing peculiar knowledge concerning facts essential to a party's case, direct or rebutting, or to examine such witness as to the facts covered by his special knowledge, especially if the witness would naturally be favorable to the party's contention, relying instead upon the evidence of witnesses less familiar with the matter, gives rise to an inference that the testimony of such uninterrogated witness would not sustain the contention of the party."

In *Kirby v. Tallmadge*, 160 U. S. 377, 40 L. Ed. at p. 465, Mr. Justice Brown, delivering the opinion for the Supreme Court of the United States, said:

"'All evidence,' said Lord Mansfield in *Blatch v. Archer*, Cowp. 63, 65, 'is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other side to have contradicted.' * * * It is said by Mr.

Starkie, in his work on Evidence, (Vol. 1, p. 54): 'The conduct of the party in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power and which rests peculiarly within his own knowledge, frequently affords occasion for presumptions against him, since it raises strong suspicion that such evidence, if adduced, would operate to his prejudice.' "

Mrs. Dele and Brunning were alone at the time they had their talk before Brunning purchased the property and Mrs. Dele *can call no one to corroborate her*. Those matters which go to the credit to be given to Brunning's testimony, *as a whole* therefore, are of extreme importance in weighing the respective stories, and one item to be considered is the failure of Brunning to call Karl, who would know more about the transaction than anyone else, and who, if Brunning's story of lack of knowledge be correct, *could corroborate him*.

The entire transaction, so far as Mrs. Dele and Marshall are concerned, was a *deliberate fraud* and it was so conceded by counsel for defendants in opening. Mrs. Dele has not received one penny for the property. On the contrary, Marshall has walked off with \$300 of her savings.

Defendants content themselves by asserting that they are bona fide purchasers for value without notice.

The answer is three fold—

First—They had actual notice.

Second—If they did not have actual notice, they had suspicion and deliberately closed their eyes.

Third—They are charged in law with notice.

ARGUMENT.

While the points are separate and distinct they will be discussed together upon the facts.

Christian Brunning is a nephew of Mrs. Dele and a son of Johanna Brunning, appellant, and of the Mr. Brunning who helped Mrs. Dele out at the time she bought the property. Appellants live directly across the street from the property but they had not been on friendly terms with Mrs. Dele since 1917 (p. 65). They knew her mental capacity. On p. 103 the following occurred, on examination of Christian Brunning—

“Q Why didn’t you go over to Mrs. Dele and ask her what it was all about before you started suit against her; why didn’t you ask her to please get out? A She is very hard to explain anything to.

The Court: *She is stupid?*

A *Yes, sir.*”

The story of the transaction, as told by Christian Brunning, is that he met Mrs. Dele in June, 1923, and (p. 81):

“A I told her I was interested in the property, and intended to get married, and that I thought it was a desirable place for my business, and I asked her if she wanted to sell the property, and she said she had sold it.”

She said nothing more (p. 81); they talked not more than five minutes (p. 81). Although Christian Brunning had stated that Mrs. Dele had said nothing more, his counsel then put a leading question, on p. 81—

“Q Was anything said about the payment of the money for the property? A She said she received \$12,000 for the property.

Q Did she say anything about whether she had actually received the money or not? A No, sir.

Q Did she say anything about staying on the property? A No, sir."

On cross examination (p. 91), Christian Brunning says that: he saw Mrs. Dele coming out of the house and went over to meet her and asked her about the property; it was the first time he had ever spoken to her about the property; he made no inquiry as to whom she had sold it, or whether she had received her money (p. 92); although *he knew she was occupying part of the premises, he made no inquiry as to under what right she was so occupying it* (p. 95); although he knew that *Mrs. Dele was receiving the rents from the Bobbinks and Atkins lease he made no inquiry as to under what right she was so receiving the rents.*

On p. 97, Christian Brunning said:

"Q Now, when you had this talk with Mrs. Dele on the street, why didn't you ask her, 'Why, if you sold the property, how is it you are living there?' A *I did not know what arrangements she had made; I did not know whom she had sold it to; I was under the impression that she owned the property.*

Q You knew she was in possession of part of it; and you now say you did not know what arrangements were between her and the person who had purchased the property; is that right; you have just stated that you did not know what the arrangements were between Mrs. Dele and the person who purchased the property in June of 1923—which would warrant her in retaining possession. Now, if you did not know, why didn't you ask? A As I explained before, I did not ask because *I did not know whether I was in a position to buy the property or not.*"

In opening the case in the court below his counsel had stated that, at this talk which Christian Brunning had had with Mrs. Dele in June,

Mrs. Dele had said she she was entitled to possession *for two years rent free*. This is brought to Brunning's attention on page 98, but he says that she did *not* tell him that.

He then says that he went to his mother, Johanna Brunning, appellant, and explained the matter to her and that she told him that there was some men "up there from the Clifton Trust Company, and they had a mortgage on it."

It was indeed a *fortuitous* circumstance that, at *that particular moment*, Mrs. Brunning could tell her son that there had been some men from the Clifton Trust Company, which held a mortgage on the place, "up there." Where is not disclosed. But Mrs. Brunning, although called by appellants, said *nothing about this fortuitous circumstance*.

Brunning then says he went to the Trust Company for information as to who owned the place and that he was told that Marshall owned it. *No one is produced from the Trust Company to corroborate this statement.*

He made inquiries at the Trust Company the day after he met Mrs. Dele in the street (p. 82); he went to Marshall's office but did not see him (p. 82); the very next day *Karl*, the real estate agent, came up "and said he had the property for sale for Mr. Marshall" (p. 82); they had a talk and agreed on \$13,000 as the price (p. 83); a contract was then and there made (Ex. D. 2), under the terms of which Marshall agreed to sell the property to Johanna Brunning, appellant, for \$13,000, \$500 to be paid on the execution of the agreement and \$12,500 in cash on the delivery of the deed; the original plan was to take the property in the name of Johanna Brunning, but that plan was changed as she

decided to take a mortgage on the house "and raise \$13,000"; she had \$7,000 in cash and she "gave me a mortgage." (The reason for the change is somewhat obscure); although this agreement was made *two days* after Mrs. Dele and Christian Brunning had met upon the street, Mr. Young, appellants' attorney, had drawn the contract on instructions from Christian Brunning (p. 113); Mr. Young was not present at the time the agreement between Karl and Christian Brunning was made.

From Christian Brunning's testimony it would appear that there had been *no discussion with respect to price or even with respect to whether Marshall wanted to sell* until Karl came and saw Christian Brunning the day after he had been to Marshall's office, and could not find him (p. 82), and yet, at this interview with Karl, *Brunning was prepared with a contract drawn by his attorney*, which was signed at the time and the \$500 paid. Marshall was not present (p. 116). Neither of the Brunnings nor Mr. Young saw Marshall until the day of the closing at Mr. Young's office.

