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BILL OF COMPLAINT.

(Filed June 19, 1925.)

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

The complainant, Locustwood Land Company, a corporation of the State of New Jersey, respectfully shows that:

1. On December 31, 1907, Charles C. Spear executed and delivered a deed of conveyance to the Fernwood Cemetery Association, a corporation of the State of New Jersey, for the following described land:

> All that certain lot or tract of land and premises situate in the township of Delaware in the County of Camden and State of New Jersey, bounded and described as follows:
>
> BEGINNING in the centre of the said Marlton Turnpike at a point seven hundred and fifty feet westwardly from the intersection of the middle line of Cooper Landing Road with the centre of said Marlton Turnpike and extending thence parallel with the westerly line of the whole tract described in the deed hereinafter recited northwardly six hundred and fifty feet; thence westwardly at right angles to said line, to said westerly line; thence southwardly along the same to the centre of the said Marlton Turnpike; thence eastwardly along the middle of the said Turnpike to the place of beginning. Containing thirteen and 30/100 acres more or less.
>
> BEING a part of the same premises which Frank C. Somers, Sheriff, by deed dated Octo-

ber 8th, A. D. 1907, and duly recorded in the Office of the Register of Deeds of Camden County in book No. 322 of deeds, page 11 &c., granted and conveyed unto the said Charles C. Spear, in fee.

2. That in and by said conveyance the said Spear reserved a vendor's lien upon said land for all unpaid purchase money.

3. Said deed was duly acknowledged, and recorded in the Office of the Register of Deeds of Camden County on January 27, 1908, in deed book No. 323, page 608, &c.

4. That simultaneously with the execution and delivery of the deed aforesaid, the said Spear executed and delivered to said the Fernwood Cemetery Association an agreement in writing, duly acknowledged, and recorded in the Office of the Register of Deeds of Camden County on January 27th, 1908, in deed book 323, page 610, &c., wherein and whereby, among other things, the said Fernwood Cemetery Association agreed to pay to said Spear fifty per centum of all moneys received by said cemetery association from sales of burial lots or places of interment, or tombs, as the same should, from time to time, be received by said cemetery association.

5. That the name of the Fernwood Cemetery Association was changed to Locustwood Cemetery Association by certificate duly filed in the office of the Clerk of Camden County as required by law.

6. That on or about July 23, 1923, said Locustwood Cemetery Association entered into an agree-

ment in writing with Locustwood Cemetery, Incorporated, wherein and whereby, among other things, said Locustwood Cemetery, Incorporated, agreed to faithfully perform all of the covenants and conditions set out in the agreement between the Fernwood Cemetery Association and Charles C. Spear (known as Spear-Fernwood Agreement) dated December 31, 1907, and referred to in paragraph four of this complaint. That the whole amount under and by virtue of said contract is justly due and owing to complainant.

7. On June 27, 1923, Charles C. Spear assigned, transferred and set over unto Mercedes Spear all of his right, title and interest of, in and to the Spear-Fernwood Agreement of December 31, 1907, and subsequently, to wit, on October 17, 1923, said Mercedes Spear assigned, transferred and set over unto Locustwood Land Company, its successors and assigns, all of her right, title and interest of, in and to the aforesaid Spear-Fernwood Agreement.

8. On January 28, 1924, Locustwood Cemetery Association executed and delivered to Locustwood Land Company a certificate under its hand and seal wherein and whereby said Locustwood Cemetery Association secured to said Locustwood Land Company the payment of $122,220 as the amount then due and owing to said Locustwood Land Company under and by virtue of said Spear-Fernwood Agreement.

9. That the whole amount of said certificate of indebtedness is justly due and owing to complainant.

10. That in and by said Spear-Fernwood Agree-

ment it was expressly agreed that said cemetery association should not take, accept or in any way acquire any other land for cemetery purposes than the land therein agreed to be conveyed by said Spear to said cemetery association.

11. That said Locustwood Cemetery Association or Locustwood Cemetery, Incorporated, has agreed to purchase additional land outside of the land covered by said Spear-Fernwood Agreement, and to operate thereon a cemetery adjoining the land now under development by Locustwood Cemetery Association above described, contrary to the covenants and conditions set out in the Spear-Fernwood Agreement hereinbefore referred to in paragraph four.

12. That Locustwood Cemetery Association, on January 9th, 1924, executed and delivered to Locustwood Land Company a deed of conveyance for lawns designated on the map or plan of Locustwood Cemetery Association as Entrance Park Lawn, Highland Lawn, Lake Mont Lawn and Fair View Lawn of said cemetery, as collateral security for said certificate of indebtedness, which deed was duly acknowledged, and recorded in the office of the Register of Deeds of Camden County on February 3rd, 1925, in deed book 586, page 103, &c.

13. That subsequent to the execution and delivery of said deed to Locustwood Land Company for said lawns aforesaid, the said Locustwood Cemetery Association or Locustwood Cemetery, Inc., have executed and delivered deeds of conveyance to divers others persons for burial lots in said lawns, and have permitted the interment of deceased persons therein to the irreparable injury of complainant.

14. That by reason of the conveyances by said Locustwood Cemetery Association to divers other persons of lots previously conveyed by said association to said Locustwood Land Company doubts may arise upon the title of said Locustwood Land Company which may necessitate a multiplicity of suits to quiet or determine the validity of said titles.

15. That on or about January 6, 1925, said Locustwood Cemetery Association executed and delivered to Locustwood Land Company a deed of conveyance for the following lots as collateral security for the payment of the certificate of indebtedness aforesaid:

In Brookside Lawn on the registered map of said lawn on file in the office of the said association, the following lots: Nos. 1 to 56, inclusive; 59 to 74, inclusive; 80 to 93, inclusive; 97 to 113, inclusive; 118 to 131, inclusive; 137 to 150, inclusive; 156 to 169, inclusive; 174 to 189, inclusive; 194 to 209, inclusive; 212 to 226, inclusive; 229 to 242, inclusive. In Flower Lawn on the registered map of said lawn on file in the office of the said association, the following lots: to 63, inclusive; 65 to 86, inclusive; 90 to 116, inclusive; 118 to 160, 173 to 180, inclusive; 193 to 203, inclusive; 214 to 221, inclusive; 231 to 224, inclusive; 246 to 276, inclusive. In St. Anthony (formerly Chapel) Lawn on the registered map of said lawn on file in the office of the said association, the following lots: 2 to 4, inclusive; 7 to 14, inclusive; 16 to 26, inclusive; 28 to 33, inclusive; 35 to 40, inclusive; 42 to 46, inclusive; 48 to 72, inclusive. In Faith Lawn on the registered map of said lawn on file in the office of said association, the following lots: 1 to 27, inclusive; 30 to 40, inclusive; 42 and 46; 49 to 52, inclusive; 54, 55, 56 and 58; 60 to 69,

inclusive; 71 to 74, inclusive; 142, 132, 96, 97, 111 and 113. In Single Grave Section on the registered map of said lawn on file in the office of said association: Nos. 1 to 86, inclusive. In Fraternity Lawn on the registered map of said lawn in the office of the said association, all the lots contained in said lawn, except Nos. 20, 21, 29, 30, 89, 90, 91, 102, 103 and 104. Except any and all lots, or parts thereof, mentioned herein, which may be found to extend beyond the boundaries of the lands now owned by the said cemetery association.

16. That subsequent to said conveyance to Locustwood Land Company said Locustwood Cemetery Association or Locustwood Cemetery, Inc., have changed the names of some of the lawns in said cemetery, and have sold, or threaten to sell, the lots owned by said Locustwood Land Company.

17. That in and by the covenants and conditions of the Spear-Fernwood Cemetery Association Agreement, aforesaid, it was agreed, among other things, that the said Charles C. Spear, or his representative, should have power to supervise the development of said land for cemetery purposes, and trees or shrubbery should not be cut down, removed or destroyed without his supervision and consent; that notwithstanding the covenants and conditions aforesaid, the Locustwood Cemetery, Inc., have by its officers, agents, or servants removed trees and shrubbery, and do threaten to remove trees and shrubbery without the consent of said complainant, that said trees are large and valuable shade trees and the removal or destruction thereof would seriously depreciate the value of said land.

18. That said Locustwood Cemetery, Inc., by its

officers, agents and servants, have molested complainant in its supervision of said premises.

19. By reason of the default in payment of unpaid purchase money under and by virtue of the contracts aforesaid, and the violation of said contracts as aforesaid complainant has elected that the whole principal shall be now due.

20. That Thomas E. French, Helen C. Aleck, and Charles C. Spear claim to have some estate, right, title or interest in said land and premises either as trustee or *cestuis que trust;* that any interest, claim or demand they might have in said land is under and subject to the right, title, estate or interest of complainant.

21. That in and by the terms, covenants and conditions of said Spear-Fernwood Agreement complainant is entitled to a beneficial interest of, in and to the land known as the Cooper Homestead Farm adjoining the land and premises above described; that Helen C. Aleck, Charles C. Spear and Joseph Beck Tyler claim to have some estate or interest in said Cooper Homestead Farm, which farm is particularly described as follows:

> All the parts of the farm plantation and tracts of land known as the Cooper Homestead Farm situate in the Township of Delaware in the County of Camden and State of New Jersey excepted from the grant to Floyd H. Bradley bearing even date herewith, being the triangular piece south of the Marlton Turnpike and a tract at the northwest corner of the Cooper Landing Road and said Marlton Turnpike commencing at a stone in the middle of

said Turnpike at its intersection with Cooper Landing Road and extending along the middle line of said Marlton Turnpike westerly seven hundred and fifty feet to the place of commencement described of the tract conveyed to the Fernwood Cemetery Association thence northwardly along the easterly line of said tract six hundred and fifty feet thence still northwardly parallel to said Cooper Landing Road thirteen hundred and fifty feet, thence eastwardly at right angles to said Cooper Landing Road to the middle of the same, thence southwardly along the middle of said Cooper Landing Road to the place of beginning.

Any claim, estate or interest they might have is under and subject to the right, title, estate or interest of complainant.

22. That the buildings on said Cooper Homestead Farm were insured against loss or destruction by fire in the Palatine Insurance Company for $3000. That a dwelling house upon said Cooper Homestead Farm was destroyed by fire and said insurance company paid to Joseph Beck Tyler, attorney, by bank check, the sum of three thousand dollars in full payment of said insurance policy because of said loss; that Joseph Beck Tyler, as attorney for the mortgagee holding a mortgage upon said dwelling house so destroyed by fire retains in his possession the bank check for the said sum of three thousand dollars, which he has not collected and has not applied as a credit upon the bond and mortgage held by him upon said Cooper Homestead Farm.

23. That Helen C. Aleck and George H. Aleck, her

husband, are about to execute a bond and mortgage to Joseph Beck Tyler upon the Cooper Homestead Farm, aforesaid, for fifteen thousand dollars; that such mortgage upon said land and premises is without a valid consideration; that said mortgage when executed and recorded would be vexatious, inequitable, and unjust, and would cloud the title of complainant which would necessitate a multiplicity of suits to remove the cloud upon complainant's title to the irreparable injury of complainant.

Complainant is without any adequate remedy in the Courts of law, and therefore prays:

1. That Locustwood Cemetery Association, Locustwood Cemetery, Inc., Thomas E. French, Helen C. Aleck, Charles C. Spear, and Joseph Beck Tyler, defendants, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the amount due complainant.

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs, by a short day, to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands; or

4. That a receiver may be appointed to sequester the assets and income of defendants towards the amount so found due complainant.

5. That said defendants, Locustwood Cemetery

Association and Locustwood Cemetery, Inc., their servants, agents, or employees, be restrained from selling or attempting to sell any burial lots within the lawns, or lots, conveyed to complainant; that said defendants be enjoined from interring deceased persons in the lots or lawns of complainant; that defendants be enjoined from purchasing land outside of the land covered by the Spear-Fernwood Agreement for cemetery purposes; that defendants be enjoined from removing trees or shrubbery from said cemetery, and that they be enjoined from interfering with complainant, its servants, agents, or employees, in supervising said cemetery.

6. That any right, title or interest of Thomas E. French, Helen C. Aleck, and Charles C. Spear, of, in and to the land above described, and also of, in and to the Cooper Homestead Farm, be set aside and for nothing holden, and that they and each of them, their servants, agents, or employees be enjoined from asserting any claim, title or interest of, in and to said land and premises.

7. That Helen C. Aleck and George H. Aleck, her husband, be enjoined from executing and delivery to Joseph Beck Tyler of a mortgage upon the land above described, and said Cooper Homestead Farm, particularly described in deed from Frank C. Somers, Sheriff, to Charles C. Spear, dated October 8th, A. D., 1907, recorded in the Register of Deeds Office of Camden County in deed book 322, page 11, &c., and that said Joseph Beck Tyler, his representatives, agents, or assigns, be enjoined from accepting or recording any mortgage upon said land and premises.

8. That Joseph Beck Tyler, attorney, and indi-

vidually, be compelled by an order of this Court to deposit said bank check for $3000 for collection and apply the proceeds of three thousand dollars when received by him from Palatine Insurance Company upon the bond and mortgage held by him against said Cooper Homestead Farm.

9. That said defendants, their servants, agents, representatives, or assigns be enjoined from asserting any right, title or interest of, in and to said land and premises, and that a decree may be made forever quieting the title to said land and premises.

10. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint, and to abide by such decree as this Court may make in the premises.

DAVID R. ROSE,
Solicitor for and of counsel with complainant.

ANSWER OF LOCUSTWOOD CEMETERY ASSOCIATION AND LOCUSTWOOD CEMETERY, INC.

(Filed August 18, 1925.)

Locustwood Cemetery Association and Locustwood Cemetery, Inc., jointly and severally, answering the bill of complaint in the above cause say:

1. Defendants admit the first paragraph of the bill.

2. Defendants admit the second paragraph of the bill; but aver that the said Charles C. Spear does not hold said vendor's lien at this time.

3. Defendants admit the third paragraph of the bill.

4. Defendants admit the fourth paragraph of the bill.

5. Defendants admit the fifth paragraph of the bill.

6. Defendants deny the sixth paragraph of the bill.

7. Defendants deny the seventh paragraph of the bill.

8. Defendants deny the eighth paragraph of the bill.

9. Defendants deny the ninth paragraph of the bill.

10. Defendants admit the tenth paragraph of the bill.

11. Defendant Locustwood Cemetery, Inc., admits that it has agreed to purchase certain lands for cemetery purposes; but Locustwood Cemetery Association denies that such purpose is contrary to the covenants and conditions set forth in the Spear-Fernwood Agreement.

12. Defendants have no knowledge or informa-

tion upon which to form a belief of paragraph twelve of the bill.

13. Defendants admit the execution and delivery of deeds of conveyance for burial lots, referred to in paragraph thirteen of the bill; and aver that the execution and delivery of said deeds was within the rights of these defendants; and deny that the complainant has suffered any injury thereby.

14. Defendants deny paragraph fourteen of the bill.

15. Defendants have no knowledge or information upon which to form a belief of paragraph fifteen of the bill.

16. Defendants admit the sale or proposed sale of certain lots in the said cemetery and a change of the names of certain portions thereof; but deny that any of such lots are owned by the complainant.

17. Defendants deny paragraph seventeen of the bill.

18. Defendants deny paragraph eighteen of the bill.

19. Defendants deny paragraph nineteen of the bill; and aver that complainant has no right of election as to any moneys being due it.

20. Defendants deny that Thomas E. French, Helen C. Aleck and Charles C. Spear have any estate, right, title or interest in the lands and prem-

ises described in the bill of complaint; but have no knowledge or information upon which to form a belief as to whether they claim such right.

21. Defendants deny the twenty-second paragraph of the bill.

22. Defendants have no knowledge or information upon which to form a belief of paragraph twenty-three of the bill.

23. Defendants have no knowledge or information upon which to form a belief of paragraph twenty-four of the bill.

First Defense.

1. The agreement referred to in paragraph six of the bill was by and between these defendants and the complainant has no interest therein and has acquired no rights thereunder.

Second Defense.

1. The alleged or pretended assignment set forth in paragraph seven of the bill of complaint was without force or effect for the reason that Charles C. Spear had no right, title or interest of, in and to the Spear-Fernwood Agreement and the said Mercedes Spear acquired nothing by such alleged or pretended assignment, and could not by reason thereof, assign, transfer and set over anything relating to the said agreement to the complainant.

THIRD DEFENSE.

1. There was nothing owing to the complainant as set forth in paragraph eight of the bill and any certificate or other evidence of indebtedness delivered to the complainant by Locustwood Cemetery Association was without force or effect.

FOURTH DEFENSE.

1. The purchase or proposed purchase of any lands for cemetery purposes by the defendant Locustwood Cemetery, Inc., is no breach of the Spear-Fernwood Agreement.

FIFTH DEFENSE.

1. That any alleged or pretended conveyance by Locustwood Cemetery Association, referred to in paragraphs twelve and fifteen of the bill of complaint as security for any alleged or pretended moneys owing to the complainant are without force or effect, as the same were in the nature of a mortgage and an instrument of such nature that the Locustwood Cemetery Association is legally precluded from executing.

SIXTH DEFENSE.

1. Defendants aver that any rights under the Spear-Fernwood Agreement which are claimed to

be held by the complainant are held by the defendant Locustwood Cemetery, Inc., and the complainant has no rights thereunder.

SEVENTH DEFENSE.

1. There are no moneys owing to the complainant for or by reason of the matters set forth in the bill of complaint.

Defendants by way of counter-claim exhibited against the complainant say:

COUNTER-CLAIM.

1. That complainant on the 9th day of January, 1924, procured the execution of what purported to be a deed by Locustwood Cemetery Association to it, the complainant, which deed is more particularly referred to in the twelfth paragraph of the bill of complaint.

2. That the complainant on or about January 6, 1925, procured the execution to it of what purported to be a deed of Locustwood Cemetery Association for certain lands of the latter, which deed is more particularly referred to in the fifteenth paragraph of the bill of complaint.

3. That the said alleged or pretended deeds are wholly invalid and without effect for the reason that at the time that the same were attempted to be executed there was no money due or owing from Lo-

custwood Cemetery Association to Locustwood Land Company, and for the further reason that the attempted execution of such deed was not the act of the Locustwood Cemetery Association and was not authorized by said association, its duly qualified officers or its stockholders.

Defendants are without remedy at law and therefore pray:

I.

That the complainant answer this counter-claim and each allegation therein made.

II.

That said alleged or pretended deeds referred to in the twelfth and fifteenth paragraphs of complainant's bill be set aside and declared void and for nothing holden for the reasons hereinabove set forth.

The defendant Locustwood Cemetery, Inc., by way of counter-claim exhibited against the defendant Charles C. Spear and certain third parties, to wit: Mercedes Spear and Equitable Estates Corporation, a corporation organized under the laws of the State of New York, says:

COUNTER-CLAIM.

1. That on the twenty-third day of October, 1923, the said Charles C. Spear, together with Mercedes

Spear and the Equitable Estates Corporation, made and entered into an agreement with Locustwood Cemetery, Inc., whereby for a consideration of $100,000 they were to transfer to Locustwood Cemetery, Inc., all of their right, title and interest of, in and to the land and premises mentioned and described in the first paragraph of the bill of complaint, and were also to assign an agreement made between Charles C. Spear and Locustwood Cemetery Association (then Fernwood Cemetery Association) known as the Spear-Fernwood Agreement; and furthermore to convey, free and clear of all encumbrances, the tract of land adjoining Locustwood Cemetery containing one hundred forty-five and two-thirds acres and known as the Cooper Homestead Farm.

2. That the said agreement further provided that the said sum of $100,000 was to be payable at any time within twenty years from the date of the agreement at the option of the said Locustwood Cemetery, Inc., with interest at the rate of six per cent. per annum on the full sum of $100,000 until the full purchase price be paid.

3. In and by the said agreement the said Locustwood Cemetery, Inc., further agreed to make minimum payments of $200 per week beginning from the date of the contract, which were to be applied as follows, viz: the sum of $6000 for the payment of interest from February 24, 1924, and the balance applied on account of the liquidation of the principal.

4. In and by the said agreement the said C. C. Spear further obligated himself to provide and re-

instate the Locustwood Cemetery Association and to cause to be appointed as trustees thereof whomsoever the Locustwood Cemetery Association might indicate.

5. The said agreement further provided that after Locustwood Cemetery, Inc., acquired the said interests, no deeds to individual plots should be executed except such as had actually been paid for at the pro rata price per acre.

6. The said agreement further provided that until the full purchase price had been paid the sellers or their assigns or authorized representatives should whenever required receive reports or statements of individual deeds so executed and at all times have access to the books of Locustwood Cemetery, Inc.

7. The said agreement as prepared was signed and executed by the said Equitable Estates Corporation, by the said Charles C. Spear and Mercedes Spear, and also signed and executed by said Locustwood Cemetery, Inc.

8. At the time the said agreement was made and entered into the said Charles C. Spear requested the officials of the Locustwood Cemetery, Inc., to give him a key to the office of the company, which is located at Camden, New Jersey, so that his wife, the said Mercedes Spear, and his infant son might have a place to stay while he attended to some personal affairs in Camden.

9. At that time the office was very often deserted, as most of the work of the officials of Locustwood Cemetery, Inc., was on the outside.

10. The said contract was placed, along with other papers belonging to the Locustwood Cemetery, Inc., in a drawer of a desk in the office.

11. Sometime during the month of December, 1923, it became necessary to refer to said contract, and it was then discovered that the paper was no longer in the files; and, although diligent search has been made in every quarter that it was thought it might be located, this defendant has been unable to locate the same.

12. This defendant, knowing that the said Charles C. Spear had a copy of the contract, related the circumstances to him and he thereupon assured defendant that the circumstances need give no concern, as he would furnish a new copy, and upon this defendant applied to the said Spear from time to time for such copy; and he gave various excuses for not furnishing the same and finally stated that he had mislaid his copy and was unable to locate it.

13. This defendant has complied with all the terms and conditions in said agreement of October 23, 1923, so far as it has been able to recall the same; but owing to the fact that said agreement has become lost or mislaid, it is not in a position to recall the strict terms of the agreement and cannot safely deal with Equitable Estates Corporation, the said Charles C. Spear or the said Mercedes Spear with reference to the same.

14. The said Equitable Estates Corporation, the said Charles C. Spear and the said Mercedes Spear has from time to time denied the existence of any

such agreement, and has denied the rights of this defendant thereunder.

15. That if through ignorance of the terms of the said agreement defendant has defaulted in any of its terms, it hereby tenders itself as willing to perform the same.

This defendant is without remedy at law and therefore prays:

I.

That the said Charles C. Spear, Mercedes Spear and Equitable Estates Corporation answer this counter-claim and each allegation therein made.

II.

That the terms of the said agreement be ascertained by this honorable Court and the same established as a good, valid and consistent agreement for the benefit of the parties hereto.

III.

That upon such agreement being established the parties thereto be decreed to perform the same in such respects, if any, as the same now remains unperformed.

D. T. Stackhouse,
Solicitor for and of counsel with defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc.

REPLICATION AND ANSWER TO COUNTER-CLAIM.

(Filed September 5, 1925.)

The complainant joins issue on the answer of defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc.

DAVID R. ROSE,
Solicitor of Complainant.

ANSWER TO COUNTER-CLAIM.

The complainant, answering the counter-claim of Locustwood Cemetery Association and Locustwood Cemetery, Inc., say that:

1. It admits paragraph one of the counter-claim.

2. It admits paragraph two of the counter-claim.

3. It denies paragraph three of the counter-claim.

DAVID R. ROSE,
Solicitor of Locustwood Land Company.

ANSWER OF JOSEPH BECK TYLER.

(Filed July 18, 1925.)

Joseph Beck Tyler, of the Borough of Riverton, County of Burlington and State of New Jersey, answering the complaint in the above matter says:

1. The allegation of paragraph one is admitted.

2. The allegation of paragraph two is admitted except this defendant believes that the said vendor's lien was reserved for the use and benefit of Helen C. Aleck.

3. The allegation of paragraph three is admitted.

4. This defendant has no knowledge or information from which to form a belief as to the truth of the allegation of paragraph four.

5. The allegation of paragraph five is admitted.

6. This defendant has no information or knowledge from which to form a belief as to the allegations of paragraph six.

7. The allegation of paragraph seven is admitted except that the assignment of said agreement to Mercedes Spear was without consideration and with full knowledge that Charles C. Spear originally took said agreement in his name for the use and benefit of Helen C. Aleck and afterwards assigned it to Thomas E. French, who in turn assigned said agreement to Helen C. Aleck (then Douglas).

8. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph eight.

9. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph nine.

10. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph ten.

11. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph eleven.

12. The allegations of paragraph twelve are admitted.

13. The allegations of paragraph thirteen are admitted.

14. The allegations of paragraph fourteen are admitted.

15. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph fifteen.

16. This defendant has no knowledge or information from which to form a belief as to the truth of allegations of paragraph sixteen.

17. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph seventeen.

18. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph eighteen.

19. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph nineteen.

(Paragraph twenty omitted in bill.)

21. It is admitted that Thomas E. French and Charles C. Spear have no right, title or interest in said premises, but that Helen C. Aleck has full right, title and interest thereto and any interest of the Locustwood Land Company or Mercedes Spear is held for the use and benefit of the said Helen C. Aleck and that the name of the complainant, Locustwood Land Company, is simply a name under which the said Charles C. Spear is trading.

22. The allegations of paragraph twenty-two are denied and any right, title or interest of the Locustwood Land Company in and to the property known as the Cooper Homestead Farm has been extinguished, forfeited, annulled and for nothing holden and title to said property is vested absolutely in Helen C. Aleck subject to the lien and claim of this defendant for amount due to him for services rendered.

23. The allegations of paragraph twenty-three are denied. One of the buildings on the said farm was insured in the Palatine Insurance Company for thirty-three hundred dollars and fire adjuster's check or draft for that amount was issued to the Palatine Insurance Company, payable to the order

of Helen C. Aleck, owner, and Josephine Allen, mortgagee, payment thereon was stopped by Charles Cooper Spear and the draft has not yet been paid.

24. The allegations of paragraph twenty-four are denied except that the said Helen C. Aleck and George H. Aleck have agreed to execute and deliver to this defendant a bond and mortgage for fifteen thousand dollars for services rendered.

This defendant prays to be hence dismissed with his reasonable costs in this behalf sustained.

JOSEPH BECK TYLER,
Solicitor Pro Se.

ANSWER TO COUNTER-CLAIM OF HELEN C. ALECK.

(Filed November 20, 1925.)

Leslie M. Holloway, defendant in the counter-claim of Helen C. Aleck, answers said counter-claim filed in the above entitled cause, says that:

1. Defendant admits the allegations of paragraph one of said counter-claim.

2. Defendant admits the allegations of paragraph two of said counter-claim.

3. Defendant admits the allegations of paragraph three of said counter-claim.

4. Defendant admits the allegations of paragraph four of said counter-claim.

5. Defendant admits the allegations of paragraph five of said counter-claim.

6. Defendant admits the allegations of paragraph six of said counter-claim.

7. Defendant admits the allegations of paragraph seven of said counter-claim.

8. Defendant admits the allegations of paragraph eight of said counter-claim.

9. Defendant has no knowledge, information or belief sufficient to deny the allegations of paragraph nine, and leaves complainant to prove the same.

10. Defendant has no knowledge, information or belief sufficient to deny the allegations of paragraph ten, and leaves complainant to prove the same.

11. Defendant has no knowledge, information or belief sufficient to deny the allegations of paragraph eleven, and leaves complainant to prove the same.

12. Defendant has no knowledge, information or belief sufficient to deny the allegations of paragraph twelve, and leaves complainant to prove the same.

ROBERT J. TAIT PAUL,
Solicitor for and of Counsel with Defendant, Leslie M. Holloway.

REPLICATION AND ANSWER OF THOMAS E. FRENCH, TRUSTEE, TO ANSWER AND COUNTER-CLAIM OF HELEN C. ALECK.

(Filed April 1, 1926.)

Thomas E. French, trustee, joins issue on the answer filed by Helen C. Aleck.

DAVID R. ROSE,
Counsel.

ANSWER TO COUNTER-CLAIM.

Thomas E. French, answering the counter-claim of Helen C. Aleck, says that:

1. He admits paragraph one of the counter-claim.

2. He admits paragraph two of the counter-claim.

3. He denies paragraph three of the counter-claim.

4. He denies paragraph four of the counter-claim.

5. He denies the truth of paragraph five of the counter-claim.

6. He denies paragraph six of the counter-claim.

7. He admits paragraph seven of the counter-claim.

8. He admits paragraph eight of the counter-claim.

9. He denies paragraph nine of the counter-claim.

10. He denies paragraph ten of the counter-claim.

11. He denies paragraph eleven of the counter-claim.

12. He denies paragraph twelve of the counter-claim.

DAVID R. ROSE,
Solicitor for Thomas E. French, Trustee.

ANSWER OF HELEN C. ALECK.

(Filed September 18, 1925.)

The defendant, Helen C. Aleck, of the Borough of Collingswood, County of Camden and State of New Jersey, answering the bill of complaint in the above entitled cause says:

1. The allegations of paragraph one are admitted.

2. The allegations of paragraph two are admitted.

3. The allegations of paragraph three are admitted.

4. The allegations of paragraph four are admitted.

5. The allegations of paragraph five are admitted.

6. The allegations of paragraph six are denied and this defendant says that the complainant was not the holder of and had no interest in the agreement dated December thirty-first, 1907, and recorded January twenty-seventh, 1908, as set forth in paragraph four of the bill of complaint at the time of the alleged agreement dated July twenty-third, 1923, as set forth in paragraph six of the complaint.

7. The allegations of paragraph seven are denied for the reasons stated in paragraph six of this answer.

8. This defendant has no knowledge of what transactions took place between Locustwood Cemetery Association and the complainant, but denies that neither the complainant or Charles Cooper Spear had any interest in the property referred to in the bill of complaint at the time of the alleged agreement made January twenty-eighth, 1924.

9. The allegations of paragraph nine are denied and this defendant says there is nothing due the complainant on said certificate of indebtedness.

10. The allegations of paragraph ten are admitted.

11. This defendant has no information from which to form an opinion or belief as to the truth of the allegations of paragraph eleven.

12. This defendant has no information from which to form an opinion or belief as to the truth of the allegations of paragraph twelve, but says that any conveyances made by either the Locustwood Cemetery Association or the Locustwood Land Company are invalid and illegal and were made without the knowledge or consent of this defendant.

13. This defendant has no information from which to form an opinion or belief as to the truth of the allegations of paragraph thirteen, but says that any conveyances made by either the Locustwood Cemetery Association or the Locustwood Land Company are invalid and illegal and were made without the knowledge or consent of this defendant.

14. The allegations of paragraph fourteen are admitted, except this defendant does not admit the Locustwood Land Company has any right title or interest in the premises.

15. This defendant has no information from which to form an opinion or belief as to the truth of the allegations of paragraph fifteen, but says that any conveyances made by either the Locustwood Cemetery Association or the Locustwood Land Company are invalid and illegal and were made without the knowledge or consent of this defendant.

16. This defendant has no knowledge or information from which to form an opinion as to the truth of the allegations of paragraph sixteen.

17. This defendant has no knowledge or information from which to form an opinion as to the truth of the allegations of paragraph seventeen, but says

that no one except herself has any right, title or possession to the premises referred to or to remove the trees or shrubbery therefrom.

18. This defendant has no knowledge or information from which to form a belief as to the truth of the allegations of paragraph eighteen.

19. This defendant denies that there is anything due to the complainant.

20. Paragraph twenty is omitted from the bill.

21. The allegations of paragraph twenty-one are denied and this defendant says that she is entitled to the possession and title to said property.

22. The allegations of paragraph twenty-two are denied and this defendant says that neither the complainant nor Charles Cooper Spear have any interest in the alleged Spear-Fernwood Agreement or in the Cooper Homestead Farm, but admits that Joseph Beck Tyler has a mortgage on the property known as the Cooper Homestead Farm for fifteen thousand dollars ($15,000.00).

23. The allegations of paragraph twenty-three are denied and this defendant says that the Palatine Insurance Company issued an order for thirty-three hundred dollars ($3,300.00), in payment of the insurance loss, which order was not honored or paid for the reason that the defendant, Charles Cooper Spear, caused the Palatine Insurance Company to stop payment thereon and claimed the insurance money for himself through the Equitable Estates Corporation, and check for the said insurance has never been paid.

24. The allegations of paragraph twenty-four are admitted and this defendant says that a mortgage for fifteen thousand dollars ($15,000.00) has been executed and delivered to the said Joseph Beck Tyler, covering what is known as the Cooper Homestead Farm, but denies that said mortgage in any way effects the interest of the complainant for the reason that the complainant has no interest whatever in said farm.

JOSEPH BECK TYLER,
Solicitor for Helen C. Aleck.

COUNTER-CLAIM.

The defendant, Helen C. Aleck, by way of counter-claim against the complainant and against the defendants, Locustwood Cemetery Association, Locustwood Cemetery, Inc., Thomas E. French, trustee, Charles C. Spear and Leslie M. Holloway, says:

1. That the defendant, Charles C. Spear, by deed dated September 28th, 1908, and recorded in the office of the Register of Deeds of Camden County, June 21st, 1909, in Book 337 of Deeds, page 614, etc., conveyed all of his right, title and interest, in and to the Cooper Homestead Farm and in and to the Fernwood Cemetery Association property, consisting in all of about one hundred and fifty-three acres, and including his rights under an agreement, known as the Spear-Fernwood Agreement, dated December 31st, 1907, and recorded in the office of the Register of Deeds of Camden County, January 27th, 1908, in Book 323 of Deeds, at page 610, etc., to Cyrus D. Marter.

2. That thereafter, the said Cyrus D. Marter and

Eleanor H. Marter, his wife, by deed, dated September 28th, 1908, and recorded in the office of the Register of Deeds of Camden County, June 21st, 1909, in Book 337 of Deeds, at page 616, etc., granted and conveyed the aforesaid premises, consisting of about one hundred and fifty-three acres, and also the agreement dated December 31st, 1907, known as the Spear-Fernwood Agreement to Thomas E. French, in trust, etc., as therein more particularly described.

3. That thereafter, the said Thomas E. French, trustee, Helen C. Douglas (now Helen C. Aleck), Charles C. Spear and Cyrus D. Marter and wife by deed dated February 21st, 1910, and recorded in the office of the Register of Deeds of Camden County, March 31st, 1910, in Book 346 of Deeds, at page 266, etc., conveyed the aforesaid premises consisting of about one hundred and fifty-three acres, together with the aforesaid Spear-Fernwood Agreement dated December 31st, 1907, to Leslie M. Holloway, absolutely, and in fee.

4. That the said deed from Thomas E. French, trustee, and others to Leslie M. Holloway was intended to convey the Cooper Homestead Farm, consisting of the entire tract of one hundred and fifty-three acres, more or less, and all right, title and interest of the defendant, Charles Cooper Spear, in the Spear-Fernwood Agreement to the said Leslie M. Holloway, absolutely.

5. That thereafter Joseph E. Nowery, sheriff, by deed dated June 23rd, 1914, conveyed all the right, title and interest of Thomas E. French, trustee, Charles C. Spear, Leslie M. Holloway and wife and

others to George H. Aleck, to what is known as the one hundred and forty acre farm tract.

6. That thereafter the interest of said George H. Aleck in and to the one hundred and forty acres was conveyed by various conveyances to this defendant, Helen C. Aleck, absolutely, in fee.

7. That prior to the alleged transfer by Charles C. Spear to Mercedes Spear dated June 27th, 1923, and the transfer by Mercedes Spear to the complainant, Locustwood Land Company, dated October 17th, 1923, the said Charles C. Spear had parted and assigned to Thomas E. French by deed dated September 25th, 1908, and recorded June 21st, 1909, in Book 337 of Deeds, at page 616, all his right, title and interest in said agreement after describing the farm of one hundred and fifty-three acres in words as follows:

> "And also a certain agreement bearing date the thirty-first day of December, nineteen hundred and seven, made between the said Charles C. Spear and the Fernwood Cemetery Association and all moneys due and to grow due thereunder, and all rights and privileges granted by said agreement, subject, however, to the covenants of the said Charles C. Spear contained in said agreement, being the same land and agreement conveyed and transferred to the said Cyrus D. Marter by said Charles C. Spear by indenture bearing date the twenty-eighth day of September, nineteen hundred and eight, recorded in the office of the Register of Deeds of Camden County, in Book 323 of Deeds, page 610, &c."

New Jersey State Library

8. That in the deed from Charles C. Spear to Fernwood Cemetery Association dated December 31st, 1907, and recorded January 27th, 1908, in Book 323, page 608, for the thirteen and thirty hundredths acres a lien for purchase price was reserved and it was expressly made subject to an agreement bearing even date therewith which was recorded on the same day in Book 323 of Deeds, at page 610, etc., a copy of said Spear-Fernwood Agreement is hereto annexed and made a part hereof.

9. That this defendant, Helen C. Aleck, has always been in possession of said tract of thirteen and thirty hundredths acres and paid the taxes thereon up to about three years ago when said Charles C. Spear and the defendants, Locustwood Cemetery Association or Locustwood Cemetery, Inc., took possession without her consent and started to develop it as a cemetery.

10. That all right, title and interest of the defendants, Locustwood Cemetery Association, Locustwood Cemetery, Inc., are subject to the claim of this defendant, Helen C. Aleck, for purchase price under and by virtue of lien reserved for purchase price in the Spear-Fernwood Agreement duly transferred to her.

11. That the defendants, Locustwood Cemetery Association and or Locustwood Cemetery, Inc., have taken possession of said thirteen and thirty hundredths acres unlawfully and are operating and selling lots without the consent of this defendant and without accounting to her under said agreement.

12. That the said Fernwood Cemetery Association made default and forfeited said agreement be-

fore the Locustwood Cemetery Association or Locustwood Cemetery, Inc., or Locustwood Land Company acquired any right, title or interest therein and the said Fernwood Cemetery Association, now Locustwood Cemetery Association, Locustwood Cemetery, Inc., and Locustwood Land Company have no right, title or interest in and to either the Spear-Fernwood Cemetery Association Agreement or the land therein referred to.

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

1. That the deed from Thomas E. French, trustee, Helen C. Douglas, Charles C. Spear and Cyrus D. Marter to Leslie M. Holloway, dated February twenty-first, 1910, and recorded in the office of the Register of Deeds of Camden County, March thirty-first, 1910, in Book 346 of Deeds, at page 266, etc., may be reformed so as to carry out the true intention and meaning of the parties thereto and convey the entire farm, known as the Cooper Homestead Farm, and the Spear-Fernwood Agreement to Leslie M. Holloway, in trust, for this defendant.

2. That the complainant, Locustwood Land Company and the defendants, Locustwood Cemetery Association, Locustwood Cemetery, Inc., Thomas E. French, trustee, and Charles Cooper Spear may be decreed to have no right, title or interest in and to the said Cooper Homestead Farm, consisting of about one hundred and fifty-three acres.

3. And in the alternative the defendant, Locustwood Cemetery Association and or Locustwood Cemetery, Inc., account to this defendant for all money due under the Spear-Fernwood Agreement

and pay to this defendant the amount so found due upon an accounting.

4. That the defendants, Locustwood Cemetery Association, Locustwood Cemetery, Inc., Charles Cooper Spear, Thomas E. French, trustee, and Leslie M. Holloway and the complainant, Locustwood Land Company, may answer this counter-claim and every part thereof.

5. That this defendant may have the States Writ of Subpoena requiring the defendants, Locustwood Land Company, Locustwood Cemetery Association, Locustwood Cemetery, Inc., Charles Cooper Spear, Thomas E. French, trustee, and Leslie M. Holloway, to answer this bill of complaint by a day to be therein fixed and to abide the order and decree of this Court.

6. That this defendant may have such other and further relief in the premises as she may be entitled to.

JOSEPH BECK TYLER,
Solicitor for Helen C. Aleck.

THIS AGREEMENT, made the thirty-first day of December, A. D., 1907, between CHARLES C. SPEAR, of the City and State of New York, of the first part and THE FERNWOOD CEMETERY ASSOCIATION, a corporation organized under the laws of the State of New Jersey, of the second part.

WITNESSETH, that whereas the said Charles C. Spear, being the owner of a tract of land described in a deed from Frank C. Somers, Sheriff of

the County of Camden, New Jersey, dated October 8th, 1907, recorded in the office of the Register of Deeds of the County of Camden in Book 322 of Deeds at page 11, etc., has this day conveyed unto the said The Fernwood Cemetery Association a part of said tract:

BEGINNING in the center of the Marlton Turnpike at a point seven hundred and fifty feet westwardly from the intersection of the middle line of the Cooper Landing Road with the center of the said Marlton Turnpike; and extending thence parallel with westerly line of the whole tract northwardly six hundred and fifty feet; thence westwardly at right angles to said line to said westerly line; thence southwardly along the same to the center of the said Marlton Turnpike; thence eastwardly along the middle of said Turnpike to the place of beginning.

CONTAINING thirteen and thirty hundreths of an acre, be the same more or less.

NOW, THEREFORE, in consideration of the said conveyance of the said lands and of the covenants and agreements hereinafter contained on the part of the said Charles C. Spear, the party of the second part doth for itself and its successors hereby covenant and agree as follows:

First: That it the said party of the second part or its successors will purchase the land herein agreed to be conveyed and will pay to the said Charles C. Spear, his heirs, executors, administrators or assigns for the same and the said tract this day conveyed and of future sales of burial lots, places of internment or tombs fifty per centum of

all moneys received from said sales as the same shall from time to time be received and drafts drawn by the said Charles C. Spear, his heirs, executors, administrators or assigns upon said party of the second part or any portion of the said moneys to be paid in accordance with the terms of this agreement shall be accepted by the treasurer of the said association.

Second: That ten per centum of the remainder of such receipts shall be reserved and set apart by the said Cemetery Association as an accumulating and permanent fund to be used in the maintenance and perpetual care of the cemetery and the amount so reserved, shall, once a year, be paid to a trust company to be selected at the annual meeting of the association of lot owners and creditors which sum shall be kept invested in some safe and first-class investment. The annual income of such funds, after deducting any necessary expenses incurred in investing and re-investing the same shall be paid over twice a year to the officers of said association to be used as aforesaid in the perpetual care of the cemetery.

Third: The residue of the proceeds of the sale shall be applied: firstly; to the improvement and maintenance of the grounds and the incidental expenses necessary to the management of the association and secondly; to the repayment of any loans made to the said association.

Fourth: The minimum price for the ground shall not be less than thirty cents per square foot for the first one hundred thousand square feet for all lots sold, which price may be increased at the rate of five cents per square foot for each additional one

hundred thousand square feet of lots sold at the option of said Charles C. Spear, his heirs, executors, administrators or assigns. No lots shall be donated or given away without the written consent of the said party of the first part, his heirs, executors, administrators or assigns.

Fifth: In estimating the value of the unappropriated or unsold lands or portions thereof such portions shall be considered as having a like value with an equal area of lots already sold arranged together and the said cemetery association shall be deemed owing to the said Charles C. Spear, his heirs, executors, administrators or assigns the equivalent of said unsold portion when estimated on that basis and the said cemetery association shall, whenever required by the said Charles C. Spear, his heirs, executors, administrators or assigns give to him or them or such party as he or they may direct a certificate or certificates of the amount of such indebtedness at the date when such certificate is requested. For the purposes of this agreement all burial lots, places of internment or tombs that may be donated or given away shall be deemed to have been sold at the said minimum price of thirty cents per square foot.

Sixth: That the said party of the second part shall not take, accept or in any way acquire any other land for cemetery purposes than the land herein agreed to be conveyed to the said cemetery association by the said Charles C. Spear until after the said land hereby agreed to be conveyed has been conveyed to the said cemetery association by the said Charles C. Spear, and the said Charles C. Spear, his heirs, executors, administrators or assigns pay the amount due him therefore.

Seventh: All books, accounts, papers and records of the said cemetery association shall, at all times, be open to the inspection of any proprely authenticated representative of the said Charles C. Spear, his heirs, executors, administrators or assigns.

Eighth: The said Charles C. Spear in consideration of the premises hereby covenants and agreed from time to time as it shall be needed for cemetery purposes and if said party of the second part has in every respect kept and performed its covenants herein contained and has paid to the said Charles C. Spear, his heirs, executors, administrators or assigns fifty per centum of all moneys received from said sales to grant and convey free of all encumbrances to said cemetery association tracts of land of ten acres in extent adjoining the lands used by the party of the second part for cemetery purposes. Parts of said lands described in said Sheriff's Deed except the triangular piece south of the Marlton Turnpike and except the tract at the northwest corner of the Cooper Landing Road and said Marlton Turnpike commencing at a stone in the middle of said Turnpike at its intersection with the Cooper Landing Road and extending along the middle line of said Marlton Turnpike westwardly seven hundred and fifty feet to the place of commencement, described of the tract herein recited as conveyed to the said party of the second part, thence northwardly along the easterly line of said tract six hundred and fifty feet thence still northwardly parallel to said Cooper Landing Road thirteen hundred and fifty feet; thence eastwardly at right angles to said Cooper Landing Road to the middle of the same, thence southwardly along the middle of the said Cooper Landing Road to the place of beginning,

shall have been granted and conveyed to it but the said Charles C. Spear, his heirs or assigns or their lessees shall at all times have the right to use, till and enjoy the portion of the said farm not improved by said cemetery association and actually used for cemetery purposes.

Ninth: It is further mutually agreed that the said party of the second part, shall, within thirty days from the date of these presents proceed to survey and properly layout and improve said land for the purpose of a cemetery and shall at all times thereafter keep employed upon said land a sufficient number of employees for the purpose of maintaining said land in a suitable condition for cemetery purposes, which work shall be authorized by and done under the joint supervision of the said cemetery association and the said Charles C. Spear, his heirs, executors, administrators or assigns or his or their duly authenticated representative. All the expenses of said work to have the written approval of the said Charles C. Spear, his heirs, executors, administrators or assigns and to be paid out of the fund provided for in this contract. The fund to be so expended shall be derived from the sale of burial lots, places of internment or tombs or from moneys borrowed upon the securities of the said cemetery association as hereinafter provided.

Tenth: That if it shall be necessary for the said cemetery association to borrow money upon its bonds, notes or other obligations in order to provide funds for the proper improvement and maintenance of said cemetery or for any other purpose, all such bonds, notes or other obligations shall be issued subject to the lien of the said Charles C. Spear on

the said lands for unpaid purchase money and it shall be so expressed therein. And the said Charles C. Spear, his heirs, executors, administrators or assigns, shall have the privilege of purchasing from said association any of said bonds, notes or other obligations not exceeding fifty-one per centum of the total issue or issues at the lowest price at which any of the same are sold or offered for sale, less any commissions or discounts that may be allowed by said cemetery association for the negotiation thereof and the said Charles C. Spear, his heirs, executors or assigns may pay for said bonds, notes or other obligations in cash or by giving to the said cemetery association a proper receipt for money owing to him or them by the said association or by releasing the said cemetery association from the payment of fifty per centum of the proceeds of the sale of a sufficient number of square feet of burial lots at the aforesaid minimum price at his or their option.

IN WITNESS WHEREOF the said Charles C. Spear has hereunto set his hand and seal and the association hath caused its corporate seal to be hereunto annexed, attested by its secretary and these presents to be signed by the president.

THE FERNWOOD CEMETERY ASSOCIATION,
By Abram E. Street,
President.
Attest: John B. Kates,
Secretary,
CHARLES C. SPEAR.

Signed, Sealed and Delivered in the presence of
JOHN B. KATES

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } *ss.*

BE IT REMEMBERED that on this fourth day of January in the year of our Lord one thousand nine hundred and eight, before me a Master in Chancery of New Jersey, personally appeared Charles C. Spear, who I am satisfied is the party mentioned in the foregoing agreement and I having first made known to him the contents thereof he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

THOMAS B. HALL,
M. C. C. of N. J.

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } *ss.*

BE IT REMEMBERED that on this fourth day of January, in the year of our Lord one thousand nine hundred and eight before me, a Master of Chancery of New Jersey, personally appeared John B. Kates, who being by me duly sworn on his oath saith that he is the secretery of the Fernwood Cemetery Association, the party named in the foregoing agreement and that Abram E. Street is the president. That deponent knows the common or corporate seal of said association and the seal annexed to the foregoing agreement is such common or corporate seal. That the said agreement was signed by the said president and the seal of said corporation affixed thereto in the presence of deponent. That said agreement was signed, sealed and delivered as and

for the voluntary act and deed of said association for the uses and purposes therein expressed, pursuant to a resolution of the Board of Trustees of said association and at the execution thereof this deponent subscribed his name thereto as witness.

JOHN B. KATES.

Sworn and Subscribed to before me the day and year aforesaid.

THOMAS B. HALL,
M. C. C. of N. J.

ANSWER OF LOCUSTWOOD CEMETERY ASSOCIATION AND LOCUSTWOOD CEMETERY, INC., TO THE COUNTER-CLAIM OF THOMAS E. FRENCH.

(Filed November 5, 1928.)

Defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc., in answering the counter-claim of the defendant, Thomas E. French, says:

1. They admit the first paragraph of the counter-claim.

2. They admit the second paragraph of the counter-claim.

3. They admit the third paragraph of the counter-claim.

4. They admit the fourth paragraph of the counter-claim.

5. They admit the fifth paragraph of the counter-claim.

6. They admit the sixth paragraph of the counter-claim.

7. They admit the seventh paragraph of the counter-claim.

8. They admit the eighth paragraph of the counter-claim.

9. They admit the ninth paragraph of the counter-claim.

10. As to the tenth paragraph of the counter-claim, defendants have no knowledge or information upon which to form a belief of the matters and things therein set forth; but aver that if such an assignment was made it had no validity.

11. Defendants have no knowledge or information upon which to form a belief of the allegations of the eleventh paragraph of the counter-claim.

12. Defendants admit the twelfth paragraph of the counter-claim.

D. T. STACKHOUSE,
Solicitor for defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc.

ANSWER OF LOCUSTWOOD CEMETERY ASSOCIATION AND LOCUSTWOOD CEMETERY, INC., TO THE COUNTER-CLAIM OF THE DEFENDANT, HELEN C. ALECK.

(Filed November 5, 1928.)

Defendants jointly and severally answering the counter-claim of the defendant, Helen C. Aleck, say:

1. They believe that Charles C. Spear made a deed to Cyrus D. Marter as set forth in paragraph one of the counter-claim; but aver that at the time of the making of the said deed the said Spear had no right, title or interest in and to the Fernwood Cemetery Association property or the Spear-Fernwood Agreement.

2. The defendants believe that Cyrus D. Marter and wife made a deed to Thomas E. French as set forth in paragraph two of the said counter-claim; but aver that Thomas E. French acquired no interest in the Fernwood Cemetery Association property.

3. Defendants believe that a deed was made by Thomas E. French, trustee, and wife as set forth in paragraph three of the complaint; but aver that Leslie M. Holloway acquired no rights in the Fernwood Cemetery Association property.

4. Defendants deny the fourth paragraph of the counter-claim.

5. Defendants believe that the fifth paragraph of the counter-claim is true; but such sale did not divest or affect the rights of these defendants under the Spear-Fernwood Agreement.

6. Defendants believe that the allegations of paragraph six of the counter-claim are true; but such conveyance did not affect or divest the rights of these defendants under the Spear-Fernwood Agreement.

7. Defendants believe that Charles C. Spear attempted to make an assignment to Thomas E. French of his right, title and interest in the Spear-Fernwood Agreement; but aver that he had no right, title or interest in the Fernwood Cemetery Association property; nor are the rights of these defendants affected thereby.

8. Defendants admit that it was attempted by such deed to reserve a vendor's lien but defendants deny that such a lien could be legally located.

9. Defendants deny the ninth paragraph of the counter-claim.

10. Defendants deny the tenth paragraph of the counter-claim.

11. Defendants deny the eleventh paragraph of the counter-claim.

12. Defendants deny the twelfth paragraph of the counter-claim.

FIRST DEFENSE TO COUNTER-CLAIM.

1. Defendants aver that whatever interest the defendant, Helen C. Aleck, has or may claim to have in the premises referred to in the counter-claim or in the Spear-Fernwood Agreement is subject to the rights of these defendants under and by virtue of the agreement made by Charles C. Spear, Mercedes Spear and Equitable Estates Corporation, set forth in the counter-claim of these defendants exhibited against the said Charles C. Spear, Mercedes Spear and Equitable Estates Corporation.

SECOND DEFENSE TO COUNTER-CLAIM.

1. Defendants deny the right of the defendant, Helen C. Aleck, to any reformation of the deed from Thomas E. French, trustee, and others to Leslie M. Holloway, set forth in the third paragraph of her counter-claim.

THIRD DEFENSE TO COUNTER-CLAIM.

1. The defendant, Helen C. Aleck, is barred by gross laches from any relief against these defendants under her counter-claim.

D. T. STACKHOUSE,
Solicitor for Defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc.

ANSWER AND COUNTER-CLAIM OF THOMAS E. FRENCH, DEFENDANT.

(Filed March 24, 1926.)

The answer of Thomas E. French, defendant, to bill of complaint, respectfully shows that:

1. He admits paragraphs 1, 2 3, and 4 of the bill of complaint.

2. He has no knowledge sufficient to form a belief of the truth of the matters alleged in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 of the bill of complaint.

Counter-Claim.

By way of counter-claim against Locustwood Land Company, Locustwood Cemetery Association, Locustwood Cemetery, Incorporated, Helen C. Aleck and Charles C. Spear, defendant, says that:

1. On September 28, 1908, Charles C. Spear executed and delivered to Cyrus D. Marter a deed of conveyance for the Cooper Homestead farm, particularly described as follows:

> BEGINNING at a stone in the Whiskey Road corner to Stoy's land and runs thence (1) along the line of the Indian Orchard south thirty-two
>
> and one-quarter degrees east seventeen chains six links more or less to the middle of the Land-

ing Road at a point therein ten chains ninety-six links from where the middle line of the said Whiskey Road crosses the same thence (2) along the middle of the said Landing Road and along the lands of Kaighn late Ellis and Lippincott south thirty-four degrees and thirty minutes west forty-nine chains and sixty-seven links to an iron plug in an angle of the said Landing Road and joining lands of the said Lippincott, thence (3) still by the said Lippincott's land and along the middle of the said Landing Road crossing the said Turnpike south fifty-one degrees and thirty-seven minutes west twenty-two chains and seven links more or less to an iron plug for a corner also to the Budd Farm, thence (4) by the same north fifty-three degrees west about eight chains and eighty-two links to an iron plug in the middle of the said Turnpike thence (5) still by the said Budd Farm and along the middle of the said turnpike north seventy-one degrees and forty-five minutes west twelve chains and sixty links to another corner of the said Budd Farm in the middle of the said turnpike marked by an iron plug and thence (6) by lines of Nicholson late Moore and Stoy north forty-three degrees and two minutes east eighty-one chains and ninety-seven links to the place of beginning. Containing one hundred and fifty-three and seventy-seven hundredths of an acre.

2. On September 28, 1908, said Charles C. Spear executed and delivered to Cyrus D. Marter an assignment of a written agreement made between the said Charles C. Spear and the Fernwood Cemetery

Association, dated December 31, 1907, and recorded in the Register of Deeds office of Camden County in Deed Book 323, page 610, &c.

3. On September 28, 1908, Cyrus D. Marter and Eleanor H., his wife, executed and delivered a deed of conveyance to Thomas E. French, trustee, of the second part, and Helen C. Douglass and Charles C. Spear, of the third part, of all the land and premises hereinabove particularly described, and, in and by the same conveyance said Cyrus D. Marter assigned, transferred and set over unto said Thomas E. French, trustee, and Helen C. Douglass and Charles C. Spear, all of his right, title and interest of, in and to said written agreement made by said Charles C. Spear with said Fernwood Cemetery Association, referred to in paragraph two.

4. That in said deed from Cyrus D. Marter and wife to Thomas E. French, trustee, and Helen C. Douglass and Charles C. Spear, the following trust was created:

> "To have and to hold said premises with all and singular the appurtenances and said agreements the moneys due thereon and the rights and privileges therein mentioned unto the said Thomas E. French, his heirs and assigns, to the only proper use, benefit and behoof of the said Thomas E. French, his heirs and assigns, in trust, nevertheless, to collect and receive the rent, income and profits thereof, and all payments made under the said agreement between Charles C. Spear and the Fernwood Cemetery Association, bearing date December 31, 1907, and after deducting the expenses of the trust

and other necessary expenses, taxes and repairs, to pay the balance to Helen C. Douglass, of Collingswood, in the County of Camden, New Jersey, for and during the term of her natural life, and after her death to pay said balance to said Charles C. Spear for and during the term of his natural life, or to allow the said Helen C. Douglass during her life to collect and receive the rents, income and profits of the said tracts of land, and the payments under said agreement, and pay the said taxes, repairs and expenses, and at the death of the survivor of the said Helen C. Douglass and Charles C. Spear to convey and transfer said property hereby conveyed, the proceeds of such parts thereof (except the parts conveyed under said agreement) as may have been sold and such moneys received under said agreement with the Fernwood Cemetery Association as may not have been paid to said Helen C. Douglass or to the said Charles C. Spear, to such person or persons as the said Charles C. Spear shall by his last will and testament or writing in the nature thereof appoint to receive the same and in case the said Charles C. Spear fails to make such appointment then to such person or persons as would be entitled to the real estate of the said Charles C. Spear, under the statutes of New Jersey regulating the descent of real estate had the said Charles C. Spear died intestate."

"And the said trustee is hereby authorized and empowered during the lifetime of the said Helen C. Douglass and Charles C. Spear, with their consent and during the lifetime of the

survivor of them, with the consent of such survivor, which consent shall be testified by the party consenting joining in and executing the deed to sell and convey the whole or any part of the lands hereby conveyed, *except that part agreed to be sold to the Fernwood Cemetery Association* and also during the lifetime of the said Helen C. Douglass and Charles C. Spear with the like consent and during the lifetime of the survivor with the consent of the survivor to assign the moneys due on said agreement and *to assign said agreement* and the moneys due thereon, and with such assignment convey the lands agreed to be sold to the Fernwood Cemetery Association free and discharged of the trusts, without liability on the part of the purchaser to see to the application of the purchase money, and all sums of money received by said trustee as the proceeds of such sales herein authorized shall be invested and held by said trustee upon such and the same trusts ends, intents and purposes, and with under and subject to the same powers, provisos, declarations and agreements as are herein declared and contained for the property so sold. And the said trustee is hereby authorized and empowered without the consent of the said Helen C. Douglass and Charles C. Spear, or either of them, to convey to the Fernwood Cemetery Association the lands agreed to be conveyed to it at the times it is entitled to such conveyances under the agreement bearing date December 31, 1907, made between the said Charles C. Spear and said the Fernwood Cemetery Association."

It is hereby covenanted and understood and agreed that said trust is accepted upon the condition that trustee may select in and about said trust and duties suitable agents and the trustee shall not be liable for any neglect, omission or wrong of such agent if reasonable care shall have been exercised in his or their selection, nor shall he be otherwise answerable save for his own wilful negligence or default.

Said trust deed also contained the following:

"And that all of the trusts hereby declared and created may be revoked and annulled, the trustee released and discharged, and the trust property conveyed and transferred at any time during the life of the said Helen C. Douglass by a deed duly executed and acknowledged by the said trustee, the said Cyrus D. Marter, if living, and the said Helen C. Douglass and Charles C. Spear, if living, and if the said Charles C. Spear survives the said Helen C. Douglass then after her death and during his life the said trust may be revoked and property transferred by the deed duly executed and acknowledged by the said trustee, the said Cyrus D. Marter, if living, and the said Charles C. Spear, and the said Cyrus D. Marter for himself, his heirs, executors and administrators."

5. On February 21, 1910, Thomas E. French, trustee, Helen C. Douglass, Charles C. Spear, and Cyrus D. Marter, executed and delivered to Leslie M. Holloway a deed for the land and premises hereinafter described:

All the parts of the farm plantation and tracts of land known as the Cooper Homestead Farm, situate

in the Township of Delaware, in the County of Camden and State of New Jersey, excepted from the grant to Floyd H. Bradley hearing even date herewith, being the triangular piece south of the Marlton Turnpike, and a tract at the northwest corner of the Cooper Landing Road and said Marlton Turnpike commencing at a stone in the middle of said turnpike at its intersection with Cooper Landing Road and extending along the middle line of said Marlton Turnpike westerly seven hundred and fifty feet to the place of commencement, described of the tract conveyed to the Fernwood Cemetery Association; thence northwardly along the easterly line of said tract six hundred and fifty feet; thence still northwardly parallel to said Cooper Landing Road thirteen hundred and fifty feet; thence eastwardly at right angles to said Cooper Landing Road to the middle of the same thence southwardly along the middle of said Cooper Landing Road to the place of beginning.

6. That in and by said deed it was expressly stated that the trusts declared and created by said deed be revoked and annulled, the said Thomas E. French, trustee, released and discharged and the trust property conveyed and transferred free and clear of all trusts.

7. That said deed to Holloway did not include the land conveyed to the Fernwood Cemetery Association by Charles C. Spear by deed dated December 31, 1907, nor did it assign said agreement to said Holloway.

8. That Charles C. Spear claims that said agree-

ment between him and said Fernwood Cemetery Association became vested in him upon the revocation and annullment of the trust created by deed from him to Cyrus D. Marter, and by the said Marter to Thomas E. French, trustee.

9. That in and by said deed of trust to Thomas B. French, the said Helen C. Douglass was entitled to receive all of the net income from the land conveyed to said Fernwood Cemetery Association during the term of her natural life.

10. That Charles C. Spear has since assigned said agreement made by him with said Fernwood Cemetery Association to Locustwood Land Company, who claims to be the owner of said agreement, and all moneys due thereunder.

11. That by reason of the conflicting claims arising by reason of the conveyance to said Holloway of the lands not included in the deed to Fernwood Cemetery Association and the agreement aforesaid, cross-complainant is unable to determine which of said claims is correct, and in order to preserve the trust property not included in the Holloway deed seeks the advice and instruction of this Court in the premises.

12. That Locustwood Cemetery Association or Locustwood Cemetery, Incorporated, has been in possession of said premises, selling burial lots therein, but has not paid any money to cross-complainant, or made any accounting whatever to him.

Cross-complainant is without adequate relief in the courts of law, and therefore prays:

1. That Locustwood Land Company, Locustwood Cemetery Association, Locustwood Cemetery, Incorporated, Charles C. Spear and Helen C. Aleck, the defendants to this suit, may answer this counter-claim and each statement therein made.

2. That an account may be taken of the amount due cross-complainant for the sale of burial lots under said Spear-Fernwood Agreement.

3. That the claims of Locustwood Land Company, Locustwood Cemetery Association, Locustwood Cemetery, Incorporated, Charles C. Spear, and Helen C. Aleck, may be fixed and settled by a decree of this honorable Court.

4. That a decree may be entered directing cross-complainant to convey said Spear-Fernwood agreement to the proper owner.

5. That a writ of subpoena may issue, commanding said defendants to answer this counter-claim and to abide by such decree as this Court may make in the premises.

DAVID R. ROSE,
Solicitor for Thomas E. French.

REPLICATION OF THOMAS E. FRENCH TO ANSWER OF HELEN C. ALECK.

(Filed April 7, 1926.)

Cross-complainant, Thomas E. French, joins issue on the answer filed by Helen C. Aleck.

DAVID R. ROSE,
Counsel for Thomas E. French.

REPLICATION AND ANSWER TO COUNTER-CLAIM.

(Filed October 22, 1925.)

Complainant, Locustwood Land Company, joins issue on the answer filed by Helen C. Aleck.

DAVID R. ROSE,
Solicitor for complainant.

ANSWER TO COUNTER-CLAIM.

Complainant, Locustwood Land Company, answering the counter-claim of Helen C. Aleck, says that:

1. It admits paragraph 1 of the counter-claim.

2. It admits paragraph 2 of the counter-claim.

3. It denies paragraph 3 of the counter-claim.

4. It denies paragraph 4 of the counter-claim.

5. It denies the truth of paragraph 5 of the counter-claim.

6. It denies paragraph 6 of the counter-claim.

7. It admits paragraph 7 of the counter-claim.

8. It admits paragraph 8 of the counter-claim.

9. It denies paragraph 9 of the counter-claim.

10. It denies paragraph 10 of the counter-claim.

11. It denies paragraph 11 of the counter-claim.

12. It denies paragraph 12 of the counter-claim.

DAVID R. ROSE,
Solicitor for Locustwood Land Company.

REPLICATION AND ANSWER OF CHARLES C. SPEAR TO ANSWER AND COUNTER-CLAIM OF HELEN C. ALECK.

(Filed November 17, 1925.)

Charles C. Spear joins issue on the answer filed by Helen C. Aleck.

WM. T. BOYLE,
Solicitor for Charles C. Spear.

ANSWER TO COUNTER-CLAIM.

Charles C. Spear, answering the counter-claim of Helen C. Aleck, says that:

1. He admits paragraph 1 of the counter-claim.

2. He admits paragraph 2 of the counter-claim.

3. He denies paragraph 3 of the counter-claim.

4. He denies paragraph 4 of the counter-claim.

5. He denies the truth of paragraph 5 of the counter-claim.

6. He denies paragraph 6 of the counter-claim.

7. He admits paragraph 7 of the counter-claim.

8. He admits paragraph 8 of the counter-claim.

9. He denies paragraph 9 of the counter-claim.

10. He denies paragraph 10 of the counter-claim.

11. He denies paragraph 11 of the counter-claim.

12. He denies paragraph 12 of the counter-claim.

WM. T. BOYLE,
Solicitor for Charles C. Spear.

ANSWER OF CHARLES C. SPEAR, MERCEDES SPEAR AND EQUITABLE ESTATES CORPORATION.

(Filed September 10, 1925.)

The joint and several answers of Charles C. Spear, Mercedes Spear and Equitable Estates Corporation, to the counter-claim of Locustwood Cemetery Association and Locustwood Cemetery, Incorporated.

1. They deny the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the counter-claim.

2. They have no knowledge or information sufficient to form a belief of the charges set out in paragraphs 9, 10 and 11 of the counter-claim.

3. They deny the truth of the allegations contained in paragraphs 12 and 13 of the counter-claim.

4. They admit the truth of paragraph 14 of the counter-claim.

5. They deny the right of defendants set out in paragraph 15 of the counter-claim.

FIRST DEFENSE.

That the directors of Equitable Estates Corporation never authorized or empowered the execution of the alleged agreement set out in the counter-claim.

SECOND DEFENSE.

That Charles C. Spear and Mercedes Spear never executed the alleged agreements set out in the counter-claim.

THIRD DEFENSE.

The Locustwood Cemetery Incorporated filed an answer in the Court of Chancery in a cause therein pending wherein Helen C. Douglass was complainant and Equitable Estates Corporation and others were defendants alleging that said corporation was in possession of said land and premises under and by virtue of a written agreement of July 23, 1923.

WM. T. BOYLE,
Sol'r of Charles C. Spear, Mercedes Spear and Equitable Estates Corporation.

ANSWER TO COUNTER-CLAIM OF THOMAS E. FRENCH.

(Filed April 6, 1926.)

The defendant, Helen C. Aleck, answering the counter-claim of Thomas E. French, says:

1. The allegations of paragraph one are admitted.

2. The allegations of paragraph two are admitted.

3. The allegations of paragraph three are admitted.

4. The allegations of paragraph four are admitted.

5. The allegations of paragraph five are admitted.

6. The allegation of paragraph six is admitted.

7. The allegation of paragraph seven is admitted so far as it relates to the Fernwood Cemetery Association land but is not admitted as to the agreement referred to as it was the intention of all parties thereto that the said deed to Leslie M. Holloway should convey all of the land and the agreement theretofore conveyed to Thomas E. French.

8. This defendant has no knowledge of what claim Charles C. Spear is making but denies that there is any validity to the alleged claim.

9. The allegation of paragraph nine is denied and the deed speaks for itself. The trusts therein created were revoked by all parties joining in a deed to Leslie M. Holloway dated February 21st, 1910.

10. This defendant has no knowledge of what assignment Charles C. Spear may have made but alleges that he had no interest or title in the said agreement at the time of the alleged assignment.

11. This defendant likewise desires that all claims may be adjudicated and in her counter-claim has asked to have the deed to Leslie M. Holloway reformed to carry out the intention of the parties and that all property except that conveyed to the Fernwood Cemetery Association and including the Fernwood Cemetery Association Agreement shall be included therein, if necessary, to complete and perfect her title thereto.

All interest of Thomas E. French, trustee, Floyd H. Bradley, Leslie M. Holloway and wife and Charles C. Spear in and to the premises conveyed to Thomas E. French and the premises known as the Cooper Homestead Farm, except the thirteen and thirty-hundredths acres conveyed to the Fernwood Cemetery Association, were foreclosed by decree in this Court entered April 7th, 1914, and by deed from Joseph E. Nowrey, Sheriff of Camden County, to George H. Aleck, dated June 23rd, 1914, and recorded on the same day in the office of the Register of Deeds of Camden County in Book 389 of Deeds, page 209, and by reason of said decree and deed the said Thomas E. French, trustee, Floyd H. Bradley, Leslie M. Holloway and wife and Charles C. Spear have no interest therein.

12. The allegations of paragraph twelve are denied and this defendant says that the Locustwood Cemetery Association or Locustwood Cemetery, Inc., have only recently and within the last year or two taken possession of the said property. That the Fernwood Cemetery Association never functioned as a corporation and this defendant had possession of the thirteen and thirty-hundredths acres up until about two years ago when the Locustwood Cemetery Association or Locustwood Cemetery, Inc., forcibly took possession of the thirteen and thirty-hundredths acres now being used for cemetery purposes.

That in view of the release executed by all of the parties to Thomas E. French set forth in his counter-claim, and in view of the fact that Thomas E. French now has no right, title or interest in and to the premises by reason of the decree of this Court above recited, this defendant prays to be hence dismissed.

JOSEPH BECK TYLER,
Solicitor for and of Counsel with Helen C. Aleck.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

LEAMING, V. C.

February 9, 1927.

APPEARANCES:

PALMER & POWELL, ESQS., for Locustwood Land Co.

DAVID R. ROSE, ESQ., for Thomas E. French, Esq.

D. T. STACKHOUSE, ESQ., & HARVEY F. CARR, ESQ., for Locustwood Cemetery Ass'n & Locustwood Cemetery, Inc.

JOSEPH BECK TYLER, ESQ., for Helen C. Aleck.

Fred W. Albert, Jr., Law Reporter, 520 Market Street, Camden, N. J.

The Court: Are counsel ready in today's case?

Mr. Rose: Yes, sir.

The Court: I don't know a thing about the is-

sues in this case. It is rather unfortunate it is set down for a single day because I think it was heretofore set down with a view of it taking much more than a day.

Mr. Tyler: I think you will find as the case proceeds it will narrow itself down to a very narrow issue and I think it will be easily cleared up today.

The Court: I hope so, for I don't know when I can finish it. Are the issues susceptible of reference? Would anything be gained by a reference?

Mr. Carr: I think your Honor will have to settle the main questions.

The Court: Well, I will do the best I can with them.

Mr. Tyler: The matter of an accounting, if that should develop will be subject to reference, but that wouldn't take place until after the main questions are disposed of.

Mr. Carr: I hardly see how we can get through today; I am not so sanguine as Mr. Tyler. The facts of the situation are a little involved.

The Court: I have today at my disposal and I will hear you as far as you can go, but it will be unfortunate if you do not finish today because I can't give you Friday, and tomorrow is occupied, and I don't know when I can resume the hearing.

Mr. Tyler: I think it is largely a question of law. I don't know what other procedure you are

going to take here, but I think after we state our separate cases it won't be much of an issue of fact.

The Court: Suppose you try to get the issues into my head the best you can.

Mr. Rose: Suppose I start at the beginning of the thing.

The Court: See if you can boil it down to what the real issue is. At this stage I know nothing about the case so you can proceed upon the assumption I never have heard about it, I know about the old Spear-Aleck litigation.

Mr. Rose: In the Spear-Aleck litigation you remember in the Bill of Complaint the cemetery of thirteen acres was specifically included.

The Court: What was?

Mr. Rose: This cemetery of thirteen acres we are here talking about today.

The Court: And the Spear farm, that is in this bill, too?

Mr. Rose: Probably I had better explain, and will your Honor ask me the questions as I go along and I will see that they are answered. The thing is very much involved and you will have to ask me questions from time to time to clear it up.

The Court: I want to get it into my head. Usually cases of this kind boil themselves down to some specific issue, when you get through with it. I don't

know whether that is so here, there may be many issues.

Mr. Rose: On December 31, 1907, Charles C. Spear who was then the owner of the whole Cooper Homestead Farm, he had acquired the title from a sheriff's sale ——

The Court: Was the cemetery a part of the farm at that time?

Mr. Rose: This cemetery of thirteen acres was carved out of the Cooper Homestead Farm. Spear had obtained the title from the sheriff, Frank C. Somers, on October 8, 1907, and on December 31, 1907, he made a deed to the Fernwood Cemetery Association for thirteen and thirty one-hundredths, (13.30) acres—I am going to call it thirteen acres.

The Court: On what date?

Mr. Rose: December 31, 1907.

The Court: After he purchased at sheriff sale?

Mr. Rose: Yes, sir, it conveyed the thirteen acres for cemetery purposes.

The Court: That is part of the Cooper Farm?

Mr. Rose: Yes, sir. The consideration was an agreement this day made between the parties providing among other things for the payment of the purchase money for said land and the habendum reserves a vendor's lien to have, to hold, and so forth, subject, however, to the lien for unpaid purchase

money provided by said agreement made between the parties hereto, bearing even date herewith. On the same date simultaneous with the execution and delivery of that deed an agreement was made bearing the same date between Charles Cooper Spear and the Fernwood Cemetery Association reciting this conveyance and providing, among other things, that he or his assigns should receive fifty (50%) percent of all moneys received from the sales of lots, and so forth, under this deed, and that the Cemetery Association should execute to him, or his assigns, a certificate or certificates of indebtedness of the amounts due him for the unpaid purchase price under that deed.

The Court: Was the purchase price named?

Mr. Rose: No the purchase price was not named.

The Court: It was to be half the proceeds of the sale?

Mr. Rose: Half the proceeds of the sale, and this agreement also provided Spear or his assigns should have supervision, control and management of the cemetery.

The Court: That Spear should?

Mr. Rose: Yes, sir. And that the Cemetery Association should not cut down any trees or remove any shrubbery without his consent. After this deed and agreement had been executed and recorded Spear made a deed of conveyance to Cyrus D. Marter of the whole Cooper Farm with the exception of this thirteen acres. And he made a separate con-

veyance or transfer of this Spear-Fernwood agreement to Cyrus D. Marter. Cyrus D. Marter then made a deed to Thomas E. French, conveying the Cooper Homestead Farm, conveying the whole of the Cooper Homestead Farm, so that the whole of it passed by that deed to Thomas E. French as trustee.

The Court: Does that convey the agreement?

Mr. Rose: It conveys the agreement. So the whole of it was placed in Thomas E. French as the trustee and the trust states that either Mr. French or Mrs. Aleck should have a right during this trust to collect and receive the income under that Spear-Fernwood agreement.

The Court: Was the conveyance to French for all the rights Spear had, whatever they were?

Mr. Rose: Yes, to Thomas E. French. And that after the death of Mrs. Aleck the residue to be paid to Spear or his assigns.

The Court: After the death of who?

Mr. Rose: After the death of Mrs. Aleck it was to be paid to Spear or his assigns. Now that trust relation continued ——

The Court: After her death to who?

Mr. Rose: Charles C. Spear or his assigns. Now, after that trust ——

The Court: To be paid to whom during the life of Spear?

Mr. Rose: The income was to be paid to Helen C. Aleck under this trust deed during her life and after her death ——

The Court: To her son.

Mr. Rose: To her son. After that trust deed had been in existence for quite some time—and that also provided it might be revoked by all of the parties in interest joining in a deed of conveyance.

The Court: That is, by every one who was given any rights under that conveyance either affirmative or rights reserved. It is expressly in trust?

Mr. Rose: Yes, sir, this sets up the trust. On February 21, 1910, that deed of trust was revoked by this deed, Thomas E. French, of the City and County of Camden, of the first part, Helen C. Douglas and Charles C. Spear and Cyrus D. Marter of the second part, and Leslie M. Holloway of the third part. In this deed it is recited that the trusts in the French deed were annulled, revoked and set aside.

The Court: In the deed to French?

Mr. Rose: Yes, said they were all set aside.

The Court: What about the deed to Marter?

Mr. Rose: Mr. Marter joined in this deed; Marter was a party to this deed annulling and revoking that deed of trust to French.

The Court: Does it bring the title back to Marter or Spear?

Mr. Rose: It would go back to Spear.

The Court: Who was Holloway?

Mr. Rose: Holloway was a third party who, as far as we know, had no interest. In fact, Dr. Spear does not know anything about him. But, this is the point, this deed of revocation did not convey the Spear-Fernwood agreement providing for the development of the cemetery and the payment of the fifty percent (50%) of the proceeds to Spear and his assigns. It did not convey that to Holloway, it merely conveyed the legal title to Holloway.

The Court: The deed of revocation is in behalf of Holloway.

Mr. Rose: No, the deed of revocation is by Thomas E. French trustee, Mrs. Douglas, Spear, and Cyrus D. Marter to Leslie Holloway, they conveyed the fee to Leslie M. Holloway, expressly conveys it, but they do not convey to Holloway this Spear-Fernwood agreement.

The Court: What about the revocation of the trust?

Mr. Rose: The trust is revoked in this instrument to Holloway.

The Court: What else did that include?

Mr. Rose: That did not include all of the land to Thomas E. French but only a very small part of it.

The Court: What part, the cemetery or the other part?

Mr. Rose: No, another part adjoining the cemetery.

The Court: But not the rest of the Cooper farm?

Mr. Rose: No, sir, only a part of it.

The Court: And that makes Holloway a grantee of the trust but the trust is revoked. No trust is declared as against Holloway?

Mr. Rose: No, sir.

The Court: Alright. But the trust is absolutely revoked?

Mr. Rose: The trust is absolutely revoked, yes, sir.

The Court: What about the deed from Spear to Marter, anything said about that?

Mr. Rose: In that deed?

The Court: Yes.

Mr. Rose: The deed of trust to Thomas E. French says it might be revoked by all parties. Mr. French, Mrs. Douglas, Dr. Spear, and Cyrus D. Marter all joined in a deed or in an instrument revoking the trust.

The Court: The part that bothers me is—per-

haps it would be clearer if I read the agreement—about their conveying only a portion of the land and revoking the trust. What became of the rest of the land?

Mr. Rose: It might be, although Mr. French does not claim it to be so. Mr. French desires to be relieved entirely of any responsibility of a trustee in this matter. He has no interest in it and he desires the Court should relieve him entirely from any responsibility but there may be a question as to whether or not the title to that part of the Cooper Homestead Farm which was not conveyed to Holloway might not yet still be in Mr. French as trustee because it was not conveyed to anybody. Then, after that trust was revoked ——

The Court: Was the deed to Marter and the trust deed from Marter to French all at one time?

Mr. Rose: Yes, sir. Marter was just merely the conduit through which to send the title to Thomas E. French as trustee. The Cemetery Association under this original deed known as the Fernwood Cemetery Association functioned for several years, your Honor, had the same Cemetery Association before you about nineteen or twenty years ago, and they continued to function until Dr. Spear went away. Of course, there were members of the Board of Trustees who could have operated it as well as he, but it was not so operated. The lots had been sold, interments had been made, bodies had been interred in the cemetery, and that condition continued for quite some time, so that upon Dr. Spear's returning and finding the cemetery in an unkempt condition he called a meeting of the lot-

holders of the Cemetery Association and they had a re-election of the trustees and later on at one of their regular meetings they passed a resolution authorizing the issuance of a bond to Spear in the sum of $16,800.00 for damages for the neglect and failure of the Cemetery Association to keep the cemetery in proper condition, and such a bond was executed and delivered to the Locust Wood Land Company who was then the assignee of Spear's rights under the Spear-Fernwood agreement. Then another company was formed having the same name as the original Cemetery Association which was the Fernwood in that deed changed its name to Locustwood Cemetery Association.

The Court: It was an incorporated body, wasn't it?

Mr. Rose: Yes, that is, a corporation under the Cemetery Act. Dr. Spear and his trustees then took up the management of the Locustwood Cemetery Association and proceeded to put the cemetery in proper condition. Then a Mr. Darcy and a Mr. Powell ——

The Court: Mr. who?

Mr. Rose: Mr. Darcy had been a friend of Dr. Spear, and they wanted to enter into some arrangement so that Mr. Darcy would be the selling agent of the lots in the cemetery and finally Mr. Darcy incorporated a corporation known as the Locustwood Cemetery, Inc., under the General Corporation law so that there were at that time two separate and distinct corporations bearing the same name, Locustwood Cemetery, one, Locustwood

Cemetery Association, and two the Locustwood Cemetery, Inc. The Locustwood Cemetery Association of Fernwood, was Dr. Spear's company, and the incorporated company was Mr. Darcy's company, so that on July the twenty-third, nineteen hundred and twenty-three, an agreement was entered into between the Locustwood Cemetery Association, formerly the Fernwood, and the Locustwood Cemetery, Inc., Charles C. Spear signing as President, of the Locustwood Cemetery Association and Max Darcy signing as Vice-President of the Locustwood Cemetery, Inc., and J. F. Powell signing as secretary, and it provided that the incorporated company—I will call it Mr. Darcy's company—this agreement provided Mr. Darcy's company should act as the selling agents and procure customers for the sale of lots and that they should receive certain commissions for the sale of lots. And that they should maintain and provide a perpetual maintenance fund for the upkeep of the cemetery, and that they should faithfully perform all the covenants and conditions set out in a certain agreement made between Charles C. Spear and the Fernwood Cemetery Association, which is that first agreement and that Mr. Darcy's company should pay to the Locustwood Cemetery Association two hundred dollars, ($200.00) a week and should pay to Charles C. Spear, or his assigns, one hundred dollars ($100.00) a week, and the payment to Charles C. Spear was to be on account of his interest in this Spear-Fernwood agreement. Mr. Darcy's company, under that agreement, went into possession of thirteen acres, began the development of it, laid it out into lawns, and so forth, and made payments to Spear, who was the President or treasurer of the Locustwood Cemetery Association of various

sums of money. We have an account of the moneys which were paid down to January, 1925. Now, after Mr. Darcy's company had gone into the physical possession of the thirteen acres and had been making the payments to the Locustwood Cemetery Association in accordance with this agreement some differences arose between Mr. Darcy and Mr. Spear which brought about this situation. Mr. Darcy's company called a meeting, a meeting of what they termed to be lot-holders of the Locustwood Cemetery Association who were not in fact lot owners who had received deeds issued by the Locustwood Cemetery Association but Mr. Darcy and his interests representing the Cemetery Association ——

The Court: Did they have a right to convey lots?

Mr. Rose: No. They did not. Under this agreement Mr. Darcy's company was obliged to obtain deeds for the lots from the Locustwood Cemetery Association of which Dr. Spear was then the President and they had theretofore applied to Spear for deeds and would pay him, for the Cemetery Association, the purchase price of those lots, and Spear had executed and delivered the deeds to the customers of Mr. Darcy's company. While Mr. Spear, and his trustees who were still the trustees who had been lawfully and regularly elected by the lot-holders of the Cemetery Association, Mr. Darcy called a meeting of what he termed to be the so-called lot-holders of his deeds, and he had himself and his associates elected as the trustees of the Locustwood Cemetery Association.

The Court: And he made deeds?

Mr. Rose: Not before that, but since that, so

that that put Mr. Darcy and his associates, who were in possession of the thirteen acres by this agreement which they had made with the Cemetery Association, they were in physical possession, yet they took over the Locustwood Cemetery Association.

The Court: Made him President of both Associations?

Mr. Rose: Yes, and the officers of the incorporated company then became the officers of the Cemetery Association and they then stopped their payments under this Spear-Fernwood agreement and stopped their payments under the agreement of July 23, 1923, so that a bill was filed by the Locustwood Land Company who was the assignee of Charles C. Spear. After the revocation of the deed of trust Charles C. Spear then assigned this Spear-Fernwood agreement to his wife Mercedes Spear, who in turn assigned it to the Locustwood Land Company, and the Locustwood Land Company, which is represented by Mr. Palmer—and I am really trespassing upon his ground, because he represents that company, but I was familiar with the facts and I thought I would follow it up so your Honor might understand it. The Locustwood Land Company filed a bill in the Court of Chancery for the foreclosure of a certificate of indebtedness made by the Locustwood Cemetery Association to the Locustwood Land Company for one hundred and twenty-two thousand dollars ($122,000.00) which had been executed under the provisions of paragraph five (5) of the Spear-Fernwood agreement and it also asked this Court to enjoin Mr. Darcy and his associates from interfering with Spear in the

supervision of the Cemetery property and to enjoin them from cutting down trees or removing shrubbery without the consent of Dr. Spear and to enjoin them from changing the names of the lawns of the Cemetery Association. While Dr. Spear and his trustees were the trustees of the Cemetery Association they had prepared a plan of lawns, they had laid out those lawns into lot numbers and Spear had executed and delivered deeds of burial lots to bona fide purchasers, designating the lots in certain lawns in the cemetery and that had continued for a long time before Mr. Darcy's associates arrived on the scene. Now, when Mr. Darcy's associates got into office they immediately changed the names of the lawns so that it was impossible to tell where the lots were which had been conveyed by the original Cemetery Association, so that great confusion arose. One of the lot-holders who had in good faith bought a lot from the Cemetery Association from Dr. Spear sought to make an interment in the cemetery and, of course, he went to the cemetery grounds to make application for the interment and Mr. Darcy and his associates refused it and said he had no such lots, he had no right to make the interment there and they refused him the interment and the bill of complaint on behalf of the Locustwood Land Company seeks to enjoin Mr. Darcy's associates from changing the lawns and plans in such fashion that it will be confusing to the lot-holders who desire to make use of their burial lots.

The Court: That is in the present bill?

Mr. Rose: That is in the present bill. And there are other aspects of the Bill of Complaint which I do not at this moment recall, but the salient feature

of this case is that Mr. Darcy's associates after making that agreement of February 23, 1923, have usurped all the powers of the Cemetery Association and have failed to comply with the terms of that agreement and after having made payments under that agreement for a long period of time now refuse, they are in arrears since January, 1925, and the Locustwood Land Company seeks to foreclose all equity of redemption of the Locustwood Cemetery, Inc., and also the Locustwood Cemetery Association.

The Court: Who represents what is called the Darcy Company?

Mr. Carr: Mr. Stackhouse, if the Court please.

The Court: Are you with Mr. Stackhouse?

Mr. Tyler: No, I am all by myself.

The Court: Where is Mr. Stackhouse?

Mr. Stackhouse: I am here, I am eclipsed by the greater lights.

The Court: Suppose I hear the attitude of the Darcy Company, if that is one of the principal issues.

Mr. Carr: Mr. Stackhouse and I are together. If the Court please, the position of what has been called the Darcy Company is this. After the conveyance by Mr. French which seemed to be a revocation of the trust that had heretofore been created, then the property, the cemetery property, and the

interests in this Spear-Fernwood agreement was assigned to the Equitable Estates Corporation, a New York Corporation, which your Honor had before you in a suit some few years ago and that assignment was joined in by the present Mrs. Aleck, then Mrs. Helen C. Douglas, and so far as the records went there was an assignment of this contract to the Equitable Estates Corporation.

The Court: In that Spear joined, also?

Mr. Carr: Yes, sir, Spear joined, Mercedes Spear joined and as I recall it, Helen Douglas joined, and put the title, that is, all the rights under the Spear-Fernwood agreement, in the Equitable Estates Corporation.

The Court: Was that among the instruments that were set aside in the suit that went to a final decree?

Mr. Carr: But not as against third parties. Your Honor reserves in your decree any adjudication as to the rights of the Locustwood Cemetery Association, rather, the Locustwood Cemetery, Inc., so that your Honor's decree there was not an adjudication of these immediate questions.

The Court: Is that a defendant now?

Mr. Carr: One of the defendants, if the Court please. I don't know whether it is a direct defendant or brought in by answer or counter-claim, but they are in court. An agreement was entered into, dated the twenty-third day of October, nineteen hundred and twenty-three, between the Equitable Estates Corporation and Mrs. Douglas, and I think Dr. Spear as well, whereby the Cooper Homestead

Farm and the rights in the cemetery under this Spear-Fernwood agreement were sold to the Locustwood Cemetery, Inc., for the sum of one hundred thousand dollars ($100,000.00). The title was then, as far as the records show, in the Equitable Estates Corporation, Mrs. Douglas having previously joined in an instrument assigning it to that corporation. This agreement of October 23, 1923, provided that a sum of one hundred thousand dollars ($100,000.00) was to be paid for the Cooper Farm approximately, I think, one hundred and fifty-three acres (153), and the rights of the Equitable Association in the Spear-Fernwood agreement, as we view it. That put the purchaser in the position originally occupied by Spear, the title and all benefits under the Spear-Fernwood agreement to which Dr. Spear was originally entitled. The sum of one hundred thousand dollars ($100,000.000) was to be paid in the following manner: Two hundred ($200.00) dollars per week—they had a period of twenty years in which to pay for it. It was to bear six per cent (6%) interest and out of those payments—the first payments were to be credited to interest and the balance to amortize the principal of the debt. Under that agreement the Locustwood Cemetery, Inc., entered into the physical possession and operation of the cemetery property.

The Court: That, then, is not the agreement that Mr. Rose refers to?

Mr. Carr: No, sir, I will come to that in a moment, if the Court please. We say, so far as we are concerned, this agreement has no legal existence. I will come back and discuss that in a moment, if your Honor will bear with me. Under the October, 1923,

agreement large payments of money have been paid. I haven't the exact figures at my finger ends, some ten or twelve thousand dollars.

The Court: To whom?

Mr. Carr: Paid to Dr. Spear, paid for the account of the Equitable Estates Corporation, paid to Dr. Spear as being the person representing them. At least, he got all of the money, and in addition to that, I am told, that something like one hundred and fifty thousand dollars ($150,000.00) has been expended by the Locustwood Cemetery, Inc., in the physical improvement of the grounds, the development of the grounds, the physical improvements and so on. Payments were made in accordance with the terms of the October, 1923 agreement, until this litigation arose, and then payments ceased for the time being until we could find out who they should pay. There were divers claimants, Mrs. Douglas claiming she was the person really entitled to receive the moneys, and as a consequence the situation has been held in abeyance. Now, as to the October, 1923, agreement we set up in the answer, in the counter claim, these facts. This company has an office in Camden, I think in the Smith-Austermuhl building; and Dr. Spear came and had access to the office, had a key to the office, requested that he might be given a key, so that he might come in there from time to time, day or night, and he was given a key and he had access to it. Sometime later the October, 1923, agreement together with a number of other papers, a complete file, disappeared from the office of the company. Repeated requests were made on Dr. Spear to furnish his duplicate agreement and those requests were never complied with, the agreement

was seen by a number of persons, some of whom are absolutely disinterested, and its substantial terms are remembered, and it is under that agreement we say we are in possession and the payments have been made.

The Court: Did you ever get a copy of it?

Mr. Carr: No, sir, couldn't get any copy of it, repeated requests were made for it but never, not even in these proceedings here, no copies of any agreements were obtained by us until yesterday, so that is the position we have been in.

The Court: It was in that agreement you were to pay the one hundred thousand dollars ($100,000.00)?

Mr. Carr: Yes, sir.

The Court: And it was not recorded?

Mr. Carr: No, sir, it was not recorded. Now, our view of the situation is we are entitled to go on making our payments from time to time and that we are entitled to parts of this adjoining tract of land under the terms of the Spear-Fernwood agreement.

The Court: You claim you are entitled to all the rights Spear originally had?

Mr. Carr: Yes, sir.

The Court: Why did you subsequently make another agreement, the one to which Mr. Rose refers, in which you were to sell lots?

Mr. Carr: I will answer we did not. The date of his supposed agreement is July 23, 1923.

The Court: Is his prior?

Mr. Carr: Prior, yes, sir. I am advised my clients deny that the signatures appearing on page three (3), the signature page, were ever attached to this agreement. Your honor will notice there is nothing on the signature page except the concluding part of the agreement beginning, "In witness whereof," and it is our view that this was originally attached to some other paper and later ——

The Court: You claim that never was made?

Mr. Carr: No, sir. Our people are positive in their denial that they never signed such an agreement as this.

The Court: What is the date of it?

Mr. Carr: July 23, 1923, and we have had no knowledge of it at all.

The Court: This was prior to the agreement under which you held?

Mr. Carr: Yes, sir, that is their position, if the Court please, although that appears to be the signature of Mr. Darcy, and probably is, but that when signed by him it had no reference to this agreement and did not form a part of this agreement. I think that is a full statement of our position, if the Court please.

The Court: Mr. Tyler, I will get you to define your attitude in this matter. It looks to me as though these simple issues you referred to are more or less complicated.

Mr. Tyler: I think they are complicated but I think there are underlying questions of dispute, as your Honor will perceive, that arose in July and October, 1923. In the spring of 1922 Mrs. Aleck filed a bill in the Court of Chancery to set aside a conveyance of the Equitable Estates Corporation, and the lis pendens was filed on May 1, 1922, and in pursuance of that bill a hearing was had and a decree was made setting aside the conveyance of this agreement to the Equitable Estates Corporation so the entire title under that decree of the 140 acres was vested in Helen C. Aleck, who now owns the title.

The Court: I understood Mr. Carr to say in that decree there is no adjudication touching their rights.

Mr. Tyler: That is true. As far as the Cemetery Company is concerned, the dispute between themselves as to any of their rights is not adjudicated.

The Court: What did that decree include?

Mr. Tyler: 140 acres.

The Court: With reference to the farm and cemetery, all of the farm except the cemetery?

Mr. Tyler: Yes, the original farm was 153 acres; out of that there was carved a cemetery tract known as thirteen acres and a fraction, so we dealt with the thirteen acre tract and the 140 acre tract, and this bill which your Honor made a decree on in 1925 was the 140 acre tract and not the thirteen acre tract, but as far the rights of these contesting Cemetery Companies are concerned their dispute arose

in October, 1923, after our lis pendens had been filed.

The Court: This is the same case in which the decree was entered?

Mr. Tyler: The same farm.

The Court: But not the same suit?

Mr. Tyler: Not the same suit. That suit was Helen C. Aleck, complainant, and various others, Spear, and the Equitable Estates Corporation as defendants. This suit is the Locustwood Land Company, complainant, against Helen C. Aleck, and others, defendants, to foreclose a certificate of indebtedness alleged to have been made by the Locustwood Cemetery Association to it. We have three bills here, the first bill is the Locustwood Land Company to foreclose a certificate of indebtedness; the second bill is the cross bill of the Locustwood Cemetery, Inc., claiming all their rights as against the other Cemetery Association. Now the third bill is a cross bill of Helen C. Aleck against all these defendants claiming she has the absolute title to the 140 acres and to this agreement.

The Court: Your cross bill involves an examination of all the issues in the original suit?

Mr. Tyler: No, because if we succeed on our cross bill, we establish the title.

The Court: It involves the very issues that were involved in the Aleck case.

Mr. Tyler: No, they are not raised, the claims made by these people arose after 1923.

The Court: Yes, but I don't see how the adjudication in the other case affects them.

Mr. Tyler: I don't see how it can help but affect them.

The Court: It would affect them if you made the same proof.

Mr. Tyler: No, they claim under the agreement with this other association.

The Court: What I am trying to get at is how far you will have to establish the same matters you established in the Aleck suit?

Mr. Tyler: I think not at all, but I will lead up to that if the Court please. Now, in the first place, there was a foreclosure sale made in 1907, that foreclosed a mortgage made many years before, I think back in 1884, that vested the title in Spear. Spear severed the title and conveyed the thirteen acre tract to the Cemetery Association and the 140 acre tract kept. Now, while he held that, he created a mortgage on that for 2,500.00. That was before any of the conveyances were made to Marter, or to French, or to anyone else.

The Court: A mortgage of how much?

Mr. Tyler: Twenty-five hundred dollars. That mortgage was made in 1906 and preceded all of these conveyances. Now, that mortgage was foreclosed in 1914 and as defendants in that foreclosure

French, trustee, Marter, his wife, Bradley, Spear and Holloway were all made party defendants and all their interests in that mortgage covering the 140 acres tract was foreclosed and title vested in Holloway.

The Court: That included all the farm except the cemetery?

Mr. Tyler: Yes, so that the title not only to the farm land but any rents, issues or profits arising out of it were foreclosed and it vested in Holloway and from Holloway the direct title goes to Mrs. Aleck, there isn't any dispute about that.

The Court: So far as the farm is concerned?

Mr. Tyler: As far as the farm is concerned and as far as the agreement is concerned.

The Court: So far as what is concerned?

Mr. Tyler: The agreement.

The Court: The agreement?

Mr. Tyler: What is known as the Spear-Fernwood agreement under which this dispute arises. The dispute arises as to the rights under the Spear-Fernwood agreement.

The Court: Was this mortgage that was foreclosed, did that include the same land that afterward became a cemetery?

Mr. Tyler: No, that included the 140 acre tract.

The Court: I don't see how that affects the cemetery.

Mr. Tyler: Except the agreement overlapped and provided for conveyances from the 140 acre tract and it was that agreement which was the consideration for the conveyance. Now, that agreement was held by Spear and our foreclosure wiped out that agreement and vested it in our people.

The Court: Is that the only consideration?

Mr. Tyler: That was the only consideration that was made for that deed. The cemetery deed for thirteen acres recited a consideration of this particular agreement and reserving a vendor's lien. That agreement related primarily to the thirteen acres and also collaterally to the entire farm because it provided for the conveyances of additional tracts to the Cemetery Association.

The Court: So far as it provided for additional tracts to be conveyed out of the remaining part of the farm to the Cemetery Association it may have been beyond his power, but it also provides, doesn't it, for payments? I want to see how far the Cemetery Association may be bound by any of these collateral matters.

Mr. Tyler: Now, may it please the Court, Spear, in his conveyance to Marter expressly assigned this agreement, parted title with it. I want to read that paragraph in the deed from Spear to Marter dated September 28, 1908, and recorded in Book 337, Page 616, there appears this clause, after describing the property, the entire property of 153 acres. "And also a certain agreement bearing date the thirty-

first day of December, 1907, made between the said Charles C. Spear and the Fernwood Cemetery Association and all moneys due and to grow due thereunder and all rights and privileges granted by said agreement," and then goes on—"being the same land and agreement conveyed and transferred to the said Cyrus D. Marter by said Charles C. Spear by indenture bearing date the twenty-eighth day of September, 1908, recorded in the office of the Register of Deeds of Camden County, in Book 323 of deeds, page 610." So that Spear parted with all his interests, not only in the land, but in the agreement itself and the title has never become re-vested in Spear, so that both of these Cemetery Associations claiming title through Spear and the Cemetery Association fall. It was divested by that particular deed.

The Court: If it was divested by the foreclosure why did I have all that trouble in the Aeck case to find out whether there was any fraud in the conveyance?

Mr. Tyler: The Aleck case arose by reason of fraudulent deeds made in 1920 which was all subsequent to this. In 1920, after Mrs. Aleck had her title, which she supposed was absolutely clear, the deeds were obtained from her by fraud to the Equitable Estates Corporation, and these deeds made to the Equitable Estates Corporation ——

The Court: Subsequent to the foreclosure?

Mr. Tyler: Yes, but her title was entirely perfected by the foreclosure proceedings and these other deeds came in afterward.

The Court: But there is no title that comes to the complainant here, or the Darcy Company, either one, emanating from her subsequent to the foreclosure?

Mr. Tyler: We had in the first place a complete assignment of the agreement to Mr. Marter and the assignment by Mr. Marter to Mr. French of the agreement itself, there stopped the legal title. Then comes along her foreclosure which cuts out all interest Spear had under its terms, so that the title to the agreement and title to the land—bearing in mind, I am excluding the thirteen acres—the title to the agreement and title to all the lands vested in Helen C. Aleck. Now it is apparent, I think, that Spear in 1923, after I had filed the bill to set aside the fraudulent conveyances, then attempted to deal with this agreement and then attempted to enter into certain agreements with the Locustwood Cemetery Association which he controlled and then with the Locustwood Cemetery, Inc., in regard to this agreement, but he had no title to it, and the certificate of indebtedness to the Locustwood Land Company is without fact because the Locustwood Cemetery Association didn't own it, they claimed it through Spear but Spear had no title to it, I think that is the only issue.

The Court: You say that mortgage did not include the thirteen acres?

Mr. Tyler: Did not.

The Court: How do you figure the rights under this agreement were eliminated by the foreclosure sale?

Mr. Tyler: The foreclosure sale wiped out everything. That left us in this situation, with the title of thirteen acres in the Fernwood Cemetery and the agreement to pay the consideration ——

The Court: I don't see how you claim to get rid of that agreement.

Mr. Tyler: We are not getting rid of the title to thirteen acres, we admit that title, subject to this agreement, is in the Fernwood Cemetery Association, but the agreement itself, the right to be paid for the consideration was assigned to Mr. Marter and from Marter to French and from Mr. French to us, so instead of the Locustwood Land Company maintaining a bill to foreclose that agreement it should be maintained by Mrs. Helen C. Aleck and eventually will be if we succeed in our contention, but the title of the Locustwood Land Company to the certificate of indebtedness falls because the Locustwood Land Company does not own that agreement.

The Court: I think I had better hear your claims first.

Mr. Tyler: Just one more thing I want to call your attention to.

Mr. Palmer: Will you let me say a word before you change to another subject?

Mr. Tyler: This is the same thing. Now then, on February 21, 1910, Thomas E. French, Helen C. Douglas and Charles Cooper Spear joined in a deed, the original of which I have here, revoking all these

agreements and conveyed everything to Leslie Holloway. That deed, I am going to submit to your Honor, is ambiguous as to the description of the property. I don't know how the mistake ever happened, I think Mr. French understood, and Holloway understood, and everybody understood, that everything that Mr. French had was by that deed being conveyed to Leslie Holloway. We contend that Mr. French by the terms of that deed meant to convey everything he had to Leslie Holloway. I don't think there is any doubt about it at all, and everybody has assumed so from 1910 down to this time.

The Court: What did he convey?

Mr. Tyler: He first sets out the prior deeds, sets out the trusts, and sets out the revocation of the trusts, and so forth, and then it goes on to say, "All the parts of the farm plantation and tracts of land known as the Cooper Homestead Farm situate in the township of Delaware in the County of Camden and State of New Jersey excepted from the grant to Floyd H. Bradly ——

The Court: Excepted what?

Mr. Tyler: Excepted from the grant to Floyd H. Bradly bearing even date herewith being the triangular piece south of the Marlton Turnpike and a tract at the northwest corner of the Cooper Landing Road and said Marlton Turnpike, commencing at a stone in the middle of said turnpike at its intersection with Cooper Landing Road and extending along the middle of said Marlton Turnpike westerly 750 feet to the place of commencement described of the

tract conveyed to the Fernwood Cemetery Association ——

The Court: What was that last?

Mr. Tyler: "Extending along the middle line of said Marlton Turnpike westerly 750 feet to the place of commencement described of the tract conveyed to the Fernwood Cemetery Association."

The Court: "Describing what?"

Mr. Tyler: That is what it says, I am reading the exact words. "Thence northwardly along the easterly line of said tract 650 feet, thence still northwardly parallel to the said Cooper Landing Road 1350 feet, thence eastwardly at right angles to said Cooper Landing Road to the middle of the same, thence southwardly along the middle of said Cooper Landing Road to the place of beginning." "The said Charles C. Spear does hereby covenant and agree to assume the payment of the mortgage of 2,500.00 on said lands and premises and to pay all interest on said mortgage as it falls due." The $2,500 mortgage was the mortgage previously made and foreclosed.

The Court: Had it already been foreclosed?

Mr. Tyler: No, it was foreclosed in 1914.

The Court: What do those boundaries embrace that you read?

Mr. Tyler: "All the parts of the farm plantation and tracts of land known as the Cooper Home-

stead Farm." That would embrace everything, that is what it is meant to embrace, but now they say, "Excepted."

The Court: The part described does not include the cemetery?

Mr. Tyler: No, does not include the cemetery.

The Court: How do you under this conveyance get what you claim to be the ownership of that Spear right in the old agreement?

Mr. Tyler: Because in the deed made by Spear to Marter and by Marter to French it conveyed the entire farm property and the Spear-Fernwood agreement.

The Court: But this does not.

Mr. Tyler: Yes, I think it does. This conveys all the parts of the farm plantation and tracts of land known as the Cooper Homestead Farm. I don't think there is any doubt in the French deed it covered the farm and the agreement. There is no attempt made to reserve it at all, it is referred to in the recital and the description covers the Cooper Homestead Farm "in toto."

The Court: If it does not it is still in French, isn't it?

Mr. Tyler: Yes, absolutely, except so far as it may have been gotten out of French by this deed or by our foreclosure. The agreement itself over which this dispute arises is still in Mr. French but Mr. French makes no claim for it.

The Court: Is Mr. French made a defendant?

Mr. Tyler: Mr. French is made a defendant and I filed a cross bill that any doubt as to the interpretation of that deed may be adjudicated, and the deed, and so forth, may be reformed, and made Leslie Holloway a defendant to whom the deed was made. If that is true your Honor can see that neither complainant can possibly have any title to the Fernwood agreement, bearing in mind we are not making claim to the legal title of the thirteen acres.

The Court: I don't know whether it makes any difference where we begin with our proofs, but it rather occurs to me that the outline of your claims, if supported by your evidence, as far as you are able to support it, might be the most feasible way to approach the issues in the order of time and then hear the proofs touching the claims of the other parties, or I will begin at the other end if you prefer.

Mr. Tyler: If it is true we have title to the agreement the dispute is over.

Mr. Palmer: If the Court please, that Spear-Fernwood agreement was of two things. It provided for the payment to Dr. Spear of fifty per cent (50%) of the money received from the sale of lots, it then provided that after that full consideration had been paid and all the agreements performed by the Locustwood Cemetery Association, the Locustwood Cemetery Association could then call upon Dr. Spear for conveyances of subsequent tracts of not more than ten acres. Now, you see, we have a con-

veyance to the Association of this thirteen acres, the consideration of which was to be fifty per cent (50%) of the money derived from the sale of lots and it goes on and provides that in the future if the Cemetery Association desires more land it had a right to call upon Dr. Spear for conveyances of subsequent tracts of land. Now then, the agreement was conveyed to Mr. French, undoubtedly, it has never been conveyed by Mr. French, it was not in the deed to Holloway, and I don't think by any interpretation of it could be. Now, if that is true, upon the termination of that trust then either one of two things happened. The agreement and rights under it still remained in French, although he divested himself of the trusteeship absolutely, or, as we contend, it went back to the grantor of that agreement, the former owner of it. Now, if it did that, then the subsequent assignments of that agreement put it in the Locustwood Land Company at the present time. Now, you see, no matter what that foreclosure may have been, the foreclosure on the 140 acres, all that could possibly have been foreclosed, under that would have the rights of the Locustwood Cemetery Association to call upon Dr. Spear for subsequent conveyances, it could not foreclose Dr. Spear's rights to receive fifty per cent (50%) of the purchase price of these lots.

The Court: I get the notion of your claim but let us get the evidence in.

Mr. Palmer: Our claim will consist of the formal proof of the documents and the statement we have never been paid.

Mr. Carr: I don't want to interrupt, but I want to say what Mr. Tyler has said, as far as I recall the

pleadings, has not been set out by the pleadings at all, and it comes rather in that nature of a surprise. I note, however, that the mortgage which was foreclosed is dated subsequently to the date of the Spear-Fernwood agreement and without having had the opportunity for reflection I would think that Spear could only mortgage what estate he had which was his fee simple in the land subject to the outstanding rights of the Fernwood Cemetery.

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The Court: If the agreement was of record he couldn't, but he ——

Mr. Carr: The Spear-Fernwood agreement was of record, as I recall and promptly recorded.

The Court: If the agreement was of record prior to the mortgage I don't see how the mortgage could affect the agreement.

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Mr. Carr: If this claim of Mr. Tyler's, if that theory is to be considered, I think we would need a little time to meet it because the pleadings do not apprise us of it. If that is to be seriously considered we would like to have a little time later on to meet the situation.

The Court: What do you refer to as a little time later on?

30

Mr. Carr: Any reasonable time.

The Court: Go to it, but I am afraid we are getting into trouble. I don't see any possibility of finishing today. Go ahead.

Mr. Rose: I would like to supplement Mr. Carr's

statement. The Fernwood Cemetery Association was not made a party defendant in the foreclosure suit, and consequently its rights cannot be affected by that decree of foreclosure.

Mr. Tyler: In the first place, the claim of Helen C. Aleck is set out in our counter-claim, sets out the agreement, claim to the agreement, the various deeds, Marter, and so forth, sets out specifically the paragraph assigning it, and Mr. Carr answered that in detail no less than two weeks ago. As to Mr. Rose's statement, the Fernwood Cemetery Association was the owner of the legal title to the thirteen acres and was not made a party defendant in the foreclosure suit because the mortgage did not cover the thirteen acres, but Mr. Spear, who owned the agreement at that time, was made a party defendant, and all his interest was cut out by that sale.

The Court: I gather from what Mr. Carr said the mortgage was made after the cemetery agreement had been recorded and that the cemetery agreement contemplates the right to receive subsequent conveyances, therefore, he says, the rights of the cemetery to receive subsequent conveyances were not foreclosed.

Mr. Tyler: Yes, that is alright, I think I understand what you mean.

The Court: So far as their rights to receive subsequent conveyances are concerned they would not pass under the foreclosure.

Mr. Rose: Counsel for all sides admit, without formal proof being made, deed made by Charles C. Spear to the Fernwood Cemetery Association dated

December 31, 1907, recorded in the Register of Deeds office, Camden County, in deed book 323, page 608.

The Court: Conveying?

Mr. Rose: Conveying thirteen and thirty one-hundredths acres (13.30) of land, more or less.

The Court: Did you give the date of the recording?

Mr. Rose: Recorded January 27, 1908.

The Court: Let it be marked.

(Said deed offered in evidence and marked Exhibit C1.)

Mr. Rose: Agreement also offered in evidence made by Charles C. Spear to Fernwood Cemetery Association dated December 31, 1907.

The Court: What was the date of the deed?

Mr. Rose: Same date. Recorded in the Register of Deeds office, Camden County, on January 27, 1908, in deed book 323, page 610, and so forth.

(Said deed offered in evidence and marked Exhibit C2.)

Mr. Rose: Also offer in evidence certified copy of deed made by Cyrus D. Marter and wife to Thomas E. French.

The Court: Has the deed gone in from Spear to Marter?

Mr. Rose: That is admitted in the pleadings, if the Court please.

Mr. Tyler: I think we ought to have it, if the Court please.

The Court: Is the pleading broad enough in its averment?

Mr. Rose: It is admitted by the answer.

Mr. Tyler: You are going to offer it in evidence?

Mr. Rose: Yes, I thought I had it here.

Mr. Tyler: You did, you showed it to me.

Mr. Rose: This is the deed from Marter to French.

The Court: I was asking for the deed to Marter.

Mr. Rose: I don't seem to have that deed with me.

Mr. Tyler: I have a title search giving the entire title straight down.

The Court: Have you a copy of the deed?

Mr. Tyler: No, we can put this in evidence and get a copy afterward.

Mr. Rose: We have a copy of it in the printed record.

The Court: I would like to know what it conveys?

(Exhibit C3 being a deed from Spear to Marter is to be supplied.)

Mr. Tyler: Dated September 28, 1908, recorded June 21, 1909, book 337, page 614.

Mr. Rose: I offer that in evidence. I think I have a certified copy of it. I thought I had it in my file.

The Court: That will be supplied.

Mr. Rose: I offer certified copy of deed from Cyrus D. Marter and wife, to Thomas E. French, dated September 28, 1908, recorded in the Register of Deeds office in book 337 of deeds, page 616.

The Court: On what date?

Mr. Rose: Recorded June 21, 1909.

(Said deed offered in evidence and marked as Exhibit C4.)

The Court: Conveying what?

Mr. Rose: Conveys 153 and .73 acres, (one hundred and fifty-three and seventy-three one-hundredths.)

Mr. Tyler: And the agreement by its expressed terms.

Mr. Rose: Yes, it does.

Mr. Tyler: Known as the Spear-Fernwood agreement?

Mr. Rose: Yes.

The Court: And the agreement known as Exhibit C1?

Mr. Tyler: The agreement is marked C2.

The Court: Two, is it?

Mr. Rose: I offer in evidence certified copy of deed from Thomas E. French, trustee, of the first part, Helen C. Douglas and Charles C. Spear and Cyrus D. Marter of the second part and Leslie M. Holloway of the third part, dated February 21, 1910, recorded in the office of the Register of Deeds of Camden County in book 346 of deeds, page 266, and so forth.

The Court: What date?

Mr. Rose: March 31, 1910.

The Court: Conveying?

Mr. Rose: Conveys all of the parts of the farm plantation and tracts of land known as the Cooper Homestead Farm situate in the township of Delaware in the County of Camden and State of New Jersey, excepted from the grant to Floyd H. Bradly, bearing even date herewith being the triangular piece south of Marlton Turnpike and a tract at the northwest corner of Cooper Landing Road and said Marlton Turnpike commencing at a stone in the middle of said Turnpike.

The Court: That is sufficient to identify it.

(Said deed offered in evidence and marked Exhibit C5.)

CHARLES C. SPEAR, sworn.

By Mr. Rose:

Q. Doctor, I show you an agreement dated July 23, 1923, between Locustwood, formerly Fernwood, Cemetery Association and Locustwood Cemetery, Inc. ——

Mr. Tyler: I understood before we got to the disputes of 1923 and these various agreements to show who has the title to this Fernwood agreement and who would be entitled to this accounting that we would put in our proofs to determine that. Now, then, we are going into an agreement between these Cemetery Associations and I think the issue underlying it as to who owns the Spear Fernwood agreement and who would have the right to foreclose for this unpaid indebtedness ——

The Court: It is immaterial to me what order we take.

Mr. Tyler: If we go into this we are getting away from the issue, I thought we were going into first. If we go into all this and then determine Helen C. Aleck owns the title this will be wasted.

The Court: Suppose the decision is adverse to them they will need the proofs.

Q. And ask whether or not—whose signatures that agreement contains?

A. It contains my signature.

Q. Pardon me.

A. Read the signatures upon it.

The Court: It shows on its face doesn't it, what signatures are there?

The Witness: Yes.

Q. Who signed as president of the Locustwood Cemetery Association?
A. I did.
Q. Who signed as secretary of the Locustwood Cemetery Association?
A. Mercedes Spear.

The Court: Who?

The Witness: Mercedes Spear.

The Court: Your wife?

The Witness: Yes, sir.

Q. Who signed as president or vice-president of the Locustwood Cemetery, Inc.?
A. Max Darcy.

The Court: Who?

The Witness: Max Darcy.

Q. Who signed as secretary of the Locustwood Cemetery, Inc.?
A. J. P. Powell.
Q. Did you see them sign their names to that agreement?
A. I did.

Mr. Rose: I offer it in evidence.

The Court: Who are the parties to the agreement. Are they enumerated in the beginning of the agreement?

Mr. Rose: Yes, sir, Locustwood Cemetery Association and Locustwood Cemetery, Inc.

Mr. Carr: Dr. Spear, isn't it a fact, that when these signatures were affixed to that piece of paper this signature did not form a part of the agreement as it stands now?

The Witness: No, that is not a fact. The signature page has never been in any other position than what it is now.

Mr. Carr: You say at the time it was signed these pages, one and two, were attached to it in the present form?

The Witness: Yes.

Mr. Carr: You say that do you?

The Witness: Yes.

By Mr. Carr:

Q. And were you present, did you physically affix the imprint of the seal of the Locustwood Cemetery Association?

A. My wife affixed the seal.

Q. Did she actually do it while you were there?

A. I actually affixed it as far as that goes.

Q. You performed the mechanical work of affixing the seal?

A. Yes, and she had the seal there.

Q. Doctor, isn't it your custom in executing agreements with a corporate seal to impress the seal through every page as in one impression as above here?

A. Yes, sir.

Q. And that is done, of course, to guard against possible substitution of pages, isn't that the idea?

A. Possibly that is one of the reasons.

Q. You did not have it impressed on the three pages as to the signature of the Locustwood Cemetery, Inc., did you, only on the last page?

A. I haven't noticed whether it is there or not.

Q. Take a look.

A. No, it does not appear to be there.

Q. Wasn't it equally important in your judgment that the party who was to be bound by this and who was to pay you these large sums of money that the seal in that case should be impressed all the way through in order to guard against changes or substitution?

A. That was their look out.

Q. You didn't ask to have it impressed in accordance with your usual custom?

A. No.

Q. Darcy and you were very friendly at times?

A. Yes.

Q. You had asked him to be one of the incorporaters of the Locustwood Cemetery, Inc., hadn't you?

A. No.

Q. Weren't you a member of that company?

A. I had nothing whatever to do with it.

Q. Never?

A. Never, absolutely.

Q. You and he were very friendly at that time?

A. Yes, sir.

Q. You did not request that protection to be taken in order to bind the party who was to pay you this money?

A. I didn't understand what you mean.

Q. Of having the seal, the impression of the seal, stamped on every page in accordance with your usual custom?

A. I don't know that I gave the matter a thought at the time.

Q. It did not occur to you at that time then, did it?

A. No.

Mr. Carr: Your Honor, I am willing this should be received as an exhibit. Of course, the authority to bind the Locustwood Cemetery, Inc., has not presently appeared and there was no corporate action, as we will show later.

The Court: Let it be filed as an exhibit.

Q. Was this all written at the same time as one continuous operation, the typing of this agreement?

A. Yes.

Q. You did it yourself, didn't you?

A. Yes.

(Said agreement offered in evidence and marked Exhibit C6.)

Mr. Carr: We would like that objection held before you, its formal execution, its authorization has not yet appeared.

The Court: If necessary they can introduce their authorization afterward. Let it be marked.

Mr. Carr: The authorization on the part of the Locustwood Cemetery, Inc., we say it was not authorized.

The Court: That will be a matter for them, if they think it is necessary to introduce it. If not, they will have to take the law as they find it.

By Mr. Rose:

Q. Doctor, I show you the minute book of the Locustwood Cemetery Association.

The Court: Why, Mr. Carr, the seals of both of the parties to this agreement appear to be printed on all of these papers.

Mr. Carr: As to one corporation, if the Court please, but not as to the other, not to the company that is bound to pay the money, they are the ones who did not get on except on the signature page.

Q. Doctor, I call your attention to the minute book of the Locustwood Cemetery Association, minutes of October 18, 1923, and ask you whether or not that is the minute of the resolution of the Locustwood Cemetery Association adopted at that time?
A. Yes.

Mr. Carr: May I ask the purpose of this? I am not questioning the authority—is it to prove the authority to execute this particular instrument?

Mr. Rose: No, this is for the certificate of indebtedness.

Q. Will you turn to the minutes of the Locustwood

Cemetery Association and find the minute passed by the trustees authorizing the making of this agreement with the Locustwood Cemetery, Inc.?

A. This is the one.

Mr. Carr: Referring to what date, Doctor?

Mr. Rose: Look over this please.

The Witness: This refers to a meeting held—do you just want the resolution?

Mr. Carr: I want to identify the date first.

Mr. Rose: Just a moment before you read it, I want you to find the resolution or minute showing the authorization of the contract between the Locustwood Cemetery Association and the Locustwood Cemetery, Inc. Will you look through these minutes and find that minute?

Mr. Carr: Isn't the secretary the proper person to prove the minutes by? The minutes are all loose here, I think we had better have a legal exception to him testifying.

The Court: Can't you find it?

Mr. Rose: No, I can't find it. I know it is there but I can't find it, I will look for it later.

Q. I show you the minute book of the Locustwood Land Company and under date of October 17, 1923, ask whether or not.

Mr. Carr: Has he identified this as the minute book yet?

Mr. Rose: I will show it to him.

Q. What is that?
A. This is the minute book of the Locustwood Land Company.
Q. Who is the secretary of the company?
A. Mercedes Spear.
Q. Who was the secretary on October 17, 1923?
A. I was.
Q. Who was on October 17, 1923?
A. October 17th, I don't know.
Q. It speaks for itself.
A. Charles C. Spear, myself.
Q. Is that a minute of the proceedings of the Locustwood Land Company held on that date?
A. Yes.
Q. Did you sign it as secretary?
A. I did.
Q. Did you see Max Darcy sign it also?
A. Yes.

Mr. Rose: I offer it in evidence.

Mr. Carr: May I inquire the purpose of this offer, what is it sought to prove? If the Court please, I object to the offer for a moment, it seems to me it is more in the nature of a self-serving declaration.

The Court: I think they may offer in evidence the minutes, in fact, I think it is their duty.

Mr. Carr: If it is intended as evidence of the act we object to the self-serving feature.

The Court: It is the best evidence of the fact, ac-

cording to the authorities; if the minute was passed by the corporation let it go in evidence.

(Said minutes offered in evidence and marked Exhibit C7.)

Mr. Rose: This is an acceptance of the assignment.

The Court: What does the minute provide?

Mr. Rose: "I hereby offer to assign"—strike that out. "The secretary then offered" ——

The Court: Can't you state generally what the minute covers?

Mr. Rose: Yes, sir. Charles Spear transferred the Spear-Fernwood agreement to Mercedes Spear. Mercedes Spear assigned that agreement to the Locustwood Land Company, and this is a minute accepting the assignment on behalf of the land company.

Mr. Carr: And the date.

Mr. Rose: October 17, 1923.

Q. Doctor, show you a paper which purports to be an assignment to Mercedes Spear. I wish you would look at it and tell us what it is?

A. That is an assignment from Mercedes Spear.

Q. I beg your pardon. Look at this one first. Strike out that last question. What is the paper which you have?

A. This is an assignment made by me to Mercedes

Spear of all my right, title and interest in the Spear-Fernwood agreement, the agreement of December 31, 1907, between Charles C. Spear and the Fernwood Cemetery Association recorded in the Register of Deeds office of Camden County, on June 27, 1923, in book 538 of deeds, page 160.

Mr. Rose: I offer that in evidence and ask to have it marked.

The Court: Identify it by date.

Mr. Rose: It is acknowledged June 27, 1923.

The Court: Has it no date?

Mr. Rose: Yes.

Mr. Carr: Just part of the month, it is "Ju" and then a hole.

Mr. Rose: Acknowledged June 27, 1923, and recorded June 27, 1923.

The Court: You can't describe the date.

Mr. Carr: It happens to have a hole in it, it must be June, the blank day of June is the date of it.

(Said papers offered in evidence and marked Exhibit C8.)

