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prona Court; Case of *Wider v. N. J. Bus Com-*
pany, 135 Atl. 473.

The plaintiff was on a cross walk where she had the right of way, which the defendant-appellant was under a statutory duty to observe (Laws 1916, page 49). That defendant-appellant did not control his speed or give signals of his approach was evidence of negligence, which was for the jury to consider, and not the Court to decide.

Misarscik v. Blank, 4 Adv. Rep. 615; 132 Atl. 351.

The judgment of the Supreme Court should be affirmed.

Respectfully submitted,

MICHAEL J. TANSEY,
Of Counsel with Plaintiffs-Respondents.

INDEX.

	PAGE
Complaint	1
Answer of Defendants Grantina B. Derees and Henry S. Derees	6
Answer of Defendants Frederick J. Howlett and Clara A. Howlett	9
Replication	12
Case	12
Conclusions	140
Final Decree	147
Amended Notice of Appeal	149
Petition for Appeal	151
Answer of Frederick J. Howlett and Clara A. Howlett to Petition of Appeal	153
Answer of Grantina B. Derees and Henry S. Derees to Petition of Appeal	154

TESTIMONY FOR COMPLAINANTS.

Edward B. Blaisdell:	
Direct	13
Cross	19, 30
Redirect	27
Lydia A. Blaisdell:	
Direct	32
Cross	35, 41, 48
Redirect	49
Dora B. Van Brunt:	
Direct	49
Cross	51
Phylis Feustermacher:	
Direct	52
Cross	53
Redirect	54

	PAGE
Grover Cleveland Hankin:	
Direct	55
Cross	56, 59
Redirect	58, 59
John Thayer Leavy:	
Direct	60
Cross	62, 65
Francis D. Wyckoff:	
Direct	66
Cross	68, 69
Redirect	71
Lester B. McQueen:	
Direct	72
John R. Long:	
Direct	73
Cross	74
Clara Wyckoff:	
Direct	75
Cross	76
Redirect	79
Mina Wolfe:	
Direct	80
Cross	81
Redirect	83
Jacob A. King:	
Direct	84
Cross	87, 90
Redirect	89
Henry S. Derees:	
Direct	91
Grantina B. Derees:	
Direct	97
Frederick J. Howlett:	
Direct	103

TESTIMONY FOR DEFENDANTS.

	PAGE
Henry S. Derees:	
Direct	106
Cross	112
Redirect	126
Recross	128
Frederick J. Howlett:	
Direct	128
Cross	133

TESTIMONY FOR COMPLAINANTS IN REBUTTAL.

Ashley Wolly:	
Direct	134
Cross	136
Alexander H. Shaw:	
Direct	138
Cross	139

Complaint.

(Filed *June 19, 1926*)

In Chancery of New Jersey 10

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainants, Edward B. Blaisdell and Lydia A. Blaisdell, his wife, residing at 696 Broadway, Long Branch, New Jersey, respectfully show:

1. The complainants are husband and wife.

2. On April 13th, 1926, the complainant Edward B. Blaisdell was the owner of the following described property, subject to the inchoate right of dower of his said wife and to all taxes and assessments and interest thereon, viz.: ALL those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Ocean, in the County of Monmouth and State of New Jersey, at Wanamassa, and being known and designated as Lots Number Two hundred and twenty-seven and two hundred and twenty-eight (227 and 228) as shown on a map of Wanamassa and Y. M. C. A. Camp, Monmouth Co., N. J., made by W. H. DeNyse, Civil Engineer, March 5, 1892, and filed in the Clerk's Office of said County, June 6, 1892; and more particularly described as follows: BEGINNING at a point in the southerly line of Sunset Avenue distant fifty feet easterly from the southeasterly corner of Laurel Avenue and Sunset Avenue; thence (1) easterly along the southerly line of said Sunset Avenue one hundred feet; thence (2) southerly at

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Complaint.

right angles with Sunset Avenue and parallel with
Gawen Avenue one hundred feet; thence (3) west-
erly and parallel with Sunset Avenue one hundred
feet; thence (4) northerly and again at right angles
with Sunset Avenue one hundred feet to the place
of beginning.

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3. Said deed was dated October 1st, 1892, and
was made by Joseph C. W. Stout and others to
said Edward B. Blaisdell and was duly recorded
in the office of the Clerk of Monmouth County on
Friday the 11th of November, A. D. 1892 in Book
507 of Deeds, page 189, etc.

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4. On said April 13th, 1926, Henry S. Derees,
the husband of Grantina B. Derees, on behalf of
himself and as the agent of his said wife called at
complainants' residence in Long Branch and al-
though concealing said fact to complainants that
he was representing himself and his wife, stated
to complainants that he wanted to make them a
present of some money; that he represented some
company and that complainants had owned some
property, describing the property hereinbefore
mentioned which he stated was twice sold afore-
said through two separate hands since said Edward
B. Blaisdell had owned it and that complainants
had no further interest therein, but that in order
to perfect the title for his company the said Henry
S. Derees would require complainants' signatures
and that he would give them \$200 for the same.
He further stated that if complainants refused to
sign he would at once take the money to the Sheriff
at Freehold, but that he would give the complain-
ants first chance. That it was of no interest to
him except that he was getting \$10 for each such
matter he closed, and that he would not give any-

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Complaint.

thing for the property and stated that his company
was taking a chance.

5. These complainants who are aged persons,
the complainant Edward B. Blaisdell being seventy
years of age, stated that they wanted time to think
it over but said Henry S. Derees acting on behalf
of himself and his wife answered that the matter
would have to be settled then and there, that he
had a deed ready and that he would not come
back and that if complainants refused to sign the
deed he would go to Freehold and give the money
to the Sheriff and in that way clear the title with-
out their signatures and that they would then re-
ceive nothing.

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6. These complainants allege that they relied on
the truth of the representations as aforesaid and
believed them to be true and thereupon on said
April 13th, 1926, without any independent advice,
executed said deed and thereupon the said defen-
dant Henry S. Derees on behalf of himself and his
said wife gave the said Edward B. Blaisdell his
check for \$200 which was paid and which amount
with interest the complainants have tendered back
and hereby tender back.

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7. These complainants charge and allege that
when the said Henry S. Derees on behalf of him-
self and his wife made the foregoing statements
that the said complainants did not own said prop-
erty and that it was twice sold through two sepa-
rate hands and that he was making them a pres-
ent of \$200 and that the said Henry S. Derees would
not give anything for the property and that his
company was taking a chance and that he could
get the title cleared by giving the money to the
Sheriff and that he would give them the first

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Complaint.

chance, all of the said statements and the statements made by him to said complainants hereinbefore referred to were false and untrue and known so to be by him and were falsely and fraudulently made to induce said complainants to part with said property for \$200 and that relying upon the truth of said false and fraudulent representations and believing them to be true the complainants executed said paper purporting to be a deed which complainants allege was taken in the name of the said defendant Grantina B. Derees, but which fact was concealed from said complainants at the execution and delivery of said deed. The said deed was recorded in the office of the Clerk of Monmouth County and said Grantina B. Derees now claims to own said property subject to the right of courtesy of her husband.

8. Complainants charge that the said defendants at the time such false and fraudulent representations were made as to the value of the said property that it was worth at least the sum of \$4,000 and that the complainants have since claimed the value thereof to be the sum of \$6,000.

9. That on June 18th, 1926, at 8 A. M., the complainants caused to be filed in the office of the Clerk of the County of Monmouth a notice of *lis pendens* of the pendency of an action by them against the said Grantina B. Derees and her said husband to compel them to reconvey said property to the said Edward B. Blaisdell. That on said June 18th, 1926, and after the filing of said *lis pendens*, the said Grantina B. Derees and her husband purported to convey the said property to the said defendant Frederick J. Howlett of the City of Newark for a pretended consideration of \$2500,

Complaint.

which deed was recorded in the Clerk's office of the County of Monmouth on June 19th, 1926; that said conveyance was not a bona fide conveyance and was made by the said defendants Derees in furtherance of their fraudulent scheme to deprive the said complainants of their said property and was made without consideration and that said defendant Howlett had full knowledge and notice of the facts and circumstances under which the alleged deed to said Grantina B. Derees was obtained as mentioned in said bill and of the said action brought by the complainants against the said Derees and wife and the filing of the notice of the *lis pendens* aforesaid and that the alleged conveyance to said Howlett was not bona fide.

10. That Clara A. Howlett is the name of the wife of the said Frederick J. Howlett and may claim some interest in said property by reason thereof.

Complainants are without adequate remedy in the courts of law and therefore pray:

(1) That said Grantina B. Derees and Henry S. Derees, her husband, and Frederick J. Howlett and Clara A. Howlett, his wife, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

(2) That the conveyance made by the said complainants to the said Grantina B. Derees and the said conveyance made by said Grantina B. Derees and Henry S. Derees to said Frederick J. Howlett be declared null, void and of no effect and that the said defendants may be required and directed by this Court to reconvey said land and premises to the said Edward B. Blaisdell, or that it may be decreed that the said defendants or some of them

Answer of Defts. Derees.

be compelled and directed to pay to the complainant Edward B. Blaisdell the value of said property and that the said complainants may have such other and further relief as may seem just and proper, together with costs and disbursements of this action.

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FRED DIEFFENBACH, JR.,
Solicitor for and of Counsel
with complainants.

**Answer of Defendants Grantina B. Derees
and Henry S. Derees.**

(Filed July 17, 1926.)

IN CHANCERY OF NEW JERSEY.

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Between
EDWARD B. BLAISDELL and LYDIA A.
BLAISDELL, his wife,
Complainants,

and

GRANTINA B. DEREES and HENRY S.
DEREES, her husband, and FRED-
ERICK J. HOWLETT and CLARA A.
HOWLETT, his wife,
Defendants.

On Bill, Etc.

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The defendants, Grantina B. Derees and Henry S. Derees, her husband, of the City of Newark, County of Essex and State of New Jersey, answering say:

1. Paragraph 1 is admitted.

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2. Paragraph 2 is admitted to the extent of saying that Edward B. Blaisdell was on April 13,

Answer of Defts. Derees.

1926, the owner of record of said premises. Except as herein admitted, said paragraph is denied.

3. Paragraph 3 is admitted.

4. Paragraph 4 is denied, but on the contrary thereof, they state that Henry S. Derees called upon Edward B. Blaisdell and told him that he was the owner, so far as the records were concerned, of certain premises referred to in the bill of complaint, that the premises had been sold many times for taxes, and asked him whether he was still the owner thereof, and whether he would sell the lot for \$200.00. After some negotiation with complainant, Edward B. Blaisdell and his wife, the premises were sold to the defendant Grantina B. Derees, and \$200.00 was given in payment therefor.

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5. Paragraph 5 is denied.

6. Paragraph 6 is denied as pleaded. They state that complainants were well aware that they were the owners of record of the premises, that they made no misrepresentations whatsoever, and merely asked whether they were willing to sell for \$200.00 or not; that complainants are intelligent people, owning considerable other property; that the defendant, Henry S. Derees had never met them before, and that there was no relation of confidence between them, such as would put the burden on him of seeing that the complainants had independent advice. Except as herein stated, the allegations of said paragraph are denied.

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7. Paragraph 7 is denied, and the answer to Paragraph 6 is again repeated.

8. Paragraph 8 is denied.

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Answer of Defts. Derees.

9. Paragraph 9 is denied, and on the contrary, they state that for some time prior to June 18, 1926, he had been negotiating with Mr. Howlett and others for the purchase of said premises, and that Mr. Howlett had for some time before June 18, 1926, indicated his readiness to take title as soon as the search was completed. That as soon as the search was completed, he took title to the premises, and paid therefor the sum of \$2,500.00. That said conveyance was in every respect bona fide, and at the time of the transaction, these defendants had no knowledge of any suit.

10. They have no knowledge of Paragraph 10.

SEPARATE DEFENSE.

1. The complainants, Edward B. Blaisdell and Lydia A. Blaisdell, his wife, were owners of considerable property on April 13, 1926, and have had many real estate transactions. They are shrewd and intelligent people, and, it was only after discussion with both, in the presence of their daughter, that the premises were sold to Mrs. Derees for the sum of \$200.00.

2. That shortly after said sale, it developed that the local volunteer fire company had erected upon the premises a substantial building. That up until a few days before the filing of the bill of complaint in this case, complainants were well content with the bargain that they had made with the defendant, Grantina B. Derees, having full knowledge of all the facts.

3. That with full knowledge of all the facts, they retained the purchase price for 2½ months, and these defendants are advised that complain-

Answer of Defts. Howlett.

ants are bound by their election. That this suit was only commenced and financed at the instigation of the Volunteer Fire Association, who have wrongfully erected their building upon said premises, and who now have offered to complainants a larger price for said premises, would they be able to set the sale aside.

4. These defendants pray to be hence dismissed with their costs.

PLUME L. DOUGLASS,
Solicitor for Defendants
Grantina B. Derees and Henry S. Derees.

NATHAN H. BEIGT,
Of Counsel.

Answer of the Defendants Frederick J. Howlett and Clara A. Howlett, his wife.

(Filed July 20, 1926.)

IN CHANCERY OF NEW JERSEY.

Between	
EDWARD B. BLAISDELL and LYDIA A. BLAISDELL, his wife,	30
Complainants,	
and	
GRANTINA B. DEREES and HENRY S. DEREES, her husband, and FREDERICK J. HOWLETT and CLARA A. HOWLETT, his wife,	
Defendants.	

Defendants Frederick J. Howlett and Clara A. Howlett, his wife, of the City of East Orange, 40

Answer of Defts. Howlett.

County of Essex and State of New Jersey, answering complainants' bill, say:

- 1. They have no knowledge of Paragraph 1.
- 2. They admit that according to the records, Edward B. Blaisdell was the owner of the premises on April 13th, 1926. Except as herein admitted, the paragraph is denied.
- 3. They admit Paragraph 3.
- 4. They have no knowledge of how the premises were acquired by Grantina B. Derees, and therefore deny Paragraph 4.
- 5. They have no knowledge of Paragraph 5, and leave complainants to their proof.
- 6. They have no knowledge of Paragraphs 6 and 7 and leave complainants to their proof.
- 7. They deny Paragraph 8.
- 8. They deny Paragraph 9, except as herein stated.

Defendant Frederick J. Howlett says that he has been a real estate operator throughout the State of New Jersey for twenty years and upwards, having an office at 142 Market Street, Newark. That for some time prior to June 18th, 1926, the defendant, Henry S. Derees was attempting to interest him in the purchase of the plot of land in question. That prior to June 18th, 1926, he had agreed to purchase the premises, accept the deed and pay the purchase price as soon as the search would be completed. That on June 17th or 18th, 1926, the County search was received, showing the premises as represented, and on that day, he purchased the premises and paid therefor the sum

Answer of Defts. Howlett.

of \$2,500.00; that he mailed his deed to the County Clerk for record; that the transaction was a bona fide purchase, so far as these defendants were concerned. Moreover, they had no knowledge or suspicion of any adverse claim by these complainants, or by anybody else. That these defendants had not at the time, and have not at this time, any actual knowledge of the so-called *lis pendens* said to have been filed on June 18th, 1926, and these defendants are further advised that the said so-called *lis pendens* filed in the manner described in the bill of complaint, does not constitute constructive notice, inasmuch as it was filed prior to the beginning of suit, and prior to the issuing and service of process.

- 10. They admit Paragraph 10.

SEPARATE DEFENSE.

1. That on the face of the amended bill, it appears that these defendants, who live in the general vicinity of the property, and with full knowledge of the facts, retained the purchase price for 2½ months and are bound by their election.

CHARLES JONES,
Solicitor for and of Counsel with
Defendants Frederick J. Howlett and Clara A. Howlett.

Replication.

(Filed *Aug 4, 1926.*)

IN CHANCERY OF NEW JERSEY.

10	Between EDWARD B. BLAISDELL and LYDIA A. BLAISDELL, his wife, Complainants, and GRANTINA B. DEREES and HENRY S. DEREES, her husband, and FRED- ERICK J. HOWLETT and CLARA A. HOWLETT, his wife, Defendants.	} On Bill, etc.
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20 The complainants join issue on the answers of the defendants.

FRED DIEFFENBACH, JR.,
Solicitor of Complainants.

IN CHANCERY OF NEW JERSEY.

30	Between EDWARD B. BLAISDELL and wife, Complainants, and GRANTINA B. DEREES, <i>et al.</i> , Defendants.	} On Bill, &c.
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40 TRANSCRIPT OF TESTIMONY in the above stated cause, taken on final hearing, at Chancery Chambers, Jersey City, October 26 and December 21,

Edward B. Blaisdell, direct.

1926, before His Honor, James F. Fielder, Vice-Chancellor.

APPEARANCES:

FRED DIEFFENBACH, JR., for Complainant.	
PLUME L. DOUGLAS, Esq., and L. EDWARD HERRMANN, Esq., for Defendants Grantina B. Derees and Henry S. Derees.	10
CHARLES JONES, Esq., for Defendants Frederick J. Howlett and Clara A. Howlett.	

EDWARD B. BLAISDELL, one of the complainants, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Dieffenbach: 20

Q. Where do you live? A. In Long Branch.

Q. Are you a married man? A. Yes.

Q. Is the other complainant, Lydia A. Blaisdell, your wife? A. Yes, sir. I am a little bit hard of hearing.

Q. Are you in any business at the present time? A. No, sir.

Q. You are retired? A. Retired from business; yes.

By the Court: 30

Q. When did you retire from business? A. About twelve or fourteen years ago.

Q. What was your business then? A. Ice business.

Q. Retail ice? A. Retail ice; yes.

By Mr. Dieffenbach:

Q. What is your age? A. I am seventy-seven years old. 40

Edward B. Blaisdell, direct.

Q. How old is your wife? A. She is about seventy-five.

Q. On April 13, 1926, did you own a piece of property in Wanamassa? A. I held a deed for it.

10 Mr. Dieffenbach: I offer in evidence deed dated October 1, 1892, made by Joseph B. W. Stout, *et al.*, to Edward B. Blaisdell, recorded in Monmouth County Clerk's office November 11, 1892, in book 507 of deeds, page 189.

(Marked Exhibit C-1.)

Q. At that time you owned the lots adjoining? A. No; not adjoining; no. I bought three lots but one of them was in these two. These two were together.

20 Q. Did you pay any taxes on these lots that you bought? A. No; I did not. I had bought three lots at the sale, and when the tax bills came out I only received a tax bill for one lot, and I did not pay any attention to it. I lived in Long Branch. The lots were at Wanamassa so I sent a check for the taxes on one lot and let the others go, thinking next year I would receive a bill. It went on that way for several years and I did not. By that time the property did not look extra good to me, and the Stouts that I had bought it from did not do what they had agreed to—

30 The Court: Wait a minute. The question was about the payment of taxes.

Q. You did not pay the taxes on these two lots because you did not get any bills and you neglected it. Is that the idea? A. Yes; I just neglected it.

40 Q. On April 13, 1926, did the defendant Henry Derees come to see you? A. Yes.

Edward B. Blaisdell, direct.

Q. At your home? A. At my home.

Q. Tell us what he said to you and what you said to him? A. I happened to be outside on the sidewalk talking to a friend, and this car drove up and had one man in it, and he said: "I am looking for E. B. Blaisdell," he said. "Well," I says, "that is my name. You are not going to arrest me, are you?" Something of that kind. "No," he said, "I came to give you something." I said: "That sounds good." Then he went on to explain what it was for, what he was doing. He said he was doing business for some company or corporation—I don't know which he said—and he was clearing up title to some property that had been sold for taxes and he had a number of properties like that, in that way, and he came to offer me \$200 if I would sign papers to release the property. I said: "Well, we will go into the house and talk it over." We went in and he showed or produced deeds to be signed by myself and my wife. She happened to be in another room and I called her and told her about it, and she refused to sign at first; she wanted more time; but he said it had to be done right away or he would go right back to Freehold and pay this money to the sheriff, instead of paying it to me, and he would rather give me the preference. So finally we signed the deed.

Q. Did he say anything about your owning the lots? A. About my owning the lots? Well, he said I had no further interest in it, it had been sold for taxes twice and I had no interest in it.

Q. And all he wanted you to do was to sign your name to clear the title; is that it? A. Yes; that is the way I understood it.

Q. Did he show you one of the papers that he had there? A. No; he didn't show it to me. I think

Edward B. Blaisdell, direct.

he put his hand like this way (illustrating). He had a bundle about that high—and he got \$10 apiece for getting them settled up. That was the interest he had.

10 Q. Did he say anything at that time about his wife having an interest in the property, or at any time? A. Not to me; no, sir. He said he was buying it for this company or corporation.

Q. Did you want time to think the thing over?

Mr. Herrmann: Objected to.

The Court: Objection sustained. The question is leading.

Q. Was anything said about wanting time to sign the papers?

20 Mr. Herrmann: I object.

The Court: Objection sustained. The question is leading.

Q. Who was present at this conversation? A. My daughter and my wife and my granddaughter was right in the room nearby, the door open between.

Q. Did he say anything about the value of the property?

30 Mr. Herrmann: I object.

The Court: You may ask him what, if anything, was said about the value of the property.

Q. What, if anything, was said about the value of the property? A. Why, he didn't consider them worth hardly anything; these people were taking a risk; they were buying them, and he wouldn't do it.

40 Q. Was anything said about who occupied the property? A. I didn't say anything to him about it.

Edward B. Blaisdell, direct.

Q. You did not? A. No.

Q. Did anybody else say anything about it? A. I think my daughter said there was a fire house on one of the lots.

By the Court:

10 Q. Did he say anything to that statement? A. Well, I don't know just what he did say. I do not recollect that—

By Mr. Dieffenbach:

Q. What happened after that? Did he give you a check for \$200? A. Yes; he gave me a check for \$200.

By the Court:

20 Q. Whose check? A. His own. He made the check out right in my house and signed it and handed it to me, and we had a little doubt at first whether it was any good or not. He says: "Come down to the Berkley-Carteret and I will give you the cash." I finally said: "We will take a chance on it and let it go." The next day I put it in the bank, deposited it in the bank, and never heard anything more from it.

30 Q. What next called your attention to this property? A. One night, reading our daily paper in Long Branch—

Q. How soon after? A. Well, I don't know exactly—a week or so, I think.

Q. Go on. A. I noticed in the transfers of real estate that the lots were sold to, I think it was, Mrs. Derees. I forget the first name. And I thought it funny, because he said he was buying them for this corporation or company.

40 Q. Then what did you do? A. Well, then I be-

Edward B. Blaisdell, direct.

gan to inquire about the thing and my grandson, Dr. Blaisdell, said he had met Mr.—

Q. (Interrupting.) Never mind what he said. What did you find out? Did you find out that his statements were untrue?

10

Mr. Herrmann: I object.

The Court: I will allow the first part of the question to stand.

Q. What did you find out? A. I found that the property was in somebody else's name—his wife, I believe. This is my—

By the Court:

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Q. Please answer the question. What did you find out? Tell us the result. That is all you are asked. A. Well, that he wanted to sell the property to the fire company there.

By Mr. Dieffenbach:

Q. Well, were you, during the month of May, advised that you were the owner of this property?

Mr. Herrmann: I object. The question is leading.

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Mr. Dieffenbach: I want to show that this man believed Derees, when he came to see him; he believed he was telling the truth.

The Court: There is no objection in showing that, but your question was: "Did you find out afterwards that you were the owner of the lots?"

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Q. What was your idea, Mr. Blaisdell, at the time Mr. Derees came to see you, whether or not you were the owner of these lots?

Edward B. Blaisdell, cross.

Mr. Herrmann: I object to what his idea was. That was not communicated to us.

The Court: Objection overruled.

A. Well, I believed that I had lost my interest in them by not paying taxes. He said they had been sold twice for taxes, but I knew the deed was given to me in the first place.

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By the Court:

Q. What effect did his statement have on your mind? A. Well, I thought that he was telling the truth. I didn't know any different.

Cross examination by Mr. Herrmann:

Q. Did you have the deed for these lots in your possession at that time? A. I had the deed in my possession ever since they were first bought in 1892, I think.

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Q. And when you received the tax bills, you only got the tax bill for one lot instead of three which you owned? A. Yes; one tax bill for the one.

Q. How many years ago did you discover that the property was sold for non-payment of taxes? A. Well, I cannot say that I ever discovered it. I had not paid much attention to them. I supposed they had been. I never saw them advertised or anything about it.

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Q. You said on your direct examination the lots did not look good to you, so you let them go? A. Yes; at that time they were in a rough state and not taken care of, and nothing seemed to be building or anything of that kind, and I just let them go.

Q. In other words, you having inspected the property, thought that there was no value to them, and you did not pay the taxes, and you let them go? A. Yes.

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Edward B. Blaisdell, cross.

Mr. Dieffenbach: I object unless he states the time.

10 Q. Will you state the time that you determined that? A. Well, for perhaps ten or twelve years since they were bought I thought they would not amount to much. The place seemed to be growing slowly, but since then the tide has turned quite a little and property has increased in value.

Q. And after ten or twelve years you paid no taxes? A. I never paid any taxes on them.

Q. You never paid any? A. No.

20 Q. Why didn't you ever pay any taxes on them? A. Well, simply because I let it go at first and then I supposed they had passed out of my hands really, sold for taxes, and in order to get them it would cost a lot of money, and maybe it would not amount to anything for me.

Q. Now, when Mr. Derees called and told you he would give you \$200 for the title, did you know how much was due in unpaid taxes and assessments against the lots? A. No; I did not.

30 Q. Did you say anything to Mr. Derees about the amount that was due and unpaid for taxes? A. No, sir; not to my recollection, I didn't say anything about them.

Q. So that your only objection seems to be that Mr. Derees' wife bought the property instead of some corporation? A. No, sir; that is not my only objection, but I saw right away that there was something wrong about it.

Q. Let us know what you found was wrong. You took the \$200? A. He told me that he was buying the property for a corporation.

40 Q. Yes. And so, if it had been a corporation and you had received \$200 for it, you would have

Edward B. Blaisdell, cross.

been satisfied with your bargain? A. Well, I don't know that I would, really, after I had investigated a little bit.

10 Q. What investigation did you make and when did you make it? A. I saw some parties from Wannamassa, and they said that the property was worth more money, and then afterwards I concluded to hire a lawyer and see what could be done.

By the Court:

Q. Part of the question was: When did you make the investigation? When did you commence it? A. Well, in May, I think, or the latter part of April; I am not certain of it.

By Mr. Herrmann:

20 Q. You did not ask Mr. Derees when he proposed \$200 to you, to give you an opportunity to investigate it, did you? A. No; I do not know that I did ask any—

30 Q. Were you not in the state of mind that you knew you had allowed this property to go for taxes ever since 1892, nearly twenty-five years, and were you not then in a state of mind that \$200 was money found to you? A. Well, I did not know anything about the legal part of the transaction, and I thought it was the best thing I could do at the time to let him have it for the \$200.

Q. You knew that you had never paid any taxes?

A. I knew I had not; no.

40 Q. You knew that in order to get your property you would have to pay a large sum of money for taxes? A. Well, yes; I knew I would have to pay that and I would not object to it if I thought it was worth it.

Edward B. Blaisdell, cross.

