

**NEW JERSEY
COURT OF ERRORS AND APPEALS.**

WILLIAM K. HAINES,
Appellant,

vs.

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYD-
HOUSE,
Defendants.

ON BILL, &c.

STATEMENT OF THE CASE.

On May 19, 1902, Henry C. Roydhouse was the owner in fee simple of a certain farm described in the bill, and on that day, he and his wife, defendants in this suit, conveyed the said premises to James Moore, consideration one dollar, and on the same day, the same premises were by the said Moore conveyed to the defendant, Ann Virginia Roydhouse, but only conveying to her a life estate in the said premises. The premises were at that time subject to a mortgage of \$10,500.00 on which had been paid March 25, 1901, \$5,500.00, and a balance due on said mortgage of \$5,220.00 was paid on March 30, 1904.

On July 1, 1907, Henry C. Roydhouse became indebted to the appellant, William K. Haines, in the sum of two thousand dollars on which judgment was obtained on December 23, 1911.

On August 27, 1910, a deed was entered into between Henry C. Roydhouse and Ann Virginia Roydhouse, his wife, conveying the premises in fee to Carrie Virginia Gulick, and Carrie Virginia Gulick on the same date conveyed in fee simple, the said premises to the defendant, Ann Virginia Roydhouse, consideration named in the deed as one dollar.

This bill was filed January 2, 1912, to set aside the conveyance of August 27, 1910, as being a fraud on the appellant, by reason of being voluntary and fraudulent. The defendants set up in their answer that the defendant, Henry C. Roydhouse, had been guilty of adultery about May 17, 1902, and his wife had separated herself from him, and he to induce his wife to return and "forgive his past marital infidelity and return to live with him in consideration of his promise of future conjugal fidelity and the conveyance to her the said Ann Virginia Roydhouse of the farm" mentioned in the bill, and that she would forgive him and return to live with him, and that the deed of 1902 was intended to operate as a fulfilment of that promise, and as a conveyance in fee simple, but that in August, 1910, discovering that she had only a life estate in the farm, the deeds of August 27, 1910, were made to correct the mistake in the deed of 1902.

On the final hearing, the learned Vice-Chancellor held that

"The only infirmity in the original agreement which can, therefore, be relied upon by the complainant is its want of valuable consideration. That question, as already stated, I cannot consider an open question in this court.

"Nor do I think that the evidence justifies the conclusion that the last deed was not made in good faith to correct the error in the former deed."

“I will advise a decree denying the relief sought by complainant.”

From judgment entered on this decision the complainant appealed to this court.

The grounds of appeal are:

1. That the learned Court adjudged that the condonation on the part of a wife of an act of adultery by her husband, and by the wife resuming marital relations with the husband, was a good and valuable consideration to support the conveyance of real estate.

2. That the learned Court decreed that the defendant, Ann Virginia Roydhouse, having forgiven the alleged adultery of her husband, the defendant, Henry C. Roydhouse, and the conveyance by Henry C. Roydhouse of a life estate in said property by an alleged mistake instead of having conveyed the fee; that subsequently upon an alleged discovery of the mistake that the defendants should be permitted to correct the alleged mistake by conveying the fee, although the defendant, Henry C. Roydhouse, had incurred extensive obligations in the meantime and had become insolvent.

3. That the learned Court below decreed that the bill of the petitioner should be dismissed.

ARGUMENT.

It is urged by the appellant that condonation on the part of a wife of an act of adultery by a husband, and the resuming of marital relations is not a good and valuable consideration sufficient to support the conveyance of real estate as appears in the proofs of this case.

It is the common law that the services, society and conjugal fidelity of a wife belong to her husband during coverture, and this is recognized as the law of New Jersey.

In *May vs. W. J. & S. R. R. Co.*, 62 N. J. L. 62:

“The services of the wife are her husband’s property and continue to be, so long as the marriage relation exists.”

And it was held in *Elliott vs. Bently*, 17 Wis. 591:

“That the earnings of a married woman during her coverture are the property of her husband, and he can make no contract with her in relation to them.”

“They cannot constitute a valuable consideration or detriment to the wife inuring to her benefit, by reason of the fact that she has no property in them, they belonging to the husband.”

Husband and wife cannot by contract charge the husband’s estate for the value of the wife’s services in nursing him in his illness by reason of the fact that the wife’s services in nursing her husband, etc., belong to the husband.

Forworthy vs. Adams, 124 S. W. 381 (Ky.).

Nor will the release of the obligation that a husband owes to the wife to support her be a sufficient consideration for the conveyance of property.

In *Auburgh vs. Lydston*, 117 *Ill. App.* 574; 74 *N. E.* 796; 216 *Ill.* 210.

Nor can a husband compensate his wife for money spent in past support for which he would otherwise have been responsible, by conveying his property to her, such an act being void as against creditors.

Cox vs. Collins, 80 *N. W.* 343; 109 *Iowa* 274.

A wife cannot by surrendering what at law belongs to her husband make such property thus surrendered a valuable consideration to support a contract between her and her husband.

In *Vandeventer vs. Hass*, 116 *Mo. App.* 316, it was held,

“Under the law in force in 1869, a husband was entitled to the rents and profits of his wife’s land not settled to her sole use, although the rents were not subject to his debts, and a man who married at that time, did not by collecting the rents and profits of his wife’s land become indebted to her in such sense as to sustain a conveyance made by him to her to the detriment of his creditors.”

It is not within the power of the husband or wife by contract to change or avoid the obligations of their marriage.

Patterson vs. Patterson, 111 *Ill. App.* 342.

In the *Barbour vs. Barbour* case, a bill was filed for specific performance of a contract entered into between husband and wife, by the terms of which, the wife forgave the husband’s adultery, and discon-

tinued her divorce action and application for alimony, and the husband agreed to convey certain property to the wife.

Vice-Chancellor Bird decreed specific performance, and held that the husband and wife may enter into reasonable contract, and it is not against public policy to enforce them. This case was appealed to this court and in 51 N. J. Eq. 267, the decision of the Vice-Chancellor was reversed by a vote of nine to four. The Court in that case holding, if a parol contract relating to land, that has been in part performed can be specifically performed, such contract must be performed to the point of demonstration. The proof in this case held to be insufficient. The ruling of Vice-Chancellor Bird as to the principles of law were not referred to in this case, but the whole case was overruled, and it is my contention here that the Barbour case affords no precedent, in this State, by reason of the fact that the case has been *in toto* reversed.

In *Briggs vs. Mitchell*, 60 Barb. 288, it was held,
“that a settlement such as in the cases cited above, though good between the husband and wife, are void as against creditors.”

And this, it appears to us, is the equitable rule, inasmuch as it seems inequitable that husband and wife may so juggle their assets between themselves, either upon real or fictitious grounds, that creditors may be defrauded of their rights by a mere transfer of property between husband and wife.

So that we conclude that the condonation on the part of a wife of an act of adultery on the part of a husband is not sufficient to support a conveyance of real estate from husband to wife when creditors intervene.

It is further contended by the complainant-appellant that even if it be conceded that the original agreement was valid as against creditors; that the subsequent conveyance in 1910 cannot prevail as against the appellant in this case, and for the following reasons:

a. That the defendant, Ann Virginia Roydhouse, had been guilty of laches and such conduct as to estop her from setting up a right paramount to that of the complainant-appellant.

It will be remembered that the original conveyance was dated May 19, 1902; the deed was given to her; was put on record at her instance and request; and then when returned was put in her own strong box and kept until 1910, to wit, more than eight years, during which time the defendant, Ann Virginia Roydhouse, had permitted her husband to deal with the farm as his own subject to her life estate; that the record so remained and credit was presumably extended to Henry C. Roydhouse by virtue of this open and notorious showing.

And it has been held in *American F. Land and Mortgage Co. vs. Maxwell*, 22 Southern 751; 39 Fla. 489:

“Where the voluntary conveyance from a husband to a wife is withheld from record until after administration of the husband’s creditors without notice attached to the property conveyed, the conveyance will be invalid as against such creditors.”

In *Earl vs. Earl*, 87 Ill. App. 49:

“Where a grantee fails to record his deed whereby a third person is induced to give credit to the grantor in the—faith—of the

latter's ownership of the property, the grantee's interest will be subordinated to the claim of such creditors."

In *Morrison vs. St. Gimmes*, 31 Mo. 230:

"A provision in a marriage contract giving dower to the wife and conferring on her the right of renouncing community and taking back everything she brought into it will have no effect as against creditors unless it has been recorded."

It is a general principle of law that where one or two persons must suffer, that the one most guilty of wrongdoing shall be the one to suffer. In this case Mrs. Roydhouse by her own conduct has made possible the condition where either she or the complainant must suffer, and it certainly follows that she should be the one to suffer rather than the complainant who has not been guilty of any wrongdoing and guiltless of any laches.

b. That conceding for the sake of argument the truth of the answer, still, the complainant is entitled to a decree for the value of the farm over and above what it was worth at the time of the conveyance in 1902. In 1902, the farm was subject to a mortgage of \$10,500.00, which mortgage was entitled at that time to a credit of \$5,500.00, leaving the said farm at that time subject to a mortgage of \$5,000.00, so that if the answer is true in every phase, all that Roydhouse could give at that time was an equity of redemption subject to the encumbrance of \$5,000.00, and it is clearly beyond dispute that the defendant, Henry C. Roydhouse, between the dates of the alleged contract and the second conveyance

had increased the value of the farm by \$5,000.00, which was not included and could not be included in the alleged agreement of 1902. And the learned Court below certainly should have found at least that the complainant was entitled to a lien to the extent of the increased value on the farm made by the defendant, Henry C. Roydhouse.

In *Converse vs. Hartley*, 31 Conn. 372, it was held:

“It appeared, in a case brought to set aside a conveyance as fraudulent, that the equitable title to the land was in the wife of the respondent solely, and that, by mistake, and without her knowledge, the legal title had been conveyed to her and the respondent jointly, instead of to her alone. The respondent afterwards, and while the legal title to one moiety of the land remained in him, invested money derived from his own funds, to the amount of \$1,447.00, in permanent improvements thereon, and afterwards, at the request of his wife, for the purpose of correcting the mistake, and without any fraudulent intent, conveyed his title to her. The wife was made a party to the bill. The whole value of the property was \$6,000.00, and the prior debts of the husband amounted to \$792.00. Held, that the conveyance was, to the extent of the value of the improvements, fraudulent against prior creditors; that the deed should not be set aside wholly, but that the petitioner should be regarded as having an equitable lien upon such proportion of the whole property as was represented by the improvements; and that a decree should be passed, authorizing the petitioner, on the failure of the respondents to pay the \$792, with interest, within a time lim-

ited by the decree, to sell such an undivided interest in the property not exceeding 1447-6000 of it, as should be necessary to raise that sum."

In *Lynde vs. McGregor*, 95 Mass. 182, it was held, "When a man expends money upon his wife's land in fraud of his creditors, which increases the value of her estate and for which she pays no consideration, the amount of such increase belongs in equity to the creditors, and may be made a charge upon their lands for their benefit, though the wife does not participate in the fraud."

In *Humphreys vs. Spencer*, 36 W. Va. 11, it was held,

"Where the money expended by the husband in permanent improvements on his wife's land, without any actual fraudulent intent, is charged in such land in an action by a creditor of the husband, the value of the property, less the value of such improvements, should be ascertained as also the value of such improvements, and in case of sale, and inadequacy of its proceeds to pay both values, the creditors and wife should share therein ratably, on the basis of such values."

In *Cox vs. Collins*, 109 Iowa 270, it was held,

"Where the value of land conveyed by a husband to his divorced wife in payment of a loan greatly exceeds the debt, the conveyance is fraudulent as to creditors, to the extent that the consideration is inadequate, although it was accepted by her in good faith."

So that here, if it should be deemed that it was equitable for the husband to correct the deed of 1902, by some later deed, the conveyance of the added value by reason of having paid the mortgage becomes voluntary and therefore fraudulent as against the complainant, because without any consideration moving from the wife to the husband.

c. If the transaction in the first deed was legitimate, the second deed is void as against creditors who have become so between the two transactions, even though the second deed was made confirming the prior one.

In *Talcott vs. Levy*, 20 N. Y. Sup. 440, it was held, "Though Laws 1887, c. 537, authorizes transfers from a husband to his wife founded on love and affection, yet where a deed of gift made while the husband is insolvent is withheld from record because he believes that it is inoperative, a subsequent conveyance, made in contemplation of insolvency to a third person who conveys the land to the wife, is fraudulent as to creditors though made to effectuate the first conveyance."

d. Whatever the rights between the parties under the alleged agreement of 1902, those rights of the wife must be subjugated to the rights of *bona fide* intervening creditors by reason of laches on the part of the defendant, Ann Virginia Roydhouse.

Watson vs. Cummins, 40 N. J. Eq. 483;
Borden vs. Doughty, 42 N. J. Eq. 314.

e. And the presumption is that the whole transaction as to the second conveyance is voluntary and, therefore, fraudulent, at least to the extent of

\$5,000.00, which was paid on the mortgage subsequent to the date of the first conveyance.

Manning vs. Riley, 52 N. J. E. 41 &c.:

“And that rule is: ‘That if the party be indebted at the time of the voluntary settlement it is presumed to be fraudulent in respect to such debts, and no circumstances will permit those debts to be affected by the settlement, or repel the legal presumption of fraud.’ The presumption of law, in this State, does not depend upon the amount of the debts, or the extent of the property in settlement, or the circumstances of the party. There is no such distinction set up or traced in any of the cases. The attempt would be embarrassing, if not dangerous, to the rights of the creditors, and prove an inlet to fraud. The law has, therefore, wisely disabled the debtor from making any voluntary settlement of his estate to stand in the way of his existing debts.”

Now, as to reason number two. Paragraphs 7, 8, 9 and 10 were admitted by the complainant. The answer does not allege that the mistake was mutual, nor does it aver that there was any mistake that was mutual, nor does the evidence disclose that there was any mutual mistake. So that in order to entitle, as a legal right, Mrs. Roydhouse to have the deed altered to what she believed and hoped she was going to get, there must have been a mutual mistake or fraud. The admission as to 7, 8, 9 and 10 of the answer admits only what is set up in those paragraphs. If the defendant, Henry C. Roydhouse, went outside of what he was obliged to do under the agreement his act was voluntary and, therefore, fraudulent as to this appellant.

Henry C. Roydhouse testified in answer to the Court's question, State of Case, page 69, line 8:

“Q. Strike out that question. Wasn't the first deed just what you promised your wife?

A. I promised —

Q. Now, listen to my question and answer it.

By the Vice-Chancellor:

Q. Can you answer that? Was the first one just what you promised your wife?

A. Yes, what I promised to give her.

By Mr. Davis:

Q. It was just exactly what you promised to give her, is that right?

A. The deed, yes, sir.”

So that it is clear that Henry C. Roydhouse had no mistaken idea as to what he had promised his wife, nor as to what he had intended to give her, but asserts that the deed of 1902 was just exactly what he had promised to give her, and just what he had instructed the scrivener to prepare. Although under a leading question of the Vice-Chancellor in State of Case, page 101, line 10, he makes a different statement, but his testimony, State of Case, page 101, does not agree with his testimony on page 67 of the State of the Case, line 4, in which he says that he does not know for what purpose the second deed was made to his wife, and in State of Case, page 67, line 28, he was asked:

“By the Vice-Chancellor:

Q. Your answer says it was in fulfilment of a prior agreement and you say that it might have been. Now, what am I to understand by that?

A. Well, I guess I will have to say that I don't know, I don't recollect.”

But he generally answers on page 69 that the deed that was made fulfilled exactly what he had promised his wife to give her.

Now the testimony of Ann Virginia Roydhouse is not at variance with the testimony of the defendant Henry C. Roydhouse, but is exceedingly indefinite.

State of the Case, page 43, line :

“Q. What did he say to you with regard to the conveyance of these premises?

A. He said, ‘I will give you anything that you want if you will return and live with me as my wife.’

Q. And was that the words as near as you can tell us?

A. As near as I can remember, Mr. Davis, those were the words.

Q. What did you say in response to that?

A. Why, I accepted it.”

So that there is no testimony at that point which is definite and specific or contradicts the testimony of Henry C. Roydhouse that he gave her everything that she wanted.

In the afternoon session, State of Case, page 111, line 16:

“Q. Now, what part of your testimony do you mean, and what part don’t you mean?

A. Why, I mean that Mr. Roydhouse said, ‘I will do anything for you that you ask me,’ and I said, ‘Well, the least that you can do, after what you have done, is to provide me with a home.’ Now, those are the actual words that were said.”

Mrs. Roydhouse, State of Case, page 121, line 5, said:

“A. Mr. Roydhouse himself said that if I would go home with him and forgive what had happened, he would give me a home.

By the Vice-Chancellor:

Q. The Mount Holly home, did you mean?

A. The Mount Holly home, the farm, he said.

By Mr. Kellam:

Q. And did you say anything in reference to that?

A. I said, ‘Well, I will accept it,’ and I went home with him and I have lived with him ever since.”

So that Mrs. Roydhouse positively swore to three different statements made by Roydhouse to her. In every particular instance she testified to the exact and only words that were used, and in each of the three particular instances she testified to three distinct and contradictory statements.

And Mrs. Emma S. Wetherill, the sister of Mrs. Roydhouse, State of Case, page 123, testified different from either of the two Roydhouses. State of Case, page 122, line 36:

“Q. Now, just tell us what you heard?

A. Well, he pleaded with her to come back to him, and he said that he would give her anything or do anything he could to make amends for what he had done.

Q. Yes. What did she say?

A. And she said that she would like to have the farm, and he said that he would give it to her.”

So that from the testimony which is introduced here there is no evidence that there was a mistake,

nor that there was a mistake either on the part of either or both of the defendants as to the contents of the original deed. But rather the testimony of Henry C. Roydhouse is to the effect that the deed complied with all the requirements of his promise, and there is no evidence in the testimony of the other two witnesses at variance with Henry C. Roydhouse's testimony.

It is, I think, the undisputed law that the mistake which is requisite to vitiate a deed and require its reformation must be a mutual mistake.

Sugden on Vendors, Vol. 1 (Perkins Ed.)
243 and notes.

In *Barbour vs. Barbour*, decided in this court and confirmed, 51 N. J. Eq. 267, it was held, that just such language as was used between the parties to this transaction did not constitute a parol agreement for the transfer of land, which could be enforced in equity. And if it was not a contract in the *Barbour* case, it is not a contract in the present case, and any attempt on the part of the husband to voluntarily convey this land without the necessity of a contract is voluntary on his part and fraudulent as to this appellant.

I wish to call the attention of the Court to the fact that although the appellant admitted paragraphs 7, 8, 9 and 10 of the defendant's answer, the defendants themselves repudiate in effect admissions on the part of the appellant, and set up a totally different contract from that which is averred in their answer, and admitted by the appellant, and it appears to our mind, it would be inequitable to enforce the full effect of an admission when a party in whose favor the admission is made repudiates the admission, and sets up an alleged agreement wholly at variance.

In *Barbour vs. Barbour*, 51 N. J. Eq. 267,

“It appeared that these were the terms of the agreement. The husband said to the wife (270), ‘If you do not think I mean what I say, I will give you the home free and clear of everything. I will give you everything that I have got,’ and the wife said, ‘All right, upon those conditions, I will go back.’”

The Court held that this was not in the nature of a contract for the conveyance of real estate, and that it was not taken by the parties to mean such.

Ann Virginia Roydhouse, one of the defendants in this case testified, State of Case, page 43, line 17, &c.:

“Q. What did he (meaning Henry C. Roydhouse, her husband) say to you with regard to the conveyance of these premises?

A. He said, ‘I will give you anything that you want if you will return and live with me as my wife.’”

I submit that there is no difference in the words used in this case at bar and those in the *Barbour* case.

And Henry C. Roydhouse, State of Case, page 71, line 31, testified:

“Q. You didn’t promise her that you would give her all that you had?

A. I am not positive about that, but I think I told her I would turn everything over, she could have everything.”

And then he proceeds to testify, as his wife did also, that he turned nothing else over to her except a life estate in this farm. This Court in *Barbour vs. Barbour*, 51 N. J. Equity 267, on page 271, criticized

such language as not constituting a contract for conveyance, especially, when not acted upon by the parties. It simply shows that their minds never met upon the proposition, or if they had met that compliance with the agreement was waived, and therefore, the defendant, Ann Virginia Roydhouse, in this present case is guilty of such laches as to not admit of her enforcing her right at the present time as against *bona fide* creditors, whose rights have intervened.

None of the admitted sections of the defendants' answer aver facts sufficiently to require or warrant the reformation of the deed in the court of equity. There is no allegation in sections 7, 8, 9 and 10 that Henry C. Roydhouse had led his wife to believe that he was going to give to her the farm in fee, nor is there any allegation that the deed did not conform to the ideas of Henry C. Roydhouse, nor are the facts proved in any other way, but on the contrary section 10 of the answer distinctly sets out that "said Ann Virginia Roydhouse accepted said deed as fulfilling the terms of the said agreement," and she continued to accept the terms of the said deed as fulfilling the said alleged agreement, and continued to do so for eight years during which time thousands of dollars of debts had been incurred by her husband, and it was only when he was hard pressed for the payment of these claims and his interest in this property about to be seized that the happy notion struck them to reform a deed which had rested at peace for eight years, the result of which was to remove his property beyond the reach of creditors.

It is submitted that the mistake in this case and the *bona fides* of this transaction have not been proved in accordance with the requirements of the law.

In *Gillespie vs. Mom*, 2 *John Ch.* 585, it was held, that the evidence in such case must be clear and strong, so as to establish the mistake to the entire satisfaction of the Court.

See, 1 *Story Eq. Jur. Sec.* 157;

Tucker vs. Madden, 44 *Me.* 200;

Cawedy vs. Marcy, 13 *Gray* 377.

And in *Stockbridge Iron Co. vs. Hudson Iron Co.*, 102 *Mass.* 45, it was held,

“On the trial by jury on an issue whether the parties to a deed intended to have a clause inserted therein but omitted by a common mistake to have it done, the intention and mistake must be proved beyond a reasonable doubt and not merely by a preponderance of the evidence.”

And this Court in *Barbour vs. Barbour* held that the proof must amount to a demonstration.

It was urged, however, in the present case on the final hearing that the husband was willing to rectify this mistake and came in and admitted the mistake, and that the proof, therefore, is not required to be so clear and exacting as if he were resisting. It appears to me that the opposite rule ought to prevail, that where a husband and wife by their alleged mistake are seeking to protect their community property from the right of creditors, that their testimony must be so clear and convincing that it must be proven beyond a reasonable doubt before the Court should allow their acts to interfere with the rights of creditors. The burden of proof is on the defendants in this case, and it is submitted that the testimony in this case is not of such character as to warrant the Court in allowing the defendants to inter-

pose their conveyances to the defeat of the appellant.

The third assignment of error on grounds of appeal is that the Court decreed that the bill should be dismissed.

It is contended in this case that under no condition should the bill have been dismissed, and even if it be admitted that the alleged contract was based upon a valuable consideration, there is no proof that any mistake or error was made in the drawing up of the original deed, and therefore, the second conveyance which conveyed more to the wife than she was entitled under the first conveyance was to the extent of the excess voluntary, to wit, to the extent of the value of an estate in fee simple of the estate for life, and also to the extent of the improvements made upon the wife's estate subsequent to the alleged contract by the payment of the \$5,000.00 due on the mortgage. In other words, if it be admitted, which is not here admitted, that the husband and wife did make a valid agreement based upon a valuable consideration that the only effect that the agreement could have had by any intendment was to convey his then interest in the property, and that was at that time an equity of redemption encumbered by a mortgage of \$5,000.00, so that when he conveys in the second conveyance the fee simple, he conveys not only his equity of redemption but also conveys the value of the mortgage, to wit, the \$5,000.00, and is to that extent, under the cases cited, voluntary and therefore fraudulent, because the second conveyance was made at the time that the defendant, Henry C. Roydhouse, was indebted to the appellant, and had not sufficient funds with which to pay his debts. And it must, therefore, follow that if the conveyances were not to be set aside *in toto* that the bill should not

have been dismissed, but a decree entered giving the appellant a lien on the said farm to the extent of his claim after deducting for the defendant the value of her life estate. This is clearly in line with the authorities which have been cited.

It is our contention that the learned Vice-Chancellor erred in his conclusion that the condonation on the part of the wife of an act of adultery by her husband constitutes a good and valuable consideration sufficient to support a conveyance of real estate. The cases which were cited by the defendant do not support the principle.

In the case *Hobbs vs. Hull*, cited by the defendant, the estate which was sought to be subjected to the debts was a copy-hold estate which were not subject to debts nor to the levy of an execution, and that the Court could not have found that this property was subject to the husband's debts. Furthermore, it is a very old case which has never been followed in England, and which is not regarded as an authority in the English courts. It will be found that the real estate law of England destroyed the right of creditors in this matter, and the opinion dealt purely with the relation between husband and wife. This is the starting point of erroneous decisions collected by my adversary.