Q. I show you a paper, writing which purports to be an assignment from Mercedes Spear and ask you to look at it.

A. Yes, this is an assignment from Mercedes

Spear to Locustwood Land Company of all her right, title and interest in the Spear-Fernwood agreement.

Q. This assignment is dated October 10, 1923, and acknowledged October 10, 1923, before E. T. Vennell, a Commissioner of Deeds, but not recorded. I ask to have it marked as an exhibit.

(Said paper offered in evidence and marked Exhibit C9.)

Q. Doctor, when did the Locustwood Cemetery, Inc., go into possession. That is, physical possession of the thirteen acres for the purpose of laying it out into lawns and lots and making it presentable for cemetery purposes?

A. Well, they began to do a little work there shortly after the contract of July 23, 1923, was executed. I don't recall the exact date when they first undertook to start some clearing up.

Q. I show you a book and ask you what it is?

A. This is a memorandum of accounts, it is an account book, record of moneys received.

Mr. Carr: A record of what, some company or individual?

The Witness: No, it does not undertake to be confined to any ——

Q. Just answer my question. I show you page five of a book bearing indorsement outside, "Day Book" and ask you whether or not that is in your handwriting?

A. That is my handwriting.

Q. What does it purport to be?

A. It is an account with the Locustwood Cemetery, Inc. At that time it was C. O. Davis & Company, the company had just been incorporated, I have it, C. O. Davis & Company to Locustwood Cemetery, Inc.

Mr. Carr: Is there any serious question as to the amount of these payments, I think we can probably agree on that?

Mr. Rose: I am not going very much into details. I merely want to identify it and get it into evidence.

Q. What is the first entry in that book?
A. July 31, 1923.
Q. Does this book show the charges and credits which were due from the Locustwood Cemetery, Inc., to Locustwood Cemetery Association?
A. Yes.
Q. Were or were not these charges and credits made in accordance with the agreement of July 23, 1923?

Mr. Carr: I object to that.

The Court: He may state whether they were intended to be in conformity to that agreement.

The Witness: Yes, they were.

Q. I show you an entry on page twelve (12) of the book under date of October 6, showing charge of $2,061.30 and a credit on the same date for the same amount. Now, I ask you whether or not that is the sum which was agreed upon between you as the president of the Locustwood Cemetery Associa-

tion and the Locustwood Cemetery, Inc., as to the amount of money which was due on that date under agreement of July 23, 1923?

Mr. Carr: It is apparently leading, if the Court please.

The Witness: It is.

Mr. Carr: I think he may be asked what that entry is and explain it, but counsel suggested the entire answer.

The Court: I think the question is very suggestive, perhaps.

Mr. Rose: I asked him "Whether or not," if the Court please. He can answer yes or no.

The Court: Do you know what the entry purports to be?

The Witness: Yes, sir, on October 6, the Locustwood Cemetery, Inc., gave me a check made to the order of Locustwood Cemetery Association for the sum of $2,061.30 which was the amount mutually agreed upon.

Mr. Carr: I object to mutually agreed upon, if the Court please.

Mr. Rose: Strike out "mutually agreed."

The Witness: Which was the amount determined.

Mr. Carr: I object to that, if the Court please, let him say what was said, not his conclusion.

The Court: I think it is competent, go ahead.

The Witness: Which was the amount determined, to be due the Locustwood Cemetery Association, by the Locustwood Cemetery, Inc., on arrearages on the $200.00 (two hundred dollars) weekly payments mentioned in the contract of July 23, 1923, between the Locustwood Cemetery Association and the Locustwood Cemetery, Inc.

Mr. Rose: I offer this book and ask to have it marked as an exhibit.

(Said book offered in evidence and marked Exhibit C10.)

Q. I show you a photostatic copy of a check dated 10-7-24, number 831, drawn on the First National State Bank of Camden, New Jersey, pay to the order of Locustwood Cemetery Association, $2,061.30, signed Locustwood Cemetery, Inc., W. B. M. Burrell, President, James T. Cawthorne, Treasurer, and endorsed, Locustwood Cemetery Association, Charles C. Spear, Treasurer, and is asked whether or not that check was received by you on that date in settlement of the balance found to be due in your day book on the date of October 7, 1924, to which you have just testified?

A. Yes.

Mr. Rose: I offer that in evidence.

(Said check offered in evidence and marked C11.)

The Court: Why a photostatic copy, where is the original?

Mr. Carr: I have the original.

The Court: What was the occasion of the photograph?

Mr. Carr: We had them all photographed, everyone of the checks have been photographed just for convenience.

Mr. Rose: This is the original, if the Court please.

The Court: It does not matter, I was just curious to know why it was.

Mr. Carr: My custom is, I don't want any more originals than I can help. I ask my clients to get copies instead of originals. May we use the photostatic copy and retain the original?

Mr. Rose: Of course, that one, I don't know about the rest.

Mr. Carr: You will have a chance to see them all, of course.

Q. Doctor, turn to page twelve (12) of the day book, exhibit C10, I ask you when was the last payment made by the Locustwood Cemetery, Inc., to the Locustwood Cemetery Association?

A. The last check was received on November eleventh and entered in the book—I think the check was dated the preceding day.

The Court: What year?

The Witness: November eleventh, 1924, and as I recall it the check was dated November tenth (10th).

Q. Have any payments been made to the Locustwood Cemetery Association or to you since that time?

A. No, there is no record of any payment since then.

Q. I am not asking about a record, I am asking whether any such payment has been made?

A. No, I have no knowledge of any such payment.

Q. Has it been paid to you personally?

A. No, sir.

Q. Has it been paid to you as treasurer of the Locustwood Cemetery Association?

A. No, sir.

Q. Doctor, I show you a paper purporting to be a certificate of indebtedness, Locustwood Cemetery Association to Locustwood Land Company, being $122,220.00, dated January 28, 1924, recorded in the Register of Deeds office on February 3, 1925, in mortgage book 247, page 356, and I ask you what that paper is?

A. This is a certificate of indebtedness issued by the Locustwood Cemetery Association to the assignee of the interests of Charles C. Spear under the so-called Spear-Fernwood agreement and represents the amount computed to be due to the assignee of Charles C. Spear for the unpaid purchase price of the land already conveyed to the Fernwood Cemetery Association computed upon the basis provided for in article five (5) of the Spear-Fernwood agreement.

Mr. Carr: May I see it?

Mr. Rose: Yes, sir.

Mr. Carr: May I cross-examine him a moment with reference to it, if the Court please?

The Court: Yes.

By Mr. Carr:

Q. Dr. Spear, you signed this certificate of indebtedness as president, didn't you, of the Locustwood Cemetery Association?

A. Yes.

Q. And your wife signed it as secretary, that is right, isn't it?

A. Yes, sir.

Q. And the body is all in your handwriting, isn't it?

A. Yes, sir.

Q. And it constitutes an admission by yourself as trustee that the Locustwood Cemetery Association is indebted to you in that sum of money, that is really what it means?

A. Not indebted to me at all.

Q. Weren't you the land company?

A. No.

Q. You owned the stock of it, didn't you?

A. No.

Q. Didn't you cause the Land Company to be incorporated?

A. I had it incorporated, yes.

Q. What proportion of the stock did you hold?

The Witness: I object to that question.

The Court: What?

The Witness: I object to the question.

The Court: Answer it if you know.

The Witness: One (1) share.

Q. Who held the rest of it?

A. Max Darcy has one share and Mercedes Spear has 1498 shares, I believe.

The Court: Has what?

The Witness: 1498 shares.

Q. Out of a total of fifteen hundred (1500)?

A. That is out of the common stock.

Q. Let us get the proportion. Mercedes has 1498 shares of preferred?

A. No, common stock.

Q. Out of how many issued?

A. Fifteen hundred (1500).

Q. How is the balance held?

A. One (1) is held by Max Darcy.

Q. Just one (1)?

A. Yes.

Q. Where is the rest of it?

A. That makes the fifteen hundred (1500).

Q. So you and your wife acting as trustees on behalf of the Locustwood Cemetery Association gave an acknowledgement that that association owes to you and your wife $122,000.00, isn't that the situation?

A. I didn't say so that way.

Q. Now, you and your wife, acting as trustees, are making an admission in writing intending to bind your cestui que trust, to wit, the Cemetery Association, that your cestui que trust owes a corporation $122,000.000 and you and your wife own all the stock in the corporation, isn't that the situation?

A. I did not understand about the cestui que trust.

Q. Strike out cestui que trust. Intending to bind

the Cemetery Company for your particular trustees. Do you understand it now, Doctor?

A. No.

Q. All right, I will break it up. You and your wife were trustees of the Locustwood Cemetery Association, that is right, isn't it?

A. Yes.

Q. You and your wife at that time were two of the three trustees of the Cemetery Association, isn't that true?

A. Yes.

Q. And had a meeting?

The Court: And stockholders of that Association were, at that time?

The Witness: I am speaking now of the Cemetery Association under the "Cemetery Act."

The Court: And the stockholders at that time?

The Witness: No stockholders in the Cemetery Association.

The Court: I thought he said ——

Mr. Carr: No, the stockholders of the Land Company who received this, I will come to that, when this was issued the stockholders of the Land Company, the Locustwood Land Company, were as follows, Mecedes, 1498 shares, is that correct?

A. Yes.

Q. Yourself one share?

A. Yes.

Q. And Mr. Darcy one share?

A. Yes.

Q. That is true, isn't it?

A. Yes.

Q. And then yourself and your wife, they were the only two persons present at the meeting of the trustees that adopted this, isn't that right?

A. I don't know, what do the minutes show?

Q. Look at the minutes. As a matter of fact weren't there three trustees at that time?

A. Yes.

Q. Who was the third trustee?

A. What is the date of that?

Q. Take a look here.

A. Acknowledged on the sixth day of February, 1924, it is dated the 28th day of January, 1924, Dr. Dubler was the other trustee at that time.

Q. He was not present at this meeting, was he?

A. What meeting?

Q. The meeting that authorized this.

A. I believe he was, I am not sure.

Q. You think so. Counsel hands me a typewritten sheet, minutes of a special meeting of the trustees of the Locustwood Cemetery Association held at 2227 Spring Garden Street, Philadelphia, on the eighteenth of October, 1923. Was that your residence at that time?

A. It was.

Q. It says the meeting was called to order by a managing trustee, Charles C. Spear, that was yourself?

A. Yes, sir.

Q. Present Charles C. Spear and Mercedes C. Spear constituting a quorum?

A. Yes.

Q. That is all there was, wasn't there?

A. Yes. I am not saying Dr. Dubler was a trustee,

I was referring to the date of the execution of the certificate of indebtedness.

Q. The authorization to do this is based upon the meeting of the trustees held on the 18th of October, 1923?

A. Yes.

Q. And at that meeting only yourself and wife were present?

A. That is correct.

Q. Then it was based on that authority, yourself and your wife determined that the Cemetery Association owed this large sum of $122,220.00 to the Land Company, isn't that right?

A. Technically, yes.

Q. Why technically?

A. That is merely carrying out the provision of the Spear-Fernwood agreement which provides for that.

Q. And the only two minds that sat in judgment as to the amount of indebtedness and the question of making an admission was yourself and your wife, isn't that right?

A. Yes.

Q. And the real beneficiary under this would be yourself and your wife as the owners of practically all the stock except one share of the Land Company?

A. To a certain extent, providing no one else has any interest in the stock.

Mr. Carr: If the Court please, I don't see that this ——

The Court: I will let it go in far what it is worth Mr. Carr.

Mr. Rose: I offer that as an exhibit.

(Said paper offered in evidence and marked Exhibit C12.)

Mr. Rose: I also offer in evidence this minute Mr. Carr, just read, of the Locustwood Cemetery Association dated October 18, 1923, authorizing the issuance of that certificate of indebtedness and ask to have that marked as an exhibit.

(Said minute offered in evidence and marked Exhibit C13.)

By Mr. Rose:

Mr. Tyler: Before you re-direct ——

Mr. Rose: No, I am still on direct examination this is not re-direct examination.

Q. Doctor, I show you a large blue paper which purports to be a plan or map of some kind. Will you look at it and tell the Vice-Chancellor what it is.

A. This is a map of the land which I conveyed to the Fernwood Cemetery Association in 1907; it is a survey of that tract and of the lawns which are intended to be used for burial purposes, the map extends somewhat over the line of the actual 13.31 acres. (Thirteen and thirty-one-hundredths.)

Q. How is it designated at the bottom, what are the printed words?

A. "Locustwood Cemetery, Inc., Camden County, New Jersey"—each block on plan indicates an area of twenty feet by twenty feet. (20′x20′)

Q. By whom was this plan given to you, who gave it to you, who presented it to you?

A. I got this from the Locustwood Cemetery, Inc.

Q. Which member of the corporation.

A. I can't recall whether it was Mr. Darcy or Mr. Cawthorne gave it to me.

The Court: Darcy or who?

The Witness: I don't recall whether it was Mr. Darcy or Mr. Cawthorne who gave me that particular blue-print.

Q. Doctor, while you were the treasurer of the Locustwood Cemetery Association did you or didn't you execute and deliver deeds for burial lots to various persons from time to time?

A. Yes, I did.

Q. Was or was not that before Mr. Darcy and his associates asssumed the trusteeship of the Locustwood Cemetery Association?

A. Yes, sir.

Q. After Mr. Darcy and his associates assumed the trusteeship of the Locustwood Cemetery Association?

A. Yes, sir.

Q. After Mr. Darcy assumed the trusteeship do you know of your own knowledge whether they refused to permit the interment of deceased persons in lots which had been purchased from the Locustwood Cemetery Association?

A. I do.

Q. Just give me one instance, please?

A. Well, I recall one instance. William Keemer of Westmont had a valid deed to a lot in the cemetery issued by the Locustwood Cemetery Association, the deed was signed by myself as president and attested by Mercedes Spear, secretary, and his son died and he wished to bury his son in the lot covered

by that deed and he was refused and prevented from doing so.

Q. Do you know of any other instances of a like nature?

Mr. Carr: If the Court please, how is this relative?

Mr. Rose: Under the pleadings.

Mr. Carr: It might seem we would be getting into the trial of each one of these proceedings, whether we are justified to refuse or not.

The Court: I don't know, I will set the summer aside for it if you think it is necessary.

Q. Doctor, do you know whether or not Mr. Darcy and his associates ever changed the names of the lawns from the names which were upon the original map which was given to you?

A. Yes, I do.

Q. Are they bona fide lot owners?

Mr. Carr: I object, that calls for a conclusion.

Mr. Rose: All right, I will withdraw that.

Q. Did or did not Mr. Darcy and his associates interfere with you in the supervision of the cemetery property?

A. Yes.

Q. In what respect?

A. I don't know how to answer that question, in practically every respect, I couldn't even go on the property.

Q. Did they refuse you admission on the property?

New Jersey State Library

A Not in so many words.

Q. Did they ever reject you from the cemetery property?

A. They had me arrested.

The Court: Arrested for going on the property, do you mean?

The Witness: I don't know what the charges were but it was simply to prevent me from being there.

Mr. Rose: I offer this in evidence and ask to have it marked as an exhibit.

Mr. Carr: May I state into the record at the same time the date of it? There appears to be a tracing here, the map has printed thereon in white the following, "Traced by H. L. W., October 24, 1923 from blue-print dated February 29, 1908."

(Said map offered in evidence and marked Exhibit C14.)

Cross-examination.

By Mr. Carr:

Q. Referring to the minute book of the Locustwood Land Company you, in fact, did all of the typewriting, didn't you, the actual typing that appears as the minutes?

A. Yes.

Q. Does your wife write English, doctor?

A. Yes.

Q. She can read English, can she?

A. Yes.

Q. And are these in the order in which the events

occurred; the page is in there just the way the events occurred, in sequence?

A. So far as I know they are. This book can be taken apart, there may be some other arrangement, but so far as I know they are intended to be in proper order.

Q. And it has been in your custody every since?

A. No.

Q. In whose custody has it been?

A. Well, it has been in my house in Hainesport when the house was unoccupied.

Q. It has been under your control?

A. Yes, but some things have disappeared.

Q. This did not disappear?

A. No, sir, not the book itself; it has also been in the custody of the assistant secretary, the person who was the assistant secretary.

Q. You mean Mr. Darcy?

A. No, a man by the name of Desosa I don't think there is much question about everything being in proper order there.

Q. Doctor, the matter you refer to of your having been arrested on some trumped up charge, a charge you can't recall, was carrying weapons unlawfully, wasn't it?

A. Yes.

Q. And it resulted in your being called upon to plead here in Quarter Sessions Court?

A. Yes.

Q. And it further resulted in your entering a plea of non-vult, and paying a fine of one hundred dollars, didn't it?

A. Yes.

Q. And that was the trumped up charge?

A. That is one of many.

Q. Now, Doctor, you had access to the office of the

Locustwood Land Company, Inc., here in Camden, didn't you?

Mr. Rose: You have the wrong name, Locustwood Land Company, you don't mean that?

Q. Locustwood Cemetery Company, Inc.?
A. I went to the office a number of times.
Q. And had a key?
A. I never had a key—no.
Q. Never had a key?
A. No.
Q. Didn't you go in there at nights from time to time?
A. Never.
Q. Didn't you take out of that office a number of papers of the Locustwood Land Company, Inc.?
A. I never did.
Q. Did you take out of there a contract dated October 23, 1923?
A. I did not.
Q. Weren't you asked to produce a copy of that contract or a copy of some contract under which the Locustwood Cemetery, Inc., was operating?
A. I was asked for a copy of the contract of July 23, 1923, yes.
Q. You were asked for a copy of the contract under which they were operating?
A. That is the only contract.
Q. Did they say to you, "We want a copy of the contract of July 23, 1923," referring to it specifically by date?
A. Yes.
Q. They said their copy had become lost or mislaid, or something, didn't they?
A. Yes.

Q. And they asked for a copy?
A. Yes.
Q. And they did not get it?
A. No, sir.
Q. Did not get a copy of it until yesterday through your counsel, isn't that right?
A. Oh, no, they had a copy long ago.
Q. When did they get a copy that they were asking for?
A. A copy was given to Judge Starr months and months ago.
Q. After the matter had gotten in litigation?
A. No, the matter was not in litigation.
Q. Never any litigation at all about that?
A. I would have to ask Mr. Rose as to the date of that copy, because I think it was in the litigation of the Equitable Estates Corporation. As I recall it, that was the time this copy of the agreement was given to Judge Starr, because he wanted to know under what agreement they claimed to be on the property.
Q. Dr. Spear, that would have been seven, eight or nine months after the agreement was signed, wouldn't it, on your theory that it was an agreement of July the twenty-third, 1923?
A. Yes.
Q. And when was this copy directed by you to be given to Judge Starr?
A. I don't recall the date.
Q. It wasn't until this Aleck suit was tried, was it?
A. No.
Q. That wasn't tried until February, 1925, was it, isn't that right?
A. No, that suit was brought before that.

Mr. Palmer: 1922 it was brought.

Q. That was the suit tried in February, 1925?

A. Yes.

Q. The Locustwood Cemetery, Inc., had repeatedly asked, hadn't they, for a copy of the agreement?

A. No, they asked on one occasion, Darcy and Cawthorne came out to Hainesport, I forget the date, but it was shortly before Judge Starr—I think it was about the time they were contemplating getting Judge Starr to represent them in this.

Q. Was that shortly before the trial of the Aleck suit here in February?

A. No, it couldn't have been very long before the trial, I don't know when they asked me for the copy, but I said, I hadn't the original I couldn't find it. It seems that Mr. Rose had it, I didn't know where it was.

Q. Now, Doctor, the figures that you arrived at, $122,000.00 in the certificate of indebtedness, or whatever it is termed, you and your wife just worked them out together sitting in your home?

A. I worked them out myself.

Q. They were never passed on by anybody else except you and your wife?

A. That is all.

Q. In fact, your wife didn't know anything about those figures?

A. She knows a good deal about them. She wouldn't be able to compute from that map the number of square feet unpaid for.

Q. The computation was entirely up to you then, wasn't it, doctor?

A. Yes, sir.

Q. That wasn't passed upon at any meeting of the lot owners, was it?

A. I believe that is covered there, I am not sure.

Q. Doctor, this certificate of indebtedness, Exhibit

C12, refers also to a bond in the sum of $33,600.00 dated the thirtieth day of October, 1923, given by the Locustwood Cemetery Association to the Locustwood Land Company. Do I understand that in addition to the $122,220.00 the Locustwood Land Company claims $33,600.00 owing from the Cemetery Association to it?

A. No, $16,800.00.

Q. This bond is in double the amount?

A. Yes.

Q. So this is a claim by the Land Company, by you, that the Cemetery Association owes in addition to the $122,220.00, $18,600.00?

A. $16,800.00.

Q. Your arithemetic is better than mine, yes, $16,800 and all of that charge, as I understand, all of that arose, $138,000.00 of indebtedness upon this thirteen acres of land?

A. Yes.

Q. You mean on that thirteen acres of land there is still coming to the Locustwood Land Company $138,000.00 or thereabouts?

A. The bond is not covered by any mortgage on the land.

Q. If I understand you correctly the Locustwood Cemetery Association is presently indebted to the Locustwood Land Company in at least $138,000.00?

A. Yes.

Q. Based upon sales in this thirteen acre tract?

A. No, it is not based upon the sales in the thirteen acre tract except in so far as that certificate of indebtedness is concerned. The bond has nothing to do with that.

Q. The actual indebtedness, is as I have stated, isn't it, doctor that is $122,000.00 plus $16,000.00 disregarding your figures making $138,000.00?

A. That is the indebtedness, yes.

Q. That is all based on lot sales present or future?

A. No.

Q. Wait a minute, don't say no yet. Within the thirteen acres, isn't that so, Doctor?

A. No.

Q. That is all there is in this cemetery, isn't there?

A. That is all there is in the cemetery, yes.

Q. And that thirteen acres of land owes you on your figuring around $138,000.00?

A. The land does not at all.

Q. But the Cemetery Association which owns thirteen acres of land owes your company $138,000.-00, which it must pay to you out of half of the sales of lots, isn't that what you are claiming?

A. Pay the certificate of indebtedness out of half of the sales of the lots. The other out of any other income.

Q. Is there any other income in a cemetery except the sale of lots, there isn't, is there?

A. Then you evidently haven't investigated the running of a cemetery.

Q. I am asking about this cemetery. Is there any other income except the sale of lots?

A. Yes, a large income.

Q. Present income?

A. I believe there is at the present time.

Q. What else do they sell in a cemetery except burial lots?

A. There haven't been 1200 graves opened in the opening of the graves alone.

Q. $12,000.00 an acre?

A. You can give the land away and get $12,000.00 an acre for it just the profit for opening graves.

Q. Did you ever make $12,000.00 an acre opening grave while you were there?

A. No, I wasn't in the grave opening business there.

Q. Did they ever produce $12,000.00 an acre?

A There haven't been 1200 graves opened in the cemetery.

Q. At any rate the present assets back of this to pay you the $138,000.00 is thirteen acres of land and out of which they can only pay from time to time half of the sales of the lots, isn't that right?

A. Out of the thirteen and one-third acres they could pay three times that amount and have plenty left.

By the Court:

Q. What do you claim this money is for, including the bond and the other amount, how did you make it due to you?

A. The Spear-Fernwood agreement provides that the Cemetery Association must keep the property in proper physical condition for burial purposes and fulfill the other covenants of the agreement, otherwise the land interest would have its property tied up and nothing received in income.

Q. Answer my question, how are your figures made up?

A. The $16,800.00 bond was issued for the damages computed to have accrued to the Land Company, through the neglect of the Cemetery Association to keep the property in proper physical condition for burial purposes over a term of about twelve years.

Q. That bond was issued for that purpose?

A. That is what it was issued for.

Q. And that was also issued at the instance of yourself and your wife?

A. We were trustees at the time, yes, sir.

Q. Then the rest, the $122,000.00, represents one-half of the sales?

A. No, there is a provision in article five of the Spear-Fernwood Agreement which provides that Charles C. Spear or his assigns may at any time call for certificates of indebtedness for the purchase price unpaid for the land already conveyed. In other words, instead of waiting for a number of years and to receive the fifty percent, (50%) as each lot is sold they can call for a certificate of indebtedness for the amount which would be due them if all the lots in the thirteen and one-third acres were sold at the rate which the lots already sold accrued together would amount to, on that basis.

Q. This certificate of indebtedness issued under those circumstances wouldn't be designed to represent an amount already payable— would they be obliged to pay that amount?

A. The certificate of indebtedness?

Q. Yes.

A. I don't think that is provided for in the certificate, it is an acknowledgment of the indebtedness, as I recall it. It is non-interest bearing.

Q. Merely to show what they will owe when the lots are sold? Is that what the $138,000.00 calculation is, is that the basis of that calculation, what will be due to you when the lots are sold?

A. Taking the lots which have been sold, and then computing the remaining portion of the unsold area than at the minimum rate or at the rate established by these sales already made is the amount due.

Q. And that is $122,000.00?

A. Yes, sir.

Q. And the $16,000.00 bond represents damage?

A. Yes, sir, for neglect of the cemetery for many years ——

The Court: It is one o'clock, come back in half an hour.

Mr. Carr: Your Honor, may we have three-quarters?

The Court: All right, three-quarters of an hour.

(At this point a recess was taken until one forty-five o'clock P. M.)

(Trial of the court is resumed at one forty-five o'clock P. M. pursuant to adjourning.)

Charles C. Spear, resumed.

Mr. Tyler: I will go ahead with the cross-examination if Mr. Carr is not ready.

Mr. Rose: Do you think Mr. Carr had finished?

Mr. Tyler: I don't think so.

By Mr. Tyler:

Q. Dr. Spear, I show you what purports to be the minutes of the Fernwood Cemetery Association and ask you whether they are?

A. They are, yes, sir.

Q. This begins with the certificate of incorporation and ends up with the minute of the meeting of the Board of Directors of the Locustwood Cemetery, Inc., held at 328 Market Street, Camden, N. J., May 7, 1910, at two P. M., that is the last meet-

ing of the Board of Directors that was held, wasn't it?

A. Yes.

Q. I show you a number of loose sheets, the first of which is entitled, "Special meeting of the Lot-holders of the Fernwood Cemetery Association," signed "Mercedes Spear, secretary pro tem," and purports to be the meeting of the lot-holders held on June 30, 1923, what is that paper, or these papers?

A. They are the minutes of the Fernwood Cemetery Association now called Locustwood Cemetery Association.

Q. Was there any meeting held between the Board of Directors meeting of May 7, 1910, and the lot-holders meeting on June 30, 1923?

A. Not to my knowledge.

Q. Now, this meeting held on June 23, 1923, recites that there was present, Walter Sage, H. B. Sterling, F. N. Wheaton, Mercedes Spear, Cyrus D. Marter, Charles C. Spear, Amy S. Durkin, those people were present?

A. They were present by proxy, except Mercedes Spear and myself, I think that was all.

Q. This meeting says it was called by the surviving trustee Charles C. Spear and four other lot-holders, F. N. Wheaton, Marter, Durkin and H. B. Sterling and notice was published of this meeting. Those facts are true?

A. It was published in the Camden Post Telegram.

Q. The minute also says that, "On motion duly made, seconded and carried it was resolved that inasmuch as this corporation has defaulted in its covenants and agreements contained in the agreement of December 31, 1907, between Charles C. Spear and this corporation under which it acquired its rights

to the land mentioned in a certain deed from said Spear to this corporation, dated December 31, 1907, and to the lands adjoining its cemetery property, and it is, therefore, necessary to arrange with the assigns of the said Spear for the reinstatement of the said agreement''—that minute was adopted at that meeting, was it?

A. Yes.

Q. All the facts therein stated are true?

A. To the best of my knowledge and belief

Q. Now, Dr. Spear, I show you what purports to be the resignation of William Longstreth, John B. Kates, Abram E. Street, David A. Henderson, Charles Cooper Spear, Dr. S. G. Bushey ——

The Court: Who was the last one you named?

Mr. Tyler: Dr. S. G. Bushey, Charles C. Spear before that. Thomas Kane, Burleigh B. Draper, Cyrus D. Marter, George N. Wimer, and F. M. Wheaton, and I ask you whether or not they are the resignations of those men as trustees or directors of the Fernwood Cemetery Association?

The Witness: Yes, they are.

Q. They are?

A. Yes.

Q. All of the officers and directors at that time resigned, didn't they?

A. Yes.

Mr. Tyler: I will offer in evidence the resignation of William Longstreth dated June 22, 1908; resignation of John B. Kates, June 24, 1908; resignation of Dr. A. E. Street, June 24, 1908; resignation of David

A. Henderson, August 5, 1909; resignation of Dr. Charles Cooper Spear, July 14, 1909; resignation of Dr. S. G. Bushey, dated June 22, 1908; resignation of Thomas Kane, dated August 25, 1908; resignation of B. B. Draper, June 24, 1908; Cyrus D. Marter, February 16, 1910; resignation of George M. Wimer, March 8, 1910; resignation as a director of William Longstreth, March 8, 1910, and F. M. Wheaton as president and trustee, dated March 8, 1910; resignation of Cyrus D. Marter as secretary, February 16, 1910.

The Court: What was the date of the last meeting you referred to in the minute book?

Mr. Tyler: The last meeting of the Board of Directors was held May 7, 1910, at which time there were present George F. Archer, Walter Sage, J. F. Wood, and Charles C. Spear.

Q. George F. Archer is deceased, isn't he?
A. Yes, sir.
Q. Is Mr. Wood living?
A. She is deceased.

The Court: Have those resignations been accepted?

Mr. Tyler: They appear in different parts of the minutes from the date of the resignations on up to the last meeting. I can hunt them out and get that, but from my examination of the minutes they have been accepted.

The Court: Prior to the last meeting?

Mr. Tyler: Prior.

The Court: Those present at the last meeting have not resigned?

Mr. Tyler: No, not those at the last meeting with the exception of Charles C. Spear's resignation dated July 14, 1909, as treasurer.

The Court: Not as trustee?

Mr. Tyler: Not as trustee.

Q. Now, at the meeting held March 7, 1910, to which Messrs. Wheaton, Wimer, Archer, Marter and Spear attended, the resignation of William Longstreth as director was presented and accepted, and Walter Sage nominated for the unexpired term, resignation of George M. Wimer was presented and accepted, J. Isabella Wood was elected in his place. The resignation of F. M. Wheaton was presented and accepted, and the resignation of Cyrus D. Marter was presented and accepted at that meeting. At the meeting held on February 16, 1910, the resignation of Cyrus D. Marter as director, secretary and treasurer was presented and his employment as secretary and treasurer was terminated.

Mr. Rose: You read that into the record incorrectly. I don't think you did it intentionally.

Mr. Tyler: All right. "On motion carried that Cyrus D. Marter as secretary and treasurer terminate the employment of J. Isabelle Wood by serving notice on her." But his resignation is accepted at the following meeting.

Q. Doctor, from the time of the last meeting of

the Board of Directors held in 1910 up to the time that this meeting of the stockholders which was held on June 30, 1923 ——

The Court: Was that stockholders?

Mr. Tyler: Lot-holders, I don't mean stockholders. The Fernwood Cemetery Association was inactive and did not carry on any activities at all, did it?

A. I don't know what transpired in connection with the cemetery after I went away, when I was absent from the country for a number of years.

Q. You were absent from 1910 until what time?

A. It was until about 1916 that I returned to this country. I was in New York, but I didn't come over here until about the fall of 1921 or 1922, I am not certain. You can verify the date.

Q. Don't you know during that period from 1910 to 1923 or 1923 that this cemetery property was in possession of your mother and she was running it and farming it?

A. I knew she was in possession of the farm.

Q. You were not here?

A. No, I wasn't here.

Q. And when you came back it was being farmed, wasn't it?

A. The cemetery?

Q. Corn planted and cows grazing there?

A. In the back end, but not within the thirteen acres.

Q. I show you what purports to be a statement in your handwriting dated April 17, 1908, addressed to Dr. A. E. Street, president, Fernwood Cemetery Association, in which you purport to advise him of

the default made by the Association with you under this Spear-Fernwood agreement and ask you whether that is your handwriting?

A. Yes.

Q. Did you send such a letter to Dr. Street as president of the Association?

A. I don't remember. If I could read it possibly I could recall it.

Q. Read it and see if it refreshes your memory.

A. It is impossible for me to say whether I ever sent that letter to Dr. Street. This is just a letter written in lead pencil, it may have been what I had in mind and intended to write, but whether I actually sent the letter of which this appears to be a rough draft I don't know. I don't recall that at all, but that is in accordance with what I recall having in my mind at the time.

Q. Was this made at the time it was dated?

A. I didn't notice.

Mr. Rose: Is that signed by anybody, Mr. Tyler?

Mr. Tyler: No.

The Witness: This was never signed, it is only a lead pencil draft of the letter; whether a letter of this kind was ever written and sent I don't recall.

Q. I wanted to see whether that copy was made about that time and if it was I wanted to ask whether the facts stated therein are true?

A. The supposition is it was made on that date, that is my handwriting.

Q. And the facts therein stated are true? That is, the company was in default?

A. As I recall it they hadn't done the work they

should have done under their contract, they were very slow about getting started, that was in the early days of the cemetery, there wasn't much done.

Mr. Tyler: I am going to offer it.

Mr. Rose: When you offer it I want to make an objection to it.

Q. Now, in this memorandum addressed to A. E. Street, president, Fernwood Cemetery Association, dated April 17, 1908, you state the Fernwood Cemetery Association is not living up to this agreement with me, referring in particular to article nine of the agreement of December 31, 1907, do you know what that referred to, Doctor?

A. Article, I don't recall. I am not sufficiently familiar with the numbers of the paragraphs.

Q. I refer you to exhibit C2, and ask you to look at article nine.

A. Yes.

Q. What does that refer to?

A. That refers to the commencing of work upon the cemetery property under this agreement.

Q. Had they done that?

A. Yes, they had done some work, but here it provides a sufficient number of employes for the purpose of maintaining the land in a suitable condition. The work was progressing very slowly and in an unsatisfactory manner, that is, I did not feel as though they were doing the work they should do on the property.

Q. That was the purpose of writing this letter?

A. That was evidently what I had in mind when I drafted that letter.

Q. Now, you say here, "I would request the Fern-

wood Cemetery Association to let me know as soon as possible whether or not it will be able to comply with the terms of the agreement with me." After that did they do anything more in response to your demand that they comply with it, was there anything further done?

A. They still continued to work there, I don't recall just exactly if such a letter was sent whether that had the effect of causing them to do more work or not, I really don't recall.

Q. You say, "Knowing the unsatisfactory condition of the Association's treasury," what did that refer to?

A. Well, I suppose it meant knowing that the Association had no funds of its own.

Q. Isn't it true that about this time that the Association had no funds, was not carrying on, and practically abandoned the upkeep of this thirteen acres as a cemetery?

A. No, they had not abandoned it, the only question was, they were not doing enough, the thing was simply dragging along and that was the cause for the dissatisfaction on my part.

Q. Isn't it true it was about that time you got in trouble and left the country and for that reason, among other, the Association did not function?

A. No, this is an entirely different date. You might say the beginning, when the cemetery formed by Dr. Street and Mr. Draper first began doing work there—this is in 1908 if that date is correct.

Q. I wasn't referring to that date, I was referring to the Association, to the Board of Directors' meetings and the fact that all the directors resigned.

A. That was over two years afterward.

Q. That was because you had ceased to take active interest in it?

A. Yes.

Q. You had ceased to take any active interest in it, hadn't you?

A. Naturally, because I wasn't here.

Q. Your resignation is sent from Cobalt, Ontario. At that time you were out of the country?

A. That was prior to this. I left in 1910, but during the time that this association was undertaking the development of the property I was up in Cobalt and that letter was written from there. After I returned from Cobalt I was here sometime before I left the country again.

Q. It was about the time you left the country that Thomas E. French deeded the property over to Holloway, wasn't it?

A. What is the date of that deed?

Q. February 21, 1910.

A. February 21, 1910. I left here sometime in September, 1910.

Q. And you joined in that deed to Leslie M. Holloway, that is your signature, isn't it?

A. That is my signature.

Q. This deed refers to a deed having been made to Floyd H. Bradley. Do you know of such a deed made to Floyd H. Bradley?

A. I know there was a deed made to Floyd H. Bradley, yes.

Q. Do you have it?

A. To the best of my recollection that deed was placed in my safe deposit box at the Guarantee Title on Chestnut Street just below Fourth on the south side. The Guarantee Title & Trust Company, isn't it? I had a safe deposit box there and to the best of my knowledge that is where that was deposited and left when I left Philadelphia.

Q. Do you have it now?

A. No.
Q. Do you know anything about it?
A. No.

The Court: Isn't it of record?

Mr. Tyler: No.

By Mr. Rose:

Q. Doctor, the Vice-Chancellor asked you before recess as to how that certificate of indebtedness was made up, how it was computed, and the Vice-Chancellor asked you whether or not the certificate of indebtedness represented the total amount that would have been due for the unsold portions of the cemetery lots and I understood you to say yes. I want to ask you whether or not the Spear-Fernwood agreement provides for a minimum price at which lots might be sold?

A. It does.

Q. What is the minimum price at which lots should be sold?

A. Thirty cents per square foot for the first 100,000 square feet; thirty-five cents per square foot for the next 100,000 square feet, and so on, the price increasing five cents per square foot for every additional 100,000 square feet.

Q. So when this certificate of indebtedness was executed was that or wasn't it computed on one-half of the minimum price?

A. It was computed upon one-half of the minimum price.

Mr. Carr: You don't mean that.

Mr. Rose: Yes, one-half of the minimum price, 15 cents a square foot.

The Witness: That is the gross amount that would be due the land interest.

Mr. Rose: The minimum price was thirty cents a square foot and all that Dr. Spear was entitled to was fifty per cent.

Q. Were your calculations on the basis of 15 cents a square foot or thirty cents a square foot?

A. On the basis of fifteen cents on the first 100,000, and 17 1/2 on the second, and so forth, increasing two and a half cents a square foot.

Q. If a higher price was obtained for the sale of burial lots then, of course, that would automatically increase, wouldn't it?

A. Automatically increase the indebtedness of the association to the land interest?

Q. Yes.

A. I think it would, yes.

Q. What is the other income which is derived from a cemetery association?

A. Derived by who?

Q. By the cemetery association.

A. You mean, what are the sources of income of the cemetery association?

Q. Yes.

A. Well, first of all, there are the sale of lots, burial lots, and from the erection of monuments, that is, the foundation work, that all is to be done by the association. The opening of graves, the issuance of permits—well, I don't know whether I can think of all the little things to which the cemetery association is entitled to receive fees.

Q. But under the Spear-Fernwood agreement you or your assignee was entitled to receive fifty per cent of all the profits derived from those sources?

A. No, only from the sale of lots, places of interment, and tombs, the other profits belonged to the cemetery association for its own personal use and benefit.

Q. Have you made any calculation as to what the cemetery association has received from the opening of graves alone?

A. What it has received or would it receive?

Q. What it could receive?

Mr. Carr: I object. That is rather speculative, if the Court please, what it could receive.

The Court: I don't know whether it would be of any service or not. Go ahead if you think it will.

The Witness: The cemetery association generally charge $20 up for opening a grave, and it certainly costs less than $10 to open it, so there is a net profit of at least $10 on the opening of each grave.

Q. You said this morning that the profit would be $10.00 a grave for each grave, and that in one acre there would be 1200 lots, did I understand that?

A. 1200 graves could be opened. I believe that calculation is correct.

Q. So that would net $12,000 per acre?

A. Yes.

Q. Now, as to the resignations of 1908, 1909 and 1910. Upon your return to New Jersey was or was not a meeting of the lot-holders held at the main entrance of the cemetery and new trustees and officers elected?

A. They were.

Q. And is this minute of the meeting of June 30, 1923, a true copy of the minute of the events which happened at that time?

A. Yes.

Q. I ask you whether or not that shows you were elected at that time?

Mr. Carr: I think it shows what it shows.

The Court: He may state generally. No dispute about that, is there?

Mr. Rose: I don't think so.

The Witness: Amy S. Durkin, Mercedes Spear and Charles C. Spear were duly elected trustees of the Fernwood Cemetery Association. "The Locustwood Cemetery Corporation" in parenthesis.

Mr. Rose: That date is June 30, 1923.

The Court: I thought they were two different companies, the Locustwood Cemetery, Inc., and the Locustwood Cemetery Association.

Mr. Rose: They are, but this is the Locustwood Cemetery Association.

The Court: He read it as though it was both. Look at it again and see if it is true.

Mr. Rose: Amy S. Durkin, Mercedes Spear and Charles Spear were duly elected trustees of the Fernwood Cemetery Association (The Locustwood Cemetery Corporation.) The Locustwood Cemetery

Corporation was the name which the Fernwood Cemetery Association undertook to change years ago, back in 1908.

The Court: I thought it was so far referred to as the Locustwood Cemetery Association and not corporation.

Mr. Rose: In the first place, Mrs. Smith started the cemetery and she called it the Locustwood Cemetery Company, Locustwood spelled as two words. When her cemetery ceased to exist and we took over the property under foreclosure, which was tried here before this Court, the new cemetery association, which was going to continue the work already started, didn't think it advisable to take the same name because of the confusion which might result, so they called themselves, the Fernwood Cemetery Association, but the name "Locustwood Cemetery," had been firmly attached to that place, so they decided to use that name again after their going through the adjustment.

The Court: What name?

Mr. Rose: The Locustwood Cemetery Corporation.

The Court: It has been heretofore referred to as the Locustwood Cemetery Association. Which is correct?

Mr. Rose: This is the name under which the Fernwood Cemetery Association went in 1908 and 1909.

The Court: They didn't change their name to

Locustwood Cemetery Association at all, they changed it to Locustwood Cemetery Corporation.

Mr. Rose: They later on changed it to Locustwood Cemetery Association. This was back—I think the minutes will show—back in 1908.

The Court: They changed the name twice then?

Mr. Rose: Yes.

The Court: What was the last change, what was the final change? What was the name of the final change?

Mr. Rose: Locustwood Cemetery Association, Locustwood spelled one word, that was made on the 30th day of June, 1923. I offer the minute book of the Locustwood Cemetery Association and ask that it be marked.

(Said book marked Exhibit C15.)

Mr. Rose: I offer the minute book of the Locustwood Land Company and ask to have it marked.

(Said book marked Exhibit C16.)

The Court: Have you anything that shows what the indebtedness was under the old agreement for lots actually sold, what your one-half would be and what you were paid?

The Witness: No. The only way of computing that would be by getting a list of the old deeds.

The Court: You haven't that data?

The Witness: No. Many of the data were lost during my absence.

The Court: That is all I wanted to ask.

Mr. Rose: We rest, if the Court please.

Mr. Tyler: Shall I proceed?

The Court: Any way you choose.

Helen C. Aleck, sworn.

Mr. Tyler: I would like to first offer in evidence title search of the West Jersey Title & Guaranty Company, 36462, showing the title of this property from what is known as the Somers deeds, being a bill to foreclose filed on December 13, 1901, down to and including a deed from Nowrey, Sheriff, to George H. Aleck, on a bill to foreclose a mortgage for $2500, dated August 20, 1908, and mortgage made by George H. Aleck.

Mr. Palmer: The cemetery property isn't involved in that title?

Mr. Tyler: No.

Mr. Palmer: It is objected to as being immaterial.

The Court: What is that?

Mr. Tyler: The 140 acres and excepting the 13.30 acres, but it is not immaterial.

The Court: I understand it is claimed there is yet a right to purchase the farm outside of the 13 acres. If so, this search would cover that.

Mr. Palmer: That would be determined entirely by the effect of the foreclosure of that $2500 mortgage, whether or not that foreclosed the Fernwood Cemetery Association from their rights to purchase subsequent property under that agreement. Now, the Fernwood Association was not a party to that foreclosure and how they could possibly be affected I can't see, nor can I see how the question of title to the 140 acres has anything to do with the situaiton. That is not involved in this situation, all that is involved here is the 13 acres.

The Court: I don't know. I think it had better go in, unless you object to the data. Of course, a search is not evidential unless counsel is willing to have it take the place of the record.

Mr. Palmer: I have no objection on that score, but I say it has no relevancy.

The Court: It may not have.

(Said paper marked Exhibit T2.)

Mr. Tyler: The search is marked in the previous suit C45. I want to offer in evidence deed made by Joseph E. Nowrey, Sheriff, to George H. Aleck, referred to in the aforesaid search, T2, as item No. 25.

Mr. Palmer: What does that deed cover?

Mr. Tyler: Covers 140 acres, and the interest of

Thomas E. French, trustee, Floyd H. Bradley, Holloway and his wife, Spear, and all these defendants, and I might say, if the Court please, there is a cross-bill here ——

The Court: What?

Mr. Tyler: A cross-bill to reform this deed, to reform the French deed so as to cover what it intended to cover. And I want to say in this foreclosure the interests of Thomas E. French, Floyd H. Bradley and Charles Cooper Spear were foreclosed by the reason of the foreclosure of that mortgage.

Mr. Palmer: That is objected to.

(Said paper marked Exhibit T3.)

Mr. Tyler: I offer in evidence the deed of Thomas E. French, Helen C. Douglas, Charles C. Spear, Cyrus D. Marter, to Leslie M. Holloway, dated February 21, 1910 ——

Mr. Rose: A certified copy is already in evidence.

Mr. Tyler: I want to offer the original deed.

The Court: That is the deed you want reformed?

Mr. Tyler: Yes.

(Said paper marked Exhibit T4.)

Mr. Tyler: I would like to inquire of my opponents whether it will be necessary to duplicate the

testimony taken in the case of Douglas v. Spear, for which I am prepared to take that additional testimony, so far as it may affect these cross-defendants, or whether we will accept the testimony that was previously taken and the decrees made thereon for the purposes of this suit? I will take so much as is necessary to establish our rights.

Mr. Rose: All of that testimony in the previous case related to three deeds dated June 20, 1920, and I don't see how the testimony in that case ——

The Court: I don't think I will stand by and let you run in a big printed book like some without any definite understanding. I guess you had better make what proofs you need. In other words, in case I have to study this case with the transcript before me it means reading all the testimony taken in this trial and reading that great big transcript through to find whether there is something in there that might be useful. I don't think that is a very good plan.

Mr. Tyler: Might I suggest this, if the Court please, it appears that the rights of these cemetery associations, so far as they arose, were in 1923, and that if there is anything that develops by reason of their rights that the attack upon the previous deeds might come in properly as rebuttal, but it doesn't seem to me, in view of the fact that these deeds have already been set aside as to Spear and the Equitable Estate Corporation, that there is anything in the pleadings which gives these cemetery associations any prior rights or any rights superior to those from whom they obtained title. I don't want to spend a lot of time taking testimony if it isn't relevant, but it occurs to me if I could reserve that as rebuttal it would be all right.

The Court: I don't know that it makes a bit of difference what order we take the testimony in, but I apprehend that the cemetery association cannot be bound by the decree in the other case because they were by its very terms excluded, as I recall it. I should hate to go all over that testimony again and if counsel can in some way devise some scheme by which we could avoid rehashing all that testimony it would be advantageous and beneficial. Much of it, I apprehend, the cemetery association wouldn't be interested in; some of it it would, probably. Now, is there any way we can work out a process of shortening matters? My recollection is, Mr. Palmer, although I confess it isn't very distinct, that under all the evidence that was submitted before I found as a fact that the deed to the Equitable Estates Corporation was void. That case, I think, went to the Court of Appeals, didn't it, and that was affirmed, I think. Now, then, I don't know how we can bind anybody else by that decree without going all over the ground again, unless they were parties to this suit.

Mr. Palmer: If the Court please, I am not entirely familiar with all the testimony in that case but the other gentlemen who are interested in this litigation are.

The Court: It is right there; you might want to glance at it.

Mr. Palmer: I may need a vacation for that, and I don't want to take it away with me on a vacation. I was talking to Mr. Rose and he says he doesn't know how you can physically do that. The testimony in the other case started with the execution

of some deeds to the Equitable Estates Corporation, and that was the foundation of that case, and those deeds your Honor set aside related to the 140 acres, 140 some acres of this farm, and this 13 acres wasn't in any of those conveyances, had been conveyed long prior to the difficulty arising in that litigation, had been conveyed by Dr. Spear in 1907, and in all the pleadings, if I understand it correctly, in the former litigation it expressly accepted these 13 acres. Now, how the testimony in regard to the invalidity of the deeds to the Equitable Estates Corporation can be involved here, I don't see.

The Court: Didn't that include the cemetery rights?

Mr. Tyler: Yes, that included the Spear-Fernwood agreement which was assigned to the Equitable Estates Corporation and also a declaration of trust.

The Court: That was set aside.

Mr. Tyler: I think Mr. Palmer is right, the rest of the litigation outside of the Spear-Fernwood agreement, and outside of the declaration of trust, related to the 140 acres, and I don't believe they have any claim to the 140 acres, and if so, there is a conflict between those two cases. I don't think anyone here is claiming through those particular deeds that were set aside, except the assignment of the Spear-Fernwood agreement and the declaration of trust.

Mr. Carr: Mr. Tyler, speaking for my humble self, the Locustwood Cemetery, Inc., as the purchaser under the agreement of October 23, 1923, claims

that the foreclosure spoken of by Mr. Tyler in no way affected their rights under the Spear-Fernwood agreement, that that agreement was of record previous to the mortgage that was foreclosed and couldn't be affected by it, and that the contract price of $100,000 didn't simply include a little cemetery of 13 acres, but the right to acquire this adjoining farm of approximately 140 acres. It made a price of about $650 an acre for the whole thing, and so far as my clients are concerned they do claim, notwithstanding the foreclosure, that they have the right as the successor of Spear, under the Spear-Fernwood agreement, to acquire the adjoining parcels of land ten acres at a time.

Mr. Tyler: That right first arose in 1923 after the will had been filed, after the lis pendens had been filed on May 1, 1922, so naturally those rights couldn't rise any higher than the litigation between the principals in the original case, and I don't understand from Mr. Carr that he claims through those deeds that were set aside but that he claims back to an agreement which was made in 1907. Now, the agreement of 1907 we are dealing with today has nothing to do with the deeds that were set aside in the decree of September 14, 1925.

Mr. Carr: Since the Court by its decree expressly declined to pass upon those rights this is the first time those rights come before the Court for ultimate decision. I don't believe in dealing with this Spear-Fernwood agreement, that end of it, we would be bound by any lis pendens, and if we were, it is only a notice of a pendency of that particular suit.

The Court: Do you claim under those instruments which were set aside in the former suit?

Mr. Carr: Yes, we claim the assignment made to the Equitable Estates Corporation was, so far as we were concerned, good, because we had no notice of any secret equities existing in favor of Mrs. Aleck, and evidently your Honor didn't care to pass on that question in the other suit, so it is still an open question and not adjudicated, so I don't think it can be said a suit in which those things were not adjudicated ——

The Court: I don't see how we can avoid going into the whole thing again if they claim under the agreement that was set aside.

Mr. Palmer: What Mr. Carr means to say is that he claims by virtue of the Spear-Fernwood agreement. Now, an assignment of that agreement was set aside, and that is all.

The Court: But he says he claims under that assignment.

Mr. Palmer: If he claims under that assignment that is a different situation.

Mr. Carr: Yes, sir.

Mr. Palmer: It still leaves the Spear-Fernwood agreement, which is the basis of this suit, still leaves that open for question, as to whom it belongs, who had the right to assign it. That is the question we have here, as I see it.

Mr. Tyler: I think that is correct, that is in accordance with my understading of it, that the title to the 13 acres is not in dispute and the fact there

is such an agreement is not in dispute, and as far as Mrs. Aleck is concerned she claims that agreement has been forfeited, abandoned, and she has taken possession of the property, and had it for a great many years. That will be our defense to the agreement. And in addition to that, that the agreement by its terms, the written agreement we have here, has been assigned to Mrs. Aleck.

The Court: The part that bothers me is, while I held the assignment of that agreement to the Equitable Estates Corporation was void, that it belonged to Mrs. Aleck, and that she was wrongfully induced to execute that assignment, and the assignment was set aside for that reason, if Mr. Carr claims that he now has an interest from that assignment and had no notice of any infirmity in the assignment, I don't know how I can help but hear the whole controversy that was heard before.

Mr. Tyler: So far as it relates to that assignment?

The Court: Yes. No one claims an interest in the real estate by virtue of the deed to the Equitable Estates Corporation, I mean, the farm?

Mr. Carr: Which property?

The Court: Does anyone claim an interest in the farm under the deed to the Equitable Estates Corporation?

Mr. Carr: My understanding is, your Honor, we make no such claim. We do claim under the 1907 Spear-Fernwood agreement there is a right to acquire parts of that farm.

The Court: Well, the only difficulty I see now is the fact that Mr. Carr thinks he may get some rights under that assignment to the Equitable Estates Corporation.

Mr. Tyler: These two cemetery associations may have some equitable rights superior to the Equitable Estates Corporation?

Mr. Carr: I think we own whatever Dr. Spear originally owned in that agreement. We have got to pay somebody some money, whether it is to Mrs. Aleck or Dr. Spear we don't know. We will be happy to have that determined.

The Court: You claim you own by the assignment of that agreement to the Equitable Estates Corporation?

Mr. Carr: And by it to the Locustwood Cemetery, Inc.

The Court: What?

Mr. Carr: From the Equitable Estates Corporation to the Locustwood Cemetery, Inc., and on the strength of that we have spent $150,000 down there and spent out $10,000 or $12,000 to Dr. Spear.

Mr. Tyler: Your assignment from the Equitable Estates Corporation bears what date, can we have that?

Mr. Carr: October 23, 1923.

Mr. Tyler: Whatever rights these two defendants

for which you filed answers and cross-bills, Locustwood Cemetery, Inc., and Locustwood Cemetery Association, they acquired through that assignment, October 23, 1923?

Mr. Carr: So I understand.

Mr. Tyler: Under that situation, may it please the Court, it appears that the bill of complaint, Helen C. Douglas v. Charles Cooper Spear and the Equitable Estates Corporation was filed in the spring of 1922, and the lis pendens on May 1, 1922, 18 months prior to the time that these defendants claim to have acquired any rights at all, so they must have taken with notice of the dispute between Mrs. Douglas and the Equitable Estates Corporation. Certainly, in view of the fact that suit was started a year and a half before, and the lis pendens filed a year and a half before they acquired any rights whatever, not having acquired any until October, 1923, their rights couldn't rise any higher than the Equitable Estates Corporation.

The Court: They couldn't in the real estate; whether they could in the profits due to Spear under the agreement I am not so clear.

Mr. Tyler: That was part of our litigation in the case and covered by the decree.

The Court: I know it was, but does the lis pendens reach it. The lis pendens ordinarily would relate alone to the real estate.

Mr. Tyler: I will have the lis pendens produced. here.

The Court: Could it go any further than the real estate?

Mr. Tyler: I think the lis pendens can cover mortgages, anything at all, any interest in real estate of any kind.

The Court: If your lis pendens protected you as against a subsequent purchase by them that decree, of course, will bind them.

Mr. Tyler: It seems to me there can't be any question about it.

The Court: Unless you would have been required even then to bring them in.

Mr. Tyler: Unless what?

The Court: Unless you would have been required then to bring them in. They were made defendants?

Mr. Tyler: Yes, they were made defendants, and we just wanted to avoid in that suit just what we are bringing up in this suit, a quarrel between two sets of officers in the same association. That suit was big enough by itself and we didn't want to inject in there a quarrel between the associations. Now, another thing, may it please the Court, these two defendants were made parties to that suit. Now, whether there was a lis pendens on file or not, being parties to the suit, acquainted with the litigation, filing answers, and knowing the extent of Mrs. Aleck's claim, they couldn't have any superior equities, because after all it is only notice, and that is

all the lis pendens is. They came in and filed answers.

The Court: We didn't undertake to litigate the rights of these two companies as against each other, but I can't remember how far the stipulation went, whether they weren't to be bound at all, or what.

Mr. Carr: I have your Honor's decree here.

The Court: The reservation in behalf of the Locustwood Cemetery Association and the Locustwood Cemetery, Inc., does not seem to go any further than to reserve any rights they have in the lands and premises above described emanating under the deed dated December 31, 1907, made between Spear and the Fernwood Cemetery Association, recorded in book 323 of deed, page 610, between Locustwood (formerly Fernwood) Cemetery Association and Locustwood Cemetery, Inc.

Mr. Carr: I think above it, if the Court please, it reserves generally all the rights said to be founded upon this particular instrument.

The Court: Yes, all the rights of the defendants, if any, in the land and premises described, which rights are all said to exist by virtue of the terms of the following, to wit: the deed and agreement between the two cemetery companies.

Mr. Carr: Which are said to exist by virtue of the deed and agreement.

The Court: It would, perhaps, if it wasn't qualified.

Mr. Carr: Which are said or claimed to be founded upon so and so.

The Court: Which rights are all said to exist by virtue of the terms of the following, to wit.

Mr. Tyler: There is no claim in the pleadings, or elsewhere, their rights arose superior to the Equitable Estates Corporation, or rights independent of that.

The Court: I am inclined to think that decree does not reserve anything but rights emanating under the deed December 31st, between Spear and the Fernwood Cemetery Association, and the agreement between the two cemetery Associations.

Mr. Carr: If the Court please, as I recall the decree there is no affirmative adjudication against the two defendants who I now represent, and there is a reservation there.

The Court: No, I don't think there is. It simply sets aside those deeds, the agreement, and other documents in favor of Mrs. Aleck.

Mr. Tyler: The decree does set aside the assignment to the Equitable Estates Corporation?

The Court: Yes.

Mr. Carr: Our theory is we bought from the Equitable Estates at a time when they appeared to have the title and when we believed that they did have the title.

The Court: Did you acquire the interest after

this suit was brought and while you were a defendant in this suit?

Mr. Carr: No, sir, I don't think so.

The Court: Mr. Tyler says so.

Mr. Tyler: Yes. It is possible that as soon as we learned that they claimed any interest they were made defendants in an amended bill. I can fish it out of the pleadings in that suit. I don't think they were in the original suit.

Mr. Carr: I don't see how we could have been, because our instrument was not of record.

The Court: I ought to go if nothing more can be accomplished. If you were defendants at the time you acquired your interest I can't see how it is possible you can have a right to be heard now.

Mr. Carr: I don't think we were. I wasn't in the case that early and we will have to check it up. I don't want to make a statment without investigating.

The Court: That last clause, Mr. Carr, to which you called my attention, if carefully read, limits your reservation to those two claims, it seems to me.

Mr. Carr: I hadn't thought so, if the Court please.

The Court: It says all your rights emanating from ——

Mr. Carr: Claimed to be based on so and so.

The Court: Based upon the following, and then it gives those two.

Mr. Carr: May I look at it again? It is further decreed that anything herein stated or adjudged shall in no way fix, set or determine the rights of the defendants, Locustwood Cemetery Association and the Locustwood Cemetery, Inc., if any, in the lands and premises above described, which rights are all said to exist by virtue of the terms of the following. I don't think that is a definite adjudication of that fact. I think no one wanted to take the responsibility.

The Court: We will have to finish this some other time. Find out in the meantime whether or not you were made defendants in that suit prior to the time you acquired this title.

Mr. Carr: I will be glad to. Your Honor understands I wasn't familiar with the other suit?

The Court: Yes. I don't know what can be done with reference to this suit. I can't hear you tomorrow, or Friday.

(At this point the case was adjourned until Friday, March 18th, and tentatively adjourned until March 15th, if agreeable to counsel.)

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
LOCUSTWOOD LAND COMPANY,
Complainant,
and
LOCUSTWOOD CEMETERY ASSN.,

On Bill, etc.

LEAMING, V. C.

June 15, 1927.
June 16, 1927.
June 17, 1927.
July 6, 1927.

APPEARANCES:
D. T. STACKHOUSE, ESQ., HARVEY F. CARR, ESQ., for Locustwood Cemetery, Inc.
JOSEPH BECK TYLER, ESQ., for Helen C. Aleck.
V. CLAUDE PALMER, ESQ., for Charles C. Spear.

LEWIS STARR, ESQ., sworn.

By Mr. Carr:

Q. Judge Starr, you are an attorney and counsellor-at-law of the State of New Jersey, aren't you?

A. I am.

Q. Did you represent any party in the suit of Helen C. Douglas, now Aleck, against Charles Cooper Spear and the Equitable Estates Corporation?

A. I did.

Q. What parties did you represent?

A. I filed an answer for the Locustwood Cemetery, Inc.

Q. Have you your office copy of the answer which you prepared?

A. I have. I have two carbon copies, the other copy, as I recall, was sent to Mr. Koehler, who was the solicitor of the complainant.

Q. Will you kindly refer to your carbon copy, second defense, answer of Locustwood Cemetery, Inc., and I call your attention to the following paragraph. "Second defense. On the 23rd of July, 1923, the Locustwood Cemetery Association entered into a contract with this defendant by which the latter was constituted its selling agent for the sale of cemetery lots in the said tract of 13 1/3 acres as well as additional 10 acre tracts which might be acquired in accordance with the contract with the said Charles Cooper Spear." I ask you from what source you obtained the information as to the date of the contract, to wit, the 23rd day of July, 1923?

A. The answer was dictated by me in the presence of Mr. Darcy, who I understood then repre-

sented the answering defendant, on the 19th day of March, 1924, and the information, with the exception of the date of the agreement, was obtained from him. I remember that when the answer was dictated he did not have the date of that agreement.

Q. Did he have the agreement itself?

A. No, I never saw that agreement until considerably later, and my recollection is that the paper was dictated and written with the date blank and subsequently to the time it was dictated and typewritten I obtained the date from Mr. Rose and it was inserted from information obtained from Mr. Rose and mailed to the clerk with the blank supplied and a carbon sent to Mr. Koehler.

The Court: At that time Mr. Rose was representing whom in the litigation?

The Witness: I think he was representing Mr. Spear. Originally I was brought into the case by Mr. Rose; Mr. Rose and Mr. Darcy came down to the office and requested me to assist in the trial of the case and subsequently he advised me that I was not to assist him in any way, that Mr. Spear objected to having the two corporations, The Locustwood Cemetery Association, and The Locustwood Cemetery, Inc., linked up in any way in the litigation, and the reason why I obtained the date from Mr. Rose was because I understood he was friendly at that time to Mr. Darcy, representing The Locustwood Cemetery, Inc., because he and Mr. Darcy came to the office to see me originally and I understood Mr. Rose was representing Mr. Spear at that time.

Q. Judge Starr, did you ever obtain a copy of the so-called agreement of July 23, 1923?

A. I did.

Q. When did you obtain it?

A. It came to me with a letter from Mr. Rose dated May 11, 1925, which was a year after I filed the answer.

Q. By the printed record it appears that the taking of testimony before His Honor, Vice Chancellor Leaming, was had on February 5, 6, 9, 11, 1925, was it after the taking of testimony had been concluded?

A. Oh yes.

The Court: Wasn't that printed as an exhibit in the other case?

Mr. Carr: No, sir.

The Court: Was it filed as an exhibit, do you know?

Mr. Carr: No, it does not appear here at all.

Q. What did you say the date was?

A. I have a letter here from Mr. Rose, dated May 11, addressed to me, May 11, 1925. "Enclosed herewith please find copy of agreement between The Locustwood Cemetery Association and The Locustwood Cemetery, Inc."

Q. Have you ever seen the original of that agreement, Judge Starr?

A. No, sir.

Q. So far as you knew did Mr. Darcy ever have the original of it?

A. He never had it in my office and I never saw him with a copy of it.

Mr. Carr: If the Court please, I would like to of-

fer in evidence the carbon copy of the answer prepared by Judge Starr so far as the second defense is concerned and call attention to the fact that the words "twenty-three" and the word "July" ——

The Court: Is that the copy forwarded to Judge Starr by Mr. Rose?

Mr. Carr: No, sir, this is Judge Starr's office copy of the pleading he prepared. My only purpose in doing that is to call attention ——

The Court: The original pleading is among the files, isn't it?

The Witness: I examined the file this morning; the original answer is on file.

The Court: Just call my attention to that paragraph.

Mr. Carr: Attention is called to that paragraph and the fact that the date is below the line of typewriting indicating, apparently, a second typewriting operation.

The Court: Do you know how it appears in the original?

Mr. Carr: This is the carbon copy.

The Court: That might have been typed over. Did you see the original?

The Witness: Yes, sir.

The Court: Wouldn't it be safer to have Judge Starr say what he saw?

The Witness: The original file is here and I examined it this morning to verify the accuracy of my carbon copy and it shows there had been a supplying of the date.

Mr. Carr: It shows the same date but the difference in alignment is not as great here as in the carbon copy.

The Court: In the original the date is typed in?

Mr. Carr: Yes, the 23rd of July.

The Court: Apparently typed into a blank?

Mr. Palmer: That is a matter of inference; from inspection I wouldn't say it apparently is.

The Court: I thought maybe it was obvious.

Mr. Carr: It isn't as obvious as in the carbon copy, the difference in alignment is much more marked in the carbon copy.

The Court: It may be or may not be. The only thing indicating that it is put in later is the circumstance that the words "twenty-third day of July" following "the" contain a considerable space between the "twenty" and the word "the" and after the word "July" the balance of what might have been a blank is filled up with dashes.

Q. At any rate, Judge Starr, is your recollection

clear on the question as to whether as originally drafted the date was in blank?

A. That is my recollection of this form. If I may be permitted to state I have a memorandum here that I endeavored to get in touch with Mr. Rose by telephone the same day that that answer was dictated and I at first failed to find him, failed to get him on the phone, and my recollection is I subsequently did reach him and he supplied the date which was put in the paper after it was dictated and typed.

Cross-examination.

By Mr. Palmer:

Q. The information you got from Mr. Rose with reference to the date of this agreement was obtained how soon after you dictated the answer?

A. Probably the same day. I have a memorandum which I dictated to my stenographer, in accordance with the usual custom, as to what happened in this case, and on the same day Mr. Darcy was in the office I dictated the answer and it shows an effort to get in touch with Mr. Rose.

Q. And it was obtained from Mr. Rose and the date inserted before the answer was filed?

A. Yes.

By Mr. Tyler:

Q. Judge, at the time the final decree was entered in September, decree bearing date September 14, 1925, you had had a copy of this agreement, hadn't you?

A. I had a copy in March, 1925.

Q. What year?

A. 1925.

Q. You had never had possession of or seen any other agreement bearing date October 23, 1923?

A. I don't recall of any agreement of that date.

Q. Except this one?

A. This one.

Q. And at the time this decree was entered neither Mr. Darcy nor any one else had called your attention to any other agreement, had they?

A. No, sir.

Q. Now, at the time you dictated your answer referring to the agreement of July 23rd, you say Mr. Spear, represented by Mr. Rose, and Mr. Darcy were friendly?

A. I understood so. I never saw Mr. Spear but I gathered from what Mr. Rose told me that that was so; at least I understood I could get the information voluntarily from Mr. Rose.

Q. And you got that from Mr. Darcy?

A. Yes, sir.

Q. You did get the information in that way?

A. Yes.

Q. Do you know how long that friendly relationship continued or when it ceased to exist?

A. I do not.

Q. About when was it you were told that the interest of these associations and Mr. Rose would cease and they would rather have separate representation?

A. That was before I filed the answer.

Q. So you knew at the time you filed the answer that their interests were conflicting?

A. All I knew was this, if you will permit me. It was on the 28th of February that Mr. Rose and Mr. Darcy were in my office ——

Q. 1924?

A. 1924, and I understood at that time that they were all friendly and I was to represent The Locustwood Cemetery, Inc., and participate in some way in the trial. On the 1st of March I received a letter from Mr. Rose—I will produce it if you want it.

The Court: Read it, please.

The Witness: Letter dated "March 1st, 1924," addressed to "Hon. Lewis Starr, Camden, N. J. Dear Judge: Charles C. Spear called to see me yesterday and said he is not satisfied to have his company, Locustwood Cemetery Association linked up with the Locustwood Cemetery, Inc., Mr. Darcy's company, the Douglass litigation. Both companies are separate corporations. The Cemetery Association is the holding company, and the other company holds a sales agency contract. I was not aware of Mr. Spear's attitude when I called with Mr. Darcy. Yours very truly, David R. Rose."

(Said letter offered in evidence and marked Exhibit T1, 6-16-27.)

Q. You saw a copy of this final decree before it was signed by the Vice Chancellor?

A. Yes, you sent me a copy of the final decree.

The Court: Has the original of this agreement been found yet, or produced?

Mr. Palmer: My answer is the same that I gave in my letter to Mr. Stackhouse. I presume those facts have been stated to Your Honor.

The Court: They were presented to me on motion here last Monday with something of an application, although not a formal one, to institute an action for contempt. I am familiar with the contents of the letter you sent to Mr. Stackhouse.

Mr. Palmer: There is nothing I can add to that statement. I talked to Dr. Spear on the telephone yesterday and at that time he said he could not locate the agreement. Beyond that I have no information whatsoever.

The Court: Have you the copy which Mr. Rose supplied you?

The Witness: Yes, sir.

The Court: I think under the circumstances that I will take the responsibility of ordering that filed as an exhibit at least tentatively until I see whether the original is found and what the future may develop touching this. There may be a further investigation touching the original and I see no reason why this should not be filed under the circumstances as an exhibit. I understand the charge is made that the date is March instead of October and that the one that bears the October date is a sheet simply containing the signatures, isn't that the claim, Mr. Carr?

Mr. Carr: No, I don't think that is quite it, if the Court please. The paper presented by Dr. Spear at our previous hearing bore date July 23rd, and it consisted of three sheets of paper.

The Court: That was presented in this case at an earlier hearing?

Mr. Carr: And it bore on its last page simply the words "In Witness Whereof" and the signatures, without any formal writing on the contract other than that.

The Court: The last page was simply the attestation page?

Mr. Carr: Yes, and it was at least suspected there had been a substitution, that the last page was never originally attached to the other two pages of the agreement, that was the suspicion, and with that suspicion in mind the application was made to have the original examined by an expert.

The Court: In your pleadings do you assert the date of March?

Mr. Carr: No, we are relying upon the last agreement of October 23rd, which differs very materially in its terms than the so-called agreement of July 23rd.

The Court: It differs in its term?

Mr. Carr: Yes, a very substantial difference, and we are relying upon the October 23rd agreement.

The Court: Since at this stage this March 23rd agreement seems to be inaccessible ——

Mr. Carr: July 23rd.

The Court: I think this ought to be filed for whatever use can be made of it in the future.

Mr. Carr: You said, "March 23rd" and it is

July 23rd. This copy bears date July 23rd, 1923, and the agreement under which we claim is October 23, 1923.

The Court: Let it be filed for such use as can be made of it in the future in the event the other agreement is not found.

Mr. Carr: If the Court please, we would like to reserve the right at any stage of this proceeding to move to suppress the agreement of July 23rd unless it is produced. We won't press that motion now.

The Court: This copy may be offered by the Court, if you like, so nobody will be bound by it and everybody can be deemed to have objected to it, if you want. There is no reason for so many documents getting lost, there seems to be a great mortality of agreements and I think there will be an investigation that will be very thorough if I can control matters.

Mr. Carr: Now, if the Court please, when this case was last before your Honor, your Honor asked the question as to exactly what we were relying on here ——

The Court: I wanted to see where I got that date of March instead of July, 1923. Go ahead.

Mr. Carr: In order to get our position on the record I want to make this statement. The Locustwood Cemetery, Inc., bases its claim upon an agreement of October 23, 1923, the terms of which will be testified to by a number of witnesses, and it bases

its claim not only upon the Spear-Fernwood agreement, that is the agreement of December 31, 1907, but also upon the agreement of October 23rd, the agreement with The Equitable Estates Corporation, which at that time had, so far as the records disclose, legal title to the 140 odd acres constituting the Cooper Homestead Farm, and the October 23rd agreement was an agreement to purchase the farm and the rights in the cemetery under the Spear-Fernwood Agreement for the sum of $100,000. I am just making this statement in order that our claim may be clear to Your Honor as we go along. I was called into this case at a late date and when Your Honor asked me a similar question I think perhaps my answer may have misled you, because my information was scant at that time and there were many facts and a long record to examine in a very short time.

Mr. Tyler: Did you say the agreement of October 23rd was made with The Equitable Estates Corporation?

Mr. Carr: Yes, sir, and also with Spear individually.

Mr. Tyler: Spear, individually?

Mr. Carr: Yes, sir.

Mr. Tyler: So it is not alleged to have been made with the same parties at all that the July 23rd agreement is made with?

The Court: Who was the one that lost this agreement?

Mr. Carr: The circumstances, Your Honor, are these. Dr. Spear was given a key to the office of the company in the Smith-Austermuhl Building, he had requested a key because he stated he had business in Camden and that he was compelled to bring his wife and little child here in an open car and that he did not want them to be sitting out in the cold and he asked Mr. Darcy and these gentlemen, who at that time were very friendly, if he might have a key to the office and he was given a key. At this time the office in Camden was very little used because the activity was at the cemetery. Sometime thereafter the file containing this agreement had disappeared and repeated requests were made on Dr. Spear to furnish a copy or to submit his duplicate original so that a copy could be made at the time. There were many such requests made but never was a copy or duplicate original ever obtained.

The Court: Is there no outstanding copy that is accessible now?

Mr. Carr: No, the agreement itself was typed by Dr. Spear, he had both the originals, one he retained and the second went into a desk in the company's office in Camden to which Spear had access, and in some unaccountable way it disappeared.

The Court: Did any other papers go with it?

Mr. Carr: I think a file disappeared, too, but at any rate the agreement disappeared. It was known to have been placed in a definite place in the desk in the company's office, it had disappeared and the officers of the company repeatedly called on Dr. Spear ——

The Court: Have you in this case given notice to produce the other original?

Mr. Carr: They denied its existence; the pleadings deny its existence. We served interrogatories in which they denied the existence of it so it seems useless to serve notice to produce, but if that be a formal request we will do so.

The Court: Did it in any way appear in the other case? Did that agreement become of importance in the other case, was it used at all?

Mr. Tyler: No, it was not.

Mr. Carr: Neither of these agreements.

Mr. Tyler: The answer filed by Judge Starr particularly referred to the agreement of July 23, 1923, and makes no reference to any other agreement. The alleged agreement of October 23, 1923, is not referred to and Judge Starr has testified it did not come to his attention at all in that proceeding, and I want to say further that Mr. Carr now states that the agreement of October 23, 1923, had as a party to it The Equitable Estates Corporation. Now, the agreement of July 23, 1923, has The Locustwood Cemetery Association and the Locustwood Cemetery, Inc., only as parties to it and I understand Mr. Carr to claim that the last page to the agreement of July 23rd was probably a substitution from the agreement of October 23rd, and if that were true the last page of substitution from the October 23rd agreement would bear the name of The Equitable Estates Corporation and it does not appear.

Mr. Carr: May I interrupt, because you are

stating what my claim is and I think I know what my claim is.

Mr. Tyler: I will be glad to hear it.

Mr. Carr: We don't say there ever was a July 23rd agreement, to our knowledge. What we suspect is this was taken from another document having no relation, perhaps, to this subject matter whatever. We don't say it was a July 23rd one, we don't limit it to that, we don't know. We don't think that is the case. We have some testimony on that, if the Court please.

The Court: Proceed with the proofs.

Mr. Carr: There are one or two questions Your Honor asked before and perhaps your Honor cares to make a note of these dates. Your Honor asked a question as to whether the contract of October 23rd was made before a lis pendens was filed. The situation of the record in the case your Honor tried before was this. An original subpoena issued—if your Honor cares to take a memorandum of these few dates ——

The Court: I have a notation the lis pendens was in May, 1922.

Mr. Carr: May 1, 1922, it was filed. This is what happened. There was an original subpoena issued on April 24, 1922, returned not served, then there was an order for publication on May 16, returnable July 17. The Locustwood Cemetery, Inc., was not originally made a defendant in this suit, they were brought in by an order to show cause, dated Feb-

ruary 11, 1924, and the service of that order to show cause was the first actual knowledge that they had of this controversy. The legal effect of that will be argued later.

The Court: It had better be that those dates are stipulated to after they are verified so there will be no necessity of having testimony. They are not a matter of dispute, are they? Let it stand as a stipulation unless it is subsequently questioned.

Mr. Tyler: The inferences Mr. Carr attempts to draw from those facts is not correct.

Mr. Carr: I am not drawing any inferences.

Mr. Tyler: They are claiming an agreement of purchase for $100,000 under an agreement dated October 23, 1923, with The Equitable Estates Corporation. Now, The Equitable Estates Corporation was a corporation and Spear controlled the corporation which held the title to this property and was a defendant in preceding suit. A lis pendens was filed and my thought is their claim can not rise any higher than The Equitable Estates claim.

Mr. Carr: My suggestion is that we defer argument on the legal effect of that until later.

The Court: Reserve your argument until the end; let's go ahead with the proofs.

MAX DARCY, sworn.

By Mr. Carr:

Q. Mr. Darcy, where do you live?

A. I live in West Collingswood, 619 Eldridge Avenue.

Q. What is your business?

A. Why, I am Vice President and General Manager of The Locustwood Cemetery, Inc., and of The Locustwood Green Houses, which is an affiliated corporation.

Q. Mr. Darcy, do you know Dr. Spear?

A. Yes, sir.

Q. How long have you known him?

A. I have known him since approximately 1912.

Q. Where did you first meet him?

A. I first met him in Blue Fields, Nicaragua.

Q. Did Dr. Spear approach you in New York with reference to becoming interested in The Locustwood Cemetery?

A. Dr. Spear approached me in New York with reference to engaging my services in finding a purchaser for The Locustwood Cemetery and the adjoining farm.

Q. Is that the farm which we have been referring to as The Cooper Homestead Farm?

A. Yes.

Q. When did he first approach you with reference to that subject matter?

A. I should say it was about 1921.

Q. 1921?

A. Yes, sir.

Q. What did he say or do with reference to the sale of the cemetery, the rights of the cemetery and the adjoining farm?

A. Why, he told me that himself and his mother had incorporated a company in which was vested the title to these properties and that they wanted to sell them to someone very badly and he stated they would give me a very attractive commission if I could do that and he gave me an option to that effect in writing.

Q. Have you that with you?

A. Yes, sir, there is the option and letter stating the commission.

Mr. Carr: Witness produces a letter dated October 26, 1921, upon the letterhead of The Equitable Estates Corporation.

Mr. Tyler: I object to its reading.

Mr. Carr: I am simply identifying it so far, Mr. Tyler. It is signed by The Equitable Estates Corporation by Mercedes Spear, secretary.

Q. Is that the letter you received from The Equitable Estates Corporation?

A. Yes, sir.

Q. To which you have just referred?

A. Yes, sir.

Mr. Carr: The letter is offered. Do you wish to see it?

Mr. Tyler: Yes, I object to it.

Q. While you are looking at that. Did you say there was a letter accompanying the so-called option letter?

A. Yes, sir.

Q. And is it the letter I now hold in my hand—is that date October 26 or 20th?

A. Probably the 26th.

Q. Dated October 26, 1921, addressed to Mr. Max Darcy, and signed The Equitable Estates Corporation, Mercedes Spear, secretary, and I ask whether that is the letter you referred to?

A. Yes, sir.

Mr. Carr: That letter is likewise offered.

Mr. Tyler: May I see that?

Mr. Carr: Surely.

Mr. Tyler: May I ask the purpose of this offer to know whether it has any relevancy or not?

Mr. Carr: Yes. It is proposed to show, if the Court please, that this portion of the cemetery with adjoining land altogether aggregating about 80 acres was offered for a price of $60,000 with a commission out of that $60,000, a commission consisting of a second mortgage of $18,000 and some cash was to go to Mr. Darcy. We are starting out at the beginning here and it is intended to show, first, the history of the negotiations down to the October 23rd agreement; secondly, also showing that they dealt with this on the basis of $60,000 for 80 acres, $100,000 for all. The July 23rd agreement, if it is figured out, will show that the purchase price would have been several million dollars, it will show that on The Locustwood Cemetery itself, the thirteen acres that the price was thirteen or fourteen thousand dollars an acre. This case involves more or less charges of fraud, it is, in fact, particularly a

fraud in this case, and I think it will be helpful to your Honor to have all these facts before you.

Mr. Tyler: This is simply the preliminary negotiations leading up to a definite agreement in writing, is that true?

Mr. Carr: No, that is not quite true, this did not result in a concluded transaction.

Mr. Tyler: It is not claimed, is it, The Equitable Estates Corporation had any title to any of this property at the time these letters were written?

Mr. Carr: Yes.

Mr. Tyler: You are wrong, because you are not familiar with the title. I object to the offer of these letters on several grounds. In the first place it is not shown that The Equitable Estates Corporation had any interest in the property referred to at the time the letters were written, and there is nothing to show that the letters were authorized in the proper way by the Board of Directors of the corporation.

The Court: That second objection is enough, you need not add any more. I did not know you were objecting to the identification of the signature. If you desire that to be proven as an act of the corporation I can not receive it.

Mr. Tyler: I object on that ground.

The Court: That is sufficient ground.

Mr. Carr: I would like to have it marked for

identification because we propose to show it was acted upon.

The Court: I am inclined to receive it when it is properly identified. It ought to go in the files so in case of a review it won't have to come back.

(Said letters marked for identification C1 and C2, 6-15-27.)

Q. Following the receipt of the letters of October 26, did you do anything with reference to the matter and based upon the option the supposed option therein contained?

A. Yes, sir.

Q. What did you do?

A. I endeavored to find a purchaser for it and I worked on it for a considerable time until finally I came in contact with a firm which at that time was at #2 Rex Street, C. O. Davis and Company, they looked the matter over and decided they would take up the proposition. I had a preliminary discussion with them in New York and it was decided they should meet Dr. Spear in their office and discuss the terms of the purchase. Dr. Spear came and the terms were discussed and it was decided they should purchase the land for $100,000, including the cemetery and the Spear-Fernwood Agreement. This $100,000 was to be paid as follows: $5,000 within a stipulated time and the balance was to be paid at the rate of $200.00 a week, at the minimum rate of $200.00 a week, there being a penalty of $6,000 a year attached, that is, the purchaser to pay a penalty of $6,000 a year as long as the entire purchase price was not paid. The time for paying the entire purchase price extended over a period of twenty years.

Q. Are you speaking now of the arrangement with C. O. Davis?

A. Yes. This was accepted subsequently and members of the firm, including myself, came here to Camden and looked over the property and the agreement was entered into with C. O. Davis & Co., under that basis.

The Court: A written agreement, you mean?

The Witness: Yes, sir.

The Court: Has that appeared so far?

Mr. Carr: No.

Mr. Tyler: I object to the terms, conversation, etc., leading up to a written agreement and ask to have the testimony stricken out because the best evidence is the production of the agreement itself.

Mr. Carr: That would be so, if the Court please, if the agreement in question was before the Court for construction, but that is not so, and it is merely an incidental or preliminary matter.

The Court: I don't understand that this Davis agreement is involved here.

Mr. Carr: No, this is merely historical.

The Court: I think the testimony may stand, subject the objection, as to the history of what was done; of course, the terms of that agreement cannot be introduced in this matter.

Mr. Carr: I understand that.

Mr. Tyler: Will you fix the time, Mr. Carr?

Q. When did Mr. Davis come to Camden?
A. Probably about July 1st.
Q. 1923?
A. Yes, and began the financial campaign which was necessary to develop the cemetery.

The Court: Had a written agreement at that time been executed?

The Witness: They had an agreement, yes, sir.

The Court: What was the date of that agreement?

The Witness: Beg pardon?

The Court: I wonder if we can fix the date of that agreement while we are talking about it.

The Witness: It was some time in July, I can't say for sure, because I was very indefinitely interested in it.

Mr. Tyler: You mean July, 1923?

The Witness: Yes, sir. Davis & Company, asked me, told me, "You are the go-between in this transaction and we want you to come down there with us, that is the only condition under which we will take it." In view of that fact I came with them, I came here on July 16, I believe, and they started, of course, forming a corporation and interesting a number of people in the project and I was instrumental in interesting some of them, too. Subse-

quently, I don't know exactly for what reason, Davis & Company became very much disgusted with the proposition and they decided to leave. Naturally, there was nothing for me to do but leave also and Dr. Spear came to me and said, "Darcy," he said, "Why don't you stay and go on with the business, and you can get Mr. Cawthorne"—Mr. Cawthorne was with C. O. Davis & Company and Mr. Spear said, "Why don't you two stay here and get Mr. Burrell as President of the company and between the three of you continue with the development; I will give you a new contract to work on." So I spoke to Mr. Cawthorne and he was agreeable, and we spoke to Mr. Burrell and he decided it was all right and Spear drew up a contract which is the contract of July 23, 1923—I mean, October 23, 1923, and brought it to our office where it was subscribed to by himself as president of The Equitable Estates Corporation and his wife as secretary and Mr. Cawthorne and myself subscribed to it for the company.

Q. Which company?
A. The Locustwood Cemetery, Inc.

The Court: Was that the same company that had been incorporated at the instance of Davis?

The Witness: Yes, sir.

Q. Now, you say that agreement was signed on behalf of The Locustwood Cemetery, Inc., and also on behalf of The Equitable Estates Corporation?
A. Yes, sir.
Q. And was or was not it signed individually by Dr. Spear and his wife?
A. Also.

Q. Now, where was that instrument delivered?

A. That was delivered in the Smith-Austermuhl Building, Room 210.

Q. Camden?

A. Camden, yes, sir.

Q. Who was present at the time of delivery?

A. Mr. Cawthorne and myself.

Q. You said Mr. Cawthorne and yourself?

A. Yes, sir.

Q. And Dr. Spear also?

A. Dr. Spear and his wife.

Q. Now, after it was signed and delivered what was then done with the agreement or the duplicate of the agreement.

A. Why, one copy of the agreement Spear carried away with him.

Q. By copy you mean a duplicate original?

A. Yes, and the other duplicate original was left with us and we put it in our file which at that time was a desk which we had in the office.

By the Court:

Q. Just a moment if you don't mind, while I have it in mind. In the Davis contract, when that was executed, were you to be Vice President of The Locustwood Cemetery?

A. I was to be temporarily, as one of the charter organizers, that is all.

Q. Who was to be secretary at that time?

A. Mr. Powell, I believe.

Q. You have no copy of that agreement—have you a copy of the Davis agreement?

A. No, sir.

Q. Do you know where there is any?

A. No, sir, I do not.

Q. Would you recognize it if you saw it?

A. Yes, sir.

Q. I would like to ask you whether you can recognize this.

A. Well, your Honor ——

Q. Never mind the signatures.

A. This is the July 23rd agreement, I read that; I read that when it was exhibited and this is a copy of it.

Q. This is supposed to be a copy of the agreement of July 23, and I wanted to see whether it was the agreement that was made with the Davis Company.

A. No, sir.

Q. It is not?

A. No, sir.

Q. The agreement in behalf of Davis was made with the Fernwood Cemetery?

A. No, sir.

Q. Wasn't it?

A. No, sir.

Q. I thought Davis incorporated the company to take over the title.

A. Yes but the title was vested in The Equitable Estates Corporation.

Q. Then you don't recognize that as the agreement under which Davis was to operate?

A. No, sir.

The Court: The instrument handed to the witness was Exhibit "Court 1" produced by Judge Starr.

By Mr. Carr:

Q. Your office was where?

A. 210 Smith-Austermuhl Building, 5th & Market Street.

Q. Who had access to that office?

A. Myself and Mr. Cawthorne.

The Court: You are referring now to the original of the October agreement?

Mr. Carr: No, we are talking about who had access to the office, that was the question.

The Court: I say, you are referring now to the October one?

Mr. Carr: Yes, sir.

The Witness: Myself, Mr. Cawthorne, and Dr. Spear.

Q. Under what arrangement did Dr. Spear have access to the office and how did he have such access?

A. At that time the relations between Dr. Spear and ourselves were friendly and he lived in Haines-port and he had quite a good deal of business to transact in Camden and he had an open car and it was winter and his wife is a native of a southern climate and was not able to stand the weather very much, and he had a young child, and he came to us and asked us if we wouldn't as a favor allow him to leave his wife and child in the office while he transacted his business so they would not be exposed, and Mr. Cawthorne and I saw no inconvenience to that and I gave him a key because the office was alone all day, our business obliged us to be out all the time, that is how he became possessed of the key.

Q. When did you next see the agreement after it had been placed in the drawer?

A. I remember showing the agreement to Mr. Burrell the next day.

Q. Did you show it to anyone else?

A. Yes, I did, I showed it to Mr. T. M. Solomon.

Q. Anyone else?

A. Mr. Paul V. Allen saw it although I did not show it to him, he saw it in the office.

Q. Did that agreement disappear?

A. Yes, sir.

Q. When did you first know that it had disappeared?

A. I should say about the month of December.

Q. 1923?

A. 1923.

Q. What brought it to your attention that it had disappeared?

A. We had some transactions with some Bridgeton people by which they were to become interested in the cemetery and before we could close it it was necessary to show them this agreement and we went to the desk to find it and it was gone.

Q. Then what did you do with reference to obtaining either a copy or the duplicate original in the possession of Dr. Spear?

A. Why, we went to Dr. Spear, I believe the first time I went and stated to him that the copy had disappeared and we wanted him to issue a new one, give us a copy of the one he had, and he stated that he would, that we could go right on with the negotiations and a copy would be forthcoming.

Q. When was this in point of time?

A. December, 1923. Well, we kept going after this agreement and he kept putting us off in one way and another and finally he said to us this, he

said, "I will tell you, when I moved over from Philadelphia all my papers were mixed up and this agreement is misplaced and I can't find it but as soon as I find it I will give you a copy." The negotiation with these Bridgeton people fell through on that account.

Q. Who were they?

A. One by the name of Ditmore, a contractor by the name of Riley, Riley Nixon, I believe is the name, and Mr. Paul V. Allen's brother was also interested in the transaction, and that is all I can remember at the present time.

Q. Did you continue your efforts to obtain a copy or see the other duplicate original in Spear's possession?

A. Continually.

Q. How often did you make an effort to get another original or another copy?

A. Well, I can't state the number of times but I don't believe it was any less than thirty or thirty-five times; every time there was an opportunity or I had the time or the fact that we didn't have this agreement weighed on our mind we would go out there.

Q. Where?

A. To his place in Hainesport.

Q. Did anyone go with you?

A. Sometimes I went with Mr. Cawthorne, other times I went with Mr. Allen, and we even went the three of us together.

Q. What reason did he give you for not giving you a copy?

A. The only reason he ever gave us was that it was misplaced and at his opportunity he would give us a new copy.

Q. As a matter of fact had he moved from Phila-

delphia to Hainesport before the date of that agreement?

A. No, sir. From Philadelphia before the date of that agreement? Yes, he had moved to Hainesport before the date of that agreement.

Q. Did he ever attempt to force you gentlemen to sign another agreement different in its character from the October 23rd agreement?

A. Yes, sir.

Q. State to the Court what occurred and when it occurred and who was present.

A. One night in 1924, the early part of 1924, myself, Mr. Cawthorne and Mr. Allen went out to Hainesport for the purpose of deciding this matter one way or the other, we went to see Dr. Spear and were very insistent. He said, "All right, I will sit down and write an agreement." He had a little typewriter there, it was a Corona, I believe, and he sat down and wrote this agreement. We stayed there, and after he got through he handed it to us and he said, "This is the agreement you have got to sign." We read it and told him we would not sign it.

Q. Did it purport to be a copy of the agreement you had signed?

A. No, it was something totally different. It was something that would practically—well, it was ridiculous in its terms.

Q. And he told you what?

A. That that was the agreement we had to sign.

Q. What was your reply?

A. We told him we would not, that that was not the agreement we were working under, that wasn't the agreement under which we had raised the capital to develop the property and we would not sign it, and he even tried to make us sign it by force.

Q. How?

A. He was sitting at his desk and he had one of the drawers open and he had a revolver and he drew the revolver and when that took place Mr. Allen became very much incensed and I saw there was going to be a conflict and I did all I could to prevent Mr. Allen from taking drastic action, and we went away from there, the three of us.

Q. Did you ever obtain a copy or the original of the agreement of October 23rd?

A. The first one, that is all.

Q. And after its disappearance were you ever able to obtain from Dr. Spear a copy or an original of it?

A. No, sir.

The Court: Did you say the Equitable Estates Corporation executed that also?

The Witness: Yes, sir.

Q. What was Spear in the Equitable Estates Corporation?

A. President and treasurer.

Q. Had you dealt with anybody else for the Equitable Estates Corporation except Dr. Spear?

A. No, sir.

Q. He had acted for them in the matter all the way through?

A. Yes, sir.

The Court: Let me inquire further. What parties signed that contract?

The Witness: Why, Carles Cooper Spear, and Mercedes Spear; Charles Cooper Spear was Presi-

dent and Treasurer of the Equitable Estates Corporation.

The Court: You mean they signed it individually?

The Witness: They signed as officers of the company.

The Court: Which company?

The Witness: Of the Equitable Estates Corporation and individually.

The Court: Who signed it for the Locustwood Company?

The Witness: The Locustwood Cemetery Incorporated?

The Court: Yes.

The Witness: Mr. Cawthorne and myself; Mr. Cawthorne was the president and I was the vice president.

Q. Did you at any time in the year 1924, 1925, or 1926 obtain a copy or an original of the agreement of October 23rd?

A. No, sir.

Q. Did you until a few days prior to the date of this hearing in the original hearing—did you up to that time ever see a copy or an original of any agreement relating to this subject matter produced by Dr. Spear, whether dated July 23rd, October 23rd, or any other date?

A. No, sir.

Q. What was the first that you had seen of any other agreement with relation to the sale of this property?

A. The first agreement that we saw was the one that was produced by Mr. Rose in your office, I think it was last February.

Q. Immediately preceding the trial?

A. Yes, sir, and that agreement appears to be between the Locustwood Cemetery Association and Locustwood Cemetery, Inc.

Q. And was that the so-called agreement of July 23rd?

A. That is what they said.

Q. The first you ever saw then of any agreement, that is, after the disappearance of your duplicate original, the first that was ever produced by Dr. Spear was the copy of the so-called agreement of July 23rd, produced at my office by David Rose at a date in February immediately before the hearing.

A. Yes, sir.

The Court: You mean a copy or the original?

The Witness: The original was there, too, the supposed original. Do you remember, we asked for an examination?

Q. Then the first you saw of any signed copy or of any copy of an original relating to this subject matter, after the disappearance of your copy, this signed original in 1923, was the production in my office by David Rose of the supposed July 23rd agreement sometime in February of this year, is that true?

A. Yes, sir.

Q. Have you ever seen a copy of the July 23rd

agreement which has been produced from the custody of Judge Starr?

A. No, sir, but you showed it to me later.

Q. When do you mean later?

A. Well, at the time I was in your office and that we saw this supposed original then you showed me a copy that Judge Starr had given you.

Q. That was after the production in my office of the supposed original in February, 1927?

A. Yes, sir.

Q. Which I produced as coming from Judge Starr's office, is that right?

A. Yes, sir.

The Court: In the original that was shown you in Mr. Carr's office did you recognize your own signature?

The Witness: It looked like my signature, yes, sir.

The Court: Did you know any of the other signatures well enough to identify them?

The Witness: Yes, sir.

The Court: Do you know whether you ever signed such an agreement?

The Witness: I never signed such an agreement.

Q. Now, will you tell the Court what the provisions of the agreement of October 23rd were?

Mr. Tyler: I object to that as to my client, Helen C. Aleck. I can't see what relevancy it has.

The Court: I don't know what the differences are between these two agreements of July and October, nor do I know the contents of either of them yet, or the contents that is claimed for either of them, or the fact which is claimed for either of them. I am very much in the position of a young man who is being educated gradually and incidentally getting an insight into the features of this case, but so far only a few. This was the case, I think, set for a Monday afternoon after motions.

Mr. Tyler: Hardly that. The Locustwood Land Company, Complainant, is foreclosing a certificate of indebtedness, now, just what the quarrel is between these two associations or how this agreement is relevant I don't know. I don't think it is relevant.

The Court: I will let them spread upon the record, subject to your objection, the contents, or alleged contents, of this alleged agreement. Go ahead.

The Witness: This agreement provided for the sale of the land adjoining the Locustwood Cemetery ——

Mr. Tyler: And the further objection, if the Court please, that it has not been proven that the original of this agreement was authorized by the several corporations alleged to have signed it; there is no evidence of the action taken by the corporation.

The Court: There were some minutes produced the other day, what were they?

Mr. Carr: If the Court please, we can only go

one step at a time, and we propose to show absolute ratification.

The Court: You will have to establish the execution of the agreement, authority of execution, or ratification.

The Witness: This agreement provided for the purchase of the Cooper Homestead Farm and the land occupied by the Locustwood Cemetery and also all rights held under an agreement called the Spear-Fernwood Agreement for the sum of $100,000, the money paid by C. O. Davis to be accepted as a first payment and the balance to be paid ——

The Court: Money that had been paid or was to be paid?

The Witness: Had been paid. I don't know the figures, but the balance was to be paid at the rate of $200.00 a week, that is, at a minimum of $200.00 a week, the Locustwood Cemetery, Inc., to have twenty years in which to make the entire payment and to be taxed $6,000.00 a year for every year they failed to make this entire payment with the exception of the first year, that is, the first year the company was not to be taxed. The cemetery was to be delivered to Locustwood Cemetery, Inc., at once for development and sale of lots and the balance of the land was to be delivered on demand as paid for.

The Court: At so much an acre?

The Witness: At a pro rata price per acre, that is, $100,000 divided by 157 acres, which was the area of all the land purchased.

The Court: That is substantially the same as had been in the Davis Agreement, wasn't it?

The Witness: Yes, sir.

Q. Now, you say taxed, what do you mean by the word taxed, Mr. Darcy?

A. You could hardly call it interest, because if the amount of money was decreased by one-half you still had to pay $6,000.

Q. Each year?

A. Yes, sir.

Q. Until the full principal was paid?

A. Yes, sir. This full principal, of course, could be paid at any time.

Q. Now, as you would pay $200.00 a week, over ten thousand dollars a year, what disposition was to be made of the decrease between the $6,000.00 and

---

A. It was to be applied to the principal and land delivered for.

Q. When the agreement of October 23, 1923, was entered into did you have any notice or knowledge of the claim of Mrs. Douglas or Mrs. Aleck that she had some claim or interest in these lands other than represented by the legal title?

A. No, sir.

Q. When was the first that you heard of the dispute between Mrs. Aleck and Charles C. Spear?

A. When a notice was served on us by this Court to appear and show cause why we should not be enjoined from selling land outside of the cemetery, that was some time in 1924, I should think about May.

Q. I show you a copy, carbon copy, of an order to show cause issued out of the New Jersey Court

of Chancery in a cause entitled Helen C. Douglas, now Helen C. Aleck, Complainant, and Charles Cooper Spear, et als, defendant, and bearing date the 11th day of February, 1924, returnable on the 18th day of February, 1924.

A. That is it.

Q. Was the service of this order to show cause the first notice you had in this matter?

A. Yes, sir.

Q. Now, after the making of the October 23rd agreement what, if anything, did the Locustwood Cemetery, Inc., do under that agreement?

A. The Locustwood Cemetery, Inc., immediately proceeded to sell lots and shares in the company, representing to the purchasers the conditions under which the company was operating and also started development of the cemetery and the adjoining property.

Q. To what extent did it sell stock to the public?

A. You mean to what amount?

Q. Yes, approximately.

A. I should say that before that notice was served upon us probably no less than $60,000.00 worth of stock was sold.

The Court: Cemetery lots?

The Witness: No, sir, stock in the Locustwood Cemetery, Inc.

Q. What was done in the way of physical changes or improvements to the cemetery property and the adjoining farm?

A. The land was cleared, roads were built, lawns were made, the place was landscaped, the fences were repaired, and old buildings were torn down and

the place was graded, and in the early part of 1924 the building of a cemetery building was started.

Q. Were there any signs placed upon the premises?

A. Yes, sir.

Q. Have you a picture of one of the signs?

A. Yes, sir.

Q. Will you produce it?

A. Yes.

Q. Where was this sign located?

A. Right in the center of the Cooper Homestead Farm, that is, the front end, off of what was the actual cemetery. The sign was up from September, 1923, to November, 1924, when it was taken down.

The Court: September?

The Witness: September, 1923.

The Court: That was before you had your contract?

A. Yes, sir, that sign was put up by C. O. Davis and when we got our contract we naturally kept that there.

Q. How large was this sign?

A. 8 by 16.

Mr. Carr: I offer the picture.

(Said picture offered in evidence and marked Exhibit C3.)

Q. How did it come to be removed?

A. Why, somebody chopped it down one night.

Q. It was not removed by the Locustwood Cemetery, Inc.?

A. What is that?
Q. It was not removed by your company?
A. No, sir.

The Court: When do you say it was chopped down?

The Witness: In November, 1924.

Q. How many men would you have working at a time on the improvements there?
A. 15 to 20.
Q. Did you have any mechanical appliances?
A. Yes, sir, tractors and stump pullers.
Q. While this work was going on would Mrs. Aleck come out there from time to time?
A. Yes, sir, very often.
Q. How often would she come out?
A. I would say no less than once a week and sometimes more.
Q. Did she ever make any comment about the work?
A. No.
Q. Ever make any objections to it?
A. No, sir.
Q. How much has been expanded, generally speaking, approximately, in the way of improvements by the Locustwood Cemetery, Inc.?
A. A very large amount of money, but I don't know the exact figures, but Mr. Cawthorne, the treasurer, knows that positively. I had very little to do with the books.
Q. Mr. Cawthorne is the financial man?
A. Yes, sir.
Q. Do you know how many stockholders there are in the Locustwood Cemetery, Inc.?

A. I don't know the exact number at all, but I imagine there are about 150, probably more.

Q. Did you call on Judge Starr with reference to the filing of an answer in the Aleck suit?

A. Yes, sir.

Q. Did you give him any data as to the date of the contract?

A. Yes, sir.

Q. What date did you give him?

A. October 23, 1923.

Q. Was the answer dictated in your presence?

A. No, sir.

Q. Did you have any copy of the agreement or the original agreement when you called on Judge Starr?

A. No, sir.

Q. Did you tell Judge Starr that fact?

A. Yes, sir.

Q. What did you say, if anything, in reference to obtaining a copy of the agreement?

A. I did not say anything at all. When I went into Judge Starr's office he told me he had the answer ready, I believe it was either a Saturday afternoon or a Friday afternoon and Judge Starr was on his way for a week-end vacation, it was a warm afternoon, and he had this paper all written up and he read it to me, we made some changes in it, and I remember distinctly the July 23rd, 1923, in this paper as the date of the agreement and I told him, "No, Judge, it is not July 23, it is October 23rd." Well, I don't remember exactly what the conversation was but I know Judge Starr said something to the effect he understood it was July 23, 1923, and I said, "No, October 23, 1923," and he said, "All right I will change it," and he took this paper and gave it to his stenographer and told her to copy it.

The Court: Which paper?

The Witness: This paper we had corrected. This answer which we had read over and made changes in it and he handed it to his stenographer and told her to copy it off and mail it to the Chancery Court, and that is the last I saw of the paper, but the paper we had corrected is not the one sent here.

The Court: I wonder if Counsel will find me that answer, I think while the witness is on that subject it had better be checked up.

Q. Regardless of the date of the instrument did you have any knowledge or any belief at that time that there were two instruments involved with different dates and relating to this same subject matter?

A. I don't think I had. I am just thinking, because that is a long time ago and you have got to establish what I knew then and what I know today.

Q. Well, at that time, from the information you had before you, had the dates any significance other than the interest of accuracy in describing the instrument?

A. That is all the interest it had with me.

Cross-examination.

By Mr. Palmer:

Q. Mr. Darcy, when the agreement was made on the 23rd day of October, 1923, you say that agreement called for the payment of $200.00 a week, that is, that was one of the terms, and the money that had been theretofore paid by the Davis Company was to be taken on account of that contract?

A. Yes, sir.

Q. Do you know how much had been paid by the Davis Company?

A. I don't know the exact figures.

Q. Whatever had been paid prior to October 23, 1923, was not paid by the Locustwood Cemetery, Inc., was it?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. It was not paid by your company?

A. It was paid.

Q. Prior to the making of your agreement?

A. Yes, sir.

Q. Why?

A. Because Davis and Company were the organizers of Locustwood Cemetery, Inc., and we took it over.

Q. Who signed the checks for the Locustwood Cemetery, Inc., prior to October 23, 1923?

A. Why, that is something I don't know.

Q. You don't know?

A. No. That is, I might make a statement but I wouldn't know whether it was correct or not.

Q. If you don't know that is all there is to it. Do you know when these payments by Locustwood Cemetery, Inc., were made?

A. The book will show that.

Q. You don't know?

A. I don't remember them, no; I know there were payments made.

Mr. Carr: We have a list of these payments and checks here and they were verified by Mr. Rose with the understanding they would save work at the trial. If you want we will give you the same opportunity of investigation.

Q. Your acquaintance with Dr. Spear you say began in Nicaragua?

A. Yes.

Q. When?

A. Approximately 1912.

Q. How long had you been back in this country when he approached you in reference to the cemetery property in regard to 1921?

A. I had been in New York a very few months, probably six months.

Q. Had you ever been in the real estate business before?

A. No, sir.

Q. And this was your first venture or connection with the sale of real estate when he suggested to you that you find a purchaser for the cemetery?

A. I had sold land but I was not necessarily a real estate man.

Q. You had never been in the business?

A. No.

Q. And he approached you and suggested that you find a purchaser for this Locustwood Cemetery?

A. Yes, sir.

Q. Had you ever seen the property?

A. I came down to see it.

Q. I mean prior to this.

A. No.

Q. You knew nothing about the locality whatsoever, you were not acquainted in this locality?

A. No, sir, I knew nothing about this part of the country at that time.

Q. And you knew nothing about it when you agreed to come down here with Davis & Company?

A. No.

Q. And you came down to look over the property?

A. Yes, sir.

Q. Other than that you knew nothing about this part of the country?

A. No.

Q. What I mean, it was a new field of operation for you?

A. Yes, sir.

Q. Now, you say there was a considerable difference between the terms of the option you had from the Equitable Estates Corporation and the agreement that was made with Davis?

A. Yes, sir.

Q. Who negotiated that agreement with Davis & Company?

A. I was the go-between, the agent.

Q. The agent for whom?

A. The Equitable Estates Corporation.

Q. The owner of the property?

A. Yes, sir.

Q. And the agreement you negotiated with the Davis Company called for considerable larger payments than your option had called for, didn't it?

A. Yes, sir.

Q. What was the reason for that?

A. Because Davis wanted to purchase the entire farm instead of the number of acres that were contained in the option.

Q. How many acres did your option cover?

A. My option, as far as I remember, covered around eighty acres, or something like that.

Q. That included the thirteen acres that was then included in the Locustwood Cemetery Association?

A. Yes, sir.

Q. And sixty-seven additional acres, was that your option?

A. I don't remember the exact figure, whether it is in the option or not.

Q. Have you that option?

A. Yes, sir.

Q. What does it call for?

A. Sixty-six and two-thirds acres besides the thirteen acres, that would be seventy-six acres altogether.

Q. Where was that sixty-six and two-thirds acres located with reference to the Cemetery Association land?

A. That 66 2/3 acres was directly adjoining.

Q. Which side?

A. I will have to refer to the option. "A tract of 66 2/3 acres of land adjoining the said tract of 13 1/3 acres and to be so measured that it shall form a rectangular extension of the said Locustwood Cemetery on its northerly side equal in width to the northerly boundary line of said tract of 13 1/3 acres extending towards the north along the westerly boundary line of the whole tract and adjoining land formerly of Nicholson and Wilsey, the distance required to give to the said rectangular tract the area aforesaid, 66 2/3 acres."

Q. A tract on the north side of the Cemetery Association land?

A. That is what that says.

Q. That is what you were to purchase, isn't it?

A. What say?

Q. That is the land on which you had an option?

A. Yes, sir, at that time.

Q. And when you made that contract with Davis it covered the whole farm, didn't it?

A. Yes, sir.

Q. The whole 140 acres?

A. Yes, sir.

Q. And also included land then under the control of the Locustwood Cemetery Association?

A. Yes, sir.

Q. Which totaled approximately 153 acres?

A. Yes, sir.

Q. At the time you went to see Judge Starr in reference to the answer filed in the other case ——

A. Yes, sir.

Q. This agreement of October 23, 1923, had been gone for some considerable time, hadn't it?

A. Yes, sir.

Q. You were still on friendly terms with the doctor at that time?

A. No, sir.

Q. When did that change?

A. They changed when he refused to give us a copy of the agreement.

Q. When did you lose the agreement, when did it disappear?

A. It disappeared, I should judge, around November or December, 1923.

Q. December, 1923?

A. Yes, sir.

Q. And up until some time in December, 1923, you had that agreement?

A. Presumably.

Q. That was the first you knew it had gone, at least?

A. Yes, sir.

Q. When was your interview with Judge Starr?

A. I would rather refer to something, because I can't give the date.

Q. I haven't any objection to your referring to anything which will give you the date.

The Court: The answer is filed March 20, 1924.

The Witness: I would say it was either March 17 or 18.

Q. 1924?
A. Yes, sir.
Q. And you told Judge Starr the date of the agreement was October 23, 1923?
A. What day?
Q. You told Judge Starr the date of the agreement was October 23, 1923?
A. Yes, sir.

The Court: And you told him also it was lost?

The Witness: Yes, sir, we did not have it.

Q. You told him that before the answer was filed in that case?
A. Yes, sir.
Q. In the course of the preparation of that answer?
A. Yes, sir.

By Mr. Tyler:

Q. Mr. Darcy, when was it you came back from Nicaragua?
A. I left Nicaragua in 1915. I went to New Orleans and from there I went to Columbia to make a report for a packing company. In 1917, the early part of 1917, I went to Cuba and while in Cuba I became interested ——
Q. I am not asking that.
A. You are asking me when I left Nicaragua, I have got to explain how I got to New York.
Q. I did not ask that.
A. Well, I left Nicaragua in 1915.
Q. Were you back there any time after that?
A. No, sir.
Q. When did you go to Nicaragua?

A. 1907.
Q. You were there ten years?
A. Eight years.
Q. And came back in 1915, was it, or 1917?
A. 1915.
Q. Where did you live prior to that?
A. Where did I live prior to living in Nicaragua?
Q. Yes, prior to that?
A. I was in Costa Rica.
Q. How long were you there?
A. I should judge about a year and a half.
Q. You lived in the United States before that?
A. Yes, sir.
Q. Where?

Mr. Carr: I don't know whether this is relevant or not, but it seems to me it is a waste of time.

The Court: I think it is competent.

The Witness: New Orleans and San Francisco.

Q. Where did you live just prior to going to Costa Rica?
A. I was in Venezuela.
Q. Where did you live last in the United States prior to going to Costa Rica?
A. New Orleans.
Q. How long had you been in New Orleans?
A. I lived in New Orleans several times and made trips away from there.
Q. The last time before you left for a southern country, how long did you live there the last time before leaving?
A. I should judge about six months.
Q. Now, have you always gone under the name of Darcy or under some other name?

A. I never had any other name.
Q. Any of the time?
A. No time.
Q. So that you and Dr. Spear were in Nicaragua together for how many years?
A. We were not there together, we met there.
Q. You were there in 1912?
A. Yes, sir.
Q. Was he there then?
A. Yes, sir.
Q. Were you both there in 1913?
A. Yes, sir.
Q. Were you both there in 1914?
A. I was there, I don't know whether he was there or not.
Q. Don't you know when he came back from Nicaragua?
A. I have no recollection; I know he came back from Nicaragua, but I don't know the date.
Q. After you came back from Nicaragua you say you saw him in New York?
A. Yes, sir.
Q. And he talked to you about the cemetery property?
A. Yes, sir, but that was much later.
Q. That was in 1921, you say?
A. Yes, sir.
Q. And he told you that he and his mother had incorporated a company and the title was vested in that company?
A. Yes, sir.
Q. Did he tell you the name of the company?
A. Yes, sir.
Q. What was it?
A. The Equitable Estates Corporation, and not only that ——
Q. Never mind, you have answered the question.

In 1921, then, you went to Collingswood and saw this property?

A. Yes, sir.

Q. Now, when did you go to Collingswood to live?

A. In 1924.

Q. 1923?

A. 1924.

Q. When was it you lived on Stiles Avenue in Collingswood?

A. 1924.

Q. When?

A. I can't say when, but my family moved here about March, 1924, I believe.

Q. Do you remember going to see Mrs. Aleck while you were in Collingswood in 1921 or 1922?

A. I saw Mrs. Aleck, yes.

Q. During that time?

A. Yes, sir.

Q. You used to go to her house?

A. I went to her house, yes, sir.

Q. You were there in November, 1921?

A. I don't know.

Q. But you were there in the fall of 1921?

A. I believe I made a visit there in that time.

Q. You were there several times, weren't you, in 1922?

A. I may have been there in 1922, also; I recollect probably I went there twice.

Q. Do you remember talking to her about the cemetery property?

A. Yes, sir.

Q. And at that time you were entirely friendly with Dr. Spear, weren't you?

A. Yes, sir.

Q. In fact, you went there to talk to her about the cemetery property, didn't you?

A. Yes, sir.

Q. Do you remember Mr. Aleck being there on some occasions, you saw him there, didn't you?

A. I believe I saw him once, yes.

Q. In fact, you had meals there on one occasion at least, didn't you?

A. Yes, I believe I had one meal there.

Q. Now, do you remember telling her you thought she was making a mistake about fighting her son about the title to this property?

A. No, sir.

Q. Do you remember telling her you thought it would be better to let her son have the property because it would eventually go to his son?

A. No, sir.

Q. Don't you remember the discussing with her the fact that Dr. Spear had gotten deeds to the property and there was a suit pending?

A. No, sir.

Q. Now, you were there in 1922, weren't you?

A. I may have been; I know I was there in 1921 or the early part of 1922.

Q. You knew this suit had been started in April or May, 1922?

A. No, sir.

Q. Didn't you discuss that?

A. No, sir.

Q. You were associated with Dr. Spear in New York before you went to the house?

A. I wasn't associated with him.

Q. You knew him and talked with him about it?

A. Yes, sir.

Q. And you went to the house of Mrs. Aleck in Collingswood about the cemetery property and this suit was pending and you never even mentioned it?

A. I never went there about the cemetery property.

Q. You said so a little while ago.

A. Dr. Spear asked me to call on his mother. He said, "She is a very nice lady and you will probably like to meet her," and I called on her, but I never discussed any business with her at all.

Q. You already testified you talked with her about the cemetery property and you went there for that purpose.

A. Well ——

Q. Listen to my question. Now, I am asking you in view of his mother having a suit pending and Dr. Spear being a defendant in that suit in regard to the cemetery property whether either with Dr. Spear or his mother you did not discuss the suit at all?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. You were interested in selling the property, weren't you?

A. Yes, sir.

Q. You went there to see about the property, that is true, isn't it.

A. I went to look at the property, yes.

Q. And you did go and look at it?

A. Yes, sir.

Q. And you went to see Mrs. Aleck at her home, that is true, isn't it?

A. Yes, sir.

Q. During 1921 and 1922?

A. Yes, sir.

Q. Now, how long did you stay in New York with Dr. Spear?

A. With Dr. Spear?

Q. While he was in New York?

A. I don't know, I don't know how long he was in

New York; I know he subsequently left for Philadelphia but I can't say when.

Q. Did you see Mrs. Aleck off and on up to the time you went to Collingswood to live?

A. Mrs. Aleck called ——

Q. Did you see her off and on up to the time you went there to live?

A. No, sir.

Q. All right. How many times do you suppose you saw Mrs. Aleck?

A. I can't say.

Q. About how many do you recall?

A. I went to her house probably twice and she did call at our office in Camden once or twice, I don't remember.

Q. When was that?

A. That is right after we had the office at 210 Smith-Austermuhl Building.

Q. Can you fix the date?

A. That was during 1923 and 1924.

Q. What time in 1923?

A. I don't know.

Q. Can't you fix the date?

A. No, sir.

Q. What did she call there for?

A. She knew me and she called there.

Q. I see, that is all you recall. You don't recall why she called?

A. No, sir.

Q. You say you entered into an agreement with the Equitable Estates Corporation?

A. Yes, sir.

Q. Did you look up their title to the property?

A. Yes, sir.

Q. Did you examine the records in the office of the Register of Deeds at Camden County?

A. I didn't look it up personally, no.

Q. Did you have some one look it up for you?
A. No, I did not.
Q. Do I understand you did look or did not look?
A. No, I did not look up the records.
Q. Did not look at it at all?
A. No, sir.
Q. You did not make any examination of the title to see whether the Equitable Estates Corporation had title to the property?
A. No, sir.
Q. You knew titles to property in this country are recorded?
A. Yes, sir.
Q. And you knew if you wanted to go and see if the title was recorded and see if there were any liens against it, couldn't you?
A. Yes, sir.
Q. Now, while you were in Collingswood and saw Mrs. Aleck didn't you leave that memorandum with her? Isn't that your writing?
A. Yes.
Q. You left that with her, didn't you?
A. Yes.
Q. And didn't you leave that for the purpose of ——

The Court: Is there any date on it?

Mr. Tyler: No, no date on it.

Q. About when was that?
A. I don't know, but that is my writing.
Q. That is your writing and you left it with Mrs. Aleck?
A. She must have got it off me.
Q. For what purpose did you leave that?

A. She probably asked me for my address and I gave it to her.

The Court: What does it say?

Mr. Tyler: Memorandum entitled, "M. Darcy, in care of T. M. Solomon & Company, 165 Broadway, Suite 1405, New York. William A. Deverall, 82 Beaver Street, Room 501, New York." I offer that.

(Said paper offered in evidence and marked Exhibit T4, 6-15-27.)

Q. Do you know those people?
A. Yes, sir.
Q. Who is T. M. Solomon & Company?
A. He is here.
Q. What business is he in?
A. Exporter and importer.
Q. Who is William A. Deverall?
A. He is a man who was in the consular service of the United States.
Q. Isn't it true you were talking to her about this property and you left this memorandum as references of yours?
A. No, they were addresses which she might get in touch with me.
Q. Why give two addresses, wouldn't one do?
A. I suppose one would be sufficient.
Q. Why give two?
A. That is something I can't explain.
Q. When was it you were having your mail sent to T. M. Solomon & Company, during what period?
A. While I was in New York.
Q. 1921 and 1922?
A. Yes, sir.

Q. When was it you were having mail sent in care of William A. Deverall?

A. About the same time.

Q. Now, what interest did you have in the Locustwood Cemetery, Inc.?

A. What interest did I have?

Q. Yes, either as an officer or a stockholder?

A. When the company was organized?

Q. Yes.

A. None.

Q. When did your interest begin?

A. My interest began that I was one of the incorporators.

Q. One of the incorporators?

A. Yes, sir.

Q. Who were the other incorporators?

A. I think Mr. Powell, and I don't know who the other one was, but my interest in the company did not begin until C. O. Davis left.

Q. When was that?

A. That was on or about October 23, 1923.

Q. Now, October 23, 1923, you were interested in the Locustwood Cemetery?

A. Yes, sir.

Q. A stockholder?

A. Yes, sir.

Q. An officer?

A. Yes, sir.

Q. On the board of directors?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. How much stock did you hold in the company?

A. I can't tell you without looking at the books.

Q. Now, at that time, who were the other directors?

A. At that time I believe Mr. Cawthorne, Mr.

Burrell, and William Glebe, and I don't know who else, but they all handed in their resignations.

Q. When was the company incorporated?

A. July, 1923.

Q. Was it incorporated on July 23, 1923?

A. I don't know on what date.

Q. You don't know when?

A. I don't know the exact date.

Q. Does the Locustwood Cemetery, Inc., have a minute book?

A. Yes, sir.

Q. Is that here?

A. You had better ask our Counsel.

Mr. Carr: The answer is they left it in the office, but counsel will produce it after recess.

Q. Now, you heard Judge Starr testify this morning.

A. Yes, sir.

Q. And you heard him say he had never heard from you or anyone else of an agreement dated October 23, 1923. You heard him say that?

A. Well, he might have said it, yes.

Q. You heard him say you had never mentioned it to him?

A. I don't remember hearing him say that.

Q. Do you know why the Locustwood Cemetery, Inc., had made this agreement of July 23rd that they entered into another agreement?

A. Yes, I do.

Q. What was that?

A. Well, because the Equitable Estates Corporation sent a notification to C. O. Davis of cancelation of contract.

Q. What contract?

A. The contract they had.

Q. What?

A. The contract they had.

Q. The Equitable Estates notified Davis of the cancelation of the contract?

A. Yes.

Q. When was that?

A. Sometime during October, 1923.

Q. What did that have to do with the canceling of that contract? What did that have to do with the prior agreement of July 23?

A. I don't know.

Q. You don't know?

A. No.

Q. I want to know what was the occasion of making two agreements.

A. I don't understand you.

Q. After having made this agreement of July 23rd why did you enter into a second agreement?

A. There was never any agreement made on July 23rd.

Q. This agreement of July 23rd, known as the Locustwood Cemetery Sales Agreement, was never made?

A. No, sir.

Q. You say that was never made?

A. No, sir.

Q. Now, there was one agreement made, wasn't there?

The Court: Can you tell me at this time, Mr. Tyler, when the property passed to the Equitable Estates Corporation?

Mr. Carr: The date is June 22, 1920, by deed recorded in book 472, page 555. Mr. Tyler, you were in error in calling me down about not knowing the title.

Mr. Tyler: I offer you an apology then.

The Court: In the agreement or copy produced by Judge Starr of July 23, 1923, the Equitable Estates Corporation is not a party?

Mr. Tyler: Yes, I understand that.

The Court: But at that time title had passed to the Equitable Estates Corporation.

Mr. Tyler: Yes, and the bill had been filed in April, 1922, and the lis pendens May 1, 1922.

The Court: The lis pendens was filed May 1, 1922.

Q. At the time you made your agreement, this alleged agreement of October 23, 1923, did you look up the record of title?

A. No, sir.

Q. Did you employ counsel at all?

A. No, sir.

Q. You say you turned over five thousand dollars and made no examination to see whether the parties you paid it to had title or not?

A. We did not turn anything over, we signed the agreement.

Q. Now, you knew that the other case known as the Aleck-Spear case was pending at the time you talked to Judge Starr, didn't you?

A. Oh, yes.

Q. You knew that then?

A. Yes, at the time.

Q. And you say the contract of October 23rd had been lost at that time?

A. Yes, sir.

Q. Lost in November or December, 1923?

A. Yes, sir.

Q. Why didn't you tell Judge Starr it had been lost?

A. I told him.

Q. Do you know why he did not set it up in his answer as a lost contract?

A. I insisted that Judge Starr should do something about it, but Judge Starr told me there was no need, that our interests were not concerned with that suit at all, that all he was interested in was that the result of the suit should not affect the rights of the Locustwood Cemetery, Inc.