Q. At that time you did not think it was worth it? A. Well, I did not think much about it at the time he came. It was such a surprise and he didn't seem to be willing to give any time to think it over. It had to be decided right away.

10 Q. You did not insist on getting time to think it over? A. Why, I did not.

Q. What did your wife say; what did your wife say on that subject? A. My wife wanted time to think it over. He said it had to be done right away or he would go to Freehold and pay the money to the sheriff and get a deed for it.

Q. There was quite a controversy, a couple of months after, was there not, with respect to the lots being occupied by the fire house? A. Con-
20 troversy with who?

Q. In the locality. A. Why, I do not quite get that.

Q. (Questions repeated as follows:) There was quite a controversy a couple of months afterwards, was there not, with respect to the lots being occupied by the fire house—in the locality? A. Well, I heard—it is funny that I cannot just get that.

By the Court:

30 Q. The question is whether there was any controversy about the lot being occupied by the fire house? A. Only ours.

Q. What was it and when? A. That we should—that is funny; I cannot collect my thoughts about it.

Q. You cannot get that question? A. I cannot just get my thoughts about it.

40 Q. Didn't you know at the time that you executed this deed to Derees that there was a fire engine

Edward B. Blaisdell, cross.

house on the property? A. Oh, yes; I knew it from the time it was first put there.

Q. How long had you known it, up to the time Derees called? A. I think three or four years. I don't know the exact time.

Q. After you had signed this deed for Mr. Derees, did anybody see you about the property in connection with the fire house being on it? A. Only my grandson told me about it. 10

Q. Did anybody come to see you representing the town or fire company? A. No; not that I know of.

Q. When did Mr. Dieffenbach come to see you? A. I don't know when I first saw him.

Q. How did you come to know Mr. Dieffenbach? A. I was recommended to him by Mr. Sinclair. 20

Q. Who is Mr. Sinclair? A. He is a man that lives in Wannamassa.

Q. Is he a member of the fire department? A. I don't know.

Q. Is he one of the town officials? A. I don't know about that. I do not know what his business is. He is a friend of ours, but I do not see him very often.

Q. How often do you see him? A. Well, perhaps once or twice a year. He was staying in Long Branch. I knew him from boyhood, but he lived in Wannamassa. 30

Q. How far is Wannamassa from Long Branch? A. I think about six or seven miles.

Q. Mr. Sinclair is a resident of Wannamassa? A. Yes.

By the Court:

Q. Did he come to see you or did you go to see him? A. No; he came to see me at one time. 40

Edward B. Blaisdell, cross.

I had been talking with friends about the property. I think I sent for him to call.

Q. Why did you send for him? A. I thought he could tell me something about the location. He is the only man I knew down there.

10 Q. Because he lived in Wannamassa near this property? A. Yes, sir; because he lived there.

By Mr. Herrmann:

Q. When he first came to see you, can you fix the time with respect to his visit? A. I don't know.

Q. How soon after it was announced in the paper that the property had been sold by you, did he come to see you? A. Well, I could not say, but I think some time within a month.

20 Q. Within a month? A. I think so.

Q. And when he came to see you, he discussed this sale with you, did he? A. Yes; we talked about the property then.

Q. Now, then, what did he say to you about the property or about the sale? A. Why, he said the property was worth some money.

By the Court:

30 Q. Did he name the amount? A. I think he said it was worth about \$1,500 a lot, if I recollect it right.

By Mr. Herrmann:

Q. Did he say anything about the fire house company being on the lots? A. Yes; he said it was there. I knew the fire house was there.

40 Q. Did he also say that because you sold the lots, that you lost some money, because you might

Edward B. Blaisdell, cross.

have sold it for more money because the fire house was on there? A. No.

Q. That was not discussed? A. No; he didn't say anything about it.

Q. Did he say anything to you about the difficulty the fire department found itself in, because it was now in the hands of someone else than you and they would have to remove their building? A. Yes; he did say that Mr. Derees asked too much price for the property, but I forget what figures he named.

Q. That is, he said that the new purchaser was asking a large price for the property now? A. Yes.

Q. Did he suggest to you that you ought to bring these proceedings? A. No; I don't think he did.

Q. How did he come to recommend Mr. Dieffenbach to you? A. Well, I asked him if there was any way to get the property back, and he suggested that I see Mr. Dieffenbach.

Q. Why did you then want the property back? You had made a bargain, had you not? A. Well, I found that I was virtually swindled out of it.

Q. Let us see if you were virtually swindled out of it: How much were the taxes and assessments at that time on the property? A. I don't know.

Q. How do you know that you were swindled? A. Well, I had reason to believe that they would not amount to what the lots were worth now.

Q. How did you know; what amount was it? A. I knew it could not be—it could not amount to \$3,000.

Q. How much did you know they amounted to? A. I don't know what they amounted to.

Q. Did you make any inquiries to find out what the amount of taxes were due? A. No, sir.

Edward B. Blaisdell, cross.

By the Court:

Q. How do you know today that you have been swindled? A. I am quite sure that the taxes won't amount to \$3,000. The lots were supposed to be worth that.

10 Q. Have you any amount in your mind that they would amount to? A. I do not think that they will amount to over \$1,000, if they do that.

Q. Didn't you know that in April, 1926? A. Well, I suppose—I didn't know whether I could get them back then—I didn't know who owned the lots.

Q. Anyway the question is: Didn't you know in April, 1926, that the taxes would not amount to over \$1,000? A. I have not thought much about what they would amount to.

20 Q. You did not commence to think about it until after you had conveyed the property? A. No.

By Mr. Herrmann:

Q. When did you make up your mind that you were swindled—about how long after you delivered the deed? A. Well, I thought right away that something was wrong, as soon as I saw the transfer in the paper.

30 Q. That was about a week afterwards, you say? A. I think about a week.

Q. And did you then seek to ascertain what the amount of unpaid taxes and assessment was? A. No; I did not inquire into that.

Q. At that time you still could not make up your mind whether you were swindled or not, because you did not know how much was due in taxes and assessments? A. No.

40 Q. What made you believe you had been swindled? A. Well, when I found right away that

Edward B. Blaisdell, redirect.

they had been bought by another person, I thought there was something wrong.

Q. Just what do you mean by that—"bought by another person"? A. He claimed he was buying them for this corporation. He bought them for some woman. I suppose it was his wife.

10 Q. So that that was the factor that made you believe you were swindled? A. I thought that there was something wrong.

By the Court:

Q. Do you know today, Mr. Blaisdell, whether the \$200 that you received for your equity in the lots was too small a sum of money? A. Yes; I know now.

Q. How do you know that? A. Because the lots were worth more.

Q. If you do not know how much the taxes are against them, how much it would cost to redeem the property from the tax sale, how can you say what the value of your equity is? A. Well, I should think that it would amount to \$1,500 or \$2,000.

Q. You are guessing at it, if you do not know how much the taxes will amount to. A. Of course, I do not know what the taxes will amount to.

By Mr. Dieffenbach:

Q. How much are the taxes on the other lot, the adjoining lot? A. On the other lot?

Q. Yes.

Mr. Herrmann: I object.

Mr. Dieffenbach: The location would have some bearing on it.

The Court: Objection sustained.

40

Edward B. Blaisdell, redirect.

Q. How near were the other lots that you owned to the fire house lot? A. That one lot I should think a couple of city blocks from it.

Q. What was the amount of taxes you paid on those lots?

10

Mr. Herrmann: Objected to.

The Court: Objection sustained.

Q. Were those lots worth about the same as the other lots?

Mr. Herrmann: Objected to.

The Court: Objection sustained.

Q. Were you told by anyone that the total amount of taxes on that property in question amounted to any more than \$1,000?

20

Mr. Herrmann: Objected to.

The Court: I suppose you mean since the sale to Derees?

Mr. Dieffenbach: Oh, yes; since the sale to Derees.

A. I don't think I was.

30

Q. Did the fact that Derees told you that he would give you the first chance and that if you did not take this money he would take it to the sheriff, that you had no interest in the property at all, did that have any effect on your mind in signing that paper? A. It did.

Q. You believed that to be true, did you? A. I did.

By the Court:

Q. Did he have the deed already drawn when he called on you? A. Yes.

40

Q. Did he read the deed to you? A. I think not.

Edward B. Blaisdell, redirect.

Q. Did he give it to you to read yourself? A. Yes, he handed it to me to sign.

Q. Did he hand it to you to read? A. Well, I say he handed it to me. I don't know as he said to read it over.

Q. Did you ask him for it? A. No; I didn't ask him for it.

10

Q. Did he do anything to prevent you from reading it over? A. No.

Q. How did you know that it was a deed for this property, this particular property, except from his sayso? A. I knew that from the deed.

Q. You did read the description? A. The numbers of the lots.

Q. You looked at the lot numbers, did you? A. Yes.

20

Q. Why did you do that? A. To be sure that I was signing for these lots.

Q. Do you own any other property? A. Not down there.

Q. Anywhere? A. In Long Branch I own my nome.

Q. You wanted to be sure that the deed was not a deed for your own home? A. Oh, yes; I wanted to be sure.

Q. Was that one reason? A. Yes, sir.

30

Q. What difference did it make to you at the time whether the property was sold to a corporation or to Mrs. Derees? A. Well, he represented to me that he was buying this property for that corporation and that it was of no interest to him; that he received \$10 for getting it fixed up that way, and that was all he got out of it.

The Court: Who took the acknowledgment to the deed?

Mr. Dieffenbach: Mr. Derees did.

40

Edward B. Blaisdell, cross.

Q. Was there anybody else with him at the time he called on you? A. No, sir.

Q. After you had signed the deed and your wife had signed the deed, who took the acknowledgment to the deed—you know what an acknowledgment is? A. Yes; I do. Why, I think he did himself. There was nobody else there but my wife and—

Q. In taking the acknowledgment, did he explain the contents of the deed to you? A. Well, I cannot say. I guess he done what was legal about that part—I don't know—he didn't read it all over to me. I could have read it myself.

Cross examination by Mr. Jones:

Q. Mr. Blaisdell, did Mr. Derees say to you and to Mrs. Blaisdell: "You understand what you are signing?" He said something to that effect, didn't he? A. I guess he did.

Q. He said: "This is a deed for two lots at Wannamassa"? A. Yes.

Q. He said: "You know what the lots are?" did he not? A. Yes.

Q. Then he asked you whether you acknowledged that you signed, sealed and delivered that deed as your free act and deed, did he? A. Yes.

By Mr. Herrmann:

Q. Did not Mr. Derees also say to you that he was engaged in the business of clearing up tax titles for big corporatitons and a number of other people? A. Yes.

Q. And that he got \$10 for getting a deed of this kind; that was his business? A. For all of these deeds. Yes, he said that was his business.

40

Edward B. Blaisdell, cross.

Q. He told you his business was the clearing of tax titles in this way, didn't he? A. Yes.

Q. That he usually went around and found owners of the properties where they had allowed the taxes to accumulate and where property was sold for taxes, and usually got a deed from the owner and paid them what he believed they would take? A. Yes.

Q. He explained that all to you? A. What is that?

Q. He explained all that to you? A. Yes; in that way.

Q. And he told you, didn't he, that this was one of the properties that he had discovered had been sold for taxes? A. Yes.

Q. And that he was willing to give you \$100 for your title to each lot? A. \$200.

By the Court:

Q. \$100 for each lot? A. Yes; \$100 for each lot.

By Mr. Dieffenbach:

Q. Did he say to you who the grantee was to be in that deed; to whom that deed was to be made? A. To this company or corporation.

By Mr. Jones:

Q. Was not the deed already made out?

The Court: He has already said it was.

By Mr. Hermann:

Q. Mr. Blaisdell, how many parcels of property have you bought and sold? A. In my lifetime?

Q. Yes. A. Not many; I think four or five.

Q. Four or five? A. Yes.

40

Lydia A. Blaisdell, direct.

LYDIA A. BLAISDELL, one of the complainants, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

10 Q. You are the wife of the witness who just left the chair? A. Yes.

Q. Do you remember the day Mr. Derees called at your home? A. Yes.

Q. When was that? A. I think about April 13th.

Q. 1926? A. 1926.

Q. Who was present at the time that he came, when the conversation started? A. My daughter was in the room with me, and my granddaughter was in the adjoining room and she could hear everything that was said, that is, by him and Mr. Blaisdell.

Q. What was said by Mr. Derees about this property at Wannamassa? A. Well, they wanted me to sign the paper, which I was opposed to doing.

Q. Say what you said. A. I said, "It seems to me we ought to have more time to investigate," and he was in such a hurry. He said he didn't have time to wait and wanted us to sign our names and he would pay the \$200.

30 *By the Court:*

Q. Did he say what he would do if you did not take the \$200? A. Yes, he says, "If you do not sign, I will go to Freehold and pay the \$200 to the sheriff." He was very decided about it.

By Mr. Dieffenbach:

40 Q. What was his manner? A. Well, he just stood up in the middle of the floor swinging his hands. That is all I can say.

Lydia A. Blaisdell, direct.

By the Court:

Q. How long was he there? A. Oh, he wasn't there I don't think more than ten minutes.

By Mr. Dieffenbach:

Q. Did you hear him say anything regarding whether or not your husband owned that property? A. No; he said he didn't own the property. He said, "You don't own the property." He says, "It has been sold twice for taxes and it is not yours anyway."

Q. Did he say anything as to whom the deed was to be made? A. No. Only to this corporation. I supposed it was a corporation.

By the Court:

Q. Did he say whom he represented? A. He represented some corporation or society or something. I don't remember just—

Q. Did he say what the corporation's interest was? A. No. He says he was not interested in it.

By Mr. Dieffenbach:

Q. Did he say his wife would buy this property? A. No; he didn't say anything about his wife.

Q. Did he mention his wife's name in any way? A. No.

Q. Did he say anything about giving you the first chance? A. Yes; he says, "I thought I would give you the first chance. You can take it, or I will take it to Freehold."

Q. Did he say anything about not coming back in case you would not sign the deed? A. Yes; I think he said he would not be back. He said, "I won't come back here," because I thought it was

Lydia A. Blaisdell, direct.

being rushed a little too much and I wanted to have time.

Q. Do you remember what he said when he said that you had no interest in that property whatever?

10 Mr. Jones: Objected to.

The Court: Objection sustained.

Q. What was the resulting effect of this conversation on your mind as to the ownership of that property?

Mr. Jones: Objected to.

The Court: Objection overruled.

20 A. Well, I felt as if—I said, “It seems to me as long as we hold a deed for this property I guess we ought to have some claim on it.” He said, “Not if you haven’t paid your taxes, and it has been sold twice.”

Q. (Question repeated.) What was the resulting effect of this conversation on your mind as to the ownership of that property? A. Well, it was on my mind that it did not seem to be right.

By the Court:

30 Q. What effect did this conversation have on your mind? Did you believe him or not? A. Well, I did not, not altogether. Sometimes I did and sometimes I did not. I thought that—I didn’t know—I didn’t know whether it was right or wrong hardly.

By Mr. Dieffenbach:

40 Q. If you knew that this property was worth a great deal of money, would you have signed this deed?

Mr. Herrmann: Objected to.

The Court: Objection sustained.

Lydia A. Blaisdell, cross.

Q. What induced you to sign that deed? A. Well, because he said we didn’t own it, and I thought, well, if we didn’t own it, that was all there was to it. I didn’t know as we could do anything.

Q. He put it to you as though this money was found money; is that so? A. Yes.

10

Cross examination by Mr. Herrmann:

Q. You thought it was found money, didn’t you? A. Found money; yes.

Q. In other words, you knew that your husband had never paid a dollar taxes? A. Yes.

Q. And you knew that he had not paid them for more than twenty-five years? A. Yes.

Q. During the time that your husband owned it, you frequently discussed with him the condition of the property, didn’t you? A. Well, I said it was queer we didn’t get any tax bills.

20

Q. You never went to find out whether you could get tax bills? A. I did not; no, sir.

Q. Didn’t your husband discuss with you very often that the lots were worthless, that there had not been any improvements, and they had not increased in value and it would be a waste of money? A. I don’t know that he put it that way. I did not bother much with it.

30

By the Court:

Q. Did he ever discuss this property with you before Mr. Derees appeared on the scene? A. Once in a while. We talked it over a little.

Q. What did he tell you he thought about it? A. He said he thought it must have been sold for taxes, that he never heard of it for some time.

By Mr. Herrmann:

40

Q. Didn’t you often drive over there with him

Lydia A. Blaisdell, cross.

and look around to see whether any improvements were being made there? A. No; I didn't go to Wannamassa very often, maybe once a year or something like that, but just go past the place.

10 Q. When you went past the place you observed the condition of the lots, didn't you? A. Yes.

Q. You knew that you were not paying any taxes on them, and didn't you think it was very wise that you should not pay any taxes on them, because the lots were not worth it? A. Well, they were worth some taxes; they should have been paid, I suppose.

20 Q. When this deed was signed by you you knew that you were selling whatever interest you had in those lots? A. Well, Mr. Derees says: "You don't own them anyway." He says: "They are not yours."

Q. What did you think you were getting \$200 for? A. Well, I don't know—just to sign that paper.

Q. And you knew that the paper was a deed, didn't you? A. I suppose it was. I didn't read it. I was kind of provoked.

By the Court:

30 Q. You were told it was a deed? A. Yes.

Q. And you believed it was? A. I believed him what he said after his talking so much. At first I felt as if maybe there was something wrong about it, but after he talked and laid down so distinctly and so plainly everything, I says: "If it isn't ours, it isn't; so it won't make any difference whether we sign or not."

By Mr. Herrmann:

40 Q. Do you know how much you would have had to pay in back taxes? A. No; I do not.

Lydia A. Blaisdell, cross.

Q. Did you ask him how much was due in back taxes? A. I don't remember whether I did or not.

Q. What do you mean—you don't remember?
A. Well, I don't remember.

Mr. Dieffenbach: That is not material.
That has nothing to do with the case at all. 10

The Court: Objection overruled.

Q. You don't remember? A. Taxes was not discussed much.

Q. Were they discussed at all? A. I don't remember that.

Q. You signed a paper that you had some doubt about, whether you wanted to do it or not. What was said about the taxes? A. I don't remember what was said about the taxes. 20

Q. There was something said about taxes? A. He said the taxes had not been paid. Well, I knew that.

Q. Why had the taxes not been paid? A. Because we never had any bills. We never received a bill all the time we owned the lots.

Q. After you got this check did you go with your husband to the bank to deposit it? A. No; I did not.

Q. Do you know whether he did deposit it? A. Well, I think I could trust him to do that. 30

The Court: He says he did.

Q. You didn't have anything more to do with the matter for how long? A. I kept thinking about it all the time. I didn't get it out of my mind. I haven't yet.

Q. When did you first begin to think that you have been swindled? A. I could not tell you exactly. 40

Lydia A. Blaisdell, cross.

Q. Were you there when this gentleman that lives at Wannamassa called on your husband?

A. Yes.

Q. Mr. Sinclair? A. Yes; Mr. Sinclair.

10 Q. Mr. Sinclair was not a very frequent visitor at your house, was he? A. Not much lately, but he used to come quite often, and in his school days he was with my granddaughter. He went to school with her, in her class.

Q. Mr. Sinclair came over one night and told you he thought he had made a mistake, didn't he? A. He asked me about the Wannamassa property, wondered whether it was all right or not, and after seeing it in the paper who this transfer was to, to Mrs. Derees, it began to look as if something was wrong.

20 Q. Didn't you know that Mr. Sinclair came to see you about this matter? A. I don't know as he did.

Q. Didn't he first discuss the matter with you before you discussed it with him? A. He spoke to my grandson first about it.

Q. He is the man that spoke to your grandson? A. I don't know who spoke to us. Somebody did over the 'phone.

30 Q. You said that he did? A. I suppose it was him; yes.

Q. Why do you suppose it was he? A. Well, they were great chums and had always been intimate.

The Court: I am going to stop this line of cross examination, even if there is no objection to it. It is not proper cross examination.

40 Q. Did you tell your husband to get a lawyer

Lydia A. Blaisdell, cross.

and open these proceedings? A. I don't know that I did.

Q. Did you get a lawyer? A. Well, I didn't get a lawyer. He got the lawyer himself.

Q. Who is the man that does most of your law work, or have you had a lawyer? A. Some one in Long Branch. 10

Q. Did you go to see him about this matter? A. No.

Q. Why not?

Mr. Dieffenbach: Objected to as immaterial.

The Court: Objection sustained.

Q. Did Mr. Derees sign the deed? A. I don't know whether he did or not. 20

Q. You were there? A. Yes, I was there, but I did not notice what he did.

Q. What was paid for the property—\$200 in cash? A. A check.

Q. Whose check was it? A. I suppose it was his. I didn't read it.

Q. You saw him write it out, didn't you? A. I didn't look. I didn't have glasses on. I could not see.

By the Court: 30

Q. You could see whether he sat down at the table and wrote something? A. I do not think he sat down once while he was there. He just stood up and talked and wrote and everything else.

By Mr. Herrmann:

Q. Do you know whether he wrote the check or whether he had it made out? A. I could not tell you. 40

Lydia A. Blaisdell, cross.

Q. Did you hear any discussison as to whether the check was good or not? A. I said, "How do we know whether this check is good or not?"

Q. Did you look at the check? A. I suppose it was his check.

10

By the Court:

Q. Can you write your name without your glasses? A. Yes; I think I can.

Q. Did you? A. Well, I don't remember that. I might have gone and put them on. I don't have to wear them only when I do writing or reading.

20

Q. What did he say when you said: "Your check may not be good"? A. He says: "I can take you right down to Asbury Park to the hotel where I am stopping"—I don't know all he did say, he had so much to say.

Q. Did he say that he wanted you to go to his Asbury Park hotel with him with his check or his wife's check or whosever it was? A. He didn't say anything about his wife. He never mentioned his wife.

Q. You are sure about that? A. Yes; I am sure.

30

Q. Did you look at the check? A. No; I didn't look at it. I don't know as I saw it or had it in my hands.

Q. Why did you say: "How do we know this check is good, if it is not certified"? A. I just happened to say: "How do we know this check is good?"—something like that.

Q. What did you say when he asked you to go to Asbury Park to the hotel? A. I said I had no time to bother with it.

Q. Did you say anything about taking the chance of the check being good? A. No.

40

Q. Did your husband say anything like that?

Lydia A. Blaisdell, cross.

A. No. We took the chance and I guess it was good.

By Mr. Jones:

Q. You had some discussion with your husband about this property, didn't you? A. Discussion about it? 10

Q. Yes—some time during the thirty-five years you owned it? A. I suppose so, but I cannot remember back thirty-five years what was said and done.

Q. Your husband said: "The lot did not look particularly good to me, and we let it go." Didn't he have some such discussion with you? A. Well, it was all woodland and underbrush and it was not so very good to look at. 20

Q. But you had some discussion with him, didn't you? He said: "These lots are no good. We might as well let them go?" A. Well, not—

Q. Did he ever have any discussion with you about the lots? A. I suppose we have talked it over sometimes. I don't remember just exactly what he did say.

By Mr. Jones:

Q. In these talks didn't you and he decide that these lots didn't look particularly good to you and you decided to let them go, as he has stated on the stand? 30

Mr. Dieffenbach: I object to the question.

The Court: Objection overruled.

A. I don't think so. I never thought they didn't look worth anything.

Q. However, I think you did say that you passed this property about once a year? A. Yes. 40

Lydia A. Blaisdell, cross.

Q. Is that right? A. Yes.

Q. You knew where it was? A. Yes; I knew where they are.

Q. So that for some years before this time you knew that a fire house or some building had been erected on these lots, didn't you? A. Yes, I knew it. 10

Q. What effect did that have upon your mind as to the ownership of these lots? A. Well, I don't know. I guess the fire house would not damage them much.

Q. Didn't you say to your husband: "Why is this building there? Can't we collect some rent?" A. No, I never asked for rent.

Q. Didn't you go over to exercise any ownership over this property? A. No; not in that way.

Q. What I am trying to get at is: "What effect did the building on it have on your mind? Did you think you still owned it when somebody else had put a building on what you supposed were your lots? 20

The Witness: Do I have to answer that?

The Court: If you want to answer Mr. Jones' question you may do so.

A. Well, I did not know whether it belonged to us or not. I knew we had not paid taxes. I did not know whether it had been sold for taxes or whether the township or someone had— 30

By the Court:

Q. The question is practically this: Knowing that you had not paid taxes on these lots and knowing that there was a fire house or engine house on them, did that make any impression on your mind that you did not own the lots? A. I thought that we ought to have some claim. 40

Lydia A. Blaisdell, cross.

Q. Why didn't you make your claim when you saw the fire house there? A. Well, I don't know. I left it to Mr. Blaisdell.

Q. How long has that building been there? A. Someone said it was up four years.

Q. You knew it was there four years, didn't you? A. Yes. 10

Q. Didn't you talk about it? A. I might have mentioned that.

Q. You say they are your lots. Didn't you say—whatever you call your husband—"Here is a building on our lots. What do you suppose they put it there for?" Didn't you say something to that effect to your husband? A. I cannot remember what I said to him about it.

Q. When you saw the building on these lots, or learned about it, didn't you say: "Mr. Blaisdell, we have got to do something about this"? A. No, sir; I did not. I knew he was very much in favor of firemen. He is a fireman himself and if they thought that was the only place to put the fire house, it would not harm us. 20

Q. Does he belong to the fire house? A. He used to in Long Branch.

Q. I mean this particular fire company whose house is on these lots? A. (No answer.) 30

By the Court:

Q. There is a fire house on this property? A. Yes; there is.

Q. Does your husband belong to that fire company? A. No; he belongs in Long Branch.

By Mr. Jones:

Q. Does Mr. Sinclair belong to that company? A. I don't know. 40

Lydia A. Blaisdell, cross.

Q. Is your husband active in the fire department? A. He is too old to be active now. He has been all his years a fireman in Long Branch and Oceanic.

10 Q. When Mr. Derees was there, didn't you ask him any questions concerning the words in the deed? A. I didn't ask him a question about anything. He was in such a hurry and rushed around so that I didn't have time to think hardly.

Q. You looked at the deed, too, didn't you? A. I seen it. I didn't read it over or look at it. I supposed that Mr. Blaisdell had, so I didn't—

Q. Mr. Blaisdell was in the room with you? A. At first we were there talking.

20 Q. I mean when the question of actually signing the deed came up between you, you and your husband were there? A. Yes.

Q. Derees with you husband in your presence told you as his wife you would have to sign it to make it any good, didn't he? A. I suppose he did say something like that.

Q. Don't suppose. Don't you remember hearing him say that? A. (No answer.)

30 Q. Didn't you hear him say that? A. I cannot say that I did, because I cannot remember.

Q. Where did you sign the deed; where did you actually sit down to sign the deed? A. At home.

By the Court:

Q. In some room? A. What we always called the office, where Mr. Blaisdell used to have his office when he was in business.

By Mr. Jones:

40 Q. You went and sat down at a desk? A. Yes.

Lydia A. Blaisdell, cross.

Q. Well, your daughter was there, too, was she? A. Yes.

Q. She came in the room and she looked at the deed, didn't she? A. No; she did not look at the deed.

10 Q. You looked at the deed? A. I did not read it through.

Q. Well, you looked at the deed? A. I looked at it when I signed it, I suppose.

Q. Was it you that called your husband's attention to this little article in the newspaper a few days after the transaction? A. After the transfer?

