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N. J. Court of Errors & Appeals.

Between
ANDREW OTTERSON, *et al.*,
Appellants,
and
SARAH M. HALL,
Respondent.
} *On Bill, &c.*

POINTS FOR RESPONDENT.

Sarah M. Hall and Rebecca B. Haines were the daughters and only children of Samuel Haines, a wealthy resident of Camden county, New Jersey. He died when his daughters were very young children, and each of them inherited a considerable estate. Rebecca B. Haines was seized in fee of a large farm in Moorestown, New Jersey, and of a very considerable estate besides. The farm is of large value. On October 1st, 1856, Rebecca intermarried with James Otterson, Junior, and on the second day of March, eighteen hundred and fifty-eight, a child was born of the marriage, who died on the twenty-ninth of the same month. On the tenth day of March, 1863, Rebecca B. Otterson, formerly Haines, departed this life, intestate, leaving no issue her surviving—and leaving the complainant, Sarah M. Hall, her only sister and sole heir-at-law. The marriage of Rebecca with James Otterson, Junior, and the birth of issue vested in James Otterson, Junior, an estate by the curtesy in the aforesaid farm, and on the death of Rebecca he, as

we contend, was entitled to and took possession of the farm, as tenant by the curtesy, and continued to occupy the same as such tenant by the curtesy until his death—James Otterson, Junior, died about the 24th of September, 1890. The bill in this cause was filed on the 10th of January, 1891, about three months after his death. James Otterson, Junior, is shown by the evidence to have been a lawyer in Philadelphia of some prominence, and a shrewd business man. The evidence also shows that Rebecca B. Otterson, his wife, took no part in the management of her own affairs, while she was a single woman, but that her property was managed by her cousin, John Kaighn, and that she refused to take any part in it or to hear any explanations about it, but always declared herself entirely satisfied that he was managing her property in a proper way. On her marriage her husband, James Otterson, Junior, entered upon the management of her entire estate and managed the same himself exclusively. On the 25th day of February, 1858—six days before the birth of the child of James and Rebecca Otterson, Otterson and his wife executed a deed conveying the said farm at Moorestown to James E. Gowen—a particular friend of Otterson, for a nominal consideration, upon the following trusts set forth in the said deed:

First. That Otterson and his wife, or either of them, during their joint lives and the life of the survivor of them, during the residue of his or her life, might occupy the premises or lease the same to other persons, and have the power to collect and receive the rents, with power to either of them to receipt for the rents individually, notwithstanding the coverture of said Rebecca, and with power to the attorney or agent of either of them to give good and valid receipts at law; but with a proviso that the rents, by whomsoever received, should be for the sole use of Rebecca B. Otterson, without being

subject to any contracts or debts of her said husband.

That Otterson and his wife, or the survivor of them, might sell and mortgage and otherwise encumber all or any part of the farm and make good conveyances thereof; and that all moneys received upon such sales or encumbrances should be for the sole and separate use of Rebecca, without any liability on the part of the purchaser of any part of the premises to see to the application thereof.

That the trustee would permit Otterson and his wife and the survivor of them, to manage the farm as to them, and the survivor of them should seem meet and proper, and Rebecca was authorized at any time during her life to appoint to whom all or any part of the premises should go after her decease and the decease of Otterson. And it was declared that if Rebecca Otterson should not by will appoint to whom the premises should go, then James Otterson at any time during his natural life might by will dispose of the premises to whomsoever he might choose. The last trust was, that if neither James nor Rebecca should dispose of the premises by will, then the trustee shall hold the farm for the right heirs at law of Rebecca, and by good conveyance convey the premises to the said right heirs of Rebecca in fee, in such shares as the heirs would have been entitled to had Rebecca died intestate. To these trusts there was appended an agreement between the parties providing for the revocation of the uses and trusts declared in the deed, but the revocation was only to be made by James Otterson and Rebecca, *jointly*, during their lives, and by the survivor of them. There was no power of revocation whatever retained by Rebecca Otterson, who was the donor of the trust, which she could exercise independently during the lifetime of Otterson, her husband.

It will be apparent from an examination of these various trusts, that the object of Otterson was to obtain the control of this property during his lifetime absolutely, with power to collect all the rents and income thereof, and to prevent his wife, the owner of the farm, from at any time during his lifetime, depriving him by revocation or otherwise, of the advantage she had thus given him. This deed of trust, although executed and delivered on the 25th day of February, 1858, was not made public until the 22d day of January, 1864, nearly six years after its execution and delivery; and on that day it was placed on record in the clerk's office of the county of Burlington. James E. Gowen, the trustee named in the said deed, was an intimate friend of Otterson before his marriage, and he and Otterson boarded together at the house in Philadelphia, where Otterson became acquainted with his wife, Rebecca, and subsequently married her. As I have said, Rebecca Otterson died on March 10, 1863; the trust deed was recorded on January 22d, 1864. Between the date of Rebecca Otterson's death and the record of the deed, Gowen made a deed in fee of the premises to James Otterson; and on February 16, 1885, Gowen died. After Rebecca's death, Otterson told the complainant, who was her sister and heir-at-law, that Rebecca had given him the farm, but that when he died all interested would find that he had done justice to her and her children. On Otterson's death a will was found executed by him, but not in the presence of witnesses, so as to be effectual as a will under our statute; and in that will he devised the farm in question to the children of the complainant. Upon the death of his wife James Otterson, Jr., entered into the possession of the farm, and by the laws of this State he was entitled so to do as tenant by the curtesy; he was entitled, furthermore, as such tenant, to retain possession against the complainant and every one else, until his death in September, 1890. During

all that time no action of ejectment could have been brought. It was brought by complainant within three months after Otterson's death. She filed this bill to set aside the deed of trust on January 10th, 1891. Her action was very prompt after her right to the possession accrued.

This is a sufficient statement of the facts in the case, and we may now take up the consideration of those principles of law which govern the rights of the parties.

Otterson died insolvent, and the question for decision is: Do the premises belong to Mrs. Hall, as heir at law of Mrs. Otterson, or shall they go to the creditors of James Otterson, Jr.? It is not pretended that these creditors, or any of them, extended credit to Otterson, or were induced to lend him money, or otherwise to become creditors by reason of his reputed ownership of the farm in question. They stand upon their bare legal right, devoid of all equity.

I.

The first question, then, for consideration is, whether the deed by Otterson and wife is a good deed in equity? Is it supported by the proofs which equity requires? The situation of the parties must first be considered. Mrs. Rebecca Otterson was the owner of the premises in fee. Otterson at the time the deed was made had no interest in them. The marriage act of 1852, had been passed a short time before his marriage, and was then in full force. By the effect of that act, Otterson had no tenancy by the curtesy initiate. *Porch* v. *Fries*, 3 C. E. Green, 204. As he could acquire no estate or right therein until issue should be born alive of the marriage, Rebecca was the sole donor in the deed of trust, for issue had not then been born. He was a lawyer, and therefore knew he would have no in-

terest in the lands in question, unless his wife should be delivered of living issue. Her health was delicate (p. 28); her delivery was imminent; it occurred within five days after the deed was made. If she had no issue born alive, and died in childbed, he lost everything. He might have suggested to her the making of a will in his favor. That he did not do that is some indication that he did not suppose she would be willing to permanently divert this landed estate from her own family, and vest it in his.

He did, however, just at this critical period, suggest the deed of trust. I say he did it, for no woman, much less the woman disclosed by the evidence in this case, would have thought of it, and so it was made. Its trusts were long and complicated, such as no unprofessional listener or reader could, without full explanation by counsel, understand. She certainly would not have been imagined that under the words "or the survivor of them," (p. 8 of Exhibits, l. 24,) lurked the right on the part of the husband absolutely to divest the title of his wife's heirs in favor of his own heirs. Nothing but disinterested professional advice could have been relied upon to make this clear to ~~him~~ her

It is said on the part of the defendants that the acknowledgment of the deed having been taken before Mr. Fish, a Commissioner of New Jersey, it follows that we must infer that the contents of the deed were made known to her and that she executed it voluntarily, without any fear, threats or compulsion from her husband.

The acknowledgment may be *prima facie* evidence of this. But it is not *prima facie*, or any evidence, that she understood it, or that it was explained to her by one competent to explain it. The act does not require that commissioners of deeds in other States be lawyers in those States, much less that they be lawyers who are versed in the laws of this State. The law is

satisfied if the commissioner read the deed, just as it is written. If it had been intended to go further, it is manifest that the legislature would have provided that all commissioners should be persons versed in the laws of this State, and that they should not only make known the contents, but see to it that the true meaning and effect of those contents was communicated to the person executing. The fact is that the acknowledgment has not altered the status of the deed in the slightest degree in this Court.

The language of the deed and the situation of the parties, make it evident that it was a most improvident deed, and a fraud upon the donor. Otterson's influence over his wife was exceptional. The affection exhibited on her part was so remarkable as to have attracted notice, so Faulkner, a builder, testifies, and to have been a common subject of conversation among the clerks in Otterson's office and the clients who resorted there. Mrs. Otterson continually accompanied her husband to his office and continually came for him to escort him home. Beside that, the evidence shows, and it is entirely uncontradicted, that Otterson was the exclusive manager of all her affairs, and stood not only in the relation of a husband, dominant in his wife's affections, and pre-eminently master, but also in the position of her confidential agent, entrusted by her with the entire management of her property and of this particular farm; always letting it to tenants and always collecting the rents, and she never taking any part in the matter.

The legal questions involved in this appeal have been so fully dealt with by the Vice-Chancellor in his able opinion, that but little in addition can be usefully said. At the risk of repetition, I submit the following propositions:

First. The deed or settlement was purely voluntary. At its date the husband had neither an estate by the curtesy to vest at his wife's death,

nor an estate by the curtesy initiate. The statute had abolished the latter, *Porch* v. *Fries*, 3 C. E. Gr. 204, and no child having being as yet born, he would not be on his wife's death entitled to the former, *Shurmur* v. *Sedgwick*, 24 Ch. Div. 597. Besides, as the Vice-Chancellor pertinently remarks, even on the assumption that he had some marital right in the land, he gave up nothing. He continued to have the same right under the settlement that he had before, and much more.

Second. It was made at a time when the wife was in extremely delicate health and on the eve of her confinement.

Third. It was made in favor of one who was not only her husband, but also her agent, entrusted with the exclusive management of her affairs, (p. 30, l. 33; p. 39, l. 20, to p. 40, l. 2; p. 40, l. 20 to 30.) The evidence on both sides shows she was dependent upon and that she trusted her husband to a degree that was unusual.

Fourth. There was no reason why, at the time the deed was executed, she should have conferred upon her husband such sweeping control over her property. The same clause which has enabled him to divert it from her sister to his own family would have enabled him to divert it from her children, had she died intestate leaving any.

Fifth. She did not have the benefit of independent advice.

Sixth. There is no affirmative evidence that the deed was fully explained to and understood by her.

Seventh. The deed contained no real power of revocation.

The following rules of equity apply to a case thus circumstanced:

"A wife," says Vice-Chancellor VAN FLEET, in *Farmer's Executor* v. *Farmer*, 12 Stew., p. 215, "may bestow her property by gift on her husband,

or she may make a contract with him which will be upheld in equity, but such transactions are always examined by courts of equity with an anxious watchfulness and caution, and dread of undue influence."

While the gift will in such cases be sustained, if it appears to have been fairly made, and to be free from coercion and undue influence, the rule is *that the burden of establishing the perfect fairness of the transaction is upon the husband*, more particularly if he be not only husband, but agent as well, entrusted with the control of his wife's affairs.

Thus, in *Farmer* v. *Farmer*, 12 Stew., on page 216, Vice-Chancellor VAN FLEET says: "The burden of establishing the perfect fairness of the contract is upon the agent." He was in that case husband as well.

In *Boyd* v. *De La Montagnie*, 73 New York Rep., on page 502, likewise a case of a transfer by a wife to a husband, CHURCH, *C. J.*, uses this language: "A court of equity will interpose its jurisdiction to set aside instruments between persons occupying relations in which one party may naturally exercise an influence over the conduct of another. A husband occupies such a relation to the wife, and the equitable principles referred to would apply to them in respect to gratuitous transfers by the wife to the husband, however it might be in ordinary business transactions which the wife may legally engage in. *When this relation exists the person obtaining the benefit must show by the clearest evidence that the gift was freely and deliberately made. The burden is upon the person taking the gift to show that the transfer was fair and proper.*"

The principle is general. It was thus strikingly stated by Lord Eldon, in *Gibson* v. *Jeves*, 6 Ves., on page 277: "It is asked where is that rule to be found? I answer in that great rule of the Court, that he who bargains in matter of advantage with a

person placing confidence in him, is bound to show that a reasonable use has been made of that confidence; a rule applying to trustees, attorneys, or any one else." It was restated by the same great Judge, in the leading case of *Huguenin* v. *Basely*, 14 Ves. 273, and there applied to the case of one who occupied the position of spiritual adviser and agent. It was applied by this Court to a case of principal and agent in *Condit* v. *Blackwell*, 7 C. E. Gr. 486, where Mr. Justice VAN SYCKEL said: "The transaction must be characterized by the utmost good faith, * * * *and the burden of establishing the perfect fairness of the transaction is upon the agent.*" The same rule has frequently been applied by the Court of Chancery.

Porter v. *Woodruff*, 9 Stew. 174
Mulock v. *Mulock*, 4 Stew. 594; 5 Stew. 358.
Mott v. *Mott*, 4 Dick. 192.

The cases are collected in the note to *Huguenin* v. *Basely*, 2 White and Tudor's L. C., Part 2, p. 1146, 4th Amer. Ed., and see also the cases cited by the Vice Chancellor in the opinion.

Furthermore, in cases of this sort it is held that it should affirmatively appear—

First. That the donor comprehends the full force and effect of his act.

Huguenin v. *Basely*, 14 Ves. 273.

It does not follow that because the commissioner read the deed, it was understood by Mrs. Otterson.

In *Dutton* v. *Thompson*, 23 Ch. Div, 278, COTTON, *L. J.*, said: "I do not mean only whether he (the *cestui que* trust) read if over, but did he know how his position under his grandfather's will would be affected by it. If he did not, I cannot doubt but that it is the duty of this Court to relieve him from it." And LINDLY, *L. J.*, said: "It was, no doubt, read over to him, but it was not fully explained to him."

Second. That he had competent and independent advice. *Rhodes* v. *Bate*, L. R. 1 Ch. App. 252; *Allcard* v. *Skinner*, 36 Ch. Div. 145, and cases cited by the Vice-Chancellor. Neither of these things appear in this case. The evidence, so far as it goes, indicates the contrary. Again, looking at the language of the deed, we find it complicated by trusts incomprehensible, if unexplained to any layman, and we find further, that its provisions are such as no woman was likely to acquiesce in, if she knew what they meant. Is it likely that she intended to give her husband full power, in case she made no will, to appropriate the estate to his own family, even to the exclusion of her own issue, if she left any?

Third. The deed does not contain a power of revocation. It does, indeed, provide that Mr. and Mrs. Otterson may *jointly* revoke, but this is no revocation at all. It is a gift to the donee, coupled with a declaration that if donee consents the gift shall be annulled. It is undeniable that HER power to revoke is gone. As Lord ELDON in *Huguenin* v. *Basely* observed, of a much less objectionable power, it was as if there had been no power at all.

In *Coutts* v. *Acworth*, L. R. 8 Equity Cases, 558, it is held that the party taking a benefit under a voluntary settlement or gift, containing no power of revocation, has thrown upon him the burden of proving that there was a distinct intention on the part of the donor to make the gift irrevocable.

See, also, *Woollaston* v. *Tribe*, L. R. 9 Eq. 44.
Everett v. *Everett*, L. R. 10 Eq. 405.
Prideaux v. *Lonsdale*, 1 DeG. J. and S. 433.
Garnsey v. *Mundy*, 9 C. E. Gr. 246.
Van Haughton v. *Van Winkle*, 1 Dick. 380.

Notwithstanding the stringency of the foregoing rules, there is no attempt on the part of defendants to show the *bona fides* of the deed. Not only is there a failure in this regard, but we have other evidence

of imposition in the concealment of the deed after its execution. The deed remained in the possession of Otterson or of his intimate friend, Gowen, the trustee, from its date, February 25, 1858, until its record, January 22, 1864. During all these six years it was carefully kept out of sight, and, so far as it appears, from of the knowledge of anybody. The donee and his friend, the trustee, could have had no interest thus to conceal this deed, except that it was a fraudulent imposition upon the rights of the donor. It was not a sort of instrument that could be suffered to see the light. Its presence on the record would have excited inquiry. The friends and relatives of the donor might have explained her position to her, and her knowledge of the true effect of the instrument may not have been desired either by her husband or the trustee. Under the circumstances, this concealment by the husband and agent is persuasive proof of fraud.

II.

But the further defence is interposed on the part of the defendants that Mrs. Hall is barred of any relief in this Court on account of her *laches*. The fraud, they say, was practiced, if any was practiced, in 1858, and the bill was not filed until 1891, so that there have been thirty-three years of acquiescence on the part of Mrs. Hall. The fact is, however, that James Otterson, Jr., was tenant by the curtesy and was in possession by a good title, as such tenant, until his death. So far as the use and possession go, no steps could have been taken to oust him. He was there of lawful right. It also appears that about the time when Otterson put his deed on record, after obtaining a conveyance from the trustee, he informed Mrs. Hall that her sister had given him the farm, but, he added, "whoever shall outlive me will see that I never done you, (Mrs. Hall,) or your children any injustice," (p. 29,

l. 35.) It must be remembered, too, that Mrs. Hall was a member of his family at that time—had been during his whole married life, and that he had been her adviser in matters of business, and had himself settled the estate of her deceased husband. He occupied a position of influence over Mrs. Hall, and she reposed the utmost confidence in him and in all that he said. Mrs. Hall knew that he was entitled to the farm during his life, and he undoubtedly meant her to understand that he would devise the farm to her or to her children at his death, and she would thus find that he had done them no injustice. In the paper which he either intended to be his will or intended to be an exculpation of his character, he had in so many words specifically devised all his farm at Moorestown to her children, (p. 69, l. 23.) This devise is the strongest confirmation of Mrs. Hall's evidence, and it is either evidence of the fact that he considered the promise binding or that he had satisfied his conscience by penning a devise which he never meant to execute, and died without publishing the will, as required by law, knowing that the devise would fail, but that his memory and reputation would be exculpated upon the plea of oversight in the publication. The defendants themselves advance the theory that he never meant the will to take effect; if so, then the will is proof that his declaration to Mrs. Hall was merely intended to keep her quiet and to practice a fraud upon her. I submit that Mrs. Hall was under no legal obligation whatever to bring suit during the tenancy for life of Otterson, she being a person who could not, until the termination of that tenancy, have any right to the possession or to the profits. It was no *laches* to wait until she had acquired a tangible interest. That this non-action under such circumstances does not constitute *laches* and is no evidence of acquiescence, is adjudged in *Kirwin* v. *Kennedy*, 3 Ir. Eq. 472. (See cases cited by Vice-Chancellor on this branch of the case.) As

soon as Otterson died and his will was found to be ineffectual for lack of publication, her right to the possession of the premises in question was ascertained. She was living and was the next heir-at-law, and she immediately took steps to assert her claim, and within three and a half months from the death of Otterson had brought her action of ejectment to recover possession of the premises and had filed her bill in equity in aid of the action of ejectment to set aside the trust deed. She then, for the first time, knew either that Otterson's assurances to her were intended as a fraud, or that they had been defeated by his neglect to publish the will. The will had been drawn and was in Otterson's possession for several years. A copy of it is before the Court. It is admitted to be a will effectual as to personalty, and the executor of the will is a party to this suit. Its genuineness is not disputed. It is of record in the courts of Pennsylvania, and the copy now before the Court is admitted to have the same force and effect as if it had been duly produced and proved so far forth as its probative force here is concerned. It is offered to support the testimony of Mrs. Hall as to Otterson's declarations to her and as to the reason which induced her to allow the deed go unquestioned until Otterson's death. Surely as against Otterson and those who claim under him, it is competent to rebut the charge of *laches* by showing that the delay to sue was the natural result of his statement that his wife had given him the property and that he would see to it that no injustice resulted from the gift.

There was besides no reason for her action, as she could not act effectually until after Otterson's death. Why should she have filed a bill to set aside this deed of trust? It could not have benefited her to do so; she had no possessory right in the property, nothing at all but an estate in remainder, and it was wholly uncertain whether that estate in remainder would ever be actually hers in enjoyment. It does not appear that complainant

had actual notice of the trust deed until after Otterson's death, and I do not understand that she was so related to the property that she had constructive notice of it. She was neither a purchaser, mortgagee nor incumbrancer. But imputed or constructive notice cannot constitute the foundation for *laches*, which presupposes positive knowledge, either of the main fact or of some facts leading up to the main fact. Either Otterson's positive statement that his wife had given him the farm, (p. 29, l. 24,) and that he would see she suffered no injury from the gift or his legal status as tenant by the curtesy, were a justification for non-action on her part until his death. It certainly does not lie in his mouth, or in the mouth of his creditors or heirs at-law, to set up in a court of equity *laches*, which were induced and secured by his representation. It is submitted, therefore, that the defence of *laches* will not be entertained by this Court. The defendants insist that Otterson's act in selling off certain lots from the farm for residential and other purposes, was notice to Mrs. Hall that he claimed to be tenant in fee, and not bound by his promise to devise the farm to her or her children; but it will be observed that the evidence not only shows that he sold lots, but that he always bought other lots and preserved a farm of equal extent, (see p. 38, l. 8.) He could always say the farm was practically untouched. It is not pretended that he acquired these lands because they were likely to increase in value; what, then, could have been his motive in preserving the acreage of the farm if it were not to show his entire good faith, and his intention to execute the promise he had made to Mrs. Hall.

It is said that by lying by until Otterson and the trustee were dead, Mrs. Hall has put the heirs-at-law of James Otterson, Jr., in a very disadvantageous position; that if she had filed her bill earlier Otterson and Gowan might have assumed the *onus probandi*, which the law casts upon them,

and have proved Mrs. Otterson's knowledge of the facts and the *bona fides* of the whole transaction. To this we may answer that Otterson was a lawyer of some eminence and knew perfectly well the risks he was running. He knew that he must, if he expected to derive any benefit under the deed, be prepared to prove its absolute *bona fides;* he knew that he had the right to file a bill in this court against the heirs-at law to perpetuate the testimony. His failure to do what he might so easily have done is rather an argument against him. The defence, in this branch of it, depends upon a complete *petitio principii;* it assumes that the deed was *bona fides*, and was not procured by fraud. That is the very thing that should be proved. The fact is that the failure to do the very thing which he might and ought to have done, if he wished the deed to stand, is evidence of *laches* on his part. If he chose to neglect this simple precaution, and trust to lapse of time to make a fraudulent deed a good deed, that was his own risk.

At least it does not lie in his own mouth or the mouths of those who succeed to his right, to say that the admitted absence of evidence to uphold the deed was the result of our *laches*. If he did not perpetuate the testimony of that which he knew was essential to support it, he has but himself to blame. The fact is that he trusted to the chapter of accidents and the influence of time to ripen his fraudulent title into a good one, and his experiment has failed.

As both in the circumstances of its execution and in its own language, we find those *indicia* of fraud which, in a court of equity, are sufficient to invalidate it.

I submit that it ought to be set aside and the decree affirmed.

FREDERIC W. STEVENS,
Of Counsel with Respondent.

November Term, 1895.

New Jersey Court of Errors and Appeals.

Between

ANDREW OTTERSON, ET AL.,

Appellants,

and

SARAH M. HALL,

Respondent.

BRIEF OF FRANK T. LLOYD.

The facts necessary to an understanding of this case are that, in 1849, Rebecca B. Haines, and her sister the complainant, inherited a farm in Moorestown, with much other valuable property, from their father Samuel Haines. In 1856 Rebecca married James Otterson, Jr., of a well known New Jersey family, and a member of the Philadelphia Bar. In February, 1858, the deed attacked in this litigation was executed. In 1863 Rebecca B. Otterson died, and the complainant was then informed by Mr. Otterson of the existence of the deed and that Mrs. Otterson had given him the farm. Mrs.

Otterson in her lifetime made no objection to the deed, nor did the complainant until after the death of James Otterson—in 1891. At this time every witness,—party or stranger—who could possibly throw light on the transaction was dead, except alone the complainant herself—a condition not unlikely after the lapse of twenty-eight year.

The deed itself purports to be a conveyance to a trustee of a part only of her estate, and its details have been fully set forth in the brief of my colleague and in the opinion of the Vice Chancellor, and will not be repeated here. Under and through it James Otterson, in 1864, became the owner in fee simple of the farm, placed his title upon record, and from that time until his death, in 1891, proceeded to deal therewith as his own, selling much of the more valuable parts and mortgaging the whole at will, without hint or suggestion from the complainant, although with her full knowledge, that he was conveying, or that purchasers were buying, property in which she claimed an interest.

Mr. Otterson died intestate as to this property, and his heirs at law, after his death, executed a voluntary conveyance of the same to Charles H. Otterson, upon various trusts, the vital one being to pay the debts of James Otterson, it being all required for that purpose.

No evidence of actual fraud in the securing of this deed was given by the complainant, her counsel contending that the onus of disproving fraud rested upon the defendants. While by no means admitting this contention, the defendants adduced much evidence tending to prove the conveyance to have been the voluntary act of the wife, without control by her husband. Harriet M. Otterson, a witness equally credible with the complainant and far less interested, testified (page 54), that Mrs. Otterson in her lifetime had stated to her "Who would I leave my property to if I did not give

it to my husband." At another time: "Sarah (complainant) was always nagging at her about her property." At another: "They (meaning Mrs. Hall and her family) would not care if she was six feet under ground if they only had her property." And finally: "Complainant should never get a cent of it if she could help it."

A number of witnesses were called to prove the affectionate regard of husband and wife for each other, and thus show that the deed in question was but a natural thing and not forced.

The deed itself and the acknowledgment were produced to prove that the deed was her voluntary act, without fear, threats or compulsion of her husband, and that the contents thereof were first made known to her by the commissioner, an eminent citizen and lawyer.

The conduct of the complainant herself is also in evidence before the Court as showing that she, herself, the party most interested, believed the transaction to be free from fraud.

It must also be borne in mind that this is an attack upon the deed itself, and not an ejectment for the recovery of the property at the termination of Mr. Otterson's right to its possession, irrespective of the deed, and that the right to bring this suit accrued immediately upon its discovery by her, in 1863.

The clearly defined question is therefore presented to the Court, sitting as a Court of Equity, whether one, with full knowledge of her rights, will be permitted, after twenty-eight years of delay and until all evidence of the transaction is lost by death of the witnesses, to attack as fraudulent the deed now before the Court upon a mere allegation that the law will presume fraud, and without a shadow of evidence that fraud, either actual or constructive, operated to procure

its excution, and in the face of much evidence to show it to have been the voluntary and personal act of the grantor.

In determining this case four important questions arise upon the record, every one of which must be determined in favor of the complainant before she can succeed.

First. Is the transaction one to which a legal presumption of fraud attaches?

Second. If such a presumption existed, has it not been successfully rebutted by all the testimony in the case?

Third. Has not the complainant, by her long delay for more than twenty-seven years after her right of action accrued, and until all the parties and witnesses who could give explanation are dead, forfeited her right to speak, and by analogy brought herself within the bar of the limitations as declared at law?

Fourth. It appearing that the whole of the property will be required to pay the indebtedness of James Otterson, incurred on the faith of his ownership, is not the complainant estopped from contesting the title she attacks?

To the first inquiry: Is there a presumption of fraud?

