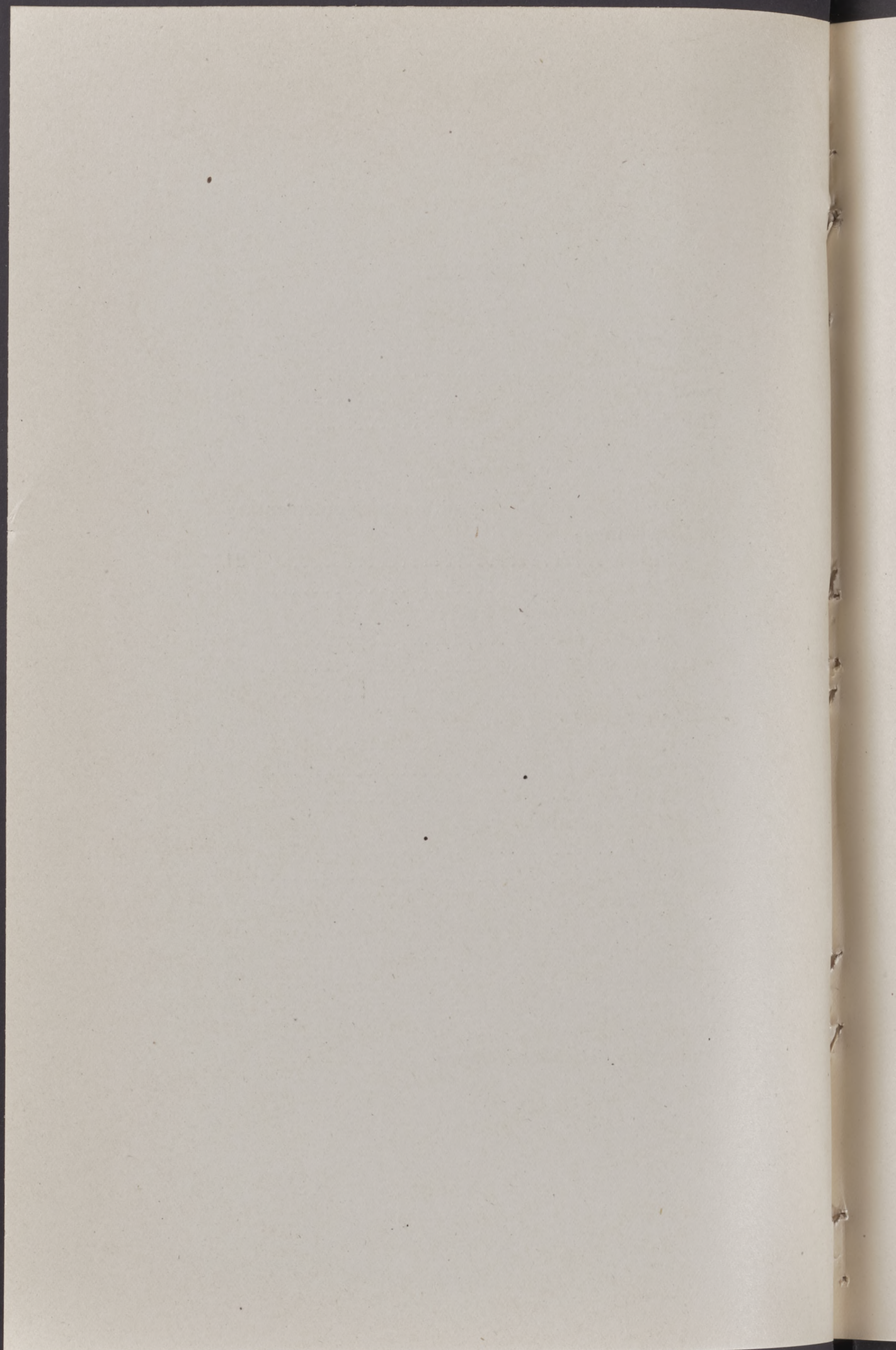


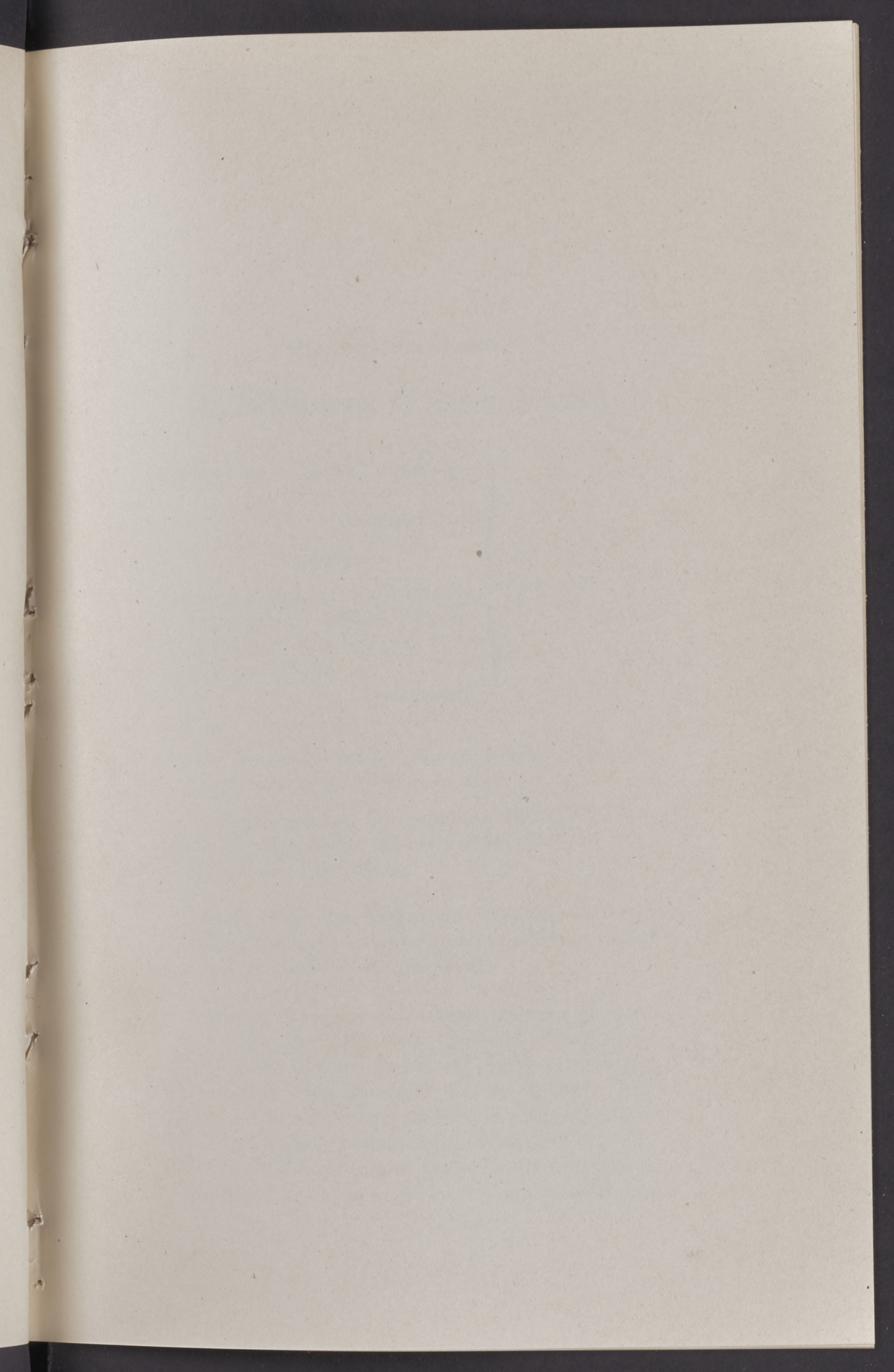
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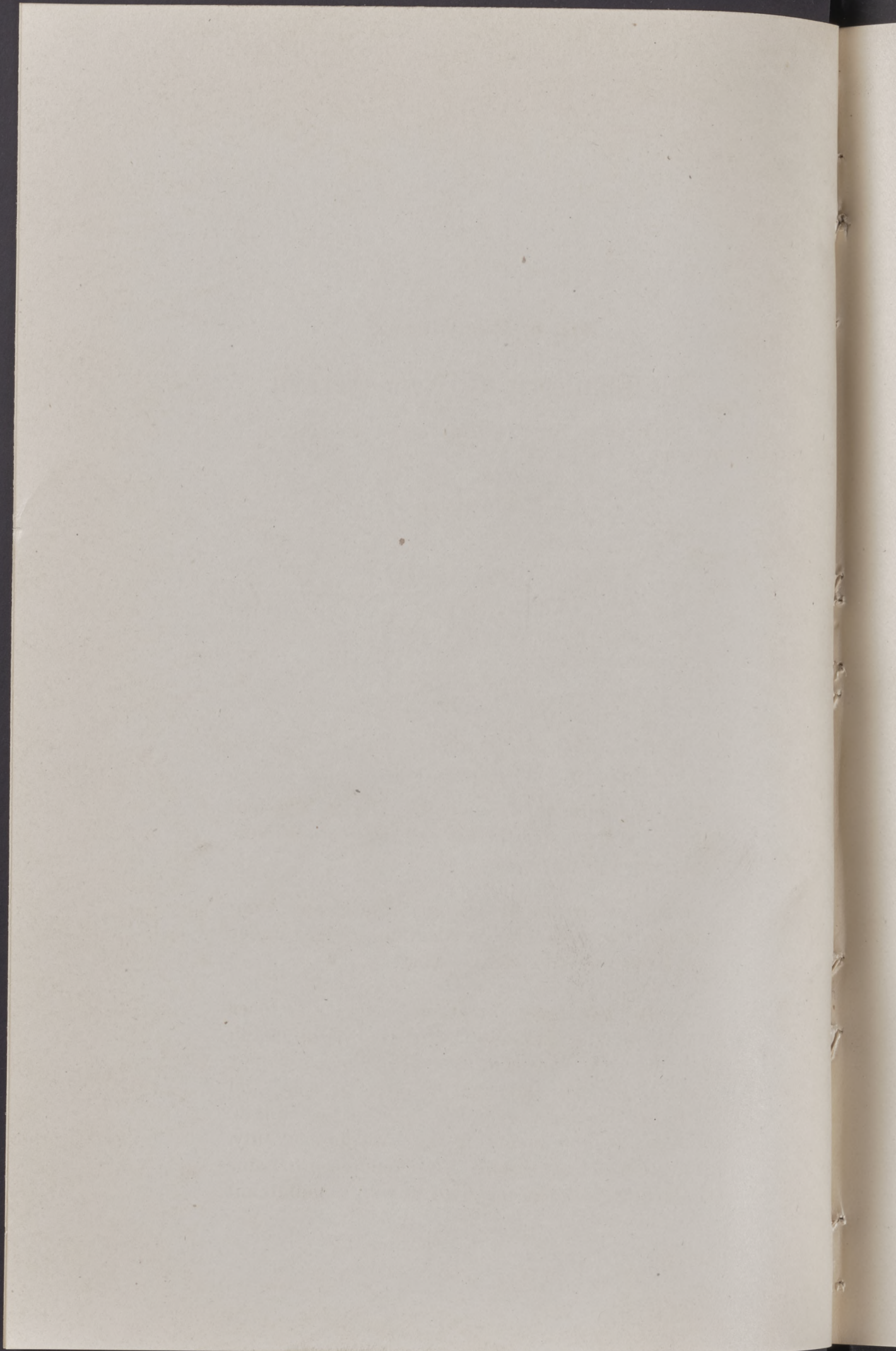
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Bill of Complaint.

In Chancery of New Jersey

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COSMOPOLITAN BANK, a corporation,
Complainant,

against

PAULINE WENIGMANN, CHRISTINE
WENIGMANN, ERNEST WENIG-
MANN and WENIGMANN CON-
STRUCTION COMPANY,
Defendants.

On Bill, &c.
Filed April
27, 1915.

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

The Complainant, Cosmopolitan Bank, a corporation existing under the laws of the State of New York, respectfully shows:

FIRST: That the defendant Wenigmann Construction Company is a corporation existing under the laws of the State of New York.

30

SECOND: That for some time prior to October 19th, 1913, the defendant Christine Wenigmann was indebted to your complainant in sums of money in excess of Five thousand dollars (\$5,000), and continued to remain so indebted to your complainant down to and including the 15th day of July, 1914, on which said date the defendant Christine Wenigmann being so indebted to your complainant

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Bill of Complaint.

10 in the sum of Four thousand dollars (\$4,000) and interest on a promissory note, your complainant then commenced an action upon said indebtedness against the said defendant Christine Wenigmann, for the recovery of the said debt and interest thereon, in the Supreme Court of the State of New York, Bronx County, and that a summons and complaint in said action were duly served on the said defendant Christine Wenigmann personally on August 25th, 1914, and such proceedings were thereupon had in the said suit that afterwards, to wit, on the 15th day of September, 1914, your complainant duly recovered a judgment against the said defendant Christine Wenigmann in the said Supreme Court of the State of New York, Bronx County, for the sum of Four thousand and thirty-nine and 26/100 dollars (\$4,039.26) damages, including costs, as appears by the record of the said judgment now remaining in the office of the Clerk of the said Supreme Court of the State of New York, Bronx County.

30 THIRD: That on the 15th day of September, 1914, execution on said judgment was on the said day duly issued to the Sheriff of said County of the Bronx against the real and personal property of said defendant Christine Wenigmann, in which county the said Christine Wenigmann then resided, which said execution has been duly returned to the said Sheriff wholly unsatisfied, and said judgment remains wholly unpaid.

40 FOURTH: Your complainant further shows that thereafter your complainant commenced an action upon the aforesaid judgment against the said Christine Wenigmann for the recovery of the said judgment in the Supreme Court of New Jersey, and that

Bill of Complaint.

the defendant Christine Wenigmann was duly served on the 29th day of January, 1915, with a copy of the summons and complaint in said action, and such proceedings were thereupon had in the said suit that afterwards, to wit, on the 25th day of February, 1915, your complainant recovered a judgment against the said defendant Christine Wenigmann in the said Supreme Court for the sum of Forty-one hundred and seventy-six and 01/100 dollars (\$4,176.01) damages, including costs, as by the record of the said judgment now remaining in the office of the Clerk of the said Supreme Court at Trenton, reference being thereunto had, will more fully and at large appear. 10

FIFTH: Your complainant further shows that for the purpose of obtaining satisfaction of the said judgment it caused to be issued thereon out of the said Supreme Court a writ of *feri facias de bonis et terris*, which writ having been first duly recorded, was delivered to the Sheriff of the said County of Hunterdon, to whom it was directed, and thereby he was commanded that of the said goods and chattels of the said Christine Wenigmann in his county he should cause to be made the said sum of Forty-one hundred and seventy-six and 01/100 dollars (\$4,176.01), so as aforesaid adjudged to your complainant, and that if sufficient goods and chattels of the said Christine Wenigmann in his county he could not find whereof to make said moneys, he should cause the whole or the residue, as the case might require, of the said moneys to be made of the lands, tenements, hereditaments and real estate whereof the said Christine Wenigmann was seized, in which county she then was, and now is, a resident, and your complainant further shows that John W. Sharp, Sheriff of said County of Hunter- 20 30 40

Bill of Complaint.

10 don, to whom the said writ of execution was directed and delivered, being unable to find any goods and chattels of the said Christine Wenigmann whereon to levy and make the said judgment, caused his return to be made as follows: "I hereby return the within execution unsatisfied for want of goods, chattels, lands, tenements or hereditaments to be found in Hunterdon County belonging to or owned by the defendant Christine Wenigmann. Dated, March 4, 1916, John W. Sharp, Sheriff," and this more fully appears from the endorsement on said writ which was filed in the office of the Clerk of the said Supreme Court at Trenton.

20 SIXTH: Your complainant further shows that the defendant Wenigmann Construction Company prior to the 11th day of July, 1914, was seized and possessed of certain tracts of land beginning at a point 220 feet south from 182nd Street and Webster Avenue in the Borough of the Bronx, City and State of New York, which lots were on the west side of Webster Avenue, being 250 feet in width on Webster Avenue and 100 feet deep, which were of the value of Twenty-seven thousand dollars (\$27,000) over and above the existing encumbrances, and which premises were caused to be conveyed and transferred to said defendant Wenigmann Construction Company by the defendant Ernest Wenigmann.