Q. Yes. A. He was the first one that noticed it.

Q. He came and read it to you, did he? A. Yes.

20 Q. Was it then and there that you made up your mind that something was wrong? A. Well, it was different from what Mr. Derees represented.

Q. Was it at that particular time that you made up your mind that things had been misrepresented to you? A. Yes.

Q. It was at that time, was it? A. Yes; Mr. Derees had misrepresented things.

By the Court:

30 Q. Mr. Jones is trying to find out whether that was the first time after you signed the deed that you decided there was something wrong—when you saw this article in the newspaper? A. When I saw it in the paper.

Q. Was that the first time that you made up your mind that there was something wrong? A. I kind of thought all the time that there was something wrong.

40 Q. You were doubtful about the whole transaction? A. I was doubtful about the whole thing.

Lydia A. Blaisdell, cross.

By Mr. Jones:

10 Q. When did you make up your mind, as you stated in your bill in this court, that you had been defrauded somehow; when did you definitely make up your mind that you had been defrauded? A. I kept thinking all the time that we had been.

Q. Even before you signed the deed? A. No; not before I signed it. Well, as soon as he left I thought there was something wrong about it.

20 Q. Well, did you definitely decide then that you had a valuable piece of property that this man had taken away from you by some misrepresentation—just as soon as he had left? A. Well, I thought that it might be that way, but I was not sure.

By the Court:

Q. You had suspicions? A. I had suspicions, yes.

Q. When did you first commence to investigate? A. I suppose perhaps it was in four or five weeks, something like that.

30 Q. Four or five weeks after you had signed the deed? A. Yes. After it came out in the paper, then we talked it over.

By Mr. Jones:

Q. You say four or five weeks afterwards you started to investigate to see whether these suspicions were well grounded; that is what you told the Vice-Chancellor practically, is it not?

The Court: All right. She did.

40 Q. Do you recollect what you did by way of investigation? A. I cannot think of anything more to say.

Lydia A. Blaisdell, cross.

10 Q. When you became suspicious four or five weeks later, what steps did you take to investigate and what did you do? A. Well, we talked it over with my grandson and with my son and got their opinion, what they thought, and different ones, and everybody seemed to think it was wrong, that we did speak to.

Q. Did you go to the tax office to find out about the taxes? A. No.

Q. Or about the ownership? A. That would come up.

Q. Did you go to Freehold or send to Freehold? A. No.

20 Q. Did you go to Freehold to find out about the ownership of the property? A. No; I did not go to Freehold.

Q. You didn't go to your lawyer, did you, with your deed, and ask him what redress you had in it? A. Well, after we engaged Mr. Dieffenbach we asked him.

By the Court:

Q. Before you engaged Mr. Dieffenbach did you go to any lawyer? A. No; no lawyer at all.

By Mr. Jones:

30 Q. As a matter of fact, didn't you bring this action at the request of the fire company or some members of the fire company? A. No; I don't think we did. I thought it was our own idea.

By the Court:

Q. Your own trouble? A. Yes.

By Mr. Jones:

40 Q. And didn't some of the fire company come

Lydia A. Blaisdell, cross.

to see you? A. I never seen any member of the fire company or had anything to do with them.

10 Q. Don't you know, as a matter of fact, whether this action was not brought by your husband and you as a result of a conversation with members of the fire company? A. (No answer.)

By the Court:

Q. The question is practically this: Did you bring this suit of your own volition, voluntarily, or because some members of the fire company asked you to bring it? A. No member of the fire company asked us to bring it that I know of.

Cross examination by Mr. Herrmann:

20 Q. Just look around the room and tell me how many members of the fire company are here. A. I don't know.

Q. But you were asked with respect to—

The Court: I will take her testimony to mean what it purports to mean. I am going to limit this cross examination of Mrs. Blaisdell. She has been put through a very long cross examination on matters that should have been asked her husband.

30 Mr. Herrmann: I would like to ask one more question.

The Court: All right.

Q. Did I understand you to say that the members of the fire department did not request you, or that the members of the fire department did not request your husband to bring this action? A. I don't know that they did.

40 *By the Court:*

Q. Did they request you? A. No.

Dora B. Van Brunt, direct.

By Mr. Dieffenbach:

Q. If you had any difficulty about signing that deed, why did you sign? A. Well, just because Mr. Derees said it was not ours. He said: "It is not yours. It does not belong to you anyway and it will not make any difference whether you sign it or not. If you don't sign it or take the \$200 I will go to Freehold and get it signed there and pay the money there."

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DORA B. VAN BRUNT, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Dieffenbach:

Q. You are a daughter of the lady who has just testified? A. I am.

20

Q. Where do you reside? A. I reside in my mother's home in Long Branch. I have lived with her always except a few years I lived across the driveway in the little house which belonged to my father, but for the last twenty or twenty-one years I have lived with my mother.

Q. I thought you lived in Chicago? A. No. I have a married daughter that lives in Chicago and I have been out to visit her.

30

Q. Do you remember April 13, 1926, when Derees called at your home? A. I do remember very plainly.

Q. Just state what took place. A. I saw Mr. Derees stopping and calling to my father from his car in the street, and I wondered who it was.

The Court: Strike out: "I wondered who it was."

By the Court:

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Q. Tell us what you saw? A. I saw him coming

Dora B. Van Brunt, direct.

in with my father in the house. He took him into the office. My mother was downstairs in the kitchen at the time.

Q. Were you there in the office with Derees? A. Not just then.

10 Q. Did you go there? A. I saw him go there and I asked—

Q. Did you go there? A. I went with my mother when she went in.

Q. You were all in the office. What happened? A. He wished my mother to sign this paper. She did not want to do it. She told him that he thought, "If I had a piece of property, it belonged to me." She knew the taxes had not been paid, but Mr. Derees talked, and my father talked, and said the taxes had not been paid, and he convinced them both at the last that the property did not belong to them. He said it had been sold twice for taxes, and that all he received from it was \$10, and it was nothing to him. I told him that there was a fire enginer house on the property. He says: "I know nothing about that. I have not seen the property. It is nothing to me." And then he said he was clearing this property, he just wanted to clear this title.

30 Q. For whom did he say he wanted to clear the title? A. For a corporation or company or whatever it was—I did not pay—I don't know—he didn't mention any name. He said he had a lot of papers, a pile of them. In fact he opened up his pocket and he did have quite a pile. He said that was all deeds. He went all around the county he said doing that for corporations. That was his business. If they didn't take the money from him, it would go to Freehold, to someone over there, I think he said the sheriff, as I remember it, but it

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Dora B. Van Brunt, cross.

was immaterial to him, that he was giving us the preference and he thought \$200 they could have; the property wasn't theirs; they had no further right in it.

Q. Did your mother say that she wanted time? A. Yes; she asked him for time. 10

Q. What did Mr. Derees say to that? A. He could not let her have any time.

Q. Is that what he said? A. That is what he said. He said it had to be decided then.

Q. That very night? A. Yes; at that time.

Q. Did he say anything if it would not be decided, what would happen? A. That they would get nothing; that the property did not belong to them anyway; if they didn't take the money, then it would go to Freehold. 20

Cross examination by Mr. Herrmann:

Q. He explained what his business was, didn't he? A. Well, yes, clearing up titles of property, as I understood.

Q. Did you urge your mother or father not to sign? A. I did at first, before I took my mother in.

Q. You warned her not to sign? A. Yes, but my father thought that he should sign.

Q. And didn't he say that if the deed was not signed then, that he would not return to have it signed; isn't that what he said? A. Yes. 30

Q. And that he would then take the matter up with Freehold, isn't that what he said? A. Yes.

Q. You are not certain that he said he would pay the money to the sheriff? A. He said he would pay it to someone in Freehold.

Q. And that they would get the money instead of your parents? A. Yes. 40

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Phylis Feustermacher, direct.

PHYLIS FEUSTERMACHER, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

10 Q. You are a daughter of the last witness? A. I am.

Q. And granddaughter of the complainants in this case? A. Yes.

Q. Where do you live? A. I live now at 2335 Allen Street, Allentown, Pennsylvania. At the time of this trouble I was living with my mother and grandmother in Long Branch.

20 Q. On the day in question, April 13, 1926, were you present at this transaction that has been testified to? A. I was not in the room with Mr. Derees. I was in the room next to the room and I could hear everything that was said.

Q. Did you make a point to hear what was said? A. Yes, I did, because from the beginning when my grandfather came in—

The Court: Strike out the because.

30 Q. What did you hear that was said at that time? A. I heard Mr. Derees tell my grandfather and grandmother that they did not own that property any more; that he was clearing titles for property, that that was his business; that he was offering them \$200 for their signatures to help clear that title and that it did not belong to them any more and that if they did not do it, he could get it cleared in Freehold by paying some money there to the sheriff, but he thought he would give them the first preference as he thought they ought to have something out of it.

40 Q. Did you hear any conversation in which

Phylis Feustermacher, cross.

your grandmother did not want to sign the deed?

A. Yes; when my grandfather came into the kitchen, I was in there with my grandmother ironing and my grandmother said: "No," she did not want to sign it. She made a big fuss about it. She did not want to sign it. She thought there was something wrong, and he said he had talked to the man, and this man, Mr. Derees, convinced him that he did not own it any more, that it had been sold twice for taxes.

10 Q. That they had no interest in the property whatever?

Mr. Herrmann: I object.

The Court: Objection sustained.

20 Q. What else did he say regarding the property, the ownership of it? A. Mr. Derees told him it had been sold twice for taxes, that he did not own it any more and that he had no further interest in it.

Cross examination by Mr. Herrmann:

30 Q. Was anything said about paying up back taxes? A. Yes; he said that is the reason he did not own it because he had not paid the taxes; it had been sold for taxes.

Q. See if I can straighten you out. First you were suspicious that something was wrong? A. I was.

Q. So that you listened attentively to everything that was said? A. Yes.

Q. And did not Mr. Derees say: "Now, there are back taxes on this property and it has been sold for taxes twice"? A. Yes.

40 Q. "And you will have to pay up these back taxes"? A. No; he did not say they would have to pay any taxes. He said it wasn't theirs.

Phylis Feustermacher, redirect.

Q. If they wanted it they would have to pay up the back taxes? A. No; he didn't say that.

10 Q. What did you mean before when you said that he said something about back taxes? A. I don't understand. He said it was not theirs because they had not paid the back taxes. He said that is the reason they didn't own it any more; it had been sold twice, so they had no further ownership in it.

Q. Were you with your grandmother before she went in the room? A. I was in there working with my grandmother.

Q. Did you at that time know what Mr. Derees was doing there? A. When my grandfather came into the kitchen.

20 Q. What did you say to your grandmother? A. I said: "I don't think I would sign." My grandfather looked at me. I thought I didn't have a right to say anything.

Q. How old are you? A. I am thirty-one.

By Mr. Dieffenbach:

Q. Did you know the fire house was on the property? A. I knew the fire house was on there.

30 Q. It was so stated at that time, was it? A. I believe my mother told Mr. Derees that there was a fire house on the property.

By Mr. Jones:

Q. You knew the fire house was there, too, didn't you? A. Yes, sir; I did.

Q. It has been up there quite a while? A. Yes.

40 Q. Does your husband live down there? A. No; my husband is a road contractor and he has never lived in Long Branch, except he comes home at week-ends. He is moving around a great deal.

Grover Cleveland Hankin, direct.

GROVER CLEVELAND HANKIN, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

Q. What is your business? A. Garage. 10

Q. Where? A. Asbury Park, New Jersey.

Q. Do you know the defendant, Henry Derees? A. Yes.

Q. How long have you known him? A. Since about last February.

Q. Did you have any conversation with him regarding these lots in question? A. I did; yes, sir.

Q. When? A. About April 22, 1926.

20 Q. What was the conversation you had with him? A. Why, Mr. Derees came in and said that he owned the lot that our fire house was on, and after it went along from day to day he said that if he decided to stay there we were perfectly welcome to stay there and nothing would be done about it and we need not worry, that everything would be all right. So that went along some time until one morning he came in and said that there had been—something about the fire commission being antagonistic to him—and the result was that he would put us all out in the street. My reply to that was that it was public property and I did not see how it could be done. He says, "Well, I have put mayors out on the street and I have put public officers out on the street and I can put fire companies out on the street." 30

Q. Was the matter of the value of the property discussed between you at all? A. No.

40 Q. What other conversation did you have regarding the property with him? A. Well, I spoke about condemning the property, and then he said

Grover Cleveland Hankin, cross.

that in order to condemn the property we would have to get the value of the property adjoining.

Q. Did he offer to sell you the property? A. No; he said he had no proposition to offer us. He put the proposition up to us.

10 Q. When you say "us," whom do you mean? A. The Board of Fire Commissioners.

Q. Is that the only conversation you ever had with him? A. Well, we talked about it off and on.

Cross examination by Mr. Herrmann:

Q. When was this conversation when he told you that he was going to put you out on the street? A. Why, I think that was about two or three weeks after he first told me he owned the property.

20 Q. The first that you knew he owned the property was April 22? A. About that date. I would not say exactly.

Q. When he told you that, that disturbed you very much? A. Naturally.

Q. You took the matter up with your fellow members? A. At the time that Mr. Derees mentioned the fact to me that he owned the land, he also requested me to take it up with the members and offer a proposition to him.

30 Q. And you did that? A. I talked it over with them. We did not call any special meeting, but I talked it over with them and they seemed to have the view that he ought to give his proposition and not him get a proposition from us. Mr. Derees said he had nothing to offer.

Q. When did the members of the company employ Mr. Dieffenbach?

40 Mr. Dieffenbach: I object to that as calling for a conclusion.

The Court: Objection sustained.

Grover Cleveland Hankin, cross.

Q. Did the members of the fire company employ any lawyer? A. Not to my knowledge; no, sir.

Q. Do you know whether any member of the company is a lawyer? A. I do not; no, sir.

Q. Was there not a subscription of \$200 raised from members of the company? A. No, sir; not to my knowledge. As far as I know there was not.

Q. Did you make any contribution to such a subscription? A. No, sir.

Q. Were you present at any of the town meetings after this? A. Yes.

Q. Were you present when Mr. Dieffenbach appeared there? A. Yes, sir; I was there one night when Mr. Dieffenbach was there.

Q. Did you hear Mr. Dieffenbach say that he represented the fire company? A. No, sir.

Q. What did Mr. Dieffenbach say? A. I think Mr. Dieffenbach made some remark about representing Mr. Blaisdell and that there would be a case later on in reference to some other lots—I am not referring to these lots. At the time the conversation was going on in the township meeting, it was concerning some other lots, and Mr. Dieffenbach stated that he represented Mr. Blaisdell and would be heard again later on on these other lots.

Q. You knew the question was coming up that night before the town meeting, didn't you? A. No; I did not.

Q. Why were you there? A. I was there on the sewer committee hearing in reference to sewers.

Q. Do you know what other members of your fire company were there? A. I think there were three or four there. I didn't look all over the room.

Grover Cleveland Hankin, redirect.

It was quite crowded. It was advertised as a public meeting.

By Mr. Dieffenbach:

10 Q. That meeting that my friend refers to, that I was there, Mr. Derees was there, was he not? A. Yes; Mr. Derees was there.

Q. Did you hear me charge on behalf of Mr. Blaisdell and his wife that Mr. Derees had fraudulently obtained this property from them? A. Yes, sir.

Q. And did he then answer that that property belonged to his wife, Grantina Derees? A. Yes; he said he didn't own the property; that he only represented his wife who owned the property.

20 *By the Court:*

Q. What was the date of that meeting? Can you fix the date of that meeting? A. I cannot.

Q. About when? A. That must have been a month after, at least, after Mr. Derees first told me he owned the property.

30 Q. Sometime toward the end of May? A. Yes; possibly it was about the middle of May. It was a public meeting advertised in the paper, at any rate.

By Mr. Dieffenbach:

Q. Repeat, as near as you can, what I said at that meeting to Mr. Derees?

Mr. Jones: I object to that, because that was after the suit was started.

The Court: Objection overruled.

40 A. Mr. Dieffenbach stated that he would prove in court later on that Mr. Blaisdell had been de-

Grover Cleveland Hankin, cross.

frauded by Mr. Derees out of these two lots which the fire house was now situated on.

Q. What did Mr. Derees answer? A. Mr. Derees said that he did not own the lots, that his wife owned the lots and that he only represented her.

Cross examination by Mr. Herrmann:

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Q. Was not that meeting in June? A. I would not say now. You see I am not familiar enough what the exact date was, what month it was in, but I presume it was a month or five weeks from the time Mr. Derees first told me he owned the property.

Q. Would you say it was not June 24th? A. No; I would not say one way or the other. Possibly it was June 24th. As I said before, it was an advertised public meeting for all citizens of Wannamassa to be present, a sewer hearing.

20

Q. Are you sure that Mr. Dieffenbach did not say that he had already commenced suit? A. No; he said he would. There was a hearing that evening on the other lots and that brought the question up in regard to these lots.

Q. The hearing was on other lots, not on these lots, and this situation was an incident in that discussion? A. That is just it. It is an incident in the course of the evening.

30

Q. Just an incident, was it? A. That is it.

By Mr. Dieffenbach:

Q. There was something about a Mr. Wochuskowsky? A. Yes.

Q. That was where Wochuskowsky claimed Derees had stolen his lot?

Mr. Herrman: Objected to.

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The Court: Objection sustained.

John Thayer Leavy, direct.

JOHN THAYER LEAVY, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

10 Q. What is your business? A. United States Internal Revenue agent.

Q. Where do you live? A. 1404 Garden Avenue, Wannamassa.

Q. Do you know the defendant, Henry F. Derees? A. Yes, sir.

Q. When did you first meet him? A. At the township meeting hall in Oakhurst, May 22, 1926.

20 Q. What was he doing there then, do you know? A. The matter that made it possible for me to identify the party as being Henry Derees was that he said that he was representing his wife with reference to having some tax matters called up—taxes on various lots.

30 Q. What happened? A. He particularly mentioned the two lots on which the fire house in Wannamassa was located, and I asked permission of the chairman of the committee to have Mr. Derees state if he owned them or whom he represented; and he said that he did not own them, that he represented his wife, Grantina Derees. There was a little bit of heated argument followed, in which the matter of what the fire company or township or association should do by virtue of having occupied his property, as he stated; and being one of the fire commissioners of that particular fire district, I asked him what he considered was a compensation. He said: "Well, I should receive at least ten per cent. on a valuation of \$6,000, which I consider the value of the lots." Our conversation at that point practically ended, as far as that particular thing was concerned.

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John Thayer Leavy, direct.

Q. Did that include the value of the fire house as well?

Mr. Herrmann: I object.

By the Court:

10 Q. Did he state what that value included? A. Yes; based on the valuation of the land.

Q. The land only? A. Yes, sir.

By Mr. Dieffenbach:

Q. How much is your fire house worth? A. The fire house actually cost us to erect, \$520.

Q. That was cost price, was it? A. Yes.

20 Q. Do you know whether it was the cost price or not? A. It was less than cost, less than fair market at that time.

Q. Do you know whether Derees was then trying to redeem these lots?

Mr. Herrmann: I object.

The Court: It would depend on what Derees said.

30 Q. What did Derees say, if anything, in the meeting, about redeeming these lots? A. He made the statement that his purpose in being there was to redeem these lots and others, on the basis of the unpaid taxes, which were taken over by the township.

Q. Do you know the amount at that time? A. Yes, sir.

Q. Was he given the amount? A. Yes, sir.

Q. Did he tell you what the amount was? A. I don't believe he mentioned it.

Q. What was the amount? A. \$1,026 or \$1,029.

40 Q. The total amount of taxes and assessments and everything? A. Yes, sir; approximately. I

John Thayer Leavy, cross.

would have to check my recollection on that, seeing a search was made by the township.

Q. Do you know whether a tax search was made for this property? A. I do.

Q. Who made it? A. Mr. John R. Long.

10 Q. Is he in court? A. He is.

Cross examination by Mr. Herrmann:

Q. What position do you occupy with the fire department? A. I am just an active member.

Q. Did you ever attend any of the conferences Mr. Derees had with the fire officers of the fire company about remaining on the lots? A. There was no such conference.

20 Q. That is, no such conference that you attended? A. I repeat there was no such conference of the officers of the fire commission, for the simple reason, as secretary of the Board of Fire Commissioners, it would have been my duty to have called that conference.

Q. You are secretary? A. I was at that time.

Q. Did you hear Mr. Hankin's testimony? A. I did.

30 Q. Did you hear his testimony with respect to the proposal of the fire department to Mr. Derees? A. I did.

Q. Was that made by official authority or was it voluntary? A. Voluntary I should say.

Q. Did the members ever discuss what they would be willing to pay Mr. Derees for the privilege of continuing to occupy the lots? A. Before I answer that question, may I ask you to qualify "the members"? Do you mean the members of the fire commission or the members of the fire company?

40 Q. Either of them. A. The matter is entirely in the hands of our fire commission, the house being

John Thayer Leavy, cross.

our property, as representatives of that fire district, and we have had no conference officially with Mr. Derees.

Q. Unofficially has there been any conference? A. Yes, sir.

10 Q. And there has been some hard feelings growing out of these unofficial conferences, has there not? A. I do not believe there has. I think Mr. Derees and I personally were a little hasty in our remarks to one another at this meeting I refer to.

Q. What were those remarks? A. Well, that I did not believe that he had the power to remove us, for instance.

Q. Did Mr. Derees say he did have that power? A. He did.

20 Q. When was that, do you remember? A. The night of May 20th.

30 Q. What else happened? A. The following day I called Mr. Derees on the 'phone where he was residing and asked him if we could not just forget our little hastiness the night before and get down to some basis on which we could come to an agreeable settlement, and Mr. Derees stated to me then, that that was all right. He said, "I know how it is. The fire department need not worry about that place at all," practically repeating to me over the telephone the same conversation that he had with Mr. Hankin, unofficially, of course.

Q. When you speak of a settlement, a settlement of what do you mean? A. A basis on which we could procure the title to the property by purchase.

40 Q. Did you want to buy the title of the property from Mr. Derees and his wife? A. From his wife, knowing that she was the record holder of the title.

John Thayer Leavy, cross.

Q. And those negotiations continued to the point where you were told you could not buy the property from Mrs. Derees? A. No, sir; the negotiations were never brought to any point of settlement.

10 Q. How far had they progressed before this suit was brought? A. They did not get to any point because I told Mr. Derees that we thought it was customary for a seller to make his price and the buyer to decide whether it was such he could take, and he has never come to that price; nor would he accept any figure from us until such time as the township committee would wipe out back taxes not only on these lots, but he frankly gave me to understand he was using that as a method to have taxes relieved on other properties in which he was interested.

20 Q. He was driving a hard bargain? A. He certainly was.

Q. And you did not like that? A. I could not do anything to like it or dislike it. I had no authority to act.

Q. You acted very hasty about it? A. No.

30 Q. You called him up the next day and asked him to forget your hastiness? A. No, sir; I did not. It was after that, that we had all these other negotiations. There wasn't any hard feelings to speak of.

Q. How long did these negotiations continue? A. Well, I suppose three or four—

Q. Until what date would you say they continued? A. Well, I could not say.

40 Q. Was it until about June 29th? A. It might be so—approximately—I don't know. No, I do not believe it had, because at that time there were a number of meetings being called at township headquarters in regard to the sewer, while Mr.

John Thayer Leavy, cross.

Derees and I had discussed this matter between ourselves, and there might have been three or four occasions that I telephoned to him, within two or three weeks.

Q. You say a search was made. For whom was the search made for, Mr. Long? A. The copy which I saw at the township committee and on their file, appears to have been made at the request of Mr. Derees. 10

Q. Was any search made for the fire company? A. No, sir.

Q. Did the fire company's lawyer make any search at all? A. We had no lawyer.

Q. What was this subscription of \$200 taken up for? A. There was no such subscription.

Q. Was there not a subscription supposed to be taken up to employ counsel? A. No, sir. 20

Q. You are sure of that? A. Absolutely, and I can qualify—

By the Court:

Q. "Absolutely" is as strong as you can make it. A. All right.

Cross examination by Mr. Jones:

Q. What were you about to say just then? A. You heard the Chancellor decide. 30

The Court: He has answered the question. "Absolutely" is a sufficient answer to the question.

By Mr. Herrmann:

Q. What does the fire company ordinarily do when it requires the services of a lawyer?

Mr. Dieffenbach: I object to that. 40

The Court: Objection sustained.

Francis D. Wyckoff, direct.

FRANCIS D. WYCKOFF, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

10 Q. What is your business? A. Cement contracting.

Q. How long have you been in business for yourself? A. I have been in business in Jersey for the past three years.

Q. For yourself? A. For myself.

Q. Were you present at the two meetings of the township committee— A. I was present at a meeting of June 10th and of June 17th.

Q. 1926? A. 1926.

20 Q. At both of these meetings was the defendant Henry F. Derees present? A. Mr. Derees was present at both meetings.

30 Q. Do you remember what conversation was had at that time, or what I told Mr. Derees at that first meeting of June 10th? A. On June 10th, as I recollect, you were sitting there in the meeting room, while Mr. Derees was talking to the committee in regard to titles of twenty specified lots. As I remember you asked the committee if there were two lots there in question that belonged to Blaisdell, and I believe they said there was. Now, I do not just recall whether that was the first meeting night or the second meeting night. However you stated that you were going to take action for the Blaisdells of Long Branch, the previous owners of these lots, and that they refrain from dismissing any taxes or making any further transactions in regard to these lots; that you were absolutely not interested in any other lots.

40 Q. Anything else? Do you remember what I said concerning the transaction of the deed? A.

Francis D. Wyckoff, direct.

On the last night, which would be the 17th, you got up to speak, and Mr. Derees, like he had done with Wobolowsky, started to interrupt you. You ordered him to sit down and he sat down. You said that you would like to tell the committee what you had to state. You then proceeded to tell the committee that Mr. Derees had obtained the two lots in question that belonged to the fire house, the so-called fire house lots, as you described them, that he had obtained these lots in a manner which did not seem to be straightforward; that you were contemplating action; that you had sent notices to Trenton, New Jersey, and that you would also file necessary papers in Freehold to ward off any further deals on these lots, and you were giving them notice so that they likewise were requested to hold off any further negotiations on these two lots; and with that, I believe, you concluded your say, and that is all there was to it.

Q. Do you remember at that time that he withdrew his application to redeem the lots?

Mr. Herrmann: I object to that as leading.

The Court: Objection overruled.

A. Yes. He made a statement that the fire house had been included in his list by mistake, and that they had been withdrawn from the request, and that is all there was to it.

Q. Was that the same night, do you remember, that a deed was tendered Mr. Derees to sign back these lots?

Mr. Herrmann: I object.

The Court: Objection sustained.

Q. What else, do you remember, happened that

Francis D. Wyckoff, direct.

10 night? A. I remember that in your conversation to the committee and also to Mr. Derees jointly, that you had a sum of money in your hand which you—I do not know just what your legal point was—legal tender, something of that kind, to the amount \$200, which you said he had made a present of to the Blaisdells, which you would return. I do not know as I can tell that, just in your words, just in the words that you used, but that was part of the conversation, that you would return the \$200 that they had made a present of to the Blaisdells; and he refused to accept it, and you said: “That is what I want to know,” which I believe were your last words.

