
New Jersey Court of Errors and Appeals

HENRY PRISCO,
Appellee-Complainant,

and

THOMAS and MILLIE PRISCO,
Appellants-Defendants.

} On Appeal from
Chancery.

STATE OF THE CASE.

ARNOLD J. BECKENBACH,
Solicitor for Appellants.

HERBERT A. DRAKE,
Of Counsel.

JOSEPH BECK TYLER,
Solicitor for and of Counsel with Complainant-Appellee.

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Filed July 6, 1918.

New Jersey Court of Errors and Appeals

Between

HENRY PRISCO *and* EMMA PRISCO,

his wife,

Complainants

AND

THOMAS PRISCO *and* MILLIE

PRISCO, his wife,

Defendants.

NOTICE OF APPEAL.

The defendants hereby appeal from the final decree made in this Court in the above stated cause, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

ARNOLD J. BECKENBACH,
Solicitor of Defendants.

Dated July 6, 1918.

HERBERT A. DRAKE,
Of Counsel.

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

HERBERT A. DRAKE,
Of Counsel with Defendants.

Filed July, 1918.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

HENRY PRISCO,
Appellee and Complainant,

AND

THOMAS PRISCO and MILLIE,
his wife,

Appellants and Defendants.

PETITION OF APPEAL.

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

The petition of Thomas Prisco and Millie Prisco, his wife, the appellants in the above stated cause respectfully shows that your petitioners find themselves agrieved by a final decree made in the Court of Chancery by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, in a certain cause wherein Henry Prisco was complainant and your petitioners herein were defendants, which decree bears date on the third day of July, nineteen hundred and eighteen, in this respect to wit: that the said decree adjudges that the complainant is entitled to restrain the defendants from removing from certain premises in the said decree mentioned a certain dwelling house therefrom and grants the complainant other relief against the said defendants as in said decree stated and set forth. And your petitioners humbly appeal from the said decree and from all and every part thereof on the ground that the same is erroneous as aforesaid, for that the said Chancellor should have granted relief to your petitioners as by them set forth and prayed for in their counter-claim.

Your petitioners therefore pray that the said decree of the said Chancellor may be wholly set aside, reversed and

for nothing holden. And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

Dated July 30, 1918.

ARNOLD J. BECKENBACH,
Solicitor of Appellants.

HERBERT A. DRAKE,
Of Counsel with Appellants.

Henry Prisco, appellee and complainant, denies that the decree entered in the above cause on the third day of July, 1918, is erroneous or contrary to law and justice.

Appellee also denies that the Chancellor should have granted relief to the defendants, the appellants herein, as prayed for in the counter-claim.

JOSEPH BECK TYLER,
Solicitor for and of Counsel with Complainant.

Filed November 12, 1917.

IN CHANCERY OF NEW JERSEY.

Between

HENRY PRISCO,	}	BILL FOR INJUNC-
Complainant,		
AND		
THOMAS and MILLIE PRISCO,	}	
Defendants.		

The complainant, Henry Prisco, of West Palmyra, county of Burlington, and State of New Jersey, says:

1. That he is the owner in fee of a lot with house erected thereon situate on the south side of Third street, between Arch and Market streets, Palmyra, New Jersey, of the value of from \$1,500.00 to \$1,800.00. That the building thereon

is of value of \$1,200.00 to \$1,500.00, and the lot the value of about \$300.00.

2. That the complainant does not have possession of the deeds to said property which he is informed is in the possession of the defendants or their attorney. The title however for one lot for twenty feet front came from William Fluck and the other lot for twenty feet front came from Henry Blackburn.

3. That the said lots were purchased by the defendants who are the father and mother of the complainant and given to the complainant, their son, about three or four years ago.

4. That since then the said defendants and the complainant from wages which he was earning and turned over to his father erected a house thereon at a cost of about \$1,200.00 to \$1,500.00 which house is rented at the sum of \$12.00 per month and the rent has been paid by the tenant to the defendants or one of them, and they have made no accounting therefore. The defendants, out of the rent, have been paying the taxes on the property which have been assessed in the name of the complainant.

5. That there was no dispute as to the title of the said property and the fact that it belonged to the complainant until the complainant got married on the tenth of May, 1917. After I was married I went to live with my father-in-law, Phillip Zimbardo, and within two months my parents demanded of me that I move and go somewhere else to live. This I was unable to do and as a result of my not complying with their request they are endeavoring to obtain the aforesaid property.

6. They have recently informed me of their intention to remove the house off the lot and for that purpose have cut down and taken away a tree that would be in the way of moving the building.

7. That within the last day or two the defendants have caused timbers and other materials to be placed on the property for the purpose of removing the building therefrom and have engaged a contractor for that purpose.

8. The complainant is informed and believes that the defendants intend to start work upon the removal of said building at once and are now engaged therein.

9. That said building is a two-story frame dwelling, set on piers placed in the ground at a depth of several feet and was put there as a permanent improvement to the property without any intention or purpose of removing it later.

10. That to remove it would seriously injure and permanently destroy the value of the property and cause irreparable injury thereto.

Complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That the defendants, Thomas Prisco and Millie Prisco answer this bill of complaint without oath and each statement therein made.

2. That an account may be taken of the amount due complainant for rents received by the defendants for the use and benefit of the complainant and the defendants or one of them be decreed to pay the same to the complainant.

3. That an injunction may issue restraining and enjoining the defendants or either of them and their agents, or servants from removing said building or any part thereof from or in any way interfering with the full use and enjoyment of the said property by the complainant.

4. That in the meantime and until further order of this Court the said defendants and one Samuel Wallace, a contractor, engaged for the purpose of removing said building, be restrained and enjoined from removing or attempt-

ing to remove the building or any part thereof from the property of the complainant.

5. That the complainant may have such other and further relief in the premises as the facts and circumstances may warrant.

6. That a writ of subpoena may issue commanding the said defendants, Thomas Prisco and Millie Prisco, to answer this bill of complaint and to abide by such order or decree as this Court may make herein.

JOSEPH BECK TYLER,

Solicitor for and of Counsel with the Complainant.

Filed November 19, 1917.

ANSWER.

The joint and several answer of Thomas Prisco and Millie Prisco, his wife, defendants, to the Bill of Complaint of Henry Prisco, complainant.

These defendants, jointly and severally answering the several paragraphs of the said Bill of Complaint, as the same are numbered, says that:

1. On or about January 20, 1913, by deed dated on that day and recorded in the Clerk's office of Burlington county, in Book 489 of Deeds, page 104, Palmyra Ice and Coal Company conveyed to the complainant by the name of Andrea Delli Priscoli, the son of the defendants, lot No. 310 on the Souder plan of Palmyra Building Lots, situate in Palmyra, on the southern side of Third street, between Arch street and Market street, and more fully described in said deed, at a consideration therein mentioned of twenty-five dollars (\$25), which was paid by the defendants and no part thereof paid by the complainant. On or about July 16, 1913, by deed dated on that day and recorded in said Clerk's office in Book 495, page 125, William L. F. Gsand

and wife conveyed to the complainant by said name of Andrea Delli Priscoli Lot No. 311 on the Souder plan of Palmyra Building Lots situate in Palmyra aforesaid, on the southerly side of Third street, between Arch street and Market street, and adjoining Lot No. 310, and more fully described in said deed, at a consideration therein mentioned of seventy-five dollars (\$75), which was paid by the defendants and no part thereof paid by the complainant. The said two lots each of which has a front of twenty (20) feet on Third street by a depth of one hundred (100) feet, are worth together a little over \$100.00. The defendants erected on said Lot No. 310 a two and one-half story frame dwelling of the value of between \$1,200.00 and \$1,500.00, at their own cost and expense, and no part thereof was paid by the complainant. In all other respects said Paragraph 1 is untrue.

2. The said house and lots have always been in the possession of the defendants since the purchase thereof as aforesaid, and the said deeds above recited have also been in the possession of the defendants since that time when the title was made to the complainant as aforesaid. In all other respects Paragraph 2 is untrue.

3. The said lots were purchased by the defendants in 1913 as aforesaid, and said deeds therefor were never given over to the complainant, who was born February 10, 1897, and who will not be twenty-one years of age until February 9, 1918. In all other respects Paragraph 3 is untrue.

4. During the month of February, 1912, the complainant went to work at the Philadelphia Watch Case Factory at Riverside, in said county of Burlington, where he worked for about six months, receiveing four dollars (\$4) per week; for a period of time after July, 1912, the complainant was out of work and lived at home with his parents, the defendants herein, until he went to work at the Spring

Works, located at Cambridge, in said county of Burlington, where he worked for a period of about four weeks, receiving eight dollars (\$8) per week, and until he received an injury which prevented him from working for a time. Sometime after he had recovered from this injury he went to work for Joseph T. Evans, at Riverton, in said county of Burlington, receiving nine dollars (\$9) per week and he worked there for three years, less three months, and was taken ill and confined to his bed at home a part of that period with a serious illness; that the wages complainant earned as aforesaid, he turned over to his father, one of the defendants herein, with the exception of two dollars (\$2) per week which was given to him as spending money. During the period of five years and three months, from February, 1912, until May, 1917, complainant worked about three years and four months, and when he was out of work he paid nothing to the defendants, but was clothed, boarded and lodged by the defendants, who also paid his doctor's bill for the injury received while working at the Spring Works and also paid all expenses incurred during said serious illness, such as paying for the services of a trained nurse, specialist's fees, doctor fees and other medical attendance, without receiving any compensation or return therefor. The complainant married without the consent and against the wishes of the defendants and after residing with the defendants for about two weeks after his said marriage during which time he paid nothing to the defendants for board and lodging, he went to live with his father-in-law, and shortly thereafter he complained to the defendants that his father-in-law was improperly treating complainant's wife; the defendants thereupon told complainant to move with his wife and go somewhere else to live, and complainant requested the defendants to permit him to live in the above mentioned house, which the defendants refused

to do. The rent of the said house and lot was paid to the defendants from on or about August 4, 1913, up to May, 1917, at ten dollars (\$10) per months, and for the past six months at twelve dollars (\$12) per month, the last \$12 of rent having been paid November 12, 1917, for one month in advance. Out of said rent the defendants have paid the taxes, ater rents, fire insurance premiums and made all repairs and paid all other expenses incident to the said house and lots. That in all other respects said Paragraph 4 is untrue.

5. The title to the said property is as above stated, except that Lot No. 310 is held on a deed from a grantor who held title under a tax certificate. About two years ago, owing to the unsatisfactory and unsteady way in which the complainant was acting and doing his work, the defendants abandoned the intention of finally turning over the said lots to the complainant when he became twenty-one years of age, and made the attempt to have the title transferred to themselves or one of them; but being discouraged therefrom by the conveyancer to whom they applied to have the transfer made, they continued to retain possession of said lots without deciding whether they would finally turn possession of them over to the complainant at majority or not. The defendants had built said house on said Lot No. 310 prior to this time and the said conveyancer advised them at this time and other times that they could remove the said house off said lot any time prior to the time when their son would become twenty-one years of age. After the complainant was married on May 10, 1917, he continued to live with his parents, without saying anything to them about his said marriage, and the parents seeing a notice of his marriage licenses in a newspaper confronted him with it, and shortly thereafter the complainant went to live with his father-in-law and after going to live with his father-in-law he com-

plained to the defendants that his father-in-law was improperly treating complainant's wife, whereupon the defendants told him to move from there with his wife and go somewhere else to live, and complainant said he would provided the defendants would permit him to live in said house, which the defendants refused to do, stating that they were going to move the house off said lot. In all other respects said paragraph 5 is untrue.

6. That the defendants consulted counsel as to their right to move the said house off of said lots and were informed they had a right to do so, and defendants proceeded to cut down a tree and make arrangements to move the said house to another lot of the defendants.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. The said building is a two and one-half story frame dwelling house, erected on a site suitable and proper for a cellar, but without a cellar, and is set on piers and is not a permanent but a moveable structure or improvement and not permanently attached to the soil, and is boarded below the bottom, between the sills and the ground and was not erected to be a permanent improvement, owing to the fact that it was erected on said Lot No. 10, which is held on a deed from a grantor who held title under a tax certificate. The defendants never turned over the said dwelling house on said Lot No. 310, to the complainant, but have always retained possession of the said house themselves as aforesaid, and had said house erected on said lot in such a way so that when it suited the defendants to move it from said lot it could be easily done. In all other respects said paragraph 9 is untrue.

10. It would not seriously injure or damage the said lots, and especially said Lot No. 310, to remove said improvement away from the same, because the piers can be easily

removed, in less than a half day, and it would take less than five dollars and not more than one day to restore the surface of Lot No. 310 to its original grade. In all other respects said paragraph 10 is untrue.

All of which matters and things these defendants are ready to aver, maintain and prove.

ARNOLD J. BECKENBACH,
Solicitor for Defendants.

PRISCO VS. PRISCO.

On or about April 9, 1918, application on due notice was made to the Court of Chancery for leave to amend the answer of the defendants, Thomas and Millie Prisco, by filing an amendment to the answer by way of counter-claims as follows:

AMENDMENT TO ANSWER BY WAY OF
COUNTER CLAIM.

Filed April 9, 1918.

The joint and several counter-claim of Thomas Prisco and Millie Prisco, his wife, defendants to the Bill of Complaint of Henry Prisco, complainant. The defendants by way of counter-claim exhibited against the complainant say:

11. That the intention mentioned in the foregoing paragraph 5 and there spoken of by the defendants as having been abandoned, was an intention declared at and before the time of the purchase of said lots and the building of said house on said Lot No. 310, which expressed the consideration on which the possession of said house and lots were to be delivered to the complainant; that the same is consistent with and in conformity to a custom of people of the same foreign nativity as the defendants, desiring their sons to be thrifty and to get property on and before majority, which custom is to require the son to turn over his

wages to his parents and to be a good boy and to be dutiful in his behavior to his parents, after he becomes sixteen years of age and out of school; that it was the declared intention of the defendants aforesaid, before and at the time of the purchases of said lots in the name of the complainant, and the building of said house on said Lot No. 310, that if the complainant worked and kept employed in a steady and satisfactory manner and turned over satisfactory wages to his parents and would be a good boy and a dutiful son, of which the defendants were to be the judge, that they would retain possession of said wages, less adequate spending money and turn over said house and lots to the complainant to enable him to keep house on his own account after he had become twenty-one years of age.

12. That the intention declared to the complainant as aforesaid was the consideration on which said lots were conveyed to the complainant, and the said house erected thereon by the said Thomas Prisco, and that the complainant has so failed to live up to the conditions expressed in said intention, and the consideration thereof and has been so unsteady and unsatisfactory in his work from early in the year 1915 and from about two years after the purchase of said lots and the building of said house, and has so failed in his duty to and proper and dutiful behavior to his parents that the defendant gave notice to the complainant that they would not turn over possession of said house and lots to the complainant and deliver to him possession thereof for his use; that thereupon the complainant stated that he did not desire the said house and that the defendants might retain possession of it; that the defendants on two occasions applied to a conveyancer to have the transfer of the title in the name of the complainant turned over to the defendant Thomas Prisco, and that said conveyancer at first discouraged them, and later on again told them the only thing they

Filed June 17, 1918.

IN CHANCERY OF NEW JERSEY.

Between

HENRY PRISCO *and* EMMA PRISCO,
Complainants

AND

THOMAS PRISCO *and* MILLIE
PRISCO, his wife,
Defendants.

FINAL HEARINGS ON
BILL FOR INJUNC-
TION AND RELIEF.
CONCLUSIONS.

JOSEPH BECK TYLER, for complainant.

A. J. BECKENBACH, ESQ., by H. A. DRAKE, ESQ., for
defendants.

LEAMING, V. C.

One of the deeds of conveyance which is challenged in this case was made by Palmyra Ice and Coal Company to complainant January 20th, 1913, and recorded February 19th, 1913; the other—also challenged—was made by William L. F. Gsand to complainant July 16th, 1913, and recorded July 19th, 1913. Both deeds express money considerations and declarations to the use of the grantee. It is, however, conceded that the consideration of these deeds was paid by the father of the complainant, and that the complainant was, at that time, only sixteen years of age.

The payment of the purchase price by a person other than the grantee named in the deed of conveyance may, in some circumstances, be sufficient to overcome and destroy the regular and formal written title which declares the conveyance to be for the use and benefit of the grantee, and to thus raise a resulting trust in favor of the person so paying the purchase price (see *Whitely vs. Ogle*, 47 N. J. Eq., 67;

Midmer vs. Midmer's ex., 26 N. J. Eq., 299), but where the conveyance is made by a father to his son, or where the consideration is paid by the father and the conveyance made by a third party to the son, there arises a presumption of gift which must also be overcome by evidence before it can be determined that the written instrument shall not be effective according to its terms. And to overcome such presumption of gift from a father to his son the evidence relied on must be convincing and leave no reasonable doubt. This rule is defined by our Court of Errors and Appeals in Reed vs. Huff, 40 N. J. Eq., 229, as follows :

"The proofs which shall raise a resulting trust, or rebut the presumption of a gift or settlement in the case of a child or wife, must be of facts antecedent to or contemporaneous with the purchase, or else immediately afterwards, so as to be, in fact, part of the same transaction; a resulting trust cannot be raised from matters arising *ex post facto*. 1 Lead. Cas., in Eq., 223; Cutler vs. Tuttle, 4 C. E. Green, 549. It is also well settled that the proofs which shall rebut the presumption of a gift in favor of a child or wife, shall be equally satisfactory and explicit with the proofs required to establish a resulting trust; the circumstances relied on must be convincing, and leave no reasonable doubt as to the intention of the party. Peer vs. Peer, *supra*."