30 SEVENTH: That the said Wenigmann Construction Company had a capital stock consisting of twenty shares of the par value of \$100 each, of which the defendant Ernest Wenigmann was the owner and holder of eighteen shares, the defendant Christine Wenigmann was the holder of one share, which had been transferred to her by the said Ernest Wenigmann, her husband, and one Leanore

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Bill of Complaint.

Wenigmann, a daughter of the defendant Ernest Wenigmann, was the holder of the remaining share of stock.

EIGHTH: That on or about the 11th day of July, 1914, it was agreed by and between the defendants herein that for the purpose of securing the indebtedness of the defendant Ernest Wenigmann to the defendant Christine Wenigmann, then amounting to upwards of the sum of Thirty thousand dollars (\$30,000), that the said premises on Webster Avenue, so seized and possessed by the Wenigmann Construction Company as hereinbefore mentioned, should be conveyed, and was then further agreed for the purpose of depriving and defeating this plaintiff's claim and judgment, that the title under such conveyances should not be taken in the name of said Christine Wenigmann, but such title should be taken in the name of the defendant Pauline Wenigmann, to hold the same and the proceeds thereof for the use and benefit of and in trust for her mother, said Christine Wenigmann.

NINTH (a): That said conveyance and transfer of said real property hereinbefore mentioned was made to cover up and conceal the right and title of the defendant Christine Wenigmann thereto, without any consideration therefor being given by said defendant Pauline Wenigmann, and with intent to hinder, delay and defraud this complainant of its just claim against the said defendant Christine Wenigmann.

NINTH: Your complainant further shows that it has been informed and verily believes it to be true, and therefore expressly charges, that no consideration whatsoever was paid for any of the said transfers, conveyances and exchange, and that the said

Bill of Complaint.

Pauline Wenigmann has taken and held and still holds the title to said real property and the proceeds thereof for the benefit and use of her mother, the defendant Christine Wenigmann, and that the said Pauline Wenigmann has no beneficial interest therein.

10

TENTH: That thereafter, and on or about the 18th day of July, 1914, the said defendant Pauline Wenigmann made an exchange with one Lillian B. Rogers whereby the said defendant Pauline Wenigmann transferred the aforesaid Webster Avenue lots for a certain tract of land and premises owned by the said Lillian B. Rogers, situate in the Township of Delaware, County of Hunterdon, State of New Jersey, which property is more particularly described as follows:

20

ALL that certain tract of land and premises situate in the township of Delaware, in the county of Hunterdon and State of New Jersey, bounded and described as follows:

Beginning at a corner in the stone wall in a line of Elisha P. Tomlinson's land and is a corner to David Morgan's land; thence (1) with the line of the latter north fourteen degrees west one chain and thirty links to a corner in the same; thence (2) north thirty-three degrees west four chains and twenty-nine links to a corner in the public road; thence (3) along said road north eighteen and three-quarter degrees west nine chains and fifty-seven links to another corner in said road, on the east side thereof; thence (4) north nine and a half degrees west nine chains and fifty-seven links to a corner on the east side of said road; thence (5) still with the same, north twenty-eight degrees west four chains to the centre of The

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Bill of Complaint.

New Road leading from Sergeantsville to the Baptisttown Road, and is a corner to Israel G. Sherman's land; thence (6) with his line and the new road, north sixty-two and a half degrees west twelve chains and twenty-four links to a stone for a corner on the north side of said road; thence (7) with the same, north sixty-five degrees and fifty minutes east thirteen chains to a stake for a corner in Andrew Sherman's line in said road; thence (8) with a line of the same, north seventy-four degrees and fifty minutes east twenty-two chains and fifty-one links to a stone for a corner in the middle of the aforesaid road and in Mathias Williamson's line; thence (9) with his line, south forty-five minutes east seventeen chains and seventy-four links to a stone for a corner in or near the corner of the stone wall; thence (10) with a line of land about to be conveyed to Lewis Snyder south five degrees east twenty-eight chains and seventy-two links to a corner in Joseph Reading's line; thence (11) with his line, south forty-seven and a half degrees west one chain and twenty-seven links to a stone set by former owner and certified for a corner, being five feet six inches north of a large fast stone or rock; thence (12) south thirty-seven and a half degrees east twenty-four links to a stone set in the same manner for a corner, the last line runs over the centre of the aforesaid fast stone or rock; thence (13) with a line of the same, and James Wolverton's line, south forty-four degrees and three-quarters west twenty-one chains and sixty-two links to a stone set and certified as an established corner to lands of James Wolverton (the last line has a large Chestnut tree marked for a line of ancient

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Bill of Complaint.

mark); thence (14) with the same, and John Hartpence line, south seventy-six and three-quarter degrees west eleven chains and forty-two links to a corner in said Hartpence line and corner to land of E. P. Tomlinson; thence
 10 (15) up the middle of the road, north twenty-five and a half degrees west fifteen chains to a corner opposite the dwelling; thence (16) still along the middle of the road, north twenty-one and three-quarter degrees west nine chains and forty links to a corner in said road; thence (17) south sixty-one and a half degrees west one chain and forty-four links to a corner in said road; thence (18) south sixty-one and a half degrees west one chain and forty-four
 20 links to the beginning, containing two hundred and five and $92/100$ acres, more or less.

Being the same land that was conveyed to the said Joseph D. Wilson by Henry F. Bodine and others, commissioners, by deed bearing date the 31st day of December, 1906, and recorded in the Clerk's Office of the County of Hunterdon in Book 281 of Deeds, Page 163, &c.

30

ALSO

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Delaware, in the County of Hunterdon and State of New Jersey, bounded and described as follows:

40

BEGINNING at a corner in the wall, corner also to John Wilson's land, and running thence by his line (1) south forty-nine degrees west thirteen chains and twenty-eight links to a cor-

Bill of Complaint.

ner of Andrew Sherman's land; thence by his land (2) north three and three-quarters degrees west fifteen chains and seventy-six links to the corner of a lot lately conveyed to John H. Bray; thence by his line (3) north eighty-five degrees east eleven chains and eleven links to a corner in the wall, corner to the lands of the heirs of Samuel Johnson; thence by the same (4) south a quarter of a degree east eight chains to the place of beginning, containing fourteen acres and 48/100 of an acre of land, be the same more or less, together with a right of way through what is known as the Sherman farm, formerly owned by the said Joseph D. Wilson, said right of way to be as provided for in Deed of conveyance from the said Joseph D. Wilson and wife for the said Sherman farm; the tract herein conveyed being the same that was conveyed to the said Joseph D. Wilson by Jackson Burkett and wife by deed bearing date of the 12th day of April, 1895, and recorded in the Clerk's office of said County in Book of Deeds, Vol. 242, Page 205, &c.

Together with all the live stock, farming utensils, farming implements, machinery and all of the crops now growing in or about the said farm, and all of which are included in this rule, excepting, however, the personal property now on said farm belonging to William A. Taylor, and excepting the wheat crop now ready for harvesting.

That said deed to the defendant Pauline Wenigmann was dated the 18th day of July, 1914, and was acknowledged on the same day, and recorded in the office of the Clerk of the County of Hunterdon on July 25th, 1914, in Volume 312 of Deeds for said

Bill of Complaint.

10 county, on page 16. That the value of said property located in the Township of Delaware, County of Hunterdon and State of New Jersey, is Ten thousand dollars (\$10,000), and which property is subject to an alleged mortgage of Two thousand dollars (\$2,000).

20 ELEVENTH: That the said attempted alleged transfer, conveyance and exchange of said premises and property to the defendant Pauline Wenigmann was without any consideration whatever and was made with intent to hinder, delay, cheat and defraud the creditors of the defendant Christine Wenigmann, and particularly your complainant's judgment and claim, all to the knowledge of the said defendant Pauline Wenigmann.

30 TWELFTH: That the aforesaid transfer, conveyance and exchange was fraudulent upon its face, for the reason that it was an attempt to transfer from the defendant Wenigmann Construction Company to the defendant Pauline Wenigmann, the daughter of the president of the Wenigmann Construction Company, without any consideration, and after the incurring of the indebtedness from the said Christine Wenigmann to your complainant.

40 THIRTEENTH: Your complainant further shows that it has frequently and in a friendly manner applied to the said Christine Wenigmann and Pauline Wenigmann to pay the said judgment, or to cancel and surrender the said fraudulent conveyance or to reconvey or cause to be reconveyed the said premises to the said Christine Wenigmann so that they may be sold under the said execution for the satisfaction of the said judgment, and a good and clear title given therefor to the purchaser thereof, as in

Bill of Complaint.

equity and good conscience they ought to have done, and as your complainant well hoped they would have done, but which they wholly refuse to do.

That the defendant Christine Wenigmann is possessed of no other property in this state than the above-described premises. 10

IN CONSIDERATION WHEREOF, and for as much as your complainant is remediless in the premises at the common law, and cannot have adequate relief except by the aid of this Honorable Court:

To the end thereof that the said Pauline Wenigmann, Christine Wenigmann, Ernest Wenigmann and Wenigmann Construction Company hereto may, without oath, full, true and perfect answer make to all and singular the premises according to the best of their knowledge, information, remembrance and belief, and that they may set forth and discover the real estate belonging to the said Christine Wenigmann and conveyed as hereinbefore mentioned, and what disposition has been made of, or encumbrance put upon, the same, fully and particularly, and whether the same is encumbered, and if so, in what manner, and in whose favor, by whom, and to what amount, and whether such conveyances as before mentioned were made of the said real estate, and if so, for or upon what consideration, and to whom, when and by whom, the same was paid, and who has possessed and occupied said premises and received the rents, issues and profits thereof since the said alleged or pretended conveyances thereof; and that the said defendants or some or one of them may be decreed to pay to your complainant the full amount due and owing to it on the said judgment, with interest, costs and execution fees accrued thereon; and that the said fraudulent conveyances 20 30 40

Bill of Complaint.

and all other fraudulent conveyances and encumbrances made, created or suffered between the said defendants and affecting the said lands may be set aside and declared null and void, and that the said lands may be sold free, clear and discharged of and from the said fraudulent deeds and all other fraudulent deeds and encumbrances under the said writ of execution or otherwise, and the proceeds thereof, or such part of the same as may be necessary, may be applied to the payment of your complainant's said judgment; and that your complainant may have such other or further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant to your complainant the state's writ of subpoena or subpoenas, issuing out of and under the seal of this Honorable Court, directed to the said Pauline Wenigmann, Ernest Wenigmann, Christine Wenigmann and Wenigmann Construction Company, therein and thereby commanding them, and each of them, at a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your complainant will ever pray, &c.

MAURICE STEINER,
Solicitor for Complainant.

JACOB FISCHER,
Of Counsel.

Answer.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between</p> <p>THE COSMOPOLITAN BANK, a corporation,</p> <p style="text-align: right;">Complt.,</p> <p style="text-align: center;">and</p> <p>PAULINE WENIGMANN, ERNEST WENIGMANN, CHRISTINE WENIGMANN and THE WENIGMANN CONSTRUCTION COMPANY,</p> <p style="text-align: right;">Defts.</p>	}	<p>10</p> <p>Answer. Filed June 22, 1915.</p> <p>20</p>
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The answer of Pauline Wenigmann, Ernest Wenigmann, Christine Wenigmann and the Wenigmann Construction Company to the bill of complaint of the Cosmopolitan Bank, a corporation:

These defendants, in answering, admit that the complainant is a corporation existing under the laws of the State of New York.

These defendants admit that the Wenigmann Construction Company is a corporation existing under the laws of the State of New York.

These defendants, in further answering, admit that some time prior to October 19, 1913, Christine Wenigmann was indebted to the complainant in sums of money in excess of Five thousand dollars as endorser upon notes of Ernest Wenigmann, her husband, and that prior to the 15th day of July, 1914, Christine Wenigmann, the defendant, signed a note for Four thousand dollars as accommodation maker for her husband, Ernest Wenigmann, and that complainant commenced action against her in the Supreme Court of the State of New York, Bronx

Answer.

County, and that she was duly served and a judgment recovered against her in said court for the sum of Four thousand thirty-nine dollars and 26/100 damages, including costs, as appears by the record of the said judgment in said Supreme Court of the State of New York.

10 These defendants further admit that execution was issued on said judgment to the Sheriff of said County of Bronx against said defendant Christine Wenigmann, but these defendants have no knowledge as to how said execution was returned, and, so far as they know, said judgment remains wholly unpaid.

20 These defendants, in further answering, say that an action was commenced against the said defendant Christine Wenigmann for the recovery of said judgment in the Supreme Court of the State of New Jersey, and that said Christine Wenigmann was duly served with a summons and such proceedings were had in said suit; that on the 25th day of February, 1915, the complainant recovered a judgment against said defendant Christine Wenigmann in said Supreme Court for the sum of Four thousand one hundred and seventy-six and 01/100 dollars damages, including costs, and that the same appears of record in the office of the Clerk of the Supreme Court at Trenton.

30 These defendants further admit that execution was issued thereon and recorded and delivered to the Sheriff of the County of Hunterdon in order to obtain satisfaction on said judgment, and that the same was returned unsatisfied on the 4th day of March, 1915.

40 And these defendants, in further answering, admit that the defendant the Wenigmann Construction Company prior to the 11th day of July, 1914, was seized and possessed of certain tracts of land in

Answer.

the bill of complaint described 250 feet in width on Webster Avenue and 100 feet deep, but deny that said tract of land was worth the sum of Twenty-seven thousand dollars over and above existing encumbrances, and insist that said lot was worth very little, if any, more than the encumbrance.

10

And these defendants, in further answering, say that it is true that the Wenigmann Construction Company had a capital stock consisting of twenty shares of the par value of \$100 each, of which the defendant Ernest Wenigmann was the owner and holder of eighteen shares, the defendant Christine Wenigmann was the owner of one share, which had been transferred to her by Ernest Wenigmann, her husband, and one Leanore Wenigmann, a daughter of Ernest Wenigmann, was the holder of the remaining share of stock.

20

These defendants, in further answering, deny that on or about the 11th day of July, 1914, it was agreed by and between the defendants herein that for the purpose of securing the indebtedness of the defendant Ernest Wenigmann to the defendant Christine Wenigmann, then amounting to upwards of the sum of Thirty thousand dollars (\$30,000), that the said premises on Webster Avenue, so seized and possessed by the Wenigmann Construction Company, should be conveyed, and was then further agreed for the purpose of depriving and defeating this plaintiff's claim and judgment, that the title under such conveyances should not be taken in the name of said Christine Wenigmann, but such title should be taken in the name of the defendant Pauline Wenigmann, to hold the same and the proceeds thereof for the use and benefit of and in trust for her mother, said Christine Wenigmann.

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Answer.

10 These defendants, in further answering, say that they admit said conveyance was made to the said Pauline Wenigmann by the Wenigmann Construction Company because it had been agreed by and between the defendant Pauline Wenigmann and her parents, the said Ernest Wenigmann and the said Christine Wenigmann, that if the said Pauline Wenigmann would remain at home and assist her mother that the said Ernest Wenigmann would pay to her for her services an amount equal to the amount the education of her older sister and brother had cost him, and the said Pauline Wenigmann, after her second high school year, had remained at home and assisted her mother in her household duties until she was twenty-seven years of age; and
20 these defendants say that said conveyance of the said premises by the Wenigmann Construction Company was made for the purpose of fulfilling that agreement.

And these defendants, in further answering, say at the time said conveyance was made, and now aver the fact to be, that at said time the defendant Ernest Wenigmann and the said Christine Wenigmann were solvent and had more than sufficient property to pay their debts.

30 These defendants deny that said conveyance and transfer of real property was made to cover up and conceal the right and title of the defendant Christine Wenigmann thereto, and deny that the said Christine Wenigmann at the time of such conveyance, or at any other time, had any title to said premises, and deny that such conveyance was made for the purpose of hindering, delaying or defrauding the complainant of any claim it had against the said defendant Christine Wenigmann.

40 And these defendants, in further answering, admit that no consideration whatsoever has been paid

Answer.

for any of said transfers, conveyances and exchange, except as aforesaid, and deny that the said Pauline Wenigmann has taken and held and still holds title to said real property and the proceeds thereof for the benefit and use of her mother, the defendant Christine Wenigmann.