20 Q. Did I have any paper in my hand? A. You did.

Q. Did I say what that paper was?

Mr. Jones: I object. Mrs. Derees was not there.

The Court: Objection overruled.

A. You had papers there which you said were—I don’t know what you said they were, but they were papers that you were to file to follow up his refusal to accept your proposition, to accept \$200.

30 *By the Court:*

Q. Did Mr. Dieffenbach say what he wanted for the \$200? A. Yes; he wanted it re-deeded to the Blaisdells and he would return the \$200 which he had given Blaisdell.

Cross examination by Mr. Jones:

40 Q. He said he wanted a “free” deed, did he? You used that word, didn’t you? A. No; re-deed.

Francis D. Wyckoff, cross.

Cross examination by Mr. Herrmann:

Q. How many other people were at these meetings of June 10 and June 17? A. There would be no way to answer that question in regard to a count, because people were going in and coming out, interested people in the neighborhood, and none of us were paying attention to the people; we were paying attention to what was being said in regard to the matters under discussion. 10

Q. What office do you hold in the fire company?

A. I hold no office in the world, not in the world.

Q. How long have you been a member of the fire company? A. About three months, I should judge.

Q. How many other people spoke, besides Mr. Dieffenbach, that night, on this subject? A. On this subject there was a party by the name of Wochuskowsky with whom there seemed to be some mixup on some land. 20

Q. Not on these lots? A. On some lots. He claimed—

Q. Is that on these lots or other lots?

Mr. Dieffenbach: I think he should be allowed to answer the question.

The Court: The question was: “Who else spoke?” He was not asked to tell what was said. 30

By the Court:

Q. Who else spoke? A. Numerous other people.

Q. About this property? A. About this property, there wasn’t any other people spoke about that property, as Mr. Derees had made the statement that he was withdrawing that from the list of twenty. So it stopped there. 40

Francis D. Wyckoff, cross.

By Mr. Herrmann:

10 Q. How do you account for your ability to remember everything that Mr. Dieffenbach said there that night? A. I account for it because I am interested in anything I do. If I had not been interested, I would not have been at the meeting.

Q. You say you do not remember whether he said: "I have started suit," or whether he said his papers would be sent to Trenton? A. I don't know that he said: "I have started suit," or "I have started negotiations," or some other words. I cannot state any particular words.

Q. Did he say he had sent papers to Trenton? A. I believe that was the expression, that he had sent papers to Trenton.

20 Q. And you said that he also said something about something at Freehold? A. No; he had some papers there and he notified the committee that he was taking necessary action at Trenton, at Freehold, and was also notifying them of his actions so that they would make no further procedure or anything pertaining to these two lots.

30 Q. Were any other members of your company present at that meeting? A. Why, certainly, there were a number of members present at the meeting.

Q. Had you ever met Mr. Dieffenbach before June 10th? A. Mr. Dieffenbach I have met before June 10th. I gave him an estimate on some work about six months before June 10th. That is the first time I saw him.

Q. Where was the building that you saw him about? A. Mr. Dieffenbach's home happens to be in Wanamassa, his summer home.

40 Q. Most of the members of the fire department there know him? A. No, sir; I doubt it. There

Francis D. Wyckoff, redirect.

are very few. As I say, the only way I knew him is the fact that I called on him and gave him a figure on some cement work.

Q. Did you ever discuss with him the rights of the fire company in this building on this land? A. I discussed things about the fire house with, I guess, everybody in Wanamassa. 10

Q. Did you ever discuss it with Mr. Dieffenbach? A. Yes.

By Mr. Dieffenbach:

Q. I want to ask you another question: Do you know anything about Derees' attempt to redeem these lots? A. These lots were included in a list of twenty lots, as I remember it—nineteen or twenty lots scattered throughout Wanamassa, and they finally, after he eliminated these two lots, I believe, agreed to take \$100 apiece, leaving these in abeyance until the case was settled. 20

Q. Was he to pay about \$100 for each lot for redemption? A. I believe—

Mr. Herrmann: I object.

The Court: Objection sustained.

Q. What was said about paying that in redemption of these lots,—the lots in question? A. To redeem the lots in question, they were stricken out of his list and he was not taking any further action on those lots at present, but he would consider that later. 30

By Mr. Herrmann:

Q. He was there for the purpose of redeeming other property sales? A. Other property.

Q. Mr. Dieffenbach merely asked that no action be taken on these two particular lots? A. That is all. 40

Lester B. McQueen, direct.

LESTER B. McQUEEN, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

Q. Where do you live? A. Red Bank.

10 Q. What position do you hold in Monmouth County? A. Deputy County Clerk, Monmouth County.

Q. Have you with you some papers which you were requested to bring here? A. I have a subpoena, subpoenaing me to bring *lis pendens* filed in our office.

Q. Have you those *lis pendens* with you? A. Yes.

20 Mr. Dieffenbach: I offer in evidence *lis pendens* filed in the Monmouth County Clerk's office, June 18, 1926, at eight o'clock in the morning, recorded in Book 5 of *Lis Pendens*, page 353, in a suit brought by Edward B. Blaisdell and Lydia A. Blaisdell, his wife, against Grantina Derees and "Charles R." Derees, her husband, said "Charles" being fictitious.

30 Mr. Jones: I object to that unless it is shown that suit was started and subpoena issued and served.

The Court: Objection overruled.
(Marked Exhibit C-2.)

Q. Was any other *lis pendens* filed? Did you bring any others with you? A. Yes.

40 Mr. Dieffenbach: I offer in evidence *lis pendens* filed in the same action June 22, at eight o'clock in the morning.

John R. Long, direct.

Q. Any others? A. I did not look for any others, just what the subpoena called for.

Mr. Dieffenbach: I offer this *lis pendens* in evidence.

Mr. Jones: Same objection.

The Court: Objection overruled.

(Marked Exhibit C-3.)

Mr. Dieffenbach: There was a third *lis pendens* filed.

No Cross Examination.

JOHN R. LONG, sworn as a witness, on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

20 Q. Where do you live? A. Lake Revere.

Q. Are you an official examiner for unpaid municipal liens for the township of Ocean, in the County of Monmouth? A. At present I am.

Q. And you were in the month of May, 1926? A. I was.

Q. Did you make a search for unpaid liens and taxes against this property? A. I did; No. 228 and 227, Wanamassa.

30 Q. What did you find? A. You mean the total?

Q. Yes. A. Approximately about \$1,020 and some odd cents.

Q. That would be the amount that would clean up everything? A. That would clean up everything due the township.

By the Court:

40 Q. Including interest? A. Yes, sir; up to that day.

John R. Long, cross.

By Mr. Dieffenbach:

Q. You made a tax search for Mr. Derees? A. I made it for Mr. Derees.

10 Q. On May 3rd? A. About May 3rd, according to date.

Q. You furnished that to him? A. I furnished it to him and through courtesy and kindness to the fire department. I also furnished copies so that they could act on the square.

Q. Do you know anything about Mr. Derees wishing to redeem these lots? A. No, sir; I know nothing about that fact, but I searched about a year ago for searches on other property which he was willing to pay the price for.

20 *Cross examination by Mr. Herrmann:*

Q. Is this a copy of the search that you furnished to Mr. Derees? A. That is a copy.

Mr. Herrmann: I ask to have it marked for identification.

(Marked D-1 for Identification.)

30 Q. Was that copy requested by the fire department? A. It was not, but through courtesy to the fire department, being acquainted with them, being in the township, I favored them by giving them a copy of it so that they could act on the square. I try to do everything I can so that everybody we do business with can get justice. I furnished the fire department with a copy because I knew the firemen in our township. Out of courtesy I sent a copy of it to Mr. Grover Hankins. I did that at the request of one of our committee. I also furnished Mr. John T. Leavy and I furnished Mr. Rosenstein, which I kindly requested them to return.
40 Those two were returned.

Clara Wyckoff, direct.

Q. This paper contains all of the records of your office with regard to the tax sales, the amount of the encumbrances, the amount of taxes and assessments unpaid? A. It does.

Q. Does it indicate the taxes for which the property was sold? A. It does—sold to the township. I know nothing outside of the township. 10

By the Court:

Q. If it had been sold to anybody else than the township, your search would show that too, would it not? A. Yes.

CLARA WYCKOFF, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach: 20

Q. Are you related to the other witness Wyckoff? A. No, sir.

Q. What is your business? A. Real estate.

Q. In what place? A. Wanamassa.

Q. How long have you resided in Wanamassa? A. Since 1914.

Q. Have you from 1912 down to the present time bought and sold property? A. I have.

Q. For yourself and others? A. Yes. 30

Q. Are you well acquainted with real estate values in that neighborhood? A. Yes.

Q. Do you know this property? A. Yes.

Q. Have you bought and sold any property in that neighborhood from 1914 down to the present time? A. I would like to know—I really could not tell you—

Q. Very many? A. Yes.

Q. About how many would you say? A. About 150 or 200. 40

Clara Wyckoff, direct.

Q. Are you acquainted with this property in question? A. I am.

Q. What does it consist of? A. Two vacant lots and a fire house on one.

10 Q. Do you know the value of that property as of April 13, 1926? A. Yes.

Q. What was the value as of April 13, 1926, of the lots and of the house?

Mr. Herrmann: I object as to the house. It is not shown that the house is on any part of this land.

The Court: Assuming that it is not.

A. The land, the lots in particular, conservatively speaking, are worth \$2,200 each.

20 Q. When you say "a lot" what is the dimension of the lot? A. This particular lot is 50 by 100 feet.

Q. Each is 50 by 100? A. Yes.

Q. Each lot is worth \$2,200? A. Yes.

Q. What do you consider the building worth on that lot?

Mr. Herrmann: I object. She has not shown any qualification to appraise the building.

30 The Court: Objection sustained.

Q. How many buildings have you sold in Wanamassa during the period since 1914? A. Well, I could almost say every other one.

Q. Could you say 150? A. More than that.

Q. Do you know the value of buildings? A. Well, I am not as conversant with that as I would be with the land.

40 Q. Will you say ordinarily what would be the value of the house located on these lots? A. Yes, judging from other values in the neighborhood.

Clara Wyckoff, cross.

Q. What would you say was the value of that house?

Mr. Herrmann: I object.

The Court: Objection overruled.

A. \$1,000.

10

Cross examination by Mr. Herrmann:

Q. Give me the sales upon which you derive the value of \$2,200? A. Well, I sold a lot on the same avenue for \$2,300.

By the Court:

Q. How far from these lots? A. Two blocks. I have others for sale. Would that answer your question?

20

By Mr. Herrmann:

Q. Give me the sales upon which you have based your appraisal of \$2,200 for these lots? A. Well, within what length of time?

Q. We want to fix it as of this time. A. Well, sales—

By the Court:

Q. He is not confining you to any sales as of this time, but any sales you have made or know of in which you were concerned. A. Central Avenue.

30

Q. It would be anywhere in the neighborhood. A. I told you I sold this one for \$2,300.

By Mr. Herrmann:

Q. Is that all? A. Just one minute. I am trying to answer you honestly. I have not sold so many lots lately. It has been mostly houses.

40

Clara Wyckoff, cross.

By the Court:

Q. Houses and lots together? A. I understood you to mean unimproved property.

10 Q. Yes; sales in the neighborhood on which you base your value of \$2,200 each for these lots? A. This, of course, is an improved highway. That is what I base the value on.

Q. You can use any sales you please for your valuation, but Mr. Herrmann wants to know what they are? A. I sold one property for \$14,000; the lot next to it for \$3,700; but I do not class that as in this same—

20 Q. You must have some basis for placing this value of \$2,200 on each of these lots? A. I have not sold a lot in that locality within the last six months.

Q. Upon what do you base your estimate of \$2,200 a lot for these lots? A. Why, just what people are asking for them—what they are asking.

Q. What sales? A. I have not made any actually, except that one for \$2,300.

Q. Do you know of any sales? A. I had an offer of \$2,300 for a lot, but they could not sell. It is very near there.

30 *By Mr. Herrmann:*

Q. Where? A. Within a block and a half.

Q. Same avenue? A. Yes. I have some sales in other sections of the place.

40 Q. Did any of them bring as high as \$2,200 a lot? A. More than that. I have one for \$2,500. It is on a wide street. This is on the highway. This is a concrete highway. It cost \$66,000 to concrete. It is about seven or eight blocks off Sunset Avenue, with all improvements.

Q. That is all you can give us with respect to

Clara Wyckoff, cross.

deriving a value of \$2,200 for each of these lots? A. I can tell you what they are asking for property in the neighborhood, if you want to know. I should like to do that.

10 Q. They might be asking \$10,000? A. In what other way can you tell?

Q. I am trying to get your basis for your estimate of \$2,200 on these lots? A. The party that I sold mine to for \$2,300 is asking \$3,500.

Q. That does not establish value. A. Well, I told you—

By the Court:

20 Q. You can use your own sales of property made through you in that neighborhood, and you may use your knowledge of prices that lots have sold for through other agents in that same neighborhood? A. There is another agent here who has sold lots there.

Q. That other agent is not testifying now. You are testifying now as to any basis that you have used for fixing this value of \$2,200 a lot? A. You cannot get a lot less than \$2,000 on that avenue.

By Mr. Herrmann:

30 Q. When? A. Now.

Q. Less? A. You cannot get it for less.

Q. They are asking that for it? A. You cannot get it for less. I know that. You can go there with the money in your hand and you cannot get it.

Q. I know that I cannot get it, but how about— A. (Interrupting.) If I can get it, you can. You cannot. That I know.

By Mr. Dieffenbach:

40 Q. From your general knowledge of real estate

Mina Wolfe, direct.

in that neighborhood—you have lived there since 1914 to the present time and have had about 150 sales of lots and houses—is a fair valuation of these lots \$2,200? A. Yes. That is conservative.

10 Q. Based on sales of other lots? A. Yes. My statement will bear investigation.

Q. How far is that from Deal Lake? A. It is a block one way and a little further the other way. All connections, gas, sewers, electricity, water. It is one of the most valuable locations there is.

MINA WOLFE, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Dieffenbach:

20 Q. Where do you live? A. 1712 Sixth Avenue, Wannamassa.

Q. What is your business? A. Real estate broker.

Q. How long have you been in that business? A. Eighteen months. I have had a license eighteen months.

30 Q. Have you had any experience in buying and selling lots there since the last eighteen months? A. Well, I have sold two lots opposite the fire house; I sold them for a party out of town, who was inexperienced and sold them very cheap. They were sold for \$3,800, all cash. There are two offers besides that on these lots at a higher price.

Q. What do you consider the value of these lots?

Mr. Herrmann: Objected to.

The Court: Objection sustained.

40 Q. Do you know the fire house lots in question? A. I have known them very well.

Mina Wolfe, cross.

Q. What, in your opinion, are they worth? A. They are easily worth \$2,200 each. The one on the other side of me, there is an offer of \$2,000 on it for four or five weeks, and the man won't accept it. If I had \$1,600 or \$1,800 offered to me, I could not get a lot 50 by 100 in Wannamassa. I have demands for them. 10

By the Court:

Q. That is now? A. That is now. I could not when I started business.

By Mr. Dieffenbach:

Q. What was it in April, 1926? A. Just the same. I have them on my list wanting lots at that price and I have not got them. I offered \$3,000 to the owner of a corner lot one block distant, and he would not take it within the last three months. 20

Cross examination by Mr. Herrmann:

Q. What about these other lots that you have had for sale for Mr. Derees? A. I have never done business with Mr. Derees.

Q. Have you not some of his property listed with you? A. He listed some with me indefinitely, without any prices put upon them, and I found that it seemed as though what he wanted, was an appraisal, and when I sent checks to Mr. Derees they were kept for a time and returned. 30

Q. What was the check for? A. Property on the same side of Third Avenue. I have never done business with Mr. Derees.

Q. What was the check for? A. Mr. Derees offered me a lot at \$1,000, and I sent a check for it, a deposit on it, and after a time he returned it. 40

Mina Wolfe, cross.

Q. What did he want for it? A. He never gave me a price.

Q. But you offered \$1,000? A. He gave me a price of \$1,000 for it, and then I got the deposit on it and sent it to him, and after a time the deposit was returned to me, and another agent went down to my customer, who is in this room now, and offered that same property belonging to Mr. Derees. I have never done business with him since.

Q. This property was in the block opposite the fire house, was it not? A. No; it was not. It was off on a side street.

Q. You would have been willing to purchase that lot for \$1,000? A. Mr. Derees wanted to sell it at a thousand dollars.

By the Court:

Q. What Mr. Herrmann wants to know is whether you would have been willing to purchase it? A. Yes; indeed I would.

By Mr. Herrmann:

Q. You sent a check? A. This was for a friend and I sent a check and it was returned.

Q. How much was it actually sold for, do you know? A. I don't know anything about it. I didn't sell it. I don't know.

Q. Didn't you say it was sold to your clients through another agent? A. No; I did not.

Q. In order to form your opinion of the value of property, you usually keep track of what other agents sell, and the prices they get for what they sell? A. No.

Q. You do not? A. No. Agents vary.

Q. Now then, the nearest I find that you have

Mina Wolfe, redirect.

come to give us any facts upon which you can form a basis for value are two lots across the way that you sold for \$3,800? A. Yes.

Q. That is the highest sale you know of that has been made there? A. No.

Q. Tell me any other sale of vacant lots that have been made at that price? A. One block on the other side below it, went for \$2,100 or \$2,200, and all taxes, but that is now held at \$3,000, net.

Q. What was paid for it? A. With taxes it was about \$2,400.

Q. That was a block nearer the lake? A. No; not nearer, one distant from the lake.

Q. How recently was that? A. Within the last four or five months.

Q. Any others? A. Well, on a cross street, on Edgewood Avenue, without a sidewalk, a man paid \$1800 for a lot to build on. I didn't sell it to him.

Q. Any others? A. Not of vacant property.

By Mr. Dieffenbach:

Q. You say that one \$1800 lot had no sidewalk? A. No sidewalk.

Q. Street fixed? A. Just in spots.

Q. No macadam on the streets? A. No macadam on the streets.

By the Court:

Q. An unimproved street, you mean? A. It has water and gas.

Q. I mean there is no grade to the street? A. No.

Jacob A. King, direct.

JACOB A. KING, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

10 Q. What is your occupation? A. Real estate and insurance.

Q. Where? A. New York and New Jersey.

Q. Where in New Jersey? A. My office is 702 Madison Avenue, Asbury Park.

Q. How long have you been in the real estate business? A. In New Jersey since 1905, in New York since 1898.

Q. Have you, in New Jersey, bought and sold property during that period? A. Not for myself; for clients, yes.

20 Q. Referring particularly to Wannamassa, do you know this property? A. In Wannamassa particularly I have only been instrumental in the sale of a piece I sold my wife, because I had no use—

By the Court:

30 Q. Do I understand you have been interested in the sale of only one piece of property in Wannamassa? A. In a sale, but I have appraised; but I only made the sale of one piece in Wannamassa, but in Asbury Park I have made several.

By Mr. Dieffenbach:

Q. How many properties have you appraised in Wannamassa? A. I have appraised about five, but I have listed over a hundred for rent and sale for different owners.

Q. Do you know these fire house lots? A. Yes.

Q. Have you examined them? A. Yes, sir; that is, I know them.

40 Q. Do you know the value of them?

Jacob A. King, direct.

Mr. Herrmann: I object. This man has not submitted himself as an expert.

The Court: I think you ought to qualify him better than you have.

Q. Mr. King, tell us the facts on which you claim to be able to give us a fair valuation of real property in Wannamassa? A. By having over 200 pieces of property listed with me for sale and knowing the sale prices that some of them have brought within the last ten years. 10

Q. You have paid particular attention to the property that has been bought and sold in Wannamassa and surrounding vicinity? A. Yes, sir.

Mr. Herrmann: Counsel is putting the words in the witness' mouth. 20

The Court: I understand the question to be: "Have you paid particular attention". Do you object?

Mr. Herrmann: I object.

The Court: Objection overruled.

Q. What is your answer? A. Yes, sir.

Q. How long have you done that? A. Since 1905.

Q. Where do you keep that—in your mind? A. I do not. I keep it on records in the office. 30

Q. You mean to say that every sale you make or is made goes down in a book? A. Not in a book. I keep a list furnished by the County Clerk of all transfers in Monmouth County.

Q. Do you go over that list? A. Very often.

By the Court:

Q. Of course, that list does not show what property sells for, does it? A. No. 40

Jacob A. King, direct.

By Mr. Dieffenbach:

10 Q. How do you know as to the values of real estate, especially in Wannamassa? A. By reason of owners of property giving me their property for sale, advising me what they would take, and knowing all of the pieces that are sold adjoining the pieces that I have. A piece of property that was sold directly across the way and two or three other pieces that have been sold within the last three months.

By the Court:

20 Q. Then you do keep track of sales about which you hear, made by others, where you get the sale price? A. Yes, sir.

By Mr. Dieffenbach:

Q. Where is that property that you have just now spoken of? A. The one that I know of, 402 Sunset Avenue, 50 feet by 100 feet. It has a house on it.

By the Court:

30 Q. Where, with reference to this property? A. Within four blocks of it, on Sunset Avenue.

Q. The same street? A. The same street. The fire house is about 1800 block and I think this is 1400 block. It is four or five blocks over on the same street.

Q. The same street improvements as about this property you are talking about? A. Yes, sir.

By Mr. Dieffenbach:

40 Q. Where is the other property you have spoken of? A. The nearest I can refer to is on Sunset Avenue at present.

Jacob A. King, cross.

Q. In your experience in buying and selling real estate in Wannamassa and surroundings, the records you have kept, conversation had with other people owning other lots, sales made by other people, can you state what the value of this fire house lot is? 10

Mr. Herrmann: I desire to cross examine the witness. I submit he is not qualified.

The Court: I will permit you to cross examine him.

By Mr. Herrmann:

Q. How many other sales do you know of that were made approximately near April, 1926? A. On Sunset Avenue, four. 20

Q. How did you learn of them? A. By being informed by the owners that had sold them, by being told by the buyers that had bought them what they paid, and now having one of the pieces for re-sale.

Q. So that your information is based upon what you learned from the buyer and seller? A. That and thirty years' experience in the business.

Q. Your thirty years' experience has been largely outside of Wannamassa? A. Wannamassa and Asbury Park is about from here to the Hudson Tube. Deal Lake divides. The only difference is that Deal Lake is between them. 30

Q. How long have you had these properties at Wannamassa listed with you? A. One, I guess, I have had for about three years, one for two years, between two and three years.

Q. You say you have over 100 properties listed with you? A. I said I had more than 100 properties listed. Yes, I guess I have more than 100 properties listed. 40

Jacob A. King, cross.

Q. Although you have 100 properties listed with you, the only sale that you have made is a sale to your wife? A. I have not tried to sell.

10 Q. How do you know what the demand is? A. Because I have people coming to me for appraisal and opinion.

Q. That means, would you say, that you had turned people away? A. I mean to say I have not referred them to buy in Wannamassa except lots that have had titles passed many years ago, because there has been nothing but controversy the last three or four years about titles.

20 Q. What do you mean by that? A. I mean that somebody would own this property in Wannamassa, and there were people who would give deeds to anybody that would pay money, and they have been trying to get these deeds cleared up for many years.

Mr. Dieffenbach: Let us get down to facts.

Q. Is that your only reason for not having sold any properties listed with you in the last three or four years? A. I would not say it is the only reason.

30 *By the Court:*

Q. Do I understand you to say that as the agent of properties listed with you, located in Wannamassa for sale, you did not try to sell those properties? A. I have been mostly renting houses in Wannamassa.

Q. What about the properties listed with you for sale—have you tried to sell them? A. No, sir.

40 Q. What is the idea? A. Because I have an office in New York and one in Asbury Park, and I

Jacob A. King, redirect.

have not had a call from people who really wanted to buy, and the fact that I did not care to sell a lawsuit, because, take the piece next door to me, it has been in litigation I don't know how long.

10 Q. That has nothing to do with the present value of the land, has it? A. I think it has. If you cannot get a clear title to a piece of property, I think it has an awful lot to do with the value of the property.

Q. I am talking about the intrinsic value of the lot. The question of the title is something else. A. No; it doesn't have anything to do with the intrinsic value of the lot.

By Mr. Dieffenbach:

20 Q. You have lived in Wannamassa for a year? A. A year last December.

Q. How many real estate agents are there in Wannamassa all together? A. At the present time I think everybody or pretty near everybody—seven or eight specifically.

Q. Now, what do you consider the value of this property, this fire house property?

Mr. Herrmann: Objected to.

The Court: Objection overruled.

30 A. Between \$1,900 and \$2,200 or \$2,500.

By the Court:

Q. That is quite a wide range? A. Yes; it is quite a wide margin.

Q. That is the best you can give? A. No; I would not—

40 Q. What are these lots worth in your judgment? A. \$2,500.

Jacob A. King, cross.

By Mr. Dieffenbach:

Q. Have you any idea as to the value of the building? A. A portable building of which I put up several—

10 *By the Court:*

Q. Yes or no. A. Yes.

By Mr. Dieffenbach:

Q. What is the value? A. \$750 to \$1,000.

Cross examination by Mr. Herrmann:

Q. Is this a portable building? A. No.

Q. Did you ever build a building like this? A. Personally, no; I have had several built.

20

Mr. Herrmann: I ask that the figure be stricken out.

The Court: I will let it stand.

Mr. Dieffenbach: I have subpoenaed Mrs. Grantina Derees.

The Court: She is not here.

Mr. Dieffenbach: That is as far as I can go. I want to take her testimony. I wish to offer the deeds in evidence.

30

Mr. Jones: I have not either deed—neither the Howlett deed nor the Derees deed.

Mr. Dieffenbach: I will offer in evidence certified copy of deed from Edward B. Blaisdell and Lydia A. Blaisdell, his wife, to Grantina B. Derees, dated April 13, 1926; consideration \$1 and other valuable consideration; acknowledged April 13, 1926, before H. F. Derees, Notary Public of New Jersey; recorded in the Monmouth

40

Henry S. Derees, direct.

County Clerk's Office April 14, 1926, at 2:30 P. M. in book 1346 of deeds, page 183.

(Marked Exhibit C-4.)

Mr. Dieffenbach: I am going to give notice in court to produce the deeds, in addition to the written notice which I have already given to produce the papers which have been called for.

10

HENRY S. DEREES, one of the defendants, called as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Dieffenbach:

Q. Have you been subpoenaed to bring with you certain deeds, checks, records? A. I think the subpoena called for about everything you can think of.

20

By the Court:

Q. Have you got the subpoena with you? A. I have not.

Q. Where is it?

Mr. Herrmann: I have it.

Q. This (indicating paper produced by Mr. Herrmann) is the subpoena that was served on you? A. Yes.

30

The Court: What do you want him to produce now?

Mr. Dieffenbach: I want the two hundred dollar check now.

Q. Have you the two hundred dollar check that Mr. Dieffenbach calls for? A. I got it out, I know.

Q. When? A. The day of the subpoena.

40

Henry S. Derees, direct.