Let us look at the facts. Mrs. Otterson was the owner of very considerable property, principally real estate; she was a devoted and affectionate wife, and her conduct was fully reciprocated by her husband. She was a woman of unusually bright mind, and in general good health. The deed in question conveyed to the trustee but a small portion of her possessions, and as the deed itself shows, in such manner as to secure the entire proceeds to her own exclusive use during her life, leaving, very properly, to her husband the management of the property. By it she secured

the right to dispose of the whole by will, and thus direct to whom it should go after her death. The evidence shows her own untrammelled wish to be that her husband should have the property (page 54 of testimony), and that under no circumstances should her sister, the complainant, receive it, in view of her avaricious desire respecting Mrs. Otterson's property. The learned Vice Chancellor was himself impelled to admit the fairness of the deed in all its aspects, except alone in the power of revocation, where he thought the insertion of the words "or survivor of them" enabled Mr. Otterson to defeat what he thought appeared to be the intention of Mrs. Otterson. But this is a question purely of construction and without evidence other than the deed itself affords, of which this Court can judge equally with the Court below. We think this criticism cannot be sustained. The effect would be to hold that Mrs. Otterson, contrary to the clearly expressed provisions of the deed, intended to give her husband but a life estate as tenant by the curtesy in building lots in a growing town, and her sister the remainder—an estate which would be a burden rather than a valuable present, as he would be fortunate if he obtained sufficient income to pay the taxes. We think the deed, in the mind of Mrs. Otterson, intended its exact legal effect, and that was that Mr. Otterson jointly with herself, should manage the property for her during her life, she to receive the income, and she to reserve the right at her death to dispose of it as she might see fit, subject to his right as tenant by the curtesy, and in the event that she failed to thus indicate a contrary course, her husband should have the right to the fee. She certainly knew that this right to will was secured to her, as it is the last and most prominent clause of the deed, and especially recites that under no circumstance shall Mr. Otterson have the right to

defeat such disposition. In addition to her own bright mind, she had the assistance of Mr. Fish, an eminent legal writer and respected lawyer, who certifies that he had made known the contents of the deed to her, and it is certainly clear that she must have known that she could, at any time within the five years she lived after its execution, have utterly annulled its effect. She did not do this, and she made no objection during this period. It therefore presents the fair inquiry whether an affectionate and devoted wife must deal ever so slightly in favor of the man "for whom she must forsake all and cleave to him," only at the risk of having her actions attacked as presumptively fraudulent by collateral relations nearly three decades after her death. And must every wife, desiring to make of her abundance some slight provisions for her helpmeet through life, do so only at the peril of her husband being held up to the world as a legal cheat? Whatever may have been the disposition of the courts in the time when even the criminal acts of the wife were presumed to be from the husband's compulsion, we apprehend no such ruling will be made respecting a deed so eminently fair at a day when the whole tendency of judges and legislators is to remove the restraints of the common law and place married women before the world as free and intelligent beings, the equal in all respects of the man.

Nor do the decisions require it regarding even a gift outright. In very rare cases will the law presume fraud, and then only under circumstances tending to show a probability of its existence, and when the thing done is an unnatural thing. But who can say the act of Mrs. Otterson was unnatural? She knew that to give her husband the Moorestown property would be a barren gift. She was not taking it from those to whom she owed a greater allegiance. It was admitted by the distinguished solicitor, now deceased, who formerly rep-

resented Mrs. Hall, that had this conveyance been in the form of a will, no suspicion would attach to it, and no presumption would exist against it. Then why, when the only benefit that Mr. Otterson can derive is by virtue of the clause which gives him the property after the death of his wife, should a different rule apply?

It was held as long ago as 1845, in New Jersey, that a feme covert is regarded in equity as a feme sole as respects the disposition of her separate estate.

Leacraft vs. Hedden, 3 Gr. Chan., 512.

A wife may deal with her separate estate as though she were a feme sole, and a decree will not be made against her so dealing upon mere suspicion.

James vs. Fisk, 47 Am. Dec., 111.

See also note in 30 Am. Dec., 233.

And finally that a feme covert may give her property to her husband, subject to the scrutiny of a court of equity, to see that no imposition has been practiced, is firmly established, and no presumption will be made against it.

2 Story's Eq. Juris, sec. 764, 765 and 1,395.

Meriam vs. Harsen, 4 Ed. Ch. Rep., page 70, 76 and 77.

Clancey on Mar. Wom, 350.

Scarborough vs. Watkins, 9 Mon., (Ken. 1) 547.

Also reported 50 Am. Dec., 535.

2 Kent Com., 166.

Stewart on H. & W., 110.

In the last named case, the Court, upholding the conveyance, declares that "unless undue influence is evinced the gift will be considered valid."

In Cregar vs. Cregar, 5 Bar., Sup. Ct., page 225, it was held that a wife may give of her separate estate to

her husband, and that it is not wrong for the husband to persuade his wife so to do.

The doctrine of a presumptive fraud was sought to be invoked in Jenkins vs. Pye, 12 Pet., 241, in a conveyance from daughter of twenty-three years to her father, but the Supreme Court refused to apply it, declaring: "That all the cases (relied upon for such a ruling) are accompanied with some ingredient, showing undue influence exercised by the parent, operating on the fears or hopes of the child; and sufficient to show reasonable grounds to presume that the act was not perfectly free and voluntary on the part of the child. And in some cases, although there may be circumstances tending in some small degree to show undue influence, yet, if the agreement appears reasonable, it has been considered enough to outweigh slight circumstances, so as not to affect the validity of the deed"—page 253.

In Bradish vs. Gibbs, 3 John. 550, Chan. Kent, in considering the question of undue influence of husband on wife in the case of a will executed in pursuance of an ante-nuptial power created by intended husband and wife, says:

"Though I concur in the intimation of Lord Eldon, that the husband's claim to his wife's bounty is to be closely inspected, and wholly free from symptoms of coercion and undue influence; yet in a fair case, like the present, which has no such imputation, and there were no offspring to claim a divided attention, I think the wife's bounty is reasonable and just. It springs from the best of human ties, and is founded on the warmest affections of the heart."

It is true this was the case of a will, but it was distinguished from a deed only because the wife could revoke it at will. The argument applies with peculiar force, because in our case the wife reserved the right to utterly annul the deed by will.

Mr. Justice Story, at Sec. 1395, declares it to be firmly established in equity that she may bestow her property upon her husband, by appointment or otherwise, adding that courts of equity examine such transactions with an anxious watchfulness and caution, and dread of undue influence.

In the case of Farmer vs. Farmer, 12 Stew., 211, so much relied on by the complainant, the husband was the agent of his wife as well, and under this peculiar relation, the Court held his estate bound to show him to be the owner, inasmuch as the possession might as well be referred to his agency as adverse. The Vice Chancellor affixed upon him as agent the duty of proving fairness, but regarding his position as husband, carefully refrained from doing more than quote from Chancellor Kent, that courts will carefully inspect such gifts on account of the danger of improper influence, but if they appear fairly made will sustain them.

In the case also was abundance of proof that the wife passed the note because the husband wanted her to do so, and regretted her act.

In our case the whole position is different; she was carrying out a well conceived wish and desire of her own, as expressed by herself.

In Grigby vs. Cox., 1 Ves., 517, (also Belt's Supp., page 218) the wife executed an appointment by deed in favor of the husband, and when attacked by the wife by way of a defence of compulsion by her husband, she was not sustained because she produced no evidence to maintain her claim.

As a fair and legitimate result of the cases, we believe the true principle to be that when one to whom no legal or moral duty is due, and yet where a confidential relation exists, such as attorney, physician or trustee, and many others, receives a benefit, the burden is on him to establish its fairness, but where there is

also a natural duty existing the courts will do no more than carefully scrutinize the act to see that no injustice is done.

Upon the second inquiry we submit that in any aspect of the case the entire fairness of the transaction is shown by the evidence adduced.

The certificate of the commissioner is certainly not a meaningless thing. In that the wife declares upon a seperate examination that the deed was her own "voluntary act, freely, and without any fear, threats or compulsion of her said husband." And the commissioner himself certifies that he made known to her the contents of the deed.

The testimony of Miss Otterson (pages 54 and 55), certainly shows that Mrs. Otterson did wish her property to go to her husband and not to her sister, and she gave a most adequate reason in addition to natural inclination for her wishes. The complainant affords some evidence in that she, as the most interested party, failed to in any manner question, either by legal steps or by complaint to Mr. Otterson in his lifetime, the entire fairness of the transaction, although having full knowledge since 1863 of the existence of the deed (page 29), and that Mr. Otterson was dealing with it as the owner in fee, making conveyances of the most valuable parts and mortgages to large amounts of the whole. She was a member of the Otterson family when the deed was made, and would be likely to know of any imposition by Mr. Otterson, and on this she is silent.

Abundance of proof was adduced to prove the devotion of husband and wife, and therefore the improbability of coercion being a necessary thing.

Under the facts presented in this case we believe the Court would take hold of very slight circumstances to rebut a presumption, even were one held to exist.

On the point of laches and the bar of the statute of

limitations by analogy, we believe this case is without a parallel in the Courts of New Jersey.

Entirely apart from the primary question as to whether the law will raise a presumption of fraud in the case of a wife who so arranges a small portion of her estate that it may, in the absence of her other disposition thereof by herself, eventually go to him to whom by all the promptings of love and affection it should go, and apart from the question whether if such a presumption really existed the defendants have not successfully rebutted it, the case, we submit, is flatly barred by the equitable rule of laches and the statute of limitations as applied in courts of equity by analogy to proceedings at law.

Very many cases will be found in the reports, both of England and this country, where much short of the statutory period at law has been held sufficient to bar the right to sustain a bill in equity, but the whole burden of the decisions and text writers is that beyond the limitations as prescribed at law, courts of equity will not entertain proceedings except alone in cases of trust and fraudulent concealment.

It is but proper to call to the attention of the Court, that this bill as originally filed averred that Mrs. Hall, the complainant, had no knowledge of the existence of the deed in question until after the death of James Otterson, in 1891, but that on the eve of taking testimony it was amended so as to aver that she had notice of it in 1863, immediately upon the death of Mrs. Otterson; otherwise this question would be before the Court in the form of demurrer instead of troubling the Court to hear the case on bill, answer and proofs.

It will be borne in mind that twenty-eight years before the filing of this bill, the complainant was specifically informed by James Otterson that his wife had given him the farm, and this was followed by the

immediate placing of the deed itself upon record. Mr. Otterson, in his lifetime, executed ten deeds of the most valuable parts of the farm, located in a populous town, and a mortgage of the whole for $7,000. The purchasers for twenty years have built upon this ground; and during all this time, according to the complainant's own testimony, (pages 33, 34 and 37, of appendix) she neither warned the vendor or his purchasers that they were dealing with property in which she claimed the ultimate ownership. She suffered the ravages of time to obliterate the last vestige of evidence to rebut her averments, and almost immediately upon the death of James Otterson filed the bill to set aside the conveyance, the right to file which existed in her at all times since 1863, when by her bill and her own sworn testimony she had both legal and actual notice.

Mr. Bispham, in his work on equity, sec. 38, page 64, says: "Equity follows the law when rights in equity are considered barred by lapse of time in analogy to the statute of limitations."

Justice Story, in his exhaustive treatise on the subject, Sec. 64, declares: "Although the statutes of limitations are in their terms applicable to courts of law only, yet equity, by analogy, acts upon them and refuses relief under like circumstances. Equity always discountenances laches, and holds that laches is presumable where it is positively declared at law."

And again at Sec 1520, the same author applied the doctrine specifically to the class of cases of which this is a flagrant example. He says: "In a great variety of other cases courts of equity act upon analogy of the limitations at law. Thus, for example, if a legal title would in ejectment be barred by twenty years adverse possession, courts of equity will act upon like limitation and apply it to all cases of relief sought upon equitable titles *or claims touching real estate.*"

And in a foot note he adds, that the citation of authorities upon this and the cognate doctrine of laches is almost unnecessary, as they are full and conclusive, both in England and America.

Daniel on Ch. Prac. & Pleading, page 560: "In determining whether the length of time which has elapsed since the plaintiff's claim arose is a bar to the relief he seeks, courts of equity have considered themselves bound by the statute of limitations as to all legal titles and demands, * * * *and as to all equitable titles and demands they act in analogy to the statute.*"

Pomeroy, at Sec. 418, commenting on the fundamental rule that equity aids the vigilant and not those who slumber on their rights, says: "Indeed, in some of its applications it may properly be regarded as a special form of the yet more general principle, that he who seeks equity must do equity. The principle thus used as a practical rule, controlling and restricting the award of reliefs, is designed to promote diligence on the part of suitors, to discourage laches by making it a bar to relief, and to prevent the enforcement of stale demands of all kinds, independent of any statutory period of limitation," and adds that it is involved in all classes of cases, except perhaps those brought to enforce a trust against an express trustee. And again, in the next section: "Nothing can call forth this Court into activity but conscience, good faith and *reasonable diligence.* The principle has in fact two aspects, one of them wholly independent of any statutory limitation, and the other with reference to such statute. In the earlier form of the statute of limitations the provisions were in express terms confined to actions at law; yet courts of equity, proceeding upon the analogy of these enactments in most suits to enforce equitable titles to real estate and equitable personal claims, append the statutory periods."

In New Jersey the whole trend of the cases is to not only apply the rules of limitations, but to refuse relief in the class of which this is an example in a period far short of such statutes.

The act of 1860, Sec. 17, declares "that every real, personal, possessory, ancestral, mixed, *or other action* for any lands, tenements or hereditaments shall be brought or instituted within twenty years after the or right title thereto, or cause of action shall accrue, and not after."

It cannot therefore be doubted that if this were a proceeding at law in any form the bar of the statute would apply. That it is by analogy equally so in equity the foregoing authorities abundantly show.

That much less time may so operate is shown by the following cases in this State:

In Doughty vs. Doughty, 3 Hal. Ch. 643, this Court reversed the Chancellor for sustaining a bill to set aside a deed alleged to have been fraudulently obtained from a person of unsound mind but twelve years before. C. J. Green said: "During the period of nearly twelve years before the filing of this bill, the complainant was of sound mind. He had full knowledge of all the circumstances of the alleged fraud. There was no impediment, legal or otherwise, to his seeking relief. He was not prevented by absence or poverty from maintaining his rights. Under such circumstances it should require the most cogent considerations to justify the delay and warrant a court of equity in lending its aid to the complainant."

In Midmer vs. Midmer, 11 C. E. Gr., 300, the Court applied the rule to even the case of a resulting trust, and held a delay of twenty years fatal. In this case also the Court commented severely on the class of testimony offered in this case, disregarding it.

Hance vs. Conover, 4 St. 505, was the suit of a re-

mainder man to surcharge a deceased executor's estate with an amount not included in his inventory, and is strikingly analogous in principle to the case before the Court. There, as here, the complainant could not enjoy the physical possession of the property until after the death of the executor, but he could attack the inventory, and the Court held him barred by a delay of four years, and until after the death of the executor. "The persons interested * * * had abundant opportunity in the four years to except to the inventory, and to make inquiry by judicial proceedings into the honesty of it. They have left the matter until his (the executor's) death, and must, under the circumstances, accept the disadvantages of the situation." The bill was dismissed.

Wilkinson vs. Sherman, 18 Stew. 413, is so recent, so closely in point, both in law and the special circumstances of the case, and so flatly in bar of the complainant's right to sustain this bill, that we beg to trouble the Court with citation therefrom.

This bill was filed to set aside a deed from nephew to uncle. The delay was for twelve years only, and in the meantime the original vendee of the deed had died. The Chancellor, in dismissing the bill, declared :—"If the circumstances of the making of this deed were such as to demand explanation from those who claim under it, it becomes manifest that equity requires that that explanation should have been demanded before the death of possibly the only person who could have given it. After deliberate and intentional delay until the death of that witness and the possibility of explanation is thereby extinguished, it is most inequitable that one who so purposely delays should now be permitted to say that such explanation is necessary to insure title under the deed."

In Coles vs. Vanneman, 6 Dick., 323, a presumption

of fraud by reason of the circumstances was admitted by the Court to apply to the transaction, and the burden of explanation cast upon the defendant, but the Court of Errors affirmed the decree of the Court of Chancery dismissing the bill, because filed after eight years of delay and after the death of the party who could give explanation. There, as here, the parties and witnesses to the transaction had died.

Wilkinson vs. Sherman, supra, is cited with approval.

In all these cases the relief was refused as against the original parties or volunteers from them. How much stronger the rules must apply in the case of twenty-eight years of delay, where all the parties who could make explanation are dead, and where the rights of creditors have grown up, for in this case the whole of this property will be required to pay the debts due by James Otterson's estate, and for that purpose Charles H. Otterson is made a trustee.

See also Seabring vs. Seabring, 16 Stew., 59.
McCarlin vs. Traphagen, ibid, 338.

Both of these cases hold that delay resulting in loss of evidence to the defendant estops the complainant.

Courts of equity act upon statute of limitations, and where a legal title would in ejectment be barred by twenty years delay, courts of equity will act upon like limitations, and will apply it to all cases of relief sought upon equitable titles or claims touching real estate.

Moore vs. Greene, 2 Cur. C. C., 202.
2 Story Equit. Juris., 520.
Farnum vs. Brooke, 9 Pick., (Mass).
Michaud vs. Girod, 4 How., 561.
Brown vs. Buena Vista, 95 U. S., 161.
Gooden vs. Kummell, 99 U. S., 210.

Says Mr. Justice Clifford, in the last cited case: "Support to these propositions is found everywhere, but there is a defence peculiar to courts of equity founded on lapse of time and the staleness of the claims where no statute of limitations governs the case. Such courts in such cases often act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands by refusing to interfere where there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights.

Badger vs. Badger, 2 Clifford, 154.
Jenkins vs. Pye, 12 Pet., 241.

But it is suggested by the learned Vice Chancellor, in his opinion, that Mrs. Hall was lulled to sleep by the conversation which she alleges took place with James Otterson, on the death of his wife, and urges it as some palliation for the long delay. We most respectfully present that this position is untenable. If every word of the complainant's testimony be accepted as true, and it must be remembered that it is an assertion made for the first time after Otterson's death, it establishes that she was then informed of what had been done—that Mrs. Otterson had given her husband the property—and from that time on the duty to proceed rested upon her, as it was in direct contravention of her remainder, and a cloud to the say the least upon her title. She alleges a conversation which she construes to be a promise to leave either this or some equivalent property to her or her children. By deliberate choice she elects to abandon her supposed legal right to set aside the conveyance and stands upon the alleged promise. As all of James Otterson's estate, including the property in question, is required to pay his indebtedness, she is disappointed in this and now attempts to re-assert an abandoned claim of twenty-eight years ago, and this

after other rights have grown up and she has remained quiescent; while creditors to the extent of $100,000 have loaned their money on the faith of the credit of James Otterson, of which the $40,000 worth of property involved in this suit was and is a necessary part.

It must not be overlooked that this proceeeing is in a court of equity, and that "he who seeks equity must do equity;" that "he who comes into a court of equity must do so with clean hands;" that equity "aids the diligent not the slothful;" and that the complainant has violated every one of these salutary rules or maxims.

During all the period of her inaction, one by one the witnesses who could rebut the averments of her bill have passed away; the evidences. save the mute testimony of the documents, her own ratification by silence, and the fragmentary proofs of Miss Otterson and Mr. Faulkner, have, by the passage of nearly three decades, been lost forever. Even the complainant herself evidently believed that the deed was entirely free from fraud or coercion, as is proven by her silence when sales and mortgages were being made, and by her declaration that she never remonstrated with Mr. Otterson or passed a word with him upon the subject of his management and disposition of property which she now claims to be her's. Is this the case that commends itself to a court of justice? Will she be permitted to make the attack which she dare not make in the life time of the only one who could meet her thrusts? Or rather is it not the case of the disappointed expectant who fails to secure the anticipated gift, and thereupon attempts to distort from the estates of the dead that which rightfully belongs to another?

A word respecting the position of the complainant and Otterson's creditors.

It will not do to say that $40,000 of an estate of $100,000 is not an element upon which creditors have

loaned their money. Our constant experience forbids such a conclusion. From the day she knew that Mrs. Otterson had given her husband the farm at her death, in 1863, she has done no act inconsistent with the title thereby created. On the contrary she has stood upon an alleged promise of Otterson. This promise, if made, he could not carry out, because of his debts, and ascertaining this result, she seeks to take from its legitimate channels the estate, which by her acts she has admitted belongs to Otterson, and now to his creditors. Will a court of conscience aid her to do this thing?

We believe the mere statement of the proposition is to answer it, and we will not trouble the Court further upon this head.

It is proper that some advertence should be made to the will of James Otterson, although by reason of the insolvency of the estate it cannot become important in the consideration of this case, for men must "first be just before they are generous."

It is contended that the testator overlooked the completion of his will, in accordance with the laws of New Jersey. This we submit, in view of the testimony, can hardly be possible. It is far more probable that this will was only partially completed for the reason that the testator, knowing the condition of his estate at the time of making the will, omitted its completion until he was certain he would have an estate to leave, but as this event never occurred, the witnesses were never added. And in any aspect it evinces the belief on his part that he had an absolute title, in which others could not share except by his act, and he proceeded to devise it to persons other than the complainant.

In the consideration of this case, we ask the earnest attention of the Court to the importance of the question involved as affecting, not only the $40,000 worth of

property immediately affected, but as affecting the far more important questions of the rights of husband and wife; the stability of titles, and the salutary rules of equity. Is the Court to stamp its disapproval on all transactions between husband and wife? Is it the law that no husband can safely arrange with his wife except under the ban of a presumption of law against him, no matter how guardedly the wife's interests may be protected? Or that the wife cannot make some provision of her abundance for her helpmeet through life except at the peril of an attack from her relations? To whom should it go if not to him? Mrs. Otterson herself declared, "Why should she not leave it to her husband?" The reason which forbids an attorney to receive from a client that to which he has no legal nor moral claim except upon proof of fairness, can have no force when applied to a gift from wife to husband, for to him is her first duty.

Are fundamental rules of equity to be brushed aside in favor of one in the position of the complainant and all precedents of adjudicated cases, embodying the legal wisdom of ages, ignored? Is the rule of equality of equity to be disregarded, and the complainant permitted by her laches to await the death of the last witness who can make full explanation of all her allegations, and then proceed to invoke the aid of a court of *equity?* Who can doubt that if James Otterson could answer this bill, proof abundant would be forthcoming to rebut her claims? For cause less than this legislation has sealed the lips of even the diligent claimant against the estates of the dead. How much more should this Court set the seal of its disapproval upon complainant and her evidence in this case!

It must be remembered that for five years after the execution of this deed Mrs. Otterson had full and ample opportunity to utterly annul its effect by the exercise

of the power of appointment. She could certainly have quietly exercised this power and James Otterson remained in ignorance thereof until her death, much less have exerted an improper influence over her. Certainly it goes far to record her deliberate and final wish entirely apart from her husband, and to explain the statements she made of the complainant that "all the latter wanted was her property, and that she would take good care that she should never get it."—page 55.

With what degree of merit can the complainant, standing in her shoes, after so many years of acquiescence, seek to set aside this solemn deed, executed under all the formalities of the law, and with the separate declaration and acknowledment of the wife herself, before a commissioner of this State, that it was executed of her own free will, without any fear, force, threat or compulsion of her husband.

Surely we do not exaggerate when we repeat that this case is without a parallel in the courts of this State.

FRANK T. LLOYD,
Of Counsel for Defendants.

New Jersey Court of Errors and Appeals.

Between

ANDREW OTTERSON, ET AL.,

Appellants,

and

SARAH M. HALL,

Respondent.

BRIEF OF PETER V. VOORHEES.

This action was brought in January, 1891, by the respondent, as sister and heir-at-law of Rebecca B. Otterson, to set aside a deed made by the said Rebecca in February, 1858, thirty three-years before, on the alleged ground that the same was procured by fraud and undue influence. And the Vice Chancellor advised a decree setting aside the said deed because the defendants did not prove affirmatively that no fraud existed, although the original parties to the deed and all witnesses to the transaction had been dead for many years before the matter was ever challenged.

The bill of complaint was filed January 10, 1891, and the answer was filed March 21, 1891.

The bill shows that Rebecca B. Otterson (as Rebecca B. Haines) became by inheritance and by certain conveyances seized in fee of the lands in dispute.

That she married James Otterson, Jr., October 1, 1856. That a child was born to them March 2, 1858, and that the child died March 29, 1858. That Rebecca B. Otterson died intestate March 10, 1863, leaving no child her surviving, and that the complainant was her only sister and heir-at-law.

On February 25, 1858, Rebecca B. Otterson, with James Otterson, Jr., her husband, made a deed of trust of said lands to James E. Gowan, and charges that said deed was procured through fraud.

James Otterson, Jr., died February 16, 1885, intestate, and the complainant claims the lands as heir-at-law of Rebecca and prays that said deed be set aside.

The answer denies the fraud, alleges the conveyance to Gowen to be bona fide and charges that upon the death of James Otterson, Jr., intestate, the lands descended to and vested in the defendant as his heir-at-law under the conveyance to said trustee and said trustee's conveyance to the said James.

The deed, page 1 of Exhibits, made by Rebecca B. Otterson and James Otterson, Jr., to James Gowan, is dated February 25, 1858, is acknowledged the day of date and recorded in Burlington County Book Y6 of Deeds, page 399, &c., January 22, 1864—Exhibits, page 10, line 34.

This deed is a full conveyance of the premises in dispute and is upon the following trusts:

First. To permit the said grantors to collect all the rents, &c., of the property, the same to be, during the lifetime of the said Rebecca, her individual property, to permit them to sell or incumber the said lands, or

any parts thereof, and the proceeds of such sale or encumbrances to be the individual property of the said Rebecca—Exhibits, page 5, line 24.

Second. That the said Rebecca shall have power at any time to devise the same by will, or writing in the nature thereof, to take effect after the decease of the said James, as fully as though she were unmarried—Exhibits, page 6, line 36.

Third. If the said Rebecca should not make such will or appointment, then that the said James might devise the same by will, or writing in the nature thereof, subscribed in the presence of at least two witnesses—Exhibits, page 7, line 17.

Fourth. If neither the said James or Rebecca should designate and appoint as aforesaid, that the said trustee should hold the same for the right heirs of Rebecca—Exhibits, page 7, line 31.

Provided that the said parties, or the survivor of them, may alter, change or revoke the said trusts, or any or all of them, and demand in writing a conveyance by said trustee, free of said trusts, to them or the survivor of them, his, her or their heirs and assigns—Exhibits, page 8, line 7.

Further provided, that the said James should not have power to defeat any testamentary devise which the said Rebecca might make—Exhibits, page 8, line 33.

And further providing for the appointment of a new trustee, with like powers in case of death, disability or refusal to act.

By this deed James Otterson, Jr., secured to himself an estate for life in said lands after the death of his said wife, if he survived her, (no child had then been born, and curtesy had not accrued to him at the date of the deed).

Rebecca secured the right of directing how said lands should go after her death, and the death of the said

James, by will, or writing in the nature thereof (appointment). This was a valuable consideration flowing to her, and no doubt induced her to make the deed, for as a married woman she had at that time (1858), no power to make a will.

A married woman is incapable of devising real estate or disposing of her chattels by will without the consent of her husband, and such will would be a mere nullity.

Van Winkle vs. Schoonmaker, 2 McCart. 384.

Wills of married women, &c., for lands, &c., shall not be held or taken to be good or effectual in law.

Nixon Digest, Ed. 1861, page 913, § 3 Wills.

The Married Woman's Act of 1852 did not give married women power to make wills.

Compton vs. Pierson, 1 Stew. 229.

A married woman's power to devise real estate was first given in 1864.

P. L. 1864, page 698.

The power conferred upon her by said deed is in the following words—Exhibits, page 6, line 36:

"Secondly. In trust, that it shall and may be lawful for the said Rebecca B. Otterson at any time during her natural life, whether she be covert or sole, by a last will and testament, or by any writing in the nature thereof, by her signed in the presence of at least two subscribing witnesses, to designate and appoint to whom all or any part of the said hereby granted premises shall go after her decease, and the decease of the said James Otterson, Junior, which said devisee or devisees, appointee or appointees, shall as to his, her or their respective portions thereof, have and enjoy all the rights and powers with reference to the said tract of land, tenements, &c., in absence of any special re

strictions, limitations, conditions or directions in the said testamentary writing or writings contained, which she, the said Rebecca B. Otterson, might and would have enjoyed if this deed had never been made, and she had lived unmarried."

And also the proviso—Exhibits, page 8, line 33:

"And provided also, however, that the said James Otterson, Junior, in the event of his surviving the said Rebecca B. Otterson, shall not have power, by means of any or all of the reservations herein contained, to annul, defeat or avoid any testamentary devise or appointment which the said Rebecca B. Otterson may in her lifetime make in reference to the said estate, as provided herein."

Rebecca Otterson, the wife, thus secured by this deed a power of directing how this property should go after her decease, which the law did not give her and which she could not have enjoyed without the trust mentioned in the deed.

The certificate of acknowledgment that the deed was acknowledged by Mrs. Otterson, freely without any fear, threats or coertion of her husband, raises a strong presumption that no undue influence was exercised over her by her husband.

Meriam vs. Harsen, 4 Edwards Ch. 70 (76).
" " " 2 Barb. Ch. Rep., 232.

Mrs. Otterson died March 10, 1863, intestate, and without exercising the power of appointment vested in her by the second trust mentioned in said deed; she thereupon by failing to exercise such power affirmed the clause in said deed that the said premises should go to her husband, and confirms the testimony of Miss Otterson. Printed Book, page 55, line 5.

Ques. You have given us one occasion and the cir-

cumstances that led up to this statement by her; what circumstances were there about the other, where she said they would not care if she was six feet under ground?