Q. As a matter of fact, you did not tell him it had been lost?

A. I certainly did.

Q. Why did you tell him he could get a copy from David Rose?

A. I didn't tell him that.

Q. Was David Rose with you then?

A. No, sir.

Q. Judge Starr said you and David Rose came in together.

A. That is when I first engaged Judge Starr, David Rose came with me.

Q. And he said the answer was dictated in your presence.

A. David Rose was not with me then.

Q. Where did he get his knowledge?

A. That was several months after we went to Judge Starr's office with David Rose.

Q. What was?

A. That this conference between myself and Judge Starr with reference to the lost contract was held with a view of answering the Chancery Court.

Q. Now, you answered that in March of 1924; you say that was several months after your first conference with Judge Starr?

A. Yes, sir.

Q. When was your first conference with Judge Starr?

A. Several months before that.

Q. How far?

A. I don't know, I can't answer that, I don't know precisely.

Q. You don't have to be precise, but it would take it back to November or December, 1923, wouldn't it?

A. I don't know where it would take it to.

Q. What did you go to see Judge Starr about in connection with this suit at least three months prior to filing the answer?

A. This was the reason, when we were served with this notice enjoining us.

Q. That was in February, 1924.

A. One minute, until I get through. When we were served with this notice enjoining us from selling any land outside of the cemetery tract I consulted David Rose and asked David Rose to come here in this Court and oppose that notion, that is, make opposition to it. David Rose presented himself in Court and said to His Honor that the Locustwood Cemetery, Inc., and the Locustwood Cemetery Association would accept the injunction as long as they could continue the selling of lots in the original cemetery, and His Honor acceded to that. That, of course, did not comply with the instructions of the Locustwood Cemetery, Inc., which they had given Mr. Rose, and that is when we told Mr. Rose we would get another attorney, and so that Mr. Rose would not feel hurt at it we asked him to suggest somebody and he said to us, "I think Judge Starr would be good. I will take you to him." And Mr. Rose went with me to Judge Starr and told Judge Starr that he had brought me there because we

wanted him to take care of the interests of the Locustwood Cemetery, Inc.

Q. Is that your explanation of why you saw him three months before the answer was filed?

A. I have no other.

Q. When you first saw him, Judge Starr, you knew this suit was pending between Aleck and Spear, didn't you?

A. Oh, yes.

Q. And you knew that suit related to the title of the Equitable Estates Corporation, didn't you?

A. That wasn't my understanding.

Q. What was your understanding of that suit?

A. My understanding in that suit, it was just a question as to whether Mrs. Aleck or Dr. Spear were to control the Equitable Estates Corporation and what it owned.

Q. In other words, the suit affected the title to all the property?

A. No, sir.

Q. It did not?

A. No, sir.

Q. You knew the suit was pending?

A. After this motion was served on us, yes, after this writ was served on us.

Q. Why did you go to see Judge Starr three months before that?

A. We did not go. David Rose defended the motion and I saw Judge Starr afterward.

Q. All right, coming back to where we started from. Now, when was it you told Judge Starr the contract was lost?

A. I told Judge Starr that when our answer was filed, which was not when this was presented, but at the ending of the suit, when the last answer is filed for decision. I can't express myself in the legal

terms, but I hope you will be able to understand what I mean.

The Court: His answer was filed March 20, 1924, if that will do you any good.

Q. Don't you remember being in the house of Mrs. Aleck and reading over with her some papers in this case?

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. Who was it that told Judge Starr he could get a copy of the agreement from David Rose?

A. I don't know, I did not.

Q. Mr. Rose went there and introduced you, that is all he did?

A. Yes, sir.

Q. And you discussed the matter with Judge Starr?

A. I did not discuss anything with him, I just asked him to follow the proceedings.

Q. He said he dictated this answer in your presence, is that true or not?

A. No, sir. When I came in he had the answer on a sheet of paper and we read it over.

Q. Did you give him any information to put in that answer?

A. I did give him some information.

Q. He said he dictated it in your presence, is that right?

A. Maybe Judge Starr doesn't remember, or my memory is at fault, but I didn't see him dictate it.

Q. And he says he remembers distinctly you told him he could get a copy of the answer from Mr. Rose.

Mr. Carr: I object, this witness is answering fairly.

The Court: I think it is competent, I think the witness ought to be apprised if he doesn't know what Judge Starr testified to.

Q. And you heard him say that you told him he could get a copy of the agreement from David Rose?
A. I never told him that.

Mr. Carr: I don't remember him saying anything like that.

Q. Did any of the other officers or directors of your company see Judge Starr about this suit except you?
A. No, sir, I was the only one.
Q. So all the information he got he got from you, is that true?
A. Yes, sir.
Q. You knew he had gotten a copy of this agreement?
A. No, sir.
Q. Did not know he had gotten it?
A. No, sir.

By the Court:

Q. Where do you understand Judge Starr got the information from which to prepare this answer? Now, I will call your attention to, say, the second defense in the answer. On the 23rd day of July, 1923, the Locustwood Cemetery Association entered into a contract with this defendant, that is, the Locustwood Cemetery Association, Inc., by which the latter was constituted its selling agent for the sale of

cemetery lots in said tract of 13 1-3 acres as well as additional 10-acre tract which might be acquired in accordance with the contract of the said Charles Cooper Spear. Now, that isn't true according to your testimony?

A. No, sir.

Q. No contract of that kind was executed on the 23rd of July or any other time?

A. No, sir.

Q. Where do you understand Judge Starr got that data?

A. He said he got it from David Rose.

By Mr. Tyler:

Q. Didn't he say he got the date from David Rose and you told him he could get it from him?

A. I did not tell him he could get it from him.

Q. My recollection is Judge Starr testified you gave him all the information except the date and you told him he could get that date from David Rose?

A. Judge Starr has the right to say whatever he pleases. I am saying I did not.

By the Court:

Q. Did you tell Judge Starr the facts, what the agreement of October 23rd did provide?

A. Yes, sir. That is, I don't know as I gave him the details, but I told him that there was an agreement of October 23rd and that is what we based our rights on.

Q. Did you tell him the substance of that agreement the same as you told here?

A. No, sir, I don't know as I did.

Q. Didn't you tell him that agreement was with the Equitable Estates Corporation?

A. That is something I can't recollect; I should judge I probably would have told him that.

By Mr. Tyler:

Q. You knew of the agreement of October 23rd with the Equitable Estates Corporation at that time?

A. Yes, sir.

Q. You did tell him of an agreement of some kind, didn't you?

A. Oh, yes.

Q. No doubt about that?

A. Yes, sir.

Q. Now, in the employment of men at the cemetery in making the improvements, who employed them?

A. Why, they were employed by myself and Mr. Cawthorne, sometimes jointly and sometimes separately.

Q. Who paid them?

A. Why, the Locustwood Cemetery, Inc.

Q. What officer or agent of the company made the payment?

A. Why, the payments were made by the foreman and the money was delivered to them by the treasurer.

Q. Who was the treasurer?

A. The treasurer was Mr. James T. Cawthorne.

Q. Where did you keep your bank account?

A. The First National State Bank, at first, and subsequently at the Haddonfield National Bank.

Q. Who signed the checks?

A. The president and the treasurer.

Q. Who was the president?

A. Mr. Burrell. The vice president also had the right to sign checks in the absence of the president.

Q. Did you sign any?

A. Yes, sir.

Q. Who was the foreman?

A. Why, the first foreman we had was a man by the name of Faulkenstien.

Q. When was he there?

A. From the very beginning of operation.

Q. I mean, give the date?

A. I should say about October, 1923.

Q. Up to what time?

A. Until about the early part of 1924, I just can't say exactly.

Q. What is that?

A. The early part of 1924.

Q. You say he was there from October until March, 1924?

A. I don't know what month, precisely.

Q. What was his name?

A. Faulkenstien.

Q. Where was your bank account at that time?

A. Our first bank account was with the First National State.

Q. How long was it there?

A. I can't give you the date.

Q. Was it there in the period of October until March?

A. I don't think we had a bank account in October.

Q. Did you have one in November?

A. I don't know, maybe.

Q. Did you have one in December?

A. The bank account was started at some time, but I can't say the date, and since that time we have had a bank account continuously. If you are very

anxious to know the date I think Mr. Cawthorne can tell you.

Q. Where has your bank account been kept since?

A. It was first kept with the First National State Bank of Camden, and now with the Haddonfield National Bank of Haddonfield.

Q. Have you your deposit book of the First National State Bank?

Mr. Carr: For what do you want them? If you tell us what you want we will produce them.

Mr. Tyler: I want to see what payments were made during the period they worked on the improvements.

The Witness: The books will show that.

Mr. Tyler: Wait a minute, please.

Mr. Carr: We have the treasurer here, who is better qualified to testify about that.

The Court: Supposing we adjourn for luncheon and you can go over these checks during the luncheon period.

(At this point a recess was taken until 1.15 o'clock P. M.)

(Trial of the cause resumed at 1.15 o'clock P. M. pursuant to adjournment.)

MAX DARCY, resumed.

By Mr. Tyler:

Q. I understood you to say you were negotiating for the sale of the property and cemetery to people in Bridgeton?

A. No, sir, I did not say that.

Q. What was it you said about Bridgeton?

A. I said we were trying to interest people in Bridgeton. We had opened negotiations with them for the purpose of interesting them in our company.

Q. You were trying to interest them in your company?

A. Yes, sir.

Q. And that fell through?

A. Yes, sir, because we could not find that contract.

Q. Now, when was it that fell through?

A. In December, 1923.

Q. What was it you did out there in the winter, November, December, 1923, January and February, 1924?

A. Why, we were clearing the land and pulling stumps.

Q. I am confining you to those months, don't tell me anything you did after that.

A. We were clearing the land and pulling stumps.

Q. Who cleared the land?

A. The men did.

Q. Men employed by the company?

A. Yes, sir.

Q. Who pulled the stumps?

A. Men employed by the company.

Q. What land, the 13 acres?

A. Both on and off the 13 acres, the 13 acres, principally, at that time.

Q. You started on the 13 acres first, didn't you?

A. We started at the entrance, yes.

Q. How long did it take you to get the 13 acres cleared up?

A. I don't know exactly how long, but a long time.

Q. Several months?

A. Yes, sir.

Q. So that from October, 1923, to March, 1924, you say you were working on the 13 acres?

A. No, sir, I did not say that.

Q. You didn't say that?

A. We worked on the entire tract, but we did more work on the 13 acres than on the other.

Q. Now, do your records show anything as to where you were working during that period?

A. I have no personal record of it.

Q. You hadn't done any work prior to October, 1923, had you?

A. I don't think so.

Mr. Tyler: Now, with the exception of the compliance with my request to produce the checks and deposits and records of payments, that is all.

By Mr. Carr:

Q. Now, Mr. Darcy, will you say whether or not you have seen Judge Starr in this matter prior to the service upon your company of the order to show cause?

A. No, sir, it was after the answer and that service; then it was when Mr. Rose took me to Judge Starr. I did not know Judge Starr before that.

Q. Had you ever conferred with Judge Starr in any manner with reference to Locustwood Cemetery prior to the service of the order to show cause?

A. No, sir, I did not know Judge Starr.

Q. You were asked by Mr. Tyler in the form of "You don't remember, you don't remember having talked to Mrs. Aleck about the affairs of the cemetery" and you answered "No," in several cases. I ask you now whether you did have any conversations with her whatever in relation to the business affairs of the corporation or any claims she might have had affecting the title in your interviews with her at her home in Collingswood?

A. No, sir.

By Mr. Palmer:

Q. I show you letter postmarked, "New York, May 1, 1923," addressed to "Dr. Charles C. Spear, 2227 Spring Garden Street, Philadelphia," and the letter contained in the envelope dated "May 1, 1923," and ask if that is your signature?

A. Yes, sir.

Mr. Palmer: I would like to have this letter marked for identification.

(Said letter marked for identification P1.)

Q. I show you a letter with an envelope postmarked May 8, 1923, addressed to Charles C. Spear, 2227 Spring Garden Street, Philadelphia, and a letter under the same date addressed to the same person and ask if that is your signature?

A. Yes, sir.

Mr. Palmer: I would like to have this envelope and letter marked for identification.

(Said letter marked for identification Exhibit P2.)

Q. I show you an envelope postmarked New York, May 11, 1923, addressed to Dr. Charles C. Spear, 2227 Spring Garden Street, Philadelphia, and a letter contained therein under the same date and to the same person and ask if that is your signature?

A. Yes.

(Said letter marked for identification Exhibit P3.)

Q. I show you an envelope postmarked New York, May 17, 1923, addressed to Charles C. Spear, 2227 Spring Garden Street, Philadelphia, and a letter contained therein under the same date and addressed to Charles C. Spear, and ask if that is your signature?

A. Yes, sir.

(Said letter marked for identification Exhibit P4.)

Q. I show you an envelope postmarked New York, June 7, 1923, addressed to Charles C. Spear, 2227 Spring Garden Street, Philadelphia, Pa., and a letter of the same date, addressed to the same person, contained therein, and ask if that is your signature?

A. Yes, sir.

(Said letter marked for identification Exhibit P5.)

Q. I show you an envelope postmarked New York, June 8, 1923, addressed to Mr. Charles C. Spear, 2227 Spring Garden Street, Philadelphia, with a letter contained therein under the same date and addressed to the same person, and ask if that is your signature?

A. Yes, sir.

(Said letter marked for identification Exhibit P6.)

By the Court:

Q. Mr. Darcy, was there any written contract executed with the Davis people before they withdrew?

A. Yes, there was.

Q. Have you it?

A. No, sir.

Q. Did you ever see it?

A. No, sir.

Q. But when you succeeded to the Davis interests and made your own contract after Davis had withdrawn you made an entirely new agreement, did you?

A. Yes, sir.

By Mr. Tyler:

Q. Now, Mr. Darcy, do you recognize those as checks of the Locustwood Cemetery?

A. Yes, sir.

Q. And that is your signature?

A. Yes, sir.

Q. None of these checks or any of the payments made on this alleged contract were made to the Equitable Estates Corporation, were they?

A. No, I don't think so.

Q. Are they the checks?

A. Yes, sir; I don't think they were made to them.

Q. You have no knowledge of any having been made to the Equitable Estates Corporation?

A. Not unless I look them over.

Q. You had better look them over, I guess.

The Court: Have you been through them, Mr. Tyler, to see?

Mr. Tyler: Yes, there are not any.

The Court: What?

Mr. Tyler: There are not any.

The Court: I think we may assume there are none, there is no use in going through that pile.

Q. In February, 1924, the Locustwood Cemetery, Inc., who made these checks, was made a party defendant to the Douglass-Spear Litigation, you understand that, don't you? They were brought in on a rule to show cause and an injunction obtained against them?

A. Yes.

Q. And notwithstanding that you kept right on making payments to Spear of these checks from February 15, 1924, up to December 27, 1924, and they were made after you had knowledge of the litigation?

A. May I develop that?

The Court: Answer the question.

The Witness: If that order was served on us in February, yes.

Q. You knew at that time what the character of the litigation was, and that Spear's interest, if any, was in dispute, didn't you?

A. No, sir.

Q. You did not know that?

A. His personal interest might have been, but I didn't know that the interest of the corporation would be in dispute.

Q. But you were making the payment to him personally?

A. No, sir, to him as president of the Equitable Estates Corporation, president and treasurer.

Q. Who is that check made to?

A. Charles C. Spear. He was president and treasurer of the Equitable Estates Corporation.

Q. Who endorsed it?

A. Charles C. Spear.

Q. No one else?

A. Well, that is not our fault, we paid it in good faith.

Q. You paid it in good faith?

A. We gave the check and then it was cashed at the bank. We don't know anything about any endorsements.

Q. You got the check back showing his endorsement, didn't you?

A. What difference does that make?

Q. Just answer the question.

The Court: Don't try to argue the case, just answer the question.

The Witness: We got it back, yes.

Q. And you drew all the rest of these the same way?

A. Yes, sir.

Q. You drew them to him personally without any designation as being treasurer, or president, or any other officer, isn't that true?

A. Yes, sir.

Q. And they were all endorsed that way?

A. Yes, sir.

Mr. Tyler: I don't know how to mark these unless we mark them as a bundle. I want to offer these.

(Said checks marked Exhibit T3, 6-15-27.)

By Mr. Carr:

Q. Mr. Darcy, can you say why the checks were drawn to Dr. Spear's order?

A. They were drawn to Dr. Spear's order because as president and treasurer of the Equitable Estates Corporation he requested that they be made in his name.

Q. Made in his name?

A. Yes, sir.

Q. Were the payments made under the terms of the October 23rd contract?

A. Yes, sir.

Q. Did the company make any other demands for the payments you had made to Spear?

A. No other demand.

Q. Did the Equitable Estates ever make any other demand for the money represented by these checks?

A. No, sir.

Q. In your dealings with the Equitable Estates Corporation did you come in contact with any person other than Spear?

A. No, sir.

Q. All the negotiations were made with him?

A. Yes, sir.
Q. And all the payments made to him?
A. Yes, sir.

THEODORE M. SOLOMON, sworn.

By Mr. Carr:

Q. Mr. Solomon, where do you live?
A. New York City.
Q. How long have you lived in New York?
A. About thirteen years.
Q. What is your business?
A. Exporter and importer.
Q. How long have you been in that business?
A. Thirty-two years.
Q. Have you a place of business in New York City?
A. Yes, 165 Broadway.
Q. Do you know Max Darcy?
A. Yes, sir.
Q. How long have you known him?
A. 1907 or 1908.
Q. Until the present time?
A. About 19 or 20 years.
Q. Has he ever changed his name in that time?
A. No, sir.
Q. Always been known by the same name?
A. Yes, sir.
Q. Do you know whether he has been in business during that time?
A. Yes, sir.
Q. Is there anything wrong about him?
A. He was held in very high esteem in South America.

Q. You have been in South America?

A. Yes, sir, lived there for 20 years.

Q. Mr. Solomon, were you approached by Mr. Darcy with reference to taking some interest in financing this cemetery proposition?

A. Yes, sir.

Q. Did you come to Philadelphia or Camden at the invitation of Mr. Darcy?

A. Well, it wasn't at the invitation of Mr. Darcy.

Q. Tell me how you did come.

A. Mr. Darcy was in New York and spoke to me about this matter, but I was very busy at the time and I told him I expected to be in Philadelphia on some business in a few days and that when I arrived at Philadelphia that I would call him up and he should meet me at the Bellevue-Stratford Hotel, so I arrived here a few days afterward and got in communication with Mr. Darcy.

Q. Can you fix the time, approximately, Mr. Solomon?

A. Well, it was either around the last day of October or the first, second or third of November.

Q. What year?

A. 1923.

Q. Did Mr. Darcy meet you at the Bellevue-Stratford?

A. Yes, sir.

Q. Did he bring any paper with him?

A. He brought a contract.

Q. What contract was that?

A. That was a contract dated about a week before in which they were to turn over to him 157 or 148 acres of land. It was a contract guaranteeing to deliver over to him a contract that Dr. Spear had with the Fernwood Cemetery, Inc., and with the Equitable Estates, a cemetery property of 13 or 14

acres, something like that, I don't remember exactly, but there was the cemetery property and outside of the cemetery and of the homestead there was 140 or 150 acres. I know the amounts better than the dates.

Q. What was the consideration?

A. The consideration I know was $100,000.

Q. And how was it to be paid?

A. At very equitable times. It was all right. He was to pay $6000 a year regardless of the principal diminishing and he was to pay it at $200 a week and the difference was to amortize the principal of $100,000. I couldn't go into the matter because I had decided between the time I had seen him in New York and the time I met him, my wife and I had decided, to go to Texas to spend two months with my son and I told him I couldn't go into it.

Q. Do you recall whether a term of years was stated in it in which settlement was to be made?

A. I couldn't swear to it, but it was either 25 years or 20 years or 15 years, it was something like that.

Q. A long period of years?

A. A long period of years, but it was very satisfactory as far as that was.

Cross-examination.

By Mr. Palmer:

Q. Who had signed that agreement?

A. The agreement was signed by the Equitable Estates and Dr. Spear and Mercedes Spear and by Mr. Darcy and Mr. Cawthorne.

Q. Had those signatures been appended as individual signatures or signatures attesting a corporation signature?

A. I think it was signed Equitable Estates, per the Doctor and the lady. I wouldn't swear if Mr. Darcy signed as Darcy or as the Locustwood Company. I don't remember that, but I think it was.

Q. You think it was which?

A. I think it was signed for the company, for the cemetery company.

Q. Your impression is that it was an agreement made between the Equitable Estates Corporation and the Locustwood Cemetery Company signed by the officers of those two corporations?

A. Yes.

Q. Not an individual agreement between those people as individuals?

A. No, but I think there was a question—I asked Mr. Darcy at the time about Dr. Spear's grantee, or promising to deliver without encumbrances of any kind, some Fernwood Company, I think the Fernwood Agreement, known as the Cooper Homestead.

Q. You say this was either the latter part of October or the early part of November, 1923?

A. I think positively it was between the 1st and 3rd of November, I am not sure.

Q. Of 1923?

A. Yes.

Q. You did not go into the proposition?

A. No, I had decided to go to Texas.

Q. And you dismissed the matter from your mind?

A. No, I did not dismiss it from my mind for this reason: I have been receiving—what do you call them—pamphlets or circulars and have been somewhat interested in it, that is, somewhat interested in taking the matter up, but afterwards found out they had made other arrangements.

Q. When did you find out they had made other

arrangements to finance this so there was no longer any reason for your going into the proposition?

A. Well, that was about maybe a year and a half or two years ago.

Q. And during that year and a half or two years you still had the matter in your mind?

A. No, every time I got a pamphlet or I met Mr. Darcy I asked him about it.

Q. Did you meet Mr. Darcy within a year or a year and a half after you saw the contract?

A. That would make it a year, yes, I think, I saw Mr. Darcy.

Q. Where and under what circumstances?

A. I met him under these circumstances.

Q. And where?

A. I met him at the Pennsylvania Hotel in New York City.

Q. Was it with relation to the Locustwood matter or some other matter?

A. I am going to tell you. He had been sent for by a man he had known in Central America to help him out and I also had been sent for and I met him.

Q. It was not in relation to the Locustwood Cemetery?

A. No, sir.

Q. When was your attention first called to the fact that this agreement of October, 1923, had been lost?

A. When was my attention called to it?

Q. To the fact that such an agreement had been lost?

A. I might ask when was the last time the case was up here? It was about a few days before that.

Q. In this present year, February of this year, that was the time.

A. That is the time I was asked.

Q. I mean, when was your attention first called

to the fact that the agreement that you had seen around the first of November, 1923, had been lost?

A. When I knew it had been lost?

Q. Yes.

A. That is different. I think that was about a year and a half ago, that was about a year or a year and a half ago that I spoke by telephone to Mr. Darcy. I was in the city here, and I spoke by telephone to Mr. Darcy and asked him how he was getting along and he spoke to me about having a little trouble and the document being lost and Court business, and all.

Q. That was about a year and a half ago?

A. Yes, sir.

Q. That would be sometime in the forepart of 1926?

A. I think before that, but I couldn't swear to it.

Q. The latter part of 1925?

A. I couldn't swear when it was exactly.

Q. Haven't you some idea, approximately, when it was first called to your attention that this agreement had been lost?

A. A year and a half or two years ago.

Q. Why did Mr. Darcy call your attention to the fact it had been lost?

A. I don't know, I just asked him how everything was.

Q. Where was he at that time?

A. He was at the cemetery.

Q. Out at the cemetery?

A. Yes, sir.

Q. Where were you?

A. I was in Philadelphia.

Q. You called him on the telephone?

A. Yes, sir.

Q. You merely asked him how he was getting along?

A. Yes, sir.

Q. That was the reason for your call?

A. I always do that.

Q. That is the first you had ever heard that this agreement had been lost?

A. That is the first I heard of it, yes; see, I wasn't interested in the business.

Q. That is what I tried to find out from you at first and you said you were.

A. I mean I wasn't financially interested. I am interested in anything pertaining to any of my friends.

Q. As far as your friendly interest to an individual is concerned, but you have no interest in this project of developing the Locustwood Cemetery Company, had you?

A. No, sir, and haven't any now.

Q. And no reason to charge your mind with anything concerning the Locustwood Cemetery Company?

A. I wouldn't charge my mind with anything unless they approached me to get me interested, and then I would study it carefully and I wouldn't forget it, either.

Q. And this is one of the things you did not get into?

A. What?

Q. This Locustwood Cemetery Company?

A. Notwithstanding the fact it was put up to me.

Q. But you didn't go into the proposition?

A. No.

Q. And when you don't go into anything you dismiss the details from your mind?

A. I never thought about it any more, but I knew what I was offered.

Q. And your attention was first called to the mat-

ter in reference to the contract you had seen at least a year and a half after you had seen it, that is true?

A. Yes, sir.

Q. When was your attention next called to the fact that this contract had been lost?

A. I can only tell you this, it was a few days before the case came up for hearing the last time.

Q. I will tell you that was some time in the middle of February of this year, and it was a few days prior to that, that is correct?

A. I suppose so, if that was it.

Q. Who directed your attention to it at that time?

A. At that time I received, I think, a letter—I won't swear to it, whether it was a letter or a long-distance telephone call—asking me if I could come to Camden, as this case was coming off, there was trouble between Dr. Spear and the company, this company, and I came over here.

Q. Was anything else said to you as to why they wanted you to come over?

A. They needed me as witness.

Q. A witness for what purpose?

A. To find out ——

Q. A witness for what purpose?

A. In this case that was coming up.

Q. Did they tell you what they wanted you to testify about?

A. No, when I got over here this gentleman here ——

Q. Mr. Carr?

A. He asked me if I knew anything?

Q. Before you got to Mr. Carr you had no information as to what your testimony was to be, about the subject of it, until you got to Camden and talked to Mr. Carr?

A. Yes, because I was to go to Mr. Carr's office.

Q. Until you reached Mr. Carr's office you had no information as to what you were wanted for?

A. No, sir.

Q. As to the subject-matter of your testimony?

A. No, sir.

By Mr. Tyler:

Q. How did you know it was worthwhile to come over to Mr. Carr's office?

A. How's that?

Q. How did you know it was worthwhile to come over to Mr. Carr's office?

A. I don't know what you mean.

Q. If you said you didn't know what you were coming for you came all the way over from New York for something, now, what was it?

A. He asked me over the phone to come over, they were having trouble with Dr. Spear and he wanted to talk to me about being a witness and for me to come over, and when I got here I rung up and they asked me to meet them at Fourth Street and Market, I think, with Mr. Carr, and I went over there.

Q. You didn't know what you were going for?

A. It isn't such a long trip. Yes, they wanted me as a witness, naturally, I knew that.

Q. Was this contract typewritten or in longhand that you saw?

A. Typewritten.

Q. How many pages?

A. Well, I don't remember; it wasn't very long, two or three pages.

Q. Rather a short contract?

A. Well, it wasn't very long, two or three pages on legal paper.

Q. Any of the signatures acknowledged?

A. Sir?

Q. Were any of the signatures acknowledged, you know what an acknowledgment is on a contract or a deed, taken before a notary public or some one authorized to take acknowledgments?

A. Do I know?

Q. Do you know what I mean when I say was it acknowledged?

A. You mean attested to, certified to by a notary?

Q. Yes.

A. I swear I couldn't tell you, I don't remember, I don't know; I couldn't swear to that, that I couldn't say.

Q. You don't remember seeing any acknowledgment on it, do you?

A. No, I don't remember seeing any seal. I might have seen it, but I wouldn't swear to it.

Q. Did it have any seals on it?

A. I didn't see any.

Q. You didn't see any?

A. I didn't pay any attention to that, but I read the contract.

Q. Were there more than just the few signatures at the end of the contract, were there any signatures anywhere else on the contract, on any of the other pages?

A. I don't think so.

By Mr. Palmer:

Q. What was the date of the contract?

A. I couldn't tell you that, except I know it was about a week or so old, because at the time Mr. Darcy was over there and speaking to me he said he had just gotten the contract and it had just been signed, and that is the time I told you I was so busy and I couldn't give him any attention and I came over only a few days afterward, six or seven days

afterward, it couldn't be over a week, a week before the last of October or the beginning of November, somewhere around there.

By the Court:

Q. Do you remember whether the contract you saw authorized the Locustwood Cemetery, Inc., that is, Mr. Darcy's company, to act as sales agent for the property or not, for the cemetery lots, and then give him an interest in the property in the profits of the enterprise?

A. There was nothing in the contract about that that I remember.

Q. Don't recall anything of that kind?

A. No, sir, I don't remember anything like that. That contract referred merely to transferring to them for a certain sum of this 150 or 160 acres, something like that, with 13½ acres or 14½ acres or 140 acres of land, but I don't remember anything about selling. I remember the significant part was about the $6000, and I think it was 25 years, or 20 years, or 15 years, I don't remember about that, but it was $200 a week and $6000 a year.

Q. $200 a week wouldn't be $6000 a year. Did you mean to say that, $200 a week?

A. No, the contract said they were to pay $6000 a year.

Q. $200 a week would be over $10,000 a year.

A. No, $6000 a year was interest to go towards the amortization of principal, and they were to pay $200 a week.

Q. That is about all you can remember about it?

A. Yes, that is the significant part of it. When you go into a thing you want to know the payments.

PAUL V. ALLEN, sworn.

By Mr. Carr:

Q. Mr. Allen, where do you live?
A. Elizabeth, New Jersey.
Q. How long have you lived there?
A. Eighteen years.
Q. Mr. Allen, at one time were you connected with C. O. Davis & Company?
A. I was.
Q. Did you come to Camden in connection with their interests in the Locustwood Cemetery Association?
A. I did.
Q. What were your duties for C. O. Davis & Company?
A. I was a stock salesman.
Q. Sold stock in the Locustwood Land Company, Inc.?
A. The Locustwood Cemetery, Inc.
Q. The Locustwood Cemetery, Inc., I should say. Did you know Dr. Spear?
A. Yes, sir, I met him when I came down here.
Q. Did you know Mr. Darcy?
A. Yes, sir.
Q. And Mr. Cawthorne?
A. Yes, sir.
Q. Now, did Davis & Company withdraw from the operation?
A. Why, yes, sir. First I was employed by C. O. Davis, and the boss came to me and paid me off one Friday and told me when I went home Monday to report in the New York office, that he wasn't going to be down here any longer.

Q. And that ended, so far as you know, the relations of Davis & Company with this enterprise, is that right?

A. That would substantially be it. He said he was leaving and he took me off the job, and I was working for him as a salesman and I figured the boss was pulling out, so I would, too.

Q. Did you have any talk with Mr. Darcy, Mr. Cawthorne, or Dr. Spear about any further arrangement?

A. I had been home about three or four days and Jimmy called me up on the telephone at night.

Q. Mr. Cawthorne, you mean?

A. Yes, called me on the telephone at my home at night and he said to jump in the car and run down here, he wanted to see me.

Q. Can you fix that date, approximately?

A. Yes, sir, it was after I had gone home, I would say it was around the 18th, 17th or 18th of October, 1923.

Q. Did you come to Camden?

A. Yes, sir, and saw Jimmy and Max.

Q. That is Mr. Cawthorne, I suppose, and Mr. Darcy?

A. Yes, sir.

Q. Did you see them with reference to making some further connections?

A. Yes, they told me—at least, Mr. Darcy told me—he said, "Now, Bill, I have been a friend of Spear's for a long time. I knew him down in South America," and he said, "C. O. Davis and the gang pulled out and are going to leave him here to hold the bag," he said, "but I have decided to stay," he said. "Jimmy and I have made a deal with him and he has made a deal that is equitable and we would like you to stay in on the party," and I said, "All

right, that suits me if it suits you." I was perfectly agreeable, in fact, I have to substantiate myself to say it was agreeable to me because of the fact as a stock salesman I have always had to be very careful about anything I undertook due to the reputation of my father in New York City and therefore I would be employed about six months out of the year in New York City as a stock salesman because there are a great many propositions in New York I can't touch because my father won't O. K. them.

Q. Did they tell you what the proposition was?

A. They told me, and I said it would not suit me, and I said, "When it is right there in black and white I want to see it," so on the week-end, I don't know just the date, but it was a week-end, Jimmy came from Montclair to my home in Elizabeth and he said, "Dr. Spear has this all drawn up, why don't you come down with us tomorrow morning, get yourself in shape, and we will have it ready to show you and you can go right at it." And I came down with Jimmy and Max Monday morning. We always came down in the machine. I lived over here at Sixth and Mickle Streets, with Jimmy and Max, we had a room over there. I have forgotten the name of the people who ran it, but it was a very nice place, and Wednesday, the 24th of October, after Jimmy and Max had been out all night before, Mr. Cawthorne and Mr. Darcy had been out the night before, I went to 210 Smith-Austermuhl Building with them and they showed me the agreement they had in black and white with Spear, and I said that was satisfactory and on that basis they elected me a director and treasurer of the company the next day, and then I had what you might call a financial interest in the company, but I only took that on after I was satisfied everything was satisfactory.

Q. So you saw the agreement in writing?
A. Yes, sir.
Q. Can you recall its date?
A. Yes, sir, the 23rd.
Q. What year?
A. 1923.
Q. Who were the parties to that agreement?
A. October.
Q. What month?
A. The parties to that agreement, the agreement was made between the Equitable Estates Corporation and the Locustwood Cemetery, Inc., whereby this Estates Corporation would turn over to the Cemetery, Inc., the cemetery property which then was 13½ or 13 and some fraction of an acre, and to my mind, it was 157 acres in the total, for the sum of $100,000, and the only reason I specifically remember the terms is there was a stipulation in there of a payment of $200 a week. Two hundred dollars a week meant a whole lot of money, because with my family to take care of and the way Jimmy and Max were hung up I wanted to know where it was coming from, and Max had an understanding with Spear it was perfectly all right that the money that had been paid in by Davis was to go as a payment for us in this incorporation and that if we could only make $150 one week we could pay $250 the next week, as long as we struck an average of $10,000 the first year. That was satisfactory, because we were working for him the same as for ourselves. It further stated one thing—I went into it rather thoroughly, because I didn't understand it. It was the terms of the payment, to deduct $6000 as sort of a premium and penalty until the entire amount of $100,000 had been paid, regardless of whether we had paid $95,000 in on the $100,000 we still had to pay a bonus of $6000 a year for that $5000 over a

period of a year until the amount was paid.

Q. How many years had you to make the payment?

A. Twenty.

Q. Was there any provision relating to releases?

A. Yes, sir, when we had paid pro rata for the cemetery any land that we paid for pro rata over and above that was to be turned over to us.

Q. At so much an acre?

A. Pro rata, yes, sir.

Q. Now, where was that agreement kept in the office, if you know?

A. It was kept with all the rest of the papers we had in a little filing cabinet, a filing case, in a big drawer of an ordinary flat top desk.

Q. Who had access to that office?

A. Mr. Cawthrone, Max, Dr. Spear and myself.

Q. Do you know in what manner Dr. Spear had access to the office?

A. Yes, some arrangement he had with Max, Max gave him a key, and Max told me about it, and several times when I dropped in there to get some application blanks or some data I wanted to show to prospective clients his wife and little son would be there.

Q. Do you remember the incident of the agreement disappearing?

A. Yes, sir, I was instrumental in interesting my brother Emerson in Bridgeton, he had made a lot of money during the war, and quite a few of his friends, and particularly the one who owns the cemetery down in Bridgeton, Dick Moore, and I told him what we had, and he said, "Paul, you are a little younger than I am"—I am seventeen years younger—"and I believe you that everything is all right and I don't want to butt into your business, but is it possible to see the agreement you have

with the man who owns the cemetery?" and I said, "Certainly," and I went down to the office and looked for it and it was gone, and I got in touch with Jimmy and Max and we looked over everything in that desk and it was gone, and I said, "That is funny," and it sort of embarrassed me with my brother, because he had questioned whether we had it or not, and that is when I knew that the agreement that we were working under on the cemetery was gone. By that time we had the roads in, they had a contractor up there, a man by the name of Riley, he was going to bring in a gang and put in ten miles of road in five minutes, something like that.

Q. When was it your friends came from Bridgeton?

A. December, 1923. I know that because when we couldn't produce this agreement in time they went to Florida.

Q. Do you know what efforts were made to obtain another copy of the agreement?

A. Yes, sir. The proposition I want to make myself plain on, I have a peculiar way of phrasing things, sometimes I am a little slangy, but most of the dealings of the corporation were between Mr. Darcy and Dr. Spear, and when we found the agreement was gone I drove Mr. Darcy out to Mr. Spear's home in Hainesport, but I don't know what transpired at that time, I didn't go in, but Max told me what he said to the doctor and I know up to the time I got disgusted, which was in the early part of May, because I arrived home on my little girl's birthday, which is the 7th or 8th, that up to that time all we did was to try to get that proposition fixed, because that is the basis we had sold the stock to all the citizens in Camden and I had also sold personal friends of my father's.

Q. Did you ever hear Darcy ask Spear for the agreement?

A. Yes, sir.

Q. How often would you say?

A. 25 or 30 times.

Q. Do you remember an incident in which you attempted to get the agreement or a copy of it from Dr. Spear?

A. Yes, sir.

Q. What was that incident?

A. One rainy night, I don't recollect the day or date, but it must have been the latter part of April, 1924, because it was what led up to my leaving in May. It was a very rainy night, Mr. Cawthorne, Mr. Darcy and myself, I drove them out to Hainesport, and we had had any number of conferences with Dr. Spear, and on this particular occasion we discussed the old agreement and the doctor said he would make us an agreement right there and then, and he sat down to a little desk that was there with a Corona typewriter, or one of those portable typewriters, and he typed the document, but it wasn't equitable, it was not an equitable proposition, it wasn't anything like what we were working under, and I don't know, but I sort of butted in and took the talk away from Mr. Darcy. I told Dr. Spear what we had done and what we were trying to do and that we were all working for the one point, and in the early part of the conference I had noticed a drawer of his desk was open and that there was a revolver in there, and I don't know, I probable unintentionally antagonized the doctor, anyway he drew the gun and said we would sign it or get out, we would sign that or leave it, and that didn't suit me, and I was inclined to debate the question further, but Max and Jimmy, Mr. Cawthorne and

Mr. Darcy, shoved me out of the door, shoved me in the automobile and drove me away from there, and I took a riding from Mr. Darcy. He said I had stepped in and was too aggressive, he could handle the doctor and I had pursued the wrong tactics, and I said to Mr. Darcy, "If that is the way things are going they don't suit me, and they have got to suit me or I will get out, because I am not going to continue this way."

Q. Have you left the company's employ?

A. I left the company's employ about a week later, after Max assured me he could get this contract.

Q. Up to the time you had left had the company succeeded in getting a copy of the contract?

A. No, sir.

Q. Had they succeeded in getting a copy of any contract?

A. No, sir, that was the principal reason I left.

Q. Up to the time you left they had no other contract in writing?

A. No, except what Dr. Spear said he was going to do.

Cross-examination.

By Mr. Palmer:

Q. Now, at the time you came to work for these people were you employed by the Davis Company?

A. No, sir, at the time I came to work for these people—C. O. Davis—I didn't get that.

Q. Perhaps my question was not very clear?

A. It was not to me.

Q. You were working down here for the Davis Company?

A. Yes, sir.

Q. And as I got your story you were told to report at the New York office the next week?

A. They borrowed me from another firm to come down here.

Q. You weren't working under Davis, a regular employee?

A. No, sir.

Q. Were you regularly employed by this other firm, whatever it was?

A. I had been for six months.

Q. Were you in the employ of this other firm when the Davis people brought you down here?

A. Yes, sir.

Q. Did you go back to work for that other firm when the Davis people took you back to New York?

A. Yes, sir.

Q. So after you had been down here with Davis you went back to your old employment in New York?

A. Let us get that straight. When I went back to this other firm in New York they didn't have anything to sell, see, and that was the reason I was free to come back here when Jimmy and Max broached the subject to me.

Q. You had no regular job at the time Mr. Cawthorne and Mr. Darcy asked you to come back to Camden with them?

A. No, except I could draw money from this other firm when I wasn't selling anything for them.

Q. You could do that?

A. Yes, sir.

Q. What was your interest in the Camden proposition, what were you to get?

A. When I came back for Max?

Q. Yes.

A. I was to make a living out of it.

Q. How much?

A. That depended on my ability as a security salesman.

Q. In other words, you got a commission on the sale of stock in The Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. No salary?

A. No, sir.

Q. That was the job you took by virtue of the contract they had with The Equitable Estates Corporation?

A. Yes.

Q. You started in selling stock in Camden?

A. I did.

Q. And continued to do this until the following May?

A. Yes, sir.

Q. And then you left?

A. Yes, sir.

Q. How much stock did you sell in that time?

A. Personally, myself?

Q. Yes.

A. Not very much, I would say 15 or 20 thousand dollars.

Q. Not over $20,000.00 worth of stock?

A. No, sir, not myself personally.

Q. I mean yourself.

A. Yes, my own individual efforts.

Q. And you got paid in accordance with the stock you sold?

A. I did, yes, sir.

Q. And you say you did not sell more than $20,000.00 worth?

A. No, sir.

Q. How much did you get for your services?

A. 15%.

Q. That is all you made during the time you were here from October until May?

A. No, sir.

Q. Did you make any other money out of The Locustwood Company?

A. We worked on an agreement, Jimmy, Max and I split our commission. If I made $100.00 a week I made $33.33. We formed a little company of our own, Jimmy, Max and I.

Q. To do what?

A. To pay ourselves out of it and split our commission.

Q. Where were you to get the money from?

A. Selling stock.

Q. You three were selling stock then?

A. Yes, sir.

Q. Were you a stockholder in the Locustwood Cemetery, Inc.?

A. I think at that time I had ten shares.

Q. That was given to you?

A. Yes, sir.

Q. You didn't pay for it?

A. No, I didn't pay for it.

Q. And Mr. Darcy and the other gentleman were the officers of the company together with yourself?

A. And Mr. Burrell.

Q. And you three formed a company to sell this stock?

A. Mr. Burrell was the president of the company, I was the treasurer, Mr. Cawthorne was the secretary, and Mr. Darcy was the vice-president. Now, Mr. Burrell didn't endeavor to sell stock, that was up to the workers, Jimmy, Max and myself.

Q. Now, if I get you ——

A. The three of us pooled our commission.

A. And divided them?

A. Yes, which is often done.

Q. Do you know how much stock Mr. Darcy had in that company?

A. I don't know how much he had at that time.

Q. Do you know how much Mr. Cawthrone had at that time?

A. I think they both had ten shares at that time, and I think a little later on we each took 55 shares.

Q. Did you pay for it?

A. No, sir, we did not.

Q. How did you get it?

A. I will tell you how we got it. We got them through in the formation of the company. C. O. Davis being purely a promoter in forming the company took a promoter's rake-off.

Q. How much was that?

A. I don't know how much it was, but it was plenty, and in transferring that certificate back into the company, when we had it signed and transferred back into the company, Mr. Cawthorne, Mr. Darcy, and myself had 500 shares of stock issued in our name and put in escrow. If we started from nothing and put the thing over we thought we were entitled to that much, because we weren't making enough to live on, and we turned the rest back into the company.

Q. You got back from Davis their certificate?

A. Yes, sir.

Q. You turned that in to the treasury?

A. Yes, sir.

Q. And issued to yourselves certificates for 500 shares of stock?

A. Yes, sir.

Q. For which you did not pay?

A. And which we did not receive.

Q. And you didn't expect to pay for them?

A. In work.

Q. You were going to get a commission on all the stock you sold, weren't you?

A. The commission we were getting was not the commission C. O. Davis got.

Q. And if you succeeded in getting the company on its feet and getting it going then each of you were to have this additional 500 shares of stock?

A. Yes, sir.

Q. And in addition the commission the company gave you for selling the stock?

A. Absolutely.

By Mr. Tyler:

Q. Weren't you interested in what this stock represented, whether the company had anything?

A. I should say I was.

Q. You looked into that?

A. Yes, sir, that is what I was working for.

Q. Did you look up and see whether the Equitable Estates Corporation ever had title to the 13 1/3 acres?

A. C. O. Davis took care of that.

Q. I am asking you.

A. I personally, no.

Q. Did you ever look up to see whether the Equitable Estates Corporation had title to any of this property?

A. Not personally, no.

Q. You said you had to be rather careful of what you were doing because of your father's reputation?

A. Yes, sir.

Q. Did it ever occur to you you might be selling stock in a company that had nothing?

A. It did. My father checked C. O. Davis up right up to the day he was born, that is all I was interested

in, C. O. Davis, he was the man I was working for, and he checked clean.

Q. But you were not selling stock in the C. O. Davis Company?

A. No, I was selling stock for C. O. Davis.

Q. And you were selling Locustwood Cemetery stock?

A. Yes, sir.

Q. And going out and soliciting prospects?

A. Yes, sir.

Q. And making representations to them that they owned real estate?

A. Yes, on C. O. Davis' O. K., anything he said was O. K., because my father checked him back.

Q. As a matter of foct, the Locustwood Cemetery did not own any real estate of any kind, did it?

A. The Locustwood Cemetery?

Q. Yes.

A. In a cemetery you don't own anything, you just sell the rights; as I understand the cemetery, the cemetery is owned by the association.

Q. You represented to these people to whom you sold $20,000.00 worth of stock that the Locustwood Cemetery owned all the property where the cemetery was?

A. No, sir, I did not.

Q. You never did?

A. No, sir, I represented the fact that the Cemetery Association owned the land and we were selling the rights to bury therein, that was my representation.

Q. You were selling stock, however?

A. Yes, sir.

Q. In the Cemetery, Inc.?

A. Yes, and gave a bonus of a lot, and that is how I knew about the land.

Q. Did you get a title policy on this land?

A. Did I, no, sir.

Q. Ever see one?

A. Did I, no, sir. I understood it could be gotten though.

Q. It was after February, 1924, you came back to work for the Locustwood Cemetery, Inc., wasn't it?

A. No, sir, it was in 1923, October.

Q. You came for whom that time?

A. For Jimmy and Max.

Q. And worked up to May, 1924?

A. Yes, sir.

Q. You kept selling stock up to that time?

A. I did.

Q. Notwithstanding you knew their rights or title, or whatever they had, was in litigation, you kept right on selling?

A. That was served on Mr. Burrell and Mr. Burrell came up to me ——

Q. You knew about it?

A. In February I did.

Q. Notwithstanding that you kept right on?

A. I explained thoroughly to everybody that to my knowledge—I am not a lawyer—but I explained to them to the best of my ability that that affected Mrs. Aleck and Dr. Spear as to the money that would be derived from the sale but it did not affect us, because I didn't see how it could.

Q. In order to give that advice to people who were going to turn money over to the company, had you looked it up?

A. I had consulted with the boys, yes, and my father had come down here.

Q. You were taking people's money for stock?

A. Yes, and took it honestly.

Q. And you were giving advice as to the character of the litigation?

A. They knew of the litigation, it was all in newspapers, you didn't have to tell them; they told you more than you could tell them. I told them, "There is the cemetery, it is land, it can't run away, it is not something we can pick up and walk off with."

Q. And with that knowledge, notwithstanding your father's reputation, you kept right on selling stock?

A. Yes, because I didn't see how the land could go away, and I couldn't see how the fact of whether Mrs. Aleck or Mr. Spear owned the land could affect the cemetery, because it couldn't be used for anything else, you couldn't build a house on it, you couldn't cut it up into developments, it had to be a cemetery.

Q. How do you know it couldn't?

A. As far as I could find out.

Q. You did not inquire?

A. That was my understanding.

By Mr. Palmer:

Q. Now, the stock sold was stock in the Locustwood Cemetery, Inc., wasn't it?

A. Yes, sir.

Q. And that company owned no land?

A. No, sir.

Q. It didn't own anything?

A. No, but it had a working contract.

Q. The only thing that company had was a contract with the Equitable Estates Corporation?

A. That is it, exactly.

Q. And you were giving with the stock you sold deeds to lots in the cemetery?

A. No, just a minute. There were 100 lots, I might be wrong on the number, maybe only 80 or 75, but I think it was 100, and the first people who

bought $500.00 worth of stock, the first 100 people who bought $500.00 worth of stock, they got a lot in the cemetery, and that was Dr. Spear's agreement because I hear Dr. Spear make that agreement. The idea was Jimmy's and Mr. Cawthorne's, and Dr. Spear said he thought it was a fine idea and Dr. Spear knew we were doing that. We didn't give them all out, there were only about 50 that really got that extra bonus we made for a limited time, but we didn't give the land, we gave the rights to bury in a certain tract of land.

Q. You didn't give a deed to it?

A. We gave them the right to bury in there.

Q. You gave them what purported to be a right to place bodies in a certain lot in the cemetery?

A. Yes, sir.

Q. What about the people who didn't buy $500.00 worth of stock?

A. They could buy a lot.

Q. People who bought stock of less than $500.00 worth all they got was the right to buy a lot?

A. No, sir.

Q. What did they get?

A. They bought $500.00 worth of stock.

Q. Stock in a company that owned nothing except a contract?

A. I wouldn't say that.

Q. What else did they own?

A. They owned the rights of a contract.

Q. Yes, they owned a contract and that is the only estate or property the Locustwood Cemetery, Inc. ever had.

A. All right.

W. B. M. Burrell, sworn.

By Mr. Carr:

Q. Mr. Burrell, you live in Camden?
A. I do.
Q. And what is your business?
A. I am an undertaker, funeral director.
Q. Have been in that business for a number of years?
A. 36 years.
Q. Are you connected with the Locustwood Cemetery Association, Inc.?
A. I believe I am president.
Q. How long have you been president?
A. I have been president since about October, 1923, I think it was.
Q. Previously to your being made president were you shown a working agreement between the Locustwood Cemetery, Inc., and the Equitable Estates Corporation?
A. I was shown the agreement, yes, and on that authority I accepted the office as president.
Q. Do you remember substantially what that agreement provided?
A. I can't go into detail because I was under rather a heavy strain at that time, my wife was very sick, but I understood the agreement was ——

Mr. Tyler: I object to what he may have understood.

The Witness: I know we were to pay $200.00 a week and the other part of the agreement I just can't remember just what it was.

Q. Do you remember how much was to be paid for the land?

A. $100,000.00.

Q. Do you remember how long you were to have to pay that in?

A. Well, I understood it was about 20 years.

Q. And how were the payments to be made?

A. $200.00 a week, but aside from that I can't say positively what the other part of the agreement was.

Q. And did you see that agreement before you accepted the presidency?

A. I did. They showed me the agreement in my office, Mr. Cawthorne brought it in and showed it to me.

Q. Do you remember the date of the agreement?

A. I remember it was in October.

Q. Of what year?

A. About 1923, and it was on a Tuesday.

Q. Mr. Burrell, you have been the president of the company from that time on to the present time?

A. Yes.

Q. Are there a considerable number of stockholders in that company?

A. Yes, I think we have got about 150.

Q. Are you familiar with the financial transactions of the company or is Mr. Cawthorne the man?

A. Mr. Cawthorne handled the financial transactions.

Cross-examination.

By Mr. Palmer:

Q. Mr. Burrell, it is the Locustwood Cemetery, Inc., of which you are president?

A. Yes, sir.

Q. That company you say you accepted the presidency of in October, 1923, after looking at this agreement?

A. Yes.

Q. Did that company have any assets other than this agreement?

A. Well, we had this agreement, we paid so much on.

Q. Did it have any other assets or property other than this agreement with the Equitable Estates Corporation?

A. Nothing outside of the cemetery.

Q. The Locustwood Cemetery, Inc., did not own the cemetery, did it?

A. They owned the agreement, they owned it, that is, according to the contract.

Q. You had a contract to buy it, but you didn't own it and did not have title to it, by you, I mean the Locustwood Cemetery, Inc., I don't mean you individually, of course, but your company never did have title to any land, did it?

A. Not that I know of.

Q. When you accepted the presidency of this company did you make any investigation to see what, if anything, the Equitable Estates Corporation could give you under that agreement?

A. Mr. Darcy came to me in the first place and got me to go into this because he was going around and made an investigation and found it was all right, and they selected me as their representative in Camden, and then Mr. C. O. Davis came from Newark, he is the man who had a very high reputation, at that time it was the firm of C. O. Davis & Co. of Newark, and he was recommended as being an A-1 concern in Newark that handled stock for various companies, and he confronted me with the title and

everything was in first-class shape, that they had gone all over the title and everything was all right.

Q. And it was on the strength of those representations you accepted the presidency of this new company?

A. That is the reason I took hold of it.

Q. Had the Locustwood Cemetery, Inc. been incorporated before you were elected president for any length of time?

A. I think they were incorporated after I was elected president, I think so, I won't say for sure.

Q. You think you were the first president of the Locustwood Cemetery, Inc.?

A. Yes.

Q. You made no investigation of the title of the Equitable Estates Corporation?

A. I took the recommendation of C. O. Davis & Company and Mr. Allen's father who came on personally to investigate it. Mr. Allen's father has a high reputation in New York and on his recommendation I accepted the presidency.

By Mr. Tyler:

Q. Did you make some inquiries and make an application for a title policy on this property?

A. No.

Q. Beg pardon?

A. No.

Q. Hadn't you seen any?

A. No.

Q. Hadn't you talked to anyone about it?

A. I relied on Mr. Darcy or Mr. Cawthorne in regard to the title part of it.

Q. Hadn't you talked to anyone about the title policy?

A. No.

Q. You had not seen one?
A. No.
Q. You never saw a title policy?
A. I understand the title is insured by the West Jersey Title Company.
Q. Have you seen the policy?
A. No.
Q. Did the company have one?
A. I don't know.
Q. You don't know of any, Mr. Burrell?
A. No, only I was shown a paper where they had been insured by the West Jersey Title Company.

Mr. Tyler: I ask counsel to produce the title policy which they have.

JOHN F. POWELL, sworn.

Mr. Carr: If the Court please, I wish to examine this witness about the so-called July 23rd agreement. Will we inquire whether it has been produced?

The Court: What was the last suggestion?

Mr. Carr: I was about to inquire whether the instrument had since been located, I see Dr. Spear is in the court room.

The Court: Yes, have you ascertained, Mr. Palmer, whether the agreement has been found?

Mr. Palmer: It has not so far as I know.

Mr. Carr: I am a little bit embarrassed, this gen-

tleman was the witness, but I will have to do the best I can in its absence.

The Court: I am going to issue an order for contempt if you will file the petition for it, but I can't do it without your filing a petition. I don't think there is any excuse for this paper being lost after being offered in evidence; somebody is going to suffer for it unless I see something differently.

By Mr. Carr:

Q. You were here in February when this case was on before, weren't you, Mr. Powell?

A. Yes, sir.

Q. You were then shown a paper purporting to be an agreement dated the 23rd day of July, 1923, between the Locustwood Cemetery Association and the Locustwood Cemetery, Inc., the paper, as I recall it, consisted of three pages, having on the last page only the words, "In witness whereof," the names of the corporation and the signatures of the officers. You were shown that paper at that time, were you not?

A. I was.

Q. Were you able to say whether or not the signature thereon was your signature?

A. It was.

Q. I now ask you whether when you signed that paper it was in the form that was shown to you in the court room—I am now showing you a paper produced and marked "Court #1" supposed to be a copy of the so-called agreement of July 23, which was previously offered as an exhibit, which I am now showing you, and my question is whether the paper produced, of which this is said to be a copy, was ever signed by you in that form?

A. The paper I saw at that time was not signed by me.

Q. In the form presented?

A. No, sir.

Q. I ask you now whether you ever signed an agreement such as the one represented by the copy, "Court Exhibit 1."

The Court: There isn't any doubt of this being substantially a copy of the other one, the one that was offered in evidence, is there?

Mr. Carr: I haven't examined it carefully, but I believe it to be. I might say we were confronted by Mr. Rose on the eve of trial with what purported to be a copy and which I believe is a copy; I haven't checked it with this, but I might say for your Honor's information that is certified by Mr. Rose to be a true copy, but it has been altered a little by my own marking and memorandums on it.

The Witness: My answer is I did not.

Q. Were you the secretary of the Locustwood Cemetery, Inc., in July, 1923?

A. I was.

Q. And when did you cease to be secretary of that company?

A. It was in the fall, I think, it was in October.

Q. Were you secretary of the company as late as October, 1923?

A. I think it was about—no, not as late as October, 1923, in the early part of October as I remember it.

Cross-examination.

By Mr. Palmer:

Q. When were you elected secretary of the Locustwood Cemetery, Inc.?
A. July, 1923.
Q. What date in July?
A. I believe it was either the 9th or the 23rd.
Q. Why do you specify those two dates?
A. Because I was in Camden attending a meeting on those two dates and I don't just recall now which was the date.
Q. A meeting of what?
A. A meeting of the directors.
Q. Of what?
A. Of the Locustwood Cemetery, Inc.
Q. Would your minute book contain which of those dates you were elected?
A. Yes, sir.
Q. Have you the minute book?

Mr. Carr: It will be produced tomorrow morning, it is at my office.

Mr. Palmer: I would like to cross-examine this witness with those minutes before him.

The Court: Are they here?

Mr. Palmer: Mr. Carr says they are at his office.

Mr. Carr: They are at my law library, this case will last over until tomorrow and we will have them here tomorrow.

Mr. Palmer: May I suggest that my cross-examination be deferred until tomorrow?

The Court: Very well.

Mr. Tyler: I would like to defer my cross-examination until tomorrow, if the Court please.

The Court: All right. That is all, Mr. Powell, you will resume tomorrow.

Warren Douglas McTaggart, sworn.

By Mr. Carr:

Q. Mr. McTaggart, where do you live, please?
A. I beg pardon?
Q. Where do you live, please?
A. I live right directly opposite Locustwood Cemetery.
Q. How long have you lived there?
A. A little over three years, I believe.
Q. When did you move there?
A. About May, 1924.
Q. May, 1924?
A. Yes.
Q. During the fall of 1923, do you know whether there was any visible activities in the Locustwood Cemetery as to physical improvements?
A. Yes, there was. I visited the cemetery on one occasion in the fall of 1923, I should judge it would be, I'm not sure, but I believe the middle of November or thereabouts.
Q. What was going on then?
A. Why, it was on a Sunday that I visited there

but the construction work was visible, the teams were about and the apparatus for pulling stumps was in evidence there, they used a cable and a tractor for drawing the stumps.

Q. Could you see evidence of work outside of the cemetery proper?

A. Yes, the making of the roads.

Q. Was there considerable evidence of activities visible?

A. I won't say considerable, there was some.

Q. When next did you see the cemetery or the work going on?

A. The next was toward the latter part of April.

Q. What did you see then?

A. At that time I started building the house I am living in directly opposite the cemetery and from then on I was nearby at all times.

Q. Was there much work going on?

A. Quite a bit of work.

Q. A number of men employed?

A. Yes, I would say a number, I would say about 20, 18 or 20.

Q. Tractors at work?

A. Yes, sir.

Q. Horses at work?

A. Tractors, horses, stump pulling, and some dynamiting.

Q. Do you remember a sign such as this up on the land?

A. Yes, sir, I do.

Q. Such as this Exhibit C3, a large sign like that?

A. A very large sign, I think it was about 16 or 18 feet long, possibly 8 or 10 feet high.

Q. Was it conspicuously displayed?

A. Very.

Q. Do you know whether Dr. Spear came around from time to time to see the work in progress?

A. Yes, sir, quite often.

Q. And Mrs. Aleck, would she be there at times?

A. I have seen Mrs. Aleck over in the cemetery in company with Dr. Spear I should judge three or four times before we were introduced or met Mrs. Aleck; she later came to the house and visited us on several occasions with Dr. Spear. On one occasion she came without the doctor and at that time she was driven over there by a neighbor, I believe, in an automobile.

Q. Did she express any pleasure or displeasure at the work going on?

Mr. Tyler: May I have the time fixed that this conversation was?

The Witness: The conversation was at various times.

Mr. Tyler: The one you referred to?

The Witness: Now?

Mr. Tyler: Was it at your house?

The Witness: Yes.

Mr. Tyler: Opposite the cemetery?

The Witness: Yes, sir.

Mr. Tyler: That was April, 1924?

The Witness: The latter part of April or the 1st of May.

Mr. Tyler: 1924?

The Witness: Yes.

Q. Did Mrs. Aleck ever express any pleasure or displeasure with the work going on?

A. Only to admire the place, how beautiful it was becoming.

Q. When did she say that?

A. I can't set a date for that, it was on various occasions.

Q. That was her comment, was it?

A. Yes, sir.

Q. Did Dr. Spear express any pleasure or displeasure at what was going on?

A. Yes, he expressed himself as saying it was becoming a very beautiful cemetery and the work seemed to be progressing rapidly and roads were well put down.

Q. The work that was going on there, when did you say you first observed the work in progress?

A. The first time I observed evidences of work was on a Sunday I visited there, some time about the middle of November, 1923.

The Court: How much testimony will there be tomorrow? Will we have any difficulty finishing tomorrow, because I am tired and I would like to quit for today.

Mr. Carr: I am willing to quit.

(At this point an adjournment was taken until Thursday, June 16, 1927, at 9:45 o'clock A. M.)

Camden, New Jersey, June 16, 1927.

(Trial of the cause resumed on the above date pursuant to adjournment, at 9:45 o'clock, A. M.)

The Court: Counsel may proceed if ready.

The Court: Have you finished, Mr. Carr?

Mr. Carr: No, if the Court please, I was waiting Mr. Tyler's cross-examination of Mr. Powell, that is all.

JOHN F. POWELL, recalled.

Cross-examination.

By Mr. Tyler:

Q. Mr. Powell, I show you a book, printed on the cover "Locustwood Cemetery, Inc.," what is that?
A. That is the minute book of the Locustwood Cemetery, Inc.
Q. Does that contain all the minutes of that company?
A. I don't know whether it contains all or not.
Q. Have you any other place you keep minutes of the company besides this book?
A. I am not the secretary of the company.
Q. Up to what time were you secretary?
A. I was secretary up to October, 1923.
Q. Does it have all the minutes up to that time?
A. It does, yes, sir.

Q. You don't know of any other?

A. I do not.

Q. Do you know of any other minute book they had besides this one?

A. At that time?

Q. While you were secretary?

A. No, sir.

Q. Have you been connected with the company since October, 1923?

A. Not officially.

Q. In what way?

A .Employed by the company.

Q. In what capacity?

A. As a bookkeeper.

Q. And are you still employed by them?

A. Yes, sir.

Q. As bookkeeper do you know of any other minute book of the company besides this one?

A. Yes. I think there is one after this date going right on after the last date in that book.

Q. Now, the last date in this book seems to be a meeting the 1st day of October, 1925, do you know of any other minute book besides this up to that date?

A. I haven't kept the books.

Mr. Tyler: Perhaps Mr. Carr will answer. Was there any other book up to that time?

Mr. Carr: No.

Q. Will you show me any minutes, if there is one, of the board of directors authorizing the execution of the contract dated October 23, 1923?

A. That is after my time expired as secretary.

Q. I am presenting the minute book, you were there up to that time. Now, will you show me any

authorization of any contract dated October 23, 1923, by the board of directors?

The Court: If you have found none, Mr. Tyler, and Mr. Carr directs my attention to none I shall assume there is none.

Mr. Tyler: I have looked through the minutes and found none.

The Court: I want to avoid the necessity of having him go all through the minutes.

Mr. Carr: I think we can agree on that, it is only a matter of inspection between Mr. Tyler and myself.

The Court: You presently know of none?

Mr. Carr: No, sir, I do not.

The Court: Is there any resolution authorizing the contract of July 23? I have an impression that was offered but I don't know whether it was or not.

Mr. Carr: If the Court please, there is a reference to the meeting of July 24 to the execution of contracts with the Locustwood Cemetery, Inc., it is vague, it speaks of it in the plural, but I can call your attention to where that may be found in the minute book and I think we can perhaps do that more quickly than the witness can.

Q. I want to ask the same questioin, whether there is any minutes of the authorization of the contract of October 23, 1923, by the stockholders?

A. That I can't answer.

Mr. Tyler: I will say from my inspection of the minutes there appears likewise to be none.

The Court: Of the stockholders, you say?

Mr. Tyler: Yes.

The Court: Can you turn to the minute Mr. Carr refers to?

Mr. Tyler: Yes, July 24, 1923, I have that minute here of the board of directors, it says, the minute reads, as follows: "Proposed agreements with Locustwood Cemetery, Inc., were read, and discussion as to these agreements, all of the directors participating, was had, and upon motion duly supported and carried the officers of the company were instructed to execute the agreements." That is the minute of July 24, 1923, and that is the only minute I have been able to find.

The Court: Is that the one you referred to?

Mr. Carr: Yes, sir.

Mr. Tyler: And following that is the contract dealing with stock sales and the commissions to be paid to Davis & Company on the selling of the stock. That is a copy of an agreement dated July 24, 1923, between the Locustwood Cemetery, Inc. and C. O. Davis & Company, and that is the only agreement that appears in the minutes and that agreement is not anywhere referred to in the pleadings in this case.

Q. As bookkeeper of the company do you have

the books showing the receipts and expenditures of the company?

A. Yes, sir.

Q. Will you produce those, please? Witness is shown a book which is produced by the Locustwood Cemetery, Inc., and is asked what that book is.

A. That is a cash book of the Locustwood Cemetery.

Q. Locustwood Cemetery, Inc.?

A. Yes.

Q. What are the entries in that book, receipts and disbursements?

A. Receipts and disbursements.

Q. Beginning July 13, 1923?

A. Yes.

Q. And ending September, 1924?

A. Yes. I wish to say I did not keep that book, that was before my time as bookkeeper.

Q. But you understand the entries in this book, don't you?

A. Yes, I understand that is the cash book.

Q. On July 31, 1923, a payment to Locustwood Cemetery Association, $1020.00, do you know what that was for?

A. No.

Q. On August 7, a payment of $100.00, do you know what that is for?

A. No, unless I looked it up; I didn't keep the book and I don't remember.

Q. You don't know what any of these payments are for?

A. Not unless I looked them up.

Q. Where would you look it up if you had to?

A. In the check book, I have all expenses there, what it is for.

Q. Will you tell me what they are?

A. Which one?

Q. The first one was July 31, 1923, $1020.00?
A. It doesn't tell.

The Court: Isn't there a ledger, or a journal, or something that gives an explanation of the items.

The Witness: That was a check, it probably will be explained on the stub of the check book.

The Court: What?

The Witness: It probably will be explained on the stub of the check book.

Mr. Carr: May I offer a suggestion, that Mr. Powell only recently came in the employ of the company in the capacity of bookkeeper; Mr. Cawthorne is far better posted on these earlier transactions.

The Court: Is he here?

Mr. Carr: Yes, sir, he is right here.

The Witness: This was about two years before I came.

The Court: Is that a journal you have, Mr. Carr?

Mr. Carr: It appears to be, yes, sir. I see entries that appear to correspond with this and an explanation of the items. Mr. Cawthorne, however, was the financial man and I think he has more exact knowledge of these things.

The Court: While on the subject of minutes, in order that I might have it in mind, are the

minutes of the Locustwood Cemetery Association of July and October, 1923, here?

Mr. Carr: Pardon me, that motorcycle was passing and I couldn't hear you.

The Court: Are the minutes of the Locustwood Cemetery Association here for July and October?

Mr. Carr: Of the association and of Inc.

The Court: Can't we ascertain now what they show with reference to these contracts, if anything?

Mr. Carr: The Locustwood Cemetery Association?

The Court: If counsel don't mind diverting.

Mr. Tyler: No, I think it would be well.

Mr. Carr: The control of the association was taken over in January, 1925, and the minutes prior to that time were in the custody of Dr. Spear and we never received them, if the Court please.

The Court: They are not here?

Mr. Carr: No, sir.

The Court: Have you those, Mr. Palmer?

Mr. Carr: Are the minute books of the Equitable Estates Corporation going to be produced in response to our request? Mr. Stackhouse telegraphed yesterday ——

Mr. Palmer: I went away from here yesterday afternoon and I haven't been to the office and I know nothing of any telegrams.

Mr. Stackhouse.: I telegraphed about 4 o'clock yesterday afternoon.

Mr. Carr: May we have those books?

Mr. Palmer: Yes.

Mr. Carr: Can they be produced today?

Mr. Palmer: I don't know about that. What is it you want.

Mr. Carr: The minutes of the Equitable Estates Corporation.

The Court: Do you remember, Mr. Tyler, when the Equitable Estates Corporation was incorporated?

Mr. Tyler: Probably in 1919 or 1920. It was prior to the conveyance of the deeds from Mrs. Aleck, which was in June, 1920.

Mr. Palmer: We have them here.

The Court: Can't we see now whether the minutes of the Locustwood Cemetery Association make any reference to this contract of July, 1923, or October, 1923, and also whether the minutes of the Equitable Estates Corporation make any reference to the contract of October, 1923?

Mr. Palmer: It doesn't seem possible to put our

fingers on it at this moment, unless you want to take the time.

The Court: Let counsel make a search of the minutes later.

By Mr. Palmer:

Q. Mr. Powell, when were you elected secretary?

Mr. Carr: Will you mind waiting a moment?

Mr. Palmer: Pardon me, I thought you were through.

Mr. Carr: Both counsel agree in reporting that they find nothing in the minute book of the Equitable Estates dealing with either July 23rd or the October 23rd contract, or in any way that appears to be in the subject-matter of this suit. If there be anything of that kind I will ask Mr. Palmer to point it out later.

Mr. Palmer: This is the first time my attention has been called to it.

Mr. Carr: The statement is not made to be critical.

Mr. Tyler: I have examined the minutes and do not find anything either, but there would be no occasion to find anything in regard to the October 23rd contract because the Equitable Estates Corporation is not claimed to be a party to that.

The Court: Mr. Palmer has not made a complete

search of the minutes of the Cemetery Association, and that will be supplied later.

Mr. Tyler: I have asked Mr. French to come here this morning and I know he is engaged in taking proofs this morning and I told him I thought we could probably have our case suspended where we are and take his testimony.

The Court: There is no objection Mr. Palmer, to the witness standing aside a moment?

Mr. Palmer: No.

THOMAS E. FRENCH, ESQ., sworn.

By Mr. Tyler:

Q. Mr. French, I show you a deed marked T4, will you examine that while I am hunting some other papers?

Mr. Carr: What is that deed, the deed to Holloway?

Mr. Tyler: Yes. What I would like to have is the deed from Charles C. Spear to Cyrus D. Marter, September 28, 1908, and recorded June 21, 1909.

Q. Witness is shown Exhibit C4, being a certified copy of the records in the register of deeds office of a deed, Cyrus D. Marter and wife to Thomas E. French, and others, dated September 28, 1908, recorded in Book 337, Page 616, and attention is called to the description in said deed. The description in

the deed calls for 153.77 of an acre and is followed by these words: "And also a certain agreement bearing date the 31st day of December, 1907, made between the said Charles C. Spear and the Fernwood Cemetery Association, and all moneys due and to grow due thereunder and all the rights and privileges granted by the said agreement, subject, however, to the covenants of the said Charles C. Spear, contained in said agreement, being the same lands and agreement conveyed and transferred to the said Cyrus D. Marter by the said Charles C. Spear, by indenture bearing date the 28th day of September, 1908, recorded in the register of deeds office in Book ——of deeds, page —— together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions and remainder, rents, issues and profits thereof, and and also all the right, title, interest, property possession, claim and demand both in law and equity of said Cyrus D. Marter of in and to the said premises with the appurtenances." Do you recall that conveyance, Mr. French, that is a certified copy of the deed, Exhibit C4 made from Marter and his wife to you?

A. I recall there was some such conveyance but I haven't any specific recollection of it, except there was such a conveyance.

Q. It is true, based upon that conveyance to you, that you made the deed, Exhibit T4, being a conveyance from Thomas E. French, Trustee, and Helen C. Douglass, Charles C. Spear and Cyrus D. Marter to Leslie M. Holloway?

A. It is.

Q. Now, I call your attention to the fact that Exhibit T4, being the deed from you and others to

Leslie M. Holloway does not have exactly the same description that is contained in the deed to you, there seems to be some variation in the description, and I ask whether it was your intention to convey all your right, title, and interest in that property, together with the agreement, to the grantee in that deed and dispossess yourself of all the title and any interests therein.

A. My recollection is that it was. My recollection also is that it was a matter in which I was not paid as trustee and I did practically what I was asked to do by the parties. I haven't any real clear recollection about it, but I know I wanted to get clear of any responsibility or liability I had in the matter.

Q. And your recollection is it was your intention to dispose of every part of the title or any interest therein to the grantee in that deed, that is correct, Mr. French?

A. My recollection is I wanted to get rid of it.

By the Court:

Q. Can you remember whether you intended to retain anything in yourself?

A. No, I did not want to retain anything in myself.

Q. Did you understand you disposed of all the interests that came to you?

A. It is impossible to say what my understanding was, but I am certain I wanted to get rid of everything I had there.

Q. Did you up to this time suppose you had?

A. I did. I was surprised when they claimed I had not.

By Mr. Tyler:

Q. From the date of that deed in 1910 down to

the present time have you exercised any control at all over the property therein described?

A. I have not.

Cross-examination.

By Mr. Palmer:

Q. Mr. French, did you prepare this deed from yourself as trustee and others, to Mr. Holloway?

A. I don't know, it was prepared in my office, whether I did it or whether Mr. Richards did it or whether the stenographer did it, I don't know.

Q. Do you know whether it was prepared in your office?

A. I know it was prepared in my office from the paper, the typewriting, and the signature of the subscribing witness.

Q. Whether it was done under your direct supervision or not you have no recollection at all?

A. I am not certain.

Q. Now, during the time that you held title, that is, between September 28, 1908, which is the date of the deed from Marter to you, and the 21st day of February, 1910, being something over a year, was anything done by you with that property at all?

A. Not that I recollect, it was a matter for the convenience of Mrs. Spear and Dr. Spear—Mrs. Douglass, I think it was then, and I did not take any active part in it.

Q. The title was conveyed to you under some arrangement that they themselves had made?

A. The arrangement was expressed in the trustee deed whatever it was.

Q. What I mean is, you had nothing to do with the preparation of the arrangement, as to the inten-

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tion of it, or the purpose of it, or anything of that sort?

A. No, sir.

Q. And during the time the title was in you, you did nothing with the property in any way, shape or form?

A. Nothing, unless I was asked to do something by them.

Q. And if anything was done by you it was as the result of the request on the part of Mrs. Douglass and Dr. Spear?

A. It was.

By Mr. Carr:

Q. Mr. French, was Mr. Holloway a trustee, as you understood it?

A. Who?

Q. Mr. Holloway, to whom you were conveying?

A. I have no recollection of that gentleman, I don't know as I know him. It was some arrangement that Dr. Spear and Mrs. Douglass had made.

Q. I presume at this time your recollection is not very clear.

A. It is not. I just remember their words, such things.

Q. You are unable to say at this time whether Mr. Holloway was taking this in trust or whether it was an absolute conveyance.

A. I have no recollection of that, I don't even recollect him.

Q. An examination of the certified copy would indicate there was no specific assignment or conveyance of the Spear-Fernwood agreement, have you any recollection with regard to that at all?

A. No, I have not.

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Q. At this time you can't say whether or not you were asked to include that in the transfer?

A. I don't know. I have no recollection of what I was asked to do, all I can remember is there were such things and these are the papers and I supposed I was rid of the whole matter.

Q. Do you know whether the deed was prepared in your office or whether it was brought to you to be executed?

A. I know the original deed was.

Q. Was prepared in your office?

A. That deed which you have in your hand, this certified copy, I imagine was, although I don't know. If I could see the original I could tell.

Q. But at the present time you have no recollection whatever as to what request was made on you with reference to assigning the Spear-Fernwood agreement?

A. I have absolutely no recollection of that.

Q. You know, of course, what I mean by the Spear-Fernwood agreement?

A. Yes, it was some agreement about a cemetery.

Q. Your best recollection is that you executed whatever was jointly requested by Mrs. Douglass and Dr. Spear to be executed in this matter?

A. I did.

Q. And does that completely summarize your recollection at the present time?

A. My recollection is I did whatever—I know I did whatever they asked me to do with respect to it, that I properly did, and also my recollection is that it was a bothersome matter and I wanted to get rid of it, and I had gotten rid of it when I executed that deed.

Q. But as to any requests dealing with the Spear-Fernwood agreement you have no recollection?

A. I have no recollection about that.

Mr. Tyler: I would like it understood at this point that the answer filed by Leslie M. Holloway, the grantee in this deed, admits the allegations of the cross-bill against Thomas E. French to reform this bill to the effect that it was his understanding and intention that the deed to him conveyed all the interest conveyed to Mr. French by the prior deed, being Exhibit C4.

The Court: His answer is only evidence of his present attitude in the matter. I apprehend it does not operate as testimony. He will have to testify if you want to utilize his recollection of it, I think.

Mr. Tyler: I thought the answer ——

The Court: It binds him but nobody else.

Mr. Tyler: I understand that.

The Court: It binds him in the controversy that might exist between him and French, but I doubt whether it binds anybody else.

Mr. Tyler: I assume that.

The Court: I doubt whether it can be used against anybody else as evidence. I don't know whether he is getable or not, but I think his testimony had better be produced if we rely upon his admission.

Mr. Tyler: I will see whether that is possible.

Mr. Carr: I made this suggestion to Mr. Tyler, and I will make it to you, that any of these matters dealing in figures we are quite willing to open all our books and perhaps we can get at it more quickly.

Mr. Palmer: All right.

The Court: Is that satisfactory?

Mr. Palmer: Yes, sir.

WARREN DOUGLAS MCTAGGART, recalled.

By Mr. Carr:

Q. Mr. McTaggart, you say you first observed the evidences of physical work and improvements of the Locustwood Cemetery in November, 1923, is that right?

A. Yes, sir, or thereabouts.

Q. Did you fix a date in November, I have forgotten?

A. No, sir, I did not.

Q. And did you observe from time to time the condition of the work or the fact that work was being pursued in the cemetery?

Mr. Tyler: I think the witness testified to that. The question is leading and is objected to on that account, and the witness has already testified he was back again in the spring of 1924, otherwise I will ask to have the time fixed.

Q. Were you back there from time to time?

A. Between those times?

Q. Yes.

A. No, sir, I had no occasion.

Q. You came back in February when you were building your house?

Mr. Tyler: That is objected to as leading and fixing the time for the witness.

Mr. Carr: I think he has already testified to that.

The Court: I think he said he went away along about that time and he wasn't there much until after he started his house.

Q. Now, from February on you were building this house?

Mr. Tyler: That is objected to as leading.

Mr. Carr: I know it is leading, but I don't think there is any doubt about it.

Mr. Tyler: I object to your fixing the time for the witness, and the time you are fixing is not in accordance with his prior testimony.

Q. You were building a house there, weren't you?

A. Yes, sir.

Q. And after you got the house built what did you do?

A. Lived in the house, I still live in it.

Q. Would you see Dr. Spear there from time to time during the progress of that work at the cemetery?

A. Very often.

Q. Would he have anything to say about the work that was in progress at the cemetery?

A. No, I can't say he did, only to express satisfaction as to what was going on. Once in a while there was some little matter like—I remember once he remarked that there was a willow tree that had

been taken down and he said, "I am sorry they took that tree out," but outside of that I don't know of anything regarding the work he disapproved of as far as the development was concerned.

Q. Did you have any talk with Mrs. Douglass or Mrs. Aleck?

Mr. Tyler: May I have the time fixed, I don't know whether this is relevant.

The Court: I think it is competent.

Q. You can tell me yes or no.

A. Yes, but not at that time, though.

Q. When did you have any talk with Mrs. Aleck or Mrs. Douglass?

A. I will have to think a minute. I started to build the house really in the spring before we moved into the neighborhood, the 16th of June.

Q. 1924?

A. Yes, 1924, but the house was not finished then, we did not move into the house until, I believe, September, August or September, and it was between that time, sometime during the construction of the house in the early stage of construction; the floor joists were laid and part of the studding of the outer sills were up when I first met Mrs. Aleck, first introduced to her, and first talked to her.

Q. Will you fix that as nearly as you can with regards to the date and month?

A. It is rather difficult to fix the date.

Q. Can you fix the month?

A. Yes, I would say June.

Q. June of 1924?

A. Sometime between the middle and latter part of June, 1924.

Q. What did you say to Mrs. Aleck and what did she say to you?

A. Well, I don't remember the exact conversations, of course, but merely to comment on the fact that the work was going along nicely and the place looked beautiful. I can't remember anything more definite than that.

Q. Were there any other talks about the same subject-matter?

A. From time to time, yes, sir.

Q. What would Mrs. Aleck say from time to time in connection with the work?

A. Generally along the same line.

Q. Which was what?

A. That the work was progressing nicely.

Cross-examination.

By Mr. Palmer:

Q. Mr. McTaggart, where did you live prior to going to the neighborhood of this cemetery?

A. Hainesport, New Jersey.

Q. How long had you lived there?

A. In Hainesport?

Q. Yes.

A. I should say about two years, not less, possibly more than that.

Q. That is where you met Dr. Spear?

A. Yes, sir.

Q. And you were employed by him in the spring of 1924 as a salesman to sell lots in the Locustwood Cemetery Association, weren't you?

A. I was employed as such.

Q. And you were paid as such?

A. No, sir, I was not.

Q. Weren't you paid any money by Dr. Spear?
A. I was not.
Q. You were not?
A. I was paid a small salary to act as assistant superintendent of the cemetery association and as a watchman. I was sworn in as a special officer.
Q. How much were you paid?
A. Fifteen dollars a week, when I could get hold of Dr. Spear to get it.
Q. And when did that begin?
A. I can't set a definite date, I should judge it was in May, 1923, sometime in May.
Q. May, 1923 or 1924?
A. 1924, I should say.
Q. How long did that continue, your employment, and the drawing of your wages?
A. It continued until Dr. Spear stopped paying it. At that time I believe his money was tied up in the taking over of the association by the present people.
Q. When was that?
A. That is a matter of record, I can't say the date.
Q. Approximately when was it?
A. It would be a random guess, it is so far back. I can't set a date.
Q. You were elected as assistant secretary of the Locustwood Cemetery Association, weren't you?
A. Yes.
Q. What were your duties in that position?
A. My duties were few as assistant secretary.
Q. What were they?
A. None.
Q. You did not do anything?
A. That is right.
Q. What did you do for the $15.00 a week that you drew?

A. Acted as watchman in the cemetery; I was sworn in as a special officer, locked the gates at night, looked over the cemetery generally.

Q. Was this during the time of the development of the cemetery?

A. It was, partly.

Q. You were subsequently dismissed by the township as a special officer?

A. I was.

Q. And you were subsequently convicted before Judge Shay of carrying concealed weapons?

A. Yes, I was, thanks to Dr. Spear and his attorney.

Q. You spoke of building a house out here, where is that house located?

A. Located on the corner of Cooper Landing Road and Marlton Pike.

Q. And where is it located with reference to the Locustwood Cemetery Company?

A. Opposite the upper end of the land adjacent to the cemetery.

Q. And on part of the land known as the Cooper-Homestead Farm?

A. Yes, sir.

Q. Who suggested you build your house there?

A. Dr. Spear.

Q. Who supplied the material for it?

A. Part of the material came from the farm.

Q. Where?

A. Part of the material came from barns that were standing adjacent to the cemetery.

Q. On the Cooper-Homestead Farm?

A. Yes, that lumber was furnished me, hauled over to the lot by the Locustwood Cemetery, Inc., and other lumber was purchased from the Haddon Heights Lumber Company.

Q. And who paid for that?

A. Dr. Spear paid for part of it, but he never finished paying for it.

Q. You claim to own the house?

A. I have a lien on the house at the present time, I have a resident lien.

Q. That is a new one on me, but it may be all right.

A. Possibly.

Q. You had Mr. Darcy arrested at one time for assault and battery, didn't you?

A. At the instance of Dr. Spear, yes.

Q. Darcy had committed an assault and battery, hadn't he?

A. Yes, sir, and so would I under the circumstances now that I know the circumstances more fully.

Q. You could tell whether a man assaulted you, couldn't you, without any help from someone else?

A. I rather imagine I could.

Q. As the result of an assault on you, you had Mr. Darcy arrested?

A. I did.

Q. And your friendship for Mr. Darcy and the Locustwood Cemetery, Inc., came after you had been discharged by Dr. Spear?

A. I have never been discharged by Dr. Spear.

Q. Are you still employed by him?

A. No, sir, I quit of my own free will and accord.

Q. And when did you do that?

A. That is a matter of setting a date again which I can't do.

Q. You could fix dates in your direct examination, you ought to be able to fix some in your cross-examination.

A. It is a matter of the examination itself, the matter of remembering, I don't know.

Q. I say, you seemed to remember on direct examination, but now you can't remember on cross-examination, is that your answer?

A. Yes, sir.

By Mr. Carr:

Q. Mr. McTaggart, the charge against Mr. Darcy was dismissed, wasn't it?

A. Yes, sir.

Q. And when you were carrying this gun what did you do, plead non vult before Judge Shay?

A. No, sir, I did not, I pleaded not guilty. I wanted a jury trial and Dr. Spear's attorney changed the plea and I was obliged to leave the matter to the mercy of the Court, but I don't criticize the Court's decision, of course.

Q. You and Spear came up together at the same time?

A. Yes.

Q. And both of you were fined $300.00?

A. Spear was fined $100.00 and I was fined $25.00, but at that time I carried a permit of the Delaware Township to carry a pistol, thinking it was a good permit.

Q. That pistol you were carrying at the instance of Dr. Spear, weren't you?

A. Yes, sir.

Q. And you were both arrested at the same time while you were both carrying guns?

A. Not exactly at the same time, I heard they had a warrant for me and went down and gave myself up, and Dr. Spear was arrested in his car in front of the court house and the pistol found on him.

By Mr. Palmer:

Q. Do you recall a sign that was erected on this property by the Locustwood Cemetery, Inc.?
A. I do.
Q. Was that on the cemetery property or the adjoining property?
A. It was on the property adjoining, the part actually under development as cemetery.
Q. Did you have any hand in the removal of that sign?
A. I did.
Q. As a suggestion of Dr. Spear?
A. Yes.

The Court: The removal of what?

The Witness: The sign.

Mr. Palmer: They offered a picture of the sign, and the testimony shows the sign was not on the cemetery property, but the adjoining property.

Mr. Carr: It was one large sign, wasn't it?

The Witness: Yes, sir.

Mr. Carr: Does that appear to be a picture of it?

The Witness: Yes, sir.

Mr. Carr: The witness is shown Exhibit C3.

By Mr. Tyler:

Q. Was that on the 13 1/3 acres?

A. No, sir, it was adjacent thereto.

Q. Did you erect another sign there later?

A. Did I?

Q. The association or someone else?

A. No, sir.

Q. Never erected any other?

A. No, sir, the sign was not erected by the association, as I understand, it was erected by the Locustwood Cemetery, Inc.

Q. Was another sign erected by them?

A. The Inc.?

Q. Yes.

A. No, sir.

Q. Wasn't there a sign torn down recently touching which there was some difficulty?

A. No, sir.

Q. Where was that erected?

A. I am not going to answer a question I don't understand.

Q. Wasn't there another sign erected after this was taken down?

A. Yes, sir, there was a sign erected.

Q. By whom?

A. I believe by Mrs. Aleck.

Q. By Mrs. Aleck?

A. Yes, but I have no definite proof of that, I believe so.

Q. Who tore that down?

A. Pardon?

Q. Who tore that down?

A. I don't know.

Q. You didn't testify in another case with regard to it?

A. There are so many signs there and your question ——

Q. You know which one I mean, I'm quite sure.

A. Possibly I would if you described it.

Q. I think you do, anyway. There was some difficulty about it in the criminal court and you testified?

A. I had so many signs, I don't know.

Q. I'm referring to the same one you are, I think.

A. I would be glad to answer your question, and truthfully, if I knew.

Q. Do you remember the sign Mr. Darcy and Cawthorne were arrested for tearing down?

A. Yes, sir, and there was a sign even more recently than that?

Q. Where was that erected?

A. That was on the cemetery proper, that was quite this way, nearer to the gate.

Q. Now, were you out there when the farmhouse of Mrs. Aleck was burned down?

A. No, sir, I never saw the farmhouse.

Q. Now, if I call your attention to the fact that that was burned down April 1, 1924, you would say you never saw it prior to that time?

A. No, sir, I did not see the farmhouse.

Q. You knew where it was?

A. Yes, sir.

Q. Right opposite where you built your house?

A. Yes, about opposite.

Q. And it was part of the remains of that building and barn that you took to build your own house?

A. No, I don't believe that I got any material from that house, it was too badly demolished, the material was mostly from the barn.

Q. I mean, that was there on the property?

A. Yes.

Q. You took them?

A. Yes.

Q. And built your own house with it?

A. Yes, sir.

Q. And you say you did that with the permission of the Locustwood Cemetery Association?

A. No, I did that at the instance of Dr. Spear.

Q. Now yesterday, I have a memorandum, and I think I recall your testimony correctly, you said when Mrs. Aleck came out she only admired the place and nothing more, is that what you said yesterday?

A. Yes, sir.

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

A. I believe that is, yes, sir.

Q. Has anyone suggested or talked to you when you add to your testimony this morning that she commented on the work going along nicely, how did you come to add that to your testimony this morning?

A. I was asked the question and answered it.

Q. You were asked the same question yesterday and you were quite definite in saying she only admired the place and nothing more, meaning the cemetery property?

A. Yes.

Q. All right. How did you come to add to it this morning that she commented on the work going along nicely?

A. I was asked the question and answered it, sir.

Q. Why didn't you state that yesterday when you were asked the same question?

A. Was I asked the same question?

Q. I understood you were asked what she said and you said, "She only admired the place and nothing more," that is what you said as I understood it; now, what has caused you to add to your testimony, "She commented on the work going along nicely?"

Mr. Carr: That doesn't agree with my recollec-

tion. I can't recall the words the witness said, "She only admired the work."

The Court: We won't take the trouble to look it up, you may assume that as the basis of your question, if you want, and if the record does not sustain you, it will be quite harmless. I think if it does sustain you, it will also be quite harmless.

Mr. Tyler: I have my notes to go by, that is the reason I am using them.

The Court: In other words, he wants to know whether you and Mr. Carr had your heads together since yesterday.

The Witness: No, sir, I haven't seen Mr. Carr.

The Court: Or any of the interests he represents?

The Witness: No, sir.

Mr. Tyler: Your Honor asked what I had in mind, but I wanted to include Mr. Stackhouse as well as Mr. Carr.

Mr. Stackhouse: I haven't seen Mr. McTaggart.

Mr. Carr: And I haven't.

By Mr. Carr:

Q. Mr. McTaggart, you were asked about a sign which was demolished and involved the arrest of Mr. Darcy, was that sign put up only last fall?
A. Oh, yes.
Q. Just last fall?

A. Yes.

Q. And the charge against Mr. Darcy was dismissed?

A. Yes, sir.

Q. And against Mr. Cawthorne?

A. Yes, sir.

MARIE MCTAGGART, sworn.

By Mr. Carr:

Q. Now, Mrs. McTaggart, you are the wife of the last witness, aren't you?

A. Yes, sir.

Q. Where do you live?

A. I live on the Marlton Pike right opposite the cemetery.

Q. The Locustwood Cemetery?

A. Yes, sir.

Q. How long have you lived there?

A. Well, close on to four years now.

Q. Do you remember when you moved there?

A. Yes, sir.

Q. When was it?

A. Well, it was in the spring of 1924.

Q. Had you gone out there while the house was being built?

A. Yes, sir, very often.

Q. Did you see the work in progress in the cemetery and the adjoining land?

A. I saw that way before we ever started building, I visited the cemetery with Dr. Spear and Mrs. Spear on a week day and there were several men working there cleaning up the cemetery, burning brush, pulling stumps and cutting the grass.

Q. And when was that as near as you can fix it?

A. If I remember rightly, it was the latter part of 1923, because it was a cold day, it was during the winter, it was very cold, and we stayed near the fire to keep warm.

Q. Could you fix the month in 1923?

A. I imagine it was around the latter part of November or the first of December.

Q. Did Dr. Spear or Mrs. Aleck make any objection to the work going on?

Mr. Tyler: I object to that, she said she went there with Dr. Spear and Mrs. Spear.

The Court: I don't see how she can know.

Q. Did you hear them make any comment on the work?

A. Dr. Spear and Mrs. Spear?

Q. Yes.

A. Yes.

Q. What comment did they make?

A. They spoke about the cemetery and told me how nicely it was going to be fixed up and they pointed out several things and showed me what was going on.

Q. Did you say it was Mrs. Spear or Mrs. Aleck?

A. Mrs. Spear went out with me.

Q. That is Dr. Spear's wife?

A. Yes, sir, and then again I went out a few weeks after that, on a Sunday, several weeks after, and there was quite an improvement over what I had seen the previous weeks and we even remarked about the lawns, how nice they were, and the roads were being prepared, you could see quite a progress, and we noticed where they had been pulling several stumps and preparing the ground.

Q. Had there been any work upon any of the land adjoining the cemetery?

A. Yes, I believe they prepared and made a road to the other gate, but that is not in the cemetery proper.

Q. Did you ever see Mrs. Aleck out there?

A. Several times.

Q. When did you see her?

A. Before I ever knew Mrs. Aleck, I knew her by sight, not to speak to, I saw her over there in company with Dr. Spear of Sunday and during the week it was a common thing to see her over there, but I didn't think much of it at the time.

Q. Did you ever hear her speak about the work?

A. After I met her, yes, sir.

Q. What comment did she make?

Mr. Tyler: I object; fix the time, please.

Q. As nearly as you can, fix the time.

A. After I met Mrs. Aleck?

Q. Yes.

A. I met her, I believe it was after our house was started, she came over to the place and we were introduced and she spoke about the place we were living at and also about the cemetery.

Q. What did she say about the cemetery?

A. How beautiful it was coming on, and spoke about what a beautiful place it was going to be and how nicely they were progressing with the work.

Q. When was this talk?

A. That was one of many talks we had with her because we met on several occasions.

Q. The first time, will you fix the date?

A. I imagine sometime in June is when I met her.

Q. June, 1924?

A. Yes, because she came over to our place.

Q. And how often would you see her out there?

A. Quite often. I couldn't say whether it was once or twice a week, possibly it was, and possibly more than that, but it was a common thing to see her out there with her son, and I know when she came out with other people she always went out through the cemetery.

Q. While she was out there was work in progress on the cemetery?

A. Yes, sir.

Q. And the adjoining land?

A. Yes, sir, but they didn't do much on the adjoining land, but you could see some improvement.

Cross-examination.

By Mr. Tyler:

Q. You say you were out there in the latter part of November or the first part of December for the first time?

A. Yes, sir.

Q. And back again a few months later?

A. A few weeks later.

Q. And that is when you saw the lawn had been cut?

A. Yes, I saw quite an improvement there, from what I had seen the first time.

Q. That would make cutting the lawn somewhere around Christmas?

A. You must remember that place had not been fixed for years, there was high grass, old grass, and old things that would naturally grow up in a place that was not fixed.

Q. You did not mean to infer they were cutting grass?

A. They were cleaning, and cutting this down, you would naturally notice the improvement of the place.

Q. It was very cold the early part of that year?

A. Yes, because we stayed near the fire.

Q. And the ground was frozen, wasn't it?

A. I couldn't say it was frozen, no, because there was no snow on the ground.

Q. You do know they were pulling stumps?

A. Pulling stumps and clearing up the place.

Q. In December?

A. I am quite sure, I remember it.

Q. Did you ever know anybody else to cut their lawn and pull stumps in December?

Mr. Carr: I don't know whether this lady is an expert on stump pulling, your Honor.

The Witness: What I mean by cutting grass is that they were clearing the place up, cutting the old high weeds, and we have done that in December.

Q. Wasn't there snow at that time?

A. At this particular time there was no snow, I remember that distinctly.

Q. When was it Mrs. Aleck came to your house?

A. Why, I said she came to our house when we first began to erect the place, I imagine that was about June, that is, she came to our place, that is, across from the cemetery.

Q. Did she ever come to your house after it was completed?

A. I should say she did, she was a frequent visitor.

Q. How often has she been to your house as a visitor?

A. That would be hard to say, she came several times?

Q. About how many, if you recall?

A. I don't know as I could say how many, but I recall she came several times, I remember.

Q. I can't tell what you mean by several times, was it eleven, or three?

A. I would say about—I don't know, half a dozen, I will say a dozen times in all, because every time she was in the neighborhood she stopped in.

Q. Came in the house?

A. Came in the house or stood out in the yard, sometimes she didn't have time enough to come in.

Q. So she was probably in the neighborhood a dozen times?

A. When she called on us.

Q. You said every time she was in the neighborhood she called on you?

A. Practically every time.

Q. Which do you mean, every time, or practically?

A. Practically every time.

Q. When did you move into the house?

A. We moved into the house we are living in now about the latter part of August or September, the first part of September.

Q. Was the house completed then?

A. It wasn't exactly completed, it isn't completed now.

Q. Now, who built this house, your husband?

A. My husband did it.

Q. He built it for himself?

A. He built it to live in, that was the understanding.

Q. And he got part of the wood from the barn over on the opposite side of the road?

A. Yes, sir.

Q. He built it to live in himself, with his family?

A. Yes, naturally.

Q. He didn't build it for anybody else?

A. That was the understanding, it was built for us to live in.

By Mr. Palmer:

Q. An understanding with whom, Mrs. McTaggart?

A. Beg pardon?

Q. An understanding with whom, you say the house was built for you to live in, that was your understanding, an understanding with whom?

A. Dr. Spear.

Q. Did your house have a sign on it stating it was the office of the Locustwood Cemetery Association?

A. Yes, it did.

Q. It still has it on?

A. Certainly has not, we took it down and I am very sorry it was on.

By Mr. Tyler:

Q. You had no understanding with anyone else except Dr. Spear?

A. No, sir.

By the Court:

Q. Who owned the lot, who had title to the lot?

A. That I can't say, your Honor, I believe it belonged to the Cooper-Homestead.

Q. To what estate?

A. The Cooper-Homestead, that is, the ground did.

JAMES T. CAWTHORNE, sworn.

By Mr. Carr:

Q. Mr. Cawthorne, where do you live?
A. Haddonfield, New Jersey
Q. How long have you lived there?
A. About three years.
Q. Are you connected with the Locustwood Cemetery, Inc.?
A. Yes, sir.
Q. In what capacity?
A. Secretary and treasurer.
Q. How long have you been connected with the company?
A. I was one of the incorporators and temporary president, subsequently secretary and treasurer.
Q. I believe the incorporation date was in July, 1923, that is about correct?
A. July 9, I believe.
Q. Who brought you into this enterprise?
A. The project was first put to me by Mr. Darcy and I introduced Mr. Darcy to a cemetery builder by the name of C. O. Davis. I was in the employ of the firm of C. O. Davis & Co. and had been for several months previously in the listed stock brokerage business in New York.
Q. You came down then at the instance of C. O. Davis & Co.?
A. Yes, sir.
Q. Were you in their employ when you came down?
A. Yes, sir.
Q. Did they establish an office here in Camden?
A. Yes, sir, about the middle of July, 1923.

Q. An office was established for the Locustwood Land Company, Inc.?

A. The Locustwood Cemetery, Inc.

Q. The Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. Where was that office located?

A. 310 Smith-Austermuhl Building.

Q. You know Dr. Spear, of course?

A. I met him, I think it was May, 1923.

Q. The first you had met him, is that right?

A. Yes, sir.

Q. Did the Davis Company begin to show signs of activity in the sale of stock, etc., in the Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. Did they proceed more or less actively with the work for some two or three months?

A. Yes, sir, they began the sale of stock prior to the organization of the company, taking predevelopment—I believe they call them interment certificates.

Q. Did Davis & Company at some time terminate their connection with the enterprise?

A. Yes, sir.

Q. When was that?

A. Sometime around the latter part of September or October Dr. Spear served a notice on them of cancellation of contract.

Q. When was that?

A. 1923, and Mr. Davis, whose health was very bad, packed up and left suddenly.

Q. Did Dr. Spear have any talk with you or with Mr. Darcy about taking the matter up in place of Davis & Company?

A. Yes, sir.

Q. With whom did he talk?

A. He talked to Mr. Darcy and myself repeatedly.

Q. You were both present at the same time?

A. Nearly always.

Q. What proposal did Dr. Spear make?

A. Along about the 10th, I establish the date about that time, of the month of October, 1923, he made a proposal for us to go along with the development as we had been doing all the work on account of Mr. Davis' ill health, and that he would co-operate and assist us, and that he would give us an agreement parallel or duplicate of the Davis agreement, the agreement he had with C. O. Davis & Company.

Q. Did you know what the terms of the agreement were with Davis & Company?

A. I never read the agreement, but I know the agreement that they gave me in the preliminary prospectus to go out and get the organization subscriptions and the terms of that agreement were discussed by Mr. Davis and myself repeatedly. I never saw the agreement.

Q. Did Spear tell you what the terms were when he said he would give you an agreement like or parallel with the Davis agreement?

A. Yes, sir.

Q. What did he say they were?

A. You mean the terms of the agreement, consideration, etc.?

Q. Yes.

A. The consideration and the price of the contract for the ground containing 157 acres, including 13.31 that was then cemetery, was $100,000, payable $5,000 cash and $200.00 per week. We had until the 24th of February to pay the $100,000 ——

Q. 1924?

A. 1924. Beginning the 24th of February and each subsequent 24th of February there was to be

added to the unpaid principal what we called a penalty of $6,000 and that penalty was to be added each year. The payments of $200 per week were to apply first to the amortization of the penalty and the balance applied on the principal.

The Court: Amortization of what?

The Witness: The penalty of $6,000. That $6,000 was always to remain the same regardless of the standing of the amount of the principal and that was to run 20 years.

Q. Pardon me. Was there any provision with regards to releases?

A. Yes, sir.

Q. What was that?

A. That the land was to be released as paid for at the pro rata price per acre, which I believe was about $627.00 an acre, approximately that.

Q. Now, these terms and conditions that you have just described, did they relate to the Davis agreement or are they the terms of the agreement proposed to you by Dr. Spear?

A. Why, they were the terms of the Davis agreement as told me by Davis and frequently discussed by Dr. Spear, Mr. Darcy and myself, and they were the terms of the agreement that the doctor was to execute for us, which we subsequently did.

Q. What did you and Mr. Darcy do with reference to his proposal, accept it or reject it, or what?

A. I did not accept it at first, I went back home, I was living in Montclair at that time and a day or so later Mr. Darcy called me up and I accepted it and came back.

Q. Was an agreement in writing prepared by anyone, and if so, by whom?

A. Why, it was prepared, I believe it was prepared by Dr. Spear because of the typewriting and the same general form he uses.

Q. At any rate, was there an agreement signed on behalf of the Equitable Estates Corporation?

A. Yes, sir.

Q. And by whom was it signed?

A. It was signed by the Equitable Estates Corporation of New York, by Charles C. Spear, president, attested by Mercedes Spear, and signed individually by Charles C. Spear and Mercedes Spear; that was done because they claimed to have an individually right in the Spear-Fernwood Right and that was to release their rights, whatever rights they might have. That was done at our suggestion.

Q. Who was the other party to the agreement?

A. The Locustwood Cemetery, Inc., signed by myself, who was still president, I have never been released as president, and Mr. Max Darcy as vice-president. The secretary was then residing in Newark.

Q. Mr. Powell?

A. Mr. Powell, yes.

Q. What was the date of that agreement?

A. October 23, 1923.

Q. After the agreement was signed, what was done with respect to duplicate original?

A. What was done with our copy?

Q. What was done with each duplicate original?

A. Dr. Spear took a copy and we placed our copy in a file pocket in the large drawer of a flat-top desk with a number of other agreements.

Q. Was that agreement shown to anyone else than Mr. Darcy and yourself?

A. Yes, sir.

Q. To whom was it shown?

A. It was shown the following morning to Mr. Paul V. Allen.

Q. Who was Mr. Allen?

A. He was not anything to the company at that time, he came down at our invitation.

Q. Had he been connected with Davis & Company?

A. Yes, sir.

Q. As a stock salesman?

A. Yes, sir, and special representative.

Q. You say you showed it to Mr. Allen?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of interesting Mr. Allen and his father in the company and getting Mr. Allen to become a director and officer and to assist us in the development of the company.

Q. Did Mr. Allen read the agreement?

A. Yes, sir.

Q. Who had access to the office of the company in Camden?

A. Mr. Allen, Mr. Darcy, myself, and Dr. Spear.

Q. Under what arrangement did Dr. Spear have access to the office?

A. Dr. Spear was living in Hainesport and he came to Camden very frequently, perhaps every day, or every other day, and he had an open car of some kind and he told Mr. Darcy in my presence that he would like to have some place for his wife and little boy to wait for him, that he had a number of errands to do in Camden, he had to go to his attorney and sometimes he had to stay a long time, and the weather was getting cold. That was along toward the latter part of October, and as we were not using the office except as a meeting place occasionally he asked for a key, and, of course, being on

friendly terms, Mr. Darcy gave him a key, which he never has returned.

Q. Do you know whether he made use of the office?

A. Frequently, yes, sir.

Q. What became of the agreement of October 23?

A. It disappeared.

Q. When did you first notice its disappearance?

A. Well, it was the latter part of November, or around the first of December.

Q. 1923?

A. Yes, sir, possibly around the 10th of December.

Q. I am going to ask you now to state the contents of that agreement as fully as you can.

A. The contents of the agreement?

Q. Yes.

A. The agreement was for the tract of ground known as the Cooper-Homestead Farm, with the legal description, including 13.31 acres, that was summarized, which made up a parcel of ground of 157 acres. The purchase price was $100,000.00, payable $5000 cash, $200 a week, and the weekly payments to run for a period of twenty years. We had until the 24th of the following February, that would be February, 1924, to pay the $100,000.00, or whatever the balance was at that time, without interest and on that date there was a penalty added of $6000, and that $6000 was to be added to any unpaid principal each February 24 following until the entire balance was paid. There was a release clause in the agreement to the effect that ground would be released to us at the pro rata price per acre, which I think was around $627, and we agreed never to sell any more lots than had been paid for. We agreed to let an authorized representative of

the Equitable Estates Corporation examine the books of the Locustwood Cemetery, Inc., at any time they thought fit and to render a report to them of all lots sold at any time they asked for. That agreement also included the transfer of an agreement, a registered agreement known as the Spear-Fernwood Agreement, describing that of record on the books in the Court House in the Recorder's office. Substantially in substance that was the agreement.

Q. Did it contain any reference to the control of the Locustwood Cemetery Association?

A. Yes, sir, to the effect that the cemetery, which we were told at that time was dormant, was to be revived and the control delivered to whoever we should designate.

Q. When you say cemetery ——

A. The Locustwood Cemetery Association.

Q. Now, you say it was some date in November or early in December that you noticed the fact that the agreement of October was missing; what brought that fact to your attention?

A. Why, we had occasion to look at it and show it to some people with whom we had negotiations for becoming interested in the company, a Bridgeton crowd, it involved quite a sum of money, around $75,000, and they insisted on seeing the contract of agreement between the operating company, the Locustwood Cemetery, Inc., the owners of the ground, and we searched for the agreement and couldn't find it, and at the same time several other documents and agreements we could not find.

Q. Then what did you do toward obtaining another copy or another original?

A. Mr. Darcy and Mr. Allen went out to see Dr. Spear and asked him for a copy, they went once, and after that we went together on numerous occasions and asked for a copy of the agreement.

Q. Did you get it?

A. No, sir, never got it.

Q. What reason, if any, did Dr. Spear give for not handing it over?

A. From the time we discovered the loss of the agreement until about May 9th the story was that he had misplaced the agreement; he showed us a huge pile of papers piled up in a corner, it looked like the contents of several filing cabinets had been scrambled together, and he said he had never had time to go through the papers to find them, it was in there somewhere and he would get it out when he could go through it, and it was all right to go ahead and do business, to go ahead with the development, and he came around to the property practically every day, and as a matter of confidence in him, we continued, but at the same time we continued to demand the agreement. We lost this connection with the Bridgeton crowd through the failure to deliver the agreement, it cost us quite a lot of time and money in the negotiation.

Q. Were you present at Dr. Spear's place at Hainesport when Mr. Darcy and Mr. Allen were there sometime, I think, in May, 1924?

A. Yes, sir, I was present at practically every meeting after the first one.

Q. Will you tell the Court what occurred on that occasion?

A. That was the last meeting in which we three appeared together. We were up to his house at Hainesport in the evening, as was our custom, it was a very nasty night, raining very hard, and we again repeated our demands for the agreement, and he seemed to be in a very bad frame of mind that night, and Mr. Allen became rather persistent, he seemed to annoy Dr. Spear, and finally he agreed to give us

the agreement, a copy of the agreement. He said, "I will have to write it out." We were sitting in a very small room and he typed for some time, I can't say for how long, but long enough to write two pages single space, it was quite some time, and we were all sitting in the corner together discussing the matter and he took the paper out of the typewriter, it was in duplicate, two copies, and he handed it to us and Mr. Darcy had a copy and Mr. Allen had a copy and I was looking over his shoulder, and after we read it, of course—it is hard to describe it—it was an outrageous agreement to hand to anybody. Mr. Allen said, "We will never accept an agreement of that kind, we couldn't," so he pulled out of his drawer a gun, when we weren't looking for it, and held it in that fashion and said, "You have got to sign that agreement." Of course, that enraged Mr. Allen, he had just come back from the war as a top sergeant, and it kind of enraged him, and then in the conversation Mr. Allen wanted to do something desperate, but in the conversation Dr. Spear said we would have to sign it or get out, and we backed out of the door and took Mr. Allen with us. That is the last time we appeared, the three of us, but Mr. Darcy and I called on him repeatedly after that until the following fall of 1924.

Q. In response to any requests of either you or Mr. Darcy, did Dr. Spear ever produce to you any contract, I mean, after the delivery of October 23 did he ever produce any contract of any date whatever bearing the original signatures?

A. No, sir.

Q. Never did?

A. No, sir.

Q. Do you recall their being produced at my office by Mr. Rose, then counsel for Dr. Spear, an agree-

ment purporting to bear date the 23rd day of July, do you remember that fact?

A. Yes, sir.

Q. And in point of time, when was it?

A. I don't quite understand that.

Q. Fix the date as nearly as you can?

A. The date we saw it in your office?

Q. Yes.

A. It was a day or two prior to the last hearing in Chancery Court, I think it was about February 15.

Q. February, 1927?

A. This year, 1927.

Q. So that up to that time Dr. Spear did not produce any original paper bearing original signatures?

A. No, sir.

Q. Now, you saw the agreement, the so-called agreement of July 23rd, at my office on that occasion, didn't you?

A. Yes, sir.

Q. And you saw it here in the Court Room sometime in February?

A. Yes, sir.

Q. You examined the paper here in the Court Room?

A. Yes, sir.

Q. And you were furnished a copy of it at my office in February, isn't that so?

A. That is right.

Q. Did you examine both the original and the copy?

A. Yes, sir.

Q. Will you tell me whether the Locustwood Cemetery, Inc., executed such a paper as the July 23rd paper?

A. No, sir.

Q. They did not?

A. No, sir, they did not, not to my knowledge.

Q. Would you have known it if it had?

A. Yes, sir, because I was the acting president of the company and always present.

The Court: Who signed this as president?

Mr. Carr: This is signed by Max Darcy as vice president and by J. Powell as secretary.

The Court: Where were you in July, 1923?

The Witness: I was here living at the Hotel Garden, 6th and Mickle.

Q. Weren't you away at all?

The Witness: Week-ends, that is, Saturday afternoons I went home and came back Monday morning, and Mr. Darcy went with me.

Q. At this date, July 23, was C. O. Davis & Company operating, were they operating this company?

A. Yes, sir, their main office was in Newark and Mr. Davis was in charge of the office here?

Q. And on that date Davis & Company were operating the company, as I understand it?

A. Yes.

Q. Now, did you at my request make a calculation to see how much 157 acres of land would cost at the rate fixed in this agreement? It is rather complicated and I just asked him to make the calculation.

A. Yes, sir.

Q. How much would it come to?

A. Can I refer to a memorandum?

Q. Yes.

A. It called for payments under that contract of $6,788,454.50, plus a perpetual care fund of $678,-845.45, plus improvements of $1,256,000, making a total of $8,723,299.95.

Q. In other words, under the terms of this agreement the buyer would be compelled to pay and expend $8,700,000 to acquire the 157 acres and to make the necessary improvements, is that right?

A. Yes, sir.

Q. And what part of those figures would be the price of the land alone without improvements?

A. May I refer to this memorandum?

Q. Yes.

A. $6,788,454.50.

Q. Did your association ever agree to pay a sum in excess of $6,000,000 for 157 acres of land?

A. Absolutely not.

Q. Could it have been handled on any such basis?

A. No, sir, not by any sane person.

Q. Then you would have had to realize a price largely in excess of this to have carried on your development and your operation, wouldn't you?

A. Yes, sir.

Q. Now, won't you tell me how many stockholders the Locustwood Cemetery, Inc., has?

A. Approximately 375.

Q. And how much money has been paid in by the stockholders?

A. I might add in addition there are 425 lot holders.

Q. How much money has been paid in by the stockholders and lot holders?

A. Approximately a quarter of a million dollars.

Q. How much has been expended in improvement of the land in the cemetery and the adjoining land?

A. The last figures I have on that are about the first of February, the trial balance shows $158,347 and some cents.

Q. Expended on the 13-acre section?

A. Yes, sir.

Q. How much had been expended on the 140-acre piece?

A. Approximately $15,000.

Q. How many internments are there?

A. At the present time approximately 100.

Q. Now, after the making of the October 23 agreement when did the work of making physical improvements on the ground begin?

A. There were two men working at that time, two workmen clearing up the ground, and we began to put on a few men as fast as we were financially able to do so.

By the Court:

Q. Didn't Davis have any contract while he was working?

A. Davis told me he had a contract between C. O. Davis Company and the Equitable Estates Corporation. That was a contract—may I give an explanation of that, your Honor?

Q. No, I don't think so, not what Mr. Davis told you, but I thought you might know whether he had or not of your own knowledge. I notice in the minutes of July 24th some reference to a Davis Agreement, you have never seen it?

A. That minute refers to stock sales commissions.

Q. Was he to do anything but sell stock? I thought you said he did some development?

A. That was the development.

Q. To sell stock?

A. To sell stocks and lots to conduct the cemetery.

Q. Were they separate agreements, one for selling stock and one for development purposes?

A. Yes, sir.

Q. Have you seen them?

A. The appointing of a fiscal agent and the lot sales contract I saw, yes.

Q. Who signed them?

A. I think they were signed by myself.

Q. What companies?

A. Locustwood Cemetery, Inc., and C. O. Davis & Company.

Q. Which one do you refer to now, the stock one or the other?

A. The stock and the lots.

Q. Both signed the same way?

A. Yes, sir.

Q. I thought you said the Equitable Estates signed it.

A. Mr. Davis had another agreement executed, I think, in the early part of June or the middle of June, 1923, between C. O. Davis & Company and the Equitable Estates Corporation for the purchase of this ground.

Mr. Tyler: May it please the Court, I don't want to interrupt the Court, but I object to any such proof of a contract that will have any bearing on our title.

The Court: Yes, I think your objection is well taken. I was trying to find some channel of investigation by which the truth may be ascertained. Of course, this testimony which the witness is now giving does not have any probative force, because it is

not the best evidence and I will not accept it as such, but I have been wondering why Davis was going ahead with his operation without some kind of an agreement, and it is possible he may have had.

By Mr. Carr:

Q. Did Dr. Spear ever tell you what the agreement was with Davis?

A. Yes, sir.

Q. What did he say it was?

A. Pardon?

Q. What did Dr. Spear say it was?

A. Identical with our contract, our agreement of October 23.

Mr. Palmer: What was that date?

The Witness: Identical with our agreement of October 23rd which I have just outlined.

Q. Do you know what has become of Mr. Davis?

A. No, sir. He has been in many different parts of the country, he is a man of considerable means, and he was in bad health and I have heard from him at various parts of the country. The last time was in Toronto sometime last fall.

Q. What has become of the business of C. O. Davis & Company?

A. They liquidated about the time Mr. Davis left here.

Q. Have you made any attempts to get in touch with any of their former managers, or Mr. Davis?

A. I have seen Mr. Davis once since then, he came here about a year ago.

Q. Have you made any attempt to locate the

agreement between the Equitable Estates and C. O. Davis & Company?

A. Yes, sir, made many attempts.

Q. What was the result of your attempts?

A. They did not know where it was. They said they were liquidating—the papers had gone into the storage house, and we had this searched thoroughly and Mr. Powell spent some weeks in searching through possibly two or three dozen filing cases, and I got in touch with the former department managers of Mr. Davis and I also asked Mr. Davis repeatedly, and, in fact, he was in New York and I got him to come on here last summer and ask him about it and he said he had misplaced it or it was in the files.

Q. You were never able to get it?

A. Never was able to get it.

Q. Now, after the October 23rd agreement was delivered, won't you tell the Court what was done in the way of physical improvements during the next several months?

A. Why, we began to rapidly augment the force as fast as our capital would permit until along in March we had probably twenty men working and we employed at a large salary a cemetery engineer, and we employed an old character of Camden, Clarence Lummis, as foreman, and employed the services of Lackey and Hettel to design a building, a handsome administration building, and furnish it, and put in high-class roads, properly drained, and generally improved it as a very fine and first-class cemetery.

Q. Did you use tractors?

A. A tractor and a truck, and we employed other tractors by the day, dump carts and horses, and we hired road rollers.

Q. Was this road apparent to the passerby from the street?

A. Yes, sir, because it was scattered across the entire front.

Q. Did it cover any part of the Homestead Farm?

A. Yes, both along the Marlton Pike and in the back.

Q. Did your company advertise in the public papers this Locustwood Cemetery development?

A. Yes, sir, in the Camden Courier and the Post Telegram and some of the suburban papers.

Q. I show you what appears to be a clipping having pasted on the top, "Camden Daily Courier, Thursday, November 22, 1923," an advertisement in large type, undersigned, "Development of the Locustwood Cemetery," and I ask you whether that was inserted in the Camden Courier?

A. Yes, sir, and the Post Telegram.

Q. And on the date indicated, November 22?

A. On the date indicated, and in the Post Telegram the following day.

Q. November, 1923?

A. Yes, sir. That particular advertisement was just checked up with the Courier files yesterday.

Mr. Carr: I offer this.

(Said paper offered in evidence and marked Exhibit C4, 6-15-26.)

Q. Was there a sign on the property like that, indicated by a photograph Exhibit C3?

A. Yes, it was 8 x 15, about five feet from the ground and probably fifteen feet from the fence, in plain view of the highway.

Q. That continued to be there at the time this newspaper advertising was going on?

A. Yes, sir, it was erected September 24, 1923, and was destroyed in the late fall of 1924.

Q. About a year later?

A. Yes, it was there about fourteen months.

Q. During the work of the physical improvements to the cemetery would Dr. Spear come out there from time to time?

A. Yes, sir, practically every day.

Q. Would you see Mrs. Aleck out there?

A. I have seen Mrs. Aleck on the ground with him frequently.

Q. Did she make any objection to the work going on?

A. I never spoke to her.

Q. You never spoke to her?

A. No, sir.

Q. Did you hear her make any comment as to the work?

A. No, I was never introduced to her, I didn't know her at that time; she was out there several times before I knew who she was.

Q. Did Dr. Spear make any objection to the work being done?

A. No, sir. Dr. Spear—I don't believe I understood that questiion, the last one.

Q. Did Dr. Spear make any objection to the work being done?

A. No, sir, no objection.

Mr. Carr: The newspaper advertisement is offered.

Cross-examination.

By Mr. Palmer:

Q. Mr. Cawthorne, in the calculation you made as to the amount that would be required under this contract what was the basis of that calculation?

A. What was the basis?
Q. Yes.
A. The agreement itself.
Q. Have you those figures?
A. That I just read?
Q. Yes.
A. Yes, sir
Q. Will you let me see that calculation you made?
A. Mr. Carr, have you any objection to my doing this?

Mr. Carr: No, give this gentleman anything he asks for.

Q. Mr. Cawthorne, this paper you have given me on the date of March 7, 1927, purports to be a copy of a letter written to Mr. Carr and in that you simply state the results of your calculation, don't you?
A. Yes.
Q. Will you tell me the manner of your calculation and how you arrived at those figures?
A. That calculation was made for me and given to me, I did not calculate it.

Mr. Palmer: I ask, if the Court please, that the testimony with reference to that calculation be stricken from the record.

The Court: The motion must prevail, the testimony will be obliterated.

Q. Now, Mr. Cawthorne, from October and through December of 1923, who was employed in the office of the Locustwood Cemetery, Inc.?
A. From when?
Q. From the first of October until the end of December, 1923.

A. The first of October?
Q. Your agreement is dated the 23rd of October?
A. Yes, sir.
Q. Dealing from the 23rd of October on to the balance of 1923?
A. Sometime in the latter part of 1923 we employed a girl for afternoons at $10.00 a week, she was not a stenographer, just someone to keep the office open.
Q. When did that employment commence?
A. The latter part of 1923.
Q. That is a little indefinite, what month?
A. I will have to refer to a memorandum.
Q. Can you do that?
A. Yes, sir.
Q. And give me that information?
A. Yes, sir.
Q. And who else was employed at the office other than this girl?
A. Yes, sir.
Q. Can you do that quickly as to the time?
A. Yes, sir, I can do it right here.
Q. Give me that information then.
A. Can I get up?
Q. Certainly.
A. On the 3rd of December we employed a girl for half time.
Q. The 3rd of December, 1923?
A. Yes, sir.
Q. And she was in the office in the afternoon?
A. Yes, sir.
Q. During the balance of the year?
A. Yes, sir.

The Court: May I interrupt you and make an inquiry that comes into my mind?

Mr. Palmer: Certainly.

By the Court:

Q. When the Davis Company began operation were the officers of the Locustwood Cemetery first elected, was that the beginning of their organization, the Locustwod Cemetery, Inc., was that the beginning of their work when Davis began operation, was that the date of it?

A. The Locustwood Cemetery, Inc. was organized, I think, July 9, 1923, but they began preliminary peration in the early part of June, 1923, from their Newark office.

Q. When Davis withdrew and the new contract was made with the Darcy Company, the Darcy crowd, was there any change in the officers of the Locustwood Cemetery Association, Inc.?

A. The Locustwood Cemetery, Inc.?

Q. Is there an "association" on it?

A. No, it is "Inc."

Mr Carr: The Locustwood Cemetery, Inc., is what your Honor just called the Darcy crowd, the Locustwood Cemetery Association is an association organized under the cemetery act.

Q. Was there any change made in the officers of the Locustwood Cemetery, Inc., after Davis withdrew and the Darcy crowd took charge, took over the operation under a similar contract of Davis'?

A. There were the same officers up to October 25, and then there was a change in the personnel.

Q. There was a change October 25?

A. Yes, sir. Mr. Davis used us as incorporators until he could get a Camden crowd to become officers of the company.

Q. There was a change of officers made at that time, October 25?

A. There was a switch of the officers, Mr. Burrell became president instead of vice-president and Mr. Darcy was the vice-president and Mr. Allen, Paul V. Allen was added to the list, four directors and three officers.