Q. When was that? A. A week ago I should say maybe.

Q. What did you do with it? A. My impression is that I gave it to the lawyer.

10 Q. What lawyer? A. Mr. Douglas. I am sure I had that check out since the subpoena.

The Court: He says he gave the check to Mr. Douglas.

Mr. Herrmann: We will look for it during luncheon hour.

(At this point recess is taken until two o'clock in the afternoon. After recess witness resumes stand and direct examination continues.)

20 *By Mr. Dieffenbach:*

Q. Did you find that check? A. I have sent for it. It is on the way here.

Q. Where is it? A. It is on the way between Newark and here now. Mr. Douglas has gone for it. I picked up the wrong bundle of papers this morning and left that lying on my desk.

Q. What have you brought in answer to the subpoena? A. I have the bank book and checks.

30 Q. You brought your check book? A. I have no check book. These are the checks and statements only.

Q. How about the stubs? A. I don't use any stubs. I use the checks and the statements.

Q. I don't understand that. All check books have stubs, don't they? A. Yes; but we don't use them. They are a repetition of the check itself.

40 Q. Yes; but they are good evidence to show when payments are made and what they are made for, are they not? A. Not unless they are filled in.

Henry S. Derees, direct.

By the Court:

Q. How do you keep track of the checks you issue? A. The bank statement and the checks themselves, a tabulation of the amounts deposited and checked out, giving me a daily balance—just one sheet. 10

Q. The bank statement doesn't show to whom the check was drawn, does it? A. In conjunction with the check, yes. Here are all the checks—

By Mr. Dieffenbach:

Q. How often do you have you book balanced or get a bank statement? A. First of every month.

Q. How about the checks that you receive as to keeping a memorandum of what they are for? A. They are kept on this same one. 20

Q. On what? A. They are kept on the same one—simply the figures of the deposits.

By the Court:

Q. You are speaking of the bank statement when you say "the same one," are you not? A. Yes; the bank statement shows both sides.

Q. The bank statement shows deposits and withdrawals? A. Yes. 30

Q. And it does not show to whose order any check is drawn? A. No; it does not.

Q. The check itself is the evidence of that? A. That is right.

Q. Until you get a bank statement from the bank at the end of the month, you don't know what your balance is? A. Yes; I know my balance every day.

Q. How do you know? A. Simply a sheet, debit and credit. I use simply a plain ruled sheet. What you deposit you put on one side and what you take out you put on the other. 40

Henry S. Derees, direct.

Q. What do you do with those sheets? A. We keep them to the end of the month and throw them away after that.

Q. Have you got your statement for the month of October, 1926? A. I haven't it here with me.

10 Q. I mean your own record. A. No; we couldn't have October yet.

Q. You couldn't have your own records? A. Yes; our balances, our daily balances.

Q. What is your business? A. Buying and selling tax liens.

Q. Have you any books? A. No books.

By Mr. Dieffenbach:

20 Q. Don't you keep any memorandum of checks you get from people that owe you money? A. I don't have to have a book—

Q. You get money from certain sources, don't you? A. Yes.

Q. Do you put down where that money comes from? A. In the bank book.

Q. You mean it is put down in the bank book where you get these checks from? A. On these.

Q. That does not show it. A. You mean the name of the party?

30 Q. Yes. A. No; I do not.

Q. Nor what the transaction is? A. No.

Q. So you don't know anything about what this transaction is? A. Yes; we have the original papers.

Q. You leave it to your mind? A. We have the original papers.

40 Mr. Dieffenbach: I am going to ask for the production of the so-called check book. He says he does not fill in the stubs. He

Henry S. Derees, direct.

is under subpoena to produce it here and he has not done so.

By the Court:

Q. What do you do with the check books from which you issue your checks? A. As fast as we get through with a 300 page check book we throw them away. There is no memorandum made on the stubs. We don't keep the stubs. 10

Q. You have not any old check book from which checks were issued? A. No; we have not.

By Mr. Dieffenbach:

Q. What did you do with them? A. We throw them away as fast as we get through with them.

Q. So that there is no record of anything that you do; is that right? A. There is nothing recorded. There is nothing written on it. 20

Q. You cannot tell what these different amounts are? A. From memory only.

By the Court:

Q. There is no record anywhere, as far as you know, which is accessible to you, which will show from what source you got the amounts deposited in the bank? A. No; there is not. Memory and the deposit slips. 30

Q. The deposit slips won't show from whom you got the checks? A. No; only where they are grouped together refreshes my memory.

Q. I asked you if the deposit slip will show you where you got your checks from? A. It does not.

Q. The deposit slip is at the bank anyway? A. Yes. 40

Henry S. Derees, direct.

Q. You might have duplicates of some of them?

A. Duplicates when it is necessary.

Q. What determines whether it is necessary?

A. When I asked for them.

10 Mr. Dieffenbach: I am going to ask to have this book marked for identification.

(Marked C-6 for identification.)

Mr. Dieffenbach: Have you any contract in your possession whereby Mr. Derees contracted to convey to Mr. Howlett?

Mr. Jones: No; I have not.

Mr. Dieffenbach: Have you, Mr. Herrmann, representing Mr. Derees?

Mr. Herrmann: I haven't seen any.

20 Mr. Dieffenbach: I think I will have to rest with this for the present, and insist that Mrs. Derees and Mr. Howlett be put on the witness stand.

The Court: We will adjourn the case for long enough time to allow for Mrs. Derees' recovery so that she may come to court to testify. From what Mr. Jones says about Mr. Howlett's condition it may be some time before he will be able to come to court to testify. Have you anything further, Mr. Dieffenbach?

30 Mr. Dieffenbach: Nothing further today.

The Court: Any cross examination of Mr. Derees?

Mr. Herrmann: I think not.

The Court: If you want to cross examine him on anything that has been brought out on direct examination, now is the time.

40 Mr. Herrmann: There is nothing except

Grantina B. Derees, direct.

to ask him with respect to what he was called upon to produce. I should like to have Mr. Dieffenbach enumerate just what papers he desires brought here.

(At this point adjournment is taken to December 21, 1926, at 10 A. M.) 10

(Court met pursuant to adjournment this twenty-first day of December, 1926.)

Appearances as heretofore.

Mr. Dieffenbach: I now ask for the production of the \$200 check that was given for the property. I asked for it at the last hearing and it was not produced. 20

(Check produced.)

Mr. Dieffenbach: I ask to have it marked in evidence.

(Check is marked Exhibit C-1, December 21, 1926.)

GRANTINA B. DEREES, one of the defendants, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Dieffenbach: 30

Q. Where do you live? A. At 329 Park Avenue, Newark.

Q. Are you the wife of the defendant, Henry S. Derees? A. Yes.

Q. How long have you known Mr. Derees? A. Well, we have been married for twenty-five years and I knew him several years before then.

Q. During that period of time he has been engaged in many enterprises, has he not? A. Several. 40

Grantina B. Derees, direct.

Q. Very many? A. No.

Q. One of the enterprises was the Creposilk Hosiery Company, of which he was president?

Mr. Herrmann: I object to that.

The Court: How is it material?

10

Mr. Dieffenbach: I think I can connect it up later on. I want to connect up certain matters.

The Court: With what?

Mr. Dieffenbach: I want to connect the two defendants, Howlett and Derees. I want to show a connection between them.

The Court: They were engaged in the same business together, is that it?

20

Mr. Dieffenbach: Not in the same business, I won't say that, but they were both in similar businesses.

The Court: Well, it may be material, but I doubt it. I will allow the question subject to a motion to strike out the testimony if it does not appear to be relevant.

A. Well, that is not the name.

Q. What is the name? A. That is not the concern. He was never president of that silk company.

30

Q. What is the name?

The Witness: Is it necessary to answer?

The Court: Yes.

A. C-r-e-p-i-s-i-l-k or c-i-l-k. I don't know how to spell it.

Q. Who is your attorney in this case now pending? A. Mr. Douglas.

40

Q. Has Mr. Douglas been your attorney right straight along? A. Yes; for some time.

Grantina B. Derees, direct.

Q. Has not Mr. Charles Jones been your attorney? A. In one case, I think.

Q. Was not the office of this company in Mr. Jones' law office, and was he not the statutory agent for that company? A. I really don't know.

Q. Don't you know that Rupert Hull or Rupert Hill was appointed receiver for the Creposilk Company? A. Yes; Rupert Hill.

10

Q. Did you have any personal dealings with buying this property in question? A. No personal dealings; no.

Q. Did you ever see the property? A. I saw it after I bought it.

Q. When did you see it? A. Well, some time last spring.

Q. What does it consist of? A. It consists of two lots with a fire engine house on it.

20

Q. Whereabouts is it? A. In Wanamassa.

Q. Have you a bank account? A. Yes, sir.

Q. In what bank? A. Glen Ridge Trust Company.

Q. Is that in your name alone? A. In my name.

Q. Is it in both of your names? A. In my name.

Q. Has your husband power of attorney for you?

A. Only in certain cases; yes.

30

The Court: Do you mean on this bank account or generally?

Q. On this bank account or any other way. A. In special cases.

Q. On the bank account has he power of attorney from you to draw moneys from this bank? A. Not without my signature.

By Mr. Dieffenbach:

Q. Is this your signature on that check, Exhibit C-1 of this date? A. Yes; this is mine.

40

Grantina B. Derees, direct.

By the Court:

Q. Is the body of the check in your handwriting?
A. No. May I see it again? I know in fact it is not.

10 Q. Did you give Mr. Derees a blank check? A. I gave Mr. Derees a blank check with my signature.

Mr. Dieffenbach: I ask for the production of the deed made by Grantina B. Derees and husband to Frederick J. Howlett.

(Deed produced.)

20 Mr. Dieffenbach: I offer in evidence deed made by Grantina B. Derees and Henry S. Derees to Frederick J. Howlett, dated June 18, 1926, acknowledged June 18, 1926, before May C. Smith, Notary Public of New Jersey; recorded in the clerk's office of Monmouth County, June 19, 1926, in book 1354 of deeds, page 306; the consideration given is \$2,500.

(Marked Exhibit C-2, December 21, 1926.)

Q. Do you remember the circumstances connected with the execution of this deed? A. Yes.

30 Q. Where was it executed? A. In Newark, in a bank building where I always go to have deeds executed.

Q. Did you go there to have it signed? A. Yes; I did.

Q. When was it; what day? A. Well, you have just said June 18th. Of course, I remember it was in June.

Q. What time—in the morning? A. Well, it was right after noon, I think.

40 Q. Right after noon? A. I think so. I am not quite sure.

Grantina B. Derees, direct.

Q. Do you know that Mr. Derees had been to Oakhurst the night before? A. No; I don't remember.

Q. You don't remember that he came home late that night? A. No; I don't remember that. He may have. I don't remember.

10 Q. Didn't he tell you that he was going to a meeting of the township committee of Ocean Township on the 17th?

Mr. Herrmann: I object to the question as leading. This is his own witness.

The Court: She is a party to the suit and not a friendly witness. Objection overruled.

20 A. Well, I cannot remember any more exactly than I say he has been to a great many meetings.

By the Court:

Q. Mrs. Derees, do not fence with counsel. Listen to me, please. If you will answer the questions and say yes or no when you can, and if you do not know the answer, say you do not know, and do not make any explanation. It is not responsive to the question. The question is: Did he tell you that he had been to a meeting in Ocean Township the night before? Either he did or did not, or you do not remember. A. I do not remember.

By Mr. Dieffenbach:

Q. Do you remember having gone before the Notary Public to have this paper signed? A. Yes.

Q. What was the Notary Public's name? A. Miss Smith.

Q. And that was on what date? A. June 18th.

40 Q. In the afternoon? A. I think it was about a

Grantina B. Derees, direct.

little after noon; I am not quite sure; it might have been in the morning.

Q. Did Mr. Derees tell you the night before that he had been accused of fraud in obtaining this deed from Mr. and Mrs. Blaisdell? A. No.

10 Q. Did he ask you to go down and make that deed? A. Why, certainly.

Q. When did he ask you to do that? A. He asked me that morning. I knew I had to do it a few days before.

Q. Did you receive the money mentioned in this deed? A. I did.

Q. Was it cash? A. It was a check.

Q. Whose check was it? A. Mr. Howlett's.

Q. That is all you received, \$2,500? A. \$2,500.

20 Q. That is all you received? A. Yes.

Q. Nothing more? A. Nothing more.

Q. How long have you known Mr. Frederick J. Howlett? A. I met Mr. Howlett last spring.

Q. What period of the year, what month? A. I am not quite sure about the month, but it was in the spring some time.

By the Court:

30 Q. How long before June 19, can you tell us? A. Several months.

By Mr. Dieffenbach:

Q. You both live in Newark? A. I live in Newark. Mr. Howlett does not live in Newark.

Q. Are you friends? A. No.

Q. No friends at all? A. No; no friends.

Q. You do not visit one another? A. No; not at all.

40

No Cross Examination.

Frederick J. Howlett, direct.

FREDERICK J. HOWLETT, one of the defendants, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Dieffenbach:

Q. Where do you live? A. 306 North Mountain Avenue, Montclair. 10

Q. What is your business? A. Real estate operator.

Q. For how long have you been in that business? A. Thirty years.

Q. How long have you known Mr. Derees? A. I think it was February or March when I first met Mr. Derees.

Q. Do you know this property in question? A. Yes. 20

Q. Where is it situated? A. In Wanamassa, North Asbury Park.

Q. Whereabouts? A. Sunset Avenue.

Q. Eh? A. On Sunset Avenue.

Q. Between what streets? A. I forget. I do not remember. I do not know the cross streets.

Q. When did you first see the property? A. Well, I seen it many times.

Q. I ask you when you saw it first. A. I cannot tell you. 30

By the Court:

Q. Can you not approximate the time and state whether it was ten years ago or four months ago? A. I have known it for many years. When I saw it first I could not say.

Q. How often did you see it? A. I used to drive through there frequently. I live in Belmar in the summer time. 40

Frederick J. Howlett, direct.

Q. Can you describe the neighborhood or any building on the corner? A. Yes; I think there is.

Q. You think there is a building on what corner? A. Why, I think it would be on the south corner.

Q. Southeast or southwest? A. Southwest.

10 Q. You are sure there is a building on the southwest corner? A. I would not want to swear to it. I am not sure.

Q. Is there one on the southeast corner? A. Is there a building on the southeast corner?

Q. Yes. A. One across the street.

Q. What corner would that be? A. I should think that would be the east side.

Q. Northeast or northwest? A. Across the street would be east.

20 Q. There is a distinction between south and north—northeast or southeast? A. Well, the compass points—I suppose the ocean lies east.

Q. What is there on this land? A. Why, there is a little wooden building.

Q. Only one building? A. Well, there might be a toilet in the back for all I know.

Q. There might be a toilet in the back for all you know? A. There might be, but there is a little wooden building there, a volunteer fire house.

30 Q. Did you look into the house? A. I looked through the window.

Q. You looked through the window? A. But there was no one there when I was there.

Q. What did you see? A. I saw a fire hose in there.

Q. You knew it was a fire house, did you? A. Yes.

Q. Absolutely positive about that? A. Well, I believed it to be.

40 Q. You believed it to be? A. Yes.

Frederick J. Howlett, direct.

Q. I ask you to look at this letter and see whether it is in your handwriting? A. I can see it is. Yes, sir; that is my handwriting.

By the Court:

Q. Do I understand you to mean that when you looked through the window of this house you saw a hose cart? A. Yes, sir. 10

Q. A hose cart? A. Yes.

Q. Was it a fire hose cart? A. Yes. It says on the door "Wanamassa—" something about "hose" I believe.

Mr. Dieffenbach: I offer this letter in evidence.

(The letter is marked C-3, December 21, 1926.) 20

Q. In this letter you state: "Upon which is erected a frame building which appears to be occupied as a fire house"? A. Yes, that is correct.

Q. You were not very certain when you wrote this letter that there was a fire house on there? A. I am certain enough, but I do not positively know. I know there was a building that has a hose wagon in it, and it said something about "Wanamassa Hose Company" over the door. 30

Q. When did you see it? A. Why, I saw it on the 10th day of June.

Q. The first time you ever saw it? A. I would not want to say that, because I have driven by there many times.

By the Court:

Q. Do I understand you to mean, on this occasion when you looked through the window and 40

Henry S. Derees, direct.

saw the sign above the door, was the 10th of June?

A. Yes, the 10th of June, on a Thursday.

By Mr. Dieffenbach:

10 Q. Did you have a written contract for the purchase of this property? A. No, sir.

No Cross Examination.

Complainants Rest.

DEFENDANTS' CASE.

HENRY S. DEREES, the defendant, already sworn as a witness, called as a witness on the part of the defense, testifies as follows:

20 *Direct examination by Mr. Herrmann:*

Q. What is your business? A. At present it is buying and selling tax liens. Previously it was the hosiery business.

Q. How long have you been in the business of dealing in tax liens or buying property? A. Between one and two years, possibly a year and a half or about two years.

Q. Have you confined your activities to any particular section? A. All over the State.

30 Q. Have you ever bought properties in Wanamassa? A. In my own name or for others?

Q. In your own name or for others. A. For others I have.

Q. Covering what period with respect to this purchase? A. In 1926, I think the first was around maybe February or March.

40 Q. And how many parcels did you buy prior to this parcel? A. I could not say exactly, maybe seven or eight, maybe ten, something in that neighborhood.

Henry S. Derees, direct.

Q. Were there many tax title in Wanamassa section?

Mr. Dieffenbach: I object to that as immaterial.

The Court: Objection overruled.

10

A. Full of them.

Q. Have you examined the records in order to ascertain the development there? A. In some cases I examined the records previous and in some cases afterwards.

Q. Did you learn the reason why there were so many tax sales in this section?

Mr. Dieffenbach: I object.

The Court: Objection sustained.

20

Q. Do you recall meeting the complainants, Mr. and Mrs. Blaisdell? A. I do.

Q. Had you ever known them before? A. I had not.

Q. Under what circumstances did you meet them? A. On the 13th of April I drove up to Broadway—I think it is Broadway in Long Branch—having obtained Mr. Blaisdell's address, and a man was outside cleaning leaves out of the hedge. I asked him if Mr. Edward Blaisdell lived there, and he said, "I am Mr. Blaisdell." I was leaning out of the car window then, and I said, "Are you the Mr. Blaisdell who owns some land down in Wanamassa that was sold for taxes?" He says, "Yes."

30

I said, "Are you going to redeem them?" He said, "Why, certainly not." I said, "Why don't you?" He said, "Well, I do not want to."

"Well," I says, "I came up here to offer you \$200 for a deed, a bargain and sale deed that will not

40

Henry S. Derees, direct.

bind you to pay any of the tax liens on the lots." He says, "Well, if you are making an offer of \$200 for those lots, you better get right out of that car and come into the house."

10 He took me into the kitchen. I showed him a deed prepared. He sat down and read it through. He says, "Are you sure of this description?" I said, "The description is taken off from the records at Freehold." He says, "All right, I am satisfied to sign the deed." I says, "Of course, you understand your wife will have to sign it as well. She is a party." He called in Mrs. Blaisdell. Mrs. Blaisdell says to him, "I don't know whether I am doing right or not." He says, "Well, if you sign it, I will give you the money." She says, "Then I will." She signed the deed. I took both of their
20 acknowledgments in the usual way and started to leave with Mr. Blaisdell telling me he got \$200 more than he ever expected to have before.

I left. I paid it with a check, which they were perfectly satisfied in taking until I went to go out of the door, they said, "How do we know this check is good?" I said, "If you are afraid of me, come down in the car with me to the Berkley-Carteret and I will have it cashed for you." I don't know
30 which one of them said it—either one of them said, "No; we are satisfied." I said good-bye and left.

Q. What proceedings, if any, did you take subsequently, to discover or ascertain the amount of taxes that were due? A. Why, Mrs. Derees wrote to the Clerk of Ocean Township and asked—

Mr. Dieffenbach: I object to that.

The Court: Objection sustained.

40 Q. Did you subsequently discover the amount of

Henry S. Derees, direct.

unpaid taxes? A. I knew that before I bought the property and afterwards as well.

Q. What was the amount of unpaid taxes due against these lots? A. In Oakhurst they had one amount; in Freehold they had another. Oakhurst showed \$1,020, if I remember rightly. Freehold
10 had about \$1,600 or close to \$1,700.

Q. Had there been more than one tax sale of these lots? A. Approximately, if I remember rightly, according to the list of 1918, twenty-five sales actually. After 1918 it was carried as one sale, according to Article 257.

Q. These amounts that you have named represented how many years unpaid taxes? A. If I remember rightly, they began in 19—Mr. Blaisdell paid up in 1892. Beyond 1893 or 1894.
20

Q. Did you discover whether Mr. and Mrs. Blaisdell or either of them had ever paid any taxes on these lots since they acquired them? A. I looked for that and found no record of them having paid any taxes whatsoever or anyone else paying them.

Q. So that taxes had accumulated on that property since the date of acquisition down to the time you purchased? A. Practically, yes.
30

Q. Taxes had not been paid? A. I found none paid whatsoever.

Q. You sold this property subsequently to Mr. Howlett for your wife? A. I did.

Q. How much did you sell for? A. \$2,500.

Q. You signed the deed? A. I signed the deed for dower right only.

Q. You mean for courtesy. A. Well, any dower right that I might have.
40

Henry S. Derees, direct.

By the Court:

Q. Your right is courtesy, not dower. A. Courtesy.

By Mr. Herrmann:

10 Q. Was there money paid? A. Yes.

Q. How much? A. \$2,400.

Q. \$2,400? A. \$2,500. Pardon me.

Q. \$2,500? A. \$2,500.

Q. Was that the total price or was it sold subject to an assessment? A. It was sold subject to an assessment.

Mr. Dieffenbach: I object to that. The deed speaks for itself on that.

20 The Court: Objection overruled.

A. It was sold subject only to an assessment, but not to any taxes whatsoever.

Q. Do you know how much the assessments aggregated? A. I had them exactly at the time; yes.

Q. Can you recall what they were? A. Somewheres around \$600, if I remember rightly, not counting interest.

Q. Did you hear the testimony of Mr. Blaisdell? A. I did.

30 Q. Did you say to Mr. Blaisdell that unless he took the money you would pay it to the sheriff instead? A. I did not. I cannot see where the sheriff would have any connection with it.

Q. Did you tell him that it had been sold for taxes twice and that he had no further interest? A. I told him that it was sold for taxes from 1925 up to the present date and asked him why he did not redeem.

40

Henry S. Derees, direct.

By the Court:

Q. 1925? A. 1902—pardon me, 1892 up to 1925.

By Mr. Herrmann:

Q. Did you mention the number of times it had been sold? A. I did. 10

Q. Twice? A. Not twice, but twenty odd times I told him.

Q. Did you tell him that you didn't care anything about it, that you had no personal interest, but that you were working for a company, and that all you received was \$10 a deed for all the lots you acquired? A. I certainly did not.

Q. Did Mr. and Mrs. Blaisdell read the deed over? A. They did, both. 20

Q. Both of them? A. Yes.

Q. Did they make any comment about the deed at all? A. Mr. Blaisdell commented that he was not sure whether the description by metes and bounds was correct or not. Mrs. Blaisdell said she was satisfied with it if the description was right.

Q. Did you hear the testimony of Mrs. Blaisdell? A. I did.

Q. Did you hear the testimony of the granddaughter of Mrs. Blaisdell? A. I did. 30

Q. She testified she was in an adjoining room and that her mother desired more time to sign the deed and that you said she could not have any more time; that if she did not sign you would go to Freehold and pay the \$200 to the sheriff. Is that so? A. That is not so.

Q. She further testified that you said: "You do not own the property. It has been sold twice for taxes. It is not yours any more." Is that so? A. 40

Henry S. Derees, cross.

I not only did not say that, but I told them that they did own it and I wanted to buy it from them.

Cross examination by Mr. Dieffenbach:

10 Q. Mr. Derees, where were you born? A. Minnesota.

Q. Subsequently did you have dealings in South America? A. I lived in South America for about twelve years, if I remember rightly.

Q. You are also known by the name of Henrico? A. I am not. The translation of Henry is Henrico in Spanish, if you want to put it that way.

Q. You have been connected with the hosiery business prior to your present business? A. For approximately twenty odd years.

20 Q. And also as a shoe exporter? A. No; handled some shoes at times, but not as a specialty.

Q. Were you not a shoe exporter in the year 1905? A. I was never a shoe exporter.

Q. Were you connected with H. D.—

Mr. Herrmann: Objected to.

The Court: Objection sustained.

30 Q. Coming down to the date of that visit of yours to Mr. Blaisdell, you had the deed already prepared, did you not? A. I did.

Q. Ready for signature? A. I did.

Q. Did you draw that deed yourself? A. I drew the deed.

Q. And you went there for the purpose, did you not, of telling these people the whole truth concerning that property? A. Why, I try to tell the truth to everybody.

40 Q. Answer my question. You went there with the idea of telling these people, with the intention of telling these people, the exact truth con-

Henry S. Derees, cross.

cerning that property? A. Which I did. I not only went there to do that, but I did it.

Q. You went there for the purpose of getting a deed, if at all possible, did you not? A. I went there to buy it, if I could buy it for \$200, no more.

10 Q. And you knew that these people knew nothing about tax liens, did you not? A. I did not, but found they did know.

Q. You knew all about tax sales and titles, did you not? A. Well, I thought I did. Some lawyers do not think so.

Q. You claim to be an authority on tax sales, don't you? A. Somewhat.

Q. You carry a law book with you, don't you? A. Several.

20 Q. What are the titles of your law books? A. Well, the "Martin Act" is one of them, "Simpson on the Law of 1918, Chapter 237" is another one. I might have others—quite a number of them.

Q. And you knew, when you went there, that if you had told these people the whole truth, they would not have signed this deed? A. I did not.

30 Q. Don't you know that if you had told these people that by going to the proper officer and paying the taxes that they could have their property— A. I asked them why they did not do it.

Q. Answer my question. A. I asked them why they did not pay their taxes.

Q. Answer my question.

Mr. Herrmann: I object to the question.

The Court: Objection sustained.

40 Q. You knew that the owner of the land could redeem the property, or anybody else that had an interest in it?

Henry S. Derees, cross.

Mr. Herrmann: Objected to.

The Court: Objection sustained.

10 Q. You knew that Mrs. Blaisdell did not want to sign that deed. She made some objection, did she not? A. Only to the extent of getting the money instead of letting Mr. Blaisdell have it.

Q. Didn't she want to have time to think it over, but you insisted? A. She did not.

Q. Didn't you say that you would never come back again unless they signed that paper? A. I did not.

20 Q. Didn't you tell them, on more than one occasion: "You should have paid your taxes"? A. Not in those words. I asked them why they did not pay them.

Q. Were you interested in knowing why they did not pay their taxes? A. I am always interested in all tax property that I buy, to know why they did not pay the taxes.

Q. Was not your sole object to get that deed from these old people? A. No; no different than any that I am handling all the time.

30 Q. You were acquainted with the value of property in that neighborhood at that time? A. I am and was.

Q. And you knew that by buying this property at that price, you were buying it at a great bargain? A. I did not, not one cent more than I paid for any other lot in Wanamassa against tax title.