Ans. Well, all the circumstance that I can remember is this: her coming into the room and taking this seat and feeling very much hurt, and she made that remark, that they cared nothing about her if she was six feet under ground, if they only had what belonged to her; but she said, I will take good care, though, they never shall have a cent of it, if I can help it.

Ques. What did she say about her husband at that time, and her feelings towards him?

Ans. Well, probably it was another time she made the remark about her husband.

Ques. What did she say on that occasion?

Ans. "Who would she leave the property to if she did not give it to her husband"—but she had the highest admiration and devotion for her husband.

After Mrs. Otterson's death intestate, and without exercising the power of appointment, James Otterson, Jr., the survivor, in conformity with the terms of said trust, in said deed mentioned, requested the said trustee in writing, to carry into execution the said trust by conveying the said premises to him as survivor, freed from all trusts, and said trustee, by his deed dated December 31, 1863, nearly nine months after the death of the wife, conveyed the said premises to the said James, in fee. See copy of deed, Exhibits, page 11.

James Otterson, Jr., thereupon became the owner in fee simple of the said premises, and such ownership will be sustained if this Court will permit the wife to do with her own property what she desired, as expressed by her sealed instrument, duly acknowledged before a respectable commissioner, as her voluntary act made freely, and also expressed in the presence of her friend

Miss Otterson, as her wish for the disposition of the property after said deed had been executed a considerable time.

A Court of Equity will uphold a conveyance by a wife of part of her separate estate to her husband, or for his benefit, unless some proof of duress or ill usage appears from the testimony.

2 Kent Com., 166.

Stewart on H. and W., § 110.

Crugar vs. Crugar, 4 Edw. Ch. Rept., 433. In this case Vice Chancellor McCann said, in 1844, "a family settlement will be upheld in Chancery."

A married woman's right to convey her separate estate to her husband is firmly established, and fraud will not be presumed.

2 Story, Eq. Juris § 1395.

Leacraft vs. Hedden, 3 Gr. Ch. 512. In this case Chancellor Haines said, in 1845, a feme covert is regarded in equity as a feme sole, in respect to her separate estate so far as to enable her to dispose of it.

A wife may deal with her separate estate as though she were a feme sole, and a decree will not be made against her dealing upon mere suspicion.

James vs. Fisk, 47 Am. Dec., 111.

Meriam vs. Harsen, 4 Ed., Ch. Rep. 70, and 2 Barb. Ch. 232.

Note 30, Am. Dec., 233.

In Grigley vs. Cox, 1 Vesey Sr., 517, the wife came into court and complained that the plaintiff had colluded with her husband to take her separate property from her, and that the money had been paid to the husband.

Yet the Court held that, as to her separate property, she should be looked upon as a feme sole, and upheld her conveyance.

In Pybus vs. Smith, 1 Vesey Jr., page 189, the wife was seized of an estate in lands which she conveyed as a security for her husband's debts, and the conveyance was sustained in equity.

Lord Thurlow in this case had a most anxious desire to find a principal of equity strong enough to protect the property, but found the law too strong to be contended with.

See note 1 Vesey, Jr., page 193.

It is not wrong for the husband to endeavor, by reasoning and persuasion, to prevail upon the wife to make a reasonable provision of a part of her income for his benefit.

Cruger vs. Cruger, 5 Barb. Sup. Ct. Rept. 225.

The deed of trust was recorded, became a public record and notice to the world and this complainant January 22, 1864. See Exhibits, page 10, line 33, the deed from the trustee to James Otterson, Jr., was recorded on the same day. See Exhibits, page 16, line 29, the bill of complaint was not filed until January 10, 1891, about twenty-seven years afterwards.

James Otterson took immediate possession and during the twenty-seven years, or until his death, exercised all necessary and proper acts of ownership; he made eleven deeds of parts of the property—(See printed book, page 64, line 22; pages 65 and 66,) and two mortgages—(See printed book, page 66, line 22,) all of which were recorded and became notice to the said complainant.

Pom Eq. Juris, § 608.

She, the complainant, had notice by visible objects. She had property in Moorestown when this property in dispute was located, and she was in the habit of going there.

See testimony of Mrs. Hall, the complainant, printed book, page 33.
Also Jones Yorkes, page 45, line 9.

He says, in effect, building was commenced in 1871. If visible objects were erected on the land she was bound to make inquiry.
Pom. Eq. Juris, § 611.

Mrs. Hall also admits that she was told that building was going on on property formerly of her father and then claimed by Otterson. Printed book, page 37.

In matters not barred by the Statute of Limitations, Courts of Equity will not interfere after a considerable lapse of time, from considerations of public policy and from the difficulty of doing entire justice.
1 Story Eq. Juris., 529.
1 Pom. Eq. Juris., § 419.
Wilkinson vs. Sherman, 18 Stew., 413.
Wood vs. Chetwood, 6 Stew., 9.

The complainant had legal notice of the conveyance by her sister and of the deed to Mr. Otterson in January, 1864, but delayed bringing action until January, 1891, twenty-seven years afterwards, and after the death of the principal and all the witnesses to the transaction, and when she knew all proof had been destroyed by death.

One who delays his action until the death of the parties able to testify is not entitled to relief.
Hance vs. Conover, 4 Stew., 505.
McCarlin vs. Traphagen, 16 Stew, 323 (338).
Seabring vs. Seabring, 16 Stew., 59.

In Hance vs. Conover, the Court said: When a remainderman interested as such in personal property made no objection in the lifetime of the executor, held

that after the executor's death he was barred by his laches.

This was the case of a disappointed legatee.

In Seabring vs. Seabring, Vice Chancellor Van Fleet said: When a complainant has suffered a suit to be without prosecution for seven years, and it appears the case is one dependant upon oral testimony, and by his laches has rendered it difficult if not impossible for the Court to determine it, the bill will be dismissed.

1 Fonbl. Eq., Chap 4, § 27, it is said, "The Court will not encourage the laches and indolence of the parties, but will presume after great length of time some composition or release to have been made, since it would be too hard to force a man to keep his evidence by him forever."

1 Story Eq. Jur., § 529, it is said: "When the demand is not of a legal nature, but is purely equitable, or when the bar of the statute is inapplicable, Courts of Equity have another rule, founded sometimes upon the analogies of the law, when such analogy exists, and sometimes upon its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage laches and negligence. Hence, in matters of account, although not barred by the statute of limitations, Courts of Equity refuse to interfere after a considerable lapse of time, from considerations of public policy, from the difficulty of doing entire justice, when the original transactions have become obscure by time, and the evidence may be lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, *Vigilantibus, non dormientibus, jura subveniunt.*"

Rayner vs. Pearsall, 3 John's Ch., 578, 585. The justice of this doctrine is obvious. He who delays asserting his rights until the proof in vindication of them is so indeterminate that it is very difficult to

decide whether what seems to be justice to him is not injustice to his adversary, ought to lose all right to the aid of a court of conscience, for, by his laches, the path of justice has become so obscure that it cannot be traced with certainty. The law assists those who are vigilant, not those who sleep upon their rights.

The long delay, over a quarter of a century, in asserting her alleged rights clearly shows that the complainant had very little, if any, confidence in her ability to recover during the lifetime of Judge Otterson, and while he might appear as a witness.

It would appear clear that if a married woman had any right whatever to direct what should be done with her own separate property after her death, that the deed in controversy should be sustained and the decree of Chancery reversed, especially when we take into consideration Mrs. Otterson's desire as to the disposition of this property expressed to Miss Otterson after the deed was made—(pages 54 and 55,) "That her sister, the complainant, should not have one cent if she could prevent it." "And of course she wanted her husband to have it; who else would she give it to?" Also her solemn declaration to Mr. Fish, a respectable commissioner, after he certifies that he had made known to her the contents of the deed "that she signed it freely as her voluntary act and deed," "without fear, threat or compulsion of her husband." The entire absence of any proof in the case of fraud or undne influence leading up to the making of the deed. The unusual affection shown all through the testimony to have existed between the said parties, the natural presumption where such affection would direct the property to go and the high standing of Mr. Otterson. How can the court, under such circumstances, without a scintilla of proof, presume fraud?

The opinion of the Vice Chancellor, I think, is based

upon wrong premises; it argues only from the inherent evidence of the deed itself; it makes no reference to the off-repeated expressions of Mrs. Otterson, the wife, that she should take good care that her sister, the complainant, should never get one cent of her property, that she intended it to go to her husband. Who else would she give it too? This was testified to by her friend and sister-in-law, Miss Otterson. See Printed Book, page 54, line 5, to page 55, line 25. If this statement is true, how could the Vice Chancellor assume she intended by the deed in question that the property should go to the complainant if she died intestate and the husband surviving her died without a will.

The Vice Chancellor also assumes that because the deed was made when she felt that her life was imperilled by her approaching confinement, that it should be looked upon more critically. What was more natural than when she felt that death was near, and she had no power in the law to make a will, for her to execute just such a deed as the one in disputes? It provides in case she lives that she shall receive the whole income from it; that she shall have the right to direct how it shall go after her death, with a covenant that the husband shall in no way interfere with such disposition, and in case of her death without making such disposition, permits the husband to take it as his own, the very disposition which she expressed to Miss Otterson she intended to make of her property.

He further argues that it does not appear that she had any advice or assistance in understanding the purport of the deed, and yet in his opinion, page 78, line 12, he shows the trustee and also the commissioner who took the acknowledgment, and was presumably present at the execution of the deed, were both prominent lawyers, with whose legal ability she must have been aware. She thus appears to have had every opportu-

nity of ascertaining from independent advisers the full legal effect of the deed. It was the commissioner's sworn duty to so explain it. He certifies that he saw her apart from her husband, made known to her the contents, and that she signed it freely as her act and deed.

The deed is but the natural result of what would be expected from the unusual affection shown between this husband and wife, and her expressed desire for the disposition of this property as stated to Miss Otterson.

It is impossible at this late date to prove affirmatively the influences which led to the making of this deed, or all the circumstances surrounding its execution; we can only judge of that from the surroundings.

The law will not, in the absence of proof, presume fraud against any man in dealing with a stranger, much less a prominent lawyer of irreproachable character in transactions with his own wife; the natural presumption in all cases is of fair and *bona fide* dealings.

If the Court sets this deed aside, it stamps a prominent and respected lawyer as a most consummate scoundrel without a scintilla of positive evidence, and vests the property in one whom Mrs. Otterson, the owner, declared should never have it if she could help it, upon the ground that she must have been deceived in so disposing of it.

I submit that the decree of the Court of Chancery should be reversed.

PETER V. VOORHEES,
Of Counsel with Defendants.

N. J. Court of Errors and Appeals

Between

ANDREW OTTERSON, ET AL.,

Appellants,

and

SARAH M. HALL,

RESPONDENT,

} EXHIBITS.

This indenture, made the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and fifty-eight (1858), between James Otterson, Junior, of the city of Philadelphia, Attorney and Counsellor-at-Law, and Rebecca B. Otterson, his wife, late Rebecca B. Haines, of the one part, and James E. Gowen, of said city, Attorney and Counsellor-at-Law, of the other part, Witnesseth, that the said James Otterson, Junior, and Rebecca B., his wife, for and in consideration of the sum of one dollar, lawful money, in hand paid to the said Rebecca B., at the time of the execution hereof, the receipt whereof she doth hereby acknowledge, and for divers other good and sufficient considerations her thereunto moving, and by and with the consent of her husband, the said James Otterson, Junior, [who joins in this conveyance as well to express such consent as to bar any

and every interest in the hereinafter described premises, which he may have acquired by virtue of his intermarriage with the said Rebecca B.,] have granted, bargained, sold, aliened, enfeoffed, released, assigned, transferred and set over, and by these presents for the purpose of assuring and settling the estate, property and premises hereby granted upon the uses and trusts hereinafter expressed and declared, do grant, bargain, sell, alien, enfeoff, release and confirm, assign, transfer and set over unto the said James E. Gowen, his heirs and assigns, all that certain plantation, farm, tract or piece of land, situate in the township of Chester, county of Burlington, and State of New Jersey, and the buildings and improvements thereon erected, described as follows: Beginning at a stone at the junction of the Evesham with the Moorestown and Mount Holly road, in the middle of both said roads; thence along the middle of said Moorestown road (1) south eighty degrees west, three chains and forty-six links to a stone, corner to Samuel Bispham's lot; thence (2) north twenty-three degrees and fifteen minutes west, seven chains and fifty-one links to a stake, corner to said Bispham's land; thence (3) south sixty-eight degrees and thirty-five minutes west, three chains and eight links to a stone; thence (4) north twenty-two degrees and twenty-five minutes west, six chains and eighty-six links to a stake; thence (5) north sixty-eight degrees and thirty minutes east, ten chains and fifty-six links to a stone; thence (6) south thirty-three degrees and thirty minutes east, fifteen chains and eleven links to a stake in the middle of the aforesaid Moorestown and Mount Holly road, corner to lands of Doctor Jonathan I. Spencer; thence along the middle of said road (7) north sixty-six degrees east, two chains and ninety-eight links to a stake; thence (8) south twenty-three degrees and ten minutes east, seventeen chains and ninety-four links to a stone; thence (9) north sixty-four degrees and thirty minutes east, seven chains and seventeen links to a stake; thence (10)

south twenty-two degrees and forty-five minutes east, nine chains and seventy-one links to a stone ; thence (11) south sixty-one degrees and twenty-five minutes west, six chains and seven links to a stake in the middle of the aforesaid Evesham road, corner to lands of Thomas G. Kimble; thence along the middle of said road (12) south forty-four degrees and forty minutes east, thirteen chains and twenty-seven links to a stone, corner to lands of William Hooten ; thence (13) south fifty-six degrees and thirty minutes west, twenty-three chains and twenty-five links to a large stone, corner to said Hooten ; thence (14) south fifty-nine degrees and fifteen minutes west, six chains and seventy-two links to a stake, corner to lands of Edward Harris ; thence (15) south thirty-six degrees and thirty minutes west, five chains and ninety-three links to a stone; thence (16) north fifty-nine degrees east, six chains and eighty-two links to a stone ; thence along the eastwardly line of Partnership lane (17) north thirty-six degrees west, fourteen chains and seventy-seven links to a stake ; thence (18) north fifty-six degrees and thirty minutes east, six chains and sixty-seven links to a stake ; thence (19) north twenty-nine degrees and ten minutes west, four chains and fifteen links to a stake ; thence (20) north twenty-one degrees and forty-five minutes west, five chains and eleven links to a stake ; thence (21) north fifteen degrees west, thirty links to a stake ; thence (22) north seventy-eight degrees east, eleven chains and sixty-seven links to a stake ; thence (23) south forty-four degrees and forty minutes east, fifty-nine links to a stake ; thence (24) south seventy-eight degrees west, nine chains and eighty-six links to a stake ; thence (25) south twenty-nine degrees and ten minutes east, eleven chains and seven links to a stone ; thence (26) north sixty-one degrees and thirty minutes east, eleven chains and seventy-nine links to a stake in the middle of the aforesaid Evesham road ; thence along the middle of the same (27) north forty-four degrees and forty minutes

west, twenty-five chains and ninety-one links to the place of beginning. Containing eighty-two acres and seventy-four hundredths of land, be the same more or less. [Being the same farm, plantation or tract of land of which Samuel Haines, late of the said township and county, deceased, died seized, leaving him surviving a widow, Mary M. Haines, who is since deceased, and two daughters, to wit: Sarah M. Haines and the said Rebecca B. Otterson, late Haines, to and in whom the same descended and vested in fee as heirs at law of the said Samuel Haines as tenants in common; and the said Sarah M. Haines afterwards, in anticipation of marriage with one Samuel W. Hall, by deed dated the ninth day of June, Anno Domini one thousand eight hundred and forty-nine, recorded in the county of Camden, in Book I of Deeds, page 134, &c., did inter alia grant and convey all her undivided moiety or half part in and to the said hereinbefore described premises to John M. Kaighn and his heirs and assigns in trust among other things as follows: "Fourthly. And in further trust that the said John M. Kaighn, his heirs and assigns, shall and will sell and convey, assign and transfer all or any part or parts of the said premises, real and personal property hereby granted and assigned, and all securities derived by investment or otherwise, from time to time, whenever the said Sarah M. Haines, be she feme covert or feme sole, shall, by writing under her her hand and seal, executed in the presence of at least two subscribing witnesses so direct." And afterwards, to wit: On the thirty-first day of August, A. D. 1852, and after the consummation of the said proposed marriage, the said Samuel W. Hall and Sarah M., his wife, formerly Sarah M. Haines, by deed bearing date the day and year last aforesaid, duly acknowledged and recorded at Mount Holly, in the county of Burlington, in Deed Book I5, page 123, &c., for and in consideration of the sum of seven thousand four hundred and thirty dollars, granted and conveyed all her, the said Sarah M.

Hall's, one equal undivided moiety or half part of the said premises to the said Rebecca B. Otterson, late Rebecca B. Haines, and afterwards, to wit: on the fifth day of December, A. D. 1857, and after the decease of the said Samuel W. Hall, the said John M. Kaighn, trustee as aforesaid, by the direction of the said Sarah M. Hall, testified by her becoming a party to and signing, sealing and delivering the same by deed of confirmation dated the day and year last aforesaid, and intended to be forthwith recorded, granted, ratified and confirmed the aforesaid conveyance of the aforesaid equal undivided moiety or half part of the said premises in and to the said Rebecca B. Otterson.] Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof. To have and to hold the said farm, plantation or tract of land hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said James E. Gowen, and to his heirs and assigns forever. Provided always, nevertheless, and this conveyance and all the estate and property hereby granted and set over is intended to be under and subject to the following uses and trusts, that is to say: First. In trust to permit and suffer the said James Otterson, Jr., and Rebecca B., his wife, or either of them, during their joint natural lives, and the survivor of them, the said James and Rebecca B., during the residue of his or her natural life, to have, occupy, use and enjoy the same and every or any part thereof, or to lease, demise and to farm let the whole or any part thereof, and from time to time to collect, recover and receive the rents, issues, income and profits thereof; and the receipts of the said James or Rebecca B., individually, [notwithstanding any coverture of the said Rebecca B.] or of any attorney or agent of them or of either of them shall be deemed and taken to be good and valid discharges in the law. It

being hereby expressly understood and declared that so much of the said rents, issues, income and profits as shall accrue during the lifetime of her, the said Rebecca B. Otterson, whether received by the said James or Rebecca B. individually, or by any attorney or agent of them, or either one of them, shall be for the sole, separate and exclusive use and benefit of her, the said Rebecca B. Otterson, notwithstanding any coverture, and without being in any way or manner whatever subject to, liable or answerable for any of the contracts, debts or engagements of her said present or any future husband. And in trust, furthermore, to permit and suffer the said James Otterson, Junior, and Rebecca B., his wife, and the survivor of them, to sell, assign, convey and transfer, and to mortgage or otherwise encumber all or any part or parts of the same, and [the said James E. Gowen, trustee as aforesaid, joining and acting therein] to make, sign, seal, execute, acknowledge and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds therefor in fee simple, or for any less estate or estates, free, clear and discharged of and from all and every trust and limitation whatsoever, and to mortgagees or other incumbrancers, such writings or other obligations as may be needful and proper in the premises; and the proceeds of any and all such sales or mortgages shall be received for the sole and separate use of the said Rebecca B. Otterson, as hereinbefore mentioned in respect to the income of said premises and without any liability on the part of the purchaser or purchasers of the said premises to see to the application thereof; and in trust, furthermore, to permit and suffer the said James Otterson, Junior, and Rebecca B., his wife, and the survivor of them, generally to manage, conduct and control the said hereby granted lands, tenements and premises as to them and the survivor of them shall seem meet and proper. Secondly. In trust, that it shall and may be lawful for the said Rebecca B. Otterson at any time during her

natural life, whether she be covert or sole, by a last will and testament, or by any writing in the nature thereof, by her signed in the presence of at least two subscribing witnesses, to designate and appoint to whom all or any part of the said hereby granted premises shall go after her decease, and the decease of the said James Otterson, Junior, which said devisee or devisees, appointee or appointees, shall as to his, her or their respective portions thereof have and enjoy all the rights and powers with refererence to the said tract of land, tenements, &c., in absence of any special restrictions, limitations, conditions or directions in the said testamentary writing or writings contained, which she, the said Rebecca B. Otterson, might and would have enjoyed if this deed had never been made, and she had lived unmarried. Thirdly. In trust, that if the said Rebecca B. Otterson shall not in manner aforesaid designate and appoint to whom the said hereby granted premises shall go after the decease of both of the said parties of the first part to these presents, and if the said James Otterson, Junior, shall survive the said Rebecca B. Otterson, then it shall and may be lawful for the said James Otterson, Junior, at any time during his natural life, by a last will and testament, or by any writing in the nature thereof by him, signed in the presence of at least two subscribing witnesses, to designate and appoint to whom all or any part of the said hereby granted premises shall go after his decease, and what estate or interest the said devisee or devisees, appointee or appointees, shall have and take therein. And fourthly and lastly. In trust, that if neither the said James Otterson, Junior, or Rebecca B. Otterson, shall in manner aforesaid designate and appoint under the rights and powers herein and hereby mentioned and reserved, then the said James E. Gowen, trustee as aforesaid, shall and will hold the said plantation or tract of land, hereditaments and premises, for the right heirs at law of the said Rebecca B. Otterson, and shall by good and sufficient

deed or deeds or other writings, transfer and set over the said premises and every part thereof absolutely to the said right heirs of the said Rebecca B. Otterson and their heirs and assigns in such shares and proportions as the said heirs would have been entitled to had the said Rebecca B. Otterson died intestate and seized thereof in fee simple. And further provided, and it is hereby expressly understood and agreed by and between the said parties hereto, that it shall and may be lawful for the said James Otterson, Junior, and Rebecca B. Otterson, and the survivor of them, by any deed or deeds, writing or writings, to be by them, or the survivor of them, signed, sealed and delivered in the presence of two or more subscribing witnesses, to revoke and make null and void all and every or any of the said uses, trusts and estate herein and hereby created, limited and declared of and concerning the premises hereby granted, or any part thereof, and either to alter or change the same or any of them, or to declare new and other uses thereof, or by such deed or deeds, or writing or writings as aforesaid, absolutely to avoid and determine all and every of the uses and trusts herein and hereby mentioned, limited, created and appointed, or upon demand made, either in writing or otherwise, by the said James Otterson, Junior, and Rebecca B. Otterson, or the survivor of them, to require of and from the said James E. Gowen, trustee as aforesaid, or any other person or persons who may by any manner of means become such trustee, a re-conveyance of the said lands and premises, and every part thereof, to them the said James Otterson, Junior, and Rebecca B. Otterson, or either of them, or to the survivor of them and to the heirs and assigns of him, her or them, or of such survivor, free and clear of and from all or any trust or limitation whatever. And provided also, however, that the said James Otterson, Junior, in the event of his surviving the said Rebecca B. Otterson, shall not have power by means of any or all of the reservations

herein contained, to annul, defeat or avoid any testamentary devise or appointment which the said Rebecca B. Otterson may in her lifetime make in reference to the said estate, as provided herein. And provided also, and it is hereby further expressly understood and declared, that in the event of the said James E. Gowen or any other trustee or trustees hereafter to be named, dying, resigning or neglecting to act, or becoming incapable to perform the trusts hereby created, it shall and may be lawful for the said James Otterson, Junior, and Rebecca B. Otterson, and the survivor of them, from time to time as often as there shall be occasion, by any writing under their, or his, or her hand and seal, duly executed in the presence of two or more subscribing witnesses, to nominate and appoint a new trustee or trustees who shall from thenceforth be and stand seized and possessed of the said estate and premises hereby granted in trust to and for the same uses, intents and purposes, and with the same powers and subject to the same and like provisions, restrictions and limitations as are herein declared and expressed of and concerning the same; and to and for no other use, intent or purpose whatsoever. In testimony whereof, the said parties have hereunto set their hands and seals the day and year first above written.

JAMES OTTERSON, JR., [SEAL.]
R. B. OTTERSON, [SEAL.]

Sealed and delivered in the presence of us.
A. I. FISH.

STATE OF PENNSYLVANIA, }
CITY OF PHILADELPHIA, } SS

Before me, Asa I. Fish, Esq., a Commissioner to take the acknowledgment and proof of deeds, &c., to be used and recorded in the State of New Jersey, resident at Philadelphia, personally appeared James Otterson, Junior, and Rebecca B. Otterson, his wife, the grantors

named in the foregoing conveyance, and did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, the contents thereof having been first made known to them by me, and I being satisfied that they are the grantors mentioned in the said deed; and the said Rebecca B. Otterson, on a private examination by me, separate and apart from her said husband, did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. Acknowledged before me this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and fifty-eight, 1858.

A. I. FISH, [SEAL.]
Commissioner.

I hereby accept the within trust.
Philada., February 25, 1858.
JAMES E. GOWEN.

Witnesses at signing.
JAMES W. HAZLEHURST,
JAMES A. FREEMAN.

[ENDORSED.]

DEED.

JAMES OTTERSON, JR., AND WIFE

TO

JAMES E. GOWEN,
In Trust.

Rec'd Jan'y 22, 1864, and recorded in Book Y6 of Deeds, pages 399 to 406, in the Clerk's office of the county of Burlington, at Mount Holly.

AMOS GIBBS,
Cl'k.

This indenture, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-three, between James E. Gowen, of the city of Philadelphia, Counsellor at Law, trustee, of the one part, and James Otterson, Junior, of said city, Counsellor at Law, of the other part. Whereas, by indenture bearing date the twenty-fifth day of February, A. D. 1858, duly executed and intended to be forthwith recorded, the said James Otterson, Jr., and Rebecca B., his wife, did grant, bargain, sell, alien, enfeoff, release, assign and transfer unto the said James E. Gowen and to his heirs and assigns, all that certain plantation farm, tract or piece of land situate in the township of Chester, county of Burlington and State of New Jersey, and the buildings and improvements thereon erected, described as follows: Beginning at a stone at the junction of the Evesham with the Moorestown and Mount Holly road, in the middle of both said roads; thence along the middle of the said Moorestown road (1) south eighty degrees west, three chains and forty-six links to a stone corner to Samuel Bispham's lot; thence (2) north twenty-three degrees and fifteen minutes west, seven chains and fifty-one links to a stake corner to said Bispham's land; thence (3) south sixty-eight degrees and thirty-five minutes west, three chains and eight links to a stone; thence (4) north twenty-two degrees and twenty-five minutes west, six chains and eighty-six links to a stake; thence (5) north sixty-eight degrees and thirty minutes east, ten chains and fifty-six links to a stone; thence (6) south thirty-three degrees and thirty minutes east, fifteen chains and eleven links to a stake in the middle of the aforesaid Moorestown and Mount Holly road, corner to lands of Dr. Jonathan I. Spencer; thence along the middle of said road (7) north sixty-six degrees east, two chains and ninety-eight links to a stake; thence (8) south twenty-three degrees and ten minutes east, sev-

enteen chains and ninety-four links to a stone; thence (9) north sixty-four degrees and thirty minutes east, seven chains and seventeen links to a stake; thence (10) south twenty-two degrees and forty-five minutes east, nine chains and seventy-one links to a stone; thence (11) south sixty-one degrees and twenty-five minutes west, six chains and seven links to a stake in the middle of the aforesaid Evesham road, corner to lands of Thomas G. Kimble; thence along the middle of said road (12) south, forty four degrees and forty minutes east, thirteen chains and twenty-seven links to a stone corner to lands of William Hooten; thence (13) south fifty-six degrees and thirty minutes west, twenty-three chains and twenty-five links to a large stone corner to said Hooten; thence (14) south fifty-nine degrees and fifteen minutes west, six chains and seventy-two links to a stake corner to lands Edward Harris; thence (15) north thirty-six degrees and thirty minutes west, five chains and ninety-three links to stone; thence (16) south fifty-nine degrees east, six chains and eighty-two links to a stone; thence along the eastwardly line of Partnership lane (17) north thirty-six degrees west, fourteen chains and seventy-seven links to a stake; thence (18) north fifty-six degrees and thirty minutes east, six chains and sixty-seven links to a stake; thence (19) north twenty-nine degrees and ten minutes west, four chains and fifteen links to a stake; thence (20) north twenty-one degrees and forty-five minutes west, five chains and eleven links to a stake; thence (21) north fifteen degrees west, thirty links to a stake; thence (22) north seventy-eight degrees east, eleven chains and sixty-seven links to a stake; thence (23) south forty-four degrees and forty minutes east, fifty-nine links to a stake; thence (24) south seventy-eight degrees west, nine chains and eighty-six links to a stake; thence (25) south twenty-nine degeees and ten minutes east, eleven chains and seven links to a stone; thence (26) north sixty-one degrees and thirty minutes east, eleven chains and seventy-

nine links to a stake in the middle of the aforesaid Evesham road; thence along the middle of the same (27) north forty-four degrees and forty minutes west, twenty-five chains and ninety-one links to the place of beginning, containing eighty-two acres and seventy-four hundredths of land, be the same more or less. Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, in trust, nevertheless, "Secondly, in trust that it shall and may be lawful for the said Rebecca B. Otterson at any time during her natural life, whether she be covert or sole, by a last will and testament or by any writing in the nature thereof by her signed in the presence of at least two subscribing witnesses, to designate and appoint to whom all or any part of the said hereby granted premises shall go after her decease and the decease of the said James Otterson, Jr., which said devisee or devisees, appointee or appointees, shall, as to his, her or their respective portions thereof, have and enjoy all the rights and powers with reference to the said tract of land, tenements, &c., in the absence of any special restrictions, limitations, conditions or directions in the said testamentary writing or writings contained which she, the said Rebecca B. Otterson, might and would have enjoyed if this deed had never been made and she had lived unmarried." * * "And further provided, and it is hereby expressly understood and agreed by and between the said parties hereto, that it shall and may be lawful for the said James Otterson, Jr., and Rebecca B. Otterson, and the survivor of them, by any deed or deeds, writing or writings, to be by them or the survivor of them signed, sealed and delivered in the presence of two or more subscribing witnesses, to revoke and make null and void all and every or any of the said uses, trusts and estates herein and hereby created, limited and declared of and concerning the premises hereby granted, or any

part thereof, and either to alter or change the same, or any of them, or to declare new and other uses thereof, or by such deed or deeds, or writing or writings as aforesaid, absolutely to avoid and determine all and every of the uses and trusts herein and hereby mentioned, limited, created and appointed, or upon demand made either in writing or otherwise by the said James Otterson, Jr., and Rebecca B. Otterson, or the survivor of them, to require of and from the said James E. Gowen, trustee, as aforesaid, or any other person or persons who may by any manner of means become such trustee, a reconveyance of the said lands and premises and every part thereof to them, the said James Otterson, Jr., and Rebecca B. Otterson, or either of them, or to the survivor of them, and to the heirs and assigns of him, her or them, or of such survivor of them, free and clear of and from all or any trust or limitation whatever." And whereas, the said Rebecca B. Otterson did, since the execution and delivery of the said deed as aforesaid, to wit: on the tenth day of March last past, depart this life having failed to designate or appoint by a last will and testament, or by any writing in the nature thereof, to whom the said premises should go after her decease and the decease of the said James Otterson, Jr., as in and by the said recited deed it is provided, leaving her surviving the said James Otterson, Jr. And whereas, the said James Otterson, Jr., has in writing made demand upon the said James E. Gowen, trustee, as aforesaid, and required of and from him, the said James E. Gowen, Trustee as aforesaid, a reconveyance of the said lands and premises and every part thereof to him, the said James Otterson, Jr., the survivor as aforesaid, and to his heirs and assigns, free and clear of and from all or any trust or limitation whatever.