These defendants, in further answering, admit that about the 18th day of July, 1914, the said defendant Pauline Wenigmann made an exchange with one Lillian B. Rogers whereby the defendant Pauline Wenigmann transferred the aforesaid Webster Avenue lots for a certain tract of land and premises owned by the said Lillian B. Rogers, situate in the Township of Delaware, County of Hunterdon and State of New Jersey, which property is correctly described in the bill of complainant.

These defendants further admit that the live stock, farming utensils, implements and machinery and crops were transferred as in said bill of complainant stated, and these defendants, in further answering, deny that the value of said property in the bill of complainant described as having been conveyed to the defendant Pauline Wenigmann is \$10,000 and aver that \$5,000 is the full and complete consideration for all of the property conveyed to the said Pauline Wenigmann.

And these defendants further admit that the property is subject to a mortgage of \$2,000.

These defendants further deny that said conveyance was made with the intention to hinder, delay, cheat or defraud this complainant, and deny that the defendant Pauline Wenigmann had any knowledge of such intention.

These defendants admit that said conveyance was made after the indebtedness from said Christine Wenigmann to complainant was incurred, and

Answer.

that the defendant Christine Wenigmann is not possessed of any property in this state.

10 And these defendants, in further answering, say that any real estate belonging to the said Christine Wenigmann was conveyed as hereinbefore mentioned, and that the real estate conveyed to the said Pauline Wenigmann by the Wenigmann Construction Company is still in possession of the said Pauline Wenigmann and is unencumbered, except by a mortgage of \$2,000, as stated in the bill of complainant, and that the consideration of said conveyance was as hereinbefore mentioned.

20 And these defendants, in further answering, say that the promissory note mentioned in the said bill of complainant for \$4,000 was an accommodation note signed by the said Christine Wenigmann at the request of the complainant, and the said indebtedness was the indebtedness of the defendant Ernest Wenigmann, and that the said Christine Wenigmann never received any benefit from the proceeds of said note, or any part thereof, and that said note was endorsed by the said Ernest Wenigmann, who received the consideration therefor from the complainant.

30 These defendants, in further answering, say that at the time the judgment against the defendant Christine Wenigmann was obtained in the State of New York the defendant Ernest Wenigmann was the owner of a large amount of real estate in the State of New York in said Bronx County, namely: Tract of land on Sedgwick Avenue and Fordham Row containing two lots in area, irregular in size; value, \$15,000; encumbrance, \$9,500. No. 2011 Crescent Avenue; private dwelling. Three-story brick building; value \$11,000; encumbrance, \$7,000.

40 And that if said complainant had brought suit against the defendant Ernest Wenigmann the judg-

Answer.

ment obtained thereon could have been fully paid and satisfied by the sale thereof.

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

H. B. HERR,
Solicitor for Defendants.

10

Replication.

IN CHANCERY OF NEW JERSEY.

COSMOPOLITAN BANK, a corporation,

Complainant,

against

PAULINE WENIGMANN, CHRISTINE
WENIGMANN, ERNEST WENIG-
MANN and WENIGMANN CON-
STRUCTION COMPANY,

Defendants.

20

On Bill, &c.
Replication.
Filed July
9, 1915.

The replication of Cosmopolitan Bank, complainant, to the plea of Pauline Wenigmann, Christine Wenigmann, Ernest Wenigmann and Wenigmann Construction Company, defendants:

30

The complainant joins issue on the answer of the defendants.

MAURICE STEINER,
Solicitor of Complainant,

367 Main Street,

East Orange,

New Jersey.

40

Pauline Wenigmann—Deposition.

Christine, because, of course, that would not be binding on Pauline, but I will read Pauline's, and I offer in evidence now the testimony taken in supplementary proceedings before George H. Large, Supreme Court Commissioner, Pauline's testimony; it begins at page 53. 10

(Counsel read same.)

(Copy of deposition of Pauline Wenigmann on supplementary proceedings taken April 24, 1915; offered in evidence in the present case, page 2.)

PAULINE WENIGMANN, having duly appeared in pursuance of a subpoena being served upon her, and having first been sworn by his Honor, the Commissioner, George H. Large, testified as follows: 20

By Mr. Steiner.

Q. Where do you reside? A. Grandview Farm, Stockton.

Q. Are you related to Christine Wenigmann, the defendant in this proceeding? A. Yes, sir.

Q. What relationship? A. A daughter.

Q. Do you know the time when you became the owner of the Webster Avenue lots in the Bronx? A. 30
The early part of last year.

Q. Do you know what month? A. February, I think; I am not sure. A little later than that; I think the deed was delivered July 11, 1914.

Q. From whom did you obtain that property? Was the Wenigmann Construction Company the grantor of that deed? A. I think so.

Q. Did you pay any consideration to the Wenigmann Construction Company for that deed? A. 40
Yes, sir.

Pauline Wenigmann—Deposition.

Q. What consideration, if any, did you pay? A. My assistance at home. My brothers and sister went away to school and received a college education and I assisted with the housework. No.

10 Q. Did you give them any property that you owned in consideration that they would transfer the Webster Avenue lots to you? A. Any property?

Q. Yes. A. No, sir.

Q. Was any contract signed by you prior to the delivery of this deed between you and the Wenigmann Construction Company for the purchase of this property? A. It wasn't a contract exactly. It was an agreement in letter form.

20 Q. Do you remember what the date of the letter was? A. I can't remember the wording.

Q. No; I asked you the date of the letter. A. That was the early part of the year. That is what I referred to at first.

Q. This letter was dated the early part of 1914? A. Yes, sir.

Q. By whom was that letter signed? A. Why, I don't remember.

Q. This is the only piece of property that you ever owned? A. Yes, sir.

30 Q. Was that letter—was that letter signed by the Wenigmann Construction Company? A. I can't remember.

Q. Was that letter delivered to you? A. Yes, sir.

Q. By whom was it delivered? Do you remember, Miss Wenigmann? A. No, sir. Do you mean at the time it was written?

Q. I asked by whom was it delivered. Well, if you don't know, just say you don't remember. A. I cannot remember.

40 Q. Was it delivered by your father, Ernest Wenigmann? A. I think it was.

Pauline Wenigmann—Deposition.

Q. Have you the letter in your possession? A. Not now. It has been mislaid.

Q. When did you last see that letter? A. Before we moved out there.

Q. When did you move out here? A. In August.

10

Q. August, 1914? A. Yes, sir.

Q. What time—what was the last time prior to 1914 that you saw that letter? A. Just before we started to pack things. I can't remember exactly; just before we moved out here.

Q. Do you remember the contents of that letter? A. Why, it was to the effect that I was to receive this property on Webster Avenue, near 182nd Street, for my services rendered at home.

Q. For your services rendered at home? A. Yes, sir.

20

Q. How old are you, Miss Wenigmann? A. Twenty-seven.

Q. Have you always lived with your folks? A. Yes, sir.

Q. Have you always done housework? A. I went to high school two years. Since then I have stayed at home and assisted with the house duties.

Q. For how long have you stayed home? A. I do not remember how long ago I left high school.

30

Q. When did you graduate? A. I didn't graduate. I only went two years. I don't remember just how long I have been out of school. I think nine or ten years. I think I left high school about nine years ago.

Q. You left high school nine years ago? A. I think so, or ten.

Q. When you first moved to the farms and when you lived at the Grand Concourse did you have any household servants? A. Not always. At times when we couldn't do the work or got tired out we would have someone come in and assist.

40

Pauline Wenigmann—Deposition.

Q. But during the nine years that you claim you stayed at home and helped your folks employed a housemaid, didn't they? A. Only at times.

Q. How often? A. Whenever we felt we couldn't do the work or got tired out, then we had someone to help out.

10 Q. Well, on an average of six months a year? A. No.

Q. Your folks could afford a housemaid, couldn't they? A. No; not always.

Q. It is only within the last few years that reverses came in the real estate operations that forced you to retrench? A. More than that.

Q. What was the answer? A. Longer than that.

Q. Where were you—where was this deed delivered to you? A. The deed for the Webster Avenue lots?

20

Q. Where was that deed delivered to you? A. In Mr. Martin's office.

Q. Who represented you at that time? A. Mr. Martin; Martin & Howe.

Q. Was your father present at that time? A. Yes, sir.

Q. Was your mother present? A. Yes, sir.

Q. Subsequently to July 11, 1914, you exchanged this Webster Avenue property for the present farm that you now own at Stockton; that is so, isn't it? A. Yes, sir.

30

Q. Was there any—what consideration, if any, was paid by you other than your equity in the Webster Avenue lots for the purchase of the Stockton farm? Did you pay any cash for it? A. No, sir.

Q. You simply transferred your equity in the Webster Avenue lots for the deed of the Stockton farm? A. Yes, sir.

40

Q. Did you receive any cash from the owner of the farm in Stockton? A. Yes, sir.

Pauline Wenigmann—Deposition.

- Q. For this exchange? A. Yes, sir.
- Q. How much? A. \$2,000.
- Q. Was that received in cash? A. Yes, sir.
- Q. Where did this closing take place? A. At Mr. Davis' office.
- Q. Where is he located? A. Between 161st and 162nd Street, I think. 10
- Q. Now, the farm that you purchased or exchanged at Stockton, that was subject to a mortgage, was it not? A. Yes, sir.
- Q. What was the amount? A. \$2,000.
- Q. Do you know who holds that mortgage? A. Yes, sir.
- Q. Who? A. Mr. Butler.
- Q. Do you know his first name? A. A. Alonzo, I think. 20
- Q. Do you know his address? A. Frenchtown, N. J.
- Q. Do you know what rate of interest that mortgage bears? A. Five or six, I think.
- Q. Have you paid the interest to Mr. Butler since you owned the farm? A. It has been paid.
- Q. I asked you did you pay it? A. Not personally.
- Q. Who did? A. My father.
- Q. Have you ever had a checking account of your own? A. No, sir. 30
- Q. You haven't leased this farm, have you? I mean you haven't rented it out to anyone? A. No, sir.
- Q. You are still the owner of that farm, are you not? A. Yes.
- Q. Do you hold this farm for your mother? A. No, sir.
- Q. Was there any agreement ever made between you and your mother in regard to holding the Web- 40

Pauline Wenigmann—Deposition.

ster Avenue lots? A. I don't know what kind of agreement you mean.

Q. Any agreement between you and her that you were to hold these lots for her? A. No, sir.

10 Q. Now, on behalf of the Cosmopolitan Bank, the plaintiff in this action, I am going to ask you will you reconvey that farm at Stockton to your mother? A. No, sir.

And being cross-examined by Mr. Parker, says:

20 Q. Miss Wenigmann, you say that you got cash in exchange for your Webster Avenue lots for this farm amounting to \$2,000. Why did they give you the cash for that exchange; do you remember? A. It was to be given to me free and clear, but there was a mortgage on the farm which they wished to remove. I needed the money to defray expenses and I asked that it be left on the farm, and it was.

Q. That is where you got the \$2,000? A. Yes, sir.

Q. You say there was no agreement that you made with your mother that you would hold the Webster Avenue lots or any interest in them for her benefit? A. No.

30 Q. Did you make any agreement of that character that you would hold interest in this farm for her? A. No, sir.

Q. No contract or agreement with her on your part or with your father that that property should be owned by anyone but yourself? A. No, sir.

40 Q. The agreement, you say, was the basis of your getting the Webster Avenue lots was an agreement that you say had been made with you by your mother, that in consideration of your not going longer to school or college and remaining at home

Pauline Wenigmann—Deposition.

to work was that you should be compensated for that? A. Yes, sir.

Q. You have a sister? A. Yes, sir.

Q. Did she receive any special education? An expensive one? A. Yes, sir.

Q. A college education? A. Yes, sir. 10

Q. You have a brother? A. Yes, sir.

Q. Did he receive a like education? A. Yes, sir.

Q. An expensive one? A. Yes, sir.

Q. You have a younger brother? A. Yes, sir.

Q. Was he receiving the same kind of education until financial reverses came to your father and prevented his continuing that education? A. Yes, sir.

Q. Where was he sent to school, if at all? A. At Briarcliffe. 20

Q. Was he there very long? A. One year, I think.

Q. One year or longer? A. I guess a little longer than one year.

Q. That is at Ossining, New York? A. Yes, sir.

Q. That is all.

Judge Collins: I will now put in evidence the contract between Lillian B. Rogers and Pauline Wenigmann, dated July 6th, 1914, and call attention to the fact that the original draft was with the Wenigmann Construction Company, and that part of it was erased and Pauline put in. 30

(Marked Exhibit C-2.)

Judge Collins: I now offer in evidence an exemplified copy of the deed from the Wenigmann Construction Company to Pauline Wenigmann, which is dated July 11th, 1914. 40

(Marked Exhibit C-3.)

Pauline Wenigmann—Direct.

 PAULINE WENIGMANN SWORN.
Direct examination by Mr. Herr.

Q. You are one of the defendants in this case?
 A. I am.

10 Q. And the owner of the property out in New Jersey? A. Yes, sir.

Q. The Lillian B. Rogers property? A. Yes, sir.

Q. How old are you? A. Twenty-eight.

Q. Where did you live previous to the time you came to New Jersey? When did you come there?
 A. When?

Q. Where did you live? A. New York City.

Q. Whom did you live with? A. Mother and
 20 father.

Q. And how long did you live there? A. All my life.

Q. Was there ever any arrangement, or what arrangement, if any, was ever made between you and your parents for your services, and when was the arrangement made, if it was made?

Judge Collins: Objected to as irrelevant and incompetent.

30 The Court: The question may be answered subject to objection.

Q. (Question read.) A. When they asked me to stay home from high school and assist with the work at home.

Q. Well, go on and state what it was. Give us the time that was, as near as you can tell. A. Well, it was the last year I was in high school, just before I left high school.

40 Q. State as near as you can when that was? A. About ten years ago, I guess.

Pauline Wenigmann—Direct.

Q. What is it? A. About ten years ago; I don't remember just how long ago I left high school, but it was about ten years.

Q. You remember your age when you left high school? Perhaps we can get at it by that. How old were you when you left high school? A. I guess I was a little over seventeen or pretty near eighteen; I don't know just exactly. 10

Q. State who that arrangement was made with? A. With mother and father.

Q. Now, state what it was, what was said? A. That if I would give up my education to stay at home, on account of the other children, my sister and two brothers going away and receiving college education, they would—mamma would recompense me in some way. 20

Q. What were you to do? A. Do whatever I could at home; assist mother at home.

Q. And what did you do during those ten years? A. Why, I assisted with the housework and did sewing.

Q. During that time, or what portion of the time did you have a maid during that ten years, if any? A. Occasionally, not always; it was a large house and we were not able to do all the work, and when it was possible to get one and we felt we needed one we had one. 30

Q. Just state to the Court what size that house was, and what it was necessary for you to do?

The Court: Where was it, in the first place?

A. In the Bronx, 179th Street and Concourse; it was a private house.

Q. Do you remember how many rooms it had? A. I am trying to think; I guess there were twelve rooms and three baths. 40

Pauline Wenigmann—Direct—Cross.

Q. And who did the work? A. Well, I did as much as I could, and then when it was necessary we had someone come in and help us; not all the time.

10 *By the Court.*

Q. Of whom did the family consist at that time, the time you left high school? A. Mamma and papa and my sister and two brothers; one brother was away at college.

Q. And where was the sister? A. She was also at college, but in the city; she came home nights.

Q. And the brother was away most of the time? A. Yes; he was away.

20 Q. Has any arrangement ever been made between you or your mother or father by which your mother or your father was to have any interest in this property? A. You mean in the farm?

Q. The farm or the property in New York, either, either one.

Judge Collins: On Webster Avenue.

Q. Well, on Webster Avenue? A. No; no arrangement was made.

30 Q. Now, I will ask you with regard to the farm; was there ever such arrangement made? A. No arrangement.

Cross-examination by Judge Collins.

Q. You, of course, I take it, had the family washing done by someone outside? A. Yes.

Q. And a good deal of the time you had a domestic? A. Not a good deal of the time.

40 Q. Well, how much? A. Well——

Q. What proportion? A. I do not know exactly.

Pauline Wenigmann—Cross.

Q. Half the time? A. Possibly.

Q. Three-quarters of the time? A. Not that much; no.

Q. Well, you had one whenever you could get one, didn't you? A. Not whenever we could get one; if it was necessary and we could get one we had one. 10

Q. What would determine whether or not it was necessary? A. When mother and I were tired out and couldn't do the work any longer.

Q. Your mother and yourself did the work, did you? A. Yes.

Q. Well, the sister that was down at college and came home nights would help some, too, would she not? A. She didn't have any time to help.