Q. You took that acknowledgment as a notary? A. I did.

Q. Do you remember June 10 and June 17, 1926? A. I do.

40 Q. Were you present at a meeting of the township committee of Ocean Township on those dates?

A. What dates did you say?

Henry S. Derees, cross.

Q. June 10 and June 17. A. I think not. I think you are wrong on your dates.

Q. Don't you know that I was present at a meeting on the 17th of June, on a Thursday? A. On a Thursday you were, in June.

10 Q. And that I then charged you with fraud on behalf of the Blaisdells?

Mr. Herrmann: Objected to.

The Court: Objection overruled.

A. No; you did not. You charged me with stealing.

20 Q. And didn't I then notify the committee that I objected to your redeeming that property, on the ground that I had brought a suit in a court of equity to set aside the deed? A. You did not. You said you were going to, and you notified the committee or at least tried to get them to pass a resolution that they would name the Blaisdells as owners, which they did not do.

Q. You know what you are swearing to. You are positive about that last statement? A. I was there at the time.

Q. That I tried to get a resolution passed to that effect? A. You asked for it.

30 Q. You had a search made by Mr. Long, didn't you, on this property for taxes? A. I think so.

Q. And that revealed there was \$1020 due? A. Something like that.

Q. Taxes and assessments, including interest? A. According to the township clerk, yes.

Q. You had your office, as president of the Creposilk Company, with Mr. Jones, did you not? A. Certainly not.

40 Q. Was he not the statutory agent? A. I am not sure. He incorporated it, but I do not know

Henry S. Derees, cross.

that we had any statutory agent, because we had our own office.

Q. Then you don't know, do you? A. I do not.

Q. Who is your attorney? A. Mr. Hill.

Q. Eh? A. Mr. Douglas. Pardon me.

10 Q. Is he your attorney in this case only, or has he been your attorney before this? A. Several cases.

Q. You had quite a bundle of papers that day, did you not, that you showed these people? A. What day do you refer to?

Q. The 13th of April, 1926, when you called on Mr. Blaisdell. A. I always have my pockets full of papers.

20 Q. And you showed them these papers, did you not? A. No, I did not; unless they looked at them.

Q. Did you take them out of your pocket? A. I did not, other than taking out the one I pulled out.

Q. Just the one. Then you put them back in your pocket? A. As far as I remember. I don't remember losing any.

Q. You did not try to impress them with the bundle of papers that you had there, telling them that you had quite a number of papers? A. No.

30 Q. You were perfectly frank with them; you told them that they were the owners and that you were buying this property for \$200. That is what you want the Court to believe? A. If they had not been the owners, I would not have given them \$200.

Q. Now, you signed this deed, Exhibit C-2 of this date, did you not? A. I did.

Q. When was this deed signed? A. If I remember rightly, the 18th of June.

Q. June 18th? A. Yes.

40 Q. Is not that the very day following the night

Henry S. Derees, cross.

we had that stormy meeting at Oakhurst? A. I think so, if the 18th was Friday.

Q. What time did you get home that night of the 17th or morning of the 18th? A. I don't remember exactly. About two hours after I left town. I think I must have left down there around ten or eleven o'clock. 10

Q. What time in the morning did you tell Mrs. Derees to have this deed signed? A. The day before.

Q. Eh? A. The day before, before I went down to Oakhurst.

Q. The day before you went down to Oakhurst? A. I told her that on the 10th day of June. I told her I had this offer from Mr. Howlett.

20 Q. Just answer my question. The day before you went to Oakhurst you told her that she was to sign a deed? A. No. The day before she signed was the day I went to Oakhurst.

Q. Before you left? A. I could not tell you that now.

Q. You could have told her when you got home that night in time? A. I was not home that night. I said two hours after ten or eleven o'clock.

30 Q. You came home the morning of the 18th? A. That is right.

Q. Before you left you told her that she had to sign a deed? A. I never told her that she had to sign a deed.

Q. What is that? A. I never told her she had to sign a deed. I told her she had this offer from Mr. Howlett and she better accept it. It was the best I could get.

Q. Then what did you do? A. Went to Oakhurst or to the coast, rather.

40 Q. And the next day did you speak to her again about the deed, the same day you got home, the

Henry S. Derees, cross.

18th? A. I drew the deed on the 17th, that is on a Thursday.

By the Court:

10 Q. So that there won't be any mistake, my recollection is that the deed is dated June 18th and is acknowledged June 19th? A. Acknowledged the same day, June 18th.

The Court: The calendar shows that June 17th fell on Thursday. Therefore June 18th was on Friday.

By Mr. Dieffenbach:

20 Q. What have you to say as to that? A. I drew the deed on the morning of Thursday, the 17th, and left it with Mrs. Derees. Then I went down the coast.

Q. Did you meet her at the office to have the deed signed together? A. On Friday, the 18th, I did.

Q. Where did you go? A. To have the deed signed?

Q. Yes. A. Went to the Notary in the—I think it is the Bank building.

30 Q. Did you meet Mrs. Derees there? A. I took her there with me. We travelled together.

Q. Was Mr. Howlett there at the time? A. He was not.

Q. Where was he? A. I don't know.

Q. What did you do after the deed was executed? A. Took her home.

Q. Did you take the deed or did she take it? A. I don't remember who carried it home.

40 Q. You don't remember? Didn't you give it to your wife after the deed had been executed by both of you? A. I don't remember which one

Henry S. Derees, cross.

took it home. I don't remember which one carried it home. It would have been all the same.

Q. When did you next do anything with reference to the deed? A. I took the deed down to deliver to Mr. Howlett—

10 Q. Did you take the deed? A. I either took it myself, having carried it back from the Notary, or I took it from Mrs. Derees—I don't remember.

Q. Then, you took that deed to Mr. Howlett? A. I did.

Q. On the 18th? A. On the 18th, if that was Friday, yes.

20 Q. What did you do at Howlett's? A. I gave it to Mr. Howlett. Mr. Howlett wanted to go down to the coast and was anxious to get away at one o'clock, as he did not go down the day before and I gave the deed to Mr. Howlett and got his check for \$2,500, and I told him, of course, it would have to be certified. He said: "Go right over to the bank and get it certified. I am going down to the coast now."

Q. He gave you the check right then and there? A. Yes, sir.

Mr. Dieffenbach: I call for that check.

30 Q. Did you have the check certified? A. I attempted to, but I did not succeed.

By the Court:

Q. Why not? A. Well, his bank said if he wanted it certified, for Mr. Howlett to come there himself. I knew Mr. Howlett had already started for the coast, and it did not worry me about the check, as I had handled hundreds of checks for real estate.

40 Q. Why did you ask to have this certified, if it was unusual to have checks certified? A. Matter

Henry S. Derees, cross.

of form, I think. It wasn't of any great importance. I knew Mr. Howlett to be a responsible man, as I had tried to sell him a million dollar proposition.

10 Mr. Dieffenbach: I move to strike that out.

The Court: Strike it out.

By Mr. Dieffenbach:

Q. Then you got that check, whom did you give it to—Mrs. Derees? A. I did.

Q. You handed it to her? A. I did.

Q. In your home? A. In our home.

20 Q. What did she do with it then? A. Gave it back to me and told me to put it in my pocket.

By the Court:

Q. When did you give it to her? A. The same day about two o'clock.

By Mr. Dieffenbach:

Q. What did she do with it? A. She gave it to me to put in my pocket, because we were going to the coast.

30 Q. Did you endorse the check? A. I think I wrote on it "For deposit to the account of G. B. Derees," as I do with anything that I deposit for her. I think so, but I am not sure.

Q. That is all you got for the property, \$2,500? A. Certainly.

40 Q. This check that you say that Mr. Howlett handed to you at his office, you went home with that check and gave it to your wife and then she gave it to you and asked you to put it in your pocket; is that right? A. That is right.

Henry S. Derees, cross.

Q. The same time that you handed it to her, did she hand it back to you, or how soon after? A. I think at the same time I showed it to her and showed her what had been accomplished.

10 Q. Did you give her the check in her hand to read it? A. I am handling a good many checks all the time and I do not remember whether I forced it into her hand or laid it down. I know I gave it to her.

Q. What for? A. She looked at it.

Q. What did she do when she looked at it; did she smile? A. I don't—

By the Court:

20 Q. Did you go to the coast that day? A. We went to the coast.

Q. When? A. About three o'clock.

Q. When did you come back? A. Wednesday afternoon.

By Mr. Dieffenbach:

Q. Did you deposit the check that same day? A. No; not until we came back.

30 Q. When did you come back? A. We came back Wednesday afternoon, if I remember rightly, about two or three o'clock, it was some time in the afternoon because we had our luncheon on the way back, the following Wednesday.

By the Court:

Q. What happened to the check finally? A. Well, the check was deposited with others that had accumulated, I think on Thursday after we returned.

40 Q. So after you got this check on the 18th you held it until— A. Until June 18th.

Henry S. Derees, cross.

Q. What? A. I think it was Thursday. We got home Wednesday.

Q. You got the check on the 18th? A. On Friday.

10 Q. On Friday the 18th? A. Friday. I am not sure whether it was deposited Wednesday or Thursday. It was deposited after we got back.

Q. Well, I call your attention to the fact that the check shows by the stamp on it, the perforation, that it was paid June 25th. I call your attention to the fact that the check is endorsed: "Prior endorsement guaranteed.—Grantina B. Derees—Glen Ridge Trust Company," and the further endorsement of the "Glen Ridge Trust Company," which further endorsement is dated June 24, 1926, and that the check also bears the perforation stamp "Paid June 25." Now, with that information before you, can you say what day you deposited that check in the Glen Ridge Trust Company? Have you got the record of the deposit? A. I have a record of the deposit here on June 24th.

20 Q. Now, how did you come to carry that check from the 18th of June to the 24th of June, when the bank on which it was drawn refused to certify it? A. I was not worrying about Mr. Howlett's check.

30 Q. When the bank refused to certify his check? A. They did not refuse to certify on account of funds. They said, "If you want it certified, have Mr. Howlett come over. You will have to be identified." I have had other banks do that.

Q. The bank refused to certify unless the request was made by the maker, is that it? A. Or I was identified.

40 Q. Well, this check was drawn on the National Newark & Essex Banking Company, and you got

Henry S. Derees, cross.

it in Newark, didn't you? A. I got it in Newark about two blocks from my place.

Q. Didn't you know anybody in Newark to whom you could go, who would identify you? A. Well, I would never go out of my way to any extent to have the check certified on a mere matter of form. I am handling real estate every day.

10 Q. With that statement I cannot understand why you asked Mr. Howlett to have the check certified? A. Mere matter of form more than anything else. I did not insist on it.

The Court: Anything further, Mr. Dieffenbach?

Mr. Dieffenbach: No.

Q. When did you take up negotiations with Mr. Howlett first for the purchase of this property? A. On June 10.

Q. That was the first time you mentioned to him that the property was for sale? A. That is right.

Q. When did he agree to buy? A. He agreed on June 10, conditionally.

Q. Conditional on what? A. He wanted to see the property again. He knew of it. When I spoke to him about it he knew the location very well. He said he had practically lived down around there. I wanted \$3,000 for it. He offered \$2,500, when he was satisfied that the deed would be all right. I asked him then: "Well, how long is that going to take?" He said: "Oh, a few days."

30 On Wednesday, the 16th I think it is,—no, Thursday the 17th, he called me up in the morning by telephone and said: "Well, everything is all right, you bring down a deed and you will get your check." I told him I could not bring it down that

40

Henry S. Derees, cross.

day, because I had to go to the coast in the morning, the Monmouth and Ocean coast, and I went the next day. He says: "All right. Telephone me tomorrow and say if you can be there, as I generally go down the coast on Thursday." And he
10 said: "I will wait there for you, but I must be able to leave at one o'clock," so I got down there a little before one.

Q. Did you tell him there was an engine house on this property? A. If I told him there was?

Q. Yes; did you tell him there was an engine house on this property? A. Mr. Howlett? A. Sure. He is the man we are talking about. A. I did.

Q. Did you tell him that any question had been raised about the manner in which you had acquired this deed from Mr. Blaisdell? A. I did not.
20

Q. Did you tell that to him at any time before he accepted the deed from you? A. I did not.

Q. Why didn't you tell him that? A. I did not understand that there was any question other than—

Q. Mr. Dieffenbach had raised the question. A. Mr. Dieffenbach had raised the question of a sale including a list of lots, a list I was buying at tax sale. That was his point, that he wanted to know
30 if these two were included in that list by mistake that had been included before, because of another mistake that had been adjusted previously, long previous to that.

Q. Now, had Mr. Dieffenbach on the 17th of June accused you of some impropriety at least in the manner in which you had obtained this deed? A. No; he only just plainly accused me of stealing.

Q. Stealing? A. Stealing that lot.

Q. The Blaisdell lot? A. Yes, which I seriously
40 objected to.

Henry S. Derees, cross.

Q. Outside of that he did not accuse you of any impropriety? A. Only stealing.

Q. That is all? A. I thought that was enough.

Q. Did he tell you why? A. No; he did not say why.

Q. Didn't he tell you that you had gotten this title from the Blaisdells by misrepresentation? A. No. He says: "You stole it from them." 10

Q. Didn't you ask him what he meant? A. No.

Q. Did he tell you what he meant you had stolen? A. No.

Q. Did he charge you with having obtained this title from the Blaisdells by fraud, by telling them that they had no interest in the property? A. No; he simply said: "You simply stole it from them." 20

Q. You did not tell that to Mr. Howlett, did you? A. No; I did not tell it to anyone, because I did not think it was necessary. I was also accused that night by another man of stealing two other lots. I have been accused so often down there of stealing property from people that I have asked and begged to redeem, that it has got to be a sort of expectation.

Q. You are hardened to that sort of thing? A. Exactly. 30

Q. Hard boiled, is that it? A. Well, you might class it that way. You get hardened to that sort of thing.

By Mr. Dieffenbach:

Q. I was going to ask you that same thing, Mr. Derees. On the 17th of June do you remember my tendering to you in legal tender \$200? A. No, sir.

Q. And asking you to sign this deed to Mr. and Mrs. Blaisdell? A. You had no deed there. 40

Henry S. Derees, redirect.

Q. Didn't I show you this deed and ask you to sign it? A. You had no deed there.

Q. Do you mean to say I did not have this paper in my hand when I spoke to you? A. You did not have it.

10 Q. Didn't I show you \$200 in bills, yellow backs?
A. Why, you showed no money.

By Mr. Jones:

Q. The time that you met Mr. Howlett, on June 10, if that is the date, and discussed this matter, did you have any papers in reference to the title with you? A. I did.

Q. What? A. I had a search from Freehold.

20 Q. What do you mean, a search from Freehold?
A. A search from the county clerk.

Q. By the county clerk of Monmouth County?
A. I think so.

Q. Who made it? A. It was made by Edward Taylor of the county clerk's office.

Q. Did you show that to Mr. Howlett? A. I showed it to him.

Q. Did you leave it with him? A. I think I did.

Q. Did you have any tax search? A. I also left the tax search. I had two different tax searches.

30 Q. Did you explain to Mr. Howlett or did he understand that he was taking subject to assessments? A. He did.

Q. Did the tax search show the assessments? A. It did.

Q. What were you to do with reference to the tax title? A. I was to attempt to clear all the township liens other than assessments such as sidewalk, curbing and sewer.

40 Q. Did you do that? A. I did.

Henry S. Derees, redirect.

By the Court:

Q. That was a question I meant to ask you. At the time you gave this deed to Mr. Howlett and accepted his check for \$2,500, had you paid these tax liens? A. I had paid or had them changed, wiped out. 10

Q. They were all paid before you delivered the deed to Mr. Howlett and got his \$2,500? A. Yes; part were paid and part were reduced.

Q. You mean you gave Mr. Howlett a deed, do I understand, free and clear of all encumbrances? A. Yes; other than the assessments.

Q. But the deed on its face is free and clear of all encumbrances. It makes no mention of any assessment? A. I am not sure. I don't think so. 20
If it does not, it is an oversight. It was not intended to be.

Q. Look at the deed. A. I did not put it, but I always put it on the second page.

Q. Look at it. A. It should have been also subject to restrictions of record. Those two items should have been in the deed.

Q. Well, how did you come to overlook those two important things? A. I drew the deed in the morning in a hurry when I was getting ready to leave for the coast. 30

Q. I understand that all the taxes against this property had not been paid at the time you delivered the deed to Mr. Howlett? A. No. You are wrong.

Q. I am not wrong, because I am asking you the question. I am asking you that question. A. The taxes were all paid up to and including 1925 at the time the deed was delivered to Mr. Howlett. 1926 taxes were not paid. 40

Frederick J. Howlett, direct.

By Mr. Herrmann:

Q. These statements that were made by Mr. Dieffenbach were made where? A. In the public meeting of the township committee.

10 Q. He never called on you privately to discuss this thing with you? A. Never.

Q. Any talk that he had concerning this sale was at this public meeting in a public hall? A. Right out in the meeting.

By Mr. Dieffenbach:

Q. (Indicating.) Do you recognize this gentleman? A. I won't say whether he was there or not. He is there at a good many meetings.

20 Q. (Indicating Mr. Wooley.) Did you see this gentleman there? A. This gentleman, I don't remember his face very well.

Q. Mr. Wooley is the tax assessor. A. I know Mr. Wooley, the tax assessor.

Q. Mr. Shaw, did you ever meet Mr. Shaw there? A. No; I don't remember Mr. Shaw. I remember Mr. Wooley well, the tax assessor.

By Mr. Jones:

30 Q. Mr. Howlett was not at that meeting, was he? A. He was not.

FREDERICK J. HOWLETT, one of the defendants, sworn as a witness on the part of the defendants, testifies as follows:

Direct examination by Mr. Jones:

Q. You lived in East Orange, did you not, until recently? A. Yes.

40 Q. And you now live where? A. 306 North Mountain Avenue, Montclair.

Frederick J. Howlett, direct.

Q. That is, since this discussion arose? A. Yes.

Q. What is your business? A. Real estate speculator.

Q. When did you first meet Mr. Derees? A. It must have been last February or March.

10 Q. Between February and June did you have any transactions at all with Mr. Derees? A. Well, I was trying to buy through him the block of the Coleman House in Asbury Park. That was where I first met him.

Q. You met him through those negotiations? A. Yes.

Q. Outside of that transaction with reference to the Coleman House and this particular transaction, have you had any business relations whatsoever with Mr. Derees? A. No; never.

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Q. Have you any social relations? A. Eh?

Q. Have you met him socially at all? A. Oh, no; not at all.

Q. When was this transaction in reference to the Wanamassa lots first broached to you? A. On June 10; Thursday, June 10.

Q. What happened then? A. Why, he came into my office in Newark and offered to sell me the two lots on which the fire house stood. He wanted \$3,000 and to take it subject to an assessment. I knew the property very well and of course knew the whole surroundings.

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Q. Why do you say you knew it very well. How did you come to know it very well? A. Well, I have lived down there for many years.

Q. How many years? A. Probably twenty-five; that is, in the summer time.

Q. Did you make him a tentative proposition as to that offer? A. Yes; I told him that if the

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Frederick J. Howlett, direct.

title was good, was satisfactory to me, to my attorney, Mr. Jones, that I would give him \$2,500 for it and pay all assessments.

Q. Did you give him any money that day? A. No, sir.

10 Q. Did you tell him anything about looking at the property again? A. Yes; I said I was going down to the shore that day and I would drive in the back way and see it, which I did.

Q. The day he was speaking to you, when you said you would agree to take it subject to assessments, did he show you any papers in reference to a search? A. Why, he did, some yellow paper I think it was, notes I would call it.

20 Q. Search notes? A. Which he gave me and I proposed delivering to you for a search.

Q. This paper which I show you; is that it? A. Yes; that is the paper, I believe.

By the Court:

Q. It has changed color since that date? A. Yes.

Q. It is white now? A. Yes; I thought it was yellow.

30 *By Mr. Jones:*

Q. How did you know what the assessments were? A. Why, he had a tax search.

Q. Showed you an official tax search at the time, did he? A. Yes.

Q. Did that search show the amount of the assessment which you would have to pay? A. It showed the assessment and I think it showed taxes at that time.

40 Q. Do you recollect what the assessments were to which you were to take it subject? A. Something around \$600 and probably over.

Frederick J. Howlett, direct.

Q. Then, before you left him that day you came to a tentative agreement, did you? A. Yes, sir.

Q. Did you subsequently look at the property as you went down by it? A. Yes, sir.

Q. Did you make up your mind about it? A. I was satisfied to buy it, provided the title was right. 10

Q. Meanwhile had you given this paper to anybody? A. I had given it to you.

Q. Subsequently did you receive a report as to the title? A. Yes. You telephoned me at my office that that title was all right.

By the Court:

Q. When? A. Why, that must have been the Thursday morning. 20

Q. Friday was the 18th, then you got this report on the 17th? A. It would be possibly the 17th, the morning of the 17th. I telephoned Mr. Derees and asked him to bring the deed down that day.

By Mr. Jones:

Q. Then, when Mr. Derees came down—

The Court: He did not come that day.

Q. You telephoned Mr. Derees? A. I telephoned Mr. Derees. 30

Q. Subsequent to receiving my report? A. Yes.

Q. Subsequent to getting word from me you telephoned to Mr. Derees? A. Yes.

Q. When did Mr. Derees come down? A. He said he was going down to the shore that day, but he would be there on Friday if I would lay over for him, and I did lay over, and he brought the deed down.

Q. What time? A. I don't know—probably one o'clock. 40

Frederick J. Howlett, direct.

Q. That was at your office, was it not? A. That was at my office.

Q. You closed the matter yourself? A. Yes; I closed it myself.

10 Q. Your attorney was not there? A. No. You had telephoned me that the title was all right.

Q. Was the deed submitted to me for examination? A. No. I sent it over to you to have it recorded.

Q. That was all that you did to pass title? A. That was all I did, and paid the money or check.

Q. You gave him the check when? A. When I got the deed on June 18th.

20 Q. Subsequent to that time when you had passed the money, did Mr. Derees say anything to you about any trouble about this property? A. No; I never heard of any trouble until I got served with a summons some weeks later.

Q. Had you heard any rumors of any trouble about that property either from Mr. Derees or anybody else up to the time you passed title? A. Nobody. I supposed I was buying a good title.

Q. Subsequent to that, do you know whether Mr. Derees had paid the taxes? A. I sent down and got a tax search for myself.

30 Q. (Showing witness.) And is this the official tax search which you received? A. Yes.

Q. This is dated June 24th, is it not? A. Yes, sir.

Q. What was the purpose of getting that? A. I wanted to see from the official search that there was no taxes on it.

Q. Were you satisfied from that search that the taxes were paid? A. Oh, yes.

40 Q. You took it subject to these assessments that

Frederick J. Howlett, cross.

are still on it? A. The assessments are still on it. I have not paid them.

Q. They amount to roughly \$600? A. Roughly, \$600.

Mr. Jones: I offer this search in evidence. (Search is marked Exhibit D-1, December 21, 1926.) 10

Q. After you had received your tax search and recorded your deed, what next did you do, if anything? A. Why, I think my next step was to write a letter, which is already in evidence, I believe.

Q. What was the next thing you heard? A. Why, I was served with a summons.

20 Q. Since then you have not done anything? A. Of course, since that I have done nothing.

Mr. Jones: The letter that was marked for identification, I am willing to offer in evidence.

(Letter heretofore marked for identification is marked Exhibit D-2, December 21, 1926.)

Cross examination by Mr. Dieffenbach:

30 Q. You were acquainted with the value of the property at the time you bought it, were you not? A. Why, yes; fairly well.

Q. You knew that the fire house people were on there at the time. A. I knew what?

Q. You knew that the fire house was there. A. I knew the fire hose company was there; yes.

Q. Did you make any inquiry as to the right of this fire company to be there? A. No.

40 Q. Didn't you think it important that an institution of that kind occupying land, that some inquiry

Ashley Wolly, direct.

should be made as to what rights they had there?

A. Not if I got a clear title.

Q. All you had was a deed, a bargain and sale deed, was it not? A. I relied on the search, not the deed.

10 Q. You didn't have a warranty deed, did you?

The Court: It is very obvious that he did not.

Q. You did not think it important to inquire from these parties what rights they had there? A. No.

Q. Didn't you think that an important matter in buying real estate?

20 Mr. Jones: I object.

The Court: Objection sustained.

Defendants Rest.

REBUTTAL.

ASHLEY WOLLY, sworn as a witness on the part of the complainants in rebuttal, testifies as follows:

Direct examination by Mr. Dieffenbach:

30 Q. What is your business? A. My business; well, I am a butcher.

Q. What town office do you hold? A. I hold the office of assessor of taxes, Ocean Township.

Q. Were you present the night of the 17th of June, 1926, when Mr. Derees was there? A. I was, yes.

Q. Did you see me offer a paper?

40 Mr. Jones: I object to the question as leading.

The Court: Objection overruled.

Ashley Wolly, direct.

A. Yes; I saw you offer a paper.

By the Court:

Q. To whom? A. To Mr. Derees.

By Mr. Dieffenbach:

Q. What did I say to Mr. Derees at the time? 10

A. You offered him,—there was some money there,—you said it was \$200, and you offered him and asked him to sign the paper, instead of taking these lots by fraud.

By the Court:

Q. Did Mr. Dieffenbach tell Mr. Derees what this paper was? A. I believe he did; yes.

Q. What did he say it was? A. Just the exact words?

Q. Oh, no. A. I don't know the exact words. 20

Q. I do not want the exact words. A. He said it was a deed.

Q. A deed back to Blaisdell? A. A deed back to Blaisdell; yes; and he claimed to represent Blaisdell.

By Mr. Dieffenbach:

Q. Did I ask him to sign it as well as his wife?

A. I do not recall that.

Q. Did he refuse? A. I believe he did refuse. 30 He would not have anything to do with you, if I recollect right.

Q. In fact, don't you remember on that occasion or the previous occasion that he withdrew these lots from the sale? A. He did; yes, sir.

Q. Didn't he say that he had made a mistake? A. I believe he did; yes, sir.

Mr. Herrmann: This is not contradictory; this is certainly not rebuttal. 40

Ashley Wolly, cross.

Cross examination by Mr. Herrmann:

Q. This was a public meeting, was it not? A. Yes; a public meeting.

10 Q. What was the meeting called for, do you know? A. It was a regular meeting of the township committee.

Q. What was Mr. Derees doing there? A. Mr. Derees was up there trying to straighten out some tax matters—lots that were included in the other list.

Q. How many lots were there? A. I imagine seven or eight.

Q. And as to each one there was an argument? A. There was some discussion.

20 Q. As to each one of the lots that came up? A. No; I would not say that there was.

Q. Wasn't there any discussion over any lots other than these two lots? A. Yes; there was another party there that was interested in some of these lots. They had an attorney there.

Q. There was quite a lot of argument there that night? A. Yes; there was.

30 Q. It was a very spirited meeting? A. I would not say it was a very spirited meeting any more than any other.

Q. What did Mr. Dieffenbach say when he arose in his usual eloquent manner? A. He asked the township committee to withhold these two lots, 227 and 228.