This rule is again stated by our Court of Errors and Appeals in McGee vs. McGee, 81 N. J. Eq., 190, as follows :

"The rule in this state is well settled that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her, and while

such presumption may be rebutted, the proof offered to accomplish it must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties."

Accordingly, the primary inquiry in this suit is whether the proofs which have been offered to establish as a fact that the conveyances here in question were not gifts to the son are adequate to establish that fact with that degree of certainty which the law requires.

A detailed review of the evidence seems unnecessary. It is quite possible that the father of complainant may have had in mind at the time the conveyances were made that he could reclaim the titles in the event that his son's future conduct was not satisfactory, but in view of the good conduct of his son up to that time it is more probable that no substantial doubt touching his future conduct was then entertained by the father, and that no thought of the possible necessity of recalling the conveyance entered his mind at that time. The testimony touching what was said to the son about his future good conduct, especially in view of the testimony to the contrary, when considered in connection with all the circumstances of the case, fails to convince me that a gift was not intended. The claim made by counsel that the consideration paid was one which the son was to earn by future good conduct is but a restatement of the claim that the conveyances were not gifts. I am convinced that the presumption of gifts has not been overcome by the evidence with that degree of certainty which is required in such circumstances. As stated by our Court of Errors and Appeals, the declaration to the use of the son, as contained in the deeds, and the accompanying presumption of gifts to the son, should only be overcome by proofs

certain, definite, reliable and convincing, and leaving no reasonable doubt as to the intention of the parties.

The marriage of the son shortly before he reached his majority obviously was the act which occasioned the parents' dissatisfaction and lead to the attempted repudiation of the gifts; but for that act it may well be doubted whether any controversy could have arisen.

This view is equally applicable to the improvements subsequently made on the land by the father. The improvements will be presumed to be gifts to the son unless that presumption is sufficiently overcome by the proofs. *Selover vs. Selover*, 62 N. J. Eq., 761, 763. The notion that the residence was personalty and was designed to be removed by the father for his own use is clearly untenable. It was no part of the intention of any one to ever have the building removed from the lot on which it stood except upon the possible contingency of a defective title to the lot. As between the father and son the building was clearly intended as a permanent improvement to the lot.

I am satisfied that complainant is entitled to an injunction restraining the removal of the house from the lot on which it stands.

But I do not think that complainant is equitably entitled to an accounting for the net income of the property prior to the time he permanently left his parents' home. Prior to that time he resided at his parents' home at their expense and they received his wages, except as to small allowances to him for spending money. Soon after his marriage he left his parents' home with their consent; until then he was unemancipated. It accordingly seems inequitable to charge the parents with the net income of the property during the period that they assumed the burden of their son's support. During that period they were entitled to their son's wages

and owed him support and other parental duties. Although the property belonged to the son, its care and management appropriately fell to his father, and the existing circumstances seem to negative the idea that its meagre net revenues should be set apart for the son's separate use. But after the son left his parents' home with their consent the net income of the property appropriately came to him. Unless counsel can agree upon the net revenues since that date I will advise a reference for an accounting.

Submitted June 12, 1918.

Determined June 13, 1918.

A true copy

JOHN H. McADAMS,
Clerk.

ORDER FOR AN INJUNCTION.

This cause coming on to be heard at the Chancery Chambers, in the Court House, in the city of Camden, on bill answer and replication thereto and on cross bill, answer and replication thereto and proofs on the several issues presented in the presence of Joseph Beck Tyler, of counsel with the complainant, and A. J. Beckenbach and Herbert A. Drake, of counsel with the defendants, and the pleadings having been read and testimony taken thereon and arguments of respective counsel having been heard and considered and no objections having at any time been made to the jurisdiction of the Court to determine the legal title to the premises described in the bill, and its appearing to the Court that the complainant is entitled to the relief sought and prayed for;

It is on this third day of July, 1918, by Edwin Robert Walker, Chancellor of the State of New Jersey ordered, adjudged and decreed, and the said Chancellor by virtue

of the poer and authority of this Court, doth hereby order, adjudge and decree that the defendants, Thomas Prisco and Millie Prisco, his wife, and their agents and servants, be and they hereby are restrained and enjoined from removing or attempting to remove the building or any part thereof from the property of the complainant, Henry Prisco, situate at Palmyra, N. J., more particularly described in the bill of complaint.

It is further ordered that a writ of Injunction issue restraining said defendants as herein provided.

It is further ordered that the defendants, Thomas Prisco and Millie Prisco account for and pay to the complainant the net income received by them or either of them or by their agents or servants from said property from and after May 10th, 1917, to the date of this decree and for the purpose of determining the amount of rentals received and the amount of lawful disbursements made the matter of accounting be and it hereby is referred to Wm. Early, one of the Special Masters of this Court, to determine and report the net income received by said defendants from and after the 10th day of May, 1917.

It is further ordered that the cross-bill of the defendants against the complainant, Henry Prisco and Mrs. Henry Prisco, his wife, be and the same is hereby dismissed.

And further, that the complainant is entitled to his costs to be taxed herein upon the bill of complaint, upon the cross-bill, which is dismissed, and upon the reference for an accounting and that the complainant have an execution for said costs and the amount found due upon said accounting as herein provided.

Respectfully advised,

E. B. LEAMING.

Dated July 3, 1918

The following Exhibits are referred to in the testimony:

EXHIBIT C-1. Deed, dated January 20th, 1913, made by Palmyra Ice and Coal Company to Andrea Delli Priscoli, in consideration of \$25.00, recorded in the Clerk's office of Burlington county in Book 489 of Deeds, page 104, etc. Being Lot No. 310 on the Souder Plan of Palmyra Building Lots, describing at length a part of the premises in question.

EXHIBIT C-2. Deed dated July 16th, 1913, made by William T. F. Gsand and wife to Andrea Delli Priscoli, in consideration of \$75.00, recorded in said Clerk's office in Book 495 of Deeds, page 125, etc. Being Lot No. 311 on said Plan, describing at length a part of the premises in question.

EXHIBIT C-3. Policy of Fire Insurance, for \$1,000, made by Pennsylvania Fire Insurance Company to Henry Delli Priscoli, for period from August 4, 1913, to August 4, 1918, on the house mentioned in the case.

EXHIBIT D-1. Palmyra, N. J., September 20, 1913. Received from Thomas Prisco, five dollars and forty cents, being the full amount of money due me on No. 311 Third street, Palmyra, N. J.

SAMUEL RUDDEROW.

IN CHANCERY OF NEW JERSEY.

Between

HARRY PRISCO,

Complainant,

AND

THOMAS PRISCO, ET AL.,

Defendants.

ON BILL, &c.

FINAL HEARING.

Before his Honor, E. B. Leaming, Vice Chancellor, at the Chancery Chambers, Camden, New Jersey, on Tuesday, June 11th, 1918.

Appearances:

JOSEPH BECK TYLER, ESQ., for complainant.
HERBERT A. DRAKE, ESQ., for defendants.

Mr. Tyler: I want to offer in evidence a deed from the Palmyra Ice and Coal Company to Andrae Delli Priscolli, which is duly acknowledge and recorded. This deed is dated January 12th, 1913.

(Said paper marked Exhibit C-1.)

Mr. Tyler: There are two lots. I also offer a deed from William T. F. Gsand and wife to Andrae Delli Priscolli, duly acknowledged and recorded, dated July 16th, 1913.

(Said paper marked Exhibit C-2.)

The Vice Chancellor: These are deeds to the son, are they?

Mr. Tyler: They are the deeds to the complainant, the son. His names appears as Andrae Delli Priscolli but he calls himself Harry Prisco. I want to offer in evidence the fire insurance policy on the same property taken out in the name of Andrae Delli Priscolli.

The Vice Chancellor: When?

Mr. Tyler: August 4th, 1913, expiring August 4th, 1918.

Mr. Tyler: I want to offer in evidence two photographs of the property in question. These are not professional photographs but they will serve the purpose just as well, I suppose.

(Said photographs marked Exhibits C-4 and C-5.)

The Vice Chancellor: Any objection to these as exhibits, Mr. Drake?

Mr. Drake: No.

The Vice Chancellor: Let them be marked.

Mr. Tyler: I want to be sure I am right about this: The answer admits a lot of pertinent facts. It admits the collection of rents from August 4th, 1913, to May, 1917, at \$10 per month, that makes a total of \$210. It admits the collection of rents from May, 1917, down to the date the answer was filed, at \$12 per month, and I would like to ask counsel whether the same condition does not exist down to the present time, \$12 per month?

Mr. Drake: Yes.

Mr. Tyler: It is admitted that the rent down to the present time, May, 1917, to the present time, has been collected at \$12 per month. That would amount to \$156. Another pertinent part is, the answer admits the relation of parent and child, that is, that the complainant is the child and defendants are the parents. Another important part is that it admits the intention and the fact that the defendants are proceeding to move the house off of this property and for that purpose have cut down and taken away a large tree in front of the house and have started to move the house. All those facts are admitted in the answer. I do not understand it is necessary for me to proceed to prove those facts.

The Vice Chancellor: Not where they are admitted.

Mr. Tyler: Well, that is the complainant's case.

JENNIE PRISCO, a witness produced in behalf of the defendants, being duly sworn according to law, on her oath says:

By Mr. Drake:

Q. Where do you live?

A. Palmyra.

Q. Are you a sister of the complainant?

A. Yes.

Q. How long have you lived in Palmyra?

A. Ever since I was a month old, eighteen years.

Q. Are you younger or older than complainant?

A. Younger.

Q. Do you remember when he was taken out of school and went to work?

A. Yes, sir.

Q. When was that?

A. That was in 1912.

Q. What time of the year?

A. About February.

Q. Where did he work?

A. When he first started to work, in Riverside Watch Case.

Q. How long did he stay there?

A. About six months.

Q. Then where did he go?

A. Then I think he went to—I don't know whether he went to Evans or the spring works.

Q. Are the spring works at Cambridge?

A. Yes, sir.

Q. How long did he stay at the spring works?

A. A few weeks.

Q. About what time did he go to Evans?

A. About the same year, 1912, in July, I think.

Q. Who worked with him at Evans?

A. My father.

Q. Is your father still working there?

A. No, he quit about a month ago.

Q. Did your father work at Evans all the time your brother worked there?

A. Yes, sir.

Q. Now, before 1913 did you hear any conversation—

A. Yes, sir.

Q. —between your father and mother and this boy?

A. Before 1913?

Q. Yes, before 1913, before the deeds were made, or in 1913, about the time the deeds were taken?

A. Yes, I heard them.

Q. What conversations did you hear?

Mr. Tyler: That is objected to, unless there is some indication that it is relevant in some way. I don't know what it will refer to.

The Vice Chancellor: I think conversations between the boy, the complainant, and his father are competent, about the time the deed was given. That is what I understand the witness is about to narrate.

Q. Did the conversations relate to these deeds?

A. Why, they were telling him if he would work steady and be a good boy, why, when he would be twenty-one they would give him the house, and he consented to this and turned in his wages and then they give him spending money out of it.

By the Vice hancellor:

Q. Who were telling him?

A. My father and mother.

By Mr. Drake:

Q. What did he say about it? When they told him this what did he say?

A. Why, he thought it would be all right.

Q. Were you present at this conversation?

A. Yes, sir.

Q. What was said about turning in the money?

A. Why, he would turn in his wages and he would get money to spend out of it, and, why, he had to pay his board, that was about—

Q. Pay his board where?

A. At our house, where he lived, that is about all he did.

Q. Did he get spending money out of his wages?

A. Yes.

Q. What wages did he get at Evans?

A. He got \$9 a week.

Q. How much spending money did he get?

A. \$2, and he didn't have to buy anything, because we have a store and he would get everything in the store.

Q. What do you mean by everything?

A. Cigarettes or cakes or candies, pies, cigars, whatever he wanted.

Q. Chewing gum?

A. Yes, chewing gum, too.

Q. He took these things out of the store, did he, without paying for them?

A. Yes, sir.

Q. Who keeps this store?

A. My mother.

Q. Do you help her?

A. Yes, sir.

Q. Was he about the house when he wasn't at work?

A. Why, he never tended to any store, he would come in for his meals, he would come in and go out.

Q. This conversation was before the house was built, was it?

A. About what?

Q. This conversation with him that you just stated that if he would be a good boy—

A. Yes, before they even bought the lots.

Q. When was the house built?

A. It was built in 1913, I think it was.

Q. Built in the summer time or winter time?

A. I couldn't tell you, my father knows, or Sam knows. In the fall, I think; I am not sure.

Q. Now, can you tell when he left Evans?

A. He left Evans in—

Q. How long did he stay at Evans?

A. About three years.

Q. Then where did he go?

A. Then he went to so many places so I can't name them but I can tell you where.

Q. After he left Evans did he work steady?

A. Why, he worked a few months one place and a couple of weeks another place, and he quit and be about another week before he got another job or two.

Q. When did he get married?

A. May 10, 1917.

Q. And he left Evans about 1916, did he?

A. About 1916.

Q. How much did he work during the two years or between the time he left Evans, in 1916 or 1915, and May, 1917, how much time did he put in?

A. From 1913 did you say, or 1915?

Q. From the time he left Evans until he got married, how much time did he work?

A. I don't know.

- Q. Did he work steady or not?
- A. He did not work very steady when he left Evans.
- Q. Did you hear any conversations between him and his parents over not working steady?
- A. Why, they told him if he don't work steady and do what they tell him why the house would not be his when he was twenty-one.
- Q. When did they tell him that?
- A. Why, every time they would have a little scrap of some kind, and he always said he didn't care, the house—he didn't want it.
- Q. After they had told him that did he go to work any better?
- A. No.
- Q. Can you mention some of the places where he worked?
- A. Metal works in Riverside, and Biddle's foundry in Palmyra, and spring work, and leather works here in Camden and brick yard.
- Q. Whose brick yard?
- A. I don't know the name of it.
- Q. Hilton?
- A. Is it Hilton? Hiltton's brick yard, and he worked at Ratto's sand bank.
- Q. Are all these places near Palmyra?
- A. Yes, sir; they are near Palmyra.
- Q. How did this come to your knowledge?
- A. Why, he would tell us where he would go to work, and they would have fights and I would be there at home.
- Q. And what would they fight about?
- A. About him not being the way he promised to be.
- Q. What about turning in his money? Did he turn in his money?
- A. Why, he would just pay his board, he didn't turn in all his money.

Q. When your mother or father or both of them would tell him if he didn't work steady and turn in his wages that he should not have the house, what did he say to that?

A. Why, he didn't care, and he would swear at her and everything else.

Q. Swear at who?

A. My mother and father, both.

Q. Was he sick at any time?

A. Yes, he was sick, I couldn't tell you what year but he was sick for quite a while.

Q. The first time how long was he sick?

A. The first time?

Q. Yes.

A. Do you mean when he got hurt at the spring works?

Q. Yes.

A. About a few weeks, I think.

Q. And then was he sick again?

A. Yes, with typhoid fever.

Q. Was he taken care of at home?

A. Yes, sir.

Q. How long was he sick at that time?

A. About three months, I think, before he was able to go to work.

Q. After he got well did he go to work right away?

A. When he was able to.

Q. By whom was he supported when he was sick?

A. My mother and father.

Q. Who paid the doctor bills?

A. My mother and father.

Q. Did they have anything but an ordinary local doctor?

A. No, they had a specialist from Philadelphia.

Q. And did they have any special nurse for him?

A. Why, mother took care of him but we had to get somebody to take care of the store and help me out with

the store, because mother helped me but she had to take care of him.

Cross-examination.

By Mr. Tyler:

- Q. You are still living with your father and mother?
 A. Yes, sir.
 Q. And Henry in 1912 was fifteen years old, wasn't he?
 A. 1912?
 Q. Yes, six years ago.
 A. Yes, I guess he was fifteen six years ago.
 Q. Then when he was fifteen years old he started to work, didn't he? That is when I think you said he started.
 A. He was sixteen years when he went to work.
 Q. He wasn't through school then, was he?
 A. No, he got expelled from school and couldn't go back.
 Q. And he went to work right away?
 A. I don't know whether he went to work right away or not, but he went after he got his papers from school.
 Q. This conversation you speak of with his parents was after he had left school, wasn't it?
 A. Yes, sir, when he started to work.
 Q. Now, he worked with Joseph E. Evans, who has a lumber, coal and ice business in Riverton?
 A. Yes, sir.
 Q. For three years at least, didn't he?
 A. Yes, sir.
 Q. And he was about in his sixteenth year then?
 A. Yes, sir.
 Q. Now, what did he do there? Didn't he drive the coal wagon, deliver coal?
 A. Yes, sir, at Evans.

Q. And he did that for three years, didn't he?

A. About three years.

Q. He started at nine dollars a week and was raised to ten, wasn't he?

A. I don't know whether he was raised to ten or not. Why, in these three years he stopped there three times.

Q. Don't you know whether his wages were raised while he was there?

A. No, sir.

Q. As a matter of fact he never got a pay envelope—his pay was always put in his father's envelope?

A. My father was working with him and my father would take the money home and he would get his money when he came home.

Q. But the boy was never paid himself by Evans.

A. He was paid by Evans when papa was out or something.

Q. But during all the time he worked there and his father was working there his father collected the boy's wages, didn't he?

A. Yes, sir.

Q. Now, there was no fault found with the way Henry worked, was there?

A. At Evans, no.

Q. And that continued up until 1916?

A. Yes, I guess it did.

Q. As a matter of fact, he worked there longer than three years, didn't he?

A. No, he did not.

Q. What time of the year was it he left there?

A. At Evans?

Q. Yes.

A. I couldn't tell you what time of the year it was.

Q. Now, there was only one year elapsed between the

time he left Evans and the time he got married, wasn't there?