Now this indenture witnesseth, that the said James E. Gowen, Trustee as aforesaid, for and in consideration of the premises and of the sum of one dollar, lawful money, to him in hand paid by the said James Otterson, Jr., the

receipt of which is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, assigned and transferred, and by these presents doth grant, bargain, sell, alien, enfeoff, release, assign and transfer unto the said James Otterson, Jr., and to his heirs and assigns, all that the said farm, plantation and piece or tract of land hereinabove particularly mentioned and described, together with all and singular the rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof, to have and to hold the said piece or parcel of land, &c., hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said James Otterson, Jr., and to his heirs and assigns forever, free and clear of and from all or any trust or limitation whatever. And the said James E. Gowen, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said James Otterson, Jr., his heirs and assigns, by these presents, that he, the said James E. Gowen, hath not at any time heretofore done, or knowingly suffered or permitted to be done, any act, matter or thing whatsoever whereby the said premises hereby granted and assigned, or any part thereof, is or can be incumbered or impeached in title, estate or otherwise howsoever.

In witness whereof, the said James E. Gowen, Trustee as aforesaid, has hereunto set his hand and seal the day and year above written.

JAMES E. GOWEN, [SEAL.]
Trustee.

Signed, sealed and delivered in presence of
J. H. SLOAN,
A. I. FISH.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.

Be it remembered, that on this thirty-first day of December, A. D. 1863, before the subscriber, a Commissioner for the State of New Jersey for taking the acknowledgment and proof of deeds, personally came James E. Gowen, known to me to be the grantor in the above deed of indenture named. And the contents thereof being by me first made known to him he acknowledged he signed, sealed and delivered the same as his voluntary act and deed.

All of which I certify under my hand and official seal.

[SEAL.]

A. I. FISH,
Commissioner for New Jersey.

[ENDORSED.]

DEED.

JAMES E. GOWEN, Trustee,

TO

JAMES OTTERSON, JR.

Rec'd Jan'y 22d, 1864, and recorded in Book Y6 of Deeds, page 406, &c., in the Clerk's office of the county of Burlington, at Mount Holly.

AMOS GIBBS,
Cl'k.

N. J. Court of Errors and Appeals

Between

ANDREW OTTERSON, ET AL.,

Appellants, | ON APPEAL.

and | ON BILL, &c.

SARAH M. HALL,

Respondent,

BILL OF COMPLAINT.

[Filed January 10, 1891.]

To his Honor, Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your oratrix, Sarah M. Hall, widow, of the city of Camden, in the county of Camden and State of New Jersey.

That Samuel Haines, the father of your oratrix, late of the township of Chester, in the county of Burlington aforesaid, was seized in his lifetime, and at the time of his death, of certain lands and premises situate in the said township of Chester and county and State aforesaid, and bounded and described as follows: Beginning at a

stone at the junction of the Evesham with the Moorestown and Mount Holly road in the middle of both said roads; thence along the middle of the said Moorestown road, 1, south eighty-eight degrees west three chains and forty-six links to a stone corner to Samuel Bispham's lot; thence 2 north twenty-three degrees and fifteen minutes west, seven chains and fifty-one links to a stake corner to said Bispham's land; thence 3 south sixty-eight degrees and thirty-five minutes west three chains and eight links to a stone; thence 4 north twenty-two degrees and twenty-five minutes west, six chains and eighty-six links to a stake; thence 5 north sixty-eight degrees and thirty minutes east, ten chains and fifty-six links to a stone; thence 6 south thirty-three degrees and thirty minutes east, fifteen chains and eleven links to a stake in the middle of the aforesaid Moorestown and Mt. Holly road, corner to lands of Dr. Jonathan I. Spencer; thence along the middle of said road 7 north, sixty-six degrees east, two chains and ninety-eight links to a stake; thence 8 south, twenty-three degrees and ten minutes east, seventeen chains and ninety-four links to a stone; thence 9 north sixty-four degrees and thirty minutes east, seven chains and seventeen links to a stake; thence 10 south twenty-two degrees and forty-five minutes east, nine chains and seventy-one links to a stone; thence 11 south sixty-one degrees and twenty-five minutes west, six chains and seven links to a stake in the middle of the aforesaid Evesham road, corner to lands of Thomas G. Kimble; thence along the middle of said road, 12, south forty-four degrees and forty minutes east, thirteen chains and twenty-seven links to a stone, corner to lands of William Hooten; thence 13 south fifty-six degrees and thirty minutes west, twenty-three chains and twenty-five links to a large stone, corner to said Hooten; thence 14 south fifty-nine degrees and fifteen minutes west, six chains and seventy-two links to a stake, corner to lands of Edward Harris; thence 15 north thirty-six degrees

and thirty minutes west, five chains and ninety-three links to a stone; thence 16 north fifty-nine degrees east, six chains and eighty-two links to a stone; thence along the eastwardly line of partnership lane, 17, north thirty-six degrees west, fourteen chains and seventy-seven links to a stake; thence 18 north fifty-six degrees and thirty minutes east, six chains and sixty-seven links to a stake; thence 19 north twenty-nine degrees and ten minutes west, four chains and fifteen links to a stake; thence 20 north twenty-one degrees and forty-five minutes west, five chains and eleven links to a stake; thence 21 north fifteen degrees west, thirty links to a stake; thence 22 north seventy-eight degrees east, eleven chains and sixty-seven links to a stake; thence 23 south forty-four degrees and forty minutes east, fifty-nine links to a stake; thence 24 south seventy-eight degrees west, nine chains and eighty-six links to a stake; thence 25 south twenty-nine degrees and ten minutes east, eleven chains and seven links to a stone; thence 26 north sixty-one degrees and thirty minutes east, eleven chains and seventy-nine links to a stake in the middle of the aforesaid Evesham road; thence along the middle of the same, 27, north forty-four degrees and forty minutes west, twenty-five chains and ninety-one links to the place of beginning. Containing eighty-two and seventy-four hundredths acres of land, be the same more or less.

And your oratrix further shows, that the said Samuel Haines died intestate, on or before the day of in the year eighteen hundred and forty-nine, leaving him surviving your oratrix and one Rebecca B. Haines his only children and heirs at law, to whom and in whom the said lands and premises descended and vested in fee, as tenants in common, upon the death of their said father, Samuel Haines.

And your oratrix further shows, that afterward, on or about the ninth day of June, in the year eighteen hundred and forty-nine, by deed bearing date the day and year last

aforesaid, she did grant and convey among other things all her undivided one half part in and to the said hereinbefore described land and premises to one John M. Kaighn and his heirs and assigns in trust, among other things, as follows: "Fourthly, and in further trust that the said John M. Kaighn, his heirs and assigns, shall and will sell and convey, assign and transfer all or any part or parts of the said premises real and personal hereby granted and assigned, and all securities derived by investments or otherwise from time to time, whenever the said Sarah M. Haines, be she femme covert or femme sole, shall by writing under her hand and seal, executed in the presence of at least two subscribing witnesses, so direct."

And your oratrix further shows, that on or about the twenty-seventh day of June, in the year eighteen hundred and forty-nine, your oratrix intermarried with one Samuel W. Hall; and that on the thirty-first day of August, in the year eighteen hundred and fifty-two, your oratrix, together with the said Samuel W. Hall, her husband, by deed bearing date the day and year last aforesaid, granted and conveyed all her one equal undivided half part of the said above mentioned land and premises to her sister, the said Rebecca B. Haines; and that afterward, on or about the fifth day of December, in the year eighteen hundred and fifty-seven, the said John M. Kaighn, trustee as aforesaid, by the direction of your oratrix, by deed of confirmation, granted, ratified and confirmed the aforesaid conveyance of the aforesaid equal undivided half part of the said premises in and to the said Rebecca B. Haines; by reason of which two said conveyances, the said Rebecca B. Haines became the sole owner in fee of the said above described lands and premises.

And your oratrix further shows, that on or about the first day of October, in the year eighteen hundred and fifty-six, the said Rebecca B. Haines intermarried with one James Otterson, Junior, and that on the second day of March, in the year eighteen hundred and fifty-eight, a

child was born of the said marriage; which said child departed this life on the twenty-ninth day of March, in the year last aforesaid, being then about four weeks of age.

And your oratrix further shows that on or about the tenth day of March, in the year eighteen hundred and sixty-three, the said Rebecca B. Otterson (formerly Haines), departed this life intestate, leaving no issue her surviving; and leaving your oratrix her surviving, her only sister and sole heir at law. And your oratrix shows that the said James Otterson, Junior, survived his said wife, Rebecca B., and that by reason thereof, and of his marriage and of the birth of the said child of the said Rebecca B. and James Otterson, Junior, he, the said James Otterson, Junior, became at the death of his said wife possessed of an estate by the curtesy in the aforesaid lands and premises and forthwith entered upon the possession of said lands and premises as tenant by the curtesy, and continued to occupy and enjoy the same as such tenant by the curtesy until his death, hereinafter set forth.

And your oratrix further shows, that as the sole heir at law of the said Rebecca B. Otterson, deceased, your oratrix became seized in fee simple of the said lands and premises above described, subject to the estate by the curtesy therein of the said James Otterson, Junior.

And your oratrix further shows that her said sister, Rebecca B. Otterson, during her lifetime, was a woman of little or no experience in matters of business; but always relied upon the advice and assistance of others in said matters. That her husband, James Otterson, Junior, was a lawyer of experience, and a shrewd business man; that after her marriage with said Otterson, he, by reason of his ability in matters of business, and her inexperience therein, obtained great influence over her, and she became accustomed to rely entirely from his advice and direction in all matters connected with her separate

estate, and permitted him to manage and control the same as if he were the absolute owner thereof.

And your oratrix further shows, that on or about the twenty-fifth day of February, in the year eighteen hundred and fifty-eight, and only a few days before the birth of her child as above set forth, and while she, the said Rebecca B. Otterson, was, by reason thereof, in a weak condition, both of body and mind, her said husband, James Otterson, Junior, availing himself of the weakened physical and mental condition of his said wife and of the influence and control which he had obtained over her by reason of their marital relations, and of the relations of trust and confidence which existed between them on account of his management and control of her estate, constrained and procured her, the said Rebecca B. Otterson, to execute a deed of conveyance (in which he joined) to one James E Gowen, who was his intimate personal friend, bearing date the day and year last aforesaid, and purporting to convey to the said James E. Gowen the said above mentioned lands and premises upon the following uses and trusts, that is to say, first, in trust to permit and suffer the said James Otterson, Junior, and Rebecca B., his wife, or either of them, during their joint natural lives and the survivor of them, the said James and Rebecca B., during the residue of his or her natural life, to have, occupy, use, and enjoy the same and every or any part thereof, or to lease, demise and to farm let, the whole or any part thereof, and from time to time to collect and recover and receive the rents, issues, incomes and profits thereof, and the receipts of the said James or Rebecca B., individually (notwithstanding any coverture of the said Rebecca B.), or of any attorney or agent of them, or of either of them, should be deemed and taken to be a good and valid discharge in the law, it being thereby expressly understood and declared, that so much of the said rents, issues, incomes and profits as shall accrue during the lifetime of her, the

said Rebecca B. Otterson, whether received by the said James or Rebecca B. individually or by any attorney or agent of them or either one of them, should be for the sole, separate and exclusive use and benefit of her, the said Rebecca B. Otterson, notwithstanding any coverture, and without being in any way or manner whatever subject or liable or answerable for any of the contracts, debts or engagements of her said, then present, or any future husband. And in trust furthermore to permit and suffer the said James Otterson, Junior, and Rebecca B., his wife, and the survivor of them, to sell, assign, convey and transfer and to mortgage or otherwise encumber all or any part or parts of the same, and (the said James E. Gowen, Trustee as aforesaid, joining and acting therein) to make, sign, seal, execute, acknowledge and deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds therefor in fee simple or for any less estate or estates, free, clear and discharged of and from all and every trust and limitation whatsoever, and to mortgages or other encumbrances such writings or other obligations as may be needful and proper in the premises and the proceeds of any and all such sales or mortgages should be received for the sole and separate use of the said Rebecca B. Otterson as thereinbefore mentioned, in respect to the income of said premises, and without any liability on the part of the purchaser or purchasers of the said premises to see to the application thereof. And in trust furthermore, to permit and suffer the said James Otterson, Junior, and Rebecca B., his wife, and the survivor of them generally, to manage, conduct and control the said thereby granted lands, tenements and premises, as to them and the survivor of them should seem meet and proper. Secondly, in trust that it should and might be lawfully for the said Rebecca B. Otterson at any time during her natural life, whether covert or sole, by a last will and testament, or by any writing in the nature thereof by her signed in the presence of at least two subscribing

witnesses to designate and appoint to whom all or any part of the said thereby granted premises should go after her decease and the decease of the said James Otterson, Junior, which said devisee or devisees, appointee or appointees, should as to his or her or their respective portions thereof, have and enjoy all the rights and powers with reference to the said tract of land, tenements, etc., in the absence of any special restrictions, limitations, conditions or directions in the said testamentary writing or writings contained, which she, the said Rebecca B. Otterson might and would have enjoyed if said deed had never been made and she had lived unmarried. Thirdly, in trust that if the said Rebecca B. Otterson should not in manner aforesaid designate and appoint to whom the said thereby granted premises should go after the decease of both of the said parties of the first part to these presents, and if the said James Otterson, Junior, should survive the said Rebecca B. Otterson, then it should and might be lawful for the said James Otterson, Junior, at any time during his natural life, by a last will and testament, or by any writing in the nature thereof, by him signed in the presence of at least two subscribing witnesses, to designate and appoint to whom all or any part of the said hereby granted premises should go after his decease, and what estate or interest the said devisee or devisees, appointee or appointees, should have and take therein; and fourthly and lastly, in trust that if neither the said James Otterson, Junior, or Rebecca B. Otterson should in manner aforesaid designate and appoint under the rights and powers therein and thereby mentioned and reserved, then the said James E. Gowen, Trustee, as aforesaid, should and would hold the said plantation or tract of land, heriditaments and premises for the right heirs at law of the said Rebecca B. Otterson, and should by good and sufficient deed or deeds or other writings transfer and set over the said premises and every part thereof

absolutely to the said right heirs of the said Rebecca B. Otterson and their heirs and assigns, in such shares and proportions as the said heirs would have been entitled to had the said Rebecca B. Otterson died intestate and seized thereof in fee simple. And further provided, and it was thereby expressly understood and agreed by and between the said parties thereto, that it should and might be lawful for the said James Otterson, Junior, and Rebecca B. Otterson, and the survivor of them, by any deed or deeds, writing or writings to be by them or the survivor of them signed, sealed and delivered in the presence of two or more subscribing witnesses to revoke and make null and void all and every or any of the said uses and trusts and estate therein and thereby created, limited and declared, of and concerning the premises thereby granted, or any part thereof, and either to alter or change the same, or any of them, or to declare new and other uses thereof, or by such deed or deeds, or writing or writings as aforesaid, absolutely to avoid and determine all and every of the uses and trusts therein and thereby mentioned, limited, created, appointed or upon demand made, either in writing or otherwise, by the said James Otterson, Junior, and Rebecca B. Otterson, or the survivor of them, to require of and from the said James E. Gowen, Trustee, as aforesaid, or any other person or persons who might by any manner of means become such trustee, a reconveyance of the said lands and premises and every part thereof to them, the said James Otterson, Junior, and Rebecca B. Otterson, or either of them, or to the survivor of them and to the heirs and assigns of him, her, or them, or of such survivor, free and clear of and from all or any trust or limitation whatever; and provided also, however, that the said James Otterson, Junior, in the event of his surviving the said Rebecca B. Otterson, should not have power by means of any or all of the reservations therein contained, to annul, defeat, or avoid any testamentary devise or appointment which the said

Rebecca B. Otterson might in her lifetime make in reference to the said estate as provided therein.

And your oratrix further shows, that she had no knowledge of the existence of such deed until after the death of said Rebecca B. Otterson; that the said deed purports to be for the nominal consideration of one dollar; but your oratrix in effect shows that no valuable consideration whatever was paid by the said James E. Gowen therefor; and that by reason of the premises, the said deed was, and is, fraudulent and void; and that your oratrix is entitled to have the said deed decreed to be fraudulent and void, and for nothing holden; to which deed, or a certified copy thereof, your oratrix begs leave to refer, if it be necessary so to do.

And your oratrix further shows, that she is informed that subsequently, and in pretended pursuance of the provisions of the aforesaid fraudulent deed of trust, he, the said James Otterson, Junior, fraudulently procured the said James E. Gowen, his intimate personal friend as aforesaid, to make and execute to him a conveyance in fee simple of the said lands and premises; and that, by virtue thereof and of the aforesaid conveyance by the said Rebecca B. Otterson and himself to the said James E. Gowen, he, the said James Otterson, Junior, pretended to have an estate in fee simple in said lands and premises above set forth and described; but your oratrix shows that the said deed of conveyance from the said James E. Gowen to the said James Otterson, Junior, if any such deed exists, was and is wholly ineffectual at law and in equity to vest the fee of said lands in the said James Otterson, Junior, and was fraudulent and void, and of no effect as against your oratrix, who is the sole heir at law of the said Rebecca B. Otterson, deceased.

And your oratrix further shows that the said James E. Gowen departed this life on or about the sixteenth day of February, in the year eighteen hundred and eighty-five, leaving him surviving his eldest son and heir at law, Francis I. Gowen.

And your oratrix further shows, that on or about the twenty-fourth day of September, in the year eighteen hundred and ninety, the said James Otterson, Junior, departed this life, intestate, leaving no issue him surviving, and leaving as his only heirs at law his brothers, Andrew Otterson, William C. Otterson and Henry L. Otterson, and his sisters Mary Conover and Harriet M. Otterson.

And your oratrix further shows, that upon the death of the said James Otterson, Junior, his estate, by the curtesy in the above described lands and premises, terminated, and your oratrix thereupon became entitled to the possession thereof as the sole owner thereof in fee simple; but that notwithstanding your oratrix's said right, the above mentioned heirs at law of the said James Otterson, Junior, immediately upon his death entered into the possession of the said lands and premises, and did, on the thirteenth day of November, in the year eighteen hundred and ninety, make, execute and deliver to one Charles H. Otterson a deed of conveyance for the said lands and premises, in trust for the sale thereof; and that the said above mentioned heirs at law of the said James Otterson, Junior, deceased, and the said Charles H. Otterson have ever since refused and still do refuse to deliver up possession of said lands and premises to your oratrix, claiming that by reason of the aforesaid pretended conveyance of said lands and premises by Rebecca B. Otterson and James Otterson, Junior, to James E. Gowen, and the aforesaid pretended conveyance of the same by said James E. Gowen to said James Otterson, Junior, and the execution and delivery of the aforesaid deed of conveyance by the aforesaid heirs at law of said James Otterson, Junior, to said Charles H. Otterson, they as such heirs at law, and the said Charles H. Otterson, as their trustee, are the owners of said lands and premises, and are entitled to the possession thereof.

And your oratrix further shows, that the said Henry L.

Otterson is married, and that his wife's name is Elizabeth S. Otterson; that the said Andrew Otterson is married, and that his wife's name is Emily C. Otterson; that the said William C. Otterson is married, and that his wife's name is Josephine C. Otterson, and that the said Elizabeth S. Otterson, Emily C. Otterson and Josephine C. Otterson each claim to have an inchoate right of dower in the undivided part of the above described premises.

And your oratrix further shows, that she has brought an action of ejectment in the Supreme Court of the State of New Jersey against the said Andrew Otterson, William C. Otterson, Henry L. Otterson, Mary Conover and Harriet M. Otterson, to recover the possession of the said lands and premises; but your oratrix is advised that she cannot successfully maintain the said action, without first obtaining the decree of this Court setting aside as fraudulent and void as against your oratrix, the aforesaid pretended conveyances respectively, made by the said Rebecca B. Otterson and James Otterson, Junior, to James E. Gowen, and by James E. Gowen to the said James Otterson, Junior.

In tender consideration whereof, and for as much as your oratrix is remediless in the premises by the strict rules of the common law; To the end, therefore, that the said heirs at law of the said James Otterson, Junior, namely, Andrew Otterson, William C. Otterson, Henry L. Otterson, Mary Conover and Harriet M. Otterson, and the said Elizabeth D. Otterson, Emily C. Otterson, Josephine C. Otterson, and also the said Francis I. Gowen, may, without oath or affirmation, make answer to this, your oratrix's bill of complaint, your oratrix hereby waiving her right to answer under oath or affirmation, and that your oratrix may be decreed to be seized of an estate in fee simple in the above mentioned lands and premises, and that the deed of conveyance hereinbefore set forth, made by the said Rebecca B. Otterson and James Otterson, Junior, to the said James E. Gowen, and also the deed of

conveyance hereinbefore set forth, made by the said James E. Gowen to the said James Otterson, Junior, and by the said Henry L. Otterson and Elizabeth, his wife, Andrew Otterson and Emlly C., his wife, Mary Conover, William C. Otterson and Josephine C., his wife, and Harriet M. Otterson, the heirs at law of James Otterson, Junior, to Charles H. Otterson, trustee, if such deed exists, may be decreed to be set aside as fraudulent and void as against your oratrix; and that your oratrix may be decreed to be seized in fee simple of the said lands and premises as the heir at law of the said Rebecca B. Otterson, deceased; and that the said Andrew Otterson, William C. Otterson, Henry L. Otterson, Mary Conover and Harriet M. Otterson may be decreed to execute a good and sufficient conveyance for the same to your oratrix, and that they may be enjoined and restrained by the process of this Court from making any sale of the aforesaid lands and premises; and that your oratrix may have such other and further relief in the premises as the circumstances of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your oratrix not only the State's writ of Injunction issuing out of and under the seal of this Honorable Court, directed to the said Andrew Otterson and Emily C. Otterson, William C. Otterson and Josephine C. Otterson, Henry L. Otterson and Elizabeth S. Otterson, Mary Conover, Harriet M. Otterson and Francis I. Gowen, Charles H. Otterson, enjoining and restraining them and each of them from making any sale of the said lands and premises hereinbefore described until this Court shall otherwise direct, but also the State's writ of subpoena issuing out of and under the seal of this Court, directed to the said Andrew Otterson and Emily C. Otterson, William C. Otterson and Josephine C. Otterson, Henry L. Otterson and Elizabeth S. Otterson, Mary Conover, Harriet M. Otterson, Francis I. Gowen and

Charles H. Otterson, therein and thereby commanding them to be and appear before your Honor in this Honorable Court on a certain day and under a certain penalty, therein to be expressed, then and there to answer all and singular the premises hereinbefore set forth and to stand to, abide by, and perform such decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your oratrix will ever pray, &c.

BARKER GUMMERE,
Solicitor and of Counsel with Compl't.

ANSWER TO BILL OF COMPLAINT.

[Filed March 21, 1891.]

The joint and several answers of Andrew Otterson, Emily C. Otterson, William C. Otterson, Josephine C. Otterson, Henry L. Otterson, Elizabeth S. Otterson, Mary Conover and Harriet M. Otterson and Charles H. Otterson, defendants, to the bill of complaint of Sarah M. Hall, complainant.

These defendants, for answer to complainant's said bill of complaint, or unto so much and such parts thereof as they are advised is or are material and necessary for them to make answer unto, severally answering say:

That they admit that it may be true, as alleged in said bill, that Samuel Haines, the father of the complainant, was seized in his lifetime and at the time of his death of the tract of land and premises in said bill of complaint described.

And these defendants, further answering, say that they admit that the said Samuel Haines departed this life intestate at or about the time mentioned in the said bill, and that the said land and premises thereupon descend-

ed to and vested in the said complainant and her sister, Rebecca B. Haines, who were tenants in common in fee as heirs at law of the said Samuel Haines, deceased.

And these defendants, further answering, admit that the said complainant, at or about the time mentioned in her said bill, granted and conveyed the one equal and undivided one-half part, being her interest in the said premises, to one John M. Kaighn for the uses and trusts and in the manner set forth in said bill.

And these defendants, further answering, admit that the said complainant, at or about the time mentioned in said bill, intermarried with one Samuel W. Hall, and that the complainant and her said husband, together with the said John M. Kaighn, trustee as aforesaid, granted and conveyed the said undivided one-half part of said lands and premises to said Rebecca B. Haines, at or about the time and in the manner mentioned in said bill, and that the said Rebecca B. Haines thereupon and by virtue of said conveyance became seized in fee in her own right of the said equal and undivided part of one-half of said premises, and became and was the sole owner in fee of the whole of the said lands and premises in the said bill described.

And these defendants, further answering, admit that the said Rebecca B. Haines, at or about the time mentioned in said bill, intermarried with one James Otterson, Jr., and that a child was born of such marriage and that said child departed this life at or about the time mentioned in said bill.

And these defendants, further answering, admit that the said Rebecca B. Otterson departed this life intestate, at or about the time mentioned in the said bill, and that her husband, the said James Otterson, Jr., survived her, leaving no child, descendant or brother, but leaving the said complainant, her only sister, her surviving. But these defendants deny that the said James Otterson, Jr., by reason of the death of the said Rebecca and the

birth of said child, became possessed and took possession of the said lands as tenants by the curtesy and continued to occupy and enjoy the same as such tenants until his death, as alleged in said bill. And these defendants allege the truth to be, that the said James Otterson, Jr., became seized and possessed of the said lands and premises, as hereinafter stated, in his own domain as a fee and so remained except of such parts as were conveyed away by him as hereinafter stated until his death.

And these defendants, further answering, deny that the said complainant, upon the death of the said Rebecca B. Otterson, became seized in fee of the said lands and premises as heir-at-law of the said Rebecca B. Otterson, or otherwise.