Mr. Young then searched the title and found the record as we have above indicated. He discovered the lease made by Mrs. Dele to Bobbink & Atkins (p. 113)—

"Q You observed in the lease the provision that Mrs. Dele was to be permitted to occupy the barn? A The three rooms in the northwesterly end of the barn.

Q Did your client tell you she was occupying the *house* at that time? A *No, sir.*

Q Of course, I suppose if you had had knowledge of that, *you would have found out why it was?* A *I imagine I would, yes, sir.*"

Christian Brunning says that, prior to the closing, he went to Bobbink & Atkins to make inquiry and (p. 85)—

Q When did you learn that Bobbink & Atkins had a lease on the property? A Before the final sale; I went over to Bobbink & Atkins' office.

Q Who notified you there was a lease on the property? A I think my attorney notified me.

Q What did you do, if anything, that morning after? A I went to Bobbink & Atkins, and saw Mr. Bobbink and asked him *what rights he had on the property.*

Q As a result of that conversation, what did you learn about the lease? A I understood that they had to the end of the year to go; they had up to the first of 1924 to stay there."

And, p. 90—

"Q Why did you go to Bobbink & Atkins to inquire as to what rights they had in the property; who told you to do that? A My attorney advised me that they had a lease on the property.

Q He also told you the lease was recorded, didn't he? A Yes, sir.

Q Why did you go to Bobbink & Atkins then? A I wanted to see if I could make some arrangement with them as to vacating the property.

Q *Then you did not go for the purpose of finding out their rights?* A Yes, sir, I did.

Q Why didn't you depend on the records? A *I thought it was my place to find out every right they had on the property.*

Q *How long have you known it was a burden put on a purchaser to find out what the rights of a person in possession of property were?* A *I knew that for some time."*

Page 93—

"Q Did you ask Bobbink & Atkins to whom they paid the rent? A *I knew whom*

they paid it to. Before I had purchased it they had been paying it to Mrs. Dele.

Q *You knew at the time of the transaction, didn't you?* A *That they had been paying the rent to Mrs. Dele?*

Q *Yes.* A *Yes, sir.*

Q *And you knew she was occupying part of the premises?* A *Yes, sir.*

Q *Why didn't you ask Mrs. Dele under what right she was occupying part of the premises?* A *I believed when I saw my attorney to have the search, that the search would reveal any rights that anyone would have.*

Q *You knew the law to be, that when a person is in possession of property, it is necessary to find out what his rights are; you tell me now that you knew they were paying the rent to Mrs. Dele; now, why didn't you ask her what right she had to receive that rent and remain in that property?* A *I inquired of the Clifton Trust Company, because I thought it could give me more information.*

* * * * *

Q *What I am trying to get you to tell me is why you were so careful to go to Bobbink & Atkins, who had a recorded lease, to find out what their rights were; and did not depend on the record title; and you did not go to Mrs. Dele, who was getting the rent, and who was in possession of the property, and inquire of her, but depended on the record title?* A *I went to Bobbink & Atkins with the idea of having them vacate the property.*

Q *Do you want to take back what you have already said, when you said you went to them for the purpose of finding out what their rights were?* A *I say that, too."*

Page 93—

“Q *As a matter of fact, you never approached Mrs. Dele from June 12th, 1923, until after this transaction was wholly completed; is that right?* A *Yes, sir."*

Page 95—

“Q Did you question her as to why she was in possession of part of it (the premises)? A I had no other conversation with her at that time.

Q Why not? A Because I went to the Clifton Trust Company and inquired, *and found out she was no longer the owner.*

Q You knew you had to get her out of that property? A Yes, sir.

Q Did you make any efforts to find out how you were going to get her out of the property? A Yes, sir.

Q From whom did you inquire about that? A My attorney.”

Page 95—

“Q Did he tell you he did not know how to get her out of the property unless he knew what right she had there, or did Mr. Young tell you he could get her out of the property, no matter what her rights were? A We believed she had no rights.

Q Did you know? A At that time I was confident she had no rights.

Q Why didn't you step across the street some morning and ask her what rights she had? A Because I knew that she no longer owned the property; and a search revealed that she had been paid—*that she had signed the deeds, I mean.*”

Appellants argue that Mrs. Dele did not testify that she collected the rents from Bobbink & Atkins after the deed. That may be so. She was not recalled after Christian Brunning had testified. He had sworn that he knew that Mrs. Dele *was collecting the rents*, and had collected them after her deed and up to the time that he, Brunning, purchased, and on July 3, 1923, which was two days before the conveyance by Marshall to Christian Brunning, Mrs. Dele had instituted a suit in the District Court of Paterson to dispossess Henry Heller, who was the tenant occupy-

ing a part of the house, the record of which proceeding was introduced in evidence after the hearing by consent of counsel (p. 121). No attempt was made to show by Bobbink & Atkins, or by anyone else that the rent was not paid as Christian Brunning himself says he knew it was paid, *i. e.*, to Mrs. Dele.

The testimony above quoted precludes appellants from claiming that they believed that the deeds imported that the consideration had been paid. It is quite immaterial therefore what the law may be as to what import is to be given to a recorded deed reciting a consideration for Christian Brunning, of his own volition, at this point testifies in effect that *he did not believe that the search revealed that she had been paid.*

He first says that it did but immediately corrects himself and says it revealed "that she had signed the deeds, I mean."

And then p. 96.

"Q And although you knew she was in possession; and although you knew the law with respect to notice and of a person's rights who is in possession, *you deliberately refrained from going over and asking her?*

A I did not ask her. (Equivalent to 'yes.')

Q You knew you could have found out if you did ask her, and you did not ask her? A *I did not think it was necessary.*" (Equivalent to "yes.")

He then attempts to indicate, contrary to his former statements, that he did *not know* that Mrs. Dele was collecting the rents, and then the following occurs—p. 97:

"Q As I understand, you did not know who was collecting the rents? A No, sir.

Q Why didn't you find out? A Because I was only interested in the rent from the time I purchased it.

Q But why didn't you find out who was collecting the rents, so that you might determine who was interested in that property except the record holder; when you were down at Bobbink & Atkins' office, why didn't you ask them 'Who are you paying the rent to?' A I saw nothing of the rent until the time when I was to collect it.

Q Why didn't you ask Marshall if he was collecting the rent or not? A I was not interested in the rent proposition.

Q So that you did not know who was collecting those rents; is that right? A No, sir, I did not know who was collecting them from the time she sold it until the time I got them.

Q Now, when you had this talk with Mrs. Dele on the street, why didn't you ask her, 'Why, if you sold the property, how is it you are living there?' A *I did not know what arrangements she had made; I did not know whom she had sold it too; I was under the impression that she owned the property.*"

His arrangements with Marshall were made and completed within *five days* after he saw Mrs. Dele upon the street (p. 99)—

Although the title was fixed to close on July 10th, the date of closing was *advanced* to July 5th (p. 100)—

"Q Why was it you did not wait until July 10th and why did you close it on July 5th; was there any object in that haste? A I was advised by my attorney that the search would be ready by that time; and he advised me to be down there on July 5; there was no special reason."