A. No, he wasn't working at Evans when he was married.

Q. No, there was just about a year elapsed, wasn't there, between the time he left Evans and the time he got married?

A. I don't know exactly.

Q. Well, do you know whether it is about right or not? You said he went to Evans in July, 1913. Is that correct?

Mr. Drake: 1912.

A. 1912.

Q. Are you sure about that?

A. I said 1912, sure.

Q. Then he worked at Evans until the summer of 1915, is that right?

A. 1915, yes.

Q. Then there was about two years elapsed between the time he left Evans and the time that he got married, is that right?

A. Yes, sir.

Q. Now, during that time he lived at home with his father and mother?

A. Yes, sir.

Q. And gave them his wages?

A. Yes, sir.

Q. Paid his board?

A. Yes, paid his board, yes.

Q. And was living there up until the time that he got married, wasn't he?

A. Yes, sir.

Q. In fact, there hadn't been any very serious trouble until the time he got married, had there?

A. Oh, no, a few years before he was ever married.

Q. Well, there was no trouble while he was working at Evans, was there?

A. No.

Q. And in the meantime you said that he was working and had turned in his wages, paid his board?

A. Why, he would come home and fight, and then he would—my mother would tell him and he would say, why, he wouldn't stay home, if she didn't like what he gave her he would get out.

Q. He was giving his wages, wasn't he?

A. He wasn't giving what he made, no.

Q. Do you know what he made?

A. Yes, by his—the way he told us, why, when he worked at Riverside he made eighteen and he would turn in nine, so he said, I am not sure if it is true, he knows if it is the truth.

Q. And he did turn in a part of his wages, at least, all the time he was working?

A. Part, yes, he didn't turn in anything extra of what he needed for clothing and board.

Q. Now, when he was making more he bought some of his own clothing, didn't he?

A. Never bought a thing for himself, mother always gave him the money when he needed anything.

Q. Now, at the time that he got married—that was in May, 1917, wasn't it?

A. Yes, sir.

Q. A good deal of fault was found with that, wasn't there?

A. What is it?

Q. A good deal of fault was found with his getting married?

A. We didn't know he was getting married.

Q. Yes, and when you found it out you made a lot of trouble?

A. Why, we found out in the paper and we asked him—

Q. Please answer my question: When you found out that he had gotten married you made a lot of trouble, didn't you?

A. We didn't make him any trouble at all.

Q. Didn't you drive him away from the house?

A. No.

Q. Didn't your mother tell him that he couldn't bring his wife there and that he would have to go away, or something of that kind?

A. No, he didn't ask to bring his wife there.

Q. Now, what did they say about—telling him to go away?

A. When we saw the news in the paper mother asked him and he wouldn't answer and mother asked him again and he says, "Yes, I am married. What about it?" And mamma says, "If you couldn't tell us you were going to get married you can't stay here." And he went out to stay, but he came back just the same.

Q. He stayed there about two weeks, didn't he?

A. Yes, he brought his wife at our house two weeks.

Q. And then you drove him away?

A. No.

Q. What did you do or what did your father and mother say about their going away? Didn't they tell him to go away, or words to that effect?

A. No, sir; his mother-in-law and father-in-law came to the house and said they wanted him to live there, to pay their board at their house, because they couldn't get along and if they got that, why, they could get along, with his board and his wifes board. That is why they went to his mother-in-law's and father-in-law's.

Q. Are you quite sure that your father and mother didn't say something to him, telling him to go away?

A. No, they didn't tell him to go, they said it would be all right if they needed him, why, he could go.

Q. They consented to that arrangement, didn't they?

A. Yes, he was married, he was supposed to do what he wanted, I guess, but that is what he did anyhow.

Q. And it was shortly after he married, or after May, 1917, or in May, 1917, that they tried to get him to deed his house back, didn't they?

A. Tried to get him to deed it? Henry wasn't of age. I didn't see how he could deed it.

Q. No, but didn't they try to get him to do so?

A. No, he didn't have the deeds.

Q. Didn't you help prepare the answer filed in this case—furnish the facts to your attorney?

A. I don't know what you mean.

Q. Didn't you help prepare the answer that was filed by your father and mother?

A. Who did I help prepare it?

Q. Yes.

A. I only helped myself. I only know what I heard.

Q. Don't you remember stating that they tried to get him to do it and he refused to do it?

A. No, they never asked him.

Q. Never asked him to deed it back?

A. Why, no. How could they deed it back when it wasn't deeded to him yet?

Q. Well, you are quite sure they never asked him to deed it back?

A. Yes, sir.

Q. Don't you remember consulting a conveyancer and finding out about having the property deeded back?

A. Why, we asked him if we could move it off of there and he told us we could.

Q. That isn't the question I asked you. Don't you remember consulting a conveyancer about having the title deeded back?

A. We went to him and they said he couldn't deed it to anybody because he wasn't of age, and he said, "Don't do that." And so they are convinced by him and they didn't. And later on they went to him.

Q. Now, wasn't that after Henry was married?

A. No, sir.

Q. Who did you go to?

A. Mr. Blackburn.

Q. In this understanding that you refer to that was had before the property was conveyed to Henry, did they have any prohibition or agreement that he should not get married.

A. Why, he told him not to get married until he was of age. He wasn't supposed to be married until he was twenty-one.

Q. Well, but was that any part of the agreement, that he should not get married?

A. Yes, they told him that he should not get married until he was twenty-one.

Q. Now, you are quite sure that back in 1912 when he was only fifteen years old, that they were talking with him then about getting married and not getting married?

A. No, he wasn't fifteen when they built the house, either.

Q. I beg your pardon?

A. They wasn't telling him that, no.

Q. You said he went to work in 1912, didn't you?

A. 1913—1912, yes.

Q. And it was before he went to work that they had this conversation with him, wasn't it, after he had left school, before he went to work?

A. Well, he was working for a little time when they decided to buy the lots for him.

Q. Now, it was before he went to work they had this conversation, wasn't it?

A. I don't know whether it was before or after. I don't remember.

Q. Henry has never done anything bad that you know of, has he?

A. No, only he didn't mind his parents.

Q. Never been arrested?

A. Never.

Q. And he always lived home up to the time he was married?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. And when he went away from home after he was married it was with the consent of his father and mother, wasn't it?

A. Because he wanted to go.

Q. Now, wait. Isn't that true?

A. Why—

Q. Can't you answer that question yes or no?

A. What is it?

Q. When he went away from home after he was married it was with the consent of his father and mother?

A. No, he wanted to go badly and mother said if they needed him so bad it was up to him to go, and mamma didn't tell him to go.

Q. And your father said the same thing?

A. Why, sure, if he was decided to go they didn't mind. He wasn't paying us any board after he got married.

Q. You mean the two weeks that he was there and his wife was there—didn't he pay \$10 a week for each week?

A. No, sir, he did not give us a penny. He never even offered mom to pay board either. didn't you?

Q. You knew that these lots were bought for Henry, didn't you?

A. Yes.

Q. And you knew that they intended to have the deed made out in Henry's name, didn't you?

A. Yes, if he was a good boy.

Q. And they so told the conveyancer or the person they bought if from to make the deed out to Henry, didn't they?

A. Yes, sir.

BY MR. DRAKE:

Q. Did he work at Evans full three years or less than three years?

A. Less than three years. He stopped there a couple of times.

Q. Did he stop before the three years were up?

A. Yes, sir.

Q. How much less than three years?

A. A few months, I think.

Q. Now, was he sick with typhoid after he left Evans?

A. No, he was still at Evans.

Q. How long was he sick, then?

A. Well, he was sick about three months.

Q. Did he ask your parents to let him move into this house?

A. Yes, and my father told him—my mother and father told him he couldn't go there because it didn't belong to him.

Q. When was that?

A. After he was married.

Q. Did he live with you with his wife after he was married?

- A. For two weeks.
- Q. What reason did he give for leaving his father-in-law's house?
- A. Because his mother-in-law treated his wife badly.
- Q. Is that what he said?
- A. That is what they both said, wife and him both said.
-

MILLIE PRISCO, one of the defendants, being duly sworn according to law, on her oath says.

BY MR. DRAKE:

- Q. Did you and your husband purchase a lot and have the deed put in your son's name?
- A. Yes, sir.
- Q. When was that?
- A. When was that?
- Q. Yes.
- A. 1912 or 1913.
- Q. Who paid the money for this deed?
- A. I do, me and my husband.
- Q. Then did you purchase another lot in 1913?
- A. The same year, six months apart, I bought the other lot.
- Q. Of whom did you buy them?
- A. Off of Mr. Blackburn. the second one I buy off of Mr. Blackburn and the first one I buy off of Fluck.
- Q. When did your boy, the complainant, Henry—do you call him Henry now?
- A. Yes, sir.
- Q. When did he start to work?
- A. In 1912. That is right, 1912.

Q. When was he born? Do you remember?

A. February the 10th—well, I cant think the year, you know, but he was twenty-one, you know, last tenth of February.

The Vice Chancellor: Next?

Q. Last?

A. Last.

Q. He became twenty-one last February?

A. Yes, sir.

Q. He was born twenty-one years before that?

A. Yes, sir.

Q. When did he leave school and go to work?

A. In 1912.

Q. Where did he go to work first?

A. Riverside Watch Case.

Q. Do you know what wages he got there?

A. Four dollars a week.

Q. Then where did he go next?

A. Next? Well, he go to Evans, because he is discharged from the Watch Case, you know, because—I don't know. I can't think of the name. He can't go back to the Watch Case no more and he go to work for his father in the coal yard.

Q. Was your husband then working in Evans' coal yard?

A. Yes, sir.

Q. How long did he stay there at Evans?

A. Three years.

Q. Three full years or lesss than three years?

A. It wasn't quite three years.

Q. Not quite three years?

A. No ,a few months short.

Q. What wages did he get there?

A. Nine dollars.

Q. Was his wages raised to \$10 while he was there?

A. No, sir.

Q. Who collected his money?

A. Father.

Q. Was he given his spending money out of it?

A. Two dollars. Sometimes I give him one and sometimes I give him two outside of the money because I got everything in the store.

Q. What do you mean by everything?

A. Cigarettes, soda water, pies, candy, anything in the store like that.

Q. Did he use those things?

A. A whole lot, he helped himself, if he have somebody else to treat, you know, because he didn't buy.

Q. You mean that he brought others in there, friends of his, and treated them?

A. Yes, sir.

Q. And didn't pay you for them?

A. No, sir.

Q. Now, about the time he went to work or about the time you bought these lots, did you have any conversation with him before you put them in his name about what they meant?

A. Well, I buy the lot and I says, "Henry, if you be a good boy I buy the lot and if you turn the wages in, you know, to me, and everything, be a good boy to me and your father and family, you know, when you are twenty-one you will get the lots and house."

Q. Was this before you built tthe house?

A. Yes, sir.

Q. Well, when you bought the lot—had you got a deed for it then?

A. No, before I buy the lot, you know, I do that. I say that.

Q. Had you paid something on account of the lot?

A. No, sir.

Q. Now, he worked at Evans three years and he went to work there in the year 1912?

A. Yes.

Q. Now, between 1915 and the time he was married, 1917, did he work steady and turn his wages in?

A. Nineteen what?

Q. After he left Evans and up to the time he got married?

A. He left Evans, he go in and out, and you can't track where he works. You can't track no wages.

Q. Did you have any conversation with him?

A. Yes, sir.

Q. About the way he was conducting himself after he left Evans?

A. Yes.

Q. And about the way he turned in his wages?

A. Yes, because when he came home and he give me the money, you know, he want to pay me \$5 board and I says, "No, you can't do that. You have got to turn the money in, you know, to pay for the house." And he says, "If you don't want what I give it to you, you could do without it."

Q. Well, did you ever tell him that if he didn't do different that he couldn't have the lot?

Mr. Tyler: Objected to as leading.

The Vice Chancellor: Yes.

Q. What did you say to him about the lot?

A. The lot I said—

Q. And the house?

A. And the house, if he be a good boy when he be

twenty-one years of age he get the house and the lot.

Q. After he left Evans what was said to him about the house and lot?

A. Well, you know, I had a scrap with him, he didn't bring the money and wouldn't work, he says "You have to keep me because you got the store."

Q. Now, when did you have that conversation?

A. After he left Evans.

Q. Did you make any complaint to him—did you find any fault with him about the way he was working?

A. Well, I find, you know, because he won't bring the money, he wanted to give me \$5 a week.

Q. And what did you say?

A. I says "No." I says, "I want the money to pay for the house." He no wanted to do it and I go to Mr. Blackburn and I was going to change the deeds and Mr. Blackburn, he says, "You cant change the deeds," he says, "you and your son, it is all right, let it go for this time."

Q. Now, was that before he was married? ,,

A. Yes, two years before he was getting married.

Q. Well, then, did you go to Mr. Blackburn again?

A. Yes, I go to Mr. Blackburn again, I says, "I am going to change the deeds." Mr. Blackburn says "Yon can't change the deeds," he says, "go ahead and remove the house if you want the house on them two lots."

Q. How was the house built on this lot?

A. On piers.

Q. What special reason did you have for building the house on piers?

A. Because if my boy, you know, was a good boy, I could move the house, and he was taxed lots.

Q. What about the title of the lot where you built the house?

A. 310?

Q. Yes, was the title in that lot as good as the title in the other lot?

A. Yes, the one I build the house on, you know, was taxed lots, and the other—he was, you know, I buy off of Mr. Blackburn.

Q. The one was taxed lots?

A. Yes.

Q. What was the reason for your building the house so you could move it—why was that?

A. Well, I consented that if the boy was good boy, you know, if the boy, you know, was good, I could move the house out of them lots.

Q. Do you mean you could build a cellar on the other lot and move this house?

Mr. Tyler: That is objected to as leading.

The Vice Chanacellor: Yes, don't lead her. What she says is not true; obviously is not.

Mr. Drake: Oh, yes, it is.

The Vice Chancellor: Why, how could it be when she has already said that she—

Mr. Drake: What she says is that she built the house on this taxed lot so that if the boy was a good boy she could dig a cellar on the other lot and move it over on the other lot.

The Vice Chancellor: If he wasn't a good boy?

Mr. Drake: If he was a good boy she could put a cellar in the other lot, 311, and move the house over there.

Q. Now, what did he tell you when you said if he didn't do different he should not have the house?

A. He swore me and he says "Stick the house in your ass, no want the house."

Q. How often did he tell you that?

A. All the time I had a scrap.

Q. How many times did you have a scrap?

A. All the time, every Saturday he bring the money in.

Q. Now, when you went to Mr. Blackburn the second time what did you say to him?

A. Well, I say "I am going to move the house," and "I was going to change the deeds," and Mr. Blackburn says "you can't change the deed," he says "you could move the house." And I wasn't sure of Mr. Blackburn and I go to Mr. Beckenbach and he told me the same thing, I could move the house.

Q. Who built this house? Who paid all the money?

A. Me and my husband.

Q. Who paid the taxes?

A. I do.

Q. Who paid the insurance?

A. I do.

Q. Is that the policy here?

A. Yes, sir.

Q. Where did you take that out?

A. Mr. Blackburn.

Q. Who has had these deeds and this insurance policy all the time?

A. I got it all the time.

Q. Did the boy ever have it?

A. No.

Q. Who has had possession of this lot all the time?

A. I do.

Q. Who collected the rent?

A. I do.

Q. And who selected the tenants and put them in the house?

A. I do.

Q. Did you do that for yourself or for yourself and husband?

A. The whole family.

Q. When he was sick who paid the expenses?

A. Me and my husband.

Q. Who took care of him?

A. I do.

Q. What was the extra expense?

A. \$300.

Q. Did that include the lost time as well as the expense?

A. No, the spending of money, I no count his time.

Q. Did he ask to live in the house after he was married?

A. Yes.

Q. Ask to move in there with his wife?

A. Yes.

Q. What did you tell him?

A. I says "No, you can't have the house," and he answered me, he says, "I pay the rent." I says "No, you can't go live in that house."

Q. Did he tell you he was going to get married?

A. No, sir, I find out in the newspaper, I was sick in bed two days when he was married, when he is going to get married.

Q. Did you see the notice of his marriage in the paper?

A. Yes, I see in the paper, you know, and I ask him and he don't answer me, and I, you know, ask it again, he says "Yes, I got the license in my pocket." I says, "All right, you can keep it."

Q. Then after that you were sick in bed?

A. Yes, I was sick in bed, you know, I was around, I was half sick then.

Q. Well, do you mean to say that the fact that he was married—

Mr. Tyler: That is objected to as leading.

Q. —made you sick in bed?

Mr. Tyler Objected to.

The Vice Chancellor: I overrule the question. How is any of this relevant, Mr. Drake?

Mr. Drake: Well, I don't see it is so very relevant. I just wanted to understand what she said. That is the reason I was leading here.

A. I was sick in bed, not him.

Q. Did he live at your house?

A. After marriage or before marriage?

Q. After marriage.

A. Two weeks.

Q. Why did he leave?

A. Why, the mother-in-law, you know, is come there and he says he wanted him and his wife for to help the mother because he can't get along, and would my son pay him he could live better.

Cross-examination.