By Mr. Palmer:

Q. Now, Mr. Cawthorne, Locustwood Cemetery, Inc., had as its only asset a so-called contract of December 23, 1923?

A. It had what?

Q. As its only asset, as all the property it had, was represented by this contract with the Equitable Estates Corporation?

A. All the property they had? You mean all the assets they had?

Q. Yes.

A. I don't know what you refer to by that.

Q. What else, if anything, did they own?

A. Well, they owned anything that any other operating cemetery company owns in the United States.

Q. I am not asking you what any other operating cemetery company owns, I want to know what this particular cemetery company owned at that time?

A. In the way of assets they didn't own anything.

Q. That represented the sole thing, did it?

A. Yes, sir, that is all any operating cemetery owns.

Q. I am not asking about those, we are interested here in this particular company.

A. Yes, sir.

Q. And that company was organized for selling its

own stock based upon the contract it had with the Equitable Estates Corporation?

A. No, sir.

Q. Why not?

A. Not for the purpose of selling stock, we were organized for the purpose of selling stock, lots, and developing the cemetery.

Q. What lots did it own that it could sell?

A. They were to be given the control of the cemetery association and in the association was vested the ownership of the property.

Q. And the Locustwood Cemetery Association was owned by its lot owners, wasn't it?

A. Yes, sir.

Q. And you were to be given control of that association?

A. Yes, sir.

Q. And that is your idea of how you were to get lots to sell?

A. Yes, sir.

Q. And the Locustwood Cemetery, Inc., never would have title to those lots to sell them, would they?

A. No.

Q. Then when you say it would have lots to sell, you mean it was going to control an association that had lots?

A. Yes, sir.

Q. Now, how many stockholders are there of the Locustwood Cemetery, Inc.?

A. At the present time?

Q. Yes.

A. I think there are about 375, approximately.

Q. And to them you have sold how much stock?

A. Why, $200,000.00, a quarter of a million.

Q. $225,000.00 worth of stock?

A. Yes, sir.

Q. What, if anything else, have you given those stockholders?

A. What, if anything else? Just what do you mean?

Q Just what I say, other than a certificate of stock?

A. We have given them a deed to a lot valued at $500.00.

Q. That deed is signed by whom?

A. President and treasurer of the Locustwood Cemetery Association.

Q. And your concern controls that association?

A. Yes, sir.

Q. When did you obtain control of it?

A. January 31, 1925.

Q. And from October 23rd, 1923, until January, 1925, you had no control of that cemetery association?

A. No, sir.

Q. Did you sell anybody any land during that time?

A. Yes, sir.

Q. Give them deeds for it?

A. No, sir.

Q. How could you convey it to them?

A. That is the customary way to do business.

Q. You sold them something you had no title to?

A. You don't have to own anything to sell it, the business is conducted along those lines.

Q. From October 23, 1923, to January, 1925, how many lots did you sell in the Locustwood Cemetery Association?

A. I can't tell you without referring to the book, quite a number.

Q. Could you refer and give us that information —I don't mean right at this minute?

A. I could send out to the administration building in the cemetery.

Mr. Palmer: Would you make a memorandum, we would like to have that information.

Mr. Carr: Do you want to know it approximately?

Mr. Palmer: No, I want the number from October, 1923 to the 25 of January, 1925.

The Witness: October 23, 1923, to when?

Mr. Palmer: To the date you say you got control of the association.

The Witness: The number of lots sold and to whom?

Mr. Palmer: To whom sold.

Q. Those people to whom you sold lots, did you give them deeds?

A. No, sir.

Q. Have they deeds for them at the present time?

A. Yes, sir.

Q. When did they get them?

A. A few deeds were brought from Dr. Spear, paid for them at the regular retail selling price; others we agreed to give deeds when we got possession of the association and that was satisfactory.

Q. How much was paid to the Locustwood Cemetery, Inc. for those lots you sold during that period of time?

A. Various prices, I couldn't give you an approximate price on that.

Q. From what prices did they range?
A. $75.00 up to $500.00.
Q. Who got the money that was paid between October 23, 1923 and January 25, 1925, for those lots?
A. The only people who could get it was the Locustwood Cemetery, Inc., the only ones entitled to it.
Q. They were the people who collected the money for the sale of those lots?
A. Yes.
Q. And still have it except as you have spent it?
A. It has gone on the development of the ground.

The Court: What about the lots which you gave as a bonus for stock, didn't you do that?

The Witness: Yes, sir.

The Court: Did you make it clear as to that in your question?

Q. During that same period did you give lots as a bonus to people for stock in the Locustwood Cemetery, Inc.?
A. Yes, sir.
Q. Did you give them deeds for those lots?
A. Yes, sir.
Q. You gave them deeds for the lots when you didn't have control of the association?
A. No, sir.
Q. When did you give them the deeds?
A. After we got control of the association.
Q. And for stock sold between October 23, 1923, and January, 1925, no deeds were delivered until after you got control of the association?
A. Only two, and we didn't deliver those.

Q. Who executed those deeds?

A. Those two deeds were given without orders, advice or authority by Dr. Spear; he gave away some other deeds in the payment of a personal bill.

Q. I am asking about the lots you gave as a bonus for stock.

A. We gave an agreement to deliver those lots at a certain time.

Q. And at what time?

A. Whenever we obtained control of the association.

Q. That was not a certain time, was it?

A. Yes, that is a certain time.

Q. If you sold me a lot on November 1, 1923, when were you going to tell me when I could have the deed?

A. When we got possession of the Locustwood Cemetery Associatioin for which we were negotiating daily.

Q. And that was no certain time you could have told me at that time?

A. Literally that is not a certain time, but it was a satisfactory time to the purchaser.

Q. That is quite different from your statement a while ago that you made an agreement with these purchasers to give them a deed at a certain time.

A. I am asking you whether you are trying to get the facts out of me or get me mixed up?

Q. Both.

A. All right, I will watch myself.

Q. That is what I want you to do. How would you agree to give me a deed on a lot which I purchased on December 31, 1923, a lot in the association which you neither owned or controlled?

A. I would agree to give you a deed to a lot when we obtained control of the association, which

we were negotiating for, and progressing favorably.

Q. Suppose I paid you $500.00 for that lot and you were never able to get control of that association?

Mr. Carr: If the Court please, this is not cross-examination.

The Court: I think it brings out the real operation, it may not go any further than that, but I think it throws light on the whole proceeding.

Mr. Carr: If your Honor thinks it is helpful I will not object.

Q. What was to become of the money?

A. If we couldn't deliver a deed we would deliver the money which we had in bank.

Q. Was that stated in the agreement?

A. No, it was not, but it was understood.

Q. Have you any copies of any agreements you made with parties who purchased lots between October 23, 1923, and January 25, 1925?

A. Yes, sir.

Q. Can you furnish me with a copy of one of those agreements?

A. You mean the lots purchasers and not the stock?

Q. Yes.

A. I have a copy of the agreement which we used, which Dr. Spear gave us.

Q. And that was used during those two dates?

A. Yes, sir.

Q. Will you get me a copy of one of those agreements?

A. Yes, sir.

The Court: Did you give the same agreement whether it was a bonus lot or a lot that was purchased?

The Witness: No, it was a different agreement. I see that Dr. Spear has just handed you one for the bonus lots.

Q. I show you a blue sheet of paper and ask if that is the form of the agreement that you used when you gave to a purchaser of stock in the Locustwood Cemetery, Inc., a lot, when you gave him a lot in the cemetery association a bonus.

A. No, sir, that agreement ——

Q. That is all the answer.

A. That is not.

Q. Will you get me a copy of such agreement that you use for that purpose?

A. Yes, sir.

By the Court:

Q. I would like to inquire why it was necessary to defer delivery of a deed, when you sold a specific lot to a person who bought it and paid you the money, why was there an inability on your part to get a deed from the title owner?

A. There was an understanding with Dr. Spear who assisted us in the drawing up of these forms that as fast as these people paid for their subscription of stock and was entitled to bonus lots that he would deliver the deeds to us against the payment of $200.00 a week.

Q. No, I had reference to cash sale of lots to purchasers who wanted a burial place for themselves and for which they paid down cash to you, why was

it necessary for you to defer procuring and delivering them deeds?

A. Because Dr. Spear wouldn't give them deeds on demand, although we had paid him for them.

Q. Was that so from the very beginning of your operation?

A. Well, there were no deliveries called for. I guess there were no lot sales until after we started to have our trouble after the disappearance of the contract.

Q. Then all your sales occurred?

A. There were some deferred payments made on lots.

Q. I am referring to sales of lots to people who wished a lot in order to secure burial places for themselves and family.

A. That was to be delivered to us by Dr. Spear who was then president of the Locustwood Cemetery Association, the lot holders' association.

Q. What I want to find out is why you didn't give them the deeds when the lots were bought and paid for; there must have been some reason for it, now, what was the reason?

A. Your Honor, we turned the money over to Dr. Spear who agreed to give us the deeds as we wanted them and he failed to do it.

Q. If you had a printed form of agreement for the delivery of deeds when you got control of the association there must have been something more than a mere refusal of Dr. Spear to give deeds. What was back of it all?

A. There was no trouble issuing deeds after we got hold of the association.

Q. I mean, when you were giving agreements for the delivery of deeds to a person who bought and paid for his lots, what was the trouble getting the deeds?

A. Dr. Spear has possession of the deeds books, he was legally elected president and his wife secretary and treasurer.

Q. What was the cause of dispute?

A. The fact remained he had the deed books and he was the only one who could issue the deeds. We paid the money for them and he refused to deliver them.

Q. Both the contracts of purchase, the contract which you say was the real contract, he had his in July and yours in October, provided for him to deliver the deeds, didn't they?

A. No, those contracts provided for him to deliver control of the association to whoever the incorporated company should indicate or direct.

Q. That was in the October contract?

A. Yes, sir.

Q. But in his contract which he produces now, and which has mysteriously disappeared again, he was to deliver deeds, wasn't he, to purchasers you found for lots?

A. I never saw that contract until February.

Q. You have seen it since February, that makes you practically sales agent?

A. Under his agreement, but we never operated under that agreement.

Q. But they both called for deeds from him, both agreements, yours and his?

A. No, in our agreement he was to resign as president and his wife as secretary of the association and to have some one elected among the lot holders which were designated and they were to issue deeds.

Q. I don't remember hearing that testimony before.

A. I think that was stated.

The Court: I overlooked it if anybody has testi-

fied to that kind of an agreement. Go ahead, Mr. Palmer, I am interrupting too much.

By Mr. Palmer:

Q. I understood you to say, Mr. Cawthorne, you had 425 lot holders in the association at the present time?

A. Yes, sir, approximately.

Q. And how many of that number have deeds for their lots?

A. Well, there are some deferred payments on the books, I don't know how many, I suppose maybe 375 or 400 of them have deeds.

Q. 375 or 400 of them have deeds?

A. Yes, sir.

Q. And when have those deeds been issued to them?

A. Whenever their purchases agreement is paid out.

Q. Covering what period of time?

A. From January, 1925, until to date.

Q. Now, after you got control of the cemetery association did you make any change in the lawns or plans or plotting of that cemetery association?

A. Any change of the layout?

Q. Or arrangement of the lawns or rearrangement of the location of the lots?

A. No, sir.

Q. Did you change the names of them?

A. Not to our knowledge. We have named some of them, given names to some new lawns, we had some old maps furnished us by Mr. Spear which I think named four lawns, three or four lawns, and as we added lawns we named them.

Q. But you didn't make any changes in those names?

A. Not in the map we had. There was a front lawn which never had a name at all, except it was called "Entrance Park" and that wasn't the name, and we named it "Walnut Lawn."

Q. How do you account for the fact that people who had deeds for lots in the Locustwood Cemetery Association given to them before your connection with it had been unable to locate the place of their lots?

A. That is not true.

Mr. Carr: Is this cross-examination? It assumes something that is not in the case at all.

Mr. Palmer: Dr. Spear testified to that matter on re-direct examination.

The Court: Go ahead.

The Witness: That is not a fact.

Q. When did you quit paying Dr. Spear or the Equitable Estates Association the $200.00 a week called for in your so-called agreement of October 23?

A. I would have to refer to the records on that.

Leslie M. Holloway, sworn.

By Mr. Tyler:

Q. Mr. Holloway, where do you live?

Q. What is your business?

A. 5928 Washington Avenue, Philadelphia.

A. Life insurance agent.

Q. With what company?
A. Providence Mutual Life Insurance Company.
Q. Philadelphia?
A. Yes, sir.
Q. And have been for how long?
A. I don't understand that question.
Q. How many years have you been connected with that company?
A. Since 1897, September.
Q. I show you a deed, Thomas E. French, Trustee, and others to Leslie M. Holloway, being Exhibit T4, are you the grantee mentioned in that deed?
A. Yes.
Q. Now, when that deed was made to you what was your knowledge or understanding of what was being conveyed to you?
A. Well, my idea was that all that Mr. French had I got, 150 and some acres, I think.
Q. Whatever title Mr. French had was being conveyed to you, that is what you understood at the time?
A. Yes, sir.

Cross-examination.

By Mr. Carr:

Q. Were you acting at the request of Dr. Spear and his mother?
A. His mother.
Q. Do you know what requests, if any, you made of Mr. French?
A. Excuse me.
Q. Do you know what requests, if any, you made of Mr. French?
A. I don't recall any.

Q. Have you any independent recollection on the matter at all, Mr. Holloway, except as you see this deed?

A. Oh, yes, I remember it having been done and I have a poor recollection, as I said before, of what Mr. French had I got.

Q. Had you discussed the matter with Mr. French at all previous to the preparation of the deed?

A. I had not.

Q. Had you made any requests of Mr. French?

A. I think not.

Q. In other words, as you understood it, Mr. French was making his conveyance at the request of Dr. Spear's mother and you were receiving whatever he was conveying to you by that means?

A. Yes, sir.

Q. At that time did you have any knowledge of a Spear-Fernwood Agreement?

A. I did not, that is, no definite knowledge, I might possibly have heard of it, but I would not have known.

Q. Wouldn't have known anything about its character or contents at that time, is that so?

A. Yes.

Q. Was the deed already executed and delivered to you without your having made any requests upon Mr. French?

A. I can hardly say, I don't remember having seen Mr. French afterwards, I don't know.

Q. In fact, did you see Mr. French at all in the matter?

A. I think I was in the office—it is ten years ago, and I wouldn't be able to say about that.

Q. At any rate you had had no talk with Mr. French and you took the deed as a completed transaction, is that what happened?

A. Yes.

By Mr. Tyler:

Q. That is your signature to the deed, isn't it Mr. Holloway?
A. Yes.

The Court: Is this expressly in trust?

Mr. Tyler: No, it revoked the trust and appears to be free of all trusts.

Mr. Carr: As far as the paper goes it appears to be free of all trusts, an absolute conveyance on its face.

Mr. Tyler: As far as the paper goes, yes.

The Court: I will ask whether you paid any consideration for this conveyance to you?

The Witness: I think I did not, if it was it was only nominal.

By Mr. Tyler:

Q. You were taking title at the request of Mrs. Aleck?
A. That is true.

The Court: Now, gentlemen, do you have the data that was asked for?

Mr. Palmer: We might adjourn at this time, it will take some time to finish the cross-examination of this witness.

(At this point a recess was taken until 1:35 P. M.)

(Trial of the cause resumed at 1:35 P. M., pursuant to adjournment.)

JAMES P. CAWTHORNE, resumed.

By Mr. Palmer:

Q. I have asked for the date of the payment to Dr. Spear.

A. The date of the last check is December 27, 1924.

Q. December 27, 1924. When was your first payment?

A. I will have to refer to the memorandum to get that.

Q. Isn't there anything you have in the way of books?

A. In my pocket, sir. The first payment was a credit on October 23, as $2,135.00 that had been paid to him by Davis & Company.

Q. How much?

A. $2,135.00.

Q. When was that paid to Dr. Spear?

A. Paid by Davis & Company.

Q. When?

A. I don't know when, because I never had access to their books.

Q. You have the check for it?

A. Not of the C. O. Davis Company, I have no access to their books.

Mr. Palmer: Mr. Carr, didn't you have a check dated in July for that payment at the last hearing?

Mr. Carr: No, here is the statement, you may look at it if you wish. The $2,135.00 was allowed as a credit for money previously paid by C. O. Davis & Company.

Mr. Palmer: I thought you had when we were here in February a check showing that payment.

Mr. Carr: No, there was never any payment made by the Locustwood Cemetery, Inc., it was a credit allowed representing the sum paid by C. O. Davis & Company.

Mr. Palmer: I have a very distinct recollection there was a check produced to that amount at the last hearing.

Mr. Tyler: It is in this cash book, showing a payment of $2,135.00.

The Witness: I have a memorandum of those payments by Davis.

Mr. Palmer: Wasn't there a check in February of that amount?

Mr. Tyler: I think so.

Mr. Palmer: There was a check exhibited when we were here in February for that amount of money.

Mr. Carr: I think if you will look at Dr. Spear's book there is a preliminary credit allowed.

Mr. Palmer: Mr. Rose offered in evidence a photostatic copy of a check for $2,135.00.

Mr. Carr: I know what you mean now.

The Witness: I can throw some light on that, Mr. Palmer.

Mr. Carr: $2,061.30, is that the one?

Mr. Palmer: No, the one dated in July.

Mr. Carr: October 2, 1924, that is the only one.

Q. Mr. Cawthorne, this book that has been produced as a cash book shows under date of July 31, 1923, Locustwood Cemetery Association, $1,020.00, to whom was that money paid?

A. I would have to look at that book before I could answer that question.

Q. On the date of July 31?

A. The entries on this book from July 13 until the time that we took the books, October 23, we made by an expert accountant from memorandums that I secured from Mr. Davis's file at the Newark office, there were no checks, because the checks were of the C. O. Davis Company and we never had those.

Q. Why did you put them into the cash book of the Locustwood Cemetery, Inc., then?

A. In order to show a full set of books and accounts from the corporation and the company.

Q. But that is before you took over the company?

A. I was president of the company.

Q. Do you know what the money was for, that $1020?

A. That was paid on the contract, I guess.

Q. What contract?

A. Between C. O. Davis's company and the Equitable Estates corporation.

Q. That is what you think it was paid on?

A. Yes.

Q. Why was it paid to Locustwood Cemetery Association?

A. I don't know anything about that, subsequently I can answer that question.

Q. What do you mean by that?

A. In the subsequent payments to which I was a party I can answer why they were paid that way or to Dr. Spear.

Q. The payments you produce in the bunch of checks you produce were all paid to Dr. Spear?

A. Not all of them. I believe I can answer why that $1020.00 check was paid to the Locustwood Cemetery Association.

Q. All right.

A. These books were made up from various memorandums and there is a memorandum statement supplied our bookkeeper by Dr. Spear which shows it paid to the Locustwood Cemetery Association.

Q. That was July 31?

A. That is the date on that memorandum, yes, sir.

Q. Now, I show you a copy of checks which has been marked in this case as Exhibit C11 for $2061.30, dated October 7, 1924, what was that for?

A. That was a payment on the contract of October 23, 1923, given to Dr. Spear and cashed by him.

Q. Now, in the bundle of checks that have been offered and marked Exhibit T3, they were paid to whom?

The Court: Can't counsel state that without the witness going through them all?

Mr. Palmer: It was stated yesterday, I think, they were all payable to Dr. Spear.

Mr. Tyler: I think they are with one or two exceptions. There are one or two paid to the Locustwood Cemetery Association, but none to the Equitable Estates Corporation.

The Witness: There are seven checks that are paid to the Locustwood Cemetery, six checks to the Locustwood Cemetery Association, one paid to the Locustwood Cemetery, Inc., certified and endorsed to tax collector.

The Court: And the rest to Spear?

The Witness: Yes.

Q. Those payments you say were made by virtue of your contract of October 23?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, can you tell me what this payment of $100.00 to Locustwood Cemetery Company under date of August 7 ——

The Court: 1924?

Q. August 7, 1923.

A. That entry was made from this memorandum provided by Dr. Spear and made by an expert accountant.

Q. You know nothing about that?

A. That was a C. O. Davis transaction.

Q. The same is true of the payment of $125.00 to Locustwood Cemetery Association on August 15?

A. It shows here one check of $100.00, and one check to the association and one check of $25.00 to Judge Carrow.

Q. That is also true of the statement in this book under August 18, Locustwood Cemetery Association, $20.00?

A. That is right.

Q. Again on August 20, Locustwood Cemetery Association, $60.00?

A. That is made up of two checks—three, one on the 18 and two on the 20 were made payable to Judge Russel Carrow.

Q. Your book entries show them payable to the Locustwood Cemetery Association, don't they?

A. They were dittoed and credited to the Locustwood Cemetery Association.

Q. Not from your memorandum it doesn't show any credit to the Locustwood Cemetery Association.

A. That credit was made from this memorandum by an expert accountant, other than that I don't know. The check on the 15, check to the Locustwood Cemetery Association, I took that to be a ditto mark.

Q. The ditto marks appear to be under the name Carrow, not under the name Locustwood Cemetery Association.

A. I can only answer that by memory, Dr. Spear ordered those checks made to Carrow, that was during some trouble he was having.

Q. You seem to be able to remember that situation and a moment ago you said this book, which is the cash book, was made up from memorandums furnished by Dr. Spear and they don't agree.

A. I beg your pardon, show me where they disagree, Mr. Palmer.

Q. Under the statement of August 18, $20.00, Locustwood Cemetery Association, now, your memorandum doesn't show any such checks.

A. It shows a check on August 18 of $20.00.

Q. To whom?

A. To Judge Russel Carrow.

Q. It doesn't show that, it says, "To Carrow," that doesn't agree with the book.

A. As far as the date and amount it agrees with the book.

Q. But it went to quite a different person?

A. But it was chargeable to the C. O. Davis agreement.

Q. How do you know?

A. Well, because at that time I was instrumental with Mr. Darcy in the passing back and forth of a check to Carrow and Mr. Spear wasn't able to come to the office at that time.

Q. You are remembering that now?

A. Yes, sir, I am remembering that.

Q. But about the payment of $10.00 on August 22?

A. August 22 was a cash check.

Q. What?

A. A check for $10.00 cash.

Q. It doesn't say so.

A. This memorandum was cashed by Mr. Darcy and taken to Dr. Spear, he wasn't able to come to the office.

Q. Read the memorandum, not your interpretation.

A. I am reading it.

Q. "Cash, Darcy," for Spear?

A. $10.00.

Q. That you charged against Locustwood Cemetery Association?

A. Yes, sir.

Q. About the 23rd the book shows Locustwood Cemetery Association, $100.00?

A. The date and amount conform with this statement.

Q. But not the payee of the check?

A. Deposited in the Producers' and Consumers' Bank to Dr. Spear's account.

Q. Where was the Producers' and Consumers' Bank?

A. Philadelphia.

Q. You mean the association deposited that money to his credit?

A. That was it, no doubt.

Q. Are you testifying from your recollection or from inferences?

A. I don't know anything about that transaction.

Q. August 28, Locustwood Cemetery Association, $200.00.

A. That is right, that is part of this memorandum.

Q. September 1, Locustwood Cemetery Association, $100.00.

A. Yes, sir, that shows September 1. You struck the wrong key, September 1 or September 11, I don't know which. Morten, personal check to Spear $100.00.

Q. Who was Morten?

A. An employee of C. O. Davis.

Q. And for that reason you charged it to the Locustwood Cemetery Association?

A. Yes, sir.

Q. What about October 2, Locustwood Cemetery Association, $200?

A. This statement shows that, right there.

Q. The 9th, Locustwood Cemetery Associatioin, $200.00.

A. That is right.

Q. November 23, Charles C. Spear on account of Locustwood Cemetery Association, $25.00?

A. Yes, sir.

Q. That was after the date of your agreement?

A. Yes, sir.

Q. Your agreement was with the Equitable Estates Corporation?

A. Yes, sir.

Q. And yet you paid the check to Dr. Charles C. Spear and say it is on account of Locustwood Cemetery Association?

A. Yes, sir.

Q. How do you reconcile those two things?

A. As to why it was credited that way?

Q. Yes, it says, "On account of Locustwood Cemetery Association."

A. It was on account of the purchase of the land.

Q. Were you buying from the Locustwood Cemetery Association?

A. The Equitable Estates Corporation.

Q. Yet your books give credit on account of the Locustwood Cemetery Association?

A. I don't remember who that check was payable to.

Q. Do the book entries show that?

A. Yes, sir.

Q. It shows a payment to Charles C. Spear on account of Locustwood Cemetery Association, doesn't it?

A. Yes, sir.

Q. December 8, 1923, Charles C. Spear, account of Locustwood Cemetery Association, $15.00.

A. December 1, $30.00, have you that there?

Q. Yes. The same way, Locustwood Cemetery Association?

A. Yes, sir.

Q. All credited on that account or charged on that account?

A. Yes, sir.

Q. The same is true of December 11, $25.00?

A. That is right.

Q. The same is true of December 14, $50.00?

A. Right.

Q. The same is true, December 21st, Charles C. Spear, on account of Locustwood Cemetery Association, $50.00?

A. That is right.

Q. Again on December 29, Charles C. Spear, on account of Locustwood Cemetery Association, $25.00?

A. That is right.

Q. Again on January 7, 1924, Charles C. Spear, on account of Locustwood Cemetery Association, $25.00?

A. That is right.

Q. Again on January 4, Charles C. Spear, on account of Locustwood Cemetery Association, $100.00?

A. That is right, $150.00.

Q. What?

A. What date is that?

Q. Under date of January 4th?

A. That is right.

Q. Again on January 11, Charles C. Spear, on account of Locustwood Cemetery Association, $150.00?

A. That is right.

Q. Again on January 15, Charles C. Spear, account of Locustwood Cemetery Association, $500.00?

A. That is right.

Q. Again January 18, Charles C. Spear, account of Locustwood Cemetery Association, $100.00?

A. That is right.

Q. February 1, Charles C. Spear, on account of Locustwood Cemetery Association, $100.00?

A. Yes, sir.

Q. And the same date, ditto mark, $200.00 on February 1?

A. That is right.

Q. Again on February 8, Charles C. Spear, account of Locustwood Cemetery Association, $50.00?

A. That is right.

Mr. Tyler: I understand these checks run all the way up to December. I imagine the witness has a compile list and will testify to the whole list as being paid in exactly the same way as we have examined on, otherwise we will have to go through ten months. It is only a suggestion, but I thought if we could cover it that way it would help us all.

Q. Do you know whether or not in this cash book of your company these payments of Charles C. Spear were charged as being on account of the Locustwood Cemetery Association up to and including the last payment which you say was made to him?

A. I think it was, a total of $15,236.32.

Q. Mr. Cawthorne, this so-called agreement of October 23, 1923, was a very valuable paper to your company, wasn't it?

A. Yes, sir, it was worth a lot of money.

Q. It constituted your sole business assets?

A. Yes, sir.

Q. You say it was left in an open drawer in a desk in your office?

A. An unlocked drawer, not open.

Q. By not open I mean unlocked?

A. Yes, sir.

Q. That anyone coming into the office could easily get hold of?

A. If they had a key to the office.

Q. I say, anyone inside the office could easily get hold of it?

A. Yes, sir.

Q. There was no attempt to put it in a safe deposit box or any place of safety whatever?

A. No, sir.

Q. And that was the only copy of that agreement that you had?

A. Yes, sir.

The Court: Do you know whether it was acknowledged?

The Witness: By a notary?

The Court: Yes, sir.

The Witness: No, sir, it was not.

Q. Now, you say you have seen Dr. Spear in your office between October 23, and the fore part of December when you missed this contract?

A. Yes, sir.

Q. What time of the day have you seen him there?

A. Various times in the afternoon.

Q. Anyone else in the office with him?

A. Sometimes his wife was there and child.

Q. Any of your company there in the office with him?

A. No.

Q. He came to your office frequently, didn't he?

A. Yes, sir.

Q. He came very frequently for checks, for money due to him?

A. No, I don't believe he did, we usually took the money out to him at Hainesport.

Q. You mean to say you took him the checks?

A. Sometimes, and when he called for money it

was always on a specified date, Tuesday afternoon, that was generally the date of payment.

Q. And he would come in Tuesday afternoon after his check?

A. Yes, sir.

Q. And it would be given to him?

A. Yes, sir, whenever we had it.

Q. That was the reason for his coming to your office?

A. He used the office whenever he saw fit.

Q. Used it for what purpose?

A. He left his family there while he was away on other business.

Q. And that would be in the daytime or night?

A. I never remember seeing him there at night.

Q. Were you ever there at night?

A. Sometimes.

Q. Frequently or occasionally?

A. Sometimes three or four nights a week.

Q. Were you in the office day?

A. Off and on.

Q. During the day?

A. Yes, sir.

Q. The same is true of Mr. Darcy?

A. Yes, sir.

Q. The same is true of Mr. Allen?

A. Yes, sir.

Q. Any one of you likely to come in or out any time during the day?

A. Yes, sir.

Q. Did you have a telephone in the office?

A. Yes, sir.

Q. Did you have anyone there to answer the telephone in case a call came when you were out?

A. No, sir.

Q. No one there for that purpose?

A. Not until December when we got a young lady there for the afternoon.

Q. Prior to that there was no one there for that purpose?

A. There was no occasion for anyone.

Q. You did not need anyone?

A. No.

Q. You weren't doing enough business to have that?

A. No, sir.

Q. I started at one time, I think, to ask you the number of lot-holders and you said there were 425 of them?

A. Approximately.

Q. And I asked whether they were all stockholders in the Locustwood Cemetery, Inc.?

A. I didn't hear you ask me that.

Q. Perhaps I did not. I will ask you now.

A. Some of them.

Q. All of them?

A. No, sir.

Q. How did they get to be lot-holders without buying stock in the Locustwood Cemetery, Inc.?

A. We stopped selling stock.

Q. When did you stop selling stock?

A. Some time ago, I can't give you the approximate date.

Q. Why did you quit selling stock?

A. We sold all that was necessary.

Q. All that you needed?

A. Yes, sir.

Q. Was there anything else besides stock that you ever sold?

A. Lots.

Q. Anything else?

A. Yes, certificates of indebtedness.

Q. What were they?

A. Promissory notes.

Q. Of the Locustwood Cemetery, Inc.?

A. Yes.

Q. What quantity of those did you sell?

A. I think they were perhaps $25,000.00, approximately.

Q. To whom were they sold?

A. They were sold to various people, residents of this community.

Q. Have you a copy of one of those certificates of indebtedness?

A. I have at the Administration Building.

Q. Could you get me one of those?

A. Yes, sir.

Q. Will you make a memorandum to do that?

The Court: Were they sold to anyone but lotholders and stockholders?

The Witness: They were sold, your Honor, usually in connection with the lots. We sold them a certificate of indebtedness with an agreement to accept that as payment for a specific lot at any time it was presented.

Q. But you did not own the lots?

A. Yes, we did.

Q. How did you own them?

A. By paying for them, we paid for them.

Q. Who did you pay for the lots?

A. We paid a representative of the Equitable Estates Corporation.

Q. Who was that?

A. Dr. Charles C. Spear.

Q. You didn't own any lots until you paid that corporation for them?

A. That is right.

Q. Now, you say you got control of the Locustwood Cemetery Association in January, 1925?

A. Yes, sir.

Q. How did you get control of that association?

A. By vote of the lot-holders.

Q. Where was that meeting held?

A. Held in Camden.

Q. Whereabouts?

A. In the basement of the Smith-Austermuhl Building at 5th and Market Streets.

Q. Was this in accordance with the by-laws of the Locustwood Cemetery Association?

A. Yes, sir.

Q. Did those by-laws call for a meeting at the association grounds?

A. No, sir.

Q. They do not?

A. No, sir.

Q. Who called that meeting?

A. A committee of lot-holders.

Q. Who was president of the Locustwood Cemetery Association at that time?

A. Of lot-holders?

Q. Who was president of the Locustwood Cemetery Association?

A. Dr. Charles C. Spear.

Q. Did he have any notice of that meeting?

A. Notices were published in the newspapers and mailed to all.

Q. Was any notice sent to Dr. Spear of that meeting?

A. Publication is sufficient.

Q. Who sent out the notices for that meeting?

A. A committee of lot-holders.

Q. Who were they?

A. I think there is a record of them in the minute book.

Q. Don't you know who they were?

A. No, sir.

Q. Nor do you know what notice of that meeting was given?

A. Notice as required by law.

Q. What was that?

A. You mean the text of the notice?

Q. What notice is required to be given to the lot-holders of a special meeting?

A. A notice is published stating the time and place and object of the meeting, by whom called, and that notice is to be inserted in an established newspaper of the county and a notice is sent to all lot-holders of record.

Q. Was that kind of a notice sent?

A. Yes, sir.

Q. By whom?

A. I sent most of them myself, some of them I sent by others.

Q. From whom did you get your information as to who were lot-holders?

A. From Dr. Spear.

Q. Have you a copy of that notice and the minutes of that meeting?

A. Yes, sir.

Q. What was the meeting called for, for what purpose?

A. The purposes as indicated in the minute book.

Q. What is that?

A. I can't tell you without referring to it.

Q. Have you that minute book?

A. Yes, sir.

By the Court:

Q. My recollection is that at that time deeds had not been given to the various parties who had purchased lots?

A. Well, your Honor, there were a number of people who owned lots who were present at that meeting.

Q. Besides those who have bought lots who had not received their deeds?

A. Yes, sir.

Q. Did your meeting include both classes of lot-holders, those that had not gotten their deeds?

A. Yes, those who had lots and those who had equity in a lot and who had demanded a deed and had not been delivered. They were given deeds that night.

By Mr. Palmer:

Q. Now, I call your attention to a book with the name of the Locustwood Cemetery Association on the outside purporting to be a minute book and a waiver of notice a special meeting of lot-holders of the Locustwood Cemetery Association, dated January 30, 1925, and I ask you first whether the name signed to that waiver, of which there are quite a number, were on January 30, 1925, lot-holders of the Locustwood Cemetery Association?

A. Why, without accurate checking there are 25, most of them have had deeds since 1912, some with burials.

Q. You say there are 25 of them?

A. About that.

Mr. Carr: I have been trying to see the relevancy of this; it certainly is not cross-examination.

The Court: It is outside the field of the direct, but I think probably we will get through better if it goes on and we ascertain what we can. I think we will probably save time; I don't think it is in the field of the direct, although he was an officer. Go ahead, anyhow.

Q. You say there were 25 of them that were actually bona fide lot-holders having deeds for their property at the time this meeting was held on January 30, 1925?

A. Approximately 25; to be exact I would have to check it carefully. They hold cemetery deeds, not deeds to property.

Q. What do you mean by cemetery deeds?

A. Deeds to cemetery lots, the right of interment.

Q. They were lot-holders?

A. Yes, sir.

Q. 25 of them?

A. Approximately.

Q. 25 of them were bona fide lot-holders at the time of that meeting?

A. Yes, sir.

Q. Now, I call your attention to the next page which purports to have a copy of a notice advertised in the Camden Daily Courier on January 20, 1925, which says, "Notice is hereby given of a special meeting of lot-holders of the above association to be held in the basement of the Smith-Austermuhl Building, Northwest corner of 5th and Market Street, Camden, New Jersey, at eight o'clock P. M., Friday, January 30. Said meeting being called for the purpose of considering the situation with respect to trustees of the association and to take such action thereon as the situation might require. Signed.

Lot-holders' Committee.'' Was that the advertisement that was inserted in the paper?

A. Yes, sir.

Q. On the next page I call your attention to what purports to be minutes of a special meeting of lot-holders of Locustwood Cemetery Association held in the Smith-Austermuhl Building, Northwest corner of 5th and Market Street, Camden, New Jersey, on Friday, January 30, 1925, at eight o'clock P. M., pursuant to notice as required by law, and giving a list of lot-holders personally present, and a list of lot-holders present by proxy, with total lots present by proxy 76, total lots present in person 57, total present and present by proxy, 133, and it goes on and gives the minutes of that meeting, and resolutions passed and provides and does elect three persons as trustees, and ask you whether those are the minutes of that meeting?

A. Yes, sir.

Mr. Palmer: I want to offer those minutes.

The Witness: Mr. William B. MacDonald was secretary. I was not the secretery.

Q. Following that there was a waiver of notice of meeting of board of trustees for a meeting on January 30, and then a special meeting of the board of trustees on January 30?

A. That is right.

Mr. Palmer: I want to offer those minutes.

(Said minutes offered in evidence and marked Exhibit P7, 6-15-27.)

Q. And it was at that meeting and the election

of the trustees that was held at that time that you say you and your people obtained control of the Locustwood Cemetery Association?

A. Yes, sir.

Q. That meeting elected as trustees, Max Darcy, James T. Cawthorne, and James E. Tatem, didn't it?

A. Yes, sir.

Q. Were any of those gentlemen lot-holders of the Locustwood Cemetery Association at the time of their election as trustees?

A. Yes, sir, all of them.

Q. All of you were lot-holders?

A. At the time of that directors' meeting we were all lot-holders.

Q. At the time of this lot-holders' meeting on January 30, 1925, you say those three gentlemen were lot-holders of the Locustwood Cemetery Association?

A. No, sir, I did not say that.

Q. What did you say?

A. I said at the time of that meeting of trustees —directors I said, but I should have said trustees —we were lot-holders.

Q. At the time of your election as trustees you were not lot-holders?

A. At the time of election of trustees we were lot-holders.

Q. You were elected on January 30, 1925, weren't you?

A. Yes, sir.

Q. You say you were lot-holders at that time?

A. At the time we went into the board meeting we were lot-holders.

Q. I am asking about the time of your election as trustees on January 30, 1925?

A. I will have to read those minutes to be able to answer that question.

Q. You know whether you owned a lot at that time, don't you?

A. I can't tell.

Q. Dont you know you were not a lot-holder at that time, the time of your election as trustee?

A. At some hour during the day of January 30, 1925, I became a lot-holder.

Q. How did you come to be a lot-holder?

A. By issuance of a deed.

Q. Did you pay for it?

A. Yes, sir.

Q. How much did you pay for it?

A. $1.00.

Q. And that is true of the other gentlemen?

Mr. Carr: If the Court please, I don't see any relevancy at all in this.

The Court: I don't know, Mr. Carr, this case is too much for me to make an intelligent ruling on; if I do make an intelligent ruling it will be through mistake.

Mr. Tyler: I think that remark ought to be stricken from the record.

The Court: Go ahead and bring out anything you can.

Q. And the same was true of the other two gentlemen elected trustees?

A. No, sir.

Q. Were they lot-holders at the time of their election?

A. Chief Tatem was a lot-holder.

Q. What about Mr. Darcy?

A. Mr. Darcy became a lot-holder at some hour during the day of January 30, 1925.

Q. You mean on the day of January 30, or on the day of your meeting to organize?

A. I don't understand that question.

Q. You were elected the trustees at a meeting called for 8 o'clock the evening of January 30, 1925?

A. Yes, sir.

Q. And following that is the waiver of a notice of a meeting of the board of trustees called for 9 o'clock in the evening of January 30, 1925?

A. Yes, sir.

Q. Do you mean to say the deeds were issued to you between the time you were elected trustees on that evening and the time of this meeting of you as trustees?

A. I think I said I can't answer that question accurately until I read the minutes.

Q. Here are the minutes, now, tell me when you got your deed with which to qualify you to be a trustee of that association.

The Court: You could have hardly gotten it before the trustees met because there was no one to give you a deed.

The Witness: Sometime during the meeting the deeds were ordered issued. I don't see it in the minutes. I was not the secretary, but they were issued.

The Court: Who signed them?

The Witness: They were signed by the officers when they were elected. They were ordered issued sometime during the evening, but I can't find it in here.

The Court: And when you became trustees you made these to yourselves?

A. Yes, sir.

By Mr. Tyler:

Q. This is the stock book of this association, the Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. The first certificate is John F. Powell, 10 shares.

A. Yes, sir.

Q. Did he pay anything for them?

A. Somebody paid for it.

Q. Where is that in the cash receipt book, did you get $100.00 cash for that?

A. Somebody got the $100.00 for it, I was not the treasurer at that time.

Q. The next one is 10 shares, Max Darcy?

A. Yes, sir.

Q. Did he pay anything for them?

A. Somebody paid for it.

Q. The next one is Cawthorne, yourself, 10 shares?

A. Yes, sir.

Q. Did you pay $100.00 for it?

A. Somebody paid for it in the C. O. Davis Company and charged it to me.

Q. The next is $3980.00 to Charles O. Davis. Show me any record of the receipt of that money for that certificate?

A. That was issued in consideration of the contract.

Q. That is dated July 18, 1923?

A. Yes, sir.

Q. What contract was that issued for?

A. I will have to refer to the minute book.

Q. From then on practically all the certificates are issued on account of that certificate?

A. Apparently.

Q. Showing that from July 18 up to October 26 various certificates were issued in exchange for that one certificate?

A. Yes, sir.

Q. So that C. O. Davis sold out what stock was given to them and they quit, didn't they?

A. No, that wasn't near all the stock given them.

Q. On July 18 you gave them 3980 shares, certificate #4?

A. Yes, sir.

Q. And by October 26 they had cleaned out that entire lot?

A. 23.

Q. Isn't this 26th here ?

A. I guess it is.

Q. Cleaned out the whole thing?

A. Yes, sir.

Q. And when they cleaned up for that certificate which they got $39,800.00 less commissions of sale they quit and turned the company over to you and your associates?

A. No, sir.

Q. How near is that true?

A. Mr. Davis left during the first part of October.

Q. But you didn't go in and you were not elected officers until October 23?

A. No, I was always the president up to the 25th of October.

Q. When was the change of officers made in October?

A. On the 25th.

Q. And Davis got out at that time?

A. He got out around the first of September or the first of October, I don't know which, he just left.

Q. But his stock was practically cleaned up?

A. No, sir.
Q. It was not?
A. No, sir.
Q. Now, certificate #4 shows on the back of it a list of transfers?
A. Yes, sir.
Q. Cleaned up 3980 shares of stock, that is true, isn't it?
A. Yes, sir.
Q. Certificate #65 gave you 2000 shares of stock?
A. Yes, sir.
Q. What was that for?
A. That was as an incorporator.
Q. For your services?
A. No, sir.
Q. What for?
A. I will have to explain that.
Q. Tell me what that is for?
A. I can't without explaining it.
Q. Did you pay anything for it?
A. Subsequently I did.
Q. That calls for a par value of $20,000.00?
A. Yes, sir.
Q. What did you give the company in exchange for that certificate?
A. $20,000.00.
Q. In cash?
A. No, sir.
Q. How did you pay it?
A. A note.
Q. Has the note been paid?
A. No, sir.
Q. It was issued on 1923?
A. Yes, sir.
Q. And it has not been paid?
A. It was extended by the directors.
Q. Have you any intention of paying it?

A. Yes, sir.

Q. Where is the note now?

A. It is in the company's vault at the First National State Bank.

Q. It has been there ever since?

A. Yes, sir.

Q. Bearing the same date?

A. No, sir, renewed.

Q. When is it payable?

A. I can't tell you that without referring to the minute book. The issuing of that stock by the incorporators is a typographical error.

Q. Why hasn't the certificate been turned in and attached to the book?

A. It is attached to the note as collateral security.

Q. How did it come to be a typographical error and issued to you?

A. It was carried out in incorporating the papers, as originally incorporated, Mr. Powell was to receive $100.00 and the difference between $100.00 and $1000.00, as required by law, to be issued in the name of Mr. Darcy and myself, and Mr. MacPeak, manager of the New Jersey Corporation and Guaranty Company stated that was carried out 2000 shares in error and we took that up with our attorney to try, after we got possession of the books, to try and have that amended, and he stated that would be done, and we just neglected to do it, and it is temporarily covered by a note.

Q. You just told me in answer to a question, under oath, you expect to pay that note for $20,000.00.

A. I do expect to pay it.

Q. Notwithstanding it is an error and you don't possess the stock.

A. I expect to pay it.

Q. Do you mean it is properly issued and you

expect to pay it or it was a technical error and carried out by mistake and it is to be credited to the company?

A. It was a technical error which we corrected by issuing my note and attaching the stock as collateral security and putting it in the vault in the bank in the First National State Bank where it remains at the present time.

Q. I show you certificate #18, 21,019, par value of $210,190.00, what was that issued for?

A. For consideration shown in the minute book.

Q. Here is the minute book.

A. This is the Locustwood Cemetery, Inc. What is the date?

Q. July 24, 1923.

A. That was in consideratioin ——

Q. Please refer to the minutes and show me where that is referred to, and I would like to produce that part which refers to it. Witness refers to a letter addressed by Locustwood Cemetery, Inc., to Charles O. Davis, dated July 9, 1923, reads as follows: "Pursuant to a Resolution of the Board of Directors of the Locustwood Cemetery, Inc., passed at their meeting, held this 9th day of July, 1923, we hereby offer you 24,999 shares of the capital stock of said Locustwood Cemetery, Inc, in full payment for all moneys so far expended and for all time and effort so far spent by you on behalf of this Company, and we hereby promise and agree, upon your acceptance of this offer, to cause to be issued to you or to your order, as called for, certificates of stock of Locustwood Cemetery, Inc., duly executed in the names of any person or persons designated by you; the said stock being fully paid and non-assessable, the full payment therefor having been time and money expended to this date on behalf of this Company and money advanced for the

cost of its incorporation. You are hereby authorized to complete any tentative arrangements which you have made on behalf of this Company. Yours truly, Locustwood Cemetery, Inc." The par value of that stock was $249,999.00, wasn't it?

A. Yes, sir.

Q. Now, from your record—you have no record of any money having been spent up to that time, have you?

A. Except shown in the cash book there.

Q. Is there any record of any money having been spent up to July 9?

A. To C. O. Davis & Company?

Q. You said this is a copy made up from their memorandum?

A. This was made up from memorandums belonging to the records of the Locustwood Cemetery, Inc., and not C. O. Davis and Company as money expended for them. How much money C. O. Davis spent outside of this I am not able to tell you.

The Court: Didn't you speak a while ago of Davis and Company having given you data from which you might make up your books?

The Witness: Data to make up the books of the Locustwood Cemetery, Inc., but not of the C. O. Davis & Company. Another consideration of that stock was the purchase contract.

Q. What contract?

A. The original agreement between C. O. Davis & Company and Equitable Estates Corporation, Spear and Mercedes Spear, which I was informed the transfer took place in June, and of which I was given written authority to go out and take reorganization subscriptions.

Q. If you had a contract by assignment from C. O. Davis why did you make another contract with the Equitable Estates in October?

A. It could not be found.

Q. You couldn't find it and you made another?

A. Yes.

Q. And when the second one was lost you and Spear and someone else sat down and he took his machine and attempted to draw a third one?

A. No, sir.

By the Court:

Q. Didn't you say your contract was identical with a copy of the Davis contract?

A. Yes, sir.

Q. And yet you did not have it?

A. No, sir, Mr. Davis evidently took it with him when he left. This is from memory, this contract.

By Mr. Tyler:

Q. You issued the stock for that contract without ever having acquired the contract?

A. Yes, sir.

Q. Now, from your record of stock receipts shown in the book, how much money had been received up to February 3, 1924?

A. $16,933.50.

Q. How much of that was spent for ordinary expenses not at all connected with the improvements of the cemetery property?

A. I would have to audit this to be able to tell you.

Q. Can you tell me approximately?

A. No, sir.

Q. Look at the first page, amounting to $2500.00, there is no part spent for improvement, was there?

A. I would have to see that to be able to tell you.

The Court: What was the date of that last check?

Mr. Tyler: July 24, 1923, that is the certificate for 21,019 shares.

The Witness: Aside from the money paid to Dr. Spear it was all spent for developments, preliminary development accounts.

Q. That is not what I am asking you, there is no use of misconstruing it.

A. It was not my intention.

Q. I will take up each item and I think you can answer it.

A. It was all spent for preliminary work; you can't devolop it unless you have office and equipment.

Q. Was any part of that money actually spent on the ground itself?

A. Not for actual development labor.

Q. Nor for material?

A. Yes, it is necessary to have an office and telephone, and those things, before you can start business.

Q. Show me any item that was spent for labor or material under development of that contract on that page?

A. Not directly on the ground, no, sir.

Q. We could have saved a lot of time if you had just said so in the beginning. Now, take the next page, and show me any item, any particular item that was spent on the ground either for labor or material?

A. There is an item of $24.00 for labor.

Q. Does that say where the labor is?

A. No, it was on the development account. Yes, sir, right here.

Q. Does it say where the labor was expended?

A. The development account, we are only developing one tract of ground, these are men clearing up the cemetery.

Q. The thirteen acres?

A. Yes, sir, the thirteen acres and the entire front.

Q. How can you tell that?

A. Because I was out there and directed them.

Q. Can you tell by the book?

A. No, sir. Shall I name the amounts?

The Court: What date is it?

The Witness: On October 7, $24.00, same date, $20.00, October 16, $36.00, October 16, $30.00, then there is office rent.

Q. Go ahead.

A. There is office rent and telephone, October 25, $36.00. There is $3.96 for matchets, grass, hacks, and tracing plans for the cemetery, October 26, $25.00 for tracing plans.

Q. I want on the ground, don't give me your office expenses.

A. This was spent on the ground. $300.00 for going over the property, and running lines.

Q. For a surveyor?

A. Yes, sir. On November 2, $36.00; on November 8, $60.00 which paid up from October 15 to the 27th. On October 8, $336.00, and then there is a telephone bill. October 8, axes, etc., $5.60. November 10, $36.00; November 22, $36.00; tools, $10.97.

November 28, $36.00; November 28, $10.00. What about the office help?

Q. No, just on the ground?

A. November 8, $20.00.

Q. December 8th?

A. December 8, $20.00; December 11, $23.00; December 17, $20.00; same date, $29.00; the purchase of a typewriter, that is certainly part of the development account, shall I give that?

Q. No, I am asking what was spent on the proprety itself, not your overhead.

A. What about advertising, sale of lots? December 20, $36.00; same date, $7.00; December 21, $25.00; December 28, $36.00; same date, $7.00; January 3, $36.00, same date, $10.00; January 8, $36.00; same date, $7.00; same date, $5.00; January 9, tools, $8.90. All these items, typewriter, etc., are applied to development. On January 11, a second item of $75.00, which makes up the back pay of the man who was only drawing $6.00 or $7.00 a week.

Q. That was Max Darcy?

A. Yes.

Q. The only labor items you have are Max Darcy and William Faulkenstein so far?

A. Yes, sir. $10.00 on January 11, $10.00 on January 11, $10.00 on January 11; $10.00 on January 14, $10.00, January 14, $10.00 on January 14, $20.00 January 16, $20.00 same date, $20.00 same date, $36.00 same date, $7.00 on the same date—I might add that that was only a part of that man's weekly salary.

Q. That was Max Darcy?

A. Yes, that was only $7.00 out of $30.00.

The Court: Won't you ask whether it is the Max Darcy here?

The Witness: Max Darcy, Jr. He was there employed as a laborer. On January 17, $10.60, January 17, $30.00, same date $10.00, same date $10.00, same date $10.00, January 25, $50.00, January 25, $70.00; January 25, $50.00; January 25, $35.00; January 25, $36.00; January 25, $10.00; February 1, $60.00; February 1, $70.00; February 1, $60.00. Those stump pullers worked on a contract, so much a stump. February 1, $36.00; February 1, $10.00. Can I call attention to the fact that is only part of that man's salary? February 1, $35.00; February 4, $7.00. A great many of these items were spent entirely for the cemetery. February 8, $10.00; February 8, $15.00, same date, $24.00, same date, $40.00, same date $40.00, same date, $36.00, same date, $30.00 the 11th, $7.00, February 15, $25.00.

Q. Not $25.00?

A. $36.00, cross out the 25. Same date $15.00, same date, $15.00, same date, $3.00, same date $3.00, February 16, $5.64.

Q. That was for repairs to the Ford car?

A. Probably meant the Ford car on the grounds used for development purposes. Do you want that scratched out?

Q. Let it stand as long as we know what is it.

A. February 20, $10.50; February 21, $3.78; February 21, $36.00; 22, $15.00, same date, $15.00, same date, $61.00.

Q. Now, that carries it up to February 25th, doesn't it?

A. Yes, sir.

Q. So that from the incorporation of the company the first record of expenses, July 13, 1923, up to February 25, 1924, the only records of expenditures on the property are those which you have enumerated from your book, isn't that true?

A. There is a car ——

Q. Never mind the office expenses, sales expense and those things, I am asking whether that record you have given us ——

A. For the actual manual labor performed on the ground, all the tools, with the exceptioin of the car, the men had to have to get back and forth with.

Q. And that begins for a period several months prior to the time you claimed to have the contract dated October 23, doesn't it?

A. That begins prior, you say?

Q. Prior to that, July 13?

A. I don't understand that, Mr. Tyler.

Q. Your record from which you have read those expenses started July 13, didn't it, 1923?

A. That is the record in this book you mean of development?

Q. Yes.

A. No, sir, I disagree with you.

Q. I know the development expenses don't start that soon, but the record of expenses on behalf of the company in the book you produce begins July 13, 1923?

A. Begins with office rent, July 13, 1923.

The Court: What did you say that large certificate of stock was given to Davis for, the very large one?

The Witness: I can only tell you what Mr. Davis told me and which he gave me written authority ——

The Court: If your entire information comes from Davis you had better not state it.

Q. Referring to the letter dated July 9, in which the company offered Davis 24,999 shares of capital stock in full payment of all money so far expended

did the company have any statement of the money he had actually expended up to that date?

A. For himself?

Q. Yes.

A. We wouldn't have a record of that, that would be in Mr. Davis' office.

Q. Do you have any statement of the moneys in this offer made by the Locustwood Cemetery Company and signed by you?

A. No, but I personally know that considerable money was spent.

Q. What for?

A. He called me in once from Flint, Michigan, and once from Louisville to consult with him on this and pay my expenses.

Q. How much would that amount to coming from Louisville?

A. I don't remember the fare now, about $30.00.

Q. And from Flint, about how much?

A. About the same, and then my salary, he paid me $200.00 a week and expenses.

Q. What other money do you know of which he had expended and which is referred to in this letter prior to that date?

A. He used up a great deal of his own time.

Q. That is a different item, I will ask you about that shortly.

A. I don't know, he spent considerable money.

Q. Do you know what for?

A. In preliminary work, in getting this contract.

Q. Have you any record of it?

A. It would be in C. O. Davis & Company's book.

Q. This is an offer made by the Locustwood Cemetery, Inc., and signed by you as president?

A. Yes, sir.

The Court: What is the balance of the consideration, money expended and what?

Mr. Tyler: Time and effort so far spent by you on behalf of this company.

Q. Now, as I recall it, he was interested in the company in June, does that agree with your recollection?

A. Yes sir, the early part of June, I think.

Q. The early part of June, and up to this time, about one month had elapsed. How much of that time did he give to the affairs of the company?

A. Practically all of his time.

Q. So that for the expenses you have enumerated and practically one month's time the company issued stock to him at the par value of $250,000.00 less $10.00, is that right?

A. That is right, yes, sir.

The Court: Now, gentlemen, I am going to catch this train, and it is time I was getting out. Are you willing to quit now?

Mr. Stackhouse: I prepared a petition in this contempt proceeding. Do you wish to issue an order to show cause on that?

The Court: I will take it with me and read it over tonight.

Mr. Palmer: To save your Honor the trouble, I have the agreement that was lost.

The Court: Suppose you deliver it to the sergeant-at-arms and let him hold it subject to inspection. We will adjourn until tomorrow at half-past nine.

(At this point an adjournment was taken until Friday, June 17, 1927, at 9:30 A. M.)

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Volume II

Camden, New Jersey, June 17, 1927,

(Trial of the cause resumed on the above date, pursuant to adjournment at 9:30 o'clock A. M.)

The Court: While I have it in mind I would like to ask Mr. Darcy a question or two.

MAX DARCY, recalled.

By the Court:

Q. I have in my hand Mr. Darcy, a copy of this agreement marked "Court 1" dated the 23rd of July, 1923, the original of which has since been produced. This professes to be executed on the part of the Locustwood Cemetery, Inc., by you as vice-president and by J. F. Powell as secretary, with the seal of your corporation imprinted. You are familiar with its terms, are you, you have seen it?

A. Yes, sir.

Q. Do you say that there was no such agreement as that made between the Locustwood Cemetery, Inc., and the Locustwood Cemetery Association?

A. I never remember such an agreement, have no recollection of ever signing it.

Q. Now, the Locustwood Cemetery Inc., was incorporated shortly before that date, wasn't it?

A. Yes, sir.

New Jersey State Library

Q. The date of the incorporation has been given and I remember it as shortly before that date?

A. Yes, sir.

Q. And it was incorporated, as I gathered from the testimony, for the special purpose of operating this cemetery?

A. Yes, sir.

Q. There must have been some agreement with reference to that operation on or about that time?

A. Yes, sir.

Q. Now, do you say an agreement was in fact made but different from this?

A. Yes, sir.

Q. In what respect?

A. The agreement that was made in fact was made between the Equitable Estates Corporation and C. O. Davis. C. O. Davis was to transfer his agreement to the Locustwood Cemetery, Inc., but this was never affected, and when C. O. Davis left he took this agreement with him for this reason, there had been some sales made by C. O. Davis and he probably wanted the agreement to justify whatever he had done. Now, after he was gone naturally, we had no agreement and that was when Dr. Spear, the president of the Equitable Estates Corporation, gave us another which was dated October 23, 1923.

Q. Why didn't you transfer that new agreement to the Locustwood Cemetery, Inc.?

A. It was made direct to the Locustwood Cemetery, Inc., it wasn't made to any individual, it needed no transfer.

Q. But prior to that time your statement is no agreement had been executed between the Locustwood Cemetery Associatioin and the Locustwood Cemetry, Inc.?

A. Not to my knowledge.

Q. But the Locustwood Cemetery, Inc., was operating and according to its book was paying bills?

A. Yes, sir.

Q. How could it do that without an agreement, either an assignment of the Davis agreement or some other agreement?

A. Davis was the man who controlled the interests and the destinies of Locustwood Cemetery, Inc., and undoubtedly there was an arrangement that this agreement was to be transferred to the Locustwood Cemetery, Inc., and it was under that arrangement that probably the Locustwood Cemetery, Inc. proceeded in doing business.

Mr. Carr: At this time I call your Honor's attention to the fact that the July 23 agreement which was produced yesterday also bears the corporate seal of the Equitable Estates impressed on it. There is no signature by the Equitable Estates but the corporate seal is on the paper. What significance that may have I don't know at this time. There is one more question I want to ask Mr. Darcy.

Max Darcy, recalled.

By the Court:

Q. I have not read this agreement of 23rd of July, 1923, carefully enough to be familiar with the terms, but from what I have seen of it it appears to be an agreement which makes the Locustwood Cemetery, Inc. a sales agent for the Locustwood Cemetery Association by which they were to sell lots and receive certain compensation, that seems to be the general effect of it.

A. It is different from that, your Honor, it not only makes it sales agent but requires the Locustwood Cemetery, Inc. to make considerable expenditures without any return whatsoever. It is only under those conditions it becomes a sales agent.

Q. Was there never an agreement by which the Locustwood Cemetery, Inc. should become a sales agent of the cemetery lots?

A. Why, the Locustwod Cemetery, Inc. must sell lots in lieu and instead of the association, that is the way all cemeteries are run.

Q. Where is the agreement which authorized them to sell lots?

A. That agreement was subsequently made.

Q. But they were selling lots at that time or trying to, weren't they, in July?

A. Yes, they were selling lots or trying to at that time under the provision of the contract of October 23, 1923.

Q. Prior to that?

A. Prior to October 23 they were selling lots under the provision of the contract C. O. Davis carried away with them.

Q. Without any written authority from the cemetery company?

A. The authority was vested in that contract under which Dr. Spear and his wife had agreed to revise the Locustwood Cemetery Association and deliver its control to the Locustwood Cemetery, Inc. Everything that was done was based on that contract of October 23 or the Davis contract and perfected in accordance with it.

By Mr. Palmer:

Q. The contract that you speak of as the Davis contract was made between whom?

A. Between C. O. Davis and the Equitable Estates Corporation, Charles C. Spear, and Mercedes Spear.

Q. Did Spear sign it individually?

A. Now, that is a question I cannot answer.

Q. Did you ever see that contract?

A. No, I did not, but I was present at a great many of the discussions that preceded it, and C. O. Davis told me he had that contract and so did Dr. Spear tell me the same thing.

Q. Your sole information concerning that contract you got from Mr. Davis?

A. And from Dr. Spear.

Q. The contract was never produced in your presence?

A. I can't recollect I ever saw it.

Q. Where did the discussions take place?

A. In a hotel in Philadelphia, I don't remember exactly—I believe it was the Benjamin Franklin.

Q. In what year?

A. That was during the month of July, 1923, and I have a letter from Spear somewhere that states he wants me here when he signs that contract, or something to that effect.

Q. Can you find that letter?

A. Yes, sir, I can.

Q. Will you produce that letter?

A. Yes, sir, I don't know if I have got it here, but I will look for it.

The Court: Supposing we proceed in the regular order while he is looking for it?

The Witness: These are the letters, your Honor.

The Court: Come back and let Mr. Palmer continue his examination.

Q. The letter you have reference to is under date of June 26, 1923?

A. Yes, sir.

Q. Addressed to "Dear friend Darcy?"

A. Yes, sir.

Q. "Yours of the 25 just received. If Davis and Dawson are coming over here today prepared to sign up you had better come over, too. I won't sign any agreement unless you are present. You introduced the parties to the deal and are entitled to be right in at the signing. Your sincere friend, Charles C. Spear." Another letter dated July 5, 1923, is produced. "Dear friend Darcy: I had a talk with Davis last night over the phone, he says he is coming over here next"—and the word "Monday" is stricken out and the word "Sunday" written after it. "It will be necessary for me to have a talk with you before then and go over the whole matter. Can you run over tomorrow, make the time to suit yourself. Sincerely, your friend, Charles C. Spear." Those are the letters you have reference to?

A. Yes, sir, those are the letters.

Mr. Carr: If the Court please, there was an extended cross-examination yesterday by Mr. Tyler with reference to the stock transactions of C. O. Davis & Company. I was unable to see the relevancy of it, it may possibly be relevant, but I think Mr. Tyler should state the object of it. Frankly, my view is this, that in one aspect of this case the stockholders, that is the company, occupies the position of a bona fide purchaser provider without notice, expending a large amount of money, and a large amount of stock has been issued to the public generally, I think $250,000.00 has been spent, and it didn't

seem to me whether or not there had been transactions with Mr. Davis, which might perhaps be questionable, could possibly affect the rights of the corporation or the body of stockholders. This sort of investigation might be of interest to stockholders of the company to see whether Mr. Davis had gained anything he had no right to, but I can't see how it affects the merits of this controversy.

The Court: Yes, I think it lends light on the claim that the engagement was made between the Equitable Estates Corporation and Davis in contemplating that it should be for the benefit of the new corporation which is just formed in July and that the present agreement of July 23 is a concoction or forgery, that no such agreement ever existed.

Mr. Carr: It is not my desire to shut out anything that your Honor thinks helpful but it did seem to me we were spending a lot of time on matters that seem to be collateral.

The Court: I think it should go in.

Mr. Carr: As long as your Honor feels that way I haven't any objection.

JAMES T. CAWTHORNE, recalled.

By Mr. Tyler:

Q. I call your attention to the fact that in the case of Douglass v. Spear, and others, case in the Court of Chancery, docket #51-559, a rule to show

cause was issued against the Locustwood Cemetery, Inc., on the 11th day of February, 1924, which was returnable on the 18th day of February, 1924, and that in pursuance to that an injunction was issued in that cause restricting your operations to the thirteen acres and a fraction, you recall that, Mr. Cawthorne?

A. Vaguely, yes, sir.

Q. I also call your attention to the fact that in the same cause a subpoena was issued on February 20, 1924, duly served February 23, 1924, on the Locustwood Cemetery, Inc., by delivering and leaving with W. B. M. Burrell, president, a true copy of the annexed writ at his office, 423 Market Street, Camden, New Jersey. I call your attention to these matters for the purpose of fixing the date and ask you up to the time that rule to show cause, or take the last date, the service of the summons, February 23, what stock had been issued to anyone with the exception of the officers and with the exception of that issued in exchange for the C. O. Davis stock?

A. Up to what date?

Q. February 23, 1924.

A. I think I could get this information quicker from the stock transfer book.

Q. Will you let me see the transfer book?

A. Yes, sir. In front of the book is a control account, it gives all the information contained in the stock book.

Q. Let me ask this, the stock book produced begins with share #1 and ends with share #100 and shows the first issue of stock on July 18, 1923, and the last issue on March 24, 1924, that book covers the entire stock transactions in that period in which I have asked you, doesn't it?

A. Yes, sir, during that period, yes, sir.

Q. Now, the stock certificates from 1 to 87 cover

all the certificates issued between those dates, don't they?

A. Yes, sir.

Q. Now, eliminating the officers of the company, Charles O. Davis and Bella Davis—that was his wife, wasn't it?

A. Yes, sir.

Q. How many shares of stock were issued during that period to others, excepting a reissue of the Davis stock?

A. From what time, Mr. Tyler, beginning with what date?

Q. From the date of the incorporation of the company up to February 23?

A. The number of shares exclusive of the incorporators and the officers?

Q. And exclusive of the re-issue of the Davis share.

A. Do you want me to call off a certain number?

Q. Yes.

A. No. 7, 25 shares.

Q. Who was Warren C. Rapine?

A. He was an undertaker.

Q. You give his office as 427 Market?

A. Yes, sir.

Q. Whose office is that?

A. Mr. Burrell's manager.

Q. He was associated with Mr. Burrell as manager?

A. He was Mr. Burrell's manager. Certificate #38, 50 shares.

Q. To William E. Anthony?

A. Yes, sir. Certificate #39, 50 shares.

Q. To Benjamin B. Mickel?

A. Certificate 56, 80 shares.

Q. That appears to be issued to W. B. M. Burrell, we will eliminate that.

A. He paid $10.00 a share for that.

Q. I am asking you for other than officers of the company.

A. You asked me for the stock sold and that was sold to Mr. Burrell for $10.00 a share.

Q. I am asking for certificates to other than officers of the company, those connected with the officers or issued to Mr. Davis and his wife are reissued in exchange for their shares.

The Court: Give the dates also as you name them, will you?

The Witness: Certificate #66, December 3, 1923, 10 shares, that was a forfeited sale.

Q. To Frances J. & Ruben F. Lynch, 529 Market, you say that sale was forfeited?

A. He subscribed for 50 shares and stopped payment. Certificate #73, December 10, 1923, 10 shares.

Q. To Andrew J. Stout?

A. Certificate #74, December 14, 1923, 50 shares.

Q. To Emma Watson Smith?

A. 75. January 4, 1924.

Q. To Otto G. W. Heinz?

A. Certificate #76, January 4, 50 shares.

Q. To Eleanor Heinz Giles, trustee for Edward Heinz?

A. Certificate #77, January 10, 100 shares.

Q. To F. Anna Mehl?

A. Certificate #78, January, 100 shares, 1924.

Q. The same person?

A. Pardon?

Q. To the same person?

A. Yes, sir, the same person. Certificate #80, January 15, 1924, 100 shares.

Q. William F. Schregler?

A. Certificate #83, January 31, 1924, 50 shares.
Q. To S. Bryan Smith?
A. Certificate #84, February 2, 1924, 50 shares.
Q. February 6th appears in the book. William E. Schlorer?
A. Certificate #86, February 15, 1924, 50 shares.
Q. To Thomas F. Hutchinson on the date of February 15?
A. Certificate #87, February 18, 1924, 50 shares.
Q. Charles T. Humes?
A. Certificate #88, February 28.
Q. That is beyond the date that the company was brought in and an injunction issued. These parties that bought 50 shares was your arrangement with them to give them a lot?
A. Yes, sir.
Q. Did you give them a lot?
A. Yes, sir.
Q. In the thirteen acre tract?
A. Yes, sir.
Q. And those who bought $100.00 worth, did they get their lot?
A. They got two lots.
Q. And those who bought less than 50 shares, what did they get?
A. They got stock.
Q. You mean they had larger agreements and forfeited them and you issued stock up to the amount paid?
A. If they paid $100.00 they got ten shares.
Q. So your sales were in units of fifty dollars with one lot?
A. Yes, sir. That certificate of Mr. Burrell's, did you want that taken out?
Q. Yes, that is not included in my question.
A. 795 shares.
Q. That includes the Rapine shares?

A. Yes, sir.

Q. How many shares did Rapine have?

A. 25.

Q. And that stock as I understood you, was sold by reason of an alleged contract with the Equitable Estates Corporation?

A. Yes, sir.

The Court: Some of those sales preceded even July, didn't they?

Mr. Tyler: Yes. No, not July, not those mentioned here; the earliest sale here is to Powell, July 18.

Q. Now, according to your record you never had more than two men working up to February 23rd up to the time you were served with a subpoena?

A. No, there were more than that, Mr. Tyler.

Q. A man by the name of Max Darcy and Faulkenstein?

A. No, there was more than that.

Q. I didn't so understand. Let me have your account book, if you please. I asked you yesterday to go through your list and pick out the payments—what I wanted to ask about, anyway, is this. You say they worked on the thirteen acre tract and on the front of the other tract, is that true?

Q. Have you any way to determine what work they did between the thirteen acre tract and the other tract?

A. Personally, I cannot.

Q. You claim to have done work on what is known as the 140 acre tract, that is the Cooper-Homestead farms, exclusive of the Fernwood Cemetery property by reason of what?

A. The contract of October 23, 1923.

Q. Now, have you examined the Spear-Fernwood agreement?

A. Yes, sir.

Q. You have examined it?

A. Yes, sir.

Q. When you bought that contract why didn't you get possession of it?

A. The Spear-Fernwood agreement?

Q. Yes.

A. A copy was delivered to us.

Q. Have you got that copy?

A. Yes, sir.

Q. Will you let me have it? Is this the copy that was delivered to you?

A. I can't tell whether that is the copy or not.

Q. The copy shown to the witness is produced by the attorney for the Locustwood Cemetery, Inc., as a copy of this agreement?

A. I am not able to tell you whether that was a copy that was delivered to us or not.

Q. Now, I call your attention to paragraph 8 which provides for sales of additional tracts of 10 acres in extent and adjoining the land used by the party of the second part for cemetery purposes, except the triangular piece south of the Marlton Turnpike and excepting the tract at the northwest cornor of Cooper Landing Road and said Marlton Turnpike, commencing at a stone in the middle of said turnpike at its intersection with the Cooper Landing Road, and extending along the middle line of said Marlton Turnpike, westwardly 750 feet to the place of commencement, described in a contract herein recited as conveyed to the party of the second part, and thence northwardly along the easterly line of said tract, 650 feet; then still northwardly parallel to said Cooper Landing Road to the middle of the same, thence southwardly along the middle

of said Cooper Landing Road to the place of beginning. Describing a tract taking the entire frontage on both sides of Marlton Pike and going back a distance along the Cooper Landing Road about 200 feet. Did you know that tract of some 40 acres was not included in the agreement at all?

A. It was included in the purchase agreement so we weren't interested in that part of it.

Q. You were making your improvements by reason of having an assignment of this agreement or that Spear joined in personally for the purpose of making an assignment of this agreement to the Locustwood Cemetery, is that true or not?

A. That was part of the consideration but the Spear-Fernwood agreement was never used as an operating basis, the October 23rd, 1923, contract was the only contract we ever recognized.

Q. Then you don't claim to have made any improvements to this adjoining property or have any rights in this enjoining property under and by virtue of the Spear-Fernwood agreement?

A. We do claim we made improvements on the property by virtue of the contract of October 23, 1923, which assigned to us the Spear-Fernwood agreement.

Q. I have shown you the Spear-Fernwood agreement and show you the entire frontage on both sides is excepted from that agreement, did you know that?

A. In the Spear-Fernwood agreement it reads that way.

Q. You knew that?

A. I knew it read that way, yes, sir.

Q. You read the other terms of this agreement, didn't you?

A. Which agreement?

Q. The Spear-Fernwood agreement?

A. Yes, sir.

Q. You are familiar with them?

A. Yes, sir.

Q. Do you know the agreement provides for payments as land is sold?

A. We never operated under the Spear-Fernwood agreement at all.

Q. You never complied with any of the terms of that agreement?

A. Never operated with it, it was never the intention of anybody to operate under that agreement because it was impossible.

Q. I am asking you if you ever attempted to comply with any of the terms of that agreement?

A. No, because we did not operate under it at all; the October 23, 1923, is the one.

Q. As far as you know since the Locustwood Cemetery has been in possession of this property they have not undertaken to carry out the terms of that agreement?

A. It was not necessary.

Q. Just answer the question.

A. No, sir.

Q. Now, after the date of February 23rd when Mr. Burrell was served with a subpoena in this case you kept right on working?

A. Yes, sir, the important work, yes, sir.

Q. Kept right on selling stock?

A. Yes, in the 13 arces.

Q. Did you make any distinction with your stock purchasers as to the 13 acres and the 140 acres?

A. Yes, sir, distinctly.

Q. So from February 23 all your stockholders distinctly understood you had nothing to do with the 140 acres?

A. The stockholders understood that from October 23 that the only title we had to any ground was

to the 13 acres, the rest was under a purchase contract.

Q. They understood you were a party to that litigation?

A. Yes, sir.

Q. Now, you said somebody had given Mr. Davis a notice of cancellation of contract in September and for that reason he quit and went back to New York. What contract was that?

A. I don't know. The contract between C. O. Davis and the Equitable Estates Corporation is the only one I had any knowledge of.

Q. And a notice had been given of cancellation?

A. Cancellation of the contract.

Q. That is true, isn't it?

A. I don't say it is true, but to my knowledge.

Q. That is what you swear to?

A. I would have to look at the records, I don't remember.

Q. After he got notice of the cancellation of that contract or forfeiture of it he quit and went back to New York?

A. I don't know where he went, he just left.

Q. That you say was in September?

A. Approximately in September, the latter part, I think.

Q. Now, from September until October a period of a month or more after this first contract had been cancelled and Mr. Davis had left what was the company doing?

A. Nothing.

Q. It had no contract to work under, had it?

A. Not to my knowledge.

Q. And the only way it was taken up again was this alleged contract of October 23rd?

A. That is true.

Q. So the company was practically out of business from September to October?

A. They weren't doing any business except office details.

Q. And then you revived the business once you got the contract of October 23rd?

A. Yes, sir.

Q. That was the new contract made with the Locustwood Cemetery, Inc.?

A. Between the Locustwood Cemetery, Inc. and the Equitable Estates Corporation and Charles Spear and Mercedes Spear.

By the Court:

Q. That contract you said was made to the Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. Whereas the Davis contract was not?

A. The contract was made, I was told, between Davis and the Equitable Estates Corporation and Spear. I never saw that contract.

Q. Either you or Mr. Darcy have testified that your contract, the contract of October, was identical with the contract Davis had.

A. Identical as had been told us by the officers of the C. O. Davis Company.

Q. But it required a considerable modification, I should apprehend to make an identical contract or a contract anywhere near identical if you were acting directly with the Locustwood Cemetery, Inc., because the other, apparently, was a contract with Davis contemplating the possibility as has been suggested, that he should in turn make terms of his own with the Locustwood Cemetery, Inc.?

A. I don't think that was the intention, I think he intended to assign it to the Locustwood Cemetery,

Inc. for a consideration. However, the terms of the contract were discussed many many times by Mr. Darcy, Dr. Spear and myself, as much as 100 times or more, going over the details, because we were all familiar with the terms.

Q. I can't say that positively but it occurs to me there would be a radical change which would become necessary when you came in contact with the Locustwood Cemetery, Inc. instead of an outsider like Davis.

A. No, I don't think so, because I think his intention was to assign it.

The Court: It might not be, but it occurred to me that changes might be made that would be radical.

By Mr. Tyler:

Q. In your minute book there is a meeting dated July 24, 1923, which is signed by you as president, isn't it ?

A. Yes.

Q. "Said proposed agreements with Locustwood Cemetery, Inc., were read and discussed ——"

The Court: Minutes of what?

Mr. Tyler: Locustwood Cemetery, Inc.

The Court: Read that again.

Mr. Tyler: "Proposed agreements with Locustwood Cemetery, Inc., were read and discussed."

The Court: Doesn't it show by whom?

Mr. Tyler: No. Attached to that is an agreement with C. O. Davis dated July 24th.

The Court: There is one, but it is on July 24th?

Mr. Tyler: Yes.

The Court: A copy of it?

Mr. Tyler: Yes, it is in here signed.

The Court: Who is the other party to it besides Davis?

Mr. Tyler: Locustwood Cemetery, Inc., Max Darcy, vice-president, J. F. Powell, secretary.

The Court: Is that in the effect of an assignment, too?

Mr. Carr: No, it relates to the sale of stock and commission.

The Court: Wouldn't it enlighten me to have it read?

Mr. Tyler: "This agreement made this twenty-fourth day of July, 1923, by and between Locustwood Cemetery, Inc, a corporation existing by virtue of the laws of the State of New Jersey, party of the first part; and C. O. Davis & Co., a common law company, existing by virtue of a certain declaration of Trust which has been duly recorded in Newark, New Jersey, party of the second part, both parties having offices and agents in Camden, New Jersey,

WITNESSETH: That whereas the party of the first part is desirous of securing the services of the party of the second part in the sale of not less than one-half of the total capital stock of the party of the first part, the total authorized capital of which is $500,000, divided into fifty thousand shares of a par value of $10 per share, all one class of stock, and whereas the party of the second part is desirous of acting as the fiscal agent of the party of the first part in the sale of an amount of its capital stock as above mentioned, and in the sale of any additional amount of said capital stock or any other investment security which may be offered for sale by the party of the first part, under certain terms and conditions hereinafter set forth, It is hereby

Agreed between the parties hereto as follows: The party of the first part hereby appoints the party of the second part its Fiscal Agent for the sale of twenty-five thousand shares of the capital stock of the party of the first part for the sum of One Hundred Eighty Seven Thousand five Hundred Dollars ($187,500) and agrees to deliver to the order, from time to time, of the party of the second part, properly executed certificates of stock, upon payment to it, the party of the first part by the party of the second part as ordered, a sum of money equal to seven and one half dollars ($7.50), per share for the number of shares to be represented in the certificate or certificates from time to time ordered by the party of the second part.

The party of the second part hereby agrees to begin to sell the said stock not later than the first day of August, 1923, and to thereafter use its best efforts on behalf of the prompt and proper financing of the party of the first part as aforesaid, to compile the necessary prospectus, descriptive booklets, sub-

scription blanks and all other literature deemed advisable to promote the financial interests of the party of the first part and to submit any and all of the same to the proper officers of the party of the first part for approval and to use in connection with the offering or sale of said stock only such literature or forms which shall have been approved by the proper officer or agent of the party of the first part.

The party of the second part hereby accepts the Fiscal Agency of the party of the first part upon all of the aforesaid terms and conditions.

It is further understood and agreed by and between the parties hereto that the party of the first part has established and will maintain offices at Camden, New Jersey, for the transaction of all of its business, and proposes to establish and maintain an office therefor in Philadelphia, Pennsylvania, and that it will keep on hand at such offices all necessary stationery, literature, blanks and other printed matter pertaining to the cemetery business and will allow the party of the second part the free use of such offices and such printed matter.

In Witness Whereof the parties hereto have set their hands and seals on the day and year first above written.

LOCUSTWOOD CEMETERY, INC."

The Court: That was the day after the proposed July 23rd agreement?

Mr. Tyler: That was the day after.

Mr. Carr: That minute is in the plural, it speaks of agreements without speaking of how many.

The Court: What?

Mr. Carr: It speaks of agreements, using the plural number but it does not specify how many.

Q. Isn't it true that the other agreement referred to in that minute was the agreement of July 23rd with the Locustwood Cemetery Association?

A. The other agreement referred ——

Q. Isn't that true?

A. No, sir.

Q. The only agreement appearing in your minutes in connection with that meeting is the agreement which we have read with the C. O. Davis Company, isn't it?

A. Yes, sir.

Q. And this is a loose leaf minute book?

A. Yes, sir.

Q. Pages without number?

A. Yes, sir.

Q. That minute in July could not possibly have referred to the subsequent alleged agreement in October, could it?

The Court: That goes without saying, I guess.

A. No, sir, it refers to a lot sale agreement.

The Court: He didn't ask what it was.

Q. There is no minute in the book referring to the agreement of October 23rd, is there?

A. No, sir.

Q. Now, didn't you say the reason that Powell did not sign the October 23rd agreement was because he was not secretary at that time?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. He didn't sign that agreement, did he?
A. No, sir.
Q. He was secretary at that time, wasn't he?
A. Yes, sir.

Mr. Carr: Did you mean he was secretary?

Mr. Tyler: He said he was secretary at that time but did not sign the agreement. I don't think there is any misunderstanding about my question at all.

Mr. Carr: I think the minutes show differently from that.

Mr. Tyler: No, I think the minutes agree with Mr. Cawthorne's testimony, and there is testimony he was not secretary, his own testimony, but the minutes do not carry that out.

Q. Darcy was connected with this Locustwood Cemetery Association from the beginning and got you into it?
A. May I have that question read again about Powell being secretary?
Q. Do you wish to correct your testimony?
A. I would like ——
Q. I asked you whether it wasn't true that on October 23, the day of this alleged agreement, that Powell was secretary?
A. He was secretary.
Q. But he did not sign the agreement?
A. He did not.
Q. Darcy was connected with this company from the beginning, wasn't he?
A. Which company?
Q. Locustwood Cemetery, Inc.
A. As one of the incorporators, yes, sir.

Q. And he is connected with it yet?

A. Yes, sir.

Q. And has been continuously from the beginning to the present time?

A. Yes, sir.

Q. And has he been an officer and director continuously?

A. He has acted as such, yes, sir.

Q. Acted always as such?

A. Yes, sir.

Q. Been in close touch with all the affairs of the company?

A. Yes, sir.

Q. Been familiar with all the details of its contracts and its operations?

A. Yes, sir.

Q. And he has advised with and consulted with the board of directors and other officers continuously, hasn't he?

A. Yes, sir.

Q. Now, in your early operations practically everything in 1923 was confined to the sale of stock?

A. Yes, sir. I would like to correct that, the sale of stock and lots.

Q. That is, lots in the 13 acre tract?

A. Yes, sir.

Q. Now, you put out a stock issue of 500,000 shares, or $5,000,000?

A. 25,000 shares, $250,000.00.

Q. But the authorized capital, according to that contract, was 500,000 shares?

A. Yes, sir.

Q. And C. O. Davis, who was in the stock business in New York or Newark came over to sell stock for you?

A. Came over to devolop the cemetery.

Q. As far as the only agreement that appears in

the minutes they came over to sell the stock, there is no other agreement appearing in the minutes excepting the one providing for the sale of stock?

A. That is the only one.

Q. And they sent several salesmen over here to sell that stock, didn't they?

A. Two salesmen, including myself.

Q. Now, C. O. Davis, nor anyone for him as far as appears in the minutes, had any connection with the Locustwood Cemetery?

A. Locustwood Cemetery, Inc.?

Q. Yes.

A. Yes, sir.

Q. Who?

A. Mr. Davis was a director.

Q. Will you show me in that book, please, where he was a director of the company? Let me know when he was made a director and how long he was a director?

A. He was elected a director on the 24th day of July, 1923, and a member of the executive committee and general manager of the cemetery.

Q. Let me see those minutes, please? That was the date the agreement was made with Davis & Company?

A. Which agreement, Mr. Tyler?

Q. The agreement of July 24, 1923.

A. Referring to what?

Q. Referring to the sale of stock?

A. Yes, sir.

Q. So that at that time when that agreement was made Mr. Davis was a director of the company?

A. At an adjourned meeting I think you will find he was elected a director, a subsequent meeting or an adjourned meeting.

Q. How long did he remain a director?

A. I will have to examine this.

Q. I would like to have that information.

A. The first meeting after August 30 with October 26 at which his resignation was accepted as a director and general manager, which had been filed sometime previously.

Q. I think you previously testified at that time, on August 26, at least your book shows, all the stock issued to him, 3900 and some shares, had been re-sold and transferred to someone else except the one certificate of 20,000, etc.

A. That question is not clear to me, Mr. Tyler.

Q. Isn't it true the certificate of 3900 and some shares having a par value of $39,000.00, 3,980 shares, having a par value of $39,800.00 had by that time been turned in and re-sold to other people?

A. By what time?

Q. By the time he resigned or the day after? Doesn't there appear on the back of the certificate #4 for 3,980 shares a list of all the transfers showing the last transfer on October 26th?

A. Yes, sir.

Q. Now, Mr. Davis attended the directors' meeting, didn't he?

A. The directors' meeting of August 30, he attended that, that was the last meeting.

Q. In making the sale of this stock did you make any examination of what title you were alleged to have either in the Spear-Fernwood agreement or to the property itself?

A. In making a sale by him?

Q. In other words, you were putting out an issue?

A. Yes.

Q. Of several hundred dollars worth of stock, that is true?

A. $250,000.00 worth.

Q. $250,000.00 worth?

A. Yes, sir.

Q. Did you make any examination as to what the company owned or their title to it?

A. You mean personally?

Q. You or the board of directors or the officers, or your attorney?

A. As one of the incorporators, having filed my resignation immediately after signing the incorporating papers, I did not, because I was employed in the capacity of a salesman and I would ——

Q. How long were you president of the company?

A. The records show I was president from the time of incorporating until October 25th.

Q. And you are still connected with the company?

A. Yes, sir.

Q. What office?

A. Secretary and treasurer.

Q. When did you become secretary and treasurer?

A. I have to refer to the record.

Q. Have you been an officer continuously since the time the company was incorporated to the present time?

A. Yes, sir.

Q. While you were president you were an executive officer of the company, weren't you?

A. That is a duty, but I did not act as such.

Q. You made no search or inquiry as to the title the company had to either the Locustwood Cemetery or the Spear-Fernwood Agreement?

A. No in the capacity as a president because I did not act as such.

Q. Why capacity, if any, did you make your inquiry?

A. I made my inquiry in the capacity of a salesman.

Q. What inquiry did you make?

A. I made inquiry of Mr. Davis as to whether or not the contracts were properly executed and the

title to the property was clear and he assured me it was.

Q. Did you make any other inquiry?

A. That is all, that is usually made.

Q. You know a record of titles is kept in the county offices?

A. Yes, sir.

Q. You knew that?

A. Yes, sir.

Q. You knew if you wanted to find out whether the Locustwood Cemetery had acquired any interest in the cemetery of 13 acres or the contract where to go and get that information, didn't you?

A. I just had an ordinary layman's idea of it.

Q. What was the ordinary layman's idea of it?

A. To know there is such a place as that.

Q. As a matter of fact, you and Davis and your associates at that time were only interested in selling stock, isn't that true?

A. No, sir.

Q. Then if you were not interested only in selling stock why didn't you go to the proper office and find out whether the company had any title to this property or acquired any under this alleged contract?

A. Why I did not?

Q. Yes, why you did not.

A. Because I accepted the assurances of my employer that it was correct.

Q. But you were president of the company, weren't you?

A. Nominally, yes, sir.

Q. Nominally, you mean you were only a figure head?

A. That is all, my resignation was at file at that time I became an incorporator, the same as you use office help to incorporate a company.

Q. Aside from your office didn't you feel any duty

at all in selling stock to know of your own knowledge whether the company had any property or not?

A. I had the assurances of my employer who had every reason to believe.

Q. Your employer appears to be a stockbroker, or interested in selling stock, a non-resident from another part of the state or from New York, and you were selling stock to residents of Camden and vicinity and didn't you have any interest in knowing whether the company had anything to sell?

A. A man of his reputation ——

Q. I understood also he liquidated on or about October—a forced liquidation, wasn't it?

A. Not to my knowledge, because he was a man of considerable means.

Q. But he liquidated in October and went to Texas, isn't that true?

A. I don't know where he went.

Q. Didn't you say that?

A. I say he was traveling around the country and he liquidated because of ill health.

Q. That was not brought about by his mental state, was it?

A. I can't tell you about his mental state.

Q. You know at the present time, don't you, that the Equitable Estates Corporation had title to this property for a brief period of time only by a deed from Mrs. Aleck and a suit was pending attacking its legality and a lis pendens on file in 1922?

A. No, sir.

Q. And don't you know the Equitable Estates Corporation never did have title to the 13 acres, that the only deed out for that property is one in 1908 from Spear to the Fernwood Cemetery, don't you know that is true?

A. Yes, sir.

Q. And don't you also know it is true that the

alleged Spear-Fernwood agreement, title to it passed from Spear back in 1908 and that he has never had title to it since?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Now, don't you know, as a matter of fact, that three of those things I mentioned was a matter of record and could have been easily discovered by examining the records in the office of the register of deeds?

A. Yes, sir.

By Mr. Carr:

Q. Mr. Cawthorne, will you say whether or not a part of the stock selling plan was to give stock as a bonus, that is, when sales were made to new purchasers of stock was any stock given as a bonus?

A. No, sir, the lots were sold—yes, the stock was sold and the land was given as a bonus.

The Court: How can you distinguish which is the bonus when the two are simultaneous? I suppose the bonus is the one you care most for or least for. All right, go on.

Q. Mr. Tyler asked you a question as to what certificates of stock were actually issued up until February 24, 1924. May I ask whether you were selling stock on installment, the certificate to be delivered upon the last installment?

A. Yes, sir.

Q. And have sales been made of stock although the certificate was not actually delivered prior to February, 1924, and not included as the certificates

delivered as you testified to in response to Mr. Tyler's question.

A. Yes, sir, a great many sales were made.

Q. Can you state, approximately, how many shares had been purchased on deferred payments but not delivered prior to February 24, 1924?

The Court: Which are not included in the list you made.

The Witness: Yes, in two or three minutes by referring to the cash book.

Q. In the meantime can you give me an approximation?

Mr. Tyler: I object to that.

A. I can not.

Q. Will you refer to your cash book and answer that question. Are these the number of shares you are now about to give me?

A. Yes, sir. 50 shares ——

Q. Give me the date.

A. August 15, 1923, August 17, 1923, 50 shares; September 14, 1923, 50 shares; October 1, 1923, 50 shares; October 6, 1923, 50 shares; October 25, 1923, 50 shares; November 15, 1923, 100 shares; November 23, 1923, 10 shares, of which there was a bonus delivered. The same date 10 shares of which there was a bonus delivered.

Q. A bonus of a lot?

A. A lot, yes, sir. December 14, 1923, 50 shares; December 17, 1923, 50 shares; December 20, 1923, 50 shares; December 28, 1923, 50 shares; December 28, 1923, 50 shares; December 31, 1923, 50 shares; December 31, 1923, 50 shares; January 7, 1924, 50

shares; January 8, 1924, 50 shares; January 9, 1924, 50 shares; same date 50 shares; same date 50 shares; January 11, 1924, 50 shares; January 15, 1924, 50 shares January 16, 1924, 50 shares; January 17, 1924, 50 shares; January 23, 1924, 50 shares, January 26, 1924, 50 shares, January 30, 1924, 50 shares; same date, 50 shares; February 6, 1924, 50 shares. What is the stop date on that?

Mr. Carr: February, 1924, was it, Mr. Tyler?

Mr. Tyler: February 23rd.

Mr. Carr: Inclusive?

Mr. Tyler: Yes, sir.

The Witness: February 14, 1924, 50 shares February 19, 50 shares, February 23, 100 shares. That stops it, doesn't it?

Q. Any more?
A. No, sir, that is all.
Q. I believe you can add that up better than I can.
A. 1640 shares.
Q. Had been subscribed for?
A. Yes, sir.
Q. And partial payments had been made on account of the subscriptions?
A. Yes, sir.
Q. And the certificates later delivered, is that right?
A. Yes, sir.
Q. And that was in addition to the 795 shares embraced in your answer to Mr. Tyler's question?
A. Yes.

Mr. Tyler: I think that included all the cash payments including the Burrell shares.

The Witness: No, sir, I did not include any officer's shares.

Q. Did Mr. Burrell pay for his stock in full?
A. Yes, sir.
Q. Did Rapine pay for his stock in full?
A. Yes, sir.
Q. You say you had an agreement of October 23, 1923, which as I understood you to say, covered the 140 odd acres embracing the Cooper Homestead Farm and including the rights formerly belonging to Spear under the Spear-Fernwood agreement, is that right?
A. Yes, sir, also including an agreement to deliver the control of the association to make the 157 tract.
Q. So that the 157 acres was to be included in a large cemetery, that is, the additional 140 acres to be added, is that right?
A. That was the original plan.
Q. And as to the machinery of obtaining deeds when lot sales had been made, how was that to be effected?
A. How was it or how was it to be?
Q. How was it to have been effected?
A. By delivery of the control of the association to whoever the Locustwood Cemetery officers designated, Locustwood Cemetery, Inc., officers.
Q. That is, the Locustwood Cemetery, Inc., were to have control of the trustees and officers, or were to designate the trustees and officers of the cemetery association, was that the plan?
A. Yes, sir, that is the custom in cemeteries.
Q. And by that means and upon the payment to the cemetery association of the price of its lot the

officers of the cemetery association would execute the actual deeds for lots, was that the plan?

A. No, sir, not by the payment for actual lots, but by the payment for ground by the acre.

Q. That is to say, when they had been paid pro rata they would deliver to the designees of the Locustwood Cemetery, Inc., a given quantity of land, is that right?

A. That is right.

Q. So that by that means, assuming the Equitable Estates Corporation had title, you would have acquired all the rights of the Equitable Estates Corporation, and also the right of Spear to have received money under the Spear-Fernwood agreement, isn't that right?

A. Yes, sir.

Q. And being in the position that Spear formerly occupied you could modify such agreement by consent between yourself and the Locustwood Cemetery Association?

A. That was the intention.

Q. That was the intention?

A. Yes, that was the plan.

Q. And you had no intention of operating specifically under the Spear-Fernwood agreement?

A. That was never entertained under any consideration to operate under that agreement.

Q. Would it have been possible to have operated under such an agreement?

A. No.

Q. Why?

A. It would not have been possible.

Q. According to calculations made by Dr. Spear and for which the cemetery association issued some form of a certificate of indebtedness for something like $130,000, if his calculations were correct it

would have cost something over $260,000 to pay for the land?

A. For the 13 acres?

Q. Yes.

A. That is about right, yes.

Q. You weren't undertaking to buy the rights into that cemetery at the rate of $20,000 an acre, were you?

A. No, sir.

Q. At that time the cemetery had been practically abandoned, hadn't it?

A. As far as anyone in charge, yes. There were some people buried there but it was abandoned and grown up in underbrush and trees.

Q. Had any considerable sum of money been expended on it, as far as you could observe?

A. Prior?

Q. Prior to your taking charge?

A. There had been considerable money, I think, spent on it, but the only benefits were derived from that was an iron fence which we had repaired and painted at a considerable expense.

Q. So far as the physical property was concerned at that time you were getting 13 acres of land which had been laid out into a cemetery and in which there had been a few interments, the property having been neglected for years, and all that you were getting was 13 acres of land and an old iron fence, wasn't that right?

A. Yes, sir.

Q. Could you by any possibility figure a value of $20,000 an acre for those 13 acres under those conditions?

A. The value placed on the property by residents of this community at that time was about $300 an acre, and we were handicapped in our sales by paying $100,000, which was generally conceded by the

community we had paid too high a price for the property, 157 acres for $100,000, and in a great many instances we could not complete a sale because of the high price we paid for the property.

Q. You have read this copy of the so-called July 23rd agreement haven't you?

A. I read it in February, yes, sir. I haven't read it since.

Q. By the terms of this agreement, if it be an agreement, it provides not for an assignment or the giving of any rights to you, but gives you a permission to be the sales agent for lots of the company after you should have fully discharged all of the obligations of the Spear-Fernwood agreement?

A. Yes, sir.

Q. And had made all the improvements contemplated thereby at your own expense your sole compensation to be the excess price which you obtained above the minimum price fixed in the Spear-Fernwood agreement?

A. Yes, sir.

Q. Did you ever agree to anything like that?

A. No, sir, under no circumstances.

Q. On the basis of the certificate made out to Dr. Spear, if figures are correct, you would have been required to pay him immediately something in excess of $130,000, and on top of that to have made all the physical improvements at your own expense before you were vested with a right of even to sell, did you ever agree to anything like that?

A. No, sir.

Q. The agreement is slightly ambiguous, any one reading it may include the Homestead Farm, which would have obliged you to have fully developed the 157 acres of land, and have paid therefor a sum of several million dollars before your right to sell lots would begin, in the meantime to have paid to Dr.

Spear $200 a week until all those improvements were completed, and all of this for the privilege of becoming the lot salesmen for the Locustwood Cemetery Association, did you ever agree to anything like that?

A. No, sir.

Q. Did your company ever agree to anything like that?

A. There was no such proposal ever put up as that, to my knowledge.

Q. Subject to verification, and assuming these figures to be correct, under the so-called agreement of July 23rd, the entire tract consisting of 157 acres, including the 13 1/3 acres, would have required payments of $6,788,454.50, would have required 10 per cent to be set aside as a perpetual care fund, $678,845.45, and estimating the cost of improvements, road, buildings, landscaping, and so forth, at $1,256,000, would have required an expenditure on the part of your company of $8,723,299.25 in order to qualify yourselves as lot salesmen for the Locustwood Cemetery Association?

Mr. Tyler: That is objected to.

Mr. Carr: I am making that assumption.

The Court: He is making that assumption and you may show it is nonsense, if it is.

Q. I am asking whether the Locustwood Cemetery, Inc. ever entered into any such an arrangement?

A. No, sir.

Q. Would it have been possible to operate under any such a financial burden?

A. I don't think it would have been possible for

an individual to do, I believe that would have to be a Government job in a thing like that.

Q. Did the Locustwood Cemetery, Inc. get out a prospectus dealing with this subject-matter? I show you a paper and ask you generally what it is?

A. Yes, sir, that was gotten out in September, I think. I could tell you the date by referring to the cash book.

Q. How many copies of this were gotten out?

A. I can tell you in a moment. Isn't there a date shown on it?

Q. There is a lead pencil memorandum but I don't know what significance that is.

A. August 24th, 5,000 copies of prospectus, $60.

Q. Were copies of that given to Dr. Spear?

A. He had copies, I have seen him with copies. I am quite sure copies were given to him because we discussed the terms frequently.

Q. This prospectus was discussed with the doctor?

A. Yes, subsequently we supplied him with copies of all the literature we got out.

Q. Now, won't you read into the record that portion of the prospectus beginning with the words, "Locustwood Cemetery" in caps, apparently on the third page thereof.

A. "Locustwood Cemetery comprises 157 acres of land fronting on the Marlton Pike, Camden County, New Jersey, and running north along the west side of Cooper Landing Road one mile to Chapel Avenue. It is seven miles from the Broad Street Station at Philadelphia, 5½ miles northeast from the Market Street Ferry in Camden, and within three miles from Westmont, Haddon Heights, Haddonfield, Merchantville and Collingswood. Excellent roads lead from all these points to the cemetery. The land is peculiarly adapted" ——

Q. That is all. I would like to offer this in evidence; any objection?

Mr. Tyler: I would like to see it.

Mr. Cawthorne, you were examined with reference to the minutes of the Locustwood Cemetery, Inc., under date of July 24th. Won't you find me that minute, please. I don't know whether I opened the right place or not.

A. Here they are. These minutes are continued on through several pages.

Q. Reading from the minutes of a special meeting of the board of directors held on July 24, 1923, "Proposed agreements with Locustwood Cemetery, Inc. were read and discussion as to these agreements, all of the directors participating, was had, and upon motion duly supported and carried the officers of the company were instructed to execute the agreements and to cause the same to be duly acknowledged by the parties thereto." The reference is to "agreements" in the plural. There is attached to the minutes of that meeting an agreement dated the 24th day of July, 1923, between the Locustwood Cemetery, Inc. and C. O. Davis & Co. I ask you if you have any knowledge as to what other agreements were referred to in that resolution I have just read to you, or in the minute, rather, I have just read to you?

A. I think it was the 26th day of October I heard Mr. Davis was in Atlantic City and I went down there, drove down to see him, and asked him for those agreements. This agreement here he had with him in his pocket. The other agreement referred to at that time was an agreement for the sale of lots between C. O. Davis & Company and Locust-

wood Cemetery, Inc., which he was unable to locate, and which was subsequently renewed by a resolution of the board of directors.

Q. Is there any reference in your later minutes to lot selling agreements which you have just spoken of as lost or not produced by Mr. Davis?

A. Yes, sir.

Q. Can you find it? Would that be in the minutes of the Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. See whether you can find it, will you?

A. Here you are, Mr. Carr. "At a special meeting held on this day" ——

Q. Witness refers to a special meeting of the board of directors of the Locustwood Cemetery, Inc. held on August 27, 1925, at which there was present, Messrs. Burrell, Dahn, Darcy, Robert Newbauer, James T. Cawthorne, William T. Harker.

A. Constituting all the members of the board.

Q. The secretary then read the following communication: "Camden, N. J." ——

Mr. Tyler: That is after the date of this suit and would simply be a self-serving declaration brought after this suit was instituted. It doesn't seem to me it is evidential.

Mr. Carr: I think it should go in. Here is a minute which is not clear, it refers to agreements without specifying them at all. Now, if there is anything more in the corporate records that would clear that up I think the court is entitled to have it.

The Court: I think Mr. Tyler's suggestioin may be controlling. This is a minute made by a defendant in litigatioin after suit is brought against them.

Mr. Carr: The other suit.

The Court: Yes. They are making a declaration by minute in their favor.

Mr. Carr: We will make the offer and your Honor will exclude it.

The Court: I doubt whether it is admissible. You may have it read if you want, so a record can be made of it, but I am convinced it cannot be used.

Mr. Carr: I will put it in for the purpose of having the record. "Camden, N. J., Aug. 19th, 1925. Board of Directors, Locustwood Cemetery, Inc., Camden, N. J. Gentlemen: At the time that C. O. Davis & Co., retired from the management of the affairs of Locustwood Cemetery, Inc., the undersigned and his associates agreed to take over the direction and financing of this enterprise, one of the considerations offered for undertaking what at that particular time seemed an almost hopeless and impossible task, was the transfer by C. O. Davis & Company, of a lot selling contract which, among other conditions provided for a net commission of Twenty (20%) per cent on the proceeds of all such sales, until the totality of the lots controlled by Locustwood Cemetery, Inc. were disposed of. This contract was immediately transferred to Paul V. Allen & Company on October 12th, 1923, and in turn Paul V. Allen & Company ceded all their rights under aforesaid contract to Darcalen Companies Limited on March 18th, 1924, under circumstances which have already been explained to this Board. Sometime during the month of October or November, 1923, this sales contract which was kept on file with other valuable papers, mysteriously disap-

peared under circumstances which are also known to this Board, and since then Darcalen Companies Limited has been working under its conditions by tacit agreement with Locustwood Cemetery, Inc. The present condition of the affairs of Locustwood Cemetery, Inc., requires that this contract be made a matter of record, and the object of this letter, is to ask the Board to pass a resolution empowering the management to replace aforesaid contract under the conditions covered by the original one, and to present it for approval and ratification at the next meeting of the Board. Very truly yours (Signed) Max Darcy. After discussion and upon motion duly made, seconded and unanimously carried it was: Resolved: that the Secretary be and is hereby authorized to present to the Board at their next meeting a contract for the sale of lots in Locustwood Cemetery or any additions thereto, for the consideration of the Board. There being no further business to come before the Board upon motion, duly seconded and carried, the meeting was adjourned. W. B. M. Burrell, President. James T. Cawthorne, Attest, Secretary."

The Witness: Do you want an explanation as to that?

Mr. Carr: I think his Honor has ruled it is inadmissible so I doubt whether his Honor will permit an explanation. You may make it if Mr. Tyler does not object. He wants to explain why the entry was made, do you object?

Mr. Tyler: I do.

Mr. Carr: You can't make it in the face of the objection.

Q. Mr. Cawthorne, I show you a sheet of paper headed, "Locustwod Cemetery" containing a description and a plotting in lead pencil, and also attached to that a sketch, and I ask if you have any knowledge of what that is?

A. Yes, sir.

Q. Can you tell me what it is and where it came from?

A. Conforming to our original plan to develop the entire tract into a cemetery this was a map setting off 50 acres of the entire front of the property, giving the legal description of it, which we were to begin the development of at once and which Dr. Spear agreed to have deeded. In fact, he stated he had already made the deed from the Equitable Estates Company. The 13.31 and this part that is laid out in this map comprises the 50 acres that we were to start to develop immediately.

Q. Who furnished that description?

A. Dr. Spear.

Q. Did that immediately adjoin the 13 acres?

A. Yes sir. The 13 acres was in this corner.

Q. Adjoining the Cooper Landing Road?

A. This is the westerly boundary and this is the Cooper Landing Road.

Q. This lead pencil sketch on the second sheet, do you know who prepared that?

A. Yes, sir, Dr. Spear.

Q. That is his work, is it?

A. Yes, sir.

Q. And on the first page whose work is that?

A. That is Dr. Spear's.

Q. He prepared the description and the sketch?

A. Yes, sir.

Q. And gave it to your company?

A. Yes, sir.

Q. A deed had been prepared in conformity with that?

A. Yes, sir.

The Court: Have you any notion of the time?

The Witness: That was a few days after the execution of the contract in October 23, 1923; he gave us that with a list of the number of people who were interred there.

Mr. Carr: I offer this, if the Court please.

(Said paper marked Exhibit C5.)

Q. And for what consideration were these additional 37 acres making up a plot of 50 acres to be bought?

A. For the consideration of $100,000 for the 157 acres in that entire tract, which we were paying $200 a week, that was the consideration.

Q. How much was to be paid before you could get title to this additional 37 acres which would make up the tract of 50 acres?

A. It was to be deeded to the Locustwood Cemetery Association immediately and the cemetery association was to deliver it to us.

By Mr. Tyler:

Q. You say the purchase of this property around $20,000 an acre would be too fanciful to be considered at all?

A. Yes, sir.

Q. In your prospectus for the purpose of selling stock you set out you expect to realize from this

property $87,130 per acre, don't you? Witness' attention is called to the fifth line on the third page?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. You say it was issued on August, 1923?

A. Yes, sir.

Q. And signed by C. O. Davis as financial agents, that is true?

A. Yes, sir.

Q. Nowhere in there do they make any claim to have any ownership to the property, do they?

A. I can't tell you without reading it.

Q. I have read it and I can't find it.

A. You can answer the question then.

Q. I understood you got this out and have seen it and were selling stock on the basis of it?

A. It was given to me by Mr. Davis but I haven't read it for three or four years.

Q. You used this in selling stock?

A. Yes. I would have to read it again to be able to answer the questions, Mr. Tyler.

Mr. Tyler: Do you want to offer this in evidence?

Mr. Carr: Yes.

Mr. Tyler: No objection.

(Said paper marked Exhibit C6.)

By Mr. Palmer:

Q. You said something about the method you were to get title from the Locustwood Cemetery Association for the purpose of transferring to people to whom you sold, what was that method?

A. I will have to ask you to be a little more explicit in that question.

Q. What was your method of obtaining title to lots that you sold for the purpose of transferring that title to purchasers?

A. Do I interpret your question to mean under the conditions that we were forced to operate under or the conditions under which we planned to operated under?

Q. Put it both ways.

A. Under the conditions we planned to operate under our contract of October 23, 1923, the officers of the Locustwood Cemetery Association and the officers of the Locustwood Cemetery, Inc. would be identical and they could issue deeds as fast as they had paid the Equitable Estates Company for the land on that $200 a week basis.

Q. Who was to take title to the land to be conveyed by the Equitable Estates Corporation?

A. The only person who could take title was the Locustwood Cemetery Association, the lot-holders' association.

Q. Assuming you got title to a tract of 10 acres from the Equitable Estates Corporation then under your plan you would have the Locustwood Cemetery Association issue deeds to parties to whom Locustwood Cemetery, Inc. sold lots?

A. Yes, sir.

Q. That didn't work out, did it?

A. It did not work out, no, sir.

Q. What method did you adopt to get title?

A. Why, whenever we were able to find Dr. Spear in an amiable frame of mind, and sober, he would give us a deed.

Q. He would give you a deed?

A. Yes, sir.

Q. Signed by him?

A. By himself as president and his wife as treasurer or secretary.

Q. Of what?

A. Of the Locustwood Cemetery Association.

Q. And that was the way the deeds that you did deliver were obtained?

A. Yes, sir.

Q. And that is the only method whereby you obtained any deeds?

A. No, sir, sometimes he would force us to pay, by paying in addition to the $200 a week the total purchase price of the lot, just according to how badly we needed it. If we needed it for a funeral we had to pay the entire purchase price.

Q. Did you submit to all the dictations he put up to you during the entire period of your operations?

A. I wouldn't say dictations.

Q. You say you couldn't get title unless he was in an amiable mind, wouldn't that be dictatorial?

A. I wouldn't say it was dictatorial.

Q. What would you call it?

A. I would have to get a word book to find out. Duress—I can't get the word now, but a very disagreeable position to be in.

Q. That continued during the entire period of your operations up until you got control of the cemetery association in January, 1925?

A. Yes, sir.

Q. You continued to do business with Dr. Spear, representing the Locustwood Cemetery Association, under those conditions until you obtained control of the Locustwood Cemetery Association?

A. By mail, we never came in contact with him very much during that time.

Q. You said a moment ago you had to catch him

in an amiable frame of mind. How did you catch him?

A. By telephone, numerous letters.

Q. Not by any personal contact?

A. Not after the time he cleaned out the place with firearms we never came on the grounds after that.

Q. When was that?

A. That was in December; I don't remember now, I would have to refer you to the records on that. That was in the spring of 1924.

Q. You continued to operate under those conditions for a year before you obtained control of the cemetery association?

A. We operated under those conditions from October 23, 1923, to January 30, 1925. Yesterday my statement was January 31st, but I see by the records it is January 30th.

Q. You never were on good terms under any agreement with Dr. Spear, were you?

A. On good terms?

Q. Yes.

A. We were on splendid terms with Dr. Spear until the discovery of the loss of our agreement of October 23, 1923.

Q. Which you discovered not later than December, 1923?

A. About that time.

Q. And you continued to operate without any agreement and under those conditions in your relations with Dr. Spear from then to January, 1925?

A. There was nothing else for us to do.

Q. That is what you did?

A. Forced to do it, couldn't do otherwise.

Q. You did do it?

A. Yes, sir.

Q. And sold lots?

A. Yes, sir.

Q. And obtained deeds and delivered them?

A. Yes, sir.

Q. And made application to the Locustwood Cemetery Association for those deeds?

A. Yes.

Q. I show you what purports to be an application for burial lot in Locustwood Cemetery, signed Henry T. Nekervis, by Locustwood Cemetery, Inc. by James T. Cawthorne, treasurer, that is your signature?

A. Yes, sir.

Q. You signed that application?

A. Yes, sir.

Q. And that was sent to the Locustwood Cemetery Association?

A. Yes, sir.

Q. As a result a deed for a lot was issued?

A. Yes, sir.

The Court: What is the date?

Mr. Palmer: October 21, 1924.

The Witness: Signed under duress.

By the Court:

Q. Signed by you under duress and obtained by you in a moment of amicable mood on the part of Dr. Spear?

A. At that time, no, sir. Let me see the date? No, at that time we were not on friendly terms at all.

Q. Did you get a deed for that?

A. I got a deed for that under these conditions, yes, sir. Dr. Spear went to this man who was buy-

ing a lot on payments and told him, he said, "Have you got your deed?" and he said, "You had better get it," and he came to us and demanded a deed and we were forced to get it under those conditions.

Q. These conditions you refer to as what?

A. Sir?

Q. What do you refer to as these conditions?

A. Forcing us to sign an application for a lot which he would take up with the directors of the association consisting of himself and wife, and grant when they felt like it. Sometimes it would take us two or three weeks, holding up a funeral to get a deed.

By Mr. Palmer:

Q. For two or three weeks?

A. Not two or three weeks.

Q. That was in accordance with the method of operation under the so-called agreement of July 23, 1923?

A. I never knew anything about any agreement of July 23, 1923. The only agreement I knew of was October 23, 1923, never heard of an agreement of July 23, 1923.

Mr. Palmer: I want to offer this application.

(Said paper marked Exhibit P8, 6/15/27.)

Q. I show you a letter dated October 6, 1924, addressed to Locustwood Cemetery Association, Post Office Box No. 102, Moorestown, N. J., and ask if that is your name signed to that letter? You don't have to read the letter to know whether it is your signature—is it or isn't it?

A. Yes, sir, that is mine.

Q. This letter says, "Gentlemen: We beg to enclose application for lot. No. 105, Faith Lawn, for Susan C. Danford. Also to acknowledge receipt of deed. We are enclosing herewith receipt from Mrs. Danford for the deed. Please accept our appreciation for your promptness in this matter. Very truly yours, James T. Cawthorne, Secretary." You wrote that letter to Dr. Spear?

A. I wrote that letter and filed the application after we had been forced to put the body in the vault a Harleigh Cemetery at an expense of $90.00, when this lady came around crying and begging for a deed and saying Dr. Spear had been harassing her by someone he had employed saying she had no right to bury there.

The Court: What is the date?

Mr. Palmer: October 6, 1924.

Q. There is nothing of that kind in your letter?

A. No, sir.

Q. And in this letter you express appreciation for his promptness in the matter?

A. Yes, that is my customary ending for a letter.

Q. Regardless of what your relations were ——

A. I came from the south and was taught courteousness as a rule.

Q. You had at that time the deed for that lot when the letter was written?

A. Yes sir.

Q. Before even the application for it had been made to the cemetery association the deed had been given to you?

A. It might have happened.

Q. Doesn't your letter say so?

A. I don't understand it that way.

Q. What does it mean? "We beg to enclose application, Lot 105, Faith Lawn, for Susan D. Danford, also to acknowledge receipt of deed."

A. I don't understand. That is what it says.

Q. You wrote it?

A. Yes, sir.

Q. And it means what it says?

A. Yes, sir, it means what it says.

Q. You enclose the receipt from Mrs. Danford for the deed?

A. Yes sir.

Mr. Palmer: I offer this.

(Said letter marked Exhibit P9, 6/15/27.)

Q. I show you what purports to be a copy of a letter dated August 5, 1924, addressed to Locustwood Cemetery, Inc., Smith-Austermuhl Building, Camden, N. J., purporting to be signed by the Locustwood Cemetery Association, by Charles C. Spear, President, and ask if your company, Locustwood Cemetery, Inc. received the original of that letter?

A. May I read it?

Q. Yes, that is the only way you can tell. What is your answer?

A. I am not able to tell you. We received many similar letters.

Q. Did you ever answer them?

A. Some we did and some we did not.

Q. And they were received beginning along in August, 1924, is that about the time?

A. Whenever the date is on that letter.

Q. This letter is August 5, 1924. I understand you to say you have no recollection of this particular letter, but you did receive letters of the same

purport and tenure of this. Now, I want to know whether they came along in August, 1924?

A. I can't tell you within a year.

Q. Don't you know when your troubles with Dr. Spear began?

A. Yes, sir.

Q. When did they begin?

A. The first part of 1924, January, 1924.

Q. You continued to make payments to him throughout the entire year of 1924?

A. Yes, sir.

Q. Your books show you made payments to him regularly through the entire year 1924 on which you say was the contract of October 23rd?

A. Yes, sir.

Q. I show you a letter dated October 5, 1924, addressed to Locustwood Cemetery Association, Post-Office Box 102, Moorestown, N. J., and ask if that is your signature to that letter?

A. Yes, sir.

Q. In this letter, after giving the address you say, "Atten. Charles C. Spear, President. Gentlemen: We have your letter of October 3rd and in reply thereto beg to say if you will kindly call at this office, Tuesday, October 7th, with a statement we will be glad to take care of the same and make a settlement. Our treasurer will meet you at 2 o'clock P. M. at our office on that date. If it is not convenient we will meet you at any time and place you indicate." What had that letter of October 3rd said to you?

A. I couldn't give you a vague idea unless I saw it.

Mr. Palmer: I would like to ask for the production of letter dated October 3rd from Locust-

wood Cemetery Company to Locustwood Cemetery, Inc.

Mr. Carr: We will endeavor to locate it.

Mr. Palmer: I want to make a demand for letter of August 5, 1924.

By Mr. Carr:

Q. Mr. Cawthorne, a number of checks were introduced in evidence showing payments to Spear and the Locustwood Cemetery Association, previously marked collectively as an exhibit, this bundle of checks here, photostatic copies, will you say under what agreement those payments were made?

A. Yes, sir.

Q. Under what agreement were they made?

A. Under the agreement dated October 23, 1923.

By the Court:

Q. Are they for moneys due under the Spear-Fernwood agreement or for moneys due under the Locustwood Cemetery Inc.—Locustwood Cemetery Association agreement?

A. No, sir, they were moneys due for the purchase of the Cooper Homestead farm of 157 acres including the Spear-Fernwood agreement, and the ceding of the Locustwood Cemetery Association to the officers of the Locustwood Cemetery, Inc.

Q. They are for moneys that fell due under what you call your contract with the Equitable Estates Corporation?

A. Yes, sir.

Q. And also under the Spear-Fernwood agreement?

A. No, sir.

Q. None at all for money due under the Spear-Fernwood agreement?

A. No, sir, our contract of October 23, 1923, purchased the Spear-Fernwood agreement.

Mr. Carr: I don't know whether our claim is clear to your Honor. We purchased two things, the right to buy the Homestead Farm and the right to buy the former Spear interests in the Spear-Fernwood agreement, so when we owned that we would be only paying ourselves if we paid any payments under it. That is the claim made by these defendants.

By Mr. Carr:

Q. Why were the checks drawn to Spear in some cases and in some cases to Locustwood Cemetery Association?

A. The first two or three checks they were drawn to Spear because at his suggestion he wanted to cash them and use the money, I suppose, I don't know what he wanted it for. After we discovered the loss of the agreement that is the only way he would accept them, he said, "They must be made to me or I won't accept them," or, "I will serve a cancellation on you," which he usually had in his hand, and in order to create harmony without any thought of the outcome we made them to Spear.

Q. Did you owe Spear or anybody any money at all in this transaction other than under the terms of the October 23, 1923, agreement?

A. No, sir, not a cent.

By Mr. Palmer:

Q. Mr. Cawthorne, I asked you for certain memorandums and things, have you produced those?

A. Yes, sir.

Q. Will you let me have them?

A. You asked me for one of our lot sales agreements. The only one I could find is one I had to take out of our records, and there it is. That shows the purchase of my own lot, January 24, 1925, and a copy of the certificate of indebtedness. You didn't ask for the agreement that was sold with, do you care to have that?

Q. Yes.

A. Is that all right, Mr. Carr?

Mr. Carr: Anything he wants. We are not hiding anything.

The Witness: That is the subscription blank we took when we sold certificates of indebtedness, and this is the agreement we executed with it, together with a copy of it, acknowledgement of which was attached to the certificate of indebtedness showing they would be accepted for an individual lot whenever surrendered. This is a copy of the agreement in which we agreed to give the stockholders a lot in consideration of $1.00. This is the list of the bona fide lot-holders of Locustwood Cemetery Associatioin, consisting of 33 in number, who attended the meeting of Locustwood Cemetery Association held in the basement of the Smith-Austermuhl Building, January 30, 1925.

Q. This last paper that you have given me I understand represents all the bona fide lot-holders at that time?

A. All that attended that meeting. All of the bona fide lot-holders you will find listed in the minutes.

Q. Attended that meeting?

A. That is all who attended.

Q. Of the persons present at that meeting of January 30th they represented 33 bona fide lot sales?

A. Yes, sir.

Q. Some of them having more than one?

A. Yes, sir.

Q. Most of them only one?

A. Yes, sir.

Q. So I understand ——

A. That is, issued by the Locustwood Cemetery Association from the time of its organization up to the time of the Danford lot, which is part of these records.

Q. That is the situation as it existed at the time of that meeting, January 30th?

A. Yes, sir.

Mr. Palmer: I would like to look at these. It may not be necessary to offer them all.

———

Max Darcy, recalled.

By Mr. Carr:

Q. Mr. Darcy, did you make a calculation of the cost of acquiring the 140 acres under the so-called July 23rd agreement?

A. Yes, sir.

Mr. Tyler: I object to this as immaterial and

irrelevant, and repetition, and not only that, but the matter refers only to the agreement of ——

The Court: I guess you had better let me figure it out. I don't think mathematics can be altered by testimony. You have already given me your notion of it and I don't think his testimony will make it any stronger.

Mr. Carr: Now, if the Court please, I think this was admitted as an exhibit, this advertisement. Now, I would like to offer in evidence C1 and C2 for identification, being the letter of October 26, 1921, addressed to Mr. Darcy and signed by the Equitable Estates Corporation, by Mercedes Spear, Secretary, as part of the history of this transaction.

Mr. Tyler: They are the papers to which I made objection at the time.

The Court: I don't believe I understood what it was.

Mr. Carr: It was an option given in October 26, 1921, to Mr. Darcy for the right to sell for the sum of $60,000 the cemetery property, which should include other lands added to it, so as to make 80 acres, for the sum of $60,000, of which $60,000 ten per cent was payable on the executioin of a deed, and the balance in two mortgages.

The Court: This was in 1921?

Mr. Carr: Yes. This is only done to show the history of the transaction and to show they were dealing with it at all times on a different basis entirely from this July 23rd one.

The Court: It is from who to who?

Mr. Carr: The Equitable Estates Corporation.

The Court: Let it be marked.

Mr. Carr: If the Court please, that concludes our case except we have not yet had the result of the expert's examination.

The Court: You are not through, Mr. Tyler?

Mr. Tyler: No, Mrs. Aleck was on the stand and she stood aside.

Helen C. Aleck, recalled.

By Mr. Tyler:

Q. Your full name, please?
A. Helen Cooper Aleck.
Q. And was it formerly Helen C. Douglas?
A. It was.
Q. That is true?
A. Yes.
Q. You were the complainant in a suit which was brought against Charles Cooper Spear, and others, in 1922?
A. I was.
Q. And that related to the claim of title to what is known as the Cooper Homestead Farm?
A. It was.
Q. By Charles Cooper Spear and the Equitable Estates Corporation?
A. Yes.

Q. Now, the Cooper Homestead Farm originally consisted of how many acres?

A. About 157.

Q. About 157 or 153, do you know which?

A. One of the surveys said 153, but a more recent survey said 157.

Q. Out of that, back in 1908, there was a deed made for 13 1/3 acres?

A. A provisional deed.

Q. You say that was a provisional deed?

A. Yes, conditional and provisional.

Q. That referred to the agreement, didn't it?

A. To the Spear-Fernwood agreement.

Q. Of December 31, 1907, that is true, isn't it?

A. It is.

Q. Now, that deed, I think, was made in 1907 - 1908, and I want you to tell us what happened, who was in possession of the property from the time that deed was made up until—fix your own time?

