

Secy of State

DAVISON & Co., Law Printers, 27 Montgomery st., Jersey City.

N. J. Court of Errors and Appeals.

MARY ANN McKEOWN,
Complainant below,
Appellant,

and

JOHN JAMES McKEOWN ET ALS.
Defendants below,
Respondents.

Synopsis
and Brief.

John James McKeown purchased the property in question May 10th, A. D. 1866, at public sale, and produces in proof thereof, the deed offered in evidence, and marked Exhibit D. 1.

He also testifies to the fact himself, see page 25. John Dwyer, a witness for the complainant also testifies, that he was the auctioneer who sold the lots; that John James McKeown bid in the property; that the deed was made to him, and that he (Dwyer) delivered McKeown the deed. Page 22.

John McAtavey, also a witness for the complainant testifies, that he was present at the sale, and that John James purchased the property in question. Page 20.

Joseph McKeown testifies, that "John James purchased the land and the house was built with his money." Page 31. He also says, "when John James bought the property he showed me the deed to him, and I read it out so the whole house could hear it. Mary Ann was then sitting within three or four feet of me." Page 31.

John Curry, a witness for complainant, testifies that he learned in 1872 that John James had the deed of the property. Page 19.

Jane Curry, a witness for complainant (and her sister), testifies that she knew in 1872 John James had the deed of the property. Page 13.

John James McKeown built the house in 1867, and paid all the bills for construction and material. See his testimony, page 25, and exhibits marked D. 2 to D. 15 inclusive. He also paid for survey of the lot, page 25, and Exhibit D. 16. He also paid all the taxes, page 26, and Exhibits D. 17, 18, 19 and 20. He also paid the insurance, page 26, and Exhibits D. 21, 22, 23, 24, 25, 26 and 27.

This suit was commenced October 3d, 1878. Mary Ann McKeown, the complainant and appellant, says that it was her money that purchased the property; this John James denies, and says that with his own money he purchased the lots; with his own money and \$100 borrowed of John M. Gibson, \$100 borrowed of his brother, and \$170 borrowed of his mother, he built the house. This \$170 may have been the money of Mary Ann, but he testifies that he paid back this \$170 to his mother, and gave her \$30 for interest, making \$200. Page 26. And Joseph McKeown testifies, page 31, that he went with Mary Ann to the bank to deposit some money, and that she said it was the last of the money John James owed her, and that she got it from her mother. John James says that he never borrowed any money from Mary Ann, and only the \$170 from his mother. Page 26.

The complainant says that this property was purchased with her money; but she is proved to be of unsound mind, and her testimony is contradicted in several important particulars:

1st. She is of unsound mind. Joseph McKeown's testimony, p. 32.

2d. She is contradicted.

A—As to her age—compare her testimony, p. 1, and Mrs. Curry, p. 13.

B—As to knowledge when property was purchased, complainant's testimony, p. 3; also Mrs. Curry, p. 13, and Joseph McKeown, p. 31.

C—As to her bank account; compare her testimony p. 6, 7 and 8, with Joseph McKeown, p. 31; John Curry, p. 18, and John James McKeown, p. 26 and 29.

D—She is also contradicted as to her knowledge of the title being in John James, as to her sending money for her parents to come from Ireland, and also as to her mother's statements.

RESPONDENT'S POINTS.

I.

If this property was purchased with the complainant's money, and for her, John James was her trustee; but

“The law never implies; the Court never presumes a trust except in cases of absolute necessity.

Baldwin v. Campbell, 4 Hal. p. 891.

II.

If a trust, it must be either a direct or implied trust.

A—It cannot be a direct trust, for the Statute of Frauds expressly says, that all declarations or creations of trust shall be in writing.

Statute Frauds, sect. 13.

B—It cannot be an implied trust; for “When a trust is sought to be raised as a resulting trust from the payment of the purchase money, there must be very clear proof of the payment of the purchase money by the person in whose favor a trust by implication is sought to be raised.”