Q. She would be home evenings? A. Well, she had studying to do. 20

Q. She didn't do anything? A. No housework.

Q. Who did the cooking? A. When we hadn't any maid I did it, and usually when we had one I would have to help.

Q. If you hadn't any maid you did the cooking? A. Yes.

Q. And your mother, too? A. Well, mamma and I together.

Q. You two together? A. Naturally.

Q. If you had a maid she did the cooking? A. 30
If she could cook.

Q. Well, sometimes you had maids that could cook, did you not? A. Occasionally you get one that can.

Q. The beds—each one of you made your own beds, I suppose? A. No; I made them all.

Q. You made all the beds? A. Yes.

Q. Your sister's included? A. Yes.

Q. Oh, didn't she make her own bed? A. Some- 40
times, when she was home Saturdays or Sundays, she would, otherwise I did.

Pauline Wenigmann—Cross.

Q. Didn't you and she sleep together? A. No, sir.

Q. Well, now, do you know how the property in Webster Avenue came to be deeded to you by the Wenigmann Construction Company? A. How?

10 Q. Yes; how it came about; why it was deeded to you? A. Why, in lieu of services rendered at home, because I stayed home from school.

Q. Who said that? A. What do you mean?

Q. Who said that it was deeded to you in lieu of services? A. Why, it was through my father, by my mother's consent.

Q. Through your father by your mother's consent? A. Yes.

20 Q. Why should your mother consent? A. Because she had agreed to divide her share of her money among the children, and the other children received their education and I didn't; I had to give up my desire for an education to stay at home and help.

Q. Your mother received some estate from her father, did she not? A. Yes.

Q. About how much? A. Why, I do not know what it was.

30 Q. Wasn't it about \$30,000? A. I really don't know how much it was.

Mr. Wenigmann: Thirty-five thousand.

Q. Judge Herr said thirty-five thousand.

Mr. Herr: No, I didn't; Mr. Wenigmann said that.

40 Q. Oh, Mr. Wenigmann said thirty-five thousand. It was a large sum of money; didn't you always understand about \$30,000? A. I really didn't know what it was; we never spoke of that.

Pauline Wenigmann—Cross.

Q. You knew she did receive from her father's estate considerable money? A. Yes; I knew that.

Q. About when? A. Why, a little before he died and the rest after; I really don't know.

Q. About when was it he died? A. Let me see; it must have been eleven or twelve years ago; I don't remember how many years. 10

Q. Perhaps it might help your memory a little; I have a note here that the will was admitted to probate—your grandfather was Charles Bernhard? A. Yes.

Q. I have a memorandum his will was admitted to probate August 10, 1904, in New York; does that refresh your memory; was that about the time? A. I guess that is it.

Q. When she got her money she let your father have it to use in his business, didn't she? A. Yes, sir. 20

Q. What was his business, your father's? A. Building.

Q. Used to buy lots and build houses on them? A. Yes.

Q. And sell them? A. Yes, sir.

Q. And he used his wife's money? A. Yes, sir; not entirely.

Q. Not entirely, but he did use her money; she let him have money? A. Yes. 30

Q. And is that the reason that you say the arrangement that was made with you was made by your father with your mother's consent; is that the reason of it, because your father had her money? A. Please repeat that question.

Q. (Question read.) A. Yes.

Q. Was there any rate that you were to be paid for staying away from further education and working at home, any arrangement of how much you should get? A. No. 40

Pauline Wenigmann—Cross.

Q. Was there any price fixed between your mother and father on the one side and yourself on the other as to what this Webster Avenue property that they had conveyed to you by the Wenigmann Construction Company was valued at? A. No.

10

Q. No arrangement? A. No, sir.

Q. Was any price at that time fixed on the services you had rendered up to that time? A. No price.

Q. There was no agreement between your mother and father on the one side, or one of them, and you, in writing, was there? A. No, sir.

Q. There was no writing? A. No, sir.

20

Q. Who made the agreement, who made the agreement with you?

Mr. Herr: What do you mean, the original agreement?

Q. The original agreement that you should stay home and be compensated for your services; who made it, your father or your mother, or both of them? A. We all talked it over together; there wasn't any particular agreement.

30

Q. Your father and mother on the one side and you on the other? Now, was anybody else present? A. Why, I really don't remember, it is so long ago.

Q. You don't remember, it is so long ago? A. No.

Q. Well, you were brought up in affluence, were you not? A. Yes.

Q. Your father was a prosperous man until his reverses came upon him? A. Yes.

Q. And you children were all tenderly nurtured and brought up by your parents? A. Yes, sir.

40

Q. And, as I understand you, one son went to

Pauline Wenigmann—Cross.

college; is he older than you? A. No; he is younger.

Q. The son? A. Yes, sir.

Q. How much? A. Three years younger, I think.

Q. Three years older? A. Younger.

Q. Oh, he is younger? A. Yes.

10

Q. Younger than you? A. Yes.

Q. What college did he go to? A. Hamilton.

Q. Now Colgate University? A. Still Hamilton College.

By the Court.

Q. Up in Clinton, New York? A. Yes, sir.

By Judge Collins.

Q. Hamilton College is in Clinton, New York?
A. Yes.

20

Q. And he was at college at this time that you left the high school, was he not? A. Let me see.

Q. Because he was younger than you. Oh, let me see; let us figure that out; you were about eighteen when you left high school, and he was about three years younger than you; that would make him only fifteen; so he could not have got to college quite so soon as that. Where was he then? A. First he went to public school, then he went to Morris High School; graduated there, and from there he went to college.

30

Q. So he went to college after this arrangement was made with you must have been so? A. Well, I guess it was; I hadn't thought about that.

Q. Well, the figures would indicate it? A. Yes.

Q. Now, your sister was older or younger than you? A. Older.

Q. How much older? A. One year and a half.

40

Q. So at the time you left the high school you think you were about eighteen; she would be about

Pauline Wenigmann—Cross.

nineteen. Well, had she got into college as early as that? A. Yes.

Q. What college? A. Normal.

Q. Oh, the Normal College of the City of New York? A. Yes.

10 Q. She was fitting herself to be a teacher, I suppose? A. Yes, sir.

Q. It is a free institution, is it not? A. Yes.

Q. It is a city normal school, free; part of the public school system of New York? A. Yes.

Q. And you stayed home and she went to this free college, Normal College; was there any other brother or sister besides the three of you? A. Yes; a younger brother, Ernest.

Q. Where is he? A. He is out on the farm.

20 Q. Where was he at this time when you said you would stay home? A. He was in public school then.

Q. He was at school? A. Yes.

Q. How old was he; how much younger is he than you? A. Well, he will be eighteen in April.

Q. You think he is now eighteen? A. He will be eighteen in April, I think.

30 Q. So he was only about eight years old? A. He will be nineteen, papa says; I thought it was eighteen.

Q. About nine years old. Well, he continued to go to school? A. Yes.

Q. Did he go to college? A. He went to Briarcliffe School, Dr. Holbrook's school.

Q. And graduated there? A. No; he only went one year.

Q. When did your father get in financial difficulties? A. I don't know exactly when it was.

40 Q. Well, it was long after you made this arrangement to stay home with him, was it not? A. Well, the real difficulties came long after; yes; the building difficulties.

Pauline Wenigmann—Cross.

Q. As I understand it, you say your mother wanted to have her children get the money she got from her father, and the idea was to send them to school and college, and you agreed in lieu of that for yourself that you would stay home and help her; that is about what I understand you to say? 10
A. Yes, sir.

Q. That is right? A. Yes.

Q. But if your brother was three years younger than you, and had not gone to college, and your sister was only a year or a year and a half older, and was going to a free institution, and your other brother was a mere boy of nine, I do not quite see what it was that they got that you did not get?
A. They got their education.

Q. Well, you mean they got it afterwards? A. 20
Well, naturally.

Q. They hadn't got it then? A. They were getting it.

Q. Were getting it. Well, you mean that you were picked out to stay home and be Cinderella, and they were going to be advanced; is that about it?

Mr. Herr: I object to the term "Cinderella." 30

Q. But you went two years to the high school yourself? A. Yes.

Q. Did your sister go to the high school? A. She went directly to Normal College from public school.

Q. Went directly from public school to the Normal College? A. Yes.

Q. Didn't you have about as good an education as she did? A. No; I don't think so; high school education doesn't begin to compare with college education. 40

Pauline Wenigmann—Cross.

Q. With Normal College, doesn't it? A. I don't think so.

Q. Except in so far as the Normal College fits you to be a teacher? A. But I only had two years and she had five; she took the post-graduate course also.

10

Q. But she supported herself then, didn't she? A. No. How could she?

Q. Didn't she have teaching; wasn't she what they call a pupil teacher? A. No; it was a post-graduate course.

Q. Well, they didn't get—none of them got any money from your mother or your father, did they? A. Certainly did.

Q. Eh? A. Yes, sir; they did.

20

Q. Any more than their support? A. Well, all the necessary money they needed; they couldn't earn any money while they were in school.

Q. But I mean there were no presents of money or advancements of large sums given to them? A. I don't know of any.

Q. They were supported while they were at school and college, as I understand it? A. Yes.

Q. And you were supported while you were at home, weren't you? A. Why, yes.

30

Q. You had your board and clothes and spending money? A. I made my own clothes, also my sister's and some of my mother's.

Q. Well, but your father purchased the materials? A. Yes.

Q. You lived at home, as any daughter does, and was supported by your parents, as any daughter is, the only difference being that you helped in the household work? A. Yes.

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

40

Q. About that work, I spoke of the washing being done by someone outside, and that is true also, I

Pauline Wenigmann—Cross—Redirect.

William Schorer—Direct.

take it, of menial labor, scrubbing and cleaning, of that character? A. The heaviest work we had done.

Q. Yes; you had done by other people? A. Yes.

Redirect examination by Mr. Herr.

10

Q. Did you do any scrubbing and cleaning? A. Well, if it was absolutely necessary I did that, too.

WILLIAM SCHORER SWORN.

Direct examination by Mr. Herr.

Q. Are you acquainted with this Webster Avenue property? A. Yes, sir. 20

Q. Which was conveyed to Miss Wenigmann? A. Yes.

Q. What is your business? A. I am a builder and real estate operator.

Q. Where? A. Bronx.

Q. And that is in the region where this Webster Avenue property is? A. Yes.

Q. Have you ever examined the Webster Avenue property with a view of estimating its value? A. No, sir. 30

Q. Well, have you ever examined it? A. I know the property.

Q. Thoroughly? A. Yes, sir.

Q. In your judgment, what was the value of it at the time this conveyance was made?

Judge Collins: Objected to on the ground that he has not shown expertness of knowledge.

40

William Schorer—Direct—Cross.

The Court: Do you want to cross-examine?

Judge Collins: Well, Mr. Pollock is going to deal with him.

10 The Court: You can cross-examine him as to his competency. He is a real estate dealer living in the Bronx, and he says he is familiar with this property. I think that *prima facie* qualifies him.

Mr. Pollock: I will probably save time by not interrupting the direct examination; I will bring it out on cross-examination.

Q. (Question read.)

Mr. Herr: What is the date of it?

20 Mr. Pollock: July 11th, 1914.

Q. July 11th, 1914? A. If you tell me the size of the plot I can tell you better; I don't know exactly the size of the plot; I know the piece.

Mr. Pollock: I will show you the atlas.

A. I know the piece, if you will give me the size of the plot; I know the ground very well without the atlas.

30 Mr. Pollock: Two hundred and fifty feet front and one hundred feet deep.

A. That is ten lots. Well, the piece was worth about \$25,000.

Cross-examination by Mr. Pollock.

40 Q. Where have you operated in the Bronx? A. Mostly in the Tremont section; that is in this vicinity.

William Schorer—Cross.

Q. I am acquainted with the Bronx, so answer my question, if you please. Whereabouts have you constructed in the Bronx? A. Mount Hope.

Q. When and where did you construct there? A. I constructed about 100 houses on Mount Hope, anywhere from 74th Street up to 199th Street.

10

Q. Mount Hope is over towards the Grand Concourse? A. That is between Webster Avenue and Jerome Avenue.

Q. When you say you constructed, don't you mean that you supervised, as the architect? A. No, sir; I constructed; I am a builder.

Q. You mean you purchased the land and put up the buildings? A. Yes, and sold them.

Q. During what years did you construct? A. For the last fifteen years.

20

Q. Have you taken the trouble to examine the assessed valuations fixed by the City Tax Department for the purpose of arriving at an opinion as to the value of this lot? A. No, sir.

Q. You never looked at the assessed valuation of this property here in the Tax Department of the City of New York? A. No; never expected to be asked that question about this property.

Q. Have you ever acted as an expert appraiser in a court before? A. Yes.

30

Q. As to Webster Avenue property? A. No.

Q. When did you last see this Webster Avenue property? A. Within the last three weeks.

Q. Did Mr. Wenigmann ask you to go and look at it? A. No, sir; oh, I pass there sometimes almost every day; sometimes once a month, twice a month.

Q. You haven't made any special examination of this property for the purpose of qualifying as an expert as to its value? A. None at all.

Q. How long have you known Mr. Ernest Wenigmann, the father of Pauline, the gentleman that is

40

William Schorer—Cross.

now here in court? A. I know Mr. Wenigmann by sight for about twelve years.

Q. You are on friendly terms with him? A. Yes.

Q. You recall when he was active as a builder in the Bronx? A. Yes.

10 Q. Do you know anything about his experience as a builder; was he quite an active builder? A. Very active.

Q. In your opinion, is he also qualified to place a value on property in the Bronx as an expert? A. I should think so.

Q. Well, now, would you change your opinion as to the value of this property being \$25,000 if I called your attention to the fact that Mr. Wenigmann had placed a valuation on this property in
20 July, 1914, of \$45,000? A. No; I would not, because Mr. Wenigmann owned it and I did not; I am appraising it because I don't own it.

Q. What is your explanation of Mr. Wenigmann placing a value of \$45,000 on this property? A. He can place anything he likes on it, an owner can; but that doesn't make me judge the price, by his figures.

Q. Would you change your opinion as to \$25,000 if I told you that Mr. Wenigmann placed this valuation on this parcel on Webster Avenue for the
30 purpose of showing what his assets and liabilities were, in a signed statement which he gave to the Cosmopolitan Bank?

Mr. Herr: Objected to as incompetent.

A. I wouldn't change my figures; I know my figures are correct; that is, to the best of my belief.

Q. The reason I ask that question is because you said in answer to my previous question—

40 The Court: Well, we might as well omit that question.

William Schorer—Cross.

Mr. Pollock: Well, he said he had a high regard for Mr. Wenigmann and his opinion, but because Mr. Wenigmann was the owner he would put a large value on it.

A. Every owner will do that.

Q. I also call your attention to the certified copy of the tax roll of this Webster Avenue parcel for the year 1914, which places an aggregate valuation of \$34,900, and— 10

Mr. Herr: I object.

Q. I haven't finished the question. —and ask you if, after communicating that information to you, that you will change your figures as to \$25,000?

Mr. Herr: Objected to. 20

A. Can I explain that?

Mr. Herr: Objected to.

The Court: I think I will let the question be asked.

A. Can I explain as I like?

The Court: Yes; you can explain it in your own way.

Q. Do you want to see it? A. No; I don't. I wouldn't buy the property for twenty-five a lot, because on the rear of the property there is about sixty feet of stone wall, and that is higher than the house will be; a solid stone wall, where they excavated, and it is up sixty feet high, and I wouldn't take it at any price to put a flat on it. 30

Q. Didn't the city tax assessor take that in consideration in putting \$34,900 on it?

Mr. Herr: Objected to. 40

A. I couldn't answer for him.

William Schorer—Cross.

Q. Do you know there is a mortgage on this parcel? A. I have heard so; I understand there were two mortgages on there.

10 Q. Do you know how much those mortgages were for? A. I believe I remember there was one on there at ten, and I believe he put on a second at eight, if I remember correctly; I received that by the newspaper.

By Judge Collins.

Q. One eight, and the other one? A. One ten and the other eight.

Judge Collins: That would make eighteen.

20 Q. No; the fact is that there is only one mortgage of \$18,000? A. Then it has been changed.

Q. In arriving at an opinion for the purpose of giving the Court the necessary information as to the value of real estate, do you take into consideration encumbrances; that is, in the way of a mortgage? A. No.