The Court: December 31, 1907, is the deed.

Mr. Tyler: Yes.

Q. What happened after that deed was made?

A. I always retained possession of the property, the farm belonged to me.

Q. And was there a house on it?

A. A very handsome house, and also a double tenant house.

Mr. Palmer: That deed did not include anything but the 13 acres, are you referring to that?

Mr. Tyler: I am referring to the farm.

The Witness: The deed referred only to the 13 acres.

Mr. Carr: Aren't you mixed there, Mr. Tyler?

Mr. Tyler: No, I am going to cover it.

Q. You say there was a house on the farm, you mean the Cooper Homestead Farm?
A. The mansion house.
Q. And that was there up to what time?
A. Until Easter Sunday, 1923.
Q. 1923 or 1924, do you know which?
A. I am positive it was 1923.
Q. When the fire took place?
A. Yes. Was it the year 1923? I closed my Collingswood house on the 6th of February, 1923, I think, and this house on the farm was burned while I was away, and it occurred on Eeaster Sunday, so it must have been in 1923, if I am correct in thinking I closed my house in 1923.
Q. I think it was 1924, but that will be subject to verification which year it was. Up to the time this house was burned down what did you do with the farm?
A. Rented it. Either lived there or rented it.
Q. To whom did you rent it?
A. For ten years I rented to it Giovanni Conti.
Q. What did he do with it during that ten years?
A. Farmed it.
Q. Did he farm the 13 acres known as the cemetery property?
A. He turned a horse onto the grounds to pasture to keep the grass cut down and he farmed the upper part.
Q. Of the 13 acres?
A. Yes, sir. Of course, there had never been any burials there.
Q. You say Conti had it for ten years, what period did that cover, from what year to what year?

A. I think it was from 1911.

Q. For ten years following 1911?

A. Yes.

Q. And after Conti left did you rent it to anyone else?

A. For a short time to a man named Leon Pipiton.

Q. How long was he there?

A. He was a short time there, about a year.

Q. During that time, from 1911 until 1922, covering the time these tenants were there, who paid the taxes on that property?

A. I did.

Q. Did the property include the 13.30 acres?

A. Yes.

Q. Was there anything at all done at that time by the Locustwood Cemetery Association or the Fernwood Cemetery Association between 1911 and 1922?

A. No.

Q. When did they first begin to do anything out there, do you know?

A. If the fire were in 1923, Mr. and Mrs. Thomas Turton, Miss Perkins and I were out to see the ruins three days after the fire and there was nothing doing then there.

Q. Have any payments or a settlement of any kind been made to you on the Spear-Frnwood agreement?

A. Never.

The Court: Prior to this?

Q. At any time?

A. Never at any time.

The Court: It doesn't run to her, does it?

Mr. Tyler: Assigned to her—I am going to go into that now—back in 1908.

The Court: By its terms the payments are to Spear, as I recall it.

Mr. Tyler: Yes.

Q. Do you recall a deed being made from Thomas E. French, and others, to Leslie M. Holloway in 1910?

A. Perfectly.

Q. I show you Exhibit T4, being deed dated February 21, 1910, Thomas E. French, and others, to Leslie M. Holloway. You signed that deed, didn't you?

A. Yes, sir, I signed that deed to Mr. Holloway.

Q. At whose request was that deed made to Holloway?

A. At my own.

Q. At your own request?

A. Yes.

Q. May I see the certified copy of the deed from French? You had previously joined in a deed to Thomas E. French, hadn't you?

A. Yes, sir.

Q. And the deed to Thomas E. French called for the Cooper Homestead Farm and the Spear-Fernwood agreement, didn't it?

A. Yes, sir.

The Court: They haven't been offered, have they?

Mr. Tyler: Yes, they are all in.

Q. Now, did you have any conversation with Mr. French, Dr. Spear, and others mentioned in this

deed, as to what this deed was to convey to Holloway?

A. My entire estate.

Mr. Palmer: Objected to. As far as Dr. Spear is concerned it may be proper, but I don't see how conversations with other parties can bind us.

Mr. Tyler: The purpose of it, if the Court please ——

The Court: I think it is competent, on your claim of reformation. Dr. Spear will not be bound by her conversation with Mr. French, except to the extent he may be charged with knowledge.

Q. What conversation did you have with Mr. French and Dr. Spear, and designate which was which, or whether they were both present at the same time?

Mr. Palmer: And when and where, if you can.

A. It was in Mr. French's office and I asked Mr. French ——

Q. Who was there?

A. Mr. French.

Q. Was Dr. Spear there?

A. Yes.

Q. Was this conversation in the presence of each other?

A. Yes.

Q. Tell us what the conversation was.

Mr. Palmer: When? Fix the time.

Q. Was it prior to the making of this deed, or when?

A. It was the time I signed.

Q. The day you signed this?

A. Yes. I didn't read the deed, my eyesight was so poor I asked Mr. French if it gave me back my entire property and he said it did and included this Spear-Fernwood agreement.

Q. And Dr. Spear was there?

A. Yes, sir.

Q. Did he make any comment upon that?

A. No.

The Court: You mean by that you asked him to deed it to Holloway for you?

The Witness: Yes, as a title-holder, yes.

Q. But you asked Mr. French the express question in the presence of Dr. Spear whether or not it deeded back to you your entire property, including the Spear-Fernwood agreement, and his reply was it did?

A. Yes.

Q. From that time on was there any claim made by anyone to this property up until the deeds which were set aside in the former suit, except this?

A. No, sir.

Q. Mr. French made no claim to it, did he?

A. No.

Q. Did Dr. Spear make any claim to the property during that period?

A. No.

Q. You were in possession?

A. I was.

Q. Mrs. Aleck, do you know Mr. Darcy?

A. I was at one time quite well acquainted with him.

Q. When did you first meet him?

A. He came to my house in November, 1921.

Q. Did he continue to come there for sometime following that?

A. Occasionally, yes.

Q. Was he there up to the time or after the time you brought your suit against the Equitable Estates Corporation?

A. Yes, and I gave him the complaint and he read it, and the whole burden of his conversation was for me to withdraw this complaint and turn all my estate over to my son.

Q. Are you referring to the bill of complaint you brought against the Equitable Estates Corporation?

A. Yes, sir.

Q. You say he read the complaint?

A. Yes.

Q. Where?

A. In my house in what we call the living-room, and Mr. Aleck, Max Rosenberg, Miss Body and I were all present.

The Court: When was that?

The Witness: About June, 1922.

The Court: When was it with reference to when the suit was filed?

The Witness: It was a few months after the suit was filed.

Q. Suit was filed April 22, 1922. Now, did he make you acquainted with the fact he was a friend of your son's?

A. When he first called in November, 1921, he told me he had never met my son, and I asked him if he had ever met Mr. Bird of New York, and he told me he had not, and I gave him Mr. Bird's address, and also at that time he wanted to rent the house.

Q. What house?

A. The big house on the farm, and I asked him $100 a month, and I told him I wouldn't rent it to him unless he could give me good references, and he told me he could and he gave me these two which you presented in evidence.

Q. Is that the memorandum he gave to you?

A. Yes, and this is his writing, he wrote it in my presence.

Q. When was it he gave that to you?

A. The first time he came when he wanted to rent the place.

Q. That was in November, 1921?

A. Yes, November, 1921.

Mr. Tyler: I want to offer that in evidence.

(Said paper marked Exhibit T4.)

Q. It refers to T. M. Solomon.

A. To whom I wrote and he did not answer, and I have forgotten the other address.

Q. William A. Deverall.

A. Yes, and he wrote ——

Mr. Carr: I object to what he said.

Q. Did you get a reply?

A. Yes, sir.

Q. As the result of that did you decide as to whether you would rent the property to him?

A. I decided I would not.

Q. You heard him testify he had known your son in Nicaragua for several years before coming to New York?

A. Yes, and the second time he came and saw me I asked if he had been to see Mr. Bird and he said he had, and I said, "Did you meet my son there?" and he said, "There was a young man sitting at a typewriter, and I asked Mr. Bird who it was and he told me it was Dr. Spear." That, he said, was the first time he had ever seen him, but he didn't have any conversation with him.

Q. You say the burden of his conversation with you was to try to get you to turn the property over to Charles?

A. Yes, sir.

Q. What did he say to you about the litigation, or the question of title, or anything, did he discuss that with you?

A. Yes, we all talked it over and he thoroughly understood how the title stood.

Mr. Carr: I object to "thoroughly understood."

Q. Tell me as near as you can what he said about your turning it over to Charlie and what was the occasion of there being any question or purpose of his coming to see you about that.

A. One remark was he thought every man and woman ought to turn his or her estate, when they arrived at the ago of 50 years, over, and that is what he intended to do, as he thought young blood was more capable of transacting business than older blood.

Q. You say he read the complaint in June, 1922?

A. I think it was.

Q. Did he discuss with you the matter of title as set out in the complaint, as to who had it?

A. Yes.

Q. Tell us as near as you can what was said about the title?

A. I told him the property belonged to me.

Q. Belonged to you?

A. Yes, because it had come down from my grandfather Cooper to my father's children, and when Charlie was but a little boy four years old I bought out all my brothers and sisters and paid them cash, and no one had ever disputed my title from that time on.

Q. Did you discuss with him how title got into the Equitable Estates Corporation?

A. Yes, I talked over with him that.

Q. Did you tell him the circumstances?

A. Yes. I told him I didn't want to litigate and I would be glad to make any reasonable agreement with my son but that I could not during my lifetime give up right and title to my estate.

Q. What brought that about, did it have anything to do with the fact it had anything to do with the Equitable Estates?

A. It had everything to do with it.

Q. It had everything to do with it?

A. Yes.

Q. You say Mr. Aleck was there?

A. Yes, sir, and also Mr. Rosenberg.

Mr. Carr: Is he a lawyer?

The Witness: No, he is a young man in business in Philadelphia, he is a friend of ours, and he often comes out to see us, and Miss Body was there.

Q. How do you fix the time she was there?

A. My sister, Mrs. Browning, died in October, 1921, and this nurse remained with me the greater part of the time. She would go away occasionally and come back, and after I closed my house on February 6, 1923, I don't know what became of her.

Q. That is during the time she was there?

A. Yes. I was alone otherwise.

Q. How long did Mr. Darcy continue to come there?

A. His last visit was in October, 1923.

Q. 1923?

A. Yes, sir.

Q. Had you discussed with him the substance of this bill of complaint in your suit against the Equitable Estates Corporation at other times?

A. I had.

Q. Had he talked to you about getting possession of the property, the cemetery property, and your property?

A. Oh, no, he never mentioned any agreement whatever.

Q. Never mentioned any agreement of any kind?

A. Mr. Tyler, I may be wrong; perhaps that was October, 1922, I am not positive about that.

Q. Had he ever mentioned to you any agreement in regard to this property?

A. Never.

Q. Never told you the Locustwood Cemetery with which he was connected or identified had any interest in it of any kind?

A. Never.

Q. Now, Mr. McTaggert and his wife have both testified you came over to their house.

A. I was never in their house until the autumn of 1926; I didn't know of the existence of the bungalow until then. Charlie called to see me and told me he had erected a very pretty bungalow on the

triangular and Mrs. Stokes and her daughter and he called on me and Charlie said, "Come get in my Dodge and I will drive you over," and he drove us all over, and that is the first time I ever saw the bungalow, and it was my first and last call upon the McTaggerts, if it could be said to be a call upon them, I really went to see the bungalow, except after I had sold the triangle I was in the kitchen and asked them to vacate.

Q. That particular triangle?

A. Which I sold to Earl Lippincott.

Q. And you asked them to vacate?

A. I did.

Q. What did they say?

A. Well, they began to talk against my son and I wouldn't listen to them and I left.

Q. They said you were over there and talked with them, at least Mr. McTaggert did, and you commented upon the progress being made with the improvements and how the place was being beautified.

A. That is absolutely untrue.

Q. Did you ever make that comment to either one of them?

A. No, sir.

Q. Did you ever make it to anyone?

A. Never.

Q. Have you in any way ever consented or acquiesced in any conveyance or agreement of any kind that would affect your interest in the Homestead Farm?

A. Never.

Mr. Carr: Objected to as calling for a conclusion.

The Witness: Nor have I ever received a nickle of compensation.

The Court: I think perhaps it is objectionable as to form. I would like to ask Mrs. Aleck when she first knew of this Spear-Fernwood, 13 acre agreement. The agreement was dated December 31, 1907, do you remember when it first came to your attention?

The Witness: Oh, yes, that was way back of the time—I don't know exactly how long after it was made. That is the only agreement I know anything about, but I am perfectly familiar with the terms of the Spear-Fernwood agreement.

Mr. Palmer: And have been since shortly after its execution?

The Witness: I imagine so, yes. Mr. Tyler, I forgot to mention one time I was at Mr. Wilkins', J. Newlin Wilkins', the real estate man, and for some reason I wanted to go over to the bungalow to see about something. I don't know what it is now, and Mr. Wilkins' son-in-law, Mr. Stevens, drove me over, but I didn't get out of the car, and I have forgotten the object of my call. It had something to do with the bungalow.

Q. That is the only other time you have been there?

A. That I now recall, yes.

(At this point a recess was taken until 1:30 P. M.)

(Trial of the cause resumed at 1:30 P. M., pursuant to adjournment.)

HELEN C. ALECK, resumed.

Cross-examination.

By Mr. Palmer:

Q. Now, Mrs. Aleck, prior to the making of the deed to Mr. French as trustee, your son, Charles C. Spear, had title to all of the Cooper Homestead Farm?

A. He was my title-holder.

Q. But he had the legal title to all of the farm?

A. Yes.

Q. And that he had acquired at a foreclosure sale sometime preceding it?

A. Yes.

Q. So that putting the legal title—he had the deed—in Charlie a deed was made by him to the Fernwood Cemetery Association which deed referred to what has been called the Spear-Fernwood agreement as the basis of that deed?

A. Yes.

Q. And it was after the making of that deed to the Fernwood Cemetery Association that it was agreed to put the balance of the Cooper Homestead Farm, together with this agreement, in Mr. French as trustee for you and Charlie?

A. I don''t agree with you there. The deed expressly says that the cemetery is in trust for me.

Q. You didn't mean the cemetery but you mean the Spear-Fernwood agreement?

A. Yes, which is the land, controls the land, at least.

Q. If we call it the Spear-Fernwood agreement, Mrs. Aleck, we both understand what we mean, and the inferences to be drawn from it is another matter. I don't mean ——

A. You understand the Spear-Fernwood agreement means the land?

Q. I understand the Spear-Fernwood agreement to mean the agreement, I don't understand it to be the land itself. It is an agreement with relation

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A. It is an agreement between the land and the association.

Q. Let me get the situation clear. That with Charlie having title to the whole Cooper Homestead Farm a deed was made to the Fernwood Cemetery Association, which deed had for its consideration the Spear-Fernwood agreement, and that was the status of affairs at the time of the making of the trust deed to Mr. French?

A. I believe so, yes, I think that was the status.

Q. Beg pardon?

A. That was the status.

Q. Then came the question of putting this Cooper Homestead Farm, no matter what the reason for Charlie having title to it, or what it was, it was to be conveyed to Mr. French, together with the Spear-Fernwood agreement, as trustee for you during your lifetime and then to go to Charlie?

A. To be trustee for me during my lifetime because it would entitle ——

Q. Never mind the reason, that is a fact?

A. I would rather make my own will.

Q. And that was the purpose and effect of that trust agreement?

A. Yes, it was.

Q. Now, then, that deed to Mr. French did not convey the 13.30 acres?

A. It conveyed the Spear-Fernwood agreement.

Q. But not the actual title to this 13 acres?

A. No, the Spear-Fernwood agreement.

Q. It conveyed the agreement and did not convey the title to the land. I don't think there is any question about it.

The Court: It will show on its face.

Q. Yes. In that status of affairs, Mr. Aleck, it was decided to have Mr. French divest himself of the trusteeship and convey the property to someone else as trustee for you?

A. Yes.

Q. And that trustee was Mr. Holloway?

A. Leslie M. Holloway.

Q. Now, you said in your direct examination, I think—if I am wrong you can correct me, because I am not attempting to confuse you—that you and Charlie were present in Mr. French's office at the time of the execution of that deed from Mr. French to Mr. Holloway of which both you and Charlie were parties?

A. Mr. French, Charlie and I were there.

Q. And that was at the time of the execution of the deed?

A. It was.

Q. Are you sure about that?

A. Yes.

Q. Now, Mrs. Aleck, I don't want to confuse you on that situation, but I would like to call your attention to the fact that the acknowledgement to that

deed taken by Mr. Richards shows it is—"Be it remembered that on the 21st day of February in the year of our Lord, 1910, before me, a Master in Chancery of New Jersey, personally appeared Charles C. Spear; on the 23rd day of February, 1910, before me, personally appeared Cyrus D. Marter and Thomas E. French, trustee, and on the 23rd day of March, 1910, before me, personally appeared Helen C. Douglas, and on the 29th day of March, 1910, before me personally appeared Leslie M. Holloway, who I am satisfied are the parties mentioned in and who executed the foregoing deed or conveyance and I having first made known to them the contents thereof they did each acknowledge that they signed, sealed and delivered the same as their and each of their voluntary acts and deeds, all of which is hereby certified." Signed, "Samuel H. Richards." Mrs. Aleck, that shows that this deed was signed and acknowledged upon various days running from the 21st of February, 1910, until the 29th day of March, 1910. Does that help you as to whether or not you were all present at the time of the execution of the deed?

A. I didn't say we were all present. Mr. Holloway wasn't there; I went with Mr. Holloway.

Q. You say that you and Charlie were there?

A. I thought Charlie was there. I remember distinctly Mr. French being there and I asked Mr. French if it gave me back my entire Marlton Pike estate and he said it did.

Q. You said in your direct examination it took place in the presence of Charlie?

A. I thought he was there.

Q. I call your attention to the difference in the dates of the acknowledgement merely for the purpose of refreshing your recollection and for you to make sure whether or not Charlie was present at

that time. Now, this would indicate, the difference in the dates would indicate, he was not present, wouldn't it?

A. It surely would.

Q. It is possible, isn't it, you are mistaken about his being present at the time you had this conversation with Mr. French?

A. Perhaps, it looks that way. I remember distinctly Mr. Holloway and I went alone to the office for him to sign.

Q. Now, Mrs. Aleck, that property remained with Mr. French between September 28, 1908, which is the date of the deed of Cyrus D. Marter, and wife, to French, and the 21st day of February, 1910, the title remained in Mr. French between those two dates, that is true, isn't it?

A. It is.

Q. Now, during that time wasn't this the arrangement that you had made or did make with Charlie, that the trusteeship was to be dissolved, that you were to have the title to all of the Cooper Homestead Farm of which Mr. French had the title and that the Spear-Fernwood agreement which had been originally made with Charlie should go back to him?

A. I always felt it was necessary that I should control everything.

Q. And wasn't that your arrangement, Mrs. Aleck, and wasn't that the reason for the deed from Mr. French to Mr. Holloway conveying only the land and saying nothing about the Spear-Fernwood agreement?

A. Did I think Mr. French did have the Spear-Fernwood agreement?

Q. The deed doesn't show it; you may assume that to be a fact.

Mr. Tyler: I think it is by inference.

Mr. Palmer: It doesn't by specific words.

The Witness: I had strong personal reasons for feeling I should control everything. I was perfectly willing for my son to manage it for me but I wanted the ultimate control to be in myself.

Q. For him to manage it for you and to operate the cemetery company and collect from the cemetery company what was due under the Spear-Fernwood agreement, wasn't it advisable he should have control of the agreement and wasn't that the reason for it not being included specifically in the deed to Mr. Holloway?

A. I thought it was included in the deed to Mr. Holloway.

Q. You may assume it is not specifically stated in the deed, that is a fact, and we all agree that is the fact as to the language of that deed. I am asking you wasn't that the arrangement made between you and Charlie when this trust was dissolved, that you were to take back the title to the farm, unencumbered by any trust arrangement with anybody, and Charlie was to have the Spear-Fernwood agreement for the purpose of operating the cemetery company?

A. Why couldn't he have operated it ——

Q. Won't you answer the question? Is that true or isn't it?

A. As I have stated I had strong personal reasons for feeling the ultimate control should be in me, but I was perfectly willing and glad to have Charlie manage it for me at the time, because I knew nothing whatever about cemeteries.

Q. Isn't it true, as I have suggested, that upon the dissolution of the trust it was agreed that the

agreement should go back to Charlie to operate for you, if you like, and the title to the farm to be vested in you?

A. I was willing and glad to have him operate the cemetery under the Spear-Fernwood agreement for me.

Q. And always have been so willing that he should?

A. Yes.

Q. So isn't it likely that is the arrangement you made upon the dissolution of this trust?

A. How does that change matters at all?

Q. Don't argue the matter, Mrs. Aleck, please. I am trying to be as considerate of you as I can in my question and I don't want to confuse you or anything of the kind. I want you to have full opportunity to think and determine, but in view of the situation as it shows itself and as the facts are undisputed wasn't that the agreement you had made with Charlie, that the trust should be dissolved, the title to the farm, and, of course, the control of the farm to be vested in you, and Charlie to take the Spear-Fernwood agreement for the purpose, if you like, of operating it for you?

A. If he operated it for me it would belong to me, wouldn't it?

Q. Would you mind answering that. Wasn't that the arrangement?

A. Everything was to be turned back to me and he was to operate the Spear-Fernwood agreement for me.

Q. Then isn't it likely that is the reason the Spear-Fernwood agreement was not conveyed to Mr. Holloway so that Charlie might have it under his control to operate for you?

Mr. Tyler: I don't think that is a fair question, if the Court please.

The Court: I think it is cross-examination of her statement. Mr. Palmer is very fair about that, he is not assuming it was not transferred, he is assuming it isn't specifically set out.

Mr. Palmer: The matter of the interpretation of that deed is what we disagree about. I say it does not convey the Spear-Fernwood agreement.

The Court: It is not specifically described. Whether it includes it or not is a matter to be determined. You are now asking her to refresh her memory and to tell you whether, in view of all that you have brought to her attention, she still maintains it was the intention of that conveyance, or the intention of the parties for that conveyance to include the Spear-Fernwood agreement. Can you say what your memory is now since Mr. Palmer refreshes your memory? Does it in any way change your recollection of it?

The Witness: No.

Q. You mean by that you were to own the Spear-Fernwood agreement or do you mean that Charlie was to have it to operate it for you? I will withdraw that question temporarily. Mrs. Aleck, wasn't it always your intention and desire that Charlie should have control of the operation of the cemetery?

A. It was, yes.

Q. That was true through all of the time from the beginning of the formation of the cemetery down to and even including the present time, it was your

desire and intention that he should control the cemetery company?

A. For me.

Q. By that you mean he was to do all the work, do all that was necessary to be done under the Spear-Fernwood agreement and turn over to you all the proceeds to be derived from that Spear-Fernwood agreement, or did you intend he should have some portion of those proceeds?

A. I surely did not intend he should take it all unless I chose to give it to him.

Q. But you did intend he should have some part of it?

A. I intended he should be compensated for his labor and time.

Q. Is that all?

A. What more could I do?

Q. Upon what basis do you think he should have been compensated if he operated the cemetery company for you?

A. We never discussed that. We at that time were perfectly congenial in our idea about expenditures, but you see now there is a change. Charlie is married.

Q. I am speaking of the time when this deed was made to Mr. Holloway, at that time you were on perfectly good terms with Charlie?

A. Yes, sir.

Q. You were friendly, you had business relations together, and you had confidence in him?

A. Unlimited.

Q. So there can be no question as to the condition that existed between you and Charlie at the time of the making of this deed to Mr. Holloway, con there?

A. Only as I stated.

Q. Beg pardon?

A. Only as I stated.

Q. You were perfectly friendly and you had confidence in him at that time?

A. Yes, sir.

Q. And it was under that condition of affairs existing between the two of you that this trust was dissolved, as the deeds indicate?

A. That he should run the cemetery at that time?

Q. I mean your relations, I am not speaking of the agreement or anything, I am speaking now that at the time of the dissolution of this trust your relations with Charlie were friendly, amicable, and you had unlimited confidence in him at that time?

A. Yes, we were on the very best of terms, but as I said before, he realized the ultimate control should always be in me.

Q. Eliminating your feelings about the ideas of control, the relations between you and Charlie at that time were entirely amiable, both personally and in a business way, that is true, isn't it?

A. Yes, but you know he had already taken to drinking some and that is the only trouble.

Q. I am merely asking you as to conditions at the time of the Holloway conveyance, that was the status of affairs?

A. Yes. I have stated the conditions and that was the reason that I felt the ultimate control should be in me.

Q. Yes, and that was the status of affairs between you at that time?

A. Yes.

By Mr. Carr:

Q. Mrs. Aleck, when do you say Mr. Darcy first came to Collingswood at your home?

A. In November, 1921. I remember the date dis-

tinctly because my sister had been buried only a few weeks previously.

Q. What was the occasion of his calling, if you please?

A. He said he had been walking around the country and admired the old homestead and wanted to know if he might rent it from me.

Q. That was the dwelling-house upon the Homestead Tract?

A. Yes, it had twenty rooms in there and he said he had a very large family and that he would like to have the house.

Q. Was he seeking to rent the house or the whole farm?

A. I understood it was the house.

Q. Just the house?

A. Yes.

Q. As you understood it was a residence proposition rather than a farming proposition, is that right?

A. Yes, sir.

Q. Do I correctly understand you asked him for references?

A. You do.

Q. And he gave you two names?

A. Two references.

Q. And that you communicated with one and received no reply?

A. That was Mr. Solomon.

Q. And you communicated with the other and received a reply?

A. Yes, that he knew nothing whatever about Mr. Darcy's financial condition.

Q. And as the result of that you determined ——

A. I did not care to have any business relations with him.

Q. Or rent him the dwelling-house on the farm, is that correct?

A. That is quite correct.

Q. At that time he was an entire stranger to you?

A. Yes.

Q. He made no mention of knowing your son?

A. He told me positively he had never met him.

Q. How long did he stay on that occasion?

A. I was away from home and he stayed all day. Miss Body said he went away and came back again to see if I returned.

Q. How long was the interview?

A. Only a short time. I came home about dusk, and probably half an hour after I came home he left.

Q. And there was no talk about anything else other than the possibile renting of this dwelling-house, is that right?

A. Yes, and as he was putting on his overcoat he said, "I see there has been a cemetery there."

Q. But you had no discussion with him at that time about the cemetery matters?

A. No, not at that time.

Q. Do I correctly understand there was a second visit to your house?

A. Yes, there were several.

Q. Several?

A. Yes.

Q. How many would you say?

A. The second time he came it was probably during the winter.

Q. Of what year?

A. Of the following year.

Q. You mean the same winter but later?

A. That was in 1921, and I don't know exactly when he came again, but it was the winter time.

Q. Of what year?

A. It might have been 1922, it might have been in January, but I don't know exactly, but it was in the winter.

Q. A month or two following the first visit?

A. Yes.

Q. Was that the occasion on which you say Max Rosenberg, Miss Body, and so on, were there?

A. No, that was much later, that was after I had filed my complaint.

Q. Now, when he came perhaps a month or two later after his first visit was there any discussion about renting the house then?

A. That dropped, and he said he just dropped in casually, and I asked him again if he had ever met my son and he spoke then of having gone to Mr. Bird's address—I gave him Mr. Bird's address—and as I said, he did see a young man sitting at a typewriter, and he asked Mr. Bird who it was and Mr. Bird said it was Dr. Spear, but he said he didn't have any conversation with him.

Q. This talk you fix as being some two or three months later than the first visit to you about November, 1921, is that right?

A. Yes. I don't think it was a very long visit. I don't remember much about it.

Q. At any rate, up to that time the only intimacy he professed with your son was having casually seen him operating a typewriter in Mr. Bird's office?

A. Yes, that is all.

Q. And that he stated was the first meeting with your son, is that right?

A. Yes, sir.

Q. At that meeting I presume there was no discussion of the affairs of the Locustwood Cemetery Company, or personal differences with your son, was there?

A. I don't remember.

Q. Do you think it likely you would have discussed it with a stranger?

A. No, I don't think so. I don't know really if anything was said or not. I don't know what could have been said.

Q. Do you think it likely you had any discussion of your personal affairs with this gentleman who was a stranger?

A. The next time?

Q. I would like you to tell me—I am speaking now of the second visit.

A. Yes, I think he said he had operated a cemetery in New Orleans, and I wasn't particularly interested in cemeteries and I suppose that is why it didn't make any impression on me, and I asked him how he would raise money to operate a cemetery, if he spoke of it at all at that visit, and he said that was very easily done, if that were the time he told me he had been operating a cemetery in New Orleans.

Q. At any rate, there was no discussion between you and him as to any differences between yourself and your son, was there?

A. No, not at that time.

Q. When was the next occasion he called at your home?

A. The next time I distinctly remember was after I filed my complaint, because I had a copy of the complaint in the house.

Mr. Carr: Mr. Tyler, what was the date of that?

Mr. Tyler: Filed April 22, 1922, the date it was filed.

Q. Counsel assures me that date is April 22, 1922?

A. This was later in the season.

Q. How much later than that?
A. I imagine it was about June.
Q. June of 1922?
A. 1922.
Q. Now, this was his third visit to your home?
A. Well, I think it was, I don't exactly remember.
Q. What was the occasion of his calling when he came then?
A. He wanted me to withdraw the complaint and to turn my estate over to my son, he said that was the proper thing to do.
Q. Did he come there on behalf of your son?
A. Well, he didn't say so in so many words.
Q. How did you understand it?
A. I inferred they were great friends.
Q. Did he state to you he represented your son?
A. He spoke then as if he knew him very well.
Q. Did he profess to be speaking for your son in the matter?
A. He appealed to me as a Christian woman.
Q. You haven't answered the question. (To the stenographer.) Repeat it, please.

(Question repeated.)

A. Well, as a friend of my son's, I would say.
Q. Did he say so?
A. He was very friendly then with my son.
Q. Did he say he was coming as a friend of your son's?
A. Not in so many words.
Q. Did he say in what way he was authorized to speak for your son?
A. I don't think he did.
Q. What did he say with reference to that?
A. He was talking about the relations between

parents and children in general, and he thought that all parents should resign active business and active interest in their affairs after they had reached the age of fifty, and he said he expected to turn everything over to his sons when he was fifty.

Q. That, of course, was all dealing in generalities?

A. Yes.

Q. How did he specifically justify what seemed to have been in intrusion into your affairs and that of your son's, how did he do that, if at all?

A. That was very readily done.

Q. Beg pardon?

A. That was very readily done. It all came under the same heading.

Q. Was he undertaking to give you advice?

A. It looked that way.

Q. Had you solicited his advice?

A. No, I had not.

Q. And he was purporting to give you this advice as a stranger who had no interest in the matter?

A. I would scarcely consider him a stranger then, he had been coming there occasionally and he seemed to take a great interest in my son's affairs at that time.

Q. Did he advise you to do something with reference to this matter?

A. Yes, he did, he tried to persuade me to withdraw my complaint; he said he thought I would be much happier if I rid myself of all business duties and entanglements and turned everything over to my son.

Q. How long were you in discussing this matter with him?

A. He was there to luncheon; I think he was there the greater part of the day.

Q. How long was he there?

A. About 1 o'clock we had lunch.

Q. That is interesting, but how long were you in discussing the matter with him?

A. That was the burden of the conversation.

Q. These other folks were there at the same time, Max Rosenberg and Miss Body?

A. Yes.

Q. Who else?

A. My husband, Mr. Aleck.

Q. These affairs were all discussed in their presence?

A. Yes.

Q. And you produced a copy ——

A. It must have been on Saturday, because ——

Q. Pardon me. You say you produced a copy of the bill in equity?

A. Yes.

Q. And gave it to Mr. Darcy?

A. And he read it.

Q. Read it aloud?

A. Yes, in my presence, and we discussed each item.

Q. Do you usually discuss affairs of that nature before so many guests and a gentleman who was practically a stranger?

A. He wasn't a stranger exactly at that time, and Mr. Aleck, I had known for many years, and Mr. Rosenberg was a very frequent visitor at our house, and Miss Body had been staying with me for quite a long while.

Q. You were represented by counsel at that time, had a lawyer?

A. Surely, yes. I couldn't very well file a complaint if I hadn't had.

Q. Did you in any way refer this gentleman to your lawyer so your lawyer might have the benefit of his views?

A. I don't recall doing so. I did refer him to Mr. Bird a lawyer with whom I was acquainted in New York.

Q. Was he the gentleman connected with the Equitable Estates?

A. Yes, sir. I didn't exactly refer him, I asked him if he knew Mr. Bird, and in June he told me he had seen Mr. Bird several times.

Q. Was that the last interview Mr. Darcy had with you looking toward some amicable settlement of your difficulties with your son?

A. I am not sure. It seems to me in October—he was there the following October and we also talked. I know he was there in the following October.

Q. That would be October, 1922?

A. Yes.

Q. Was he again advising you with reference

A. And Mr. Aleck and Mr. Rosenberg were there that time, too.

Q. Was he again advising you with reference to settling this matter?

A. Yes.

Q. You again discussed it with him?

A. Yes, talked everything over, but he never intimated there was any agreement between him and Charlie.

Q. By the way, speaking of the Equitable Estates, was the stock holdings in the company limited to 10 shares, Mrs. Aleck?

A. I believe it was.

Q. They are the ten shares that his Honor adjudicated to belong to you exclusively?

Mr. Tyler: I don't think that is true, that assumption is wrong. There was no adjudication touching the stock of the Equitable Estates Cor-

poration. The title of the Equitable Estates Corporation was set aside.

The Court: I don't remember whether I did anything more than to restore the legal title, I don't think so. I won't be sure. I know the controversy was over the Equitable title.

Q. There were 10 shares outstanding altogether, weren't there, in the Equitable Estates?

A. I don't care to discuss the Equitable Estates Corporation at all.

Q. I don't wish to be rude, but I will have to ask you that question.

A. You will have to ask my attorney.

Mr. Carr: May I have an answer?

The Court: Answer if you can remember; if you can't remember, don't.

The Witness: I don't remember.

Q. You claimed to be the owner of all the shares of stock in that company?

The Court: If you can remember what you claimed you may say so.

The Witness: I don't remember.

Q. Now, won't you try just a little harder to remember; I think you can remember that, Mrs. Aleck. You say you can't remember at all what you claimed with regard to your stock ownership in the Equitable Estates, is that right?

A. Yes.

Q. Did you claim to own any of the stock of that company?

The Court: I can't remember either. Wasn't there still a subsequent incorporation after the Equitable Estates?

Mr. Tyler: No, I think not.

The Court: Was that the company that had the stock with the survivorship in it?

Mr. Carr: Do you object stating what the fact was?

Mr. Tyler: I am willing to state what it was.

Mr. Carr: Wasn't it 10 shares of stock?

Mr. Tyler: Yes, and I think there was a qualifying share in Mrs. Spear and Bird.

Mr. Carr: Mercedes Spear and Mr. Bird?

Mr. Tyler: I think so. I may be wrong about them. However, that doesn't make any difference.

Mr. Carr: Wasn't the certificate of either eight or ten shares issued jointly in the name of Mrs. Aleck and her son with the supposed right of survivorship by Mrs. Aleck.

The Court: I have a vague recollection a certificate was sent to her and she refused to accept it because it required a joint vote to take action.

Mr. Tyler: And it had been sent to her not

filled out and she had signed it with the understanding it would be issued to her and when she got it back it had been filled in differently from what her understanding was.

The Court: I know it required the joint action of both parties so it couldn't be voted against the will of the other.

Q. Now, Mrs. Aleck, you conveyed, so far as the paper conveyance was concerned at least, the title to the Cooper Homestead Farm to the Equitable Estates Corporation by a deed dated June 22, 1920—have you got that here, Mr. Tyler?

Mr. Tyler: Beg pardon?

Mr. Carr: Have you got that deed here of June 22, 1920?

Mr. Tyler: No, sir, never had it, and Mrs. Aleck denies she ever made the conveyance, and that conveyance was set aside as being obtained by fraud, without the benefit of advice of counsel, and various other reasons set out in the pleadings.

Mr. Carr: Do you happen to have that deed here?

Mr. Palmer: I have not.

Mr. Tyler: Those deeds were supposed to be turned over to us in the final decree but they never were, and having been set aside by the decree the actual possession of the papers became unimportant.

Q. Mrs. Aleck, by the record there appears to have

been a deed executed by Helen C. Douglas to the Equitable Estates Corporation bearing date June 22, 1920, and covering the Cooper Homestead Farm. Did you ever execute any deed like that?

Mr. Tyler: I object to that, because in that proceeding this defendant and each of these defendants, were made a party defendant, and the decree that was made in regard to those deeds is equally binding upon these defendants except so far as there is a reservation, and that reservation does not cover the validity of those deeds, so there has been an adjudication setting aside those deeds as being of no legal value. I don't see how we can go into that question, and if that question is pursued it means we would have to practically duplicate our testimony taken in the other case as to the validity of those deeds.

Mr. Carr: I have no desire to do that, Mr. Tyler.

Mr. Tyler: May I know the purpose of this so as to know the relevancy of it?

Mr. Carr: I want that fact as a matter of record; we might have to bring in certified copies of the deeds, and, as a matter of fact, the legal title of this property at the time we dealt with them, was in the Equitable Estates Corporation.

The Court: What?

Mr. Carr: At the time we dealt with them the legal title was in the Equitable Estates Corporation.

The Court: You will have no difficulty stipulating to that, I apprehend, with the lis pendens on file.

Mr. Carr: The effect of that lis pendens we are prepared to discuss later.

The Court: Why can't you stipulate to the facts?

Mr. Carr: Any objection to stipulating that?

Mr. Tyler: No, I have no objection to stipulating that at that time, the time this agreement of October 23, 1923, was made, that the legal title to the property was in the Equitable Estates Corporation.

Mr. Carr: By deed Helen C. Douglas to Equitable Estates Corporation, dated June 22, 1920, recorded June 28, 1920, in book 472, at page 55, and that there was of record in the office of the Register of Deeds of Camden County an assignment of agreement Helen C. Douglas, attorney in fact for Charles C. Spear, to Equitable Estates Corporation, of the Spear-Fernwood agreement, said assignment being dated June 22, 1920, recorded June 28, 1920, in book 472, page 53.

Mr. Tyler: Yes, that is correct, and also at the same time there was of record in the office of the Register of Deeds of Camden County a lis pendens entitled, "In the case of Helen C. Douglas, complainant, v. Charles Cooper Spear, Hobart S. Bird, Equitable Estates Corporation, etc," dated April 24, 1922, and filed May 1, 1922, referring to the litigation in that matter, and that that litigation covered both the title to the Equitable Estates Corporation referred to in the deed and assignment.

Mr. Carr: As to that latter, Mr. Tyler, I won't ask you to produce a certified copy, but may we have a copy of the lis pendens?

The Court: It was filed May 2, 1923, in the suit which was brought by Mrs. Aleck to set aside as fraudulent the deed to the Equitable Estates Corporation and the assignment of the agreement. At any rate, the bill is here and the stipulation won't change that.

Mr. Tyler: And on September 14, 1925, a decree was entered in that suit setting aside the deed referred to and setting aside the assignment referred to.

Mr. Carr: As to the lis pendens, if the Court please, we would like to have a copy of it.

The Court: Yes, let the copy be filed as an exhibit, and then go on with your stipulation. That was the date of my decree?

Mr. Tyler: Yes, and that was affirmed by the Court of Errors and Appeals on October 18, 1926.

Q. Mrs. Aleck, during the progress of the work at the cemetery in 1923, did you go out there at all to see what was going on?

A. I did not.

Q. You knew there was some activity in the cemetery development, didn't you?

A. Not until a long while afterwards.

Q. Hadn't you seen the public press advertisements dealing with the development of this cemetery tract?

A. I don't know when I first noticed them.

Q. Beg pardon?

A. I don't recall when I first noticed them. I know from November 3, 1924, until May 18, 1925, I was in Atlantic City.

Q. I am speaking of 1925, where were you living in 1923?

A. I was living in various places. I closed my house soon after the holidays.

Q. Which holidays?

A. My Collingswood home.

Q. Which holidays?

A. The Christmas holidays.

Q. That would be Christmas of 1922?

A. 1923. 1922-1923.

Q. Where were you living, say, July, 1923?

A. I had returned to my Collingswood house.

Q. How long did you remain there?

A. I might have been there during the greater part of the summer.

Q. Were you there in September and October, 1923?

A. Yes, sir.

Q. And November, 1923?

A. Yes.

Q. And December, 1923?

A. Yes.

Q. During that time hadn't you observed advertisements in the Camden paper advertising this development?

A. No, I don't remember seeing any, because I read the Philadelphia papers, the Public Ledger, principally.

Q. Up to the last of December, 1923, you say you had not heard a word of the activity going on at Locustwood Cemetery?

A. I don't think so. I know I wasn't out there at all.

Q. Didn't know an active development of that cemetery was going on?

A. I don't know exactly when I had the first

notice. I will find out. Perhaps Mr. Aleck can tell me or Mr. Tyler.

Q. Use your best memory. I am trying to find out whether up to November 21, 1923, you had heard in any way of the activity at the Locustwood Cemetery?

A. I knew there was something going on there but I didn't know just what.

Q. Something brought it to your attention, didn't it?

A. Well, we had heard rumors about it.

Q. Who brought the rumors to you?

A. Well, I don't know.

Q. Could it have been your son for one?

A. I wish I knew when I closed the house in 1923. Was it 1923 or 1924 I went away, Mr. Tyler.

Mr. Tyler: I can't help you on that, I don't know.

Q. Could your husband help you on that. I have no objection to your asking him.

Mr. Tyler: Mr. Aleck isn't here just now.

A. I had seen Charlie several times previous to going away in 1923.

Q. Now, Mrs. Aleck, you have told me you were in Collingswood during the summer of 1923, and remained there until at least the end of the year?

A. Yes.

Q. You think that is correct?

A. I think that is correct.

Q. Because I don't know at all. You will have to tell me.

A. I think that is correct.

Q. Now, you say that during that period you heard rumors of activity at the Locustwood Cemetery?

A. Yes, but I didn't know definitely what was going on there.

Q. Do you know from whom you first heard the rumor?

A. Well, Mr. Darcy during his visits didn't intimate he was in conjunction with Charlie and going to run the cemetery. I don't think he positively mentioned that.

Q. But you heard from some source there was some development work going on?

A. Yes, something going on there.

Q. I am trying to find out from what source you heard that?

A. Well, previous to my going away and closing my house after the Christmas holidays—if that were 1923 or 1924—I saw Charlie several times, and we both of us thought it was very foolish to have any more litigation, and I tried very hard to have some sort of settlement.

Q. During this period, say during the summer of 1923, would you meet your son Charles from time to time?

A. I saw him from September.

Q. Did you see him at all during that summer?

A. I don't recall, I don't know.

Q. At any rate, you had some talk with him?

A. I remember later in the season.

Q. At some time with him as to the desirability of settling your differences, didn't you?

A. Yes, sir.

Q. Was that in the summer of 1923 or the fall?

A. No, it was later, it was in the cold weather.

Q. In the fall?

A. No, I would say it was in the winter.

Q. Did you see him at all say from July 1, 1923, to December 31, 1923, do you remember at all whether you saw him during that period of about half a year?

A. Yes, sir.

Q. You saw him several times in that interval?

A. Yes.

Q. Where would you see him, at your home, or where would you see him?

A. At my home.

Q. He would come there to see you?

A. Yes.

Q. And came several times in that interval?

A. I remember his coming twice.

Q. And when did he come?

A. It was in the winter.

Q. I am speaking of the period between July 1st and December 31, 1923?

A. Yes, I understand that.

Q. I understood you to say he had called at least twice in that period, am I correct?

A. Yes.

Q. When was the first time he called, the first of those two visits?

A. It was in the winter, it was cold weather.

Q. The winter is rather long.

A. Snow and ice.

Q. Was it as early as November?

A. Later than November.

Q. It couldn't have been later than December.

A. Sometime in December.

Q. Now, didn't he tell you of the activity at the cemetery, didn't he tell you there was an active development going on at the cemetery?

A. No, I can't recall that he talked about the cemetery at all.

Q. Wasn't that involved in your dispute?
A. No.
Q. Not at all?
A. No.
Q. Weren't you seeking to get title in you for the Spear-Fernwood agreement, among other things?
A. I was trying to get everything back, all my property back?
Q. At that time that included this Spear-Fernwood agreement, didn't it?
A. Yes.
Q. Which involved, of course, the cemetery?
A. Yes.
Q. You mean that your son didn't tell you at all there was an active development going on, that improvements were being made on lands outside of the original 13 acres?
A. No, I didn't know there were any improvements being made.
Q. He didn't mention anything to you about it?
A. No.
Q. Didn't mention about the fact that the barn had been or was to be removed?
A. Two or three men came over to see me and asked me whether they might take the barn down, that was some time after the other house had been burned.
Q. That house was burned down, you say, Easter of 1922, is that right?
A. I think it was 1923, and Mr. Tyler thinks it was 1924. We can easily verify that, can't we, Mr. Tyler?

Mr. Tyler: Very easily.

Q. Your present recollection is it was Easter, 1923?

A. Yes, I know it was Easter.

Q. Did you know that fences had been erected and a large sign placed upon the Cooper Homestead Farm as early as September, 1923?

A. There isn't any fence there except what I put up myself.

Q. Did you ever see this sign?

A. Never heard of the sign or never heard anybody speak of it, so I don't think it was there.

Q. By any chance did you see this advertisement in the Camden paper advertising it?

A. No.

Q. You say your son never mentioned to you in any way the fact there was an active development going on in the Locustwood Cemetery?

A. No. At that time I don't think there was any active development at all, because the entrance and the fence was there—I paid $7500 myself for the drainage, the roads were good, and the shrubbery and trees were all there.

Q. Hadn't they suffered somewhat by neglect in the years that had passed?

A. Nothing to speak of. The grass might need cutting, and there were beautiful shade trees there and I am sure they are there now.

Q. Your idea is there has been practically no change in the situation there?

A. That is my idea.

Q. You think the cemetery is in about the same condition as when you knew it years ago?

A. It was in beautiful condition then.

Q. You can see no evidence of improvements involving the expenditure of large sums of money on the ground?

A. Positively not.

Q. You can see no evidence at the present time of

anything having been done on the Homestead Farm adjoining the cemetery?

A. Now, how recently have I been there? I have been there since they put up that little building, a little building that cost probably two or three thousand dollars, a little office building.

Q. Is that on the Homestead Farm?

A. No, that is on the 13 acres.

Q. That is all you can see in the way of improvements around there?

A. Yes, the fence is there just as I left it, and the entrances, Mr. Aleck had the stone entrance repaired, they have been there a great many years, and the trees were all there, and the shrubbery, and the grass has been cut. Some grass might have grown up in the driveways and that has probably been eradicated.

Q. I understood you to say that during the first 10 years this cemetery was practically inactive, am I right about that?

A. I once sold the place to Mrs. Smith and she started the cemetery.

Q. For ten or fifteen years there had been no interments, no activity at all?

A. I think ten years.

Q. Ten years no activity?

A. No.

Q. Had there been any interments for that ten years?

A. Yes.

Q. A few?

A. Yes.

Q. For at least ten years the cemetery had laid there inactive?

A. Yes, but you remember what was called the cemetery was our park and it was very beautiful.

Q. I don't dispute that. Had you no knowledge in the summer and fall of 1922 that condition at the cemetery had changed from inactivity to an active cemetery?

A. I did not.

Q. You didn't know anything about it?

A. Nothing that made any impression on me.

Q. And you were in absolute ignorance of that fact, we will say, up to December 31, 1923, am I right?

A. When I first noticed they were working on the cemetery was when I went to look at the bungalow say in the autumn of 1926. I hadn't been over there for a long time.

Q. I don't want to mislead you, but did you intentionally say 1926?

A. Yes.

Q. But you didn't quite answer my question, Mrs. Aleck. It was this. Up until December 31, 1923, I should say, you knew nothing about the fact that this cemetery which had lain there inactive for at least ten years, had developed into a condition of business activity, interments being made, and physical changes being made to the property, you knew nothing about it up to that time?

A. No.

Q. Hadn't heard anything about it?

A. No.

Q. You saw your son at least twice and he never mentioned it to you?

A. I don't remember his mentioning the cemetery to me.

By the Court:

Q. Did you know lots were being sold there during the time Mr. Carr is inquiring about, during 1923?

A. I didn't hear that first part, what was that?

Q. Did you know that cemetery lots were being sold?

A. Oh, no, no, of course, not; I hadn't any idea of such a thing.

The Court: What bothers me is how it is that these men that were specialists in selling stock didn't unload some on Mrs. Aleck.

Mr. Carr: Perhaps they did.

The Witness: I have a letter at home I can locate from a friend of mine upon whom Mr. Darcy and Mr. Cawthorne called and tried to sell stock, and she said they were certainly gifted talkers.

Mr. Carr: I hardly think this is evidence.

The Witness: But I don't know when that was.

Q. That would be very interesting, but I don't think it is evidence. Will you say, taking the next year, up to December 31, 1924, you were still in ignorance of whatever changes had occurred with regard to the Locustwood Cemetery?

A. I was away from after the Christmas holidays until late in May, I was away from Collingswood.

Q. I am trying to find out whether you knew or didn't know?

A. I don't remember hearing anything about it, no.

Q. That is your present impression, you knew nothing about the sale of stock, the sale of lots, physical changes at the cemetery, we will say, until December 31, 1924, that is a year later?

A. I received this letter from Mrs. Lillian Depew telling me about their trying to sell her stock.

Q. Have you any idea when that was?

A. No. I think I have the letter; I will look it up.

Q. Outside of that, if that was in 1924, you had no notice or knowledge there had been any change in regard to the cemetery association, am I correct or incorrect?

A. I think you are correct.

Q. Now, when was it you first heard there had been any material change in the situation in regard to the Locustwood Cemetery?

A. Let me see, it was in February, 1925, the case was heard about the Equitable Estates. Well, I don't know whether the cemetery matter had been discussed previous to that or not.

Q. I am trying to find out when you personally first learned?

A. I would tell you in a minute if I remembered, but I really don't remember.

Q. Was it sometime early in 1925?

A. I was in Atlantic City all that time.

Q. Well, Mrs. Aleck, the information got to you at some time?

A. I was in Atlantic City from the 3rd of November, about, until the 18th of May.

Q. 18th of May, 1925?

A. Yes, so I didn't see the Camden papers or hear anything about what was going on in that part of the country; my attention was entirely taken up with Atlantic City.

Q. At any rate, you hadn't heard anything about the condition of the cemetery until after May, 1925?

A. I could refresh my memory by some letters; I don't remember now when those letters were written.

Q. Have you any distinct recollection at this time who brought the matter to your attention?

A. Friends of mine upon whom Messrs. Darcy and Cawthorne called.

The Court: What?

The Witness: Messrs. Darcy and Cawthorne called on some friends of mine and I received some letters from them telling me they were selling cemetery stock and lots.

The Court: You say you don't know when that was?

The Witness: No, but I will look up the letters. I am sure I had one, at least.

Q. During all this period your son didn't discuss the cemetery with you at all?
A. No.
Q. You made no inquiry?
A. I very seldom saw him.
Q. You saw him several times in that interval?
A. Yes.
Q. He never mentioned it to you?
A. No.
Q. And you never spoke to him about it?
A. I don't remember about that.
Q. You would remember, wouldn't you?
A. I think I would.
Q. At any rate, you remember no talks between yourself and your son?
A. About the cemetery?
Q. About the cemetery; I am bringing you up now as far as May, 1925.
A. I don't think you are entitled to that.
Q. I will let you answer it any way you want.
A. I said I would refresh my memory.

Q. But at the present moment you have no recollection, but you are willing to refresh your memory and come back and testify in accordance with the refreshment, is that right?

A. I am willing to refresh my memory and notify you in some way if it is necessary.

Q. We need that in the way of testimony in some way. Mrs. Aleck, in the former suit between yourself and your son and others, a petition was filed in that cause February 15, 1924, and attached to the petition as Exhibit A is an announcement of the initial development of Locustwood Cemetery signed by Mr. Burrell as president, Mr. Darcy as vice-president, Mr. Allen as treasurer, Mr. Cawthorne as secretary.

A. When do you say that was?

Q. The paper containing it was filed in this Court on the 15th of February, 1924, which Schedule A contains this statement, "Locustwood Cemetery comprises 157 acres of land fronting on the Marlton Pike, Camden County, New Jersey, and running along the west side of Cooper Landing Road one mile to Chapel Road."

A. Of course, if I had seen such an untruthful statement as that I would have contradicted it.

Q. And attached to that is your affidavit.

A. That I said anything like that—never.

Q. I say, attached to the petition is an affidavit taken by you—that is your signature, isn't it?

A. What do I say?

Q. That is your signature?

A. It looks like it. I am very blind.

Q. Your affidavit is attached to the petition and sets forth in the petition that the Locustwood Cemetery, Inc., are posting these advertisements, sending out this prospectus?

A. What is the date?

Q. The date of your affidavit is the 6th day of February, 1924?

A. Yes.

Q. I am asking now whether in view of that affidavit and the advertisements annexed to the ——

A. What do I say in the affidavit, have you any idea?

Q. Have you difficulty in reading?

A. Oh, yes, I can't read at all. I suppose that is the reason I remember so much, I have to be accustomed to hearsay.

Q. Are you satisfied that I read this to you accurately?

A. It might take too much time.

Q. I would rather read it.

The Court: Is there any way we can escape that?

Mr. Tyler: I think if counsel will refresh the witness' mind, being a petition filed for injunction.

The Witness: Yes, I remember the injunction proceeding, that was in 1924, I recall it.

Q. You were in error when you said you knew nothing about the changed conditions at the cemetery up to December 31, 1925, you were mistaken, weren't you?

A. I said the first time I noticed they were working there was the day my son drove me over to see the bungalow which was in the beginning of 1926.

Q. Aren't you mistaken as to the year, 1926?

A. No.

Mr. Tyler: She has been consistent with that, Mr. Carr, 1926, that is the physical condition.

The Witness: Yes, as to the physical condition. That is when I saw the office building had been erected. I didn't go on the grounds at all, I just saw it as I drove by.

Q. But you did know as early as February, 1924, that there was a changed condition at the cemetery, didn't you?

A. Before the injunction Mr. Koehler came and saw me ——

Q. Who brought it to your attention and when was it brought to your attention?

A. The injunction?

Q. No, the facts which you set up in your injunction application?

A. I don't know what the facts are, I have forgotten.

Q. Can you tell me when, if at all, you learned of the change in the physical conditions at the Locustwood Cemetery, whether directly or indirectly?

A. The first time I saw them is when I told you.

The Court: Can you tell when you first learned about them; you must have known about them when you applied for that injunction.

The Witness: Yes, I knew that, and I remember Mr. Koehler coming to me and reading me an injunction.

Q. How long before that did you have any knowledge at all, either directly or indirectly?

A. The knowledge I had made very little impression on me. I knew there was a Mr. Darcy and Mr. Cawthorne and they were doing something, but I didn't know what. I hadn't a car, and I don't walk and I had no way of going out there.

Q. Then you have no distinct recollection when this matter first came to your attention before the injunction proceedings?

A. No, I have not.

The Court: Gentlemen, I am tired and it is time to quit. You have now taken a day I am supposed to have for my opinion work. Now, we have got to make some arrangements about finishing this case. (After discussion.) Well, it is off until the 28th unless you agree on an earlier time.

Camden, N. J., July 6, 1927.

(Trial of the cause resumed on the above date in the presence of respective counsel.)

HELEN C. ALECK, resumed.

By Mr. Tyler:

Q. Mrs. Aleck, you were testifying at the last hearing as to the time you had talked with Mr. Darcy about your litigation with the Equitable Estates Corporation. Now, I show you what purports to be a telegram and an envelope and ask you whether you received that from him?

A. Oh, yes, I received it from Mr. Darcy.

Mr. Tyler: I want to offer in evidence telegram as follows: "New York, N. Y., 10/10/22. Mrs. Douglas, 23 E. Stiles Avenue. Am postponing my visit till Thursday if not convenient wire me 308 west 134th. M. Darcy," with the envelope addressed to Mrs. Douglas.

(Said telegram marked Exhibit T1, 7/6/27.)

Q. Do you recall Mr. Darcy coming on Thursday as stated in that telegram?

A. Yes, sir.

Q. I show you another telegram and the envelope and ask you if you recognize that and from whom you received it?

A. Will you kindly read it to me; I see it is a tele-

gram and directed to Mrs. Douglas but I can't read it.

Q. Can you read the signature on it?

A. Yes, I can see that. M. Darcy.

Q. Did you get that from Mr. Darcy?

A. I did.

Mr. Tyler: I offer that in evidence.

(Said telegram marked Exhibit T2, 7/6/27.)

Mr. Tyler: New York, N. Y., November 8, 1921. Mrs. Helen C. Douglas, 23 East Stiles Ave., Collingswood, N. J. Just returned from short business trip found your two letters waiting am unable to see you at present if you have suitable tenant lease him the farm being unable to attend to this matter with the promptness you require, Yours respectfully. M. Darcy." Envelope of the Postal Telegraph-Cable Company addressed to Mrs. Helen C. Douglas, 23 East Stiles Ave., Collingswood, N. J.

Q. Mr. Darcy, as I recall, testified he had not been to your house, had no conversations with you either in 1921 or 1922, do you recall that, Mrs. Aleck?

A. I think I do in this last trial.

Q. Yes, in the present trial?

A. Yes.

Q. And since you testified last you handed me these telegrams?

A. Yes, sir.

Q. You found them among your papers?

A. Yes, sir.

Q. You say at the time stated in those telegrams you did talk to Mr. Darcy?

A. I did.

The Court: Where?

The Witness: In my own home, 23 E. Stiles.

Q. The telegram dated October 10, 1922, was after you had brought your suit against Dr. Spear and the Equitable Estates Corporation, do you recall that?

A. Yes.

Q. Now, you previously testified you talked to him in June, 1922?

A. As near as I can recall.

Q. And he read the bill of complaint?

A. He did.

Q. Did you talk to him in October about the subject-matter of the suit pending against the Equitable Estates Corporation and Charles C. Spear?

A. Yes.

Q. You did?

A. Yes.

Q. Can you say what the purpose of this visit to you was in October, 1922, by Max Darcy?

A. To induce me to turn everything over to my son.

Q. That was the purpose of his visit?

A. Yes, that was the burden of his song.

Q. Now, to induce you to turn everything over to your son. Will you tell us, please, what everything referred to in that conversation, did it refer to property, or what?

A. It referred to all the estate on the Marlton Pike.

Q. That is, the Cooper Homestead Farm.

A. The entire Cooper Homestead Farm.

Q. And that was one of the pieces of property that was in litigation?

A. It was.

Q. Do you recall what you said to him and what he said to you about the title to that property?

A. He knew it was my property, he said he was glad it was mine, and it would be to my interest to turn it over to my son absolutely, that he was a young man and more capable of attending to business and it was my duty to do so.

Q. Was the Equitable Estates Corporation mentioned?

A. Yes, we always spoke of that.

Q. Will you tell us what was said about that, or whether anything was said about the title being put in the Equitable Estates Corporation?

A. I said I had delayed a year before I had the complaint filed with the hope that we might come to an amicable settlement, but I found that was out of the question and I was unwilling to give up my estate during my lifetime.

Q. I understood you to say previous to that he had read the bill of complaint?

A. He had. It was in June, 1922, he came and spent a good part of the day, and Mr. Aleck, I think it was, went up-stairs and got the bill of complaint and I asked Mr. Darcy to read it and he did, and we went carefully over the different parts and discussed them.

Q. That was the bill of complaint, wasn't it, against Charles Cooper Spear and the Equitable Estates Corporation, wasn't it?

A. Et al, yes.

Q. Now, I show you what purports to be a clipping from the Camden Daily Courier and ask if you ever saw that before, and where, and how you got it?

A. Yes, I remember Mr. Koehler had that printed in the Courier.

Q. Have you made a memorandum on the back of it in your writing? If so, tell us what date that was published in the Courier, will you please. There appears to be endorsed on the back of this, "Camden Daily Courier, September 17, 1923," did you put that on there?

A. Yes, I wrote part of it and Mr. Aleck wrote part. This is my writing here and that looks like Mr. Aleck's writing.

Q. The blue pencil is Mr. Aleck's?

A. Yes, sir.

Q. But the ink is yours?

A. Yes, sir.

Q. Was that taken from the Courier of that date?

A. It was.

Mr. Tyler: I want to offer in evidence as a published statement or announcements bring to the attention of the Locustwood Cemetery Company, or incorporated, and to the officers, a notice of the claim of Mrs. Aleck prior to the date that the alleged contract was supposed to have been made and referring to litigation in which the Locustwood Cemetery, Inc., was a party at that time.

The Court: You may file it for use. It hasn't any probative force unless they have seen it but the circumstances of the case may establish they did see it, and that can be filed as the basis of a claim if they saw it.

Mr. Carr: But unless connected up it wouldn't have any probative force.

The Court: No, unless it is shown they saw it or circumstances are proven to show that they must have seen it.

(Said clipping marked Exhibit T3, 7/6/27.)

Cross-examination.

By Mr. Carr:

Q. Mrs. Aleck, do you remember whether you gave an option on the Cooper Homestead Farm in October, 1922, to anyone?

A. To whom?

Q. Did you give it to anyone at all, do you remember?

A. In 1922?

Q. Yes, October, 1922?

A. I would have to refer to my papers to answer that.

Q. Have you any recollection at all on the subject?

A. No.

Q. Do you remember giving an option to Mr. McCloskey in October, 1922?

A. A Mr. McCloskey came to see me ——

Q. Pardon me. Can you tell whther you did give an option or not?

A. But I don't think the option was concluded. We talked about one.

Q. You say no option was ever signed?

A. If it were it was tentative.

Q. You know whether it was signed or not, don't you?

A. As I say, it was tentative, there was nothing absolute.

Q. It was signed by you tentatively, is that right?

A. We probably did sign something in that way.

Q. Did you sign an option, whether tentative or otherwise, to Mr. McCloskey?

A. I believe I did.

Q. And do you recall the price was $90,000 for the Cooper Homestead Farm?

A. That is what he offered me.

Q. Wasn't that the option figure?

A. I say I didn't accept it.

Q. You accepted the $1500 that was paid on account of it, didn't you?

A. Before ——

Q. Pardon me. Didn't you accept the $1500?

A. That was tentative also, he got it back again.

Q. But it has been retained by you to the present time?

A. No, sir.

Q. It was returned to Mr. McCloskey?

A. He got it back again.

Q. You gave it back to him?

A. I don't know that I am obliged to tell here how he got it back but he did get it back, because Mr. Koehler told me so.

Q. Did you give it back to him?

A. Do I have to answer that?

The Court: There is no reason why you shouldn't. You are not ashamed of it, are you?

The Witness: No, sir, not at all. If I remember it there was a clause ——

Q. Pardon me. I would like to know whether

A. He immediately turned around and re-sold the place to Mr. Clow and Mr. Clow paid him $1500 on account.

Q. On the resale?

A. Yes.

Q. But as far as you were concerned ——

A. And then I saw Mr. McCloskey and we called it off.

Q. And you retained the $1500?

A. Yes, but he got it back from Mr. Clow.

Q. And that you say was likewise tentative and never delivered?

A. What was tentative?

Q. The option was tentative and never delivered?

A. It was called off.

Q. Beg pardon?

A. It was called off.

Q. When it was signed and you got the $1500 the signed paper was handed to Mr. McCloskey, wasn't it?

A. Yes.

Q. Was it a complete delivery at that time or was there conditions attached?

A. There were conditions attached.

Q. He went away with the paper?

A. And Mr. McCloskey didn't fulfil the conditions.

Q. Mr. McCloskey took away the signed paper and you had the $1500?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir.

Q. And you say there were some conditions that were not apparent on the face of the paper?

A. Some conditions were not fulfilled.

Q. There were some conditions that were not apparent on the face of the paper that affected Mr. McCloskey's rights, you say?

A. I think they were apparent but he didn't fulfill the conditions and the sale was called off.

Q. As far as the paper was concerned it was complete on its face, wasn't it?

A. I just said it was not.

Q. Not complete on its face?

A. If a thing is conditional it is not complete.

Q. Was the delivery of the agreement to Mr. McCloskey conditional?

A. Surely.

Q. What was the condition which affected its vitality as an instrument?

A. He was to make other large payments in rapid succession and he didn't make them.

Q. By the terms of the agreement he was to make other payments?

A. Yes, sir.

Q. Do you mean he defaulted in carrying out his agreement, is that what you mean?

A. Yes, he did.

Q. Then the agreement was a completed agreement but McCloskey defaulted in its terms?

A. It was a conditional agreement and Mr. McCloskey defaulted.

Q. If Mr. McCloskey had made the payments contemplated by the agreement he would have been entitled to the land as far as you were concerned?

Mr. Tyler: I object to that.

The Court: I think that is proper, Mr. Tyler. She has left it in the air whether there were any conditions apparent on the face of the agreement.

Mr. Tyler: I think the witness should be apprised of what the question embraces before she is compelled to answer what the agreement refers to.

The Court: I think it is proper. She has left it uncertain as to what conditions she does refer to.

whether there was something on the side or something apparent on the face of the agreement.

(Question repeated.)

The Witness: I wouldn't have completed a transaction like that without consulting Mr. Tyler.

Q. Without consulting who?
A. Mr. Tyler.
Q. You signed the agreement without cousulting him?
A. Yes, because it was tentative.
Q. And took the money without consulting him?
A. Yes, sir.
Q. What was there that made the delivery of this instrument conditional?
A. I have just said.
Q. I didn't understand it, Mrs. Aleck, won't you tell me again?
A. I said it two or three times.

The Court: Tell him again, Mrs. Aleck, and let us get through.

The Witness: Mr. McCloskey didn't fulfill his part of the contract.

Q. You mean he defaulted?
A. Yes.
Q. And that is why you say it was a conditional agreement?
A. Surely.
Q. That is the only reason why you say it was a conditional delivery, is that right?
A. I am not sure of that.
Q. All of the conditions you speak of now with re-

gard to defaults were in the agreement, weren't they?

A. I suppose they were; I have forgotten the agreement now.

The Court: If the agreement can be secured can't she go over it and refresh her memeory on it. I don't think anyone can stand up under an examination about a written agreement made that far away.

Q. Mrs. Aleck, I show you ——

The Court: You had better read it over to her.

Q. A paper dated the 28th of October, 1922, purporting to be an agreement between George H. Aleck of New York, Helen C. Douglas of Collingswood, N. J., called the sellers, and Louis W. McCloskey of Haddonfield, called the purchaser, and appearing to be signed by Mr. Aleck, by yourself, and by Mr. McCloskey.

A. And Mr. Thompson.

Q. Mr. Thompson as a subscribing witness.

A. Charles Thompson.

Q. That is your signature, isn't it?

A. Yes.

Q. And Mr. Aleck's signature?

A. He will have to say that himself; it looks like it. What of it? It was my property and I had a right to sell it if I wanted to.

Mr. Carr: I will omit the lengthy description. I am reading this for the convenience of the lady whose sight is not very good.

The Court: He is refreshing your memory so

you won't be compelled to depend on your memeory for a transaction so long ago.

Q. I understand your vision is a little defective?
A. Very defective.
Q. And I am reading it for your convenience.
A. I can't even see your face.

Mr. Carr: This is an agreement between the parties mentioned and it starts by saying, "First. That the sellers agree to sell and convey and the purchaser agrees to buy from the said sellers all the right, title, interest and ownership of the sellers of, in and to the real estate hereinafter described, on the terms hereinafter set forth." Then follows a description which I take it is the Cooper Homestead Farm containing 153 acres and 77/100 of an acre. "The total price to be paid for the said real estate is the price or sum of $90,000, to be paid as follows: A. $1500 in cash upon the signing and delivery of this agreement, receipt whereof is hereby acknowledged."

Q. That is the payment you received?
A. Yes.

Mr. Carr: B. $1000 in cash on the 30th day of November, 1922. C. $2500 in cash on the 28th day of February, 1923. D. $25,000 in cash on the day of settlement. E. Sellers to take back a first mortgage for $50,000 for a period of five years with interest at the rate of six per cent per annum payable semiannually. This mortgage is to be a releasing mortgage on the following basis." Then come the release clauses which I take it are not essential: "Sellers to take back a second mortgage

for the balance of $10,000, with interest at the rate of six per cent per annum, payable semiannually. This second mortgage to be paid in full within one year from the date of settlement. 4. Taxes for the year, 1923 to be apportioned to the day of settlement. 5. The title to said real estate is to be a good and marketable title, in fee simple, clear of all encumbrances other than as aforesaid. It is agreed time shall be the essence of this agreement, which shall apply to each and every payment of money, and that settlement shall be made at such place as may be agreed to by the parties concerned 90 days after the sellers establish a clear title which shall be not later than the 28th of October, 1923. 7. If the title to said real estate is not a good and marketable title in fee simple, then in such case, the aforesaid sums paid by the purchaser to the sellers shall be returned to the purchaser without interest on the 28th day of October, 1923, and that right to remedy shall thereupon cease and determine. Executed the day and year hereinabove written,'' Signed by Mr. Aleck, yourself, Louis W. McCloskey, and a witness by the name of Mr. Thompson.

The Witness: May I make a statement.

Q. Pardon me. You may later. Were there any conditions not contained in this instrument that affected the validity of its delivery or in any way impaired its force?

A. Not that I know of, unless it was this Mr. Thompson who made the sale for me said it was an inadequate price.

Q. That you were selling it too cheap?

A. Yes. And he said, ''I hope Mr. McCloskey won't come up with his payments, because it will be

a great sacrifice to let the property go at that figure," and for that reason I didn't urge Mr. McCloskey to keep his agreement.

Q. Then are you prepared to say this was an effective instrument when delivered free from any conditions affecting its delivery?

A. It is free from any conditions affecting my right to sell.

Q. Do you question in any way Mr. McCloskey's right to buy under its terms provided he carried out the terms?

A. No.

Mr. Carr: Mark that as an exhibit.

(Said agreement marked Exhibit S1, 7/6/27.)

Mr. Tyler: May it please the Court, I want to offer in evidence Book 2 of the record of lis pendens in the office of the Register of Deeds of Camden County, page 411, being a record of a lis pendens in the suit between Helen C. Douglas and Charles C. Spear and the Equitable Estates Corporation in the Court of Chancery affecting the title to property known as the Cooper Homestead Farm, lis pendens being dated April 24, 1922, and filed May 1, 1922, and I am having a copy of that lis pendens made so it may be filed in this case.

Mr. Carr: I have a copy of it here made by a young man in my office. You may look at it and it may serve your purpose.

Mr. Tyler: I also want to offer in evidence the bill of complaint which was filed in that case, being the bill of complaint that was referred to in the testimony of Helen C. Aleck and read by Max Darcy

in June, 1922, and is the same proceeding upon which the lis pendens was filed.

The Court: And upon which a final decree was subsequently entered?

Mr. Tyler: Yes, dated September 14, 1925.

The Court: And subsequently affirmed by the Court of Appeals.

Mr. Tyler: And subsequently affirmed by the Court of Errors and Appeals. Now, I want to offer in evidence the file in the Court of Chancery of New Jersey, between Josephine Allen, substituted complainant, and Charles C. Spear, and others, defendants, being a bill to foreclose two mortgages ——

The Court: The bill being filed when?

Mr. Tyler: The bill being filed November 11, 1913, Docket 37/180, the bill being originally filed in the name of Allen M. Craig and Josephine Allen being substituted, and the two mortgages set out in the bill, mortgage of $2500. Charles C. Spear to Thomas E. French, dated August 20, 1908, and that said mortgage was recorded on August 21, 1908, in book 110 of mortgages, page 583, and referring to another mortgage made by Leslie M. Holloway, dated June 7, 1911, to Theodore G. Brinton to secure the sum of $3500.

Mr. Carr: Have you got the record of that?

Mr. Tyler: Recorded in the Office of the Register of Deeds the 23rd day of June, 1911, in book 121, page 468. Both of these mortgages went to

foreclosure sale and were bought in at the foreclosure sale by deed from Joseph E. Nowrey, Sheriff, dated June 23, 1914, recorded the same day in book 389 of deeds, page 209, by George H. Aleck. It was a suit in which Thomas E. French, trustee, was defendant, Floyd H. Bradley, J. B. VanSciver Company, Philadelphia Farms Supply Company, Leslie M. Holloway, Althea Holloway, Charles C. Spear and P. M. Sharples were made defendants, recorded June 23, 1913, book 389 of deeds.

(Said deed marked Exhibit T4, 7/6/27.)

Mr. Carr: We think the offer is irrelevant but that will be argued later.

Mr. Tyler: I offer the mortgage itself made by Spear to Thomas E. French, dated August 20, 1908, recorded August 21, 1908, book 110, page 583, $2500 covering the 153 77/100 acres, excepting throughout the 13.33 acres.

(Said mortgage marked Exhibit T5, 7/6/27.)

Mr. Tyler: I offer original mortgage by Leslie M. Holloway to Theodore G. Brinton, recorded June 23, 1911, in book 121 of mortgages at page 468, and covers what is known as the Cooper Homestead Farm by the same inaccurate description as appears in the deed from Thomas E. French, trustee, and others, to Leslie M. Holloway.

(Said mortgage marked Exhibit T6, 7/6/27.)

The Court: You mean to include the files in the foreclosure suit?

Mr. Tyler: Yes, to show that any interest that Charles Cooper Spear may have had in those premises was foreclosed, settled and extinguished by these proceedings. The mortgage recites, "Together with all and singular the buildings, woods, ways, waters, water courses, rights, liberties, privileges, improvements, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof."

GEORGE ALECK, sworn.

By Mr. Tyler:

Q. Where do you reside?
A. Where do I reside?
Q. Yes.
A. 23 E. Stiles.
Q. Collingswood?
A. Collingswood, N. J.
Q. And Mrs. Helen C. Aleck is your wife?
A. Yes, sir.
Q. How long have you been familiar with the litigation with regard to the Cooper Homestead Farm?
A. Familiar as to what I have learned through documents, and so on, was back to 1910, and before that, 1907.
Q. You are the George H. Aleck referred to in the deed from Joseph E. Nowrey to George H. Aleck?
A. Yes, sir.
Q. Did you read the bill of complaint that was filed by the then Mrs. Douglas against Charles

Cooper Spear and the Equitable Estates Corporation?

A. Yes, sir.

Q. When did you first see that?

A. I can't remember the date. I suppose as soon as it appeared, whenever that was. I believe it was a William Harker who got it up at that tmie.

Q. Do you recall having a conversation with Mr. Darcy?

A. Yes, sir.

Q. Were you present at 23 E. Stiles Avenue when Mr. Darcy was there?

A. I met Darcy there probably three or four times.

Q. Will you tell us when you first met him there?

A. I will take it this way. In the year Mrs. Browning died, in October.

Q. What year?

A. October, 1921, and Mrs. A. closed the house.

Q. You mean your wife?

A. Yes, sir. The beginning of January she closed the house and moved out of town and between those dates I met Darcy two or three times.

Q. You met him two or three times between those dates?

A. Three or four, probably.

Q. Do you recall his coming to the house on East Stiles Avenue?

A. Yes, sir.

Q. Do you know what was discussed at that time?

A. The first time I met him he discussed the matter and told me he was a man of family and he saw that place and he wanted to rent it as a farm.

Q. That was the first discussion?

A. Yes, sir.

Q. When was that?

A. That was probably November, 1921, the latter part, somewhere around there, the first or second visit to the place.

Q. Mrs. Aleck didn't rent the farm to him, did she?

A. No, sir.

Q. When did you see him again following that?

A. Well, I don't know, I can't say exactly. He would come at times when I would be working, and I would just get down on Saturdays and by my suggestion he came certain times on Saturdays.

Q. Tell us the time following the November visit.

A. I think the next important thing that came up in the matter was when I was there and when the complaint was brought out. I think he had his meal there at the time.

Q. The bill of complaint?

A. Between Mrs. A. and the Equitable Estates Corporation.

Q. When was that?

A. I judge that was somewhere around early July or June.

Q. What year?

A. 1922.

Q. What took place?

A. The subject was constantly on the case, so the complaint was brought out and read over; I read part of it and handed it to Darcy and he read it, and we discussed the matter probably for an hour, pretty nearly.

Q. You mean the complaint in the suit in regard to the title to the Cooper Homestead Farm?

A. Yes, sir, in July or the latter part of June. I really only take it from the circumstances, I can't remember dates, but I know it was at or about that time.

Q. Do you remember how long it was after the bill of complaint was filed?

A. I should judge it was about July owing to several things. For instance, the clothes I wore, and I know the dress Mrs. Aleck had on, and I know it was extremely warm and hot.

Q. Do you know how long after the complaint was filed?

A. It wasn't a long time, but the nearest I can locate it is June or July.

Q. What year?

A. 1922.

Q. Do you know the purpose of Mr. Darcy coming there at that time?

A. The second time he discussed the case in a general way and asked her to withdraw the suit, that seemed to be the general trend of the conversation, and that was the only subject, apparently, we were interested in, either of us.

Q. You say you read the bill of complaint in part and Mr. Darcy read it in part. Did you read it aloud?

A. Yes, and handed it to him and he read it.

Q. Did he read it aloud?

A. I can't recall that.

Q. After he looked over the bill of complaint what discussion followed, what was said?

A. The proposition was he told about the difficulty of carrying out a case like that, she could never win, she couldn't do anything, too much against her, it was that line of argument he gave, to steer clear of the courts, she should drop the case, and that was the standing conversation during all the period I had anything to do with Mr. Darcy.

Q. And you say you were present at two or three interviews with him?

A. The latter part was just some time before the house was closed, it might have been two or three weeks before that.

Q. When was the house closed?

A. Sometime in January or February, sometime before that.

Q. What year?

A. 1923.

Q. At that conference will you tell us the purpose of his coming to the house?

A. The same thing discussed, but it ended up by him saying he had intended to turn his business over to his sons and it was her duty to do so.

Q. He had turned his business over to his sons?

A. Mr. Darcy had said that and it was her duty to do it, and he sent a letter also which I read before this where he pleaded with Mrs. Aleck to turn the property over to her son, to be a Christian lady, and for that purpose and that, and to bury her pride for the good of mankind and turn it over to her son.

Q. What property was referred to then?

A. The property in court.

Q. Set out in the bill of complaint?

A. Yes.

Cross-examination.

By Mr. Carr:

Q. Did you understand Mr. Darcy was an attorney?

A. I didn't understand you.

Q. Did you understand Mr. Darcy was an attorney?

A. No, Mr. Darcy was not an attorney.

Q. And the second occasion which you saw him,

you and Mrs. Douglas discussed at length the lawsuit then pending and discussed at length the bill of complaint, that is right?

A. Yes, sir.

Q. This is the second time you met the man?

A. The second time I remember particularly reading that. I don't know whether I saw him three or four times.

Q. In what capacity was he there making this argument for the good of mankind and Christianity, was he there as the direct representative of Charles C. Spear?

A. That is what I supposed he was there for, and I understood from his manner he was representing Charles Spear to tie up the estate in some shape, that is the position I took from what he said.

Q. Did he say he was there as the representative of Charles C. Spear?

A. No, he was a stranger to Spear at first.

Q. Did he at this time represent himself as a stranger to Spear?

A. Yes, sir.

Q. And he was a stranger to you?

A. Yes, sir.

Q. And a stranger to your wife, is that right?

A. Yes, sir, that is the early part of it; later on we found out he wasn't a stranger.

Q. But as far as you knew at that time he was an absolute stranger?

A. Yes, sir.

Q. Unvouched by nobody?

A. Yes, sir, except himself.

Q. Is it your custom to discuss family affairs of this character with unvouched for strangers?

A. Yes, sir, if I think he has business relating to the matter.

Q. Is it your wife's custom also to discuss these intimate family affairs with strangers?

A. If a man appears to give some information she might find out, yes.

Q. You weren't finding out anything from Darcy?

A. Yes, sir, we were finding out considerable.

Q. And at that time he said he was a stranger to Spear?

A. Yes, sir.

Q. What were you finding out?

A. He represented himself as a gentleman from New Orleans who had a large family and had been out around the country and saw the house.

Q. With reference ——

A. I found out at least he was sent by Spear.

Q. I didn't finish my question.

A. You wanted to know what I found out.

Q. What did you find out of value with reference to this litigation, the important problem, by this frank disclosure of your situation to Mr. Darcy?

A. What did I find out about this litigation?

Q. At that interview?

A. I found out that Spear and Darcy were well acquainted and were working hand-in-hand for some purpose.

Q. At that interview?

A. I can't say which interview, but that seemed to be the whole thing from beginning to end.

Q. At the time of the discussion?

A. Specify which time.

Q. I am trying to.

The Court: Let him finish the question.

Q. At the time of the discussion relating to the reading of the bill in equity and the then pending

suit Darcy represented himself to be a stranger to Spear?

A. No, sir, not at that time.

Q. What representation did he make as to his relationship with Spear at that time?

A. As far as I know at that time he claimed to be a tea merchant, that is part of the story.

The Court: Mr. Aleck, Mr. Carr is very deliberate in his question and you don't answer until he finishes.

The Witness: I will ask what time.

The Court: He said this time when the bill of complaint was read.

The Witness: He then apparently was working with Spear for some purpose and the purpose was to have his mother withdraw the complaint.

Q. Did he make such representation at that time?

A. Yes, sir, that was the object of the thing as we can make out.

Q. Did he make such a statement at that time?

A. Yes, he made statements to that affect.

Q. That he was there representing Charles C. Spear and speaking in the interest of Charles C. Spear, did he state that?

A. Officially I don't think he mentioned that, but that is the fact, he was there and was in communication with Spear and came there for that purpose, either at Spear's request—I can't say that—but that was the request, and he was in close communication with Spear at the time and knew him.

Q. I am now asking whether you understood at the time the bill of complaint was discussed from

anything that Mr. Darcy said that he was there representing Dr. Spear, did you?

A. I don't know whether he had a document to show, I don't know, but it was understood he was there speaking for Spear by inference, if nothing else.

Q. You and Mrs. Douglas were discussing it with him on the basis of his representing Spear in the transaction?

A. We were discussing it and he was thoroughly conversant with what was in the paper and he seemed to know the facts.

Q. What was your object of discussing it with him if he didn't represent Spear?

A. He came there for a purpose and I was trying to find out what Spear was trying to do.

Q. You suspected?

A. Yes, I suspected and proved the facts afterwards.

Q. You suspected he was there representing Spear?

A. Yes, sir.

Q. Do you know whether your wife shared in that suspicion?

A. Yes, she recognized that same position.

Q. At the time you and she both thought or suspected he was talking for Spear, is that right?

A. Yes.

CHARLES C. SPEAR, recalled.

By Mr. Tyler:

Q. Did you know Max Darcy in 1921 and 1922?
A. Yes.
Q. Did you see him in New York at that time?
A. Yes.
Q. I think it was June, 1920, that the deeds were made to the Equitable Estates Corporation by your mother?
A. Yes.
Q. And April, 1922, that the bill of complaint was filed to set aside those conveyances against you and the Equitable Estates Corporation?
A. Yes, sir.
Q. Following the filing of that bill of complaint in April, 1922, did you talk to Max Darcy about the title to that property?
A. Yes.
Q. Will you tell us, please, whether you discussed with him the purpose of that suit, what it was for, did you do that?
A. Yes, I discussed the thing fully with him.
Q. Now, do you know of his coming over to see your mother, that is true, isn't it?
A. Yes.
Q. Do you know how he came to see your mother about it?
A. At my suggestion.
Q. At your suggestion?
A. Yes, sir.
Q. Now, do you know when that was?
A. The first time he went over was in the month of October, if I recall correctly.
Q. What year?

A. 1922.

Q. 1921 or 1922?

A. 1921.

Q. 1921?

A. Yes, sir. My child was born on the 7th of October and it was then that Darcy came.

Q. 1921?

A. Yes, 1921, and it was sometime after that he went over.

Q. Taking the time when the bill of complaint was filed, do you recall his going over after that, and if so, how soon?

A. I first saw the notice of the complaint having been filed in the Camden Courier before any papers were served on me and it was right after that I talked the matter over with him, the exact date of seeing that I don't recall, but at my suggestion he went over to Collingswood.

Q. What for?

A. To see my mother and see what it was all about and see if there wasn't some way of making an amicable settlement.

Q. Did he come back and talk to you about it after that?

A. Yes, sir.

Q. What did he tell you about your mother's purpose in pressing this suit, what did he say to you about it?

A. Now, I don't recall just exactly what he said. He discussed the different phases of the bill of complaint and he seemed to think the matter could be straightened out, but he didn't accomplish anything at that interview. She seemed to be rather reluctant in doing anything.

Q. Can you fix the time when that took place, as near as possible?

A. If I had a copy of the Courier I could fix it

exactly because it was shortly after seeing that in the legal notices in the Courier.

Q. What was that legal notice?

A. I don't know how to express it, but it recited this bill in Chancery making me a defendant and the Equitable Estates Corporation.

Q. Giving you notice you must appear and answer by a certain time?

A. Notice of publication, yes.

Q. How long after that was it you asked Darcy to go and find out what it was all about?

A. I can't say, but it was shortly after that.

Q. About when was it he reported to you the substance of his conversation with Mrs. Aleck and what the substance of the bill of complaint was?

A. He came back the same day, I think, I don't think he stayed overnight. On that occasion he came to my rooms and discussed the matter.

Q. Do you recall his going over in October, 1922, and seeing your mother?

A. Yes.

Q. What was the purpose of his going then?

A. To try and bring about some kind of a settlement. I had suggested he go and broach the cemetery proposition, see if he couldn't come to some understanding whereby the cemetery could be started up again and also get her to withdraw the litigation.

Q. Had you see a copy of the bill of complaint by that time, that is, October, 1922, six months after the suit was started?

A. Yes, I sent to Norman Harker and got a copy.

Q. After you got a copy do you know whether Darcy saw your copy or you discussed with him the contents of it?

A. Yes, he did.

Cross-examination.

By Mr. Carr:

Q. Dr. Spear, putting the time you are discussing now in 1921 and 1922, you had given Darcy some sort of an option, or some sort of an arrangement for him to go out and find a purchaser for this land?

A. Yes, sir.

Q. In other words, Darcy was practically working for you at that time?

A. I don't know whether you could put it that way exactly. I had discussed this property and at that time my mother was in the notion of selling and she had written me several letters suggesting a sale and it was in that connection I spoke to Darcy about seeing if he couldn't find a purchaser.

Q. That was the idea?

A. Yes, sir.

Q. Or in some way to finance the enterprise?

A. To procure a purchaser.

Q. At that time Darcy wasn't representing anybody, as far as you knew, excepting yourself, was he, in connection with this?

A. No, he hadn't any connection with the people he became associated with afterward, he was just looking around.

Q. To find a purchaser?

A. Yes, sir.

Q. And if successful he was to be compensated by you, isn't that the situation?

A. Yes.

Q. You didn't send Mr. Darcy down to see your mother in order to get a copy of the bill of complaint, did you, or to learn what was in it?

A. To get a copy of the bill of complaint?

Q. Or to find out the contents of the bill of complaint in the other suit?

A. In 1922, you mean?

Q. Yes.

A. No, I already had a copy, I sent to Norman Harker and got one.

Q. So you knew and were informed of the nature of the suit before he went to Collingswood, isn't that right?

A. Yes.

Q. And you were asking him to use his best efforts with your mother in order to perfect a settlement, was that the purpose of it?

A. Yes, to see if there couldn't be some adjustment of it.

Q. Were the relations between yourself and mother estranged at that time?

A. No, she was in constant correspondence with me, her letters were all very friendly. It is a peculiar situation, part of the time she appears to be a bitter enemy and the next day she is a very affectionate mother.

Q. At the time Darcy went down were your relations pleasant or unpleasant?

A. They were pleasant, but she had filed this bill, of course, making some very mean charges against me, but otherwise her relations were perfectly pleasant.

Q. I was wondering why you didn't choose yourself as an ambassador to discuss this with your mother?

A. I will be perfectly frank and tell you the reason. At that time when Darcy first came to Camden I sent him over for the purpose of clearing up an indictment, if that is what you want to clear up. That is when Darcy first came over in 1921.

Q. That was his preliminary work?

A. Yes.

Q. You had been close friends for a number of years?

A. Yes, sir.

Q. And he came over as a friend to help you out?

A. Yes, sir.

Q. That had nothing to do with the cemetery proposition?

A. No.

Q. Didn't you at that time ask him to stop in and see your mother and tell her he was coming from you?

A. In 1921?

Q. Yes.

A. No.

Q. Didn't you suggest he stop in and see your mother while over here?

A. I don't recall whether I ever suggested he stop in and see her; I gave him a list of some people in Collingswood whom I wished him to see for the purpose of getting affidavits. Whether I suggested that he see her at that time, I don't know.

Q. He did come over like a good friend and help you?

A. He was compensated for it.

Q. In money?

A. Yes.

Q. You put it purely on that basis, do you?

A. It was an accommodation for which he was compensated.

Q. And it was a friendly act?

A. Yes.

Mr. Tyler: Now, I have a copy of the lis pendens, a typewritten copy which has been made from the records.

(Said paper marked Exhibit T7, 7/6/27.)

Mr. Tyler: That is all.

Mr. Palmer: If the Court please, I have a little rebuttal testimony, but I assume all the defendants should finish their case first and then I will present what little I have in rebuttal. If we have reached that stage I am in a position to do it.

Mr. Carr: We have some testimony.

Mr. Palmer: I think that ought to go in before I put mine in.

Mr. Tyler: I do have another witness here in corroboration of Mrs. Aleck and Mr. Aleck as to the conference with Max Darcy. He happened to be there at that time.

Max Rosenberg, sworn.

By Mr. Tyler:

Q. Where do you live?
A. 5812 Larchwood Avenue, Philadelphia.
Q. Do you know Mr. and Mrs. Aleck?
A. Yes, sir.
Q. How long?
A. Since about 1917.
Q. Do you recall being at their house in 1922?
A. I recall being in the house 1920, 1921 and 1922.
Q. Do you recall being there at a time when Max Darcy was there?
A. I recall being there on two occasions when

Max Darcy was there. The first time was November or December, 1921, about his third visit to Mrs. Aleck's home, and the second time was in June, 1922.

Q. In June, 1922, will you tell us what the conversation was about?

A. I can tell you in this way, that on my first visit Mr. Darcy had been at Mrs. Aleck's home, who was then Mrs. Douglas, that was on his third visit there, and I also made calls at Mrs. Aleck's home between the first time I saw Mr. Darcy and the second time, and during those times she would tell me the progress that was made in the affairs and the happenings with Mr. Darcy.

Q. Up to June, 1922, or rather, in June, 1922, you were there when Mr. Darcy was there?

A. Yes, sir, I was.

Q. What was discussed at that time?

A. Why, one of the things that was discussed was the bill of complaint that Mrs. Douglas had brought to court between herself and the Equitable Estates Corporation.

Q. Did you see the bill of complaint?

A. Yes, I did.

Q. What was done with it, what was it used for at that meeting?

A. It was used to enlighten Mr. Darcy on the affairs and progress that was taking place between Mrs. Aleck and Spear.

Q. What did they do?

A. The bill of complaint was gotten by Mr. Aleck, he went upstairs and brung it down and showed it to Mr. Darcy, and Mr. Aleck read part of it and also showed it to Mr. Darcy.

Q. Was it read aloud?

A. Mr. Aleck read parts of it aloud; I don't re-

call Mr. Darcy reading it aloud, but he looked it over.

Q. After Mr. Darcy looked over the bill of complaint what discussion took place in your presence there, what was said about the bill of complaint, if anything?

A. I don't know how to answer that question. I know previous to that time Mr. Darcy's purpose was ——

Mr. Carr: I object.

Q. Did he say what he came there for?

A. I think his purpose was to have her withdraw the bill of complaint.

Q. He had talked about the bill of complaint?

A. Yes.

Q. What did he say about withdrawing the bill of complaint?

A. If I remember correctly he thought it was possible they could compromise, Mr. Spear and his mother, without taking the affair to court.

Cross-examination.

By Mr. Carr:

Q. How did you come to be there, Mr. Rosenberg?

A. Why, being a friend of Mr. and Mrs. Aleck, Mr. Aleck working over in New York at the time and Mrs. Aleck being alone in the house, I would come down occasionally on a Sunday.

Q. Was this on a Sunday?

A. Yes, most of the times I would get over on Sunday.

Q. I mean, the discussing of the bill of complaint, was that on a Sunday?

A. Yes, as far as I recall.

Q. How did you come to be there on that occasion?

A. How did I come to be there on that occasion?

Q. Yes.

A. I can't say, I just came over.

Q. Were you related to them?

A. No, I am not related to Mr. or Mrs. Aleck.

Q. You came without invitation?

A. I have an open invitation to call any time at all. I am welcome there and there was no set date to come there.

Q. On this occasion you had no special invitation?

A. No.

Q. Just happened to come?

A. Yes, sir.

Q. What time of day was this?

A. This was in the afternoon, I should say, about three o'clock.

Q. Did Mr. Darcy propose any definite settlement at all in the matter?

A. No, I don't believe he did.

Q. Was he proposing any definite terms of settlement?

A. Not that I recall.

Q. Just in a general way was advising that they make peace, is that it?

A. Yes.

Q. Did he suggest that she meet her son and reach an agreement?

A. I don't recall exactly.

Q. You didn't understand he was empowered to execute any agreement?

A. No, sir, not to my knowledge.

Q. As you understood this did it call for Mrs. Aleck meeting her son and reaching an agreement?

A. As far as I understand correctly I think he was acting in an unofficial capacity as her son's representative.

Q. How was the agreement to become effective at all, as you understood it, from what Darcy said?

A. If Mrs. Aleck would withdraw her complaint they could get together.

Q. You mean he was asking her to absolutely surrender everything and talk about it afterwards, is what you understood?

A. Yes, I would say that.

Q. That is what he said, "Abandon your suit, give up everything, and talk about it afterwards," is that the substance of what he said?

A. If I understand correctly.

Q. Is that the substance?

A. The exact words I can't recall.

Q. I am asking if that was the substance of what he said as you understood it. Did he propose to Mrs. Douglas, as it was then, that she abandon her suit, give up everything, and talk about it afterwards, was that his proposition?

A. No, I can't say it was.

Q. What was his proposition?

A. For an indefinite time Mrs. Douglas kept on putting off the entry of her suit in court because she thought she could come to terms with her son.

Q. What was Darcy's proposition, if he had any?

A. I can't say exactly what his proposition was.

Q. Did he have any proposition to make?

A. I can't say he had. He was surprised she brought her suit in the bill of complaint.

Q. Did it occur to you or any of them that it didn't make any difference whether he as a stranger

was surprised or not, did that occur to you or any of those present?

A. He was a stranger in a sense, yes.

Q. Did he say he was representing Dr. Spear?

A. No, sir, he did not.

Q. Were you there when he came in?

A. There in the house at the time?

Q. Were you present in the room when he came in?

A. Yes.

Q. How did he account for his presence?

A. That wasn't his first time at the house.

Q. He said something, what did he say when he came in?

A. I can't recall.

Q. What did he say he came for?

A. He called on his first visit to rent the farm.

Q. I mean on this occasion, what did he say he came for?

A. I don't remember.

Q. He wasn't on the basis of a social caller at that time, as far as you knew?

A. No, I wouldn't call him a social caller.

Q. Therefore he came on business as you understood it?

A. Correct.

Q. He didn't say what business he came on or whom he represented?

A. His business all the time along was to rent the farm.

Q. On the occasion when this bill was discussed what did he represent himself to be, if anything?

A. He was looking out for his own interests, as I understand correctly, he wanted to rent the farm.

Q. I am talking about the time the bill was discussed, which you say was in June, 1922; he wasn't talking about renting a farm in June, 1922, was he?

A. He was kind of surprised.

Q. Was he talking about renting a farm in June, 1922?

A. I don't recall that part of it.

Q. What did he say he came for when he came in June, 1922?

A. He was surprised the complaint was put through.

Q. What did he say, did he make any statement whatever as to the purpose of his calling?

A. I can't recall.

Q. Just came in as a stranger and said he was surprised that a bill was filed?

A. If I remember correctly.

Q. Didn't say he represented Dr. Spear at all at that time?

A. No, sir.

Q. Nobody asked what business it was of his or why he was surprised, did they?

A. No.

Q. Do you remember what Darcy looked like?

A. Why, yes, I should judge he was a man around forty-five or fifty.

Q. Can you pick him out here in the court room?

A. He was sitting next to that man here, but he has moved or gone out.

Q. Can you pick him out in the court room?

A. No, I don't see him here.

The Court: There is a gentleman back there in the back seat.

Mr. Tyler: Stand up, Mr. Darcy. Is that the man?

The Witness: Yes. At that time, 1922, I thought he had a mustache.

Q. Is that the man you saw?
A. Yes, I am pretty sure of it.

MAX DARCY, recalled.

By Mr. Carr:

Q. Mr. Darcy, two telegrams have been offered in evidence, one dated November 8, 1921, Exhibit T2, addressed to Mrs. Helen C. Douglas, and signed "M. Darcy," won't you look at that, please?
A. Yes.
Q. Mr. Darcy, what was the occasion for your calling at Collingswood upon Mrs. Douglas?

The Court: At that time?

Q. At that time, referring now to the telegram dated November 8, 1921?
A. When I met Dr. Spear in New York in 1921 I believe he gave me, or asked me to find a buyer for the Cooper Homestead Farm and cemetery. I asked him why he didn't come down here himself and he told me he had gotten into some trouble several years before that and he couldn't come down. Subsequently in subsequent conversations he said to me, "I believe if you went down there and made an investigation you might get some evidence that would be favorable to me and I might be able to acquit myself," and at his repeated requests, and saying he had no other means of doing this, I decided to come down.
Q. Did he tell you the nature of the charge?
A. Yes.
Q. What did he say it was?

A. He said he was accused of murder, and I came down ——

Q. Did he say whether or not he was under indictment?

A. He was under indictment. I came down here and I called on his mother, naturally I called on his mother because she was interested in her son and she could give me certain information that possibly I couldn't get from anybody else, and I made several trips here.

Q. Speaking of your first trip, was that the purpose of your first trip?

A. Yes, sir.

Q. What was discussed on that occasion?

A. The discussion on that occasion was I told Mrs. Aleck or Mrs. Douglas at that time what I was there for.

Q. What did you state that to be?

A. I said I was there to get evidence for her son to see whether he could clear himself of the charges against him, and I wanted her to give me some information. "Now" she said, "I don't want Mr. Aleck to know you are here for that purpose, because there is bad blood between Mr. Aleck and my son, and if he finds out it is going to be hard for me," and I made several visits to her home for that purpose. I made several visits to Camden to find evidence, which I found, and upon which he was later acquitted. Not only that but I engaged an attorney to look into the matter for him, Judge Kates, who at that time had an office on Federal Street, that was in 1921, and Judge Kates received a retainer of $100, which I handed to him myself.

Q. I call your attention to a telegram dated 10/11/22, marked Exhibit T1, addressed to Mrs. Douglas and signed by yourself, and I ask what the occasion of that visit was?

A. When Mrs. Douglas found out I was helping her son in that way every once in a while she would send me a letter saying if I came down she would give me some valuable information. I had business to attend to in New York and I wasn't able to come and I sent her this telegram saying that I couldn't come when she wanted me but I would come on the date this telegram states.

Q. Did you come on the date stated there?

A. I believe I did.

Q. Was there any discussion on that occasion of the then pending lawsuit between Mrs. Douglas and her son?

A. No, sir.

Q. Did anybody hand you the bill of complaint on that occasion?

A. No, sir.

Q. Did anybody read you the bill of complaint, or part of it?

A. No, sir.

Q. Was there any discussion whatever with reference to it?

A. No, sir.

Q. Did you ever see this young man Rosenberg before?

A. This is the first time I ever saw him.

Q. Was he present?

A. I never saw him before.

Q. Did Dr. Spear show you the bill of complaint over in New York?

A. No, sir. Dr. Spear wouldn't show me the bill of complaint because at the time he was trying to get me to sell this to someone and if he had showed me the bill of complaint I would have ceased all efforts to sell the place.

Q. Did Dr. Spear tell you there was anything

wrong with the title at all when he was trying to get you to sell it for him?

A. No, sir.

Q. Did you know there was any controversy about the title when you were endeavoring to sell it?

A. No, sir.

Q. Had you known would you have come to Camden and spent your time and efforts on it?

A. No, sir, I would not.

Q. Mr. Darcy, there was some discussion with relation to stock issued to C. O. Davis & Company by the Locustwood Cemetery, Inc., I ask whether that stock was actually delivered to Davis?

A. No, it was not.

Q. And for what purpose was it used?

A. Part of that stock was used for certain bonuses given to people for the benefit of the company.

Q. Did you personally profit by a dollar of that stock?

A. No, sir.

Q. Did Mr. Cawthorne personally profit by a dollar of that stock?

A. No, sir, none of that stock was sold.

Q. It was issued to third parties for the benefit of the company?

A. Only a small portion of it was issued.

Q. As a bonus?

A. Yes.

Q. Mr. Darcy, I show you a so-called agreement of July 23, 1923, upon which the signature of Max Darcy appears as vice-president, and the signature of Mr. Powell appears as secretary of the Locustwood Cemetery, Inc., and I ask you whether or not you and Mr. Powell did sign any paper or agree-

ment at or about the date of July 23, 1923, that is, between the Locustwood Cemetery Association and Locustwood Cemetery, Inc. You may look at these signatures if you like.

A. I now recollect that there was a document of this kind signed. When the sales contract was executed to C. O. Davis & Company, why, it was agreed that upon the payment of the first $5,000 the control of the Locustwood Cemetery Association should be delivered to the Locustwood Cemetery, Inc., without which the Locustwood Cemetery, Inc., could not do business. That was one of the considerations of the purchase and Mr. Davis had a document drawn up in which the Locustwood Cemetery Association agreed to deliver that control to the Locustwood Cemetery, Inc., and I believe this is the sheet that accompanied that contract.

Q. You say there was an agreement?

The Court: What do you mean, this is the sheet?

The Witness: I mean this last page.

Q. The signature page?

A. Yes, sir.

Q. You say then there was an agreement on or about July 23, 1923, between the two companies which related to another subject-matter?

A. Yes.

Q. And that subject-matter was what?

A. The delivery of the Locustwood Cemetery Association to Locustwood Cemetery, Inc.

Q. Can you tell me the number of interments to date in the cemetery now?

A. I believe there are 96, but that figure may be off one or two, I don't know.

Q. Ninety-six bodies interred there during your administration?

A. Yes.

Q. Were any lots sold under your administration?

A. Yes.

Q. And can you tell us about how many lots have been sold?

A. No, I can't, without referring to the books; but there have been quite a number, I should say over 300.

Q. Over 300 lots actually sold?

A. Yes.

Q. And the deeds delivered?

A. Yes, sir.

Q. And paid for, is that right?

A. Yes, sir. I am not sure of those figures.

Q. Would Mr. Cawthorne know that more accurately?

A. Yes, he has the books and would know it.

Q. Do you know, approximately, how much has been expended in improvements during your administration?

Mr. Tyler: I object to this. It is not in any way re-direct and it is opening another question that was gone into fully on direct examination.

Mr. Carr: I fear I overlooked something.

Mr. Tyler: I know you went into it and I went into it fully.

Mr. Carr: I want the gross figures, that is all.

Mr. Tyler: They are all in and it simply involves the taking of the testimony the second time.

The Court: Let it stand if there is any doubt about it.

The Witness: I can't tell exactly without referring to the books.

Mr. Tyler: I object to any further testimony then.

The Court: All right, if he doesn't know that is all there is to it. Can you testify approximately?

The Witness: Yes, sir.

The Court: Go to it.

The Witness: Approximately $200,000.

Q. Expended on the physical improvements to the cemetery, is that right?

A. Yes, sir.

Q. Can you tell me, approximately, how many stockholders there are in the Locustwood Cemetery, Inc.?

A. I should say approximately 300.

Q. You sold to the public at large in and around Camden?

A. Yes, sir.

Cross-examination.

By Mr. Palmer:

Q. Mr. Darcy, speaking of an agreement which you say was made about the 23rd of July, 1923, who prepared it?

A. The agreement was prepared between Mr. Spear and C. O. Davis.

Q. At that time the Locustwood Cemetery, Inc., had been incorporated?

A. Yes.

Q. And was functioning as a corporation?

A. Yes, sir.

Q. And that agreement you think was dated July 23, 1923?

A. Approximately.

Q. You think it was the same date as this agreement you have just been shown?

A. Approximately that date; I won't say it was the exact date.

Q. What makes you remember that?

A. It was a problem to me where this signature page came from and I naturally racked my memory until I remembered.

Q. Now, this racking process which you have been putting yourself through since the last hearing was with reference to the so-called signature page of this agreement?

A. Yes, sir.

Q. And the process of going over that in your mind you came to the conclusion there had been some other agreement made?

A. I knew there must have been.

Q. You say you knew there must have been?

A. Sure.

Q. Do you know there was or was not?

A. I knew there was.

Q. And that agreement, you think, must have been made at or about the same date as this agreement?

A. Yes, sir.

Q. Why?

A. Because that was the time that C. O. Davis and Spear were negotiating.

Q. Negotiating for what?

A. For the purchase of the property.

Q. Of what property?

A. Of the cemetery and the Cooper Homestead Farm and the cemetery agreement.

Q. The cemetery at that time, the title to that, was all in the Locustwood Cemetery Association?

A. That was the motive of that agreement I have reference to.

Q. To do what?

A. To transfer the cemetery to Locustwood Cemetery, Inc.

Q. Do you mean transfer the title?

A. No, sir, the control.

Q. What do you mean by transferring the cemetery?

A. To transfer the control.

Q. How was it to be effected?

A. By appointing trustees of the Locustwood Cemetery Association individuals that the Locustwood Cemetery, Inc., might indicate.

Q. The control of the Locustwood Cemetery Association was vested in the lot-holders, wasn't it?

A. No, sir.

Q. Where was it?

A. No, sir, it was vested in the trustees.

Q. The lot-holders elect the trustees?

A. Yes, sir.

Q. Then your agreement that you speak of was that somebody was to get these lot-holders to vote for trustees such persons as were indicated by the Locustwood Cemetery, Inc.?

A. No, sir.

Q. How else could it be done?

A. The trustees were to be appointed and the others were to hand in their resignations according to the by-laws and in that way the change was to be effectuated.

Q. And you knew and know now the trustees of a cemetery association are elected by the lot-holders?

A. Yes, sir.

Q. And you know the trustees then existing in July, 1923, had been elected by the lot-holders?

A. I was told.

Q. You know enough of the management of a cemetery association to know that was true?

A. That was probably so.

Q. And the method was the then trustees were to resign?

A. Were to appoint other trustees.

Q. You have got to get rid of those in existence before you can appoint new ones. I want to know how you are going to get rid of the persons who were elected trustees by the lot-holders of the association?

A. The by-laws provided for a number of trustees larger than those in control at that time and extra men were to be appointed and those in control were to retire.

Q. The trustees then in existence were to resign?

A. Yes, sir.

Q. And the Locustwood Cemetery, Inc., were to appoint their successors?

A. Were to have a voice in it.

Q. Who was to make the appointments?

A. The Locustwood Cemetery, Inc., was to indicate them.

Q. Indicate to the Locustwood Cemetery Association the parties they would like to have as trustees?

A. Yes, sir.

Q. How was the Locustwood Cemetery Association going to effectuate that purpose?

A. By having a meeting of its board of trustees and appoint these trustees to fill the positions.

Q. And the fellows who were already trustees were to remain or resign?

A. Resign.

Q. Would that give you control of the cemetery association?

A. I believe it does. I have no legal knowledge of that situation.

Q. Was that the purpose of the agreement and how it was to be effectuated, as you have indicated?

A. Yes, sir.

Q. And that is the way that the Locustwood Cemetery, Inc., was to obtain control of the Locustwood Cemetery Association?

The Court: His statement was, Mr. Palmer, I don't know whether he is correct or not, that the board was not full and that the remaining members of the board, those on the board, had the power to fill those vacancies, and they would fill the vacancies and then they would quit.

Q. Yes, and that was the purpose of this agreement?

A. The purpose of that agreement, and also the agreement called that this was not to be done until $5,000 was paid to the Equitable Estates Corporation.

Q. Now, the Locustwood Cemetery Association had nothing to do with the Equitable Estates Corporation, did it?

A. No, sir, but the trustees of the Locustwood Cemetery Association were the same individuals who controlled the Equitable Estates Corporation.

Q. Who were they?

A. Dr. Spear and his wife.

Q. They were trustees of the cemetery association?

A. Yes, sir.

Q. Who else were trustees?

A. I can't recollect at the present time.

Q. You don't know whether there were any more or not?

A. I don't know as I can say there were any more.

Q. How large a board of trustees were you to have in the Locustwood Cemetery Association?

A. That was a matter that was discussed by C. O. Davis; he had charge of the details of that transaction.

Q. How large a board did this agreement provide for that you say was made on or about July 23, 1923?

A. It provided for a board in accordance with the by-laws of the association.

Q. How many were they?

A. Whatever the by-laws said at that time.

Q. That is what the agreement said. Didn't the agreement specify the number?

A. I can't say at present whether it did or not, not unless I would see the agreement.

Q. Where is the agreement?

A. I would like to know.

The Court: Wouldn't you be the proper person to have it, or some of your associates?

The Witness: No, because at that time I was only an incorporator, I only acted in this matter as a go-between between the Equitable Estates Corporation and the purchasers. I was only an incor-

porator and it was my purpose when everything was arranged to retire; so much so that Mr. Davis, I believe, had my resignation in his pocket.

Q. When did he get it up?

A. He got it up before I was made an incorporator.

Q. Before you even could resign?

A. Yes, sir, without date.

Q. Now, in your efforts to account for what you call the signature page you have the conclusion you now reach?

A. Yes, sir.

Q. Were copies made of that agreement?

A. I think C. O. Davis had a copy and Dr. Spear had a copy.

Q. Didn't you people keep one, didn't the Locustwood Cemetery, Inc., keep one?

A. When the actual ——

Q. I am asking whether you kept a copy of that agreement?

A. C. O. Davis kept a copy, yes.

Q. Did the Locustwood Cemetery, Inc., keep a copy?

A. C. O. Davis was supposed to hold the copy for the Locustwood Cemetery, Inc.

Q. What connection did he have with the Locustwood Cemetery, Inc.?

A. He was the organizer.

Q. What position did he hold?

A. He was general manager and vice-president.

Q. How many vice-presidents did you have?

A. I don't remember, but I think there were three or four.

Q. You were one of them?

A. Yes, sir.

Q. Who was the president?

A. James T. Cawthorne, I believe.

Q. Why didn't he sign this agreement as president?

A. You will have to ask C. O. Davis, I don't know. I had the power to sign it as vice-president and he asked me to sign it.

Q. Who asked you?

A. C. O. Davis.

Q. I ask you in whose handwriting are the words, "Locustwood Cemetery, Inc." on the signature page of this agreement?

A. That looks like Mr. Powell's.

Q. His handwriting?

A. Yes, sir. This is my handwriting, this is Mr. Powell's handwriting, and this is Powell's.

Q. No question about that being your signature?

A. No, I don't think there is any question about it.

Q. Not the slightest doubt in your mind that "Max Darcy, Vice-president of Locustwood Cemetery, Inc." signed to the agreement of July 23, 1923, is your signature?

A. It looks like it.

Q. Is there any doubt in your mind?

A. No, I wouldn't doubt that signature at all.

The Court: But you still say you never signed any agreement embodying the terms of this one?

The Witness: No, sir, never saw such an agreement.

By Mr. Tyler:

Q. You say your telegram of November 8, 1921,

was for the purpose of going over and seeing about quashing this indictment?

A. Yes, sir.

Q. Will you explain this then when you say, "Just returned from short business trip found your two letters waiting me unable to see you at present if you have suitable tenant lease him the farm." If your telegram referred to a murder indictment why did you refer to the leasing of the farm?

A. Mrs. Aleck embodied in her letters certain details about her own business and asked my advice, and probably that is one of the things she asked me about. She asked me about leasing this to a tenant and I said to lease it to them.

The Court: I would like to take out that fastener to see what is under it.

Mr. Stackhouse: I think he has examined that and I would be afraid to consent to that.

Mr. Carr: I don't like to deny your Honor anything but I think he has examined it.

Q. So the purpose of your visit was not as stated in that telegram?

A. I don't know what the telegram states about the purpose of the visit.

Q. I told you it referred to obtaining a tenant for the farm.

A. You don't understand the telegram. I beg your pardon.

Q. "If you have a suitable tenant lease him the farm."

A. Read the whole telegram.

Q. I have read it. I am reading to you the part that refers to the farm. Is there any part of the

telegram that refers to the visit in regard to the murder indictment?

A. I wouldn't refer to that in a telegram.

Q. It does not?

A. No.

Q. But it does refer to the leasing of the farm, doesn't it?

A. Yes, sir.

Q. I have asked you why if you went there in regard to the murder indictment only and not to the leasing of the farm why you refer to the leasing of the farm in the telegram?

A. I have explained about that, Mrs. Aleck ——

Q. Is that all the explanation you have?

A. I will try to explain if you will let me.

The Court: Have you any additional explanation?

The Witness: No, sir.

Q. You talked to Hobart S. Bird about leasing the farm?

A. No, sir.

Q. I am going to show you a letter of Hobart S. Bird, dated October 22, 1921, "I have received your two letters and also had conference with Mr. Darcy," is that true or not, dated October 22, 1921?

A. Not until I look at the letter.

Q. I will show you the letter.

Mr. Carr: That is not evidence, I object.

Mr. Tyler: I think it is proper.

The Court: The letter is not competent but he

can be asked whether the statements in there are true.

The Witness: I know nothing about the contents of this letter.

Q. You know Mr. Bird's signature, don't you?
A. No, sir.
Q. Do you know where his office is?
A. Yes, sir.
Q. And you have been there?
A. Yes, sir.
Q. And were you there in October, 1921?
A. I can't answer that question.
Q. And when Mr. Bird says ——

Mr. Carr: I object to what Mr. Bird says.

The Court: I don't think that is competent.

Q. Now, in your previous testimony my recollection is, and I think it is correct, you said that in 1921 and 1922 you had not visited Mrs. Aleck at all. How do you explain that in view of these telegrams?

A. I don't believe I said that.

Q. You don't believe you said that you didn't come over in 1921 and 1922?

A. No, sir, I never said that. I went to Collingswood.

Q. I have no doubt of it now because we have the proof of it. This is the previous testimony I am referring to.

A. I would like to see it.

Q. In September, 1923, you were connected with the Locustwood Cemetery, Inc.?

A. Yes, sir.
Q. You were an officer?
A. Yes, sir.
Q. And a director?
A. Yes, sir.
Q. So the litigation that took place in September, 1923, you knew about, didn't you?
A. No, sir.
Q. Didn't know about it?
A. No, sir.

The Court: When did you first learn of the litigation?

The Witness: When notice was served on us by this Court to show cause why we shouldn't be enjoined from utilizing the land outside of the original 13 1/3 acres.

The Court: I mean, when did you first learn of the suit of Mrs. Aleck against her son and the Equitable Estates Corporation?

The Witness: That was the first knowledge.

The Court: And what was that in date?

The Witness: The paper is there.

Mr. Carr: Order to show cause dated 4th of February, 1924, returnable February 11, 1924.

Q. Now, in September, 1923, you were selling stock, that is, the Locustwood Cemetery, Inc., was, wasn't it?
A. Yes, sir.
Q. I show you this clipping from the Camden

Daily Courier of September 17, 1923, in regard to the Locustwood Cemetery Co., meaning the Inc., do you mean as vice-president of the company at that time carrying on business that such a publication never came to your knowledge?

A. Never saw this.

Q. Never heard of it?

A. No, sir. What date?

Q. September 17, 1923?

A. No, sir.

Q. Read that and see if the facts aren't true.

A. I see the heading.

Q. It refers to your company?

A. No, it says, "Move to Block Spear Land Sale."

Q. And it refers to the sale of stock by the Locustwood Cemetery Company?

A. After I read it I will see. I see it refers to Dr. Spear selling stock. It says, "Dr. Charles Cooper Spear, indicted for the murder of Edward Lawrence, came into the legal limelight again today, when it was announced that he was proceeding with the sale of stock in the Locustwood Cemetery Co., located on the Cooper Homestead farm at Ellisberg when the shooting occurred. The announcement was made by Herbert J. Koehler, counsel for Mrs. Helen C. Douglas Aleck, who warned prospective buyers, asserting Dr. Spear was not the owner of the land and that he will not be able to give a clear title. The stock is being issued in the name of the Locustwood Cemetery Co." I had no knowledge that Dr. Spear was selling any stock of the Locustwood Cemetery Company.

Q. You knew the Locustwood Cemetery Company was selling stock?

A. There is no such company.

Q. The Locustwood Cemetery, Inc.?

A. Yes, we were.

Q. The fact that the Locustwood Cemetery, Inc., was selling stock is true?

A. It doesn't say that. It makes a statement here which does not refer to the Locustwood Cemetery, Inc.

Q. That is the only distinction you find?

A. I don't know. After all it is immaterial whether there is any distinction or not.

Q. Assuming that is referring to the Locustwood Cemetery, Inc., then the facts there are true?

A. I don't know.

Q. Isn't it true Mr. Koehler represented Mrs. Aleck and gave notice publicly that the Locustwood Cemetery, Inc., had no right to sell stock?

A. I don't know whether he did or not.

Q. You know somebody did, don't you?

A. No, sir.

Q. In all your connection with this company you never knew that Mr. Koehler gave notice to you, or anyone else, that you had no right to proceed with the sale of stock?

A. I have already answered that question.

Q. How did you answer it?

A. No.

JOHN F. POWELL, recalled.

By Mr. Carr:

Q. Mr. Powell, I show you a purported agreement of July 23, 1923, and call your attention to the signature page, No. 3, the words, "Locustwood Cemetery, Inc." is that in your handwriting?

A. Yes, I think it is.

Q. I call your attention to the signature following "Max Darcy, vice-president" by "J. F. Powell, secretary," is that your signature?

A. Yes.

Q. I think you have previously testified you did not sign a paper containing the conditions disclosed by this agreement?

A. That is correct.

Q. Now, do you recall signing any agreement between the Locustwood Cemetery Association and the Locustwood Cemetery, Inc., at or about the date of July 23, 1923?

The Court: And the Equitable Estates Corporation, did you include that?

Mr. Carr: They are not included, if the Court please.

The Court: There are three seals on it.

Mr. Carr: Yes, sir, three seals but only two signatures. It isn't signed by the Equitable Estates Corporation.

The Witness: I remember now signing only one such agreement and that pertained to the control of the cemetery after the first payment had been made.

Q. Do you recall the amount of that first payment?

A. $5,000.

Q. And what was the substance of the agreement as nearly as you can recall it?

A. It provided that after the payment had been

made then the control should pass to the Locustwood Cemetery, Inc.

Q. The control of which, Mr. Powell?

A. Of the cemetery.

Q. The cemetery association?

A. The cemetery association.

Q. Were there any other substantial terms of the agreement which you recall?

A. I don't recall them at the present time.

Q. But you do recall signing an agreement between the two companies mentioned the substantial purport of which related to the control of the cemetery association on the payment of $5,000?

A. Yes.

Cross-examination.

By Mr. Palmer:

Q. When did you remember that?

A. It was after I saw the sheet when my name appeared.

Q. When, how soon afterward?

A. I can't say exactly.

Q. The next day?

A. No, I don't think it was.

Q. When did you remember it?

A. I think it about the time of the last hearing in this case.

Q. Before or after the last session we had?

A. I think it was right afterward.

Q. Right afterward?

A. Yes.

Q. Then it came back to you?

A. Yes, sir.

Q. You talked about that with Mr. Darcy?

A. Yes, we have talked it over because our names both appeared on it.

Q. And you remembered the same thing about the same time?

A. I don't know when it came to his mind.

Q. He first mentioned it to you that he had remembered it?

A. I think that is when we were discussing it together.

Q. When was that?

A. That is after the last session.

Q. Where did this discussion take place?

A. I believe in this room.

Q. During the session of court?

A. No, right afterwards.

Q. Right after we adjourned the last time we were here, is that what you mean?

A. As near as I can recall it.

Q. Who first suggested that such an agreement had been made, you or Mr. Darcy, who first remembered it?

A. I believe he spoke of it first.

Q. He had remembered it and called it to your attention?

A. In talking it over.

Q. Just a minute. He had remembered it first and called it to your attention?

A. Yes.

Q. And after he talked with you about it for a while then you could remember it?

A. I recalled it.

Q. That is the way it happened, that is right, isn't it?

A. Yes, sir.

Q. You remembered it after Mr. Darcy had said to you he could remember signing such an agreement then you could remember it?

A. Yes, sir.

Q. That is the way you know about it?

A. That is the way I remember it.

Q. How many copies of that agreement were signed?

A. I should say it was signed in duplicate.

Q. Now, do you remember, or don't you?

A. I would recall at least two copies.

Q. No more than two?

A. I wouldn't say positively.

Q. Where was it signed, where were you actually and physically at the time of its execution?

A. I think it was in Camden.

Q. Whereabouts in Camden?

A. I should say it was at the office of the New Jersey Corporation Guaranty & Trust Company.

Q. Where was that?

A. That was then at 4th & Market.

Q. Was that the office of the Locustwood Cemetery, Inc.?

A. No.

Q. Was it the office of the Locustwood Cemetery Association?

A. No, sir.

Q. Why was it at this office rather than the office of either of the contracting parties?

A. Because at that time there was a meeting held in that office.

Q. A meeting of what?

A. A meeting of the stockholders.

Q. Stockholders of what?

A. The Locustwood Cemetery, Inc., and of the directors.

Q. There was a meeting of the stockholders and directors of the Locustwood Cemetery, Inc., on July 23, 1923?

A. I think that is the date, or the 24th, one of those two dates.

Q. And at that meeting the execution of an agreement upon the part of the Locustwood Cemetery, Inc., with the Locustwood Cemetery Association was authorized?

A. I think that is right.

Q. Will you get your minute book and find that for me?

A. It is in there.

Q. What does it say?

A. "Proposed agreements with Locustwood Cemetery Association were read and discussion as to those agreements by all directors present. On motion duly seconded and carried the officers of the company were directed to execute the agreements."

Q. What agreements did that refer to?

The Court: What is that date?

The Witness: July 24th.

Q. The meeting was at the office of the Locustwood Cemetery, Inc., wasn't it?

A. This says at the office of the company.

Q. That is where it was then?

A. Yes, it must have been.

Q. Then you were mistaken about the meeting being held somewhere else?

A. I know there was a meeting of the stockholders and directors. The stockholders' meeting was held at the office of the trust company and it might have been this meeting was held here.