He had never met Marshall until the day of closing (p. 101); at that time no questions whatever were asked; no inquiry was made as to who Alice C. Aldred and James Herbert Aldred were.

Christian Brunning had said that he had not asked Mrs. Dele as to whom she had sold the property but that someone at the Clifton Trust Company (not produced) told him that Marshall was the owner, yet no inquiry was made as to who the Aldreds were, and no inquiry as to why the deed to Marshall had been *kept off record from October 20, 1922, until March 19, 1923.*

The attorney for appellants, Mr. Young, had never met either Karl or Marshall until the closing of the transaction. He took the acknowledgment of Marshall solely upon the introduction of Marshall by Christian Brunning, although Christian Brunning had never met or known Marshall until the date of the transaction (p. 113).

He corroborates Christian Brunning to the effect that nothing was discussed with Marshall with respect to the property, and p. 115:

“Q You did not ask him (Marshall) how it was that Mrs. Dele was occupying the property, did you? A No, sir, I did not ask him.

Q Nothing was asked him about the transaction at all? A I did not ask him about the transaction.

Q Nor did Brunning in your presence? A No, sir.”

In real estate transactions, where property is leased by the owner selling, it is customary to get an assignment of the lease from the vendor. This property was leased to Bobbink & Atkins. There was a question as to whether a renewal had been exercised. Christian Brunning had gone to the tenants, to find out what their rights were. And yet, at the time the transaction was closed, no inquiry, with respect to their rights, was made of Marshall; no assignment of the

lease was requested; no statement requested as to how much rent had been paid.

There was a deliberate closing of the eyes.

According to the testimony of Mr. Young, about a week after the transaction was closed, Mrs. Johanna Brunning, appellant, came to his office with Mrs. Heller (the tenant of Mrs. Dele, occupying a part of the house), and said that Mrs. Heller "had been ordered to vacate some property, that is, the room she was occupying in Clifton at Mrs. Dele's house, for non-payment of rent; and that she had until that day in which to pay the rent or be dispossessed."

Mr. Young says that he did not understand Mrs. Dele starting dispossess proceedings against Heller and that he went to the office of the clerk of the court and found the records and (p. 112)—

"* * * after that I called Mr. Duddleston on the telephone and told him Mr. Brunning had purchased the property and I could not understand why Mrs. Dele had started dispossess proceedings. At that time he told me of her right to stay there for some time—Duddleston told me that."

And then came the following significant testimony—

"Q Can you tell me when that was that you had that conversation? A That was about a week after the deed was passed.

* * * * *

Q Do you know how long it was after the commencement of the dispossess proceedings against this woman by Mrs. Dele that you had this talk with this agent? A It was the same day that I learned of the dispossess proceedings."

On his direct examination he had testified that he met Mrs. Dele toward the latter part of July, 1923—

“A Mrs. Dele—I learned that Mrs. Dele had a right to stay there a certain length of time and had been sent to Mr. Mills, and Mr. Mills spoke to me about it; and I said ‘That is news to me’; and he said, ‘I will arrange to have her come down and talk it over; which we did’; I said to her, ‘Did not Mr. Brunning speak to you in reference to buying the property from you?’ and she said, ‘Yes, he did, but I told him it was sold, *and I had the right to stay there until August 1, 1925.*’ I asked her what she got for the property; and she said ‘\$12,000.’ I said, ‘You got it all in cash?’ and she said, ‘No.’ She said, ‘I got \$3,000 in stock’; and then she said, ‘No, I got \$7,000 in stock and the balance of \$4,000 which they held; and she also received a mortgage she claimed, on the property, *but had sold it that very day, or around that time when I saw her.*’

Q Was anything said about Mr. Brunning getting possession of the house that she then occupied? A She merely claimed she had this right to stay there until August 1, 1925.”

Christian Brunning denies that Mrs. Dele, at the time he saw her, in June, told him that she was entitled to stay in the property until *August 1, 1925*. Mr. Young, called to corroborate Christian Brunning, indirectly with respect to the statements made by Mrs. Dele to Christian Brunning in June, 1923, in fact, corroborates Mrs. Dele.

Mrs. Dele says that, when she met Christian Brunning in June, 1923, she told him that Marshall was buying the property from her and that Christian Brunning asked her if she had her full amount of money and that she told him “no”

and that *she had the right to stay on the property until she had her full amount of money* (p. 66).

Mr. Young, called to corroborate Christian Brunning, attempted to say that Mrs. Dele had told him that she had told Christian Brunning that she had the right to stay in possession until *August 1, 1925*, but, on cross examination (p. 111), the following occurs—

“Q You had arranged this appointment in order to get some information? A Yes, sir.

Q When she said she was permitted to stay there until August 1, 1925, didn't you ask her how it came about? A *I think she said at that time that she was supposed to get her money by then, or words to that effect.*

Q *Didn't she say that she was to stay there until she got her money; and that she was supposed to get her money in 1925? A That might have been it.*

Q The two statements are quite different, are they not, in your mind as a lawyer? A Somewhat.

Q But you made no inquiry of her at that time as to how it came about; you made no further inquiry as to how it came about that she was to be permitted to stay there? A No, sir, I don't think I did.

The effect of Mr. Young's testimony is, therefore, that Mrs. Dele told him precisely what she says she told Christian, *i. e., that she did not have her money and that she was entitled to remain in possession of the property until she got it.*

But what motive would Mrs. Dele have to tell Christian Brunning anything other than what she says she told him? She had sold the property, so far as the record was concerned, in October, 1922, but, in *June of 1923, she was still in possession.* She was *not* in possession under the lease for the lease, which she had made to

Bobbink & Atkins, only gave her the right to occupy the *barn* (p. 113). She was not occupying the barn; she was occupying the house and had been occupying it since 1922, and she had a tenant in the house, *from whom she was collecting rent*.

The permission given in the lease for her to occupy the barn is immaterial for, having sold the property in October of 1922, *she ceased to be the landlord and Aldred or Marshall succeeded to her rights to possession under the lease*. So far as the lease was concerned, after Mrs. Dele sold the property in October of 1922, *Aldred or Marshall was the person entitled to the privilege under the lease*.

Her possession, therefore, of the house could not have been under the lease. *It must have been under some other arrangement or some other claim of right*.

And the most that Christian Brunning can say is that *he did not know what arrangements she had made* (p. 97).

If we take his story to be correct, **not knowing what arrangements she had made, he deliberately refrained from making inquiry**.

It is highly significant, we submit, that the summons, in the dispossess proceedings (p. 120) brought by Mrs. Dele against Heller, was issued on July 3rd, served on July 5th, returnable July 10th. The time originally fixed for the closing of the Marshall-Brunning contract was July 10th. It was advanced to July 5th. May it not have been so advanced because the summons, in dispossess, had been issued on July 3rd, and it was quite apparent that, *by July 10th at least, no one could deny knowledge but that Mrs. Dele*

was asserting a right of ownership in this property by bringing dispossess proceedings against a person occupying rooms in the house. It would be a matter of public record.