“A resulting trust will not be held to arise upon payments made by one asserting his claim in common with the grantee in the deed, when the consideration is set forth in the deed as moving solely from the latter, unless satisfactory evidence is offered exhibiting the portion which was really the property of each, and establishing the fact that the payment was made for some specific grant or distinct interest in the estate.”

Cutter v. Tuttle, 4 C. E. G. 549.

Shrosee v. Isaacs, 1 Stewart, 320.

III.

Delay in asserting the claim is an important consideration in determining whether there is a trust or not.

Midmer v. Midmer, 11 C. E. G. 299.

“ “ 12 C. E. G. 548.

Barnes v. Taylor, 12 C. E. G. 266.

JAMES CHAPMAN,
Sol'r Respondents.

Court of Errors and Appeals.

Between

MARY ANN McKEOWN,
Appellant,

and

JOHN JAMES McKEOWN ET ALS.,
Respondents.

POINTS OF APPELLANT.

The bill of complaint seeks to have a resulting trust declared in favor of the appellant in certain lands in Hudson County, now held in the name of her brother, John J. McKeown, the defendant.

The said defendant, respondent, filed an answer, ^{the} ~~the~~ cause came on to hearing upon bill, answer and proofs, the Chancellor denied the relief sought and dismissed the bill of complaint, decree was entered accordingly.

From the decree the appellant (complainant) appeals to this Court and asks a reversal.

I.

A resulting trust should be established in favor of the appellant (complainant) in the property described in the bill of complaint. The appellant claims that the money

with which the property was purchased and improvements made thereon was her money, that she gave the money to her mother upon the express understanding and agreement that it should be used for her benefit in purchasing a home for her, that with this money the property in question was purchased and the improvements made thereon, and the title to the same was taken in the name of John James McKeown without her knowledge or consent, and in fraud of her rights, and that a resulting trust ensues to her benefit.

Now as to the facts :

I.

She was of sufficient pecuniary ability to furnish the money wherewith to purchase the property and make the improvements. From the time that she came to this country, and up to the year 1872, embracing the money she gave her mother, it is shown that she had over \$3,000.

Pages 2, 3 and 15 of testimony.

She was thirteen or fourteen years old when she came here. She now (1879) is forty. She has then been in the country twenty-six or twenty-seven years. Up to the time the property was purchased, in 1866, she had been at service on good wages, ^{some} ~~some~~ twelve to fourteen years.

Pages 13 and 25 of testimony.

Up to 1879 she had worked in this country about 26 or 27 years at wages. In 1866 she had been working about 12 or 13 years.

She speaks fully of this in her own testimony. Jane Curry speaks of it and John Curry also.

See John Curry's testimony, page 16, line 20 to 40.

He speaks of her as never being out of employment. That she always earned good wages.

II.

She gave these earnings to her mother from time to time until the property was purchased and the house built upon the land, and even after that she gave money to her mother to keep it in order and repair.

Her own testimony, page 2, line 10 ; page 2, line 16 to 22 ; page 3, line 10 to 20.

On cross examination, page 6, line 10 to 30 ; page 6, lines 35, 36 and 37.

She kept no bank account, but gave her money to her mother.

Page 6, line 40 ; page 7, line 1 to 10.

She did not loan money to any one.

Page 7, line 1 to 10.

She gave her mother money to use in the building, furnishing and keeping in order.

Page 8, line 1 to 10.

Jane Curry in her testimony states that Mary Ann always gave her earnings to her mother.

Page 9, line 1 to 10 ; page 10, line 4 to 20 ; page 4, line 1 to 10.

John Curry also testifies to this fact, page 16, line 30 to 40 ; page 18, line 20 to 30 ; page 20, line 10 to 20.

John Dwyer's testimony, page 22, line 20 to 30.

III.

This money was given to and deposited with her mother upon the express understanding and agreement with her mother that it should be used in the purchase of a home for the appellant, to purchase lands for her, to make a home for her.

This is abundantly proved by the testimony of all the witnesses who speak about the matter.