The Court: What was that agreement about?

The Witness: That was an agreement between the association and the incorporators.

Q. It says "Agreements" doesn't it?
A. There might have been other agreements.
Q. How many were there, how many agreements did you make on July 23, 1923, with the Locustwood Cemetery Association?
A. I can't recall at this time.
Q. You wrote those minutes, didn't you?
A. No, sir.
Q. You signed them, didn't you?
A. Yes, sir.
Q. You were the secretary, weren't you?
A. I was the secretary.
Q. And it was your business to take the minutes?
A. I didn't take them personally. As I understand, they were written by Mr. Davis.
Q. They don't represent the Locustwood, Inc., minutes on July 24th, then, do they?
A. Yes.
Q. Were you there?
A. Yes, sir.
Q. And didn't take the minutes?
A. Mr. Davis wrote them up.
Q. I asked you if you took the minutes?
A. No, I don't think I did myself.
Q. Somebody else did it?
A. Yes.
Q. And somebody else wrote up the minute book?
A. Yes.
Q. And you signed it?
A. Yes, sir.
Q. And signed it without reading it?
A. No, sir, I read it.
Q. You are sure you read it?
A. Yes, sir.

Q. And you are sure it truly represents the minutes of that meeting?

A. Yes.

Q. No question about that?

A. Yes, sir.

Q. And your minute refers to agreements of the Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. And who was the Locustwood Cemetery, Inc., making agreements with?

A. With the association and the C. O. Davis & Company.

Q. They were all made at the same time?

A. Some made then, yes.

Q. What was the agreement with C. O. Davis authorized on July 24, 1923?

A. One was with respect to the sale of stock and another was with respect to the sale of lots.

Q. Do any of those agreements appear on the minutes of that meeting?

A. I don't recall.

Q. Don't you know? You have seen the minute book.

A. I don't recall whether they are in the book or not, I will have to look them up.

Q. Don't you know one agreement is put in the minute book following the minutes of that meeting?

A. I believe there is one there, yes.

Q. And one out of all the agreements that were authorized on that day then were inserted in the book?

A. I don't know whether there are others there or not until I look at the book.

The Court: Do you want to see the book? There is the July 24th meeting if you want to look at the book.

Q. Do you find any agreements?
A. That is the only one.

The Court: Did you find one recorded there?

The Witness: Yes, one.

Q. One out of all the agreements that were passed or approved on July 24th is recorded in the minutes, and the others are not recorded?
A. Yes.
Q. Do you know why?
A. No, I do not.
Q. You were the secretary, weren't you?
A. Yes.

The Court: This agreement on the 24th day of July, 1923, between Locustwood Cemetery, Inc., and C. O. Davis & Company is not along the lines of the one you described, is it?

The Witness: No.

The Court: Why would this be executed and also another one between the same parties and not put in this book?

The Witness: I don't know why they weren't put in.

By Mr. Tyler:

Q. Now, it was customary for your company when it authorized an agreement to have it referred to in the minutes, wasn't it?
A. I attended only upon a meeting or two so I don't know whether it was a custom or not.

Q. You know there was no minute appearing in the minute book authorizing the agreement of October 23, 1923, you have already testified there is no such minute?

A. October 23rd?

Q. 1923?

A. I don't recall about that.

Q. Look and see. Is there any minute authorizing that agreement?

A. I don't see any agreement authorized.

Q. Is there any minute anywhere referring to an agreement of October 23, 1923, with the Equitable Estates Corporation?

A. Not as far as I know. I haven't examined the entire book.

Q. Examine it and tell me.

A. I will have to go through the book to tell you whether there is nothing of that kind. In order to answer your question competently I will have to look through the entire book.

The Court: Will you have to look through the entire book to find out whether an agreement was authorized in October, 1923? Look far enough before and after that date to satisfy your own conscience as to whether it is there or not. You may state, if you choose, how far you have looked. (After pause.) I will assume it isn't there unless it is produced by somebody.

By the Court:

Q. How definitely do you remember the agreement which was made on July 23 or 24th, 1923? That agreement, you say, was between the Locustwood Cemetery Association and the Locustwood Cemetery, Inc., as you remember it?

A. Yes, sir.

Q. And you remember it provided for a change in the Board of Directors of the Cemetery Association after certain moneys should have been paid?

A. Yes, sir.

Q. So your recollection of it is it was an agreement by the Cemetery Association in which they agreed to change their Board of Directors?

A. Yes, sir.

Q. Isn't that rather an unusual method for the cemetery association to adopt in making a contractural obligation?

A. As I understand it that the only way they could control the association, in having their nominees made the trustees of the association.

Q. I don't see how the cemetery association can agree to elect a board of directors to be nominated by another corporation, that is one too many for me.

A. That was my understanding.

By Mr. Tyler:

Q. Why couldn't you use the trustees who were then existing?

A. I suppose they could have been if it had been satisfactory.

Q. Who were they?

A. Who were the trustees?

Q. Yes.

A. I don't know.

By the Court:

Q. Do you know whether any resignations were signed and put in escrow to be filed when the other

contract was complied with, or anything of that kind?

A. I don't know.

Q. Do you remember whether there was or not?

A. I don't remember.

Q. Do you know whether Dr. Spear signed his resignation?

A. I don't know.

Q. Do you know that he did not?

A. I don't know anything about that at all.

(At this point a recess was taken until 1:30 P. M.)

Trial of the cause resumed at 1:30 P. M., pursuant to adjournment.

JAMES T. CAWTHORNE, recalled.

By Mr. Carr:

Q. Are you the present secretary of the Locustwood Cemetery, Inc.?

A. Yes, sir.

Q. There are certain minutes of July 24, 1923, will you refer to them a moment, please? When the books came into your possession as secretary was the agreement which immediately follows the minutes of July 24th in the minute book?

A. No, sir.

Q. Did you make an effort to obtain the agreements referred to in that minute of July 24th?

A. Yes, sir.

Q. What efforts were made?

A. Why, I located Mr. C. O. Davis in Atlantic City and went to see him to try to get the agreements.

Q. Were you successful?

A. I was successful in getting this one agreement.

Q. Was that in his custody?

A. Sir?

Q. Was that in his possession?

A. That was in his possession, yes, sir.

Q. That he gave to you?

A. That he gave to me.

Q. I observe that it has been folded. What brought about the folding of it?

A. He perhaps had it in his pocket, and he gave it to me out of a folder, a correspondence folder.

Q. Did you ask him for the other agreements?

A. I asked for all the agreements he had.

Mr. Tyler: That is objected to, conversations with Mr. Davis.

Mr. Carr: Simply explanatory of the minute book.

The Court: I think it may be shown he tried to get it.

Q. What efforts did you make to get the contracts referred to in the minutes of July 24th, or all the contracts relating to the company affairs?

A. I got all that Mr. Davis had and I went over to the Newark office and searched the files.

Q. What was Mr. Davis' physical and mental condition at that time?

A. Why, he had just had a nervous breakdown, his physical condition was very bad.

Q. What with regard to business, was he transacting any business?

A. No, sir, none at all.

Q. Do you know whether he was maintaining his office in Newark, or wherever it was?

A. No, he had liquidated that, ordered it liquidated.

Q. What was C. O. Davis' business, do you know?

A. Prior to 1923 he was a cemetery developer; in 1923, that was February, 1923, to July, he was a stock broker.

Q. Do you know whether he had any successful cemetery developments?

A. Yes, sir.

Mr. Palmer: That is objected to.

The Court: What is the purpose of it, Mr. Carr?

Mr. Carr: I think it is a proper part of the picture, the res gestae, as it were. Mr. Davis has been referred to a good bit and I wanted to know what sort of a man he was. If the Court doesn't think it is of any value ——

The Court: I am afraid it is going into too broad a field.

Mr. Carr: Your Honor has the ruling hand, if it doesn't help you it won't be of any advantage to me.

The Court: Unless you have some specific matters to bring out I think the objection is well taken.

Mr. Carr: No, I only wanted to show he was a responsible man, and so on.

The Court: I can't think it would be of any value.

Q. You were asked on cross-examination with relation to a stock issue to C. O. Davis & Company, were those certificates ever delivered to Mr. Davis?

A. No, sir.

Q. What use was made of the certificates?

A. Why, nearly all of them are still in the cemetery office. There were some used for bonuses in developing the cemetery.

Q. Did you personally profit by any of that Davis stock?

A. Not a cent.

Q. What about Mr. Darcy?

A. Not a cent.

Q. Can you tell me the number of bodies interred in the cemetery since the Locustwood Cemetery, Inc., took charge?

A. Yes, sir.

Q. How many?

A. Either 97 or 98.

Q. Deeds given for all of those lots?

A. Some of them had deeds executed a number of years ago.

Q. How many deeds have been executed and delivered since the Locustwood Cemetery, Inc., have been in charge?

A. I can't answer that accurately, I should say 250 or something like that, maybe 300.

Q. Between 250 and 300 actual sales?

A. Yes, sir.

Q. Delivery of deeds?

A. Yes, sir.

Q. Can you say the character and the approximate amount spent on improvements to the cemetery since the Inc. took charge?

A. Yes, including administration costs, approximately $200,000.

Q. Can you say, approximately, how much of that is represented by physical improvements on the ground?

A. Well, of course, there was a great deal of equipment purchased, road-rollers, automobile trucks, scrapers, and tools of all kinds, is that what you refer to, the equipment and physical improvements together?

Q. Yes.

A. Well, I should suppose around $160,000 or $165,000.

Q. How much on permanent improvements to the grounds, buildings, landscaping, and so on?

A. I included that in the $165,000.

Q. I am trying to get you to exclude from that the tools, automobile trucks, and so on.

A. Separate that, you mean?

Q. Yes.

A. In other words, you mean the actual labor?

Q. How much have you expended for making roads, landscaping, buildings, building of bridges, or whatever permanent improvements you made?

A. Approximately $150,000.

Q. Have you here any pictures showing the condition of the cemetery?

A. At present?

Q. Have you photographs of the present condition?

A. I have not. I have some but I didn't bring them with me.

Q. You were asked on cross-examination at the last hearing to read a portion of the resolution passed at a meeting of the board of directors of your company held on the 9th day of July, 1923,

the portion which you read began with the resolution and omitted the recital which formed a part of the resolution. Will you kindly read the preamble to the resolution which I just referred to?

A. "Upon motion duly made and seconded and by the affirmative vote of all the voters the following preambles and resolutions were adopted: Whereas this company's main purpose of incorporating is to sell cemetery lots and to acquire and improve land for cemetery purposes, and whereas upon investigation it appears to be to this company's best interests to secure an agreement and act in such capacity for Locustwood Cemetery Association, and whereas, the Charles O. Davis has negotiated and entered into an agreement with the Locustwood Cemetery Association for the sale of all of its land situate on the Marlton Pike in the County of Camden and State of New Jersey, and the improvement of its present land and any other land which may hereafter be acquired by it on behalf of this company and is assuming all expenses incidental thereto, and whereas, Charles O. Davis will agree to finance this company, or cause it to be financed, and whereas, upon investigation its Board of Directors has found that Charles O. Davis has financed other companies to a general satisfaction, and whereas, certain of the full paid and non-assessable shares of the capital stock of this company will be required by Charles O. Davis to be utilized as a bonus to secure contracts and other valuable considerations for this company, therefore——"

Q. "Therefore be it resolved" is that it?

A. Yes, sir.

Q. I show you a photograph which I am marking on the back with the character "1" in a circle, and ask what that represents?

A. That represents an artificial lake on the Marlton Pike side of the cemetery at the southwest corner.

Q. Was that in that condition when you took charge?

A. No, sir.

Q. I show you a photograph which I am marking on the back "2" in a circle, and ask what that represents?

A. That represents the entrance, stone entrance, with an iron gate, the main entrance to the cemetery.

Q. Was it in that condition when you took charge?

A. No, sir, it was grown up in weeds, the masonry work was badly damaged, and the gate was bent in places and rusted.

Q. I show you another picture which I mark "No. 3" in a circle, do you recognize that picture?

A. Yes, sir.

Q. What is that?

A. That is a picture of the main road through the cemetery leading in from the entrance.

Q. Was it in that condition when you took charge?

A. No, sir, nothing there but a very narrow marked road, apparently plowed and grown up in big trees.

Q. I show you a picture which I am marking "No. 4" in a circle and ask you what that is?

A. That is a flag pole erected and dedicated by the Boy Scouts.

Q. Was that there when you took charge?

A. No, sir.

Q. I show you another photograph which I am now marking "5" and ask you if you know what that is?

A. That is the administration building of the Locustwood Cemetery.

Q. Was that there when you took charge?
A. No, sir.
Q. Who put it up?
A. The Locustwood Cemetery, Inc.
Q. I show you another picture marked "6" and I ask you what that represents?
A. That represents the front lawn along the highway.
Q. The cemetery ground?
A. Yes.
Q. Was it in that condition when you took charge?
A. No, it was a jungle, you couldn't penetrate it.
Q. I show you a photograph marked "7" and ask what that represents?
A. That represents "Faith Section" of the Locustwood Cemetery.
Q. Was it in that condition when you took charge?
A. No, sir.
Q. I show you a photograph marked "8" and I ask what that represents?
A. That represents part of the "Walnut Section" of Locustwood Cemetery.
Q. Was it in that condition when you took charge?
A. No, sir.
Q. What condition was it in?
A. It was a jungle.
Q. I show you a photograph marked "9" and ask what that represents?
A. That is a roadway between "Faith" and "Highland" section of the Locustwood Cemetery.
Q. Was it in that condition when you took charge?
A. No, sir, that was a creek there about 30 feet wide and 10 feet deep and we filled it in and made a road of it.
Q. These bars in the foreground?
A. That indicates underdrainage.
Q. Who put that in?

A. Locustwood Cemetery, Inc.

Q. I show you photograph marked "10" and ask you what that represents?

A. That is a creek that empties into the lake.

Q. Was it in that condition when you took charge?

A. No, sir, it was a jungle there.

Mr. Carr: I would like to offer these photographs.

The Court: They are in a book bound; let them be marked.

(Said book marked Exhibit S2, 7/6/27.)

Mr. Tyler: I object to it as immaterial and irrelevant and not being properly proven.

The Court: I think it may be introduced for the purposes of illustrating what work has been done.

Cross-examination.

By Mr. Palmer:

Q. When did you become secretary of the Locustwood Cemetery, Inc.?

A. I am not altogether sure, Mr. Palmer, without looking at the minute book. It was either October 25, 1923, or May 9, 1924, I am not sure.

Q. Can you look and verify that?

A. Yes, sir. I took the oath of office as secretary November 16, 1923.

Q. Prior to that you had been president for a while, hadn't you?

A. I was one of the incorporators and president until October 25, 1923.

Q. October 5th?
A. October 25th.
Q. And that is when you became secretary?
A. No, I became secretary November 16, 1923.
Q. 1923?
A. Yes, sir.
Q. And the minute book at that time was turned over to you?
A. Yes, sir.
Q. When did you obtain the agreement as inserted in the minute book from Mr. Davis?
A. About the middle of October, 1923.
Q. The middle of October, 1923?
A. Yes, sir.

The Court: Before you became secretary?

The Witness: My resignation as president had never been accepted, I was then president of the company as an incorporator.

Q. Now, what other agreements are referred to in this minute of July 24, 1923?
A. It says, "Proposed agreement with Locustwood Cemetery, Inc." The words "Locustwood Cemetery, Inc.," is a typographical error, I believe.
Q. You think that is a mistake then. Who were the agreements with then?
A. C. O. Davis & Company.
Q. Who was making the agreements?
A. Between Locustwood Cemetery, Inc., and C. O. Davis & Company.
Q. You don't think the minute means what it says then?
A. I am not sure about that.
Q. What agreements does it refer to?
A. It says, "Proposed agreements."

Q. You were president of the company at that time, weren't you?

A. Yes, sir.

Q. What agreements are referred to in that minute then?

A. I can only answer that by referring to the minute.

Q. And that doesn't tell you, does it?

A. I can give you my opinion.

Q. I am asking you as president of that company what agreements are referred to in this minute of July 24, 1923?

A. It refers to a stock sales agreement and a lot sales agreement.

Q. And which one of those did you afterward procure and insert in the book?

A. This agreement here.

Q. Is that the lot sales or stock sales?

A. Stock sales.

Q. And those are the two agreements which are referred to there?

A. Yes, sir.

Q. There was no agreement referred to in that minute then with reference to turning over the Locustwood Cemetery to Locustwood, Inc.?

A. No, sir.

Q. And the reference in that minute of July 24, 1923, has no reference whatever to any agreement between Locustwood Cemetery Association and Locustwood Cemetery, Inc., for the purpose of turning the Cemetery Association over to the corporation?

A. No, sir.

Q. Now, what other additions have you made to that minute book since you obtained it?

A. I have never made any additions to it.

Q. What other sheets have been extracted from

that minute book by you since you obtained possession?

A. No sheets have been extracted by me.

Q. The pages aren't numbered, are they?

A. No, sir.

Q. And it is a loose-leaf book?

A. Yes, sir.

Q. I call your attention to minutes showing regular meeting of the board of directors of the Locustwood Cemetery, Inc., held at the office of the company at Camden, N. J., at 3 o'clock on Thursday, August 30, 1923, and ask you if you know anything about that minute?

A. I don't remember the meeting; I signed it.

Q. Now, the two sheets of paper making that minute have been folded, haven't they?

A. Yes, sir.

Q. And have been folded since they were typewritten?

A. Yes, sir.

Q. And then subsequently inserted in the book?

A. Yes, sir.

Q. You don't recall anything about that?

A. They were probably sent to the secretary for signature, who was in Newark.

Q. He didn't attend your meetings then?

A. I don't know.

Q. Don't you know?

A. I don't remember.

Q. Whether he did or did not?

A. No, sir. He might have attended the meeting and left before they were signed up.

Q. Somebody else prepared the minutes for him?

A. I wouldn't say that, no, sir; I don't know.

By Mr. Tyler:

Q. Mr. Cawthorne, you say that this property was grown up as a jungle when you took possession?

A. Yes, sir.

Q. And had been abandoned for a good many years?

A. I am not able to say that.

Q. It had that appearance?

A. Yes, sir, it had that appearance.

Q. From whom did you get possession of the property?

A. From whom?

Q. Yes.

A. Why, from the Equitable Estates Corporation.

Q. You claim your right, title, or possession, whatever it is, comes through the Equitable Estates Corporation?

A. From a contract dated October 23, 1923.

Q. And no other way?

A. No other way.

Q. Whatever you acquired, if anything, was based upon the contract of October 23, 1923, that is correct, is it?

A. Yes. We came into possession of the 13.33 acres by vote of the lot-holders.

Q. When was that?

A. I think that was January 30, 1925.

Q. The only agreement that you claim any interest in any of the adjoining property is the agreement of October 23, 1923, isn't it?

A. Yes, the agreement providing for the purchase of the ground and the Spear-Fernwood agreement.

Q. That was the October 23rd agreement?

A. Yes, sir.

The Court: Your questions, Mr. Tyler, have used the word "you." By "you" you mean the Locustwood Cemetery, Inc.?

Mr. Tyler: That is true. I used the word "you" as referring to the company which you have been connected with.

The Witness: I assumed that.

Mr. Carr: If the Court please, I offer in evidence search No. 71184 of the West Jersey Title & Guaranty Company covering the Cooper Homestead Farm.

(Said search marked Exhibit S3, 7/6/27.)

The Court: Is it stipulated by counsel that that shall stand in place of proof of the record?

Mr. Carr: Mr. Tyler has said so.

Mr. Palmer: If Mr. Tyler has no objection I have no objection.

Mr. Tyler: This covers the entire field, if the Court please.

Mr. Carr: I haven't had a chance to examine this minute book of the Equitable Estates Corporation, but I would like to offer it.

(Said book marked S4, 7/6/27.)

Mr. Tyler: I think that was used and we did stipulate that there was nothing appearing in that

minute book authorizing the execution of the contract that has been referred to.

Mr. Carr: I would like to offer it, anyway. Is there anything in this minute book which deals with the October 23rd or July 23rd agreements?

Mr. Palmer: Dr. Spear's answer is there, is not.

Mr. Carr: No formal action of the board of directors recorded dealing with either of those two agreements, is that correct?

Mr. Palmer: Yes.

Mr. Carr: If the Court please, with the exception of the testimony of Mr. Melcher we rest.

The Court: What about him?

Mr. Stackhouse: We can have Mr. Melcher here tomorrow morning.

The Court: Is there any more testimony in the case except his?

Mr. Stackhouse: I know of none from our side.

The Court: What about the others?

Mr. Tyler: I am through.

Mr. Palmer: I have a little rebuttal testimony, if the Court please.

The Court: Can't you put it in now?

Mr. Palmer: I may be able to put part of it in now.

CHARLES C. SPEAR, recalled.

By Mr. Palmer:

Q. Now, Doctor, the title to the Cooper Homestead Farm was vested in you by deed of October 8, 1907, from Frank C. Somers, sheriff, wasn't it?
A. Yes, sir.
Q. That vested in you the title to the entire farm?
A. Yes, sir.
Q. And you obtained that on the foreclosure of a mortgage?
A. Yes, sir.
Q. And you purchased at that sale?
A. Yes, sir.
Q. And paid for it?
A. Yes, sir.
Q. So that on the 8th of October, 1907, the title to the whole farm was in you?
A. Yes.
Q. Then there was made what is known as the Spear-Fernwood agreement?
A. Yes, sir.
Q. And that is dated when?
A. December 31, 1907.
Q. And that was made between whom?
A. That was made between the Fernwood Cemetery Association and myself.
Q. You as owner of the property?
A. Owner of the land, yes, sir.
Q. Was there any development of that cemetery undertaken by the Fernwood Association?
A. The property had been partly developed as a cemetery, it had been started as a cemetery a few years before, before I took it under foreclosure, and the new association, that is, the Fernwood Ceme-

tery Association, they undertook to continue the development of the property for cemetery purposes.

Q. What did they do in the way of development?

A. They laid out some lawns which were measured out in lots, improved the roads, cut the grass, and took out some old trees which were not desirable, and laid out some flower beds and planted shrubbery.

Q. Those things were done between what years?

A. I think it was in 1902 that Mrs. Smith first started the cemetery, she was in possession for several years until I took the property under foreclosure.

Q. After the foreclosure and the acquisition by you of title to the entire tract what was done after that?

A. The property was kept in a suitable condition for burial purposes, more gravel was put on the road—at that time they were gravel roads, and they were extended and improved, and flower beds were laid out and shrubbery was planted.

Q. Did you have anything to do with that work yourself, give it any supervision?

A. Yes.

Q. Up until what time?

A. Up to 1910.

Q. 1910 was when you left this country?

A. Yes, sir.

Q. And went where?

A. To Nicaragua.

Q. When did you return to this country?

A. In 1915, I think it was, May, 1915, I believe.

Q. After your return in 1915 what did you discover had taken place in regard to the cemetery property?

A. It had been neglected, the lot-holders had done

nothing to keep the property in proper condition, and the cemetery was practically without organization.

Q. What, if anything, did you do to try to rehabilitate it?

A. Then I called a meeting of all of the lot-holders whom I could locate. The records of many of them had been lost so I couldn't locate all the lot-holders and notice was published in the Post Telegram, and notice was served by letter on all those whose address I could find.

Mr. Tyler: When was that meeting?

The Court: No date has been fixed.

Q. We will get to that. I will get the date for you.

A. Those notices were ten days before the date set for the meeting, which was a special lot-holders meeting to be held on the 30th day of June.

The Court: Were you still president?

The Witness: No, I was secretary.

The Court: Who was president?

The Witness: There was no president; the president had resigned, and all the trustees had resigned except myself, I was the only surviving trustee.

Q. You mean at the time this meeting was called?

A. Yes, sir.

The Court: While you were away did those resignations occur during that period, or was that a plan of your own to have them resign and reorganize?

The Witness: No, that took place, I believe the minutes will show, after I had left. There had been some changes in the trusteeship, some had resigned and others had been elected before I went away, and after I went away all of them resigned with the exception of myself.

Q. So that you were the only surviving actual member of the board of trustees at the time of the calling of this meeting?

A. Yes, sir.

Q. And that meeting was called for when?

A. 30th day of June, 1923.

Q. What happened at that time?

A. The meeting was held at the entrance to the cemetery, and Amy S. Durkin, who was a lot-holder, was elected a trustee, and myself, and Mercedes Spear, my wife.

Q. That was the 30th of June, 1923?

A. Yes, sir.

Q. Prior to June, 1923, had you had any communication or acquaintance with Mr. Darcy?

A. Yes, sir.

Q. Where did you first meet him?

The Court: Before you go into that, between 1915, when you came back, and 1923, was everything quiet, nothing done?

The Witness: Nothing was done.

The Court: This was the first activity after your return, in 1923, in June?

The Witness: Yes, sir.

Q. Where did you first meet him?

A. I first met Darcy in Blue Fields, Nicaragua.

Q. What was he doing there?

A. He was running a roulette wheel in the room back of the bar in the Tropical Hotel.

Q. How long did you know him in South America?

A. For several years, practically from 1910 until the spring of 1915, when I returned to the States.

Q. You returned to the States?

A. Yes, sir.

Q. Did you see anything of him between 1915 and 1921?

A. No, I met him in New York in 1921.

Q. What time in 1921?

A. In October.

Q. Did you have any negotiations or business relations with him with reference to the Cooper Homestead Farm, did you ask him to do anything with it, or anything of that sort?

A. Yes, I often talked about the property and suggested he was going around a great deal and he might be able to find a purchaser.

Q. Now, did he come to Camden or this vicinity for any purpose for you, did he come down here in your interest in regard to the property? He testified in coming to see your mother and other people in reference to the indictment against you.

A. He came over here to get some affidavits in regard to an indictment. I gave him a list of some people, Annie Wigglesworth, and a number of people who knew the circumstances regarding this matter for which I had been indicted in 1910, and he came over here for the purpose of getting their affidavits, because I wished to have the thing cleaned up. He made several trips.

Q. Now, was he paid for that purpose?

A. Yes, I used to give him generally $20 every time he came over, out of which he would pay his

carfare, and then he would have something left over.

Mr. Carr: How much did you say, Doctor?

The Witness: $20.

Q. After he had made these trips for you was there something done with reference to the farm, something in the way of an option, something like that?

A. Yes.

Q. Tell us about that?

A. He said in order to try to make a sale he would have to have something to show he had some authority to offer the property for sale, so an option was given him which expired automatically in a certain time if nothing had been done in the matter.

Q. Did he do anything under that option?

A. No, sir, nothing ever came of that at all.

Q. Tell us the next step with reference to this property?

A. The next time he came over to Collingswood in reference to the property was after the bill in Chancery had been filed against the Equitable Estates Corporatioin by my mother, then he came over here at my expense and saw her to see if the matter couldn't be adjusted in some way. The first time he came here he didn't say he knew me, I thought it was better for him not to say he knew me, just to come over and see about renting the property, in order to find out her attitude, and on the other occasions he then said he had seen me in New York in Mr. Bird's office.

Q. What was the beginning of the formation of the Locustwood Cemetery, Inc., do you know anything about that?

A. Yes. The matter first came up through Darcy. I had talked the matter over with him a number of times he used to come to my rooms almost every day, and we talked about this a great deal, and he mentioned having a friend, I think it was Mr. Cawthorne he referred to at that time, and he was in touch with a cemetery promoter which subsequently turned out to be this man Davis, and the result was that I had an interview with Davis and his associates, and men by the name of Dawson and Morton, I think they were curb brokers at an office at 2 Rector Street New York and the outcome of it was that Davis incorporated this Locustwood Cemetery, Inc., through the New Jersey Corporation Guaranty & Trust Company and they entered into an agreement with the cemetery association for the development of the cemetery property and the sale of lots, which is this agreement of July 23, 1923.

Q. What happened after that?

A. Well, they began work out there ——

The Court: The agreement of July 23, 1923, doesn't have the Equitable Estates Corporation a party?

The Witness: No, the Equitable Estates Corporation never had any dealings whatsoever with the Locustwood Cemetery, Inc. It was always Davis' desire to get some kind of an interest between the land interest and his company, and that I always stayed absolutely clear of. There never existed any agreement between the Equitable Estates Corporation and this company of Davis'.

Q. This agreement of July 23, 1923, of course, was made subject to the terms and conditions of the Spear-Fernwood agreement?

A. Yes, it so states in there repeatedly.

Q. And the Locustwood Cemetery Association's agreement with the Locustwood Cemetery, Inc. dealt with the cemetery land and the terms and conditions of the Spear-Fernwood agreement?

A. Yes, sir.

Q. And the Locustwood Cemetery, Inc. knew of that Spear-Fernwood agreement?

A. Yes, sir, it had been on record for many years.

Q. It had been recorded?

A. Yes.

Q. And the agreement of the Cemetery Association with Locustwood, Inc, referred to that agreement?

A. Yes.

Q. After that agreement of July 23, 1923, was made what happened?

A. They commenced working out there, as I say, first on a small scale. They were going around selling their stock, the idea was they were to sell the stock in this general corporatioin of theirs and use that money for the purpose of selling the cemetery.

The Court: This agreement of July 23, 1923, is nothing but a sales agreement?

Mr. Carr: It purports to be an agency contract which requires the Locustwood Cemetery, Inc., to carry on at their expense all the work of improvement and when they have fully completed the work of improvement then they are entitled to the excess above the minimum price fixed in the Spear-Fernwood agreement, with the right of revocation by Mr. Spear at any time, and so on. In effect it is an agency contract.

The Court: It practically makes them agents?

Mr. Carr: Yes, when we have completely improved the whole cemetery our agency begins. We have no right to sell anything until we have made all the contemplated improvements. In other words, we pay a premium for the privilege of being agents.

Q. Was any money paid to you by the Locustwood Cemetery, Inc. under that agreement?

A. Not to me as an individual, it was paid to me as treasurer of the Locustwood Cemetery Association.

Q. Some of the checks were drawn to you personally, weren't they?

A. Yes, sir.

Q. What was done with that money?

A. Deposited to the credit of the Locustwood Cemetery Association.

Q. Now, then, what caused the trouble between the Locustwood Cemetery Association and the Locustwood Cemetery, Inc.?

Mr. Carr: I object to that. That calls for a conclusion. He can state what happened.

Q. Put it the other way, what happened?

A. What started the trouble was, I found that representations were being made that the Locustwood Cemetery, Inc., had bought this property, the Cooper Homestead Farm, I was told by people that representations had been made to them that they had purchased it outright and owned it in fee, and I began by publishing notices which I placed at the entrance to the cemetery and also in the newspapers, and by notifying the Chamber of Commerce, that I found that they had made representations to the effect that they purchased the property and ——

Mr. Carr: I object to that.

The Court: Yes.

The Witness: And that led to friction, and one thing followed another until they then refused to make any more payments and the contract was declared null and void. One time they did come up and squared up the arrearage and after that they lapsed again and finally refused to pay any more money and they undertook to hold a special meeting of the lot-holders of record and without notifying the president of the association, simply, apparently, notifying just a few lot-holders who were friendly, I think, and then undertook to place in as trustees men who were not even lot-holders in the cemetery association, and by reason of litigation they have been able to hold possession and that is the way the matter now stands.

Q. Was there ever any agreement made between the Locustwood Cemetery Association and the Locustwood Cemetery, Inc., having for its object the turning over of the Locuswood Cemetery, Inc., the control of the Locustwood Cemetery Association?

A. No, sir, there never was such an agreement.

Q. In July, 1923, what was the provision of the by-laws of the Locustwood Cemetery Association as to the number of its trustees?

A. I think there were three.

Q. Was there at that time?

Mr. Carr: Have you got the by-laws here?

The Court: That can be accepted subject to verification.

Q. I think that is right, Mr. Carr. Who were the trustees at that time, July, 1923?

A. There was Dr. William J. Dubler, Mercedes Spear and myself.

Q. You were the three trustees?

A. Yes.

Q. Did you ever notify Mr. Burrell as president of the Locustwood Cemetery, Inc., anything about the difficulties or troubles between that company and the Locustwood Cemetery Association?

A. Yes, sir.

Q. When did you do that?

A. About September, 1923.

Q. What did you say to him?

A. I asked him if he had been told that the Locustwood Cemetery, Inc., his company, had bought the Cooper Homestead Farm and he said, yes, that was his understanding, and I said, "That is not so, you had better look into the affairs before that representation is made any further."

Mr. Tyler: Can you fix the date of that?

The Witness: September, 1923; the exact day of the month, I can't say.

Q. Now, Doctor, did the Locustwood Cemetery, Inc., have a copy of this July 23, 1923, agreement?

A. Yes.

Q. Did you have access to their office between July 23, 1923, and the end of that year?

A. I was in the office at times.

Q. Did you have a key to the office?

A. No.

Q. Did you ever take your family there to wait for you while you were around Camden?

A. No. I took my wife and child there a couple

of times and they have stayed in there for a short time, but always when someone was in the office.

Q. Did you ever take them there when there was no one in the office, any of the representatives of the Locustwood Cemetery, Inc.?

A. No.

Q. Do you know Theodore M. Solomon?

A. Yes.

Q. Did you ever take to him any contract dealing with the cemetery property or the farm property and show it to him?

A. No.

Q. Now, this agreement of July 23, 1923, who prepared it?

A. I did.

Q. You drafted it and typewrote it yourself?

A. Yes.

Q. Now, Doctor, going back a ways, you recall the transfer of this farm property together with the Spear-Fernwood agreement from you to Mr. French as trustee?

A. Yes, sir.

Q. What was the purpose of that?

A. The purpose of it was to protect my mother. She was to have all the income during her life and then upon her death the remaining interest would go to myself or my heirs.

Q. That trust agreement was made at a time when you had title to the farm?

A. Yes, sir.

Q. You also at that time owned the Spear-Fernwood Agreement?

A. Yes, sir.

Q. They both had been put into that trust deed?

A. Yes, sir.

Q. Do you know anything about the dissolution of that trust and the reason for it?

A. I never could see any real reason for it, except mother wasn't satisfied and Mr. French had considerable annoyance with it and he wanted to get it off his hands, so it was finally agreed that he should revoke the trust, and the farm she wanted to have as her suburban residence, she always took a great deal of interest in that as a home, that was to be made in the name of a trustee agreeable to her and that the cemetery was to refer to me. She never had any interest in the cemetery, she was always antagonistic to it, didn't like the idea of having a cemetery there adjoining the mansion house.

Q. What was to become of the Spear-Fernwood Agreement upon the dissolution of this trust?

A. That was to revert to me.

Q. You were the one who had put it into that?

A. Yes, sir.

Q. Was there any formal assignment of that Spear-Fernwood Agreement to you by Mr. French?

A. No, sir.

Q. You had physical possession of it?

A. Yes, sir.

Q. And have always exercised control over it?

A. Yes.

Cross-examination.

By Mr. Carr:

Q. Doctor, this option which you gave Mr. Darcy in October, 1921, that provided for 66 2/3 acres in addition to the cemetery for a total of $60,000, didn't it?

A. I don't recall now.

Q. I just want you to glance at this and I want you to summarize this for the record.

A. Yes, that is correct.

Q. That is correct, isn't it?

A. Yes, sir.

Q. In other words, for $60,000 Mr. Darcy was given an option to purchase the Spear-Fernwood Agreement and the 66 2/3 acres adjacent to the cemetery, is that not correct?

A. That is the way it is, yes.

Q. And was to receive as a commission in case he effected a sale a second mortgage provided therein of $18,000, is that correct?

A. Yes, sir.

Q. So that on the basis of this option the net selling price to be realized by you would have been $60,000 less eighteen, or $42,000, am I correct?

A. I don't know.

Q. Just glance over it and satisfy yourself.

The Court: It shows on its face.

The Witness: Yes. If that is the way it reads that is the way it figures out.

Q. No doubt about that, is there?

A. No, I don't think there is.

Q. Doctor, none of the moneys you received from the Locustwood, Inc., were received by you in your personal capacity, were they?

A. No, the checks were made to me.

Q. Some of them were made to you as an individual?

A. Yes, sir.

Q. But I understand you didn't accept them as an individual, but as an officer of the company, is that right?

A. That is correct.

Q. And were they sometimes made that way for your convenience, made to you personally for your convenience?

A. I don't know why that should be any convenience to me.

Q. I am asking you.

A. No, I don't know that there was any reason.

Q. Dr. Spear, I find in the minute book of the Equitable Estates Corporation a minute under date of November 6, 1924. The minutes appear to be signed by yourself and Mercedes Spear as secretary, and immediately preceding it is a printed notice with the words in writing, "Approved, Helen C. Aleck." Is the notice referred to in the minutes the printed notice bearing the approval of Helen C. Aleck?

A. That is the way I take it.

Q. Won't you look at it and tell me whether that is so or not?

A. I think that is the one; there are several notices.

Q. It is your view that the notice referred to in the minutes of November 6, 1924, is the notice immediately preceding that in the minute book and bearing the words, "Approved, Helen C. Aleck," is that right?

A. Yes, sir.

Q. Is that Mrs. Aleck's signature?

A. Yes.

Q. Do you know whether these notices were submitted to her for her approval?

A. Well, she signed it; I don't know whether it was done beforehand or not.

Q. Do you know whether it was approved after they were sent out or before?

A. It was approved of after.

Q. And you sent a copy for her approval and she did approve it?

A. Yes.

Q. When would that approval be with reference to the 6th day of November, 1924, would it be before or after, would you say?

A. You mean that she approved it?

Q. Yes, sir.

A. That I don't know. That may have been approved a long time afterwards, because I wasn't in touch with her sometimes for weeks at a time.

Q. You think it was probably after November, 1924?

A. This appears to have been published in the West Jersey Press, December 13th.

Q. That is what I should infer. Would that be December 13, 1924?

A. Yes, sir.

Q. So it was probably after that date that this notice was approved by Mrs. Aleck?

A. I don't know, I can't say, I don't recall when that was done, I haven't the slightest recollection.

Q. Does this little mark which appears to be December 13th in the lower left-hand corner, does that suggest anything to you?

A. Yes, it appears to be by the West Jersey Press and I think that is the date when that ad was published.

Q. So the approval would probably be about that date or later than that date, is that correct?

A. It would necessarily be afterward, because this is the proof of the notice that was published in the paper.

Mr. Carr: I want to read the notice in the record.

Mr. Tyler: I object to that as far as Helen C.

Douglas is concerned. I first want a chance to read it, too.

Mr. Carr: Read it first.

Mr. Tyler: I would like to cross-examine the witness on this before it is read into the record.

The Court: All right.

By Mr. Tyler:

Q. The minute, Doctor, that is referred to, November 6, 1924, appears to have been held at No. 34 S. Delaware Avenue, Atlantic City, N. J.

A. Yes, sir.

Q. That is the day or about the day that the case between you and your mother was to come up for trial, isn't it?

A. Yes, sir.

Q. In other words, you took your mother to Atlantic City the evening preceding the trial of that case?

A. Yes, sir.

Q. And is that the day it was, November 6th, or a day or two after that?

A. If that is the correct date. November 6th, was it?

Q. That is the date appearing in the minute.

A. What date was the case to have come up?

Q. My recollection is it was November 4th, but I won't be sure about that.

A. It was about that time, I know, because she was living then at Mrs. Fulmer's in Atlantic City, no, that is Mrs. Parks'.

Q. That is where you took your mother?

A. Yes, sir.

Q. That is where she was at the time you had Dr. Dubler take her up to see the Chancellor?

A. I didn't take her up.

Q. But you met her in Trenton?

A. Yes, sir.

Q. She was staying at that address at that time?

A. I don't know whether she was staying there or at Mrs. Fulmer's.

Q. And was that the address at which she was staying when you had her write the letters which were delivered to me and the Court on the day of the trial?

A. Yes.

Q. That is where she was at the time?

A. Yes, sir, there at one of those addresses, Mrs. Parks' or Mrs. Fulmer's.

Q. You claim while she was there on November 6th at 2.30 o'clock in the afternoon you had a meeting of the Equitable Estates Corporation, is that true?

A. Yes, sir.

Q. And at that meeting there were present Helen C. Aleck, Mercedes Spear and Charles C. Spear?

A. Yes, sir.

Q. And wasn't it at the same time she attempted to withdraw her suit against you and against the Equitable Estates Corporation?

A. I think that was the time she lived in Atlantic City sometime, I don't recall whether that was the time or not.

Q. And that withdrawal of the suit and the letters that were delivered in Court were afterwards repudiated by her after she came back to Collingswood to live?

A. Yes, sir.

Q. And this minute and meeting was held at the same time that the letters were written and right after you had taken her to Atlantic City?

A. If the dates, as you say, are correct, all right, but I don't remember whether it was in November the case was to come up or not.

Q. This printed notice here in which is written, "Approved, Helen C. Aleck," was signed at the same time?

A. That I can't say.

Q. While she was in Atlantic City with you?

A. I don't know whether it was signed there or signed in Hainesport.

Q. That is, after you came back from Atlantic City you took her up to Hainesport?

A. Yes, sir.

Q. And that was November, 1924, before the Locustwood Cemetery, Inc., had been made a party defendant to that suit in February, 1924, you knew that, didn't you?

A. Yes, sir.

Q. Now, are you sure that is Helen C. Aleck's signature on that memorandum?

A. Yes.

Q. Did you see her sign it?

A. Yes.

Q. Now, the item in that minute of November 6, 1924, "On motion duly made and seconded and unanimously carried, it was resolved that the president deny the report that the property of this association situate in Delaware Township, Camden County, New Jersey, has been sold to the Locustwood Cemetery, Inc." That was part of your attempted adjustment of your affairs with your mother?

A. No, that was in order that the public might be

apprised of the fact that the Locustwood Cemetery, Inc., did not own this property, and inasmuch as the title was still at that time in the Equitable Estates Corporation, notwithstanding the fact it was in litigaion, it seemed proper for that notice to be signed by the Equitable Estates Corporation because they had, if nothing else, the naked title at that time.

Q. And the purpose of that minute was to notify the public that the Locustwood Cemetery, Inc., had no title to the property?

A. Yes, sir.

Q. And the notice was made to carry out that contention?

A. Yes.

Mr. Carr: I will now read the notice in the record. "Locustwood Cemetery, Marlton Avenue and Cooper Road, Camden County, N. J. Notice is hereby given that premises known as Locustwood Cemetery, situate in Delaware Township, Camden County, New Jersey, is owned in fee by the Locustwood Cemetery Association (formerly the Fernwood Cemetery Association) of Camden County, New Jersey. They acquired the property in 1907. That rumors to the effect that the said cemetery association has sold this cemetery or has entered into any agreement for the sale thereof are without foundation in fact. The land and premises adjoining the Locustwood Cemetery, known as the Cooper Homestead, parts of which are to be deeded to the said cemetery from time to time as required for burial purposes, is owned in fee by the Equitable Estates Corporation of New York. The report that this property was sold to Locustwood Cemetery, Inc., a corporation of New Jersey, who formerly had offices in the Smith-Austermuhl Building, Cam-

den, New Jersey, is absolutely false." Signed, "Locustwood Cemetery Association, By Charles C. Spear, President, Equitable Estates Corporation, By Helen C. Aleck, Chairman," both signatures being printed, and on the right-hand margin, in writing, the words, "Approved, Helen C. Aleck."

Mr. Tyler: I object to this on the further ground that it appears to have been made as late as November, 1924, which is a year after the alleged agreement of October 23, 1923, was made, and can have no bearing upon the contractual rights of the parties, and made after the Locustwood Cemetery, Inc., itself was made a party defendant to the former proceeding in which the title of the Equitable Estates Corporation was adjudicated as having been acquired fraudulently.

The Court: In the other litigation it was found as a fact and determined by me, that the things that transpired between Dr. Spear and his mother during that period between the day before the trial was to come on and a week or two later could be given no force or effect. As I recall it, it was then determined that Mrs. Aleck had been imposed upon by promises upon the part of Dr. Spear to do the right thing if she would dismiss her suits against him without any written agreements or assurances outside of the oral promise, and she ordered her solicitor to dismiss the suit, and her letters to me asked me to dismiss the suit, and she even went to the Chancellor, and we all refused to do it until we had a full investigation, and afterwards a rupture again occurred between her and Dr. Spear and the litigation went on. Now, it is going to be difficult for me to give very much force to anything that transpired in that period.

Mr. Carr: We occupy, perhaps, a little different position, and when it comes to the argument we will so argue.

The Court: Let it go in as part of the record.

(At this point an adjournment was taken until Thursday, July 7, 1927, at 10 A. M.)

Camden, N. J., July 7, 1927.

Trial of the cause resumed on the above date, pursuant to adjournment, at 10 o'clock A. M.

WEBSTER A. MELCHER, sworn.

The Court: I think counsel will waive qualifications, probably.

Mr. Tyler: Yes, sir.

The Court: And you?

Mr. Palmer: Yes, sir.

The Court: It is stipulated the witness is qualified as a handwriting expert.

By Mr. Carr:

Q. Mr. Melcher, you live in Philadelphia?
A. On the border of Philadelphia, my place of business is in Philadelphia.
Q. You are a member of the Bar of Philadelphia?
A. Yes, sir.
Q. And you deal with disputed handwriting?
A. Yes, sir, and everything pertaining to documents.
Q. Have you examined the document which I now hand you, Exhibit C6, being a purported agreement of the 23rd of July, 1923?
A. I have.

Q. Won't you state the general nature and character of the examination which you made of this document?

Mr. Palmer: Ask him when it was made.

Q. When did you make the examination?

A. I spent the 17th of June, 1927, here working on it, and also the 20th of June.

Q. Of this year, 1927?

A. 1927, yes, sir.

Q. What was the general nature and character of the examination and tests that you made with reference to that document?

Mr. Palmer: I must object to this testimony being given on the ground his examination has been made in violation of the order your Honor made with reference to the examination. If you examine that order you will find it was to be made on notice to counsel interested in the case, and no notice whatsoever was ever given to me of this examination.

The Court: If that is the order I suppose that objection has its force. I haven't any recollection of the order.

Mr. Palmer: If you will examine the order—it is in the files, and if I may have it I will call your Honor's attention to what I mean.

Mr. Carr: (After reading order.) If the Court please, my impression is that —— Of course, this paper was not produced in response to the order of the Court, it was actually handed up after contempt proceedings had been presented to your Honor, and my recollection is it was examined in the room in

the rear and that counsel were actually present. That is my recollection of it, and I think Mr. Palmer was there. I know I saw Mr. Melcher working on it, but Mr. Richardson can probably speak more accurately than I on the subject.

Mr. Palmer: The contract, if the Court please, after it was produced, was handed by me to Mr. Richardson, and I think preceding that Mr. Carr asked to look at it, and I said, "All right," and I said, "Now, I must deliver this to Mr. Richardson," which I did. I haven't had it, except as it has been here in the courtroom since, nor did I have any notice of any time and place when it would be submitted to any expert for examination.

Mr. Carr: If the Court please, while it would have been much better if counsel had formally notified Mr. Palmer, I had thought that counsel knew and was present. I may be mistaken about that, but I don't think that destroys the value of this testimony. The situation became complicated by reason of the fact that the paper was not produced in response to your Honor's order, and we had progressed with the trial for some two days when the petition for contempt proceedings was filed, and then the paper was forthcoming, and then the time, of course, was very much shortened, but it seems to me that all Mr. Palmer could ask would be an opportunity to have it examined by an expert of his own if he wishes. It doesn't destroy the value of the testimony of this gentleman. The only effect, if the Court please, would be a further postponement of this case, because the situation was caused by the strange disappearance of the paper and its production at the last moment. That is what brought about the complications.

The Court: I very much dislike to adopt any course that will again delay the matter. I think the only equitable solution of the situation is to let the expert go ahead and testify and extend a similar privilege to the other litigants to make a like examination and produce their witness. Surely no harm can come by that course except it may take time. Of course, the order has not been strictly followed. It was contemplated that everyone should be present if they sought to be. As a matter of fact, we all know that Mr. Melcher has been working in the next room while we were trying the case in this room, hurrying his work so he might be able to testify. I will adopt that course, I will let Mr. Melcher testify, and reserve to the other solicitors the right, at the conclusion of his testimony, if they so desire, to make a similar examination.

Mr. Tyler: When the matter of examination and having an expert witness testify as to this contract came up your Honor suggested that counsel for the complainant, if he expected to have a handwriting expert testify, that he should arrange for it in advance.

The Court: This presents a new situation. Here is a man who has made his examination which was not in accordance with the order, but apparently nobody observed that fact, and we all knew he was there making the examination in the next room.

Mr. Tyler: I am not making any objection to the witness testifying, but I am making objection to any serious delay.

The Court: I think I will have to extend that

privilege, Mr. Tyler, in view of the fact that this examination was not made strictly in accordance with the order. I think counsel had a right, if he saw fit, to rely upon the order.

(Question repeated.)

A. Microscopical, and all the other examinations I made in connection with it, and also metric, ordinary measurements, and color metric, measurements of color value, and also chemical tests, and microscopical tests come in there for the purpose of observations, of course.

Q. From your observations have you been able to determine whether or not the entire document as it now appears was prepared and executed at substantially one and the same time?

A. I am able to, yes.

Q. What is your conclusion?

A. They were not prepared at the same time, nor with the same means, or the same materials entirely.

Q. Won't you amplify that and explain what you mean?

A. What did you ask me?

Q. Won't you please amplify that last answer.

A. Do you want me to go over all the details?

Q. Whatever you think best.

A. What has any bearing on the question, I suppose that is what you want. In the first place I want to eliminate from consideration certain marks which are apparent on the paper in certain ways you look at it, which I am responsible for. Every sheet has a number of glossy rings, they were the protective rings I put around the chemical tests, they don't affect the paper in any way, they are on the three sheets, and also on the first and third sheets on the blank paper.

The Court: The third sheet is the signature sheet?

The Witness: The third sheet is the signature sheet. On the first sheet I made certain tests of the blank paper and some of those tests resulted in certain color reactions which I made on the paper and they are there; one was a reddish or pinkish spot on each page and the other was a yellowish spot on each page. Then on the third page, which is the signature page again, there are certain spots in some of the ink lines in the three several sections representing the varieties of ink there visible where there is a blueing of the line where I applied a test. I am responsible for that, and it signifies certain things in the test. Then there has developed with the lapse of time certain other spots on the first page, brownish in character where I made a chemical test for the typewriting part, and on the third page where I made a similar test. Now, passing from that, in the first place I notice that these three white sheets of paper constituting the body of the document are all water-marked, they all bear the same water-mark, therefore they come from the same manufacturer. That is Berkshire parchment linen, U. S. A. That water-mark is all right for use in connection with the date apparent on Page 3 of this paper as well as any time since and quite a good while before, so as far as the water-mark is concerned that would be simply all right. As to the paper, the basic substance of the paper, which I ascertained chemically, is essentially that of rags for all three sheets, there is no mechanical wood pulp in it, no straw fiber in it, no wood of any kind in it, so that in that respect we have three sheets of white paper which tally again in basic substance of

which those sheets are made. As to the sizes of the sheets, so far as I could tell without taking them apart, they appear to be the same trim or cut, so we will assume that they are, so that there again that is all right. In three other features affecting dimensions there are variances. In the first place as to the thickness of the sheets of the paper. The first two pages without any signatures on measure in thickness quite evenly .004 of an inch except at the foot of the page, where it varies from .0038 to .0042. That variance is quite permissible in the average paper, but the bulk of those sheets apart from that runs very evenly around .004 of an inch; so evenly it infers that this paper was intended to be of that particular measurement, .004. However that may be, we have a paper of a very even thickness, from .0038 to .0042. Sheet three runs evenly, .0035 to .0036 of an inch, which is evidently proper for a weight represented in the finished product, .0035 of an inch. The other two sheets have a weight in the finished product running along .004 of an inch instead of .0035, which is quite important, especially in a good quality of paper like this paper is. All of these sheets are woven finish, that is to say they do not have lines running through the fiber of the paper, either crossways or up and down, or any way like that. Paper is either laid or woven. Where they have the lines on when you look through it it is called laid paper and the other is woven paper. These are all woven paper, but there is one substantial difference in the character of the two sheets in front from the third sheet, and that is in the third sheet. When you look at it toward the light you can barely see the weave of the paper, the weave marks the grain, as it is called, and when you look at the other two sheets you can see them very positive, the

wires running diagonally across the sheets, so that notwithstanding the paper all being woven, there is again a radical difference between sheets one and two and the signature sheet. Another difference between these first two sheets and the signature sheet is in the tint or tone of the paper. Of course, they are all white paper, but paper is only white when it is bleached. These have been bleached, all three of them, but by reason of certain chemical features in pages one and two they have acquired as a batch a brownish tone in distinction from the pure white tone which still remains in sheet three. That is not due to the mere thickness, the variation of thickness in the paper, that would tend to make the tone grayish rather than a pure white, depending on the thickness. The brownish part comes from an entirely different thing, and the fact that the batch of pulp from which sheets one and two came gave a reaction from iron positively in the paper apart from anything on the paper and sheet three gives no reaction at all from iron, was itself entirely free, while the other batch is quite loaded with iron, accounts for the color and makes a radical difference between the two sets of sheets.

These three sheets are fastened together with a cover sheet, ordinary terra-cotta rough paper, without any water-mark. The quality of that paper does not have any bearing on this particular controversy whether it would be all right if the agreement was made on the date the signature page so specifies or on some other day shortly before or after. Another thing that I found quite apparent, especially when your attention is called to it, that is, the fasteners used here are three in number. Ordinarily there are two, one on either side, and those two match up, both common fasteners you bend over on the

back with the fingers, and when they are used at all they are supposed to be, in a general way, used alone and are sufficient for the purpose of binding the sheets together. In addition to that there is a third in the middle of an entirely different type, a mushroom type of eyelet, which is quite permanently affixed in there at the present time. The other two thumb fasteners at the time I examined them, and apparently are still, showed no indication of having been either flattened down tightly at any time, or having been opened and closed enough to make any difference in the bend of the two flaps on the back of the paper so far as the metal is concerned. They looked at that time very much as though they had not been out of the paper probably at all from the time when they were first put in, and at that time they had not been mashed down flat. If they had been taken out they must have been removed with sufficient care so as not to make an additional crease in the metal. I notice now there is an indication of a little additional bend on one of them just away from the middle part. I had nothing of that sort here when I examined the paper.

As to the execution of the paper my test showed that it was signed on page three with a variety of inks, all except one of which contain iron, and represented iron-gall inks, that type, although not identical iron-gall inks in basic constancy or foundation. Another one had no iron in it, and the third one on the signature page is a mixture, that is, the word "cemetery" in the middle of it, after Mercedes Spear's signature, that impressed me at first possibly as logwood ink, but I tested it and much to my surprise it turned out to have iron in it and I discovered the secret of it was it was written with a pen that had been previously used for red ink and

then dipped in blue-black ink and then used, the mixture of the blue and red making the logwood tint which was apparent in the bulk of the signature, and there are places which show spots of red aside from that, so that is the mixed ink there. In addition on the signature page, so far as the execution of the document is concerned by the parties there are impressed the double-die seals of the cemetery association and cemetery incorporated. As to the typing of the three pages, quite evidently it was done on the same machine; it not only shows the same type faces, but it shows a number of instances where the same faults in the impression exist by the type appearing in the paper. As to the operating habits of the person who was doing the typing, there are chances, of course, of gaining some light, and I have looked into that. So far as the line-spacing itself is concerned, that is practically uniform or substantially so on all three pages, and such as would appear in three pages of typewriting done by the same person on the same machine at the same time or at different times. It was the same machine and the same person.

As to the lengths of the lines, there we have a noticeable condition. On the first two pages the longest line written represents 167 millimeters, 66 spaces. Usually there are not more than 165 millimeters in that. The third page shows slightly less than 160 millimeters of line in the longest point. There are only, it is true, two full lines there, but there is that difference of substantially seven millimeters in the length of those lines as compared with the lines on either of the other pages. That leaves 63 spaces as against 66 spaces on the machine, and, of course, relatively speaking, it would mean that with the longer line more could be gotten on the

pages than with the shorter line, thus providing the possibility of getting a good deal more material on the first two pages than on the second page, supposing the same person and machine were doing the operation.

Now, as to the position of the writing on the sheets, at the tops and bottoms and around the margins we have another distinction between the first and second sheets and the third sheet. On the first page the margin on the left is about 1 1/4 inches, on the second page it is about the same at the top of the sheet and narrows slightly toward the bottom, indicating the paper was not set exactly straight in the machine. On the third page the margin is 1 3/8 inches plus wide, 1/8 of an inch wider, 14 1/2 spaces against 12 1/2 spaces on the typewriting machine. Now, it is a notorious fact a person typewriting, especially typewriting a single document, will space the margin on the left, at least, at the same point, because they pick out ten or fifteen, whatever numeral they want on the scale of the machine and use that as the starting point, but this shows a difference in the spacing between the first two pages, which are alike in habit, and the last page. At the top of the sheet on the first page, I can't tell the distance it was below the top edge because the paper is fastened together and I didn't take the liberty of taking the staples out on account of their possible importance in the case, so I had to count from the bottom, and on the first page the top line comes 11 13/16 inches from the bottom and the second page 12 inches, but on the third page it only comes at 11 inches above the foot of the page. That means the top margin, whatever the actual measurement would be when you had the paper apart, is decidedly wider on the third page than the others, which are

nearly alike. That indicates again an unusual and irregular habit in regard to the person as between the first and second pages and the third page. Those distances from the bottom of the page disregard the page numerals which are typed on sheets two and three, but not on sheet one. On the second page the page numeral is 3/16 of an inch higher than the top line of type where on the third page it is 11/16 inches higher than the top line of the type. Another irregular thing from an operating point of view in regard to the placing of type on the paper is that on Page 2 the last line typed reads, "In witness whereof the parties hereto have caused these signatures," and then that is all stricken out by the diagonal type mark of the machine, and it is worthy of notice that it sets unusually close to the bottom of the page as well. The third page begins again with the same words, "In witness whereof the parties hereto have caused these signatures." If this paper consisting of three pages were prepared by the same person or by any person at one and the same time, it is difficult to understand the necessity of striking out that clause at the foot of the second page. However that might be, I am simply calling the Court's attention to it. The result of all this information regarding the marginal habits on all three pages, added to the length of the line habit, shows that the arrangements on pages one and two in regard to type were such that they would hold very much more material than if written consistently with the typing habits on Page 3, although only a few lines at the top of Page 3 appear. Frequently that is accounted for by the desire to crowd in something into a paper, but that is a matter of argument, not a matter of observation with me. The fact remains that these two papers will hold a great deal more as they are pre-

pared than the third page would if it had been prepared fully according to the way it was started.

Another striking difference between the pages one and two and the signature page consists in the character of certain impressions of letters in the typewriting. Take tall letters, such as lower-case "d," or the characters corresponding to that, such as the parenthesis mark, they are numerous enough here on all pages to be worthy of particular notice. On pages one and two very often the tops of those tall marks fail to print on the paper, and on the last page every one of the tall letters in a similar position to those we have described mark full clear up to the top, indicating a different ribbon condition or placement as between the first and second pages on the one hand and the third page on the other hand. The effect of that failure to indicate the upper part of the letter is to shorten the upper part of the impression at this—those particular parts which doesn't occur in every single instance on the first and second pages, but it is quite a frequent habit there, so you have every reason to believe it would be duplicated one or more times on the third page, whereas it is not duplicated at all.

That brings us to the ribbon. Black-record ribbon is the general type for all three pages, not heavily inked on any one of the three pages and under ordinary pressure it would give rather a light mark. On Page 3, that is the signature page, it bears, microscopically speaking, slightly more of a purplish tint of the ribbon ink at high power instead of the brownish black tinge at similar high power on the first two pages, thus indicating, microscopically, a difference in the color, slight, of course, of the two separate parts of this document. Of course, being a black record ribbon, you would have to classify

them all as black, but, as a matter of fact, black record ribbons are toned with red or blue colors to make them richer blacks, apparently, or they are left without that, and in that case they have a brownish-black tinge, which is the carbon tinge, although we are prone to believe carbon is always black, which it is not. Also on the third page, the signature page, microscopically at high power there is generally slightly more of a tendency to have the field of the mark of the impression colored with color rather than is found on the first two pages. The ribbon impression, as of course your Honor understands is made by the contact of the type against the paper, but, as a matter of fact, unless the ribbon is very heavily inked it makes a rather seedy appearance when it is under a magnifying glass rather than a solid field of color. On Page 3 we have the carbon seediness scattered along the color field. At low power, on the other hand, Pages 1 and 2 appear of a greyish-black, while on three it shows a bluer tone than they do.

Now, as to the actual color ascertained from colorimetric measurements. The type on Pages 1 and 2 corresponds as to each other, but differs radically from the type on Page 3. Perhaps I ought to explain the colorimetric measurements are based on the power of inks to absorb additional rays of the primary colors, red, yellow and blue. As to the ribbon ink, my test showed a difference in chemical quality as well, while the most of the tests gave similar results indicating the base of the ribbon color was practically the same, yet there were positive indications, no doubt in part due to this difference in the tone color which I have been speaking about, but also part due to some of the things mixed in with the carbon to prepare it for use on the ribbon.

But there was in a number of tests radical chemical differences in the qualities of the typewriting on Pages 1 and 2 as against the typewriting on Page 3.

Now, as to other irregularities I discovered in the document which call for explanation. First I will take up the condition as to the fasteners in the paper. As I said, I took particular care not to disturb them when I was examining them, although I wanted very much to take them out and see the condition underneath, but I didn't think it was the proper thing to do, but I would certainly recommend the Court to do it unless the Court wants me to do it. As to those fasteners, the one on the left-hand side of the page shows a very slight soiling underneath the flaps on the colored paper, not the quantity which would normally be there had the fastener been pressed in closed contact with the paper for any length of time, such as would be indicated by the age of this document according to its purported date. The soiling on that left-hand staple at the top of the back is in a slightly different position than the position now occupied by that fastener. You can see the end of the impression right in the paper there. I confess I don't know what significance to attach to that except it is there and it must have been made with the eyelet in a different position from the one that is now there. The one here now would never, without being forced, reach around to that particular position. Neither of these staples is particularly stained as by handling or age, or particularly bright, and as I think I said a while ago, there was no evidence when I examined them first, of the staples, either of them, having been bent in a position more than once or removed and reinserted. The eyelet fastener in the middle is quite tight here, but it was slightly stained from the

mechanism used. It was well pressed in the paper. There is no evidence on the cover sheet of the fasteners ever having been taken out except that the staple holes on the back of the paper, where visible, are worn and torn entirely too large to be caused by the single perforation of the sheet. This is more marked at the right-hand staple than at the left; also on the front of the cover sheet when you look with the glass underneath the head of the staple. Also on the front of the cover sheet on which the round staple heads appear in the two positions, the points being pushed through the back, the tears of the paper, when you twist it around so you can see, they are larger than necessary for merely running those staples once through that piece of paper. Some of the tears around the opening running nearly to the edge of the head of the staples, which there is no excuse for it under ordinary conditions when one perforation of the paper is made. They also show a partial, at least, protrusion of the cover paper toward the front of the document at the point of perforation, and toward the head of the staple at the point between the cover sheet and the front of the first typed page the cover holes are shown with the torn edges larger, curled up independently, of the first typed page instead of going through it as would happen had the staples been pressed through from front to back with all the papers in there as in there now, and the tears are slightly larger and in different positions than the cutting in the first typed page. The cutting through the first typed page shows a clearly cut perforation made with a greater or less degree of curvature toward the bottom of the paper as it would be in position when you are looking at it as to the left-hand fastener, indicating that in all

probability the hole through that first typed sheet was at least partly circular, not as would be caused by pushing a staple through a hole with the three sheets of paper there. If a circular hole had not been made prior to the sticking of this staple through on the left at that point then the only other way to account for that condition of the lower edge at that point on page 1 would be to say a piece of paper had been deliberately cut out at that point instead of having a staple run through it in the ordinary way. As to the right-hand staple the opening between the cover sheet and the first typed sheet is not visibly so clearly cut in the manner I have described, but there, too, some sort of a perforation had been cut in the paper independently and without regard to the act of putting that staple through on that side. In between the first and second pages, looked at at the same points, there is clearly evidence at each staple of the rounded hole, at least on the lower side, being cut through the paper, nothing to correspond with the mere putting of the staple through the sheets at that point. As to the third sheet, the signature sheet, considered from the same point of these two staple fasteners at the left-hand fastening point the paper there is clearly gashed as with a knife almost in a vertical position up and down the sheet of paper, slightly to the left of the fastener, while the space around the fastener shows it has also been cut out irregularly as with a knife, making an opening not matching that on the other sheet either in position, size or direction of tears. At the right-hand staple on this third sheet the space is similarly trimmed out, but a much larger cut was made and extending from right to left a distance, as nearly as I could measure it without taking it apart, .35 of an inch, and was

cut and torn that except for the third eyelet, the mushroom eyelet that was put in, this sheet could not be held in the position which we now find it. It either would be out, falling apart altogether, depending on the condition of that hole when the staple was taken out, or it would wobble around. So it would at once disclose the fact it was not put in at the same time, under the same conditions, and in the same manner as the other two papers were put in there. I think there is every indication from the microscopical appearance of these holes here that this third sheet, the signature sheet, was cut out of some other fasteners, either torn or cut, or wholly cut-out, and then put in with these other sheets, and as I suggested to the Court it would well be worth while taking these staples out, when the proper time comes, and just look at the condition of those holes. The putting of the staple through from front to back had it been done under normal conditions and the normal way would result not only in a certain consistent character of hole being made all the way through the three sheets and cover as to size of the hole and position of the hole, but it would result in the edges being pushed in the direction the staple was being pushed so one would interlock with the other, but they don't do it. Some of them don't come in the same position at all. Others again are bulged out mushroom style, independent of the other sheets and forward instead of backward, so that by no possible manipulation in a regular way or under regular conditions those two staples could have ever gotten into this paper and left the marks and conditions on the paper which are there now, so far as I can see them, and which probably would be accentuated if you took those two staples out and looked at them. Furthermore, I am satisfied from

my examination of this paper in that respect that as to the first and second sheets, so far as these two staples locations are concerned, they were treated practically alike and presumably together, but the holes were never made by those staples that are in here at the present time.

The whole thing is folded into quarters for filing. The folds in the back of the paper seem to be in normal condition so far as wear is concerned, and they did not when I examined it show evidence of additional folds being in there. Sheet 3, that is the signature sheet, shows foldings that substantially match those on the back, while the folds on sheets 1 and 2 correspond except as to the lowest fold. There sheets 1 and 2 tally as to foldings but they don't tally with sheet three exactly or with the cover page in the present positions, although they do in the other folds. At the folds the third sheet is slightly soiled on the back next to the cover sheet, though slightly cracked on its surface; the other sheets show nearly the same amount of cracking on back but on their faces they are appreciably less disturbed in this respect than the last sheet. That has some significance because of the position of the pages. The first page, assuming that it was all prepared and put together at one time and handled together afterwards, would, of course, have the greater wear and tear by reason of its additional exposure. Somehow or other the condition was reversed in actual fact. While the condition was slight the greater amount of effect of exposure appeared on the last than on the first.

On page 2 of the agreement there has been an ink "Λ" marked down in the third division of the page. That caret mark was put there to indicate the position of an interlined word "until," the word

being typewritten. Assuming that the pen and ink caret mark was necessary at all we still have something funny about that particular mark. First, it was formed with a dried fixed blue ink such as appears nowhere else on these papers in its execution on any one of the three pages. After that ink, which was an aniline ink by the way, had entirely dried so it wouldn't mix with the re-writing a black ink was used to go over that mark almost entirely, although not entirely covering the blue. I have no reason to know why that was done, but the fact remains it was done and it was done after a considerable interval of time.

The Court: Does the black tally with the signature ink?

The Witness: Neither of these inks tally with any of the signature inks, or anything entering into the signature inks. Colorimetrically each of these two inks in the caret mark is entirely different, and chemically, likewise, it is entirely different from any of the inks on the signature page 3, which is the only place where ink appears in this document.

Another thing which is certainly out of the ordinary and may have considerable significance, it does to my mind, is the fact of the condition of the paper with regard to corporate seals. The two parties purporting to have signed this agreement, or executed this agreement, were the Cemetery Association and the Cemetery, Inc., both of which have their corporate seals attached in connection with the signatures. In addition to that, however, on the left-hand side of the paper there is another impression with the same seal of the Locustwood Cemetery Association—I say the same seal because it shows the same faults in impression. There doesn't ap-

pear to be any reason for that being there legitimately, but the fact of the matter is that in the first place that it is the same seal and that the impressions were not made in the same way nor with the same results. As to the same seal used in connection with the signatures it goes through the sheet of paper very decidedly, makes a good, clear-cut impression in the main, although there are some faults ot it, whereas in the others there is no cutting through the paper at all and the impression is much clearer.

The Court: Aren't they all done with the one impression?

The Witness: That may be accounted for that that impression of the seal on that side was apparently done at one time. Those three impressions on the left-hand side of that seal were made at one and the same time, but apparently there was a little variance in position, not after the three sheets were fastened together in their present form, the three sheets of paper were loose, set in the seal and that impression made all at one time. Another still stranger thing is that in addition to these impressions there is one that is irrelevant. I haven't read the agreement, but as far as the parties to the agreement are concerned there is no connection between them and the Equitable Estates Corporation calling for the latter seal to be on this particular paper and yet it appears in the lower right-hand corner of each sheet. There again those impressions were apparently made at one and the same time, but certainly were not made after the sheets of paper were put in there present position. The position of the impressions on the three sheets cannot, without doing violence to the present arrangement of

paper, coincide so as to allow those impressions to have been simultaneously made on the three sheets as now fastened together, consequently they must have been put on before the three sheets were bound together.

Now, one other thing I went into was the question of the relative times when the typewriting of these three pages and the ink writing, so far as we had it for comparison, were done. So far as the signature part in handwriting was concerned my tests of the ink showed that those signatures and all of that handwriting was put on at or about the time which this agreement purports to be dated, so that so far as they were concerned there was nothing developed by my tests to indicate that they were out of date. Now, as to the typewriting part there appears, in addition to the differences which I have gone into between pages 1 and 2 and page 3, an appreciable difference in time of typewriting, as well as all the other things between the first two pages and the last page.

The Court: Which is the older?

The Witness: Beg pardon.

The Court: Which is the older?

The Witness: The signature page is the older according to its tests, appreciably older. There wasn't enough material here, but so far as the tests indicate that wasn't for a fraction of a day, or anything like that, I would be very much inclined to say from the results of the tests that it went into months rather than days in the interval between. At any rate it was at a widely different time and an

earlier time that the typewriting on page 3 was done than the time when the typewriting on pages 1 and 2 were done. There was very little material from which I could draw on for this, I had almost to exhaust it for the other tests, but as far as I could go with the material at hand that also is appreciably more recent than the writing on page 3 of the signature page of this document. I have gone all over the conditions as the result of my examination along the various lines and they convince me of certain things.

Q. Mr. Melcher, based on the facts you have just testified to and from your examination of the document and your tests thereof, what conclusions have you reached as to the sequence of time in which the various parts of the document were produced or prepared?

A. The first two pages were prepared at an appreciably considerable length of time after the third page was prepared and signed. In regard to the allocation of them in their present position and connection I have no means of telling, of course, what any of these pages ever was attached to other than the paper which we have before us, but I am sure those three sheets of paper were not originally part of one document such as we find them now, and that page 3 was deliberately taken out from some binding by way of fasteners and then pages 1 and 2 added.

Q. Can you give us some idea as to that appreciable length of time you mention, was it a matter of days, weeks, months, or what?

A. I should say fully months, at least. It might run anywheres from, according to the tests I made, of course, from one to six months. I am quite sure it wasn't within a month. As to the actual date of

preparation, as to the date it was fastened together in the present shape, I am utterly unable to pass on that. I can only deal with the preparation of the individual papers, but I have every reason to believe that it was a matter of a number of months between the preparation of the first two pages and the last page, and that the first two pages were done at essentially one and the same time as well as with the same actions and with the same materials but different from page 3 except as to the typewriter used and probably the operator. The cover page, I have every reason to believe was before this time used as a backing.

Mr. Carr: Your Honor, would there be any objection to removing these staples and having the witness examine it?

The Court: Let me see whether counsel concur in that. If they all want it done let it be done. Is there any objection to that, Mr. Palmer?

Mr. Palmer: There is only one situation, if the Court please, that might offer itself as an objection, and that is this, if I am to have this paper examined by some typewriting expert I don't think that removal should be made prior to that examination. Now, that one proposition is the only reason I can see as an objection.

The Court: I think you are right.

Mr. Palmer: If we don't have it examined by some handwriting expert, or if we do, after that examination I would be satisfied for the Court to make that removal, or somebody else in the presence of the Court can testify to it.

Cross-examination.

By Mr. Palmer:

Q. You have testified with reference to the two staples as distinguished from the mushroom fastener in the center; will you tell me what made the holes through which these two staples have been placed.

A. I would have to take them out to find out that.

Q. Is there nothing about it which indicates to you whether or not it was made by the staples themselves or by a fastener or machine such as used to make the holes with which a mushroom staple is put in?

A. It was absolutely not made by the staples themselves. If it were made by a perforater, such as you refer to, which is sometimes used, then the actual perforater, at least on some of the sheets, was supplemented by an irregular cutting, something like a knife.

Q. Assuming then that the original hole was made by a staple machine, such as used to make perforations for these mushroom staples, you say that before these other two staples were inserted there was some other cutting of that paper?

A. Yes, and the circular perforater we are speaking of would only apply as to pages 1 and 2; in 1 and 3 there were no evidences that there was that particular kind of a hole made, or in the cover page.

Q. Is there anything in pages 1 and 2?

A. One and two are the only ones that might by any possible argument be perforated by such a thing.

Q. I am asking what you discovered from your examination; is there anything in your examination that leads you to say that the holes in page 1 and 2 were made by a perforating machine?

A. It is possible in pages 1 and 2, apparently on the lower side of the lower hole there was a degree of circularness in the cutting, now, that might have happened through the perforating instrument, or the knife going around something. At any rate, it was supplemented by the other.

Q. At any rate it was supplemented by some other cutting other than made by the perforating machine or by these staples themselves?

A. Yes.

The Court: Did you say that page 3 showed neither the use of a perforating machine or cutting?

The Witness: Page 3 showed that it had been fastened into something or other by some means and apparently had been cut-out irregularly, gashed out. I was unable to determine whether or not there was ever a perforated hole on that because there was nothing on the paper I could cut out to show that. There was the extended gashing which did not tally with any of the other things, clear cuts, as though with a sharp edge, not mere tears.

Q. Now, you have stated the letter "d" as appearing in this paper on pages 1 and 2 and in comparison with the impression on page 3 shows a considerable difference in the outlines or in the amount of impression that is made. How many "d's" are there on the third page with which you had to make a comparison?

A. On the third page?

Q. Yes.

A. I didn't count them, but there are quite a number. I don't know how many, but they were all one way.

Q. I am asking how many you had on page 3 to make your comparison with pages 1 and 2?

A. I don't know.

Q. Did you have more than one?

A. I have reason to suppose so. I certainly had more than one of the parentheses marks.

Q. Did you have more than two?

A. I presume so, but I can't state.

Q. Did you have more than five?

A. I have no record or memory of it.

Q. You don't know with how many letter "d's" you had to deal with on page 3 in making your comparison with pages 1 and 2?

A. I don't know the numbers.

Q. Do you think there were more than five?

A. I have no means of telling you at all except to look at the paper.

Q. Do you think if there were less than five it made a fair comparison with those on pages 1 and 2?

A. Yes, under the circumstances. On pages 1 and 2 the majority of them, perhaps, probably were deficient in their inking at the tops, whereas on page 3, even with the smaller number, none of them are so.

Q. Would that difference on page 1 and 2 be accounted for by the different point of the ribbon that might be going through the machine at that particular time?

A. What do you mean by the different point?

Q. The ribbon runs through a typewriting machine from one wheel to another?

A. Yes.

Q. And it runs continuously as the typewriting is being done?

A. Yes, and wears.

Q. Now, I am asking you whether or not the dif-

ference you found in the "d's" on page 1 and 2, you say they were different, couldn't be accounted for by the difference in the particular point of the ribbon at which that particular impression was made?

A. I would say not from experience.

Q. Why not?

A. Because of the fact of the uniformity on page 3.

Q. I am asking about one and two.

A. And not on pages 1 and 2 because the same machine and ribbon ink to the same extent was used.

Q. The ink on a ribbon on a machine is taken out of the ribbon as it is used?

A. Yes, it comes off and comes off irregularly.

Q. And where these particular "d's" you found deficient as to ink on the first and second pages were made isn't it possible that was due to the work of the ribbon?

A. On pages 1 and 2 it is quite possible it was due to a defective condition or the condition of the ink on the ribbon, but you must bear in mind that the ribbon used on pages 1 and 2 was not the ribbon used on page 3.

Q. You took the two as making your comparison and made your comparison and reached your conclusion based upon that which you found on pages 1 and 2 in comparison with page 3?

A. Yes, that is right.

Q. Did I understand you to say that the seal of the Locustwood Cemetery Association appearing on the left-hand side, the left margin of this paper, was made before these sheets were fastened together?

A. Apparently so, yes.

Q. What is there that tells you so?

A. The difference in the position of the impressions.

Q. Tell me the difference of the impression of those three sheets.

A. Simply a very slight difference on the face; it is exaggerated in the other seal and less so in that.

Q. I am not asking about the other seals, I will get to them in time. I want to know with reference to this impression on the left-hand side of the page.

A. A very slight difference in the position of the seals as the paper runs at the present time fastened together.

Q. How slight or how great a difference?

A. I have no record of it, I think. From recollection I would say it wasn't over .01 of an inch out of position in any one. I have no record of that, but I have a clear recollection that the difference was comparatively slight, and yet it was distinctly enough as between one or two of the impressions not to be able to secure, with the sheets in their present binding, the same positions without doing violence to the paper. You can't, in other words, twist a sheet around a little to get them exactly superimposed, and with the impression from such a seal the sheets that are impressed with the seal together would exactly superimpose in every respect.

Q. In which direction is that difference of .01 of an inch?

A. I have no recollection. It was a slight difference. At first I was inclined to think there was no difference at all and after I discovered the other seal ——

Q. I am asking about this one, if you will confine your testimony to this one until we get through with it.

A. I am coming right back to that.

Q. You say that difference was .01 of an inch?

A. I don't think it was any more.

Q. And you don't know whether that is from the right to the left or from the top to the bottom?

A. From recollection I can't say.

Q. Can you by examination of it now?

A. No. Offhand it looks alike but I found by actual measurement it was not quite alike.

Q. In determing the fact of these impressions having a difference of .01 of an inch how did you determine that, by measuring from the edge of the paper, or how?

A. Folding your paper out, your several sheets of paper in their present position, and then measuring the position of the relative parts of the impression of the seal carefully.

Q. Was that measurement made from the top, bottom or side?

A. Anyway at all.

Q. Which did you do?

A. I measured it all the way around, but I can't tell which way the difference was, or what the actual difference was, except it was very slight, very slight.

Q. You don't know whether your measurements were made from the left-hand side of these pages or from the top or bottom?

A. No, but it would depend on the position of the lettering on the seals for measurements.

Q. You don't know how you measured it?

A. I can't tell you now.

Q. Now, you say there is a difference in the preparation of sheets one and two as distinguished from what is on sheet three; you mean by that a difference in the typewriting indicating a difference in time or from one to six months in the preparation of those sheets?

A. Yes, I think so, yes.

Q. Can't you fix it any more accurately than that?

A. Not on my present information, no, on my present data.

Q. You think it was at least a month's difference in time?

A. I said I couldn't on my present data.

Q. I say, you have expressed yourself that there was at least a difference of one month?

A. Yes, sir.

Q. And not more than six months?

A. Not more than six months.

Q. And you put it in a period of six months?

A. Yes, sir.

Q. That this third sheet antedated the first and second sheet?

A. Yes, sir.

Q. So far as the typewriting is concerned?

A. Yes, and so far as the ink writing is concerned.

Q. Does that help you as to the time?

A. Certainly, it does.

Q. Is there any ink on the first or second pages to make a comparison with the third?

A. Yes, the second page has a caret mark. As I said, that is a small mark, and my opportunities for testing that were comparatively limited, but as far as I was able to do it that indicated it to be in the same boat.

Q. I am asking when you made a comparison as to the typewriting you say there was a difference of from one to six months?

A. Yes, sir.

Q. And you say that also applies to the handwriting?

A. Yes, sir.

Q. And you have for the purpose of comparison

between pages 1 and 2 in comparison with page 3 only a caret mark on the lower third of the second page?

A. As to the writing fluid, yes.

Q. That is the only thing you have with which to make a comparison as to the time of the preparation of the first and second sheets and the third sheet?

A. Yes, as to comparison, but I have the experience, too. Speaking of comparison alone that is the only thing I have.

Q. In making your comparison that is the only thing you have to rely on?

A. From the actual paper comparison.

Q. I ask you to look at the signature page and take the words, "Locustwood, formerly Fernwood, Cemetery Association, by Charles C. Spear, president," and ask you whether or not that was written with the same ink at the same time?

A. The entire thing?

Q. What I have read you.

A. Down to the "attest?" As to the tests made I did not test every stroke of ink writing on this signature page, even in that part you speak about. I examined them sufficiently to know that certain parts classified themselves together and then tested them, picked out certain parts of that writing for testing for one thing and another, therefore, from actual tests I couldn't say whether all that writing you have read was done at the same identical moment, or one sitting, we will say. I believe from the tests I made and put together it was done practically at the same time, if not at the same time, and with the same ink.

Q. Now, I ask you to look at the words, "Attest, Mercedes Spear," and ask you when they were made with reference to what you have already said with regard to the words, "Locustwood, formerly

Fernwood, Cemetery Association, Charles C. Spear, President."

A. My answer to that would be as already given, supplemented by this. My tests all put together indicate that is the same ink but whether or not it is done at the same identical time with the part that went before I can only indicate on certain tests I made that it was done substantially at the same time. Whether immediately before or after I can't say.

Q. The word "secretary" under the name of Mercedes Spear is obviously in another handwriting?

A. I wasn't looking at handwriting at all.

Q. I am asking you now.

A. I don't pass on handwriting by flash looks. I would say apparently it looks differently but that doesn't give you anything because that is only an opinion of mine.

Q. Your opinion is not any more valuable than that?

A. Not on a glance.

Q. "Locustwood Cemetery, Inc., by Max Darcy, President, and J. F. Powell, Secretary," was that with the same ink and about the same time?

A. Different ink, but taking the tests altogether at or about the same time.

Q. I mean, not in comparison with the others, but by themselves?

A. I say, at or about the same time. I have explained before I did not take every individual line and every individual ink mark of the signatures, but took them all. I have got to select, and when I find that the inks classify themselves naturally it will serve the purpose in regard to the whole paper.

Q. In regard to that paper, "Locustwood Cemetery Company" is not in the same handwriting as the name "Max Darcy?"

A. Apparently so, but I am not passing on handwriting.

Q. What are you passing on?

A. The condition of the document as regards to paper and ink.

Q. You used those signatures as a part of your test?

A. Not as identifying the handwriting.

Q. You used those signatures and the ink of which they were written?

A. Yes, but that doesn't signify personality.

Q. I am not asking about personality, I am asking when and whether or not the words, "Locustwood Cemetery Company" are written with the same ink as the name "Max Darcy?"

A. Yes, sir, it was.

Q. It was by the same ink?

A. The same ink.

Q. And that is true of the name J. F. Powell?

A. I think so, yes.

Q. Don't you know?

A. My tests taken altogether would indicate that.

Q. That is what you base your opinion on?

A. Yes, but I haven't taken every individual line on that.

Q. But you are willing to come here and testify as to your opinion?

A. Yes. I am sorry I did not examine it or I would have some foundation for an opinion.

Q. There appears on this paper in the lower right-hand corner on all three sheets the impression of a seal of the Equitable Estates Corporation, was that seal put on before or after the paper was fastened together?

A. Before or after?

Q. The papers, the three sheets, were bound together?

A. After—I mean before they were put together.

Q. What is there that tells you that?

A. Because the three impressions evidently were made simultaneously but they couldn't be made simultaneously on account of their position and relation to each other with the papers as they are now fastened together.

Q. What is the difference?

A. A matter of measurement.

Q. How much difference?

A. I don't know, but it is much more marked than the other.

Q. Half an inch?

A. No, you would hardly expect to find that. I should say off-hand, roughly speaking, somewhere around 1/8 of an inch.

Q. Between which two papers, the first and second, or second and third?

A. I was just bunching them together then.

Q. I want to know what the difference is.

A. Hold them down somewhere near straight. The first page the bottom of the impression is materially lower than the second page and still lower than the third page, and the position in regard to the sideway twist of the seal is still more different.

Q. And that is the reason you say they were placed on there before the papers were fastened together in their present fastenings?

A. I don't want to hurry you, but I must positively get away from here in five minutes; so if you can't finish with me I will have to come back.

The Court: I am not going to postpone it. The cross-examination will have to be finished or the direct examination stricken. I have been very generous, I think, in the distribution of time. Go ahead.

Q. Now, you gave as one of the reasons for indicating that the first and second pages were not written at the same time as the third page was the difference in the margin between the left-hand edge of the machine and the beginning of the typewriting.

A. That is one break in the wall.

Q. And you gave that on the first page as being 1 1/4 inches and the third 1 3/8.

A. The first page 1 1/4 and the third 1 3/8 plus.

Q. Might that difference be due to the different point at which the paper was placed in the typewriting machine by the operator which would give a difference in the margin on the left-hand side of the page?

A. Yes, it might be due to that, but the length of the line would be likewise affected.

Q. Confining yourself to this one break you talk about, that might be due to the placing of the paper in the machine?

A. Yes, sir, but if it was placed in there as part of the same document there is no reason why it should be different.

Q. Did you ever do any typewriting?

A. Oh, yes.

Q. Do you always get your sheet of paper in at exactly the same distance from the left?

A. When I am preparing a document of one page my paper goes in the machine ——

Q. Assuming you are not a stenographer and know nothing about this matter, is it unnatural for a paper to be different?

A. It is less likely to happen with a professional typewriter than one that isn't.

Q. What is the difference between the first and second pages?

A. At the top the first and second pages are prac-

tically alike, but the typewriting has twisted around a little so it narrows up toward the foot.

Q. And that is due to the way the paper was put in the machine?

A. It was started in all right, but it was placed in there uneven.

Q. In other words, the paper when it was inserted in the machine?

A. Or it may have slipped a little bit in going down.

Q. Any of those things might have made the difference in the margin?

A. Toward the bottom, yes, but not at the top.

Q. Now, you called attention to the last line on the second page in which certain words were "x" out, and I will ask you when that was done, whether when the first and second pages were prepared or the third page?

A. I have no means of knowing that because I didn't test that line specifically in itself.

Q. That line presented something unusual in the document?

A. Yes.

Q. And it showed that one line of the second page had been "x" out and that line rewritten on the third page, that is what the document shows, doesn't it?

A. Ostensibly.

Q. That is what you testified to, didn't you?

A. No, I testified that the third page was written before the second page, therefore the last line, although taken out there, was not rewritten off the third page.

Q. When was this last line of the second page crossed out?

A. I don't know at the present moment.

Q. You say there is a difference in the thickness of the sheets of paper as between the first two pages and the third?

A. There is a difference in the thickness.

Q. Made by the same manufacturer?

A. Yes, sir.

Q. And approximately the same time?

A. No, not the same mix at all of pulp.

Q. It is possible in the preparation of this paper that one sheet of lesser thickness could have gotten inserted in a ream of the thicker paper?

A. Such a thing is possible on the principle that lightning may strike the building across the street, but it is not at all possible, and especially with a reputable manufacturer.

Q. That is true in the preparation of the reams of paper, it is entirely possible that would account for the difference of weight of those papers?

A. Yes, sir.

Q. And isn't it also true the difference in the weight of paper might have come from the same batch in the manufacture of it?

A. No, sir, that is not possible.

Q. Are you a paper manufacturer?

A. No, sir, but I am experimentally a paper maker as much as anything.

Q. The difference in the length of the lines between the typewriting on the third page ——

The Witness: Your Honor, it is absolutely ——

The Court: You can't come here and submit yourself as a witness and leave during the cross-examination. I have waited for you several days and you have come, now, you must finish, or if you go your direct examination will have to be elimi-

nated. Now, that is all I can do. You can take your choice.

The Witness: It is only a question of missing a train and a lot of other things.

The Court: I can't help it. We have been missing you for some days.

Q. The difference in the length of the lines between the typewriting on the third page and that on the first and second you give as a considerable difference?

A. What was that?

Q. You gave a difference in the length of the lines?

A. Yes.

Q. That is due, partly, isn't it, to the difference in the margin on the left-hand side?

A. Due to the commencement part which, of course, is the margin.

Q. And there is a difference in the margin?

A. Slight.

Q. A very slight difference?

A. Yes, about 1/8 of an inch.

Q. The length of the line, you say, then became shorter on the third page than what it was on the first and second?

A. I think the line was less there, yes.

Q. Now, I call your attention to the first line on the third page of this paper, "In Witness Whereof the parties hereto have caused the signatures"—the word "signatures" is the last word of that line, isn't it?

A. Yes.

Q. Now, how does the distance of the end of the word "signatures" from the right-hand margin of

the paper on this third page compare with the general run of the ends of the lines on the other two pages?

A. Much less than some and more than some.

Q. Typewriting on the right-hand side ——

A. Is very irregular.

Q. And it ends, so far as possible, with a good operator with the end of a word?

A. As a general proposition they try to.

Q. A good operator tries to get a word at the end of a line?

A. Or the end of a syllable.

Q. Does not break a syllable or word?

A. They generally stop regardless of the point.

Q. I call your attention to the fact this first line ends with the word "signature."

A. Yes.

Q. And the first word of the second line is the word "of"?

A. Yes, sir.

Q. I call your attention to the second line of this third page and that is exactly the same length as the first one?

A. Yes, and hyphenated.

Q. And hyphenates the word "corporate" and hyphenates it between the syllables?

A. Yes.

Q. And brings it exactly the same length?

A. Yes, sir.

Q. When the operator reached this point, he or she, knew that they had very little more to be added to this document?

A. I don't know.

Q. Presumably so?

A. I would presume so from the reading of it.

Q. This document you think was written on the same machine?

A. I thought so.

Q. And by the same operator?

A. I believe so.

Q. But at different times?

A. I believe so.

Q. Do you think the third page of this document had been folded before it was folded in connection with the first two pages?

A. I think I haven't said as to that; I don't know as to that.

Q. I understood you to say something about a fold indicating something to you?

A. I said the last fold in the first and second pages did not tally with the fold on the third page.

Q. What would that signify?

A. It would indicate the probability they were not folded together originally.

Q. Now, show me wherein there is a difference in the fold.

A. See that?

Q. Yes.

A. The first two pages fold together and the bottom fold of the last page is roughly speaking nearly 1/4 of an inch away from that point.

Q. Did it occur to you that difference might have been caused by the taking of these three sheets of paper, putting them in this cover and folding them, would that produce a difference in the fold?

A. I have never seen it done that way.

Q. When you fold two or three sheets of paper, the lower one, assuming they are of the same length, the lower one must fold to a shorter fold, musn't it?

A. The lower one?

Q. Yes.

A. No, I think you are the wrong way around, the lower one would run longer.

Q. To come up above the edge of the other two?

A. It would be the outside position and would have a little further to go around.

Q. And that would make a difference in the point where it would fold?

A. Very slight.

Q. And that would make a difference when there was a cover added to it?

A. It is possible it would, but not as much as claimed here.

Q. But isn't it true it did it and couldn't help but do it?

A. It is true it couldn't help but do it depending on the thickness of the paper, but there wouldn't be any variation as we have here.

Q. And the thicker the paper the more noticeable that would be?

A. Yes.

Q. Isn't it possible, quite reasonable and proper, in folding a paper such as this was, the condition you saw on that third page could have been made by folding it together?

A. I would say not positively.

Q. Why not?

A. The first two pages are thicker than the third page and that would tend to get away from the possibility altogether, making the first two pages accurately to that extent, and in addition to that the position of the folds when they are actually put together is such as to make it out of question.

Q. I ask you to look at the first and second pages of this agreement.

A. They agree.

Q. As to the fold taken from the middle and without the rest of the paper, does it come out at the same point?

A. They agree, I said.

Q. Will you look at them and see; I can see a considerable difference and I am asking you to look here at the edge of the paper.

A. At the top?

Q. Yes.

A. I am talking about the top.

Q. I am asking you to look at it; it shows a difference, doesn't it?

A. The foot of 1 and 2 pages comes at a different position when turned up against the top of the cover page from the edge of that top of the cover page.

Q. And when you turn up the third page you get still more of a difference?

A. Yes, sir.

Q. And that third fold comes when turned up over the middle third of the third sheet?

A. The middle fold is in agreement all through.

Q. So there is nothing in this fold theory?

A. I think there is a good deal in it.

By the Court:

Q. Are you able to say the third sheet was ever folded before it was put in the cover?

A. Which pages?

Q. Are you able to say the third sheet was ever folded before it was put in the cover?

A. I am not able to say, except inferentially. The fold at the foot does not tally with the pages 1 and 2, but does tally with the folds of the cover.

Q. Are there two folds noticeable at that point?

A. There are not two folds noticeable at that point.

Q. Do you think it was ever folded before it was put in this cover?

A. It was folded at the very folds in the same position it now is, but not as to the lower fold.

In other words, the lower fold does not coincide with the other sheets. From the condition of the fasteners and the general condition of the paper I would be led to believe that the single set of folds which appear in sheet three at the prent time and the cover were made prior to this present fastening and these other two sheets were in the course of the act of folding in combination with the cover and third sheet accidentally put in the same position as to the upper folds but missed fire as to the final fold.

Q. Holding or smoothing out this paper, holding it as tight as I reasonably can, shows a difference in the location of these sheets on the lower right-hand corner, doesn't it?

A. Yes.

Q. And also on the lower left-hand corner?

A. Right.

Q. Looking at the top of this document and the fold over of the cover shows that the typewriting in comparison with the edge of the cover runs down the page and not straight across, that is, down to the right, the first page?

A. The first page, yes; the second page slightly so; the third page I can't tell, but off-hand it looks mighty even.

Q. Does that indicate anything to you as to the placing of those three sheets of paper in this cover?

A. No, sir.

Q. Doesn't mean anything to you at all?

A. No, sir.

Q. As to the perforations on the top of it or anything else?

A. No, the folds are together as far as the three pages are concerned.

Q. I am not asking anything ——

A. The typewriting is in a different position, as we have gone over several times on the different pages.

By Mr. Tyler:

Q. The instrument you have been examining is dated July 23, 1923?

A. That is the typewritten date at the top of it.

Q. That will be four years old in a few days, won't it?

A. Yes.

Q. Now, you said that the first two pages were written at least 30 days after the third page, is that correct?

A. Yes.

Q. But you can't tell whether it might not have been as much as six months after the third page?

A. It runs from one to six months according to the tests I made.

Q. What I want to get from you as an expert is how you can be so sure of 30 days and can't be sure as to six months?

A. Because of the fact that with a thirty day period at approximately four years ago with typewriting your reactions would be so equally alike that you have got, in fairness to all hands, allow a little play in your measurements, whereas if it is substantially apparent as a difference in your measurements then you can get away from your thirty day period and take the longer period.

Q. Did you allow any period of variation on the first page?

A. I didn't discover any period of variation on the first page.

Q. I mean on the third page, did you allow any

period of variation as to when the third page might have been written?

A. According to the tests I made that was written approximately at or about one time.

Q. Did you allow any variation for it?

A. I would allow, in the present state of my data for the third page not over two days.

Q. Not over two days?

A. Not over two days.

Q. Now, fix a time when the third page was written, will you?

A. Approximately the date of the head of the thing, within a day or two of that.

Q. How is it then if you can fix the third page within two days after an elapse of practically four years that you can't fix the first or second pages within a period of one to six months?

A. Because the third page has a lot of handwriting upon it which tests very differently and measures very differently from typewriting, and that enables you to get it more close than typewriting.

Q. The first and second pages have no handwriting on them?

A. Except the caret mark, and when I got through with the other tests, I had very little opportunity for the age test.

Q. That doesn't answer the question of how you can fix the period of the first and second pages as 30 days after the other, but can't fix it for six months after that.

A. I didn't fix it definitely other than between one and six months.

Q. You did fix it definitely as 30 days.

A. I am saying it was at least done a month and possibly up to six months.

Q. What I can't understand is how you can fix

a definite period of 30 days and can't fix a definite period within six months?

A. I confess I don't grasp the meaning of your question.

Q. I may be ignorant, you are the first handwriting expert I have seen, but you say that the first and second pages are definitely 30 days after the third, but you can't say as to six months.

A. Because the 30 day period wasn't much more than an allowance.

Q. What do you mean by that?

A. I mean I am giving it the benefit of the possibility of uncertainty in reaction because of typewriting.

Q. You can make the 30 days definite but can't make it definite within six months. Is this an exact science?

A. It is an exact science but human beings have to practice it.

Q. If it is an exact science tell us why you can't fix it definitely from one to six months, if you can fix the one month definitely?

A. Because I can't measure the reaction for typewriting so fast.

Q. Can't measure it within a five month period?

A. We are talking about 30 days. You say, "Why can't you fix it within 30 days?"

Q. I am asking if you can fix one point definitely for 30 days why you can't fix after that within the six month period?

A. The only answer I can make to that is that during the testing I can't move faster than so fast and I can't shorten periods than so short, and therefore, I have to allow in typewriting for that. In handwriting you have much more play.

Q. Are you sure that the first and second pages

are not over three years, ten month and fourteen days old?

A. That I don't know anything about. I am speaking about the interval of time between the two.

Q. I am asking you if you can tell whether the first and second pages definitely are not over three years, ten months and fourteen days old?

A. I didn't measure it except in relation to the third page.

Q. You have measured the third page as being definitely three years, eleven months and fourteen days without a variation of more than one day. Now, then, having done that, can you tell us definitely that the first and second pages are not over three years, ten months and fourteen days old?

A. I can answer it this way.

Q. Answer it yes or no.

A. Yes, the first and second pages are not over that time if the others are that time.

Q. If you can tell it is not over three years, ten months and fourteen days old why can't you tell how much it is within a period of 150 days.

A. For the reason I have gen.

Q. I understand you can tell definitely that is not over three years, ten months and fourteen days old, but you can't tell within a period of 150 days how old it is?

A. Yes.

Q. And you expect us to believe that you can fix the age?

A. I know what ——

Q. You can fix the maximum age, but you can't tell the exact age within 150 days?

A. I am not fixing it at any time at all except with relation to other papers, and the signature page shows me as to the handwriting that was done within a day or so of the time which it was dated.

Q. In these pages you have no handwriting to go by?

A. Except the caret mark.

Q. And not having any handwriting to go by, taken purely as typewriting, you can't tell within 150 days how old it is?

A. I am allowing a margin of six months and one month.

Q. You can't tell within that time how old it is?

A. I can't on my present data.

Q. Then on your present data how can you say it is not over three years, ten months and fourteen days old?

A. On the third page there is ——

Q. Never mind the third page.

A. I am telling you why I say that.

Q. Put it this way. If these two pages, without the third page, eliminate that entirely, assuming you have never seen it, can you tell how old they are?

A. If we eliminate the third page I would leave a wider margin than one to six months.

Q. How wide?

A. I would have to test it more.

Q. From the present test, taking those two pages by themselves, it is impossible to tell how old they are?

A. No, it would be impossible to pin it down to one to six months.

Q. Taking your time without the third page it might have been written on July 23, 1923?

A. Taking them by themselves without any other paper at all it is difficult to say what I would find in regard to the actual date of writing because I would have to make other tests.

Q. From your present test, taking those two pages

alone, you can't tell whether they were written on July 23, or thereabouts?

A. From my present tests, based entirely on those two pages, I won't say.

By the Court:

Q. If it be true as you state that the seal "Locust-wood Cemetery Association" was made with one impression or imprint on the three pages at one time, how can it be possible that the third page might have been taken from some other document to which it had been formerly attached and sealed?

A. Simply on the theory, if I may use the term, that a seal is accessible to somebody or other in interest, this particular seal must have been accessible to somebody interested, and I have no means of judging how they had access to it, or anything about that, but I am satisfied the same seal made the impression in the first place as was impressed on the signature page in the proper place, and I am satisfied also that by hook or crook that very instrument was used on those three sheets of paper at one and the same time, whether they were in their original condition or not, but not in the position in which they are found here. You can't make those three impressions superimpose in this present binding of these three pieces of paper, therefore, it follows necessarily the three sheets of paper must have been in some other position slightly out of this exact one, and you can't get that other position, at least, I can't, by twisting the papers around just a little. In order to find a place you would have to take them apart from this present binding.

Q. Would it be possible if the third sheet had been already sealed with the seal of the company for

any person to have laid down the other two sheets over it or under it and made impressions through the three sheets exactly on the old one so it wouldn't be detected?

A. The left impression?

Q. Exactly on the older one?

A. The left-hand impression you are speaking about?

Q. Yes.

A. No.

By Mr. Carr:

Q. Mr. Melcher, assume for a moment that the seal of the Locustwood Cemetery Association appearing on the right was there at the time of execution, but that the seal Locustwood Cemetery Association appearing on the left margin was not, and then assume the pages prior to page 3 had been removed and someone having access to the seal of the Locustwood Cemetery Association had then made the one impression after having substituted the two pages ——

The Court: Is it on two?

Mr. Carr: Yes.

Q. Would it have been possible to accomplish the substitution and still produce the result which you saw there as the corporate seal?

The Court: I thought that was the only place.

A. It is quite possible although I don't think it happened in this case.

Q. Assuming there had been a substitution and the party making the substitution had control of the seal, could he have made the impression on the left margin with one impress and still the substitution exist, couldn't that have been possible?

A. In the present position?

The Court: There is no force to my question at all when there is another seal that doesn't go through at all. I wouldn't have bothered with that if I saw it. It is perfectly clear you could have done that.

CHARLES COOPER SPEAR, recalled.

By Mr. Tyler:

Q. In your testimony yesterday you said that Mr. Davis continuously endeavored to get from the owner of the property, that is, the Cooper Homestead Farm, or the cemetery property, some agreement in writing, that is, getting from the owner of the property and distinguished from the operating company, you recall that, don't you?

A. Yes.

Q. That was during the period, wasn't it, that the title to the farm was in litigation, that is, the litigation started in 1922 and was not terminated until 1925, it was within that period?

A. That was in 1923.

Q. Now, did you at any time discuss with Mr. Davis the title as to the fact that there was litigation pending as to the title?

A. Why, certainly.

Q. Will you fix, please, in 1923 what time, if any, you talked with Davis about the title or litigation of the property?

The Court: With whom?

Q. Mr. Davis, C. O. Davis.
A. It was in the month of July.
Q. In July, 1923?
A. Yes, sir.
Q. Will you tell us what you told him as to the litigation?

Mr. Carr: If the Court please, it doesn't seem to me we would be bound by that conversation.

The Court: If you disclaim any rights under Davis, all right.

Mr. Carr: Davis is an individual, if the Court please.

Mr. Tyler: He was the prime mover of the Locustwood Cemetery, Inc.

The Court: It may not bind the corporation, but you may state it.

The Witness: I discussed the matter thoroughly with him, and my contention was that the cemetery association was at that time not involved in the litigation and could therefore go ahead and operate as an association, and that the question of the title to the Spear-Fernwood Agreement and the balance of the property would eventually be straightened out.

Q. Straightened out by the litigation that was pending?

A. Yes, sir.

Q. Did you acquaint him with the character of the litigation that was pending involving the title to the property?

A. Yes, he went over the bill of complaint. He is a lawyer.

Q. He is a lawyer and he read the bill of complaint at or about the time you mention?

A. Yes.

Q. I think you also testified in September, 1923, you told Mr. Burrell or had some talk with him about the ownership of this property, is that correct?

A. That is correct, yes, a telephone conversation.

Q. How is that?

A. I told him over the phone.

Q. Mr. Burrell personally?

A. Yes.

Q. What did you tell him about the ownership of the property or the subject of the litigation then pending?

A. I don't recall the exact words of the conversation, but it was to this effect, "I understand that representations have been made that your company has purchased the property of the Equitable Estates Corporation and the cemetery" and I said, "That is not so." He said, "That is what I understand," and I said, "You had better then investigate the affairs of your company," or words to that effect. The exact conversation I don't recall.

Q. Do you recall what Mr. Burrell's connection at that time was with the Locustwood Cemetery, Inc.?

A. I think he had become president at that time; I am not certain about that.

Q. You said the trouble came about with you and the officers of the Locustwood Cemetery, Inc., because of the claim of the Locustwood Cemetery, Inc., as to the ownership of the property, and you had notified them and published statements that they were not the owners of this property. Will you tell us over what period of time that occurred?

A. I think it first came to my attention as early as October, 1923. They were out selling stock and representing to people that they had purchased the cemetery and the Cooper Homestead Farm. I spoke to Darcy about that and he denied it, said it wasn't so, but afterward I found there was a report here in the chamber of commerce which also tended to show ——

Mr. Carr: I object.

The Court: Sustained.

Q. Eliminate the conversations with anyone else except the officers of the company and tell us with whom you had those conversations and fix the time.

A. I didn't want those reports to be circulated for fear it might involve the property and involve me personally, that I would become a party to the misrepresentation, so I commenced then to publish notices in the papers. Notice was published in the Argus and the Post-Telegram, and the Courier published one and then they refused to publish any more. They were paid for one and they wouldn't publish it and returned the money.

Q. When were those publications made?

A. I think most of them—I have a few here—the first ones were published, I believe, about the latter part of 1923.

Q. Now, you said you had your talk with Burrell in September, 1923; with what other officers did you talk at or about that time, if any?

A. Darcy and Cawthorne.

Q. Did you talk with Darcy and Cawthorne?

A. Yes, sir.

Q. Fix the time when you talked to them, will you, please.

A. I saw them there two or three days.

Q. Well, as early as when?

A. As soon as they had commenced work out there —before that, while Davis was having his company incorporated. I think Darcy and Cawthorne went to live at the Garden Hotel in the early part of July.

Q. 1923 was that?

A. Yes, sir, and I met them nearly every day.

Q. All right. You said in September you talked to Burrell?

A. Yes.

Q. And told him the representations that were being made were untrue?

A. Yes, sir.

Q. Who else did you talk to about that time? You say Darcy and Cawthorne, what did you say to them?

A. About that same time ——

Q. What did you say to them?

A. I don't recall the conversation but on numerous occasions I called their attention to the fact that I understood representations were being made that they had bought the property and the reply was, "Oh, no, we can't go into the question of this litigation and explain everything, we couldn't sell any stock at all."

Q. Was it prior to October 23, 1923?

A. Yes.

Cross-examination.

By Mr. Carr:

Q. You say you talked to Mr. Burrell over the phone, Doctor?
A. Yes.
Q. How did you know it was he?
A. By his voice.
Q. You recognized his voice over the telephone?
A. Yes.
Q. You knew him well enough to recognize his voice?
A. Yes.

By Mr. Palmer:

Q. Doctor, I show you a letter dated October 20, 1924, purporting to be signed by D. T. Stackhouse and ask you if you received that letter from Mr. Stackhouse?
A. Yes, I did.

Mr. Palmer: I would like to read this into the record: "October 20, 1924. Charles C. Spear, Esq., Box 102, Moorestown, N. J. Dear Sir: Replying to yours of the 14th inst, in reference to the Locustwood Cemetery matter what I had in mind was the arranging of the details for the purchase of $16,800 of certificates of indebtedness issued to you by the Locustwood Cemetery Association. This proposition, I believe, has been discussed tentatively between yourself and two of its directors, Messrs. Cawthorne and Darcy. The money, they inform me, to effect this transaction was now being made available. I would like to arrange with you or your attorney the

details of this transfer. Very truly yours, D. T. Stackhouse."

Q. Now, Doctor, that referred to the certificates of indebtedness issued by the Locustwood Cemetery Association to you which we are seeking to foreclose in this case?

A. No, it referred to a bond of $16,800 issued by the Cemetery Association to the Locustwood Land Company.

Mr. Palmer: I would like to have this marked.

(Said letter marked Exhibit P1, 7/7/27.)

Q. Doctor, I show you this purported agreement of July 23, 1923, and ask you what you know about the imprint of the seal of the Locustwood Cemetery Association appearing on the left-hand side of this document of all three pages thereof.

A. That was affixed by myself at the time the paper was executed.

Q. I call your attention to the seal of the Locustwood Cemetery Association imprinted on the third page of this document through your name as president and ask you when and by whom was that seal put on there?

A. That was put on by myself after the signatures had been written.

Q. What was the reason for the putting on of those two different seals of the Locustwood Cemetery Association?

A. This was merely for identification of the three pages comprising the document.

Q. I call your attention to the seal Equitable Estates Corporation appearing on the lower right-

hand corner of all three pages of this document and ask when and by whom was that imprint made?

A. That was put on by me sometime subsequently.

Q. Subsequent to what?

A. The execution of this document.

Q. Why?

A. For no particular reason. The seal was left with the other seals and I put it on for identification of the pages. There was no necessity for the seal being there.

Q. The seal of the Locustwood Cemetery Association which appears on the left-hand side of all three pages and on the right-hand side of the last page is in whose possession?

A. My possession.

Q. And always has been?

A. Yes.

Q. Did the Locustwood Cemetery Association have a seal made?

A. Yes, I saw a seal they had affixed to a deed signed by Mr. Burrell's name as president. It was in the Recorder's office and I asked permission to look at it.

Q. To what did this letter of Mr. Stackhouse, marked P1, 7/7/27 have reference, what was the reason for that correspondence?

A. There had been talk with Darcy and Cawthorne about their getting into possession of the association so that they could operate it and I had agreed, subject to certain conditions, that if they would pay this bond of $16,800 that then I would undertake to have my two associates resign and I would resign and the lot-holders could then elect new trustees; if they chose to put them in that would be satisfactory to me.

Q. The question was asked yesterday as to the provision of the by-laws as to the Locustwood Ceme-

tery Association as to the number of trustees and you were to make an examination for that purpose, have you done so?

A. No, I have not. The minute book is right there.

Q. Mr. Carr, wanted to know about that and I suppose it ought to be supplied. How long will it take you to find it?

A. Not over two minutes. At what particular date was that?

Q. In 1923, the summer of 1923?

A. In the summer of 1923 there were three directors.

Q. Three trustees?

A. Three trustees, yes.

Q. That was the provision of the by-laws?

A. Yes, sir.

Q. And so long as you were connected with the association there was no change made in that?

A. No.

By Mr. Carr:

Q. Was that the provision of the by-laws in force then, three directors or trustees?

A. The original by-laws drawn up by Judge Kates in 1908 provided for seven, but then they were subsequently cut down to three.

Q. You mean was there a formal amendment or did they just fail to elect the other four?

A. No, there was a formal amendment reducing the number from seven to three.

Q. Can you find that amendment among the papers?

A. Yes, on the 9th day of June—no ——

Mr. Palmer: Of what year?

The Witness: On the 30th day of June, 1923.

Q. The by-laws were then formally amended, Doctor?

A. Yes. The trustees have a right ——

Q. May I see that?

A. Yes. The trustees have a right to change the number of trustees by resolution. I think you will find that is provided for in the constitution.

Q. At any rate, on June 9, 1923, at a meeting at which there was present yourself and your wife—was that all?

A. No, that is the meeting of June 30th. I think that date, June 9th, refers to something else.

Q. Show me the date of the meeting at which the change was made.

A. That is June 30th, isn't it?

Q. I don't know, I am not familiar with it. June 30, 1923. Now, at that meeting you say the by-laws were changed?

A. Yes, sir.

Q. Find it for me, will you, Doctor. Now, up to the 30th of June you were the sole surviving trustee?

A. Yes, sir.

Q. And then a meeting was called on the 30th of June?

A. 30th of June.

Q. At which the number of trustees was then fixed at three?

A. Yes.

Q. Well, Doctor, they didn't amend the by-laws, but simply resolved to elect three trustees?

A. Yes, sir.

Q. So under your by-laws they stood at seven before you only elected three?

A. No, the by-laws didn't provide for that.

Q. Your original by-laws, I think you said, called for seven?

A. At the time the association was incorporated.

Q. And that was never formally changed until, as you say, in June, 1923, is that right?

A. Yes.

Q. And the change that was made, is it covered by the resolution which I am now reading, "On motion duly made, seconded and unanimously carried, it was resolved that three trustees be elected to manage the affairs of the corporation." There was no other corporate action dealing with the amendment of the by-laws changing the number from seven to three?

A. I am under the impression there was one, but in 1910, but I haven't been able to find that. There was always diffculty getting seven trustees together.

Q. At any rate, the corporate action you refer to as having changed the by-laws is the minute I have just read you?

A. That was the intention of that minute.

Q. Just answer the question.

A. Unless there is another minute. I am under the impression there was, but as I say, I haven't been able to find it.

Q. The only one you have found up to date is the one I have read you?

A. Yes.

Q. Will you examine them at the recess hour if you wish to supplement that?

A. Yes.

(At this point a recess was taken until 1:45 o'clock P. M.)

(Trial of the cause resumed at 1:45 o'clock P. M., pursuant to adjournment.)

CHARLES COOPER SPEAR, resumed.

By Mr. Palmer:

Q. Doctor, I show you this agreement of July 23, 1923, and call your attention to the two staples on the right and left-hand sides of the paper and ask you who inserted those?

A. I did.

Q. I call your attention to the mushroom staple in the center and ask you if you know who put that in this paper?

A. Mr. Rose, David R. Rose.

Q. When was that done?

A. Immediately after the execution of the agreement.

Q. What was the reason for Mr. Rose doing that?

A. It was given to him to examine and to keep; he had it in his possession.

Q. He was your attorney at the time?

A. Yes.

Q. And the mushroom staples was put in by him?

A. Yes, sir.

Q. And the other two by you at the time of the execution of the agreement?

A. Yes.

The Court: Can't Mr. Rose verify that fact?

Mr. Palmer: I called him on the phone and asked

him to come up here. I didn't know that until the noon recess, and I phoned to him.

Q. Did you find anything else, Doctor, about the minutes?

A. No, I failed to find anything else.

By Mr. Carr:

Q. The answer you gave before the noon recess stands then?

A. Yes, sir.

Mr. Palmer: That is all, if the Court please, except Mr. Rose to verify that statement when he comes.

W. B. M. Burrell, recalled.

By Mr. Carr:

Q. Mr. Burrell, you are the president of the Locustwood Cemetery, Inc., are you not?

A. Yes.

Q. Do you know Dr. Spear?

A. I have known him only from the time he came here.

Q. He has testified that he had a conversation with you in September, 1923, with reference to the title to the Locustwood Cemetery Association and properties adjoining, the Cooper Homestead Farm, did he ever have such a conversation with you?

A. I never had any personal conversation with him.

Q. Did he ever call you on the phone?

A. I don't remember any time he ever called me on the phone.

Q. By the minutes in the minute book of the Locustwood Cemetery, Inc., you appear to have been elected president of the company on November 16, 1923?

A. That is right.

Cross-examination.

By Mr. Palmer:

Q. Who was president prior to you?

A. Why, I don't just recollect.

Q. When did you become a director?

A. I was a director somewhere around July, 1923.

Q. 1923?

A. Yes.

Mr. Tyler: It is agreed between counsel that Cawthorne was president up until the time Mr. Burrell was made a director, and Darcy was vice-president.

By Mr. Carr:

Q. You say you have no recollection of any telephone conversation from Dr. Spear; would you have recalled such a conversation if it had occurred?

A. I don't think I could; I don't remember of any such conversation over the phone.

The Court: Do you remember ever speaking to him over the phone.

The Witness: I don't remember of any time.

By Mr. Tyler:

Q. You do remember there was a dispute about the title being litigated at that time?

A. Yes.

Q. And there was considerable notoriety about the litigation between Dr. Spear and his mother at that time?

A. Yes.

Q. You knew that, didn't you?

A. Yes.

Q. And you knew that question was coming up, didn't you? When the company was selling stock you would frequently hear of the litigation?

A. I depended on Mr. C. O. Davis, who was an attorney, and then the matter was left to Mr. Cawthorne and Mr. Darcy.

Q. You mean you did not make investigation of it yourself, is that the idea?

A. No.

Q. You depended on them?

A. Yes.

Q. Mr. C. O. Davis and Mr. Darcy?

A. Mr. C. O. Davis was an attorney, he was the man who started the investigation.

Q. You mean you took their word for whatever they had to say about the title?

A. Yes.

Q. And they had discussed the litigation and title with you?

A. Yes.

Q. In fact, Mrs. Aleck came to see you and she had a talk with you about the title?

A. Yes.

Q. And didn't you say to her, in substance, that you were not interested and wasn't concerned with the title?

A. I told her I was perfectly satisfied with the decision of Mr. C. O. Davis and I had perfect confidence in Mr. Cawthorne and Mr. Darcy.

Q. And you knew that they knew about it?

A. Yes.

Q. Did you discuss it at your meetings?

A. No, I don't think we did.

Q. You don't think you did?

A. No.

Q. When did you discuss it?

A. I don't remember.

Q. You can't fix any particular time?

A. No.

Q. But it was a subject of discussion between the officers and directors of the company, wasn't it?

A. Yes, sir.

Q. And was that true while you were a director as well as while you were president?

A. I can't say as to that. The first meeting I attended was in the Guarantee Title Company in the Temple Building, that is the first meeting I attended.

Q. The first meeting you attended as director?

A. Yes, sir.

Q. Do you remember what date that was, Mr. Burrell?

Mr. Carr: This is hardly cross-examination. If he wishes to make him his witness, all right.

The Court: I think that is a proper inquiry. Call him as your own witness if you want.

Mr. Tyler: I am leading up to the fact of the discussion with Spear.

The Witness: We didn't have anything to do

with Spear at that time. I had no discussion whatever with Dr. Spear.

Q. Can you tell me about when it was you attended the first meeting of the board of directors?

A. The first meeting I attended was in the Temple Building, the Title Company.

Q. Now, I see by the minutes a meeting of the board of directors was held on Thursday, October 25, 1923, present, Cawthorne, Burrell, Darcy and Glee.

A. That was after the reorganization.

Q. That was after the reorganization?

A. Yes.

Q. Had you attended meetings before that?

A. I attended meetings in the Temple Building.

Q. I see here a meeting on July 24, 1923.

A. I recall that, that was in the Temple Building.

Q. That was in July?

A. Yes, sir.

Q. So that as far back as July the officers and directors among themselves discussed the title to this property, is that true?

A. Well, we had no discussion that I know of about the title.

Q. What did they talk about?

A. We were just having a stockholders' meeting, that is all.

Q. This is a directors' meeting and you were a director at that time?

A. Yes.

Q. And I understood you to say you did talk over among yourselves the litigation in regard to the title to this property?

A. No, I did not talk about the litigation.

Q. Did not?

A. No, sir, not at that time.

Q. When was it you talked about the litigation?

A. I talked with Mr. Cawthorne about the litigation.

Q. When was that?

A. That was after October 23rd.

Q. After October 23rd?

A. Yes, sir.

Q. You didn't talk anything about the litigation prior to October 23rd?

A. No, sir.

Q. Why did you talk about it afterwards instead of before?

A. Well ——

Q. What fixed that date in your mind?

A. It was after this contract or agreement had been made.

Q. How soon after the contract was made?

A. Sometime in October.

Q. The end of October?

A. Sometime.

Q. So as early as the end of October, within a week after you made this contract, you knew of the litigation that was going on between Mrs. Aleck and the Equitable Estates Corporation?

A. No, I didn't know then.

Q. How soon did you know that?

A. I don't remember.

Q. A month ago you said you talked about it at the end of October, is that true or not?

A. I don't know what took place or what we discussed; I know we had a meeting and everything was mapped out.

Q. What do you mean, everything mapped out?

A. Well, there was quite considerable discussion at various times but I can't say just what.

Q. Discussion about what? That is what I am

trying to get. A discussion about the litigation over the farm?

A. No.

Q. What was the discussion about? I don't understand what you mean by having things mapped out and having discussions.

Mr. Carr: If the Court please, this is certainly beyond the limits of my direct-examination.

The Court: I think it is excessive, Mr. Carr, but I think it is all right; I think we will find out what the witness knows.

The Witness: I want to give as true testimony as possible, but it is hard to keep in mind what occurred.

By the Court:

Q. Can't you remember when you first heard of this squabble between Dr. Spear and his mother?

A. Of course, I had various conversations with Mr. Cawthorne and Mr. Darcy, and, of course, I can't remember.

Q. Without reference to what they were or what you said, can you remember how early it may have been when you first knew it?

A. I know one thing that impressed me very much, I know Mr. Cawthorne and Mr. Darcy were very much worked up over this agreement, that they had gone back and forward to Dr. Spear, been there late at night on several occasions, to try to get him to surrender this agreement, and he didn't seem to be inclined to do it.

By Mr. Tyler:

Q. Taking the date of the agreement, which you say was made in October, using that as a basis, when was it you were talking to Cawthorne and Darcy about the Spear-Aleck litigation?

A. It was somewhere in October, I should say.

Q. October, 1923?

A. Yes.

Q. And you talked it over with Cawthorne who was then president, wasn't he, of your company?

A. It must have been after I was made president.

Q. You were made president November 16th.

A. Probably it was before then.

Q. And you had talked it over with them before you became president?

A. Yes.

Q. At the time you knew about this contract with the Equitable Estates Corporation, didn't you?

A. I knew it through Mr. C. O. Davis.

Q. You didn't know anything about it yourself?

A. No.

Q. Never saw the contract?

A. I never saw that contract, no.

Q. I mean, the contract with the Equitable Estates Corporation and the Locustwood Cemetery, Inc., you never saw that one, did you?

A. I saw the contract that Mr. Cawthorne brought me a copy of it, showed it to me down at my office.

Q. Is that the contract of October 23rd you referred to?

A. Yes.

Q. At that time, October 23rd, you talked with Cawthorne and Darcy about this litigation and this cemetery, had you?

A. I can't say as to that date.

Q. Was it about that time?

A. About that time.

Q. And you believed, didn't you, that you were making a contract with the owner and the Equitable Estates Corporation was the owner of the property?

A. Yes, sir.

Q. And you knew Mrs. Aleck was contesting their title to the property?

A. I didn't know anything about it.

Q. You left that to Davis, Cawthorne and Darcy?

A. Yes.

Q. You knew that they knew?

A. I am not positive.

Q. And that it what they talked about, wasn't it?

A. Yes.

Q. Will you read that article. Do you remember seeing that in one of the newspapers in Camden?

A. No, I don't remember seeing that.

Q. You haven't read it yet, have you?

A. No. Probably I did read it but I don't remember it. I may have read it in the papers but I don't remember it.

Q. Now, it says, "The announcement was made by Herbert J. Koehler, counsel for Mrs. Helen C. Douglas Aleck, who warned prospective buyers, asserting Dr. Spear was not the owner of the land and that he will not be able to give a clear title. The stock is being issued in the name of the Locustwood Cemetery Co." Do you remember that warning being giving; do you remember it caused you some trouble in the sale of the stock?