By Mr. Tyler:

Q. Now, Henry lived there with you up to the time he was married, didn't he?

A. Yes, two weeks.

Q. And he lived there—well, he lived there all the time until he was married, didn't he?

- A. Yes, sir.
- Q. After he was married he lived there two weeks?
- A. Yes, sir.
- Q. With his wife?
- A. Yes, sir.
- Q. And that was with your consent, wasn't it?
- A. Well, with my consent because he was run away and he was outside and bring them in.
- Q. You permitted them to come there and live after they were married, didn't you?
- A. Yes, sir.
- Q. And your husband did the same—isn't that true?
- A. Yes, sir.
- Q. And as far as you know he would have been living there yet except that you consented to him and his wife going to live with her father and mother—isn't that true?
- A. Yes, sir.
- Q. Now, Henry paid board for the two weeks he and his wife were there, didn't he?
- A. No, sir; he didn't offer any money and I didn't ask for it.
- Q. You didn't ask for it?
- A. No, sir.
- Q. Didn't you want it?
- A. Eh?
- Q. Didn't you want it?
- A. No, he didn't give it to me and I didn't ask for it.
- Q. Didn't you want him to pay board for that two weeks?
- A. No; if he was going to stay with me, you know, he paid board, but the mother-in-law he want them over there and them two weeks—I didn't bother for them two weeks, if he stay longer sure I was going to charge him board.
- Q. But you didn't want board for these two weeks?
- A. He didn't give it to me.

Q. Listen to my question. You didn't want him to pay it? Didn't you or did you?

A. Well, I didn't want it and he didn't give it to me and I didn't ask him for it.

Q. Why didn't you ask for it—because you didn't want it?

A. Well, he was my son and I thought I do this favor for him.

Q. You thought he had just gotten married—

A. Yes.

Q. —and you were perfectly willing to let them live there two weeks without board, weren't you?

A. Yes, sir.

Q. Now, when you bought this first lot you knew it was a tax lot, didn't you—tax title?

A. Yes, sir.

Q. You had no intention of buying the other lot at that time, had you?

A. No, I buy six months after.

Q. Now, when you started to build a house Henry carted materials there for it, didn't he?

A. Well, he is working for the boss, you know.

Q. I understand that, but he carted the materials there for the house, didn't he?

A. Well, he is carted them but Evans paid him.

Q. Can't you answer that yes or no. Did Henry cart the materials there?

A. Yes, but I buy them.

Q. And he took some of these materials and dumped them on the adjoining lot, didn't he?

A. Yes, sir.

Q. And the people objected to it?

A. Yes, sir.

Q. And they want to order you and your husband or Henry to keep his materials off of that lot, didn't they?

A. Yes, sir.

Q. So when that situation arose you went and bought the adjoining lot, didn't you?

A. Yes, sir.

Q. Paid \$25 down?

A. Yes, sir.

Q. And got the right to have possession of that adjoining lot—isn't that true?

A. Yes, sir.

Q. So it was because they objected to your putting materials there and you needed that for your building materials that you first got the idea of buying the adjoining lot, wasn't it?

A. Yes, sir.

Q. And that lot you had bought in Henry's name, too?

A. Yes, sir.

Q. And these two deeds for the lots were made out and are made out just as you instructed them to be made out, aren't they?

A. Yes, sir.

Q. Now, you say you and your husband paid for the house?

A. Yes, sir.

Q. How much did it cost?

A. Its cost is \$1,500.

Q. And in the three years that Henry was working at Evans he turned in \$9 a week, didn't he?

A. Yes, sir.

Q. That amounts to a little over \$1,400, doesn't it?

A. \$1,400.

Q. That money you got from Henry?

A. Yes.

Q. During that three years he was at Evans?

A. Yes.

Q. And you also received from him in addition to that

his money that he got when he was working at Riverside, at the spring works—isn't that true?

A. He didn't work long at the spring works.

Q. No, but when he did you got his money?

A. Yes.

Q. And since that time you received money from Henry, too, although you say not all of it—you received some of it all the time he worked, isn't that true?

A. Yes, sir; some of it.

Q. And in addition to that you received the rent all that time for the property?

A. All that time.

By the Vice Chancellor:

Q. What did it rent for?

A. Well, for the first four years it was \$10 a month, and now it is \$12 a month for a year and three months.

By Mr. Tyler:

Q. Now, you told a lot of people around the neighborhood that it was Henry's house, didn't you?

A. If he was a good boy.

Q. Yes, and that was commonly understood around the neighborhood—his uncle understood it was Henry's house, didn't he? Didn't you say so?

A. I said it was Henry's house when he was twenty-one if he was good to me and father.

Q. And it was so understood by all the family, wasn't it?

A. Yes.

Q. And Henry has reached twenty-one, hasn't he?

A. Not when he left the house.

Q. Wait a minute. Henry is past twenty-one now?

A. Yes, he is past twenty-one.

Q. And Henry was brought up by you and your husband all the time, that is, he always lived with you until the time he was married, didn't he?

A. Yes, sir; very few times, you know, he left the house for a few days.

Q. I beg your pardon?

A. A very few times he left the house, a very few times when he was mad he left the house, he not care for my house.

Q. And Henry during all the time up to the time he was married was never arrested, was he?

A. No, sir.

Q. He never got in any serious trouble of any kind

A. No, sir.

Q. Never did anything more than ordinary boyish pranks same as all the boys do—isn't that true?

A. Yes, sir, that is all.

Q. And you didn't make any effort to move this house until after Henry had married, did you?

A. Two years before he getting married.

Q. When did you cut down the tree in front of the house or have it cut down?

A. When I got—when Mr. Blackburn told me I could move the house.

Q. When was it?

A. Well, after Henry was married, you know.

Q. All right. After Henry was married you cut down the tree, didn't you?

A. Yes, sir, when I was ready to move the house.

Q. And you hadn't made any agreement or contract with anybody to move the house until after Henry was married, had you?

A. Yes, sir.

Q. Do I state it correctly? Is that true?

A. Yes, sir, that is the truth, but I do that before, you know, and I didn't do it.

Q. You hadn't done anything either towards making an agreement with anybody or moving the tree or placing any materials on it to remove the building until after Henry was married, had you?

A. Two years before I had, after he was married I make another contract.

Q. Now, what did you do two years ago?

A. Two years ago I go to Mr. Blackburn, I was going to change the deeds and he says "You can't change the deeds."

Q. That is all you did then, wasn't it?

A. Well—and he says, "Well, you and your son—" he says "your son might be good to you."

Q. So you decided to wait then, did you?

A. Yes, sir.

Q. And then you didn't do anything more towards moving the house until after your son was married, did you?

A. No, it was a scrap pretty near all the time.

Q. Please listen to my question. I am not asking you about your relations with your son, but you didn't do anything towards moving the house off of the lot until after your son was married, did you?

A. Yes, two times I was going to move the house, two years before and after he married.

Q. I am not asking you for your intentions.

A. All right.

Q. Did you engage a contractor or any other person to move the house before your son got married?

A. Two times I signed the contract for Mr.—— what do you call him?—two years before he was married, you know, and after he is married, two times, for Mr. Keiser.

Q. Mr. who?

A. Keiser.

Q. And why didn't you move it then?

A. Well, I thought the boy be good to me, I waited, I give him so many chances, you know.

Q. After the boy got married you had the tree cut down—isnt that true?

A. Yes, sir.

Q. And you engaged a contractor to move the house— isn't that right?

A. Yes, sir, after Mr. Blackburn and Mr. Beckenbach told me I could.

Q. And you had materials put on there, moving materials, for the purpose of taking the house away, didn't you?

A. Yes, sir.

Q. That was all done after the boy got married?

A. The last time?

Q. Yes, that is true, isn't it?

A. Yes, sir.

Q. And prior to that time you had never done anything more than talk about it, had you?

A. What do you mean—talk about it?

Q. Talk about moving it. Is that correct?

A. Yes, I was going to move the house and I talked about it in the house. I wasn't going to talk outside.

By Mr. Drake:

Q. When you talked about moving the house did you talk about moving it on the other lot or moving it off of both lots?

A. Well, moving off of both lots, you know.

Q. Did you say that two years before you cut the tree down you started to do something towards moving off of the house. What was that?

A. No, two years ago, it was a year ago I cut the trees,

you know, and go to Mr. Blackburn, I says "I want to move the house." He says, "All right, you can cut the tree."

Q. Well, but before that what arrangement or what terms did you make with anybody about moving the house?

A. Well, you know, I signed a contract, you know, for moving the house for that man two times.

A. Mr. Keiser.

By Mr. Tyler:

Q. Now, Mrs. Prisco, why did you want to move the house off these particular lots?

A. Well, because I built the house with that intent if the boy wasn't good to me.

Q. You bought the lots with the same intention, didn't you?

A. Well, I buy the lots, if he was good boy, you know, I had that intention in my mind, if he was a good boy I give it to him when he was twenty-one.

Q. How did the house differ, then, from the lots? They were both exactly the same. If one belonged to him the other belonged to him, didn't it?

A. No, sir.

Q. You considered that the lots belonged to the boy, did you?

A. Well, if he was good to me I considered it.

Q. Well, the same thing applied to the house, didn't it?

A. No sir; I didn't consider the house belong to him. I considered the lots I buy for him if he was a good boy for me, and when he was twenty-one he could get the lots and the house if he was good to me.

Q. Now was there any different arrangement or understanding in regard to the house than there was in regard to the lots?

A. I can't get that.

Q. Was there any different arrangement or understanding with Henry about the lots than there was in regard to the house?

A. I can't get that.

Q. Was there more than one understanding or just one?

A. Well, me and my husband—he knows that.

Q. Your understanding was that if Henry was good he would get the lots and the house, wasn't that it?

A. If he was good, after he was twenty-one.

Q. Can't you answer yes or no?

A. Yes.

Q. If he was good until he was twenty-one he was to get the house and the lots—isn't that it?

A. Yes, sir.

Q. Then why did you want to take away the house and leave the lots?

A. Why, if I fight I fight the house and lots both.

Q. But when you attempted to take away the house you intended to leave the lots for Henry?

A. No, sir, I take the house and fight for the lots after that.

Q. You thought you could get the house without a fight?

A. Yes, sir.

Q. But that you would have to fight for the lots, is that it?

A. Yes, sir.

By Mr. Drake:

Q. You said he got mad and went away for two or three days?

A. Not for two or three days, for one day and night, you know, and his uncle brought him back home.

Q. Oh.

A. His uncle, my husband's brother, and he, promised he be good boy and he come back in the house again.

Q. Henry wasn't any different from other boys in the neighborhood, was he?

A. Well, he was a boy same as other boys.

Q. Just about the same as other boys?

A. Well, he was a little extra to me.

THOMAS PRISCO, one of the defendants, being duly sworn according to law, on his oath says.

By Mr. Drake:

Q. Where do you live?

A. Palmyra.

Q. How long have you lived there?

A. I lived there about fifteen years.

Q. Are you the father of this boy, the complainant in this case?

A. I suppose so.

Q. Was he born and raised in your family?

A. Yes.

Q. When did he go to work, leave school and go to work?

A. 1912.

Q. Where did he work then?

A. Worked up at the Watch Case.

Q. Then after that where did he go to work?

A. Went to work over there in the spring work.

Q. Was that at Cambridge?

A. Cambridge.

Q. Then where did he go?

- A. Came to work over there at Joe T. Evans.
- Q. Where were you working at the time?
- A. Worked same place.
- Q. How long did you work there?
- A. I worked there ten years.
- Q. How long did the boy work there, the complainant?
- A. He worked there about—not quite three years.
- Q. Was he sick during that time?
- A. Yes, he was sick three months.
- Q. Who paid all the bills?
- A. His mother paid all the bills.
- Q. Did he earn any wages or pay anything on account?
- A. No, sir.
- Q. Anything on account of these bills during the time he was sick?
- A. No, sir.
- Q. Now then, he was married in 1912, wasn't he?
- A. Yes.
- Q. Now, after he left Evans how much time did he put in at work?
- A. Oh, he put in so many places I can't track him which way he went.
- Q. How much time did he put in?
- A. Oh, he put in about—all the time he was working he put in about three years and nine months?
- Q. All the time he was working he put in about three years and nine months?
- A. Yes, sir.
- Q. That is, between 1912 and 1917 he put in three years and nine months?
- A. Yes, sir.
- Q. And the rest of the time he was out of work?
- A. Out of work.
- Q. What did he do when he was out of work?
- A. He wouldn't do anything, he want to whip you.

Q. You mean he wanted to whip you?

A. Sure.

Q. Did you ask him to help around the house or around the yard?

A. Every time I ask him to do anything I got to fight, he leave or go away.

Q. He didn't help you around the house?

A. Not help much. I got to fight before he do anything.

Q. What did you have to do around the house?

A. Oh, work around the house sometime, you know. Chop wood. You know what a house is.

Q. Did you have a yard around this house?

A. Yes, sometimes have a little garden.

Q. Have any grass to mow?

A. No grass to mow.

Q. Did you work in the store?

A. No, I didn't work in the store. Worked outside.

Q. Did your wife work in the store?

A. Yes.

Q. Did he work in the store?

A. Who, the boy?

Q. Yes.

A. No, he no look in the store except to get something, cigarettes or something, cigars; take away those when he went in the store.

Q. When was this period when he didn't work?

A. He say he didn't want to work. He say you got to keep him before he is twenty-one.

Q. Now, before you bought the lot did you have any talk with him about why you bought the lots?

A. Yes.

Q. What was that?

A. I told him—I said, "I bought a lots and going to put up a house if you be a good boy"—or was all right, will be a good boy. When I bought the lots I bought tax lots.

I built a house on it and covered all the stuff on the next lots. When I find the people kick I bought the other lots six months afterwards.

Q. Was the second lot a tax title lot?

A. No, that was a property lot, clear title.

Q. Now, did he turn in his wages after he quit Evans and worked at these other places?

A. Turned in his wages to his mother. I don't know how much he turned in. Sometimes \$9, sometimes turned in what he pleased.

Q. What did you say to him about his being out of work and not turning in his wages?

A. His mother would keep me quiet. She wouldn't say nothing. He said he turned all his money in. It was a lie. I find out afterwards he didn't turn in nothing.

Q. What did you tell the boy?

A. Well, the boy told me—he said he didn't want the house. I told him he can't get the house when he twenty-one. He say, "Stick it in the ass."

Q. How often did you have these conversations with him?

A. Oh, all the time, can't track how many, pretty nearly every week.

Q. Did you go to Mr. Blackburn to try to get the lots?

A. I went to Mr. Blackburn three times.

Q. How many times?

A. About three or four times. Mr. Blackburn—he said, "You can't do it." He say, "Maybe the boy turn out good after bit. Wait a little while." When I find out he would get worse I went to him again, but he says, "Never mind, leave him go," he says. When I went the third time he says, "The only way to get the house," he say, "to move the house off of the lot."

Q. Did you ask counsel about that?

A. No.

- Q. Did you ask Mr. Beckenback about that?
- A. Oh, sure.
- Q. What did he tell you?
- A. He say move the house.
- Q. Was the house so you could move it?
- A. Yes.
- Q. Without hurting the lot?
- A. Was on the pier.
- Q. How much damage to the lot was the cutting down of that tree?
- A. Well, the township give me permission to cut the tree down. He say it ain't no good, to put a new one.
- Q. What kind of a tree was it?
- A. A poplar tree.
- Q. A Carolina poplar?
- A. Yes.
- Q. How thick was it?
- A. Well, about a foot and a half.
- Q. How much foliage had it on?
- A. Pretty near about one hundred feet high, and when I asked the township he say the township would cut it down, he say.
- Q. Did you ask the township whether you could cut it down or not?
- A. Sure, the township say, "Go ahead, cut it down. Put a new one there."
- Q. At whose expense was this house built?
- A. Who paid for it?
- Q. Who paid for the house?
- A. I made the house to him when he was twenty-one.
- Q. Who paid for it?
- A. I paid the house myself, me and my wife.
- Q. Who paid for the lot?
- A. I paid myself.
- Q. Who paid the taxes?

A. Me, myself, me and my wife paid the lots and everything.

Q. And the fire insurance?

A. Myself, I pay.

Q. What would be a fair board for this boy while he was living at your house?

A. Well, what would be a fair board—he was pretty good, then he turned around bad.

Cross-examination.

By Mr. Tyler:

Q. Your mother lived with you, didn't she?

A. Yes.

Q. And she gave you some money towards this house, didn't she?

A. She give nothing at all.

Q. Didn't give anything at all?

A. Didn't give nothing.

Q. Didn't she give you some money towards repairing it?

A. I paid for the repairs myself.

Q. Didn't your mother give you some money towards it?

A. She didn't give—

Mr. Drake: I object if the Court please. It is irrelevant. What difference does it make if he borrowed money of his mother? He repaired the house, it was his house, in his possession, any repairs would be chargeable to him.

The Vice Chancellor: I think it may be inquired into. It may reach the question of gift.

Q. Didn't your mother give you money towards it?

A. What?

Q. Didn't your mother give you money towards paying for this house?

- A. No, he was to pay.
- Q. What?
- A. He was to pay all the time, my wife was to pay.
- Q. Who was to pay?
- A. My wife.
- Q. And didn't your mother give money then to your wife to help pay for it?
- A. Yes, she helped pay for it, yes.
- Q. That is what I thought. And you have heard your mother say lots of times—
- A. My mother?
- Q. Your mother say lots of times—
- A. My mother?
- Q. —that that was Henry house didn't you?
- A. He was if he be a good boy.
- Q. And you have heard her say it was Henry's house?
- A. Yes, he say lots of times if he be a good boy.
- Q. You have heard Henry's grandmother say a number of times that that was Henry's house, haven't you?
- A. Yes, if he was a good boy.
- Q. And when you bought these lots and built the house you told Henry, "Now, I am going to give you these, but you must be a good boy," didn't you?
- A. Sure.
- Q. And that is what you said to him, wasn't it?
- A. That is what I say all the time.
- Q. "Now, I bought these lots and built this house and you must be a good boy?"
- A. Yes.
- Q. Isn't that right?
- A. Yes.
- Q. And he said he would?
- A. Yes, sir.
- Q. Isn't that it?
- A. Yes.