See Mary Ann McKeown's testimony, page 2, lines 10, 11 and 12 ; page 3, line 10 to 22 ; page 8, line 1 to 10.

John Curry's testimony, page 17, line 20 to 40.

John Dwyer's testimony, page 22, line 20 to 30.

IV.

The money was used in the purchase of the property, and in making the improvements on it, and finishing the same, putting it in repair and keeping it so.

Mary Ann McKeown's testimony, page 2, line 10 to 20 ; page 3, line 20 to 30 ; page 4, line 8 to 10.

On cross-examination, page 6, line 10 to 30 ; page 8, line 1 to 10.

Jane Curry's testimony, page 9, line 10 to 30 ; page 11, line 29 to 35.

The mother kept a bank account at the time of the purchase of the lot and the building of the house.

Page 12, line 3 to 8.

Saw her mother have the money which John James got for the building.

Page 13, lines 38 to 40.

Her mother had money in bank.

Page 14, line 1 to 10.

John Curry's testimony, page 17, line 1 to 10 ; page 17, line 30 to 40 ; page 18, line 10 to 30 ; line 30 to 40 ; page 19, line 10 to 20.

John McAtavy's testimony, page 21, line 1 to 10.

John James told McAtavy that he got the money which paid for the building from his mother.

John Dwyer's testimony, page 22, line 20 to 30.

V.

In furtherance of the design and agreement in relation to the purchase of this property and the making of the improvements thereon, the appellant took possession of a portion of the premises and remained in possession many years, at times when she was out of service, or at times when she chose to be there. Of a portion she had exclusive possession.

Page 4, line 19 to 30 ; line 30 to 40 ; page 6, line 10 to 20 ; page 7, line 10 to 20.

Mrs. Curry's testimony, page 11, line 30 to 40 ; page 12, line 1 to 10.

VI.

John James McKeown never had any money to purchase any property with up to the time of the purchase of the property, or the making of the improvements on the same.

He was the last of his family to come to this country.

Page 1.

He was younger than the appellant.

Page 4, lines 38 and 39.

Up to the time of his mother's death he had no money.

Page 5, lines 27 and 28.

At the time of the purchase John James had been discharged, was out of employment—had no money—his mother gave him money.

See Jane Curry's testimony, page 9, line 10 to 40

He had been out of employment a long time, had no money, and was sick.

He superintended the building because he was out of work at the time.

Page 10, line 20.

John James had no money. Seven weeks before his sister had given him money to buy shoes and her husband gave him pants.

Page 10, line 20 to 40.

He spent his money foolishly.

Was not working then—was making his home at his mother's.

He had no money of his own.

Page 11, line 20 to 30.

Never while a young man had any money in bank.

Page 11, line 20 to 30.

Said if his mother did not get money for the building it must stop.

Page 11, lines 30, &c.

He never gave his mother any money.

Page 12, line 10, to 20.

Left the country once for bad conduct and then had to borrow money to do it.

Page 12, line 20 to 30.

He was a spendthrift.

Page 12, line 30 to 40.

Never had money in bank and never spoke of having money in bank.

Page 12, line 30 to 40.

Came to his sister for aid, just a little while before the property was purchased.

Page 13, line 1 to 10.

John Curry says: I never knew of John James having any money; my wife gave him clothes; his mother gave him monny to pay the doctor's bill when he was sick; I don't think John James had a cent of money in this prop-

erty; I don't believe John James had any money because he was never working at a steady job; if he had money he would gamble it away at cards; he had loose habits; he was a spendthrift in his habits; he had a child by a woman in Second Avenue; I had no idea that John James was purchasing the lots; I never knew him to give either the father or mother any money; the reason he got the deed was because the old man used to drink; his situations were in hotels.

Pages 17, 18, 19 and 20.

He has a family of his own to take care of.

Page 5, line 30, &c.

See McAtavy's testimony.

His mother said he was spending his money one way or another; that John James gave her no money.

Page 20, line 30 to 40.

John James told me that he got into trouble with a girl.

Same page.

VII.