In *Adams vs. Adams* (New York case) there were no intervening creditors, but the action was purely on the part of the wife to collect the amount of a promissory note given by the husband to the father of the wife, and by him endorsed over to the wife, and consequently the essential element of protection to creditors did not arise in that case.

In *Jodrell vs. Jodrell*, the wife of the defendant had instituted suit for divorce, but she and the defendant, her husband, entered into a family arrange-

ment whereby he conveyed the property to a trustee for the benefit of his wife and children. The wife now files a bill to compel compliance with its terms. The defendant demurred. It was held that the agreement was a family arrangement. "This is not a matter of pecuniary consideration, but a family arrangement, a compromise of legitimate rights between the parties," said the Court, which shows that it was not decided upon the theory of forgiveness of the wife, but that the compromise of a legitimate right would act as a valuable consideration.

In *Pippin vs. Tapia*, the Court of Alabama on the authority of *Hobbs vs. Hull*, *Adams vs. Adams*, *Jodrell vs. Jodrell* and *Barbour vs. Barbour*, held that this was a valuable consideration. This case is directly against my contention, but it should be remembered that it is decided upon the theory of the case of the *Hobbs vs. Hull*, *Adams vs. Adams* and *Jodrell vs. Jodrell*, none of which have the essential elements present which are present in the case under consideration. The authority upon which the Alabama Court relied proves to be no authority at all, for each of the cases except the Barbour case was decided upon different ground and other elements entered into the decision of those cases, and the case *Barbour vs. Barbour* was subsequently reversed by the Court of Errors and Appeals. This Court reversed the Vice-Chancellor on his interpretation of the facts and the sufficiency of the facts upon his conclusions of law. No reference was made as to the legal position and conclusions of the Vice-Chancellor because it was not necessary for this Court to decide that question. It seems to me to be sufficient that this Court reversed the Barbour case, and it therefore is no authority in this State and the Barbour case was also based upon the authority of the cases which I have mentioned above.

A diligent search reveals no case in the United States or in England that sustains the rule of the Court in Pippin against Tapia, nor is there any now in England which I can find which follows Hobbs against Hull, and Adams against Adams and Jodrell against Jodrell, or differentiates from *Hobbs vs. Hull*, *Barbour vs. Barbour* and *Pippin vs. Tapia*.

It appears to me that the rule opens the door to fraud; that it is against equity and contrary to all of the established principles of court of equity the land over. And it is, therefore, contended that the learned Vice-Chancellor was wrong in his conclusion that the condonation was a sufficient consideration.

It is also contended that the learned Court below erred in holding that the defendants should be permitted to correct the alleged mistake by conveying the fee because the mistake was not mutual. The testimony of the defendant was to the effect that there was no mistake; that the defendants are guilty of laches; that equitable rights inuring to the complainant intervened between the making of the first and second deed, and that the defendant, Henry C. Roydhouse, had become involved, and that the Court will not under such conditions hear him say that a mistake was made eight years before there was any attempt to correct it.

3. We claim that the learned Court below erred in decreeing that the bill of the complainant be dismissed for the reason that under any view of the testimony the complainant was entitled to a decree; that he had an equitable lien on that part of the premises which had accrued to the defendant by reason of the defendant, Henry C. Roydhouse, having paid off a mortgage of \$5,000.00 subsequent to the date of the first conveyance to his wife.

It is, therefore, respectfully submitted that the decree of the Court of Chancery should be reversed.

DAVIS & DAVIS,
*Attorneys of and of Counsel
with the Appellant.*

NEW JERSEY
COURT OF ERRORS AND APPEALS.

Between

WILLIAM K. HAINES,
Complainant and
Appellant,

and

HENRY C. ROYDHOUSE
and ANN VIRGINIA
ROYDHOUSE,

Defendants and Appellees.

ON BILL, &C.

ON APPEAL.

BRIEF FOR APPELLEES.

The appellees contend that the conclusions of Vice-Chancellor Leaming as filed in the court below should be sustained.

I. THE CONTRACT SET FORTH IN THE SEVENTH PARAGRAPH OF THE ANSWER FILED BY THE DEFENDANTS—APPELLEES IS A VALID CONTRACT, BASED UPON A VALUABLE CONSIDERATION.

A. The contract is a valid contract. The learned Vice-Chancellor in his conclusions on the final hearing in this case in the court below, said:

“At final hearing it was stipulated that the averments of paragraphs 7, 8, 9 and 10 of the answer were true. These paragraphs of the answer disclose that the contract was in fact made and that a deed which was executed in supposed fulfillment of the contract by mistake conveyed only a life estate. The only infirmity in the original agreement which can therefore be now relied upon by complainant is its want of valuable consideration.”

B. The condonation on the part of a wife of an act of adultery by a husband and the resuming by the wife of marital relations with the husband is a good and valuable consideration to support a conveyance of real estate.

Barbour vs. Barbour, 49 *N. J. Equity* 429;
51 *N. J. Eq.* 267 (1893);

Pippin vs. Tapia, 42 *Southern* 545 (*Ala.*)
(1906);

Adams vs. Adams, 24 *Hun.* 401 (*N. Y.*)
(1881);

Hobbs vs. Hull, 1 *Cox. Chancery* 445 (1788);
Jodrell vs. Jodrell, 9 *Bevan Reports* 45
(1845).

In *Barbour vs. Barbour*, the wife left her husband upon her discovery of his marital infidelity and instituted proceedings for a divorce against him. Later the husband followed the wife and begged to be forgiven and promised to give her the house and lot upon which they had been living if she would forgive him and return to live with him. He also offered to give her everything he had if she would again resume marital relations with him. The wife returned to the husband, resumed the relation of his wife and

discontinued her proceedings for a divorce. Later the husband refused to convey the house and lot and the wife filed a bill for the specific performance of his contract with her.

Bird, V. C., said:

“The agreement is an agreement respecting the conveyance of land. The consideration was a valuable one. No consideration can be named of higher importance or of more solemn significance. It is difficult to measure. Dollars and cents afford no adequate conception of the true nature of the consideration moving upon the one side to the execution of this agreement. * * * * Looking at it from a pecuniary standpoint, she gave up all moneys that she would undoubtedly have been entitled to upon her application for alimony and counsel fees, had she pressed her petition against him because of his crime; and, more than this, she actually paid the costs and expenses incident to the suit which she had carried on to the time of making the agreement. She also dismissed her suit. The sums which she thus paid, and which she undoubtedly would have recovered (since he confesses the adultery) would soon have been very considerable. * * * *

“In the second place, it is not contrary to public policy, as understood in this State, notwithstanding it may be so regarded in others, to maintain the integrity of such contracts. * * * * But I take it for granted from what has been said by the Courts of this State respecting agreements between husband and wife, looking to their separation, that agreements providing for the peaceable continu-

ance of their marital relations would be most certainly sustained.”

In *Pippin vs. Tapia*, the wife had commenced proceedings for a divorce against her husband and had obtained an injunction against his disposing of his property. Upon a settlement of the proceedings a deed for certain real estate belonging to the husband was given to the wife, which was to be recorded if the husband drank again. The husband did drink again and the wife recorded the deed. A creditor of the husband attacked the deed as fraudulent and without valuable consideration.

The Court held:

“The deed was not voluntary. A voluntary deed is one founded merely and exclusively on a good, as distinguished from a valuable consideration, on motives of generosity and affection, rather than on a benefit received by the donor, or detriment, trouble or prejudice to the donee. If the donor receives a benefit, or the donee suffers detriment, as the consideration of the conveyance, the consideration is valuable, not good merely. However inadequate such consideration may be, however trivial the benefit to the one or the damage to the other, the conveyance is not voluntary.
* * * * *

“The settlement of the affairs between husband and wife such as existed between these parties was a consideration for the execution of said deed of inestimable value, particularly to the husband, and one to be encouraged and not condemned. * * * *

“The consideration for such a surrender on her part was a matter of legitimate dealing

between her and her husband if fairly and not fraudulently conducted by her, and if she demanded much for so doing, the creditors of the husband have no right to complain of her. It was the same as a purchase for cash on her part, entered into with no fraudulent intent so far as appears."

The above case cites the case of *Barbour vs. Barbour* as an authority.

The oldest case on the subject is the English case of *Hobbs vs. Hull*, cited *supra*. In that case the husband was indebted to the plaintiffs on a judgment and otherwise, a separation took place between the husband and wife and the former made a settlement of part of his real estate on his wife, for the maintenance and support of herself and the children of the marriage. A bill was filed to set aside that settlement as fraudulent against the creditors of the husband under the statute of 13 Elizabeth, he being indebted at the time of making the settlement, and the same being (as the plaintiffs insisted) voluntary.

The Master of Rolls said:

"However, I am now bound to decide the question whether the husband having behaved so ill as to entitle the wife to obtain a divorce in the Spiritual Court *a mensa et thoro* and to have a proper allowance from him, if the wife, instead of strictly prosecuting that right, meets the husband on the threshold, and says she will accept the maintenance proposed by him without litigation, whether this can be said to be such a voluntary act as to be fraudulent against creditors. Surely this settlement can never be said to be without consideration, a husband and wife may cer-

tainly, in peculiar situations, treat together effectually, if they treat upon fair and reasonable terms. When the wife in this case agrees to accept this settlement instead of resorting to the enforcing her rights in the Ecclesiastical Courts, surely she is giving up something for it. I am therefore very clearly of opinion, that this is not one of those agreements which the Statute of Elizabeth meant to prevent. I do not go upon any motives of compassion, when I decree as I am now about to do, nor upon the conduct of the parties, but upon the rights in law which I take to exist between them."

In *Adams vs. Adams*, the husband executed a note for the benefit of his wife in consideration of her discontinuing an action for absolute divorce commenced by her on the ground of adultery and returning to live with him as man and wife. Upon a suit on the note the defendant claimed that the note was without consideration and that the contract upon which it was based was against public policy. The Court held:

"There was ample consideration to support the agreement. *Prima facie* evidence of the defendant's adultery having been produced in the action for divorce, the plaintiff's discontinuance of that action without costs, and her condonation of the offense, furnished a good consideration. Presumptively, the plaintiff was entitled to a judgment of divorce, and was no longer under legal obligation to return to the defendant's house. It is to be assumed, therefore, that her agreement had the effect not only to relieve the defendant from the

impending decree which she might have taken against him, and all the adverse consequences that would have resulted from it, but also to restore to him the society and services of the plaintiff as his wife, the right to which he had forfeited by his misconduct. It is not necessary to look further for a consideration for the defendant's promise. It is difficult to see upon what ground the agreement can be held to be contrary to public policy. * * * * We think this ground of defense untenable."

In *Jodrell vs. Jodrell*, a deed of settlement made by a husband to his wife in consideration of her abandoning a suit for divorce commenced by her in the Ecclesiastical Court was sought to be set aside as void on grounds of public policy, without sufficient consideration and for lack of mutuality. The case of *Hobbs vs. Hull* was cited as authority for the principle that the abandonment by the wife of her suit for divorce was a sufficient consideration. Also *Bateman vs. The Countess of Ross*, 1 Dow. 235 and *Wilson vs. Wilson*, V. C. E. Feb. 11, 1845. The Master of the Rolls refused to declare the deed illegal.

It is to be noted that the case of *Barbour vs. Barbour* cited *supra* was appealed to this court and that in 51 N. J. Equity, 267, the decision of the lower Court was reversed. Such reversal however was based on the inadequacy of the evidence to sustain the contract upon which suit was brought and did not reverse the opinion of the lower Court that the action of the wife in forgiving her husband for his marital infidelity and returning to live with him constituted a valuable consideration upon which to base a contract for the conveyance of real estate.

In this respect attention is again called to the

finding of the learned Vice-Chancellor in the court below in which he states that the only infirmity of the original agreement which can be relied upon by the complainant is its want of valuable consideration.

In several of the cases above cited actual litigation was pending at the time of the settlement between the husband and wife, but while in this case no actual divorce proceedings had been instituted by the wife, there is no satisfactory theory upon which the wife's rights can be regarded as less substantial before a suit is instituted for the enforcement of her rights, which she admittedly possesses, than after such a suit has been actually brought.

II. THE ORIGINAL CONTRACT BEING A VALID ONE, BASED ON A VALUABLE CONSIDERATION THE FIRST DEED, WHICH WAS INTENDED TO CONVEY A FEE, ACCORDING TO THE TERMS OF THE CONTRACT, BUT WHICH BY MISTAKE CONVEYED ONLY A LIFE ESTATE, IN EQUITY SHOULD BE REGARDED AS CONVEYING A FEE, AND THE SECOND CONVEYANCE MERELY A CORRECTION OF AN ERROR IN THE FORMER CONVEYANCE.

A. It has been held that a subsequent conveyance between husband and wife made to avoid any question as to the validity of a former deed, although made without substantial consideration, will be sustained as against creditors of the husband where the first conveyance was based upon a sufficient consideration.

Fitzpatrick vs. Burrehill, 28 N. Y. Supplement 389 (1893);

Odell vs. Mylins, 53 *Howard's Practice* 250;
See also 24 *Century Digest* 268.

B. The discharge of the incumbrance between the date of the first deed and the second deed is immaterial in view of the fact that such discharge took place three years prior to the creation of the claims of any of the creditors.

A voluntary conveyance is not void as against subsequent creditors of the grantor unless it is shown that such conveyance was made with an actual fraudulent intent.

Minzeheimer vs. Doolittle, 39 *Atlantic Reporter* 386.

It follows therefore that the second conveyance, if made in good faith, was merely a correction of an error in the earlier conveyance and is not open to attack by the complainant-appellant who did not become a creditor of the husband until a considerable time after the original conveyance.

Any question as to the *bona fides* of the last conveyance resolves itself into one of fact. The learned Vice-Chancellor in the court below found that the evidence did not justify any conclusion that the last deed was not made in good faith to correct the error in the former deed. He saw and heard the witnesses, and as has been said by Chancellor Magee in *Riddle vs. Clabby*, 59 *N. J. Equity* 573, affirmed on rehearing, 46 *Atlantic Reporter* 782, "as the evidence was extremely contradictory and as the decision thereon must have depended upon the credit given to the witnesses, I feel unable to say that the Vice-Chancellor, who saw and heard the witnesses, was wrong in his conclusions."

The defendant, Ann Virginia Roydhouse, has not

been guilty of laches. She promptly recorded the original deed which she was told and believed gave her the farm property. In 1910, upon discovery that said deed did not give her what her husband had agreed to give her she immediately insisted upon the mistake being corrected. She in no way can be said to have slept on her rights. She believed that the original deed gave her what she was entitled to and immediately upon learning the contrary she had the error corrected and a new deed given her.

The paying off of the mortgage on the property by the husband occurred three years prior to the creation of the appellant's indebtedness. The burden was on the complainant to prove fraud in such payment. This the complainant could not do. The complainant is therefore not entitled to any lien on the farm by reason of such payment.

The testimony of all the witnesses produced by the defendants if read as a whole shows that there was clearly an agreement to give to the wife the farm at Mount Holly.

At the final hearing it was admitted by both husband and wife that a mistake had been made in the original deed and that the subsequent conveyance was made to correct said mistake.

An admitted mistake having been made, in the absence of the proof of any fraud, the correction of such mistake cannot be considered to be in fraud of creditors. The burden was on the complainant to prove such fraud and this he failed to do.

The appellees contend therefore that the decree of the learned Court below dismissing the bill of the complainant should be sustained.

RALPH N. KELLAM,
*Solicitor for and of Counsel
with Appellees.*

EXHIBITS

This Indenture, made the nineteenth day of **May** in the year of our Lord one thousand nine hundred and three (1903) **between Henry C. Roydhouse** of the City of Philadelphia and **Virginia** his wife, of the one part, and **James Moore** also of said City, of the other part, **witnesseth**, That the said **Henry C. Roydhouse** and **Virginia**, his wife, for and in consideration of the sum of **one dollar** lawful money of the United States of America, unto them well and truly paid by the said **James Moore** at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said **James Moore** his Heirs and Assigns, **all that certain farm, Etc.** 10

Together with all and singular Woods, Roads, Lanes, Passages, Ways, Waters, Water Courses, Rights, Liberties, Privileges, Hereditaments and Appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of them the said **Henry C. Roydhouse** and **Virginia** his wife in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof. 20

To Have and to Hold the said two tracts of Land above described, hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said **James Moore**, his Heirs and Assigns, to and for the only proper use and behoof of the said **James Moore**, his Heirs and Assigns forever. 30

And the said **Henry C. Roydhouse** and **Virginia** his wife for themselves, their Heirs, Executors and Administrators, Do by these presents, covenant, grant and agree, to and with the said **James Moore**, his Heirs and Assigns, that they the said **Henry C. Roydhouse** and **Virginia** his wife, their Heirs, all and singular the Hereditaments and Premises herein above described and granted, or mentioned and intended so to be, with the Appurtenances, unto the
 10 said **James Moore**, his Heirs and Assigns, against them the said **Henry C. Roydhouse** and **Virginia** his wife, 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 or under him, her, them or any of them, shall and will **Warrant** and forever **Defend**.

In Witness Whereof, the said Parties to these Presents have hereunto interchangeably set their hands and seals. Dated the day and year first above
 20 written.

HENRY C. ROYDHOUSE
 VIRGINIA ROYDHOUSE

Sealed and Delivered
 in the presence of us,
 W. A. G. Fox
 Clarence E. Fox

30 **Received**, the day of the date of the within or aforegoing Indenture, of the within-named **James Moore**, the sum of One Dollar being the full consideration money within mentioned.

Witnesses at signing

VIRGINIA ROYDHOUSE.

On the 19th day of May Anno Domini 1903, before me, A Notary Public for Commonwealth of Pennsylvania residing in the City of Philadelphia, personally appeared the above-named **Henry C. Roydhouse** and **Virginia**, his wife, and in due form of law acknowledged the within Indenture to be their act and deed, and desired the same might be recorded as such.

Witness my hand and Official seal the day and year aforesaid.

CLARENCE E. FOX.

10

This Indenture, Made the nineteenth day of May in the year of our Lord one thousand nine hundred and three (1903) **Between James Moore**, of the City of Philadelphia and **Isabella**, his wife of the one part, and **Henry C. Roydhouse** also of said City and **Virginia**, his wife of the other part, **Witnesseth**, That the said **James Moore** and **Isabella** his wife for and in consideration of the sum of One Dollar lawful money of the United States of America, unto them well and truly paid by the said **Henry C. Roydhouse** and **Virginia**, his wife at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said **Virginia Roydhouse** for and during the term of her natural life and after her death to the said **Henry C. Roydhouse**, his Heirs and Assigns, **All That Certain Farm, Etc.**

Together with all and singular the Woods, Roads, Lanes, Streets, Alleys, Passages, Ways, Waters, Water Courses, Rights, Liberties, Privileges, Here-

20

30

- ditaments and Appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the Reversions and Remainders, Rents, Issues and Profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever, of them the said **James Moore** and **Isabella**, his wife in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof, **To Have and to Hold** the said two tracts of land above described, Hereditaments
- 10 and Premises hereby granted, or mentioned and intended so to be, with the Appurtenances, unto the said **Virginia Roydhouse** for and during the term of her natural life and after her death to the said **Henry C. Roydhouse**, his Heirs and Assigns, to and for the only proper use and behoof of the said **Virginia Roydhouse** for and during the term of her natural life and after her death to the said **Henry C. Roydhouse**, his Heirs and Assigns forever.
- 20 **And** the said **James Moore** for himself, his Heirs, Executors and Administrators doth by these presents, covenant, grant, and agree to and with the said **Virginia Roydhouse** for life and the said **Henry C. Roydhouse**, his Heirs and Assigns, that he the said **James Moore**, his Heirs all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said **Virginia Roydhouse** for life, and **Henry C. Roydhouse**, his Heirs and Assigns, against him the said **James Moore**, his Heirs
- 30 and against all and every Person or Persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from, or under him, them, or any of them, shall and will, **Warrant** and forever **Defend**.

In Witness Whereof, the said **James Moore** and **Isabella**, his wife, have hereunto set their hands and seals. Dated the day and year first above written.

JAMES MOORE
ISABELLA MOORE

Sealed and Delivered
in the presence of us,
Geo. W. Fox
Clarence E. Fox

10

Received the day of the date of the above Indenture of the above-named **Henry C. Roydhouse** and **Virginia**, his wife, the sum of One Dollar being the full consideration money within mentioned.

JAMES MOORE

Witnesses at Signing:
Geo. W. Fox
Clarence E. Fox

20

This Indenture, made the twenty-seventh day of August in the year of our Lord one thousand nine hundred and ten, **Between Henry C. Roydhouse** and **Ann Virginia Roydhouse**, his wife, of Mount Holly, in the County of Burlington and State of New Jersey, parties of the first part, and **Carrie Virginia Gulick**, of the City of New York, in the State of New York, party of the second part: **Witnesseth**, That the said party of the first 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 party of the second part to the said party of the first part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold,

30

aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, her heirs and assigns, **All That Certain Farm, Etc.**

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 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 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, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. **And** the said parties of the first part, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that they the said parties of the first part, their heirs, all and singular the hereditaments and premises, herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, her heirs and assigns, against them the said parties of the first 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, through, from or under them, **Shall and Will** by **These Presents Warrant** and forever **Defend**.

In Witness Whereof, the said parties of the first part to these presents have hereunto set their hands and seals dated the day and year first above written.

H. C. ROYDHOUSE

ANN VIRGINIA ROYDHOUSE

Sealed, Signed and Delivered
in the presence of
V. Claude Palmer

10

This Indenture, made the twenty-seventh day of August in the year of our Lord one thousand nine hundred and ten **Between Carrie Virginia Gulick**, of the City of New York, in the State of New York, party of the first part, and **Ann Virginia Roydhouse** of Mount Holly, in the County of Burlington and State of New Jersey, party of the second part: **Witnesseth** That the said party of the first 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 party of the second part to the said party of the first part, at and before the en sealing and delivering of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said party of the second part, her heirs and assigns, **All That Certain Farm, Etc.**

20

30

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 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 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, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever. **And** the said **Carrie Virginia Gulick**, for herself, her heirs, executors and administrators, does by these presents covenant, grant and agree to and with the said party of the second part, her heirs and assigns, that she the said **Carrie Virginia Gulick**, her heirs, all and singular the hereditaments and premises, herein above described and granted, or mentioned and intended to be so, with the appurtenances, unto the said party of the second part, her heirs and assigns, against her the said **Carrie Virginia Gulick**, her heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, from, or under her, **Shall and Will by These Presents Warrant and forever Defend.**

In Witness Whereof, the said party of the first part to these presents has hereunto set her hand and seal dated the day and year first above written.

CARRIE VIRGINIA GULICK

Signed, Sealed and Delivered

in the presence of
V. Claude Palmer

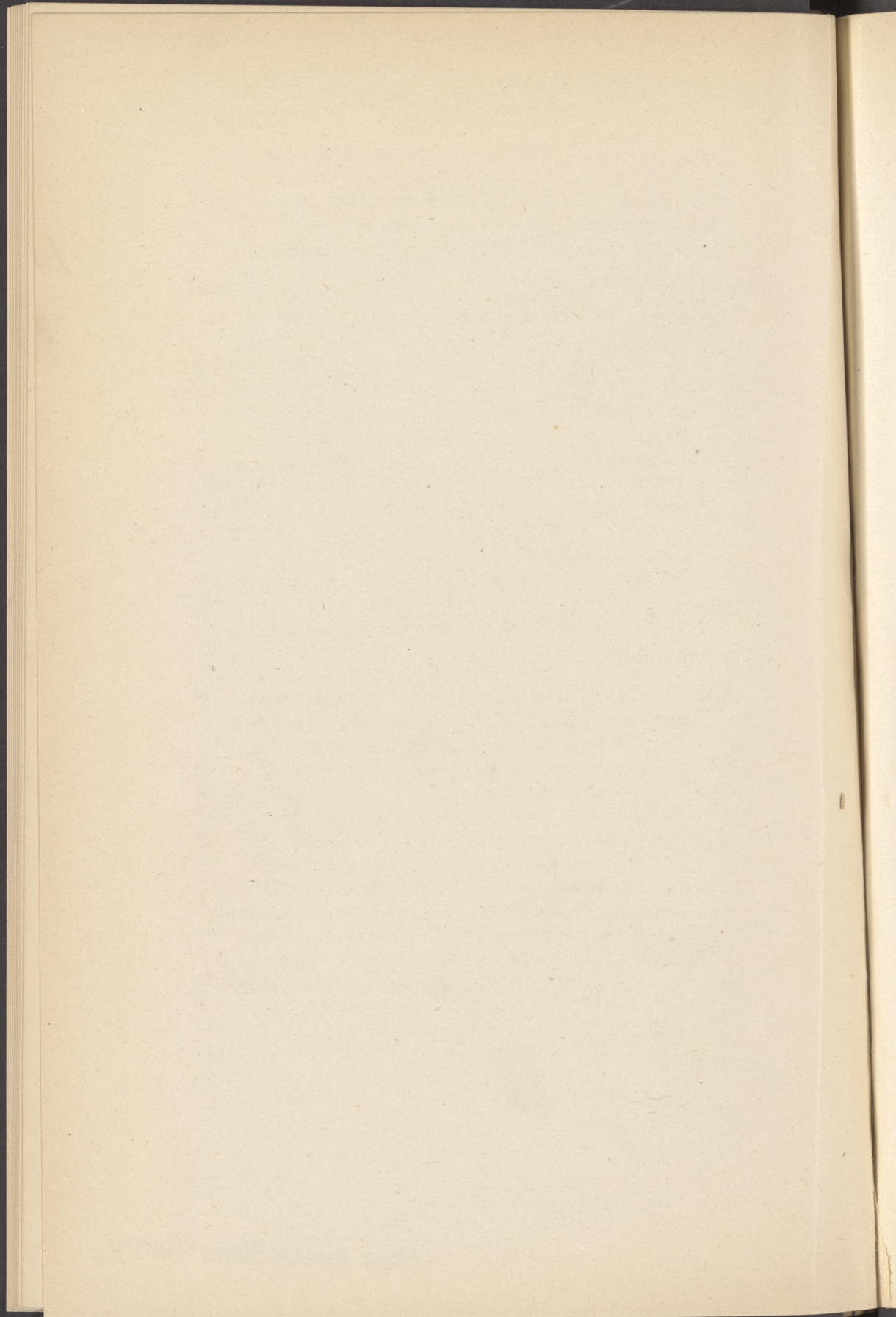
On March 25th, 1901, the receipt of \$5,500.00 is acknowledged on account of the said mortgage.