Christian Brunning says that, after title was closed, he collected the rents from Bobbink & Atkins—(p. 184)—

“Q Did anyone—did Mrs. Dele—protest against your getting the rent? A Yes, sir.

Q What was done, if anything, about it? A I spoke to Bobbink & Atkins’ man; they left it go for some time; and I understand they looked up the records and found out I was the owner; and they decided to pay me; and they did pay me.

Q When did you first get any money from them for rent? A In August, 1923.”

The conduct of Christian Brunning, after title was closed, indicates that he had previous knowledge of Mrs. Dele’s rights. He says that he instituted dispossess proceedings (he means ejectment) against Mrs. Dele to force her to move out of the house (p. 87). Before he instituted these proceedings he made no attempt to see her (p. 96).

He says (p. 101)—

“Q Didn’t you go to see her before you started ejectment proceedings, to ask her to get out, or something of that kind? * * *

A No, sir.

Q Why didn’t you, before you started suit to get her out? A Because she claimed she had a right to stay there; she told my lawyer she had a right to stay there until 1927, I believe.

* * * * *

Q * * * Now, I ask you why you started dispossess proceedings before you asked her to get out? A Because my attorney was taking care of it.

* * * * *

Q Did your attorney tell you how he got that knowledge? A Yes, sir.

Q How? A I believe it was from a man from Bobbink & Atkins.

Q Did your attorney tell you she claimed some rights? A He told me about it.

Q When did you have any talk with your attorney in which you spoke about some information which your attorney got from some real estate man from the Bobbink & Atkins' outfit, that Mrs. Dele had some rights? A I don't remember the date.

Q Was it before you started the dispossess proceedings? A Naturally, it would be."

Page 103—

"Q Why didn't you go over to Mrs. Dele and ask her what it was all about before you started suit against her; why didn't you ask her to please get out? A *She is very hard to explain anything to.*

By the Court.

Q *She is stupid?* A *Yes, sir."*

Counsel for appellants tried to help out, on p. 103, by suggesting that the attorney had told him that Mrs. Dele had some right or privilege *under the lease* with Bobbink & Atkins, but Christian Brunning says that his attorney did *not* tell him anything of the kind, and, as we have stated before, Mrs. Dele having sold the property, any privilege in the lease to the landlord was a privilege of Aldred or *Marshall*, not of Mrs. Dele.

Again, we submit that, in view of Mr. Young's statement that there was some questions about this Bobbink & Atkins lease and that he asked Christian Brunning to find out "just what the terms were under the renewal," it is highly significant that *no inquiry was made of Marshall at the time of the closing of the title.*

The ejectment proceedings were, in fact, started on August 13, 1923.

Is it not, to say the least, peculiar that it was so easy for appellants to acquire information that Mrs. Dele asserted rights in this property, precisely the same as she asserts them now, so soon *after* the transaction had closed and that they did not acquire any of this information *before* July 5th, when the contract closed, although on July 3rd Mrs. Dele had brought proceedings in dispossess against a person occupying a part of the premises, Mrs. Dele claiming to be the owner and, on July 5th, the summons was served, July 10th being the return day, and although it was *prior* to July 10th, the original date set for closing the contract, that Mr. Young had his talk with Mrs. Dele in which Mrs. Dele asserted her rights in the property *precisely as she has asserted them here, i. e., that she was entitled TO POSSESSION until her money was paid?*

As bearing upon the credit to be given the testimony of appellants and their witnesses, it must not be overlooked, we submit, that Mr. Young, when he first testified, led the court to believe that what Mrs. Dele had said to him was that she was entitled to possession *until August 1, 1925* (p. 110). The import from his testimony at this point is that this was *all* that she had said.

But, on cross examination, he is forced to admit that she *might* have said that she was to stay there *until she got her money and that she was to get her money by August, 1925* (p. 111), and he said (p. 111)—“I think she said at that time that she was supposed to get her money by then, or words to that effect.”

He did not say *this* on direct examination, although, as a lawyer, he realized that the statements were quite different in their legal effect (p. 111).

Mr. Young, as a lawyer, admits (p. 114) that, if he had known that Mrs. Dele was occupying the house, he would have made some inquiry as to what right she had therein. He says that he did not know that she was occupying the house (p. 115). He seeks to excuse himself for not making inquiry by asserting that he believed that Mrs. Dele was occupying under the lease. But even if she had been occupying the *barn*, that portion of the premises set apart to her under the lease, she was occupying it *without right so far as Aldred or Marshall was concerned*, unless she had some arrangement with *Marshall*, for Marshall had succeeded to her rights under the lease.

But Christian Brunning *knew* that she was occupying the house, and he also knew (or thought he did) that the law required that inquiry be made by intending purchasers of persons in possession and he acted upon that knowledge, so far as Bobbink & Atkins were concerned, although, significantly, he did not ask them to whom they were paying the rent, which might have disclosed an interest in Mrs. Dele adverse to Marshall, and yet *he made no inquiry whatever of Mrs. Dele, although he says that he knew that he had to get her out of the house, and he did not know how he was going to do it.*

We submit that, upon this testimony, it is clear that the Brunnings, appellants, **actually knew that Mrs. Dele had not been paid and asserted a right in the property and had a vendor's lien.**

Mrs. Dele says that she told Christian Brunning that she was entitled to possession of the property until her money had been paid. If she, in fact, told him that then *he had actual knowledge*. He denies it, but that is not determinative.

Considering his testimony and that of Mr. Young as a whole we submit that it is apparent that Mrs. Dele is telling the truth. The conduct of the Brunnings, appellants, in the closing of this transaction and their subsequent conduct is consistent only with knowledge upon their part and a deliberate attempt to escape the consequences of that knowledge.

But if they did not have actual knowledge, they had such knowledge of Mrs. Dele's condition, of her business inability, and of the circumstances surrounding her as that they believed that if they made inquiry they might discover matters which would prevent them from taking title to this property, and, so knowing, they deliberately closed their eyes.

Lastly, under the law, by reason of the fact that Mrs. Dele was in *actual possession of this property* and of the other facts known to the Brunnings, the duty was cast upon them to make inquiry of her, which duty *they carefully refrained from performing, and they are bound by such knowledge as they would have acquired had they made inquiry.*

And we again direct attention to the fact that Heller was in possession of part of the house under a renting from Mrs. Dele.

Heller being in possession, there was, under the law, an obligation on the Brunnings to in-

quire of him what his rights were and how he derived them for, under the law, possession by a tenant is notice of the landlord's rights.

If Christian Brunning had inquired of Heller he would have discovered that he had rented the premises *from Mrs. Dele* and the obligation then would have been upon him to inquire of Mrs. Dele how it was that, after selling the property, she was still exercising acts of ownership over it.