A. I don't remember.

Q. Don't remember any question coming up with prospective buyers as to whether you could make title?

A. No.

Q. Didn't you get a title policy that showed exceptions on it as to who was the owner?

A. I don't know.

Q. Didn't Mrs. Aleck come to you and talk to you about it and you said you had a title policy and settlement certificate for it?

A. When Mrs. Aleck came I referred her to Mr. Cawthorne and Mr. Darcy.

Q. Didn't you say to her, in effect, that you didn't care who had title to it you were going ahead with the proposition?

A. No, I don't remember saying that.

Q. You remember Mrs. Aleck coming there to see you?

A. Yes, I remember her coming.

Q. And you remember talking to her about the title to this property?

A. I told her to go to the cemetery office and see Mr. Cawthorne and Mr. Darcy.

Q. Didn't you also tell her words to the effect, not exactly, but to the effect, that as far as you were concerned you didn't care who had title to the property you were going ahead with it?

A. I don't remember.

Q. You may have said that?

A. I don't know as I would have said that. I said I had perfect confidence in the management.

Q. In who?

A. In the management of the office.

Q. In who?

A. The management of the office.

Q. And that was Cawthorne and Darcy, that is true?

A. Yes.

By Mr. Carr:

Q. Do you know when it was Mrs. Aleck came to see you, Mr. Burrell?

A. No, I do not; I don't remember just when it was.

Q. Was it after you became president?

A. I am not sure.

Q. You don't fix the date at all?

A. No, I don't remember.

MAX DARCY, recalled.

By Mr. Carr:

Q. Mr. Darcy, Mr. Spear testified that he saw you some place in Nicaragua back of a roulette wheel, tending to a roulette wheel. Were you ever in the gambling business down there?

A. No, sir.

Q. Ever run a roulette wheel?

A. No, sir.

Q. Now, Mr. Darcy, up to the service of the restraining order, the order to show cause, of this court, sometime in February, 1924, were you and Spear working together in reasonable harmony?

A. Yes, sir.

Q. You were paying over money to him and he was accepting it, is that right?

A. Yes, sir.

Q. While he was taking your money did he tell you the title was no good or there was any question about it?

A. No, sir.

Q. Were your relations so harmonious you went

to Dr. Spear's attorney when you were served with the order to show cause?

A. Yes, sir.

Q. There was no disharmony between you at all, was there?

A. No, sir.

Q. And had he or anyone else told you that the title to the thing you were trying to buy and which you were then attempting to pay for was not good?

A. No, sir.

Q. Was there any discussion among the board of directors, among the officers, prior to the service of the order to show cause in relation to any question as to the title that you were attempting to buy?

A. No, sir. There were discussions with reference to the disappeared agreement before that.

Q. A letter has been produced with relation to a certificate of indebtedness for $16,000, can you tell or explain that transaction?

A. Yes, sir. At that time we were trying to get from Dr. Spear a new copy of the October 23, 1923, agreement, which carried with it, of course, the control of the Locustwood Cemetery Association, and after a great deal of dickering he agreed that he would give us a new copy provided we paid him $16,800. I don't know very well what that $16,800 was, but it was put up to us this way, "If you pay that I will give you the agreement, if not, I won't."

Q. Did you arrange for a meeting at Mr. Stackhouse's office?

A. I was naturally a little suspicious and I discussed it with Mr. Cawthorne and we decided to straighten the matter out and we saw Mr. Stackhouse and Mr. Stackhouse wrote Dr. Spear the letter which Dr. Spear showed, and to which he paid no attention.

(No cross-examination.)

JAMES T. CAWTHORNE, recalled.

By Mr. Carr:

Q. Mr. Cawthorne, up until the service of the order to show cause in the former suit, some date in February, 1924, were your relations with Dr. Spear reasonably harmonious?

A. Agreeably so, yes, sir.

Q. And were you paying moneys to him pursuant to the terms of your agreement?

A. Yes, sir, regularly each week.

Q. Did he at any time up to that time tell you that his title was questioned?

A. No, sir.

Q. Did you have any knowledge that it was?

A. No, sir.

Q. From any source whatever?

A. No, sir.

Q. And was there any discussion in the board or among the officers of any defects in the title which you were attempting to acquire prior to the service of the order to show cause?

A. No, sir.

Cross-examination.

By Mr. Tyler:

Q. You remember testifying about the disappearance of this agreement?

A. Yes, sir.

Q. What time did you fix that at?

A. I don't understand that question.

Q. What time did you fix that at?

A. The date of the disappearance of the agreement?

Q. Yes.

A. Sometime around December 1st we discovered it, I think.

Q. Don't you remember saying you were unfriendly with Spear at that time?

A. We were unfriendly. The attorney asked if we were agreeably harmonious, which was a fact.

Q. I didn't get the distinction. When did your unfriendly relations begin?

A. Our unfriendly relations began about the time he threatened us with a gun to force us to sign a contract, that was in May, 1924.

Q. You fix a still later time for the unfriendly relations, making it May, 1924?

A. We weren't friendly, we were agreeably harmonious.

Q. What were your relations in November and December, 1923?

A. In November and December very pleasant up to the time of the discovery of the loss of the agreement.

Q. When was it you discovered that?

A. Around December 1st.

Q. December 1st?

A. Around that time. It may have been the latter part of November.

Q. What was the condition after December 1st?

A. Why, most of the time when we were together the relations were harmonious, agreeably so.

Q. I thought a moment ago you fixed that as being February, 1924, when there was a change of relationship, at the time the rule to show cause was served?

A. There was a marked change in which we never spoke or met after the first part of May, 1924,

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but prior to that time we had frequent meetings and during those meetings we would bury the hatchet.

Q. And the service of the rule to show cause in February did not make any difference?

A. In our relations?

Q. Yes.

A. Not at that time, no.

Q. You say you never had any knowledge of the dispute about the title. You got a title policy from the West Jersey Title Company in regard to this property, or a settlement certificate?

A. Yes.

Q. Will you produce that, please.

A. I haven't got it.

Mr. Tyler: I ask to have that produced.

The Court: When was it the gun episode occurred at Dr. Spear's house when you were discussing the agreement?

The Witness: Why, approximately around the first of May.

Q. This title policy you got you read that, did you?

A. Yes, sir.

Q. And it set out a lis pendens showing the litigation pending between Mrs. Aleck, her son, and the Equitable Estates Corporation, didn't it?

A. Yes, sir. I think we got that policy about the middle of February.

Q. The middle of February?

A. About the same time or perhaps after we got this injunction served on us.

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The Court: Let it be filed later. Do you have anything more to ask?

Q. You say you were very friendly with Spear up to the time the agreement was lost or disappeared?
A. Yes, sir.
Q. And that was about the first of December?
A. Approximately.
Q. And you had been connected with him for many months prior to that in the operation of the cemetery, hadn't you?
A. Why, about three months.
Q. About three months prior to that?
A. Yes, sir.
Q. And do you say that notwithstanding your very friendly relations and your joint enterprise in conducting this cemetery he did not discuss the litigation he was having about it?
A. No, sir.
Q. Notwithstanding you were working together?
A. Yes, sir.
Q. And you were very friendly?
A. Yes, sir.

The Court: Never told you his mother was after him?

The Witness: No, sir.

Q. He never said anything to you about the title?
A. The title?
Q. Yes.
A. Not as a cloud on the title.
Q. Never said anything about a cloud on the title?
A. No.

Q. Did he tell you who owned it?
A. Yes.
Q. Who did he tell you owned it?
A. The Equitable Estates Corporation.
Q. And did you make any investigation to see whether they did?
A. No, sir.
Q. None whatsoever?
A. No.
Q. You just relied upon Dr. Spear?
A. Yes, sir.

By Mr. Carr:

Q. Did you also rely on Mr. Davis for an investigation of the title?
A. Yes, sir.
Q. That wasn't in your department, an investigation of the title?
A. It wasn't necessary.
Q. That wasn't your work, was it?
A. No, sir.

David R. Rose, Esq., sworn.

By Mr. Palmer:

Q. Mr. Rose, you are a counsellor at law of the State of New Jersey?
A. Yes, sir.
Q. And you formerly represented Dr. Spear?
A. I did.
Q. And represented him at the time of the filing of the bill in this particular suit?
A. Yes, sir.

Q. I show you an agreement dated July 23, 1923, between the Locustwood Cemetery Association and Locustwood Cemetery, Inc., and ask you if you have seen that before?

A. I have.

Q. Do you know when you first saw it?

A. I can't recall definitely. My best recollection is Dr. Spear soon after he employed me in 1923 brought to me a large bundle of papers and those papers were in my possession from that time until I was relieved of my duties as counsel in this case in —I think the April Term of the Supreme Court, at which time I wrote Dr. Spear a letter requesting him to come and get the papers.

Mr. Carr: April Term what year?

The Witness: 1927, this year. Dr. Spear came into my office and before he came I had gotten together all the papers which were in my office and I made an itemized statement of each paper, and this was one of the papers, and to the best of my recollection this paper was in my possession, in my safe, from sometime in 1923 until the April Term of 1927.

Q. No changes or alterations were made in it during that time?

A. No, sir.

Q. And it is now in the same condition as when you delivered it to Dr. Spear a month or two ago?

A. Yes, sir. I haven't looked at it. (After looking.) Yes, it is in exactly the same condition.

Q. I call your attention, Mr. Rose, to the mushroom staple in the center of the top of this paper.

A. Yes.

Q. And ask you if you have any recollection at all with reference to when or by whom that was inserted?

A. No, sir, I have no recollection.

Q. It might or might not have been done in your office?

A. It might have been.

Q. But you don't recall anything concerning it?

A. I don't recall the circumstances at all.

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By the Court:

Q. Can't you tell when you were employed and when the papers were brought to you?

A. I looked at the answer and counter-claim, which is the top paper of that file Mr. Tyler now has in his hands, and on October 4, 1923, as solicitor for Charles Cooper Spear I filed the answer and counter-claim in the case of Helen C. Douglas, com-
20 plainant, against Charles Cooper Spear, 51/599. Of course, it took me some little time to prepare that answer and counter-claim, so I should say that Dr. Spear had come to my office and had brought these papers to me some short space of time before October 4, 1923, but just when, I don't know.

Q. Didn't you supply a copy of that agreement to someone for use in this litigation?

A. I think I did.

Q. To Judge Starr, wasn't it?

30 A. Yes, I think I gave Judge Starr a copy of the agreement, and I do remember that before Judge Starr filed the answer for the Locustwood Cemetery Association that Judge Starr called me on the telephone for the purpose of getting the date of this agreement here, Exhibit C6, and I remember supplying Judge Starr the date of that agreement over the telephone, and that was prior to the time when

Judge Starr filed his answer for the Locustwood Cemetery Association.

Q. Didn't you supply him a copy of it?

A. Vice-Chancellor, I wouldn't want to say positively that I did. I think I made copies of it and supplied them to someone, but I wouldn't want to say whether I did or not.

Q. Doesn't it appear in his answer?

A. I haven't looked at his answer. This is the answer of Locustwood Cemetery, Inc. I was mistaken when I said Locustwood Cemetery Association; it was Locustwood Cemetery, Inc.

Q. I think I saw that agreement in that answer.

A. Now, Judge Starr in his answer filed March 20, 1924, on behalf of the Locustwood Cemetery, Inc., states as a second defense, "On the 23rd day of July, 1923, the Locustwood Cemetery Association entered into a contract with this defendant by which the latter was constituted the selling agent for the sale of cemetery lots in the said tract of 13 1/3 acres, as well as additional 10 acres tracts which might be acquired in accordance with the contract with the said Charles Cooper Spear." Now, I supplied that date to Judge Starr. I don't want to trespass upon counsel in any way, but Judge Starr and I had a conference with reference to the filing of this answer before it was filed. Mr. Darcy and I were on friendly terms and Mr. Darcy had come to my office and I told him I could not represent the Locustwood Cemetery, Inc., in that suit that they would have to have other counsel, and I suggested Judge Starr. We made an appointment with Judge Starr and we went down to Judge Starr's office together, and we went into the matter very carefully, and it was at that time that I informed Judge Starr of the contract of July 23, 1923, and it

was upon the strength of that contract that he filed this answer.

Q. Was Mr. Darcy present?

A. Mr. Darcy was present, yes, sir.

Cross-examination.

By Mr. Carr:

Q. You say you had the contract with you at that time?

A. No, I didn't say that. I said I told Judge Starr at that time that it was the agreement of July 23, 1923, that the Locustwood Cemetery, Inc., was working with the Locustwood Cemetery Association.

Q. But you didn't exhibit a copy of that contract to Mr. Darcy at that time?

A. I can't say positively now because it has been so long ago, but I do know that I told Judge Starr in Mr. Darcy's presence of this agreement of July 23, 1923, and I said that was the contract under which the Locustwood Cemetery, Inc., was operating the Locustwood Cemetery Association.

Q. Mr. Rose, didn't you say you telephoned that date?

A. That was at a later time I telephoned Judge Starr.

Q. Telephoned the date of the contract?

A. Yes, but that was a later time. Let me explain, Mr. Carr, so you won't misunderstand me. I said that Mr. Darcy and I were on friendly terms. Through Dr. Spear, Mr. Darcy used to come to my office quite often with Dr. Spear and when I was substituted as counsel for the Equitable Estates Corporation and Charles Cooper Spear, Mr. Darcy came along at about the same time and he asked

me whether or not I wouldn't assist them in some way or the other, and I told him I couldn't, and I suggested the name of Lewis Starr and he and I went to Judge Starr's office together and we talked over the matter in detail and Judge Starr and I, and Mr. Darcy, all understood and agreed at that time that the Locustwood Cemetery, Inc., was operating under that contract of July 23, 1923, then later when Judge Starr had prepared his answer for the Locustwood Cemetery, Inc., he, or someone in his office, I think it was the Judge himself, called me on the telephone and asked me to give him the date of that contract and I looked at the contract and gave him the date.

Q. Evidently up to that time he did not have a copy of the contract in his possession?

A. No, I think not if he called me on the telephone and asked me for the date of it. You see, this has been quite a long while ago, since 1923.

Q. Mr. Rose, have you any distinct recollection that when Dr. Spear handed you a number of papers in October, 1923, that this was among them at that time?

A. No.

Q. He came in to see you from time to time with considerable frequency?

A. Yes, sir.

Q. And did he bring papers in at other times?

A. He might have done so; I think he did.

Q. And those papers you would place together, I presume, in the safe?

A. Yes, sir.

Q. And you have no means of knowing positively at this time whether this agreement C6 was handed to you in October, 1923, or handed to you at a later time?

A. No, I can't fix that, except I said my best recollection was these papers were all given to me at the one time.

Q. But it might have come in at a later time?

A. Yes, sir, it might have come, yes, sir.

Q. From time to time would Dr. Spear come in and look at his papers?

A. No, I don't think he did. Dr. Spear never troubled me about that at all, about looking at his papers.

Q. Never came in and examined any of his papers?

A. I don't think he did. I put those papers in one side of my safe, which occupied about 1/3 of my safe, I have a small safe, and these papers were in there for a long, long time, and I am quite sure Dr. Spear never examined those papers.

Q. Even in your preparation for trial and one thing and another?

A. I don't think he did, because I worked on this case alone and mostly at night.

Q. Did you have a clerk in your office?

A. Yes, my daughter.

Q. During this time did Dr. Spear have access to these papers if he wished?

A. If he had wanted to see them of course we would have let him have them, and I might be mistaken about it, but to the best of my recollection Dr. Spear never saw or touched those papers from the time he gave them to me until I gave them to him in April, 1927, that is the best of my recollection.

By Mr. Tyler:

Q. Mr. Rose, at the time you were discussing the matter with Mr. Darcy and Judge Starr was there

ever anything said about another or different contract from this contract?

A. No, sir.

Q. There was nothing acquainting you with a contract of October, 1923?

A. No, sir.

Q. Never heard of it?

A. No, sir, not until it was raised in the pleadings in this case.

Q. This litigation?

A. Yes.

MAX DARCY, recalled.

By Mr. Carr:

Q. Mr. Darcy, do you recall calling on Mr. Rose and Judge Starr sometime in February, 1924?

A. Yes, sir.

Q. At that time was the so-called agreement of July 23rd, Exhibit C6, shown to you?

A. I never saw it and neither did Judge Starr. Judge Starr gave that testimony here that he never saw it.

Q. Were the terms of it discussed before Judge Starr in your presence by Mr. Rose?

A. No, sir. At that time Mr. Rose had represented us here in Chancery and something had occurred that had displeased us very much and we were rather backward about discussing anything with Mr. Rose because he was Mr. Spear's attorney, and that is the reason we asked Mr. Rose to indicate another attorney, and he took me to Judge Starr, but no discussion took place before Mr. Rose.

Q. Was there any reference made at that time of any contract of July 23rd?

A. No, sir.

By the Court:

Q. Where do you understand that Judge Starr as your attorney got the information to embody in your answer this agreement?

A. Judge Starr asked David Rose for the date.

Q. How do you know?

A. Because Judge Starr said so here in this court.

Q. I remember he testified but I don't remember his saying you were not present?

A. He said he got the date from David Rose and he never saw that agreement and I never saw it. That is what he testified to.

(No cross-examination.)

The Court: Well, are we all through? What about your expert testimony, Mr. Palmer; do you want one or not?

Mr. Palmer: No, sir. We are willing to waive any question of presenting any expert testimony. We don't desire to do so.

The Court: Does everybody rest?

Mr. Carr: Everybody.

ALL SIDES REST.

September 26, 1927.

October 10, 1927.

CHARLES C. SPEAR, recalled.

By Mr. Tyler:

Q. Dr. Spear, I show you a letter dated New York, November 14, 1922, signed M. Darcy and addressed to Mrs. Helen C. Douglas, Collingswood, New Jersey, with the envelope accompanying that. Did you call my attention to the fact you had that letter, and if so, when?

A. I think it was on the 2nd day of September in looking ——

Q. Is that the letter you wrote to me?

A. Yes.

Q. You wrote me that letter?

A. I discovered this letter ——

Q. What is the date of that letter?

A. September 2nd, 1927.

Q. That was after all the proofs had been taken in this case, wasn't it?

A. Yes, it was.

Q. Does that refer to two letters or more than one letter?

A. I think this letter refers specifically to two letters, if I remember correctly.

Q. Are these the two letters, November 14, 1922, which I have just referred to, and another letter on pink paper dated March 13, 1923, are they the two letters?

A. Yes, sir, they are the two letters referred to.

Q. Where were those letters at the time you wrote me about them on September 2, 1927?

A. Those letters were in an old trunk containing a lot of papers which I had put aside as irrelevant to this case, and it was on the 2nd of September that I got the papers out of the trunk to see what they were, to see if I could dispose of some, and I discovered these two letters and I immediately notified Mr. Tyler.

Q. These papers were in your possession, not Mrs. Aleck's?

A. They were in my possession.

Q. One of them is addressed to Mrs. Aleck?

A. Yes, sir.

Q. And one addressed to you?

A. Yes.

The Court: One addressed to who?

Mr. Tyler: Mrs. Aleck, Mrs. Douglas, now Mrs. Aleck.

Q. After you advised me you had these two letters what happened?

A. I received a letter from you.

Q. Requesting you to bring them to my office?

A. Yes, and I think I have it in my pocket.

Q. Never mind. You were requested to bring the letters to my office?

A. I was, yes.

Q. They did not relate to your case, they related to Mrs. Douglas' case, didn't they?

A. Yes.

The Court: I understand it is alleged they contain matter contradictory to the testimony of the party who signed these letters given at this trial?

Mr. Tyler: That is true.

The Court: And they want to be introduced to contradict his testimony, and, of course, if he wants to come in and explain these letters he will have to be given that privilege.

Mr. Carr: May I ask whether the purpose is to discredit the testimony of Darcy or are these intended to be original proof?

Mr. Tyler: To substantiate the proof of Mrs. Douglas who testified she had discussed the matter with Darcy and to further discredit the proof of Mr. Darcy who said she did not. Here are letters covering that period in which he did discuss it with writing to the then Mrs. Douglas.

Mr. Carr: I would like to have the opportunity of looking these over.

Cross-examination.

By Mr. Carr:

Q. Dr. Spear, where did you say these letters were?

A. These letters were in an old trunk which I had at Hainesport, Burlington County, New Jersey. Subsequently they were removed to Collingswood and from there to Maple Shade, and it was on the 2nd day of September when I went through this trunk to see what there was there and I discovered these two letters.

Q. You have previously supplied numerous exhibits in this case upon the request of counsel, didn't you?

A. Yes, I did.

Q. Were you ever asked by Mr. Tyler to put at his disposal the different letters and exhibits which you had?

A. I don't think Mr. Tyler knew I had any exhibits except those I brought into court.

Q. Did he ask you whether you had any other papers?

A. I don't recall that he ever did.

Q. Now, the letter addressed to Mrs. Douglas, how did that come to be in your possession?

A. I was living at Hainesport in the month of January, 1924 ——

Q. I am referring to when it was dated, November 14, 1922?

A. She came over to Hainesport quite frequently to see me and on one occasion she gave me this letter.

Q. You kept together the various papers and writings relating to the cemetery enterprise, didn't you, Doctor?

A. I endeavored to, but I had no facilities for keeping everything on file in a systematic way, there was often a confusion of papers.

Q. And between yourself and your mother you kept the records dealing with the cemetery, didn't you?

A. I think I have nearly all the records relating to the cemetery.

Q. Your mother didn't undertake to keep those papers or records?

A. The cemetery papers?

Q. The papers and letters and correspondence dealing with the cemetery, didn't you undertake to keep those things together?

A. I undertook to keep these records relating to the cemetery association.

Q. You haven't quite answered my question.

A. I am not trying to evade your question but I don't quite exactly understand.

(Question repeated.)

The Witness: Yes, everything that related to it that was addressed to me, or came into my possession, I endeavored to keep together, yes.

Q. You say your mother handed you the letter of November 14, 1922?

A. Yes.

Q. And that was because you were keeping the records together, wasn't that the idea?

A. No, she would frequently come over and discuss matters with me, and as I recall it, she brought this letter over and showed it to me. Whether she intended for me to keep it or not I don't know.

Q. Did she turn over any other papers or letters relating to the cemetery to you from time to time?

A. She has from time to time shown me various things which have come into her possession which related to it.

Q. And would she turn them over to you for custody, Doctor, usually?

A. Not usually.

Q. Frequently?

A. Well, I can hardly say frequently, but it has happened she has delivered papers to me to keep.

Q. So that you might have the custody of papers relating to the cemetery, is that the idea?

A. The custody of the particular papers she turned over to me, whether they related to the cemetery or the other litigation which was thrown out some time ago. There has been so much it has hardly been possible to keep everything separated.

Q. You say the other litigation, you are referring to the Cooper-Homestead Farm?

A. Yes, the Equitable Estates which was tried in this court.

Q. She turned over papers to you relating to that as well?

A. Some papers.

Q. For your custody?

A. Some papers, yes.

By Mr. Tyler:

Q. Dr. Spear, did you get the letter dated March 13, 1923?

A. I received that from Max Darcy.

Q. Does that refer to matters you had previously discussed with him?

A. It does, yes.

Q. Do you know the signature to that letter?

A. I do, yes.

Q. Whose signature is it?

A. The signature of Max Darcy.

Q. The letter addressed to your mother, does that refer to matters which you previously discussed with him?

A. It does, yes.

Q. Do you know whose signature that is on that letter?

A. That is the signature of Max Darcy.

Q. And this letter addressed to you dated March 13, came in this envelope?

A. Yes, that is the envelope in which I received it.

HELEN C. ALECK, recalled.

By Mr. Tyler:

Q. Mrs. Aleck, at the time the testimony was taken in this case, the last testimony taken in July last, did you have any knowledge or know where the letters were that I have just referred to, the letter of November, 1922, and March, 1923?

A. I hadn't any knowledge.

Q. You didn't know where they were?

A. No, I did not.

Q. When did these letters first come to your knowledge, the two letters, I don't mean the time you received them in 1922, but with relation to the trial?

A. When I received the letter from you.

Q. Was that in September?

A. Yes.

Q. This year?

A. Yes, I have the letter with me.

Q. Had you during that trial made a search of your papers for papers from Darcy?

A. I searched diligently.

Q. And you produced some letters at the trial, didn't you?

A. Yes.

Q. This letter of November 14, 1922, from whom did you receive that?

A. From Mr. Darcy.

Q. And did it come in the envelope which you have in your hand?

A. Yes, that is where I was living.

Q. The envelope, "Helen C. Douglas, 23 E. Stiles Avenue, Collingswood, New Jersey," and postmarked New York City, November 15, 1922?

A. Yes.

Q. Is that the envelope you received this in?

A. I remember perfectly receiving the letter.

Q. And the contents of that letter referred to matters you discussed with Mr. Darcy?

A. Yes, it does.

Q. Now, the other letter addressed to Dr. Charles C. Spear, dated March 13, 1923, had you ever seen that before?

A. No, I don't remember, I don't recall it. I see the same signature.

Q. But you had never seen that letter before?

A. I have no recollection of it; if the letter were read to me I might remember it, I don't know.

Cross-examination.

By Mr. Carr:

Q. Mrs. Aleck, did you inquire of your son for all the papers he might have relating to the cemetery land?

A. I did not, for I didn't imagine he had any that were of any importance.

Q. At any rate, you did not inquire of him?

A. No.

Q. Did you at times deliver papers to him for his custody relating to the cemetery matter and the farm?

A. We probably read over some letters together and I might have handed them to him.

Q. I am asking you whether you did, did you at times hand him papers for him to keep?

A. If I didn't ask to have them returned I suppose I was willing for him to keep them.

Q. As a matter of fact, you did at times deliver

some papers to him intending he should be the custodian of them, is that right?

A. Yes, sir.

Q. And those papers related to the cemetery and the Cooper-Homestead Farm?

A. Yes.

Mr. Tyler: May it please the Court, I want to offer the letter of Dr. Spear addressed to me in which these letters were brought to my knowledge, and which he has identified, and the two letters and two envelopes which have been identified.

The Court: Is there any objection, Mr. Carr?

Mr. Carr: I think the Spear letter can't be received, if the Court please, that would be entirely ——

The Court: You can be sworn, Mr. Tyler to show you had no knowledge of this yourself.

Joseph Beck Tyler, Esq., affirmed.

The Witness: In reference to the two letters referred to, November 14, 1922, and March 13, 1923, the first knowledge that I had of this was contained in the letter from Dr. Spear dated September 3, 1927. I had discussed with Mrs. Aleck the possibility of such letters and she had, to my knowledge, diligently searched her papers to find letters from Darcy which would contradict his testimony but

had been unable to find them, so that this letter of September 3rd was the first indication I had of any kind that these letters existed, and immediately upon receipt of the letter I submitted both letters to Mr. Stackhouse and offered to furnish him copies of them for the purpose of making this application.

(No cross-examination.)

The Court: I can't see any reason why these letters should not be filed. Mr. Darcy, of course, will be privileged to testify if he desires touching them by way of explanation.

Mr. Tyler: That privilege was extended in the order and was discussed last week on the application of the rule to show cause with the understanding that that privilege would be extended to them at this time if they wished to do it.

The Court: Is that in the order to show cause?

Mr. Tyler: Yes, that is in the order.

The Court: Have you anything to offer, Mr. Carr?

Mr. Stackhouse: My understanding of this motion was to see whether the letters were actually to be admitted.

The Court: Do you want time?

Mr. Stackhouse: Yes.

The Court: How long?

Mr. Stackhouse: Any time the Court fixes.

The Court: All right, next Monday. Let the letters be marked.

(Letter and envelope dated November 14, 1922, marked Exhibit T1 and T2, 9-26-27. Letter and envelope dated March 13, 1923, marked Exhibit T3 and T4, 9-26-27.)

Max Darcy, recalled.

By Mr. Stackhouse:

Q. Mr. Darcy, I show you a letter dated New York, November 14, 1922, addressed to Mrs. Helen C. Douglas, 23 E. Stiles Avenue, Collingswood, New Jersey, signed M. Darcy, which has been produced in an envelope addressed to Mrs. Helen C. Douglas, 23 E. Stiles Avenue, Collingswood, New Jersey, and postmarked November 15, 1922, bearing the inscription, "From M. Darcy, seeking terms for cemetery and urging I accept any terms he offers," and is asked if he wrote that letter?

The Court: Has the letter been marked?

Mr. Stackhouse: Yes.

The Court: Is it marked as an exhibit?

Mr. Stackhouse: Yes, I think that is the mark,

Vice-Chancellor, this letter is marked "T2, 9-25-27."

The Witness: Yes, apparently, I must have written this.

Q. This inscription on the envelope to which I have referred, is that in your handwriting?

A. No, I did not write that.

The Court: What do you refer to on the envelope?

Mr. Stackhouse: Some writing here which reads as follows: "From M. Darcy, seeking terms for cemetery urging I accept any terms he offers." Do you know whose writing that is in?

The Witness: I think that is Mrs. Douglas' writing or Mrs. Aleck's.

Mr. Tyler: It is admitted that is no part of the communciation, simply a memorandum she put on it, it is not offered in evidence for that phase of it at all.

Q. Have you anything to say as to why this letter was written or the circumstances under which it was written?

A. I have no recollection of the letter or the circumstances. I suppose it is the result either of letters I received or conversations of some kind I had with her, but I had no recollection of having written the letter until I see it now.

Q. Did you have any recollection of having written the letter until the copy was supplied by Mr. Carr?

A. No, I had no recollection of it whatever.

Q. Witness is shown a letter dated March 13, 1923, addressed to Charles C. Spear, 2227 Spring Garden Street, Philadelphia, Pa., signed M. Darcy, and marked Exhibit T4, 9-26-27, and is asked if he wrote that letter.

Mr. Tyler: You said the other was the 25th, one date must be wrong; they were both offered on the same day.

Mr. Stackhouse: I took it for a 5, it must be a 6.

Q. Mr. Harvey Carr, who is associated with me, supplied you with a copy of that letter, didn't he?

A. Yes, sir.

Q. When was it you received a copy of the letter from him?

A. That was about a week ago.

The Court: Did he answer whether he wrote the letter, did you ask him that?

Mr. Stackhouse: I asked him that and I understood him to say yes.

The Court: I didn't hear his answer.

Q. Mr. Carr supplied you with a copy of that letter about a week ago?

A. Yes, sir.

Q. Up to that time did you have any recollection of having written this letter?

A. No, sir.

Q. Do you have any recollection now of the circumstances under which that letter was written?

A. No, I have not, I had forgotten all about these letters, it is so long ago it would be very hard to keep it in my mind.

Cross-examination.

By Mr. Tyler:

Q. When you testified in the hearing of this case that you knew nothing of this litigation and had not discussed it with Mrs. Douglas you were in error?

A. I was what? I was in error?

Q. Yes.

A. I testified what I knew.

Q. Now, with these letters showing you had discussed it both with Mrs. Douglas and Dr. Spear aren't you prepared to say you were in error in your previous testimony?

A. Not necessarily.

Q. Not necessarily?

A. No.

Q. And when you testified under oath here that you knew nothing of this litigation and had not discussed it with Mrs. Douglas at the time you wrote this letter you still say you were not in error in that testimony?

A. No, because I don't remember the circumstances that made me write this letter.

Q. You haven't any doubt, have you, Mr. Darcy, that this letter to Mrs. Douglas and the one to Dr. Spear refers to this litigation?

A. I am not entirely sure of it, because they had litigation pending for several pieces of property.

Q. Do you know of any other litigation except this?

A. They had a lot of trouble about that property at 23 E. Stiles Avenue.

Q. Wasn't that the same bill of complaint, all the property in the one bill of complaint? As a matter of fact, it was.

A. I didn't know it.

Q. You didn't know that it was not, did you?

A. No, I didn't know anything.

Q. When in this letter you referred to the Locustwood Cemetery litigation you knew then at the time you wrote this letter, November 14, 1922, that there was litigation in regard to that property, didn't you?

A. Something to that effect must have been mentioned to me or I wouldn't have written the letter.

Q. When you said in your letter of March 13, 1923, addressed to Dr. Spear, "I am sorry to hear you have been unable to come to a definite understanding with your mother as a poor agreement is better than successful litigation," you were referring to the litigation then pending?

A. Not necessarily.

Q. Wait a minute. If that was the only litigation that was pending between them weren't you referring to that litigation?

A. I just advised him against litigating.

Q. You spoke in your letter of coming to an agreement as it was better than litigation?

A. It was a piece of advice I was giving him, I imagine that was what that letter was.

Q. Then you knew of the substance of the litigation, didn't you?

A. I possibly at that time may have known something, I can't recollect what.

By Mr. Stackhouse:

Q. Mr. Darcy, at the time the agreement was made by the Equitable Estates Corporation with the Locustwood Cemetery Association ——

Mr. Tyler: July 23 or October 23, will you fix the date of that?

Mr. Stackhouse: I don't recall the date of that, I am referring to the agreement which was offered in evidence here with the Equitable Estates Corporation.

Mr. Tyler: That is the last agreement?

Mr. Stackhouse: Yes.

Mr. Tyler: That was on October 23, 1923.

Q. Did you have any knowledge at that time of any litigation that was pending?

A. I was assured there was no litigation.

By Mr. Tyler:

Q. You say you had no knowledge notwithstanding the letter written in November, 1922, and March, 1923, referring to the litigation?

A. I had no knowledge, no, sir.

The Court: You don't mean you hadn't heard of it?

The Witness: I had no recollection of any litigation and I was assured there was no litigation. I did not recollect writing these letters.

The Court: You are satisfied now you had heard of the litigation in some way?

The Witness: Yes, I must have.

The Court: That concludes everything and the next things I will have are the briefs of counsel.

Mr. Tyler: Yes.

STIPULATION RE EXHIBITS ON APPEAL.

It is, on this ninth day of May, 1929, stipulated by and between Locustwood Cemetery Association and Locustwood Cemetery, Inc., defendants-appellants, by D. Trueman Stackhouse (with whom is associated Harvey F. Carr, of counsel), and Helen C. Aleck, defendant-appellee, by Joseph Beck Tyler, counsel, that the following exhibits are not material to the issues raised by the appeal in this matter, and are omitted from the record, viz: C7, C8, C9, C10, C11, C12, C13, T3, C4, 6/15/27, P7, C5, 6/15/27, P8, P9, S4, 7/6/27, C14, C15, C16 and T6, 7/6/27.

Further stipulated that as to Exhibit T1, 6/16/27, letter addressed to Judge Starr from David Rose, the same is set forth *in hac verba* in the record and need not be printed as an exhibit; and that as to Exhibit P1, 7/7/27, letter dated October 20, 1924, to C. C. Spear from D. T. Stackhouse, the same is set forth *in hac verba* in the record and need not be printed as an exhibit.

Further stipulated as to Exhibit P1, P2, P3, P4, P5 and P6, that demand has been made upon V. Claude Palmer, Esquire, solicitor for and of counsel with the Locustwood Land Company, for the production of Exhibits P1 to P6, inclusive, for the purpose of including in this record, and that Mr. Palmer has advised he is unable to locate or produce the same, and, accordingly, the production and printing of these exhibits is hereby waived.

Further stipulated as to Exhibit T2, search of Cooper Homestead Tract, Search #36462, that the same may be omitted because the information therein contained is included in Exhibit S3, Search #71184, and it is further stipulated with reference

to Exhibit S3, that the same may be abridged by the omission therefrom of certain conveyances, transfers and assignments immaterial to the issues, and that the description may likewise be abridged.

Further stipulated that as to Exhibits C3, C4, C5, T3, 7/7/27, T4, 7/6/27, and T5, the same may be abridged by eliminating matters immaterial to the present issue.

LOCUSTWOOD CEMETERY ASSOCIATION,
LOCUSTWOOD CEMETERY, INC.,
By D. TRUEMAN STACKHOUSE,
HARVEY F. CARR,
Of Counsel.
HELEN C. ALECK,
By JOSEPH BECK TYLER,
Of Counsel.

EXHIBIT C1.
2/9/27

This Indenture made the thirty-first day of December in the year of our Lord one thousand nine hundred and seven between Charles C. Spear of the City of New York County of Kings and State of New York of the first part and the Fernwood Cemetery Association a corporation of the State of New Jersey of the second part Witness that the said party of the first part for and in consideration of the an agreement this day made between the parties providing among other things for the payment of the purchase money of said land and of the sum of One Dollar lawful money of the United States of America well and truly paid by the said party of the second part to the said party of the first part at and before the ensealing and delivery of these

presents the receipt whereof is hereby acknowledged hath granted bargained sold aliened enfeoffed released conveyed and confirmed and by these presents doth grant bargain sell alien enfeoff release convey and confirm unto the said party of the second part its successors and assigns All that certain lot or tract of land and premises situate in the township of Delaware in the County of Camden and State of New Jersey bounded and described as follows Beginning in the centre of the said Marlton Turnpike at a point seven hundred and fifty feet Westwardly from the intersection of the middle line of Cooper Landing Road with the centre of said Marlton Turnpike and extending thence parallel with the Westerly line of the whole tract described in the deed hereinafter recited Northwardly six hundred and fifty feet thence Westwardly at right angles to said line to said Westerly line thence Southwardly along the same to the centre of the said Marlton Turnpike thence Eastwardly along the middle of the said Turnpike to the place of beginning Containing thirteen and 30/100 acres more or less. Being a part of the same premises which Frank C. Somers, Sheriff by deed dated October 8th. A. D. 1907 and duly recorded in the Office of the Register of Deeds of Camden County in Book No. 322 of Deeds pages 11 &c. granted and conveyed unto the said Charles C. Spear in fee Together with all and singular the buildings improvements woods ways rights liberties privileges hereditaments and appurtenances to the same belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and of every part and parcel thereof and also all the estate right title interest use property possession claim and demand whatsoever both in law and equity of the said party of the first part

of in and to the said premises with the appurtenances To have and to hold the said premises with all and singular the appurtenances unto the said party of the second part its succesors and assigns to the only proper use benefit and behoof of the said party of the second part its successors and assigns forever subject however to the lien for unpaid purchase money provided by said agreement made between the parties hereto bearing even date herewith and the said Charles C. Spear for himself his heirs executors and administrators doth by these presents covenant grant and agree to and with the said party of the second part its successors and assigns that he the said Charles C. Spear and his heirs all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended to be so with the appurtenances unto the said party of the second part its successors and assigns against the said Charles C. Spear and his heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend In witness whereof the said party of the first part to these presents hath hereunto set his hand and seal dated the day and year first above written Chas. C. Spear (Seal) Signed sealed and delivered in the presence of The words "Sum of" in the 8th. line of first page being stricken out before signing Thomas B. Hall State of New Jersey County of Camden ss It is hereby certified that on this fourth day of January in the year of our Lord One thousand nine hundred and Eight before me a Master in Chancery of New Jersey personally appeared Charles C. Spear who I am satisfied is the grantor in the within Indenture named and I having first made known to him the contents thereof he did acknowledge that he signed

sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed Thomas B. Hall Master in Chancery of N. J. Recorded Jany. 27-08 at 10 A. M. by Edward W. Delacroix, Register.

STATE OF NEW JERSEY
County of Camden

I, JOSHUA C. HAINES, Register of Deeds and Mortgages for the County of Camden, do hereby certify, that the foregoing is a true copy of the record of the Deed from Charles C. Spear to Fernwood Cemetery Assn. as the same is of record in my office in Book 323 of Deeds page 608 &c.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Camden, this 5th. day of January A. D. 1926.

Joshua C. Haines
(Seal) Register.

[Endorsed]

Certified Copy of
Deed
Charles C. Spear
to
Fernwood Cemetery Assn.

EXHIBIT C2.
2/9/27

SPEAR FERNWOOD AGREEMENT

Charles C. Spear
to
Fernwood Cemetery
Association

This agreement made the Thirty First Day of December A. D. Nineteen Hundred and Seven between Charles C. Spear of the City and State of New York of the first part and The Fernwood Cemetery Association a Corporation organized under the laws of the State of New Jersey of the second part:

Witnesseth that whereas the said Charles C. Spear being the owner of a tract of land described in deed from Frank C. Somers Sheriff of the County of Camden New Jersey, dated October Eighth Nineteen Hundred and seven recorded in the office of the Register of Deeds of the County of Camden in Book No. 322 of Deeds pages 11 etc., has this day conveyed unto the said The Fernwood Cemetery Association a part of said tract Beginning in the centre of the Marlton Turnpike at a point Seven Hundred and Fifty feet Westwardly from the intersection of the middle line of the Cooper Landing Road with the Centre of said Marlton Turnpike and Extending thence parallel with the Westerly line of the whole tract Northwardly Six Hundred and Fifty feet thence Westwardly at right angles to said line to said Westerly line thence Southwardly along the same to the centre of the said Marlton Turnpike

thence Eastwardly along the middle of said Turnpike to the place of beginning Containing thirteen and thirty hundredths of an acre be the same more or less. Now therefore in consideration of the said conveyance of the said lands and of the covenants and agreements hereinafter contained on the part of the said Charles C. Spear the party of the Second part doth for itself and its successors hereby covenant agree as follows:

FIRST:—That it the said party of the Second part or its Successors will purchase the land herein agreed to be conveyed and will pay to the Said Charles C. Spear his heirs Executors Administrators or Assigns for the same and the Said tract this day conveyed out of future sales of burial lots places of interment or tombs fifty per centum of all moneys received from Said Sales as the same shall from time to time be received and drafts drawns by the Said Charles C. Spear his heirs Executors Administrators or Assigns upon Said party of the Second part for any portion of Said moneys to be paid in accordance with the terms of this agreement shall be accepted by the Treasurer of the Said Association.

SECOND:—That ten per centum of the remainder of Such receipts shall be reserved and set apart by the Said Cemetery Association as an accumulating and permanent fund to be used in the maintenance and perpetual care of the Cemetery and the amount so reserved shall once a year be paid to a trust company to be selected at the Annual meeting of the Association of lot owners and creditors which sum shall be kept invested in same safe and first class investment. The annual income of such funds after deducting any necessary expenses

incurred in investing and reinvesting the same shall be paid over twice a year to the officers of Said Association to be used as aforesaid in the perpetual care of the Cemetery.

THIRD:—That the residue of the proceeds of the Sales shall be applied firstly to the improvement and maintenance of the grounds and the Incidental Expenses necessary to the management of the Association and secondly to the repayment of any loans made to the Said Association.

FOURTH:—The minimum price for the ground shall not be less than thirty cents per square foot for the first one hundred thousand square feet for all lots sold which price may be increased at the rate of five cents per square foot for each additional one hundred thousand square feet of lots sold at the option of the Said Charles C. Spear his heirs, Executors, Administrators or Assigns. No lots shall be donated or given away without the written consent of the said party of the first part his heirs, Executors, Administrators or Assigns.

FIFTH:—In estimating the value of the unappropriated or unsold lands or portions thereof such portions shall be considered as having a like value with an Equal Area of lots already sold arranged together and the Said Cemetery Association shall be deemed owing to the Said Charles C. Spear his heirs, Executors, Administrators or Assigns the equivalent of said unsold portion when estimated on that basis and the said Cemetery Association shall whenever required by the Said Charles C. Spear his heirs, Executors, Administrators or Assigns, give to him or them or such party as he or they may direct a Certificate or Certificates of the

amount of such indebtedness at the date when such Certificate is requested for the purposes of this agreement all burial lots places of interment or tombs that may be donated or given away shall be deemed to have been sold at the said minimum price of thirty cents per square foot.

SIXTH:—That the said party of the second part shall not take, accept or in any way acquire any other land for Cemetery purposes than the land herein agreed to be conveyed to the said Cemetery Association by the Said Charles C. Spear until after the said land hereby agreed to be conveyed has been conveyed to the said Cemetery Association by the Said Charles C. Spear and the Said Charles C. Spear his heirs, Executors, Administrators or Assigns paid the amount due him therefore.

SEVENTH:—All Books, accounts, papers and records of the Said Cemetery Association shall at all times be open to the inspection of any properly authenticated representative of the Said Charles C. Spear his heirs, Executors, Administrators or Assigns.

EIGHTH:—The Said Charles C. Spear in consideration of the premises hereby covenants and agrees from time to time as it shall be needed for Cemetery purposes and if said party of the second part has in every respect faithfully kept and performed its covenants herein contained and has paid to the Said Charles C. Spear his heirs, Executors, Administrators or Assigns fifty per centum of all moneys received from said sales to grant and convey free of all encumbrances to said Cemetery Association tracts of land of ten acres in extent adjoining the lands used by the party of the second part

for Cemetery purposes parts of said lands described in said Sheriff's deed except the triangular piece South of the Marlton Turnpike, and except a tract at the Northwest corner of the Cooper Landing Road, and said Marlton Turnpike, commencing at a stone in the middle of said Turnpike at its intersection with the Cooper Landing Road and extending along the middle line of said Marlton Turnpike Westwardly Seven hundred and fifty feet to the place of commencement described of the tract herein recited as conveyed to the said party of the second part, thence Northwardly along the Easterly line of said tract six hundred and fifty feet, thence still Northwardly parallel to said Cooper Landing Road thirteen hundred and fifty feet thence Eastwardly at right angles to said Cooper Landing Road to the middle of the same, thence Southwardly along the middle of said Cooper Landing Road to the place of beginning shall have been granted and conveyed to it but the said Charles C. Spear, his heirs, or Assigns or their lessees shall at all times have the right to use till and enjoy the portions of said farm not improved by said Cemetery Association and actually used for Cemetery purposes.

NINTH:—It is further mutually agreed that the said party of the second part shall within thirty days from the date of these presents proceed to survey and properly lay out and improve said land for the purposes of a Cemetery and shall at all times thereafter keep employed upon said land a sufficient number of employees for the purpose of maintaining said land in a suitable condition for Cemetery purposes which work shall be authorized by and done under the joint supervision of the said Cemetery Association and the said Charles C.

Spear, his heirs, Executors, Administrators or Assigns or his or their duly authenticated representative all the expenses of said work to have the written approval of the said Charles C. Spear, his heirs, Executors, Administrators or Assigns and to be paid out of the fund provided by this contract. The fund to be so expended shall be derived from this sale of burial lots, places of interment or tombs or from moneys borrowed upon the securities of the said Cemetery Association as hereinafter provided.

TENTH:—That if it shall be necessary for the said Cemetery Association to borrow money upon its bonds, notes or other obligations in order to provide funds for the proper improvement and maintenance of said Cemetery or for any other purpose, all such bonds, notes or other obligations shall be issued subject to the lien of the said Charles C. Spear on the said lands for unpaid purchase money and it shall be so expressed therein and the said Charles C. Spear, his heirs, Executors, Administrators or Assigns shall have the privilege of purchasing from said Association any of said bonds, notes or other obligations not exceeding fifty one per centum of the total issue or issues at the lowest price at which any of the same are sold or offered for sale less any commissions or discounts that may be allowed by said Cemetery Association for the negotiation thereof and the said Charles C. Spear, his heirs, Executors or Assigns may pay for said bonds, notes or other obligations in cash or by giving to the said Cemetery Association a proper receipt for money owning to him, or them by said Association or by releasing the said Cemetery Association from the payment of fifty per centum of the proceeds of the sale of a sufficient number of

square feet of burial lots at the aforesaid minimum price at his or their option.

IN WITNESS WHEREOF the said Charles C. Spear has hereunto set his hand, seal and the Association hath caused its Corporate seal to be hereto annexed, attested by its Secretary and these presents to be signed by the President, of The Fernwood Cemetery Association by Abram E. Street, President Attest John B. Kates, Secretary, Charles C. Spear signed, sealed and delivered in the presence of John B. Kates, State of New Jersey, Camden County.

BE IT REMEMBERED:—That on this Fourth Day of January, in the year of our Lord One Thousand Nine Hundred and Eight before me a Master in Chancery of New Jersey, personally appeared Charles C. Spear who I am satisfied is the party mentioned in the foregoing agreement and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed all of which is hereby certified Thomas B. Hall, M. C. C. of N. J. State of New Jersey, Camden County, S.S.

BE IT REMEMBERED: That on this Fourth Day of January, in the year of our Lord One Thousand Nine Hundred and Eight, before me a Master in Chancery of New Jersey, personally appeared John B. Kates who being by me duly sworn on his oath, saith that he is the Secretary of The Fernwood Cemetery Association the party named in the foregoing agreement and that Abram E. Street is the President that deponent knows the Common or Corporate seal of said Association and that this seal annexed to the foregoing agreement is such

Common or Corporate seal that the said agreement was signed by the said President and the seal of said Association affixed thereto in the presence of deponent that said agreement was signed, sealed and delivered as and for the voluntary act and deed of said Association for the uses and purposes therein expressed pursuant of said Association and at the execution thereof this deponent subscribed his name thereto as witness John B. Kates sworn and subscribed to before me the day and year aforesaid. Thomas B. Hall, M. C. C. of N. J. Recorded Jany 27, '08, at 10 A. M. by Edward W. Delacroix Register.

EXHIBIT C3.
2/9/27

DEED —

Dated September 28, 1908; between Charles C. Spear, of the first part, Cyrus D. Marter, of the second part; consideration $1.00.

Conveying the same premises conveyed to the said Charles C. Spear by Frank C. Somers, Sheriff, by deed bearing date October 8, 1907, and duly recorded in the Office of the Register of Deeds of Camden County on October 9, 1907, in Book No. 322 of Deeds, page 11 &c. Also assigns, transfers and sets over unto said Cyrus D. Marter, his executors, administrators and assigns, a certain agreement and rights thereunder, bearing date the 31st day of December, 1907, made between said Charles C. Spear and Fernwood Cemetery Association. Subject, however, to the covenants of the said Charles C. Spear in said agreement.

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and of every part and parcel thereof, and also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part of, in and to the said premises, with the appurtenances.

To have and to hold the said premises with all and singular the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

Acknowledged September 28, 1908, before Samuel H. Richards, M. C. C. of N. J.

Recorded June 21, 1909, in the Office of the Register of Deeds of Camden County, Book 337, page 614 &c.

EXHIBIT C4.
2/9/27

DEED —

Dated September 28, 1908; between Cyrus D. Marter and Eleanor H., his wife, parties of the first part, Thomas E. French, party of the second part, and Helen C. Douglass and Charles C. Spear, parties of the third part; consideration $1.00.

Conveying the same lands and agreement conveyed and transferred to the said Cyrus D. Marter by said Charles C. Spear by indenture bearing date

the twenty-eighth day of September, 1908, recorded in the Office of the Register of Deeds of Camden County in Book 337 of Deeds, page 614 &c.

Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also all the right, title, interest, property, possession, claim and demand both in law and equity of said Cyrus D. Marter of, in and to the said premises with the appurtenances.

To have and to hold the said premises with all and singular the appurtenances, and said agreement, the moneys due thereon and the rights and privileges therein mentioned unto the said Thomas E. French, his heirs and assigns, to the only proper use, benefit, and behoof of the said Thomas E. French, his heirs and assigns, in trust, nevertheless, to collect and receive the rent, income, and profits thereof, and all payments made under the said agreement between Charles C. Spear and The Fernwood Cemetery Association, bearing date December 31, 1907, after deducting the expenses of the trust and other necessary expenses, taxes and repairs to pay the balance to Helen C. Douglass, of Collingswood, in the County of Camden, New Jersey, for and during the term of her natural life, and after her death to pay said balance to said Charles C. Spear for and during the term of his natural life.

Acknowledged by Cyrus D. Marter and Eleanor H. Marter on October 2, 1908, before Floyd H. Bradley, Attorney-at-Law of New Jersey; and by Charles C. Spear on September 28, 1908, and by Helen C. Douglass on October 2, 1908, before Samuel H. Richards, M. C. C. of N. J.

Recorded June 21, 1909, in the Office of the Reg-

ister of Deeds of Camden County, Book 337, page 616 &c.

EXHIBIT C5.
2/9/27

DEED —

Dated February 21, 1910; between Thomas E. French, Trustee, party of the first part, Helen C. Douglass, Charles C. Spear and Cyrus D. Marter, parties of the second part, and Leslie M. Holloway, party of the third part —

Annulling and declaring void trusts declared and created in deed between Cyrus D. Marter and wife, parties of the first part, said Thomas E. French, party of the second part, and Helen C. Douglass and Charles C. Spear, parties of the third part, bearing date September 28, 1908, and recorded in the Office of the Register of Deeds of Camden County in Book 337 of Deeds, page 616.

And the said parties of the first and second parts, for and in consideration of the sum of One dollar well and truly paid by the said Leslie M. Holloway to them, grant and convey to the said Leslie M. Holloway, his heirs or assigns, all the parts of the farm plantation and tracts of land known as the Cooper Homestead Farm, situate in the Township of Delaware, in the County of Camden and State of New Jersey, excepted from the grant to Floyd H. Bradley bearing even date herewith, being the triangular piece south of the Marlton Turnpike and a tract at the Northwest corner of the Cooper Landing Road and said Marlton Turnpike, commencing at a stone in the middle of said Turnpike at its

intersection with Cooper Landing Road, and extending along the middle line of said Marlton Turnpike westerly seven hundred and fifty feet to the place of commencement described of the tract conveyed to the Fernwood Cemetery Association, thence northwardly along the easterly line of said tract six hundred and fifty feet, thence still northwardly parallel to said Cooper Landing Road thirteen hundred and fifty feet, thence eastwardly at right angles to said Cooper Landing Road to the middle of the same, thence southwardly along the middle of said Cooper Landing Road to the place of beginning.

Together with all and singular the buildings and improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof and of every part and parcel thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever both in law and equity of the said party of the first and second part of, in and to the said premises, with the appurtenances.

To have and to hold the said premises with all and singular the appurtenances unto the said party of the third part, his heirs and assigns.

Acknowledged before Samuel H. Richards, M. C. C. of N. J., by Charles C. Spear on February 21, 1910, by Cyrus D. Marter and Thomas E. French, Trustee, on February 23, 1910, by Helen C. Douglass on March 23, 1910, and by Leslie M. Holloway on March 29, 1910.

Recorded March 31, 1910, in the Office of the Register of Deeds of Camden County, Book 346, page 266 &c.

EXHIBIT C6.
2/9/27

THIS AGREEMENT, made this twenty third day of July, A. D., 1923, Between Locustwood (formerly Fernwood) Cemetery Association, an association formed under and pursuant to the Cemetery Laws of the State of New Jersey, party of the first part, and Locustwood Cemetery, Inc., a corporation formed under the laws of New Jersey, party of the second part, WITNESSETH: that whereas the said party of the first part is the owner in fee of a tract of land, known as Locustwood Cemetery, and rights and privileges specifically set forth in a certain agreement made the thirty first day of December, A. D. 1907, between Charles C. Spear and the Fernwood (now Locustwood) Cemetery Association, and of record in the office of the Register of Deeds of Camden County, N. J., in Book 323 of deeds, page 610, and whereas the said party of the second part does hereby assume all the obligations of the said party of the first part, relating to the development and maintenance of the lands mentioned in the said agreement between Charles C. Spear and the Fernwood Cemetery Association of Dec. 31, 1907, hereinafter referred to as the Spear-Fernwood Agreement, and hereby agrees to bear all expense in connection therewith, NOW, therefore, the said party of the first part, in consideration of the premises, hereby covenants and agrees, that, subject to the terms and conditions of the said Spear-Fernwood Agreement and the By-Laws, Rules and Regulations of the said Locustwood (formerly Fernwood) Cemetery Association, made and adopted or to be made and adopted, it will permit

the said party of the second part to undertake, at its own cost and expense, the development and maintenance for cemetery purposes of the lands mentioned in the said Spear-Fernwood Agreement, and when the said lands have been fully developed for cemetery purposes by the said party of the second part, as aforesaid it will appoint the said party of the second part its sole and exclusive agent for the sale of burial lots, places of interment or tombs for the minimum prices mentioned in the said Spear-Fernwood Agreement, or for such other prices in excess thereof as the said party of the second part may deem advisable. And the said party of the first part further agrees that, after it has provided for the perpetual maintenance fund required by the said Spear-Fernwood Agreement to be set aside for the permanent maintenance of the cemetery, and has paid the salaries of its officers, the necessary expenses incident to the operation of the cemetery and proper dispatch of its business, and all other moneys it may owe, out of its share of the gross receipts from the sale of burial lots, places of interment, or tombs, under the said Spear Fernwood Agreement, and if the said party of the second part shall have faithfully performed all its covenants contained in this agreement, and shall have properly developed the lands mentioned in the said Spear-Fernwood Agreement for the purposes of a cemetery, it will pay over to the said party of the second part all the remainder of its said share of the gross receipts from the sale of lots, places of interment or tombs to be used by it in the further improvement and maintenance of the said cemetery lands. All money paid the said party of the first part for burial lots, places of interment or tombs, sold by the said party of the second part, which is in excess of the minimum prices mentioned in the

said Spear-Fernwood Agreement, shall be paid over to the said party of the second part, in lieu of all commissions and in full compensation and satisfaction for the faithful performance by the said party of the second part of all the covenants and agreement on its part contained herein. And the said party of the first part further agrees that, after all the covenants and agreements on its part in the said Spear-Fernwood Agreement have been faithfully performed and the assigns of the said Charles C. Spear paid the full purchase price of the lands mentioned in the said Spear-Fernwood Agreement, and if the said party of the second part shall have faithfully performed all its covenants under this agreement, it will permit it to erect, at its own cost and expense upon lands of the said party of the first part, a public or community mausoleum, a crematory and columbarium, or other building, or buildings, for any other form or disposition of the dead which may hereafter become legal, and will appoint the said party of the second part its sole and exclusive agent for the sale of crypts, columbarium niches, cremation certificates, or other service of aforesaid methods of disposition of the dead, at prices to be decided upon from time to time by the said party of the second part and which shall be sufficient to defray the cost to the said party of the first part of operation and maintenance of the said crematory and other buildings and to net the said party of the first part at least six per cent. per annum on the appraised value of said buildings and grounds occupied thereby, and to permit of the setting aside of a fund of at least Five Hundred Thousand Dollars ($500,000), the net income from which, after deducting the amount required by the said party of the first part for said operation and main-

tenance and the said six per cent. per annum on the appraised value of the buildings and grounds, shall be paid semi-annually to the said party of the second part forever. AND THE said party of the second part, in consideration of the premises, doth for itself, its successors and assigns, hereby covenant and agree, that it will faithfully perform all the covenants and agreements of the said party of the first part, contained in the said Spear-Fernwood Agreement, relating to the development and maintenance of the lands mentioned therein, and will bear all expense in connection therewith, and will apply all moneys paid to it by the said party of the first part to the proper improvement and maintenance and the said lands for cemetery purposes, except that portion of moneys derived from the sale by the said party of the second part of burial lots in said cemetery, which is in excess of the minimum prices mentioned in the said Spear-Fernwood Agreement, and which said excess portion of said moneys is payable to the said party of the second part for its sole use and benefit, and which the said party of the second part hereby agrees to accept as its sole and complete compensation for the faithful performance of all the covenants and agreements on its part herein contained, and in full satisfaction of every claim and demand on its part against the said party of the first part under this agreement, until after the assigns of the said Charles C. Spear have been paid the full purchase price of the lands mentioned in the said Spear-Fernwood Agreement. And the said party of the second part further agrees to purchase, or to sell as agent for the said party of the first part, a sufficient number of lots in the said Locustwood Cemetery and future additions thereto to net the

said Charles C. Spear, his heirs, executors, administrators or assigns the sum of at least One Hundred Dollars ($100) each and every week, on account of the purchase price of the lands mentioned in the said Spear-Fernwood Agreement, until the full purchase price thereof has been paid. The said party of the second part hereby agrees that until it shall have put the said cemetery in proper condition for the sale of lots and burial of the dead, it shall pay to the said party of the first part the weekly sum of Two Hundred Dollars ($200) before five o'clock in the afternoon on Tuesday of each and every week, in return for which the said party of the first part shall issue to the said party of the second part deeds for burial lots in the said cemetery at the minimum prices mentioned in the said Spear-Fernwood Agreement, when the lands mentioned therein have been properly developed for cemetery purposes by the said party of the second part, as hereinabove provided. It is hereby mutually agreed between the parties hereto that this agreement shall, at the option of the said party of the first part, become absolutely null and void in every respect and all the rights and privileges granted the said party of the second part herein shall immediately cease and all moneys spent by the said party of the second part or paid by it to the said party of the first part under this agreement, shall accrue to the sole use and benefit of the said party of the first part, as liquidated damages, if the said party of the second part shall at any time fail to faithfully perform any of the covenants or agreements herein contained.

IN WITNESS whereof the parties hereto have caused the signatures of their respective Presidents

and Secretaries and their corporate seals to be affixed hereto.

Locustwood (formerly Fernwood Cemetery Association
By Chas. C. Spear, Pres.
(Corporate seal)
Attest: Mercedes Spear
Secretary
Locustwood Cemetery, Inc.
By Max Darcy, Vice President
By J. F. Powell,
Secretary.
(corporate seal)

Signed, sealed and delivered
in the presence of

[Endorsed]

AGREEMENT
BETWEEN
Locustwood Cemetery Assn.
and
Locustwood Cemetery, Inc.

EXHIBIT T3.
2/9/27

THIS INDENTURE, MADE THE twenty-third day of June in the year of our Lord one thousand nine hundred and fourteen (1914) Between Joseph E. Nowrey, Sheriff of the county of Camden, in the State of New Jersey, of the first part, and George H. Aleck of the City of Camden, County of Camden and State of New Jersey, of the second part, WITNESSETH, that whereas, on or about the seventh day of April in the year of our Lord one thousand nine hundred and fourteen a certain decree was made in the Court of Chancery of the State of New Jersey, in a certain cause therein pending, wherein Josephine Allen is the substituted complainant and Thomas E. French, Trustee, Floyd H. Bradley, J. B. VanSciver Company, Philadelphia Farmers Supply Company, Leslie M. Holloway, Althea Holloway, Charles C. Spear and P. M. Sharples (Philip M. Sharples) are defendants: and afterwards, to wit, on the Eighteenth day of April in the year one thousand nine hundred and fourteen, a writ of fieri facias was issued thereon, out of the said Court of Chancery, directed to the Sheriff of the County of Camden, in said State, which having first been duly recorded in the office of the Clerk of the said Court, at Trenton, in said State, in Book N-nine of Executions, page 113 &c. and afterwards, to wit, on or about the twentieth day of April in the year one thousand nine hundred and fourteen delivered to the said Joseph E. Nowrey, the party of the first part hereto, he then and still being the

Sheriff of the said County of Camden, to be executed according to law, which said execution, among other things, set forth and commanded as follows, to wit:

NEW JERSEY, ss:

The State of New Jersey to the Sheriff of the County of Camden, Greeting:

(SEAL) WHEREAS, on the seventh day of April in the year of our Lord one thousand nine nineteen hundred and fourteen, by a certain decree made in our Court of Chancery, before by our Chancellor, at Trenton, in a certain cause therein depending, wherein Josephine Allen is the substituted complainant and Thomas E. French, Trustee, Floyd H. Bradley, J. B. Van Sciver Company, Philadelphia Farmers Supply Company, Leslie M. Holloway, Althea Holloway, Charles C. Spear and P. M. Sharples (Philip M. Sharples) are defendants: it was ordered, adjudged and decreed, that certain the said mortgaged premises, with the appurtenances, in the bill of complaint in the said cause particularly set forth and described, that is to say: all that farm tract or parcel of land and premises situate in the Township of Delaware, in the County of Camden, and State of New Jersey, known as the Cooper Homestead Farm and described as follows:

BEGINNING at a stone in the Whiskey Raod corner to Stoy's land and runs thence (1) along the line of the Indian Orchard south thirty-two and one quarter degrees east seventeen chains and six links more or less to the middle of the Landing Road at a point therein ten chains and ninety-six links from where the middle line of the said Whiskey Road crosses the same thence (2) along the middle of the

said Landing Road and along the lands of Kaighn, late Ellis and Lippincott south thirty-four degrees and thirty minutes west forty nine chains and sixty seven links to an iron plug in an angle of the said Landing Road and joining lands of the said Lippincott; thence (3) still by the said Lippincott's land and along the middle of the said Landing Road crossing the said Turnpike south fifty one degrees and thirty seven minutes west twenty-two chains and seven links more or less to an iron plug for a corner corner also to the Budd farm; thence (4) by the same north fifty three degrees west about eight chains and eighty-two links to an iron plug in the middle of the said Turnpike; thence (5) still by the said Budd farm and along the middle of the said Turnpike north seventy one degrees and forty-five minutes west twelve chains and sixty links to another corner of the said Budd farm in the middle of the said Turnpike marked by an iron plug and thence (6) by lands of Nicholson, late Moore and Stoy, north forty three degrees and two minutes east eighty one chains and ninety seven links to the place of beginning. Containing one hundred and fifty three acres and seventy-seven hundredths of an acre.

Excepting that part of the above described premises as follows:

BEGINNING in the center of the Marlton Turnpike at a point seven hundred and fifty feet westwardly from the intersection of the middle line of the Cooper Landing Road with the center of said Marlton Turnpike and extending thence parallel with the westerly line of the whole tract northwardly six hundred and fifty feet; thence westwardly at right angles to said line to said westerly line; thence southwardly along the same to the center of the said Marlton Turnpike; thence eastwardly

along the middle of said Turnpike to the place of beginning. Containing thirteen and thirty hundredths of an acre be the same more or less.

Being the same premises which Frank C. Somers, Sheriff, by deed bearing date the eighth day of October, nineteen hundred and seven and recorded in the office of the Register of Deeds of Camden County in book 322 of Deeds, page 11, granted and conveyed unto the said Charles C. Spear, in fee.

Together with all and singular the rights, privileges, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversions and remainders, rents, issues and profits, or, in and to and out of the same, as may be necessary for the purpose be sold to pay and satisfy unto the complainant, Josephine Allen, the sum of twenty-eight hundred and ninety-two dollars and eight cents principal and interest, secured by a certain mortgage given by Charles C. Spear to Thomas E. French bearing date the twentieth day of August, nineteen hundred and eight and by various assignments duly assigned to the complainant; and also to satisfy unto the complainant, Josephine Allen, the sum of thirty-five hundred and sixty-six dollars and fifty cents principal and interest secured by a certain mortgage made by Leslie M. Holloway and wife to Theodore G. Brinton bearing date the seventh day of June, nineteen hundred and eleven and by various assignments duly assigned to the complainant, until the same be paid and satisfied, and also the costs of the said complainant.

And for that purpose a writ of fieri facias should issue directed to the Sheriff of the County of Camden commanding him to make sale as aforesaid. And that in case more money shall be raised by the sale than shall be sufficient to cover such pay-

ments that the same be brought into the said court, subject to the further order of the said court, as by the decree remaining of record in the said Court of Chancery at Trenton, does and may more fully appear, and whereas the costs of the said complainant have been duly taxed at One hundred eighty seven dollars and seven cents:

Therefore we command you that you cause to be made of the premises aforesaid described, by selling the same for the purpose of raising the said sums, twenty-eight hundred and ninety-two dollars and eight cents and thirty-five hundred and sixty-six dollars and fifty cents, together with lawful interest thereon as aforesaid and the sum of costs of the complainant, with lawful interest thereon from the date of the decree, and that you have those moneys before our said Chancellor in our Court of Chancery, aforesaid, at Trenton on the seventeenth day of July nineteen hundred and fourteen to render to said complainant as aforesaid, and also the surplus money, if any there be, to abide the further order of our said court, according to the decree aforesaid, and you are to make return at the time and place aforesaid by certificate under your hand and the manner in which you have executed this our writ, together with this writ.

WITNESS, EDWIN ROBERT WALKER, our Chancellor at Trenton, aforesaid, this Eighteenth day of April, nineteen hundred and fourteen.

Robert H. McAdams,
Clerk.

Joseph Beck Tyler,
Solicitor.

AND WHEREAS, the said Sheriff did seize and take all the hereinbefore particularly described lot or piece of land and premises, with the appurte-

nances, and did advertise the same for sale at public vendue, on the fifteenth day of May in the year of our Lord one thousand nine hundred and fourteen, at the Sheriff's office in the Court House, in the City of Camden, in said County of Camden and State of New Jersey, at the hour of two o'clock in the afternoon of the said day, by advertisements, signed by himself, and put up at five or more public places in the said County of Camden, one whereof was put in the Township of Delaware, in the County of Camden, in said State, in which all of the said real estate is situate, at least four weeks next before the time appointed for selling the same, and did likewise cause the same to be published in the Camden Daily Courier and The Tribune two newspapers designated by him, printed and published in said County of Camden, in which the said land is situate, and circulating in the neighborhood of the said land, at least once a week for four weeks successively, next preceding the time so as aforesaid appointed for selling the same, one of which, the Camden Daily Courier, is printed and published at the City of Camden, said city being the county seat of said County of Camden, and at the time and place so as aforesaid appointed and advertised for selling the same, the said Sheriff did expose the same to sale by public vendue, and the said party of the second part being the highest bidder, the same was, between the hours of twelve and five o'clock in the afternoon of the day last aforesaid, struck off and sold to the said party of the second part for the sum of Twenty five hundred dollars;

AND WHEREAS, after the said sale the same was reported by the said Sheriff to the said Court of Chancery, according to the statute in such case made and provided, and confirmed by an order of the said

Court, dated the Twenty-sixth day of May in the year of our Lord one thousand nine hundred and fourteen.

NOW THIS INDENTURE WITNESSETH, That the said Joseph E. Nowrey, Sheriff as aforesaid of the said County of Camden, for and in consideration of the sum of Twenty five hundred dollars to him in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, Hath and by these presents Doth grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, all the hereinbefore described lot or piece of land and premises with the appurtenances.

TO HAVE AND TO HOLD the said above mentioned and described tract of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said Joseph E. Nowrey, Sheriff as aforesaid, can, may or ought, by virtue of the said execution and of the statutes in such case made and provided, to grant, bargain, sell and convey the same.
And the said Joseph E. Nowrey, Sheriff as aforesaid of the said County of Camden, doth covenant and agree to and with the said party of the second part, his heirs and assigns, that he, the said Joseph E. Nowrey, Sheriff as aforesaid, hath not done or suffered to be done any act or thing whereby the said premises, or any part thereof, are or may be charged or encumbered in estate, title or otherwise.

IN WITNESS WHEREOF, the said Joseph E. Nowrey, Sheriff as aforesaid, hath hereunto set his

hand and seal on the day and year first herein written.

Joseph E. Nowrey
(Seal) Sheriff.

Signed, sealed and delivered in the presence of
Copy of execution in deed made to correspond with original writ and eraser used page 2, line 9, page 3, lines 19 & 36, and page 4, line 2, before signing & sealing.
Cyrus D. Marter

STATE OF NEW JERSEY, Camden County, ss:

Be it remembered, That on this twenty third day of June in the year of our Lord one thousand nine hundred and fourteen before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Joseph E. Nowrey, Sheriff of said County of Camden, in said State, who is, I am satisfied, the grantor named in the foregoing deed, and I having first made known unto him the contents thereof, he acknowledged that he signed, sealed and delivered the same, freely, as his voluntary act and deed; all of which is hereby certified.

Cyrus D. Marter
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, Camden County, ss:

I, Joseph E. Nowrey, Sheriff of said County of Camden, in the State of New Jersey, do solemnly swear that the land and real estate described in this

deed, made by me to George H. Aleck was by me sold by virtue of a good and subsisting execution, as is therein recited; that the money ordered to be made has not been to my knowledge or belief paid or satisfied; that the time and place of the sale of said land and real estate were by me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

Joseph E. Nowrey
Sheriff.

Sworn and subscribed before me, the subscriber, one of the Masters in Chancery of New Jersey, on this twenty third day of June, in the year of our Lord one thousand nine hundred and fourteen; and I, having examined the deed above mentioned, do approve the same, and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

Cyrus D Marter
Master in Chancery of New Jersey.

[Endorsed]

DEED.

JOSEPH E. NOWREY,
Sheriff,
TO
George H. Aleck.
Covers all of the land, including the small triangle across the Marlton Pike,

excepting the 13 36/100 A. of the cemetery.
Received in the Register of Deeds' Office of the County of Camden, New Jersey, on the 23rd day of June A. D. 1914 at 3.50 o'clock in the afternoon, and recorded in Book No. 389 of Deeds for said County, on page 209, &c.

Edward M. Delacroix
Register.

EXHIBITS C1 AND C2.
6/15/27

(Envelope)

From
General P. O. Box 202
New York, U. S. A.

Mr.Maxim Darcy,
165 Broadway,
New York.

EXHIBIT C1.
6/15/27

General P. O. Box 202 Telephone, Canal 8228
EQUITABLE ESTATES CORPORATION
Room 1522, Woolworth Building
~~Bowery Bank Building~~
New York

Oct. 26th, 1921.

Mr. Maxim Darcy,
165 Broadway,
New York City.
Dear sir:

I am instructed by the Board of Directors of Equitable Estates Corporation to notify you that this corporation agrees to sell to you, for the sum of Sixty Thousand Dollars ($60,000), all its right, title and interest in and to a certain tract of land, known as Locustwood Cemetery, containing thirteen and one third acres, situate in Delaware Township, Camden County, New Jersey; and also to assign to you the original agreement made between Charles C. Spear and Fernwood Cemetery Association of New Jersey; and furthermore to convey to you, free and clear of all encumbrance, a tract of sixty-six and two third acres of land, adjoining the said tract of thirteen and one third acres, and to be so measured that it shall form a rectangular extension of the said Locustwood Cemetery on its northerly side, equal in width to the northerly boundary line of said tract of thirteen and one third acres, and extending towards the North, along the westerly boundary line of the whole tract, and adjoining lands formerly of Nicholson and Wilsey, the

distance required to give to the said rectangular tract the area aforesaid (66 2/3 acres).

Of the said purchase price of Sixty Thousand Dollars ($60,000) ten (10) per cent., or Six Thousand Dollars ($6,000) shall be paid to us at the time of execution and delivery to you of the proper deed and assignment to the lands and agreement aforesaid, and the balance, or Fifty-Four Thousand Dollars ($54,000), in five years from the date of delivery of said deed and assignment, with interest at the rate of six per cent. per annum; said balance to be secured by a first mortgage upon the lands, agreement and rights conveyed, for Thirty-six Thousand Dollars ($36,000) and a second mortgage for Eighteen Thousand Dollars ($18,000) on the same, interest on both mortgages to be paid semi-annually.

Payments of all, or any part, of the principal of said first mortgage of Thirty-six Thousand Dollars, in sums of Thirty-six Hundred Dollars ($3,600) or more, will be accepted by us on any interest date and credited upon the principal of said mortgage, and parts of the said tract of sixty-six and two third acres, in rectangualr blocks having as their base the northerly line of the said thirteen and one third acre tract, or a line parallel thereto, if releases have already been made, will be released from said first mortgage, at the rate of one acre for each Six Hundred Dollars ($600.) so paid.

You are to advance to us all money required for legal expenses in connection with the transfer of the rights, property and agreement aforesaid, and the money so advanced shall be returned to you out of the first moneys paid to us on account of the aforesaid purchase price of the property and agreement mentioned herein.

This option shall continue in full force and effect until the first day of January next (Jan. 1st, 1922), on which date it shall terminate automatically, provided, however, that if on the said first day of January, NinetEen Twenty-two, the sum of Thirty-six Hundred Dollars ($3,600.) is paid to us, we will renew this option for the term of one year from that date, or until January first, Nineteen Hundred and Twenty-three.

Very truly yours,
EQUITABLE ESTATES CORPORATION
Mercedes Spear
Secretary.

EXHIBIT C2.
6/15/27

General P. O. Box 202 Telephone, Canal 8228
EQUITABLE ESTATES CORPORATION
Room 1522, Woolworth Building
~~Bowery Bank Building~~
New York

Oct. 26th, 1921.

Mr.Maxim Darcy,
165 Broadway,
New York.
Dear sir:

Referring to the option which has been handed to you on this date, relative to the purchase of our rights under the Fernwood Cemetery Agreement and a tract of sixty-six and two third acres of land adjoining Locustwood Cemetery, situate in Delaware Twp., Camden County, New Jersey, we hereby agree that in case the proposed sale is consumated

in accordance with the terms of said option, to allow you the following commission: (1) One-half of the annual interest paid to us on the said first mortgage of Thirty-six Thousand Dollars, provided said interest is paid to us promptly when due; (2) to transfer to you the totality of the second mortgage given to us as part payment for the agreement and land mentioned, whether said second mortgage be for $18,000, as stipulated, or for any other amount

Very truly yours,
EQUITABLE ESTATES CORPORATION
Mercedes Spear
Secretary

EXHIBIT T4.
6/15/27

M. Darcy.
care of
T. M. Solomon & Co.
165 Broadway
Suite 1405
New York
Wm. A. Deverall
82 Beaver St.,
Room 501
New York

EXHIBIT C6.
6/15/27

A BUSINESS of greater safety than any other
A Business which is more profitable than any other
A Business which is an Absolute Necessity
A Business of which the Financial Details are Seldom Exploited —

SAFE—And value steadily grows
PROFITABLE—Large returns
INDISPENSABLE—Absolutely
PERMANENT—Nothing is more so

THE CEMETERY BUSINESS

An up-to-date park or lawn cemetery, properly organized, and under good business management, is not to be compared from any standpoint with what is commonly called a graveyard.

The land of a cemetery, and its improvements, under the laws of the State, are exempt from taxation, may not be mortgaged, and are exempt from debts or claims of any kind or nature, and it is this feature of the cemetery business which makes it safe,—absolutely.

The establishment of an up-to-date cemetery is

the purchase of acreage, its complete improvement and development, and its sale in burial plots, by the square foot.

One acre contains 43,560 square feet, and after deducting one-fifth of the entire cemetery for drives, walks, buildings, artificial lakes, landscaping, etc., each acre contains 34,852 square feet of actual burial land.

During the initial development of a high-class cemetery, the advance sale of burial plots is at not less than 50c per square foot. $100 for a 7 grave family lot. This amounts to $17,426 per acre. Receipts from lot sales comprise only a part of the profits in the cemetery business, as each acre of burial land contains 1,200 grave spaces, and the charge for grave excavations is $18; showing a profit to the cemetery of not less than $12 per grave from this source, which amounts to $14,400 per acre.

Approximately one-third of the lot owners, after interments have been made in their lots, desire, and are willing to pay for, extra special care of their lots, the annual charge for which is at a profit to the cemetery of about $7.50 per year per lot, and which consists of the special care of ornamental shrubbery, trees, and flowers, planted on the lot by the cemetery at the order of the lot owner, and at an initial profit to the cemetery, which generally owns its own greenhouses.

Permanent or Perpetual Care is guaranteed by all better class cemeteries. It consists of properly maintaining its surface and depth drainage system, the proper upkeep of all cemetery buildings, drives, lawns, walks, trees, flower beds, shrubbery, and all other embellishments belonging to the cemetery, as well as keeping level all lot spaces and maintaining the grass on all lots to uniform length and in as good shape as may be done with ordinary care.

From the beginning, the cemetery establishes its, "Permanent Care Fund" by setting aside not less than 10% of all money received in payment for burial lots, to be deposited in a Trust Fund and from time to time invested in securities permissible for the investment of Trust Funds under the laws of the State. The interest on this fund is added to it, and invested and re-invested the same as the principal, until all of the burial ground has been sold; when it is found that the interest returns from this permanent care fund, having been compounded over a period of years, are sufficient; first to take good and proper care of the cemetery, and second to afford a very substantial profit to the cemetery, forever.

$500 for a 7-grave family lot with permanent care, is not considered an excessive price for a park cemetery. This totals $87,130 per acre.

LOCUSTWOOD CEMETERY comprises 157 acres of land fronting on the Marlton Pike, Camden County, New Jersey, and running North along the West side of Coopers Landing Road, one mile to Chapel Road. It is 7 miles from the Broad Street Station at Philadelphia, 5½ miles Northeast from the Market Street Ferry in Camden, and within 3 miles from Westmont, Haddon Heights, Haddonfield, Merchantville, and Collingswood, N. J. Excellent roads lead from all of these points to the cemetery.

The land is peculiarly adapted for the establishment of one of the most beautiful park cemeteries in the United States. A topographical survey indicates exceptional facilities for deep drainage of the entire tract at comparatively small expense, as well as a running stream of sufficient flow to provide for three artificial lakes, the excavating of which is esti-

mated to provide sufficient earth for all advisable fill-ins. Nearly one-half of the tract is wooded, Locust trees predominating. The soil has surface loam of ample strength to maintain lawns, shrubbery, and flower beds. It is ideal for cemetery purposes, and to be properly appreciated has to be seen.

Exclusive of the city of Philadelphia, the estimated population within burial distance of Locustwood is more than 400,000 people. This district of New Jersey is fast building up with high-class homes, and many of its residents are from Philadelphia. Hundreds of acres are being subdivided and restricted. It is not inconsistent to estimate that the Philadelphia-Camden Bridge, now in course of construction, will add considerable stimulus to the growth of Camden County, and that the population will more than double in ten years.

Locustwood Cemetery is entirely convenient to Philadelphia for burial purposes, and there is, from the standpoint of the present cemetery situation, no district adjacent to a large city, where there is the same opening and need for a large, new, high-class cemetery.

Locustwood Cemetery is capitalized at $500,000, shares $10 each, fully paid and non-assessable, organized under the laws of New Jersey. Its stock has been subscribed at par, $10 per share, and among its present shareholders are some of the best known funeral directors, business, and professional men in Camden and Philadelphia, from whom its permanent board of directors will be selected. Its management is aggressive and entirely capable, and has already secured the services of the best cemetery talent obtainable. No necessary expense will be spared in developing the property into a park cemetery second to none.

Locustwood will follow the example of the large nationally known midwestern cemeteries in the sale of its burial lots. An ample crew of experienced cemetery lot solicitors will be employed to exploit all the territory within burial distance of the cemetery. From the start, the dividend rate on cemetery stock depends upon the volume of lot sales, which in turn depends upon the vigor with which an up-to-the-minute lot selling campaign is begun and continued. The average business man or woman can readily be shown the advisability of selecting a cemetery lot before, rather than when, a death has occurred in the family, and as it is a known fact that the price of lots in a first-class cemetery continually increases, a Cemetery lot is in no sense a poor investment, and in the natural course of events, is sure to become a necessity.

At least one-half of the cemetery's receipts through lot sales even during the first year, may properly be paid to the stockholders in dividends, and a substantial first year's dividend may reasonably be promised to Locustwood stockholders. As the income from excavating graves, special care endowments, etc., steadily increases, each subsequent year a greater proportion of the income from the sale of lots may be applied to dividends, and when all of the lots are sold, the stock receives, forever, substantial returns from that portion of the interest on the permanent care fund not required to maintain the cemetery as such.

We invite subscriptions for from $100 to $1,000 of Locustwood stock at par, $10 per share. We hope and desire to secure a large number of stockholders,—partners in our business, each of whom will recommend our burial lots when opportunity

occurs, and many of whom will be of active assistance to our lot sales force.
C. O. DAVIS & CO.
Financial Agents.
LOCUSTWOOD CEMETERY, Inc.,
Smith-Austermuhl Building,
5th and Market Streets,
Camden, N. J. Bell Phone.

SAFE—And value steadily grows
PROFITABLE—Large returns
INDISPENSABLE—Absolutely
PERMANENT—Nothing is more so

EXHIBIT T1.
7/6/27

WESTERN UNION TELEGRAM
Mrs. Douglas
23 E Stiles Av
Col

Number 3.
Charge PAID
WESTERN UNION TELEGRAM
RECEIVED AT COLLINGSWOOD, N. J.
801 A M 10-11 1922
Number 3 Received by SW. Check 19 NL
DATED New York N Y 10-10-22
TO Mrs Douglas 23 E Stiles Ave
Am postponing my visit till Thursday if not convenient wire me 308 West 134th.

M. Darcy.

(On back)
Darcy
308 W. 134 st

EXHIBIT T2.
7/6/27

Postal Telegraph-Cable Company

TELEGRAM

Mrs Helen C Douglas
23 East Stiles Ave
Collingswood N J

Postal Telegraph-Commercial Cables
TELEGRAM
311 Federal St., Camden, N. J.

10P N 41NL 810AM 8TH
FA NEWYORK NY NOV 8TH 1921

MRS HELEN C DOUGLAS
23 EAST STILES AVE, COLLINGSWOOD NJ
JUST RETURNED FROM SHORT BUSINESS TRIP FOUND YOUR TWO LETTERS WAITING AM UNABLE TO SEE YOU AT PRESENT IF YOU HAVE SUITABLE TENANT LEASE HIM THE FARM BEING UNABLE TO ATTEND TO THIS MATTER WITH THE PROMPTNESS YOU REQUIRE, YOURS RESPECTFULLY.

M DARCY.

EXHIBIT T3.
7/6/27

MOVE TO BLOCK SPEAR LAND SALE

Counsel for Mother of Physician Again Asserts Property Not His

---

Dr. Charles Cooper Spear, indicted for the murder of Edward Lawrence, came into the legal limelight again today, when it was announced that he was proceeding with the sale of stock in the Locustwood Cemetery Co., located on the Cooper Homestead farm at Ellisburg when the shooting occurred.

The announcement was made by Herbert J. Koehler, counsel for Mrs. Helen C. Douglas Aleck, who warned prospective buyers, asserting Dr. Spear was not the owner of the land and that he will not be able to give a clear title. The stock is being issued in the name of the Locustwood Cemetery Co.

Suing to Recover Deeds

Mrs. Aleck is Dr. Spear's mother and at the present time has a suit in Chancery Court to compel her son to return deeds to the land which she claims he fraudulently obtained.

Mr. Koehler, in a statement this morning, declared he had learned that Dr. Spear had negotiated

with brokers with respect to the Locustwood Cemetery proposition since his release on bail two weeks ago, and that a prospectus had been issued and some stock already sold.

Technical Question of Defendant

Application was made in Chancery Court this morning by Louis B. LeDuc, who is assisting Mr. Koehler, to have Dr. Spear removed as the defendant in the suit by Mrs. Aleck, and to have the Equitable Estates Co. substituted.

David H. Rose, representing Dr. Spear, opposed the application, contending that such action would preclude his client from testifying in the case.

The Locustwood Cemetery Co. is said to be a subsidiary of the Equitable Estates Co. The latter is said to be interested in all of Dr. Spear's holdings.

(On back)

The Camden Daily Courier

Sept 17—1923

EXHIBIT S1.
7/6/27.

THIS AGREEMENT made this 28th day of October A. D. 1922, between George H. Aleck of New York, N. Y. and Helen C. Douglas of Collingswood, N. J., hereinafter called the SELLERS, and Louis W. Macloskey of Haddonfield, N. J., hereinafter called the PURCHASER, WITNESSETH:—

FIRST, That the Sellers agree to sell and convey and the Purchaser agrees to buy from said Sellers, all the right, title, interest and ownership of the Sellers, of, in and to the real estate hereinafter described on the terms hereinafter set forth.

SECOND, The real estate to be conveyed is described as follows:—All that farm, tract or parcel of land and premises situate in the Township of Delaware, in the County of Camden, in the State of New Jersey, known as the Cooper Homestead Farm, and described as follows:—BEGINNING AT a stone in the Whiskey Road corner of Stoy's land, and running thence (1) along the line of the Indian Orchard south thirty-two and one quarter degrees east seventeen chains and six links more or less to the middle of the Landing Road at a point therein ten chains and ninety-six links from where the middle line of the said Whiskey Road crosses the same; thence (2) along the middle of the said Landing Road and along the land of Kaighn, late Ellis and Lippincott south thirty-four degrees and thirty minutes west forty-nine chains and sixty-seven links to an iron plug in an angle of the said Landing Road

and joining lands of the said Lippincott; thence (3) still by the said Lippincott's land and along the middle of the said Landing Road crossing the said Turnpike south fifty-one degrees and thirty-seven minutes west twenty-two chains and seven links more or less to an iron plug for a corner, corner also to the Budd Farm; thence (4) by the same north fifty-three degrees west about eight chains and eighty-two links to an iron plug in the middle of the said Turnpike; thence (5) still by the said Budd Farm and along the middle of the said Turnpike north seventy-one degrees and forty-five minutes west twelve chains and sixty links to another corner of the said Budd farm in the middle of the said Turnpike marked by an iron plug and thence (6) by lands of Nicholson, late Moore and Stoy, north forty-three degrees and two minutes east eighty-one chains and ninety-seven links to the place of beginning.

CONTAINING one hundred and fifty-three acres and seventy-seven hundredths of an acre.

THIRD, The total price to be paid for said real estate is the price or sum of $90,000—to be paid as follows:

(a) $1500 in cash upon the signing and delivery of this agreement, the receipt whereof is hereby acknowledged,
(b) $1000 in cash on the 30th day of November, 1922,
(c) $2500 in cash on the 28th day of February, 1923,
(d) $25,000 in cash on the day of settlement,
(e) Sellers to take back a first Mortgage for $50,000 for a period of five years, with interest at the rate of six per cent. per annum, payable semi-annually. This mortgage to be a releasing Mortgage on the following basis:—Said Mort-

gage to contain a releasing clause to be released in the following manner:—Any frontage on Cooper Landing Road or newly made roads to be released at $7.50 per front foot to a depth of 150 feet. This releasing clause pertains to 108 acres plotted on survey made by Remington. That the portions of ground fronting on the Marlton Turnpike and as designated on Remington Plan (or the remainder of the whole tract) is to be released upon the payment of $25,000 in cash. Reducing said mortgage of $50,000 as mentioned above accordingly.

(f) Sellers to take back a second mortgage for the balance of $10,000, with interest at the rate of six per cent. per annum, payable semi-annually. This second Mortgage to be paid in full in one year from the date of settlement.

FOURTH, Taxes for the year 1923 to be apportioned to the day of settlement. The Purchaser shall accept title subject to all assessments, charges or claims made against said property after the date of this agreement.

FIFTH, The Title to said real estate to be a good and marketable title in fee simple clear of encumbrance other than as aforesaid. It is agreed that time shall be the essence of this agreement, which shall apply to each and every payment of money, and that settlement shall be made at such a place as may be agreed to by parties concerned, ninety days after the Sellers establish a clear title, which shall be not later than the 28th day of October, 1923.

SIXTH, If the title to said real estate is a good and marketable title in fee simple, clear of encumbrance

other than aforesaid, and if the Purchaser shall fail to comply to the terms of this agreement, within the time above limited for settlement, then and in such case the Sellers shall have the option to hold and retain the aforesaid sums paid as liquidated damages for the breach of this agreement.

SEVENTH, If the title to said real estate is not a good and marketable title in fee simple, clear of encumbrance other than as aforesaid, then and in such case the aforesaid sums paid by the Purchaser to the Sellers shall be returned to the Purchaser, without interest, on the twenty-eighth day of October, 1923. And all right and remedies shall thereupon cease and determine.

EIGHTH, This agreement shall bond and Endure to the benefit of the several and respective heirs, executors, administrators of the respective parties hereto.

EXECUTED the day and year hereinabove written.

Geo. H. Aleck (SEAL)
Helen C. Douglas (SEAL)
Louis W. Macloskey (SEAL)

WITNESS
Charles D. Thompson

November 8, 1922.

For Fifteen Hundred Dollars ($1,500.00) value received, I hereby assign all my right, title and interest in the above agreement to Robert D. Clow, Jr., Inc.

Louis W. Macloskey (Seal)

EXHIBIT T4.
7/6/27.

THIS INDENTURE made the twenty-first day of February, in the year of our Lord, one thousand, nine hundred and ten, between

THOMAS E. FRENCH, of the city and county of Camden in the state of New Jersey, trustee, party of the first part,

HELEN C. DOUGLAS and CHARLES C. SPEAR of the borough of Collingswood, in the county of Camden, and state of New Jersey, and CYRUS D. MARTER of the said city of Camden, parties of the second part, and

LESLIE M. HOLLOWAY of the city and county of Philadelphia, and state of Pennsylvania, party of the third part.

WHEREAS by a deed of trust dated the twenty eighth day of September, A. D. nineteen hundred and eight, wherein said Cyrus D. Marter and wife were parties of the first part said Thomas E. French was party of the second part and said Helen C. Douglas and Charles C. Spear were parties of the third part, the land and premises hereinafter described were conveyed unto said Thomas E. French his heirs and assigns, upon certain trusts therein specified, declared and set forth, which said deed is of record in the office of the Register of Deeds of Camden County in Book 337 of Deeds page 616 &c. And

WHEREAS in and by said deed it was among other things declared that all of the trusts thereby declared and created may be revoked and annulled, the trustee released and discharged, and the trust

property conveyed and transferred at any time during the life of the said Helen C. Douglas, by a deed duly executed and acknowledged by the said trustee, the said Cyrus D. Marter if living and the said Helen C. Douglas and Charles C. Spear.

AND WHEREAS the parties hereto have agreed that the trusts declared and created by said deed be revoked and annulled the said Thomas E. French, trustee, released and discharged and the trust property conveyed and transferred, free and clear of all trusts.

NOW THIS INDENTURE WITNESSETH that the parties hereto in consideration of the premises do mutually stipulate and agree that all of the trusts declared and created by the hereinbefore recited deed be and they are hereby revoked and annulled and that the said Thomas E. French be and he is hereby released and discharged as such trustee and from all claims whatever and the said parties of the first and second part, for and in consideration of the sum of one dollar, lawful money of the United States of America, well and truly paid by the said Leslie M. Holloway to them at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for divers other good considerations thereunto them moving, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed and assigned, transferred and set over, and by these presents doth grant, bargain, sell, alien, enfeoff, release convey and confirm and assign, transfer and set over unto the said Leslie M. Holloway, his heirs or assigns:

ALL the parts of the farm, plantation, and tract of land known as the Cooper Homestead Farm, situate in the Township of Delaware, in the county of Camden, and state of New Jersey, excepted from the

grant to Floyd H. Bradley, bearing even date herewith, being:—

The triangular piece south of the Marlton Turnpike and a tract at the northwest corner of the Cooper Landing road and said Marlton Turnpike, commencing at a stone in the middle of said Turnpike at its intersection with the Cooper Landing Road, and extending along the middle line of said Marlton Turnpike, westwardly seven hundred and fifty feet, to the place of commencement, described of the tract conveyed to The Fernwood Cemetery Association; thence northwardly along the easterly line of said tract six hundred and fifty feet; thence still northwardly parallel to said Cooper Landing Road thirteen hundred and fifty feet; thence eastwardly at right angles to said Cooper Landing Road to the middle of the same; thence southwardly along the middle of said Cooper Landing Road to the place of beginning.

The said Charles C. Spear does hereby covenant and agree to assume the payment of the mortgage of twenty five hundred dollars on said land and premises, and to pay the interest on such mortgage as it falls due.

TOGETHER with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said parties of the first and second part, of in and to the said premises with the appurtenances.

TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the

said party of the third part,.....his heirs or assigns,..... to the only proper use, benefit and behoof of the said party of the third part,..... his heirs or assigns.....

And the said parties of the first and second part, each for himself or herself, his or her respective heirs, executors, and administrators, do by these presents, covenant, grant and agree to and with the said party of the third part..... his heirs or assigns; ..... that they the said parties of the first and second part, their heirs, all and singular the hereditaments and premises hereinabove described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the third part, his heirs or assigns..... against them, the said parties of the first and second part, their heirs and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, through or under him, her, them or any of them, shall and will warrant and forever defend.

IN WITNESS WHEREOF, the said parties of the first, second and third part to these presents have hereunto set their hands and seals. Dated the day and year first above written.

Thomas E. French (Seal)
trustee
Cyrus D. Marter (Seal)
Chas. C. Spear (Seal)
Helen C. Douglas (Seal)
Leslie M. Holloway (Seal)

Signed, sealed and delivered
in the presence of
Samuel H. Richards

State of New Jersey }
County of Camden } *ss.*

BE IT REMEMBERED that on the twenty-first day of February in the year of our Lord, one thousand, nine hundred and ten, before me, a master in chancery of New Jersey personally appeared Charles C. Spear, on the twenty-third day of February 1910 before me personally appeared Cyrus D. Marter on the and Thomas E. French trustee on the twenty-third day of March nineteen hundred and ten before me personally appeared Helen C. Douglas and on the twenty-ninth day of March nineteen hundred and personally appeared Thomas E. French, Helen C. Douglas, Charles C. Spear, Cyrus D. Marter ten before me personally appeared and Leslie M. Holloway,..... who I am satisfied are the parties mentioned in and who executed the foregoing deed or conveyance, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their and each of their voluntary act and deed. All of which is hereby certified.

Samuel H. Richards

Received at CAMDEN, N. J., March 31st 1910 at 2.48 P. M., and Recorded in Book No. 346 of Deeds Page 266 &c. in the Office of the Register of Deeds, &c., of CAMDEN COUNTY.

Edward W. Delacroix
Register

[Endorsed]

DEED.
THOMAS E. FRENCH, Trustee
and
HELEN C. DOUGLAS and CHARLES
C. SPEAR and CYRUS D. MARTER
AND
LESLIE M. HOLLOWAY
Certificate of record inside
Feby 21 1910

EXHIBIT T5.
(7/6/27)

MORTGAGE—

Dated August 20, 1908; between Charles C. Spear, party of the first part, and Thomas E. French, party of the second part; for $2500. principal, payable, 1 yr.

Covering premises which Frank C. Somers, Sheriff of the County of Camden, by deed dated October 8th, A. D. 1907, and duly recorded in the Office of the Register of Deeds of Camden County in Book No. 322 of Deeds, pages 11 &c., granted and conveyed unto the said Charles C. Spear, in fee;

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

To have and to hold the said hereditaments and premises above granted, or intended so to be, with

the appurtenances, unto the said party of the second part, his heirs and assigns forever.

Acknowledged August 20, 1908, before Joseph L. Thomas, M. C. C. of N. J.

Recorded in the Office of the Register of Deeds of Camden County, August 21, 1908, in Book 110, page 583, &c.

EXHIBIT T7.
7/6/27

IN CHANCERY OF NEW JERSEY

Between HELEN C. DOUGLAS, Complainant, and CHARLES COOPER SPEAR, Hobart S. Bird, Equitable Estates Corporation, George H. Aleck, John A. Scanlon and Alice M. Wesley, Defendants	ON BILL, etc. LIS PENDENS

TO WHOM IT MAY CONCERN:—

Take notice that a suit entitled as above set forth has been commenced and is still pending in the court of Chancery of New Jersey; that the general object of the said suit is to set aside three deeds to the

hereinafter described parcels of land, each from or alleged to be from Helen C. Douglas to Equitable Estates Corporation and to compel a conveyance by parties claiming an interest in these properties to her and to quiet her title thereto and that the lands and real estate to be affected thereby are described in said bill as follows: All that farm, tract or parcel of land and premises situate, lying and being in the Township of Delaware, in the County of Camden and State of New Jersey known as the Cooper Homestead Farm and described as follows: BEGINNING at a stone in the Whiskey Road corner to Stoy's land and running thence (1) along the line of the Indian Orchard South thirty two and one quarter degrees east seventeen chains and six links more or less to the middle of the Cooper Landing Road at a point therein then chains and ninety six links from where the middle line of said Whiskey Road crosses the same; thence (2) along the middle of the said Landing Road and along the lands of Kaighn late Ellis and Lippincott South thirty four degrees and thirty minutes west forty nine chains and sixty seven links to an iron plug in an angle of the said Landing Road and joining lands of the said Lippincott; thence (3) still by the said Lippincott's land and along the middle of the said Landing Road crossing the Marleton Turnpike South fifty one degrees and thirty seven minutes west twenty two chains and seven links more or less to an iron plug for a corner, corner also to the Budd farm; thence (4) by the same North fifty three degrees west about eight chains and eighty two links to an iron plug in the middle of the said turnpike; thence (5) still by the said Budd farm and along the middle of the said turnpike North seventy one degrees and forty five minutes west twelve chains and sixty links to

another corner of the said Budd farm in the middle of the said Turnpike marked by an Iron plug; thence (6) by lands of Nicholson late Moore and Stoy North forty three degrees and two minutes east eighty one chains and ninety seven links to the place of beginning. Containing one hundred fifty three acres and seventy seven one hundredths of an acre, excepting that part of the above described premises as follows:—Beginning in the center of the Marlton Turnpike at a point seven hundred and fifty westwardly from the intersection of the middle line of the Cooper Road with the center of the said Marlton Turnpike and extending thence (1) Parallel with the westerly line of the whole tract northwardly six hundred and fifty feet; thence (2) Westwardly at right angles to said westerly line; thence (3) Southwardly along the same to the center of the said Marlton Turnpike; thence (4) eastwardly along the middle of the said turnpike to the place of beginning. Containing thirteen acres and thirty one hundredths of an acre to be the same, more or less. All that certain lot, tract or piece of land situate in the Borough of Collingswood, in the County of Camden and State of New Jersey being marked and designated as Lot No. 5 on Plan of Homestead Tract at Collingswood, N. J. a copy of which plan or map has been duly recorded in the Office of the Register of Deeds of Camden County and which said lot number five is bounded and described as follows:—BEGINNING at a point in the northwest line of Stiles Avenue distant two hundred feet northeast from the north corner of Stiles and Haddon Avenues and extending thence (1) northeast along the northwest line of Stiles Avenue fifty feet thence (2) northwest at right angles to Stiles Avenue one hundred thirty four feet and two tenths of a foot; thence (3) south

twenty eight degrees nine minutes and fifty seconds west fifty feet and ninety nine one thousandths of a foot; thence (4) Southeast at right angles to Stiles Avenue one hundred thirty seven feet and thirty six one hundredths of a foot to the northwest line of Stiles Avenue and place of beginning. All that certain lot or tract or piece of land situate in the borough of Collingswood in the County of Camden and State of New Jersey being marked and designated as lot number 6 on the map or plan of the Homestead Tract, Collingswood, N. J. a copy of which plan or map is duly filed in the Office of the Register of Deeds of Camden County which said lot is bounded and described as follows:—BEGINNING at a point in the northwest line of Stiles Avenue distant two hundred and fifty feet Northeast from the North corner of Stiles and Haddon Avenues and extending thence (1) Northwest at right angles to Stiles Avenue one hundred thirty four feet and two tenths of a foot; thence (2) North twenty eight degrees nine minutes and fifty seconds East fifty feet and ninety nine one hundredths of a foot; thence (3) Southeast at right angles to Stiles Avenue one hundred thirty one feet and four one hundredths of a foot to the northwest line of Stiles Avenue; thence (4) Southwest along the same fifty feet to the place of beginning.

Norman W. Harker, Attorney for Complainant. Dated April 24th, 1922 Filed and Recorded May 1st, 1922 at 7:15 A. M. by Joshua C. Haines, Register.

EXHIBIT S3.
7/6/27

SEARCH No. 71184
71643

AGAINST PREMISES situate in the Township of Delaware County of Camden and State of New Jersey, described as follows:

BEGINNING at a stone in Whiskey Road, corner to Stoy's land, being the lands and premises contained in deed, Frank C. Somers, Sheriff, to Charles C. Spear, recorded in Office of the Register of Deeds of Camden County in Book 322 of Deeds, page 11 &c.

CONTAINING 153.77 Acres.

The WEST JERSEY TITLE AND GUARANTY COMPANY, in consideration of the charges on the within Search, hereby certifies and guarantees that no Unsatisfied Mortgages, and no Conveyances, Leases, Certificates of Sale for Taxes, Lis Pendens, Releases, or Assignments of Mortgages, or Unsatisfied or Unexpired Mechanics' Lien Claims, Judgments, Attachments, Sheriff's Bonds, Recognizances, Decrees from Chancery Filed in Supreme Court, Decrees or Adjudications of Bankruptcy

appear of record or on file, made by or against any of the persons named below, in the respective Offices and within the respective periods hereinafter particularly enumerated, to wit:

IN THE REGISTER'S OR CLERK'S OFFICE OF CAMDEN COUNTY there do not appear of record or on file any Unsatisfied Mortgages, or any Conveyances, Leases, or Certificates of Sale for Taxes, affecting the above described premises,

Given by or Filed Against	Recorded or filed between the following dates, incl. From	To
Charles C. Spear	Oct. 7, 1907	1927 8 AM
Fernwood Cemetery Association	Dec. 30, 1907	1927 8 AM
Cyrus D. Marter	Sept. 27, 1908	1927 8 AM
Thomas E. French, Trustee	Sept. 27, 1908	1927 8 AM
Leslie M. Holloway	Feb. 20, 1910	June 24, 1914
George H. Aleck	June 22, 1914	June 29, 1920
John A. Scanlan	July 26, 1916	June 23, 1920
Helen C. Douglass	June 6, 1920	1927 8 AM
Helen C. Aleck	June 6, 1920	1927 8 AM
Equitable Estates Corporation	June 20, 1920	1927 8 AM
Charles C. Spear, Trustee	July 22, 1923	1927 8 AM
Mercedes Spear	July 22, 1923	1927 8 AM
Locustwood Cemetery Associatoin	Dec. 30, 1907	1927 8 AM

In the Office of the Clerk of County, or of the several Courts of said County, of the New Jersey Supreme Court, and also of the United States Courts for the District of New Jersey, there do not appear of record or on file any unsatisfied or unexpired Mechanics' Lien Claims affecting said premises, nor any unsatisfied or unexpired Judgments, Attachments Sheriff's Bonds, Recognizances, Decrees from Chancery, or Decrees, or Adjudications of Bankruptcy, and other Liens.

Against	Recorded or filed between the following dates, incl. From	To

AND IT IS FURTHER CERTIFIED, that there do not appear of record any ASSIGNMENTS OR RELEASES of the Mortgages hereinafter mentioned as Nos. 4, 13, 33, recorded in Book 110 of Mortgages, pages 583 &c. Book 121, page 468; Book 264, page 357;

Nor any delinquent taxes, water rents, or municipal liens affecting said premises within years last past,

EXCEPT THE FOLLOWING:

Note Sheriff's Deed	
Frank C. Somers, Sheriff	Dated Oct. 8, 1907
	Recd. Oct. 9, 1907
Michael Cotter, et als Defendants	Book 322, page 11
	$9200.00 Consideration
The Louis Bergdoll Brewing Company Complainant	Recites foreclosure of Mortgage 33, page 611
	Bill filed Dec. 13, 1901
to	French & Richards, Solicitors
Charles C. Spear	
Covers premises in question.	

1. Agreement	
Between	Dated Dec. 31, 1907
Charles C. Spear	Recd. Jan. 27, 1908
and	Book 323, page 610
The Fernwood Cemetery Association	

Agreement conveying premises beginning in the centre of Marlton Turnpike 750 ft. West from intersection of middle line of Cooper Landing Road with the Centre line of said Marlton Turnpike,
thence parallel with West line of the whole tract North 650 ft.,

" West at right angles to said line to said West line,
" South along same to centre of aforesaid Marlton Turnpike,
" East along middle said Turnpike to beginning.

Containing 13.30 Acres more or less. Upon Certain Conditions &c.

2. Deed

Charles C. Spear	Dated Dec. 31, 1907
to	Recd. Jan. 27, 1908
The Fernwood Cemetery Association	Book 323, page 608
	$1.00 &c., Consideration

Covers same as above Agreement 323, page 610; Item No. 1.

3. Deed

The Fernwood Cemetery Association	Dated Aug. 4, 1908
	Recd. Feb. 3, 1925
to	Book 583, page 226
Charles C. Spear	$1.00 Consideration

Covers premises situate Locustwood Cemetery.
Lot #75, Faith Section,
Containing 160 square feet.

4. Mortgage
$2500.00

Charles C. Spear, single	Dated Aug. 20, 1908
to	Recd. Aug. 21, 1908
Thomas E. French	Book 110, page 583
	$2500.00 1 yr., 6%

Covers premises in question.
Except as in above Deed 323, page 608; Item No. 2.

Substitute for Items 5, 6, 7, 8 and 9—

Item No. 4, by mesne assignments, was assigned to Josephine Allen by assignment dated January 31, 1914, recorded March 12, 1914, in Book 44, page 257; consideration $2500.

10. Deed

Charles C. Spear	Dated Sept. 28, 1908
to	Recd. June 21, 1909
Cyrus D. Marter	Book 337, page 614
	$1.00 Consideration

Covers premises in question.

Also doth assign, transfer and set over unto said party of the second part, his executors, administrators and assigns a certain agreement dated Dec. 31, 1909, made between said party of the first part and Fernwood Cemetery Association and all moneys due and to grow due thereunder and all rights and privileges granted by said agreement, subject, however, to the covenants of said party of the first part in said agreement

11. Deed

Cyrus D. Marter	Dated Sept. 28, 1908
Eleanor H., his wife	Recd. June 21, 1909
Parties of the 1st part	Book 337, page 616
Helen C. Douglass	$1.00 Consideration
Charles C. Spear	
Parties of the 3rd part	
to	
Thomas E. French	
Party of the second part	

Covers premises in question.

In Trust to collect and receive the rents, income and profits and all payments made under said Agreement between Charles C. Spear and Fernwood Cemetery Association 323, page 610; Item No. 1., Conditions &c.

Note:—Helen C. Douglass and Charles C. Spear join herein to be bound by the covenants and agreements herein contained.

12. Deed

Thomas E. French,
Trustee
Party of the first part
Helen C. Douglas
Charles C. Spear
Cyrus D. Marter
Parties of the 2nd part
to
Leslie M. Holloway
Party of the 3rd part

Dated Feb. 21, 1910
Recd. Mar. 31, 1910
Book 346, page 266
$1.00 Consideration

Covers all the parts of the farm, plantation and tract of land known as the Cooper Homestead Farm, situate in Delaware Township excepted from the grant to Floyd H. Bradley, bearing even date herewith being—

The triangular piece South of the Marlton Turnpike and a tract at Northwest corner of the Cooper Landing road and said Marlton Turnpike commencing at a stone in the middle of said Turnpike at intersection with Cooper Landing Road,

thence along middle line said Marlton Turnpike West 750 ft. to place of commencement described of tract conveyed to Fernwood Cemetery Association,

" North along East line said Tract 650 ft.,

" North parallel with Cooper Landing Road 1350 ft.,

" East at right angles to Cooper Landing Road to middle of same,

" South along middle of said Cooper Landing Road to beginning.

13. Mortgage
$3500.00

Leslie M. Holloway	Dated June 7, 1911
Althea, his wife	Recd. June 23, 1911
to	Book 121, page 468
Theodore G. Brinton	$3500.00 within 3 yrs., 6%

Covers same as above Deed 346, page 266; Item No. 12.

Substitute for Items 14, 15, and 16—

Mortgage, Item No. 13, by mesne assignments, was assigned to Josephine Allen by assignment dated January 31, 1914, recorded March 12, 1914, in Book 44, page 256; consideration $3500.

17. Power
of
Attorney

Charles C. Spear	Dated June 14, 1910
to	Recd. Dec. 2, 1910
Helen C. Doughlas	Book 352, page 456

Party of the first part appoints party of the second part his lawful attorney &c.

18. Sheriff's
Deed

Joseph E. Nowrey,	Dated June 23, 1914
Sheriff	Recd. June 23, 1914
to	Book 389, page 209
George H. Aleck.	$2500.00 consideration
	Recites foreclosure of
	Mortgages 110, page 583
	and 121, page 468
	Bill filed—
	Joseph Beck Tyler, Solr.

Covers premises in question.
Except as in above Deed 323, page 608; Item No. 2.

19. Deed

George H. Aleck, single	Dated July 27, 1916
to	Recd. Oct. 18, 1916
John A. Scanlan	Book 410, page 238
	$1.00 Consideration

Covers premises in question.
Except as in above Deed 323, page 608; Item No. 2.

20. Declaration
or
Affidavit

Helen C. Douglas	Dated Nov. 2, 1917
to	Recd. Sept. 2, 1921
Charles C. Spear	Book 492 of Deeds, page 79

This is an Affidavit by Helen C. Douglas who states that on June 14, 1910 Charles C. Spear executed a Power of Attorney to her giving her full control of all the Estate of said Charles C. Spear in accordance with the terms of verbal agreement between them whereby she was to enjoy all the rents &c. thereof during her lifetime, but that the equitable fee was in the said Charles C. Spear.

21. Deed

John A. Scanlan	Dated June 14, 1920
to	Recd. June 22, 1920
George H. Aleck, single	Book 470, page 552
	$1.00 Consideration

Covers premises in question.
Except as in above Deed 323, page 608; Item No. 2.

22. Deed

George H. Aleck, single man	Dated June 7, 1920
	Recd. June 28, 1920
to	Book 472, page 50
Helen C. Douglas	$1.00 Consideration

Covers premises in question.
Except as in above Deed 323, page 608; Item No. 2.

23. Revocation of Power of Attorney

Charles C. Spear	Dated June 9, 1920
to	Recd. July 26, 1920
Helen C. Douglass	Book 471, page 375 of Deeds

Revokes above Power of Attorney 352, page 456; Item No. 17.

24. Deed

Helen C. Douglas	Dated June 22, 1920
to	Recd. June 28, 1920
Equitable Estates Corporation	Book 472, page 55
	$1.00 Consideration

Covers premises in question.
Except as in above Deed 323, page 608; Item No. 2.

25. Asst. of Agreement

Helen C. Douglas	Dated June 22, 1920
Attorney-in-fact for	Recd. June 28, 1920
Charles C. Spear	Book 472, page 53
to	$1.00 Consideration
Equitable Estates Corporation	

Assigns above Agreement 323, page 610; Item No. 1.

26. Lis Pendens

Helen C. Douglas	In Chancery of New Jersey
Complainant	
and	Dated Apr. 24, 1922
Charles Cooper Spear	Filed May 1, 1922
Hobart S. Bird	Book 2, page 411
Equitable Estates Corporation	Norman W. Harker, Attorney for Complainant
George H. Aleck	
John A. Scanlon	
Alice Wesley	
Defendants	

That the general object of said suit is to set aside three deeds, each from or alleged to be from Helen C. Douglas to Equitable Estates Corporation and to compel a conveyance by parties claiming an interest in these properties to her and to quiet her title thereto and that the lands and real estate to be affected thereby are premises in question.

Except as in above Deed 323, page 608; Item No. 2.

27. Asst. of Agreement

Charles C. Spear	Dated June — 1923
to	Recd. June 27, 1923
Mercedes Spear	Book 538, page 160 of Deeds

Assigns above Agreement 323, page 610; Item No. 1.

28. Deed

11A—Stockhouse Exhibits—14531 Smith

Equitable Estates Corporation	Dated July 23, 1923
	Recd. Aug. 2, 1923
to	Book 538, page 535
Charles C. Spear	$1.00 Consideration
Mercedes Spear co-trustees of Locustwood Cemetery	

Association, an association
of trustees operating under
declaration of trust, made
July 23, 1923 by Charles C. Spear
and Mercedes Spear the principal
purpose of which is to administer
certain real and personal property
in interest of stockholders of
said Equitable Estates Corporation
the assignees of said Charles C. Spear
et als
Covers premises in question
Except as in above Deed 323, page 608; Item No. 2.

29. Quit-Claim
Deed
Charles C. Spear — Dated Sept. 5, 1923
Mercedes Spear — Recd. Oct. 4, 1923
co-trustees of Locustwood — Book 548, page 283
Cemetery Association an — $1.00 Consideration
association of Trustees
operating under a Declaration
of Trust made July 23, 1923
recd. in Camden County
to
Equitable Estates Corporation
Covers premises in question.
Except as in above Deed 323, page 608; Item No. 2.

30. Certificate of Indebtedness

This is to certify that Locustwood Cemetery Association (formerly The Fernwood Cemetery Association) is indebted to Locustwood Land Company (Corp. N. J.) for value received in the sum of $122,220.00

Dated Jan. 28, 1924
Recd. Feb. 3, 1925
Book 247, page 356

This Certificate of Indebtedness is given in compliance with terms of Article 5 of certain Agreement made Dec. 31, 1907 between Charles C. Spear and The Fernwood Cemetery Association and the Agreement amendatory thereof, Made Jan. 25, 1924 between Locustwood Land Co., assignee and said Locustwood Cemetery Association and subject only to lien of said Charles C. Spear or his assigns for unpaid purchase money due for lands conveyed to said Cemetery Association by said Charles C. Spear and to certain bond in sum of $33,600.00 dated Oct. 30, 1923 and given by said Locustwood Cemetery Association to said Locustwood Land Co., is a preferred lien on all income of said Cemetery Association from any source whatsoever, &c. &c.

30½ Asst. of Agreement

Equitable Estates Corporation to Locustwood Land Company

Dated Dec. 9, 1923
Recd. Jan. 7, 1925
Book 584 of Deeds, page 129

Assigns above Agreement 323, page 610; Item No. 1.

31. Deed

12A—Stockhouse Exhibits—14531 Smith

Locustwood Cemetery Association (formerly The Fernwood Cemetery Association) to Charles C. Spear	Dated Dec. 31, 1917 Recd. Mar. 13, 1925 Book 589, page 50 Consideration $1.00 and the faithful performances of covenants &c. on part of said Fernwood Cemetery Association in above Agreement Dec. 31, 1907, 323, page 610; Item No. 1 and whereas said aforesaid Fernwood Cemetery Association failed to perform as per said agreement &c.

Party of the first part transfers and sets over unto party of the second part all its right, title and &c. in land Containing 13.30 Acres.

32. Lis Pendens

Locustwood Land Co. signed by David W. Rose, Attorney for Complainant Complainant and Locustwood Cemetery Association Locustwood Cemetery Inc. Thomas E. French Helen C. Aleck Charles C. Spear Joseph Beck Tyler, Defendants	In Chancery of New Jersey Dated June 22, 1925 Recd. June 22, 1925 Book 3, page 17

Object of said suit is for the forecloseure of a Vendor's lien reserved in habendum of Deed 323, page

608 and a written agreement between said parties book 323, page 610 and to restrain defendants from committing waste, selling or disposing of land and to restrain defendants or some of them from impairing or incumbering the title of said land and for an accounting.
Covers same as above Deed 323, page 608; Item No. 2.

33. Mortgage
$15,000.00

Helen C. Aleck	Dated Aug. 19, 1925
George H., her husband	Recd. Aug. 19, 1925
to	Book 264, page 357
Joseph Beck Tyler	$15,000.00 1 yr. &c. as therein set forth, 6%

Covers premises in question.
Except as above Deed 323, page 608; Item No. 2.

34. Rel. Mtge.
264/357

Joseph Beck Tyler	Dated Nov. 11, 1925
to	Recd. Nov. 17, 1925
Helen C. Aleck	Book 37, page 172
George H., her husband	$1.00 Consideration

Covers premises beginning at the intersection of the middle lines of Marlton Turnpike and Cooper Landing Road,
thence South 54° 54′ 40″ West 226.76 ft. to lands now or late of Henry O'Brien,
" along said lands North 49° 42′ 20″ West 548.10 ft. to middle line of aforesaid Turnpike,
" along same South 69° 37′ 20″ East 643.87 ft. to beginning.
Recites above Mortgage Item No. 33.

35. Final Decree

Helen C. Douglas now Aleck
Complainant
and
Charles Cooper Spear
Equitable Estates Corporation, et al
Defendants

In Chancery of New Jersey
Recd. & filed Nov. 17, 1925
Book 609 of Deeds, page 324
Dated Sept. 14, 1925

Final decree that inter alia deed from Helen C. Douglass to Equitable Estates Corporation dated June 22, 1920, 472, page 55; agreement or declaration of trust by Helen C. Douglass to Charles Cooper Spear dated Nov. 2, 1917, 492, page 79; deed by Equitable Estates Corporation to Charles C. Spear and Mercedes, his wife co-trustees &c. dated July 23, 1923, 538, page 535; deed by said Charles C. Spear and Mercedes his wife co-trustees &c. to Equitable Estates Corporation, dated Sept. 25, 1923, 548, page 283; be and the same are hereby set aside annulled and for nothing holden so that the title of the Complainant Helen C. Douglas, now Aleck, to the above described premises be and the same hereby is absolutely discharged of any lien encumbrance or claim under or by virtue of the aforesaid deeds, conveyances or declaration of trust.

Also sets aside assignment of agreement between Fernwood Cemetery Association and Charles Cooper Spear, which Assignment was made by Helen C. Douglas as Attorney for Charles Cooper Spear to the Equitable Estates Corporation dated June 22, 1920, 472, page 53.

It is further ordered, adjudged and decreed that the counter-claim of the Defendant Charles Cooper Spear, in which he prays for specific performance of an agreement dated Nov. 20, 1922 between the

Complainant Helen C. Douglas and said Charles Cooper Spear relating to the above described property and purporting to convey some interest therein to said Charles Cooper Spear be and the same hereby is dismissed. And it is further ordered and decreed that anything herein stated or adjudged shall in no way fix, settle or determine the rights of the defendants Locustwood Cemetery Association and the Locustwood Cemetery Inc., if any, in the lands and premises above described which rights are alleged to exist by virtue of the terms of the following, to wit:

Deed dated Dec. 31, 1907 made by and between Charles C. Spear and the Fernwood Cemetery Association recorded in Office of Recorder of Camden County in 323 of deeds, page 610 and the agreement dated July 23, 1923 made by and between Locustwood, formerly Fernwood Cemetery Association and Locustwood Cemetery Inc.

It is further ordered and decreed that the lien for compensation for services heretofore reserved or existing to Herbert J. Koehler shall not be affected by this decree.

Omit Items 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68.

IN VERIFICATION of this Certificate of Search No. 71184 the WEST JERSEY TITLE AND GUARANTY COMPANY hath caused these presents to be sealed with its Seal, attested by its Secretary and countersigned by its Search Clerk, this .....day of..... Anno Domini nineteen hundred and .....

.....

Search Clerk.

F

Attest:
W. S. Barto
Secretary.
Charges, $75.00

[Endorsed]

WEST JERSEY TITLE AND
GUARANTY COMPANY
Incorporated 1888
Capital, Surplus and Reserve, $1,000,000.00
OFFICERS
WM. S. CASSELMAN
President
CHARLES H. LAIRD, Jr.
Vice-President
W. E. BARTO
Vice-President and Secretary
C. R. LIPPINCOTT
Treasurer
Complete Plant of Camden County

Search No. 71184
Against
Locustwood Cemetery
Association, et als
PREMISES:
Delaware Township
Camden County,
New Jersey
D. T. Stackhouse
Attorney.
Dated.....192
Under Search Order No. 71643
WEST JERSEY TITLE AND
GUARANTY COMPANY
S. E. Cor. Third and Market Streets
Camden, N. J.
Charges, $75.00

EXHIBIT T1.
9/26/27

(Envelope)
Mrs. Helen C. Douglas,
23 East Stiles Ave.,
Collingswood, N. J.
From M. Darcy seeking terms for cemetery urging
I accept any terms he offers. Nov. 15 1922
(On back of envelope)
From M. Darcy, 308 W. 134th St.
New York City.