On March 30th, 1904, \$5,220.00 is acknowledged as paying balance in full of principal and interest.

The said mortgage was discharged of record August 29th, 1908, the original being produced by H. C. Roydhouse and cancelled by Watson T. Sooy.

I N D E X

	Page
Bill of Complaint.....	1
Answer.....	7
Replication.....	13
Conclusions.....	14
Final Decree Dismissal.....	17
Notice of Appeal.....	18
Petition of Appeal.....	19
Acknowledgment of Service.....	21
Answer to Petition of Appeal.....	22
Testimony:	
William K. Haines—Direct.....	24
Cross.....	25
Peter S. Schenck—Direct.....	25
Cross.....	27
George W. Roydhouse—Direct.....	29
Cross.....	30
Defendants' Testimony:	
Ann Virginia Roydhouse—Direct.....	33
Cross.....	42
Recalled—Cross.....	102
Henry C. Roydhouse—Direct.....	58
Cross.....	61
Re-direct.....	94
Re-cross.....	97
Emma S. Wetherill—Direct.....	121
Cross.....	123
Plaintiff's Rebuttal:	
Peter S. Schenck—Direct.....	124
Cross.....	126
William K. Haines—Direct.....	133
George W. Roydhouse—Direct.....	134
Offer of Deeds.....	136



BILL OF COMPLAINT.
IN CHANCERY OF NEW JERSEY.

BETWEEN

WILLIAM K. HAINES,
Complainant,

AND

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYD-
HOUSE,
Defendants.

ON BILL, ETC.
BILL.

10

20

*To his Honor Mahlon Pitney, Chancellor of the State of
New Jersey:*

Your orator, William K. Haines, of Vincentown, in the County of Burlington and State of New Jersey, and on behalf of all others similarly situated, who may come in and contribute to the expenses of this cause, humbly complaining shows unto your Honor:

1. That on the twenty-third day of December, A. D. 1911, judgment was entered in the Circuit Court of the County of Burlington in favor of William K. Haines, your orator, and against the defendant, Henry C. Roydhouse, for the sum of two thousand and eighty-four and ninety-nine one hundredths (\$2084.99) dollars, in an action upon contract, and on the same day execution duly

30

issued upon said judgment and a levy thereon was made upon the same date, upon the following described real estate as the property of Henry C. Roydhouse, which said levy still holds the said property:

- “All that certain farm, plantation and tract of land situate lying and being in the Townships of Northampton and Westhampton in the County of Burlington, State of New Jersey, beginning at a stake in road running in front of premises of the late Lewis R. Ashhurst to Gaskill’s
- 10 lane, also corner to land of Clayton Zelly in Daniel Bodine’s line from which it runs (1) along said road and Daniel Bodine’s line north sixteen degrees and forty minutes east twenty chains and eight links to a stone in Gaskill’s lane, corner to Daniel Bodine’s land in Joseph Stackhouse’s line, thence (2) along the middle of said Gaskill’s lane north eighty-three degrees and ten minutes west eighty-four and a half links to a stone in said lane, corner to Joseph Stackhouse’s line, thence (3) by said Stackhouse’s line north sixteen and three-quarters degrees
- 20 east seventeen chains and twenty-three links to a stone corner to Solomon Gaskill’s land, thence (4) along said Gaskill’s land south seventy-one degrees east four chains and thirty-two links to a stone corner to said Gaskill’s land in Daniel Bodine’s line, thence (5) along said Bodine’s land north thirteen degrees and twelve minutes east eleven chains and fifty-nine links to a stone corner to land of William Kirby in said Bodine’s line, thence (6) along said Kirby’s line north fifty-five degrees and fifty-two minutes west nineteen chains and ninety links to a stone
- 30 corner to said Kirby’s land, thence (7) crossing the road leading from Mount Holly to Jacksonville north forty-eight degrees and twelve minutes west six chains and thirty-three links to a stone corner to Samuel Parker’s land in Zachariah Reeve’s line, thence along said Parker’s line south twenty-three degrees west seventeen chains and sixty-seven links to a stone corner to said Parker’s land,

thence (9) along Parker's line south forty-seven degrees east seven chains and eight links to a stone corner to said Parker's land, in the middle of the aforesaid Jacksonville road, thence (10) along the middle of said road crossing Gaskill's lane south twenty degrees and fifty-seven minutes west thirty-one chains and thirteen links to a stone in the middle of the said road, corner to land of Clayton Zellely, also corner to land of Dr. Z. Read, thence (11) along said Zellely's line south fifty-two degrees and twenty minutes east seventeen chains and sixty-one links to a stone corner to said Zellely's land, thence (12) by said Zellely's line south seventy-three degrees east five chains and fifteen links to the place of beginning, containing one hundred and thirteen acres and fifty one-hundredths of an acre of land, more or less. 10

"And also all that certain lot, tract or parcel of land situate in the said Township of Westhampton, beginning at a stone in the middle of said road from Mount Holly to Jacksonville, which stone is the (10th) corner of the above described tract of land, from which it runs (1) along the middle of said road south twenty degrees and fifty-seven minutes west, thirty links to a stone in the middle of said road, thence (2) north forty-nine degrees and fifty minutes west one chain and fifty-five links to a stone corner to Samuel E. Roger's land, also corner to school house lot, thence (3) still along the same course four chains to a stone, corner to Samuel E. Roger's land, thence (4) along said Roger's land north forty-five degrees west one chain and fifty links to a stake, corner to said Roger's line, thence (5) along said Roger's line north seventy-nine and a quarter degrees west one chain and ninety-five links to a stone corner to said Roger's land, thence still by said Roger's line (6) north sixty-four degrees and twenty minutes west six chains and thirty links to a stake, standing on the south side of a ditch opposite where another ditch empties into the same, and in the line 20 30

of said Roger's land, and corner to Joseph Sooy's land, thence (7) running along a ditch north twenty-eight degrees east six chains to a stake, corner to said Sooy's land, thence (8) along said ditch north twenty-six degrees east one chain and ninety links to a stake corner to said Sooy's land, thence (9) along said ditch north twenty-nine degrees and thirty-four minutes east four chains and thirty links to a stake corner to said Sooy's land, thence (10) along said ditch north twenty-four degrees and nineteen minutes east two chains and fifty links to a stake corner to said Sooy's land, thence (11) along said ditch north twenty-seven degrees and forty minutes east five chains and sixty-eight links to a stone in the easterly side of said ditch in said Sooy's land and corner to Zachariah Reeve's land, thence (12) along said Reeve's line south forty-nine degrees and five minutes east six chains and seventy-one links to a stake in said Reeve's line and corner to the above described tract, thence (13) by above described tract, south twenty-two degrees and thirty-five minutes west seventeen chains and seventy-seven links to a stake, corner to said last mentioned land, thence (14) along the said south forty-eight degrees east seven chains and six links to the place of beginning, containing fourteen and thirty-seven one hundredths of an acre of land, more or less."

2. Your orator further shows that he is unable to realize his aforesaid debt by means of the execution and levy aforesaid. On August 27th, A. D. 1910, Henry C. Roydhouse and Ann Virginia Roydhouse, his wife, made and executed a deed of said above described premises in fee simple to Carrie Virginia Gulick, in which deed it was set forth that the consideration therefor was the sum of one (\$1.00) dollar. This deed was recorded on August 31st, A. D. 1910, in the office of the Clerk of Burlington County in Book 462 of Deeds, folio 420, etc., to which

reference is hereby made. On August 27th, A. D. 1910, Carrie Virginia Gulick reconveyed the above described premises to Ann Virginia Roydhouse by deed of that date recorded in the office of the Clerk of Burlington County in Book 462 of Deeds, folio 423, etc., to which reference is hereby made, and in said deed it was set forth that the consideration therefor was the sum of one (\$1.00) dollar.

And your orator further shows that Ann Virginia Roydhouse, to whom Carrie Virginia Gulick conveyed the aforesaid premises, was and is the wife of Henry C. Roydhouse, both of whom are defendants in this suit, and that as a matter of fact no consideration whatsoever was paid for the conveyance of the aforesaid premises, but that the said conveyance from Henry C. Roydhouse and Ann Virginia Roydhouse, his wife, to Carrie Virginia Gulick was absolutely without consideration, and the conveyance of the aforesaid premises from Carrie Virginia Gulick to Ann Virginia Roydhouse was likewise without any consideration whatsoever, and both conveyances aforesaid were a part of a fraudulent scheme entered into by Henry C. Roydhouse and Ann Virginia Roydhouse, defendants in this suit, and Carrie Virginia Gulick for the purpose of concealing the assets of the said Henry C. Roydhouse, and for the further purpose of preventing creditors of the said Henry C. Roydhouse from realizing the payment of their just debts by way of execution or otherwise.

And your complainant further avers that the conveyances aforesaid operate as a special fraud upon your orator, by reason of the fact that at the time of the conveyances the said Henry C. Roydhouse was indebted to your orator in the sum of two thousand (\$2000) dollars and more.

And your orator further avers that the said premises are still the property of the said Henry C. Roydhouse, and are held by the said Ann Virginia Roydhouse for the

said Henry C. Roydhouse as a part of the said fraudulent scheme aforesaid.

3. And your orator further avers that the said Henry C. Roydhouse has no other assets within the State of New Jersey and within the jurisdiction of this court, and that he is by reason of these facts utterly without remedy in the courts of law and can be relieved in this court alone.

10 To the end, therefore, that the said defendants may true and perfect answer make, but without oath, to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto the matters and things herein complained of, and that the said defendants and each of them may be restrained from in anywise conveying or encumbering the said premises, or executing and delivering any paper in the nature of a conveyance.

20 And to the end, that the conveyance from Henry C. Roydhouse and Ann Virginia Roydhouse to Carrie Virginia Gulick, as above mentioned, may be declared to be fraudulent and without consideration, and that the conveyance aforesaid from Carrie Virginia Gulick to Ann Virginia Roydhouse may be declared to have been without consideration and void, and that it may be decreed by this Honorable Court that Ann Virginia Roydhouse holds the said premises as trustee for the said Henry C. Roydhouse, and that it may further be decreed that your orator's judgment and levy are a lien upon the said premises and that the amount of the said debt may be raised and paid out of the said premises, and for such other relief as to your Honor may seem meet;

30 May it please your Honor the premises considered to grant unto your orator the State's writ of subpœna, issuing out of and under the seal of this Honorable Court

to be directed to the said defendants, Henry C. Roydhouse and Ann Virginia Roydhouse, commanding them and each of them, by a certain day, and under a certain penalty therein to be expressed to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orator will ever pray, etc.

10

DAVIS & DAVIS,
*Solicitors of and of Counsel
with the Complainant.*

ANSWER.

IN CHANCERY OF NEW JERSEY.

20

BETWEEN
WILLIAM K. HAINES,
Complainant,

AND

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYDHOUSE,
Defendants.

ON BILL, ETC.
ANSWER.

30

The joint and several answer of Henry C. Roydhouse and Ann Virginia Roydhouse, his wife, defendants to the bill of complaint of William K. Haines, complainant.

These defendants respectively answering say:

1. As to the allegations in paragraph 1 of said bill these defendants neither admit or deny the facts as therein stated but leave the complainant to make such proof therein as he may be able.

2. They admit the complainant is unable to realize his debt by means of an execution and levy against the property described in the first paragraph of his bill.

They admit that on August 27, A. D. 1910, Henry C. Roydhouse and Ann Virginia Roydhouse, his wife, made and executed a deed of the premises described in the complainant's bill in fee simple to Carrie Virginia Gulick in which deed the consideration was set forth as one dollar. They admit said deed was recorded August 31st, A. D. 1910, in the office of the Clerk of Burlington County in Book 462 of Deeds, folio 420, etc. They further admit that on August 27th, 1910, Carrie Virginia Gulick reconveyed said premises to Ann Virginia Roydhouse, one of the defendants, by deed of that date recorded in the office aforesaid in Book 462 of Deeds, folio 424, the consideration set forth in said deed being one dollar. They admit that Ann Virginia Roydhouse is the wife of Henry C. Roydhouse, both of whom are defendants in this suit.

3. The said defendants, however, deny that no consideration whatsoever was paid for the conveyance of the aforesaid premises. They aver that said conveyances were for a good and valuable consideration, being made for the express purpose of fulfilling a previous valid agreement between the said Henry C. Roydhouse and the said Ann Virginia Roydhouse, his wife, such agreement being based on a sufficient valuable consideration as hereinafter set forth.

4. They deny further that said conveyances were a

part of a fraudulent scheme entered into by Henry C. Roydhouse and Ann Virginia Roydhouse, defendants, and Carrie Virginia Gulick for the purpose of concealing the assets of said Henry C. Roydhouse, and for the further purpose of preventing creditors of the said Henry C. Roydhouse from realizing the payment of their just debts by way of execution or otherwise, and deny also that the said conveyances operate as a special fraud upon the complainant, even though the said Henry C. Roydhouse was indebted to the complainant in the sum of two thousand dollars or more at the time of said conveyances. The said defendants again aver that said conveyances were made in fulfilment of a previous valid agreement between the said Henry C. Roydhouse and the said Ann Virginia Roydhouse as hereinafter set forth. 10

5. The defendants deny that said premises are the property of the said Henry C. Roydhouse and further deny that said premises are held by the said Ann Virginia Roydhouse for the said Henry C. Roydhouse and further deny that said premises are held by the said Ann Virginia Roydhouse for the said Henry C. Roydhouse as a part of any fraudulent scheme. 20

6. The defendants admit that the said Henry C. Roydhouse has no assets within the State of New Jersey and within the jurisdiction of this court.

7. The defendants aver that on or about the seventeenth day of May, 1902, the said Ann Virginia Roydhouse having been informed that her husband, the said Henry C. Roydhouse, had been guilty of marital infidelity, withdrew from the apartments of her said husband at Hotel Lorraine in the City of Philadelphia and went to live with her sister at the latter's home at 2331 College Avenue in the City of Philadelphia, that later the 30

said Henry C. Roydhouse came to see said Ann Virginia Roydhouse at her said sister's home and persuaded her, the said Ann Virginia Roydhouse, his wife, to forgive his past marital infidelity and return to live with him in consideration of his promise of future conjugal fidelity and the conveyance to her the said Ann Virginia Roydhouse of the farm located near Mount Holly, in the State of New Jersey, where they had lived together, said farm being the premises described in the complainant's bill.

10

8. In consummation of said agreement the said Henry C. Roydhouse and Virginia Roydhouse, his wife, on May 19th, 1903, made and executed a deed of the premises described in the complainant's bill to James Moore, of the City of Philadelphia, in fee simple, the consideration being stated in the deed as one dollar. This deed was recorded June 3rd, 1903, in the office of the Clerk of Burlington County in Book 374 of Deeds, folio 454, etc., to which reference is hereby made. On May 19, 1903, the said James Moore and Isabella, his wife, reconveyed the said premises to Henry C. Roydhouse and Virginia Roydhouse, his wife, by deed of that date, the consideration in said deed being one dollar. Said deed was recorded on June 5, 1903, in the office of the Clerk of Burlington County in Book 374 of Deeds, folio 486, etc., to which reference is hereby made.

20

9. The defendant, Ann Virginia Roydhouse, either by counsel or otherwise, was not represented either during the negotiations between her and her husband or at the time of conveyances made in May, 1903. Said deeds were prepared by a conveyancer doing business in the City of Philadelphia, who was employed by defendant's husband, Henry C. Roydhouse, to draw the necessary papers.

30

10. Acting on the promise and agreement of the said

Henry C. Roydhouse to convey said farm to her in consideration of her returning and living with him and forgiving his conjugal infidelity the said Ann Virginia Roydhouse accepted said deed as fulfilling the terms of said agreement believing that the legal effect of said deed was to vest in her the fee of said farm. Said deed from James Moore and wife, however, gave to the said Virginia Roydhouse only a life estate in said premises as will appear from an examination of the same.

10

11. At the time of said conveyance the defendant, Henry C. Roydhouse, was possessed of other real estate in the City of Philadelphia to the value of five thousand dollars and was moreover one of three partners in the contracting firm of Roydhouse, Arey Company. He had no debts which he could not readily pay when called upon, and was not at that time indebted to the complainant in any sum or manner.

12. The said Ann Virginia Roydhouse did forgive the marital infidelity of her said husband and returned to live with him and has continued to live with him as his wife at said farm in New Jersey and elsewhere. 20

13. In the month of August, 1910, the defendant, Ann Virginia Roydhouse, upon the suggestion of a business associate and friends, decided to consult for the first time with an attorney as to the validity of the deed to her of said farm premises.

Accordingly she conferred with Claude V. Palmer, Esq., of Mount Holly, New Jersey, and then for the first time discovered that the deed from James Moore and wife to her, the said Virginia Roydhouse, gave her only a life estate in said premises. 30

14. Upon the discovery of this fact the said Ann

Virginia Roydhouse immediately insisted through her attorney that the defendant, Henry C. Roydhouse at once correct the mistake made in the deed from James Moore and wife and fulfil on his part the terms of the agreement entered into between her and the said Henry C. Roydhouse in May, 1903, and which she, the said Ann Virginia Roydhouse, had fulfilled on her part at that time and since by forgiving her said husband's marital infidelity and returning and living with him.

10

15. The said Henry C. Roydhouse finally offered to correct the mistake made in the previous deed of May 19, 1903, and accordingly the deeds of August 27th, 1910, were prepared and executed by the parties for the purpose of fulfilling on the part of the said Henry C. Roydhouse the agreement between him and his wife, the said Ann Virginia Roydhouse, entered into in May, 1903, and of which the said Ann Virginia Roydhouse had already fulfilled her part as above set forth.

20

16. At the time of the conveyances in August, 1910, the defendant, Ann Virginia Roydhouse, had no knowledge of the actual financial condition of her husband, Henry C. Roydhouse. Moreover, the said Henry C. Roydhouse assured his wife's attorney that he, the said Henry C. Roydhouse, was perfectly able to take care of and pay any and all debts which he might then owe or which might come due in the future.

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

RALPH N. KELLAM,
Solicitor for and of Counsel
with Defendants.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

BETWEEN

WILLIAM K. HAINES,
Complainant,

AND

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYD-
HOUSE, his wife,
Defendants.

ON BILL, ETC.
REPLICATION.

10

The complainant joins issue on the answer of the de-
fendants.

DAVIS & DAVIS,
Solicitors of the Complainant.

20

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

10	BETWEEN WILLIAM K. HAINES, <i>Complainant,</i> AND HENRY C. ROYDHOUSE, et al., <i>Defendants.</i>	} FINAL HEARING ON CREDITORS' BILL, ETC. CONCLUSIONS.
----	---	---

20

DAVIS & DAVIS, for Complainant.
 RALPH N. KELLAM, for Defendants.

LEAMING, V. C.

As I view this case the primary question is whether a contract between a husband and wife of the nature of the contract set forth in the sixth paragraph of the answer is a valid contract based upon a valuable consideration.

30 If such a contract is to be regarded as supported by a valuable consideration, then the deed made in August, 1910, to correct an error in the deed previously executed in an attempted fulfilment of that contract is supported by that consideration, otherwise it must be regarded as a voluntary conveyance and void as to then existing creditors.

The prior deed cannot be challenged, as no creditors then existed. But if the prior deed is to be regarded as a gift it can only stand as against subsequent creditors to the extent that it became an executed gift. The subsequent conveyance must, therefore, be regarded as a gift and as void as to then existing creditors, unless supported by a valuable consideration.

But regarding the original contract as supported by a valuable consideration the deed which was intended to convey a fee in fulfilment of that contract and which by mistake conveyed only a life estate will in equity be regarded as conveying a fee and the subsequent deed will, in such case, be treated as merely a correction of the mistake in the former deed. In that view the discharge of the incumbrance on the property between the dates of the two deeds becomes immaterial, for no creditors then existed to render it improper for the husband to make such a gift to his wife. 10

A motion against the answer was heretofore heard by me in this suit. At that time I filed the following conclusions: 20

"I am unable to regard the question presented by the present motion as an open question in this court, for in *Barbour vs. Barbour*, 49 *N. J. Eq.* (4 *Dick.*) 429, a contract similiar to the one stated in the answer was sustained as supported by a valuable consideration. The decree in that case was reversed by the Court of Errors and Appeals 51 *N. J. Eq.* 267), but the reversal was by reason of inadequacy of the evidence to sustain the contract. 30

"In the several cases cited in which contracts of this nature have been sustained and declared to be supported by a valuable consideration by reason of the surrender of valuable pecuniary rights upon the part of the wife litigation appears to have ex-

isted between the parties and the contracts have accordingly included the element of settlement of a pending suit. But I am unable to discern any satisfactory theory upon which the wife's rights should be regarded as less substantial before a suit is instituted in her behalf for the enforcement of rights which she admittedly possesses than after such a suit shall have been actually brought.

10

"The second conveyance, if made in good faith, was merely a correction of an error in the earlier conveyance. If the wife was entitled as of right to a conveyance in fee at the time the earlier conveyance was made she was obviously entitled at the time the later conveyance was made to a correction of the error.

"I will advise an order denying the motion."

I am unable to modify the views then expressed by me.

20 At final hearing it was stipulated that the averments of paragraphs 7, 8, 9 and 10 of the answer were true. These paragraphs of the answer disclose that the contract was in fact made and that the deed which was executed in supposed fulfilment of the contract by mistake conveyed only a life estate. The only infirmity in the original agreement which can therefore be now relied upon by complainant is its want of valuable consideration. That question, as already stated, I cannot consider an open question in this court.

30 Nor do I think that the evidence justifies the conclusion that the last deed was not made in good faith to correct the error in the former deed.

I will advise a decree denying the relief sought by complainant.

FINAL DECREE DISMISSAL.

(Filed Feb. 27, 1913.)

IN CHANCERY OF NEW JERSEY.

BETWEEN

WILLIAM K. HAINES,
Complainant,

AND

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYD-
HOUSE,
Defendants.

ON BILL, ETC.
DECREE.

10

20

This cause coming on to be heard in the presence of Davis and Davis, Esquires, of counsel with William K. Haines, complainant, and Ralph N. Kellam, of counsel with Henry C. Roydhouse and Ann Virginia Roydhouse, defendants, and the pleadings having been read, and proofs having been submitted, and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint,

30

It is, on this twenty-fourth day of February, one thousand nine hundred and thirteen, ordered, adjudged and

decreed, that the complainant's bill be and the same is hereby dismissed with costs to the defendants.

E. R. WALKER,
C.

Respectfully advised.

E. B. LEAMING,
V. C.

A true copy.

SAML. K. ROBBINS,
Clerk.

10

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

20

BETWEEN

WILLIAM K. HAINES,
Complainant,

AND

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYD-
HOUSE, his wife,
Defendants.

NOTICE OF APPEAL.

30

The complainant hereby appeals from the final decree made in this court, in the above-stated cause, as from the

whole and every part of the final decree to the Court of Errors and Appeals in the last resort in all causes.

DAVIS & DAVIS,
*Solicitors and of Counsel
with the Complainant.*

Dated

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

JAMES MERCER DAVIS, 10
Of Counsel with the Complainant.

PETITION OF APPEAL.

NEW JERSEY
COURT OF ERRORS AND APPEALS.

WILLIAM K. HAINES,
Appellant,

vs.

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYD-
HOUSE, his wife,
Respondents.

20

PETITION OF APPEAL.

30

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

The petition of William K. Haines, the appellant in the above-stated cause, respectfully shows that your peti-

tioner find himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-seventh day of February in the year of our Lord one thousand nine hundred and thirteen, wherein the said William K. Haines was complainant and the said Henry C. Roydhouse and Ann Virginia Roydhouse were defendants, in this respect, to wit:

10 1. That the learned Court adjudged that the condonation on the part of a wife of an act of adultery by a husband, and by the wife resuming marital relations with the husband, was a good and valuable consideration to support the conveyance of real estate.