The respondent never spoke to any one or gave it out that he was the owner of the property, but kept perfectly silent about it.

Page 5, line 1 to 10.

Page 33.

Page 18, line 20 to 30.

Page 19, line 10 to 20.

VIII.

His attempt to induce his sister Jane Curry to give testimony in his behalf by promising to give her \$100, if it be true, is evidence here of the bad faith and untruthfulness of the respondent.

Page 10, line 30 to 40; page 13, line 30 to 40.

IX.

The deed to John James McKeown was taken in his name by fraud and concealment of the mother and son and it was never revealed to her by any one.

Page 5, line 1 to 10.

The mother did say to others that the money of Mary Ann was in the property. To John Curry she said that the daughter should have half the property at her death.

Page 17, lines 33 and 34.

She told McAtavy that the deed was put in John James' name because the old man used to drink.

She said to McAtavy that John James and Mary Ann both had money in it.

He told McAtavy that when he paid a bill of groceries for the old people he always deducted half the amount of bill from what he owed Mary Ann.

Pages 20 and 21.

To John Dwyer the mother said it belonged to John James and Mary Ann conjointly.

X.

To this statement the respondent makes a simple denial and offers no corroborative testimony, and says that his sister is a woman of simple mind, and has always been so since she had an attack of the small pox.

He says he had money in bank, but makes no offer to corroborate himself.

The fact is the hard earnings of this simple minded woman for many years have been taken and used for the benefit of this indolent and spendthrift brother.

XI.

It is contended that a resulting trust under these facts will prevail in favor of the appellant, either

1. To the undivided one-half part of this property, or
2. To the whole of it.

Coke, Littleton, 290, 249, sec. 8.

Wales Trusts, 51.

2 Washburn Real Property, page 174.

Hall *vs.* Young, 37 N. H., 134.

When an agent fraudulently purchases land for himself with the money of his principal, he will be held as trustee therefor.

Wills *vs.* Robenson, 13 Cal., 133.

If one pays the purchase money of the estate, and takes the deed in the name of another, in the absence of all evidence of intention, the law presumes a trust from the natural equity, that he who pays the money for property ought to enjoy the beneficial interest.

Perry on Trusts, sec. 124 to 165.

It was clearly in this case the intention that the property should belong to the appellant.