- Q. And that is about all that was said, wasn't it?
- A. That is all that was said.
- Q. And these deeds were made out in Henry's name in accordance with your instructions, weren't they?
- A. What?
- Q. And you directed the deeds to be made in Henry's name?
- A. Yes.
- Q. Then they were made in accordance with your instructions?
- A. What do you mean? I don't understand.
- Q. Well, they were made out just as you directed them to be made out?
- A. Yes, I told them to make them out in his name, sure.
- Q. You didn't ask Henry to sign any agreement of any kind when you gave him the house, did you?
- A. He can't sign nothing. He was not of age.
- Q. But you didn't ask him to, did you?
- A. I never ask him, no, he can't do it. What is the use?
- Q. I didn't ask you that.
- A. That do no good.
- Q. Answer my question. You didn't ask him to sign anything of any kind, did you?
- A. No, sir.
- Q. And he didn't sign anything of any kind?
- A. No, sir.
- Q. And as far as you knew he was turning in all of his wages—at least, his mother told you so?
- A. Yes, sir.
- Q. Isn't that true?
- A. Kept me quiet, you know, she wouldn't say nothing.
- Q. That is, all the time that he was working you believed that he was turning in all his money all his wages?
- A. That is what I believe, she was lying I find out.
- Q. And you didn't have any quarrel with him on account

of not turning in his wages, did you?

A. No, never no fights, because his mother told me he turned in his wages, I didn't say nothing.

Q. And you never had any quarrel with him on that account?

A. No.

Q. And you never heard his mother have any quarrel with him on that account either, did you?

A. I heard her two or three times quarrel because he didn't turn it in, yes.

Q. I understand you to say you believed he had turned it in?

A. Well, I find out from some other people, you know, the little children told me, say that Henry not give no money to mamma Saturday night andd I asked her and she told me.

Q. Then his mother didn't tell you all the time he had turned in his wages?

A. Two or three times he fool me. I asked him, he say he turned the money in, he would do it.

Q. Then during all these years two or three times you learned that he had not turned in all his wages, is that right?

A. Yes.

Q. But you hadn't quarreled with him about that, had you?

A. No.

Q. Now, this tree that was taken down is the same as the other trees along the street, isn't it?

A. Yes, sir.

Q. That is, they are all poplar trees along that street?

A. Yes.

Q. And by taking this tree down it leaves this particular property without any tree on it, doesn't it?

A. Yes.

Q. And when you were working at Mr. Evans in Riverside you collected Henry's wages, didn't you?

A. Yes.

Q. Put right in your envelope, wasn't it?

A. No, put in his envelope.

Q. But the envelope was handed to you?

A. Yes.

Q. And that was true of all the time that he worked there?

A. True, yes.

Q. And didn't Henry start at \$9 a week?

A. Yes.

Q. And wasn't he increased to \$10 a week?

A. He was increased to—he quit there in January and came back and then started at \$10. He didn't stay there long when he got \$10. About a couple of months he went away.

Q. He was away sick, wasn't he?

A. Yes.

Q. And finally went back to work?

A. Yes.

Q. And they gave him \$10 a week?

A. Yes.

Q. And after he got through at Evans he went to the Watch Case Company?

A. Yes, sir.

Q. He went there to work again?

A. Yes, sir.

Q. And he got bigger wages up there?

A. Yes, sir.

Q. How much did he get up there?

A. His mother told me he was getting \$18 a week. I don't know how much he got a week.

Q. How much wages did he get?

A. He said he get \$18 a week.

Q. How much?

A. Eighteen.

Q. And that was the second time that he had worked for the Watch Case Works?

A. The second time, yes.

Q. Then you heard your wife say that Henry could never go back to work at the Watch Case Works again?

A. Yes, sir.

Q. Now, that isn't true. He did go back again?

A. No, the second time he left there, the first time he was a boy, you know, the second time he went back, he was given another trial.

Q. They did take him back the second time?

A. Yes.

Q. Now, Mr. Prisco, Henry lived with you all the time up to the time he was married, didn't he?

A. Yes.

Q. And after he got married, why he lived there for about two weeks?

A. Yes.

Q. And after that he went to live with his wife's parents in Palmyra, didn't he?

A. Yes.

Q. And he talked to you about going to live with the parents, didn't he?

A. I told him—

Q. Wait a minute. Henry talked to you about him and his wife going to live with his wife's parents, didn't he?

A. His father-in-law talked to me.

Q. Didn't Henry talk to you at all about it?

A. He didn't want to go there.

Q. He didn't want to go?

A. No.

Q. But you did say to him, "Well, if they need you

and they need your board, why it is all right for you to go," didn't you?

A. Yes.

Q. And you never asked Henry to pay any board for his wife while she was there, did you?

A. No, I never asked for nothing. I didn't ask for no board at all.

Q. Henry has been working all the time since he was married, hasn't he?

A. After he was married?

Q. After he was married he has been working all the time?

A. I don't know whether he worked or not. I ain't got nothing to do with him. He is married.

Q. Do you know whether he worked or not?

A. No, I don't know anything about it.

Q. He is working up at the Watch Case factory now, isn't he?

A. I don't know where he works.

Q. Well, he and his wife are living in Riverside now, aren't they?

A. Living at Riverside at his father-in-law's.

By Mr. Drake:

Q. Now, you say that Henry couldn't go back to the Watch Case factory. Do you know anything about that?

A. Yes, he had to quit there. He didn't go back there, you know.

Q. Was it after he quit the first time or after he quit the second time that he couldn't go back again?

A. After he quit the second time.

Q. Now, did you find out before Henry was married or after all about the way he had been working and turning in his wages?

A. Oh, sometimes he told me he was working at the brick yard and changed so many places I couldn't tell one.

Q. Yes, but you say a part of the time his mother didn't tell you?

A. No, didn't tell me nothing.

Q. When was it that she began to tell you about him, that he didn't turn in his wages. When was that?

A. Before he got married.

Q. Before he got married?

A. Yes, sir.

Q. How long before?

A. Oh, I don't know, about six or seven months before.

Q. Who went to see Mr. Blackburn—just your wife or you and your wife?

A. I went to see him by myself three times.

Q. What did you go to see him for?

A. I told him I wanted to change the deed.

Q. Why did you want to change the deed?

A. I wanted to change the deeds because he was no good to me. He was sassing me all the time.

Q. What do you mean by sassing you all the time?

A. Well, when you asked him to do anything he didn't want to do it.

FREDERICK BLACKBURN, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says.

By Mr. Drake:

Q. What is your business, Mr. Blackburn?

A. Real estate and insurance.

Q. Where?

A. Palmyra.

Q. Do you know these people in this case?

A. I do.

Q. Do you know the boy and his father and mother and daughter?

A. I don't know the boy. I wouldn't have known the boy if I had fell over him until to-day. Then I asked who he was and they told me. I had no knowledge of the boy at all except when he was a little bit of a fellow.

Q. Have you knowledge of the rest of the family?

A. Oh, yes, I know the rest of the family very well.

Q. Was one of these lots bought through you?

A. Yes, sir, there was one lot I sold.

Q. Is that it (exhibiting paper to witness)?

A. That is it; yes, sir.

Q. Who paid you the money?

A. Mrs. Prisco.

Q. Was this insurance taken out?

A. Yes, sir.

Q. Who paid you that money?

A. Mrs. Prisco.

Q. What application did they make to you about the change of the title to the lot?

A. They came over so many times and wanted me to draw a deed from the boy to them, and I told them that the boy was a minor and "he cannot possibly deed that property to you in any way that I know of," I says.

Q. Did they state the reasons why they had come there?

Mr. Tyler: Objected to. I don't think that is material.

The Vice Chancellor: The objection is well taken.

Q. Did they say why it was they didn't want the boy to have—why it was they wanted to change the title?

Mr. Tyler: That is objected to as immaterial.

The Vice Chancellor: Objection sustained. It seems to me it is clearly incompetent.

Q. When they came over there did they bring the with them?

A. No.

Q. What advice did you give them about moving the house?

A. I told them the boy could not deed the lots to them and the only way I know be for them to move the house off, it was on piers. I thought they would have—being the guardians of the boy—they would have a perfect right to move the house, as far as I knew; but I told them they had better consult an attorney.

Cross-examination.

By Mr. Tyler:

Q. Mr. Prisco, when they placed this insurance on the property they told you to put it in the boy's name, didn't they?

A. Yes; the policy is in the boy's name.

Q. That is in accordance with their instructions?

A. In accordance with their instructions; yes, sir.

Q. And when they directed you to prepare the deeds, you prepared them just as they instructed you to prepare them, did you?

A. Just as they instructed me; yes.

Q. This deed for the second lot was prepared by you, wasn't it?

A. It was.

Q. But the deed for the first lot was not prepared by you?

A. I don't know anything about the first lot. I knew nothing about the transaction until it came to the second deed.

Q. They didn't tell you, did they, anything more than simply to put the deed in the boy's name?

A. They told me to put it in the boy's name, and Mrs. Prisco paid for it.

Q. And they didn't tell you of any agreement or understanding about anything that would lead you to believe that there was a qualification or limitation upon the title in any way; did they?

Mr. Drake: Objected to.

A. At the time they came for this deed,—I have no knowledge of the transactions up until they came for the second lot,—

The Vice Chancellor. I think that is competent.

A. (Continuing) —and then I knew—she told me the boy wasn't of age, and I told her then that they couldn't sell that property, that he could not deed the property, and she said the boy had been a pretty good boy, and the boy was going to turn all his money over to them, &c., and pay for it, and she thought he would be able to do it at the time he was twenty-one; if not, he would do it afterwards. That is all I know of the transaction.

Q. And they didn't ask you to make any provision in the deed to limit the title in the boy; did they?

A. I made out the deed exactly according to their instructions.

Q. Now, Mr. Blackburn, you have lived in Palmyra for a good many years—how many?

A. Why, thirty-seven years, about.

Q. Thirty-seven years?

A. Yes, sir.

Q. And your residence and office is only three or four or five blocks from the West Palmyra station; isn't it?

A. No; there is no such place as West Palmyra.

Q. Well, Arch street station?

A. Yes.

Q. Isn't that true?

A. Yes; I am two blocks away.

Q. And the Prisco place is about one or two squares from Broad street, towards the river; isn't it?

A. Yes, it is; from Broad street.

Q. So that it is about three squares from your place; isn't it?

A. Three or four squares.

Q. Now, Henry has lived in that neighborhood for a number of years. Did you ever hear anything bad about Henry?

A. I never knew anything anything about the boy; either good, bad or indifferent.

Q. You never heard anything about Henry; did you?

A. No.

Q. He was not a bad boy around the town that you knew of; was he?

A. Not to my knowledge.

Q. You are a justice of the peace; are you?

A. No.

MILLIE PRISCO recalled.

By Mr. Drake:

Q. Did you get any money from your mother-in-law to pay for these lots?

A. He lent me \$20 and I returned it back again. My mother, not my mother-in-law; my mother.

Q. Oh, your mother loaned you \$20?

A. Yes; the time I buy the lot, you know. I didn't have the \$20 and he lent it to me and I returned it back again.

Q. Which lot?

A. The one he has got the house on.

No cross-examination.

SAMUEL RUDDEROW, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says.

By Mr. Drake:

Q. Do you know Thomas Prisco?

A. Yes, sir.

Q. The man here in court now?

A. Yes, sir.

Q. Did you build a house for him in 1913?

A. Yes, sir; I did.

Q. Who paid you the money for it?

A. Mrs. Prisco always done the paying; she seemed to be the clerk.

Q. Have you been paid up in full for it?

A. Indeed I was

Q. I show you a receipt dated September 20th, 1913, signed by Samuel Rudderow.

A. Yes; that is my signature.

Q. Was that the last or a preceding payment?

A. This was the last payment.

Q. Everything had been paid when you got that?

A. Yes.

Q. How did you work? Did you do the house on a contract or days' work?

A. By contract.

Q. How was the house built?

A. Why, it is a good house.

Q. Was it built with a cellar under it, or on piers?

A. No; on brick piers.

Q. Was the house built so that it could be moved?

A. Yes.

Q. Are there any other houses in that locality built the same way?

A. There may be; I haven't taken much notice about that. I can say that most of them have got cellars under them.

Q. Is there a house in that neighborhood that is worth over \$500 that is built on piers without a cellar under it?

A. Yes; there are some there built on piers.

Q. Now, how much damage would it be to this lot to move this house off and leave it without a house? Could the lot be changed so as to move the piers and—

Mr. Tyler: That is objected to. It apparently involves the cutting down of a tree on the lots, and I think it requires some testimony as to damage to real estate. Mr. Rudderow is not a real estate dealer.

A. I have been.

The Vice Chancellor: Well, if he will qualify on values

the testimony may be competent. I don't know as it is going to be of any value, though.

Q. Do you know the values of real estate in this neighborhood?

A. Not in Camden.

Q. No; in the neighborhood of this lot?

A. Yes.

Q. Have you dealt in real estate in Palmyra and Riverton?

A. I have Riverton.

Q. Have you enough knowledge to know what damage it would be to a lot to cut down a tree?

Mr. Tyler: That is objected to, it calls for a conclusion.

The Vice Chancellor: I think you have got to show his experience and knowledge in that locality, Mr. Drake.

Mr. Drake: Yes.

Q. What value are these trees in front of that lot?

Mr. Tyler: I object to that. The witness is not qualified to place a value on trees.

The Vice Chancellor: I think the objection is well taken so far.

Q. Do you know the value of trees?

A. I certainly do; I set out many a one, many a hundred different kinds.

Q. Have you had any experience in snugging up lots from which buildings have been moved, from which houses have been moved?

A. Yes, I have moved buildings myself; have done it.

Q. Buildings without cellars under them or with

cellars?

A. With cellars under.

Q. How many piers are in this house?

A. About eight of them, all told.

Q. What is there underneath the sills of the house, between the piers and the ground, to keep the wind from going through?

A. Why, when I built it there wasn't nothing. I have since—I notice it is planked-up.

Q. Planked up between the sills and the ground?

A. Yes.

Q. How much expense would it be—if the house was moved off, how much would it be to take these piers down and snug up the lots?

A. A day's work, \$3.

Q. For how many men?

A. One man could do it.

Cross-examination.

By Mr. Tyler:

Q. What was the contract price?

A. I think it was \$350.

Q. No, what was the contract price for building the house?

A. That is what I am talking about.

Q. How much?

A. I answered that.

Q. I didn't get it.

A. \$350.

Q. \$350?

A. Yes.

Q. You mean just for the labor?

A. Yes, sir.

By Mr. Drake:

Q. For the carpenter work?

A. Yes; I didn't furnish any lumber.

By Mr. Tyler:

Q. You didn't furnish any materials?

A. No.

Q. You simply contracted to furnish the labor?

A. Yes, sir.

Q. Now, I show you Exhibit C-5: That is a picture of the house, isn't it?

A. Yes, sir.

Q. And that is just about the same as all the other houses along that street, in the neighborhood, isn't it all the same kind of a house or is it a little better?

A. It is a better house.

Q. It is a better house?

A. Yes, sir.

Q. In fact, running from Market street west or east it is probably one of the best houses on the street, isn't it?

A. Yes, best material in it.

Q. And it is one of the best built houses?

A. Yes.

Q. And for general appearance outside it is better than anything along there for several squares, isn't it?

A. Yes, sir.

Q. It isn't in any sense of the word a shack, is it?

A. No. I just built that out of my head.

Q. How many rooms are there in the house?

A. It is a six-room house.

Q. And it has a front porch, hasn't it?

A. Yes.

Q. And three stories high?

A. Yes, three stories.

Q. A three-story house?

A. Yes.

Q. And has a fence built around it?

A. There was no fence there while I was there, but I believe there has been one put there since.

Q. But it was built good and substantial, to stay there, so far as you know?

A. No, their idea was—they intended—they was going to move the house.

Q. Move it to the next lot?

A. They talked about moving it.

Q. On the next lot?

A. This was a tax lot.

Q. Yes, and they bought the lot next door with the idea that they might move it on that, didn't they?

A. They bought the lot next door, yes; it was through my suggestion for them to buy it.

Q. Because they thought they might have to move it off of the tax lot—isn't that it?

A. I don't know about that.

Q. Why did you suggest that they buy the lot next door, Mr. Rudderow?

A. Oh, I know the first lot bought was a tax lot. I put it on piers to move it.

Q. And wasn't that the reason, because it was a tax lot, that you suggested that they buy the lot next door?

A. No. I told them I thought it would be well for them to buy that lot, somebody might put up a house detrimental to their property.

Q. And that is the reason you gave for requesting them to buy it, isn't it?

A. That is right.

By the Vice Chancellor:

Q. You didn't answer fully the question that was asked you by Mr. Tyler as to how substantially the house was built.

Mr. Tyler: I thought he did answer it.

Q. I don't remember the form of the question, but the general inquiry was with reference to the permanency of this structure, whether it was built as a permanent structure or built with a view to having it moved, that was the general purpose of the question. What is the extent of your knowledge about that? I refer now to matters that you knew before the house was built or while it was being built.

A. The idea was to put piers in it so as to move it, I know from the conversation.

Q. Before it was built?

A. Yes, before it was built.

Q. Well, to move it on the adjoining lot?

A. They didn't say where ;at that time they hadn't bought the adjoining lot. That lot was bought six months later anyhow.