20 2. That the learned Court decreed that the defendant, Ann Virginia Roydhouse, having forgiven the alleged adultery of her husband, the defendant, Henry C. Roydhouse, and the conveyance by Henry C. Roydhouse of a life estate in said property by an alleged mistake instead of having conveyed the fee; that subsequently upon an alleged discovery of the mistake that the defendants should be permitted to correct the alleged mistake by conveying the fee, although the defendant, Henry C. Roydhouse, had incurred extensive obligations in the meantime and had become insolvent.

3. That the learned Court below decreed that the bill of the petitioner should be dismissed.

30 Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

DAVIS & DAVIS,
Solicitors of Appellant.

Of Counsel with the Appellant.

ACKNOWLEDGMENT OF SERVICE.

NEW JERSEY
COURT OF ERRORS AND APPEALS.

BETWEEN

WILLIAM K. HAINES,
Appellant,

vs.

HENRY C. ROYDHOUSE and
ANN VIRGINIA ROYD-
HOUSE, his wife,
Defendants.

10

ON APPEAL.

Service of a copy of appeal filed in the Court of Chan-
cery, and a copy of the petition filed in the Court of Er-
rors is hereby acknowledged this first day of October,
in the year of our Lord one thousand nine hundred and
thirteen, as of time.

20

Deposit to secure costs is hereby waived.

RALPH N. KELLAM,
Solicitor and of Counsel
for the Defendants.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY
COURT OF ERRORS AND APPEALS.

10	BETWEEN WILLIAM K. HAINES, <i>Appellant,</i> vs. HENRY C. ROYDHOUSE and ANN VIRGINIA ROYD- HOUSE, his wife, <i>Defendants.</i>	} ON APPEAL. ANSWER TO PETITION OF APPEAL.
----	---	---

20 The answer of the defendants to the petition of appeal of the appellant.

The defendants admit it to be true that a certain final decree was on the twenty-seventh day of February, A. D. 1913, made and entered in the Court of Chancery, as in the petition of appeal is stated; but as to the substance and form thereof these defendants pray to refer thereto when the same shall be produced.

30 And these defendants are advised and believe that said decree, as to the matters complained of by the appellant in his petition of appeal, is agreeable to law and equity, and they pray that the same may be affirmed, in the particulars aforesaid, with costs to be adjudged to these defendants.

RALPH N. KELLAM,
Solicitor for and of Counsel
with Defendants.

IN CHANCERY OF NEW JERSEY.

BETWEEN WILLIAM K. HAINES, <i>Complainant,</i> AND HENRY C. ROYDHOUSE and ANN VIRGINIA ROYD- HOUSE, <i>Defendants.</i>	}	ON BILL, ETC. FINAL HEARING.	10
---	---	---------------------------------	----

Before his HONOR E. B. LEAMING, Vice-Chancellor, at the Chancery Chambers, Camden, New Jersey, on Tuesday, January 21st, 1913.

20

APPEARANCES:

MESSRS. DAVIS & DAVIS, for the Complainant.
 RALPH N. KELLAM, ESQ., for Defendants.

Mr. Davis: I offer first, if your Honor please, a certified copy of a judgment by default in the Burlington County Circuit Court in an action between William K. Haines and Henry C. Roydhouse, judgment entered the 23d day of December, 1911. The amount of the judgment is \$2,084.99. 80

(Said paper marked Exhibit C1.)

Mr. Davis: I offer in evidence certified copy of judgment by default in the Burlington County Circuit Court, Peter S. Schenck, plaintiff, and Henry C. Roydhouse, defendant, for \$3,403.87, entered the 3d day of July, 1912.

(Said paper marked Exhibit C2.)

10

WILLIAM K. HAINES, the complainant, being duly sworn according to law, on his oath says:

By Mr. Davis:

Q. Mr. Haines, you are the complainant in this case?

A. Yes, sir.

Q. Did Mr. Henry C. Roydhouse owe you money?

20

A. Yes.

Q. When did the debt originally arise?

A. When did he get the money first, do you mean?

Q. Yes.

A. Nineteen hundred and seven, July.

Q. What date in July?

A. First.

Q. Has anything been paid on account of your money?

A. The interest has been paid up to —

30

By the Vice-Chancellor:

Q. Well, nothing on account of the principal?

A. Nothing on account of the principal, no; paid up to July 1st, 1911, the interest.

Cross-examination.

By Mr. Kellam:

Q. Mr. Haines, was that debt evidenced by a note?

A. It was (handing paper to counsel).

Q. That note was for one year, was it not, Mr. Haines?

A. For one year; yes, sir.

10

Q. Was any demand ever made for principal at the end of one year?

Mr. Davis: That is objected to, if your Honor please.

The Vice-Chancellor: I think that is immaterial.

Mr. Kellam: Well, I will withdraw the question.

20

By Mr. Davis:

Q. The note that you have in your hand, Mr. Haines, is or is not a renewal of a former note?

A. It is a renewal.

PETER S. SCHENCK, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says: 30

By Mr. Davis:

Q. Mr. Schenck, does Henry C. Roydhouse owe you money?

A. Yes, sir.

Q. Can you tell the date of the note or other evidence of indebtedness?

A. I can't tell you the exact date, I haven't had the note for so long I don't remember just the exact date; you have got the note.

10 Q. I show you paper dated Philadelphia, December 1st, 1909, "Received from Peter S. Schenck \$3,000 (three thousand) for a term of five years, which I agree to pay six per cent. interest on the same," and ask you if that is the memorandum of this indebtedness?

A. Yes, sir.

The Vice-Chancellor: December what?

Mr. Davis: December 1st, 1909.

20 The Vice-Chancellor: This is the debt on which the other judgment was obtained?

Mr. Davis: Yes, sir.

Q. Was the money loaned on the date that the paper bears?

A. No, sir.

Q. When?

30 A. Now, he gave me this paper about—I imagine about a week after I loaned him the money, I imagine, this calls for the same date that I gave him the money, this paper was given to me about a week after I gave him the money.

Q. In other words, the money was loaned on the date which this paper bears?

A. Yes, sir, but I didn't get the note that date.

Cross-examination.

By Mr. Kellam:

Q. Mr. Schenck, have you obtained a judgment on that paper?

A. Mr. Davis has, I guess.

Q. Doesn't that paper provide that it isn't to be due for five years?

10

Mr. Davis: That is objected to, if your Honor please; it is immaterial.

Mr. Kellam: I think, your Honor, it is rather relevant.

The Vice-Chancellor: I think not; I cannot go back of the judgment. If there was a judgment procured for this debt I have got to assume that the law court did its duty. Any number of questions may have arisen there and been disposed of. Have you proof of your execution? 20

Mr. Davis: I have, if your Honor please, the original execution in the case of William K. Haines against Henry C. Roydhouse. I would like to have that spread on the record. The sheriff requires this taken back to-night.

The Vice-Chancellor: Very well; let it be offered. 30
What does it show?

Mr. Davis: It shows that an execution issuing out of the Burlington Circuit Court in an action William K. Haines against Henry C. Roydhouse, on contract, returnable December term, 1911, damages ——

The Vice-Chancellor: What is the date of the execution?

Mr. Davis: It was delivered to the sheriff on 12-23-11 at 12.30 P. M.; the execution is dated December 23d, 1911. That is offered in evidence.

The Vice-Chancellor: Does it show a levy?

10 Mr. Davis: It shows a levy, sir, on the premises described in the bill.

The Vice-Chancellor: What is the date of the levy?

Mr. Davis: It is still in his hands, sir, no return made on it, merely a levy.

(Said paper marked Exhibit C3.)

20 Mr. Davis: I call for a mortgage from Roydhouse to Roydhouse, Mr. Kellam.

(Paper produced and handed to counsel.)

Mr. Davis: Complainant offers in evidence a mortgage dated the 26th day of March, 1894, made by Henry C. Roydhouse and Ann Virginia, his wife, to George W. Roydhouse, Philadelphia, bearing a cancellation or discharge dated August 29th, 1908.

30 Mr. Kellam: I would like Mr. Davis to offer in evidence also the fact of the receipts on the back.

Mr. Davis: It all goes in with it.

The Vice-Chancellor: Yes; what is the receipt that you call attention to?

Mr. Davis: There are two receipts, if your Honor please, endorsed on the back, one under date of March 25th, 1901, acknowledging receipt of \$5,500, and another one dated 3-30-04, acknowledging the receipt of \$5,220.

(Said paper marked Exhibit C4.)

The Vice-Chancellor: Is this a mortgage on the property in question?

Mr. Davis: Yes, sir.

10

The Vice-Chancellor: And it shows that a mortgage that existed on this property was cancelled July 29th, 1908?

Mr. Davis: Yes, sir.

The Vice-Chancellor: A mortgage under date of March 25th, 1894?

Mr. Davis: Yes, sir.

20

The Vice-Chancellor: And the receipts endorsed on the mortgage show the two payments named?

Mr. Davis: Yes, sir.

The Vice-Chancellor: What is the amount of the mortgage?

Mr. Davis: Ten thousand five hundred dollars.

GEORGE W. ROYDHOUSE, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says: **30**

By Mr. Davis:

Q. Mr. Roydhouse, you know Henry C. Roydhouse?

A. I do.

Q. Was he in business with you in the years 1901 and 1904?

A. He was with me at that time, yes.

Q. I show you mortgage marked C4, bearing receipt under date of March 25th, 1901, of \$5,500, and also receipt under date 3-30-04 of \$5,220, purporting to have been signed by you, and ask you whether or not Henry C. Roydhouse or Virginia Roydhouse at the time of the
10 —or at the date of the receipts paid you the money mentioned in those receipts?

A. I don't recollect being paid this amount, I don't recollect anything about that part of it, I know Mrs. Roydhouse didn't pay anything and I don't recollect whether it was received.

Q. Will you say whether or not Henry C. Roydhouse paid you the money mentioned there?

A. I don't recollect of his paying me the money; I think probably at the time that he was with me that I
20 took the money from the company, I think, we were trading under the name of G. W. Roydhouse at that time,—took the money from the company and gave him credit here.

Q. Well, the money that you took from the company—did he have an interest in it?

A. I don't think he did at that time, he may possibly have had at that time, I am not sure of that.

Cross-examination.

30

By Mr. Kellam:

Q. Mr. Roydhouse, the mortgage that you hold in your hand has been paid off, has it not?

A. What do you mean by "been paid off"?

Q. May I have the paper a minute?

A. Yes.

Q. Here is a mortgage made to you for \$10,500, dated March 26th, 1894?

A. Yes.

Q. You have received the money that was loaned on that mortgage, have you not?

A. I satisfied the mortgage in some way or other, I don't know that I received the money or whether the money was taken from the account, I can't tell without looking the matter up.

10

Q. You are not in the habit of signing receipts on mortgages unless you receive the money, are you?

A. Well, I should say not.

Q. And these are your signatures (indicating)?

A. Those are my signatures.

Q. And as far as you know of your own knowledge the money was either paid you or you received the money in some way on the dates there set forth?

A. I am satisfied that there was some sort of an arrangement made; what I think was, that I just took the money from the company, that is, I had a check drawn.

20

Q. Now, I present to you a letter; maybe that will refresh your memory. Read that over, will you please?

A. Yes (reading). I wrote this.

Mr. Kellam: If you have no objection I will offer that in evidence in connection with the mortgage.

Mr. Davis: I have no objection.

30

Mr. Kellam: This is dated 3-30-04. "To whom it may concern: This is to certify that H. C. Roydhouse has paid me the full amount of the principal and interest of mortgage that I hold against his farm near Mount Holly and he is entitled to have the same satisfied of record which I authorize to be done at once. (Signed)

George W. Roydhouse. The farm is known as the Ashhurst farm and the receipt for the balance of principal and interest is on the mortgage. George W. Roydhouse.”

Q. These are your signatures?

A. Yes.

Q. That is in your handwriting?

A. Yes.

10 Q. Then this particular mortgage was paid off in full on the 30th day of March, 1904?

A. It was settled for in some way, I don't know just how.

Q. Well, that is the effect of this receipt. It was paid at that time?

A. Yes.

Q. It was settled for?

A. Yes.

Q. You had no further claim in it after that date?

A. No, no.

20

By the Vice-Chancellor:

Q. You remember it was settled only you do not remember how,—that is the idea?

A. I don't recollect how.

Q. Well, was it paid to you by Mrs. Roydhouse?

A. No, it was not.

Q. That part you are sure of?

A. I am sure of that.

30

By Mr. Kellam:

Q. It was paid in two instalments, one in 1901 and the other in 1904, according to the receipts?

A. Well, I think that is—yes, the receipts are the times that the payment was made or the settlement.

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

Mr. Davis: I believe, if your Honor please, the execution of the deeds is admitted in the answer and not necessary to prove. Complainant rests.

ANN VIRGINIA ROYDHOUSE, one of the defendants, being duly sworn according to law, on her oath says: 10

Mr. Kellam: Before proceeding further, your Honor, I would like to have leave to change a mistake in my answer in a numeral. In paragraph 7 occur the words: "The defendants aver that on or about the seventeenth day of May, nineteen hundred and three." That should be 1902. That is the fault of the stenographer and was overlooked. I presume you have no objection to that amendment? 20

Mr. Davis: That is favorable to me and I have got no objection to it.

Mr. Kellam: We want to get the truth on the record.

The Vice-Chancellor: The amendment will be made.

By Mr. Kellam:

Q. Mrs. Roydhouse, you are the Ann Virginia Roydhouse defendant in this proceeding? 30

A. I am.

Q. And Henry C. Roydhouse, the other defendant, is your husband?

A. He is.

Q. When were you married?

A. Eighteen hundred and eighty-eight.

Q. And you lived together thereafter as man and wife?

A. We did.

Q. Now, do you recall any discussion or argument you had about any matter with Mr. Roydhouse in 1902?

10 Mr. Davis: Perhaps we can simplify this matter, if your Honor please. So far as this case is concerned, I am willing to concede that the discussion took place in 1902 as related in the answer.

The Vice-Chancellor: And that the deed was made through inadvertence to the two of them, as stated in the answer, and afterwards corrected by a new deed?

Mr. Davis: Why, if your Honor please, I think I am willing to accede to that, yes, sir.

20 Mr. Kellam: Well, your Honor, that is the gist of my case and I would like to have that spread at considerable length on my record.

The Vice-Chancellor: Well, he admits it as full as stated in your answer, I understand. That leaves entirely a question of law as to the sufficiency of your defence.

30 Mr. Kellam: If your Honor will pardon me, I would like to examine my answer to make sure I am getting all on the record that I want. I take it then that the paragraphs in my answer admitted are 7, 8, 9 and 10?

Mr. Davis: I am willing to admit paragraphs 7, 8, 9 and 10 of the answer.

The Vice-Chancellor: Well, does that include the

error of the Philadelphia scrivener and the execution of a new deed?

Mr. Kellam: No. Do you want to include that also?

The Vice-Chancellor: The error of the scrivener and the execution of the subsequent deed to correct that error?

Mr. Davis: No; I am not willing to admit that.

Q. Mrs. Roydhouse, Mr. Davis has admitted on the record all of the facts surrounding the execution of the first set of deeds, so that I won't ask you to testify as to that.

10

The Vice-Chancellor: This admission is paragraphs —

Mr. Davis: Seven, 8, 9 and 10.

Mr. Kellam: I understand it includes the bargain, the fulfilment of it by the execution of the deeds in Philadelphia, except for the mistake.

20

Q. After these deeds were executed in Philadelphia you continued to live with your husband?

A. I did.

The Vice-Chancellor: That is, she resumed.

Mr. Kellam: Well, she had resumed before that.

30

The Vice-Chancellor: That is, the averment is that the agreement was made —

Mr. Davis: In 1902.

The Vice-Chancellor: That she would resume conjugal relations with her husband if he would convey her these properties?

Mr. Kellam: Yes.

The Vice-Chancellor: And on the faith of that agreement she did resume her marital relations and condoned the offence which she charged him with and the deeds
 10 were afterwards executed in fulfilment of that agreement. Is that the part that is admitted?

Mr. Davis: Yes.

Q. Mrs. Roydhouse, when was the first that you discovered that the deeds executed in 1903 were not what you believed them to be?

Mr. Davis: Well now, that is objected to.

20 Mr. Kellam: That is relevant with the previous admission. The admission is that she received these deeds which she believed to be the bargain which she had contracted for. If that is admitted this is relevant.

Mr. Davis: That is not admitted; the mistake of the scrivener is not admitted.

30 Mr. Kellam: I guess we had better prove our case, because this admission seems to be a matter of considerable doubt.

(Question repeated.)

Mr. Davis: That is objected to.

The Vice-Chancellor: I think the question is proper.

The offer now is to show that after these deeds were delivered she discovered that they were not what the agreement had called for.

Mr. Davis: Well, if your Honor please, it seems to me that before answering that question it ought to be shown—because that is the part that I reserved—that the scrivener made a mistake and that the deed did not recite what the deed should contain.

The Vice-Chancellor: Well, that is what I understand she is going to testify to now. 10

Mr. Davis: Well, my thought is she is now asked to give her opinion upon what the deed actually does and what she understood it was to do.

The Vice-Chancellor: I think the question is proper, when she made a discovery.

Mr. Kellam: Now, Mrs. Roydhouse, we will have the question read again and you please answer it. 20

Q. (Repeated.) Mrs. Roydhouse, when was the first that you discovered that the deeds executed in 1903 were not what you believed them to be?

The Vice-Chancellor: If you in fact made such a discovery at any time?

A. I did. 30

The Vice-Chancellor: That might be added to the question.

A. (Continuing.) It was in August, 1910.

Q. Now, just state what you did and what happened at that time.

A. Well, I had been informed by a mutual friend of both Mr. Roydhouse and myself that it would be well to look into it, and he had asked me about it several times, two years previous to this.

The Vice-Chancellor: Won't you tell us who? "He" doesn't mean anything to me.

10 Q. Well, just mention names.

A. Well, Mr. Carpenter mentioned it.

Q. Yes. Go right on.

A. And I didn't think anything of it, because I had faith in what my husband had told me, he promised never to deceive me again.

Mr. Davis: One minute; that is objected to.

20 The Vice-Chancellor: What are you objecting to now?

Mr. Davis: I am objecting to what Mr. Carpenter told her.

The Vice-Chancellor: She is telling what her husband promised her, I understood.

Q. Go on, Mrs. Roydhouse.

30 A. I didn't pay any attention to it in the beginning. I suppose one reason was because of my faith in Mr. Roydhouse's word to me and the other was because, woman-like, my papers were in Philadelphia and my key to my safe was in Mount Holly, and when I thought of it I wouldn't have the key with me, so I neglected it, and in 1910 Mr. Carpenter again asked me about it, then I thought it would be well to investigate.

By the Vice-Chancellor :

Q. Who is Mr. Carpenter?

A. He is a friend of ours, he was a business associate.

Q. He is not the man who drew the papers?

A. Oh, no.

Q. All right.

A. So I took the papers to Mr. Palmer, of Mount Holly, Lawyer Palmer, and that was when I first discovered that Mr. Roydhouse hadn't done what he promised to do. 10

By Mr. Kellam :

Q. Well, what did you do when you discovered this, Mrs. Roydhouse?

A. I went right ——

By the Vice-Chancellor :

Q. Up to that time you believed that you had an absolute deed for this property? 20

A. I did.

Q. This property that is now in question?

A. I did.

Q. And that was the first time you knew that you hadn't?

A. Yes.

Q. That is correct, is it?

A. Yes. If I had had any suspicions, you know, I would have attended to it before. 30

By Mr. Kellam :

Q. And what did you do then when you discovered these facts?

A. I got the papers and took them to Mr. Palmer—I told you that—and went right to Mr. Roydhouse and told him about it and he said, “We will have it corrected,” and that very same day he took me to the lawyer, to Mr. Palmer’s office, and the second deed—had the second transfer, rather, made out.

Q. Now, I hand you a paper, a deed, dated August 27th, 1910, from Henry C. Roydhouse and Ann Virginia Roydhouse to Carrie Virginia Gulick, and ask you what
10 that paper is.

A. This is the last transfer that was made by Mr. Palmer.

Q. Whose signature is that (indicating)?

A. That is mine.

Q. And whose signature above?

A. That is Mr. Roydhouse’s.

Mr. Kellam: I offer this deed in evidence. It has been duly recorded in the office of the Clerk of Burlington
20 County in Book 462 of Deeds, page 420, etc.

(Said paper marked Exhibit D1.)

Q. I hand you a second paper and ask you what this is. This is a deed of the same date as the one just shown you, from Carrie Virginia Gulick to Ann Virginia Roydhouse, isn’t it?

A. Yes.

Q. And duly recorded in the Clerk’s office of Burlington
30 County, in Book 462 of Deeds, page 424. What is that paper?

Mr. Davis: That speaks for itself.

A. I suppose that is the other deed.

Mr. Kellam: So it can be identified—I offer that in evidence as the second deed.

(Said paper marked Exhibit D2.)

Q. Now, Mrs. Roydhouse, at the time of this second deed of conveyance did you know that your husband was indebted to Mr. Haines or Mr. Schenck?

A. I knew nothing about Mr. Roydhouse's financial affairs in any way. I can't remember positively but if I knew that he borrowed money from my brother it was the only thing that I remember and I am not positive of that. 10

Q. Which is your brother?

A. Peter Schenck. If I knew, if I supposed, of course, Mr. Roydhouse was amply able to settle all claims.

By the Vice-Chancellor:

Q. Did you know at the time you took this last conveyance that he was in debt? 20

A. No, I didn't.

By Mr. Kellam:

Q. Mrs. Roydhouse, was this final conveyance made with the intent to defraud any of Mr. Roydhouse's creditors?

Mr. Davis: That is objected to.

Mr. Kellam: That has appeared in the bill, I think it is pertinent. 30

The Vice-Chancellor: I don't know whether it is competent or not. I think it may be answered. It is a mixed question of law and fact and subject to cross-examination. I think it is perhaps competent.

(Question repeated.)

A. Absolutely not.

By the Vice-Chancellor :

10 Q. What about the original conveyance? At that time, or at the time the agreement was made between you and Mr. Roydhouse under which he made the original conveyance to you, did you know that he owed any money to anybody?

A. I knew that when he bought this farm that he didn't pay for it entirely, but that is all, I didn't know what the amount was or anything about it; I knew nothing about Mr. Roydhouse's financial affairs, I never have known.

20 Q. Well, did you have any knowledge at that time that he was in any way financially involved or unable to pay his debts?

A. Oh, no; no, indeed, I didn't.

Cross-examination.

By Mr. Davis :

30 Q. Mrs. Roydhouse, what did your husband say to you with regard to conveying these premises at the first conversation that you had with him in which he promised to convey them to you?

Mr. Kellam: One moment. Your Honor, if Mr. Davis directs his question to the admitted part of the answer I think he is not entitled to cross-examine the witness. I am perfectly willing she be examined at any length.

The Vice-Chancellor: Yes; I do not suppose that it is proper to cross-examine on the admissions.

Mr. Davis: Your Honor asked me whether I admitted that the first deed was a mistake; I stated to your Honor that I didn't admit that the first deed was.

The Vice-Chancellor: You may cross-examine on that.

Mr. Davis: That is what I am asking for.

10

(Question repeated.)

A. Mr. Roydhouse gave that to me because of what he had done.

Q. What did he say to you with regard to the conveyance of these premises?

A. He said "I will give you anything that you want if you will return and live with me as my wife."

20

Q. And was that the words as near as you can tell us?

A. As near as I can remember, Mr. Davis, those were the words.

Q. What did you say in response to that?

A. Why, I accepted it.

Q. And that constituted what he said to you and your acceptance of that offer, is that right?

A. As near as I can remember.

Q. Now, that was in 1902?

A. Yes.

30

Q. May, I think it was, wasn't it?

A. Nineteen hundred and two.

Q. May, was it not?

A. Oh, no; that was in—it was in 1902, on May 17th, that I first found out —

Q. Yes.

A. — one moment—that I first found out that my husband was maintaining another establishment.

Q. That was the time of the conversation with him?

A. No, not as regards the property.

Q. How long after that?

A. I was ill after that.

Q. Now, it was in 1903 that he gave you this deed, and where were you at the time that it was executed?

A. Do you mean where were we living?

10 Q. No, where were you? Were you personally present at the time of the execution of this deed?

A. Why, at Mr. Fox's office.

Q. Mr. Moore, don't you mean?

A. No.

Q. Now, that was in Philadelphia?

A. That was in Philadelphia.

Q. Where were you living at that time?

A. During the winter months we were living in Philadelphia, in the summer months in Mount Holly.

20 Q. Was the deed given to you on the day on which it was executed?

A. It was not.

Q. When was it given to you?

A. Quite a long time after.

Q. How long?

A. As near as I can remember it was over a month.

Q. Over a month. What did you do with it when you got the deed?

A. I took it and put it in the Land Title & Trust Company's box.

30 Q. That was when it was given to you?

A. That was when it was given to me.

Q. Who had the deed recorded?

A. I couldn't tell you, I don't remember.

Q. You don't remember whether you did or not?

A. I don't remember anything about it. I knew very

little about business and Mr. Roydhouse attended to everything.