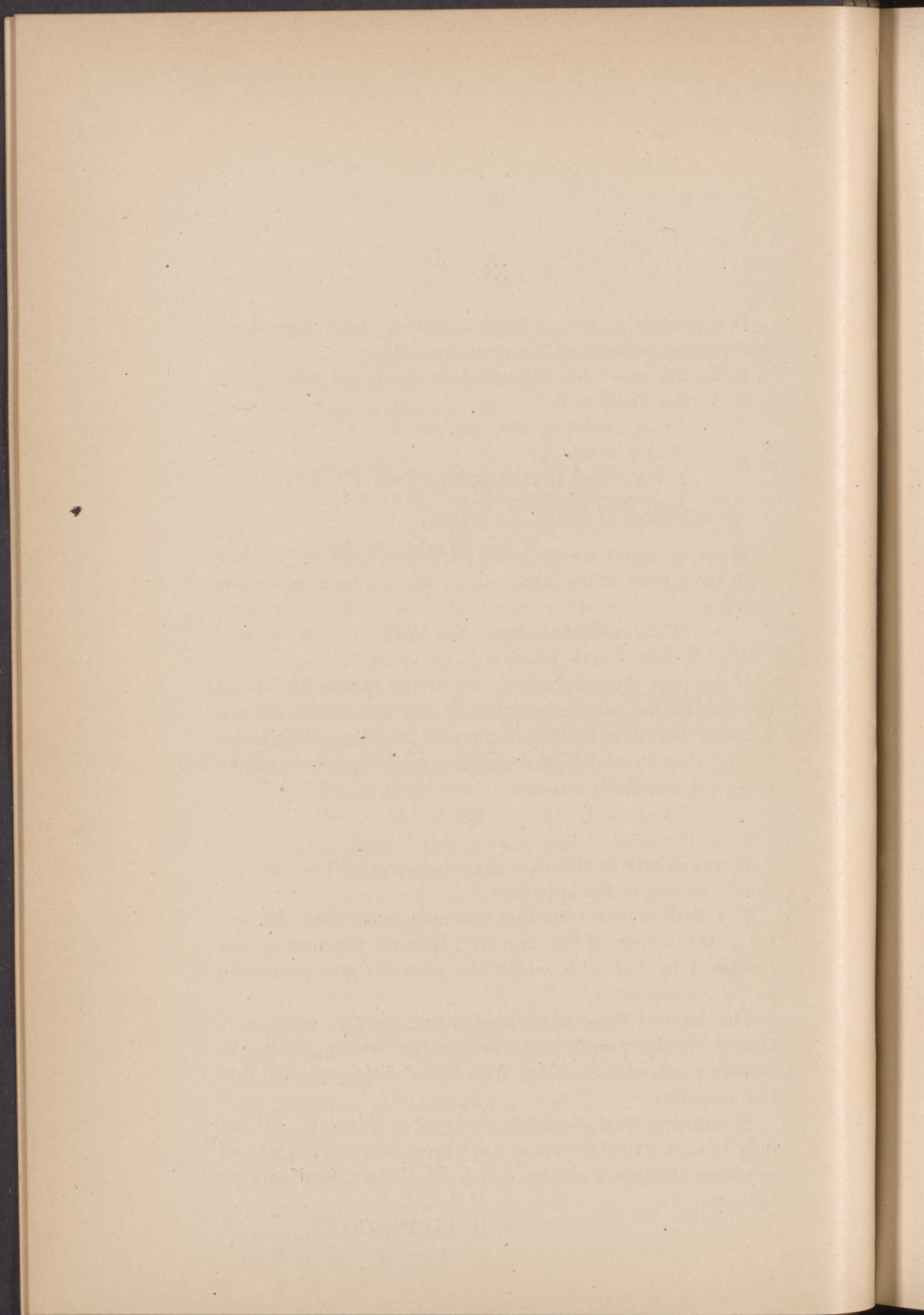
The distinct understanding was here made that she was to be the owner of the property, because the money was furnished by her with which the property was purchased and the house built.

The learned Chancellor in determining the cause says that he thinks it quite probable that the money which the mother received from Mary Ann for safe keeping went into the property.

A resulting trust should be declared in this case, subject only to such expenditures as have been made in the way of payment of taxes by John James McKeown, and interest thereon.

J. H. LIPPINCOTT,

Counsel of Appellant.



In Chancery of New Jersey.

Between

MARY ANN McKEOWN,

Compl't,

and

JOHN J. McKEOWN and others,

Defd'ts.

10

Examination of witnesses, &c., in the above entitled cause on part of the complainant, taken before me, ISAAC ROMAINE, a Master and Examiner of said Court, at my office No. 245 Washington street, Jersey City, 20 on Friday, September 19th, 1879, at two o'clock in the afternoon, in presence of J. H. LIPPINCOTT, counsel for complainant, and JAMES CHAPMAN, counsel for defendants.

Mary Ann McKeown, the complainant above named, being duly sworn on her oath, says :

I reside at 148 West Thirty-fourth street, with John D. Wilson, as waitress. I am over thirty years of age.

I was born in Ireland ; I have been in this country 30 since I was a small child ; since I came to this country I have taking charge of children and waiting ; my first service was taking care of a child in Brooklyn ; during the years I was a girl I have taken care of children, and during the maturity of womanhood I have been waiting, that is, engaged as a waitress.

I have a father living, two brothers and one sister ; my mother is dead ; her name was Ann. My brother Joseph and I came over here together before the others. 40 Two years after, my father, mother, and John James,

then a boy, came over; I was not at service when they came.

Jane Curry, my sister, was the first of the family who came over to this country. I have been at almost constant service since I came to this country.