Q. What did you understand to be the need of moving it? What was the occasion for building it to move, so far as you know?

A. One thing, being a tax lot.

Q. What?

A. A tax lot, one thing; there might be complications arise.

IDA MALETA, a witness produced in behalf of the defendants, being duly sworn according to law, on her oath says.

By Mr. Drake:

Q. Where do you live?

A. I used to live in Palmyra, but I live between Morris Station and Delair.

Q. Did you ever live in a house in Palmyra?

A. Did I ever live in a house in Palmyra?

Q. Yes.

A. Yes, sir.

Q. To whom did you pay the rent?

A. To Mrs. Prisco.

Q. Where was the house? What street was the house on?

A. I don't know the street, the name of the street; it is right across from Mrs. Prisco's store.

Q. Who rented the house to you?

A. Mrs. Prisco.

Q. How long did you live there?

A. A year and seven months.

Q. To whom did you pay the rent?

A. To Mrs. Prisco.

Q. How much?

A. \$10 a month.

Q. When did you move away?

A. I moved away—It was in the winter time, sometime after Christmas.

Q. Last winter?

A. In February or March.

Cross-examination.

By Mr. Tyler.

Q. And you used to ask Mrs. Prisco to make some repairs once in a while; didn't you?

A. Yes, sir.

Q. And she did say to you once or more than once

that that was Henry's house; didn't she?

A. Yes.

Q. And that would be one reason she would give for not granting your request for repairs right off?

A. Yes.

Q. She would tell you it was Henry's?

A. Yes.

ARNOLD J. BECKENBACH, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says.

By Mr. Drake:

Q. Where do you live?

A. Palmyra, N. J.

Q. What is your business?

A. Attorney-at-law.

Q. I show you deed, in this case Exhibit C 1, and ask you if you know anything about the drawing of that deed?

A. Yes; I prepared the deed.

Q. At whose request?

A. At the request of the Prisco family; I don't know whether it was Mr. or Mrs.

Q. What do you know about the title?

A. Well, it is a title to a lot sold at a tax sale, and I perfected the title or complied with that act of 1913 with regards to posting a notice, filing a notice and affidavit of posting, together with tax certificate, and having it recorded as a deed in the deed books at Mt. Holly, and from that I took a recitation and drew this deed.

Q. What instruction did you give to them about building a house on it?

A. Well, I have perfected or straightened the title out to several lots in that locality, and I did this conveyancing for several of the attorneys in that neighborhood, and I have always told her, I told Mrs. Prisco that if she wanted to build that the best thing for her to do was to buy a lot adjoining these tax lots and build the permanent house on those lots, and if she didn't, to build a house on these lots in such a way that it could be removed. I did that to every one that I conveyed or drew a deed for.

Q. Do you know about the houses in this neighborhood, whether they are built with or without cellars,—houses of any considerable size?

A. There may be one or two exceptions, but I have gone over the ground carefully since I have had this case in charge and made an examination, and there is no house in that locality, with perhaps one exception, and I was careful. I mean, I went in that neighborhood and made a careful examination within squares, and there is no house in that locality that I know of that hasn't got a cellar on it excepting some shacks that is not worth more than two or three hundred dollars.

Q. Is ground in this neighborhood so that cellars can be built under the house?

A. There are cellars under nearly every house in that locality except these shacks.

Q. Do they have water in them?

A. I don't think there is water in any of them.

Q. Who is solicitor of the Township of Palmyra?

A. I am.

Q. What order has the Township of Palmyra made about trees?

A. I have personally written to the Tree Commissioner and told him—

Mr. Tyler: I object to this as immaterial and irrelevant.

The Vice Chancellor: Objection sustained.

Q. What do you know about trees in this locality?

A. I can't answer that question in that form.

Q. Do you know the tree that has been cut down in this case?

A. I do.

Q. Is that the only tree in front of this lot or is there another tree in front of this lot?

A. I can only say that there was a tree cut down in order to leave enough space to get out of the house.

Q. How many trees are there along this street?

A. I can't answer that question.

Q. What kind of trees are these?

A. Poplar trees.

Q. Carolina poplar?

A. Yes.

Q. What is the value of them?

Mr. Tyler: Objected to as immaterial and irrelevant. The witness is not qualified to answer the question.

Q. Do you know the value of trees in this neighborhood?

A. Yes.

Q. How did you become acquainted with the value of trees in this and other portions of Palmyra Township?

A. By knowing the nature of trees and by knowing the trees we are trying to preserve and those trees which we are destroying.

Q. Which trees is the Township, the Tree Commissioner or the authorities destroying?

A. We are destroying all poplar trees throughout the entire town.

By the Vice Chancellor:

Q. What for?

A. Because they root up the ground and because they become, after they get to be the size of this tree, they get a hollow spot in them, and the Tree Commissioner is making an examination to see if there is any evidence of that kind, and we are ordering and trying to compel the property owners to move them. I myself have had to take down twenty-five or thirty dollars' worth in Palmyra Township alone within the last two years, because when they get to this height and this age they become worm-eaten and they are a danger to—damage to property, and we are taking down these trees or trying to compel the property owners to take them down and then the Tree Commissioner gives them a maple tree to put in their stead and that is being done throughout the township.

By Mr. Drake:

Q. Now these poplar trees, how do the roots grow—down deep in the ground or along the top of the ground?

A. Grow all over, everywhere. You can't plant or raise—you can't plant any vegetables within thirty feet of a poplar tree, due to the roots taking all of the strength out of the ground.

Q. What is the action of this kind of a poplar tree on the sidewalk and curb by way of rooting it up?

A. Very damaging.

Cross-examination.

By Mr. Tyler:

Q. Mr. Beckenbach, you knew in preparing a deed how to reserve the title as a trustee, didn't you, if you wanted to?

A. Yes, sir.

Q. And you knew that when you prepared this deed?

A. Yes, sir.

Q. To Henry?

A. Yes, sir. I didn't know I was preparing the deed to Henry. I didn't even know what the father's name was. I didn't know but what I was preparing it for the father.

Q. All you knew was they simply wanted you to prepare a deed for Henry?

A. That is all I knew. I followed my instructions exactly. I didn't know who I was preparing the deed for.

Q. They didn't tell you at the time it was their son?

A. No, sir.

Q. Didn't tell you it was a minor?

A. No, sir.

Q. And didn't give you any instruction about any condition or limitation to put in the deed?

A. Not of any kind at all.

Q. Now, who gave you those instructions?

A. As I said before, it either came from Mr. or Mrs. Prisco, but my larger part of the dealings was with Mrs. Prisco.

Q. But they did tell you at the time that they wanted to build upon it?

A. No; they did not.

Q. How did you come to discuss the matter of erecting a building on a tax lot?

A. Mrs. Prisco or Mr. Prisco said, "Is this title good now? Is the title good?" And then I would tell them,

as I said before, that while it was all right and possibly there would never be a question, for safety sake and for certainty they had better only use these tax title lots for to add ground to adjoining property that they might own or acquire.

Q. But if they built on it to build in such a way—

A. But if they built, build in such a way that they could remove it in case they had to.

Q. Now, you said the same to them as you have said to a great many others?

A. I just made a general practice, when they asked me, as all the attorneys had, "Is this title good?", I just made a general statement.

Q. Were there a good many of these tax titles in that locality?

A. I think there must be fifty.

Q. Aren't there other houses built upon tax title lots besides this one?

A. It may be, but I have some in mind now that are not; right across the street, where there are about five or six of these lots, there is nothing permanent built on the lots.

Q. And you don't know of any other house that is built upon a tax title, do you, in that locality?

A. No; I do not.

Q. And, therefore, this house being constructed upon a tax title is in a little different situation from any other house that you know of in that locality; isn't it?

A. You mean as to the piers being put under it?

Q. Yes.

A. And boarded up around with a hemlock board an inch thick?

Q. Yes.

A. Yes.

Mr. Drake: I offer Mr. Rudderow's receipt.

(Said paper marked Exhibit D 1.)

Mr. Drake: We rest.

HENRY PRISCO, the complainant, being duly sworn according to law, on his oath says.

By Mr. Tyler:

- Q. Henry, you are the person who brought this suit?
A. Yes, sir.
Q. And the defendants are your father and mother?
A. Yes, sir.
Q. Where are you living now?
A. Riverside, N. J.
Q. How long have you been living there?
A. February 10th.
Q. Since February 10th of this year?
A. Yes, sir.
Q. You are married?
A. Yes, sir.
Q. And living there with your wife?
A. My wife and mother-in-law.
Q. Your wife and who?
A. Mother-in-law.
Q. Now, where are you working?
A. William F. Taubel.
Q. That is the hosiery mills up there?
A. Yes, sir.
Q. How long have you been working there?
A. April 2d.
Q. Of this year?

- A. Yes, sir.
- Q. How much do you make?
- A. Twenty-five to twenty-six dollars a week.
- Q. Have you been working steady?
- A. Steady
- Q. Have you been working all the time since you were married?
- A. Yes, sir.
- Q. Where did you work before you went to Taubel's?
- A. Why, I worked at—what do you call it?—down here, Mathis' shipyard, a while.
- Q. Here in North Camden?
- A. Yes.
- Q. Is that the place that you worked just before you went to Taubel's?
- A. Yes.
- Q. How long were you there?
- A. Well, I worked there about two months until I got the chance up at Taubel's and I went up there because it was nearer home for me.
- Q. Where did you work before you went to Mathis' shipyard?
- A. Hog Island.
- Q. How long did you work there?
- A. About four months.
- Q. That was last winter?
- A. Last winter.
- Q. Worked outdoors all that time?
- A. Outdoors.
- Q. December, January, February and March you were working outdoors?
- A. Yes, sir.
- Q. And where did you work before that?
- A. The metal works.
- Q. Is that at Riverside?

A. Yes, sir.

Q. Do you mean the Riverside Metal Company?

A. Yes, sir.

Q. That is a part of the Keystone factory?

A. Yes.

Q. And how long did you work there?

A. Well, I worked up there until heat got me, got the best of me. I lost about ten or fifteen pounds and I had to quit. I worked there I guess about three or four months.

Q. Is that the first time that you had worked for the Keystone Watch Company?

A. No, sir.

Q. How many times were you there altogether?

A. About three times.

Q. Three different times?

A. Yes, sir.

Q. Now, when did you quit school?

A. Why, I was fourteen.

Q. When you were fourteen?

A. Yes, sir.

Q. Did you go to work then?

A. Yes, sir.

Q. Where did you go to work?

A. Watch Case.

Q. Riverside?

A. Riverside.

Q. How long did you work there?

A. Well, about five or six months, I guess.

Q. How much did you make?

A. Why, \$4.50 a week is all I was paid then.

Q. What did you do with your money?

A. Why, I gave it to my mother and she gave me carfare out of it, which was all I got.

Q. Was that true all the time that you were there?

A. All the time I was there.

Q. Then where did you go after you left there?

A. Joe Evans.

Q. In Riverton?

A. Yes, sir.

Q. Did you go right there or work at the spring works first?

A. I worked at the spring works first.

Q. For how long?

A. Well, I didn't work there very long. I didn't care about working then. I was only about fourteen and a half. I got burned there.

Q. What?

A. I got burned over the eye there and I quit and went to Joe Evans.

Q. How much did you get there?

A. Nine dollars for a while.

Q. How much did you get at the spring works?

A. Six dollars a week.

Q. What did you do with your money?

A. Gave it to my mother.

Q. When you went to Joe Evans—can you tell me when that was, what time of the year?

A. Well, it was warm. I went there because that would give me Saturday afternoons off.

Q. How much did you get there?

A. Nine dollars the first time.

Q. How long did you work for \$9?

A. Well, about two years and a half.

Q. About two years and a half?

A. Yes, sir.

Q. Was that money paid to you or to whom?

A. My father took it in an envelope there.

Q. He got it all the time?

A. He got it all the time.

Q. Now, what did you do at Joe Evans?

A. Drove a coal wagon.

Q. Delivered coal?

A. Yes, sir.

Q. Just tell us what happened after that, after you left there, and where did you go?

A. Well, I left there and I don't know where I went then.

Q. Did you go back to Evans' again?

A. No, I didn't go back to Evans; I went back to the metal works again.

Q. Back to the metal works?

A. Yes, sir.

Q. How long did you work there, then?

A. No; first I went back to the Watch Case again as beltman.

Q. How long were you there?

A. Well, about six or seven months.

Q. How much did you get, then?

A. I got from fifteen to sixteen or seventeen dollars a week; I had overtime; I worked fifteen hours a day sometimes; from six to ten at night.

Q. And what was supposed to be your regular weekly wage up there?

A. Well, \$2 a day.

Q. \$2 a day?

A. \$2.50 a day.

Q. And would you give that money to your parents?

A. Yes, sir.

Q. How much of it?

A. Well, I would give them from twelve—eleven, according to whatever I made, and I spent some.

Q. And was that true of all the six or seven months that you were there?

A. Yes, sir.

Q. Then where did you go after that?

A. Well, I left there and then I got a job here at Biddle's.

Q. Where?

A. Biddle's, Palmyra.

Q. The Biddle-Supplee Hardware Company?

A. Yes, sir; that was nearer my home. I got \$12 a week there.

Q. How long were you there?

A. Why, about nine months.

Q. How much did you get?

A. Well, according to the time I put in there, I was getting thirteen, twelve, according to whatever I made.

Q. What did you do with that money?

A. Gave it to my mother.

Q. Did you give it all to her?

A. Well, I commenced getting wise then. I would keep a dollar or so; give her about \$10 a week.

Q. Where did you go from there?

A. Went back to the metal works.

Q. When was it you went to the Biddle plant there at West Palmyra Station? About what time does that bring it up to?

A. I couldn't tell you just the date.

Q. Well, how long ago?

A. Well, last year, about the early part.

Q. The early part of last year?

A. Yes.

Q. Do you mean before you were married?

A. Before I was married.

Q. Where were you working when you were married?

A. Why, Biddle-Supplee Hardware.

Q. At the Biddle place?

A. Yes, sir.

Q. Now, after you left Evans how much of the time until you were married you were out of employment,

do you suppose? Tell us as near as you can how much time you were out of employment and why you were out of employment?

A. Since I was married?

Q. From the time you left Evans until the time you were married?

A. I couldn't tell you.

Q. Were you out of employment much?

A. No, sir; I got a job just as soon as I quit,

Q. Always had a job?

A. Yes, sir; I can get a job anywheres.

Q. Now, when your father and mother arranged or said they were going to give this property to you, just what did they say?

A. Why, they didn't say nothing; told me they was going to give me a present if I would be a good boy, and I tried to be as good as I could, and I would go to work and give them all the money with the intention I was going to get that house when I became of age.

Q. Did they say anything to you about—that if you weren't a good boy that you would have to give it back, or anything of that kind?

A. No, sir.

Q. Just said they were going to give you the property?

A. Give me the property.

Q. Now, did you ever say to them or either of them afterwards that you did not want it and they could have it back?

A. No, sir.

Q. Did you say anything to that effect?

A. No, sir.

Q. Did your father ever complain of your not giving him all the wages?

A. He never knew what I give. I give it to my mother.

Q. Did you ever have any quarrels with your mother or swear at her?

A. I never swore at her, but we had little fights once in a while.

Q. What do you mean by fights?

A. She wouldn't give me no money, only give me about fifty or sixty cents a week. I couldn't do nothing with that.

Q. What did she give you that for?

A. Why, to go to moving pictures.

Q. For that and your carfare?

A. Well, that was beside my carfare.

Q. That was besides your carfare?

A. Besides my carfare. About a dollar a week is all I got to pay my carfare and spending money.

Q. Is it true that you were ever making thirteen, fourteen to eighteen dollars a week and only turned in \$5 a week?

A. No, sir.

Q. Is it true that you used to take things out of the store and give things to your friends without paying for them?

A. No, sir; I took cigars once in a while, but I never brought nobody in there to treat.

Q. Did your mother know that?

A. Yes, sir; she used to tell me—she says, "Take fifty cents," whatever it is, "and you can get your cigars right in the store." I had to do something. I couldn't go out and buy them while she had them in there.

Q. Did you turn in your wages to your mother up to the time you were married?

Mr. Drake: Objected to as leading.

The Vice Chancellor: I think it is objectionable. I think he said there was a portion of the time when he held some-

thing out. I didn't get a very adequate idea of how much he did hold out.

Q. Now, when was it you said that you held out a dollar or so out of your wages? Just tell us where you were working when you did that and how much you were making?

A. Well, over at Biddle's, I was making eleven or twelve dollars a week there.

Q. And this Biddle place is about just a few squares from your house, isn't it?

A. It is four squares.

Q. And you were working there at the time you say you kept out a dollar or two?

A. Yes, sir.

Q. How much were you making?

A. Well, about fourteen dollars a week and I would give them twelve or thirteen dollars a week.

Q. Now, over what period of time was it that you were keeping out a dollar or so out of your wages?

A. Well, since February. I was getting ready to get married then.

Q. Since February, 1917?

A. Yes, sir.

Q. And you got married in May, 1917?

A. Yes, sir.

Q. And you say during that time your mother only gave you about a dollar a week to pay your carfare?

A. She wasn't giving me then, for I wasn't working far away. She wouldn't give me no carfare. She would give me about fifty cents a week.