And these defendants, further answering, deny that the said Rebecca B. Otterson was a woman of little or no experience in business matters, or that she always relied upon the advice and assistance of others in such matters, or that her husband obtained or exercised any unlawful or improper influence over her, or that she permitted her husband to manage and control her separate estate as if he were the absolute owner thereof. And these defendants allege the truth to be that the said James Otterson, Jr., was a lawyer of position and experience, ond exercised no further or other control over the said Rebecca B. Otterson than an honorable man should exercise over his wife.

And these defendants, further answering, admit that at or about the time mentioned in the said bill the said Rebecca B. Otterson, together with the said James Otterson, Jr., executed a deed of conveyance of the said premises to one James E. Gowen, who was an intimate friend of both the said James and the said Rebecca, for the uses and trusts set forth in said bill and in further trust that if the said James E. Gowen should die, or refuse, or become incapable of acting, then and in such case the said James Otterson, Jr., and the said Rebecca

B. Otterson, or the survivor of them, might from time to time, by writing under their hands and seals, or the hands and seals of the survivor, appoint a new trustee to be clothed and invested with like power, which said deed, bearing date the 25th day of November, 1858, was duly acknowledged on the day of the date thereof before Asa I. Fish, Esq., a Commissioner of Deeds for the State of New Jersey, residing in the State of Pennsylvania, and was duly recorded in the Clerk's office of Burlington county, in Book Y 6 of Deeds, page 399, &c, on the 22d day of January, 1864. And these defendants deny that at the time of the execution of said deed the said Rebecca B. Otterson was in a weak condition of body or mind, and that the said James Otterson, Jr., availed himself of a weakened physical or mental condition of the said wife and of the relations of trust and confidence which existed between them, and these defendants deny that the said James Otterson, Jr., constrained or procured the said Rebecca B. Otterson to execute said deed, but allege that the said deed was prepared and executed at the special instance and request of the said Rebecca, and that at the execution thereof the said Rebecca, on a private examination apart from her said husband, acknowledged and declared that she signed, sealed and delivered said deed as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

And these defendants, further answering, deny that the complainant had no knowledge of the existence of such deed until after the death of said James Otterson, Jr., but allege the truth to be that the said complainant had legal notice of the said deed from the date of record thereof as aforesaid, and as these defendants have been informed, actual notice and a knowledge thereof, from, at or about the same time. And these defendants state that they have no knowledge of what consideration was given for the said deed except from the said deed and

cannot set forth any belief therein, but leave the complainant to prove the same, as she may be advised is necessary. And these defendants deny that the said deed is fraudulent and void, but allege that said deed is a good and valid conveyance in law of the said premises.

And these defendants, further answering, admit that after the death of the said Rebecca B. Otterson intestate, the said James Otterson, Jr., requested the said James E. Gowan to convey to him, the said James Otterson, Jr., the said premises, under and by virtue of the uses and trusts set forth and declared in the deed to him above mentioned, and that the said James E. Gowan, in compliance with such request and under and by virtue of the uses and trusts aforesaid, conveyed the said premises in fee simple to the said James Otterson, Jr., the survivor, by deed dated the thirty-first day of December, 1863, and recorded in the Clerk's office of Burlington county, in Book Y 6 of deeds, page 406, &c., on the twenty-first day of January, 1864, as by the said deed when produced will more fully and at large appear. And these defendants deny that the said James Otterson, Jr., fraudulently procured the said James E. Gowan to make and execute a conveyance in fee simple of the said premises to him, and these defendants deny that the above mentioned conveyance is ineffectual at law and in equity to vest the fee in such lands and premises in the said James Otterson, Jr., and was fraudulent and void against the said complainant. And these defendants allege the truth to be that the said deed was executed in good faith for a valuable consideration in compliance with the trust above mentioned and set forth in said deed, and vested in the said James Otterson, Jr., the title to said premises in fee simple, free from any trusts and conditions whatever. And these defendants further say, that the said complainant had legal notice of said conveyance at the time of the record of the said deed as aforesaid, and as the defendants have been informed and believe

actual notice thereof about the same time. And these defendants further state, that the said James Otterson, Junior, after conveyance to him as aforesaid, executed a deed for a part of said premises to one N. Newlin Stokes, said deed bearing date the twenty-first day of June, 1864, and was recorded on the twelfth day of April, 1869, in the Clerk's office of Burlington County, in Book A 8 of Deeds, page 120, &c., that he afterwards, by deed dated the 27th day of September, 1871, and recorded in the Clerk's office aforesaid, on the 19th day of December, 1871, in Book L 8 of Deeds, page 559, &c., conveyed another part of said lands and premises to one Joseph V. Ashead. The said James Otterson, Jr., afterwards by deed dated the first day of September, 1873, and recorded in the Clerk's office aforesaid, on the 15th day of September, 1873, in Book U 8 of Deeds, page 253, &c., conveyed another part of said lands to Florence Spencer and John E. Spencer. That said James Otterson, Jr., afterward by deed dated the twenty-first day of July, 1873, and recorded in the Clerk's office aforesaid on the 19th day of November, 1873, in Book U 8 of Deeds, page 546, &c., conveyed another part of said lands to Dr. N. Newlin Stokes. That the said James Otterson, Jr., afterward, by deed dated the second day of October, 1874, recorded in the Clerk's office aforesaid, on the 15th day of October, 1874, in Book Z 8 of Deeds, page 374, &c., conveyed another part of said lands to one Asa R. Lippincott. That the said James Otterson, Jr., afterwards, by deed dated the twenty-first day of September, 1878, and recorded in the Clerk's office aforesaid, on the 30th day of September, 1878, in Book W 9 of Deeds, page 1, &c., granted and conveyed another part of said lands to Albert C. Hewlings. That said James Otterson, Jr., afterward, by deed dated the 21st day of September, 1878, recorded in the Clerk's office aforesaid, on the 9th day of October, 1878, in Book W 9 of Deeds, page 53, &c., conveyed another part of said lands to one Asa R. Lippincott. That the

said James Otterson, Jr., afterward, by deed dated the 24th day of February, 1890, recorded in the Clerk's office aforesaid on the 26th day of February, 1880, in Book A 10, of Deeds, page 502, &c., conveyed another part of said lands to one Bartram Kaighn. That the said James Otterson, Jr., afterward, and by deed dated the first day of April, 1880, and recorded on the 15th day of April, 1880, in the Clerk's office aforesaid, in Book E 10 of Deeds, page 31, &c., conveyed another part of said lands to Horace K. Thurber, Francis B. Thurber and Abner D. Thurber. That the said James Otterson, Jr., afterward, by deed dated the 5th day of April, 1887, recorded in the Clerk's office aforesaid, on the 30th day of April, 1887, in Book R 11 of Deeds, page 64, &c., conveyed another part of said lands to Hannah Ann Marter and Lydia Ann Marter. That the said James Otterson, Jr., afterward, by deed dated the 14th day of May, 1889, and recorded in the Clerk's office aforesaid on the 3d day of July, 1889, in Book No. 380 of Deeds, page 478, &c., granted and conveyed another part of said lands to one Joseph Stokes. That the said James Otterson, Jr., on or about the 13th day of January, 1880, executed a mortgage upon the said premises, or a large part thereof, to one Elizabeth B. Albertson, to secure the sum of $6,000, or some other sum, which said mortgage was recorded in the Clerk's office aforesaid, on the 14th day of January, 1880, in Book Y2 of Mortgages, page 16, &c. And that the said mortgage has been since discharged of record, and that the said James Otterson, Jr., on or about the 12th day of November, 1889, executed another mortgage on the said premises, or a large part thereof, to secure the sum of $6,500, or some other sum, which said mortgage was recorded on the 14th day of November, 1889, in book P3 of mortgages, folio 163, &c. That the said deeds and mortgages were placed upon record and became and were legal notice of said conveyance, of the claims of the said James Otterson, Jr., and these de-

fendants allege that they have been informed and believe that the said complainant had actual notice of the said mortgages and conveyances above mentioned, executed by the said James Otterson, Jr., at or about the time of the making and recording thereof as aforesaid, and that the said complainant, although fully notified of the said conveyance to the said James Otterson, Jr., and of the legal effect thereof, and the conveyances made by the said James Otterson, Jr., above mentioned, and the mortgages above referred to, yet made no claim or demand upon the said James Otterson, Jr., during his lifetime, or for or upon the said lands for more than twenty years after the said conveyance to the said James Otterson, whereupon, and by virtue of the statute in such case made and provided, she cannot now at this late date, and after the death of the said James Otterson, Jr., and of the said James E. Gowan, trustee as aforesaid, against the bona fides of said conveyance, allege anything against the same. And these defendants claim the same advantage thereof as though they had specially pleaded the same.

And these defendants, further answering, admit that the said James E. Gowen departed this life at or about the time mentioned in the said bill, leaving him surviving his oldest son, Francis I. Gowen.

And these defendants, further answering, admit that the said James Otterson, Jr., departed this life at or about the time mentioned in the said bill, leaving no issue and leaving him surviving these defendants, his brothers and sisters, Andrew Otterson, William C. Otterson, Henry L. Otterson, Mary Conover and Harriet M. Otterson, his only heirs at law. And these defendants allege that the said premises descended to and vested in these defendants as the only heirs at law of the said James Otterson, Jr., as tenants in common in fee.

And these defendants deny that the said James Otterson, Jr., had an estate by the curtesy in said premises, and that upon his death the complainant became entitled

to the possession of said premises as owner in fee simple or otherwise.

And these defendants allege the fact to be that the said James Otterson, Jr., was seized and possessed of said premises under and by virtue of the conveyances aforesaid in his own domain as a fee, and that upon such death said premises descended to and vested in these defendants, Andrew Otterson, William C. Otterson, Henry L. Otterson, Mary Conover and Harriet M. Otterson, his brothers and sisters and only heirs at law, as tenants in common in fee.

And defendants admit that upon the death of the said James Otterson, Jr., they took possession of the said lands and premises as owner in fee thereof, as they had a just and legal right to do. And these defendants admit that at or about the time mentioned in the bill these defendants, Henry L. Otterson and Elizabeth, his wife, Andrew Otterson and Emily C., his wife, Mary Conover and William C. Otterson and Josephine C., his wife, and Harriet M. Otterson executed a conveyance of said lands and premises, or the portion thereof owned by the said James Otterson, Jr., at the time of his death, to this defendant, Charles H.Otterson, in trust, as mentioned in said bill. That said deed is dated the thirteenth day of November, 1890, and recorded in the Clerk's office of Burlington county on the 20th day of November, 1890, in Book No. 288 of Deeds, page 207, &c. And these defendants deny that the said Charles H. Otterson took the same with full knowledge of the complainant's rights and equities in the said lands, and deny that the complainant ad any right or equity in said lands. And these defendants deny that the said conveyance was fraudulent and void and of no effect as against the complainant. And these defendants allege the truth to be that the said conveyance was made to the said Charles Otterson for convenience in making title to said lands, these defendants living at great distances from each other, and it being impra-

tical and difficult to get the signatures of all the defendants to deeds of conveyance of any parts of the lands. And these defendants deny that said conveyance was made for any improper purpose, as insinuated in the said bill, but allege that said conveyance was a good and valid conveyance in the law of said premises for the uses and purposes therein expressed.

All of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

P. V. VOORHEES,
Solicitor for and of Counsel with Defts.

TESTIMONY.

Transcript of Stenographer's notes of evidence in the above stated cause, before His Honor Robert S. Green, Vice Chancellor, at the Chancery Chambers, at Camden, N. J., February 23rd, 1893, at 11 A M.

APPEARANCES.—Hon. BARKER GUMMERE and W. S. GUMMERE, Esq., Counsel, &c., with complainant; PETER V. VOORHEES, Esq., and LLOYD, Esq., Solicitors, &c., with defendants.

Mr. W. S. Gummere: I would ask the Court for permission to amend the bill on page 9 of said bill, the third line from the bottom, by striking the name of James Otterson, Jr., and interlining in place of that name, the name of Rebecca B. Otterson.

The alteration noted in pencil on the margin of the original bill and motion granted.

It is admitted that the child of James Otterson, Jr., and Rebecca B. Otterson, his wife, was born and died at the times set out in the bill of complaint.

Mr. Gummere: We have here a printed copy of the will of James Otterson, Jr., and I would like to know if there is any objection to that printed copy being used instead of producing the original or a certified or exemplified copy?

Mr. Voorhees: There may be an objection to its being used at all, but it will not be objected to on the ground that it is not certified, and it may be used with the same force and effect as if duly certified.

Sarah M. Hall, who being duly affirmed saith:

Examined by Mr. W. S. Gummere.

Ques. Are you the complainant in this cause?
Ans. I am.
Ques. Where were you born?
Ans. In Philadelphia.
Ques. Who was your father?
Ans. Samuel Haynes.
Ques. How many brothers and sisters had you?
Ans. One sister.
Ques. What was her name?
Ans. Rebecca B. Otterson, formerly Rebecca B. Haines.
Ques. Where did you live when your father died?
Ans. Moorestown.
Ques. On this farm in question?
Ans. Yes, sir.
Ques. Who lived there with you?
Ans. Father, mother and my sister, and the servants.
Ques. That composed the family?
Ans. Yes, sir; that composed the family.
Qnes. Which died first, your father or mother?
Ans. My father.

Ques. You continued to live with your mother after his death?

Ans. Yes, sir.

Ques. At the farm you spoke of?

Ans. Yes, sir.

Ques. And with your sister?

Ans. Yes, sir.

Ques. How old were you when your father died?

Ans. I was six years old.

Ques. How old was Rebecca?

Ans. I think she was three years old; there was three years between us.

Ques. How long did your mother live after your father's death?

Ans. Well, I don't really remember; I cannot remember exactly the number of years—we were only children and mother did not die until after my marriage, and just before my sister was married.

Ques. When were you married?

Ans. On the 27th of June, 1849.

Ques. To whom?

Ans. Dr. Samuel W. Hall.

Ques. Where did you live after your marriage?

Ans. Philadelphia.

Ques. Did you have a house or board?

Ans. Well, we first boarded and kept house after that.

Ques. Who boarded with you when you went to Philadelphia with your husband to the boarding house?

Ans. My sister and mother—we were all together boarding, and also in keeping house.

Ques. Where did you and your sister first meet James Otterson?

Ans. We first met him on Sansom street at this boarding house I spoke of.

Ques. Was he boarding there when you first came there?

Ans. We were there first; he and Mr. Gowan came

there afterwards ; they came together to the same boarding-house.

Ques. What Mr. Gowan ?

Ans. James E. Gowan.

Ques. Where did they sit at the table ?

Ans. They sat opposite us at the table.

Ques. Did you become acquainted with them there?

Ans. Yes, sir.

Ques. And you never saw them before ?

Ans. No, sir ; we never saw them before.

Ques. How old was your sister then ?

Ans. I suppose she was twenty-one or twenty-two; I cannot say exactly, but I suppose that is near enough.

Ques. Your sister had considerable property of her own at that time ?

Ans. Yes, sir.

Ques. Did she manage her own affairs ?

Ans. No, sir ; she never managed her own affairs.

Ques. Who did ?

Ans. My cousin, John Kaighn, was appointed her guardian after father's death, and he continued to take charge of it, and then she had him as her agent.

Ques. Did she take part in any of her own affairs after he became her agent ?

Ans. She never did.

Ques. Who did manage her affairs ?

Ans. Cousin John M. Kaighn.

Ques. Besides this farm she had considerable other property ?

Ans. Yes, sir ; she had considerable other property besides the farm.

Ques. Mr. Otterson paid attention to your sister how long, after you came to the boarding house, before the marriage took place ?

Ans. Well, I don't know ; I suppose about a couple of years or so, or three, I cannot tell the exact time. I have been present at the settlements of my cousin John

Kaighn and my sister. I don't know whether it is proper or not for me to say anything about that?

Ques. Tell us what was said?

Ans. I was present in the room—interrupted.

(Objection by Mr. Voorhees as incompetent and immaterial. Objection sustained.)

Ques. When were you present at interviews between John M. Kaighn, the agent, and Mr. Otterson?

Ans. Well, I cannot place the exact date at any time, but I was frequently present; is that what you asked me?

Ques. No; with reference to their marriage, before or after?

Ans. Before their marriage, when cousin John had charge of the property.

Ques. Did he remain in charge of the property up to the time of their marriage?

Ans. Yes, sir.

The Court: I will take the evidence of anything that occurred before the marriage.

Ques. What did you hear take place between them?

Ans. I have known cousin John come there and pay my sister money, and he would say, Rebecca, this is so and so, and she would say "Yes, I know, cousin John, it is all right," and then he would say, it is so and so, and I want you to understand it, Rebecca, and she would say, "I don't want to know anything more about it; I know it is all right, and I leave everything to you."

Ques. Where were Mr. and Mrs. Otterson married?

Ans. 2037 Chestnut street, Philadelphia.

Ques. The same place?

Ans. After my sister died he moved from there, after her death.

Ques. After the marriage, who composed the family living in the house at 2037 Chestnut street, Philadelphia?

Ans. Mr. and Mrs. Otterson and my two children and myself, with the servants.

Ques. How long did you continue to live with Mr. and Mrs. Otterson?

Ans. Until six months after Mrs. Otterson's death.

The Court:

Ques. You mean you lived at that house?

Ans. Yes, lived there with them; I went there after they were married and boarded there with them.

Mr. Gummere:

Ques. What was the condition of health of your sister, Mrs. Otterson, during the time before her marriage?

Ans. She was always delicate; she was of a desponding disposition.

Ques. And always delicate?

Ans. Yes, sir.

Ques. Physically?

Ans. Physically, yes; not mentally—physically delicate.

Ques. What was her condition of health after her marriage?

Ans. Well, I think it was very much the same; I don't think there was very much difference; I don't think there was any in fact.

Ques. In 1858, it is admitted, that the child was born of this marriage; that is so, is it not?

Ans. Yes, sir.

Ques. Were you present?

Ans. I was present at the time; I was in the room when the child was born.

Ques. What was the condition of health of Mrs. Otterson at that time, aside I mean from that occurrence of her confinement?

Ans. About as it had been; she was nervous and just about in the same condition as previously.

Ques. How long did she remain sick after her confinement?

Ans. Well, I suppose six weeks—a month or six weeks, something like that.

Ques. What was the condition of the child when it was born?

Ans. He was very delicate indeed—he had a gathering upon his wrist and he did not live—he died in less than four weeks—there was a large gathering on his wrist as large as a half a dollar, and when that burst or broke he died—he died of abscess of the liver, that is what he died of.

Ques. He lived about four weeks you say?

Ans. About four weeks; yes, sir.

Ques. Mrs. Otterson survived for several years?

Ans. Five years after, or a little over five years.

Ques. When did you first discover that Mrs. Otterson had executed this deed of conveyance to James E. Gowan?

Ans. The first I heard of it was after my sister's death. That was when Mr. Otterson told me. He did not mention Mr. Gowan's name at all, but he told me that my sister had given him the farm, but he went on and added immediately, whoever—interrupted.

Mr. Voorhees: I don't think that in this case this witness can testify to statements made by the decedent.

The Court: They claim under him, don't they?

Mr. Voorhees: Yes.

The Court: I will take it.

Witness: He immediately went on and said, "Whoever shall outlive me will see that I never done you or your children any injustice."

By Mr. Gummere:

Ques. This was how long after the death of Mrs. Otterson?

Ans. A few days, just after the funeral; that was the first I knew that there had been such a deed at all.

Ques. Did he show you the deed?

Ans. No, sir.

Ques. When your father died, how long did you live at Moorestown?

Ans. We lived at Moorestown for a short time after father died, and then we came to live at a little house down here.

Ques. Who settled his estate?

Ans. I think a man by the name of Styles, and another by the name of Bolton, and the other, I forget his name; I believe the parties are all dead, however.

Ques. Who settled your mother's estate?

Ans. My husband settled that.

Ques. Did not Mr. Otterson have something to do with settling some one's estate?

Ans. Mr. Otterson settled my husband's estate.

Ques. He acted as administrator?

Ans. Well, I don't know what you call it; my husband left no will, and Mr. Otterson settled the estate.

Ques. Was this after the marriage of Mrs. Otterson?

Ans. Yes, sir; my husband died before the marriage, but the estate was not settled until after Mr. Otterson married my sister.

Ques. You said you lived with Mr. and Mrs. Otterson after their marriage?

Ans. All the time, and I lived there six months after her death.

Ques. Who managed Mrs. Otterson's affairs during the marriage?

Ans. He, Mr. Otterson; altogether.

Ques. Did you know that Mr. Otterson, after your sister's death, was selling any property?

Ans. I did not know it at the time; I accidentally found

it out afterwards, and at the same time found out that he was buying other property which made the amount about the same.

Ques. The amount of acres?

Ans. The amount of acres and the amount in value about the same.

Ques. When he sold a piece he would buy another?

Ans. Yes, sir; when he sold a piece he would buy another piece; he never said anything to me about it; I found it out accidentally.

Ques. Your knowledge was merely the fact that he had, or you heard he had, sold pieces of property and bought others?

Ans. That was all; yes, sir.

Cross-examination.

By Mr. Lloyd:

Ques. How long did you live at Moorestown?

Ans. Well, I was about six years old when father died. I was born at Philadelphia and left there very soon after.

Ques. That brought you down to what period of time?

Ans. How do you mean? I lived there six years during my father and mother's lifetime.

Ques. You left there when, about?

Ans. Do you mean to say the year?

Ques. Yes.

Ans. I was six years old. I was born in—well, I really cannot tell. I could tell by looking at the Bible. I was six years old when I left there, and that is as near as I can come to it.

Ques. Tell us what year you were born in?

Ans. On the 10th of April, 1829; there was about three years difference between my sister and myself; she was born in 1832, I think.

Ques. You have been a frequent visitor since at Moorestown?

Ans. Not frequent; I own a farm there, but that did not bring me in sight of this farm; I came up there now and then, but I—interrupted.

Ques. You are familiar with the location of this property described in this bill, are you not?

Ans. Well, in a general way, I am; I cannot really point out the different tracts.

Ques. That is substantially it, is it not, an outline of the property? (handing witness a map.)

Ans. I don't think I could positively say as to that.

Ques. Do you know where Chestnut street is?

Ans. No, sir, I do not.

Ques. You know where the railroad is?

Ans. Yes, sir.

Ques. You know where the canning factory is?

Ans. Yes, sir.

Ques. You know also where Dr. Stokes' place is?

Ans. Do you mean down on Chester avenue?

Ques. No, out here on the turnpike.

Ans. I don't know; Dr. Stokes owns property next to me on Chester avenue.

Ques. I am speaking of a very fine residence on the Mt. Holly turnpike belonging to Dr. Joseph Stokes; do you know that?

Ans. Do you mean the new house?

Ques. Comparatively new, yes.

Ans. Yes, sir; on the right hand side, I know there is one there; I don't know the boundaries of it or anything of that kind.

Ques. This is the railway—will you show where on this map your farm is?

Ans. Really Mr. Lloyd, I—interrupted.

Ques. The station is here, and the railroad here, and here is the Otterson property; now in what direction from the railroad is your property?

Ans. Mine?

Ques. Yes.

Ans. In getting out of the station at East Moorestown you turn to the right as you go out of Moorestown, and as you go to my sister's property you go towards Moorestown, and when you go to mine you go the other way.

Ques. By your sister's property you mean your father's property?

Ans. Yes, sir.

Ques. And that is right near the station?

Ans. Yes, sir; within a couple of squares from the main street.

Ques. How often would you visit there?

Ans. Sometimes I would be a year or two and not be up there.

Ques. Tell us first how you heard of these improvements you spoke of, the selling property and buying other property?

Ans. I cannot tell you; I just heard it in a casual way; I never had any notice of it or anything of the kind; I just happened to hear about it.

Ques. When, first?

Ans. I cannot tell you.

Ques. About?

Ans. I cannot tell you; I really don't remember.

Ques. Tell us what you did hear?

Ans. That Mr. Otterson was selling property and buying other property.

Ques. You had no knowledge of any specific sales?

Ans. Nothing at all.

Ques. You had no knowledge of improvements made by other persons being made?

Ans. Not until I saw them myself.

Ques. When did you see them yourself?

Ans. I cannot say.

Ques. How long ago?

Ans. I don't remember; I have no way of finding out or remembering it, and consequently don't remember it.

Ques. Didn't you consider it a matter of importance to

you that he was selling off property belonging to you; didn't you consider it sufficiently important that you should look into it?

Ans. No, sir.

Ques. Will you tell us, Mrs. Hall, when you first knew of the canning factory being placed there?

Ans. That is right at the station—in sight of the station—I don't know when that was put there; I have no idea.

Ques. How long have you seen it there?

Ans. I cannot tell you.

Ques. How many years ago; give us an idea; is it five or ten?

Ans. I cannot say whether five or ten; I cannot say; I do not know.

Ques. Was it between the two periods?

Ans. I cannot say; I do not know. I have no reason for remembering these things, and I really do not remember them.

Ques. Tell us whether this factory is in the improved section of the property or not; in what section of the property is it?

Ans. Down towards the railroad—in sight of the railroad.

Ques. How near the station is it?

Ans. I should say from just as I could see it from the station, about a square.

Ques. It was easily within sight of the station?

Ans. Yes, sir.

Ques. And a very permanent building?

Ans. Well, it was buildings that I noticed and some one said that it was a canning factory, and that is all I know about it.

Ques. Do you think you have seen it there for the last ten years?

Ans. I don't know at all; I told you whether I had seen it five or ten years ago.

Ques. Do you know where the old farm house is?

Ans. Oh, yes, sir; I know where that is.

Ques. Do you know what squares of property have been sold off adjoining that or right in the immediate neighborhood?

Ans. Not particularly; I know some has been sold but I cannot say how much.

Ques. That is the most valuable portion of the property?

Ans. Some of the most valuable, not the most valuable, but some of the most valuable.

Ques. Do you know where he bought other property?

Ans. No, sir; I do not.

Ques. Do you know where it is located in respect to this property?

Ans. No, sir; I do not know where it is located in respect to this property.

Ques. Do you know that it was not located anywhere near the centre of the town?

Ans. I do not know where; I have just told you that.

Ques. Tell us as near as you can get at it, when you first knew of the property of Dr. Stokes, the one I have called your attention to?

Ans. I cannot tell you that; I recollect seeing an ice house there and hearing that it was on some property Mr. Otterson had sold, and that is all about it.

Ques. Did you see the property when it was being built?

Ans. I think I did.

Ques. You did?

Ans. I think so; I think it was not quite finished when I saw it first.

Ques. That was in Mr. Otterson's lifetime?

Ans. I suppose it was; there was nothing sold since.

Ques. You knew that was on the Otterson property?

Ans. I was told so.

Ques. Didn't you, as a matter of fact, know from your

own knowledge of the location of the property that you claim here, that it was in point of fact on it?

Ans. I did not know it; I really did not know where the lines were, and do not know it now.

Ques. Is it not on the main street of the town?

Ans. Yes, sir; I knew that.

Ques. On which side?

Ans. On the right hand side as you go up.

Ques. Mr. Otterson owned the entire south side?

Ans. I don't know; part of it lies on the south side; I cannot say how far.

Ques. Were you not sufficiently familiar with the lines to know that this improvement was being put up on that property, of your own knowledge, irrespective of what anybody told you?

Ans. No, sir.

Ques. But you did have information that it was being put up on the Otterson property?

Ans. Yes; that it was put up on my father's property.

Ques. And that was just before it was completed?

Ans. I think the house was not completed when I first saw it; I cannot say how nearly completed it was.

Ques. Mrs. Hall, will you tell me, if you recollect, about how many times a year or how often you visited your place during the period running from 1880 to 1890?

Ans. I cannot tell you; I have no idea.

Ques. Who was in charge of your own place up there?

Ans. I was in charge myself?

Ques. In what way?

Ans. In renting it; how else would I be in charge?

Ques. And you rented it to somebody up there and they paid you the rent for it?

Ans Well, yes, sir; it is presumed they did; ought to at any rate.

Ques. You visited them more or less with reference to repairs and such like?

Ans. They usually came down to see me, and when I felt like going up there, I went up there.

Ques. Is not this canning factory that I have spoken of being there, has not been there as long as since 1880?

Ans. I haven't any idea when they put it there, not the least idea.

Ques. You saw it being built?

Ans. I don't know that I did; I may have done so; I merely knew that it was the canning factory when it was put up, but anything else about it I don't know.

Ques. Tell us what other improvements you know of having been made on this property?

Ans. I did not know of any.

Ques. Hadn't any?

Ans. I don't know anything about them.

Ques. Tell us what other portions of this property you know of being sold by Mr. Otterson in his lifetime?

Ans. I don't know any of them at all.

Ques. When you saw this property of Dr. Stokes being put up there, didn't you feel it incumbent upon you to go to James Otterson and call his attention to it?

Ans. No, sir; I never thought of such a thing.

Ques. Did you feel it incumbent to warn these persons when there, that they were building upon your ground?