I commenced earning wages as soon as I came to this country, at the first place I had.

After I went to service and before my mother came, I gave my earnings to my sister Jane to take care of
10 for me. After my mother came here, I gave all my earnings to my mother until the year 1872. My mother bought my property with my earnings; it was for that she got it; I refer to property in Weehawken, two lots—there is a house on one lot; it is the same property I am claiming in this suit,

During the time I have been in servitude I have always been paid monthly. I gave the money to my mother as soon as I got the opportunity of going out.

I gave it to my mother as regularly as I received it;
20 I did not retain any part of my wages, or very little, for clothing; I was always supplied with clothing by the ladies I lived with.

My first servitude in America was three months in Brooklyn, at three dollars a month.

My second was in Twelfth street, New York, seven months, at five dollars a month.

My third was in Sixth avenue, New York, seven months, at seven dollars a month.

My next was in Twelfth street again, two years, at
30 twelve dollars a month.

My next was in Union Square, Fourteenth street, New York, fourteen months, at twelve dollars a month.

Then my next servitude was in Forty-first street, New York, four years, at twelve dollars a month.

My next was in Forty-second street, New York, four years, at twelve dollars a month.

My next was between Thirty-fifth and Thirty-sixth streets, on Fifth avenue, seventeen months, at fourteen dollars a month.

40 This was while I was minding children and sewing.

Then I went to service as a waitress. I was at George W. Lane's in Twenty-ninth street, New York, two years, at sixteen dollars a month.

Next I was at Mr. Charles Isham's, Fifth avenue, near Thirty-third street, seventeen months, at eighteen dollars a month.

Next I was at General Stephen's, Union Square, two months, at eighteen dollars a month.

Next I was at Mrs. Hoadley's, at Englewood, New Jersey, three months, at eighteen dollars a month. 10

This was up to the early part of 1872, and embraces the money I gave my mother, and which I claim was put in this property.

I am at service now.

I never in my life gave my father any of my earnings.

My object in giving the money to my mother was to have a country home, and leave New York as soon as I could. My money was to go in a country home. My father was a sexton in Dr. Houghton's church, in Twenty-ninth street, New York, for twelve years; neither he 20 nor my mother nor the family needed my money, and it was to be laid out in an independent home for me.

There was nothing to any amount taken out of this money for my own personal expenses, that I know of.

My mother and I talked over the matter of this property; she told me that the place was advertised to be auctioned off, and that she had sent John James over to bid for them; those lots were to be bought for me. These are the same two lots that are in dispute in this case. 30

Two hundred dollars cash was paid for each lot.

I don't know who the lots were bought from. The house was not on the lots when they were bought.

My mother told me that the house cost \$2500 without any plastering. After the house was built I continued giving my mother money, until the dispute came.

I don't know the year the lots were purchased in.

The house had been built about seven years at the time of the dispute; by the time of the dispute, I mean the year 1872. 40

The house was paid for according as it was built ; there was nothing left standing on the house or lots.

I now know that the deed to the property was taken in the name of John James.

At the time the lots were purchased, there was nothing said by my mother as to whose name the deed should be taken in.

I know whose money it was that paid the \$400 for the lots. It was my money. My mother told me it
10 was my money that went into the house.

My mother never gave me a statement showing how she had disbursed the money.

At the time that articles were necessary for the building, my mother would tell me that such and such things were necessary.

It was a handsome frame cottage two and a half stories high, that was erected. It is on Eleventh street near Niles avenue, in Union Township.

After the house was finished, my father, mother
20 and myself moved in it, and I had one room that was my own exclusively. This continued so for seven years about. During this seven years I was constantly at service. During this seven years, my mother got all my money, and is included in the amount I have given.

About the end of this seven years, my mother was taken very ill indeed, and John James came there and took her away in a wagon. My father and myself remained in the house a little while after that, then my father went away, and I was left alone in the house ; I
30 stored my best things in New York, and the rest I left in my own house, locked the doors of the house, and came to New York to live at service.

My brother, John James, then broke into the house, took possession, and has kept possession until this time.