THE LAW.

No argument is made that Mrs. Dele was not defrauded or that, as between her and Marshall, she had not the right to set the entire transaction aside and to retain the lands, or, if she elected, to retain a vendor's lien upon the lands for the full amount of the purchase price.

The only question is whether these rights of Mrs. Dele may be asserted against the Brunnings, appellants, and the solution of that question depends upon whether the Brunnings had actual or constructive notice of her rights, for constructive notice is equivalent to actual notice, or, as the courts have otherwise put it, whatever is sufficient to put the purchaser on inquiry in relation to *prior equities* is equivalent to notice of such equities, and whatever puts a party upon inquiry amounts to notice.

Raritan Water Power Co. v. Veghte, 21 N. J. E. 463;

Lee v. Woodworth, 3 N. J. E. 36, 37;

Smallwood v. Lewin, 15 N. J. E. 60;

Hoy v. Bramhall, 19 N. J. E. 563, 564.

One of the latest cases upon the subject is *LeCombe v. Headley*, 91 N. J. Eq. 63, in which

case this court, holding parties bound to constructive notice of an unrecorded deed, said:

“* * * and it is entirely settled both in this state and elsewhere, that possession of land, if open, notorious, and unequivocal, constitutes notice of the right, or claim of right, under which the party in possession occupies it; and this notice is effective, not only as to those who have actual knowledge of the occupation, but as to all the world. *It is the duty of an intending purchaser of land which is in the possession of a person other than the intending grantor to inquire of the occupant, and ascertain the rights under which he holds, and if he does not make such inquiry he is chargeable with notice of such facts as the inquiry, if it had been in fact made, would have revealed.*”

In *Zurick v. Perlmutter*, 94 N. J. L. 328, a tenant was in possession of lands and there was a collateral agreement between the landlord and the tenant, and the court said—

“It is well settled that the possession of the tenant amounts to notice of his rights, *not merely under the lease, but also under collateral agreements, such as a contract for the purchase of the estate.*”

In *Essex County Nat. Bank v. Harrison*, 57 N. J. E. 91, Vice-Chancellor Pitney said, at p. 96—

“He contends that the notice there referred to is a notice of the actual character of the instrument, and that the possession of the defendant Edwards, under his deed, could not have the effect of giving the complainant notice of the actual character of this instrument.”

“The complete and simple answer to this argument, as it seems to me, is that the effect of the constructive notice, due to possession, *is a notice of everything which a party interested in the premises would get by in-*

quiring of the party in possession. In other words, the actual possession of the premises puts any person having a claim, or seeking to acquire title thereto, to an inquiry of such person as to what his title actually is; and until the complainant has actually made inquiry and has received an untrue answer from Mr. Edwards in this case, he is not in a position to say that he is not chargeable with notice of what his actual right and title was and is. *Non constat*, if he had inquired of Mr. Edwards, he would not have told him the precise situation of affairs."

In *Wood v. Price*, 79 N. J. E. 620, this court held that, not only was the possession of the tenant notice of the tenant's rights but *also notice of the rights of the landlord under whom he held*. The court said at p. 624—

"Now, it is the duty of a purchaser to inquire of the person in possession of the premises and ascertain the rights under which he holds, and if this duty of inquiry be disregarded, the purchaser is chargeable with notice of such facts as the inquiry, if it had been in fact, made, would have revealed. 2 Lead. Cas. Eq. 188; *Holmes v. Stout*, 10 N. J. E. 419; 426; *Havens v. Bliss*, *supra*; *Essex County National Bank v. Harrison*, 57 N. J. E. (12 Dick.) 91."

And p. 626—

"Now, an inquiry of a tenant of necessity would result *in being informed of the landlord under whom the tenant occupied, and whose possession it was that the tenant held*, and through whom the latter must assert whatever right he claims to retain the premises."

"To limit, therefore, the effectiveness of the inquiry merely to the rights of the tenant, is to deprive the notice of practical and beneficial usefulness to a purchaser, a result which must have been originally intended in the beneficial design for his

protection, at the foundation of the doctrine.”

“As Chief Justice Field of California says, in the well-considered case of *Dutton v. Warschauer*, 21 Cal. 609, in discussing the subject: ‘It is not easy to give to the fact of possession any influence as notice without making it notice of *all such matters as a prudent man, desirous of purchasing the property, would naturally inquire about respecting the title.* Ascertaining that the possession of the occupant is that of a tenant, he would, in the ordinary course of things, proceed to inquire as to the title of the landlord.’

“*Dickey v. Lyon*, 19 Iowa 544, contains an instructive examination of the question, and concludes: ‘It seems to follow therefore that if the possession of a tenant is notice of his lease and its contents, as the authorities uniformly concede, *it must necessarily become notice of the fact that the landlord claims title and holds possession adverse to the proposed purchaser’s vendor*, and having notice of such fact, he cannot become a good-faith purchaser of the estate.’

* * * * *

“We conclude, therefore, that the possession of premises *by a tenant is constructive notice not only of such tenant’s rights and equities, but as well notice of those of the landlord.*”

And in this connection, we direct attention to the fact that Heller was in possession of a part of those premises *as tenant of Mrs. Dele*. And Christian Brunning refrained from making any inquiry of him. If he had made such inquiry he would have discovered that Mrs. Dele claimed the right to rent part of the house. The possession of Heller *as tenant was notice of Mrs. Dele’s rights for Mrs. Dele was Heller’s landlord.*

In *Havens v. Bliss*, 26 N. J. E. 363, which case has been approved by this court in several cases, the Chancellor said (p. 370)—

“But it is insisted that Bliss and Slater are bona fide purchasers for valuable consideration, without notice of the claim now set up by the complainant. It is urged on their behalf, that the possession of the complainant was, inasmuch as the legal title was of record in the name of her deceased husband, notice only of her claim to quarantine as his widow. It is true, there are to be found cases in this country in which the notice which possession gives is confined to a known title under which the possessor holds, but the rule is, and I see nothing to take this case out of its operation, *that the occupancy of land is equivalent to notice to all persons dealing with the title, of the claim of the occupant.* If a tenant has even changed his character by having agreed to purchase the estate, his possession amounts to notice of his equitable title as purchaser. 2 Sudg. on Vend. (11th Am. ed.) 543; *Daniels v. Davidson*, 16 Ves. 254. In *Baldwin v. Johnson*, Saxt. 1 Ves. Jr. 440, the language of Lord Rosslyn, in *Taylor v. Gibbert*, 1 Ves. Jr. 440, is quoted with approbation, and applied to a case where a mortgagee had taken her mortgage on land, the legal title to which was in the mortgagor, but was subject to a trust in favor of another person, of which the mortgagee has no knowledge or information. The tenants of the mortgagor were in actual possession of the property. The court held her bound to inquire of them as to the title. The language of Lord Rosslyn above referred to is: ‘It was sufficient to put the purchaser upon inquiry, that *he was informed the estate was not in the actual possession of the person with whom he contracted; that he could not transfer the ownership and possession at the same time; that there were interests, as to the extent and terms of which it was his duty to inquire.*’ ”

The latter statement of the Chancellor, quoting from *Taylor v. Sibbert*, 1 Ves. Jr. 440, is particularly apposite to this case, *i. e.*, it was sufficient to put the purchaser upon inquiry that he was informed that *the estate was not in the actual possession of the person with whom he contracted*; that he could not transfer *the ownership and possession* at the same time; that there were interests, as to the extent and terms of which it was his duty to inquire.