Q. Now, after your marriage where did you go to live?

A. Mother-in-law.

Q. With your mother-in-law?

A. Yes, sir, I was living with my mother two weeks, then I went with my mother-in-law.

Q. When you left your mother's place, did you talk the matter over with your father and mother?

A. Well, we had a little talking there between my mother-in-law and father-in-law and my mother and father.

Q. At your mother's house?

A. Yes, sir.

Q. You were all there together?

A. We was all there together. She said, "All right, go ahead and live with them."

Q. Your mother told you that?

A. Yes, sir.

Q. Was your father there?

A. Yes, sir.

Q. And what did he say?

A. He said all right, go ahead.

Q. Did they say why they wanted you to live with your father-in-law?

A. Well, the mother was a dressmaker and she wanted to go over there and learn how to sew and things like that; didn't know how to sew.

Q. Who was a dressmaker?

A. My mother-in-law.

Q. And she wanted your wife to come to her house to learn how to sew?

A. Yes, sir.

Q. Was there anything said during that talk about your boarding over there where you went to live?

A. Yes; they told me they wanted me to pay \$7 a week; I said all right.

Q. Over at your mother-in-law's?

A. Yes, sir.

Q. And did you do that?

A. Yes, sir.

By Mr. Drake:

Q. For the two of you?

A. Yes, sir.

By Mr. Tyler:

Q. How much were you paying at your mother's, then?

A. I give her \$20; I was there two weeks.

Q. You gave your mother \$20 the two weeks you and your wife were there?

A. Yes, sir; I gave her \$10 a week.

Q. Do you know how your mother came to buy the lot adjoining the tax lot?

A. Why, she told me she was going to buy it and was going to put a pool table there; that is what started the whole thing; so she bought the lot there and built piers there to hold a pool table, you know, pool shack.

Q. Do you know whether there was any trouble about your going on the lot before you bought it?

A. No, sir; I didn't know, I was too young to know, I wasn't paying any attention to it.

Q. Did you cart any materials to the house?

A. Yes, sir.

Q. Did you have any trouble about that?

A. Well, the lot alongside of it, the party had it fenced in, so I drove in there.

Q. What with?

A. With a team, unloaded my sand; there was a little fuss over it, I don't know what they done. I went on about my business.

Q. Well, was it after that that they arranged to buy it, do you know?

A. It was after that.

Q. Whose team were you driving then?

A. Joe Evans.

Q. Were you carting materials for the building?

A. Yes, sir.

Q. I wish you would tell us what your parents or either of them said to you before you were married, if anything, about trying to take this house and lot away from you?

A. Why, I went away from there,—what before I was married?

Q. Before you were married.

A. They didn't say nothing about that before I was married.

Q. Was the matter of taking the house away from you ever discussed before you were married?

A. No, sir.

Q. When did it first come up?

A. After I got married.

Q. When was it you learned that they had consulted some one and were making an attempt to remove the house?

A. Why, I seen some lumber there and Bill Haines said they was going to move the house, so I got busy and came down to see you to put an injunction on them.

Q. Henry, have you ever been in any trouble of any kind?

A. No, sir.

Q. Did you ever have any fights with your parents—I mean fist fights?

A. No fist fights; get mad once in a while and walk out, slam the door, something like that.

Q. Never struck either one of them?

A. No, sir.

Cross-examination.

By Mr. Drake :

Q. Did you ever pay your father and mother or your mother over \$9 a week?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. How much of the time?

A. About two years I paid over that, two or three years.

Q. What two years was that?

A. Well, towards the last when I commenced to get married.

Q. Before you got married?

A. 1915 or 1916, yes.

Q. After you were married did you do anything at all for your parents?

A. After I was married?

Q. Yes.

A. Why, I attended to my wife. I couldn't attend to them any more.

Q. Did your mother ever pay you less than \$2 a week for spending money?

A. Two dollars a week?

Q. Yes.

A. She never gave me no more than a dollar unless I had carfare to pay, and if I didn't have no carfare to pay she only gave me fifty cents.

Q. Where were you working just before you were married?

A. At the Biddle-Suplee Hardware.

Q. Where were you working during the two weeks that you lived home?

A. Biddle-Suplee Hardware Company.

Q. After you were married?

A. Biddle-Suplee Hardware Company.

Q. You say you paid \$10 a week for those two weeks?

A. I give her \$20.

Q. When?

A. Well, the two weeks after I was married.

Q. Did you pay the \$20 all at once?

A. No, sir; \$10 a week. Couldn't pay it all at once. I got paid every week.

Q. You paid her \$10 twice?

A. I give her two tens, one each week, as long as I staved there.

Q. Who was present when you paid this \$10?

A. Nobody only my mother.

Q. Only your mother?

A. Yes, sir.

Q. You gave her \$10 twice?

A. Yes, sir.

Q. Now, after you left Evans or while you were at Evans you were sick, weren't you?

A. Yes, sir.

Q. And then you went back to Evans after you were sick?

A. Yes, sir.

Q. Then you quit Evans in 1915, didn't you?

A. I don't know just when I quit.

Q. Now, what job did you take after that?

A. Why, Watch Case.

Q. Where?

A. Why, up there in the Watch Case, metal works, whatever you call it.

Q. Riverside?

A. Yes, sir.

Q. How long did you stay there?

A. Why, about five or six months, I guess.

Q. Then where did you go?

A. Why, I went to Biddle again.

- Q. Direct from the Watch Case?
- A. Direct from the Watch Case.
- Q. How long did you stay at Biddle's?
- A. About a month.
- Q. Then where did you go?
- A. Well, I left there; went back to the metal works.
- Q. Watch Case?
- A. Metal works. They are both the same thing.
- Q. Same thing, different department?
- A. Yes, sir.
- Q. Where is that—Riverside?
- A. Yes, sir.
- Q. How long did you stay there?
- A. Well, I stayed there a while until the heat got the best of me and I quit.
- Q. How long was it?
- A. About four or five months, I guess.
- Q. Where did you go from there?
- A. Why, down here at Mathis shipyard.
- Q. How long did you work there?
- A. Well, I don't know how long—not Mathis, Hog Island, and from Hog Island to Mathis, worked there five months at Hog Island.
- Q. How long?
- A. Four or five months.
- Q. Mathis ship, how long did you work there?
- A. Oh, I stayed there a while until I got my chance up here at the stocking mill, about two or three months, I guess, something like that.
- Q. How long have you been at the stocking mill?
- A. April 2d, 1918.
- Q. Did you ever work at Hilton's brick yard?
- A. Yes.
- Q. How long?
- A. Worked there until they shut down.

Q. How long?

A. About five months, I guess.

Q. What year?

A. I don't know the year.

Q. Did you ever work at Duratto's sand bank?

A. I worked there about a couple of weeks, I guess. I didn't want a job like that; I just went there for devilment.

Q. Keystone Leather Company, did you ever work there?

A. Keystone Leather Company?

Q. Yes.

A. No, sir.

Q. Didn't you work there for an hour or two once,—
Keystone Leather Company?

A. No, sir.

Q. Any leather company?

A. No, sir.

Q. Any morocco works?

A. No, sir.

Q. Did you ever work on the trolley track at River-
side?

A. Yes, sir.

Q. How long?

A. Well, worked there about two months, I guess.

Q. Did you ever work for Collins & Sons, up at
Riverton?

A. Yes, sir.

Q. How long?

A. I don't know how long I worked there. ?

Q. A month?

A. About that I guess.

Q. Where were you working at the time you were
married in May, 1917?

A. Biddle-Supplee Hardware.

Q. How long had you been there?

A. Nine months.

Q. When you were married?

A. What,—after I was married?

Q. No. You were married in May, 1917?

A. Yes, sir.

Q. And at the time you were working for the Biddle-Supplee Hardware Company?

A. Yes.

Q. At the time you were married?

A. Yes, sir.

Q. How long had you been working for the company at that time?

A. Well, I had been working about nine months before I got married.

Q. Now, all these places—the metal works and the shipyard, and Mathis, and Hilton, and Duratto, and the Riverside trolley works, and Collins & Son, and Biddle, all those places you worked between the time you left Evans and the time you got married; didn't you?

A. No, sir. Well, I was fooling around there for about six months before I went to Biddle, then I changed jobs.

Q. You did fool around some five or six months?

A. Well, changed jobs; I didn't change around after I got a job I liked.

Q. Didn't you lose about eighteen months between the time that you left Evans and the time you got married?

A. No.

Q. How much did you lose?

A. I didn't lose that much; about four or five months, I guess, put it all together.

JAMES FABRICATORE, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says.

By Mr. Tyler:

Q. Mr. Fabricatore, you live at Palmyra?

A. Yes, sir.

Q. How long have you lived there?

A. About five years.

Q. How long have you known Henry?

A. Since the day he was born, I guess.

Q. Are you related to Henry?

A. I am his uncle.

Q. You are his uncle?

A. Yes, sir.

Q. Is his mother your sister?

A. Yes, sir.

Q. Now, you have lived in Palmyra the last five years and Henry lived about a square from you; didn't he?

A. Well, when I first moved there I guess he lived about three squarese away from me.

Q. And how much of your time has he lived closer?

A. Well, I judge about two years. Then of course he moved up to Riverside.

Q. Do you know whether Henry has been working fairly steadily or pretty steadily?

A. Yes, sir; he worked pretty steady.

Q. Had a job most of the time?

A. Yes, sir, when he left one he had another one ready.

Q. Now, what can you tell us about Henry's conduct or his treatment with relation to his parents?

Mr. Drake: Objected to. How could he know?

The Vice Chancellor: He can disclose what the extent of his knowledge is.

A. Well, that is something I can't tell you much about, because I never was there.

Q. Did you ever hear of Henry getting into any trouble of any kind?

Mr. Drake: Objected to.

The Vice Chancellor: I don't think that indicates anything, Mr. Tyler; he said he never went there.

Mr. Tyler: All right.

Q. Did you go with either of Henry's parents when they had the deed made out for these lots?

A. Yes, sir, they asked me to go with them.

Q. Where did you go?

A. To a man by the name of Fluck.

Q. That is the first property that was bought?

A. Yes.

Q. You are referring to deed Exhibit C-1, which they got from the Palmyra Ice and Coal Company; is that the one?

A. Yes.

By the Vice Chancellor:

Q. Is that the first lot?

A. That is the first lot; yes, sir.

By Mr. Tyler:

Q. Now, did you talk to Mr. Fluck?

A. Yes, sir.

Q. Why did you go along with them?

A. Why, they asked me to go along to talk for them and put the lot in the boy's name.

Q. You say you talked for them. Couldn't they talk English?

A. Well, I suppose she could talk just as good as I could, but she wanted me to talk for her.

Q. She asked you to go along?

A. Yes, sir.

Q. What did she tell you to tell Mr. Fluck, or what did you tell him in her presence?

A. She told me—she said she wanted the lot put in the boy's name.

Q. Is that all that she said about it?

A. That is all.

Q. And you told him that?

A. I told him that; yes, sir.

Cross-examination.

By Mr. Drake:

Q. Was the boy present?

A. Yes, sir.

Q. Was the boy present when you went to Fluck's?

A. Yes, sir.

Q. The boy was along, was he?

A. Yes, he was along.

Q. The complainant?

A. What say?

Q. The complainant, Henry?

A. No, didn't complain of anything.

Q. Did Henry Prisco go along with you and his mother and father when you went to Fluck's?

A. The father wasn't there—I don't remember whether it was the father or not, but I think it was the mother.

By the Vice Chancellor:

Q. Well, did Henry go along?

A. Yes, sir; he went along.

By Mr. Drake:

Q. Now, if you didn't go to the house very much, how could you tell—how could you know that Henry worked fairly steadily? How do you know when he was at work or out of work?

A. Because I lived around the neighborhood. I can pretty near see what is going on.

Q. That is the way you could tell?

A. Yes, sir.

Q. Just from general neighborhood talk?

A. Yes.

PETRO MARTUCCI, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says:

By Mr. Tyler:

Q. Where do you live now?

A. I live on Second street.

Q. Palmyra?

A. Yes, sir.

Q. And where do you work?

A. Up at the country club.

Q. At Riverton?

A. Yes; Riverton Country Club.

Q. Did you ever live in the Prisco House?

A. Yes, sir.

Q. How long did you live there?

A. About a year.

Q. About a year?

A. Yes, sir.

Q. Was anything said to you by Priscos or any one in their house—

A. No.

Q. Now, wait a moment,—as to whose house it was?

A. Well, I have been hearing about it that it was Henry's.

Q. Who told you that?

A. Well, I heard it off of the mother, the old lady.

Q. Did she say whose house it was?

A. That it was Henry's; that is all I know.

Q. How long has it been since you were there?

A. Oh, a good while; it is over a year and a half.

Cross-examination.

By Mr. Drake.

Q. When did you move away?

A. Last part of last summer; I went up to the country club to live.

Q. In the summer of 1917 to 1916?

A. The summer of 1916, I guess; last summer.

Q. 1916?

A. Yes.

Mr. Tyler: That is all we have.

MILLIE PRISCO, recalled.

By Mr. Drake:

Q. Did you hear Henry testify on the witness stand?

A. Yes, sir.

Q. Did you hear him say when he was at the Biddle-Supplee Hardware Company he paid you twelve or thirteen dollars a week?

A. No, sir.

Q. Did you hear him say that?

A. Yes, sir.

Q. Is that true or untrue?

A. I heard him say, but he is wrong; I didn't receive that much money.

Q. Was that correct or wrong?

A. It is wrong.

Q. Did you hear him say that you didn't pay him fifty cents a week above his carfare?

A. Well, he could say what he please, but I gave him \$2 and sometimes one outside the spending money, and he got everything he wanted in the store.

Q. Did you ever give him as small a sum as fifty cents a week for spending money?

A. No, sir.

Q. More or less than fifty cents a week?

A. More.

No cross-examination.

Both sides rest.

TO WHOM IT MAY CONCERN.

This agreement made the tenth day of September, A. D. 1918, by and between Henry Delli Prisco, of the Township of Palmyra, County of Burlington, and State of New Jersey, party of the first part, and Millie Delli Prisco, his mother, party of the second part, of the same place, witnesseth: That said party of the first part for and in consideration of the sum of one dollar (\$1) lawful money of the United States of the United States of America, doth make, transfer and assign to said party of the second part, all those two lots or pieces of land containing a two and one-half story frame dwelling thereon and numbered as three hundred and ten (310) and three hundred and eleven (311), on Souder plan of Palmyra, N. J., to be held by her during the balance of her life and to revert back to said Henry Delli Prisco, party of the first part, after her death. Said party of the second part to have full possession and all the income from said property during her life and to pay all taxes, water rents, fire insurance and all other expenses.

HENRY PRISCO. (L. S.)

her

MILLIE X DELLI PRISCO. (L. S.)

mark.

Signed, sealed and delivered
in the presence of us.

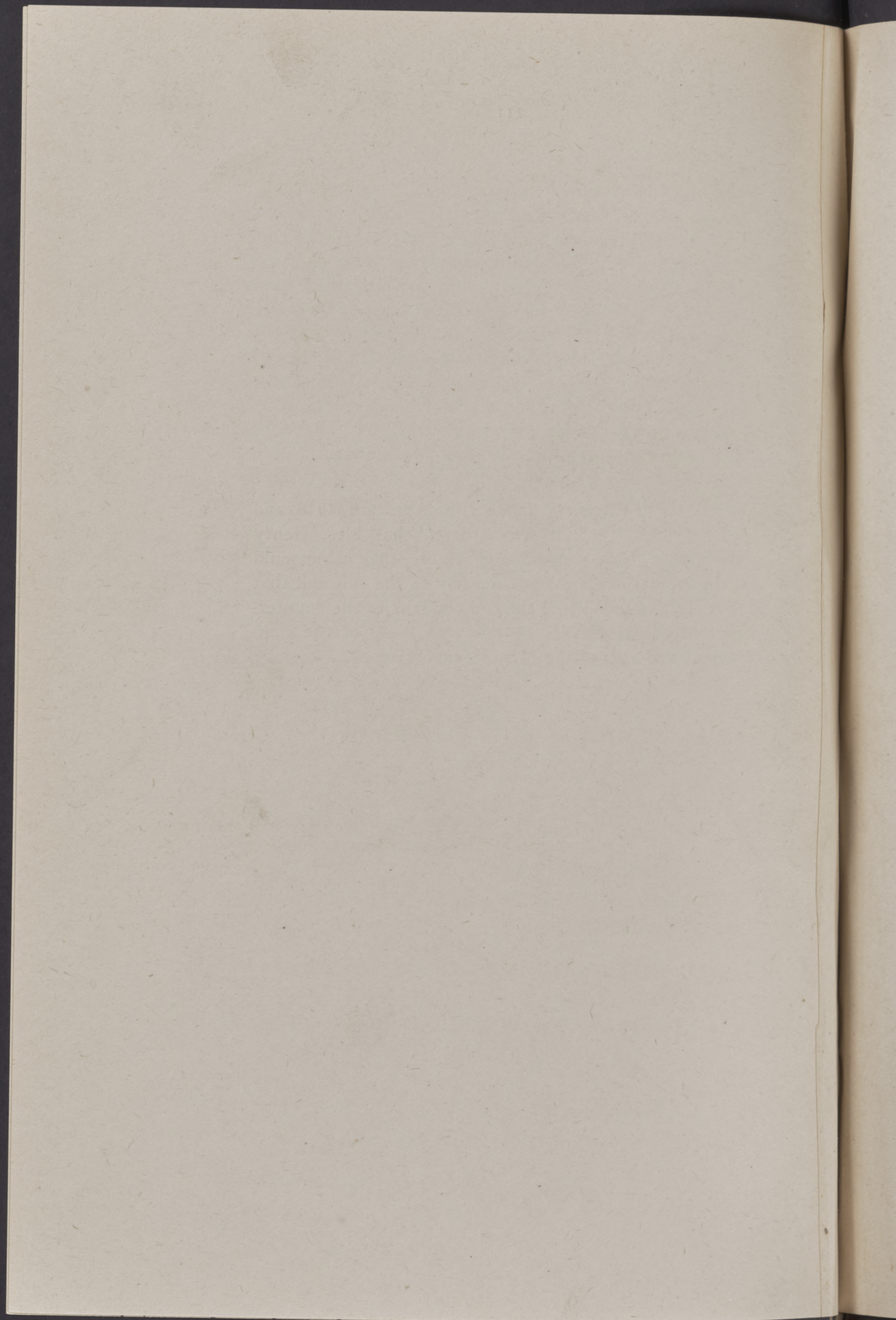
JENNIE PRISCO.
DOMNIL BEMIGOCO.
F. BLACKBURN.