Ans. No, sir.

Ques. And yet you knew that they were building on property—on ground that Mr. Otterson only had a life estate in?

Ans. I was told that it was property belonging to my father.

Ques. You had been warned of that?

Ans. No, sir; I had not been warned at all. I had been told in a casual way that that property had belonged to my father.

Ques. You had your own farm up there ever since your father's death?

Ans. Yes, sir; that came to me with the other property of my father.

Re-direct.

By Mr. Gummere:

Ques. You said, in answer to a question of Mr. Lloyd, that you did not consider it a matter of importance that Mr. Otterson was selling off a part of his property; will you tell why you did not consider it a matter of importance?

Ans. I considered that Mr. Otterson had made a promise to leave it back to my family, to me or my children, and anything that he was buying, knowing that he was buying other property that made it up to about what it was when he received it, I felt satisfied; that is, well, yes, sir, that is it.

Ques. This other property that he was buying, did that adjoin the original place?

Ans. Yes, sir; I think it did; yes, it did.

Further cross-examination by Mr. Lloyd.

Ques. Why did you, in answer to my question, when I asked you where that property was, say that you did not know where that was?

Ans. What other property?

Ques. The other property Mr. Otterson was buying?

Ans. I did not know.

Ques. Why did you say it adjoins the original place then?

Ans. If you had asked me if it had adjoined the other place I should have said yes; I know that it adjoined it, adjoins the farm, but I do not know where it is.

Ques. If you know that it adjoins your father's farm then you know where it is?

Ans. I know it adjoins the farm, but I cannot say where it is.

Ques. How do you know it adjoins the farm?

Ans. From hearsay and reports; that is all I have known about it, about the matter, was what I was told.

JOSEPH M. KAIGHN, a witness produced in behalf of the

complainant, being duly sworn according to law, on his oath saith :

Examined by Mr. Gummere.

Ques. Where do you live?

Ans. In the city of Camden.

Ques. Are you the son of John M. Kaighn, who is mentioned by Mrs. Hall?

Ans. I always passed as such.

Ques. Is he still living?

Ans. No; I think father died in 1871.

Ques. Do you remember Mrs. Rebecca B. Otterson?

Ans. Yes, sir.

Ques. You knew her during her lifetime?

Ans. Yes, sir.

Ques. You were some relation of the family were you not—were not the Kaighns and Ottersons related?

Ans. The Nichols and Ottersons were related, I think; that is the way we looked at it.

Ques. Did you have any knowledge of the business relations existing between your father and Mrs. Otterson before her marriage?

Ans. Yes, sir.

Ques. Who had charge of the management of Mrs. Otterson's estate before her marriage to Mr. Otterson?

Ans. My father.

Ques. Do you know that from your own personal knowledge?

Ans. Well, I know this far, I cannot say as to any division between the two children, but I know he settled up the whole estate and the selling out of lots, and had general charge of it.

Ques. General charge of whose estate?

Ans. We called it Sheriff Haynes' property.

Ques. You say that continued up to the time of Mrs. Otterson's marriage.

Ans. When Rebecca married Mr. Otterson, father told

us, Rebecca is married and she had married an attorney, and I think he ought to take charge of that estate.

Ques. Were you in business with your father at that time?

Ans. I was a boy around the farm at that time, a young man, perhaps, at that time.

No cross examination.

Mr. Gummere: We had another witness whom we expected to have here to-day, but he is dead, and under the circumstances we cannot ask his widow to attend. I believe he only died a few days ago. What we expected to prove by Mrs. Collins is this: Mr. Collins was a tenant on this property of Mr. Otterson's, and was during the lifetime of Mrs. Otterson, and we wanted to show that all his business dealings in relation to that property was with Mr. Otterson, and not with Mrs. Otterson, after the marriage; that before the marriage his dealings were with Mr. Kaighn, and after the marriage his dealings were with Mr. Otterson; I don't know that it is specially important or that it will be denied by the other side.

Mr. Voorhees: The dealings as tenants you mean?

Mr. Gummere: The dealings in relation to this property.

Mr. Lloyd: I think we can admit that if Mrs. Collins was here she would testify to that.

Complainant rests.

William C. Otterson, a witness produced in behalf of defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lloyd:

Ques. You are a physician?

Ans. Yes, sir.

Ques. And reside where?

Ans. Brooklyn, New York.

Ques. And a brother of James Otterson, deceased?

Ans. Yes, sir.

Ques. Were you ever a visitor at his residence in Philadelphia during his married life?

Ans. Yes, sir.

Ques. When—what year, if you can tell us?

Ans. In 1849 I think.

Ques. 1849?

Ans. That is my impression now.

Ques. Where were they living at that time?

Ans. Green street near Twentieth—well, no, I am mistaken about that date; I think it was in 1859, I think so.

Ques. You observed their relation with each other I suppose during your visits to them?

Ans. Yes, sir.

Ques. Now just tell us what their conduct towards each other was?

Ans. It seemed to be most harmonious as far as my observation extended.

Ques. Where they a jarring family in any respect, or affectionate?

Ans. I never heard any controversy between them at all, and never saw any evidence of it.

Ques. How long were you there, and how frequently?

Ans. During the summer they were residents in Philadelphia—is that the memorandum I gave you of the date?

Ques. You cannot look at this—how long were you there and how frequently?

Ans. I was back and forth three or four times a week on the average, seeing more or less of them at the house, dining with them, &c.

Ques. I want to ask you what was the condition of health of Mrs. Otterson at that time?

Ans. She seemed to be tolerably well; I never knew her to have any serious sickness during that time; I never heard of her having called in a physician.

Ques. What was her mental condition?

Ans. Bright as a dollar—I mean a hundred cents on a dollar, I don't mean any other dollar—she was an unusually clear-headed lady of general information, according to my judgment.

Cross-examination by Mr. Gummere.

Ques. How are you able to fix this time, Doctor?

Ans. Fix the time?

Ques. Yes.

Ans. It appears I have not fixed it very accurately. My first impression—I took it from some little memoranda I have home, some little book and my recollection—I graduated in 1863, and it was some years after my graduation that I spent a summer in Philadelphia after their marriage, and they were keeping house at this place in Green street.

Ques. What part of Green street was it?

Ans. Near Twentieth; I don't remember the number.

The Court:

Ques. Are you much acquainted with Philadelphia?

Ans. With the topography, or individuals?

Ques. With the names of the streets.

Ans. I should say probably not.

Mr. Gummere:

Ques. You spent, though, the whole summer there, you say?

Ans. Yes; I could find my way about the town, I suppose.

Re-direct.

By Mr. Lloyd:

Ques. Do you recollect anything about the character of the street?

Ans. Did I say Green street?

Ques. Yes; you said Green street.

Ans. I meant Chestnut street; that is where they first lived; he subsequently moved to Green street.

Ques. Can you tell whether this was after or before the birth of the child?

Ans. It was before the birth of the child.

Ques. How long before the birth of the child?

Ques. That I do not know; that sickness took place during my absence.

ANDREW OTTERSON, a witness produced in behalf of defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lloyd:

Ques. You are also a physician?

Ans. I am, yes, sir.

Ques. Residing where?

Ans. In Brooklyn.

Ques. And a brother of James Otterson, deceased?

Ans. Yes, sir.

Ques. Were you ever a visitor at his house during his married life?

Ans. I must have been there, but I cannot date it.

Ques. I merely asked the fact whether you were there or not—whether you knew Mrs. Otterson?

Ans. I did.

Ques. Tell us what was her apparent condition of health when you knew her?

Ans. Good.

Ques. What was her condition of mind?

Ans. I always looked upon her as a rather unusually bright lady.

Cross-examination.

By Mr. Gummere:

Ques. How long before her death was it before you saw her last?

Ans. I cannot date it; if you will allow me to state without a question—interrupted.

Ques. No; that may interest the other side more; she was a young woman when she died, was she not?

Ans. Yes, sir.

JONES YERKES, a witness for the defendant, being duly affirmed, saith:

Ques. Where do you reside?

Ans. In Moorestown, New Jersey.

Ques. And have resided there how long?

Ans. Since 1868.

Ques. Are you familiar with the location of property through the town?

Ans. Yes; I am pretty familiar with it.

Ques. Are you familiar with the location of the tract of ground described in those proceedings, known as the Otterson property?

Ans. Yes, sir; I think I am.

Ques. Will you look at that plan and see if that is an outline of the location of the tract (handing witness a paper)?

Ans. Yes, sir; I think it is.

Ques. Will you tell us of what improvements there are—in the first place, are you familiar with any of the sales made of that property to persons by Mr. Otterson in his lifetime?

Ans. Well, I bought a piece of him there near the railroad station.

Ques. What was that?

Ans. This one—one of the canning factories is located on it (indicating).

Ques. How do you identify it?

Ans. Here is the railroad, and I identify it by adjoining the railroad; it is called the "Thurber tract," and marked on the plan.

Ques. How large a piece is that?

Ans. I think it is less than an acre.

Ques. When was that you bought that property?

Ans. I think in 1871—somewheres in that neighborhood; I cannot give the year exactly.

Ques. Are there any improvements on that ground?

Ans. Yes; a large warehouse building on it.

Ques. For what purpose?

Ans. For storing canned goods.

Ques. Is there a canning factory in connection with it?

Ans. Yes, sir; but not on this piece of ground.

Ques. How far from the railroad station is it?

Ans. About half a square.

Ques. Is there anything to obstruct the view between the railroad station and this warehouse?

Ans. No, sir.

Ques. It is open and in plain sight, is it—that is, to any person coming to the station?

Ans. Yes, sir.

Ques. How long has that property been built there, or improved, about.

Ans. I commenced building right away as soon as I purchased it.

Ques. Are you familiar with the other portions of the ground that have been sold off; take the Stokes property on the other side of the tract, marked on this plan "Stokes?"

Ans. Dr. John Stokes.

Ques. Are you familiar with that?

Ans. Yes, sir; I know he has a fine residence there.

Ques. Did you know when that property was built?

Ans. I cannot say the year; but three or four years probably.

Court :

Ques. Put up three or four years ago ?

Ans. Yes, sir ; I cannot say the exact year that building was built.

Mr. Lloyd :

Ques. Give the Court the general outline of the residence.

Ans. It is a fine residence built of stone.

Ques. Are you familiar with the probable cost of such a building ?

Ans. It is a pretty expensive building ; I would not like to say.

Ques. Do you know of any other piece of ground being sold off there ?

Ans. I have heard of others.

Ques. You don't know of your own personal knowledge ?

Ans. No, sir ; I do not know of my own knowledge.

No cross-examination.

JOSEPH STOKES, a witness produced in behalf of defendant, being duly affirmed, saith :

Examined by Mr. Lloyd :

Ques. You are a physician ?

Ans. Yes, sir ; I am.

Ques. Where do you reside ?

Ans. Moorestown, New Jersey.

Ques. Are you familiar with the property up there of which you bought a portion seven years ago ?

Ans. Yes, sir.

Ques. What property is that known as ?

Ans. The Otterson estate.

Ques. What known as, before his death ?

Ans. The Otterson property.

Ques. Did you purchase any plot of ground from Mr. Otterson, in his lifetime ?

Ans. I purchased the piece of ground delineated on that map and marked Joseph Stokes.

Ques. Tell us about the size of that ground ?

Ans. One hundred and fifty feet front, by three hundred feet deep, to the middle of the road, containing about an acre.

Ques. What portion of the property is that, speaking relative to its value; the most valuable, the least valuable, or how ?

Ans. It is in the most valuable portion of the property, I should say ; the part below the Pike is the most valuable, and it is in that.

Ques. Are you familiar with other portions of the property sold off by Mr. Otterson ?

Ans. Yes, sir.

Ques. Tell us on that plan where they are ?

Ans. My father bought a portion there, N. Newlin Stokes (indicating on the map).

Ques. What others ?

Ans. Mr. Marter bought one lot, Mr. Bertram Penn bought a lot ; I do not know the person who bought the next adjoining property, but it was sold.

Ques. What about the other ?

Ans. I cannot certainly say about the Lippincott lot when it was bought.

Ques. Do you know whether any improvements have been put upon that property ?

Ans. Yes, sir; houses on all.

Ques. Tell us about those I have last asked about, whether they are in the valuable or least valuable section ?

Ans. They are all in the valuable section.

Ques. Are you familiar with the portions of ground that Mr. Otterson bought in his lifetime up there, where they are ?

Ans. That Mr. Otterson bought in his lifetime?

Ques. Yes?

Ans. I did not know of his buying any.

Ques. Will you tell us whether or not all of these tracts or what ones of them have been improved or built upon?

Ans. Improvements have been built on Mrs. Marter's that has been built on, and there are two other tracts there which I think now must be comprehended in one—there is one house, I cannot say which property it is on; it is marked Lippincott and Ascher—I think the Lippincott lot has the improvements on it.

Ques. What about your father's?

Ans. That has not been built on.

Ques. Will you tell the character of your own improvement?

Ans. It is a stone dwelling house, or partially stone.

Court:

Ques. How large and how high is it?

Ans. I forget its dimensions; it is seventy feet long by about thirty, and three stories high.

Mr. Lloyd:

Ques. Do you object telling us the cost or value of it?

Ans. I should prefer not to do so.

Court:

Ques. When did you build it?

Ans. In 1889.

Ques. What time in 1889?

Ans. It was commenced, I think, in either July or August.

Ques. What time was it completed?

Ans. It was completed, I think, in June, 1890; it was building about one year.

Ques. That is about a year and two or three months before Mr. Otterson's death, it was completed?

Ans. Yes, sir.

Cross-examination.

By Mr. Gummere:

Ques. You say that the land on the turnpike is the most valuable part of it in your judgment; is it more valuable than the part that backs on the railroad?

Ans. I should say that it was.

Ques. It would depend altogether on the use of which it is to be put?

Ans. Yes, it would; but I think at present the land on the pike would sell for more than on the railroad.

Sallie Ann Kaighn, a witness produced on behalf of defendant, being duly sworn, on her oath saith:

Examined by Mr. Lloyd:

Ques. Where do you reside?

Ans. In Moorestown.

Ques. How long have you lived there?

Ans. Thirty-six years.

Ques. Your father lived there before you?

Ans. No, sir; I think it is really thirty-seven years.

Ques. Your father, I believe, bought a tract of land there; tell us where it is designated on this plan? (indicating on map).

Ans. I think this is it, the one marked Kaighn.

Ques. Do you know when he bought that, about?

Ans. In 1878, I think.

Ques. He has since deceased?

Ans. Yes, sir.

Ques. What improvement did he make upon the ground there?

Ans. Built a frame house.

Ques. A residence?
Ans. Yes, sir.
Ques. Do you live there now?
Ans. Yes, sir.
Ques. When was this improvement made?
Ans. In 1880.
Ques. Immediately after he bought?
Ans. Yes, sir.
Ques. Can you tell us whether that piece of ground can be seen from the station?
Ans. Yes, sir; it can be seen; it is not a conspicuous house, but it can be seen.

No cross-examination.

Recess.

N. Newlin Stokes, a witness produced on behalf of defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lloyd.

Ques. You are a physician?
Ans. Yes, sir.
Ques. Practicing in Moorestown?
Ans. Yes, sir.
Ques. And reside there?
Ans. Yes, sir; I do.
Ques. Do you know the property here described in this bill?
Ans. I believe I know it pretty well.
Ques. And given in that plan there? (Handing witness a map).
Ans. Yes, sir.
Ques. Did you buy any portion of that ground?
Ans. Yes, sir; I bought a lot of Mr. Otterson.
Ques. That you have not improved?
Ans. I have not improved it.

Ques. Are you familiar with the general location of the property there?

Ans. I feel quite familiar with it; yes, sir.

Ques. I want to ask you, Doctor, whether a person visiting Moorestown while these improvements were going on after they were made and reaching the station there, an ordinary observant person would see these buildings and improvements made?

Ans. I know they would see Thurber's improvements very plainly, and Dr. Joseph Stokes', I think they would see, and the roof of the house belonging to Mrs. Marter and the Kaighn sisters and Aschers, I think they would be seen—the roof they would see, not the buildings, because the factory intervenes.

Ques. What is the character of improvements made there?

Ans. Generally speaking, they are all substantial buildings.

Ques. Do you know when the first of these properties was built on?

Ans. The first property, I think, was built by Mr. Ascher; it now belongs to Mr. Lippincott.

Ques. About when was it built?

Ans. It may not have been before the factory, but I think it was, though; it must have been twenty years ago, I think so—that is not accurate, you will understand.

No cross-examination.

ABRAHAM W. DEACON, being duly sworn according to law, on behalf of defendant, saith:

Examined by Mr. Lloyd:

Ques. Where do you reside?

Ans. Moorestown.

Ques. You were at one time a tenant of property belonging to Mrs. Hall?

Ans. I did not live there; I rented a place of her I believe.

Ques. When was that?

Ans. About six years ago.

Ques. Was she a visitor at your place?

Ans. Once a year probably.

Ques. Now, will you tell us whether you had any conversation with her with respect to the property of Joseph Stokes up there, and that improvement?

Ans. I do not recollect that we had any conversation about that particularly.

Ques. In any conversation was the subject mentioned or spoken of?

Ans. She mentioned to me about that farm from up there that belonged to her father.

Ques. I am talking about the improvement that Mr. Stokes was making there; did she say anything about that building, or do you know whether she knew of the fact that it was being put up?

Ans. Probably she said something to me, but I almost forget, it has been so long ago, whether she did or not—I think she knew it though.

Ques. That is, when it was being built?

Ans. When it was being built.

No cross-examination.

HARRIET M. OTTERSON, a witness produced on behalf of defendant, being duly sworn according to law, on her oath saith:

Examined by Mr. Lloyd:

Ques. You reside now where?

Ans. 106 Lincoln street, Germantown, Philadelphia.

Ques. You are a sister of James Otterson, deceased?

Ans. I am.

Ques. Where have you lived during the last thirty years?

Ans. I have lived on Grand street—interrupted.

Ques. In Philadelphia?

Ans. In Philadelphia; yes, sir.

Ques. Where were you living during 1858 and 1859, the winter of 1858 and 1859?

Ans. Well, as I do not keep a diary, I cannot remember dates.

Ques. Tell us as near as you can when, if ever, were you living with James Otterson at that time during his married life?

Ans. I never lived with him during his married life.

Ques. You knew Mr. Otterson?

Ans. Yes, sir; well.

Ques. Visited at his house?

Ans. Frequently.

Ques. During any season of his married life, which lasted, I believe, from 1857 to 1863, what portion of that were you visitor there, if any?

Ans. Oh, well, I was frequently a visitor there, a week at a time, or perhaps two weeks at a time; but I spent nearly one winter there, for I was under treatment.

Ques. When was that?

Ans. I cannot tell.

Ques. Before or after the birth of the child?

Ans. After the birth of the child.

Ques. Tell us what sort of a woman Mrs. Otterson was, whether a woman of bright intellect or otherwise?

Ans. She was exceedingly bright.

Ques. You have told us that you were there one winter under physician's care?

Ans. Yes, sir.

Ques. What were the relations between Mrs. Otterson and her husband?

Ans. Most amicable.

Ques. Did you ever hear or overhear any conversation, or did Mrs. Otterson ever say anything to you with respect to her property and its disposition?

Ans. She said—she made the remark once—interrupted.

Ques. When was it and where was it?

Ans. Don't ask me dates; I cannot tell you.

Ques. Was it during this period of time?

Ans. I presume it was, but I cannot tell positively; she said: "Who would I leave my property to if I did not give it to my husband?"

Ques. What was the occasion of this remark, tell the whole circumstances about it?

Ans. She said, "Sarah was always nagging at her about her property."

Ques. Who was Sarah?

Ans. The defendant.

Ques. Do you mean Mrs. Hall?

Ans. I mean the complainant; yes, sir.

Ques. Tell us what else she said?

Ans. At another time she said that they would not care anything about her if she was six feet under ground if they only had what belonged to her.

Ques. What did she mean by "they?"

Ans. Her and her family—no one else.

Ques. Why was this remark made; give the circumstances that brought it about?

Ans. Well, she seemed to be excited and had come out from an interview with them or with Sarah, I suppose, and that caused her to make this remark.

Ques. What condition of mind was she in at that time?

Ans. Well, she seemed excited.

Ques. Was she angry, or anything of that sort?

Ans. I cannot say that she was positively angry, but she felt very much, very much hurt.

Ques. Where had they been—where did this difference between them occur?

Ans. Oh, I do not know; I was in the second-story front room and I do not know where it occurred.

Ques. What was she doing in the room you were in?

Ans. She came in and took a seat and made that remark right then and there?

Ques. Where were they living then?

Ans. Chestnut street; I forget the number.

Ques. You have given us one occasion and the circumstances that led up to this statement by her; what circumstances were there about the other, where she said they would not care if she was six feet under ground?

Ans. Well, all the circumstance that I can remember is this; her coming into the room and taking this seat and feeling very much hurt, and she made that remark, that they cared nothing about her if she was six feet under ground, if they only had what belonged to her; but she said, I will take good care, though, they never shall have a cent of it, if I can help it.

Ques. What did she say about her husband at that time, and her feelings towards him?

Ans. Well, probably it was another time she made the remark about her husband.

Ques. What did she say on that occasion?

Ans. "Who would she leave the property to if she did not give it to her husband"—but she had the highest admiration and devotion for her husband.

Ques. They were living there together, in this residence on Chestnut street?

Ans. Yes, sir.

Ques. What portions of the house were occupied by Mrs. Hall and her children, and what portion was occupied by Mr. Otterson and his family?

Ans. The third story was occupied by Mrs. Hall and her family, and the rest of the house was occupied by my brother and his wife, and their servants.

Ques. Can you tell us anything about the apparent relations between Mrs. Otterson and her husband as to their feelings for each other in respect to their company, whether they were in each other's company often at the time, or with strangers?

Ans. They were devoted to each other as far as I could judge, and he never spent an evening out without her, unless it was on some specific business, and they were always in their sitting-room in the evenings.

Cross-examination.

By Mr. Gummere:

Ques. These conversations that you have related, do I understand you that they took place at the time you were in Philadelphia undergoing treatment?

Ans. I cannot tell whether they were or not, it is so many years ago; I did not keep a diary.

Ques. I was surprised at the strength of your memory; it was thirty years ago when these things took place.

Ans. Yes, but I remember these things very vividly.

Ques. You don't remember when these things took place?

Ans. I cannot give you the dates.

Ques. Was this the first time your sister-in-law had unbosomed herself about her relations with her sister and her family?

Ans. They had a good many—interrupted.

Ques. You had a good many, too, perhaps—but was this the first time Mrs. Otterson had unbosomed herself to you?

Ans. I cannot say that.

Ques. Had she been married very long when these conversations took place?

Ans. I suppose three or four or five years, I cannot tell exactly—I cannot tell the dates—she was only married six and a half years.

Ques. Did she live at any other place except Chestnut street with her husband?

Ans. She did not.

Ques. Can you tell whether this conversation took place before or after the birth of the children?

Ans. Afterwards.

Ques. All of them?

Ans. As far as I remember just now.

Ques. Shortly before her death?

Ans. I cannot say that; it might have been within the year of her death; I cannot say positively as to that.

Ques. Do you think probably it was within the year of her death?

Ans. It might have been; I should not be surprised if it was.

Ques. What year was it that you had this illness you spoke of?

Ans. I do not remember the year.

Ques. Not by connecting it with any other circumstance?

Ans. I cannot; I have tried, but I cannot.

Ques. About how many different times did these conversations take place? I understand you to say that at one time Mrs. Otterson said, "Sarah was always nagging at her about her property;" she also said that they would not care if she was six feet under ground, if they had her property; were those two things said on the same occasion?

Ans. I think not.

Ques. On different occasions?

Ans. I think so.

Ques. She also made this remark, "why should I not leave my property to my husband;" was that a different occasion, still?

Ans. I think it was.

Ques. Three different occasions?

Ans. Yes, sir.

Ques. Do you remember anything else that was said when she asked why she should not leave her property to her husband?

Ans. I do not remember anything further than that.

Ques. Do you remember where the conversation took place?

Ans. Perfectly; I could take you to the very place.

Ques. No, thanks; I haven't time to go; but tell us where it was, please?

Ans. It was in this house in Chestnut street.

Ques. In the spare room?

Ans. No, sir; it was in the sitting room, where they always sat.

Ques. Was it in the evening?

Ans. No, sir; it was in the day—during the day.

Ques. You were sitting there with Mrs. Otterson?

Ans. Yes, sir.

Ques. And she made the remark?

Ans. Yes, sir.

Ques. Do you remember anything else said afterwards?

Ans. No, sir; I do not.

Ques. Where was it she said that Sarah was always nagging at her?

Ans. In the same room.

Ques. Was anyone else there at the time?

Ans. No one else.

Ques. Did she say anything before she said that remark to you?

Ans. No, sir; I do not remember.

Ques. Do you remember anything that was said after?

Ans. No, sir.

Ques. And the other remark was, that she would not care if she was six feet under ground, if they only had her property?

Ans. Yes, sir.

Ques. And you were sitting in the same part of the room?

Ans. Almost.

Ques. And she was there, too?

Ans. Yes, sir.

Ques. Do you remember anything that was said before she made the remark?

Ans. No, sir; she came into the room and made that remark.

Ques. What did she say afterwards?

Ans. I cannot say.

Ques. Who did she mean by "they?"

Ans. Mrs. Hall and her family.

Ques. What did the family consist of?

Ans. Fred and Minnie.

Ques. How old was her family?

Ans. I cannot say positively.

Ques. About?

Ans. I do not suppose Minnie was over ten years old at the time, but I cannot say positively.

Ques. You never heard any conversation between Mrs. Hall and Mr. Otterson about the property?

Ans. No, sir; never.

Ques. Mrs. Hall lived with Mr. Otterson during his whole married life?

Ans. Yes, sir.

Ques. And continued to live in the same residence with Mr. Otterson for some time after his wife's death?

Ans. Yes, sir; she did.

Ques. Do you remember how old Mrs. Otterson was when she died?

Ans. I never knew her age.

Ques. She was a young woman, was she not?

Ans. Yes, comparatively young.

PETER L. VOORHEES, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Voorhees:

Ques. Did you ever know Rebecca B. Otterson in her life time?

Ans. Yes, sir.

Ques. Did you see her frequently?

Ans. Yes, sir; I can say frequently—I met her very frequently before she was married, but I don't think I ever met her but once or twice afterwards—I used to meet her as a young lady very often here before she was married.

Ques. What sort of character did she have, strong or weak?

Ans. Well, she was a positive woman, of a good deal more than ordinary strength of mind; I sometimes thought that she was a little angry at times, but perhaps I did not judge very well, but anyhow I thought she was a woman of more than ordinary brightness and of a decisive character.

Ques. Would she strike you as being a woman that would be easily controlled?

Ans. I don't think so, from the intercourse I have had with her; I was not impressed with anything of the kind.

Ques. Did you know Asa I. Fish?

Ans. Yes, sir.

Ques. A Commissioner of the State of New Jersey, residing in Philadelphia?

Ans. Yes, sir.

Ques. I hand you this paper and ask you if this is his handwriting?

Ans. I think that is his handwriting; he is now deceased; he was a son of old Benjamin Fish, of Trenton, and I used to meet him and transact business with him very frequently, and there is no doubt about that being his signature and being in his handwriting at all; there is not a doubt about that.

Cross-examination.

By Mr. Gummere:

Ques. The acquaintance that you have had with Mrs. Otterson, was that a business acquaintance or social?

Ans. Never anything but social.

Ques. You never had any business acquaintance with her?

Ans. I do not recollect that I ever had any business acquaintance with her at all; I did have with her husband in the latter part of his lifetime, but her acquaintance and mine was strictly of a social character.

Ques. The business transactions you had with her husband, did they relate to Mrs. Otterson or her estate?

Ans. Not at all; Mr. Otterson was opposed to me in a certain will fight, or, perhaps, I was opposed to him; it does not matter which way it was, and afterwards he came to see me, after that case was decided; but he never came to see me about his wife's business or her estate or anything pertaining to that matter, or so far as this thing is concerned, and I never had any relations whatever with him or with his wife, except as I have stated.

EDWARD H. FAULKNER, a witness produced in behalf of defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lloyd:

Ques. Where do you live?

Ans. I reside at 3915 Fairmount avenue, Philadelphia.

Ques. Did you know James Otterson in his lifetime?

Ans. Yes, sir.

Ques. How long have you known him?

Ans. About forty years.

Ques. Did you know his wife?

Ans. I knew her; yes, sir; when I saw her—when they were married I became acquainted with Mr. Otterson by way of counsel and client; that was in 1852, I think, and I was very often at his office, and I saw her there with him.

Ques. You saw who?

Ans. His wife.