Take Christian Brunning's statement at its face value. He says that he *knew that Mrs. Dele was in actual possession of the premises*, or part of them. He further says that he knew that Mrs. Dele was collecting *the rent for all of them*. He also says that (p. 95) "You knew you had to get her out of that property." Answer "Yes, sir."

He also says (p. 97)—

*"I didn't know what arrangements she had made. * * *"*

He also says that he knew the law required him to make inquiry of the person in possession (p. 93), yet he says (p. 96)—

"Q And although you knew she was in possession; and although you knew the law with respect to notice and of a person's rights who is in possession, you deliberately refrained from going over and asking her?
A I did not ask her."

Every element required by the cases to put appellants upon notice was present. In the language of the Havens-Bliss case, they knew that the estate was *not in the actual possession of the person with whom they contracted* and they knew that the *person with whom they contracted could not have transferred the ownership and possession at the same time*.

It would make no difference in this case if Christian Brunning did not know the law. That he did know the law, however, is potent evidence that, if he is injured in any way, it is his own fault.

But it is held in *Wood v. Price*, 79 N. J. Eq. 620, that possession of the tenant is notice of the *landlord's* interests. Bobbink and Atkins were tenants of this property and their lease was with Mrs. Dele. Heller was a tenant. Mrs. Dele was the *landlord*. Christian Brunning went to Bobbink and Atkins to ascertain what their rights were but carefully refrained from asking them any questions as to the rights of the landlord, although, as he says, he knew that Bobbink and Atkins were paying rent to Mrs. Dele. He made no inquiry of Heller. At the time of the transfer in Mr. Young's office no questions were asked of Marshall and he was not asked to produce an assignment of the lease of Bobbink and Atkins from Mrs. Dele. As matter of fact, Mrs. Dele never assigned the lease, and always remained the landlord of Bobbink and Atkins, so far as the lease was concerned. No questions were asked of Marshall as to Heller's rights. It is somewhat significant that Christian Brunning says that the first intimation that he had, as to the claim of Mrs. Dele, was information, which he obtained from someone connected with Bobbink and Atkins *after* the transaction was closed. Had he inquired, prior to the transaction closing, he would have received the information *before* it closed, at least it will be so presumed.

Essex County Nat. Bank v. Harrison, 57 N. J. E. 96, at bottom of the page.

In *Roberts-Horsfield v. Gedicks*, 94 N. J. E. 82, at p. 84 Vice-Chancellor Backes said:

“Mrs. Gedicks II is not an innocent purchaser for value and is chargeable with notice of the complainants’ rights. She, perhaps, did not know all the circumstances attending the gift, but the open and notorious possession by the complainants put her on notice and reasonable inquiry would have disclosed the truth.”

Appellants are charged with notice of *all* of Mrs. Dele’s rights, which include the right to set aside the transaction *in toto*, or to a vendor’s lien for the entire purchase price.

A vendor’s lien is recognized in this State and will be enforced not only against the vendee but as against any person purchasing the property affected with notice, actual or constructive.

Van Doren v. Todd, 3 N. J. E. 387;

Brinkerhoff v. Vansciven, 4 N. J. E. 251;

Graves v. Coutant, 31 N. J. E. 763.

In *Graves v. Coutant*, 31 N. J. E. 763, this court said, with respect to the enforceability of a vendor’s lien against a second purchaser:

“It is not only necessary that a defendant setting up a defense of a bona fide purchaser should clearly and unequivocally state in the answer that the purchase was for value, without notice, but he must also set forth all the particulars of the purchase, and must distinctly prove them.”

Nor is it necessary that the second purchaser know that there is a vendor’s lien. All that it is necessary is that he know or *be charged with knowledge* of the facts and circumstances which create such a lien, or, in other words, it is not necessary to show that the second purchaser knew the law.

Van Doren v. Todd, 3 N. J. E. 397.

Under Mrs. Dele's *express agreement with Marshall*, according to her statement, she was entitled to retain possession of the property until the entire purchase price had been paid. This is no more or less than saying that, *by express agreement with Marshall, the vendor retained her vendor's lien*. Appellants took charge with notice of *that* right.

Bearing upon the conversation which Christian Brunning says that he had with Mrs. Dele in June is the case of *Stanford v. Lyon*, 37 N. J. E. 94, in which Vice-Chancellor Van Fleet, at p. 109, said:

"The defendant William Lyon testifies that shortly before making the contract of purchase, he informed the complainant that he intended to purchase and asked him what part of the premises he claimed the right to use, and that the complainant replied he claimed the store, the cellar under the store and the office in the rear; that he then inquired if that was all, and that the complainant answered 'yes.' The defendant says when he made these inquiries, the question whether the complainant had any rights in the yard was before his mind, but he does not know whether it was before the mind of the complainant or not, and that the reason he did not ask him directly whether he claimed any rights in the yard or not, was because his statement as to what he claimed corresponded, except as to the office, with what Lemuel Thomas had told him the complainant was entitled to, and also because Lemuel Thomas had previously informed him the complainant had no rights in the yard. *The reasons he gives for not making inquiries respecting the yard seem to me to be both unnatural and insufficient, and to indicate that his questions were framed rather with a view of getting as much information as might be useful than with a desire to learn the whole truth.*"

Language more clearly apposite to the conduct of the defendants in this case could not have been used.

The Stanford case was modified in *Lyon v. Stanford*, 42 N. J. E. 411, but the modification in nowise affected the language heretofore referred to.

Appellants rely, upon the matter of constructive notice, upon *Van Keuren v. Central R. R. Co.*, 38 N. J. L. 165; *Bingham v. Kirkland*, 34 N. J. E. 229; *Cohn v. Plass*, 85 N. J. E. 153, at p. 158; *Groton Savings Bank v. Batty*, 30 N. J. E. on p. 126, at p. 133; *Rankin v. Coar*, 46 N. J. E. 566.

In these cases the courts of this State have announced the rule that the continued possession of a grantor does not put a purchaser of the grantee upon inquiry. The rule is opposed to that in other States, 2 Pomeroy Equity Jurisprudence, 4th Ed., sec. 617, p. 1175.