*This page expunged
by agreement of Counsel,
Joseph Beck Lyle,
Pro. Appellee.*

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PRISCO VS. PRISCO.

By order of Chancery, made as of April 9th, 1918, and filed July 1st, 1918, it was ordered that Mrs. Henry Prisco, wife of the complainant, whose other name could not be ascertained, be made a party to the suit and that the reply and answer of the complainant to the counterclaim of the appellants be taken as those of the complainant and also of the Mrs. Henry Prisco.



New Jersey Court of Errors and Appeals

HENRY PRISCO, Appelle-Complainant, and THOMAS PRISCO and MILLIE PRISCO, his wife, Appellants-Defendants.	} ON APPEAL FROM CHANCERY.
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Brief of ARNOLD J. BECKENBACH and HERBERT A. DRAKE, for Appellants-Defendants.

STATEMENT OF FACTS.

1. In 1913, these appellants, following the custom of our citizens of their Italian nativity to make the complainant, their son, a man of substance, proposed to him that on his arriving at his majority, in consideration of his performing his legal obligations to be a dutiful and obedient son, and work and turn in his wages from that time out, they would purchase for him and convey to him two lots, No 310 and No. 311, in Palmyra Township, Burlington County, and build thereon for him a house, which on their realizing that consideration and upon his performing those legal obligations, would become his absolutely when he arrived at twenty-one.

2. The lots were conveyed to him in February, and in July, 1913, when he was about sixteen, as shown by the

Exhibits C-1 and C-2, State of the Case, page 28, and the house on lot 310, the tax title lot, was built and finished by September 20th, 1913.

ARGUMENT.

3. The law of the case is simple, and conveyances made to a grantee upon consideration afterwards to be paid or rendered may be set aside for failure of consideration.

See Pironi vs. Corrigan, 47 N. J. Eq., 135.

Crimmins vs. Crimmins, 13 N. J. Law Jour, 12.

Walls N. J. Dig., p. 229, sec. 69.

Also the law is, where an infant is under a legal obligation to do a certain act, he may in general bind himself for its performance by a contract which will be valid, notwithstanding his infancy.

See 22 Cyc., 584, Section 6.

Baker vs Lovett, 6 mass., 78; 4 Am. Dec., 88.

Peoples vs. Moore, 4 Den., 518; 47 Am. Dec., 272.

4. The record shows that the appellants lived in Palmyra with two daughters and with the complainant, who came of age February, 1918; several months after the filing of the bill in November, 1917. The complainant had been married since May, 1917.

5. He undertook the performance of the consideration to entitle him to a delivery to him of the possession of the property early in 1912 or 1913. The lots were purchased and conveyed to him and the house built by the end of September, 1913. During a part of this period, the complainant worked under the same employer as

his father, the appellant, Thomas Prisco, and the father received the son's wages, \$9.00 per week. This lasted less than three years, during three months of which the complainant was ill with typhoid fever at a large expense to the appellants. During this period there is no serious complaint of the appellants that the complainant was not rendering to them a fair measure of the consideration he was to pay for that period of time, and there is no denial anywhere on the part of the son that the lots were to be his only on his performance of the legal obligations he undertook.

6. It is respectfully submitted that the trust aspect given to the case by the conclusions of the learned Vice Chancellor in deciding the case for the complainant has no further basis in fact than has arisen from the failure of the complainant to perform the legal obligations of which the consideration he was to render are composed, namely, that of a constructive trust.

7. It is shown by the pleadings and proof on the part of the appellants that the bargain was the son was not to have this property delivered to him by the parents unless he were dutiful and obedient and ~~was~~^{kept} employed and turned in all his wages, which under every circumstance of the case, his parents were entitled to have, as he did not reach twenty-one until after he filed his bill. They everywhere testified that after the complainant left the Evans employment in 1915, he did not perform these legal obligations to constitute his consideration for having the property delivered to him at majority, while on the other hand the complainant nowhere claims or insists in the proofs that he did perform those legal obligations entitling him to a delivery of the property at majority.

8. Allowance is claimed on the part of the appellants for their being of Italian nativity and not so intelligent as to make of themselves self-serving witnesses. At the same time, it is submitted that they do show what is claimed for them in the preceding paragraph, namely, that there is no denial of the lack of dutifulness on the part of the complainant and no claim of the rendering of obedience and respect on the part of the complainant.

9. It must be perfectly apparent to the Court that the appellants were continuously the Court of final resort to pass upon the performance by the complainant of what he undertook to do. From this point of view, it is very apparent that he did not mind his parents, did not turn in his wages, did ~~not~~ attempt to move into the house before he was twenty-one, did not keep steadily employed and could not be tracked where he worked after he left Evans in 1915. The period from 1915, when he left Evans, until he filed his bill in 1917, was one of continuous refusal on his part to do as he was told and earn the reward he was to have for performing his legal obligations. He was frequently away, and his irreverent and disrespectful remarks to his mother and father in connection with their demanding his wages above what he desired to pay for board, defying them by telling them they might keep the house so he could spend his money, which he had agreed to turn in to them, was an abandoning by him of the performance of his contract. The result of his behavior was that his parents passed judgment against him, as shown by their attempt to transfer the property back to themselves by calling on Mr. Blackburn for that purpose. At first they found they could not do this, and under Mr. Blackburn's suggestion they withheld judgment to give their son another chance. This was about two years before the bill was filed.

Then they applied to him the third time, as we understand the testimony, after their boy's marriage. This was a final passing of judgment where their right to do so, it is submitted, cannot be questioned. Jennie Prisco, the daughter, says he was not to get married. Of course, he was not. He was to have the property and marry when he became of age, when it would be absolutely his own. To get married in the way he did, without informing his parents, was a most distinct violation of his contract to be obedient and give them his wages. Necessarily he had agreed not to get married without seeking his parents' consent. He was under obligation not to do so. It was no violation of public policy that he be required to abstain from entering into the marriage relation until he was able to have a house to which he could take his wife. The house was not to be his until he was twenty-one. His parents were not unkindly disposed to him after being married, because they took him and his wife in from the outside when he had no place to which to go and kept him two weeks without board, when under his contract his parents were entitled to have him at work for them and turning in his wages. He only left his parents' house after marriage because his wife's parents wanted what the appellants were entitled to have. It is contrary to public policy to limit or oppose marriages, but it is not contrary to that public policy under the circumstances in this case for these parents to insist that this boy should not be married until he was twenty-one. The fact of his getting married without their permission before he was twenty-one was an abandoning of the performance of the contract which he had undertaken. It is not against public policy for the parents in this case to be outraged because this boy got married before he was twenty-one. They wanted him to put himself in the position where he could be a substantial

married man when he was twenty-one, and he paid to them his duty and obligation and contract of obedience by disobedience, irreverence and disrespect.

10. With the immense expense which the taxpayers of New Jersey are put to for probation officers in every county and for the maintenance of the corrective and penal institutions throughout the State at Jamesburg, Rahway, Trenton, &c., it would seem that the attempt of these people to nurture a citizen who should be self-dependent and worthy of his State and community, should meet with legal encouragement instead of with discouragement. It was a worthy purpose they set out to accomplish. They are satisfied that they have failed. Their judgment in that respect, it is submitted, should go because they were the only persons present on the ground to pass on the facts, and certainly their judgment is that the complainant failed to come up to the reasonable requirements of his contractual undertaking, all within his legal obligations. Further evidence of this and of their fairness and sincerity in passing that judgment is their setting about to remove the house which the preliminary injunction of the Court of Chancery restrained.

11. Another circumstance which should have its bearing on the case was that the house was built on a temporary foundation on a tax title lot, adjoining the lot which cost \$75.00, instead of \$25.00 paid for the tax title lot. The proposal was in case the son made good to dig a cellar on lot No. 311, the \$75.00 lot, and move the house to lot No. 311 from its temporary foundations on lot No. 310, and lot No. 310 was to be used only for side yard purposes, so that a failure of title should not involve the improvement, but the son's failure to perform his part of the contract did not make the impression upon his parents that he was entitled to have this consideration.

12. It is submitted that this gift was never more than a tentative thing to be realized on the part of the son when he came up to the reasonable requirements which were embraced in his legal obligations of obedience, respect, keeping employed, and the giving over of his wages to his parents, as he was bound to do during minority.

13. It is further respectfully submitted that the cases cited in the conclusions of the learned Vice Chancellor, namely, *Reed vs. Huff*, 40 N. J. Eq., 229, and *McGee vs McGee*, 81 N. J. Eq., 190, do not arise out of such facts as to furnish principles which should control the disposition of this case. They are transactions between husband and wife, and the element of consideration to be supplied by the son excludes the case from that of a resulting trust and places it in the category of constructive trusts. *Crimmins vs. Crimmins*, Walls N. J. Dig., 229, sec. 69, is in line. The case was that of a drunken husband who had habitually maltreated his wife. He promised if she would convey him her property he would reform and treat her well. After the property was conveyed to him, he treated her worse than before. Held on a bill filed by the wife against his heirs, that the property be restored to her. The boy's title whenever he was not performing his contract was becoming fraudulent against the parents. It is not the question of a presumption arising from a resulting trust to be overcome by proof. It is admitted that there is an almost insuperable difficulty in overcoming such a trust. This is not that sort of a case. The question is, there being no denial in the case of the existence of a contract on the part of the son to earn the consideration, whether the son did earn it or not. If the son failed, the property belongs to the parents. If he did not fail, or if his performance was sufficient to save him, which the appellants deny, then he is entitled to have the decree below affirmed.

14. If a son can be guilty of continuously scrapping with his father and mother and taking no interest in their affairs and being away from home whenever he is not eating or sleeping, or treating his friends out of the goods in the appellants' store, and of refusing to help his father about the premises and getting every advantage he can against them and not returning to them what he is bound to, and in face of all this then of getting away with the loot, ^{it is submitted} that family discipline of father and mother will be seriously shaken in New Jersey.

15. It is contended that the case at bar is differentiated from Reed vs. Huff, and McGee vs. McGee, Supra., and the line of cases to which they belong, relating to resulting trusts, by the following strong circumstances in favor of the appellants:

(a) The fact of the continuous possession of the property in question by the appellants, their retention of the deeds as their own, and the management of the property by the appellants as their own, and the manner of that management in ignoring any rights of the complainant in the property. (b) Also the impression of the appellants that they could transfer the property back to themselves, and their applications to Mr. Blackburn for that purpose. (c) Their attempt to move the house from lot No. 310 and their failure to dig a cellar and move it over to lot No. 311. (d) The acquiescence of the complainant in all these matters. (e) The abandonment by the complainant of the property, by telling his mother when she refused to let him have his wages for sending money, that she could do what she liked with it, thereby accepting the judgment of his parents against him on his failure to fulfill his contract, consisting of legal obligations. (f) The conveyances were never consummated by delivery of possession, which always remained

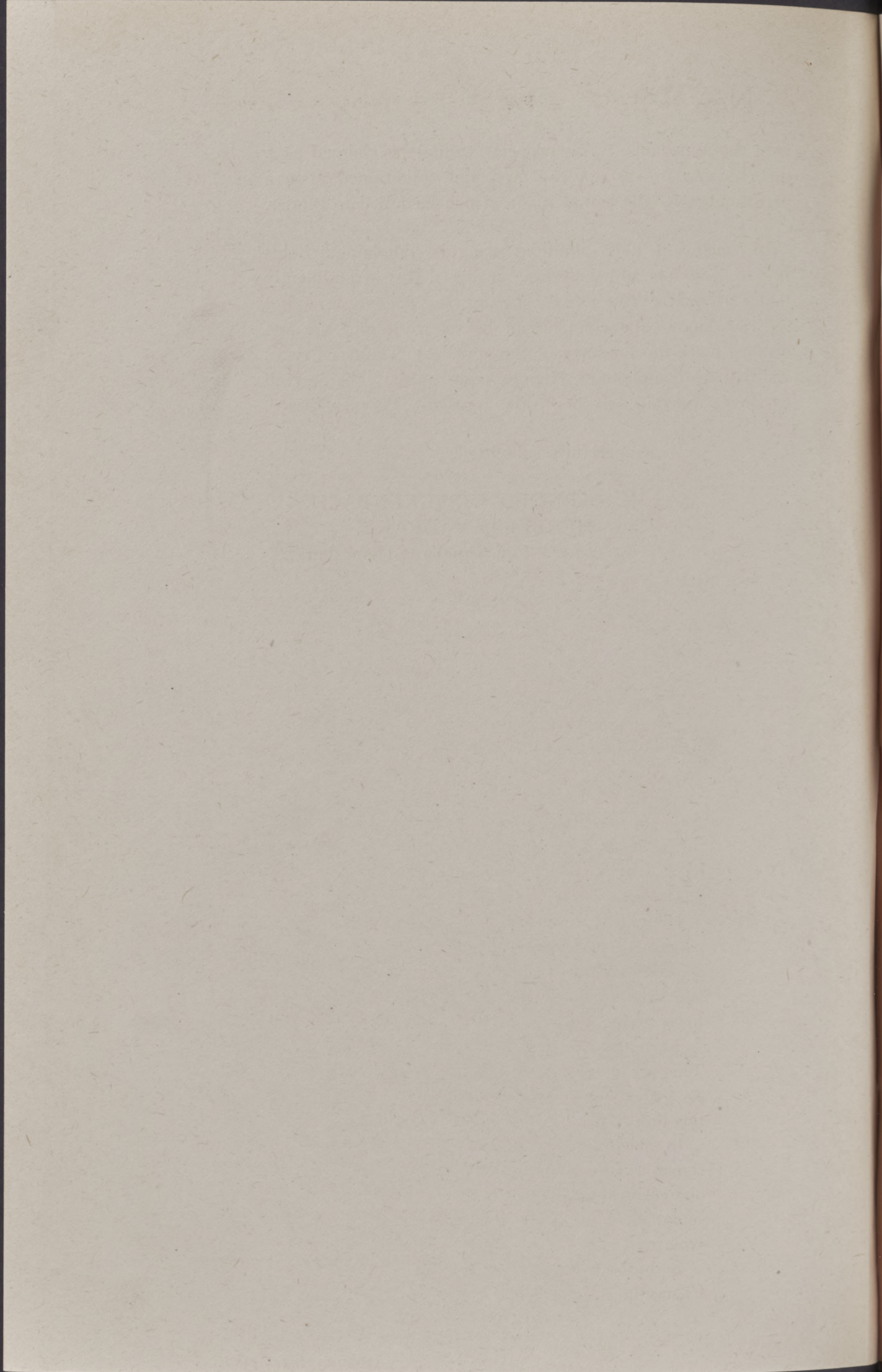
with the appellants. The property cannot be claimed as a gift, because it was not executed, but conditioned upon a performance by the complainant, which he failed to render.

Submitted

In conclusion, it is submitted that this complainant holds title to these lots and the house on one of them fraudulently under a constructive trust, and that the deeds conveying the two lots to the complainant be set aside and the lots decreed to be the property of the appellant, Thomas Prisco, and that the complainant, Henry Prisco and wife, be decreed to convey the said two lots to the appellant, Thomas Prisco.

Respectfully submitted.

ARNOLD J. BECKENBACH,
HERBERT A. DRAKE,
For Appellant-Defendants.



New Jersey Court of Errors and Appeals

HENRY PRISCO,
Appelle-Complainant,
and
THOMAS PRISCO and MILLIE
PRISCO, his wife,
Appellants-Defendants. } ON APPEAL FROM
CHANCERY.

Brief for Appellants-Complainant.

The Vice Chancellor found as a fact in this case that the property in question was conveyed by the defendants to the complainant as a gift and that the evidence presented by the defendants was not convincing enough to overcome the rule that a written instrument shall be effective according to its terms.

No attempt was made by defendants to recover the property until just after their son married and the Vice Chancellor found that:

“The marriage of the son shortly before he reached his majority obviously was the act which occasioned the parents dissatisfaction and led to the attempted repudiation of the gifts; but for that fact it may well be doubted whether any controversy would have arisen.”

Also see State of Case, Page 98.

The appearance of complainant showed that he was a bright hard working young man, and the testimony showed that he had always worked hard except when he was sick.

He had never been in any trouble and gave his wages to his parents all the time until he was married. The whole family appear to be thrifty but the mother was very overbearing and only allowed this young man 50 cents a week out of his wages for spending money. (S. of C., pg. 94 and 95.)

Then the son went with his wife to live with her parents. This was done with the consent of the defendants. (S. of C., pg. 96). It was only after that that they attempted to recover this property.

In conclusion, the Vice Chancellor found as a fact that the conveyance in question were gifts to the son and that the proofs offered by the defendants were not adequate to rebut the presumption of gift with that degree of certainty which the law requires.

Both the evidence and law are fully analyzed in the Vice Chancellor's conclusions.

Respectfully submitted,

JOSEPH BECK TYLER,

Attorney for Appellee.

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