Ques. What was the apparent relations between Mr. and Mrs. Otterson?

Ans. They appeared to be of the most agreeable character, and I may say that I never saw a couple that appeared more so. My business took me quite a good deal there at the office of Mr. Otterson and when I would be there in the morning I would be there very early and she would come down to the office with him and they would part there, she would part with him there, and I always noticed that they appeared to be and they were a very loving couple. I never saw a couple as agreeable and loving together as they were.

Ques. What was her condition with respect to her activity of mind and so on, as far as you could judge?

Ans. I only noticed of their being together, and she would be coming in sometimes and wait for him. She would come there while I was waiting for him in the outer office and she appeared to me to be a lady quite competent to do anything that a lady ought to do, I suppose.

Cross-examination.

By Mr. Gummere:

Ques. What do you mean by that, "competent to do anything that a lady ought to do;" what ought a woman to do?

Ans. I believe, from what I noticed of their conduct together, that she was in every way a loving, kind, affectionate and good wife, and she appeared in every way proper; there was nothing wrong about her or deficient about her, either in mind, memory, or anything else. I would hear them conversing, her and the Judge conversing together, and the Judge would come out of the outer office with her and say he was very busy and that he would get through with his clients as quickly as possible,

and then they would go home together, and she would wait there for him until he got through, and then they would go home together; sometimes she would go off on little shopping expeditions and come back in time to go home with him. I fixed the time, because his wife and mine died almost close together, and this was in 1863, because mine died in 1864, and she died in 1863.

Ques. You were struck with the relationship existing between them?

Ans. Yes; and the people in the office would remark how kind, and agreeable, and loving they seemed to be, and what a happy couple they were.

Ques. You told all this to the others; I want to talk a little myself now; you were struck with the relationship existing between them?

Ans. Yes, sir; the loving relationship that seemed to exist between them; I never saw a couple that seemed so affectionate in my life.

Ques. She seemed to be observing her marriage vow, and faithful, obedient and loving?

Ans. Well, I don't know about that—about being faithful—she was just as I tell you.

Ques. She loved him so far as you could see, and obeyed him and honored him?

Ans. Yes; so far as I could see she did—she would come down to the office with him, they would come together and then they would separate at the office, sometimes at the door, and sometimes she would come in, and when they were going out shopping they would go out together sometimes, and sometimes she would be there and wait for him until he got through and then go home together.

Ques. He didn't wait for her?

Ans. No, sir; she appeared to be waiting for him—he was in his office attending to his business.

Ques. What kind of a looking man was Mr. Otterson, a large man?

Ans. The first witness examined here on his side this morning was just the picture of him.

Ques. That was his brother?

Ans. Yes, sir; it was a very good picture of him, too. I was here at the time and saw him, and I was struck with the likeness; it was a very good picture of him.

Mr. Voorhees: I offer in evidence deed of James Otterson, Jr., and Rebecca B. Otterson, his wife, to James E. Gowan in trust, dated February 25, 1858, acknowledged before Asa I. Fish, Esq., the same date, and recorded in the office of the Clerk of of the County of Burlington in Book Y6 of Deeds, page 399.

Marked Exhibit D1.

Next I offer in evidence deed from James E. Gowen, trustee, to James Otterson, Jr., dated December 31, 1863, acknowledged before Asa I. Fish, Commissioner of New Jersey, on the same day, and recorded in the Clerk's office of Burlington county, January 22, 1864, in Book Y6 of Deeds, page 406.

Marked Exhibit D2.

Next I offer in evidence deed made by James Otterson to N. Newlin Stokes, dated July 21, 1873, acknowledged same date before William Collins, Master in Chancery, recorded November 19, 1873, in the Clerk's office of Burlington county in Book U8, page 546.

Marked Exhibit D3.

Next I offer in evidence deed from James Otterson to Joseph B. Ashead, dated September 27, 1871, acknowledged same date before William Knight Shylock, Commissioner of New Jersey, recorded December 19, 1871, in the Clerk's office of Burlington county, in Book L8, pages 59, &c.

Marked Exhibit D4.

Next I offer the record of a deed by James Otterson to Florence Spencer, dated September 1st, 1873, recorded September 15, 1873, in Book U8 of Deeds for Burlington county, page 258, &c.

I next offer the record of a deed by James Otterson to Dr. N. Newlin Stokes, dated July 21, 1873, recorded November 19, 1873, in the Clerk's office of Burlington county, in Book U8 of Deeds, page 546, &c.

Next I offer a deed by James Otterson to Asa R. Lippincott, dated September 21, 1878, acknowledged before William Collins, Master in Chancery, same date, and recorded October 9, 1878, in the Clerk's office of Burlington county, in Book W9 of Deeds for said county, page 53.

Marked Exhibit D5.

Next I offer in evidence a deed by James Otterson to Asa R. Lippincott, dated October 2, 1874, acknowledged same day before William Collins, Master in Chancery, and recorded in the Clerk's office of Burlington county, October 15, 1874, in Book Z8 of Deeds, page 374.

Marked Exhibit D6.

Next I offer the record of a deed by James Otterson to Albert C. Hewlings, dated September 30, 1878, recorded same date in the County Clerk's office of Burlington county, in Book W9, page 1, &c., and conveys ten and one-third one hundredths acres.

Next I offer in evidence a deed by James Otterson to Bertram Aiken, dated February 24, 1880, acknowledged same date before Charles H. Otterson, a Commissioner for New Jersey, recorded February 26, 1880, in Book A10 of Deeds for Burlington county, page 502.

Marked Exhibit D7.

Next I offer the record of a deed by James Otterson to Horace K. Thurber and others, dated April 1, 1880, recorded April 15, 1880, in the Clerk's office of Burlington county in Book E10 of Deeds, page 31, &c.

Next I offer the record of a deed by James Otterson to Anna N. Marter, dated April 5, 1878, recorded April 30, 1878, in the Clerk's office of Burlington county, in Book N 11 of Deeds, page 64, &c.

Next I offer in evidence a deed by James Otterson to Joseph Stokes, M. D., dated May 14, 1889, acknowledged same date before William Collins, Master in Chancery, and recorded in the Clerk's office of Burlington county July 3, 1889, in Book 280 of Deeds, page 478.

Marked Exhibit D8.

Next I offer in evidence a mortgage on the premises in question made by James Otterson to Elizabeth B. Albertson, dated January 13, 1880, recorded January 14, 1880, in the Clerk's office of Burlington county in Book Y2, page 16, &c.

Marked Exhibit D9.

Next I offer in evidence a mortgage made by James Otterson, Jr., to Edward Carpenter on this property, dated April 3, 1871, recorded April 4, 1871, in the Clerk's office of Burlington county, in Book N2 of Mortgages, page 306, &c.

Marked Exhibit D10.

Next, I offer in evidence a deed made by Henry L. Otterson and wife, Andrew Otterson and wife and others, the parties defendant to this suit, to Charles H. Otterson, Trustee, dated November 13, 1890, recorded in the Clerk's office of Burlington county, November 20, 1890, in Book 288 of Deeds, page 207.

Marked Exhibit D11.

The next thing we have to offer is a deed made by Sarah M. Hall to James Otterson, for lands in the township of Newton, Camden county, dated December 19, 1867.

Mr. Gummere: What is the object of that offer?

Mr. Voorhees: To show that she had knowledge of the rights in this other property as early as 1867, and as a declaration by the defendant.

It is acknowledged before Edward H. Snyder, a Commissioner for New Jersey, December 19th, 1867, and recorded December 26, 1867, in the Clerk's office of Camden county, in Book 55 of Deeds, page 266.

The Court: You may read so much of that deed as you think relevant.

The deed read.

Mr Gummere: We object to that offer.

(Objection sustained.)

Defendant rests.

Mr. Gummere: We here offer the draft of the will of Mr. James Otterson, although it was never executed in the presence of witnesses, and therefore never took the effect of a will in New Jersey, but as I understand, counsel have agreed that it shall have the same force and effect as if this was a certified copy, or as the original instrument, and we offer it for the purpose of showing that it was the intention of Mr. Otterson to do what he told Mrs. Hall, the complainant, he would do at the time of his wife's death.

The Court: Is it admitted that Mr. Otterson executed the paper of which that purports to be a copy?

Mr. Gummere: The paper of which this purports to be a copy was offered for probate in the State of Pennsylvania, and was admitted as a good and valid will of personal property, and his signature is testified to by two witnesses, and it was admitted to probate as a valid will of personal property and Charles Otterson, the principal defendant, takes under that will.

Mr. Voorhees: We object to the admission of this will in this case, according to Mr. Gummere's new statement that it was a will without due proof in this State and cannot be a will in this State of New Jersey.

Court: I understand it is only offered as an admission on the part of James Otterson; the question is, whether you admit that James Otterson executed a paper of which that purports to be a copy?

Mr. Lloyd: We offer no objection to this paper on the ground that it is not the original, but we do not care to admit anything; this paper, I am free to say, is a copy of a will registered in Philadelphia county, and made by James Otterson.

Court: Do you admit that the will was made by James Otterson?

Mr. Lloyd: Our position is that we do not want to waive any rights by any admission here that will bring this paper within the purview of this case. We were first asked whether we objected to this paper on the ground that it was not the original, and we say no. But we do not want to make any admissions that will connect in any way, or bring the estate of James Otterson into this case through this will.

Court: I understood that you did not object to this printed copy or that you would not interpose any further objection to it than you would to a properly certified copy from the Register of Wills in Philadelphia.

Mr. Lloyd: That is it, that is our admission.

Court: Now, the question comes up whether the paper proved in that way is in this State evidence of the recitals contained in it.

Mr. Gummere: It seems to me it is the only way we can prove it. The will is now in the custody of the proper authorities in Pennsylvania; the will is filed just as it is in every other civilized country.

Court: It is not so done in New York.

Mr. Gummere: I mean in New Jersey, and when you want to prove it you have to subpœna the proper officers with the original.

Mr. Voorhees: Our objection rests upon these grounds. It is not that this paper was not signed by James Otterson, Jr. By the third clause of this paper it says: "I give and devise my farm at Moorestown, in the State of New Jersey, to Minnie Hall and Samuel Frederick Hall, my niece and nephew of my deceased wife." (Reads the portion of the will).

Now exactly on what grounds Sarah M. Hall can claim to have that paper interposed here, which is not a will in New Jersey, I cannot say. Under no statement that she made this morning can it come in, nor upon any matter that has so far entered into this case. As to his declaration, he might have intended to give this property away to somebody else; he mentions Fred. Hall and Minnie Hall, but does not mention Sarah M. Hall, and she is the complainant here. I cannot understand upon what grounds it can come into this case at all.

Court: I will take it for what it is worth, under the admission that it is signed by James Otterson. I do not mean to say that I pass on this question finally now, but after I have examined into the question, if I find it is not properly introduced I will then disregard it.

SARAH M. HALL, being recalled in her own behalf, saith:

Examined by Mr. Gummere:

Ques. You were present in court when Mrs. Harriet Otterson testified to certain conversations which she said she had had with Rebecca B. Otterson, your sister?

Ans. Yes, sir.

Ques. Did you ever, during the time of your sister's married life, or at any other time, have any conversation with her as to what disposition she proposed to make of her property?

Ans. No, sir; I never had any; I never talked the matter over at all at any time, either before or after her marriage.

Ques. Did you ever ask her what she proposed to do with her property, or did you ever offer any suggestions to her as to what she should do with it?

Ans. No, sir; never.

Ques. You have two children?

Ans. Yes, sir; two children.

Ques. At the time of your residence with Mr. and Mrs. Otterson, had you only two children?

Ans. Yes, sir.

Ques. And their names are Frederick and Minnie?

Ans. Yes, sir.

Ques. Do you remember the dates of their births?

Ans. The 22d of December—interrupted.

Ques. Which was the elder?

Ans. Minnie.

Ques. How old is she?

Ans. Forty-two.

Ques. You say there was nineteen months between them?

Ans. She was born in May, 1850, and Fred the next December a year.

No cross examination.

Mr. Voorhees: I offer the map which has been referred to by the witness in evidence.

Marked Exhibit D12.

Adjourned to February 25, 1893, at 10.30 A. M.

Pursuant to said adjournment parties and counsel met at the Chancery Chambers, Newark, at 10.30 A. M., and the following evidence was taken:

CHARLES H. OTTERSON, a witness produced on behalf of defendant, being duly sworn according to law, on his oath saith:

Examined by Mr. Lloyd:

Ques. You are one of the defendants in this cause?

Ans. I am.

Ques. Are you the grantee in trust named in this deed marked Exhibit D11?

Ans. I am.

Ques. Are you familiar with the assets and liabilities of the estate of James Otterson, deceased?

Ans. I am.

Ques. Tell us whether or not the estate of James Otterson is solvent or insolvent?

Mr. Gummere:

I object to that unless you tell us us how you know.

Court:

The objection is that you have not shown how the witness can tell anything about the condition of the estate; what is his source of information?

Witness:

I was associated with my uncle in his office for twenty-six years prior to his death.

The Court:

Ques. You are a nephew of James Otterson?

Ans. Yes, sir, and I am also the executor named in his will, and have received notice from the creditors of claims against the estate.

Ques. Tell us whether the estate, leaving out the property at Moorestown, is solvent or insolvent?

Ans. Insolvent.

Ques. Will any portion of this property be required to pay the indebtedness of the estate?

Ans. All of it, unless the other properties bring far more than they are estimated to be worth.

Cross-examination.

By Mr. Gummere:

Ques. What is the amount of the indebtedness?

Ans. Close upon $100,000, in round figures.

It is admitted that Mr. Gowan, the trustee named in this deed, is deceased.

Case closed.

OPINION.

[On Bill, Answer, Replication and Proofs in open Court.]

Green, V. C.: Samuel Haines, late of the county of Burlington, in this State, who departed this life about the year 1835, was seized in his lifetime, and at his death, of a considerable estate, including the lands and premises in controversy in this suit, being a farm at Moorestown, N. J. He left him surviving his widow, since deceased, and two daughters, Rebecca B. and Sarah M., his only children and heirs at law. Sarah M. Haines, on or about the 9th of June, 1849, conveyed all her undivided one-half part in the premises in controversy to one John M. Kaighn, his heirs and assigns, in trust among other things, to convey all or any part thereof, whenever the said Sarah M. Haines, whether feme covert or feme sole, should, in a specified manner, direct.

Sarah M. Haines, on or about the 27th day of June, 1849, intermarried with one Samuel W. Hall, and on August 31st, 1852, together with her husband, conveyed all her equal undivided one-half part of the premises to her sister, Rebecca B. Haines; and afterwards, on or about the 5th of December, 1857, John M. Kaighn, trustee as aforesaid, by the direction of the said Sarah M. Haines, granted, ratified and confirmed the aforesaid conveyance of the said undivided half, in and to the said Rebecca B. Haines, who, by reason of the said conveyances and her inheritance from her father, became the sole owner in fee of the premises.

On or about the first of October, 1856, Rebecca B. Haines intermarried with one James Otterson, Jr., and on March second, 1858, a child was born of the marriage; it lived only twenty-seven days. James Otterson,

Jr., was a lawyer of prominence in Philadelphia, and as the evidence shows, was entrusted by his wife with the entire management of her property and affairs.

February 25th, 1856, that is, six days before the birth of the child, Otterson and his wife, for a nominal consideration, executed a deed conveying the premises in controversy, being a farm at Moorestown, New Jersey, to James E. Gowan on various trusts.

Mrs. Otterson had considerable other property, real and personal, and I do not think the provisions of the trust deed, other than the clause claimed to contain a a power of revocation, are justly open to severe criticism as unreasonable or improvident. It is true that by them the husband acquired control of the wife's estate during his life, but that is no more than would be expected from a loving and devoted wife to an affectionate and attentive husband. By the insertion, however, in the clause referred to of the words, "or survivor of them," he was enabled to defeat what I think appears to have been the intention of his wife, namely, that the property should, in the event which has happened, descend to those in whose behalf this suit is brought. After the trust as to the property during the lives of both husband and wife, there follow provisions, stripped of their technical phraseology, substantially, that the wife at any time during her life might appoint to whom all or any part of the premises should go after her decease and the decease of her husband; that if she should not by will so appoint, then he, at any time during his natural life, might, by will, dispose of the premises to whomsoever he might choose, and if neither of them should dispose of the premises by will, then the trustees should hold the farm for the right heirs at law of Rebecca, and by good conveyance convey the premises to the said right heirs of Rebecca in fee, in such shares and proportions as the said heirs would have been entitled to had Rebecca died intestate.

Then follows the clause providing for the revocation of

the uses and trusts declared in the deed, and for reconveyance, but which revocation could only be made by James Otterson, Jr., and Rebecca jointly during their lives, and by the survivor of them, with the proviso that Otterson, in the event of his surviving his wife, was not to have power to defeat any testamentary devise or appointment which Rebecca might make in her lifetime.

Mrs. Otterson died March 10th, 1863, intestate, leaving her husband, but no issue, her surviving, and the complainant, Sarah M. Hall, her only sister and sole heir at law.

James Otterson, Jr., the husband, took possession of the farm and continued to occupy it until his death, September 24th, 1890. The deed of trust was not recorded until January 22d, 1864, six years after its date and one year after Mrs. Otterson's death. Between the time of Mrs. Otterson's death and the record of the deed, Gowen, the trustee, on Otterson's revocation of the trust and demand therefor, made a deed in fee of the premises to James Otterson, Jr., and on February 16th, 1885, Gowen died. The deed from Gowen to Otterson was also recorded January 22d, 1864.

Otterson in his lifetime conveyed several portions of the property to various individuals, many of whom erected buildings on the parcels so conveyed.

On Otterson's death, a paper was found, signed by him, but not in the presence of witnesses so as to be effectual as a will under the statute, by which he attempted to devise the farm in question to the children of the complainant. In consequence of its defective execution, he died intestate as to the real estate, leaving no issue, but several brothers and sisters his only heirs at law, who thereupon took possession of the property, and afterwards, by deed dated November 13th, 1890, conveyed the premises to Charles H. Otterson in trust; which deed it seems to be admitted was made for convenience in making title to the lands.

Sarah M. Hall, the complainant and sole heir at law of Rebecca B. Otterson, brought an action of ejectment three months after Otterson's death, and on the 10th of January, 1891, filed the bill in this cause to set aside the deed of trust.

Otterson died insolvent, so much so that the value of this land is necessary to pay his debts, and the contest in the case is therefore practically between the complainant, as the heir at law of Mrs. Otterson, and the creditors of James Otterson, Jr.

The deed in question was made prior to the birth of the child and subsequent to the married woman's act of 1852. Nixon Dig., 4 Ed., 547.

This deed was a voluntary conveyance on the part of Mrs. Otterson. She had inherited the property in question from her father, who died in 1835, when she was three years of age. She held it, and the rents, issues and profits thereof, after her marriage in 1856, under the act of 1852, "as her sole and separate property, as if she was a single female." At the time of the conveyance attacked, her husband had no present estate in her lands.

He was not tenant by the curtesy initiate, not only because the act of 1852 prevented his acquisition of that estate, Porch vs. Fries 3 C. E. G. 204, but also because no issue of the marriage had yet been born alive, nor for the same reason had he "obtained an inchoate right which, on his wife's death, he surviving, would bloom into a freehold." Ins. Co. vs. Barrowcliff, 16 Vr. 543, 550.

In Sherman vs. Sedgwick, 24 Ch. Div. 597, V. C. Bacon held that the relinquishment of a possible estate by the curtesy did not render a deed of settlement not voluntary and void as against a mortgagee under 27 Eliz. Ch. 4 Sec. 1.

Speakman vs. Tatem, 3 Dick. Ch. 136 aff. on appeal, 5 Dick. Ch. 484, recognizes that the husband has some inherent marital rights in his wife's estate, which are not defined, which he may relinquish in a deed of settlement,

of sufficient moment to give him the right to hold the trustee to the discharge of his duty.

But in this case any such interests were not given up by Mr. Otterson, who by the terms of the trusts secured for his life every right in his wife's property which he could possibly have exercised over it as her husband.

The rule of equity that "he who bargains in a matter of advantage, with a person placing confidence in him, is bound to show that a reasonable use has been made of that confidence." Gibson vs. Jeves, 6 Ves., 266, applies with particular force to a transaction by which a husband secures from his wife a portion of her estate. The most dominant of all relations is that of the husband over the wife. There are, of course, exceptional cases when the will of the woman may control. The relation is so close, the trust of the wife so absolute, her dependence so entire, it may be her fear so abject, while the dominion of the husband is so complete, his influence so insidious yet so controlling, that equity regards all such transactions with a jealous care, and subjects them to the severest scrutiny. The greater the affection, the more submissive the dependence; the stronger the trust, the more liable is the wife to be subject to the control of the husband, and the more vigilant should the court be in protecting the weak: Farmer Ex. vs. Farmer, 12 Stew., 211, 216; May on F. Con. (T. B. S.), 483; Black vs. Black, 3 Stew., 215, 219; Boyd vs. De La Montague, 73 N. Y., 502; Weeks vs. Haas, 3 W. & S., 520; Campbell's Appeal, 80 Pa. St., 298; Darlington's Appeal, 86 Pa. St., 512; McRae vs. Battle, 69 N. C., 98; Witbeck vs. Witbeck, 25 Mich., 439; Smyley vs. Rees, 53 Ala., 89; Schaffer vs. Kugler, 17 S. W. R., 698. Chief Justice Gibson says, in Watson vs. Mercer, 6 S. & R., 49, with reference to transfers obtained from the wife for the purpose of vesting the estate in the husband, "what honest mind would feel regret that in the hurry of accomplishment, some circumstance, merely formal, was omitted, by which the wife and her family were rescued from his rapacity?"

This deed was executed at a critical period of Mrs. Otterson's life; she was in extremely delicate health; it was doubtful if she could survive the peril of her approaching confinement. She was a refined lady, unacquainted with business, relying for its care, first, on her agents and then on her husband, who, after their marriage, became her agent, and was entrusted by her with the entire management of her estate and exclusively of the property in question; in short, she was most dependent on and devoted to him and his interests; her affection for and attention to him was marked, as was her anxiety to please him. He was a prominent lawyer, so was the selected trustee, who was the husband's intimate friend, and so was also the officer who took the acknowledgment. So far as the evidence shows, this inexperienced lady was surrounded by these gentlemen, of whose legal ability she must have been aware, in one of whom she reposed the most implicit confidence, she being without any competent independent adviser. It is a case in which the Court should be alert to require the observance of all technical rules applicable.

In all transactions between persons occupying relations, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, is presumed, or, in fact, reasonably exists, the burden of proof is thrown upon the person in whom confidence is reposed, and who has acquired an advantage, to show affirmatively, not only that no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood. Mott vs. Mott, 4 Dick. Ch., 192; Gibson vs. Jeves, supra; Houghton vs. Houghten, 15 Beav., 278; Simeon vs. Wilson, 3 Edw. Ch., 36; Coutts vs. Acworth, L. R., 8 Eq., 558; Boyd vs. De La Montague, supra; Darlington's Appeal, supra; Hugenin vs. Bazely, and notes; 2 W. & T. Ledg. Cas. in Eq., (T. B. S.,) 507.

It is essential to the maintenance of a deed of gift that

the donor comprehend the full force and effect of his acts, as Sir George Jessel puts it, "thoroughly understands what he is about." (Dutton vs. Thompson, 23 Ch. Div. 278, 281.), or in the words of Lord Eldon, in Huguenin vs. Bazeley, 14 Ves. 273, "with that knowledge of all their effect, nature and consequences, which the defendants and the attorney were bound by their duty to communicate to her, before she was suffered to execute them." See also Mulock vs. Mulock, 4 Stew. Eq. 594, 602. It is to establish this thorough understanding that the burden of proof is thrown on the donee in cases of gifts between persons standing in fiduciary relations.

The State, in its careful protection of the rights of married women in the transfer of their real estate, requires by statute that a public officer shall make known to her the contents of the instrument, and take her acknowledgment, when she is separate and apart from her husband, that her execution thereof is her voluntary act and deed, freely done and without fear, threats or compulsion of her husband. This law is to secure to her, through an officer, knowledge of the contents of the paper, and an opportunity when not in the actual presence of her husband, of exercising her own will and purpose. The certificate of the officer in compliance with the statute completes the formality and makes it a legal conveyance. It is evidence that the contents of the deed have been made known to the wife, and that she has acknowledged that its execution is free and voluntary. Yet while it may be true that the deed has been read to her, she may be as far from thoroughly understanding the effect of the act as she may be unconscious of the dominant influence of her husband's will inducing her action.

While, in the case of an ordinary transfer of title, it may be safely assumed that any man or woman of intelligence would entirely comprehend the effect of a deed whose contents have been made known to them, that pre-

sumption cannot, I think, be indulged in with reference to a deed of trust with its complicated provisions—something more than having the contents made known would be required in order that a man or woman of ordinary information should fully understand the force and effect of such a deed drawn in the technical verbiage of the professional conveyancer. Hoghton v. Hoghton, supra.

It is to secure this thorough understanding that Courts of Equity require, in cases of this kind, except those involving mere trifling gifts, that the donor shall have independent advice. Sir G. J. Turner, L. J., in Rhodes v. Bate, L. M., 1 Ch., App., 252, at 257, says, "I take it to be a well established principle of this Court, that persons standing in a confidential relation towards others cannot entitle themselves to hold benefits which those others may have conferred upon them, unless they can show, to the satisfaction of the Court, that the person by whom the benefits have been conferred had competent and independent advice in conferring them. This, in my opinion, is a settled general principle of the Court, and I do not think that either the age or capacity of the person conferring the benefit, or the nature of the benefit conferred, affect this principle. Kekewich J., in Allcard vs. Skinner, 36 Ch. Div. 145 at 158 says: "Where the paramount influence presumably exists, it (the law) casts on the possessor of such influence the burthen of proving that the gift was free, and it holds an essential part of that proof to be that the donor had "competent independent advice;" and Lindley L. J., at 181, "in this class of cases it has been considered necessary to show that the donor had independent advice, and was removed from the influence of the donee when the gift to him was made." See also Prideaux vs. Lonsdale, 1 D. J. & S. 433; Savery vs. King, 5 H. L. C. 627; In re Garnett, 31 Ch. Div. 1; Dolliver vs. Dolliver, 30 Pac. R. 4; Leech vs. Fare, cited in Am. Law Reg. Vol. 13, N. S. D. 350.

Not only does it not appear that Mrs. Otterson had in-

dependent advice to explain the effect of the deed, but I think the present condition of affairs, considered in the light of the provisions of the deed of trust, demonstrates that Mrs. Otterson did not thoroughly understand it. It is undoubtedly true, that in construing an instrument it is to be assumed that the parties intended its terms in the sense established by the courts in their interpretation, but in ascertaining whether the parties really understood the terms of the instrument, we have a right to judge, from its plain provisions, whether one or more of its possible effects was intended. No question is raised as to the validity, under the trusts of the conveyance from James E. Gowen, the trustee, to James Otterson, Jr., by which the fee was vested in him, and diverted from the heirs-at-law of Mrs. Otterson. I think a cursory reading of the trusts would never have given the unprofessional mind the idea that any such power was given. The scheme such examination would disclose to such person is, that during the lives of James and Rebecca they may jointly do what they wish with the property, even to the revocation of the trusts; that Rebecca might at any time during her life appoint to whom all or any part of the premises should go after the death of herself and husband; that in the event of her failure to so appoint, James, he surviving her, at any time during his life might, by will, dispose of the premises to whomsoever he might choose; that if neither James or Rebecca did dispose thereof by will, then the trustee should hold for the right heirs of Rebecca, to whom the premises should be conveyed. It is clear from these provisions, that she intended to secure to herself the right to appoint by will the persons to whom she wished the property ultimately to go, and if she failed so to do, that her husband, by will, might do the same, and in the event of their both dying intestate, or without making such appointment, the premises should go to her heirs-at-law. She died without a will; he made an unfinished attempt to leave one;

the event contemplated, by which the heirs were to have acquired the estate, happened, but the insertion of the words "or the survivor of them" in the clause of revocation nullified this clearly expressed intention, and tends to divert the property to the creditors of the husband.

The effect of the absence of a power of revocation in a voluntary conveyance has been the subject of much fluctuation of opinion.

Chancellor McGill in Van Houghten vs. Van Winkle, 1 Dick. Ch., 380 at 385, thus states the present condition of the law. "As to such an instrument, the authorities appear to hold that where the intent to make it irrevocable does not appear, and no motive for an irrevocable settlement is shown, the absence of the power of revocation is *prima facie* evidence of mistake." Guernsey vs. Mundy, 9 C. E. Gr., 243, same case with note, 13 Am. Law. Reg. (N. S.,) 345.