Q. Now, you then put the deed in the Land Title & Trust Company and kept it there how long?

A. From the time it was given, in May, 1902, until 1910.

Q. Was it in a strong box there?

A. In my box that I had there.

Q. Now, when did you and your husband embark in this business in New York City?

10

A. As near as I can remember it was in 1907.

Q. And the money that Mr. Haines loaned your husband was put in that business, was it not?

A. Absolutely not.

Q. Where was it put? Do you know?

A. I know nothing about it.

Q. You began business with your husband in New York at that time, did you not?

A. I put in the money that I had saved in that business.

20

Q. Yes, and I am talking about—at the time in 1907, when the business was begun in New York; didn't you enter the business with your husband at that time?

A. I did.

Q. What office did you hold in the business there?

A. Treasurer.

Q. From the beginning?

A. I can't remember.

Q. Who else was associated with you in business at that time?

30

A. I don't quite understand, Mr. Davis.

(Question repeated.)

A. No one. Oh, yes. Mr. George Copley.

Q. How long did Mr. Copley continue in business with you?

A. I can't remember exactly.

Mr. Kellam: Well, now, your Honor, I am perfectly willing to let Mr. Davis go as far afield as he wants but I really think he is going so far that it is entirely irrelevant. It strikes me that it is entirely immaterial what this lady and her husband did.

- The Vice-Chancellor: I can hardly think so, Mr. Kellam. The good faith of this transaction is questioned. Your claim is that this latter deed was made in correction of the former error. Now I understand Mr. Davis' claim to be quite the contrary, and these side lights may be very beneficial. If she and her husband had gotten into some sort of financial straits—I do not know what may be claimed—and these deeds, latter deeds were made as an after-thought, rather than in conformity with a former agreement and to correct an error in the former deed, it may be very relevant. I think it is proper to go into all of the circumstances surrounding the action of these parties from the time this agreement was made up until the time the last deed was made. I will overrule the objection.

Q. Give us your best remembrance, Mrs. Roydhouse.

A. Well, it must have been a year, a part of a year.

Q. Did any one take Mr. Copley's place?

A. Yes.

Q. Who was it?

30 A. Mr. Carpenter.

Q. And after you and Mr. Carpenter and your husband were in business together did any one else come in the business?

A. No. There was another man in the business, there was another man had stock in it.

Q. Who was that?

A. A Mr. Gordon Smith.

Q. Did he have any part in the management of the business?

A. Yes.

Q. What was his business?

A. He was manager of the manufacturing part of it.

Q. How long was he in the business?

A. He has been in the business ever since it has been in existence.

Q. Now, who conducted the actual financial transactions in the business in New York? 10

A. Up until a year ago Mr. Carpenter did, up until a little more than a year ago. No; no, it isn't. It is a year ago next May.

By the Vice-Chancellor:

Q. What kind of a business was this? It is all new to me and I would like to know what kind of a business it was. 20

A. Manufacturer of carbon brushes.

By Mr. Davis:

Q. Now, you were treasurer of that concern from the time of its beginning?

A. Yes.

Q. And are still treasurer?

A. I am.

Q. Now, you knew that that concern was in financial straits, did you not? 30

A. I did. It always had been ever since we had had it.

Q. And you had borrowed money to float that concern, had you not?

A. No.

Q. Is it not a fact that there was \$10,000 that was advanced in some way by the Roydhouse-Arey Company?

A. Absolutely not; the Roydhouse-Arey Company had nothing to do with it, nothing in any way, shape or form.

Q. Were there not two notes made by the New York concern of which you were treasurer aggregating the sum of \$5,300 —

A. I am sure I don't know, Mr. Davis.

Q. One minute. —which the Roydhouse-Arey Company gave a check to pay?

A. Well, if there was I know nothing about it, absolutely not.

Q. You were treasurer, were you not?

A. Yes, but I didn't transact the business, I was not in New York, I had nothing to do with it, I was only treasurer in name.

Q. Now, you knew you signed this mortgage that your husband gave to George W. Roydhouse in 1894?

A. A mortgage? What do you mean? On the farm?

Q. Yes.

A. Well, I must have known it. You know just how much a man tells his wife about business.

Q. I don't know a thing about it, Mrs. Roydhouse. I am a married man too.

A. Well, you probably know as much as I do.

Q. That is your signature there on Exhibit C4, is it not?

A. Yes, but I wasn't allowed to read these papers.

Q. You weren't allowed to read them?

A. No, I was not asked to read them, I was asked to put my name to the papers, which I did

30 Q. And you signed the paper and acknowledged that it was your act and deed without reading the paper?

A. I did indeed.

Q. Or knowing what they were?

A. I did.

Q. And you didn't know anything about this indebtedness until that time—the indebtedness of this mortgage at the time that you signed it?

A. Mr. Roydhouse here ——

Q. Won't you answer yes or no, Mrs. Roydhouse?

A. I don't think I can, satisfactorily, Mr. Davis.

Q. Well, then, you can explain afterwards. Read the question. (Question repeated.) And you didn't know anything about this indebtedness until that time—the indebtedness of this mortgage at the time that you signed it?

A. May I answer that in my own way?

10

The Vice-Chancellor: Well, if you can answer "yes" or "no," if he insists upon that kind of an answer.

Mr. Davis: No; I will let her answer it her own way.

A. Why, Mr. Roydhouse told me that he couldn't—I didn't know it until after I had signed those papers, that he wasn't buying that property outright; and afterwards I said, "Why, was there a mortgage on it?"

Q. Never mind what you said. Now, afterwards you had learned that there was a mortgage on the farm? 20

A. Yes.

Q. When did you learn that?

A. Directly after.

By the Vice-Chancellor:

Q. After what?

A. After signing the papers.

Q. Which papers?

A. The first deed. 30

By Mr. Davis:

Q. Which first deed was that?

A. Why, the deed of 1903 that gave ——

Q. That is, the deed by which Mr. Roydhouse conveyed the premises to you?

A. Oh, no; I am referring to when Mr. Roydhouse bought the property in the beginning.

Q. Now, just tell us what you mean, Mrs. Roydhouse, because it is confused in my mind. I asked you when you first knew of the existence of this mortgage on the farm.

A. When Mr. Roydhouse bought the property from
 10 Mr. Ashhurst, after I had signed the papers, we had the conversation that I have just given you and then he told me that there was a mortgage on the property.

Q. Did he tell you how much it was?

A. No, he didn't tell me what it was.

By the Vice-Chancellor:

Q. You haven't given it clearly to me yet. I do not know to what paper you refer that you signed.

20 A. Why, the deed.

Q. You didn't sign that?

A. I didn't sign it?

Q. No, of course, you didn't.

A. Isn't that what they just gave me to look at and what I signed?

Q. That is a mortgage, the paper he just handed you.

A. Well, that is what I mean.

Q. Well, you said a deed. Now, then, see if I understand you right.

30 A. One paper is the same as another to me.

Q. Just a moment. I want to be sure that we don't misunderstand each other, because I have to proceed upon your testimony and I don't want to misunderstand you.

A. Yes.

Q. The question is when you first knew that there was a mortgage on this Mount Holly farm, and I understand

you now to say that you knew about it when you signed this mortgage? This is the mortgage that was given?

A. Was this mortgage given at the time?

Q. I don't know. I really don't know. You see, I don't know a thing about these transactions. That is what I am trying to find out.

A. Yes.

Q. This is a mortgage that appears to have been given by your husband and joined in by you on the Mount Holly farm, on March 26th, 1894, not 1904, ten years 10 before your troubles.

A. Yes; that is correct.

Q. The mortgage was for \$10,500, and your husband and you have signed it on that day. Now, I don't know when he bought the property, whether this was a purchase money mortgage or not. That is, whether it was given at the same time he bought the property.

A. I really don't know myself.

Q. Yes, it is; this is a purchase money mortgage, apparently. 20

Mr. Kellam: Your Honor, in due course I will introduce the original deed which shows all this.

Q. So that when he bought this property he gave back a mortgage of \$10,500 and you signed it. You must have known of it at the time, although it may not have made any impression on your mind.

A. No, it didn't make any impression.

Q. Now, the question is when you first knew that this Mount Holly property had a mortgage on it. Now, can you answer it, with or without explanation? 30

A. I must have known it at the time if the deeds and the mortgage were executed at the same time.

By Mr. Davis:

Q. And you continued to know, of course, that this mortgage was on the farm, did you not?

A. Mr. Roydhouse told me that he had paid that mortgage off.

Q. When?

A. I can't remember when.

Q. Well, what fixes it in your mind that he told you that?

A. Why, because I asked him if it had been recorded—

Q. When was that?

A. ——— and he said "no."

10 Q. Had been recorded?

A. Or whatever you do on the books.

By the Vice-Chancellor:

Q. Cancelled?

A. Cancelled.

Q. Cancelled, she means, of course.

A. Yes. I beg your pardon! What was your last question?

20

By Mr. Davis:

Q. Now, when was that that you had this conversation with him?

A. Oh, goodness, I can't remember; it was sometime between—well, it was before 1908.

Q. Yes, and after the deed from Mr. Roydhouse to you?

A. Oh, no; before that, because that wasn't until 1910.

30 I don't understand what he means.

By the Vice-Chancellor:

Q. There are two deeds from Mr. Roydhouse to you.

A. Yes.

Q. The first was in 1903.

A. Yes, and the second in 1910.

Q. Now, was it before the first deed?

A. No; before the second deed.

Q. After the first deed and before the second?

A. After the first deed and before the second.

By Mr. Davis:

Q. Then it was after the first deed and before the second —

10

A. Yes.

Q. — that he told you that it had been cancelled?

A. Yes.

Q. Do you know whether or not at that time it had been cancelled?

A. No, it hadn't been and I told him that I thought it was very careless not to have it attended to, and he said he would, and it went on for sometime again before he did.

Q. Now, why did you ask whether or not that had been cancelled?

20

A. Why do we ask any question?

Q. Now, please, of course —

A. Well, I suppose it just came up in the natural course of events and I asked.

Q. Well, what was in your mind? What were you disturbed about?

A. If it hadn't been attended to that it should be, that that was business, and then, too, I was beginning to learn.

Q. Learn what?

30

A. That things should not be neglected.

Q. What had you learned?

A. Why, that if a business man has any transaction that he should make legal that he should do it.

Q. You had learned that by your experience over in New York?

A. Yes; I had.

Q. And you had also learned, had you not, at that time that Mr. Peter Schenck held a note against your husband or an indebtedness of \$3,000?

A. No, I don't remember about that, I don't remember about that at all; I may have known it.

Q. How long before this mortgage was cancelled was it that you learned that it hadn't been cancelled?

A. I told you I couldn't remember that but I think it
10 was about two years, —

Q. You can give us some idea?

A. — and maybe a little bit more.

By the Vice-Chancellor:

Q. Before it was cancelled?

A. Before it was cancelled.

By Mr. Davis:

20

Q. That was in 1906?

A. I know it was a long time, I can't tell you positively.

By the Vice-Chancellor:

Q. It was cancelled August 29th, 1908.

A. Well, it was a long time before that that I had asked Mr. Roydhouse why he didn't attend to it, and then it went on for a long time and finally I asked him again
30 if it had been and he said "no, but I will attend to it now."

By Mr. Davis:

Q. Now, when was that conversation?

A. Well, that was in 1908.

Q. In 1908? About what time of the year of 1908?

A. Well, it was in the summer because we were up at Mount Holly and I said, "Now we are here, you can do it."

Q. And just prior to the time that it was cancelled?

A. Yes.

Q. Would you say that it was in August that you had this conversation with him?

A. I wouldn't like to say any month, because I don't remember, it passed out of my mind entirely.

Q. You knew that your husband was indebted to your brother, did you not? 10

A. I don't remember.

Q. You remember getting—opening a letter by mistake that was addressed by your brother Peter to your husband?

A. I don't.

Q. And do you not remember that you wrote your brother Peter a letter to the effect —

A. I certainly do.

Q. — that you had opened the letter by mistake? 20

A. If I did I don't remember that; I remember writing my brother a letter but what I said in it I don't remember.

Q. Well, is it not a fact that in that letter that you mentioned the fact that your husband was indebted to him in the sum of \$3,000?

A. I don't remember about the letter at all.

Q. Well, how is it that now you remember writing such a letter when you don't know what was in the letter and don't know what you wrote about? 30

A. How does it happen?

(Question repeated.)

A. Well, you just recalled it to my mind.

Q. Well, do you now remember?

A. I remember writing a letter to him but I don't remember what I wrote in it.

Q. What was in it?

A. I don't remember.

Mr. Kellam: Mr. Davis, if you have the letter I think it speaks for itself.

Mr. Davis: Maybe she can speak for herself.

10

The Witness: No; I don't remember.

The Vice-Chancellor: She cannot be examined on the contents of a letter if you have got it.

The Witness: I wrote millions of letters.

Q. Well, do you now remember writing a letter in which you mentioned the \$3,000 indebtedness?

20

A. I don't.

Mr. Kellam: If you have got such a letter, Mr. Davis, produce it.

Mr. Davis: When I get ready I will produce it.

Q. You don't remember that?

A. I don't.

30 Q. When did you learn that your husband was indebted to your brother?

A. I learned that my husband was in debt?

Q. No, I am talking about to your brother?

A. I don't remember.

Q. When did you learn that your husband was in debt?

A. In debt?

Q. Yes.

A. Not until 1910, after all this had happened.

Q. How long after?

A. In August of 1910.

Q. What time in August?

A. I don't remember.

Q. Well, how do you fix it in August?

A. Because I had been up in Maine and on my return I found things in such a dreadful condition.

Q. Go ahead and tell us about it.

A. I found everything turned topsy-turvy.

10

Q. What time in August was that?

(At this point the witness wept and exhibited emotion and she was temporarily withdrawn.)

Mr. Kellam: Before going on with another witness I would like to get from the other side just what their admission means.

20

The Vice-Chancellor: I do not know how there can be any misunderstanding about it. Let us not have any, at any rate.

Mr. Kellam: The opening questions of Mr. Davis were directed to apparently upsetting the admitted fact that this contract was entered into for the conveyance of the farm. I understood that to be admitted. Now, if it is not I shall prove it.

30

The Vice-Chancellor: It has been admitted, at any rate, that what is alleged in the answer is true, hasn't it, Mr. Davis?

Mr. Davis: Yes, sir; I admit the facts set up in para-

graphs 7, 8, 9 and 10. They speak for themselves; there they are.

The Vice-Chancellor: You admit whatever is said there, I suppose, nothing else?

Mr. Davis: Yes.

10

HENRY C. ROYDHOUSE, one of the defendants, being duly sworn according to law, on his oath says:

By Mr. Kellam:

Q. Mr. Roydhouse, you are the other defendant in this case?

A. Yes.

Q. And the husband of Ann Virginia Roydhouse?

20

A. Yes.

Q. Do you recall having a conversation with her sometime in 1902 concerning the farm at Mount Holly?

A. I do.

Q. Well, now, just tell us where that occurred and who was present and just what was said?

Mr. Davis: If your Honor please, if he proposes to go into that transaction I reserve the right to cross-examine his other witness.

30

Mr. Kellam: The crux of my case is the bargain. If the bargain is admitted, your Honor, I am perfectly willing to waive presenting any testimony. If the bargain, on the other hand, is denied, and it is alleged on behalf of Mr. Davis and his client as being something different than what I set forth in my answer, I shall be compelled to prove what the bargain was.

The Vice-Chancellor: You have set the bargain forth in your answer.

Mr. Kellam: I have, sir.

The Vice-Chancellor: And he admits it. Now, what more do you want?

Mr. Kellam: The difficulty is Mr. Davis starts in to cross-examine —

10

The Vice-Chancellor: Only on the question of the fact that the last deed was made to correct a mistake in the first deed. Now, I do not see how anything can be plainer than the present situation.

Mr. Kellam: If that is the distinct understanding on the record —

Mr. Davis: I don't know how distinct it is to you, 20
Mr. Kellam. I made my admission on the record.

The Vice-Chancellor: Now, you can direct the testimony of the witness, if you choose, to the last conveyance to show that it was to correct a mistake in the first one.

Q. Now, Mr. Roydhouse, there was a series of conveyances in which your wife and Miss Gulick were interested in 1910?

30

A. Yes.

Q. Will you kindly tell us what were the circumstances leading up to that and what was done, of your own knowledge?

A. Well, I had been to Philadelphia and when I came home in the evening Mrs. Roydhouse met me at the station, —

Q. Do you remember about when this was?

A. Well, it was some part—of the fore part of August, 1910.

Q. Go on.

A. And as soon as I got in the carriage she says to me, "Did you know those papers or deeds were not made out ——"

10 Mr. Davis: If your Honor please, it seems to me that conversations outside of the presence of the complainant between these two defendants is not admissible.

The Vice-Chancellor: I do not know of any other way in which to establish the fact of a mistake. I will overrule the objection.

Q. Go on.

A. And she says to me, "Did you know those papers ——"

20

The Vice-Chancellor: It is the only way I know to ascertain the bona fides of the parties.

A. (Resuming.) "Did you know those papers were not made out to me only for a life interest?" And I says, "I certainly didn't," and I says, "I don't think such is the case." "Well," she says, "we will go right up to Mr. Palmer's and see." So we stopped there at Mr. Palmer's and I went in, looked the thing over, and I found
30 out such was the case and I told her to have them or I would have them fixed up at once without any delay.

Q. Was that done?

A. That was done.

Q. Now, Mr. Roydhouse, there has been some question about this business in New York. You were interested in the business, were you not?

A. Yes.

Q. Was that business an incorporated business?

A. Yes.

Q. Was it incorporated when it was started or subsequent to the starting of the business?

A. Subsequent? It was before I got it, I took it over in that form.

Q. And when did you get it?

A. I think it was in 1907.

10

Cross-examination.

By Mr. Davis:

Q. And immediately upon taking it over it was in financial straits, was it not?

By the Vice-Chancellor:

Q. You mean to say that you acquired the stock of an incorporated business? 20

A. Yes.

Q. The capital stock and became owner of the business in that way,—is that what you mean?

A. Yes.

By Mr. Davis:

Q. Now, Mr. Roydhouse, who were the stockholders immediately after you took it over? 30

A. Mrs. Roydhouse, Mr. Copley and myself.

Q. How much did Mr. Copley have?

A. I don't recollect.

Q. Well, about how much?

A. I have no recollection.

Q. How much did you have?

A. Well, at the time I owned the principal part of it.

Q. And your wife and Mr. Copley became stockholders merely for the purpose of having the required number of stockholders, did they not?

A. It probably might have been that.

Q. And immediately after you got this business you found that you needed money, did you not?

A. I don't think it was immediately after.

Q. You remember the transaction in which you got
10 \$5,300?

A. I remember I drew \$5,300, —

Q. You gave a note?

A. — which I supposed—I being one of the partners in the firm, I had a right to draw some money out of the firm.

Q. Well, as a matter of fact you gave a note for it, did you not, and the note was paid by the Roydhouse-Arey Company?

A. I gave a note and it was paid by me.

20 Q. It was not paid by the Roydhouse-Arey Company?

A. No, sir.

Q. Now, I am talking about the money that was used for the purchase of the stock by you?

A. Yes.

Q. What time of the year was it that you purchased this New York concern?

A. About 1907, I said.

Q. What time of the year?

A. Oh, I don't recollect just the time of the year.

30 Q. Well, can't you tell us something about it?

A. No, sir.

Q. Don't remember a thing about it?

A. No, sir.

Q. Was it before or after you borrowed the money from William K. Haines?

A. Why, I had this before I borrowed any money from him.

Q. You did. Then it must have been that you bought that business before July 1st, 1907?

A. I think so.

Q. Now, how long had you been in the business before you borrowed this \$5,300?

A. I don't recollect.

Q. How long had you been in the New York business before you borrowed the money from Mr. Oberholtzer?

A. Well, from seven to ten or eleven, I don't know which.

10

Q. What is your answer, Mr. Roydhouse?

A. From 1907 to 1910 or 1911, I don't recollect which.

Q. You don't know what years you borrowed from Oberholtzer?

A. I think it was probably the latter part of 1910.

Q. And you borrowed it from Peter Schenck in December, 1909,—is that right?

A. December 1st, 1909.

Q. When did you borrow the money from the Union National Bank of Mount Holly?

20

A. I think that was August 28th.

Q. Of what year?

A. Nineteen hundred and ten.

Q. The day before the conveyance of this property to your wife by the second deed?

A. No, sir.

Q. When was the property conveyed?

A. I think it was about the 10th.

Q. Tenth of what?

A. August.

80

Q. But you are sure that it was on the 28th of August, 1910?

A. Not positively.

Q. Well, that is your best memory?

A. I think it was somewhere along there, I don't recollect just which.

Q. It was in August, at any rate?

A. I think so.

Q. And that was \$500?

A. Yes, sir.

Q. Now, you knew, of course, that when you conveyed this property to your wife at the first that there was a mortgage on the property?

A. Of how much?

10 A. Well, regardless of how much it was, you knew that there was a mortgage, did you not?

A. Why, I think there were a mortgage, a portion of the mortgage remained.

Q. And your right then was an equity of redemption, was it not?

A. What say?

(Question repeated.)

20 Mr. Kellam: I don't think he can testify to that, Mr. Davis; that is a matter of law, what his right was.

The Vice-Chancellor: Well, can you answer it?

A. Well, what do you mean by that?

Q. You don't know what an equity of redemption is, —is that right?

A. You will have to explain it.

Q. Well, you can answer the question whether you know or not. Perhaps it won't be necessary to explain it.

30 A. I don't think I do.

Q. Well, at that time you owned the premises subject to a mortgage, didn't you?

A. The farm, you mean?

Q. Yes.

A. Yes.

Q. What other property at that time did you own?

The Vice-Chancellor: He is speaking now of the date when this first agreement was made with your wife, in 1902.

A. Why, I think I owned property 1232 North Twenty-fifth Street.

Q. Were there any encumbrances on it?

A. No, sir.

Q. What did you owe at that time?

A. Nothing that I know of except a portion of this 10 mortgage, \$5,220, whatever it might have been.

Q. And all of these debts were subsequently acquired by you?

A. What do you mean,—before or after?

Q. Well, subsequently, Mr. Roydhouse.

The Vice-Chancellor: You said “acquired.” You mean “incurred.”

Mr. Davis: Incurred.

20

The Vice-Chancellor: You said these debts were subsequently acquired. Incurred, you mean?

Mr. Davis: Yes, sir.

By the Vice-Chancellor:

Q. That is, that all of these debts of yours were contracted afterwards. That is what he means. After this 30 first agreement with your wife.

A. Yes.

By Mr. Davis:

Q. And before the second deed to your wife?

A. I don't think they all were.

Q. Well, what one was acquired afterwards?

A. It might have been Mr. Oberholtzer's.

Q. You think that is the only one?

A. And the bank.

Q. Now, isn't it a fact, Mr. Roydhouse, that the Oberholtzer note was dated sometime in January, 1909?

A. I think not; I don't know.

10 Q. And that subsequently, about the end of the year, that is, January, 1910, you gave him a judgment note?

A. I don't know what year it was.

Q. You don't know?

A. No.

Q. Well, do you think that that is the only indebtedness that was incurred after the transfer of the property to your wife by the second deed?

A. That and the bank, I think.

Q. Was it incurred afterwards or before the one at the bank?

20 A. Afterwards.

Q. What time in August was the one at the bank incurred?

A. I don't recollect.

Q. Well, how do you know that it was incurred afterwards?

A. Well, I knew that it was sometime after, I don't exactly know but that is probable, but I am pretty positive, I haven't got my papers with me to show that or anything of the kind.

30 Q. You stated a while ago that your memory was that it was on the 28th of August?

A. Somewheres thereabouts.

Q. Is that correct or not?

A. I don't remember exactly.

Q. Well, do you know or don't you know that the Oberholtzer indebtedness was incurred in 1909?

A. I don't recollect.

Q. You don't recollect?

A. No, sir.

Q. Now, when you made this second deed to your wife that, according to your answer, was in fulfilment of a prior agreement, was it not?

A. It might have been.

Q. Well, was it or not?

A. I don't recollect.

Q. You don't recollect why you made this second deed **10**
to your wife?

A. I made the second deed to my wife —

Q. Yes?

A. To correct the first.

Q. Well, now, what part of the first was it supposed to correct?

By the Vice-Chancellor:

Q. Now, did you understand the question he asked **20**
you before? I do not believe you did. You want to be sure you understand questions before you answer them. You may have understood that question but I do not believe you did.

(Previous questions and answers read.)

Q. Your answer says it was in fulfilment of a prior agreement and you say that it might have been. Now, what am I to understand by that? **30**

A. Well, I guess I will have to say that I don't know, I don't recollect.

Q. That you don't know why you gave that last deed?

A. I don't know—oh, yes, I know why I did,—to correct the first one, which I said.

Q. Well, he has just asked you what it was for and you say you don't know?

A. To correct the first one, I said.

Q. No, you didn't, you said it might have been to correct the first deed; you said it might have been in fulfilment of the original agreement. Don't you know whether it was or whether it wasn't?