While my father and mother and I lived there, I thought I was the owner of the property. I am four years older than my brother John James. During the time I was living at the house, John James came there
40 very often.

He never said anything to me about his being the owner of the property; he never mentioned it in his life.

Neither my father nor mother ever during the time we were living there, said anything to me about John James being the owner of the property.

I never in my life heard it from any of the other children or relatives.

I never heard that John James had his name in the property until I came to see you (Mr. Lippincott), then 10 my mother told me. She told me to go and see a lawyer as soon as I could, and she would see me rectified. It was because John James was trying to sell the place.

I have a brother Joseph. When I last heard from him he was a policeman at Morrisania.

I don't know whether John James has sold any of this property.

I don't know whether my brother Joseph owns one of the lots.

I don't know whether John James is married or 20 single.

I know that Joseph is married. I am unmarried.

I don't know how old John James is. He has followed waiting when he did do it. Up to the time of my mother's death, John James had not done much work.

Up to the the time of her death John James had no money.

My father and mother had fourteen children; there 30 are eleven older than me.

When my father and mother came to this country there were only four children living; Jane was grown and married, the others were children, but earning money.

Joseph did not put any money in this property. He was married shortly after father and mother came here, and he had a family of his own to take care of.

(It is admitted that the complainant has made all necessary demand on John James McKeown to convey to her the property described in the bill of complaint.)

And being *cross-examined* she says :

I could not say the year my mother died in ; it was after John James returned from Australia. It was near 1872. The house was finished about seven years
10 before that.

At the time the house was finished it was all paid for, so that there was nothing against it.

The principal part of the money I gave my mother after we moved in the house was used in putting up fences and finishing the house. My father gave up his sextonship when we moved to Weehawken.

The plastering the house and putting up the fences was over and above the \$2500.

This plastering was finished and the fences all put
20 up inside of a year. My mother never told me how much the plastering and fencing come to. I have heard how much all cost, but I do not recollect. After the plastering and fencing were finished, I continued giving my mother my money until her death, about six years after. I don't know what she did with the money.

I don't know how old I was when I came to this country. I wore short dresses. My lady would not let me go out alone with the child.

30 All the money I received for the first two years was given to my sister, and after deducting some little money for my clothing, the rest was sent to bring my father and mother and John James over here. After my mother came here I gave her all my money, and she bought my clothing for me, which was very little—my ladies gave me all my clothing. What I bought cost very little. I never kept a bank account in New York.

I never had a bank account in the Sixth Avenue
40 Savings Bank, nor any other bank in New York.

I have no bank account now ; my bank is in my own possession until times are better.

John James never in his life borrowed any money from me ; he never paid me any money he borrowed from me ; he never in his life gave me any money.

I never went to the Sixth Avenue Savings Bank and deposited money which John James repaid to me for money borrowed from me.

I have a brother Joseph ; I never told him that John James had paid me the last cent he had borrowed from me, when he and I went to deposit it in the Sixth Avenue Savings Bank ; he never went to the bank with me to deposit any money. 10

When we moved in the house, John James did not come there to live.

I don't know when John James went there to live ; I often saw him there on Sundays when I went over ; he did live there, but I don't know how long or when he went there.

When my mother was taken from the house, John James was not living there. 20

My father and mother had left the house when we had the suit before the Quarter Sessions.

My father never in life told me that John James owned this property. My mother never told me that he owned the property until she told me to go and hire a lawyer ; this was before the suits in Quarter Sessions.

I do not recollect of hearing my father and mother swear in the case of The State against my father and John James, that the property belonged to John James. 30

I never knew that there was a mortgage on the property, and if there was, I don't know who paid it ; I always got an account from my mother that the property was clear.

I don't know that my brother John James is married. I have not see his face since my mother's death until to-day.

I never paid out any money myself for this property or the building. 40

And being again *examined-in-chief*, she says :

I gave mother my earnings after the property was bought and the house built, to put the place in order, and keep it in order.