It is, we submit, also opposed to the reasoning of *Havens v. Bliss*, 26 N. J. E. 363, which has several times been subsequently referred to by this court, with approval, in which case the Chancellor quoted with approval, the language of Lord Rosslyn:

“It was sufficient to put the purchaser upon inquiry, that he was informed the estate was not in the actual possession of the person with whom he contracted; that he could not transfer the ownership and possession at the same time, that there were interests, as to the extent and terms of which it was his duty to inquire.”

The reason underlying all of the cases holding that one is bound by constructive notice of the rights of tenants, etc., in possession is, as stated by the Chancellor in the last cited case, that the person with whom the vendee contracts *cannot*

deliver possession and ownership at the same time. And this reasoning applies with equal force to a grantor who remains in possession after conveyance. So long as the grantor remains in possession, the grantee cannot convey ownership and possession at the same time. The grantor must be in by some arrangement dehors the grant, unless he is a trespasser and a wrongful holding will not be presumed.

It is said that the reason why the ordinary rule is not applied in the case of a grantor remaining in possession is that, because he has made an absolute conveyance, he cannot derogate from his own grant, *but vendor's liens are recognized in this State.* A grantor might remain in possession under his claim of vendor's lien. As between himself and the grantee *he is entitled to derogate from his own grant to the extent of setting up a vendor's lien.*

Vice-Chancellor Berry in *Thatelbaum v. Neidorf*, 100 N. J. E. 236, at p. 237, said that it was settled that a vendor's lien for the unpaid purchase price of land attaches *at the time of the conveyance from the vendor to the vendee.* There is nothing to prevent a grantor, *after conveyance, or at the time of conveyance,* making an arrangement with his grantee for a lease and so continue in possession under a lease. Is it possible that the continued possession of the grantor would not be notice of his rights *under the lease?* If not, why not? if the broad language of the Supreme Court is to be taken as settling the law that, in *no instance,* is the continued possession of the grantor notice of any rights in the property. An assertion of such a right under such a lease would *not* be a derogation from his own grant because it would be an arrangement made *after the conveyance.*

To the extent of setting up a vendor's lien, claiming under an unrecorded mortgage, or setting up fraud in the conveyance, a grantor is permitted to derogate from his own grant as between himself and the grantee, and the only question is whether a subsequent purchaser from the grantee is put upon constructive notice because of the retention of possession by the grantor.

In view of the fact that it is apparent that, if a grantor remains in possession after conveyance, the grantee cannot convey to another *possession and ownership at the same time*, and that, to use the language of Christian Brunning himself, *he knew had to get her out in some way*, there is no logical distinction, we submit, between the continuance of possession by a grantor and by anyone else.

But, assuming that there is a distinction, the courts of this State have *only* held that the *mere* fact that a grantor remains in possession is not sufficient, *in and of itself*, to put an intending purchaser from the grantee upon notice of the grantor's rights.

In this case, we have much more than the *mere fact* that Mrs. Dele remained in possession. We have facts and circumstances, *brought to the knowledge of the intending purchaser*, which made it *his duty to inquire*, and facts and circumstances which indicate that, to say the best for appellants, there was a deliberate failure to make inquiry for fear of what might be discovered and the language of Vice-Chancellor Van Fleet in *Stanford v. Lyon*, 37 N. J. E. 94, at p. 109,

“The reasons he gives for not making inquiries respecting the yard seem to me to be both unnatural and insufficient, and to in-

dicate that his questions were framed rather with a view of getting as much information as might be useful than with a desire to learn the whole truth."

is apposite.

The law is settled, beyond the need of citation of authority, that one who deliberately closes his eyes is bound with notice of what he would have discovered had he opened them.

Upon this branch of the case the matter is one of fact. Indeed, every case where the question of notice is involved must stand upon its own facts.

The rule approved by our courts is recognized in Oregon. The Oregon Court in *Randall v. Lingwall*, 43 Oregon 383, 73 Pac. 1, refused to apply it where the grantor did not himself remain in possession but turned his possession over to a tenant. The Oregon Court said:

"And, finally it is argued that the possession of Gans was not notice to the defendant of the title of O. P. Randall, because of the rule announced in *Exon v. Daucke*, 24 Ore. 110, 32 Pac. 1045, that the continued possession of land by the grantor is not notice to a bona fide purchaser from the grantee of any claim to the property by the grantor. *There is authority for holding that this rule does not apply where a grantor remains in continuous possession long after the recording of the deed.* *Bennett v. Robinson*, 27 Mich. 26; *Stevens v. Hulin*, 53 Mich. 93, 18 N. W. 569. But whatever the rule may be upon that point, *the doctrine can have no application here, because the grantor himself did not remain in possession of the property. Gans' possession was sufficient to put the defendant upon inquiry as to the rights under which he was holding, and as such inquiry, if prosecuted, would presumably have disclosed his landlord's title, the defendant is chargeable with notice thereof.*"

The situation there present was analogous to the situation at bar for, in this case, the first and second floors were rented by Mrs. Dele to Heller, and a part of the premises were in the actual occupancy of Heller. Mrs. Dele was collecting rents, and, on July 5th, instituted a suit to dispossess Heller, which suit went to judgment for possession, and then, on July 21st, 1923, the amount of rent was paid into court and, by the court, paid to *Mrs. Dele*. Inquiry of Heller, who was in possession, would have developed that *his landlord* was *Mrs. Dele* and that Mrs. Dele was exercising acts of ownership over the property, wholly inconsistent with ownership by Marshall. A large part of the property was in the possession of Bobbink and Atkins, as lessee from Mrs. Dele, and no inquiry was made of them as to whom they were paying the rent to.

Recognizing the rule of law as settled in this State, under the distinction made in the Oregon case, it was the duty of appellant to make inquiry of Bobbink and Atkins and of Heller and, in either event, inquiry would have disclosed *more than the mere possession of a part of the premises by Mrs. Dele*. It would have disclosed that *Mrs. Dele was actually exercising the rights of an owner, renting the premises and collecting the rents*.

The Oregon court also indicates that the rule will not be applied where the grantor has been a long time in possession.

In other words, it comes down to a question of fact in each particular case,—*were circumstances present such as would put a reasonable man upon inquiry?* One of the circumstances which certainly can be taken into consideration, although not decisive, is the fact that the grantor

remains in possession. All other circumstances present must be considered in the light of *that* fact and it is the concrete whole, including that fact, which must be taken into consideration.

The rule as settled here can only be said to be that the *mere* fact that grantor remains in possession standing alone cannot be considered as putting an intending purchaser upon inquiry *as matter of law*.