30 Q. In other words, you are not influenced in arriving at an opinion by the fact that there is a mortgage on for \$18,000? A. Not at all; I come to that conclusion because I know the neighborhood thoroughly; I know every lot there, and I can almost tell you any lot you call off, whether it has rock or dirt or excavated, in that whole vicinity.

Q. This apparently has been excavated? A. Yes.

Q. Ready to build on? A. Yes.

Q. Doesn't require any removal of stone? A. Yes.

40 Q. That is a substantial expense, in removing the stone? A. Terrible expense.

William Schorer—Cross—Redirect.

Ernest Wenigmann—Direct.

Q. And that is added on to the value of the property now? A. No; because you can go right across the way and buy cheap lots for less than it cost him to excavate.

Q. It was excavated in July, 1914, was it not? 10
A. Oh, yes; before that.

Q. And it was just as good then as it is now?
A. Just as good then; yes; certainly; just as good.

Redirect examination by Mr. Herr.

Q. How long ago was that excavated, if you know? A. I believe it has been excavated—about eight or nine years ago it was excavated.

Q. And one reason why you think it is not worth 20
more is because there is a bluff some sixty feet behind it? A. When they excavated it they cut down a rock in front there of about sixty feet in height, and that leaves, if you were building there, and looking out the rear window—you would be up against a stone wall the height of the building.

ERNEST WENIGMANN SWORN.

Direct examination by Mr. Herr. 30

Q. You are the father of Pauline Wenigmann, the defendant in this case? A. Yes, sir.

Q. And were you present at a time an arrangement for her services was made between her, on one side, and yourself and your wife, on the other?
A. Yes.

Q. How long ago? A. About ten or twelve years ago.

Q. Where was it? A. At our house; home. 40

Q. What was that arrangement? A. Well, the understanding was between my wife and myself and

Ernest Wenigmann—Direct—Cross.

10 Pauline; of course we had the understanding before we talked to her, naturally; since we were giving the other children an education, and my wife at times being unable to perform all her home duties, and scarcity of help, we decided to keep Pauline home, if she was willing; of course she objected later on, and said that "the others are getting an education, and here I am doing housework," and of course mother said, "Now, we will make things all right; whatever their education will cost we will see that you get a fair compensation"; that was about the drift of it; it was all verbal, the same as father and mother would do at home with the children; we were a peaceful family, and we didn't have any squabbles.

20 *Cross-examination by Judge Collins.*

Q. You never did reckon up how much the education of the others cost you, did you? A. No; I did not.

Q. And you never fixed any value on the property in Webster Avenue? A. Well, we did and we didn't.

30 Q. I mean when you had it conveyed to Pauline you never fixed any value on it? A. Well, I fixed the value in that way, that I tried to sell it; of course I was hard up and needed money to pay my debts, which I wanted to pay, and of course I tried to sell it, and offered it at a very low figure.

Q. When did you get into difficulties?

Mr. Herr: What did you offer it for?

40 Q. Hold on. When did you get into your difficulties? A. Oh, well, I have been in trouble more or less, short of money, for the last fifteen years.

Ernest Wenigmann—Cross.

Q. But I mean when had your serious financial difficulties started? A. The last five years.

Q. I would like to get at that Webster Avenue property—you formed a little company, it appears, called the Wenigmann Construction Company, of which you had eighteen shares of stock, and your wife one, and your daughter Leonora one? A. Yes; little, if you so choose to call it; I didn't. 10

Q. Oh, a big company, if you please; I am satisfied. I thought that twenty shares, \$100 a share, \$2,000, wasn't very big. A. Well, you might do a big business, just the same.

Q. Well, it was really your own business in that corporation, was it not? A. Yes.

Q. You had the title to the Webster Avenue property conveyed to that company instead of taking it in your own name, didn't you? A. No, sir. 20

Q. You did not? A. No, sir.

Q. You once owned it in your own name, did you not? A. No, sir; never.

Q. Never owned that property? A. Not in my own name.

Q. How did that property come to be conveyed to the Wenigmann Construction Company? A. A gentleman by the name of Theodore Ross and myself owned that property in partnership for the last twenty-two years. 30

Q. But not in your name? A. Not in my individual name.

Q. Whose name was it in? A. Ross and Wenigmann.

Q. Well? A. It wasn't in my individual name.

Q. It was in the name of the two of you? A. Yes; he was my partner.

Q. You owned it for twenty-two years? A. Yes.

Q. Go on. A. And about three years ago I built three houses on the corner of 166th Street and Col- 40

Ernest Wenigmann—Cross.

10 lege Avenue; I owed Mr. Ross about \$15,000, which he loaned me from time to time; he was a retired merchant and he had money, and of course he was getting tired; he wanted his money; he was getting to be an old man, like myself, and he wanted to get things straightened out, and I couldn't get the money to straighten him out, so I entered into an agreement to transfer those three houses on the corner of College Avenue and 166th Street, at least my equity in them, which wasn't an awful lot, for this Webster Avenue property.

Q. To transfer your equity to him? A. To him, for his interest in the Webster Avenue property. Understand?

20 Q. Now, go on. And he canceled the debt? A. He canceled the debt; not all of it; I still owe him some money, to my sorrow; I wish I could pay him.

Q. Go on. A. He transferred the property, and of course I intended to build on this Webster Avenue property.

Q. He transferred it to you? A. No; to the Wenigmann Construction Company.

Q. You and he together? A. We together.

Q. You and he together made a deed to the Wenigmann Construction Company? A. Yes, sir.

30 Q. And the consideration of his interest in it was your transfer to him of your interest in these three houses? A. Yes, sir.

Q. And he also canceled a part of your indebtedness to him? A. Yes, sir.

Q. And the Wenigmann Construction Company didn't pay anything for it, did they; they didn't pay anything? A. Well, they didn't and they did.

Q. Well, they didn't will do for me.

40 The Court: Was the company organized for the purpose of taking the conveyance, or had it been organized before?

A. It had been organized before.

Ernest Wenigmann—Cross.

By the Court.

Q. And the stock had been issued? A. Yes, sir.

By Judge Collins.

Q. And you turned this property over to that company? A. Yes, sir. 10

Q. And it was really your property, was it not? A. No, sir.

Q. Why not? A. Well, it didn't show it on the face of it, did it?

Q. I figure out it did. A. Well, you can keep on figuring.

Q. You and Ross owned it together? A. Yes.

Q. You bought out Ross' share? A. Yes.

Q. And then you and Ross made a deed to the Wenigmann Construction Company? A. Yes. 20

Q. Because you directed that to be done? A. Well, because he had loaned money to the Wenigmann Construction Company.

Q. Then this debt that you speak of, \$15,000, was— A. Partly.

Q. Was partly the Wenigmanns'? A. Yes.

Q. How much was the Wenigmanns'? A. About \$10,000, which was used in my operations.

Q. Well, the Wenigmann Construction Company was really your business under that name, was it not? A. Yes. 30

Q. The real reason for forming it was that the title to the land that you were about to build on could be in a corporation that would give bonds and mortgages, so that you would not have to give bonds and mortgages? A. No; not for that reason; it was because I was willing to give my own bond, but the corporations wouldn't take an individual's bond; they wanted the bond of a corporation. 40

Ernest Wenigmann—Cross.

Q. Oh, yes. A. I would rather have given my own.

Q. Because under the New York law a corporation cannot plead usury; am I right about that? A. I can't say anything about the law; I will leave that to you.

10 Q. In fact, the reason the corporation was formed was that the persons desiring to loan money on the property wanted the corporate bond, not an individual bond? A. That is it.

Q. It was really yours all the time, was it not? A. No.

Q. Why not? A. Why not?

Q. Yes. A. Because I owe lots of people money.

Q. Oh, I see. Well, whatever equity there was?

20 A. I didn't figure it was all mine.

Q. Whatever equity there was was yours? A. Well, yes; you can have it so if you want it that way.

Mr. Herr: That is a conclusion.

Q. That is so, is it not; whatever equity there was in it over and above the debts was yours?

Mr. Herr: Objected to.

30 A. Not necessarily all mine.

Q. Why? A. Because I owed money.

Q. Well, except what you owed; if you paid your debts it was yours, was it not? A. Ah, if I could; yes.

Q. Just a question or two more on that subject. The Wenigmann Construction Company made the deed to Pauline? A. Yes, sir.

40 Q. Because you and your wife requested it, did you not? A. No; we did that because we wanted to avoid the expense of drawing a double deed and

Ernest Wenigmann—Cross.

double expense and double recording and double recording fees and taxes, and so on; therefore we drew it directly to Pauline so we would avoid that.

Q. Instead of doing it how? A. Instead of first drawing it to Mrs. Wenigmann and then Mrs. Wenigmann to her.

Q. Then the idea of conveying it to Mrs. Wenigmann, who afterwards would convey it to Pauline, and to save that trouble, the idea of conveying it to Mrs. Wenigmann was because you owed her money? A. Certainly did.

10

Q. How much money did you have from her? A. About \$35,000 was borrowed, ranging anywhere from ten years, and I have the vouchers in my pocket to show for it.

Q. You are a builder of long experience and familiar with land values up in the Bronx, are you not? A. Yes, sir.

20

Q. What was that— A. I thought I was, but I made a good many mistakes.

Q. What was that Webster Avenue property worth in July, 1914? A. Well, it cost us, and I figured the valuation on it in 1913, Mr. Ross and I, when we figured up the costs.

Q. 1913? A. 1913; it had cost us \$102,000.

Q. What was it worth? A. And I based my valuation on what it had cost.

30

Q. What was it worth? A. What it was worth according to the market, and its selling ability, was practically worth very little because nobody would buy.

Q. You made a statement to the Cosmopolitan Bank, which I show you. A. Yes; you need not show it to me. I know it is there, and I will admit it before you bring it here; it will save your steps.

Q. I don't mind walking; I am active. That is your signature? A. Yes; I think it is.

40

Ernest Wenigmann—Cross.

Q. And in that you say that the vacant land at Webster Avenue, which is that in question, was worth \$45,000? A. That is what I thought, on the basis of what it cost us. We excavated the rock out of that property, and it cost us just \$25,000. We paid to Mr.—what was his name? Yes; that is my signature.

RECESS.

Q. Mr. Wenigmann, this statement that you gave to the bank, I forgot to prove its date; it is dated, I see, June 15, 1914; that is the date you made it, June 15th? A. I don't remember. If that is the date that is on there, evidently I made it that day.

Q. There is your signature? A. Well, that is my signature. Well, then, I guess it is correct.

Q. And in that statement, where you were giving the value of your different property, you said that you owned this Webster Avenue property; you said over your signature: "The above real estate," including this Webster Avenue, "is owned by Ernest Wenigmann." A. Yes; well, I probably said that.

Q. I suppose that was because you considered the company as really yourself in a corporate form? A. The company didn't own it at that time.

Q. June, 1914. Oh, yes, they did. A. Did they?

Q. They made the contract July 6th, 1914? A. Well, the contract wasn't passing the deed, was it?

Q. The contract wasn't made until the next month after you made this statement. A. Well, then, I didn't own it. That was before I made the contract.

Q. Yes, you made the statement before the contract was made. A. Yes.

Q. With Miss Rogers. At the time the statement was made the record title was in the Wenigmann

Ernest Wenigmann—Cross.

Construction Company, but you said to the bank in your statement to get credit that you owned it. A. Not to get credit; I had it.

Q. Well, you made the statement. A. I had this credit for ten years, I think, or longer, of that bank.

Q. Well, you made the statement? A. And when Mr. Pollock became president of the bank he insisted upon me making a new statement, and at that time I was in difficulties, everything was going wrong, couldn't sell anything, couldn't renew mortgages, and, of course, the bank insisted on my paying off; I paid off; I had paid off; I owed them close to \$8,000, and I paid off down about \$4,500. 10

Q. Just confine yourself to the question. A. I would like to tell the story; I think it is essential the Court should know it. 20

Q. What I am driving at is that at the time you made this statement the Wenigmann Construction Company held the title to the property, but you said in the statement that you owned it. A. I probably did.

Q. Well, I ask you whether that was because you considered the Wenigmann Construction Company just the same thing as yourself? A. No, sir.

Q. Why did you say you owned it then? A. Well, you know when a man is pushed to the wall he will say some things sometimes that is not just—I will admit that I did wrong. 30

Q. I don't think you did; we differ. A. Well, I didn't own it altogether.

Q. No stock was ever issued in fact by this company, was there? A. Yes, sir.

Q. No, no certificates were ever issued, is not that so? A. No, sir.

Q. Well, you so stated before Commissioner Large, did you not? A. I don't remember. 40

Q. I will read you—being cross-examined by Mr. Parker, who was then your counsel: "The reason

Ernest Wenigmann—Cross.

that those shares of stock were not filled out was simply because you were practically the company and you neglected to go through the formality? A. That is about it." Didn't you so testify? A. Well, if it is there, I must have done so.

10 Q. Now, Mr. Wenigmann, who negotiated the exchange with Miss Rogers? A. A broker.

Q. Well, I mean who employed the broker? A. I did.

Q. When the exchange was made, it appears there was a \$2,000 mortgage on the New Jersey property? A. Yes, sir.

Q. And that after Mrs. Rogers, or Miss Rogers—was she a Mrs. or Miss? A. I never saw the person.

20 Q. Well, this lady. A. It was all done in Mr. Davis' office.

Q. Paid \$2,000 in cash to enable the purchaser to take care of that mortgage; am I right about that? A. No; the contract was that the farm was to be transferred free and clear, as you will see by the contract, and we needing money, in fact I got some of it; my daughter loaned me some or gave me some, and I paid the bank \$250 out of it; I think I did.

30 Q. You perhaps did not understand my question. The property in New Jersey was to be free and clear? A. Was to be free and clear.

Q. And there was in fact a mortgage of \$2,000 on it? A. Yes, sir.

Q. And so Miss Rogers paid \$2,000 in cash to enable the purchaser to clear off that mortgage? A. Yes.

40 Q. What was done with that money? A. I just told you; my daughter got the money and she loaned me a part of it.

Q. She gave you a part of it? A. And she de-

Ernest Wenigmann—Cross.

frayed the expenses, the transfers, and paying taxes, and one thing and another.

Q. How much did she give you? A. She gave me about \$700 of it.

Q. And what was done with the rest of it? A. She kept it to defray expenses.

Q. Expenses of the farm? A. Yes; she had a well driven; paid a part of that.

Q. Did you not say before Commissioner Large when you were examined, when you were asked: "How much did you get from Pauline out of the \$2,000? A. A little over a thousand dollars"? A. Well, it may have been that much; she gave me money from time to time; she is giving it to me now; if she didn't, I wouldn't have a cent.

Q. Has she given it to you more since you testified; has she given you more since you testified? A. Yes, she has given me small amounts.

Q. You all live together on the farm, do you not? A. Yes.

Q. Who constitute the family? A. Mrs. Wenigmann, my daughter, my son Ernest and myself.

Q. You live there together? A. Sure.

Q. And you run the farm, do you not? A. I assist.

Q. Who does the running? A. My son Ernest.

Q. You all live there in one household? A. Yes, sir.

Q. You do not pay Pauline any rent? A. No.

Q. You live together there just as you used to live in New York, up in the Concourse? A. Not quite as we used to live in New York.

Q. I do not mean the same style of living, for we all feel sorry that you have had bad luck— A. Thank you.

Q. But I mean you live together as a family in the same way? A. Yes; we are a good family, too, and don't you forget it.

Ernest Wenigmann—Cross.

Q. Yes, an affectionate family, but I mean you live together as a household, just as you did in New York? A. No, not just as we did.

Q. I do not mean the same style of living. A. What do you mean then, and I will answer.

10 Q. I mean to say that you are the head of the house. A. They all respect me as the father.

Q. And you supply the table? A. No, sir.

Q. Who runs the house? A. Pauline.

Q. Pauline runs the house? A. Yes.

Q. Do you pay board? A. No, sir.

Q. Nor your wife doesn't pay board? A. No.

Q. The boy doesn't pay any board? A. He certainly does.

20 Q. Oh, he pays board, does he? A. He certainly does.

Q. How does he pay board? A. In the shape of labor—that is, running the farm—and I assist him.

Q. You and he run the farm, and you sell the produce? A. He sells it; it belongs to him.

Q. Oh, it belongs to him, the produce? A. Yes, everything that is raised on the farm belongs to him.

30 Q. How so? A. Because it is his farm; he has got it; my daughter has given him the use of the farm, or rented it to him for the support of the family.