A. It was.

Q. Well, then, why did you say, "it might have been"? I simply want to be sure, Mr. Roydhouse, that you testify to what you mean to testify to, that is all; I am trying to prevent the record showing what you don't mean, I want the record to show exactly what you mean to say, and you have said there that it might have been in fulfilment of the original agreement, and I felt sure you didn't mean that, but now you say it was in fulfilment of the original agreement,—is that what you mean?

A. Yes, sir.

Q. I supposed, of course, that was what you meant.

By Mr. Davis:

20

Q. Well, what was the second one given for?

The Vice-Chancellor: That is the one you asked him about,—didn't you?

Q. I mean the first one.

Mr. Kellam: There are so many deeds, let us get it clear.

30

By the Vice-Chancellor:

Q. You have said that the last deed was in fulfilment of the original agreement, to correct a mistake in the first deed to your wife?

A. Yes.

Q. Now, he asks you what the first deed was for. That was your question, wasn't it?

A. What the first deed was for?

Q. What the first deed was for?

By Mr. Davis:

Q. Strike out that question. Wasn't the first deed just what you promised your wife?

A. I promised —

10

Q. Now, listen to my question and answer it.

By the Vice-Chancellor:

Q. Can you answer that? Was the first one just what you promised your wife?

A. Yes, what I promised to give her.

By Mr. Davis:

20

Q. It was just exactly what you promised to give her, is that right?

A. The deed, yes, sir.

Q. Now, when you gave this second deed you wanted to correct some mistakes that were in the first one? You thought it would be better if a second deed was made to correct some mistakes which you then saw in the first deed—is that right, Mr. Roydhouse?

A. That I saw in the first deed?

Q. You heard my question; you understand English. 30

(Question repeated.)

Q. You can answer yes or no, can't you?

A. I did that because she told me the first one was only made out to her during her life, which —

Q. Yes, and the —

By the Vice-Chancellor:

Q. Go on; finish your answer. Let the witness say what he wants to say. It is hard enough for him to understand the questions at best, apparently. Now, listen to the answer and finish it. Read his answer. You were interrupted before you finished. Now, I
10 want you to finish what you intended to say.

(Answer of witness read.)

Q. You said "which" and then you were interrupted. Now, what else did you want to say?

A. Which—to get things all straight I told her that I would have it made out over again.

By Mr. Davis:

20

Q. Now, what were you going to straighten out, Mr. Roydhouse? Strike the question out.

A. I was going to straighten —

Q. One minute. You read the deed or knew what was in the first deed to your wife, did you not?

A. I didn't.

Q. Didn't? Who put it on record?

A. Why, Mr. Fox, a friend of mine.

Q. Who first got it after it was returned from record?

30 A. I think I got it and gave it to Mrs. Roydhouse.

Q. Did you look at it then?

A. No.

Q. When you went to Mr. Fox did you tell him what you wanted?

A. I told him that I wanted —

Q. You can answer yes or no.

A. — a deed made out to Mrs. Roydhouse.

By the Vice-Chancellor:

Q. The question was, did you tell him what you wanted?

A. Yes.

By Mr. Davis:

Q. You explained to him just what you wanted in the deed, did you not? 10

A. I explained to him that I wanted it made out to Mrs. Roydhouse.

Q. Well, did you tell him how you wanted it made out to her?

A. Just told him to make the deed out to Mrs. Roydhouse.

Q. Was she present?

A. No, I don't think she was. 20

Q. And that was in 1903?

A. I think so.

Q. Now, what were the exact words, as near as you can tell me, that you promised Mrs. Roydhouse you would do?

A. I told Mrs. Roydhouse, in the presence of Mrs. Christopher Wetherill, that I would give her the farm absolutely.

Q. That is your memory of it, now?

A. My memory of it. 30

Q. You didn't promise her that you would give her all that you had?

A. I am not positive about that, but I think I told her I would turn everything over, she could have everything.

Q. You told her that you would turn over every-

thing. Now, did you turn over your Philadelphia house to her?

A. I think that house was sold before then, she got the money, yes.

Q. Well, did you turn the house over to her?

A. I don't think I owned the house at that time.

Q. At what time?

A. When I told her this; I am not positive about it.

10 Q. Didn't you state a while ago that you did own the Philadelphia house at the time?

A. I don't recollect.

Q. Well, now, when was it you told her this that you have just recited on the stand?

A. Told her what?

Q. That you would give her everything. At the time that you made this second deed to her?

A. That I would give her the farm?

Q. Yes. At the time you made this second deed?

A. No, sir.

20 Q. When?

A. Long before that.

Q. When?

A. About the time the first one was made out.

Q. About the time of the first one?

A. Yes.

Q. How long before the first one?

A. Just prior to the first one.

Q. Well, how long before?

A. I don't know.

30 Q. Well, you can tell us something, Mr. Roydhouse. It may have been a week, a day or ten minutes?

A. I don't know how long it was.

Q. You don't remember at all?

A. No, I don't remember.

Q. Where were you?

A. At the time I told her I would give her —

Q. Yes.

A. I went to see her at Mrs. Wetherill's residence, on North College Avenue, Philadelphia.

Q. And that was the time, was it?

A. That was the time.

Q. Now, at that time didn't you own the house and the premises in Philadelphia?

A. I don't recollect whether I did or not, I couldn't tell that at all now.

Q. Well, you ought to be able, it seems to me, to tell, Mr. Roydhouse, what property you owned at the time you promised your wife you would give her everything you had? 10

A. I don't remember.

Q. You don't remember?

A. No, I don't.

Q. You don't remember when it was sold?

A. No, sir, I don't.

Q. Who bought it?

A. I don't remember the man's name who bought it 20 even.

Q. Who sold it for you?

A. I think Mr. Fox negotiated it, I am not positive.

Q. What did you do with the money?

A. Mrs. Roydhouse got the money.

Q. What was done with it?

A. I don't know.

Q. Now, when you had this conversation with your wife did you say to her that you would give her only the farm or did it include all that you had? 30

A. I told her I would give her the farm and everything else —

Q. What?

A. And anything else that I might own.

Q. And that was in 1903?

A. I think so.

Q. Now, at the time, Mr. Roydhouse, that you met your wife at the railroad station in Mount Holly, isn't it a fact that at that time she told you that she had been informed that she had only a life right in the farm, and that you told her that you were willing for her to have the whole right, title and interest in the farm?

A. I told her we would have the papers fixed up after I was to Mr. Palmer.

Q. Have them fixed up for what?

10 A. For her.

Q. Now, was that exactly what you said? We want to get at the truth.

A. I can't tell exactly what I did say.

Q. You can't tell what you said?

A. No, not exactly.

Q. And you don't remember what she said?

A. I remember that she said that Mr. Palmer said that they were only made out for her during her life, and I said it was a mistake, it wasn't the fact, and she said, "I will prove it to you, we can stop right at Mr. Palmer's as we go home."

20

Q. Did she tell you how she had discovered that?

A. I don't recollect.

Q. Did she tell you how she came to inquire?

A. I don't recollect.

Q. How long had it been since she had returned from Maine at that time?

A. I don't know.

Q. She had been in Maine that summer, had she not?

30 A. Part of it, I think.

Q. And you don't know how long it was after she had returned from Maine before you had this conversation with her?

A. No.

Q. How long had it been since you had seen William K. Haines with reference to this money that you owed him?

A. I don't know.

Q. When she came back at that time she found things that were going on wrong, didn't she? What was it?

A. I don't know that I recollect.

Q. What was your financial condition at that time?

A. Well, I was in debt.

Q. Your creditors were pressing you?

A. I don't recollect when they were pressing.

Q. Why, you know that William K. Haines had been 10
pressing you for security on his note, do you not?

A. At what time?

Q. At the time that you had this conversation with your wife prior to the making of the second deed.

A. Not prior to that.

Q. This note—this money was loaned by him to you in 1907, on the first of July, was it not?

A. No, sir.

Q. When was it?

A. Nineteen hundred and nine. 20

Q. Isn't it a fact, Mr. Roydhouse, that in the first of July, 1910, you went to see Mr. Haines at his place in Vincentown and you paid the interest on the note up to that date and he pressed you at that time for security for the money, and that you told him at that time that your wife was in Maine, was expected back within a short time, and as soon as she returned that you would see that a mortgage was given on the farm,—isn't that a fact?

A. If she would do it. 30

Q. Answer the question. Isn't that a fact?

A. No, sir.

Q. Well, was there not a conversation between you and Mr. Haines to that effect?

A. No, sir.

Q. No conversation at all?

A. Conversation in reference—I said that I would see what she would do.

Q. What gave rise to the conversation or to your words that you would see what she would do? What did he say?

A. Well, he wanted it fixed up.

Q. In what particular?

A. Well, he said, "If Mrs. Roydhouse would sign a note you can have it for two or three years."

10 Q. Sign a note or mortgage?

A. A note.

Q. Well, you told him at that time that you would see what Mrs. Roydhouse would do with regard to it, did you not?

A. I think I did.

Q. And that was at the time that the note came due in July, first of July?

A. I don't know whether—I don't recollect whether it was the first or not.

20 Q. At that time she was in Maine, was she not?

A. She might probably have been, I don't recollect.

Q. And when she returned from Maine, then is the time that this property was transferred to her by this second deed,—isn't that a fact?

A. I don't think so.

Q. Well, when was it?

A. It was in August, about the 10th of August, I think.

Q. When she returned?

30 A. Oh, I don't know about that, I don't know when she returned, when this transaction occurred.

Q. That was on the 10th of August?

A. I think so, I am not positive.

Q. Well, she didn't pay you any money at that time?

A. Who pay me any money?

Q. Mrs. Roydhouse.

A. No.

Q. Paid you nothing else at the time that you made this transfer to her?

A. I am not positive about that.

Q. You owned the stock on the farm at the time that you had this conversation with your wife, did you not?

Mr. Kellam: Which conversation? Be more explicit.

10

Q. Why, the conversation in May, 1902.

The Vice-Chancellor: Nineteen hundred and three.

Mr. Davis: Nineteen hundred and two.

The Vice-Chancellor: Yes, before the first deed was made.

Mr. Davis: Yes, sir.

20

Q. You owned the stock on the farm, did you not?

A. A portion of it.

Q. How much was it worth?

A. I don't know.

Q. What was it taxed at?

A. The stock?

Q. Yes.

A. I don't recollect.

Q. When did you get rid of that?

30

A. I didn't get rid of it as I know of.

Q. Still own it?

A. That is, as far as selling it I didn't get rid of it.

Q. Do you still own it?

A. I turned it over to Mrs. Roydhouse.

Q. When?

- A. I don't recollect.
 Q. When?
 A. I don't recollect.
 Q. When was that?
 A. I don't recollect.
 Q. What year?
 A. I don't recollect.
 Q. How many years ago?
 A. I don't recollect.
- 10 Q. Do you recollect at all that you done it?
 A. Yes, I did, and I think she has the papers, but I don't recollect what year, what date or anything about it.
 Q. Was it before this second deed to your wife?
 A. It probably might have been, I don't recollect.
 Q. You don't remember?
 A. I think it was.
 Q. When did you get rid of your automobile?
 A. Well, I think that was probably a year and a half
- 20 ago.
 Q. Since these suits were begun, was it not?
 A. What say?
 Q. Since these suits were begun, was it not?
 A. Probably it was.
 Q. You sold it to whom?
 A. My brother-in-law.
 Q. What did you get for it?
 A. I don't recollect.
 Q. You don't recollect? What did you do with the
- 30 money?
 A. I don't recollect what went with the money; for living purposes, I suppose.
 Q. Well, do you know what you did with it?
 A. I spent it for living purposes.
 Q. Did you give it to your wife?
 A. She might have gotten some of it.

Q. Well, as a matter of fact, didn't she? Don't you know what you did with your money, Mr. Roydhouse?

A. I can't tell what I spent it for; I might have spent some for clothes, some for groceries.

Q. Did you give any of it to your wife at the time you received it?

A. I don't recollect.

Q. You don't remember?

A. No.

Q. Now, are you still the owner of the property in 10 New York, the corporation?

A. No, sir.

Q. When did you get out of that?

A. When I took the stock over I turned it over to my wife, 1907.

Q. In 1907?

A. Yes.

Q. Well, you continued to be a stockholder and director, did you not?

A. Oh, yes; of course I had ———

20

Q. Well, one minute. That was in 1907 you turned all of this stock over into your wife's name,—is that right?

The Vice-Chancellor: You refer now to the corporate stock of the New York corporation.

Q. Corporate stock, yes.

A. All but a little.

Q. How much did you retain?

30

A. I kept enough to make me ———

Q. How much?

A. I don't exactly know just what.

Q. Can you tell us anything definite at all, Mr. Roydhouse?

A. I don't know how much I kept.

Q. Can you tell us about how much, whether it was five or ten shares or what? How much is it worth per share?

A. Well, I don't know what it is worth a share.

Q. How much par is it?

A. One hundred dollars.

Q. How much?

A. One hundred a share.

Q. How much did you turn over to your wife in 10 1907?

A. Well, it was all but a few shares what I retained, enough to make me hold an office.

By the Vice-Chancellor:

Q. When you bought this New York property in 1907,—it was in 1907 that you bought it, wasn't it?

A. Yes, sir; I think so.

Q. You turned it over right away to your wife when 20 you bought it?

A. Sometime during 1907.

Q. Was it right after you bought it?

A. I don't think—I don't recollect, but I know it was shortly after.

Q. I want to get this straight. Was it bought with your money and then turned over to your wife? I want to get that straight.

A. I gave this note for it at that time, yes.

Q. You gave a note for it, then you had the stock 30 put in your wife's name,—is that right?

A. Yes; I think that is right.

By Mr. Davis:

Q. What time of the year, Mr. Roydhouse, was this? Was this in the fall of the year?

A. I don't recollect.

Q. You don't remember what time of the year you bought the business, whether it was in the spring or fall?

A. I don't recollect.

Q. Well, is there anything at all about it that you do recollect?

By the Vice-Chancellor:

Q. Well, do you know how much you paid for the business? 10

A. It was somewhere between five and six thousand, five thousand and fifty-five hundred.

Q. Was that the money you borrowed from Mr. Haines?

A. No, sir.

Q. It was about the same time, wasn't it?

A. No; it was in 1907, and Haines—I didn't borrow any from Mr. Haines until 1909.

Q. Well, Mr. Haines testified, I think, to July 1st, 1907, as the time? 20

A. Nineteen hundred and seven? No, 1909.

Q. Am I wrong about that?

Mr. Davis: You are right, sir, 1907.

Q. Mr. Haines testified that you borrowed from him July 1st, 1907?

A. Have you got the note? Where is the note? That will tell. 30

Q. I don't know whether he produced the note or not.

A. Yes; he had it here.

The Vice-Chancellor: Is the note here?

Mr. Davis: This is a renewal. The testimony was that this is the renewal note, that the original note was made July 1st, 1907, and this was made July 1st, 1909.

The Witness: That is the original note, 1909.

Q. Well, your testimony is that you didn't owe Mr. Haines anything in 1907?

10 A. Yes.

By Mr. Davis:

Q. Now, this stock is still in the name of your wife, is it not?

A. Yes.

Q. You then continued to be a manager in this business after you had given this stock to your wife?

20 A. Well, up to within the last year or two.

Q. And what happened then?

A. In what way?

Q. With regard to your management of the corporation affairs?

A. Well, I didn't manage it, we got another party that managed it.

Q. Who got another party?

A. Mrs. Roydhouse.

30 Q. Isn't it a fact that Mrs. Roydhouse took charge of the affairs at that time and got a new manager in?

A. Practically.

Q. And what business have you been engaged in since?

A. Well, I have been superintending some work.

Q. What work?

A. Building.

By the Vice-Chancellor:

Q. Is that business still a going concern in New York?

A. Well, it about makes expenses.

Q. Well, it is still being operated?

A. Yes.

Q. And belongs to your wife?

A. Yes.

10

By Mr. Davis:

Q. What was your reason for giving that to her, Mr. Roydhouse?

A. What say?

Q. What was your reason for giving that to her, that stock to your wife?

A. No particular reason.

Q. No particular reason at all? When you borrowed this money from Mr. Haines what did you do with it? 20

A. Well, it went for different things.

Q. Well, what different things?

A. I don't know. Buying clothes or probably something of that kind. I don't recollect.

Q. What went with the money that you borrowed from Peter Schenck?

A. Well —

Q. Did you give that to your wife?

A. No.

30

Q. Went into the business over in New York?

A. No.

Q. What did you do with the money you borrowed from Mr. Oberholtzer?

A. I don't recollect what all became of it.

Q. At that time you were in business in New York, were you not?

A. I think I was.

Q. And at that time you were engaged there, actually, personally present, were you not?

A. Yes.

Q. And what did you do with the money that you borrowed from the Union National Bank?

A. Well, I think Mr. Schenck got some of that.

Q. What Mr. Schenck?

A. Peter Schenck.

10 Q. On what?

A. Note.

Q. Which note?

A. Interest on the note.

Q. Well, he got some of it,—how much?

A. I don't recollect what.

Q. Well, the note was only for \$3,000?

A. Yes.

Q. And you borrowed five hundred from the Union Bank, didn't you?

20 A. Yes.

Q. What became of the balance of it?

A. I don't know what became of it.

Q. Is that the way you have done business for the last several years,—you don't know what has become of your money, where you placed it?

The Vice-Chancellor: How much was it he borrowed from Haines?

30 Mr. Davis: Two thousand dollars, if your Honor please.

The Vice-Chancellor: And how much was the Schenck note?

Mr. Davis: Three thousand, Oberholtzer fifteen hundred, Union National five hundred.

By the Vice-Chancellor:

Q. Can't you tell what became of any of those moneys? You borrowed two thousand of Mr. Haines, and along about the same time three thousand of Mr. Schenck, fifteen hundred of Mr. Oberholtzer, and you are not able to tell what any of those moneys were borrowed for?

A. Well, I got to speculating a little and I suppose some of it went there, probably most of it.

10

Q. Why do you say you suppose? Don't you know? Are you sure none of it went in the New York business?

A. Not to my knowledge.

Q. Well, it wouldn't get in there without your knowledge, would it?

A. No, I don't think so.

Q. Then don't you know?

A. I say none of it went in there to my knowledge.

By Mr. Davis:

20

Q. What speculation did you engage in?

A. Stocks.

Q. What stocks?

A. Mining stock.

Q. By whom and through whom?

A. Well, I suppose—it was through a man who used to work for us.

Q. Well, who?

A. A party by the name of Ingram.

30

Q. Where does he live?

A. I don't know.

Q. Where did he live then?

A. He was working for us.

Q. Working for whom?

A. Roydhouse-Arey Company.

- Q. Well, when? Is he a broker?
 A. No.
 Q. What stocks did you buy?
 A. Oh, I don't know; different stocks.
 Q. Well, what was one?
 A. I think I bought some Reading.

By the Vice-Chancellor:

- 10 Q. Some what?
 A. Some Reading.
 Q. You don't call that mining stock, do you?

By Mr. Davis:

- Q. Off of this man?
 A. No. Then I bought some mining stock.
 Q. What mining stock?
 A. Well, two or three. I think Sioux Consolidated
 20 was one; I don't know what other; there was another
 one or two, I forget what they were now.
 Q. What did you do with them?
 A. What say?
 Q. What has become of the ——
 A. Margin.
 Q. What has become of the Reading stock?

By the Vice-Chancellor:

- 30 Q. Bought on margin—closed out?
 A. Yes, sir.

By Mr. Davis:

- Q. What became of your Reading stock?
 A. I sold it.

Q. Well, is all of your stock sold?

A. All except what I have in the Roydhouse-Arey Company.

By the Vice-Chancellor:

Q. Is that the New York corporation you are talking about?

Mr. Davis: No, sir; that is a Philadelphia corporation. 10

Mr. Kellam: Let the witness answer.

Mr. Davis: The Roydhouse-Arey Company, if your Honor please, is the company of which Mr. George W. Roydhouse is the head in Philadelphia.

By Mr. Davis:

Q. What did you do with the money that you had when you sold these stocks and through whom did you buy these stocks? 20

A. I don't know the broker's name.

Q. Where is his place of business?

A. Why, I think it was in the Real Estate Building.

Q. Whereabouts?

A. I don't know what floor, what number the room was even.

Q. You don't know what floor or what room? 30

A. No.

By the Vice-Chancellor:

Q. When you say Real Estate Building do you mean Philadelphia?

A. Yes, Philadelphia.

By Mr. Davis:

Q. Real Estate Trust Company?

A. Broad and Walnut—Broad and ——

Q. From whom did you buy the Reading stock?

A. I forget who the man's name was.

Q. What did you do with it?

10 A. What did I do with the Reading stock?

Q. Yes.

A. I sold it.

Q. To whom?

A. Back to them, I think, back afterward.

Q. At a profit or less?

A. I think that was a profit, ——

Q. What did you do with the money?

A. —— and what led me on.

Q. And what did you do with the money?

20 A. Well, I spent it for different things.

Q. Well, what different things, Mr. Roydhouse?

A. I don't know, I don't know what.

Q. You don't know what? In other words, you had nearly eight thousand dollars since 1907 and you don't know what has gone with a dollar of it? Do you mean to tell us that?

A. Well, what I say, I probably bought some things with it, I don't know.

30 Q. Well, I am trying to get at now what you have bought with it and what you have got now.

By the Vice-Chancellor:

Q. Do you know what you lost in stock speculation?

A. Do I know?

Q. Yes.

A. No, sir; I don't want to know it.

Q. Well, I do, and I would like to know something about it. I think it is time you began to try to think and see if you can answer some of the questions that have been asked. Have you no idea how much you have lost in stock speculation?

A. No, sir; I haven't.

Q. Whether one thousand or ten?

A. Well, I don't know; it is more than one thousand and I don't think it is ten.

10

Q. Now, we have got something to go on.

By Mr. Davis:

Q. Mr. Roydhouse, how much Portland Cement stock did you dispose of in that time?

A. Well, in what time?

Q. Since ——

A. What—space of what?

Q. —— 1903?

20

A. Nineteen hundred and three? I don't know how much.

Q. Wasn't it about ten thousand?

A. I don't think so. I probably had that amount of stock, but it wasn't all disposed of in one year or two.

Q. What does Mrs. Roydhouse own at the present time?

A. The farm practically.

Q. What else?

A. And the Carbon Company.

30

Q. What else?

A. And all that is on the farm.

Q. What else?

A. I don't really know.

Q. Didn't you sell this Portland Cement stock in about 1908?

A. Not all of it.

Q. How much did you sell then?

A. I don't recollect how much it was I sold; it was sold along at different times in a couple of years.

Q. And what did you do with that money?

A. I guess some of that went to speculation.

Q. Now, who was the broker that you bought this stock from?

A. I don't know.

10 Q. You don't know?

A. No, sir.

Q. What did you buy through Ingram?

A. I bought this Reading and I forget what the other one was.

Q. Didn't you just tell us a few minutes ago you bought the Reading from the man in the Real Estate Building?

A. Through his influence—introducing me to this man.

20 Q. I am not asking you about influence or introductions; I am asking you from whom did you buy these several stocks?

A. I don't know, what his name was I don't know, he introduced me to him, it was through him.

Q. Now, who did he introduce you to? What was his name?

A. I don't know.

Q. How many times did you go there?

A. I don't know that either.

30 Q. Once or more?

A. More.

Q. How many times more?

A. I don't know, a good many times more.

Q. What did he look like?

A. Well, he was a smooth-faced man.

Q. Large or small? What was the complexion of his hair?

A. Medium.

By the Vice-Chancellor:

Q. A regular broker?

A. I think he was.

By Mr. Davis:

Q. Now, Mr. Roydhouse, do you mean to tell us **10**
that you lost all of this money through a broker whose
name you don't know?

A. No.

Q. And whose office you don't know the location of,
and you can't tell how many times you went to see him,
and you don't know what stock you bought,—is that
right or not?

A. I told you what stock I bought.

Q. Answer my question. Is that right or not?

A. It practically is, leaving out the stock. **20**

Q. Well, now, tell us what stock you bought?

A. I bought, I told you, this Sioux Consolidated.

Q. How much?

A. I don't know how much.

Q. No, you don't know how much. How much
Reading did you buy?

A. I don't recollect.

Q. No, you don't know?

A. No.

Q. How many times did you buy Reading? **30**

A. I don't know whether it was once or twice.

Q. How many times did you buy Sioux?

A. I don't know.

Q. Now, is there anything you do know about the
stocks then?

A. I found out I didn't know anything about stocks.

Q. And is there anything that you know about it now?

A. I know a good deal more than I did then.

Q. Well, then, tell us about some of this stock that you bought, who you bought it from, what you paid, who you sold it to?

A. It was bought on a margin, I didn't have a chance to sell.

Q. You didn't buy Reading on a margin, did you?

10 A. No, I didn't buy Reading.

Q. Now, Mr. Roydhouse, isn't it a fact that your wife was correct when she testified on the stand that at the conversation that you had with her in 1902 that you told her that you would give her all that you had?

A. I think so.

Q. You think that that is correct, do you?

A. Yes, I think so.

Q. Did you give her the Roydhouse-Arey stock?

20 A. The Roydhouse-Arey stock? When was this date you quoted to me?

Mr. Davis: Will you just read the question?