EXHIBIT T2.
9-26-27

New York, Nov. 14, 1922.

Mrs. Helen C. Douglas,
23 East Stiles Ave.,
Collingswood, N. J.

Dear Mrs. Douglas:

Hereby acknowledge receipt of your most esteemed favor of the 12th. Inst., contents of which have been duly considered.

Take note of your reference to Mr. John Riggins, whom I have not the honor of being acquainted with, nor would I employ the services of an agent in a matter of this kind which I am sure can be handled must better directly: also ignore whether this gentleman is acting for himself or as someone else's agent.

Had about given up all hopes of ever being able of bringing about an agreement whereby I might be able to undertake the development of the cemetery, on account of the tenure of your telegram received on the 2nd. Inst. signed by Miss Bodey, as follows:

"COME FRIDAY MORNING AUTHORIZED TO ACT LATER USELESS DOUGLAS WINNER.

Signed—ARRABELLE.

Being unable to see you that Friday morning on account of previous and pressing business engagements, according to the contents of above it seemed almost useless to persist in my endeavours. You must certainly realize Mrs. Douglas that my mission was no sinecure, that I was really working in your interest in trying to negotiate a settlement, and although I was probably to be benefitted indi-

rectly, above telegram was certainly a surprise to me.

You undoubtedly appreciate that I was devoting considerable time and going to some expense to try and arrange this matter for you, and had I known that my efforts were to be considered so indifferently it is more than probable that I would have avoided myself a good deal of unnecessary labor. Nevertheless Mrs. Douglas, I am still willing to assist you to the very best of my ability in this matter, providing you are willing to give me a concrete basis to negotiate on, that is let me know at your earliest convenience and by letter, what are the conditions you are willing to accede and subscribe to, trusting that same may be such that they prove acceptable to your son.

It would certainly be disappointing and a cause for regret that such a valuable property should become the prey of those who are looking for an opportunity for obtaining same for little or nothing, and every day that passes in useless litigation serves only to make them bolder and surer of success.

Although this situation is certainly detrimental to all concerned, you are undoubtedly the greatest sufferer for you are deprived of the considerable income which the intelligent development of this property would produce, it would therefor behoove you to bring about a prompt settlement.

Sincerely hoping this will find both yourself and Miss Bodey in the very best of health and spirits and thanking you for your kind inquiry as to my physical condition, which I am glad to say is steadily improving, I beg to remain as ever

Yours most respectfully,

M. Darcy

EXHIBIT T3.
9/26/27

(Envelope)
Dr. Chas. C. Spear,
2227 Spring Garden St.,
Philadelphia, Pa.
(On back of envelope)
From M. Darcy, 308 W. 134th St.,
New York City.

EXHIBIT T4.
9/26/27

New York, March 13, 1923.

Dr. Chas. C. Spear,
2227 Spring Garden St.,
Philadelphia, Pa.
Dear Friend Spear:

Received your letter of Feb. 26, which was read with pleasure, had not answered it as yet because I was overrun with work; have been trying to incorporate a Company to develop a new medical treatment brought here by a young Brazilian Physician and scientist, it is a wonderful proposition and full of the greatest possibilities, at some future date I will endeavour to give you some idea of it. Of course you realize all the difficulties one encounters putting anything over without any other capital than your nerve and therefor you can readily believe that I have been busy.

The photoengraving business about the same and on the whole I cannot complain as it has been pretty

steady but does not seem to get much better. Juanita is now working in one of Kresse's stores and is earning $12 a week, of course that will help a little, I have been unable to obtain working papers for the other two boys.

Am sorry to hear that you have been unable to come to a definite understanding with your mother as a poor agreement is better than successful litigation, sincerely hope that by the time this letter reaches you the case shall have come up for trial and that you may have some idea as to its probable result. I suppose that living must be somewhat cheaper and more agreeable in Philadelphia as New York seems to be about the limit for being just exactly the opposite. Also hope you will soon be able to take up the Camden matter, it is about time the new prosecutor should be appointed, it has always been my opinion that if you can settle that matter the rest will become much easier. Have not gone to your old address to inquire for mail as yet but will do so in the next few days. My family joins me in returning your kind wishes and regards, my wife says she would also like to be with Mercedes in Philadelphia. Trusting this will find you all O.K. as it leaves us, I am as ever,

Your sincere friend,

M. Darcy

CONCLUSIONS.

The bill of complaint filed herein primarily seeks the enforcement of a vendor's lien against the land of defendant Locustwood Cemetery Association. The conveyance of the land was made December 31st, 1907, by Charles C. Spear to the Fernwood Cemetery Association, and recorded January 27th, 1908. Since then by assignments the rights of Spear as vendor have passed to Locustwood Land Company, complainant herein, and the name of the vendee has been changed to Locustwood Cemetery Association. Numerous defendants have been brought in as claimants of adverse interests.

At the date of the conveyance from Spear to the Fernwood Cemetery Association (Dec. 31st, 1907), the legal title to what is known as the "Cooper Homestead Farm," containing 153.77 acres, stood in the name of Charles C. Spear, and the land that day conveyed by him to the Cemetery Association embraced 13.30 acres of that farm.

The deed of conveyance recites as its consideration "an agreement this day made between the parties providing among other things for the payment of the purchase money of said land, and the sum of one dollar." The *habendum* of the deed provides that the conveyance is "subject, however, to the lien for unpaid purchase money provided by said agreement."

The agreement recited in the deed of conveyance —uniformly referred to as the "Spear-Fernwood Agreement"—bears date the same day as the deed of conveyance and provides that the Cemetery Association will pay for the land conveyed to it "out

of future sales of burial lots, places of interment or tombs fifty per centum of all moneys received from said sales as the same shall from time to time be received, and drafts drawn by the said Charles C. Spear, his heirs, executors, administrators or assigns, upon said party of the second part [Cemetery Association] for any portion of said moneys to be paid in accordance with the terms of this agreement shall be accepted by the treasurer of said Association." The agreement further provides a minimum price at which the lots shall be sold, and that in estimating the value of unappropriated or unsold lots such portions shall be considered as having a like value, and the Cemetery Association shall be deemed owing to Spear the equivalent of the unsold portion when estimated on that basis; and also provides for the Cemetery Association, when requested, to give to Spear a certificate or certificates of the amount of indebtedness at the time or times requested. Many other provisions are contained in the agreement looking to its enforcement and giving Spear general supervision over the operation of the Cemetery Association, among them a provision that should the Cemetery Association find it necessary to borrow money upon its bonds, notes or other obligations such "obligations shall be issued subject to the lien of the said Charles C. Spear on the lands for unpaid purchase money and it shall be so expressed therein." Among other provisions in the agreement which are material herein is an engagement of Spear to convey to the Association from time to time as it shall be needed for cemetery purposes tracts of land of ten acres in extent adjoining the land already conveyed, provided the agreement has been faithfully kept and the fifty per centum of all moneys received from sales has been paid to him.

These contemplated ten-acre tracts were parts of the remaining portion of the Cooper Homestead. This Spear-Fernwood agreement was recorded January 27, 1908.

August 20, 1908, Spear executed a mortgage to T. E. French on all of the Cooper Homestead Farm excepting the 13 1/3 acres theretofore conveyed to the Cemetery Association. Since the Spear-Fernwood agreement was then of record, obviously the lien of this mortgage was subject to any rights the Cemetery Association may have had under the Spear-Fernwood agreement to acquire the ten-acre tracts referred to in the agreement as parts of the Cooper Homestead tract.

September 28, 1908, Spear conveyed to Cyrus D. Marter the entire Cooper Homestead tract, without excepting the 13.30 acre cemetery tract theretofore conveyed to Fernwood Cemetery Association. In this deed Spear warrants title to the land described therein as to all persons claiming under him except under the mortgage above referred to as made by him to French under date of August 20, 1908. In this conveyance Spear also assigns to Marter the Spear-Fernwood agreement with all moneys, rights and privileges due or to grow due thereunder, but subject to the covenants of Spear in that agreement. This conveyance was recorded June 21, 1909.

September 28, 1908, Cyrus D. Marter, by deed of general warranty, conveyed to Thomas E. French, in trust, the said entire Cooper Homestead Farm, without excepting the 13.30 acre cemetery tract, and in that deed also assigned to French the Spear-Fernwood agreement. In this conveyance Spear and Helen C. Douglas (now Aleck) join as parties of the third part and are declared to be bound by

its covenants. The trust set forth is for French, as trustee, to collect all revenues of the land and all payments under the Spear-Fernwood agreement and pay the net revenues to Mrs. Douglas during her lifetime and at her death to Spear for his lifetime, and at the death of the survivor to pay to the testamentary appointee of Spear, or in default of appointment to the heirs at law of Spear. This deed declares the trust revocable, and in the event of revocation in the lifetime of Mrs. Douglas the trust property is to be conveyed by the trustee by deed executed by him, Spear, Mrs. Douglas, and Marter, if all alive; to whom the property is to be conveyed is not specified.

February 21st, 1910, the trust last described was revoked and a deed of conveyance of that date was made to Leslie M. Holloway. This deed was executed by French, as trustee, Marter, Spear, and Mrs. Douglas. While the deed recites the revocation of the trust and the release and discharge of the trustee and also the provision for the conveyance by the trustee of the trust property in that event, for some reason which no one has been able to fully explain the land described in the conveyance does not include all the land which had been conveyed to the trustee and does not specifically assign the Spear-Fernwood agreement. The deed suggests no trust in Holloway, but Holloway has testified that he took title at the request of Mrs. Aleck. That deed was recorded March 31st, 1910.

June 7th, 1911, Holloway executed a mortgage on the land conveyed to him by French to Theodore G. Brinton.

The last named mortgage and also the mortgage of August 20, 1908—which latter mortgage embraced the entire Cooper Homestead tract except-

ing the cemetery tract—by sundry assignments became vested in Josephine Allen and were foreclosed by her, and all of the Cooper Homestead, except the 13.30 acre cemetery tract, was conveyed by the sheriff under that foreclosure sale on June 23, 1914, to George H. Aleck. That deed was recorded June 24, 1914.

June 7th, 1916, Geo. H. Aleck conveyed the title acquired by him at the foreclosure sale last above named to Helen C. Douglas, now Aleck.

June 22nd, 1920, Helen C. Douglas conveyed the same to Equitable Estates Corporation by deed recorded June 28th, 1920. This conveyance described the entire Cooper Homestead Farm of 153.77 acres and excepts therefrom the 13.30 acre cemetery tract. At the same time Helen C. Douglas by power of attorney from Spear assigned to Equitable Estates Corporation the Spear-Fernwood agreement of December 31st, 1907.

April 22nd, 1922, a bill in equity was filed by Helen C. Douglas against Charles C. Spear and Equitable Estates Corporation and others to set aside the conveyance and assignment last above named, and also other conveyances and agreements not here involved.

April 24th, 1922, subpoenas *ad respondendum* were issued against all defendants in the last named suit, returnable May 15, 1922.

May 1st, 1922, a *lis pendens* was filed in that suit and recorded.

May 8th, 1922, the subpoena against Equitable Estates Corporation was returned "not found" with affidavit of sheriff showing the residences of the officers of that corporation in the City of New York.

May 16, 1922, an order of publication was made directing Equitable Estates Corporation to answer

on or before July 17, 1922, and directing the notice prescribed by court rules to be served or published within 10 days.

May 22, 1922, notice to absent defendant, Equitable Estates Corporation, was published, and mailed May 25th, 1922.

July 25, 1922, decree *pro confesso* was entered against Equitable Estates Corporation.

Nov. 22, 1922, the decree *pro confesso* against Equitable Estates Corporation was opened and an answer filed by that corporation.

Defendant Locustwood Cemetery, Inc., was incorporated a few days prior to July 23, 1923.

A written agreement dated July 23, 1923, between Locustwood Cemetery Association and Locustwood Cemetery, Inc., has been received in evidence. By the terms of that agreement the latter company is made sales agent of the former under certain terms therein specified. The Locustwood Cemetery, Inc., claims that it never executed that agreement or any agreement of that nature. The claim of the Locustwood Cemetery, Inc., is that it entered into a written agreement with the Equitable Estates Corporation dated October 23rd, 1923, and that this agreement has been stolen from its safe. It is claimed that by this last agreement the Equitable Estates Corporation agreed to convey to the Locustwood Cemetery, Inc., for $100,000 the cemetery tract and also the remaining part of the Cooper Homestead Farm, and also the Spear-Fernwood agreement.

That claim of the Locustwood Cemetery, Inc., having arisen pending the suit of Douglas v. Equitable Estates Corporation, the bill was amended and the Locustwood Cemetery Association and Locustwood Cemetery, Inc., were made defendants and thereafter answered; the former Mar. 20, 1924, the latter May 10, 1924.

September 14, 1925, a final decree was entered in Douglas v. Equitable Estates Corporation setting aside the several conveyances to the Equitable Estates Corporation and restoring the title to Helen C. Douglas and also setting aside the assignment to the Equitable Estates Corporation of the Spear-Fernwood agreement. That decree, however, contained the following reservation:

> "And it is further ordered and decreed that anything herein stated or adjudged shall in no way fix, settle or determine the rights of the defendants, Locustwood Cemetery Association and the Locustwood Cemetery, Inc., if any, in the lands and premises above described, which rights are all said to exist by virtue of the terms of the following, to wit: deed dated December 31st, 1907, made by and between Charles C. Spear and the Fernwood Cemetery Association, recorded in the office of the Recorder of Camden County in Book 323 of Deeds, page 610, and the agreement dated July 23, 1923, made between Locustwood, formerly Fernwood Cemetery Association, and Locustwood Cemetery, Inc."

At this time complainant corporation claims to enjoy the rights formerly enjoyed by Spear under what is known as the Spear-Fernwood agreement through an assignment from Spear dated June 27, 1923, to his wife, and an assignment from her dated October 17, 1923, to complainant.

Defendant Helen C. Aleck, mother of Spear, claims to own all the rights formerly enjoyed by Spear under that agreement, and also all of the Cooper Homestead Farm except that part conveyed by the deed of December 31st, 1907, which deed conveyed 13.30 acres of the farm to the Fernwood

Cemetery Association—now Locustwood Cemetery Association, one of the defendants herein; and also seeks an accounting of the amount due under the Spear-Fernwood agreement.

Defendant Locustwood Cemetery, Inc., claims to enjoy a contract of purchase of the entire Cooper Homestead Farm and also all rights originally enjoyed by Spear under the Spear-Fernwood agreement, and seeks specific enforcement of its contract of purchase.

Defendant Locustwood Cemetery Company, now controlled by defendant Locustwood Cemetery, Inc., joins in the answer and counter-claims of Locustwood Cemetery, Inc.

Defendant French answers and prays for an ascertainment of his duties under a former declaration of trust touching these lands.

MESSRS. PALMER & POWELL, for complainant, and for defendants Charles C. Spear, Mercedes Spear, and Equitable Estates Corporation.

D. TRUEMAN STACKHOUSE, ESQ., with whom was associated HARVEY F. CARR, ESQ., for defendants Locustwood Cemetery Association and Locustwood Cemetery, Inc.

JOS. B. TYLER, ESQ., *pro se,* and for defendant Helen C. Aleck.

DAVID R. ROSE, ESQ., for defendant Thos. E. French.

ROBT. J. T. PAUL, ESQ., for defendant Leslie M. Holloway.

LEAMING, V. C.:

It will be observed that all the contractual rights claimed by defendant Locustwood Cemetery, Inc., are predicated upon a written agreement dated October 23, 1923, between it and the Equitable Estates Corporation, which agreement has been lost. A great amount of testimony has been taken as to whether that agreement was ever made and as to its contents, if made. Dr. Spear, who was president of the Equitable Estates Corporation, and who with his wife as secretary executed the agreement in behalf of that corporation, if it was in fact executed, denies that any such an agreement ever was made. A number of witnesses who claim to have seen the agreement agree as to its date and in the main agree touching its general contents, some supplying features omitted by others. Nearly all agree that it was signed in behalf of the Equitable Estates Corporation by Dr. Spear, as its president, and by his wife as its secretary, and sealed by that corporation, and also signed by Locustwood Cemetery, Inc., by its president and secretary, and sealed by that corporation. Nearly all these witnesses have stated that it was signed by no other person or corporation, though one witness stated that Dr. Spear also signed it in his individual capacity. Since the legal title to the 13.30 acre cemetery tract was at that time in the Locustwood Cemetery Association, and the legal title to the remaining part of the Cooper Homestead Farm and the Spear rights under the Spear-Fernwood agreement were in the Equitable Estates Corporation, there would seem to have been no occasion for Dr. Spear to sign the agreement individually unless there may have been in the agreement a stipulation, which has been suggested, that Dr. Spear, who admittedly controlled the Loc-

ustwood Cemetery Association, was to turn the management of that corporation over to the Locustwood Cemetery, Inc. Gleaning the contents of that alleged agreement from the testimony of all the witnesses, the general plan appears to have been the acquisition by the Locustwood Cemetery, Inc., by the payment of $100,000, of every right in any way incident to the cemetery tract and the remaining part of the Cooper Homestead Farm as well as the rights incident to the Spear-Fernwood agreement. Some payments are claimed to have been made on account of that purchase price, and it is claimed that further payments have become impossible by reason of adverse claims.

Dr. Spear produces a written agreement between the Locustwood Cemetery, Inc., and Locustwood Cemetery Association, in which the former is made the general sales agent of the latter under specific terms there set forth. That agreement is dated July 23, 1923. Dr. Spear's testimony is that that agreement is the only agreement ever made with the Locustwood Cemetery, Inc., touching any of the interests here involved. That agreement is, in turn, wholly repudiated by the Locustwood Cemetery, Inc., and is alleged to be fabricated. Some embarrassment has also arisen to the Locustwood Cemetery, Inc., by the circumstance that in the answer filed by that corporation in the suit of Mrs. Douglas, now Aleck, to set aside the conveyances and assignments to the Equitable Estates Corporation, the following appears: "On the twenty-third day of July, 1923, the Locustwood Cemetery Association entered into a contract with this defendant by which the latter was constituted its selling agent, for the sale of cemetery lots in the said tract of thirteen and one-third acres, as well as in additional ten acre

tracts which might be acquired in accordance with the contract with the said Charles Cooper Spear." This, it will be noted, is a specific description and assertion of the contract now repudiated by it, not only as to its date but also as to its contents. This is now explained as an error made at the time the answer was framed and not thereafter discovered until this suit was filed. But according to the testimony of Judge Starr, who prepared and filed that answer, it was dictated by him in the presence of Mr. Darcy, who throughout all transactions of the Locustwood Cemetery, Inc., has been its active and moving spirit, and it is almost incomprehensible how he could have participated in the preparation of that answer and made no reference to a contract of purchase of the whole enterprise by his company, if such a contract had in fact been negotiated by him and executed by his company. Again, in the final decree entered in the Douglas suit, quoted in the above preliminary statement of dates and events, the interests of the Locustwood Cemetery, Inc., are referred to as arising under an agreement of July 23, 1923.

But I think it unnecessary to undertake either a further review or a final solution of this troublesome issue of fact touching the execution of the alleged agreement of October 23rd, 1923, and the claim of fabrication of the agreement of July 23, 1923, since it seems clear that any contractual rights which could be claimed under the alleged agreement of October 23rd, 1923, should that agreement be deemed established, are of no avail to the Locustwood Cemetery, Inc., by reason of the *lis pendens* filed in the Douglas suit against the Equitable Estates Corporation with whom that contract is alleged to have been made.

As to this *lis pendens* the claim is made in behalf of the Locustwood Cemetery, Inc., that a *lis pendens* is not operative until service of process for appearance has been made. Haughwout v. Murphy, 22 N. J. Eq. 531, is relied upon. But a reference to the files in the suit of Douglas v. Equitable Estates Corporation, which files have been received in evidence, discloses that the *lis pendens* in that suit was filed and recorded May 1st, 1922, and a decree *pro confesso* was entered against the Equitable Estates Corporation July 25th, 1922. No doubt can exist that the *lis pendens* became effective as constructive notice at least from the latter date. In that suit the conveyance to the Equitable Estates Corporation of the Cooper Homestead Farm, exclusive of the cemetery tract, was set aside, as was also the assignment of the Spear-Fernwood agreement to the Equitable Estates Corporation. It follows that the Locustwood Cemetery, Inc., acquired nothing by its alleged contract of October 23rd, 1923, as against Helen C. Douglas, now Aleck. The *lis pendens* may not have been operative upon the rights under the Spear-Fernwood agreement, but the rights of Spear under that agreement had been assigned to his wife June 27, 1923, and assigned by her to Locustwood Land Company on October 17, 1923, and the Locustwood Land Company is not claimed to have been a party to the alleged contract of October 23rd, 1923.

It may be appropriately added, however, that a careful consideration of all the circumstances and conflicting testimony touching the alleged agreement of October 23rd, 1923, strongly impels the belief that an agreement of the general nature claimed was confidently contemplated by the parties and measurably acted upon by them, but had not been

formally executed at the time the harmonious relations of the parties terminated. But even though executed and lost, as claimed, the *lis pendens* and subsequent final decree in the suit against the Equitable Estates Corporation are operative to deny to the Locustwood Cemetery, Inc., the relief herein sought.

In the controversy between complainant corporation (who now claims to hold the legal title to the Spear-Fernwood agreement by assignment from Spear to his wife and from her to complainant) and Mrs. Aleck (who claims the equitable rights incident to that agreement) there seems little room for doubt. In 1907 Mrs. Aleck, then Douglas, owned the entire Cooper Homestead Farm, though the legal title then stood in the name of Spear, her son, who attended to her affairs for her. That was the specific basis of the bill, the opinion and the decree in the former suit by Mrs. Aleck and is conclusive as against Spear. December 31st of that year Spear made the conveyance of the thirteen acre cemetery tract to the Fernwood Cemetery Association, now Locustwood Cemetery Association, and accepted in his own name as the consideration of the conveyance the Spear-Fernwood agreement, which agreement, as already stated, is a promise of payment of the purchase price from the proceeds of sales of cemetery lots, and in the agreement a vendor's lien is reserved in favor of Spear. Subsequently this Spear-Fernwood agreement was assigned to the Equitable Estates Corporation. That assignment was in form made by Mrs. Aleck as attorney in fact of Spear, under Spear's direction and domination. In the former suit against Spear and the Equitable Estates Corporation that assignment was set aside, and the basis of the bill, opinion and

decree annulling that assignment was also the fact that that agreement and the rights running to Spear under it belonged to Mrs. Aleck and not to Spear; the Equitable Estates Corporation being therein denied the status of a purchaser without notice. Pending that suit Spear formed the Locustwood Land Company, complainant herein, and notwithstanding the pending suit against him seeking the restoration to Mrs. Aleck of her enjoyment of the rights flowing under that Spear-Fernwood agreement, he assigned the agreement to his wife and she in turn assigned it to Spear's corporation, complainant herein. 1498 shares of stock of the corporation were issued to Spear's wife and one share to him and one to his friend Darcy. These 1500 shares constituted all of the stock of the corporation. I am unwilling to give countenance to the notion that complainant's rights as assignee of the Spear-Fernwood agreement can be said to rise above those of Spear, through whom it derives its title, and thus defeat the rights awarded to Mrs. Aleck by the decree in the then pending suit. Complainant corporation was so clearly the creation, servant, tool and representative of Spear that any effort to contemplate it as in the enjoyment of rights superior to Spear as his assignee repels all sense of right and justice. In the absence of some evidence disclosing consideration or good faith in these transfers so obviously designed to put the title to this Spear-Fernwood agreement out of the reach of Mrs. Aleck I am impelled to the conclusion that as between complainant and Mrs. Aleck the rights flowing from this agreement must be awarded to her, pursuant to the prayer of the counter-claim of Mrs. Aleck. It is also claimed in behalf of Mrs. Aleck that the legal title of Spear under the Spear-Fernwood agreement was conveyed to Holloway for her

in the conveyance from French, as trustee, to Holloway and by mutual mistake omitted from the description of the property and rights conveyed. A reformation of that conveyance is sought by her. While it strongly appears that the parties intended to transfer to Holloway all the rights enjoyed by French as trustee at the termination of his trust, the views herein already stated render the determination of that question of fact unnecessary.

Defendant Locustwood Cemetery Association is a regularly established cemetery company with many burial lots occupied and others owned by innocent purchasers. Its integrity must be preserved, if possible. At this time in effect it is controlled by the Locustwood Cemetery, Inc., as the result of a contested lot-holders' meeting. By the Spear-Fernwood agreement the Cemetery Association is privileged under specified conditions to acquire additional territory from the Cooper Homestead Farm. Since the mortgage of August 20, 1908, was subject to the operation of that clause of the agreement its foreclosure in no way affected that right.

The decree to be entered will restore to Mrs. Aleck the Spear-Fernwood agreement, that is, the rights in terms flowing to Spear under that agreement and preserve to the Locustwood Cemetery Association the rights in terms flowing to the Fernwood Cemetery Association under that agreement; and pursuant to the prayer of the counter-claim of Mrs. Aleck a reference will be made to a Master to ascertain the amount due under that agreement from the Locustwood Cemetery Association to Mrs. Aleck. Under her present counter-claim a decree of foreclosure of the vendor's lien, preserved to her by the agreement, cannot be made. It is unnecessary to here determine to what extent that lien can

be enforced or the remedies available to her. Should further difficulties arise in the management of the Locustwood Cemetery Association rendering a receivership of that corporation necessary the application for a receivership may be renewed.

Submitted: July 23rd, 1928.
Determined: September 7th, 1928.

FINAL DECREE.

(Filed October 1, 1928.)

This matter came on for a hearing in the presence of

Messrs. Palmer & Powell, for complainant, and for defendants Charles C. Spear, Mercedes Spear and Equitable Estates Corporation.

D. Trueman Stackhouse, Esq., with whom was associated Harvey F. Carr, Esq., for defendants Locustwood Cemetery Association and Locustwood Cemetery, Inc.

Joseph Beck Tyler, Esq., *pro se,* and for defendant Helen C. Aleck.

David R. Rose, Esq., for defendant Thos. E. French.

Robert J. T. Paul, Esq., for defendant Leslie M. Holloway.

The complainant, Locustwood Land Company, having filed a bill of complaint in the above cause

to enforce a vendor's lien against the lands of the defendant, Locustwood Cemetery Association, known as Locustwood Cemetery, claiming to hold said vendor's lien by assignment from the defendants, Mercedes Spear and Charles C. Spear, and to restrain the execution of a bond and mortgage by Helen C. Aleck and George H. Aleck, her husband, to Joseph Beck Tyler on the adjoining property known as the Cooper Homestead Farm;

And the defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc., having filed a joint counter-claim against Locustwood Land Company praying that the conveyance of certain lots or lawns in the cemetery by the Locustwood Cemetery Association to the Locustwood Land Company be set aside;

And the defendant, Locustwood Cemetery, Inc., having filed a separate counter-claim against the defendants, Charles C. Spear, Mercedes Spear and Equitable Estates Corporation, praying that an agreement dated October 23rd, 1923, between Charles C. Spear, Mercedes Spear and Equitable Estates Corporation and the said Locustwood Cemetery, Inc., be established and enforced;

And the defendant, Helen C. Aleck, having filed a counter-claim praying that the complainant, Locustwood Land Company, and the defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc., Thomas E. French, trustee, and Charles Cooper Spear, may be decreed to have no right, title or interest in and to the Cooper Homestead Farm and that Locustwood Cemetery Association and/or Locustwood Cemetery, Inc., account to said Helen C. Aleck for all money due under the Spear-Fernwood agreement;

And no proofs having been taken by the complainant as to the defendant, Joseph Beck Tyler;

And no proofs having been taken on the counterclaim of the defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc., as against the complainant;

And it appearing that the complainant, Locustwood Land Company, and the defendants, Locustwood Cemetery, Inc., Thomas E. French, trustee, and Charles Cooper Spear, have no title or interest in and to the premises known as the Cooper Homestead Farm and/or Locustwood Cemetery described as follows:

BEGINNING at a stone in the Whiskey Road corner to Stoy's land and runs thence (1) along the line of the Indian Orchard South thirty-two and one-quarter degrees East seventeen chains and six links, more or less, to the middle of the Landing Road at a point therein ten chains and ninety-six links from where the middle line of the said Whiskey Road crosses the same thence (2) along the middle of the said Landing Road and along the lands of Kaighn, late Ellis and Lippincott South thirty-four degrees and thirty minutes West forty-nine chains and sixty-seven links to an iron plug in an angle of the said Landing Road and joining lands of the said Lippincott; thence (3) still by the said Lippincott's land and along the middle of the said Landing Road crossing the said Turnpike South fifty-one degrees and thirty-seven minutes West twenty-two chains and seven links, more or less, to an iron plug for a corner, corner also to the Budd Farm; thence (4) by the same North fifty-three degrees West about eight chains and eighty-two links to an iron plug in the middle of the said Turnpike; thence (5) still by the said Budd Farm and

along the middle of the said Turnpike North seventy-one degrees and forty-five minutes West twelve chains and sixty links to another corner of the said Budd Farm in the middle of the said Turnpike marked by an iron plug and thence (6) by lands of Nicholson, late Moore and Stoy, North forty-three degrees and two minutes East eighty-one chains and ninety-seven links to the place of beginning. Containing one hundred and fifty-three acres and seventy-seven hundredths of an acre.

And it appearing that the vendor's lien, known as the Spear-Fernwood agreement of December 31st, 1907, and recorded in the Office of the Register of Deeds of Camden County on January 27th, 1908, in Book 323 of Deeds, at page 610, etc., sought to be enforced by the complainant, is the property of the defendant, Helen C. Aleck, and any money due or to become due thereon should be accounted for by the Locustwood Cemetery Association to her;

And it appearing that the Locustwood Cemetery, Inc., has not established the agreement set forth in its counter-claim against the defendants, Charles Cooper Spear, Mercedes Spear and Equitable Estates Corporation;

And proofs having been taken and argument having been heard and briefs submitted;

It is, on this eighth day of October, 1928, ordered, adjudged and decreed that the bill of complaint of the Locustwood Land Company as to all the defendants therein named be and it hereby is dismissed with costs.

It is further ordered that the joint counter-claim of Locustwood Cemetery Association and Locustwood Cemetery, Inc., against the complainant, Loc-

ustwood Land Company, be and it hereby is dismissed without prejudice to any of the parties in this proceeding.

And it is further ordered that the counter-claim of Locustwood Cemetery, Inc., against the defendants, Charles C. Spear, Mercedes Spear and Equitable Estates Corporation be and it hereby is dismissed.

And it is further ordered, adjudged and decreed that the defendants, Locustwood Cemetery, Inc., Thomas E. French, trustee, and Charles Cooper Spear, and the complainant, Locustwood Land Company, have no right, title or interest in and to the premises known as the Cooper Homestead Farm and/or Locustwood Cemetery.

And it is further ordered, adjudged and decreed that the agreement of December 31st, 1907, known as the Spear-Fernwood agreement, set forth in the bill of complaint of the Locustwood Land Company be and it hereby is awarded to the defendant, Helen C. Aleck, as her sole property and that the said complainant, Locustwood Land Company, and the defendants, Locustwood Cemetery, Inc., Charles C. Spear and Mercedes Spear be and they hereby are decreed to have no right, title or interest therein and that the said Locustwood Land Company, its agents, officers, or solicitors, surrender and deliver said agreement to said Helen C. Aleck or her solicitor, forthwith.

It is further ordered, adjudged and decreed that the defendant, Locustwood Cemetery Association, account for and pay to Helen C. Aleck all money now due and from time to time that may become due under and by virtue of said agreement and that there be preserved to the said Locustwood Cemetery Association as the successor of the Fern-

wood Cemetery Association, all rights existing under said agreement.

And it is further ordered that a reference be made to William T. Read, one of the Special Masters of this court, to take proofs and advise what amount is now due from the Locustwood Cemetery Association to Helen C. Aleck under and by virtue of the said agreement of October 31st, 1907, known as the Spear-Fernwood agreement.

And it is further ordered that there be reserved to the said Helen C. Aleck the right to apply for any other and further order to enforce the collection of the amount due her when ascertained.

Respectfully advised:

AMENDED NOTICE OF APPEAL.

(Filed December 14, 1928.)

To Palmer & Powell, Esquires, solicitors for the complainant and for the defendants, Charles C. Spear and Mercedes Spear and Equitable Estates Corporation:

To Joseph Beck Tyler, Esquire, solicitor pro se, and for defendant Helen C. Aleck:

To David R. Rose, Esquire, solicitor for the defendant Thomas E. French:

To Robert J. T. Paul, Esquire, solicitor for defendant Leslie M. Holloway:

The defendants, Locustwood Cemetery Association and Locustwood Cemetery, Inc., hereby appeal from the final decree made by the Chancellor on the advice of Vice-Chancellor E. B. Leaming in the above cause on October 15, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated: December 6, 1928.

D. T. STACKHOUSE,
Sol'r for and of Counsel with Defendants Locustwood Cemetery Association and Locustwood Cemetery, Inc.

PETITION OF APPEAL.

(Filed Dec. 26, 1928.)

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Locustwood Cemetery Association and Locustwood Cemetery, Inc., the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor, of the State of New Jersey, bearing date October 15th, 1928, in a certain cause in said Court of Chancery wherein the said Locustwood Land Company was complainant, and these petitioners, and Charles C. Spear, Mercedes Spear, Equitable Estates Corporation, Joseph Beck Tyler, Helen C. Aleck, Thomas E. French and Leslie M. Holloway were defendants; in this respect, to wit:

(a) That the said decree adjudges that the joint counter-claim of these petitioners against the complainant be dismissed.

(b) That the counter-claim of your petitioner, Locustwood Cemetery, Inc., against the defendants, Charles C. Spear, Mercedes Spear, Equitable Estates Corporation, be dismissed, and further

(c) That your petitioner, Locustwood Cemetery, Inc., has no right, title or interest in and to the prem-

ises known as the Cooper-Homestead Farm, and/or Locustwood Cemetery, and further

(d) That your petitioner, Locustwood Cemetery Association, would have to pay to the defendant, Helen C. Aleck, the money now due and from time to time that may become due under and by virtue of a certain agreement involved in said Chancery suit known as the Spear-Fernwood agreement, and further

(e) That a reference be made to the Honorable William T. Read, Special Master to take proofs and advise what amount is due from your petitioner, Locustwood Cemetery Association, to Helen C. Aleck under and by virtue of said Spear-Fernwood agreement.

Petitioners appeal from the decree aforesaid upon the ground that the same is erroneous in that

(a) Petitioner, Locustwood Cemetery, Inc., had established the agreement set forth in its counter-claim against the defendants, Charles Cooper Spear, Mercedes Spear and Equitable Estates Corporation, and that the same should not have been dismissed, and further

(b) That these petitioners had established their joint counter-claims against the complainant and the same should not have been dismissed, and

(c) That petitioner, Locustwood Cemetery, Inc., was seized and possessed of a right, title and interest in and to the premises known as the Cooper-Homestead Farm and/or Locustwood Cemetery, and

that the said decree should not have adjudged that petitioner, Locustwood Cemetery, Inc., had no right title or interest therein, and

(d) That petitioner, Locustwood Cemetery Association, should not have been compelled to account for and pay to Helen C. Aleck any moneys under the said Spear-Fernwood agreement, and

(e) That no reference should have been made to a Master to take proofs and advise what amount is now due from petitioner, Locustwood Cemetery Association to Helen C. Aleck under said Spear-Fernwood agreement.

Petitioners therefore pray that the said decree of the said Court of Chancery, may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

D. T. Stackhouse,
Harvey F. Carr,
Solicitors for and of Counsel with Appellants.

ANSWER OF HELEN C. ALECK.

(Filed Jan. 15, 1929.)

The defendant, Helen C. Aleck, answering the petition of appeal of Locustwood Cemetery Association and Locustwood Cemetery, Inc., says:

She does not admit the truth of all or any of the matters in said petition of appeal contained and for answer thereto nevertheless admits that a decree was on the fifteenth day of October, 1928, made and entered in the Court of Chancery of New Jersey in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree this appellee takes leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree is agreeable to equity; and prays that the same may be affirmed with costs to be taxed in favor of this appellee.

JOSEPH BECK TYLER,
Solicitor for and of Counsel with Helen C. Aleck.











NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

LOCUSTWOOD LAND COMPANY,
Complainant,

and

LOCUSTWOOD CEMETERY ASSOCIATION, *et als.*,
Defendants.

ON APPEAL OF LOCUSTWOOD CEMETERY ASSOCIATION AND LOCUSTWOOD CEMETERY, INC., DEFENDANTS-APPELLANTS, AND AGAINST HELEN C. ALECK, DEFENDANT-APPELLEE.

BRIEF ON BEHALF OF LOCUSTWOOD CEMETERY ASSOCIATION AND LOCUSTWOOD CEMETERY, INC., APPELLANTS.

This appeal challenges a decree advised by Vice-Chancellor Leaming. **This decree deprives innocent stockholders of $175,000.00 expended by the Locustwood Cemetery Association for physical improvements upon the locus in quo, and presents the same to Helen C. Aleck. (Formally Douglas.)**

Mrs. Aleck had conveyed the property in question by deeds and assignments, regular in form, and

had placed legal title thereto in the Equitable Estates Corporation, a New York corporation. All of the stock of this corporation was owned by her son. Afterwards it was determined in the prior suit of Douglas (later Aleck) against the Equitable Estates Corporation, *et als.*, that this mother, Mrs. Aleck, had been defrauded by her son, and a reconveyance was ordered. **This folly of Mrs. Aleck has cost the stockholders of Locustwood Cemetery Association the sum of $175,000.00 in improvements. In the working out of this problem the Vice-Chancellor has made a present of this sum to the woman whose folly occasioned the situation.**

This result is achieved not upon a consideration of the relative equities of any of the parties to this suit. It results solely from a supposed constructive notice of a *lis pendens filed prior to the service of process in the first named suit.*

The final decree in that suit provided, *inter alia,* as to these defendants, as follows:

> "It is further ordered and decreed that anything herein stated or adjudged shall in no way fix, settle or determine the rights of the defendants, Locustwood Cemetery Association and the Locustwood Cemetery, Inc., if any, in the lands and premises above described * * *."

In that suit no issues were raised whatever as to the relative rights of Mrs. Aleck and these appellants under a certain contract. This contract was made between Locustwood Cemetery, Inc., and the Equitable Estates Corporation whereby the Equitable Estates Corporation agreed to sell to Locustwood Cemetery, Inc., the lands in question together with all of the rights formerly held by Spear in and to an agreement entitling him and his assignees to 50% of the monies to be derived from the sale of

cemetery lots. Such a result warrants the closest scrutiny by a Court of Review. The mere statement of this proposition at once shocks one's sense of fitness and fairness, and if such a result can be avoided in consonance with known principles of equity it certainly should be avoided.

We desire to state in a summarized form the questions involved in this appeal and will later deal with both the law and the facts in detail.

FIRST.

Bill filed and subpoena served are necessary before a *lis pendens* becomes constructive notice to persons who shall acquire title from the parties to the suit *pendente lite.*

SECOND.

The *lis pendens* statute is restrictive of an existing right of *lis pendens* founded upon a doctrine of ancient origin. It is intended to protect the subject-matter of the suit pending litigation in order that a judgment or decree may be effective as against alienation *pendente lite.* It is not intended as a constructive notice for any other purpose than that incident to pending litigation, and its force is wholly expended upon the entry of a final decree except as to such matters included in said decree.

THIRD.

Both Helen C. Aleck and Dr. Spear stood by while visible and extensive improvements were in pro-

gress, involving the expenditure of large sums of money, and by their silence must be held to have acquiesced in the rights of these appellants.

FOURTH.

Helen C. Aleck and Dr. Spear are both estopped by their failure to object to the extensive improvements made by the appellants with their knowledge.

FIFTH.

In any event the Locustwood Cemetery, Inc., is entitled to a lien for monies actually expended by it upon the improvements to the *locus in quo.*

SIXTH.

As between the appellants and Helen C. Aleck, she (Aleck) at the best had a secret and undisclosed equity and the appellant, Locustwood Cemetery, Inc., occupies the position of a *bona fide* purchaser for value without notice, and its position is that superior to Mrs. Aleck.

SEVENTH.

So far as any adjudication is concerned in the suit of Douglas against Equitable Estates Corporation that suit was *res inter alia acta* and is not binding upon these appellants, nor is the decree therein as against these appellants evidence of the

existence of any equity in favor of Helen C. Aleck. *Hence, there is no evidence in the suit sub judice as against these appellants of any equity, secret or otherwise, of Helen C. Aleck in the Cooper Homestead Farm or in the Spear-Fernwood agreement.*

EIGHTH.

While the primary question immediately involved is whether or not the appellants are bound by the constructive notice of the *lis pendens,* if the Court should determine this question in favor of the appellants, then we respectfully request that the Court consider the merits of the whole controversy and determine the relative rights of all of the parties, and whether or not the controlling agreement is that of October 23, 1923, or of July 23, 1923. This request is made because of the fact that Locustwood Cemetery Association is a *quasi* public corporation, and there are involved the interests of a large number (425) of its lot-holders and almost equal number (325) of the stockholders of its allied company, Locustwood Cemetery, Inc., and because the operation of this cemetery is practically at a standstill and the lot-holders are uncertain as to whether they can safely bury their deed therein until this litigation has ended. We, therefore, discuss in a separate section of this brief the questions involved between the Locustwood Land Company and these appellants growing out of the two agreements above referred to, and respectfully submit that upon the whole case the agreement of October 23, 1923, should be established as the true agreement.

This raises the following questions which become

relevant only upon a consideration of the whole case:

(A) May there be a valid vendor's lien upon land sold to a cemetery association organized under the Rural Cemetery Act?

The answer to this question is no.

(B) May there be a valid mortgage given by a cemetery association organized under the Rural Cemetery Act (1 N. J. Comp. Stat., p. 375, Sec. 8), making the mortgaged premises subject to sale under foreclosure proceedings?

The answer to this question is no.

(C) Did these defendants have actual notice of the rights claimed by Helen C. Aleck in the *locus in quo* prior to the making of the agreement of October 23, 1923?

The answer to the above is no.

(D) Has a court of equity a right to re-establish lost instruments?

The answer to this is yes.

SUMMARIZED STATEMENT OF PLEADINGS AND LEGAL QUESTIONS INVOLVED.

The bill of complaint sought the enforcement of a vendor's lien against lands of Locustwood Cemetery Association. This land was conveyed by Charles C. Spear to the Fernwood Cemetery Association by deed dated December 31, 1907. The name of the Fernwood Cemetery Association was later changed to Locustwood Cemetery Association. By

sundry assignments the rights of Spear as vendor are claimed to have passed to the Locustwood Land Company. Under the terms of this agreement the original vendor was entitled to 50% of all monies derived from the sale of lots by the cemetery association. At the date of the conveyance from Spear to the cemetery association legal title to what is known as the Cooper Homestead Farm, consisting of 153.77 acres, stood in the name of Spear. Out of this larger tract he conveyed to the cemetery association 13.30 acres of that farm. The deed from Spear to the cemetery association also contained the engagement of Spear to convey to the association from time to time, as shall be needed for cemetery purposes, tracts of land of 10 acres in extent adjoining the lands already conveyed. These 10 acre tracts were part of the remaining portion of the Cooper Homestead Farm.

There are sundry assignments and conveyances by Spear referred to in the opinion of Vice-Chancellor Leaming to which reference is made, but do not appear to be immediately relevant to the questions raised upon this appeal.

On June 22, 1920, Helen C. Douglas conveyed, by deed recorded June 28, 1920, title to the Cooper Homestead Farm to the Equitable Estates Corporation, a corporation of New York. At the same time Helen C. Douglas, by power of attorney from Spear, assigned to the Equitable Estates Corporation the Cemetery agreement of December 31, 1907, referred to throughout the proceedings as the "Spear-Fernwood agreement."

On April 27, 1922, a bill in equity was filed by Helen C. Douglas against Charles C. Spear, and the Equitable Estates Corporation, and others to set aside the conveyance and assignment last

above mentioned, and also other conveyances and agreements not here involved.

On April 24, 1922, subpoenas *ad respondendum* were issued against all defendants in the last named suit, returnable May 15, 1922.

On May 1, 1922, a *lis pendens* was filed in that suit and recorded.

On May 8, 1922, a subpoena against Equitable Estates Corporation was returned "Not found" with affidavit of the sheriff showing the residence of the officers of that corporation to be in the City of New York.

On May 16, 1922, an order of publication was made directing Equitable Estates Corporation to answer on or before July 17, 1922, and directing the notice prescribed by Court rule to be served or published within ten days.

On May 22, 1922, notice to absent defendant, Equitable Estates Corporation, was published and mailed May 25, 1922.

On July 25, 1922, a decree *pro confesso* was entered against the Equitable Estates Corporation, which decree was later opened and an answer filed by that corporation.

The defendant, Locustwood Cemetery, Inc., was incorporated in July, 1923. The Locustwood Cemetery, Inc., claims that by virtue of a written agreement, dated October 23, 1923, between the Equitable Estates Corporation and itself, it became entitled to purchase, for the sum of $100,000.00, all the rights originally enjoyed by Spear under the Spear-Fernwood agreement, as well as the balance of the Cooper Homestead Farm, which provided for payments to be made in installments. At this time, according to public records, legal title both to the Cooper Homestead Farm and said agreement were in the Equitable Estates Corporation. On Febru-

ary 11, 1924, an order to show cause was issued against Locustwood Cemetery, Inc., for the purpose of certain injunctive relief *pendente lite.* No other relief was prayed for against Locustwood Cemetery, Inc.

Further proceedings were had in the suit of Douglas (later Aleck) against Equitable Estates Corporation as follows:

Bill amended and Locustwood Cemetery Association and Locustwood Cemetery, Inc., were made defendants, and thereafter answered as follows:

The former March 20, 1924, and the latter May 10, 1924.

On September 14, 1925, a final decree was entered in Douglas v. Equitable Estates Corporation setting aside the several conveyances to the Equitable Estates Corporation and restoring the title to Helen C. Douglas and also setting aside the assignment to the Equitable Estates Corporation of the Spear-Fernwood agreement. That decree contained the following reservation:

> "And it is further ordered and decreed that anything herein stated or adjudged shall in no way fix, settle or determine the rights of the defendants, Locustwood Cemetery Association and the Locustwood Cemetery, Inc., if any, in the lands and premises above described, which rights are all said to exist by virtue of the terms of the following, to wit: deed dated December 31st, 1907, made by and between Charles C. Spear and the Fernwood Cemetery Association, recorded in the office of the Recorder of Camden County in Book 323 of Deeds, page 610, and the agreement dated July 23, 1923, made between Locustwood, formerly Fernwood Cemetery Association and Locustwood Cemetery, Inc."

In the case *sub judice* Spear claimed that the agreement of October 23, 1923, was not the true agreement, but that in fact a certain agreement dated July 23, 1923, was the controlling agreement and a mass of testimony was taken upon this issue, but not determined by the learned Vice-Chancellor. Acting on the faith of legal title being vested in the Equitable Estates Corporation and wholly in ignorance of the secret equity claimed by Helen C. Douglas (later Aleck) the Locustwood Cemetery, Inc., sold stock to approximately 375 stockholders and lots to 425 lot-holders, upon which the stockholders and lot-holders paid in approximately a quarter of a million dollars (page 339). The Locustwood Land Company expended upon the 13-acre section the sum of $158,347.00. In addition to this there has been expended on the 140-acre tract approximately $15,000.00. In addition to this about 100 interments have been made in the cemetery since October, 1923, and in reliance upon the agreement of October 23, 1923. The reason a dispute arose as to which agreement controlled is that the October, 1923, agreement disappeared under such circumstances as to reasonably fasten suspicion upon Dr. Spear and the July 23, 1923, agreement bore evidence of having been fraudulently altered and was inherently improbable. Because of its terms it would have required the purchaser to have paid the sum of $8,723,299.95 (page 339).

The case *sub judice* was determined by the learned Vice-Chancellor solely upon the question of the operative effect of the *lis pendens* filed in this suit on May 11, 1922, and as a consequence the *lis pendens* became effective as constructive notice at least from July 25, 1922, when a decree *pro confesso* was entered against the Equitable Estates Corporation, and hence it followed that the Loc-

ustwood Cemetery, Inc., acquired nothing but its "alleged" contract of October 23, 1923, as against Helen C. Douglas (now Aleck). This adjudication produces a truly remarkable result in that upon the ground of technical constructive notice and in order to protect the secret equity of Helen C. Douglas (now Aleck) **there is taken from innocent stockholders of Locustwood Cemetery, Inc., physical improvements costing approximately $175,000.00,** and without any compensation whatever or without any protective lien upon the property for the monies so expended.

At the outset, the above result shocks one's sense of fairness and directs the searchlight of reason thereon, and one is impelled to a strong belief that there must be something wrong with the result so produced.

FIRST.

Bill filed and subpoena served are necessary before a lis pendens becomes constructive notice to persons who shall acquire title from the parties to the suit pendente lite.

The above is the precise language in *Haughwout v. Murphy,* 22 N. J. Eq. p. 531 (E. & A. 1871).

The order for publication is the equivalent of process but the parties are not in court until the return day thereof.

In the case of *Vineland National Bank v. Shinn,* 55 N. J. E. 415, at 422, the Court says:

> "It is only at the conclusion of the period of publication, and on proof of observance of the directions of the order that the non-resident

defendant is in court as in case of subpoena served."

Hence until the return day of an order of publication there is no equivalent of service of subpoena. In view of this fact the notice of *lis pendens* was ineffective for the purpose of constructive notice. The statutory provision with regard to *lis pendens* is as follows:

> "*No process deemed constructive notice until lis pendens is filed.*—Neither the issuing of a summons or subpoena, or other process or writ, nor the filing of a declaration or bill in any suit relating to or affecting the possession of or title to lands or real estate, nor any proceedings had or to be had thereon, either at law or in equity, before a final judgment or decree, shall be deemed or taken to be constructive notice to any bona fide purchaser or mortgagee of any lands or real estate to be affected thereby, until the plaintiff or complainant in such action, or his attorney or solicitor, shall have first filed in the office of the clerk of the Court of Common Pleas, except in counties where there is a register of deeds and mortgages, then in the office of the register of deeds and mortgages, of the county in which such lands or real estate lie, a written notice of the pendency of such suit, setting forth the title of the cause and the general object thereof, together with a description of the lands or real estate to be affected thereby."

This statute is restrictive and confers no additional rights prior to the enactment of any statute requiring the filing of a notice of *lis pendens* in the proper county office. The institution of a suit in

equity affecting titles to land was, in itself, a notice of *lis pendens.* (See *Haughwout v. Murphy, supra,* p. 545.)

It is true that the learned Vice-Chancellor in his opinion makes use of the following language:

> "But a reference to the files in the suit of Douglas against Equitable Estates Corporation, which files have been received in evidence, discloses that the *lis pendens* in that suit was filed and recorded May 1, 1922, and the decree *pro confesso* was entered against the Equitable Estates Corporation July 25, 1922. *No doubt can exist that the lis pendens became effective as constructive notice at least from the latter date.*"

Why "no doubt" exists is not explained by the learned Vice-Chancellor. He cites no cases in support of the above positive assertion, nor has counsel been able to find any cases in this State supporting such an assertion. While the opinion cites the reservation in the final decree in *Douglas against Equitable Estates Corporation* it, in no way, discusses its effect. We do not feel that this exception can be so lightly passed over in view of the fact that that suit ended without any decree whatever affecting the rights of these appellants. Indeed, the rights of these appellants were in no way challenged by any of the pleadings nor by any evidence. In view of the pleadings and final decree entered in that cause it is quite evident that it was not intended thereby to conclude these appellants' rights, and that the position of the present appellants in that suit was merely that of spectators not concerned in the outcome and only ultimately concerned in the question as to which of the litigants in that suit

should be ultimately entitled to be paid whatever was due to the successful party under the agreement of October 23, 1923. The case of *Haughwout v. Murphy,* 22 N. J. Eq. *supra,* has been followed in a large number of cases, among which are the following:

Mabee v. Mabee, 85 N. J. E. 353, 357;
Straus v. Loudenslager, 96 N. J. E. 678.

> "It is now well settled, except where it is otherwise provided by statute, that no suit or action is *lis pendens* before the service of process or a voluntary appearance in lieu thereof, and that the mere filing of the bill of complaint is not sufficient. Where the service of summons initiates the pendency of the action it is insufficient, therefore, unless it is a valid service * * * " 38 *C. J.* p. 27.

> "*Service by publication.* It is usually held that a suit is *lis pendens* in the case of notice by publication when the statute as to service has been complied with and when the publication is complete, but not before, except where it is otherwise provided by statute." 38 *C. J.* p. 28.

The learned Vice-Chancellor cites no cases in support of his statement that a *lis pendens* which was invalid when filed becomes later vitalized by some subsequent act or proceeding in the cause. Counsel has carefully searched the authorities in this State and finds no authority in support thereof. We may fairly anticipate that the fourth syllabus in *Delaware River Q. & C. Co. against Mercer Freeholders,* 88 N. J. Eq. page 506, may be cited by the appellees

in support of such a proposition. This head-note reads as follows:

> "4. A notice of pendency of suit served on the day the bill was filed is sufficient, although subpoenas were not issued until four days later."

An examination of this case, however, discloses that it was a bill filed to enforce a municipal mechanic's lien. In the opinion, at page 511, Vice-Chancellor Backes uses the following language:

> "Suits in Chancery are commenced by the issuance and service of subpoena or the making of a *bona fide* attempt to serve it after the bill has been filed (*Haughwout v. Murphy,* 22 N. J. Eq. 531; *Hermann v. Mexican Petroleum Corporation,* 85 N. J. Eq. 367, and other cases; and a notice filed under the *lis pendens* act (*Comp. Stat.* p. 3175) before the action is thus commenced, is ineffectual, as suits in equity were before the act was passed; innocent purchasers being charged with constructive notice of the pendency of the suit only by the filing of the bill and the service of the subpoena. A reason for this rule of practice may be found in the hardship imposed on innocent third parties by the doctrine of *lis pendens,* but no such reason can be advanced for its application to the Municipal Mechanic's Lien Act where no innocent parties are involved. Here the notice is actual, not constructive, and it serves an entirely different purpose."

It will, therefore, be observed that the learned Vice-Chancellor was dealing with a different situation and that the fourth headnote, without refer-

ence to the body, of the decision, is misleading and without application to the instant case.

The language in the opinion of Vice-Chancellor Backes in the suit of *Del. River Q. & C. Company v. Mercer Freeholder, supra,* "suits in Chancery are commenced by issuance and service of subpoena *or a making of a bona fide attempt to serve it after the bill has been filed"* (italics ours), is at variance with the language of *Haughwout v. Murphy, supra.* We have found no cases in the Court of Errors and Appeals relaxing the rule of *Haughwout v. Murphy,* that not only must the bill be filed and process issued but that the process must be actually served before a *lis pendens* becomes constructive notice under the statute. Hence, this expression of opinion by the learned Vice-Chancellor would appear to be in conflict with the rule established in *Haughwout v. Murphy, obiter dicta* and without authority.

Cases from other States are of absolutely no assistance here unless the decision is read in connection with the statute in such case.

SECOND.

The lis pendens statute is restrictive of an existing right of lis pendens founded upon a doctrine of ancient origin. It is intended to protect the subject-matter of the suit pending litigation in order that a judgment or decree may be effective as against alienation pendente lite. It is not intended as a constructive notice for any other purpose than that incident to pending litigatiion, and its force is wholly expended upon the entry of a final decree except as to such matters included in said decree.

The above is largely supported by the case of *Haughwout v. Murphy, supra. Lis pendens* is based

not upon notice, but is intended to protect the subject matter of litigation from alienation *pendente lite*. It has no other or further purpose. It should not be extended by implication beyond these bounds. The doctrine itself, unless applied with caution and in compliance with the statute and decisions, is apt to work a great hardship upon innocent buyers, and the instant case is a striking instance of the danger in converting this doctrine into one of permanent constructive notice. When the final decree in this case was entered the *lis pendens*, even if valid, had fully expended its force except to refer a person whose rights had accrued thereafter to the decree itself. A reference to such decree by the appellants would have disclosed no adjudication binding upon them, but on the contrary, a reservation of their rights under said decree.

It is significant that there is no finding by the Vice-Chancellor that the appellants had any actual notice. Therefore, the appellants are being deprived of their rights upon a technical constructive notice and if Mrs. Aleck seeks to take from the appellants $175,000.00 worth of property without compensation, then we have a right to insist that in order to accomplish such a result that she shall have complied with every technical requirement of the law and the adjudicated cases.

THIRD.

Both Helen C. Aleck and Dr. Spear stood by while visible and extensive improvements were in progress, involving the expenditure of large sums of money, and by their silence must be held to have acquiesced in the rights of these appellants.

After the delivery of the October 23rd agreement

the Locustwood Cemetery, Inc., employed an increasing force when until the following March, twenty men were working, using tractors, dump carts, horses and road rollers and were engaged in general improvements to the land, designing and building an administration building, etc. (pages 213, 288, 289, 320, 343); and that on November 22, the project was advertised in large type in the Camden Courier and in the Post-Telegram, and that there was a sign on the property like that indicated by Exhibit C3. This was a sign about 8 x 15, five feet from the ground and probably fifteen feet from the fence, in plain view of the highway; that the sign was erected September 24, 1923, and was destroyed in the late fall of 1924 (pp. 212, 344); that during the work of the physical improvements to the cemetery Dr. Spear was there practically every day and that the witnesses had seen Mrs. Aleck on the ground with him frequently and that she made no objection to the work in progress (page 345).

In other words, Dr. Spear and Mrs. Aleck knowingly permitted the expenditure of large sums of money under a claim of ownership adverse to them and stood mute. It became their duty to speak, and the appellants were well warranted in assuming an acquiescence by Dr. Spear and Mrs. Aleck in the adverse claim of ownership of Locustwood Cemetery, Inc., and that under these circumstances the contest between Dr. Spear and Mrs. Aleck was for the purpose of determining who would be entitled to receive the purchase monies arising out of the agreement of October 23, 1923.

> "He who will not speak when he should shall not speak when he would."

FOURTH.

Helen C. Aleck and Dr. Spear are both estopped by their failure to object to the extensive improvements made by the appellants with their knowledge.

The above is covered in the discussion of Point No. 3. In the interest of brevity this discussion is not here repeated, but the omission of detailed discussion is not to be construed as an abandonment of this point.

FIFTH.

In any event the Locustwood Cemetery, Inc., is entitled to a lien for monies actually expended by it upon the improvements to the locus in quo.

The argument under Points Nos. 3 and 4 is applicable to the above, and in the interest of brevity will not be repeated. The failure to repeat the above detailed arguments is not to be construed, however, as a waiver or abandonment of this point.

Equity may decree a lien or charge the lien for improvements where under the circumstances it is just and equitable that such a lien should be given. An equitable lien upon the property benefited has been held to arise where a person in good faith and under a mistake as to the condition of title, makes improvements, renders services, or incurs expenses that are permanently beneficial to another's property. *MacKelway v. Armure,* 10 N. J. E. 115; *Magnolia Construction Company v. McQuillan,* 94 N. J. E. 736.

SIXTH.

As between the appellants and Helen C. Aleck, she (Aleck) at the best had a secret and undisclosed equity and the appellant, Locustwood Cemetery, Inc., occupies the position of a bona fide purchaser for value without notice, and its position is that superior to Mrs. Aleck.

At the time of the purchase the title to the Cooper Homestead Farm and to the Spear-Fernwood agreement was in the Equitable Estates Corporation and placed there by deeds and assignment executed in legal form to create an absolute estate in the Equitable Estates Corporation. It is true that the learned Vice-Chancellor in his opinion makes the following statement:

> "The *lis pendens* may not have been operative upon the rights under the Spear-Fernwood agreement, but the rights of Spear under that agreement had been assigned to his wife June 27, 1923, and assigned by her to Locustwood Land Company on October 17, 1923, and the Locustwood Land Company is not claimed to have been a party to the alleged contract of October 23, 1923."

Apparently the Vice-Chancellor regarded this as sufficiently bona fide to defeat the rights of Locustwood Cemetery, Inc., after the expenditure of $175,000.00 by the company upon the *locus in quo*. Strangely enough, however, the learned Vice-Chancellor, in speaking of the same transaction in a later part of his opinion, uses the following language:

> "Pending that suit Spear formed the Locust-

wood Land Company, complainant herein, and notwithstanding the pending suit against him seeking the restoration to Mrs. Aleck of her enjoyment of the rights flowing under that Spear-Fernwood agreement, he assigned the agreement to his wife and she in turn assigned it to Spear's corporation, complainant herein. 1498 shares of stock of the corporation were issued to Spear's wife and one share to him and one to his friend Darcy. These 1500 shares constituted all of the stock of the corporation. I am unwilling to give countenance to the notion that complainant's rights as assignee of the Spear-Fernwood agreement can be said to rise above those of Spear, through whom it derives its title, and thus defeat the rights awarded to Mrs. Aleck by the decree in the then pending suit. Complainant corporation was so clearly the creation, servant, tool and representative of Spear that any effort to contemplate it as in the enjoyment of rights superior to Spear as his assignee repels all sense of right and justice."

Locustwood Cemetery, Inc., not only spent large sums of money in improvements, but paid many thousands of dollars to Dr. Spear as the representative of Equitable Estates Corporation under the contract of October 23, 1923. Why the paper performance should be regarded as bona fide so far as these appellants are concerned and the contemplation of such performance as bona fide as applied to Mrs. Aleck "repels all sense of right and justice" is indeed difficult, if not impossible, to understand.

The rights of the appellants are those of innocent purchasers for value without notice of any secret

equities, and are superior to the secret equity claimed by Mrs. Aleck.

The facts in support of the above proposition are stated fully in that portion of the brief dealing with the facts, and will not here be repeated. It is true that the full consideration was not paid prior to the acquisition of the knowledge of the claim of Mrs. Aleck by the service of order to show cause dated *February 11, 1924,* and it is probable that it will be urged that the rule stated in *Bridgewater v. Ocean City Association,* 96 Atl. 905, is fatal to such a claim. This rule, as so stated, is, "Payment or its equivalent of the whole purchase money is essential to the defense of a *bona fide* purchaser. The execution of a bond and mortgage in payment is not sufficient." This is conceded to be a correct statement of the law as applied to the facts of that case.

In the case of *Schwarz v. Munson,* 94 N. J. Eq. 754, E. & A. 1923, it was held that where the subsequent purchaser had accepted a conveyance and paid part of the purchase money in good faith before notice of the prior contract, he was entitled to be indemnified by receiving out of the purchase money which normally would be paid by the vendee to the vendor such sum as will indemnify him against loss which otherwise would result from the payment of a part of the purchase money.

In the instant case, the parties stood by while large sums of money were paid, to their knowledge, upon the theory that these appellants were operating under a valid contract, and in addition to this, moneys were paid from time to time under that contract and in accordance with its terms, so that there is now an estoppel on the part of these parties, who claim that the contract had no valid existence. Nor is any citation of authority necessary in support of the doctrine of ratification by the acceptance of

benefits. It certainly would be inequitable to permit either Dr. Spear or his mother, by pursuing methods of silence and stealth, to acquire, at no cost to themselves, one hundred seventy-five thousand dollars of the stockholders' money expended by these defendants. If by any possibility a different view can be legally and logically sustained, then, under the doctrine of the Schwarz case, the defendants are entitled to absolute indemnification for such losses as have resulted from the silence and apparent acquiescence of both Dr. Spear and Mrs. Aleck, which should include the total repayment to them of the sums expended by way of improvements as well as all moneys paid under the contract.

SEVENTH.

So far as any adjudication is concerned in the suit of Douglas against Equitable Estates Corporation, that suit was res inter alios acta and is not binding upon these appellants, nor is the decree therein as against these appellants evidence of the existence of any equity in favor of Helen C. Aleck. Hence, there is no evidence in the suit sub judice as against these appellants of any equity, secret or otherwise, of Helen C. Aleck in the Cooper Homestead Farm or in the Spear-Fernwood agreement.

These defendants were brought into that suit solely for incidental and injunctive relief with the view of preserving the subject matter of a suit *pendente lite,* and were dismissed with no adjudication against them.

> "Neither the declarations nor any other acts of those who are mere strangers, or, as it is

usually expressed, *res inter alios acta,* are admissible in evidence against anyone." *2 Bouvier's Law Dictionary,* p. 898 (Rawles Rev.).

"A matter is not *res adjudicata* unless there be identity of the thing sued for, of the cause of action, of the persons and parties, the quality of the persons for and against whom the claim is made, and the judgment in the former action be so in point as to control the issue in the pending one.

"A proper test in determining whether a prior judgment between the same parties concerning the same matters is a bar to a subsequent action, is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first; if so the prior judgment is a bar." *Hoffmeier & Sons v. Trost,* 83 N. J. L. 358, N. J. Sup. Ct. 1912.

EIGHTH.

On the whole case the agreement of October 23, 1923, should be established as the true agreement.

On p. 28 below follows "Appendix A," forming a part of this brief and covering a discussion of testimony.

A question arises as to whether these appellants entered into possession of the cemetery under an agreement of July 23, 1923, or of October 23, 1923. By the terms of the alleged agreement of July 23, 1923, these appellants would have been required to pay the sum of $8,723,299.95, or approximately $55,562 an acre, for lands that had been of-

fered for sale at approximately the same time by both Dr. Spear and Mrs. Aleck on a total basis not exceeding $100,000.

Under the agreement of October 23, 1923, the Equitable Estates Corporation sold both the "Spear-Fernwood Agreement" and the Cooper Homestead Farm to Locustwood Cemetery, Inc., for the sum of $100,000, payable at any time within a period of twenty years. Upon the faith of this agreement the Locustwood Cemetery, Inc., expended several hundred thousand dollars in improvements to the cemetery property.

The October 23rd contract has the merit of being consonant with probability, and represents a sum more nearly related to the known value of real estate of this character at that time.

It necessarily follows that if the agreement of October 23rd is established then no moneys are due to the complainant under the pretended and later assignment of the "Spear-Fernwood Agreement" to the complainant, and that the only moneys due to any one under said agreement is the balance of the sum of $100,000 payable in the manner fixed in that agreement.

The appellants, Locustwood Cemetery, Inc., acknowledges that under the terms of the agreement of October 23rd it is indebted to some of the parties to this suit, but until the Court by its decree adjudges to whom these payments are due, it cannot safely make payments to any one. Upon the legal ascertainment of the person to whom the moneys are due, Locustwood Cemetery, Inc., stands ready to pay any arrearages and to resume its payments in accordance with the agreement of October 23, 1923.

These appellants seek to have re-established by the decree of this Court the agreement of October

23, 1923. This agreement disappeared at a time when Charles C. Spear had access to the office records of these defendants, and it is fairly inferable that the agreement was removed by him. He persistently refused to produce his duplicate original of the basic agreement. Numerous requests were made upon him, and he pretended that he had lost his original. It was not until a few days prior to the date fixed for final hearing of this cause that these appellants were able to see or inspect any agreement whatever. It was not until the compulsive power of the Court was applied that any agreement was produced, and then it was the alleged agreement of July 23, 1923. Upon the inspection of this agreement, and because of the suspicious circumstances surrounding the same, counsel requested the privilege of having the same examined by an expert on disputed documents. This request was refused. Upon obtaining the order of the Court directing such examination, the delivery of the paper was again refused, and it was not until contempt proceedings were actually under way, and danger of imprisonment was imminent, that the alleged agreement of July 23rd was produced.

The appellant, Locustwood Cemetery, Inc., is a corporation having several hundred stockholders, chiefly residents of Camden County, which has expended in improvements to the lands in question at least one hundred and seventy-five thousand dollars, and whose possession has been open and notorious, and the Court is necessarily confronted with the question as to whether one hundred and seventy-five thousand dollars of improvements resulting from the expenditure of the stockholders' moneys are to be awarded Mrs. Aleck, or whether they shall be retained by the Locustwood Cemetery, Inc., for the benefit of its innocent stockholders.

It is a maxim of equity so firmly established as to need no citation of authority to support it, that where one of two innocent persons must suffer he whose act caused the loss must bear it.

Assuming for the moment that Mrs. Aleck had a secret equity in the Cooper Homestead Farm, that legal title thereto was in the name of the Equitable Estates Corporation at the time of the making of the agreement of October 23, 1923, and that the Locustwood Cemetery Association dealt with that title in ignorance of such equity and in good faith, and that relying upon the legal title then in the Equitable Estates Corporation expended large sums of money, the equity of Locustwood Cemetery, Inc., would, unquestionably, be superior to that of Mrs. Aleck, while Dr. Spear would have no standing whatever in the matter.

It seems to us that the true solution of this matter lies in affirming the validity of the agreement of October 23rd, and it then follows as a necessary corollary that the rights of innocent stockholders of the last named company will be protected, and that the consideration for the sale of the lands at $100,000 is an adequate one, and that upon the ascertaining by this Court as to whether all or some part of such consideration shall be paid either to Mrs. Aleck or to Dr. Spear, and that upon payment of the consideration to the party or parties thus adjudged to be entitled thereto exact justice will be done.

A discussion of the questions of fact raised by the testimony is dealt with later in this brief under the caption "Appendix A—Discussion of Testimony."

"APPENDIX A," Forming a Part of the Brief of Appellants, LOCUSTWOOD CEMETERY, INC., and LOCUSTWOOD CEMETERY ASSOCIATION.

DISCUSSION OF TESTIMONY.

Which is the true agreement? That of July 23, 1923, or that of October 23, 1923?

The complainant contends that the first mentioned agreement is the true agreement, while these appellants contend that the latter is the true agreement. If the appellants' contention is correct and the appellants occupy the position of innocent purchasers for value without notice, then these appellants have no further concern in this suit, except to have the Court ascertain and determine to whom these appellants shall pay the balance of the purchase price, in accordance with the terms of the latter agreement.

The facts and circumstances surrounding the July 23rd agreement are highly suspicious, and the agreement itself bears internal evidence seriously impeaching its integrity. This agreement by its terms calls for payments aggregating $8,723,299.95 in payment of the purchase price of one hundred and fifty-seven acres of land, or an average price per acre of approximately $55,600. As to the value set upon this land by indisputable evidence, the following facts are of great weight:

1. By an agreement dated the 28th day of October, 1922, between HELEN C. DOUGLAS and LOUIS W. MACLOSKEY, MRS. ALECK agreed to sell the LOCUSTWOOD FARM, consisting of

153.77 acres, for the price of $90,000, of which $50,000 was to be paid by a purchase money mortgage for five years. See Exhibit S1 (page 517), and particularly note the evasive character of the testimony of MRS. ALECK in reference thereto (beginning on page 517 and continuing to page 525) and her extreme reluctance to admit the truth of the facts contained in the written agreement signed and acknowledged by herself.

2. By a letter dated October 26, 1921, addressed to MAX DARCY and signed by the EQUITABLE ESTATES CORPORATION, 80 acres of the *locus in quo,* including the original cemetery of 13.3 acres, an option was granted to MR. DARCY to sell the entire 80 acres for the sum of $60,000, which included a commission to DARCY in the form of a second mortgage for $18,000 and also half of the interest on a mortgage of $42,000, so that the net consideration to be received by the EQUITABLE ESTATES CORPORATION would have been the sum of $42,000 subject to a division of half of the interest on that sum (page 192, Exhibits C1 and C2 for identification, page 194).

3. We have the EQUITABLE ESTATES CORPORATION, which was the *alter ego* of CHARLES C. SPEAR, offering a little more than half the property, including the cemetery proper, on the basis of $42,000 net or at the approximate rate of $500 an acre, and we have MRS. ALECK offering the entire property in October, 1922, at $90,000, or at the approximate rate of $580 an acre, and then the Court is asked to believe that by an agreement of July 23, 1923, MR. DARCY, who was cognizant of the price quoted by the EQUITABLE ESTATES CORPOR-

ATION, permitted the sale to go through to the LOCUSTWOOD CEMETERY, INC., for the same lands at a price in excess of $8,700,000—approximately $56,000 an acre; nearly one hundred times the price claimed both by the EQUITABLE ESTATES CORPORATION and MRS. ALECK.

4. It is self-evident that the LOCUSTWOOD CEMETERY, INC., entered into possession of the defunct cemetery under some agreement. It is not claimed that it was merely a trespasser. Hence it must have entered into possssion under one of the two agreements; under either the alleged agreement of July 23, 1923, or under the agreement of October 23, 1923. The testimony referring to the agreement under which the LOCUSTWOOD CEMETERY, INC., entered into possession is as follows:

5. MAX DARCY testified that the offices of that company were in the Smith-Austermuhl Building in Camden; that the agreement was subscribed to by the EQUITABLE ESTATES CORPORATION, by MR. SPEAR as president, and his wife as secretary, and by MR. CAWTHORNE and MR. DARCY on behalf of the LOCUSTWOOD CEMETERY, INC.; that the instrument was delivered (page 197); at the time of the delivery MR. CAWTHORNE and MR. DARCY, DR. SPEAR and his wife were present; that the duplicate original was delivered to DR. SPEAR and the other duplicate original was placed in a desk in the office of LOCUSTWOOD CEMETERY, INC. (page 198); that LOCUSTWOOD CEMETERY, INC., had no other copy than the duplicate original (page 198); that DR. SPEAR had access to the office in the Smith-Austermuhl Building and had a key thereto; the office was not

occupied during the day (page 200); that the agreement was last seen in a drawer in the office in the Smith-Austermuhl Building (page 201) and that it was shown to MR. W. B. BURRELL, MR. T. M. SOLOMON and MR. PAUL V. ALLEN (page 201); that it was ascertained in December of 1923 that the agreement had disappeared; that attention was brought to this fact, by reason of the fact that some Bridgeton people who purposed to become interested in the cemetery desired to see the agreement, and that when it was looked for in the desk it was discovered that the agreement was missing (page 201); that DR. SPEAR was informed of its disappearance (page 201) and the DOCTOR was asked for a copy of the one he had; that he replied that when he had moved from Philadelphia his papers were mixed up and that the agreement was misplaced; that he could not find it, but as soon as he was able to do so he would furnish a copy (page 202); that continual efforts were made to obtain a copy or to see the duplicate original in SPEAR'S possession (page 202); that at least upon thirty or thirty-five occasions requests were made upon DR. SPEAR for the agreement or copy thereof, without success (page 202); that DARCY went to DR. SPEAR'S home in Hainesport at times accompanied by MR. CAWTHORNE, at times with MR. ALLEN, and at times all three went; that their efforts were not successful (page 202); that SPEAR attempted to force MR. DARCY and the officers of the LOCUSTWOOD CEMETERY, INC., to sign another agreement (page 203); that one night in the early part of 1924, DARCY, CAWTHORNE and ALLEN went to Hainesport for the purpose of deciding the matter one way or another, and went to see DR. SPEAR and were very insistent, and thereupon he sat down and wrote another agreement on

the typewriter and said, "This is the agreement you have got to sign"; that the agreement did not purport to be a copy of the agreement signed, but was something totally different, and that at the time SPEAR had one drawer of the desk open and he drew therefrom a revolver, apparently in aid of the execution of the paper, which DR. SPEAR desired to have executed. In view of the fact that this controversy had become quite acute, DR. SPEAR, on December 16, 1924, pleaded *non vult* to an indictment charging him with carrying weapons unlawfully, and was fined by the Court in the sum of $100 (page), there is ground for belief that the attempt to procure the execution of a new agreement at the point of the pistol was not based upon an idle threat. At no time during the years 1924, 1925 or 1926 was MR. DARCY successful in obtaining either a copy or the original of the agreement of October 23 (page 205). At no time until a few days prior to the hearing of February 9, 1927, had DARCY seen any copy or original of any agreement relating to this subject matter, whether of July 23, October 23 or any other date, excepting, of course, the agreement of October 23 from the date of its execution until its disappearance (discovered in December, 1923) (pages 205 and 206). The first time that DARCY or any officer of the company was able to see any agreement from the date of the disappearance in December, 1923, until February, 1927, was when the original of the alleged agreement of July 23 was produced in the office of Harvey F. Carr in February of 1927 (page 206). (The production of the so-called July the 23rd agreement at the office of Mr. Carr was only obtained by the compulsive power of an order of the Court of Chancery requiring the production of papers for examination and inspection.) As to the paper produced in the office

of MR. CARR in February, 1927 (the alleged agreement of July 23), DARCY recognized his signature and that of the other officers of the company (page 207). He testified that he had never signed such an agreement (page 207). The witness testified that the agreement which he signed on behalf of the LOCUSTWOOD CEMETERY, INC., provided for the purchase of the Cooper Homestead Farm and the lands occupied by the LOCUSTWOOD CEMETERY and also the rights held under an agreement called the SPEAR-FERNWOOD for the sum of $100,000 (page 209), and that moneys paid by C. O. DAVIS under a prior agreement were to be accepted as the first payment, and that the balance was to be paid at the rate of $200 a week, minimum, and that LOCUSTWOOD CEMETERY, INC., was to have twenty years in which to make the entire payment and to be "taxed" $6000 a year for every year they failed to make this payment with the exception of the first year; that the cemetery was to be delivered to LOCUSTWOOD CEMETERY, INC., at once for development and sale of lots and the balance of the land was to be delivered on demand as paid for at a *pro rata* price per acre; that is, $100,000 divided by 157 acres, which was the area of all the land purchased (page 209); the witness defines the word "taxed" as follows:

> "A. You could hardly call it interest because if the amount of money was decreased by one-half you still had to pay $6000 each year until the full principal was paid." (Page 210.)

6. The testimony of DARCY as to the contents of the agreement of October 23 is corroborated by the following witnesses:

JAMES T. CAWTHORNE (pages 329, 330, 331 and 332). DARCY'S testimony as to the access of

DR. SPEAR to the office of LOCUSTWOOD CEMETERY, INC., is likewise corroborated by MR. CAWTHORNE on pages 332 and 333, and on page 333 MR. CAWTHORNE describes the contents of the agreement of October 23 in detail. CAWTHORNE further testifies to the efforts made to obtain a copy or the duplicate original of the missing agreement (page 334); and the statement of DR. SPEAR as to his inability to locate his, DR. SPEAR'S, duplicate original (page 335); also as to the incident at the home of DR. SPEAR at Hainesport when DR. SPEAR typed another agreement and attempted to persuade the MESSRS. DARCY and CAWTHORNE to sign the same at the point of a pistol, and further that SPEAR in response to the numerous requests made upon him never did produce any contract after the delivery of the October 23rd contract, bearing any original signatures whatever (page 335) and that the first that he ever saw of the alleged agreement of July 23rd was at the office of MR. CARR about February 15, 1927 (pages 336-337); and that LOCUSTWOOD CEMETERY, INC., had never executed such a paper as the July 23rd paper (page 337). MR. CAWTHORNE testified at page 338 that he had made a calculation of the payments called for under the alleged contract of July 23 and that the total thereof amounted to $8,723,299.95 (page 339), and that LOCUSTWOOD CEMETERY, INC., had never agreed to pay a sum in excess of $6,000,000 for 157 acres of land, and that the proposition could not be handled on any such basis (page 337); that LOCUSTWOOD CEMETERY, INC., has approximately three hundred and seventy-five stockholders, and in addition thereto there were four hundred and twenty-five lot-holders, and that the stockholders and lot-holders had paid in approximately a quarter of a million

dollars (page 339); and that the records of the company showed that there had been expended on the thirteen-acre section $158,347 (pages 339 and 340), in addition to which there had been expended on the one hundred and forty acre piece approximately $15,000, and that there were about one hundred interments in the cemetery (page 340). After the delivery of the October 23rd agreement the LOCUSTWOOD CEMETERY, INC., employed an increasing force, when until the following March twenty men were working, using tractors, dump carts, horses and road rollers, and were engaged in general improvements to the land, designing and building an administration building, etc. (page 343); that on November 22nd the project was advertised in large type in the Camden Courier and in the Post Telegram (page 344, Exhibit C4), and that there was a sign on the property like that indicated by Exhibit C3 (page 344). This was a sign about 8 x 15, five feet from the ground and probably fifteen feet from the fence, in plain view of the highway; that the sign was erected September 24, 1923, and was destroyed in the late fall of 1924; that during the work of the physical improvements to the cemetery DR. SPEAR was there practically every day (page 345), and that the witnesses had seen Mrs. Aleck on the ground with him frequently and that she made no objection to the work in progress (page 345).

PAUL V. ALLEN, formerly connected with the LOCUSTWOOD CEMETERY, INC., but not connected therewith in any capacity at the time he testified as a witness, testified that he came to Camden on October 24, 1923, and was shown the agreement of October 23rd (page 265); this agreement called for the sale of the cemetery property and other lands making a total of 157 acres for the sum of

$100,000, and called for payments at the rate of $200 a week with a deduction of $6000 as a "sort of premium and penalty" until the entire sum of $100,000 had been paid. This agreement had twenty years to run (page 266), and that releases were obtainable at a *pro rata* rate (page 266); that this agreement was kept in the office in the Smith-Austermuhl Building with the rest of the papers in a big drawer of an ordinary flat-top desk and that the persons who had access to that office were MESSRS. CAWTHORNE, DARCY, DR. SPEAR and the witness; that sometime in December, 1923, the witness, MR. ALLEN, who had been instrumental in interesting some people from Bridgeton in the cemetery proposition, made a search for the agreement, but was unable to find the agreement (page 267); that the witness had heard DARCY ask SPEAR for the agreement about twenty-five or thirty times; that he remembered an incident at the home of DR. SPEAR at Hainesport in the latter part of April, 1924, that on this occasion SPEAR typed an agreement, drew a revolver and insisted that DARCY and CAWTHORNE sign or get out (page 268); that as a result ALLEN thereupon became convinced that it was impossible to obtain the agreement from SPEAR and left the COMPANY'S employ about a week later; that up to the time he had left no contract (other than the October 23rd contract) or copy thereof had been obtained from DR. SPEAR, and that that contract was still missing (page 269).

THEODORE M. SOLOMON testified that he came to Philadelphia from New York at the invitation of MR. DARCY about the last of October or the first, second or third of November, 1923 (page 252); that DARCY brought with him "a contract dated about a week before in which they were to turn over to him 157 or 148 acres of land, it was a

contract guaranteeing to deliver over to him a contract that DR. SPEAR had with the FERNWOOD CEMETERY, INC., and with the EQUITABLE ESTATES, a cemetery property of 13 or 14 acres, something like that, I don't remember exactly, but there was the cemetery property and outside of the cemetery and of the homestead, there were 140 or 150 acres. I know the amounts better than the dates. He was to pay $6000 a year regardless of the principal diminishing and he was to pay it at $200 a week and the difference was to amortize the principal of $100,000." The witness was not certain as to the duration of the contract, but stated it was "either 25 years or 20 years or 15 years, it was something like that."

W. B. M. BURRELL, who has been in business in this city for thirty-six years, and the president of the LOCUSTWOOD CEMETERY, INC., testified that he has been presdient since about October, 1923 (page 279), and that previous to being made president he was shown a working agreement between LOCUSTWOOD CEMETERY, INC., and the EQUITABLE ESTATES CORPORATION, and on that authority he accepted the office as president; that the consideration to be paid for the lands was $100,000 payable at the rate of $200 a week and that the company had about twenty years in which to make the payments (page 280); that he saw the agreement before he accepted the presidency (page 279), and that MR. CAWTHORNE brought it to him in his, MR. BURRELL'S, office (page 280).

7. The substance of the October 23 agreement is, therefore, sworn to by five witnesses, one of whom, THEODORE M. SOLOMON, is totally disinterested and another, PAUL V. ALLEN, who had ab-

solutely no interest whatever in the controversy at the time when he testified.

JULY 23RD AGREEMENT: In addition to the extreme improbability that any sane person would enter into an agreement of this character calling for a payment in excess of $8,700,000 for this tract of land, there are certain peculiarities in the instrument and in its execution worthy of note. The corporate seal of the LOCUSTWOOD CEMETERY ASSOCIATION was under the control of DR. SPEAR. The agreement bore the imprint of this seal on all three pages (page 674); DR. SPEAR testified that this was for the identification of the three pages comprising the document; likewise the seal of the EQUITABLE ESTATES CORPORATION was impressed on all three pages of the document. This seal was likewise under the control of DR. SPEAR. The seal of the LOCUSTWOOD CEMETERY, INC., who was the party to be bound to the payment of this vast sum of money, appears only on the signature page of the agreement. *It is significant that this seal was not in the possession of DR. SPEAR.* If the impression of the seal of LOCUSTWOOD CEMETERY, INC., had appeared on all three pages and that seal had never been in the control of DR. SPEAR, it would have made it practically certain that there had been no substitution of the first two pages of the agreement.

WEBSTER A. MELCHER, handwriting expert, testified to examining the alleged agreement of July 23 and testified as to his conclusions that the entire document submitted was not prepared at the same time nor with the same means nor with the same materials entirely (page 621). Then follows a technical but interesting recital of the various examinations and tests made by him in support of the conclusions reached and as the opinions were all based

upon physical and observable facts the value of the conclusions drawn by the witness can easily be determined. A peculiarity that cannot escape the observation of the untrained witness is as follows:

On page 2 the last line typed reads as follows: "In witness whereof the parties hereto have caused these signatures" and then that is all stricken out by the diagonal type mark of the machine, and it is worthy of notice that it sets unusually close to the bottom of the page. The third page begins again with the same words, "In witness whereof the parties hereto have caused these signatures" (page 628). Commenting on this, MELCHER says: "If this paper, consisting of three pages, were prepared by the same person or by any person at one and the same time, it is difficult to understand the necessity of striking out that clause at the foot of the second page" (page 628). MELCHER calls attention to a striking difference between pages one and two and the signature page, consisting in the character of certain impressions of the tall letters, such as lower-case "d" or the characters corresponding to that. On pages one and two very often the tops of those tall marks fail to print on the papers, and on the last page every one of the tall letters in a similar position to those we have described mark full clear up to the top, indicating a different ribbon condition or placement as between the first and second pages on the one hand and the third page on the other hand. MR. MELCHER then deals with the question of the ribbon and reaches the conclusion that a different ribbon with chemically different ink was used on pages one and two from that used on page three (pages 629, 630 and 631). With regard to the staples or fastenings, MELCHER says, at page 634, "I think there is every indication from the microscopical appearance of these holes here that this

third sheet, the signature sheet, was cut out of some other fasteners, either torn or cut, or wholly cut out, and then put in with these other sheets." The witness then suggested to the Court that it would be well worth while to take these staples out and "just look at the condition of these holes." This suggestion, however, was not concurred in by counsel for DR. SPEAR. MELCHER further testified, "I am satisfied from my examination of this paper in that respect that as to the first and second sheets, so far as these two staple locations are concerned, they were treated practically alike and presumably together, *but the holes were never made by those staples that are in here at the present time.*" (Pages 634 and 635.)

As to the corporate seals impressed upon the alleged agreement of July 23, MELCHER testified, "There again those impressions were apparently made at one and the same time, but certainly were not made after the sheets of paper were put in their present position. The position of the impressions on the three sheets cannot, *without doing violence to the present arrangement of paper, coincide so as to allow those impressions to have been simultaneously made on the three sheets as now fastened together, consequently they must have been put on before the three sheets were bound together.*"

MELCHER testifies:

> "Now, as to the typewriting part, there appears, in addition to the differences which I have gone into between pages one and two and page three, an appreciable difference in time of typewriting, as well as all the other things between the first two pages and the last page."
>
> "The Court: Which is the older?
>
> "The Witness: The signature page is the

older according to its tests, appreciably older." (Page 638.)

On page 639 the following question and answer appears:

"Q. Mr. Melcher, based on the facts you have just testified to and from your examination of the document and your tests thereof, what conclusions have you reached as to the sequence of time in which the various parts of the document were produced or prepared?

"A. The first two pages were prepared at an appreciably considerable length of time after the third page was prepared and signed. In regard to the allocation of them in their present position and connection I have no means of telling, of course, what any of these pages ever was attached to other than the paper which we have before us, but I am sure those three sheets of paper were not originally part of one document such as we find them now, and that page three was deliberately taken out from some binding by way of fasteners and then pages one and two added."

Following this, MR. MELCHER testified that the interval of time was a matter of months between the preparation of the first two pages and the last page (pages 639 and 640). Following this, MR. CARR asked whether there would be any objection to removing the staples and having the witness examine the papers. The Court inquired of counsel as to whether they concurred. MR. PALMER made the following response: "There is only one situation, if the Court please, that might offer itself as an objection, and that is this, if I am to have this

paper examined by some typewriting expert I don't think that removal should be made prior to that examination. Now, that one proposition is the only reason I can see as an objection." As a matter of fact, MR. PALMER did not have the paper examined by any handwriting expert, but whether the objection thus made was merely specious and not intended to defeat the further examination of the paper upon a vital point, it, nevertheless, had that effect, whether that was the design of counsel or not. It is almost fundamental that one is presumed to intend the natural consequence of his own act. If the consequence were but merely accidental it certainly operated for the benefit of MR. PALMER'S client in practically ending all further examination of the paper as to a very important and critical feature.

It is significant that in the suit *sub judice* there is no proof whatever to establish the fact that HELEN C. ALECK had any equity whatever in the lands, title to which was vested in the EQUITABLE ESTATES CORPORATION. While it is true that there was such an adjudication in the DOUGLAS-SPEAR suit such adjudication is not binding in any way upon LOCUSTWOOD CEMETERY ASSOCIATION or LOCUSTWOOD CEMETERY, INC.

In re reference to agreement of July 23, 1923, in final decree in DOUGLAS v. SPEAR, Judge Starr, who represented the LOCUSTWOOD CEMETERY, INC., and the LOCUSTWOOD CEMETERY ASSOCIATION, and who filed an answer on behalf of those defendants, testified that he obtained his information with the exception of the date of the agreement from MR. DARCY; that MR. DARCY did not have the agreement and that he, JUDGE STARR, never saw the agreement until consider-

ably later, and that his recollection was that the paper was dictated and written with the date blank, and subsequent to the time it was dictated and typewritten he obtained the date from MR. ROSE (then counsel for DR. SPEAR) and it was inserted from information obtained from MR. ROSE and mailed to the clerk with the blank supplied; that he, JUDGE STARR, obtained a copy of the so-called agreement of July 23rd from MR. ROSE with a letter dated May 11, 1925, "which was a year after I filed the answer;" that it was after the taking of the testimony in that suit, which testimony was taken on February 5, 6, 9 and 11, 1925, and that JUDGE STARR had never seen the original of that agreement; that he had never seen it in the possession of MR. DARCY and that he, JUDGE STARR, had examined the original answer and also his office carbon copy and compared the same with the original answer. JUDGE STARR then testified, "The original file is here and I examined it this morning to verify the accuracy of my carbon copy and it shows there had been a supplying of the date." It was JUDGE STARR'S recollection that the answer as originally drafted was blank as to date (pages 174 to 180). An examination of the paper book in the DOUGLAS (ALECK) v. CHARLES C. SPEAR suit indicates that no testimony whatever was taken with reference to the rights, claim or title of LOCUSTWOOD CEMETERY, INC., or LOCUSTWOOD CEMETERY ASSOCIATION. It is unfortunate that there was a confusion of dates in the reference made to the agreement in the final decree. However, it is perfectly apparent that since no claim was being made against these defendants and it was not proposed to enter any decree binding them that JUDGE STARR did not consider the date had any other significance

than to merely identify an agreement. He had never seen the original agreement nor had even a copy of the alleged agreement, been furnished him until many months after the trial. He received his information from reputable counsel and unquestionably was justified in accepting the same as accurate. It is true that DAVID R. ROSE, former counsel for DR. SPEAR, testifies that DR. SPEAR brought to him a large bundle of papers which remained in the custody of MR. ROSE "from sometime in 1923 until the April term of 1927," and that it was ROSE'S impression that SPEAR came to his office and brought the papers to him "some short space of time before October 4, 1923, but just when I do not know." It is also true that MR. ROSE has no recollection of having shown JUDGE STARR the original of the alleged agreement of July 23 and it is also true that MR. ROSE had no distinct recollection when DR. SPEAR handed him a number of papers in October, 1923, that the disputed paper was among them. He also testifies that DR. SPEAR came in to see him from time to time with considerable frequency, and that he thinks that DR. SPEAR brought in papers at other times and that those papers would be placed together in the safe; and that he has no means of knowing positively whether the agreement, the disputed paper, Exhibit C6, was handed to him in October or at a later time; and that it might have been handed to him at the later time. He was asked whether DR. SPEAR ever came in from time to time to look at his papers. His reply was "ANSWER. I don't *think* he did * * * and I am quite sure DR. SPEAR never examined these papers. Q. Even in your preparation for trial and one thing another?" A. "I don't think he did, because I worked on this case alone, and mostly at

nights." It would seem rather strange that in the preparation of the former case, complicated and involved as to fact, that there would be no examination of the papers in the presence of DR. SPEAR. ROSE was asked this further question: "Q. During this time did DR. SPEAR have access to these papers if he wished? A. If he had wanted to see them, of course we would have let him have them, and I might be mistaken about it, but to the best of my recollection DR. SPEAR never saw or touched those papers from the time he gave them to me until I gave them to him in April, 1927, that is the best of my recollection." Counsel has no desire to impugn the veracity of MR. ROSE, but a man as cunning and crafty and versed in such devious methods as DR. SPEAR might easily have imposed upon counsel by substituting the papers or might easily have placed the disputed paper among the others unobserved by MR. ROSE. It seems scarcely credible that in the preparation and during the course of the trial that these papers should never once have been examined by or opened or placed upon the desk in the presence of DR. SPEAR. There was no reason why counsel should have denied DR. SPEAR any request that he might have made with reference to the examination, inspection or removal of any of the papers. Such incidents could easily occur in the routine of a lawyer's office and not be remembered by counsel after the lapse of so great a period of time. At any rate, the date fixed by JUDGE STARR in his answer and in the decree was unquestionably supplied by counsel for DR. SPEAR and at no time was the original of the agreement produced either to JUDGE STARR or to MR. DARCY or MR. CAWTHORNE, nor was it offered in evidence in the trial of the former's suit. Under these circumstances these de-

fendants certainly cannot be concluded by the decree in the former suit. A court of equity certainly would not wish to conclude the rights of these defendants in a matter where no evidence whatever had been before it and where the decree expressly states that "anything herein stated or adjudged, shall in no way fix, settle or determine the rights of the defendants, LOCUSTWOOD CEMETERY, INC., and LOCUSTWOOD CEMETERY ASSOCIATION, if any, in the lands and premises above described." The words which immediately follow "which rights are all *said* to exist by virtue of the following" certainly are not restrictive of the general words preceding, and is the result solely from a misrecital of a date, under the circumstances explained by JUDGE STARR.

BRIEF ON THE LAW BASED ON CONSIDERATION OF POINT #8 AND MATTERS ARISING THEREUNDER.

This case presents the following questions:

A. May there be a valid vendor's lien upon lands sold to a cemetery association organized under the Rural Cemetery Act?

The answer to this is, "No."

> "A vendor's lien for unpaid purchase money does not attach to lands sold to the cemetery association and devoted to burial purposes. A vendor's lien for unpaid purchase money on lands of a cemetery association not used for burial purposes is waived by the agreement of the vendor to accept payment out of the proceeds of the sale of burial plots." *Attorney-*

General v. Linden Cemetery Association, 90 N. J. Eq. 404, N. J. Chan. 1919.

This is controlled by "An Act to authorize the incorporation of rural cemetery associations and regulate cemeteries," *Revision,* 1877, page 100; 1 *N. J. Comp. Stat.* page 375, Sec. 8.

B. May there be a valid mortgage given by a cemetery association organized under the act above referred to, making the mortgaged premises subject to sale under foreclosure proceedings?

The answer is, "No."

See the act last above referred to, 1 *N. J. Comp. Stat.* page 375, Sec. 8, and *Charles C. Spear v. Locustwood Cemetery Company,* 72 N. J. Eq. 821, N. J. Chan. 1907.

> "A cemetery association formed under the Rural Cemetery Act cannot mortgage its lands except for a consideration of value received for cemetery purposes. A mortgage to secure a negotiable bond issue to a promoter to float a cemetery project is *ultra vires* except to the extent of value received for cemetery purposes." *Fidelity Union Trust Co., Trustee, v. Union Cemetery Association,* 6 N. J. A. R. p. 52; Adv. Sheet No. 2, Jan. 14, 1928.

C. Did these defendants have actual notice of the rights claimed by Helen C. Aleck in the locus in quo prior to the making of the agreement of October 23, 1923?

It is attempted to charge the Locustwood Ceme-

tery, Inc., with notice by reason of conversations alleged to have occurred between Mrs. Aleck and Max Darcy, and on one of these occasions it was claimed that the bill of complaint in the former suit was read to Mr. Darcy. The date fixed by Mrs. Aleck was sometime in August, 1922, and June or July of 1922, was fixed as the date by two other witnesses.

If it be true that Darcy had actual notice, is such notice imputable to the corporation?

Locustwood Cemetery, Inc., did not come into existence until the filing of the certificate of incorporation in the office of the Secretary of State on July 2, 1923, and the organization meeting at which officers and directors were elected occurred on July 9, 1923, at which meeting Max Darcy was elected vice-president.

The question is then presented as to whether notice acquired by Mr. Darcy, when acting not in the capacity of agent for a corporation not then formed and not even in contemplation of formation so far as the evidence goes, can be binding upon the corporation so as to adversely affect the rights of two or three hundred stockholders and to deprive the shareholders and lot-holders of an investment of at least one-quarter million dollars.

> "In order that the principal may be affected with a constructive notice of matters known to the agent, the information constituting the notice must be obtained by or imparted to the agent while he is in fact acting as agent—while he is actually engaged in doing his principal's business in pursuance of his authority and in his character as agent.
>
> "The knowledge of the agent is chargeable upon his principal only whenever the principal,

if acting for himself, would have received notice of the matters known to the agent."

Hanford v. Duchastel, 87 N. J. L. 205, 93 A. 586, E. & A. 1915.

This principle is further discussed in the case of *Montclair Building & Loan Association v. Miller,* 93 N. J. Eq. 653, E. & A. 1922, affirming opinion of V. C. Fielder. In the case as reported in the State Reports, no headnotes or syllabi appear. The same case, reported in 117 Atl. Rep., at p. 140, has this headnote:

"Knowledge acquired by officers or directors of the mortgagee corporation while they were acting for another corporation which conveyed the title to the mortgagor, is not imputed to the mortgagee corporation."

It would therefore seem, on principle and authority, that neither Locustwood Cemetery, Inc., nor Locustwood Cemetery Association was bound by any knowledge acquired by Darcy under the facts in this case.

"The mere fact that the same person was an officer of the assignor of notes and the assignee, would not impute notice to the assignee, in the absence of a showing that such notice came to the officer when acting as a member or officer of the assignee in his official capacity, or that, while acting as an agent of the assignee and within the scope of his authority, he received the information at the time he was actually acting as agent."

Shaw v. Standard Piano Co., 86 N. J. Eq. 127; N. J. Ch. 1916.

RE-ESTABLISHMENT BY A COURT OF EQUITY OF LOST INSTRUMENT.

A discussion of the principles controlling the above subject-matter is to be found in 38 *C. J.*, at page 260. We cite a brief excerpt therefrom as follows:

> "The evidence of the contents of the lost instrument must be clear and satisfactroy, leaving no reasonable doubt as to its terms, it not being enough that a witness states his understanding of its legal effect; and in the case of a lost deed or contract the terms must be established with the same certainty as in the case of a parol contract. However, it is unnecessary that witnesses should be able to testify with verbal accuracy to the contents, it being sufficient if they are able to state it in substance, and the rule has been laid down that in proving the contents of a lost instrument, it is sufficient to show by whom and to whom it was executed, the approximate time of execution, the consideration and the property conveyed, or the subject-matter of the contract."
>
> "The Court may either establish a lost instrument by declaring its existence in its decree, or order its re-execution, or may order the execution by a commissioner of a new deed to replace the lost one, or decree payment of the amount due."
>
> 38 *C. J.* pages 260, 261.

See also the following New Jersey cases:

Wells v. Flitcraft, 43 Atl. Rep. 659, N. J. Chan. 1899, and

Borstelman v. Brohan, 81 N. J. Eq. 401, N. J. Chan. 1913.

IN CONCLUSION.

A portion of Exhibit S2, which was a collection of photographs showing the appearance of the cemetery after its development, is inserted in the back of the State of the Case. By no means other than an actual visit to the cemetery could it so graphically be brought to one's realization, the tremendous change which accomplished the transformation of what has been described as a wilderness to a place of picturesque beauty; nor can it be conceived that such a result could be effected by anything short of the expenditure of unremitting labor, energy and diligence. It is so extremely improbable as to be practically impossible that the parties who were developing the cemetery and effecting this metamorphosis, were doing so with the realization that at some future period persons undeserving from any standpoint should step in and without giving them any compensation or return, should deprive them of the result of their labors.

As this Court has well said, in the case of *Burrichter v. Wishnefsky,* 103 L. 340; 135 A. 890, that this Court never decides a case on the theory of sympathy for the parties, "but only according to the law of the land as right and justice demands."

Where, in the instant case, does right and justice lay? Is it in the direction of depriving innocent persons of nearly $200,000.00 in property and awarding it, without compensation, to undeserving individuals who stood by seeing vast improvements being made on their property and who, after such improvements had been accomplished, stepped in at an opportune moment to reap the advantages thereof, for which they were in no way responsible,

and of which they were entirely undeserving, and this result to follow purely because of a narrow technicality?

Upon the whole case, therefore, it is respectfully submitted, but strongly urged, that the decree of the Court of Chancery should be reversed and as part of such reversal the agreement of October 23, 1923, should be re-established by the decree of this Court as a valid and controlling agreement; and that the Court of Chancery should be directed to ascertain what amount is due from Locustwood Cemetery, Inc., and to whom, and that this Court should adjust the equities between the parties to this appeal.

D. T. STACKHOUSE,
Of Counsel, with whom is associated,
HARVEY F. CARR,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

LOCUSTWOOD LAND COMPANY,
Complainant,

and

LOCUSTWOOD CEMETERY ASSOCIATION, *et als.*,
Defendants.

BRIEF OF HELEN C. ALECK.

The conclusions by Vice-Chancellor Leaming (S. of C., page 804) give a chronological statement of the conveyances, agreements, etc., leading up to this litigation and it would be useless to restate them.

The trouble began with the conveyances of June 22nd, 1920, by Helen C. Aleck (then Douglas) to Equitable Estates Corporation (S. of C., page 808).

Charles C. Spear is the son of Helen C. Aleck.

On April 22nd, 1922, a bill was filed by Helen C. Aleck (then Douglas) against Spear and the Equitable Estates Corporation to set aside these conveyances on the ground of fraud, etc., and *lis pendens* was filed on May 1st, 1922 (conclusions of Vice-Chancellor Leaming, S. of C., page 808).

A final decree was entered in that case, *Douglas v. Equitable Estates Corporation, et al.*, setting

aside the several conveyances to the Equitable Estates Corporation and restoring the title to Helen C. Aleck (formerly Douglas) and also setting aside the assignment of the Spear-Fernwood agreement.

The opinion in that case is found in 97 N. J. Eq. 25 and was affirmed by this Court on the opinion of Vice-Chancellor Leaming, 100 N. J. Eq. 342. The opinion of Vice-Chancellor Leaming in 97 N. J. Eq. 25 (129 Atl. 128), is very illuminating as to the conditions surrounding the present litigation. In that case the present appellants were parties defendant and represented by Hon. Lewis Starr and the final decree in that case was conclusive against the present appellants, Locustwood Cemetery Association and Locustwood Cemetery, Inc., except as therein provided, to wit:

> "And it is further ordered and decreed that anything herein stated or adjudged shall in no way fix, settle or determine the rights of the defendants. Locustwood Cemetery Association and the Locustwood Cemetery, Inc., if any, in the lands and premises above described, which rights are all said to exist by virtue of the terms of the following, to wit: deed dated December 31st, 1907, made by and between Charles C. Spear and the Fernwood Cemetery Association, recorded in the office of the Recorder of Camden County in Book 323 of Deeds, page 610, and the agreement dated July 23, 1923, made between Locustwood, formerly Fernwood Cemetery Association, and Locustwood Cemetery, Inc."

In the present case the appellants assert an agreement dated October 23rd, 1923, and repudiate the agreement of July 23rd, 1923. No such agreement as that of October 23rd, 1923, was asserted or dis-

cussed in the preceding suit and Judge Starr testified in regard to the July 23rd, 1923, agreement (S. of C., page 180) as follows:

"Q. You had never had possession of or seen any other agreement bearing date October 23rd, 1923?

A. I do not recall any agreement of that date.

Q. Except this one? (Referring to July 23rd, 1923, agreement.)

A. This one.

Q. And at the time this decree was entered neither Mr. Darcy nor anyone else had called your attention to any other agreement, had they? (Referring to decree of September 14th, 1925.)

A. No, sir."

So that it appears that the appellants in the preceding suit to which they were defendants asserted all their rights under an agreement of July 23rd, 1923, and made no mention either to counsel or in their proofs of the alleged agreement of October 23rd, 1923, and were concluded by the decree in that case. They appeared in that case as parties defendants, filed an answer and decree was made against them except so far as their rights were claimed under the deed of December 31st, 1907, for the thirteen and thirty-hundredths acres known as the cemetery and the sales agency agreement between Locustwood Cemetery Association and Locustwood Cemetery, Inc., of July 23rd, 1923 (conclusions of Vice-Chancellor Leaming, S. of C., pages 810 and 814).

Vice-Chancellor Leaming, S. of C., page 815, says:

"It may be appropriately added, however, that a careful consideration of all the circumstances and conflicting testimony touching the

> alleged agreement of October 23rd, 1923, strongly impels the belief that an agreement of the general nature claimed was confidently contemplated by the parties and measurably acted upon by them, but had not been formally executed at the time the harmonious relations of the parties terminated. But even though executed and lost, as claimed, the *lis pendens* and subsequent final decree in the suit against the Equitable Estates Corporation are operative to deny to the Locustwood Cemetery, Inc., the relief herein sought."

The Locustwood Cemetery Association holds title to the cemetery consisting of about thirteen and thirty-hundredths acres, and Locustwood Cemetery, Inc., is the sales agent. This is fully set out in the agreement of July 23rd, 1923, Exhibit C6 (S. of C., page 739). That agreement was admittedly executed by both the appellants and was the agreement reserved to the appellants in the decree of September 14th, 1925, in the prior suit.

The agreement of October 23rd, 1923, is alleged to have been made between the Equitable Estates Corporation and Locustwood Cemetery, Inc., but the Vice-Chancellor has found that no such agreement was ever executed (S. of C., page 815). It is admitted even by the appellants that the execution of such agreement was never authorized by the Board of Directors of the Equitable Estates Corporation. The minutes were produced and there was no minute in any way relating or referring to such an agreement (S. of C., pages 292-3).

The Locustwood Cemetery, Inc., was not incorporated until July, 1923, more than a year after the litigation in the prior suit had begun, and it immedi-

ately made the sales agency agreement of July 23rd, 1923, and as soon as the complainant learned that they claimed any rights in the cemetery they were made parties defendant in the preceding suit, and Locustwood Cemetery, Inc., filed an answer on March 20th, 1924, and Locustwood Cemetery Association on May 10th, 1924 (conclusions of Vice-Chancellor Leaming, S. of C., page 809).

As to the alleged agreement of October 23rd, 1923, the appellants have shown no payments whatever to the Equitable Estates Corporation. This, coupled with the fact that the said agreement was never authorized by the Board of Directors of the Equitable Estates Corporation and the finding of fact by the Vice-Chancellor that such an agreement was never executed is quite conclusive that the agreement has not been established and is entitled to no consideration.

How the appellants could acquire title to the property then in litigation and against which *lis pendens* was filed especially when they were made parties defendant to that suit and a decree made against them in that suit no one so far has been able to comprehend. This last agreement is claimed to have been made by Equitable Estates Corporation with Locustwood Cemetery, Inc., the sales agent, and not with the Locustwood Cemetery Association. The Locustwood Cemetery, Inc., was not incorporated until July, 1923; was made a defendant in the preceding suit as soon as it was learned that it claimed any rights in the property and it filed an answer therein on March 10th, 1924, and a preliminary injunction made against it in that suit except so far as the thirteen and thirty-hundredths acres was concerned. It has not been shown that any of the alleged expenditures of the Locustwood Cemetery, Inc., for improvements were made

prior to the time that it was brought in as a defendant in the preceding suit.

The appellants had a scheme whereby they sold a lot in the cemetery and gave with it stock of the Locustwood Cemetery, Inc., or, *vice versa,* sold stock and gave with it a lot (S. of C., p. 276). This was carried on during the other litigation, being restrained, however, to the thirteen and thirty-hundredths acres to which the Locustwood Cemetery Association held title and to which it still holds title. This cemetery proper was not affected by the prior litigation nor is the title to the lots purchased by said stockholders affected by this litigation. The statement in the brief for appellants (S. of C., p. 1):

> "This decree deprives innocent stockholders of $175,000.00 expended by Locustwood Cemetery Association for physical improvements upon the *locus in quo* and presents the same to Helen C. Aleck"

is untrue. In the first place the Locustwood Cemetery Association had no title except to the 13.30 acres at any time. In the second place, the Vice-Chancellor in his conclusions (S. of C., page 818) said:

> "Defendant, Locustwood Cemetery Association, is a regularly established cemetery company with many burial lots occupied and others owned by innocent purchasers. Its integrity must be preserved, if possible. At this time in effect it is controlled by the Locustwood Cemetery, Inc., as the result of a contested lotholders' meeting. By the Spear-Fernwood agreement the cemetery association is privileged under specified conditions to acquire additional territory from the Cooper Homestead Farm. Since the mortgage of August 20, 1908, was subject to the operation of that clause of

the agreement its foreclosure in no way affected that right.

The decree to be entered will restore to Mrs. Aleck the Spear-Fernwood agreement, that is, the rights in terms flowing to Spear under that agreement and preserve to the Locustwood Cemetery Association the rights in terms flowing to the Fernwood Cemetery Association under that agreement; and pursuant to the prayer of the counter-claim of Mrs. Aleck a reference will be made to a Master to ascertain the amount due under that agreement from the Locustwood Cemetery Association to Mrs. Aleck. Under her present counter-claim a decree of foreclosure of the vendor's lien, preserved to her by the agreement, cannot be made. It is unnecessary to here determine to what extent that lien can be enforced or the remedies available to her. Should further difficulties arise in the management of the Locustwood Cemetery Association rendering a receivership of that corporation necessary the application for a receivership may be renewed."

The decree was made in accordance with said conclusions so that all lots were preserved to the purchasers and the right of the cemetery association in and to the agreement of December 31st, 1907, was preserved to the cemetery association. Nothing whatever was taken from the lot-holders. The decree provides for an accounting between the cemetery association and the appellee, Helen C. Aleck. That is all.

Counsel again state in their brief (S. of C., page 2):

"This folly of Mrs. Aleck has cost the stockholders of Locustwood Cemetery Association

> the sum of $175,000.00 in improvements. In working out this problem the Vice-Chancellor has made a present of this sum to the woman whose folly occasioned this situation."

This is untrue and there is no foundation for such a statement. The improvements were made to the thirteen and thirty-hundredths acres held by the Locustwood Cemetery Association and the title to that property is in no way affected by this decree.

The photographs attached to the State of Case are of the cemetery proper, title to which is not affected by this litigation.

All the decree in this case does is to require the cemetery association to account to Mrs. Aleck under the Spear-Fernwood agreement. This Spear-Fernwood agreement is set out in full (S. of C., page 38), and discussed by Vice-Chancellor Leaming (S. of C., page 816).

Again counsel for appellants in their brief (S. of C., page 11) says:

> "There is taken from innocent stockholders of Locustwood Cemetery Association physical improvements costing approximately $175,000.00."

Thus on three occasions this statement is made in bold black faced type and in no case is any reference made either to the conclusions or the final decree to substantiate this claim. It is untrue and the conclusions of the Vice-Chancellor and the final decree entered in this cause preserves to the cemetery association the cemetery proper and the rights to acquire additional property under the Spear-Fernwood agreement. Nothing whatever has been taken from the Locustwood Cemetery Association or the Locustwood Cemetery, Inc. As between the appel-

lants and appellee in this case all that the decree does is to award the agreement to Helen C. Aleck and require the cemetery association to account to her for the purchase price in accordance with the terms of that agreement. Counsel stated on the trial of this case (S. of C., page) that it desired to account to the owner of the Spear-Fernwood agreement but did not know to whom to make payments so that the obligation to account for the purchase price of the cemetery land has always been recognized but the owner of that agreement was in dispute. That has now been settled by this decree.

The Locustwood Cemetery Association was known as the Darcy company and Darcy and Spear were close friends and working together at the time this company was formed. Darcy (S. of C., page) claimed to have no knowledge of the litigation between Mrs. Aleck (formerly Douglas) and the Equitable Estates Corporation and Charles C. Spear. He denied emphatically that he had ever heard of it (S. of C., page), and was afterwards confronted with exhibits T2 (S. of C., page 800) and T4 (S. of C., page 802). These two letters written by Darcy were discovered after the previous case had been closed and when confronted with these letters he admitted that he knew of the litigation (S. of C., page 721). That Darcy, the moving spirit of the Locustwood Cemetery, Inc., and an officer of that company, knew all about the litigation prior to the incorporation of the company is conclusively proved by his letters above referred to.

What happened was that Spear, when he returned from Nicaragua and got all the property of his mother in the Equitable Estates Corporation, found that he was blocked by the suit in the prior litigation and a *lis pendens* filed against him and the Equitable Estates Corporation attempted to carry

on the operation of the cemetery under the name of Locustwood Cemetery, Inc., and collect on the Spear-Fernwood agreement and as soon as this was discovered the said company was made a defendant in that suit and restrained by an order in that suit. The said Spear then endeavored to convey the Spear-Fernwood agreement by assignment dated June 27th, 1923, to his wife and by assignment from his wife dated October 17th, 1923, to the complainant herein, Locustwood Land Company (conclusions of Vice-Chancellor Leaming, S. of C., page 810). Notwithstanding the agreement had already been conveyed to the Equitable Estates Corporation and was set aside as one of the fraudulent conveyances in the preceding suit. The Vice-Chancellor in his conclusions (S. of C., page 816) discusses this agreement and the alleged conveyances and awards the agreement to Mrs. Aleck, the cross complainant, for the purpose of an accounting.

Spear and Darcy are co-conspirators having met in Nicaragua while Spear was a fugitive from justice. Darcy and Cawthorne are typical stock promoters. It would be necessary to see this pair in order to appreciate them, for there was nothing which they could not prove if they only knew in advance what was wanted.

For instance, Darcy was most emphatic that he knew nothing of the prior litigation until he was confronted with two letters from him showing that he knew all about it but even the pair of them could not show that they had spent any money except on the thirteen acre tract which is not in dispute and even then they could not show that they spent any money prior to the time that their company had been brought in as a party defendant in the previous suit.

The title of the thirteen-acre section known as the

cemetery is not in dispute or affected by this litigation. The title thereto is held by the Locustwood Cemetery Association. It was that property upon which the money was spent.

Counsel for appellants in their brief, page 10, say:

> "The Locustwood Land Company expended upon the thirteen-acre section the sum of $158,347.00. In addition to this there has been expended on the one hundred and forty-acre tract approximately $15,000.00."

This apparently makes up the $175,000.00 previously referred to so that even on their own statement the money was spent on the cemetery proper and this was protected by the decree in this cause. Counsel either do not understand the situation or are deliberately misleading.

It is only necessary to read the conclusions of the Vice-Chancellor and the final decree in this cause to see how misleading the statements in black faced type are, to wit: that the money expended for improvements is taken away from the cemetery association and given to Mrs. Aleck.

LIS PENDENS.

As to the decree in the prior suit and the *lis pendens* being binding against these appellants there seems no reason to doubt. This has been fully discussed by the Vice-Chancellor and in *Delaware River Quarry and Construction Company v. Board of Chosen Freeholders of Mercer County*, 88 N. J. Eq. 506 (103 Atl. 18), Vice-Chancellor Backes held:

> "The objection that notice of the pendency of the suit was prematurely given cannot prevail. The bill was filed on January 20th, 1917, and

on the same day notice of the suit was served upon the proper financial officer of the county. Subpoenas were not issued and served until four days later, but all was done within ninety days of the filing of the lien. Suits in chancery are commenced by the issuance and service of subpoena or the marking of a bona fide attempt to serve it, after the bill has been filed, (citing several cases) and a notice filed under the Lis Pendens Act (3 C. S. p. 3175) before the action is thus commenced, is ineffectual as suits in equity were before the Act was passed * * *

While at the time of the service of the notice this suit was not technically commenced, the first step in the proceedings had actually been taken the bill was on file, and, in the popular sense at least, the action had been begun * * *."

Vice-Chancellor Backes in the same case further said:

"In Tate v. Jordan, 3 Abb. Prac. (N. Y.) 392, the complaint and notice of pendency of the action were filed on May 10, 1856, but the summons was not served on any defendant until May 21st, following. Objection was made to the validity of the lis pendens notice on the ground that no action was pending when it was filed, and the Court held that the notice was not a nullity but was merely ineffectual until service of the subpoena, and then became effective. The text in Cyc. is that:

'The notice of the pendency of the action may be filed before the summons is served. It does not become operative except where the statute otherwise provides, until service of the summons.' 25 Cyc. 1467."

In *Straus v. Loudenslager, et al.*, 96 N. J. Eq. 678, 127 Atl. 20, Vice-Chancellor Leaming held:

> "It is an established equitable doctrine that 'a suit in chancery, duly prosecuted in good faith, and followed by a decree, is constructive notice to every person who acquires from a defendant *pendente lite* an interest in the subject-matter of the litigation, of the legal and equitable rights of the complainant, as charged in the bill and established by the decree.' This rule has been modified by the Lis Pendens Act to the extent that constructive notice is imputed only from the time a lis pendens shall have been filed. Haughwout & Pomeroy v. Murphy, 22 N. J. Eq. 531."

It is not claimed that any rights were acquired prior to the institution of the prior suit which was begun in April, 1922, for the reason that the appellant, Locustwood Cemetery, Inc., was not incorporated until July, 1923. In July, 1922, a decree *pro confesso* had been entered against the Equitable Estates Corporation (S. of C., page 809), and the Vice-Chancellor found from that date at least (S. of C., page 815), that the lis pendens was effective. The suit had been begun, subpoena issued and returned not found before the filing of the lis pendens.

Vice-Chancellor Backes points out in the Delaware River Quarry case that under these circumstances the action has begun and the lis pendens is not premature but becomes effective upon service being completed.

There is no case cited by the appellants that is contrary to this rule which would be operative in the present case.

CEMETERY ACT.

As to there being a valid vendor's lien upon lands sold for cemetery purpose the Cemetery Act, Compiled Statutes, Vol. 1, page 375, Section 8, is as follows:

> "That the cemetery lands and property of any association formed pursuant to this Act, or otherwise incorporated, as well as bonds and mortgages given to secure the purchase-money of such cemetery lands, shall be exempt from all public taxes, rates or assessments, and shall not be liable to be sold on execution, or be applied in payment of debts due from any individual proprietors; but the proprietors of lots or plats in such cemeteries, their heirs or devisees, may hold the same exempt therefrom so long as the same shall remain dedicated to the purpose of a cemetery, and during that time, no street, road, avenue, or thoroughfare shall be laid through such cemetery, or any part of the lands held by such association for the purpose aforesaid, without the consent of the trustees of such association, except by special permission of the Legislature of the State (Rev. 1877, p. 102)."

The statute does not say that the lands shall be exempt from debts or claims but that it shall not be liable to be sold on execution against individual proprietors. The apparent purpose is that the cemetery shall be maintained as a whole and not result in the disinterment of bodies and the use of part of the land for one purpose and part for another so that the frugal would suffer with the improvident. This, however, only relates to a sale of the land.

Public policy does not extend any further nor is the object of the statute to relieve the cemetery association of its obligations.

Section ten of the same Act, Compiled Statutes, Vol. 1, page 375, takes care of this as follows:

> "That all lots or plats of ground designated on the maps filed as aforesaid and numbered as separate lots by the corporation, shall be indivisible, but may be held and owned in undivided shares; provided, that the boundaries of the unsold lots or plats of ground belonging to the corporation may be altered or amended, by and with the consent of a majority of the legal voters of said association present at any regular meeting of the corporation; and provided further, that a supplemental map or maps of said cemetery lands, with such alteration of boundaries shown thereon, be filed in the clerk's office of the county in which the lands be situated; one-half at least of the proceeds of all sales or lots or plots shall be first appropriated to the payment of the purchase-money of the lands acquired by the association until the whole purchase-money shall be paid, and the residue thereof to preserving, improving and embellishing the said cemetery grounds, and the avenues and roads leading thereto, and to defray the incidental expenses of the cemetery establishment; and after the payment of the purchase-money, and the debts contracted therefor, and for surveying and laying out the land, the proceeds of all future sales shall be applied to the improvement, embellishment and preservation of such cemetery and for incidental expenses, and to no other purpose or object, so long as such embellishment is incomplete. (Rev. 1877, p. 102, as amended P. L. 1882, p. 25.)"

This section provides that one-half at least of the proceeds of lots or plots shall be first appropriated to the payment of the purchase-money of the lands acquired by the association until the whole purchase-money shall be paid and the residue thereof used for preserving, improving and embellishing the cemetery.

It appears that the agreement of December 31st, 1907, known as the Spear-Fernwood agreement was drawn in conformity with this limitation.

In *Bliss v. Linden Cemetery Association,* 85 N. J. Eq. 501 (96 Atl. 1001), this Court in effect held that equity is charged with the duty of protecting the vendors and such a trust relation exists as amply justifies a court of equity in charging the trustees of the cemetery with the payment of the purchase price in the method provided for in section ten.

SUMMARY.

The Vice-Chancellor has found as a fact that the alleged agreement of October 23rd, 1923, was never executed and therefore the cross bill of the Locustwood Cemetery Association should be dismissed.

Further than this, the said agreement could not be enforced or any decree made for the reason that Helen C. Aleck who owned the Spear-Fernwood agreement and the land in question under the decree of September 14th, 1925, was not made a party defendant to said cross bill. The counter-claim of these appellants (S. of C., page 16) is against the complainant and the counter-claim of the Locustwood Cemetery, Inc. (S. of C., page 17), is against Charles C. Spear, Mercedes Spear and Equitable Estates Corporation.

In neither counter-claim has the appellee herein

been made a party defendant and there is no foundation for a decree to establish the alleged contract as against this appellee, under any circumstances.

The lis pendens was effective to prevent the Equitable Estates Corporation making conveyance and the appellants herein were bound by the final decree in the prior suit.

There is no contention that the findings of fact by the Vice-Chancellor who heard the witnesses is not supported by the evidence.

It is respectfully submitted that the decree should be affirmed.

JOSEPH BECK TYLER,
Solicitor for and of Counsel with Helen C. Aleck.