40 Q. Did the township committee ask him who he was? A. I do not know if they asked him that. He was representing Mr. Blaisdell, and he had started action to have Mr. Derees reconvey these lots, for the simple fact that he had taken the lots by fraud.

Ashley Wolly, cross.

Q. And then he turned to Mr. Derees. Just tell us the exact words he used? A. I don't remember the exact words.

10 Q. Well, tell us as nearly as you can what he said? A. He had that deed and he had some cash and he told Mr. Derees it was \$200, the exact amount he had given the Blaisdells, and he tried to make him convey back the lots, saying that he represented the Blaisdells.

Q. Now, did he say anything resembling this: "I herewith hand you a deed for you and your wife to sign"? A. I cannot remember about exact words, but it was something to that effect.

20 Q. Where was Mrs. Derees that night—she was not there, was she? A. I did not see her. If she was there I did not see her.

Q. Just Mr. Derees? A. Yes; he was there.

Q. Mr. Dieffenbach said to Mr. Derees: "I now hand this deed to you and demand that you and your wife sign it." Did he say that? A. Words to that effect. I do not remember just the exact words.

Q. Did he hold the \$200 in his hand? A. He stated the amount, yes, sir, \$200.

30 Q. Did he hold the bills up in his hand? A. Yes.

By the Court:

Q. He held the bills out, did he? A. Yes; so he could see them.

Q. It was not gold? A. Yellow backs.

By Mr. Herrmann:

40 Q. Do you know whether or not they were yellow backs? A. Yes; they looked yellow to me, anyhow.

Alexander H. Shaw, direct.

ALEXANDER H. SHAW, sworn as a witness on the part of the complainant in rebuttal, testifies as follows:

Direct examination by Mr. Dieffenbach:

10 Q. Where do you live? A. 140 Woodlock Avenue, Wannamassa.

Q. Were you present at a meeting on June 17, 1926, at which Mr. Derees and I and other gentlemen were present? A. Yes; I was.

Q. Did you hear what transpired there? A. I did.

20 Q. Just tell the Court what transpired. A. The question came up about these two lots. They were withdrawn from a number on the other list for various reasons. The one particular reason that Mr. Dieffenbach made the statement that he had started or was about to start an action—I do not say that he had started it or was going to start it—an action to recover these lots for Blaisdell. And he offered to tender \$200 and held up a paper—I do not know just what paper, because I did not read it over myself, but I presume it was a deed—to re-convey these lots back to Blaisdell that the \$200 was paid for; and he said he would
30 return the gift, if I remember right, I think that is the word he said—"gift". That is about all I recollect.

By the Court:

Q. What did Derees say? A. I do not just recall anything. He did not accept it, anyway.

By Mr. Dieffenbach:

40 Q. Mr. Derees has testified in his examination that I attempted at that meeting to get the Board

Alexander H. Shaw, cross.

to pass a resolution; is that the fact? A. Well, you put in a motion—I do not know whether it was passed or not—I do not recollect, but you put in some sort of a resolution to have these two lots held up, if that is what you have reference to.

10 Q. Did I give notice then in the name of Mr. Blaisdell and in my name as his attorney? A. As his attorney.

Q. To put it down on the books, so as to notify them in case anybody else came to redeem the property? A. Yes.

Q. Wasn't that what I said? A. I believe that was what you said.

Cross examination by Mr. Herrmann:

20 Q. How did you happen to pay so much attention to Mr. Dieffenbach? A. Because I was there on a sewer proposition.

Q. Were you there as a member of the fire department? A. No, sir; I was there as a taxpayer.

Q. Are you a member of the fire department? A. I am a member of the fire department; yes.

Q. How many other members of the fire department were there that night? A. I don't know.

30 Q. Were there not a great many? A. I don't know.

Q. Why don't you know? A. Because I was not there on the fire department proposition. I was there on the sewer proposition.

Q. Don't you know that the members of the fire department were there because they were interested in this property because their fire house was on the property? A. No, sir; I don't know that.

40 Q. Does Mr. Dieffenbach represent the fire department? A. No, sir.

Conclusions.

Q. Has he ever represented the fire department?
A. Not that I know of.

10 Mr. Jones: I forgot about the search. I offer in evidence search made by Edward Taylor, dated April 6, 1926, as the title search given to Mr. Howlett and also the continuation of this title search also made by Edward Taylor, dated June 17, 1926, as the continuation search.

(Searches offered in evidence are marked Exhibit D-4, Dec. 21, 1926; Exhibit D-5, Dec. 21, 1926; Exhibit D-6, Dec. 21, 1926.)

Conclusions, filed May 3, 1927.

20 IN CHANCERY OF NEW JERSEY.

Between

EDWARD B. BLAISDELL and wife,
Complainants,

and

GRANTINA B. DEREES, et al.,
Defendants.

On Bill, &c.
61-162.

30 FRED DIEFFENBACH, JR., for Complainants.
PLUME L. DOUGLASS, Esq., and L. EDWARD HERRMANN, Esq., for Defendants Grantina B. Derees and Henry S. Derees.
CHARLES JONES, Esq., for Defendants Frederick J. Howlett and Clara A. Howlett.

FIELDER, V. C.:

40 An appeal having been taken from the final de-

Conclusions.

cree entered in this cause, I am requested by the appellant to state and file my reasons for advising said decree.

10 By deed dated November 11, 1892, the complainant Edward B. Blaisdell became the owner of two lots at Wannamassa, in Monmouth County. By bargain and sale deed dated April 13, 1926, he and his wife (the other complainant) conveyed the lots to the defendant, Grantina B. Derees, who by deed dated June 18, 1926, in which her husband, the defendant Henry S. Derees, joined, conveyed the lots to the defendant, Frederick J. Howlett. The complainants sought to set aside the conveyance by which title became vested in Howlett on the ground that the deed from them to Mrs. Derees was obtained by fraud practiced by Mr. Derees acting as agent for his wife, of which fraud Howlett had notice. 20

Blaisdell and Derees were strangers. On April 13, 1926, Derees called on Blaisdell and induced the latter to execute the bargain and sale deed to Mrs. Derees for the consideration of \$200. The fraud of which the complainants complain is that in the negotiations that day, Derees told them that he was employed by a corporation in clearing up tax titles and received \$10 for each deed obtained as compensation for his services; that he had no personal interest in the transaction and had come to offer the complainants \$200 for their interest in the property in question; that when complainants hesitated over accepting his offer, he told them the property had been twice sold for unpaid taxes and that complainants no longer owned it or had any interest in it; that if complainants did not accept his offer at once, he would not return to them but would go to the "Sheriff" at Freehold 30 40

Conclusions.

and obtain a deed from him; that believing what Derees said, they executed the deed and thereafter learned that they had conveyed to Derees' wife and that the property was worth considerably more than the amount of the tax lien thereon.

10 Derees denied these statements. He testified that his business for about two years had been the purchase and sale of tax liens; that he had ascertained the amount required to redeem the lots from the tax sales thereon and then called upon the complainant with a deed of bargain and sale, in which his wife was named as grantee and offered to pay \$200 if they would execute the deed; that he asked why they had not paid the taxes and told them the property had been sold at least twenty times

20 for tax arrears and asked why they had not redeemed; that Mrs. Blaisdell said she did not know whether or not it was right for her to sign, whereupon her husband said he would give her the consideration money if she would; that after Mr. Blaisdell had read the deed, he and his wife executed it, Derees taking their acknowledgment as Notary and he paid them \$200 by check signed by Grantina B. Derees and that he made none of the statements attributed to him by the complainants.

30 Mr. Blaisdell was seventy-seven years old at the time of the hearing of this cause and his wife was seventy-five. Both were apparently in good health and of average intelligence. He is a retired business man who has had four or five experiences in the purchase and sale of real estate and he owns his own home. He impressed me as a man well informed in ordinary business affairs and as possessing the average man's ability to take care of himself in a simple real estate transaction.

40 From the time he purchased the lots in 1892 he had

Conclusions.

paid no taxes on them, in the first years because the tax collector had sent him no tax bill and latterly because he did not consider the property worth the tax arrears which he believed had accumulated thereon. He admitted he knew or believed, as of course he must have known, that because of his failure to pay taxes, his lots had been sold by the township. Both complainants insist that Derees informed them that there had been two tax sales, while Derees insists he told them there had been twenty. In fact, the property had been sold to the township at least twenty times for unpaid taxes. Mr. Blaisdell must be charged with the knowledge which every property owner has, that during the thirty-four years wherein he had failed to pay taxes, there must have been many more than two tax sales. Derees knew that the lots could be redeemed from the township; he had taken the precaution to ascertain what sum would be required for that purpose and he had an opinion as to the value of the lots. Blaisdell also had some idea as to what the lots were worth and he assumed, without knowing the amount of tax arrears, that they were not worth the liens thereon. Whether or not he knew he could redeem, does not appear by direct testimony. Derees was there to buy the lots as cheap as possible. He was not bound to impart to Blaisdell all the information he had gathered. All that was required of him was that he should make no false statements or representations to Blaisdell of a material fact and that he should conceal no fact that it was his duty to disclose. In a real estate deal, where no relation of trust or confidence exists between vendor and purchaser, the parties deal with each other at arm's length and each has the legal right

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Conclusions.

to obtain such advantage over the other, with regard to the price, as is possible, for gain or profit is the object of such transactions. The fact that a seller parts with his property at a price below its market value, is not, standing alone, evidence that he has been defrauded.

10 The first fraudulent statement attributed to Derees is that he represented to the complainants that he was purchasing for a corporation and not for himself. It would seem that Derees could not have made this statement because the deed exhibited to the complainants named Mrs. Derees as the grantee and her name was endorsed on its back. It was handed to Mr. Blaisdell to read and he says he examined it, especially the description
20 —there was no attempt to prevent him from reading it from beginning to end—and the consideration was paid by Mrs. Derees' personal check. Even if Derees informed complainants that he was purchasing for a corporation, I cannot perceive in what respect a conveyance to an individual defrauded them. The next fraudulent representation alleged is that Derees told the complainants the property had been sold for unpaid taxes and that they no longer owned, or had any interest in it.
30 While this was a true statement, it was not the whole truth, in that it did not include the information that they had the right of redemption. If we can assume that Blaisdell did not know that a property owner has a right to redeem from tax sale, I do not think Derees was under a legal duty to call his attention to such right. Blaisdell was presumed to know the law and moreover Derees (according to Blaisdell) had said that if Blaisdell did not accept Derees' offer he (Derees), would go
40 to Freehold and obtain a deed from the "sheriff,"

Conclusions.

which was information to Blaisdell that somewhere, through some official and upon payment of some sum of money, even a stranger could obtain good title and if a stranger could do this, the inquiry should have arisen in Blaisdell's mind, Why could the record owner not do so? And while Derees was telling Blaisdell that the latter no longer had any interest in the property, he was also, in effect, telling him that he had an interest which Derees wanted to buy, that is, that the complainants had something to sell. The final allegation is that Derees cajoled the complainants into executing the deed by telling them if they did not accept his offer, he would leave and not return again. Everyone knows that in negotiations for the purchase and sale of land, it is customary for the seller to ask more than he is willing to take and for a purchaser to offer less than he is willing to give and that such transactions frequently reach a point where one or the other and perhaps both say: "This is my final offer. Take it or leave it. I am through," but it cannot be considered fraud on the seller if, after accepting the purchaser's alleged final offer, he discovers that the purchaser was really prepared to pay a higher sum if forced to it.

The situation here seems to me to have been that the complainants had practically abandoned the property and although they lived six or seven miles away and drove in the vicinity as often as once a year and had the means at their command to ascertain the amount of tax arrears and the probable value of the lots, they felt that their interest in the lots was of no value and when, after an ownership of thirty-four years, a stranger, suddenly appeared and told them he thought their

Conclusions.

10 interest of sufficient value to justify an offer from him, they should have understood that they had something to sell and should have declined to negotiate until they had time for inquiry and investigation, but they jumped at the chance to get something for nothing, with the usual result. The case of Industrial Savings &c., Co. v. Plummer, 84 N. J. Equity, 184, is one where a purchaser claimed to have been defrauded, but the remarks of the Court therein contained can well be applied to the instant case. I cannot bring myself to believe that in obtaining the deed from the complainants to his wife, Derees practiced fraud or misrepresentation on the complainants, or concealed any fact which he was bound to disclose to them.

20 If, however, the deed to Mrs. Derees was fraudulently obtained, there is no evidence to show that the defendant Howlett, to whom Mrs. Derees conveyed, had notice of the fraud and was not a bona fide purchaser. The deed to him is dated and acknowledged June 18, 1926, and was recorded June 19, 1926. The bill of complaint herein was filed June 19, 1926, but a notice of *lis pendens* was filed in the Monmouth County Clerk's office June 18, 1926. The *lis pendens*, having been filed prematurely, is not constructive notice to Howlett (Walker v. Hill's Executors, 22 N. J. Equity 513) and it is not shown that before recording his deed, he had actual notice of it.

30 The complainants say that they did not discover until a few days after they had executed the deed to Mrs. Derees, that they had conveyed to her and not to a corporation. They then knew that Derees had deceived them in this respect and within a month after the sale they had information as to the amount of tax arrears and the value of the

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Final Decree.

land. It was then they knew they had been induced to convey for what they considered to be an inadequate consideration. The defendants urged on the hearing that the complainants should at once have disavowed their conveyance and should have commenced suit to set it aside and not having filed their bill until a month after the discovery of the alleged fraud, they are guilty of laches. Because I have found no fraud in the transaction and have found that the defendant Howlett acquired title without notice of the alleged fraud, I have not discussed this last point.

Final Decree.

(Filed January 11, 1927.)

IN CHANCERY OF NEW JERSEY.

Between
 EDWARD B. BLAISDELL and LYDIA A. BLAISDELL, his wife,
 Complainants,
 and
 GRANTINA B. DEREES and HENRY S. DEREES, her husband, and FREDERICK J. HOWLETT and CLARA A. HOWLETT, his wife,
 Defendants.

On Bill, Etc.

The above entitled cause coming on to be heard before the Chancellor in the presence of Fred Dieffenbach, Jr., solicitor for and of counsel with complainants and Plume L. Douglass and L. Edward Herrmann, of counsel with the defendants,

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Final Decree.

Grantina B. Derees and Henry S. Derees, her husband, and Charles Jones, of counsel with the defendants, Frederick J. Howlett and Clara A. Howlett, his wife, on bill, answer, replication and proofs taken in open court.

10 And the evidence offered by the respective parties having been submitted, the cause having been argued, and the Court having considered the pleadings, proofs and argument of counsel, and being of the opinion that the complainants are not entitled to the relief prayed for in their pleadings,

20 It is on the 11th day of January, 1927, by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED and the said Chancellor, does, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE AND DECREE that the complainants' bill be and the same is dismissed with costs to the defendants against the complainants and with said costs shall be included a counsel fee of \$150.00 to Plume L. Douglass, solicitor for and of counsel with the defendants Grantina B. Derees and Henry S. Derees and a like counsel fee of \$150.00 to Charles Jones, as counsel for the defendants, Frederick J. Howlett and Clara A. Howlett.

30 And it is further ORDERED, that the *lis pendens* filed herein be cancelled of record.

It is further ORDERED, that execution issue for said taxed costs against the goods and chattels, lands, tenements, hereditaments and real estate

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Amended Notice of Appeal.

of the said complainants, according to the practice of this Court.

E. R. WALKER,
G.

Respectfully advised,

JAMES F. FIELDER,

V. C.

"A True Copy."

THOMAS BARBER,

Clerk.

Amended Notice of Appeal.

(Filed April 11, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

EDWARD B. BLAISDELL and LYDIA A. BLAISDELL, his wife,
Complainants,

and

GRANTINA B. DEREES and HENRY S. DEREES, her husband, and FREDERICK J. HOWLETT and CLARA A. HOWLETT, his wife,
Defendants.

On Bill, etc.

The complainants Edward B. Blaisdell and Lydia A. Blaisdell, his wife, hereby appeal from the final decree advised herein by JAMES F. FIELDER, Vice-Chancellor, and made herein by the Chancellor on his advice on the 11th day of January, nineteen hundred and twenty-seven, dismissing the bill of complaint of the complainants and refusing to

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Amended Notice of Appeal.

10 grant relief to the complainants against the defendants as sought for in the said bill and in granting to the said defendants' solicitors the costs and counsel fee mentioned in said decree, to the Court of Errors and Appeals in the last resort in all causes.

Dated, April 8th, 1927.

FRED. DIEFFENBACH, JR.,
Solicitor for Complainants.

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

FRED. DIEFFENBACH, JR.,
Solicitor and of Counsel
for Complainants.

20 Sat below.
V. C. FIELDER.

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Petition for Appeal.

(Filed .)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
EDWARD B. BLAISDELL and LYDIA A.
BLAISDELL, his wife,
Complainants-Appellants,

and

GRANTINA B. DEREES and HENRY S.
DEREES, her husband, and FRED-
ERICK J. HOWLETT and CLARA A.
HOWLETT, his wife,
Defendants-Respondents.

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On Bill.

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

The petition of Edward B. Blaisdell and Lydia A. Blaisdell, the appellants in the above stated cause, respectfully shows:

That your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, advised by his Honor, JAMES F. FIELDER, Vice-Chancellor, bearing date the eleventh day of January, nineteen hundred and twenty-seven, in a cause wherein Edward B. Blaisdell and Lydia A. Blaisdell, his wife, were complainants, and Grantina B. Derees and Henry S. Derees, her husband, and Frederick J. Howlett and Clara A. Howlett, his wife, were defendants,

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Answer of Grantina B. Derees and Henry S. Derees.

the same may be affirmed, with costs to be adjudged to these respondents.

10 CHARLES JONES,
Solicitor for and of Counsel with
Respondents F. J. and Clara
Howlett.

Answer of Grantina B. Derees and Henry S. Derees, to Petition of Appeal.

(Filed .)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

20 Between
EDWARD B. BLAISDELL and LYDIA A.
BLAISDELL, his wife,
Complainants-Appellants,
and
GRANTINA B. DEREES and HENRY S.
S. DEREES, her husband,
Defendants-Respondents.

30 The answer of Grantina B. Derees and Henry S. Derees, her husband, the respondents in the above stated cause to the petition of appeal of the above named appellants.

40 These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was on the 11th day of January, 1927, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is there-

Answer of Grantina B. Derees and Henry S. Derees.

in stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

10 PLUME L. DOUGLASS,
Solicitor for Respondents G. B.
and H. S. Derees.

CHARLES JONES,
Of Counsel with Respondents.

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113 MAY. T. 1927

New Jersey Court of Errors and Appeals

EDWARD B. BLAISDELL and LYDIA
A. BLAISDELL, his wife,
Complainants-Appellants,

v.

GRANTINA B. DEREES and HENRY
S. DEREES, her husband, and
FREDERICK J. HOWLETT and
CLARA A. HOWLETT, his wife,
Defendants-Respondents.

Submitted on
Briefs.

APPELLANTS' BRIEF.

This action was brought to set aside two deeds on the ground of deceit and fraud by defendants Derees, one deed made of property at Wannamassa, near North Asbury Park, N. J., by the complainants to the defendant Grantina B. Derees, dated April 13th, 1926, and the other deed of the same property made by the defendants Derees to the defendant Frederick J. Howlett, dated June 18th, 1926, recorded June 19th, 1926.

The answers of all the defendants denied the fraud and claimed laches in bringing suit and an election.

Facts Claimed to Have Been Proven by Complainants.

Complainant Edward B. Blaisdell in 1892 owned two lots in question, 100 x 100, and other property in Wannamassa, N. J. He paid his taxes on the other property but on the property in litigation he

failed to do so for the reason that he never received any tax bill for the lots in question while he did receive a tax bill on the other property, and in the early period believed the lots of little value but since a tide has turned quite a little and property has increased in value (p. 20, fol. 10).

On April 13th, 1926, the defendant Henry S. Derees called on Edward B. Blaisdell at his home at Long Branch. The latter was then seventy-seven years of age and retired. Derees' business was buying and selling tax liens all over the State (p. 106, fols. 20 to 30). He obtained Blaisdell's address (p. 107, fol. 30) and knowing the amount due for taxes on the property before he received a deed for it from Blaisdell (p. 108 end of p. and top of p. 109). He knew the amount due for taxes at the time that he called to see Blaisdell (p. 73, fol. 30; and see Exhibit D-1, tax search). He also knew the value of the property placed by him at \$6,000 (p. 60, fol. 40). The building of the Fire Company was worth \$520 which was less than cost (p. 61, fol. 20).

Clara Wyckoff, real estate dealer, valued the property, the lots at \$4,400 and the building now at \$1,000 (p. 76, fol. 20; p. 77, fol. 10) and Mina Wolfe, another real estate dealer, estimated the lots only to be worth \$4,400 (p. 81, fol. 10).

Derees claims to be an authority on tax sales and carries with him the "Martin Act," "Simpson on the Law of 1918, Chapter 237" and quite a number of others (p. 113, fol. 20). He was a man of great power and force which is shown on page 55, folio 30:

"Well, I have put Mayors out on the street and I have put public officers out on the street and I can put fire companies out on the street."

Derees drew the deed from Blaisdell and wife and had it in his pocket when he called on Blaisdell

on April 13th, 1926 (p. 112, fol. 30); it was the first and only time he saw Blaisdell. He knew how to draw deeds (p. 127, fol. 20). He also was a sworn officer of this State—a Notary Public—and took the acknowledgment of Mr. and Mrs. Blaisdell to the deed from them in this transaction (p. 29, fol. 40). Mr. Blaisdell did not read the deed. He simply looked at the description to see that the lots in question were included in the deed (p. 29, fol. 10).

On April 13th, 1926, Derees, acting for himself and his wife and also as a notary public, saw Blaisdell and according to the latter said in substance, "I came to *give* you something." Blaisdell said, "That sounds good" (p. 15, fol. 10). They went into Blaisdell's home in Long Branch and the substance of the conversation with Derees and Blaisdell, corroborated by three witnesses, is as follows:

(1) Derees said he was doing business with some company or corporation; that he was clearing up titles to some property that had been sold for taxes and offered \$200 if Blaisdell would sign papers.

(2) He said that Blaisdell had *no further interest* in the property and all that he wanted to have was Blaisdell's signature to clear the title.

(3) Complainant, Lydia Blaisdell, desired time but Derees acting at that time for himself, his wife, and also as a sworn officer of this State, a Notary Public, said that it would have to be done right away or he would go to Freehold and pay this money to the Sheriff.

(4) He said he would rather give Blaisdell the preference (all of p. 15).

(5) He stated he didn't consider the property worth hardly anything; that *these people* were taking a risk; *they* were buying them and *he* wouldn't do it (p. 16, fol. 40).

(6) That it was of no interest to him; that he received \$10 for getting it fixed up that way and that was all *he got out of it* (p. 29, fol. 30).

(7) Derees knew a fire house was on the property (p. 17, fol. 10).

“Q. What was your idea, Mr. Blaisdell, at the time Mr. Derees came to see you, whether or not you were the owner of these lots? A. Well, I believed that I had lost my interest in them by not paying taxes. He said they had been sold twice for taxes but I knew the deed was given to me in the first place.

“*By the Court:*

“Q. What effect did his statement have on your mind? A. Well, I thought that he was telling the truth. I didn't know any different” (bottom of p. 18 and top of p. 19).

Blaisdell did not read the deed and no one read it to him, but he only read the description to see that the property he was signing for were the lots in question (p. 29, fols. 10 to 20). The deed was not read over to him (p. 30, fol. 10). Derees told him that the grantee was to be a company or corporation (p. 31, fol. 30).

After the deed was delivered Blaisdell saw in a newspaper that it was made to Grantina B. Derees, one of the defendants, the wife of the Notary Public, which aroused his suspicion. He saw some parties from Wannamassa and then concluded to see a lawyer and ascertain what could be done. The investigation was made the latter part of April or in May, 1926 (p. 21, fols. 10 and 20).

Blaisdell wanted his property back because he found that he was virtually swindled out of it (p. 25, fols. 20 to 30).

Corroboration.

Lydia A. Blaisdell corroborated her husband and showed the manner in which Derees acted. He just stood up in the middle of the floor swinging his hands (p. 32, fol. 40; p. 44, fol. 10), was in a hurry so that I didn't have time to think hardly. He was there only 10 minutes (p. 33, top of page). Derees said, “You don't own the property, it has been sold twice for taxes and it is not yours anyway” (p. 33, fol. 10). He said the deed was to be to a corporation and that he was not interested in the property and he never mentioned his wife's name (p. 33, fols. 20 and 30). He said, “I thought I would give you the first chance, you can take it or I will take it to Freehold” (p. 33, fol. 30).

“A. Well, I felt as if—I said, ‘It seems to me as long as we hold a deed for this property I guess we ought to have some claim on it.’ He said, ‘Not if you haven't paid your taxes and it has been sold twice’” (p. 34, fol. 20).

“Q. What induced you to sign that deed? A. Well, because he said we didn't own it and I thought well if we didn't own it that was all there was to it. I didn't know as we could do anything.

“Q. He put it to you as though this money was *found money*? Is that so? A. Yes” (see p. 35, fol. 10).

Testimony of Dora B. Van Brunt.

Derees *convinced my parents at last* that the property did not belong to them and said that all he received was \$10 and that it was nothing to him (p. 50, fol. 20). That if we didn't take the money it would go to Freehold and that he was giving us the preference and he thought \$200 they could have; the property wasn't theirs; *they had no further right in it* (p. 51, top of page). Mother wanted time but this was refused (p. 51, fol. 10).

It had to be decided then and if not they would get nothing. He would take it to Freehold and would not return again (p. 51, fols. 20 to 30).

Testimony of Phyllis Fenstermacher.

Mr. Derees said that they did not own the property any more and that they had no further interest in it and that he thought he would give them the first preference as *he thought they ought to have something out of it* (p. 52, fol. 30).

“Q. Did you hear any conversation in which your grandmother did not want to sign the deed? A. Yes. When my grandfather came into the kitchen I was in there with my grandmother ironing and my grandmother said ‘No’ she did not want to sign it. She made a big fuss about it, she thought there was something wrong and he said he had talked to the man and this man Mr. Derees *convinced* him that he did not own it any more; that it had been sold twice for taxes” (p. 53, fol. 10).

“Q. And you will have to pay up these back taxes? A. No. He did not say they would have to pay any taxes. He said it wasn’t theirs” (p. 53 at fol. 40).

Nine days after Derees obtains this deed and on April 22nd, 1926, he sees Grover Cleveland Hankin, connected with the Fire Department, who built a building on this property (p. 55, fol. 10). Derees would not mention the value of the property but put it up to the Board of Fire Commissioners (top of p. 56). Hankin swears that he was present at a public meeting in May or June in which defendant Derees was accused of having obtained the deed by fraud. The latter stated that his wife owned the lots and that he only represented her (p. 59, fols. 10 to 20).

John Thayer Leavy, United States Internal Revenue Agent, met Derees on May 22nd, 1926, and

the latter said: “Well, I should receive at least 10% on a valuation of \$6,000 which I consider the value of the lots” (p. 60, fol. 30). This testimony is not contradicted. He then told Leavy that the taxes were \$1,026 or \$1,029 and that he would not accept any figure from the Board of Fire Commissioners until such time as the Township Committee would wipe out back taxes not only on these lots but he frankly gave him to understand that he was using it as a method to have taxes relieved on other properties in which he was interested.