(Question repeated.)

Q. Nineteen hundred and two.

A. No.

Q. Did you give her —

30 A. I didn't have the Roydhouse-Arey stock at that time.

Q. What did you have at that time? When did you get the Roydhouse-Arey stock?

A. I think it was in either the latter part of 1908 or the fore part probably of 1909.

Q. You had no interest in the Roydhouse-Arey business in 1902 or 1903?

A. I don't think ——

Q. What interest did you have?

A. I suppose I had ——

Q. I am not asking you what you suppose, I am asking the fact. What did you have?

A. I don't know what I had.

Q. Did you convey to your wife the Bath Portland Cement stock?

A. No, sir.

Q. You had that, didn't you, at that time?

10

A. What date?

Q. Nineteen hundred and two and 1903?

A. No, sir; I didn't get that until 1909.

Q. Nineteen hundred and nine?

A. Nineteen hundred and eight or 1909, I think.

That was what? The bath stock?

Q. Yes.

A. I don't recollect about that, when I got that.

Q. Did you convey it to her?

A. No, sir.

20

Q. You had money at that time, had you not? What did you do with that? Did you convey it to her?

A. No.

Q. In 1910 did she make any complaint that you hadn't conveyed the Roydhouse-Arey stock to her?

A. Not that I know of.

Q. Did she make any complaint that you hadn't conveyed the Bath Cement stock to her?

A. I think not.

Q. Did she make any complaint that you hadn't given her the money that you had in 1902 and 1903?

30

A. I don't recollect about that, whether she did or not.

Q. Did she make any complaint that you hadn't given her the stock on the farm at that time?

A. I don't know. What? Nineteen hundred and two?

Q. Nineteen hundred and ten.

A. Nineteen hundred and ten?

Q. Yes.

A. I think that was given to her before that time.

Q. When did she first complain about that?

A. I don't recollect.

By Mr. Kellam:

10 Q. Mr. Roydhouse, what connection had you with the Roydhouse-Arey Company in 1903?

A. Well, I supposed I was one of the partners at that time.

Q. Was it an incorporated company at that time?

A. No, sir.

Q. Was it incorporated subsequently?

A. Afterwards, it was incorporated afterwards.

Q. Did you then receive any of the stock of the corporation?

20 A. Yes, sir.

Q. Do you still hold that stock?

A. Yes, sir.

Q. Won't you tell us just exactly in your own words what happened at the time you and Mrs. Roydhouse had this conversation about your keeping this other woman? Just tell us what you did and just what occurred?

A. Well, in reference to that, I was—in 1902 I think I was living at the—or had a room at the Lorraine, and
30 Mrs. Roydhouse sometime while I was there—I think it was in either April or May—she sent for me to come to the country. I went up to the country and she showed me an anonymous letter which she had received from a woman in Philadelphia, and asked me about it, if I knew anything about it. Well, of course, I denied it, and we had a talk over it. I came back to the city,

to my apartments. Sometime after that Mrs. Roydhouse and Mrs. Wetherill came to the city. Mrs. Roydhouse went to a friend of hers, a Miss Jackson, on Tioga Street, and Mrs. Wetherill went to this agent that I rented the house of and found out through him that I was keeping an establishment on Cumberland Street. And while Mrs. Roydhouse was at her friend's house on Tioga—or in the meantime Mrs. Wetherill came down to our office in the Fidelity Building and accused me of it, keeping this house, which I denied again, and told me Mrs. Roydhouse was out at Miss Jackson's. And I went—drove out there to see her, and took her out for a drive and talked the thing over with her, tried to straighten things out; and in the evening I took her to the apartment at the Lorraine Hotel, where I was staying, living, and we were talking the thing over, and I asked her not to leave me. While we were in the conversation the telephone rang. She said she would answer the 'phone call, and she went down to the 'phone, came back, said there was a call for me from Broad Street Station, that there wasn't any message with it, only a call. Shortly after a messenger boy came there with a message; when he brought it up to the room I took it, tore it up and threw it in the toilet, Mrs. Roydhouse didn't see it. And we talked there probably—all night, almost; I tried to straighten things out. So the next morning she said she couldn't live with me, she was going to her sister's. She went up to her sister's.

Q. What sister's?

A. Mrs. Christopher Wetherill, on North College Avenue, Philadelphia.

By the Vice-Chancellor:

Q. Had you in the meantime confessed to her your wrong?

A. Yes; in the meantime—in that evening I confessed that I was keeping an establishment up on Cumberland Street, when we were talking, as I said before, practically all night, and the next morning she was going to leave me and go to her sister's, up on North College Avenue.

By Mr. Kellam:

10 Q. What did you do then?

A. And in a few days I followed up there, I went up there, I didn't know whether she was there or not at that time, then, and I went up there and Mrs. Christopher Wetherill let me in, and I don't know just what I then said,—I said when I came in, "Ginger, are you here?"—that is what she went by, that name—and she didn't make any remark for a while, and I talked a while, tried to persuade her to come back and live with me; and while we were talking I asked her if she wouldn't come back and live with me, that I would try to do what was right, and she told me—in the meantime, she says, "If I come back and live with you," she says, "I don't think it is anything more than just that you should give me a home," and I told her I would do most anything, and in the presence of her sister, Mrs. Wetherill, I told her that I would give her the farm, she could have that absolutely.

20 Q. Well, did she say she would come back then?

30 Mr. Davis: One minute; I object to that, I object to the whole line of this examination, it is not proper re-direct examination.

The Vice-Chancellor: Well, I won't exclude it on the ground that it is not re-direct. If it is competent at all I will let it be received. I think it must be re-

garded as competent; I do not see how it can be otherwise.

A. And she said after that she would come back, and we have practically been living together most of the time since; and I told her I would have the papers made out and give her the farm, and I let some time elapse before I done it and I finally had it done.

Q. Now, Mr. Roydhouse, at the time that the second transfer occurred you were indebted to a number of 10 people in various sums of money, were you not?

A. Yes.

Q. Had you any estate at all at that time?

A. I had stock of the Roydhouse-Arey Company, which I thought at that time was worth its face value, had no idea of its being anything else, and that I had plenty to pay what debts I owed besides; besides, I thought that if the Roydhouse-Arey Company—they had \$48,000 in bonds of the Bath Portland Cement Company, which was drawing six per cent. interest, as 20 I understood it, and I would be one of the firm, vice-president of the firm, that one-third of that was my interest anyhow, and I thought I had plenty of assets to cover my indebtedness two or three times over what I owed.

By Mr. Davis:

Q. You know, as a matter of fact, Mr. Roydhouse, that the Roydhouse-Arey stock is worth nothing? 30

A. Not at that time.

Q. You know it now?

A. Now, yes.

Q. That you can't get anything for it, can you?

A. I don't know.

Q. You have tried, haven't you?

A. I never tried to sell it.

Q. Well, you have tried to cash it in, haven't you?

A. I tried—I asked my brother if he would take the between twenty and twenty-five thousand I have and let me have the money to pay probably seventy-five hundred dollars that I owed.

Q. You couldn't get anything on it?

A. He said he didn't see why I should ask him to do that.

10 Q. I say, you couldn't get anything on this stock? Who has got the stock now?

A. I have.

Q. Do you own it?

A. Yes.

Q. Hasn't it been assigned to your wife?

A. No, sir.

Q. Now, you have related here a conversation that took place between your wife and yourself very fully. Is that all of the conversation that you can remember?

20 A. Well, she asked me two or three times if I had the deeds fixed and I told her I hadn't but I would,—after our conversation at Mrs. Wetherill's.

Q. I am talking about this first conversation. Now, have you related all of that first conversation that you can now remember? Can't you say "yes" or "no"?

A. I don't know that there is any more of that; I cannot think, I have been worried so much that I can't think.

30 Q. Now, Mr. Roydhouse, when you first went with the Roydhouse-Arey Company you drew a salary, did you not,—before it was incorporated?

A. I got so much a year and I drew out of the firm occasionally some money, too.

Q. You had invested no capital in it at that time?

A. No, I don't think I had.

Q. When was it incorporated?

A. I think the latter part of 1908 or 1909.

Q. Nineteen hundred and eight or 1909?

A. That is what I said, yes.

Q. Now, at that time did you contribute anything toward the capital stock,—put any money in it?

A. No.

Q. You continued to draw a salary, did you not?

A. Yes.

Q. On the date that the receipt acknowledged on the mortgage—March 25th, 1901—\$5,500, did you pay **10** cash?

A. A check.

Q. You paid cash by check?

A. Yes.

Q. Are you sure of that?

A. I haven't the check with me, but I gave my brother a check for it.

Q. I am asking you was that cash and was cash transferred for this receipt here?

A. I gave my brother the check and he got the **20** money.

Q. You remember that, do you?

A. I can remember giving him the check.

Q. Why is it you can remember that and can't remember what you did with any of this \$8,000 of money that you had long since this transaction?

A. Well, if I can't explain things—I guess you can tell where most of it has gone, some of it.

Q. Well, won't you please tell us why it is that you can remember with such vividness that you gave a **30** check in 1901, when you can't remember what became of a single dollar —

A. I don't know.

Q. One minute. — when you can't remember what became of a single dollar of eight thousand which you have had and spent since 1907? Do you understand the question?

A. The question—I say, it is gone for different things.

Q. Is that your answer to my question there?

A. I don't know any particular thing; of course I know this because I made out a check for it.

Q. I am asking you now why is it that you can remember that you gave a check in 1901 when you can't remember what has become of a single dollar since 1907, although you have had eight thousand of borrowed money. Have you got any explanation to that?

A. The explanation that I just said.

Q. Yes. Well, what bank did you give this check on?

A. I think it was the Land Title & Trust Company.

Q. On the 30th day of March, 1904, what did you give to George W. Roydhouse, if anything?

A. Another check.

Q. On what bank?

A. I think it was on the same.

20 Q. You are sure of that, are you?

A. Land Title & Trust Company.

By the Vice-Chancellor:

Q. Well, you are sure these two credits on the mortgage were cash payments?

A. Yes, sir; check, yes, sir.

Q. Well, a check and cash are the same thing as far
30 as I know now.

A. I have the checks, but I haven't them here.

Recess Until Two O'clock P. M.

Hearing resumed at two o'clock P. M., in the presence of the respective counsel heretofore noted.

HENRY C. ROYDHOUSE, recalled.

By the Vice-Chancellor:

Q. I think, Mr. Roydhouse, you probably testified to what I want to ask you, but I wish to make sure of it. Did you testify or do you testify that at the time this first deed was made to your wife and given to her by you that you understood that it conveyed to her this farm absolutely? **10**

A. Yes, sir.

Q. And you didn't know that it conveyed to her merely a life estate until the time you say she told you about it?

A. No, I didn't. **20**

Q. I guess you testified to that before, probably, but I wasn't sure. Very well.

By Mr. Davis:

Q. Well, Mr. Roydhouse, what did you instruct the conveyancer to give her?

A. I told him to make the farm out to Mrs. Roydhouse.

Q. That is what you told him? **30**

A. Yes.

By the Vice-Chancellor:

Q. Is that conveyancer still alive?

A. Yes, sir.

ANN VIRGINIA ROYDHOUSE, recalled.

By Mr. Davis:

Q. Now, Mrs. Roydhouse, the summer of 1910, at least a part of it, you spent in Maine, did you not?

A. I spent eight weeks in Maine.

Q. When did you go?

A. As near as I can remember it was the first part of
10 June, either the latter part of May or the first of June, as near as I can remember.

Q. And did you spend June and July there?

A. I must have.

Q. And when you left Maine where did you go?

A. I went to New York.

Q. And stayed there how long?

A. I stayed there a short time, I can't remember just how long.

Q. When did you come to Philadelphia or New
20 Jersey?

A. I came from New York to Philadelphia to Mount Holly.

Q. And what time?

A. I can't remember just what time, but I had been in New York long enough to find out the chaotic state that things were in.

Q. By "chaotic state" you mean the chaotic financial condition of your husband, do you not?

A. Yes. No, no; I mean the condition of the Carbon
30 Company.

Q. Well, he was the chief stockholder at that time or you were, were you not?

A. I was.

Q. And what condition did you find it in?

A. That Mr. Roydhouse had drawn out all of the money that he could possibly get hold of.

Q. And left the treasury empty?

A. Left everything absolutely empty.

Q. How long were you in New York?

A. A few weeks, as near as I can remember.

Q. You mean by a few weeks what, Mrs. Roydhouse?

A. Why, Mr. Davis, I was there a few weeks and then I came home; I couldn't tell you how long.

Q. I am trying to get at what you mean by a few weeks. Two or three weeks or something like that?

A. A week, a week or two; I can't remember positively about that. 10

Q. I see. You think you were there until about what time in August?

A. I don't remember.

Q. You don't remember?

A. No; I can't remember positively.

Q. How long had you been home,—that is, in Mount Holly, before this deed was made?

A. That I can't remember.

Q. You don't remember? 20

A. Mr. Davis, I was in such a nervous condition that I don't remember.

Q. When did you go to get the deed from the Land Title?

A. Well, that I cannot quite remember. That deed was made out the latter part of August so it must have been then.

Q. Well, I am talking about the original deed of 1903. You said that you kept that in the Land Title Building? 30

A. Yes.

Q. When did you get that from the Land Title Building and take it to Mount Holly?

A. I can't remember.

Q. How many days prior to the drawing up of the deed, the second deed?

A. How many days?

Q. Yes.

A. Well, that I couldn't remember.

Q. You got that after you returned from New York, didn't you?

A. Mr. Davis, that is not clear in my mind, I cannot remember.

Q. Well, you didn't have it before you went to Maine?

A. No; so it must have been after.

10 Q. It was still in the strong box?

A. As far as I can remember.

Q. Yes, until you went to Maine, and on your return, some time after your return, you got this deed out of the strong box,—is that correct?

A. I can't tell you whether it was before or after, but I think it was before I went to Maine, now that you refresh my memory.

Q. You think you took it out before you went to Maine?

20 A. I think so, but I am not sure, I won't be positive about it.

Q. Well, now, up to that time you hadn't said anything to your—I mean by "that time," up until your return to New York you hadn't said anything to your husband about transferring this deed to you?

A. You mean about transferring the last deed?

Q. Yes.

30 A. Why, no, because I evidently didn't know it; whenever I got that deed, then, at that time I knew of it, and I had known about—or, at least, I had been advised at least four years before I finally took that deed.

Q. That is, been advised what?

A. To look into it to see if it was legally made out.

Q. That was by Mr. Carpenter?

A. Yes.

Q. And that, then, was somewhere around about 1906?

A. Nineteen hundred and six or 1907, as near as I can remember.

Q. How was it discussed, Mrs. Roydhouse? What gave rise to the discussion of that by Mr. Carpenter and yourself?

A. I don't know; it just came up in a business way; of course, any one being in New York, or, at least, going through what I did in New York —

Q. Well, now, just tell us what it was. I am trying to get at what the facts were that surrounded or gave rise to this discussion between you and Mr. Carpenter. 10

A. Well, it was—having things made out in a legal way, and he asked me about the deed, he said "How was that deed for the farm made out? Was there a lawyer employed?" And I said, "No, Mr. Roydhouse did it." And he said, "Well, are you sure that it was legal?" And I said, "Why, certainly, Mr. Roydhouse wouldn't do anything that wasn't."

Q. Now, how came he to mention such a question? Wasn't it because of the fact that Mr. Roydhouse was making-way with your property from time to time? 20

A. Well, if it was he knew it and I didn't.

Q. Well, did you know that —

A. It was apropos of nothing that I can remember.

Q. You knew all along that Mr. Roydhouse was squandering his funds, did you not?

A. I did not; he didn't squander them on me.

Q. Didn't you know of the cement stock being transferred?

A. I certainly didn't; that was another shock that I received. 30

Q. When did you receive that?

A. After I first came back.

Q. When was that?

A. In 1910, the summer of 1910, after this deed was made out, this last transfer, I learned all of that, every

bit of it, and the only way I got it was by dragging the question out of Mr. Roydhouse.

Q. It is a shame you weren't here this morning, maybe you would have gotten something out.

A. Well, then, you have an idea of what I did.

Q. What was the first knowledge you had, Mrs. Roydhouse, of the fact that your husband was involved financially?

A. The note that—the money, rather, that he borrowed from the bank in Mount Holly.

Q. Well, you had known of your brother?

A. Well, outside of that—I won't say positively that I knew of that, Mr. Davis, I won't say positively, I may have known of it, and if I knew it I supposed Mr. Roydhouse was amply able to more than pay it.

Q. What did you suppose that he had?

A. Why, I never thought—I thought—he always gave me the impression that he had money enough to—we lived in a way, but without luxuries and I supposed he had money enough to settle a claim of \$3,000.

Q. You were a business woman, you were treasurer —

A. I am now, but I wasn't then.

Q. You were treasurer —

A. Not actively, Mr. Davis.

Q. You were treasurer of the Carbon Company and signed checks and things of that sort?

A. I didn't then, Mr. Roydhouse and Mr. Carpenter signed them, I didn't sign them until 1910 when I found out all of this trouble.

Q. That was about the time that this deed was made, was it not?

A. Yes.

Q. Before that?

A. It was after that, Mr. Davis, that I did that, when Mr. Roydhouse had put things in such a position that

I was compelled to go there and stay and take charge of things.

Q. Well, prior to that time you had been in Maine and away all the summer so that you couldn't sign checks?

A. My dear man, only two weeks—only two months, and that had been going on since 1907.

Q. You were some time in New York that summer?

A. Only a short time.

Q. How long had you been home before this deed 10 was signed?

A. I couldn't tell you, I don't remember.

Q. Well, you can tell us something about it?

A. No, I positively cannot; if I could I would be glad to tell you.

Q. What were the circumstances that led you to suspect, if you did suspect, that this original deed of 1903 was in the form that it was?

A. I didn't suspect it until Mr. Palmer told me so. When I took the paper to Mr. Palmer I laughed about it, because I said, "Mr. Roydhouse wouldn't deceive me that way after what he has done." 20

Q. How, then, if you thought that was all true, you believed that, how in the wide world, Mrs. Roydhouse, was it you came to take that deed there questioning your husband's integrity and asking counsel?

A. How do we do anything?

Q. Well, we are trying to find out how you did this. You had no question about your husband's integrity at that time? 30

A. No, I hadn't.

Q. And you hadn't seen the deed to inspect it?

A. I hadn't.

Q. And no one had told you that it was in that condition?

A. No; they hadn't.

Q. Nobody had questioned your right to the premises at that time?

A. No.

Q. And so far as you knew there were no obligations on his part that in anywise involved this farm?

A. No.

Q. Well, then, how was it, when you had implicit confidence in your husband's integrity towards you, that you took a deed to an attorney to ask counsel on it?

10 A. Simply because I was told to do so by some one else.

Q. Well, why should any one tell you to do a thing of that kind when you had implicit confidence in your husband?

A. Well, I don't know. Probably the person that advised me didn't have the confidence.

Q. Well, why should you, with implicit confidence in your husband, listen to somebody else on the outside?

20 A. Well, don't we often listen to things that are told us?

Q. Well, I am asking you to explain, Mrs. Roydhouse?

A. That is as near as I can explain.

Q. In other words, you have no explanation for that procedure?

A. No, I haven't.

By the Vice-Chancellor:

30 Q. It was after you had received the shock in New York arising from the fact that you discovered he had drawn out all the money that could be drawn out of the company there, wasn't it?

A. I can't remember whether it was or not; I really don't remember, but I don't think it was; I think it was before that, I may be absolutely wrong, but I can't tell.

The Vice-Chancellor: I suppose, of course, it was after she came from New York, but I do not know.

By Mr. Davis:

Q. Well, at any rate, Mrs. Roydhouse; you had taken no steps before you had gone to Maine that summer?

A. I think it was before,—may I ask Mr. Roydhouse a question?

10

Mr. Kellam: No. Confine yourself to your own memory.

A. (Continuing) I can't remember.

Q. You don't remember doing anything before you went to Maine, do you?

A. No, I can't remember.

Q. But you do remember that when you returned from Maine to New York you had a shock over the financial condition and then you became suspicious,— 20
is that correct?

A. That is perfectly correct.

Q. And by reason of that suspicion you inquired into your deed, took it to an attorney, had an opinion given by him to the effect that you had merely a life interest, and when that knowledge was imparted to you you then sought to have him give you a deed absolutely in fee simple, did you not?

A. Mr. Davis, I think the more I think about it that that was done before I went to Maine, the paper was taken to Mr. Palmer before I went to Maine and I didn't get it until after my return. Now, I am not sure about it, but I think so, and if it was before then it was after I went—then I insisted upon him giving me what rightfully belonged to me. 30

Q. Well, you knew at the time that you took this

deed, Mrs. Roydhouse,—the second deed I refer to—that at the time that the first deed was made to you that there was a mortgage on it, on the farm?

A. I may have known it and forgotten it.

Q. Yes. Well, there was no reason why you shouldn't have known it, was there?

A. Only that women when they are asked to sign a paper are not told anything or they are not given the papers to read.

10 Q. I understand, but you testified this morning that you had learned of the existence of this mortgage directly after you had signed it?

A. Yes, they told me—I asked what I had signed and they said it was a mortgage.

Q. So that there wasn't any reason why you shouldn't have known of the existence of this mortgage when you took this deed in 1903, was there?

A. Not that I know of.

20 Q. And is there any reason why in 1910 you shouldn't still have known that there was in 1903 a mortgage on these premises?

A. Well, it had been paid off.

Q. I understand, but in 1903 it hadn't been paid off?

A. No.

Q. And in 1910 you knew that—that it hadn't been paid off in 1903?

A. I knew it, but I didn't think anything about it.

30 Q. I understand. So that when you took the deed to this property in 1910 you took more than you would have gotten under the arrangement in 1902 and 1903, didn't you?

A. Why, I suppose I did, yes, if you put it that way, but then when Mr. Roydhouse gave me the place —

Q. That is all; there is no question. Now, in this 1910 transaction you paid no money to Mr. Roydhouse for the transfer of this deed?

A. I didn't. It wasn't a money consideration, Mr. Davis.

Q. I understand. It was purely in carrying out what you testified to this morning that he had agreed to do —

A. An agreement between me and him.

Q. —namely, to give you all that he had?

A. Oh, no, not all that he had.

Q. Didn't you testify this morning that he told you he would give you all he had? 10

A. I may have said so, but I didn't mean all he had.

Q. Please tell us what part of your testimony you mean and what part you don't mean, because you are here under oath to testify to the whole truth.

A. Well, I am trying to as near as I can.

Q. Now, what part of your testimony do you mean and what part don't you mean?

A. Why, I mean that Mr. Roydhouse said, "I will do anything for you that you ask me," and I said, "Well, the least that you can do, after what you have done, is to provide me with a home." Now, those are the actual words that were said. 20

Q. Now, I asked you this morning to tell us what was said, did I not, and didn't you tell me this morning that he—not me merely, but the Court—that Mr. Roydhouse told you that he would give you all that he had?

A. Well, Mr. Davis, if I did I wasn't conscious of it.

Q. Won't you answer my question and say "yes" or "no"—whether you made that statement? 30

A. If you say I did then I did.

Q. I am asking you.

A. I don't remember it.

Q. Isn't it easier for you to remember what took place this morning than it is what took place four or five years ago?

A. Testified to, do you mean? If your heart was beating as mine was this morning you wouldn't remember it.

Q. Then you don't remember what you testified this morning?

A. Yes, I remember, but I don't remember that.

Q. You weren't in the room when Mr. Roydhouse was testifying?

A. No, I wasn't.

10 Q. In the noon hour with whom were you discussing this question?

A. We weren't discussing the question any more than just to talk over the things that happened.

Q. This morning? You were discussing things that had taken place this morning?

A. Simply talking over the things that had happened.

Q. Well, what things that had happened?

A. Why, a few of the small points that came up.

Q. This morning?

20 A. Yes, this morning.

Q. And it was told you then what your husband had testified to?

A. No; there were a few things mentioned, but not much. I asked a few questions, Mr. Davis; naturally I would.

Q. Well, I want to know—do you mean to tell us that during the noon hour, after your husband left the stand, that it was not told you what your husband had testified to with regard to the conversation that he had

30 with you on that time?

A. On which time?

Q. On the time that the first deed was made.

A. Oh, no; it wasn't mentioned.

Q. That wasn't mentioned at all?

A. That wasn't mentioned.

Q. Well, then, why was it this morning when I asked

you distinctly and specifically what he had said to you that you then said that he promised to give you everything that he had, and this afternoon, after he had testified, you come on the stand and use identically his words? Will you explain why that happened?

A. Well, he didn't mention those words to me.

Q. Well, who did?

A. No one; they weren't mentioned to me.

Q. Where did you eat at lunch hour?

10

Mr. Kellam: Well, now, if your Honor please, I really must object to this line of examination.

The Vice-Chancellor: I think it is competent, Mr. Kellam. It is cross-examination, and if this witness has testified differently from this morning he has a right to investigate it.