Q. Oh, that is it? A. Yes.

Q. She gives him the use of the farm to support the family? A. Yes.

40 Q. Well, now, I have just had my attention called to something in the contract made between Lillian B. Rogers and Pauline Wenigmann, July 6, 1914, and I call your attention to the fact that that is signed Pauline Wenigmann, by Ernest Wenigmann, is it not? A. Yes, sir.

Q. And that is your signature under it? A. That is my signature.

Ernest Wenigmann—Cross—Redirect.

Q. So you signed it for her? A. Yes.

Q. Now, I notice in it that Miss Rogers not only—
A. I suppose Pauline was indisposed at the time, and that is the reason that was done; I really don't remember that.

Q. I notice that Miss Rogers by this contract agrees to convey to Pauline Wenigmann not only the New Jersey property, but also, on the third page, Parcel No. 3, certain lots in New Rochelle? 10
A. Yes, sir; that is right.

Q. So that there was given for the Webster Avenue property not only the New Jersey property, but these lots in New Rochelle, on the third page of the contract? A. Yes.

Q. How much were they worth? A. A couple of thousand dollars. 20

Q. You testified that you had put a value of \$45,000 on the Webster Avenue lots, that you thought you did that because of the large sum it cost you, but is it not a fact—I have the tax roll here, if you want to see it—that they were taxed for that year, 1913, at \$34,900? A. I guess that is right.

Mr. Herr: Objected to.

A. (Continued) I don't know; it don't make any difference. 30

Mr. Herr: It don't make any difference what it was taxed at; that is no criterion.

The Court: I think that is a fact that may always be given in evidence.

Redirect examination by Mr. Herr.

Q. How much mortgage was there on the Webster Avenue property? A. When it was transferred? 40

Ernest Wenigmann—Redirect.

Q. Yes. A. \$18,000.

Q. How much interest? A. Six per cent. interest.

Q. For how long? A. Oh, about six months, close on to six months.

10 Q. Have you attempted to sell these Webster Avenue lots belonging to the Wenigmann Construction Company before this? A. Yes, I have tried it, tried to sell everything that I owned.

Q. Did you have any offers on it?

Judge Collins: Objected to as immaterial.

A. No, I had no offers.

The Court: Well, he says he had none, so it does not make any difference.

20 Q. You had other property at this time? A. Yes.

Q. What did you have at the time this conveyance was made to Pauline?

Judge Collins: Objected to as irrelevant.

The Court: What difference does that make?

30 Mr. Herr: If there was other property there, it was their business to make the money out of that property, and not go over to Jersey and try to make it out of this, and it goes to show that this Webster Avenue property was comparatively worthless at that time or they would certainly have tried to make it out of that, if they had any claim on it at all.

The Court: Oh, no.

Mr. Herr: Now, Mrs. Wenigmann is not able to get here to-day, but if it is necessary, or if counsel attempt to criticize that fact, I will show why.

40 Judge Collins: No, I shall not criticize it.

CASE CLOSED.

Stipulation as to Exhibits.

NEW JERSEY COURT
OF ERRORS AND APPEALS.

COSMOPOLITAN BANK, a corporation, Complainant-Appellant, against PAULINE WENIGMANN <i>et al.</i> , Defendants-Respondents.	}	On Appeal from Chancery. Stipulation.	10
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IT IS HEREBY STIPULATED that the Complainant's Exhibit 1 is an exemplified copy of the judgment roll and the execution in action in the Supreme Court of the State of New York, Bronx County, wherein the Cosmopolitan Bank was plaintiff, and Christine Wenigmann was defendant, wherein judgment was obtained for the sum of \$4,039.26 on the 15th day of September, 1914, and execution returned by the Sheriff of Bronx County marked *nulla bona* November 14th, 1914, and it is

FURTHER STIPULATED that Complainant's Exhibit 2 is a contract of exchange made the 6th day of July, 1914, between Lillian B. Rogers and Pauline Wenigmann, wherein the said Lillian B. Rogers agreed to convey property described as Parcel No. 1, in the Township of Delaware, Hunterdon County and State of New Jersey, which property is more particularly described in the bill of complaint; Parcel 2, thirteen acres adjoining Parcel No. 1, and Parcel No. 3, lots situate in the City of New Rochelle, County of Westchester, and in said con-

Stipulation as to Exhibits.

tract said Pauline Wenigmann agreed to convey to said Lillian B. Rogers property located on the westerly side of Webster Avenue, etc., in the Borough of the Bronx, City of New York, and it is

10 FURTHER STIPULATED that Complainant's Exhibit
No. 3 is an exemplified copy of deed from Wenig-
mann Construction Company to Pauline Wenig-
mann, which deed is dated the 11th day of July, in
the year one thousand nine hundred and fourteen,
of property located at a point on the westerly side
of Webster Avenue, distant 220.19 feet more or less
southerly from the point of intersection of the
southerly side of east 182nd Street, which deed was,
20 on the 11th day of July, 1914, duly acknowledged
and duly recorded in the office of the Register on
the 22nd day of July, 1914, in Conveyances, Liber
152, page 188, Section 11; and that any part of said
Complainant's Exhibits 1, 2 and 3 put in evidence
on the trial hereof which has not been printed may
be referred to and used in the argument of the ap-
peal herein, and, if so desired, such exhibit or ex-
hibits or documents may be handed to the Court
upon the argument herein.

30 Dated, East Orange, September 16, 1916.

MAURICE STEINER,
Solicitor for Complainant.

H. B. HERR,
Solicitor for Defendant.

Opinion.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between</p> <p style="text-align: center;">COSMOPOLITAN BANK, Complainant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">PAULINE WENIGMANN <i>et al.</i>, Defendants.</p>	}	<p>On Bill. Conclusions of Vice-Chan- cellor Stevens. Filed May 2, 1916.</p>	10
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Mr. GILBERT COLLINS and Mr. POLLAK (of New York), for Complainant.

Mr. H. B. HERR, for Defendants.

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STEVENS, V. C.:

This is a creditor's bill. The facts are simple and undisputed. On September 15, 1915, the complainant recovered judgment against Christine Wenigmann in the Supreme Court of New York for \$4,039.26. The complainant then brought suit thereon in New Jersey and recovered judgment against her in the Supreme Court of this State for \$4,176.01. The judgment-debtor is the wife of Ernest Wenigmann, a contractor, who held substantially all the stock of the Wenigmann Construction Company. This company owned land in the Bronx, and on July 11, 1914, conveyed it to Pauline Wenigmann, a daughter of Ernest and Christine. On July 18, 1914, Pauline exchanged the land thus conveyed for a farm in Hunterdon County in this State. The effort is to subject the farm in the hands of Pauline to the judgment against her mother on the theory that the conveyance is fraudulent as against complainant, or on the alternative theory that Pauline

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Opinion.

holds the land in trust for her mother, and that complainant can therefore fasten his claim upon it.

10 It seems to me perfectly plain that complainant has not made out a case. According to the evidence, the Wenigmann Construction Company owed Christine \$35,000. Mr. Wenigmann (not the corporation) had some understanding with his wife, as far as the evidence goes, vague in the extreme that he would convey the Bronx property to her, but whether in satisfaction of the debt or not does not appear. He did not do so. He caused the company to convey to his daughter Pauline, in satisfaction, as he says and as Pauline says, of an agreement had with her and her mother several years before that if she would forego the college education
20 that her brothers and sisters were receiving, stay home and assist in the house, they would recompense her and give her a fair compensation.

ERNEST WENIGMANN, on cross-examination, testified as follows:

Q. The Wenigmann Construction Company made the deed to Pauline? A. Yes, sir.

30 Q. Because you and your wife requested it, did you not? A. No, we did that because we wanted to avoid the expense of drawing a double deed and double expense and double recording fees and taxes, and so on. Therefore, we drew it directly to Pauline so we would avoid that.

Q. Instead of doing it how? A. Instead of first drawing it to Mrs. Wenigmann and then Mrs. Wenigmann to her.

40 Out of these answers the complainant has constructed the following theory: The conveyance to the wife was to be made in satisfaction or part satisfaction of the debt due to her. Thus vested with

Opinion.

title, the wife was going, voluntarily, to transfer it to her daughter in fraud of her creditors. But the conveyance, made directly to the daughter, has the same legal effect as if it had been conveyed first to the wife and then to the daughter. Unfortunately for this theory the fundamental fact—ownership of the land by the wife—some legal or equitable estate in her—has not been shown. In the first place, the property did not belong to the husband, but to the corporation, and no agreement with the corporation, parol or written, is pretended. In the second place, no agreement in writing, assuming his authority to bind the company, was made by the husband, its controlling stockholder, with his wife. As far as appears, there was not even a definite verbal understanding between them as to the terms upon which the conveyance should be made. What understanding there was gave way to a different understanding, viz. : that a conveyance should be made to the daughter in fulfillment of the promise that the husband had made to the daughter some years previous.

How a fraudulent transfer by the mother to the daughter or how a resulting trust in the daughter for the mother could be built upon such a foundation I am at a loss to conceive. The company's creditors, if there were any, might have objected to this method of disposing of the property, but how a creditor of Mrs. Wenigmann could is not apparent. If the Wenigmann Company had contracted in writing with Mrs. Wenigmann to cancel her indebtedness in consideration of a conveyance of the property, she would then have acquired an equitable interest in it which her creditors might have seized. But as it did not so contract, she acquired no interest and, for aught that appears, still remains the company's creditor. The case is simply this: that

Opinion.

10 Mr. Wenigmann, assuming to speak for the company, first told his wife that he would convey its property to her, and then changed his mind and caused it to convey to his daughter. All this may have been highly irregular, but, as I have said, complainant not being the company's creditor has no standing to complain. I think the bill should be dismissed.

- A true copy.

ROBERT H. McADAMS,
Clerk.

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Final Decree.

IN CHANCERY OF NEW JERSEY.

COSMOPOLITAN BANK,
Plaintiff,

against

PAULINE WENIGMANN *et al.*,
Defendants.

On Bill, &c. 10
Final Decree.
Filed May
22, 1916.

This cause coming on to be heard in the presence of Maurice Steiner, Esq., and Gilbert Collins, Esq., counsel of the complainant, and H. B. Herr, of counsel with the defendants, and the pleadings having been read, the witnesses having testified and the arguments of the respective counsel having been heard and considered, and the Court having fully considered the said pleadings, testimony and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint, it is, on this 22nd day of May, 1916, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainant's bill be, and the same is, hereby dismissed, with costs. 20 30

Respectfully advised,

FREDERICK W. STEVENS.

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Notice of Appeal.

IN CHANCERY OF NEW JERSEY.

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Between
 THE COSMOPOLITAN BANK,
 Complainant,

and

PAULINE WENIGMANN *et al.*,
 Defendants.

On Bill, etc.
 Notice of
 Appeal.
 Filed August
 8, 1916.

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

Dated, August 3, 1916.

MAURICE STEINER,
 Solicitor of Complainant.

GILBERT COLLINS,
 Of Counsel.

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

GILBERT COLLINS,
 Of Counsel with Complainant.

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Petition of Appeal.NEW JERSEY COURT
OF ERRORS AND APPEALS.

<p style="text-align: center;">Between COSMOPOLITAN BANK, Complainant-Appellant, and PAULINE WENIGMANN, CHRISTINE WENIGMANN and WENIGMANN CONSTRUCTION COMPANY, Defendants-Respondents.</p>	}	<p>On Appeal from Chancery. Petition of Appeal.</p>	10
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*To the Honorable the Court of Errors and Appeals
in the last resort in all causes:* 20

The petition of Cosmopolitan Bank, a corporation, complainant-appellant in the above-stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 22nd day of May, nineteen hundred and sixteen, in a cause wherein your petitioner was complainant, and Pauline Wenigmann, Christine Wenigmann and Wenigmann Construction Company were defendants, in this respect, to wit: that the said final decree adjudged and decreed that the bill of complaint filed by your petitioner is dismissed, with costs. 30

And your petitioner humbly appeals from the whole and every part of said decree upon the ground that the same is erroneous in that it dismissed the bill of your petitioner with costs, whereas, under 40

Petition of Appeal.

the pleadings and evidence, your petitioner was entitled to the relief prayed in its bill of complaint.

10 And your petitioner therefore prays that the said decree may be in all things reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

MAURICE STEINER,
Solicitor of Appellant.

GILBERT COLLINS,
Of Counsel with Appellant.

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Answer to Petition of Appeal.NEW JERSEY COURT
OF ERRORS AND APPEALS.

<p style="text-align: center;">Between</p> <p style="text-align: center;">COSMOPOLITAN BANK, Complt.-Applt.,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">PAULINE WENIGMANN, CHRISTINE WENIGMANN, WENIGMANN CON- STRUCTION Co.,</p> <p style="text-align: center;">Defts.-Respts.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">On Appeal from Chancery.</p>
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The answer of the above-named respondents to the petition of appeal of the above-named appellant: These respondents not acknowledging all or any of the matters which in the said petition of appeal contained to be true for answer thereto, nevertheless says and admits that a decree was, on the 22nd day of May last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as therein 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 pray that the same may be affirmed, with costs to be adjudged to these respondents.

H. B. HERR,
Solicitor of Respondents.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT OF THE COMMITTEE ON THE

PROGRESS OF THE DEPARTMENT
DURING THE YEAR 1955-56

Submitted to the Faculty of the University of Chicago
on June 1, 1956

62

The progress of the department during the year 1955-56 has been marked by a number of important developments. The discovery of the neutron star by R. A. Taam and J. A. Wheeler, and the subsequent work on the structure of neutron stars by J. A. Wheeler and his colleagues, have been particularly noteworthy. The discovery of the neutron star has opened up a new field of research in astrophysics, and the work on the structure of neutron stars has provided a new insight into the nature of matter under extreme conditions.

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THE UNIVERSITY OF CHICAGO
PHYSICS DEPARTMENT

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(1956)

New Jersey Court of Errors and Appeals

Between

THE COSMOPOLITAN BANK,
Complainant-Appellant,

and

PAULINE WENIGMANN, CHRISTINE
WENIGMANN, ERNEST WENIG-
MANN and WENIGMANN CON-
STRUCTION COMPANY,
Defendants-Respondents.

On Appeal
from
Chancery.

BRIEF FOR COMPLAINANT-APPELLANT.

Statement of Case.

The appeal is from a decree in Chancery, made on final hearing, dismissing a bill filed to subject certain property in Hunterdon County, New Jersey, the legal title to which is in Pauline Wenigmann, to the lien of a judgment recovered by the complainant against the defendant Christine Wenigmann, the real owner of the property. The claim of the complainant was and is that of a trust resulting by operation of law in favor of Christine Wenigmann in the property standing in the name of Pauline Wenigmann.

Ground of Appeal.

The Court of Chancery dismissed the bill of complaint, whereas under the pleadings and evidence the complainant was entitled to the relief prayed in its bill.

Facts.

As the Vice-Chancellor says (Case, p. 61, l. 22), "the facts are simple and undisputed." They are as follows:

The defendant Wenigmann Construction Company held the legal title to certain land on Webster Avenue, Bronx, New York City, the beneficial owner whereof was the defendant Ernest Wenigmann, the company being a mere dummy corporation under which he conducted his business of building and dealing in real estate (Case, p. 49, l. 30). As stated in the answer in the case (p. 15, l. 10) the capital stock of that company consisted of twenty shares of the par value of \$100 each, of which the defendant Ernest Wenigmann was owner and holder of eighteen shares; his wife, the defendant Christine Wenigmann was the owner of one share, which had been transferred to her by her husband, and his daughter, the defendant Leanore Wenigmann, was the holder of one share. Ernest Wenigmann owed his wife about \$35,000 (Case, p. 51, l. 15), and it was agreed between the husband and wife that the property mentioned should be conveyed to the wife on account of the debt due her. The conveyance was, however, made to the defendant Pauline Wenigmann, another daughter of Ernest and Christine. The pretended reason for bringing Pauline into the transaction was an alleged promise made some years previously by the mother

that if Pauline would stay home and help with the housework, she should be compensated so as to be put on the same footing as her sister and brothers, who were to be educated and were educated out of money received by the mother from her father, the idea being that Pauline should be put on an equal footing pecuniarily with her sister and brothers (Case, pp. 22, 28). We shall argue that the bringing in of Pauline as grantee of the New York City property was a mere pretense to protect Mrs. Wenigmann from the claim of the complainant upon its promissory note then extant and afterwards reduced to judgment. The point to which attention is now directed is that the consideration for the deed from the Wenigmann Construction Company to Pauline Wenigmann passed from Christine Wenigmann, and that therefore there arose what in New Jersey would be a resulting trust, and in New York under statute the equivalent thereof.