“Q. He was driving a hard bargain? A. He certainly was” (p. 64, fols. 10 to 30).

Francis B. Wyckoff, a cement contractor, swore that on June 10th and 17th, 1926, he was present at two meetings of the Township Committee at which the defendant Derees and Mr. Dieffenbach were present (p. 66, fol. 20). That at that time Derees received notice that action was being taken against him by the Blaisdells (p. 67, fols. 10 to 30), and that a tender was made to Derees and a deed presented for execution (p. 68, fols. 10 and 30). Derees attempts to redeem the property (p. 71, fol. 20).

John R. Long, Tax Searcher, shows that both lots on May 3rd, 1926, required to clean up everything due the Township including the interest \$1,020 and some odd cents, and that the property was only sold to the Township and no one else (p. 73 and top of 74; see search marked Exhibit D-1).

Valuation of Property.

The testimony of Clara Wyckoff and Mina Wolfe each value the two lots at \$4,400. The building now is valued by Clara Wyckoff at \$1,000 (pp. 76 and 77). The property now is on a concrete highway which cost \$66,000 to concrete (bottom of p.

78). \$2,200 for each lot is conservative (p. 80, top of page). Derees himself knew the value of the property and the amount of taxes due before and after he obtained the deed for it.

The *lis pendens* was filed June 18th, 1926, at eight A. M., the next morning after the night before when Derees was accused of obtaining the property by improper methods. Grantina B. Derees swears that on that day, June 18th, she executed a deed of the same property with her husband to defendant Frederick J. Howlett (p. 100, fol. 30; Exhibit C-2). She had given her husband a blank check signed by her which is the check in evidence (Exhibit C-1). She did not remember that her husband had been to Oakhurst the night before and did not know that he was going to that meeting and did not remember that she was told that he was going to that meeting (p. 101, top of page). And she also swore that her husband did not tell her that he had been accused of improper conduct in obtaining the deed although he asked her the very next day to make a deed of this property (p. 102, fol. 10). She further swore that all she received for the property was \$2,500 nothing more. Henry S. Derees on page 115, folio 10, denies that he was charged with obtaining the deed by fraudulent means but claims that he was accused of *stealing* it at a meeting in the month of June and admits that the day after the charge was made against him he signed the deed to Howlett (p. 116, bottom of page). He did not notify Howlett of any such claim made against him. Page 114, folio 20, the following appears:

"Q. Was not your sole object to get that deed from these old people? A. No. No different than any I am handling all the time."

Derees says he never told his wife to sign a deed; that he told her she had this offer from Howlett

and she had better accept it. It was the best he could get (p. 117, fol. 30). He drew the deed on the morning of the 17th as he says and then went down the coast (p. 118), and on the 18th he took the deed to Howlett and received a check for \$2,500 and told him, "Of course, it would have to be certified" (p. 119, fol. 20). He says the bank would not certify the check and it was delivered by Derees to his wife in their home and she gave it back to him and told him to put it in his pocket (p. 120, fols. 10 to 20). He held the check until June 24th uncertified and then deposited it. The deal was closed without a contract being signed and without a lawyer (p. 132, fol. 10). Derees flatly denied a tender of \$200 and the presentation of a deed to him to reconvey (p. 125, fol. 40). That counsel did not show him a deed or the money for it (p. 126, fol. 10). These statements and denials on the part of Derees are denied by two disinterested witnesses. Also the statement of Derees that counsel stated that he had *stolen* the property is denied by the same witnesses.

Frederick J. Howlett, real estate dealer, testified that the transaction of the Wanamassa lots was first broached to him on June 10th, 1926. He knew the property very well, lived down there (in Belmar) for twenty-five years in the summertime (p. 129, fols. 20 to 30). That he was acquainted with the value of the property at the time he bought it. He knew that the Fire House was on the property and made no inquiry as to its right there; didn't think it important to inquire (p. 133, fols. 30 to 40 and top of p. 134). The matter was closed without a lawyer except that he sent the deed to his lawyer to record. The two disinterested witnesses who denied the statement of Derees, first, that he was accused of having stolen the property and, secondly, wherein he denied that a tender was made

to him, are Ashley Wolly, tax assessor (pp. 135 and 137, fols. 10 to 20) and Alexander H. Shaw (p. 138, fols. 20 to 30).

POINT I.

The preponderance of evidence clearly shows fraud on the part of the defendant Henry S. Derees acting for himself and his wife and who was at the same time acting as a Notary Public in taking the acknowledgment to the deed.

Four witnesses testified that he convinced the Blaisdells that they had no further interest in the property of any kind or description. In other words he of all men knew that the equity of redemption belonged to the Blaisdells, and told them that they had none. While it may be true for the sake of argument as the learned Vice-Chancellor below said that Derees was not obliged to tell Blaisdell that they owned the equity of redemption, still he, especially, a sworn officer highly interested should not have told an untruth. He was a man of force and strength who had put mayors and public officials on the street acquainted with the drawing of deeds and the laws of tax sales and redemption. With a deed already drawn by him in his pocket for the purpose of enriching not only his wife but himself makes these false statements shown in the foregoing state of facts inducing these unsuspecting people to execute the deed. Our esteemed and learned Vice-Chancellor states that all Derees was required to do was "not to make any false statements or representations to Blaisdell of a material fact and that he should conceal no fact that was his duty to disclose" (p. 143, fols. 30 to 40), and that "in a *real estate deal* where no relation or trust of confidence exists between the vendor and

purchaser the parties deal with each other at arms length and each has the legal right to obtain such advantage over the other with regard to the price, as is possible, for gain or profit is the object of such transactions."

Ordinarily that is true, but in this case the parties were not dealing at arms length. Derees was highly interested in the transaction and made the statements according to the sworn testimony of the witnesses. He knew the value of the property which is uncontradicted to be \$6,000 according to his own statement; he knew the taxes with interest to clean up everything amounted to \$1,026; he knew that if he obtained that deed from the Blaisdells he was making a profit of the difference between said sums.

Can this Court under such circumstances uphold and put its stamp of approval on a transaction of this kind and allow these people to profit to the extent of \$4,000 to \$5,000? Derees made these people believe that they had no right of any kind in the property and only to clear the title were their signatures required and for that he would pay \$200. He falsely stated that he had no interest in this matter except \$10 which he was receiving for every one of these titles he closed. He never mentioned his wife's name and the old folks never read the deed nor did he read it to them, only in so far as Mr. Blaisdell looked at the description to see that the fire lots were in the deed and nothing else and no other property.

You might say that the Blaisdells were negligent in not paying their taxes; that is true, but it is an argument in favor of our contention that the long period of time that elapsed from the time of acquiring the property down to the sale to Derees that they had paid no taxes would put their mind in a state that they might have forfeited their

right to the property, and when Derees with his mannerism, the swinging of his arms and his convincing arguments, induced these people to believe that they had absolutely no further interest in the property, no right of redemption, he committed a fraud of the worst kind. He told them he would give them the first chance; but what right had he to give a first chance? He had no interest of any kind; he had no chance to give. When he was accused of obtaining the deed by improper means—*stealing* it as he said, what did he do? The next day he executes a deed with his wife never telling her anything about the accusations, or to Howlett, and on the same day receives \$2,500 from Howlett. His testimony should not be believed. He swore positively that no tender of a deed and money had been made to him by counsel in an open meeting. These are important matters of material facts and either are true or they are not true. He swears they are not true but he is contradicted by two disinterested witnesses who happened to be present at a meeting of the Township council. He also swore that counsel used language that he *stole* the property. This is also contradicted by the same witnesses who swear that counsel accused him of fraudulently obtaining the property according to Blaisdell's statements.

It was said in *Hall v. Otterson*, 52 Equity 528, that if there is no deception or undue influence if all was fair, open, voluntary and understood the transaction is unimpeachable.

In *Melick v. Metropolitan Life Insurance Company*, 84 N. J. Law 37, Judge GARRISON said:

“In order to establish a case of false representations as was said in *Lomerson v. Johnson*, 47 Equity 312, it is not necessary that something which is false should have been stated as if it were true. If the presentation of that

which is true creates an impression which is false, it is, as to him who seeing the misapprehension seeks to profit by it, a case of false representation.”

It is considered as a species of duress “and yet this notion of the imminence of her husband's arrest was just the one fact of the impression produced upon her mind by Lomerson's statements which were false and which he knew to be false.” From this time on the case became one of false representations, not because falsehoods were stated as if they were facts but because the state of mind produced falsely represented the facts. To take advantage of such a state of mind is to profit by false representation.

Under ordinary circumstances a vendor and a purchaser stand at arms length—the test is whether the party would have entered into a contract if the fraudulent representations had not been made. The rules are not to be rigidly adhered to where to do so would be to allow fraud to go unpunished. Equity will redress fraud in whatever shape it may appear. *Kullkamp v. Hidding*, 31 Wis. 503.

A false statement made to a purchaser of land that another person wished to buy it and that he must act quickly may constitute a fraud. *Hammond v. Pennock*, 61 N. Y. 145.

In *Monell v. Colden*, 13 Johnson 395, at page 402, it was held that one who has been induced to make a purchase of land on false representations of the vendor that if he bought it he would be entitled to obtain from the State certain adjoining lands under water, vendor knowing that the State had previously conveyed it, might maintain an action of fraud. “If,” said the Court, “no representation had been made on the subject by the defendant both parties would have been equally charged with a knowledge of the law and the pub-

lic records of the State, but according to the declaration, the defendant knowingly and falsely misrepresented the fact with respect to the situation of the land under water and if so he is chargeable with the damage resulting from such false representations." The Court declared that there was a relation of trust and confidence between the parties and the seller was bound to exhibit the truth of the case as it stood. Cited in *Babcock v. Case*, 61 Penn. St. 427.

A man who is dealing with another has a right to rest upon an assertion of fact made by the latter (*Mead v. Burns*, 32 N. Y. 295), but not on his right of opinion unless he is an expert, in which case the parties do not deal upon equal terms and the ordinary rule does not apply.

Picard v. McCormack, 11 Mich. 68;
Kost v. Bender, 25 Mich. 515.

In this case Derees claims to be well grounded in the law, tax sales, and deals in tax titles all over the State and it may well be said that he is an expert in this particular vocation.

A party who has been guilty of an intentional fraud whereby another has been misled cannot escape the consequences thereof by showing that the fraud might have been discovered had the other party exercised reasonable diligence. *Eastern Trust, etc. Co. v. Cunningham*, 70 Atl. 17; 103 Maine 455; 70 Atl. page 22, the following occurs:

"But the defendant contends further that if the plaintiff did not know it ought to have known and would have known but for its own negligence. We think this defense cannot avail. There are cases which hold that where one carelessly relies upon a pretense of inherent absurdity and incredibility, upon mere idle talk, or upon a device so shadowy as not to be capable of imposing upon any one, he must

bear his misfortune if injured. He must not shut his eyes to what is palpably before him. But that doctrine, if sound, is not applicable here. We think the well settled rule to be applied here is that if one intentionally misrepresents to another facts particularly within his own knowledge with an intent that the other shall act upon them, and he does so act, he cannot afterwards excuse himself by saying, 'You were foolish to believe me.' It does not lie in his mouth to say that the one trusting him was negligent."

See opinion of Justice KALISCH in *Lembeck v. Gerken*, 88 N. J. Law 329.

In *Lenington v. Strong*, 107 Ill. 295, the following was said:

"The doctrine is well settled that as a rule a party guilty of fraudulent conduct shall not be allowed to cry negligence as against his own deliberate fraud. While the law does require of all parties the exercise of reasonable prudence in the business of life, and does not permit one to rest indifferent in reliance upon the interested representations of an adverse party, still, as before suggested there is a certain limitation to this rule; and as *between the original parties* to the transaction, we consider that when it appears that one party has been guilty of an intentional and deliberate fraud by which to his knowledge the other party has been misled or *influenced in his action*, he cannot escape the legal consequences of his fraudulent conduct by saying that the fraud might have been discovered by the party whom he deceived had he exercised reasonable diligence and care."

Cooley on Torts, 3d Edition, page 907, says:

"Where the sources of information are equally open to both parties to any dealings and the one obtains an advantage of the other *without resort to any trick or artifice of concealment calculated to throw the other off his*

guard or to any false representation of facts, the advantage he gains is deemed legitimate and the losing party must bear such loss as has resulted from his own want of vigilance and prudence. Ordinary prudence does not always protect even against the simplest devices when strong and plausible protestations have captured confidence especially as the very facility of detection will of itself do something to disarm vigilance by making it seem incredible that one would attempt fraud under the circumstances."

I quote the language of Justice MINTURN in the case referred to by the Vice-Chancellor. *Industrial Savings & Loan Co. v. Plummer*, 84 Eq. P. 184.

At page 186 the learned Judge says:

"They examined the property and its environment and no *effort, artifice or subterfuge* seems to have been employed to pervert their judgment or becloud their sense of observation and discernment."

In *Keen v. James*, 39 Equity at 541, Judge DIXON said:

"The second class embraces those circumstances in which * * * it appears that either one or each of the parties, in entering into the contract or other transaction expressly reposes a trust and confidence in the other; or else, from the circumstances of the case the nature of their dealings or their position towards each other, such a trust and confidence in the particular case is necessarily implied. The nature of the transaction is not the test in this class. Each case must depend upon its own circumstances. The trust and confidence and the consequent duty to disclose may expressly appear by the very language of the parties; or they may be necessarily implied from their acts and other circumstances. 2 Pom. Eq., Section 902."

And see *Conover v. Wardell*, 22 Equity 492.

POINT II.

The deed was not properly made known by the officer, the Notary Public, to the Blaisdells.

Who but Derees knew who the grantee was in the deed if in fact there was any in the deed at the time of its execution. The original deed was demanded to be produced at the trial by subpoena and notice given therefor but to no avail.

An officer of the law should not be interested in a transaction of this kind. He should not only have made known the contents of the paper but explained the effect of the deed, that it was cutting off the right of redemption. He should not have disarmed vigilance and have induced and influenced for his own gain the parties to hurriedly, that very night in the course of ten minutes to sign that deed, but it should rather have been his duty when they were undecided and did not want to sign and requested time, to have given a fair opportunity of investigation and referred them to their lawyer as was no doubt their object for requesting time. That would have been fair and honest dealing of the notary, *but that would have spoilt the transaction.*

His mannerism, the swinging of his arms, and his threats, all of the above were not such a solemn execution of a deed as is referred to in the opinion of Mr. Justice MINTURN in 84 Equity 186.

This case may on more than one ground be distinguished from it.

In that case in the first place there was no fraud and secondly, there the parties negotiated for a period of *three months* and ample time had been given to investigate and thirdly, only three years thereafter was suit brought.

POINT III.

Defendant Howlett is chargeable with notice of the facts and dealings in this case and the inadequacy of the consideration would seem to be sufficient to impute knowledge to him.

Howlett resided in the neighborhood for over twenty-five years, in the summertime knew the location and the value of real property. In this matter he closed his own title within a week of learning of the lots for sale by Derees and paid only \$2,500 and assumed the assessment of \$600, Derees to pay the balance of the taxes, etc. He must be charged with knowledge of the value of this property to be \$6,000 and if he had searched the records he would have found the *lis pendens* on record on June 18th, 1926, at eight A. M., the very day that he says he received the deed from Derees. He evidently knew very little about the property as his letter in evidence, D-2, would indicate. In it he did not know positively that a fire house was on the property. The *lis pendens* unfortunately was filed one day ~~after~~ ^{before} the bill of complaint was filed but before the delivery of the deed and unless Chapter 226, Laws of 1926 helps out, which provides for the filing of the *lis pendens*, Howlett cannot be held unless it may be said that he either knew of the circumstances or else that with his knowledge of the price of the property he bought it so cheap as to shock the conscience of this Court.

POINT IV.

No laches can be shown in bringing this action.

After the discovery of the alleged fraud action was taken at once by the Blaisdells; what attracted their attention to the alleged fraud was the transfer in the newspapers to Grantina B. Derees. They had supposed that the deed was to be made to a corporation and thereupon consulted with a Mr. Sinclair and their grandson, and the Blaisdells thereupon hired a lawyer. This was all done in the months of May and June, 1926. Surely no great length of time after April 13th, 1926 (see p. 38, fols. 10 to 20; p. 46, fol. 20; p. 47, fol. 30).

POINT V.

Even if this Court should hold that there was no notice of any fraud to Howlett and that he cannot be held in this case and it finds that relief is proper against the defendants Derees it has still the power to compel the defendants Derees to pay money damages.

The bill of complaint is in the alternative that either the property be conveyed or that judgment be had for damages. The value of the property has been shown and the encumbrances and the difference between the said two sums ought to be the damage. To allow this cunning, strong and forcible character to escape without being held accountable would seem to be equivalent to an invitation of fraud. He operates all over the State in tax titles. He keeps no records of his transactions, throws away his books and check books and *relies on his memory* and if the Court below is

upheld he can proudly point to this case as a justification for him, alone, at any time to enter any home and in a triple capacity for himself as agent, for his wife and as a Notary Public, continue his nefarious practices to enrich himself and succeed on his sworn statements alone in a Court of Justice notwithstanding the material contradictions of disinterested witnesses.

Respectfully submitted,

FRED DIEFFENBACH, JR.,
Of Counsel.

113 MAY 1 1927

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

EDWARD B. BLAISDELL and LYDIA
A. BLAISDELL, his wife,
Complainants-Appellants,

vs.

GRANTINA B. DEREES and HENRY
S. DEREES, her husband, and
FREDERICK J. HOWLETT and
CLARA A. HOWLETT, his wife,
Defendants-Respondents.

BRIEF FOR RESPONDENTS.

Facts.

Edward B. Blaisdell, on April 13, 1926, and for thirty-four years prior thereto, had been the owner of record of two lots in Wanamassa. Very shortly after he had purchased them, he concluded that these lots were of little value; as complainant says (p. 14, l. 30), "the property did not look extra good to me." He never at any time paid any taxes on it. He knew that they had been sold many times for taxes; he lived in the vicinity. He was a bright, intelligent man, and had been for many years in the retail ice business; he had had four or five real estate transactions (p. 31, l. 40). Complainant and his wife passed these lots frequently. He knew that for several years a volunteer fire association had erected a building on these lots and used it. He supposed he had lost the lots because of taxes, and he never asked for any rent or inquired how this fire company came to build on the lots, title to which he knew was once in him and the deed for which he had at the house.

This was the state of affairs when on April 13, 1926, the respondent, H. S. Derees, who deals in or represents people who deal in tax titles, called on him; Derees told him that he, Blaisdell, was the owner of these two lots, and offered him \$200.00 for a deed for them. The offer was accepted and the deed signed by Blaisdell and his wife, and the money paid by the check of Grantina B. Derees, who was the grantee in the deed.

On June 10, 1926, Derees approached the respondent Howlett, a wealthy real estate operator, but only casually known to Derees, by reason of one other transaction in which he unsuccessfully attempted to interest him in a piece of property in Asbury Park. Howlett had for twenty-five years and upwards lived at the shore during the summer, and knew the property in question. A tentative bargain was struck for \$2,500.00, subject to assessments, Howlett to examine the property more critically on his weekend trip to his home in Belmar. Meanwhile, he took Deree's search and had it continued to date by the same searcher at Freehold. He also ordered an official tax search.

On June 18, 1926, the title searcher having returned the abstract, and the title appearing satisfactory, he sent for Derees, took the deed for the property and gave Derees his check for \$2,500.00; Howlett mailed the deed to Freehold, where it was recorded on May 19, 1926, at 8:00 A. M. It appeared in the evidence that on June 18th, or June 19th, a *lis pendens* was filed in the present suit, but it was not filed at the time of the search, and, of course, was not shown in it, and Howlett had no knowledge or means of knowledge that there was any trouble or any suit pending. The fact is that the *lis pendens* was filed before the bill of complaint in this cause,

and some two weeks before the subpoenas were issued and served.

POINT ONE.

Respondent Howlett was a bona fide purchaser for value without notice of any alleged fraud.

Howlett is a well-known real estate operator, who has been buying and selling real estate in different parts of the State for the last twenty-five years and upwards. He never knew Derees or his wife socially. He met Derees but once before, when Derees was trying to interest him in the purchase of the old Coleman House Block at Asbury Park about February, 1926 (Case, p. 129).

On June 10, 1926, Derees offered the property in question for sale. Howlett having spent his summers at the shore for the past twenty-five years (Case, p. 129), said he knew the property; a sort of tentative deal was made for \$2,500.00, subject to assessments; but Howlett wanted to look over the property again. Meanwhile, he took Derees' search and had it continued to date by the same searcher at Freehold. This original search was in evidence. He had an official tax search made; that also was in evidence. He took the deed, paid the \$2,500.00 purchase price by check, dated May 18, 1926, as appears by the deed and the check. He mailed the deed at once to Freehold. It was recorded May 19, 1926, at 8:00. There is not the slightest evidence of any actual notice of the alleged fraud of Derees.

The price paid, viz.: \$2,500.00 plus \$600.00 assessment, \$3,100.00 in all. It is to be assumed that unless he felt that it was susceptible of being sold or traded at a profit he would not have bought it.

There was no constructive notice, because the *lis pendens* was filed prematurely. In fact, it was filed before the bill of complaint. A *lis pendens* does not become notice until not only the bill is filed, but process issued and served.

Haughwout v. Murphy, 22 N. J. Eq. 531;
Lehigh Valley Railroad Co. v. Andrus, 91 Eq. 225 at 229.

The original papers show that process was issued and served some two weeks subsequent.

POINT TWO.

No fraud can be inferred from Derees' conduct.

As the Vice-Chancellor found in his opinion, the complainant and his wife were bright, intelligent and alert; they had had four or five other real estate transactions. Far from inducing them to buy, that they had no interest in the property; Derees told them that they *did* have an interest, and that that was what he wanted to buy. He was dealing at arm's length. In the cases cited by adversary, there was a position of trust or confidence existing between the parties, which is absent here.

It is settled beyond dispute in this State, that mere inadequacy of consideration will not avail to set aside a deed unless accompanied by fraud.

Where was the fraud? This is Blaisdell's own story of the representations (Case, p. 15):

"Q Tell us what he said to you, and what you said to him. A I happened to be outside on the sidewalk talking to a friend, and this car drove up and one man in it, and he said, 'I am looking for E. B. Blaisdell,' he said. 'Well,' I says, 'that is my name. You are not going to arrest me, are you?' Something of that kind. 'No,' he said, 'I came

to give you something.' I said, 'That sounds good.' Then he went on to explain what it was for, what he was doing. He said he was doing business for some company or corporation—I don't know which he said—and he was clearing up title to some property that had been sold for taxes and he had a number of properties like that, in that way, and he came to offer me \$200 if I would sign papers to release the property. I said, 'Well, we will go into the house and talk it over.' We went in and he showed or produced deeds to be signed by myself and my wife. She happened to be in another room and I called her and told her about it, and she refused to sign at first; she wanted more time; but he said it had to be done right away or he would go right back to Freehold and pay this money to the sheriff, instead of paying it to me, and he would rather give me the preference. So finally we signed the deed."

Derees' story is set forth clearly on pages 107 and 108:

"Q Under what circumstances did you meet them? A On the 13th of April I drove up to Broadway—I think it is Broadway in Long Branch—having obtained Mr. Blaisdell's address, and a man was outside cleaning leaves out of the hedge. I asked him if Mr. Edward Blaisdell lived there, and he said, 'I am Mr. Blaisdell.' I was leaning out of the car window then, and I said, 'Are you the Mr. Blaisdell who owns some land down in Wanamassa that was sold for taxes?' He says, 'Yes.'

I said, 'Are you going to redeem them?' He said, 'Why, certainly not.' I said, 'Why don't you?' He said, 'Well, I do not want to.'

'Well,' I says, 'I came up here to offer you \$200 for a deed, a bargain and sale deed that will not bind you to pay any of the tax liens on the lots.' He says, 'Well, if you are making an offer of \$200 for those lots, you

better get right out of that car and come into the house.' ”

After a careful examination of the evidence of all of complainants' witnesses, it is quite clear that they not only understood what they were doing, that they knew all about this property, but that they also had the benefit of the independent advice of a very intelligent daughter and granddaughter. It further appears that the only alleged fraud of which they complained is this: That according to his story, Mr. Derees was buying for a corporation, and that a few days afterward they learned that an individual, namely, Grantina B. Derees, had bought the property; but it likewise appears in complainants' own evidence that they examined the deed, and it quite clearly appears from the check in evidence that they were paid by the check of the grantee, Grantina B. Derees.

POINT THREE.

The deed was properly acknowledged.

Whether or not the acknowledgment was taken correctly can best be seen by the following evidence of the complainant (Case, p. 30, ll. 20 to 30):

“Q Mr. Blaisdell, did Mr. Derees say to you and to Mrs. Blaisdell, ‘You understand what you are signing?’ He said something to that effect, didn't he? A I guess he did.

Q He said, ‘This is a deed for two lots at Wanamassa?’ A Yes.

Q He said, ‘You know what the lots are?’ did he not? A Yes.

Q Then he asked you whether you acknowledged that you signed, sealed and delivered that deed as your free act and deed, did he? A Yes.”

The fact that Derees happened to be the husband of the grantee would make no difference.

POINT FOUR.

There was an election on complainants' parts, and they are bound by that election.

Adversary in Point Four seems to indicate that respondents refer to laches. The settled law in this State is

“That the defrauded party to a contract has but one election to rescind; that he must exercise that election with reasonable promptitude, after the discovery of fraud, and when once he elects, he must abide by his decision.”

See *Faulkner v. Wassmer*, 77 Eq. p. 537 at 543.

About the same length of time elapsed in the cited case as in the present case. In the present case the complainants found out within a few days what they now allege was the fraudulent conduct on the part of Derees in selling to an individual rather than to a corporation. They lived in the immediate vicinity; knew of the fire-house and the means of finding out any facts about the property were much more available to them than they were to Derees.

ANSWER TO ADVERSARY'S POINT FIVE.

Adversary suggests that if the Court finds that Howlett is a bona fide purchaser, yet it should find that Derees was guilty of fraud; and inasmuch as the bill was drawn in the alternative, the Court could somehow find a judgment for damages. Certainly, a court of chancery upon the rescission of a contract does not assess *unliquidated* damages.

See *Faulkner v. Wassmer*, 77 Eq. 537 at page 544, and the cases cited.

Lastly, the words of Justice Magee in case of *Haydock v. Haydock*, 34 N. J. Eq. 570 at 576, are particularly applicable to this case.

“The calm, and deliberate judgment of the Vice-Chancellor, pronounced after an opportunity to see and hear the witnesses, has and ought to have great weight. It ought not to be reversed unless clearly wrong.”

Respectfully submitted,

CHARLES JONES,
Of Counsel with Defendants-Respondents.

INDEX

- Application for Writ of Mandamus
- Max Margolis
- Max Margolis
- Case Cause
- State of Facts
- Agreed State of Facts
- Writ of Mandamus
- Supreme Court
- Writ of Mandamus
- Alternative Writ
- Return
- Demurrer
- Judgment
- Grounds of Appeal