Mr. Kellam: I am perfectly willing to give Mr. Davis all the latitude he wants; we have nothing to conceal. 20

The Vice-Chancellor: The witness says there was no conversation touching her husband's testimony on this point. If Mr. Davis wants to pursue it I think he should be permitted to do so.

Q. Where did you lunch?

A. At the Young Women's Christian Association, or the Young Men's, whichever it is. 30

Q. I mean today.

A. Yes, today.

Q. Who was in the party?

A. My sister, Mrs. Wetherill; my brother, Mr. Schenck, and Mr. Roydhouse, Mr. Kellam and myself.

Q. Where did this conversation take place?

A. At the table in the dining room.

Q. No, I don't mean today; I mean the conversation with your husband in 1902.

A. You mean when he promised to give me a home?

Q. Yes.

A. At my sister's house on North College Avenue, Philadelphia.

Q. And when had you seen him before that?

A. I left him after I discovered what had happened, —

Q. Where —

A. — that he was keeping another establishment. He had his apartment at the Lorraine, on Fairmount Avenue.

Q. Where was it you left him?

A. I left him at the Lorraine. I wasn't living there with him. I was in Mount Holly at the time; I came down to verify the report that I had heard.

Q. Did you have any conversation with him about this matter?

A. I did.

Q. Where?

A. In his business carriage, he came out.

Q. Is that the only conversation?

A. No. I had another one at the Lorraine that night.

Q. When? That same night?

A. Right after we made the discoveries.

Q. Was that after the conversation at your sister's home?

A. That was before, that was when I left him and went to my sister's.

Q. And how long before was it that you had the conversation in the Lorraine?

A. The night before; I left him the next morning and went to my sister's.

Q. And then after you left him how long was it before he saw you in your sister's home?

A. About three days, either two or three days, I can't remember whether it was two or three,—he came there.

Q. Mrs. Roydhouse, what money had your husband put in the New York concern after 1907?

A. I couldn't tell you, Mr. Davis, because I don't know.

Q. Who kept the books? 10

A. A Miss MacTernen.

Q. You have seen the books, have you not, as treasurer of the concern?

A. Yes, I have seen them, but I don't know anything about bookkeeping, I don't understand it.

Q. You haven't investigated how much stock was put in or how much was taken out?

A. No, I hadn't then.

Q. Well, have you now?

A. Yes, I have now; now I have the books properly 20 kept.

Q. What contributions of capital were made by Mr. Roydhouse after 1907?

A. He had put—I think it was \$1,000—in.

Q. When?

A. I couldn't tell you; I don't remember the date.

Q. What year?

A. I don't remember that either.

Q. You still hold the stock in the New York concern? 30

A. I still hold some of it, yes.

Q. How much?

A. I don't know just how much stock I own.

Q. How many shares?

A. I can't tell you just how much I own.

Q. Who holds the others?

A. A Mr. Holbrook owns some.

Q. How much?

A. He has 200 shares, and Mr. Gordon Smith owns some.

Q. How much does he have?

A. I think he has ten.

Q. Who else?

A. A Mr. Fesser.

Q. How much does he have?

10 A. He has one; each of the directors had one share.

Q. How much does Mr. Roydhouse have?

A. I can't tell you just how much he has, Mr. Davis.

Q. And you have more than all the rest of them?

A. I have more than all.

Q. You have, in other words, sufficient to control the concern?

A. I have the controlling stock, yes; it was given to me at the time the business was bought.

Q. By Mr. Roydhouse?

20 A. By Mr. Roydhouse, and I put in my savings.

Q. Now, when did Mr. Roydhouse convey to you the stock on the farm?

A. The stock on the farm?

Q. Yes.

A. Mr. Roydhouse never conveyed the stock on the farm to me, that belonged to my father and mother.

Q. So that none of it belonged to him,—ever belonged to him?

A. No.

30 Q. He never had any stock on the farm?

A. Horses.

Q. Well, that is what I am trying to get at.

A. His driving horses.

Q. Does he still own them?

A. No, he doesn't.

Q. When were they conveyed to you?

A. Conveyed to me?

Q. Yes.

A. They were never conveyed to me, they were sold.

Q. To whom?

A. I don't know.

Q. When?

A. Several years ago, three or four years ago.

Q. Your husband testified on the stand this morning that he had owned, I think he said, a half of the stock on the farm and had conveyed it to you about 1907 or 1908. Is that true or not? **10**

A. My father and mother ——

Q. Well, answer ——

A. —— owned the stock on that farm.

Q. Well, answer my question. Is it true or not?

A. I don't know.

Q. Do you mean to say now that you don't know whether your husband ever conveyed to you any interest in the stock on the farm?

A. As I can remember it I have a chattel mortgage on the stock on that farm which was given to me years and years ago. **20**

Q. But still you don't answer my question.

A. I can't remember it, Mr. Davis; that was done so long ago that I can't remember.

Q. Well, 1907 or 1908 you would be likely to remember, would you not?

A. Well, this chattel mortgage was given to me long, long before that.

Q. I am not asking about the chattel mortgage. We are talking at cross purposes. I am trying to get at the fact whether or not it is true that your husband gave you his interest in the stock on the farm in 1907 or 1908 or at any other time? **30**

A. I don't think he did.

Q. You don't know anything about it?

A. No, I don't.

Q. Well, now, you say you hold a chattel mortgage on the stock. On what stock, Mrs. Roydhouse? I don't mean particularly, but on whose stock?

A. Well, I suppose it belonged to my father and mother.

Q. Well, as a matter of fact, who does it belong to?

A. Well, now, I have the chattel mortgage, it must belong to me.

10 Q. The chattel mortgage belongs to you, but who does the stock belong to?

A. Well, it belongs to me, I should think; I supposed it did.

Q. Well, when did you get it and where did you get it?

A. Just what I have told you.

Q. No, you haven't told us at all. You told us where you got the chattel mortgage, but you haven't told us how you got the stock?

20 A. Well, then, it must have been, now ——

Q. Do you remember?

A. No, I don't.

By the Vice-Chancellor:

Q. I thought you said it belonged to your father and mother?

A. Well, he says it doesn't.

Q. Who?

30 A. Mr. Davis.

Mr. Kellam: Don't pay any attention to Mr. Davis. You tell us what you know.

Q. You must not put too much confidence in Mr. Davis. I say that without any reflection upon him.

A. I don't know anything about Mr. Davis.

Q. Under the present conditions it is well enough for you to testify to what you know and nothing else, and not get your information from Mr. Davis or anybody else. Now, what did you mean when you said the stock belonged to your father and mother?

A. I meant that my father —

Q. I do not understand Mr. Davis to say that it doesn't.

A. I may have misunderstood him. If I did I apologize. 10

Mr. Davis: No apologies required, Mrs. Roydhouse.

Q. State what you meant.

A. Well, I meant that, as I understand, I have a chattel mortgage on the stock on the farm, everything, and I supposed that gave it to me.

Q. A few moments ago you said it belonged to your father and mother. What did you mean by that? 20

A. Well, before it was given to me, it belonged to them before it was given to me.

Q. Who gave you the chattel mortgage?

A. My mother and father.

Q. That wasn't from Mr. Roydhouse?

A. I don't think so. There are some more papers that I haven't read.

Q. What?

A. I say those are other papers that I haven't read, I have just simply taken other people's word for it. 30

By Mr. Davis:

Q. Did you pay any money to your mother and father for that chattel mortgage?

A. I did not.

Q. When did they give it to you?

A. It has been many years ago, many, many years ago.

Q. Well, the stock that was on there then isn't on there now, is it?

A. Well, it is the descendants.

Q. Mrs. Roydhouse, what aroused your suspicions as to that deed? Tell us fully.

A. Mr. Carpenter coming to me and telling me
10 about it.

Q. When?

A. I can't remember just when it was, some time in 1906 or 1907.

Q. That was four years before?

A. Four years before.

Q. Why hadn't you in the meantime acted upon it?

A. Simple neglect and faith in my husband.

Q. What caused you then in 1910 to act, if you still had that faith and confidence, as you testify to?

20 A. I don't know; one of those little inexplicable things that did it.

By Mr. Kellam:

Q. Mrs. Roydhouse, at this meeting which took place on College Avenue between your husband and yourself, at the time that you testify there was an agreement entered into, was anyone present besides Mr. Roydhouse and yourself?

30 A. My sister, Mrs. Wetherill, was there with me.

Q. And at that time, in the presence of your sister, just what was said by you and Mr. Roydhouse with regard to your returning to live with him?

Mr. Davis: It seems to me, if your Honor please, that has been gone into.

The Vice-Chancellor: Well, I think it may be answered if you desire it.

Q. Just answer the question.

A. Mr. Roydhouse himself said that if I would go home with him and forgive what had happened he would give me a home.

By the Vice-Chancellor:

10

Q. The Mount Holly home, did you mean?

A. The Mount Holly home, the farm, he said.

By Mr. Kellam:

Q. And did you say anything in reference to that?

A. I said, "Well, I will accept it," and I went home with him and I have lived with him ever since.

By Mr. Davis:

Q. Well, now, Mrs. Roydhouse, why isn't it you haven't mentioned the Mount Holly farm business before? 20

A. Why, I thought it was understood.

Q. Well, you don't take anything for understood in this court.

A. My dear man, I don't know, it is my first experience.

30

EMMA S. WETHERILL, a witness produced in behalf of the defendants, being duly sworn according to law, on her oath says:

By Mr. Kellam:

Q. Now, Mrs. Wetherill, you are the sister of Mrs. Roydhouse, one of the defendants in this cause?

A. I am.

Q. Where were you living in 1902?

A. Twenty-two hundred and thirty-one North College Avenue, Philadelphia.

Q. Do you recall your sister coming to your house at that time?

A. I certainly do.

Q. Do you remember about when it was?

A. Well, it was in the summer of 1902.

10 Q. Now, did your sister come accompanied by anyone?

A. No.

Q. Do you recall whether her husband ever came to see her there after that?

A. Yes.

Q. Well, now, how soon after your sister came to your house?

A. A day or two, I can't tell exactly when.

Q. Do you recall Mr. Roydhouse coming to the house?

20 A. Yes.

Q. Do you know who let him in the door?

A. I did.

Q. And what happened? Just tell what happened.

A. Well, he burst into tears and he said, "Oh, Ginger, I was afraid you had gone."

Q. Now, I don't understand who "Ginger" was?

A. Ginger was my sister; that is his exact words, I remember that.

Q. That is a nick-name?

30 A. That is a nick-name.

Q. Well, now, did they have any conversation then together?

A. They did.

Q. Were you present?

A. I was.

Q. Now, just tell us what you heard?

A. Well, he pleaded with her to come back to him, and he said that he would give her anything or do anything he could to make amends for what he had done.

Q. Yes. What did she say?

A. And she said she would like to have the farm and he said he would give it to her.

Q. Was that all that was said at that time?

A. No, but that is what I remember particularly.

Cross-examination.

10

By Mr. Davis:

Q. Now, he didn't say then—rather, she didn't say that "I think you ought to give me a home"?

A. Yes, something to that effect.

Q. Well, now, we don't want "something to that effect"; we want to know what this woman said.

A. Well, goodness, I can't remember the exact words.

Q. And you don't mean to attempt on the stand, do you, Mrs. Wetherill, to narrate anything like the exact words that were used? 20

A. I know what was said, I was there.

Q. Well, what were they?

A. Well, I can't repeat the exact words, but that was the nature of them, it was to that effect, she wanted the farm and he promised it to her.

Q. What did she say and what did he say?

A. Don't ask me; it was to that effect.

Q. You can't tell us? 30

A. That was the substance of it, I can't repeat it word for word.

Mr. Kellam: That is the defendants' case.

PETER S. SCHENCK, recalled.

By Mr. Davis:

Q. Mr. Schenck, you have been sworn. I think you testified this morning on direct examination that this money was loaned in December, 1909. Did you receive a letter from your sister, Mrs. Roydhouse, that in anywise referred to the money that Mr. Roydhouse had borrowed from you?

10

Mr. Kellam: Now, one moment. Your Honor, I object to the introduction of any evidence of any letter that is not produced until either the letter is shown to have been sent or shown to have been received and its loss accounted for.

Mr. Davis: Well, I can't do it unless I get a question.

20 The Vice-Chancellor: Go ahead and show that the letter is lost and been searched for recently exhaustively and that it is lost before you prove its contents.

(Question repeated.)

A. Yes, sir, I did.

Q. Now, what has become of that letter?

A. Well, I am not positive that the letter is destroyed, it may be in my drawer somewhere.

30

Q. Have you looked for it?

A. I have looked but I haven't taken everything out it, I may find the letter in there somewhere.

Q. You say you have looked for it and you didn't find it?

A. No, I didn't find it.

The Vice-Chancellor: He says he didn't go all the way through.

Mr. Davis: That may be but a man isn't bound to look everywhere under heaven to find a letter.

The Vice-Chancellor: No, but he is bound to make an exhaustive search. He says it may be there.

Q. Do you know whether it is there or not? 10

A. No, I don't. I am not positive whether I destroyed it or not but I did receive a letter from her stating —

Mr. Kellam: Now, wait. I object. The loss of this letter has not been shown, I think.

The Vice-Chancellor: I do not think you have brought it within the rule, Mr. Davis.

20

Q. Do you know, as a matter of fact, Mr. Schenck, whether or not your sister had knowledge of the debt that her husband owed you?

The Vice-Chancellor: Now, if your source of knowledge is from a letter or the letter which has just been referred to it would not be proper for you to answer it, but if you know in any other way you can do so.

A. Yes, I know that she had knowledge of it because I came from Atlantic City, New Jersey, and went up there and talked to her personally about it myself. 30

Q. You did?

A. Yes, sir.

Q. When was that?

A. That was before the farm had been transferred, this last deed.

Q. And how long before?

A. Why, I couldn't say exactly how long before but it was within a month before.

Q. What conversation did you have with her?

A. Only that I ask her—told her that I had loaned Mr. Roydhouse this money and she said that I shouldn't have done it because Mr. Roydhouse was in bad circumstances, something like that.

Q. Who told you that?

10 A. My sister told me that.

Q. What else, if anything?

A. Well, I don't remember what other talk transacted in the business, but that I do remember.

Q. You say that was about a month before the farm was transferred?

A. Just about a month, might have been four weeks, three weeks before it was transferred.

Cross-examination.

20

By Mr. Kellam:

Q. Now, Mr. Schenck, this money was loaned to you in December, 1909, was it not?

A. Money was loaned to me?

Q. Yes. I beg your pardon. You loaned the money in December, 1909?

A. Whatever date is on that note.

Q. Did you receive any interest on this loan?

30 A. Mr. Roydhouse sent me \$100, sent me a check for \$100.

Q. When was that?

A. That was about—oh, I guess about—maybe a year after I had loaned him the money.

Q. A year after you had loaned him the money?

A. Yes.

Q. Did you ever see that paper before (exhibiting)?

A. I certainly have.

The Vice-Chancellor: What is it?

Mr. Davis: I object; it speaks for itself.

Q. Where did you receive that paper?

A. Over here in Camden,—the Victor Talking Machine, six-story building.

10

Q. Who gave it to you?

A. Mr. Roydhouse.

Q. And why was it given to you?

Mr. Davis: That is objected to as not being proper cross-examination.

Mr. Kellam: I am testing the credibility of this witness on the questions he has testified to.

20

The Vice-Chancellor: Go ahead; it may be enlightening, I don't know whether it is or not.

Q. Why was it given to you?

A. It was given to me to secure me in a way for the money that I loaned him—the note calls for.

Q. And this is what you received?

A. That is what I received, yes.

By the Vice-Chancellor:

30

Q. What is the paper? This is the paper you referred to this morning?

A. Yes, sir.

Q. That paper you said was given a few weeks after the loan was made?

A. Yes, that is the one.

Mr. Kellam: The matter has been before the Court in that way.

By Mr. Kellam:

Q. That loan then was for five years, was it not?

A. Five years.

10 Q. In other words, it was made by you in 1909, December 1st, for five years?

A. Yes.

Q. Then how was it in August, as you say, 1910, you went and demanded the money from your sister, Mrs. Roydhouse?

A. I didn't demand the money from my sister, Mrs. Roydhouse.

Q. That is the effect of your testimony?

A. No, it isn't.

20 Q. Well, what is your testimony?

A. I asked Mrs. Roydhouse if she would take this note of mine that Mr. Roydhouse had given me, I didn't demand it, I just merely asked her to take it, she refused to take it.

Q. Why did you go to her within a year after you had loaned the money for five years with this note, as you call it?

30 A. The reason I went to her was because I found out that—after I had loaned this money, six months after I had loaned this money I wrote a letter to Mount Holly to Mr. Roydhouse and she opened the letter, stating that it had been addressed to her or that it had been ——

Q. Do you know that of your own knowledge?

A. Yes, I know it or got her words for it, she told me this and that she opened the letter by mistake and found out then that Mr. Roydhouse—that I had loaned Mr.

Roydhouse \$3,000; I wrote to Mr. Roydhouse and asked him for some interest on the money and he didn't send me any at that time, she got the letter and opened it.

Q. You subsequently received interest on the money, did you not?

A. One hundred dollars on it about a year afterwards. About a month after she got that letter of mine that I wrote to Mr. Roydhouse here, the farm was then legally transferred over to her, I had the record searched in Mount Holly and found it out.

10

Q. And your reason for going and taking this up with your sister was to see whether she would assume this debt?

A. Yes. Nothing wrong about that, it is her husband, a man and wife is supposed to be one, you know.

Q. Well, did she have anything with which to assume this debt?

A. Not that I know of outside of that carbon work over in New York.

Q. Did she own the farm at that time?

20

A. Well, now, wait a moment until I think it over and I will tell you. The farm had been transferred to her at that time, yes.

Q. It was known in the family as her farm, wasn't it?

A. It was at that time, had been transferred the second time, that was about six months after I had loaned the money.

Q. At the time you went to see her, which you claim was prior to the transfer, the farm was then —

A. I don't claim prior to the transfer I went to see her about that, it was after the transfer.

30

Q. Oh, you testified that it was a month or three weeks before the last transfer —

Mr. Davis: No, that is the letter he referred to.

A. No, I didn't testify to that.

Q. — that you went to see your sister?

A. No.

Q. Well, then, you went to see your sister after this was transferred?

The Vice-Chancellor: After and before, both?

10 A. No, I didn't go to see her before, I don't think it was before it was transferred. It seems to me that it was the time I was down to Atlantic City and came up to see her about it and wanted her to take the note. In fact, while I was at Atlantic City I wrote her and asked her to take it, and when I got done I came up to the house and went out to the farm to see her about it.

By the Vice-Chancellor:

20 Q. The conversation that you testified to on the direct examination, to the effect that you went to see her and she told you that he was in bad shape, that you ought not to have loaned him the money, that was after this last transfer, you say now?

A. If I could just remember exactly the time when I came up from Atlantic City I could tell you.

Q. Well, is that the same conversation that you —

A. That is the same conversation.

Q. Now, on your direct examination you said that was three or four weeks before this last transfer?

30 A. Well, I might be a little bit twisted.

By Mr. Kellam:

Q. It probably occurred after the transfer?

A. Now, wait a minute. It is pretty hard to remember all those things all the way back, to remember them

exact, days and dates. Now, I wrote a letter to Mr. Roydhouse and she got the letter and opened it.

Q. When did you hear of that?

A. When did I hear of it?

Q. Yes.

A. Why, she either wrote me a letter and told me about it or else I was up there.

Q. Now, wait.

The Vice-Chancellor: You cannot tell the contents of **10**
the letter.

A. She either wrote me a letter and told me about it or else it came up when I was up there, but I am positive that she answered that letter that I sent to Mr. Roydhouse asking for interest, I am pretty near positive she did.

Q. When did you have this conversation? That is the important point.

A. That is a pretty hard thing to tell, I will tell you just here, to tell exactly it is a very hard thing to tell. **20**

Q. Was it in September?

A. It was before September, it was just after—when I finished up down at Atlantic City, a building down there, I went home, I came to Philadelphia and then went up home to Mount Holly, and I couldn't tell you but it seems to me it was about—I can't tell exactly when we did get done, it was before August though.

By Mr. Davis:

Q. Before August? **30**

A. It was before August, it was before—I can't tell you, to tell the truth, because I don't know just exactly when I got done down there, it was in the spring of the year, I know that.

By Mr. Kellam:

Q. And you went to her because you thought she

owned this farm and she could raise the money or she was a responsible party?

A. No, I didn't think she owned the farm; no, I didn't go to her because I thought she owned the farm; I went to her simply to ask her if she would take the note.

Q. You knew she owned the farm? Wasn't it known in the family?

A. Never known to me that it was her farm, not until I had the record searched in Mount Holly and found it

10 had been legally transferred to her.

Q. You testified a few moments ago it was known as her farm?

A. Never known to me as her farm. I don't think I testified to that fact, I don't think I did.

Q. Now, which do you mean?

A. I mean it was never known to me to be her farm until I wrote to the Clerk of the Court at Mount Holly and asked him to search the record.

Q. Why did you do that?

20 A. Because I wanted to find out if it was her farm, if my note was any good, or whether it had been transferred before or after he borrowed this money from me, that is what I wanted to find out.

Q. How did you come to do that?

A. How did I come to do that?

Q. Yes.

A. Why, because somebody told me they had loaned him money and couldn't get anything out of him.

30 By the Vice-Chancellor:

Q. Well, didn't you say that you wanted her to take over this note —

A. Sir?

Q. Didn't you say that you wanted her to take over this note because you knew she had the farm and it was no more than right that she should?

A. I won't say whether I wanted her to take over the note before or after it had been transferred. I wanted her to make a settlement with me so as to keep it out of court, but now, your Honor, I won't say whether it was before or after the transfer of the farm. It was my idea to settle it without going into court with it.

Q. I understand now that you do not remember. On your direct examination you said it was three or four weeks before this last transfer. You cannot be sure of that now, I understand you? 10

A. The only thing I can be sure of is that I wrote about six months after loaning Mr. Roydhouse this money and she got the letter, and then it was answered, and then about a month after that the farm was legally transferred, as I got it searched up there in the court by the clerk and he sent me that statement.

WILLIAM K. HAINES, recalled. 20

By Mr. Davis:

Q. Mr. Haines, on the first of July, or thereabouts, 1910, did you have any conversation with Mr. Roydhouse with regard to securing yourself for the money that was owing to you?

A. I wrote to him, told him to come and see me and we would have a talk about the security, I wanted security on the note. He didn't come for sometime. Now, I cannot tell you whether it was on July 1st or not, but he finally did come to see me, and July 1st, 1911, — 30

Q. I refer to 1910, before the transfer of this property?

A. Oh, yes, I had asked him for security prior to that time, wanted different security than a note alone.

Q. And what did he say to you, if anything, at that time?

A. Why, I think he wrote to me in these words: "For God's sake don't sue me."

Mr. Kellam: I object.

Q. No, what did he say to you with regard to giving you security in 1910?

10 A. He said he would, as soon as his wife came home he would make it satisfactory to me.

Q. As soon as his wife came home?

A. Yes.

Q. Where was she at that time, if you learned from him?

A. He said she was visiting up in New England, as near as I can remember, I don't think he said Maine, he said New England with some friends of hers.

20 Q. Now, how long after you had this conversation with him and asked him for security was it before the premises were conveyed by this second deed, as near as you can tell us?

A. Well, it don't seem—may I have the date of the transfer, of that deed?

Q. August 29th, 1910,—or 27th?

A. Well, I should suppose a month.

Q. A month before?

A. Yes.

30 No cross-examination.

GEORGE W. ROYDHOUSE, recalled.

By Mr. Davis:

Q. Mr. Roydhouse, have you looked up the records of

your office to ascertain whether or not the two receipts, March 25th, 1901, and March 30th, 1904,—whether Henry C. Roydhouse paid you the money?

A. I find two checks, one of March 25th, 1901, drawn to H. C. Roydhouse by Roydhouse, Arey & Company, for \$5,500, endorsed by H. C. Roydhouse and handed over to me, and another one, March 25th, 1904, for \$5,220, drawn to H. C. Roydhouse by Roydhouse, Arey & Company, and endorsed and handed over to me.

Q. Were those checks paid?

10

A. Those checks were paid; yes, sir.

Q. And were they paid out of the funds of the Roydhouse-Arey Company or out of the funds of H. C. Roydhouse?

A. Out of the funds of Roydhouse, Arey & Company, the firm for which I supplied all the capital and practically run the thing.

Q. Well, were they in anywise paid out of the capital of Henry C. Roydhouse?

A. Well, he had an interest in the thing as we made profits, and it was from that that he got this, got payments, and he got this stock, this Bath Portland Cement stock.

Q. So that they were actually paid out of the funds in which he had part interest?

A. Of which he had a part interest.

By the Vice-Chancellor:

30

Q. Well, this was no doubt charged to him?

A. This was charged to him.

Q. These are checks of the company, drawn to his order, given to him and by him endorsed over to you?

A. Yes.

Mr. Davis: I offer the deed Roydhouse and wife to Moore.

(Said paper marked Exhibit C6.)

Mr. Davis: Deed from Moore and wife to Ann Virginia Roydhouse.

(Said paper marked Exhibit C7.)

10

BOTH SIDES CLOSE.