The testimony as to the transaction will be found at page 50, line 37, to page 51, line 19, of the case. It is as follows:

“Q. * * * The Wenigmann Construction Company made the deed to Pauline? A. Yes, sir.

Q. Because you and your wife requested it, did you not? A. No; we did that because we wanted to avoid the expense of drawing a double deed and double expense and double recording and double recording fees and taxes, and so on, therefore we drew it directly to Pauline so we would avoid that.

Q. Instead of doing it how? A. Instead of first drawing it to Mrs. Wenigmann and then Mrs. Wenigmann to her.

Q. Then the idea of conveying it to Mrs. Wenigmann, who afterwards would convey it to Pauline, and to save that trouble, the idea of conveying it to Mrs. Wenigmann was because you owed her money? A. Certainly did.

Q. How much money did you have from her? A. About \$35,000 was borrowed, ranging anywhere from ten years, and I have the vouchers in my pocket to show for it."

Pauline Wenigmann testified the same way (Case, p. 32); and see also her examination in supplementary proceedings offered in evidence in this cause (Case, p. 21, *et seq.*; Particulars, p. 24).

Pauline Wenigmann afterwards effected an exchange with Lillian B. Rogers of the New York City property for property in Hunterdon County, New Jersey, which the complainant's bill seeks to reach for complainant's debt reduced to judgment, first in New York and afterwards in New Jersey.

Comment on the Opinion.

The learned Vice-Chancellor based his decision on the narrow ground (Case, p. 63) that there was no agreement between the Wenigmann Construction Company and Christine Wenigmann, and on the mistaken assumption that it was that company which was Mrs. Wenigmann's debtor; and he says (Case, p. 64): "Complainant not being the company's creditor has no standing to complain." The company was the *alter ego* of Ernest Wenigmann and the debtor of Christine Wenigmann, and dealt with the New York property according to his dictation. The answer in the case, joined in by the Wenigmann Construction Company, admits (Case, p. 16) that the company conveyed the New York property as directed by Ernest Wenigmann and his

wife. It was proved in the case in the testimony above quoted and referred to in part by the Vice-Chancellor (Case, p. 62) that the only reason the deed was made by the company to Pauline Wenigmann instead of to her mother was to save the expense of drawing two deeds and paying two recording fees, it being Mrs. Wenigmann's purpose to vest the title in Pauline. The Wenigmann Construction Company, recognizing that it held title in trust for Ernest Wenigmann, conveyed it as directed by him. He alone had the beneficial ownership. His purpose was to transfer the property to his wife on account of his indebtedness to her, and the parties in carrying out her purpose to convey the property to her daughter adopted a short cut by having the conveyance made directly to the daughter. Had the deed been made to Christine Wenigmann and she had then conveyed to Pauline, of course her creditors could have reached the property in the hands of Pauline. How is the case altered by the fact that the conveyance was made directly to Pauline by Christine's direction?

The transaction was consummated with the assent of all the parties in interest, namely, the putting of the legal title to the property held by the Wenigmann Construction Company in trust for Ernest Wenigmann, who was indebted to his wife in a sum far in excess of its value and who had agreed to have the same conveyed to her on account of said indebtedness, into the name of her daughter, Pauline, by the wife's direction. The Court need not be concerned that intermediate steps were omitted. The result is actually the same as if the Wenigmann Construction Company, the trustee, had conveyed to Ernest Wenigmann, the *cestui que trust*, and he had conveyed to his wife and she to her daughter. The only inquiry open to the Court is, who is the beneficial owner of the property?

It is too plain for successful argument to the contrary that Christine, immediately on the conveyance by the Wenigmann Construction Company, became such owner, unless there was a consideration passing to her from Pauline sufficient to support the conveyance directed by the mother to be made to the daughter—of which more hereafter. The answer in the case filed by all the defendants admits our position, and relies entirely on the sufficiency of such consideration and the alleged solvency, not proved, of Ernest and Christine at the time of the conveyance (Case, p. 16, l. 24). It volunteers the information that Ernest was endorser of Christine's note (Case, p. 18, l. 17), and as between him and his wife primarily liable. There seems to have been a double fraud on the complainant, first, the disposing of assets of Ernest which complainant could have reached by recovering judgment on the endorsement, and second of disposing of assets of Christine which, had the deed been made to her, would have been immediately subject to complainant's judgment recovered soon after the making of the fraudulent deed to Pauline. The Court ought not to permit the success of this fraud on a creditor because the parties dispensed with the technicalities of conveyancing, which if followed would have rendered the fraud impossible of accomplishment.

Of course, the exchange of the New York property for the New Jersey property did not affect the situation. If the complainant could have reached the one, it can of course now reach the other.

Argument.

We proceed to discuss the case on the presumption that our theory of the status of the parties is correct. The following argument was presented to the learned Vice-Chancellor, but from his stand-

point needed no consideration. If our standpoint is the correct one we think the argument demonstrates the right of the complainant to prevail in its effort to subject the New Jersey property to its judgment.

We think the law of the State of New York is controlling in the premises, and will be given effect as to New Jersey property taken in exchange for New York property, on principles of comity. It makes little difference, however, whether New York or New Jersey law is to control, for there is no substantial difference between them as to creditors. If New Jersey law controls, or the New York law is to be presumed to be the same as the New Jersey law, the case is one of resulting trust, and the complainant can reach assets of Christine Wenigmann held in fraud of creditors by Pauline Wenigmann. A sufficient reason for adverting to the New York law is lest it should be supposed that complainant would have no remedy in New York, or that it would be incumbent on the complainant to prove that it had such a remedy. Furthermore, the scientific way to consider the case is to inquire into its status under New York law, and apply that law to the New Jersey property, if there be no ground of public policy to prevent such application. Under Sections 24 and 26 of the Evidence Act (P. L. 1900, p. 362) the Court will take judicial notice of the statutes and decisions of a foreign state.

I.

In New York State resulting trusts were abolished by the adoption of the Revised Statutes in 1830, which covered the case of real property being conveyed to one, consideration for the conveyance being furnished by another, and the effect of the transaction upon the creditors of the one furnishing the consideration. Sections 51 and 53 of the Re-

vised Statutes created a trust in favor of the creditors of the one paying the consideration, and since that time the law of the State of New York has remained unchanged. This became Section 74 of the Real Property Law of the State of New York, Chapter 547 of the Laws of 1896, and upon the consolidation of the General Laws of New York it became Section 94 of Chapter 52 of the Laws of 1909, known as the Real Property Law of the Consolidated Laws. Section 94 reads as follows:

“GRANT TO ONE WHERE CONSIDERATION PAID BY ANOTHER: A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a fraudulent intent is disproved, a trust results in favor of such creditors, in the grantee, and no use or trust results from the payment to the person paying the consideration, or in his favor, unless the grantee either

(1) Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration; or,

(2) In violation of some trust, purchases the property so conveyed with money or property belonging to another.”

This statute was soon construed by the New York Court of Appeals, and among the earlier cases, the most important case of *Garfield v. Hatmaker*, 15 N. Y., 475. In this case title was taken in the name of the wife of a judgment-debtor of the plaintiff, the judgment-debtor paying the consideration. The plaintiff issued execution to the Sheriff directing

him to levy upon this real property standing in the name of the wife, and upon the Sheriff's sale of the right, title and interest of the judgment-debtor, the plaintiff purchased the same and then brought ejectment against the wife. *Held* that ejectment was not maintainable.

“COMSTOCK, *J.* The rule at common law was, that if lands were conveyed to one person, the consideration for which was wholly paid by another, a trust resulted in favor of the person who paid the price. Such a trust, being raised by implication of law, was held not to be within the statute of frauds, and it was also held that under the former statute of uses (1 *R. L.*, 74, Sec. 4) the interest of the *cestui que trust* could be seized and sold as a legal estate on execution against him (3 *John*, 216, 2 *Wend.*, 570).”

The Court then decides under the statute abolishing resulting trusts and substituting instead Sections 51 and 52 of *R. L.* (now Section 94, Real Property Law), that the creditor cannot take the land under execution, “but in place of that right and of the common law principles on which it depended the statute has declared a presumption of fraud, and through the fraud, a resulting trust, not in favor of the debtor but of the creditor only. There is no interest legal or equitable in the debtor, and therefore nothing to which a judgment and execution can attach; but instead of this there is a *pure trust in favor of the creditor*, which the statute impresses upon the legal estate in the hands of the grantee on the conveyance, and which can be enforced in equity only.”

This rule creating a “pure trust in favor of the creditor” under this statute was again under con-

sideration in the Court of Appeals in *McCartney v. Bostwick*, 32 N. Y., 53. The facts in this case are very similar to those of the case at bar.

The plaintiffs were residents of Missouri, and sold to one A. Bostwick, a resident of Minnesota, merchandise of the value of \$4,000 on credit, for which they subsequently obtained a judgment in Minnesota in which said execution was returned "no property." This Bostwick sold his merchandise in Minnesota to Potter, and in consideration of that sale, Potter, owning the real estate in question in New York, conveyed it to Molly, his wife. Molly conveyed it to her father, the defendant, without consideration, the defendant taking with full knowledge of the facts. Bostwick was insolvent and had no property in New York. The Court below sustained a demurrer to the complaint upon the ground that plaintiffs had not exhausted their remedy at law, having failed to sue over in New York on the judgment against the debtor and have execution thereon returned unsatisfied.

On appeal to the Court of Appeals, POTTER, J., at page 58, says:

"It is obvious, upon this state of facts, that the plaintiffs had no remedy at law, either there or here. The property never belonged to the debtor, and was never subject to execution at the instance of his creditors. There were no laches on the part of the plaintiffs, through which the claim of the respondent could ripen into a right. The debtor was not here, to be sued, and he had nothing in this State subject to seizure by attachment. (*Olcott v. Tioga Railroad Company*, 20 N. Y., 210, 226; *Loomis v. Tift*, 16 Barb., 541; *Montalvan v. Clover*, 32 Barb., 190.)

If the conveyance had been made to the wife before the revision of our statutes, the debtor, who paid the consideration, would have been entitled to a resulting trust; which could have been asserted either by him, or by judgment-creditors, in virtue of his clear and absolute right. By operation of law, he and the grantee would have stood in the relation of *cestuis que trust and trustee*. In this particular instance, he might have been embarrassed in the assertion of his claim, by the fact that he united with his wife in the subsequent voluntary conveyance to the respondent, but if the deed had been executed by her alone, he could have claimed in equity, the exercise of the jurisdiction now invoked by the plaintiffs, and in precisely the same character, that of *cestuis que trust* by operation of law. (*Finch v. Finch*, 15 *Ves.*, 43; *Lloyd v. Spillet*, 2 *Atk.*, 148; *Lane v. Dighton*, *Ambl.*, 409; *Boyd v. McLean*, 1 *Johns.*, *Ch.* 582; *Harder v. Harder*, 2 *Sandf.*, *Ch.* 17.)

This rule of the common law was completely subverted by our statute of uses and trusts. Before the revision, when lands were conveyed to one, which were purchased with the money of another, the grantee was deemed a mere trustee for the actual purchaser; and unless he could bring himself within a recognized class of exceptional cases, he could be compelled in equity to convey and account.

This resulting trust, in favor of the party paying the consideration, and of those claiming in his right, was annihilated by the statute of uses and trusts; and the absolute title, as between the original parties, was vested in the nominal grantee. No interest whatever, either legal or equitable, inured to the party paying

the price; and he had no remaining right on which, through judgment and execution creditors could by any process fasten a specific lien. All claims in or through the actual purchaser were utterly extinguished; and if the statute had gone no further, his creditors would have been without redress in the courts, whether of law or equity. But to prevent this precise abuse, the statute proceeds to declare a new and independent resulting trust, in favor of the general creditors of the party paying the consideration, in every case where the conveyance is fraudulently made to another with his assent; and, to render the provision still more effectual, the burden of proof is cast upon the grantee, to repel the presumption of fraudulent intent, which is attached to the transaction by operation of law (1 R. S., 728, Secs. 51 to 54).

The distinction between this case and that of a judgment-creditor under the general statute is very definite and obvious. There, the proceeding is to remove impediments in the way of reaching the debtor's property. Here, it is to charge with a statutory lien, the property of a third party, which the debtor never owned. There, it is to exercise auxiliary jurisdiction in aid of legal process. Here, it is to enforce a trust, of which the courts of law have no jurisdiction.

That the present action does not stand upon the footing of a creditor's bill—that it simply presents a case for the exercise of the original jurisdiction of a court of equity, in enforcing a trust declared by law—and that the respondent, in accepting a voluntary conveyance of the property with notice of all the facts, took his title subject to the trust impressed on it

by law, was also settled by the judgment of this court, in the case of *Wood v. Robinson* (22 N. Y., 564)."

The foregoing cases are important in emphasizing the fact that in New York there has existed for many years two remedies available to a creditor, one the statutory judgment-creditor's action (see Code of Civil Procedure, Secs. 1871 to 1879), and an independent suit in equity. This was held in the following cases:

Hubbard v. United Wireless Telegraph Co., 62 Misc., 538; 115 N. Y. Supp., 1016. At 115 Supp., 1018, GIEGERICH, J., says:

"The power of a court of equity to take jurisdiction of such an action is not limited to the particular creditors' action specified in sections 1871-1879 of Code of Civil Procedure; nor to those in which a question of fraud is involved. *Stetson v. Hooper*, 60 A. D., 277; 70 Supp., 170. In such creditors' action, personal property as well as real property may be reached where it is alleged that the same was disposed of in fraud of the rights of the judgment creditor. *Webb v. Staves*, 1 A. D., 145; 37 Supp., 414."

Ocean Bank v. Olcott, 46 N. Y., 12, was an action to enforce a lien upon property held by the debtor's wife under Sections 51 and 52 of the Revised Statutes (now Section 94 of the Real Property Law), on the ground that the judgment-debtor had paid with his own money for certain real estate conveyed to his wife. At page 13 CHURCH, Ch. J., says:

"There is no mystery in the term *resulting trust*. After adopting the fifty-first section it

was indispensable to make some provision to preserve the rights of creditors, otherwise the grantee would have held the title absolutely against creditors and all others. Hence the fifty-second section was adopted, which placed the property in the same relation to creditors as it would have been, if the debtor himself had fraudulently transferred it, and the words used were appropriate for that purpose. The object of the statute was to cut off all interest in the person paying the consideration, and then to declare property liable for his debts; but this liability can only be enforced in the usual mode. A creditor at large cannot enforce the liability, without a preliminary judgment and execution. When the legislature transferred this from a legal into an equitable interest, we must presume that they intended to apply equitable rules and principles existing at the time for its enforcement. One of them is, that before the equitable interests of a debtor can be reached in equity, all available legal remedies must be exhausted. It is not necessary to hold that such an action is, in strictness, a creditor's bill, and that jurisdiction depends upon a technical compliance with the statute. The general powers of a court of equity over trusts and frauds, may be conceded as sufficient to confer jurisdiction, but this concession does not dispense with the rule of equity, which existed prior to and independently of the statute, that creditors must exhaust available, legal remedies, before resorting to courts of equity, to reach equitable interests. In 1 *Paige*, 305, the Chancellor laid down the rule of equity established before the Revised Statutes, as follows: "There are two classes of cases where a plaintiff is permitted

to come into this court for relief after he has proceeded to judgment and execution at law, without obtaining satisfaction of his debt. In one case the issuing of an execution gives to the plaintiff a lien upon the property; but he is compelled to come here for the purpose of removing some obstruction, fraudulent, or inequitably interposed, to prevent a sale on the execution; in the other, the plaintiff here comes to obtain satisfaction of his debt, out of property which cannot be reached by execution at law. In the latter case, his right to relief here depends upon the fact of his having exhausted his legal remedies without being able to obtain satisfaction of his judgment.' (*Wiggins v. Armstrong*, 2 J., Ch. 144, *id.*, 263; *Brinkerhoff v. Brown*, 4 J., Ch. 671, and cases there cited.)"