But the rule relied on by appellants in any event cannot apply here for Mrs. Dele was *not* the grantor of Marshall, Christian Brunning's vendor. She was the grantor of *Aldred who in turn conveyed to Marshall*. It is no answer to say that the person to whom she actually sold was Marshall, for we are now concerned with the *record* only and the record showed Mrs. Dele's deed to Aldred as recorded in October, 1922, and the deed from Aldred to Marshall not until March, 1923. How came *Mrs. Dele to remain in possession after her grantee had conveyed to Marshall*? She may have had arrangements with Aldred who was *not* defendant's grantor. It is no answer to say that, in fact, she had no such arrangements because Aldred was but a dummy for Marshall and whatever arrangements she had were with Marshall, for the question here is only—was the record title in such shape as to excuse inquiry *as matter of law*? It was *not* for, under the rule approved by this court it is only where the record shows that the *grantor* of the *prospective vendor* is in possession that *mere* possession is not notice *as matter of law*.

The ordinary rule therefore applied and her possession was notice of her rights.

Some of the facts and circumstances present in addition to the known possession by Mrs. Dele were:

First: Christian Brunning is a nephew of Mrs. Dele, a son of Johanna Brunning, and the son of *the* Mr. Brunning who helped Mrs. Dele out at the time she bought the property. He lived directly across the street. He had full knowledge of Mrs. Dele's mental incapacity.

Second: In June, 1923, he met Mrs. Dele on the street and he says that he asked her if she wanted to sell the property and she said that she had sold it. He said that she said nothing more. He knew that Mrs. Dele was continuing to occupy part of the premises but made no inquiry as to under what right she was occupying. He was asked why he did not ask her why it was that she was living there, if she had sold the property, and his answer was: "*A I did not know what arrangements she had made,*" and he finally says: "I did not ask her because I did not know whether I was in a position to buy the property or not." He thought that it was his duty to inquire, yet he refrained from inquiring. Why? It is immaterial whether under the law he was forced to inquire? The question is: did he deliberately refrain from inquiry? Whatever the law may be he thought it was his duty to inquire of any one in possession and he deliberately refrained. Why?

Third: Within two days he made a contract to purchase the property. He did not see Marshall. He saw only Karl, the real estate agent who had knowledge of all of the circumstances under which Marshall purchased from Mrs. Dele, and *full knowledge of the fraud*. Mr. Young, Brunning's attorney, was not present at the

time the contract was made. Yet the contract was prepared by Mr. Young.

Fourth: Mr. Young says that he did not know that Mrs. Dele was occupying part of the premises. Brunning made inquiry of Bobbink and Atkins with respect to their rights under their lease, and he says that he had known for a long time, that the burden was on the purchaser to find out what the rights of the person in possession of the property were. He excuses his failure to ask Mrs. Dele anything because he says that he inquired of the Clifton Trust Company because he thought it would give him more information. He says that he knew that she was in possession of part of the property, but he made no efforts to find out as to how he was going to get her out except inquiry of his attorney. He finally says that he made no inquiry because he knew she no longer owned the property; "a search revealed that she had been paid; that she signed the deed." He then says that he did not ask because he thought it was unnecessary.

It would almost seem as if his attorney knew the rule of law which is referred to in the brief of counsel for appellant, and, with that knowledge of the law, refrained from making any inquiry not actually required by what he conceived to be the law, overlooking that, even if the law (as matter of law) does not put a burden upon an intending purchaser to inquire of a grantor of the person from whom he is buying who is in possession, there may be circumstances present which make it apparent that the inquiry is not made because of a fear of what the inquiry would disclose, and, in such a case, the rule of law referred to does not protect the intending purchaser.

Fifth: Although the title was to close under the contract on July 10th, the date of closing was advanced to July 5th. Why? The only reason given by Christian Brunning is that he was advised by his attorney that the search would be ready by that time. A better reason is that on July 3rd, Mrs. Dele, *as landlord*, caused a suit to be instituted in the District Court of the City of Paterson to oust a tenant, which suit was returnable on July 10th. If that suit had come on for trial before the passing of title (and it did come on on July 10th) the claim of Mrs. Dele would have been so public as that appellants could hardly have denied knowledge. It was not until the day fixed for the passing of title that Christian Brunning met Marshall.

Sixth: Mrs. Dele did not make a deed directly to Marshall. Her deed was made to Aldred. Marshall's deed was held off record from October 20th, 1922, to March 19th, 1923. Mr. Young, the attorney for appellants, had never met Karl or Marshall until the day of closing title. Christian Brunning had never met Marshall until the same time. In view of Christian Brunning's knowledge that Mrs. Dele, although she had sold her property, was still in possession, it would have been the most natural thing in the world for someone to have asked Marshall how it was that *she* was occupying the property, particularly in view of the fact that Christian Brunning said he knew Mrs. Dele was in possession and that he knew that he had to get her out, and that he did not know *what arrangements* she had with Marshall. In view of the fact that the Aldreds had intervened between Mrs. Dele and Brunning it would have been the most natural thing in the world to have asked Marshall about the Aldreds. In real estate transactions, where

property is leased by the owner selling, it is customary to get an assignment of the lease from the vendor. This property was leased to Bobbink and Atkins. There was a question as to whether a renewal had been exercised. Whatever the fact may be, Christian Brunning *thought* that Mrs. Dele was collecting the rent. Yet, at the time the transaction was closed in Mr. Young's office, no inquiry with respect to the rights of Bobbink and Atkins was made; no assignment of the lease was requested; no statement requested as to how much rent had been paid.

Christian Brunning's conduct, after title was closed, indicates that he had knowledge of Mrs. Dele's rights. He instituted ejectment proceedings against Mrs. Dele without making any inquiry as to her rights. He did not even request her to get out before he started suit. If he thought that she had no rights or claimed rights, why not make a request before instituting suit? It would have been the natural thing to do. His only excuse for not doing so was "that she is very hard to explain anything to," and is stupid.

Seventh: The failure to produce Karl, who knew of the fraud, to corroborate Christian Brunning *that he did not know of the fraud* is a significant circumstance, and goes to the weight to be given the testimony of Christian Brunning as to what Mrs. Dele told him before he made the purchase.

If the court believes the testimony of Mrs. Dele as what she said to Christian Brunning it must be found, we submit, that there was not only a deliberate closing of the eyes but actual knowledge, for Mrs. Dele says that she told him (p. 66) that "Marshall was buying it from me and that he would have to ask Marshall; and he asked

me if I had my full amount of money, and I told him 'No.' ” “Q What else was said? A He said he was going to get married and would like to buy the place. Q Was anything said about your staying in the property? A Yes, sir; I said I had full right to stay there until I had my full amount of money.”

Conclusion.

This case was decided below upon an issue of fact, as is impliedly conceded in appellants' brief, for whether a person is an innocent purchaser for value without notice depends upon the facts of each particular case. The effect of the opinion below is that, considering all of the circumstances of this case, appellants were not bona fide purchasers for value without notice. While it is true that this court is not bound in anywise by the finding of fact below it is equally true that this court will not ordinarily disturb a finding of fact where there appears to be evidence upon which it can be based for the trial court has had the opportunity of seeing the witnesses and observing their demeanor when under examination and sometimes the demeanor of the witnesses speak louder than their words.

It is respectfully submitted that the decree appealed from should be affirmed with costs.

Respectfully submitted,

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