The deed in question did contain a certain power of revocation, but it could only be exercised by Mrs. Otterson in the lifetime of her husband, by his joint co-operation. She was the donor and he was the beneficiary in this deed. Is the reservation of a power to be jointly exercised by the donor and donee, such a power of revocation as is contemplated by the authorities? I do not think it is.

Lord Eldon, in Hugenin vs. Bazeley, 14 Ves., at 296, referring to a decision of Lord Hardwicke, says: "There was in that deed a power of revocation, but it was a power to revoke in presence of three persons who, perhaps, never could be got together, which was therefore considered as if there had been no power of revocation, and the want of such power was considered strong evidence that the parties did not understand the transaction, whence arose a strong inference of an undue purpose."

In this case the reservation of the power of revocation to the donor, to be exercised only jointly with the donee, cannot certainly be considered as reserving to her the

right to revoke the deed. The absence of such power under the above statement of the law then is *prima facie* evidence of mistake, unless the intent appears to make it irrevocable. So far from this being the case, the insertion of the clause demonstrates that it was the intention to make it revocable, and no motive for an irrevocable settlement is shown.

The evidence shows that this deed, by which Mr. Otterson, the agent, secured to himself the opportunity to control and dispose of the property, subject to the single contingency of Mrs. Otterson's power of appointment by will, was entirely voluntary on her part, and that it was made at a time when she was completely under his influence; so far as appears, it was executed by her without any information as to its contents and effect, other than what the perfunctory duty of the acknowledging officer required, and without the benefit of independent advice; it would seem from her intention, as gathered from its provisions, that she did not fully understand its force and effect, and it is to be presumed that it was executed under a mistake, as it is without power of revocation reserved so far as she individually was concerned, although it, on its face, develops the intention that it should be revocable; all these conclusions unite in the result that this deed cannot stand in a Court of Equity.

It was, however, made in 1858, and Mrs. Otterson died in 1863, and the bill was not filed until 1891, twenty-eight years after the execution of the deed, and the defendants set up the statute of limitations, and also claim that the complainant, by delay, has lost any right she might otherwise have to attack the conveyances; and further, that by her inaction, with the knowledge that James Otterson, Jr., was exercising acts of ownership, by the sale and conveyance of portions of the estate, and its improvement by the purchasers, has so far given her acquiescence to the original transaction that she cannot now dissent therefrom in a Court of Equity.

The sections of the statute of limitations which the defendants rely on are 16 and 17 Rev., 597. The first limits entry on lands to twenty years next after the right of entry accrued, the other limits the bringing of any real, possessory, ancestral or other action for lands to the same period, after the right or title thereto, or the cause of such action accrues. The latter relates to actions for the recovery of lands and necessarily involves the possession thereof—the time limited therein cannot commence to run until the right of entry has accrued. Time under either section does not run against a remainder-man until the death of the tenant for life. This was held in Pinckney vs. Burrage, 2 Vr., 21, with reference to the thirty years' section of the statute, Rev. 598, pl. 24. James Otterson, Jr., was entitled to the possession of these premises for life as tenant by the curtesy, irrespective of the conveyances. His possession was as referable to the one right as the other—while he lived; therefore, Mrs. Hall had neither the right of entry nor of possession—until his death in 1890 she could not maintain a suit at law for the recovery of the land, and the statute has not therefore run against her at law. Duke of Leeds vs. Amherst, 2 Phil., 117; Kirwin vs. Kennedy, 3 I. R. Eq., 472; Thompson vs. Simpson, 1 Dr. & W, 459. The principle is also recognized by L. J. Turner in Life Asso. vs. Liddall, 3 D. F. & J., 58, 72, saying "A *cestui que trust* whose interest is reversionary is not bound to assert his title until it comes into possession."

The present is a suit purely of equitable cognizance. It is founded on that branch of equity jurisdiction which relieves against mistake. As to its subject matter she would be remediless at law. The case does not fall within the principle that equity applies the bar of the statute to cases where there is both a legal and equitable remedy for the same cause of action. Kane vs. Bloodgood, 7 Johns. Ch. 90, 118; Smith, Admr., vs. Wood, 15 Stew. 569; Kirkpatrick vs. McElroy, 14 Stew. 555; 13

Amer. & Eng. Ency. of Law, title Limitation of Actions, p. 675, and notes.

This defense must rest therefore solely on the application of those rules relating to acquiescence and laches, which the court has always recognized, altogether outside of and independent of the statute of limitations. They are the fruit of the maxim that "equity aids the vigilant, not those who slumber on their rights." The Chancellor has forcibly stated the rule, its reason, and the consequences attendent on its disregard, in Van Houten vs. Van Winkle, supra.

The defences of laches and acquiescence are cognate but not correlative; they both spring from the cardinal rule that "he who seeks equity must do equity." Acquiescence, however, properly speaking, relates to inaction during the performance of an act. Laches relates to delay after the act is done.

Lord Cottenham, in Duke of Leeds vs. Amherst, 2 Phil., 117, says of the use of the term acquiescence, "If a party, having a right, stands by and sees another dealing with property in a manner inconsistent with that right, and makes no objection while the act is in progress, he cannot afterwards complain. That is the proper sense of the word acquiescence." And thus it is that in such a case an equitable estoppel is raised. Acquiescence here might properly be applied, in favor of purchasers, to the inaction of the complainant, while James Otterson, Jr., was selling portions of the property, and those purchasers were spending money in its improvement.

"But," says Thesiger L. J., in De Buesche vs. Alt, 8 C. D., 286, 314, "when once the act is completed, without any knowledge or assent upon the part of the person whose right is infringed, the matter is to be determined on very different legal considerations. A right of action has then vested in him, which, at all events, as a general rule, cannot be divested without accord and satisfaction,

or release under seal. Mere submission to the injuries for any time short of the period limited by statute for the enforcement of the right of action cannot take away such right, although under the name of laches it may afford a ground for refusing relief under some peculiar circumstances."

"Now the doctrine of laches in Courts of Equity," says Sir Barnes Peacock, in the Lindsay Petroleum Co. vs. Hurd, L. R., 5 P. C., 221 at 293, "is not an arbitrary or technical doctrine. When it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or when by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted; in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay, of course, not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

In the adjustment of these scales of justice, it is a controlling consideration whether the delay has been without valid excuse—not an excuse in law, but one which would have led a person reasonably to act as the party charged with laches has. A person cannot be deprived of his remedy in equity on the ground of laches, unless it appears that he had knowledge of his rights. As one cannot acquiesce in the performance of an act of which he is ignorant, so one cannot be said to neglect the pros-

ecution of a remedy when he has no knowledge that his rights have been invaded; excepting, always, that his want of knowledge is not the result of his own culpable negligence.

It is not a little difficult to determine what knowledge is necessary to place the party in the position of negligently delaying his action.

The Chancellor, in Van Houten vs. Van Winkle, supra, says: "After he has been informed of facts and circumstances which apprise him of the wrong." The Court in O'Neill vs. Hamil. Beat., 618: "Of her being fully apprised of her rights." In Lindsay vs. Hurd, supra, it is described as "sufficient knowledge of the fact constituting the title to relief." That it must be something more than knowledge of the mere facts which have transpired, or papers which may have been executed, is shown by In re Garnett, 31 C. D., 1, which was an action brought by two ladies who had themselves executed releases to their aunt. This was done in 1859; the aunt died in 1879. The action was not commenced until 1883 to set aside the releases. The act attacked was the act of themselves, and of course they were not ignorant of it. Cotton, L. J. says, 316: "But here on the evidence, these ladies never knew until after the death of their aunt that they had any right which they were giving up, any rights beyond those which were stated on the face of that deed, in respect to which they had received those sums."

In Savery vs. King, 5 H. L. C. 666, the father had a life estate in certain lands, with remainder to his sons in tail male. He was indebted to S., his solicitor, more than £9,000, which was secured by policies of insurance on his life. In 1835 it was arranged between the father, the solicitor and the eldest son, who had only just come of age, and who was living with his father, that a disentailing deed should be executed, and that the father and son should then execute a mortgage for £10,000, with a power of sale—the difference in the amount of the former

incumbrances and mortgage being made up by further advances, there being also a reduction in the rate of interest, and the policies of insurance being assigned to the elder son for his use. The son had no other advice than from his father's solicitor, who was also mortgagee. The father afterwards borrowed more money from the solicitor, repayment of which was secured by charges on the estate executed by both father and son. With part of that money other property was purchased for the son. The original property was afterwards put up for sale to discharge all the incumbrances, and was bought in and ultimately purchased by the solicitor, who was the mortgagee. The bill to set aside these transactions was not filed until 1847, fourteen years after the disentailing deed was made. It will be noted that in this case the son, who was the plaintiff, participated in the execution of the papers which he sought to set aside, and must therefore have had knowledge of the facts.

Cranworth, L. C., at 666, says on the question as to the plaintiff being barred by the lapse of time: "His bill was filed in March, 1847; that was about twelve years after the date of the mortgage, and eight or nine years after the sale. I cannot think that this delay makes any difference in the case. There is no reason whatever to suppose that Richard (the son) was guilty of any unreasonable delay, or indeed of any delay till after he had become aware of his right to question the validity of the mortgage; and in those circumstances, even if the delay had been much greater than it was, there would have been nothing to impugn his title to relief. Savery, the solicitor, must be considered substantially to have represented to Richard that the mortgage was valid, and so consequently, that the sale was binding on him; he cannot, therefore, complain that Richard acted on his representations till, after the lapse of several years, he discovered it to be erroneous."

We have here stated as an excuse for delay that the

complainant has been misled by the defendant. See, also, Buckingham vs. Ludlow, 10 Stew., 137-148.

Mrs. Hall says that she first heard that her sister, Mrs. Otterson, had executed this deed of conveyance after her death. That Mr. Otterson then told her that her sister had given him the farm, and that he immediately went on and said "whoever shall outlive me will see that I have never done you or your children any injustice." She was at the time a member of the Otterson family, making her home with them when her sister died, and continuing to live there for some time thereafter. The same diligence is not required between members of the same family as between strangers. Laver vs. Fielder, 9 Jur. N. S. 190.

After Mrs. Hall's husband's death, Otterson became her legal adviser, attended to her business, and continued, not only on terms of friendship, but of confidence during his life; she had every reason to, and did put entire trust and reliance in him and his representations; and there is no reason to think from the facts as they appear, that her confidence was misplaced. The unwitnessed will, dated May 20, 1887, twenty-four years after his wife's death, demonstrated, I think, that he really intended to carry out Mrs. Otterson's purpose that this property should go to the children of the complainant.

But it is urged that she had constructive, if not actual notice from the record of the transfer of the Ottersons to Gowen, and from Gowen to Mr. Otterson. The deed of trust, however, was not put upon record until January, 1864, six years after its date, and nearly one year after Mrs. Otterson's death, and contemporaneous with the conveyance from Gowen, trustee, to Otterson. It does not appear definitely when the statement that his wife had given him the property was made by Otterson to Mrs. Hall, but the fair construction of the evidence is, that it was soon after her sister's death. But I do not think she was negligent in failing to make an examination

of the record; not only is it probable that, at the time it was put on record, she was acting under the promises of Otterson, but if she had any knowledge whatever of legal rights she knew that, independent of the deed, Otterson was entitled as tenant by the curtesy to continue in possession of the property.

These defendants stand in Otterson's shoes; they cannot urge as a bar to the complainant's right of action a delay in commencing suit, if it has been occasioned by the acts or representations of him under whom they claim. They come into Court and insist that it is inequitable that the complainant should, after a delay of many years, prosecute her claim, but if he whom they represent has been the cause of this procrastination this appeal to the equitable denial of this Court does not lie in their mouths. With his announcement to Mrs. Hall that her sister had given him the farm, he makes her the promise that puts her vigilance to sleep, and it is in consequence of his representations that she has remained inactive; and herein this case differs from Wilkinson vs. Sherman, 18 Stew., 413.

It is said that it would be inequitable to permit this suit to be maintained because during the complainant's delay in bringing it witnesses have died and testimony has been lost. But it appears to me that Mr. Otterson has been himself guilty of laches in this regard. He, being a lawyer of distinction, must be assumed to have known that the law cast upon him the burthen of proof hereinbefore indicated. It was within his power by suit to have perpetuated the testimony necessary to establish the deed as a valid gift, as well as within hers either to have perpetuated the testimony necessary, or to have brought suit to annul it; and he cannot invoke her delay in that regard as a bar to her action, because during the interval he has been deprived of testimony lost to him by his own neglect.

I am of opinion that these conveyances, so far as they

relate to property not conveyed by James Otterson, Jr., in his lifetime, should be set aside.

FINAL DECREE.

This cause coming on to be heard before the Court, upon final hearing upon bill, answer, replication and proofs, in the presence of Barker Gummere and William S. Gummere, of counsel for complainant, and of Peter V. Voorhees and Frank T. Lloyd, of counsel for the defendants, and the arguments of counsel having been heard and duly considered, and it appearing to the satisfaction of the Court that the deed of conveyance set forth in the bill of complaint in the said cause, made by James Otterson, Jr., and Rebecca B. Otterson, his wife (late Rebecca B. Haines), of the one part, and James E. Gowen, of the city of Philadelphia, of the other part, bearing date the twenty-fifth day of February, in the year eighteen hundred and fifty-eight, whereby the said grantors purported to convey to the said grantee certain lands and premises set forth and described therein, and being separate property of the said Rebecca B. Otterson, upon certain trusts particularly set forth therein, for the use and benefit among other matters of the said James Otterson, Jr., was made and executed by the said Rebecca B. Otterson as a voluntary deed of gift so far as concerned the said James Otterson, Jr., and without any valuable consideration paid or passing to her therefor; and that at the time of the execution and delivery of the said deed of conveyance the said Rebecca B. Otterson was in a delicate state of health, and that the force and effect of the said deed of conveyance were not explained to her by any competent and independent person charged with the duty of communicating to her the effect, nature and consequence of her act in executing and delivering

the said deed of conveyance, but that the only persons who appear to have been privy to the execution and delivery thereof were her husband, James Otterson, Jr., a counsellor skilled in the law, and James E. Gowen, the grantee and trustee named therein, who was also a counsellor skilled in the law, and an intimate friend of the said James Otterson, Jr., and Asa I. Fish, the Commissioner of Deeds before whom the execution and delivery of the said deed was acknowledged by said Rebecca B. Otterson and her husband, and that the said deed, although wholly voluntary on the part of the said Rebecca B. Otterson, and without consideration, contained no power reserved to her for the revocation thereof, save by and with the assent and joining therein of the said James Otterson, Jr., her husband, and that the same was improvidently executed by the said Rebecca B. Otterson, whilst under the dominant influence of her husband, James Otterson, Jr., and that the said deed of conveyance is therefore fraudulent in law, void, and of none effect.

And it further appearing that the deed of conveyance of the said lands and premises, set forth and described in the said bill of complaint, made and executed by the said James E. Gowen to the said James Otterson, Jr., bearing date the thirty-first day of December, in the year eighteen hundred and sixty-three, and recorded in the Clerk's office of the county of Burlington, in Book Y6 of Deeds, page 408, &c., was made, executed and delivered in alleged execution and performance of the powers and trusts created by and contained in the above-mentioned conveyance from James Otterson, Jr., and Rebecca B. Otterson, to James E. Gowen, and is also fraudulent in law, void and of none effect. And it further appearing that, subsequent to the making of the said conveyance by the said James E. Gowen to the said James Otterson, Jr., he (the said James Otterson, Jr.), at divers times conveyed to certain persons certain portions of said lands

and premises, and that such conveyances were severally made to the persons named therein for full and valuable consideration and without knowledge of the rights and interests of the said complainant in the same, and that, therefore, the said conveyances are, each of them, valid and effectual as against the said complainant;

It is, therefore, on this twelfth day of February, in the year of our Lord one thousand eight hundred and ninety-five, by his Honor, Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said deed of conveyance made by the said James Otterson, Jr., and Rebecca B. Otterson, his wife, to James E. Gowen, bearing date the twenty-fifth day of February, eighteen hundred and fifty-eight, and recorded in Book Y6 of Deeds, folio 399, &c., in the Clerk's office of the county of Burlington, in the State of New Jersey, and also the said deed of conveyance made by the said James E. Gowen to the said James Otterson, Jr., bearing date on the thirty-first day of December, eighteen hundred and sixty-three, and recorded in the office of the Clerk of the county of Burlington, in Book Y6 of Deeds, page 408, &c., are each of them fraudulent in law, null, and void, and that the same be and are each of them hereby set aside and for nothing holden, and that the lands and premises set forth and described therein are, and the same are hereby decreed to be the property of the said complainant in fee simple absolute, saving and excepting therefrom, however, the lands sold conveyed by the said James Otterson, Jr., as hereinbefore set forth, and which are particularly described in the following deeds of conveyance, to wit:

First. The lands and premises set forth and described in a certain deed of conveyanve made and executed by James Otterson, Jr., to N. Newlin Stokes, bearing date June twenty-first, in the year eighteen hundred and sixty-four, and recorded in the Clerk's office of the county of Burlington in Book A8 of Deeds, page 120, &c.

SECOND. The lands and premises set forth and described in a certain deed of conveyance made and executed by James Otterson, Jr., to Joseph V. Ashmead, bearing date the twenty-seventh day of September, in the year eighteen hundred and seventy-one, and recorded in the Clerk's office of the county of Burlington, in Book L8 of Deeds, page 559, &c.

THIRD. The lands and premises set forth and described in a certain deed of conveyance, made and executed by James Otterson, Jr., to Florence Spencer and John E. Spencer, bearing date September first, in the year eighteen hundred and seventy-three, and recorded in the Clerk's office of the county of Burlington, in Book U8 of Deeds, page 253, &c.

FOURTH. The lands and premises set forth and described in a certain deed of conveyance, made and executed by James Otterson, Jr., to N. Newlin Stokes, bearing date the twenty-first day of July, in the year eighteen hundred and seventy-three, and recorded in the Clerk's office of the county of Burlington, in Book U8 of Deeds, page 546, &c.

FIFTH. The lands and premises set forth and described in a certain deed of conveyance, made and executed by James Otterson, Jr., to Asa R. Lippincott, bearing date the second day of October, eighteen hundred and seventy-four, and recorded in the Clerk's office of the county of Burlington, in Book Z8 of Deeds, page 374, &c.

SIXTH. The lands and premises set forth and described in a certain deed of conveyance, made and executed by James Otterson, Jr., to Albert C. Hewlings, bearing date the twenty-first day of September, eighteen hundred and seventy-eight, and recorded in the Clerk's office of the county of Burlington, in Book W9 of Deeds, page 1, &c.

SEVENTH. The lands and premises set forth and described in a certain deed of conveyance made and executed by James Otterson, Jr., to Asa R. Lippincott, bearing date the twenty-first day of September, eighteen hundred and seventy-eight, and recorded in the Clerk's office of the county of Burlington, in Book W9 of Deeds, page 53, &c.

EIGHTH. The lands and premises set forth and described in a certain deed of conveyance made and executed by James Otterson, Jr., to Bartram Kaighn, bearing date the twenty-fourth day of February, eighteen hundred and eighty, and recorded in the Clerk's office of the county of Burlington, in Book A10 of Deeds, page 502, &c.

NINTH. The lands and premises set forth and described in a certain deed of conveyance made and executed by James Otterson, Jr., to Horace K. Thurber and others, bearing date the first day of April, eighteen hundred and eighty, and recorded in the Clerk's office of the county of Burlington, in Book E10 of Deeds, page 31, &c.

TENTH. The lands and premises set forth and described in a certain deed of conveyance made and executed by James Otterson, Jr., to Joseph Stokes, bearing date the fourteenth day of May, eighteen hundred and eighty-nine, and recorded in the Clerk's office of the county of Burlington, in Book No. 280 of Deeds, page 478, &c.

ELEVENTH. The lands and premises set forth and described in a certain deed of conveyance made and executed by James Otterson, Jr., to Hannah Ann Marter and Lydia Ann Marter, bearing date the fifth day of April, eighteen hundred and eighty-seven, and recorded in the Clerk's office of the county of Burlington, in Book R11 of Deeds, page 64, &c.

And it is further ordered, adjudged and decreed, that the deed of conveyance dated the thirteenth day of November, eighteen hundred and ninety, and made, executed, and delivered by the defendants, Henry L. Otterson and Elizabeth S., his wife, Andrew Otterson and Emily C., his wife, Mary Conover, William C. Otterson and Josephine C., his wife, grantors, to Charles H. Otterson, grantee, and recorded in the Clerk's office, of Burlington, in Book 288 of Deeds, page 207, &c. (and which deed of conveyance is set up and set forth in the answer of the said defendants filed in this cause), in trust for the sale of the premises therein set forth and described, so far as the said deed purports to convey to the said Charles H. Otterson the lands and premises mentioned and described in the aforesaid deeds of conveyance, made, executed, and delivered by the said James Otterson, Jr., and Rebecca B. Otterson, his wife, to the said James E. Gowen, and by the said James E. Gowen, to the said James Otterson, Jr., be and the same is hereby decreed to be fraudulent in law, inoperative and void, and is hereby set aside and for nothing holden.

And it is further ordered, adjudged, and decreed that Andrew Otterson, Emily C. Otterson, William C. Otterson, Josephine C. Otterson, Henry L. Otterson, Elizabeth S. Otterson, Mary Conover, Harriet M. Otterson and Charles H. Otterson, the answering defendants in this cause, and Francis I. Gowen (who has not answered, and against whom the bill of complaint herein is decreed to be taken as confessed) do, within thirty days after service upon them or upon their solicitor in this cause, of a certified copy of this decree, execute and deliver, under their respective hands and seals, a quit claim deed, duly acknowledged according to law, granting and conveying to said Sarah M. Hall, the complainant in this cause, her heirs and assigns, all the lands and premises embraced in the aforesaid deed made by James Otterson, Jr., and Rebecca B. Otterson, his wife, to James E. Gowen, and

specifically set forth in the bill of complaint in this cause, and bounded and described as follows:

All that certain plantation, farm, tract or parcel of land situate in the township of Chester, county of Burlington and State of New Jersey: Beginning at a stone at the junction of the Evesham with the Moorestown and Mount Holly road, in the middle of both said roads; thence along the middle of the said Moorestown road (1) south eighty degrees west, three chains and forty-six links to a stone, corner to Samuel Bispham's lot; thence (2) north twenty-three degrees and fifteen minutes west, seven chains and fifty-one links to a stake, corner to the said Bispham's land; thence (3) south sixty-eight degrees and thirty-five minutes west, three chains and eight links to a stone; thence (4) north twenty-two degrees and twenty-five minutes west, six chains and eighty-six links to a stake; thence (5) north sixty-eight degrees and thirty minutes east, ten chains and fifty-six links to a stone; thence (6) south thirty-three degrees and thirty minutes east, fifteen chains and eleven links to a stake in the middle of the aforesaid Moorestown and Mount Holly road corner to lands of Dr. Jonathan I. Spencer; thence along the middle of the said road (7) north sixty-six degrees east, two chains and ninety-eight links to a stake; thence (8) south twenty-three degrees and ten minutes east, seventeen chains and ninety-four links to a stone; thence (9) north sixty-four degrees and thirty minutes east, seven chains and seventeen links to a stake; thence (10) south twenty-two degrees and forty-five minutes east, nine chains and seventy-one links to a stone; thence (11) south sixty-one degrees and twenty-five minutes west, six chains and seven links to a stake in the middle of the aforesaid Evesham road corner to lands of Thomas G. Kimble; thence along the middle of the said road (12) south forty-four degrees and forty minutes east, thirteen chains and twenty-seven links to a stone corner to lands of William Hooton; thence (13) south

fifty-six degrees and thirty minutes west, twenty-three chains and twenty-five links to a large stone corner to said Hooton; thence (14) south fifty-nine degrees and fifteen minutes west, six chains and seventy-two links to a stake corner to lands of Edward Harris; thence (15) south thirty-six degrees and thirty minutes west, five chains and ninety-three links to a stone; thence (16) north fifty-nine degrees east, six chains and eighty-two links to a stone; thence along the eastwardly line of Partnership lane (17) north thirty-six degrees west, fourteen chains and seventy-seven links to a stake; thence (18) north fifty-six degrees and thirty minutes east, six chains and sixty-seven links to a stake; thence (19) north twenty-nine degrees and ten minutes west, four chains and fifteen links to a stake; thence (20) north twenty-one degrees and forty-five minutes west, five chains and eleven links to a stake; thence (21) north fifteen degrees west, thirty links to a stake; thence (22) north seventy-eight degrees east, eleven chains and sixty-seven links to a stake; thence (23) south forty-four degrees and forty minutes east, fifty-nine links to a stake; thence (24) south seventy-eight degrees west, nine chains and eighty-six links to a stake; thence (25) south twenty-nine degrees and ten minutes east, eleven chains and seven links to a stone; thence (26) north sixty-one degrees and thirty minutes east, eleven chains and seventy-nine links to a stake in the middle of the aforesaid Evesham road; thence along the middle of the same (27) north forty-four degrees and forty minutes west, twenty-five chains and ninety-one links to the place of beginning.

Containing eighty-two acres and seventy-four hundredths of land, be the same more or less; saving and excepting therefrom, however, the lands and premises set forth and described in each of the above mentioned several deeds of conveyance made by the said James Otterson, Jr., viz: the deed to N. Newlin Stokes,

bearing date the twenty-first day of June, eighteen hundred and sixty-four; the deed to Joseph V. Ashmead, bearing date the twenty-seventh day of September, eighteen hundred and seventy-one; the deed to Florence Spencer and John E. Spencer, bearing date September first, eighteen hundred and seventy-three; the deed to N. Newlin Stokes, bearing date the twenty-first day of July, eighteen hundred and seventy-three; the deed to Asa R. Lippincott, bearing date the second day of October, eighteen hundred and seventy-four; the deed to Albert C. Hewlings, bearing date the twenty-first day of September, eighteen hundred and seventy-eight; the deed to Asa R. Lippincott, bearing date the twenty-first day of September, eighteen hundred and seventy-eight; the deed to Bartram Kaighn, bearing date the twenty-fourth day of February, eighteen hundred and eighty; the deed to Horace K. Thurber and others, bearing date the first day of April, eighteen hundred and eighty; the deed to Joseph Stokes, bearing date the fourteenth day of May, eighteen hundred and eighty-nine; and the deed to Hannah Ann Marter and Lydia Ann Marter, bearing date the fifth day of April, eighteen hundred and seventy-seven.

And it is further ordered, adjudged and decreed, that the said defendants do pay to the said complainant, Sarah M. Hall, or to her solicitor, her costs in this cause to be taxed, within thirty days after service of a certified copy of her taxed bill of costs and of this decree upon the said defendants, or their solicitor, and that in default of such payment an execution *de bonis et terris* do issue out of this Court against the said defendants for the enforcing the payment of said costs.

ALEX. T. McGILL,
C.

Respectfully advised,
ROBT. S. GREEN,
V. C.

IN CHANCERY OF NEW JERSEY.

Between

SARAH M. HALL,

Complainant,

and

ANDREW OTTERSON, ET AL.,

Defendants.

ON BILL, &c.

NOTICE OF APPEAL.

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

Dated February 12, 1895.

PETER V. VOORHEES,
Solicitor of Deft's.

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

PETER V. VOORHEES,
Of Counsel with Deft's.

PETITION OF APPEAL.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes as heretofore.

ANDREW OTTERSON, et al., Appellants,	ON APPEAL FROM	10
and	CHANCERY.	
SARAH M. HALL, Respondent.	PETITION.	

The petition of Andrew Otterson, Emily C. Otterson, William C. Otterson, Josephine C. Otterson, Henry L. Otterson, Elizabeth S. Otterson, Mary Conover, Harriet M. Otterson and Charles H. Otterson, appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey, by his Honor Alexander T. McGill, Chancellor, bearing date the twelfth day of February, in the year of our Lord one thousand eight hundred and ninety-five, wherein the said Sarah M. Hall was complainant, and Andrew Otterson, Emily C. Otterson, William C. Otterson, Josephine C. Otterson, Henry L. Otterson, Elizabeth S. Otterson, Mary Conover, Harriet M. Otterson and Charles H. Otterson and others were defendants in this respect among other things, to wit: That the said decree adjudges that a certain deed of conveyance mentioned in the said cause, made by Rebecca B. Otterson and James Otterson, Jr., her husband, to

James E. Gowan, bearing date the twenty-fifth day of February, eighteen hundred and fifty-eight, was made by the said Rebecca whilst under the dominant influence of her said husband, and was fraudulent in law, void and of no effect, and from the whole and every part of said decree upon the ground that the same is erroneous, and for that it is unlawful.

Your petitioners, therefore, pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

PETER V. VOORHEES,
Solicitor for and of Counsel with Petitioners.