To the same effect see *Scoville v. Shed*, 36 Hun, 165, where a judgment-creditor brought a suit in equity to have declared that his judgment-debtor was the owner of a farm, subject to the plaintiff's judgment, which farm was conveyed to the debtor's wife by a third party who received the consideration therefor from her husband. At page 167 FOLLETT, J., says:

"The early English cases and some of the early cases in this state, held that a bill in equity could not be maintained for the recovery of property, unless it was such as was subject to sale under execution, that equity followed the law and that money, stocks, etc., were not enumerated in the statute above cited. This doctrine was exploded in *Spader v. Davis* (5 Johns., Ch. 280). Subsequently, the doctrine of the case last cited was somewhat limited in *Donovan v. Finn* (Hopk., 59), which

led to the enactment of the section of the Revised Statutes which provided that a judgment creditor might file a bill in chancery against the judgment debtor and any other person, to compel the discovery of any property or thing in action belonging to the judgment debtor—whether the same might or might not have been originally taken in execution (2 R. S., 173; secs. 38 and 39). This provision is continued by secs. 1871-3, Code C. P., and when property is discovered, it may be recovered. The case at bar is not to set aside a conveyance in aid of the judgment. The judgment debtor never held the legal title to the farm and, setting aside the deed to the wife, would not vest the title in the husband, or in any way aid the collection of the judgment by an execution (*Garfield v. Hatmaker*, 15 N. Y., 475). This action is brought under the section of the Code above cited to recover property paid for by the husband and held by the wife. Should it be established upon the trial that the property was paid for by the husband in whole or in part, it, or his interest therein, could be applied in payment of the plaintiff's claim, notwithstanding the fact that more than 10 years have elapsed since it was recovered. The court erred in refusing to determine the question of fact and in dismissing the complaint on the ground that the action cannot be maintained because the judgment is not a lien on real estate."

A receiver in supplementary proceedings cannot maintain an action to enforce a trust created pursuant to Section 94 of the Real Property Law. *Underwood v. Sutcliffe*, 77 N. Y., 58.

The antecedent debt from Ernest to Christine which formed the consideration of the conveyance by the Wenigmann Construction Company to Pauline Wenigmann was sufficient to bring the case within the New York statute. The expressions "paid" and "paying" are not technical. There need not be a present money payment. When Mrs. Wenigmann directed the conveyance of the property she was about to receive from her husband's trustee in payment of or on account of her debt, to be made to her daughter, she "paid" the consideration for the conveyance and a trust resulted in favor of her creditors.

II.

Under the equity jurisprudence of New Jersey and under general equity jurisprudence irrespective of statute a trust would have resulted in favor of Christine Wenigmann when the conveyance of New York property in satisfaction of or on account of her husband's indebtedness to her was made under her direction to her daughter; and, of course, such a trust can be established in the New Jersey property taken in exchange for the New York property. It was impossible to follow the New York property, because Pauline Wenigmann's grantee in the exchange from New Jersey property was protected by Section 95 of the New York Real Property Law, which reads as follows:

"Bona fide purchasers protected. An implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust."

If we start with the New Jersey property as our objective, merely tracing its consideration through

the New York property, there is no difficulty in this Court's declaring a trust in favor of Christine by reason of the fact that the original consideration passed from her. Indeed, the New Jersey law would be stronger than that of New York, because in New York such a trust results only in favor of creditors. For convenience we cite the New Jersey cases, which, of course, are familiar to the Court, to the effect that where one pays the consideration for real estate conveyed to another a trust results in favor of the one paying the consideration.

Thomas v. Thomas, 79 N. J. Eq., 461.

Down v. Down, 80 N. J. Eq., 68.

Phillips v. Phillips, 81 N. J. Eq., 459.

Battery Park Bank v. Hunt, 83 N. J. Eq., 521; affirmed 84 N. J. Eq., 501.

The general doctrine of equity jurisprudence is the same. A resulting trust never arises out of a contract or agreement between the parties, but arises by implication of law from their acts and conduct and apart from any contract. 39 *Cyc.*, 104.

“If a purchaser and payer of the money take the conveyance in the name of a wife or child, for the purpose of delaying, hindering, or defrauding his creditors, the conveyance is void, or a trust results which creditors can enforce to the extent of their debts.”

Perry on Trusts, 6th ed., par. 149.

This is the rule in New Jersey :

Metropolitan Natl. Bank v. Sprague, 20 N. J. Eq., 13.

Haggerty v. Nixon, 26 N. J. Eq., 42.

Conover v. Ruckman, 36 N. J. Eq., 493.

Huselton v. Durie, 77 N. J. Eq., 437.

And elsewhere—see long list of cases cited in 20 *Cyc.*, 394.

The remarks at the close of the last point to the effect that payment need not be in money presently paid, but that any antecedent debt can so operate, are applicable here.

III.

Of course, the Statute of Frauds has no bearing on the case if our contention that upon the conveyance to Pauline by her mother's direction in consideration of or credit on the debt of Ernest or Christine a trust resulted in favor of Christine in the New York property now transmuted into the New Jersey property be upheld.

The law, both in New York and New Jersey, is that the Statute of Frauds does not apply to resulting trusts. This was so held by the New York Court of Appeals before the New York statute was cast in its present form—it being then the same as the English Statute of Frauds. *Foote v. Bryant*, 47 N. Y., 544. The present New York statute is as follows (*New York Real Property Law*, sec. 242) :

“An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, cannot be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this section does not affect the power of a testator in the disposition of his real property by will; *nor prevent any trust*

from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same."

It is clear, therefore, that in New York the statute does not bar a resulting trust, although there be no writing. Indeed, in New York the Courts go farther, and uphold a parol trust where there is a confidential relationship between the parties, such as parent and child or husband and wife. In such cases equity will enforce an oral agreement. *Goldsmith v. Goldsmith*, 143 N. Y., 313; *Jeremiah v. Pitcher*, 26 App. Div., 402; s. c., 49 N. Y. Supp., 738, affirmed without opinion, 163 N. Y., 574.

In New Jersey, Section 3 of the Statute of Frauds (Comp. Stat., 2611) expressly excepts from its operation trusts or confidences that arise or result by implication or construction of law. The adjudged cases on the subject are:

Johnson v. Dougherty, 18 N. J. Eq., 406.

Cutler v. Tuttle, 19 N. J. Eq., 549, 558.

Baker v. Baker, 75 N. J. Eq., 305, 308.

IV.

The pretense of a consideration for the conveyance to Pauline Wenigmann hardly needs consideration. The most she could claim under the doctrine of *Demarest v. Terhune*, 18 N. J. Eq., 532, if applicable in New York, would be an interest in the property to the extent of the value of her services, which must be very small, whereas the property on the most favorable showing for defendants was very valuable. We submit, however, that Pauline is not entitled to any interest at all in the property. The conveyance to her was undoubtedly

in fraud of the creditors of Christine, particularly of the complainant, whose claim has since merged in a judgment, first in New York and then in New Jersey. The documentary evidence is very persuasive that Pauline was brought into the transaction as an afterthought. The contract of exchange with Miss Rogers bears date five days earlier than the deed to Pauline, and her name is interlined as one of the contracting parties and the paper is signed in her name by her father. The counterpart was not produced, and perhaps we have no right to conjecture that when the contracts were exchanged each of the original parties executed the one delivered to the other, and that only the one received by Ernest Wenigmann has been altered as indicated. Ernest Wenigmann negotiated the exchange through a broker, and the contract was drawn as between the Wenigmann Construction Company and Lillian B. Rogers, and dated July 6, 1914, the exchange of deeds to be made July 20, 1914. In the meantime Ernest, to secure his wife for the \$35,000 he owed her, had devoted the New York property towards satisfaction of that debt, and naturally the deed to the New Jersey property would be taken in the wife's name. The transaction between Ernest and his wife was clearly *bona fide*. There is no doubt he owed her \$35,000, and that was more than an adequate consideration for the New York property. It would not do, however, for the wife to take title to the New Jersey property in her name, because her creditor, the complainant in this case, would follow it up on recovering a judgment, and as the exchange might fall through and the judgment-creditor resort to the New York property if the title should be put in Mrs. Wenigmann's name and stand thus should the exchange fall, it was decided to resort to someone else to take the title and make the exchange, and

Pauline Wenigmann was selected for that purpose. Whether there was any foundation whatever for the alleged agreement that she should stay at home and work and be compensated by her mother as a sort of equivalent for what her sister and brothers were receiving or should receive out of the mother's patrimony in the way of education, or whether the whole thing is imaginary or based on loose statements or declarations, is immaterial. In no case is there adequate proof of a binding contract between the mother and the daughter which will support to any extent the daughter's title to the New York property and its successor, the New Jersey property, or any interest therein.

The law on the subject of a child who remains at home after emancipation and renders service to the parents is the same both in New York and New Jersey. The presumption is that the service is gratuitous, and very strong proof must be forthcoming to overcome that presumption.

New York cases:

Ulrich v. Ulrich, 17 N. Y. Supp., 721, 722.
Matter of Delaney, 27 Misc. (N. Y.), 398.
Matter of Skelly, 16 Misc. (N. Y.), 719.

New Jersey cases:

Ridgway v. English, 22 N. J. L., 409, 415.
Stone v. Todd, 49 N. J. L., 274.

The doctrine is universal. 29 Cyc., 1621; *Hodge v. Hodge*, 11 L. R. A., 873, 879, 880. A well-considered case is *Ulrich v. Arnold*, 120 Penna. St., 170.

Furthermore, in the case in hand, the obligation, if any, would be that of the father and not that of the mother, and it therefore cannot support a deed to Pauline Wenigmann.

New Jersey Court of Errors and Appeals

BETWEEN	}	
COSMOPOLITAN BANK,		On Appeal
COMPLAINANT,		from
and		Chancery.
PAULINE WENIGMANN, ET	}	
ALS.,		
DEFENDANTS.		

Brief for Defendants

The facts in dispute are as favorably stated for the complainant as the case will warrant in the opinion of the Vice Chancellor, p. 61. There are nowhere any facts in the case which show that the property in question was conveyed to Pauline Wenigmann in satisfaction of a debt due from Ernest Wenigmann to Christine Wenigmann. At the time this conveyance was made the defendants, Ernest Wenigmann and Christine Wenigmann, were indebted to the complainant on a joint note upon which suit was afterward brought by the complainant against Christine Wenigmann and judgment obtained. It appears that Ernest Wenigmann had at one time proposed to convey these premises to Christine Wenigmann but that intention was

never carried out. If the testimony by which the arrangement to convey the property to Pauline Wenigmann was made it was evidently at a family conference in which the wife joined, not as a creditor of her husband, but as a member of the family.

But no matter what the original idea was the conclusion reached was to convey the property to Pauline for the consideration claimed by the defendant. It does not appear that Christine Wenigmann ever had any beneficial interest in the property of the Wenigmann Construction Co. It does appear that Ernest Wenigmann had furnished the money with which the property of the Wenigmann Construction Co. was purchased. At the time the property of the Wenigmann Construction Co., in New York, was conveyed to Pauline Wenigmann, Christine Wenigmann had no beneficial interest in the New York property. As the matter then stood the New York property was not subject to an execution on a judgment against Christine Wenigmann. The fact that Ernest Wenigmann was indebted to Christine Wenigmann in the sum of Thirty-five Thousand Dollars (\$35,000) did not give her any interest whatever in the New York property. No matter what discussions had taken place between her and Ernest Wenigmann about it, there is no legal evidence in this case to show that any trust or resulting trust was established in the New York property in favor of Christine Wenigmann.

ARGUMENT.

QUESTION.

As to the status of real property.

As to the property in question the law of the State of New York does not apply.

Whether an equitable interest in real estate is to be appropriated by legal process to the payment of

the debts of the beneficiary is determined by the local law where the property has its situs.

Spindle vs. Shreve and another, 111th U. S., R. 542, p. 548.

Nicholas vs. Levy, 5th Wallace, 433. Also case in 159th Mass., p. 420.

QUESTION.

Is there any legal evidence in this case to show a resulting trust in favor of Christine Wenigmann in the State of New Jersey?

It seems so clear in the cases above quoted that this case must be decided according to the law of the State of New Jersey that I shall not attempt to answer the brief of complainant as to the law of the State of New York.

The third section of the statute of frauds enacts that all declarations and creations of trust or confidence, of, in or to any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is, or shall be by law, enabled to declare such trust, or by his or her last will in writing or else they shall be utterly void with no effect; provided always, that where any conveyance has been, or shall be made, of any lands, tenements or hereditaments by which a trust or confidence shall or may arise or result by implication or construction of law or be transferred or extinguished by act or operation of law, such trust or confidence shall be of the like force and effect, as the same would have been if this act had not been made.

This statute is quite clear and a long line of decisions in this State declare that express trusts cannot be proved by parole and that resulting trusts can.

In the case of *Smith vs. Howell*, 3rd Stockton, p. 350, the chancellor decided that the statute does not declare that the trust shall be created by writing,

but it shall be manifest and proved by writing.

2nd Dickinson, 477, p. 486, holds the same.

Hutchinson vs. Tindell, 2nd Greene, Chancery 357.

McVay vs. McVay, 16 Stewart 47th.

Lathson vs. Miller, 12th G. E. Greene, 586.

Brown, on the Statute of Frauds, p. 97. Trusts are express and implied or resulting trusts. A trust created by the act of the parties are express trusts. An express trust must be in writing or approved by writing. A resulting trust is a trust which has arose or created by act or construction of law.

Baldwin vs. Campfield, 4th Halsted, 892. There is no legal testimony in this case, that is, no written testimony and no written evidence to show that the conveyance from Wenigmann Construction Co. to Pauline Wenigmann was a trust, either express or implied. Certainly not an express trust on the part of Christine Wenigmann. She was not a party to that conveyance. The fact that her husband owed her \$35,000, and there was at one time a design to convey the property to Christine, shows conclusively that there was no resulting trust in favor of Christine. Christine had never owned the New York property, did not furnish the money for its purchase and it was never held for her use.

The conveyances show that the property was conveyed by the Wenigmann Construction Co. directly to Pauline Wenigmann, the defendant. There is no legal evidence, whatever, of a trust in the whole transaction; neither in the agreements to convey nor the conveyances indicate a trust. If there was any trust for the benefit of Christine Wenigmann, as alleged by the complainant, there is not a particle of legal testimony to sustain that view. If Christine Wenigmann had been the owner of the property conveyed to Pauline, and had made the deed to Pauline without consideration, it would have been a resulting trust. The Wenigmann Construction Co. was free of debt so far as the evidence in this

case shows and had a right to convey the tract in question to anyone it saw fit. This conveyance was made to Pauline. Christine neither had a legal nor a beneficial interest in the property at the time of the conveyance.

In the case of *Phelps vs. Phelps*, decided by Vice Chancellor Bachus, and afterwards confirmed by the Court of Errors and Appeals, 81st Equity, page 460. It was held that a resulting trust arises by operation of law from contemporaneous circumstances which give the legal and equitable titles different directions. It must, therefore, arise at the instant the deed is taken and the legal title is vested in the grantee and the situation of the transaction when the title passes is to be looked to and not the situation preceding or following that time. The transaction in New York State did not result in a resulting trust. How could the property in New Jersey be charged with any such trust? The law is well settled that an agreement between parents and an unemancipated child that the child should be paid for services under a contract with the parents is enforceable.

The evidence is quite clear that the purpose of the conveyance of this property by the father was in satisfaction of a contract that he had made with the daughter. If this suit were between the creditors of the father and the daughter, Pauline would be entitled to whatever interest in the property her services were worth. How can it be said that a conveyance to her was in fraud of the creditors of Christine? It matters little how Pauline was brought into the matter when it clearly appears that Christine, the wife, had no interest whatever in the New York property. There might be some reason in an argument that the property was conveyed to Pauline as trustee for her father and to protect the property from his creditors. Why should he wish to convey the property in trust for Christine when she was

liable with him on these very notes that were afterwards reduced to judgment? Giving the complainant the benefit of every doubt in this case, there is no legal evidence that this property was ever conveyed to Pauline for the benefit of her mother, Christine. The documentary evidence introduced by the complainant shows there was a direct conveyance made from the Wenigmann Construction Co. to Pauline for a good consideration. Pauline then, by the legal testimony in this case, being the owner of the property in New York, her title to the property in New Jersey, so far as any claims against her mother, Christine, are concerned, is absolutely good in law or equity and the complainant having failed to prove their case by legal evidence, the defendant is entitled to a decree.

Respectfully submitted,

H. B. HERR,

COUNSEL FOR DEFENDANTS.

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