The money I gave my mother was used in building the house, furnishing it, and keeping it in repair, and doing what was needed.

10 I never put any money from my earnings, or from any other source in bank. Up to the time of my mother's death, she got it all, and since that time I have kept it all in my possession.

I never in my life went with my brother Joseph to any bank. I never went to any bank with Joseph when he put money in. I never stood in a bank with Joseph.

MARY ANN McKEOWN.

20 Taken, sworn to and subscribed this 19th day of September, A. D. 1879, at Jersey City, before me,

ISAAC ROMAINE,
Master in Chancery.

Whereupon the examination was adjourned to Tuesday, December 16th, 1879, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

30

Jane Currie, a witness produced on part of the complainant, being duly sworn on her oath, says :

I live in Englewood, Bergen county, N. J. ; I am married ; my husband's name is John Currie.

I am going on forty-five years old ; I was born in Ireland ; I am a sister of Mary Ann McKeown, the complainant in this case. There are four children now living of my father and mother, two brothers, myself
40 and Mary Ann.

I came over from Ireland first ; I was married before I came to this country.

Mary Ann always gave her earnings to her mother after her mother came here. Before that she gave what she could spare to me ; her wages were small then, and she had but little to give.

I know the house and two lots in Weehawken, the property which is involved in this suit. I do not remember the year that it was purchased.

My mother gave the money to John James to purchase that property with. 10

I don't know, myself, what was paid for the lots.

I know as a fact that my mother gave John James the money ; I know it myself ; how I know it is this : John James had been out of employment for some time, he had been discharged out of two places, the Fifth avenue and St. James' hotels, and afterwards John James came home, my mother asked me if she should give him money ; I said she was very foolish to do so ; she said she thought he might do something to himself, 20 and she thought it better to give him some money to buy those lots. I did not see my mother give John James the money, but I know she went to the bank, and I saw the money that came out of the bank.

At that time I was living in Forty-first street. The bank in which the money was kept were the Greenwich and Bleecker street banks ; my mother had money in both banks.

I saw my mother have the money in her own house in Twenty-eighth street where she lived. 30

This was before the lots were purchased. John James was making his home with my mother at that same place.

Q. Do you know whether at that time John James had any money or not ?

(Question objected to.)

A. I know he hadn't.

I couldn't tell exactly how long he had been out of employment ; he had been a long time sick. 40

I don't know anything about the transaction itself ; when the deed was taken, and the purchase money paid.

I know Mary Ann gave her mother her money, because I saw her do it ; I paid my sister's passage, and afterwards went to my sister for it ; she told me she always gave her money to her mother, and then I went to her mother and got it.

I have repeatedly seen my sister give my mother
10 money.

Before the purchase of these lots I repeatedly saw Mary Ann give my mother money several years before that.

After the lots were purchased Mary Ann always gave my mother money, until the time John James disturbed my sister's home.

After the property was purchased, a house was built on it ; a wooden house, two stories and garret.

John James superintended the erection of the build-
20 ing ; he had permission from my mother to do so ; my father couldn't do it, he was working, John James was not.

My mother always gave John James the money, and he paid the bills ; I don't know how much the building cost.

The way I know that John James had no money at the time of the purchase of these lots, is that about seven weeks before my mother gave him the money to buy the lots, I gave him money to buy shoes, and my
30 husband gave him pants.

John James said he was sorry to trouble me, that he would see me paid ; he said he was sorry he had spent his money so foolishly, and hoped he would be good in the time to come.

I have had a talk with John James about this property ; about four years ago he brought me a turkey and did his best to get me to take \$100, to take his part in the property ; he wanted to bribe me at three different times ; he offered me \$100 to take his part in the prop-
40 erty, but nothing would bribe me ; I told him that he

was my brother, and Mary Ann was my sister, and that one was as dear to me as the other, and that I would do what was right between them both, as I thought I knew the whole particulars. We have not talked about this property since that Christmas four years ago—that is, John James and I.

We never talked before that time about whose property it was, or who bought it; I always knew that.

My father and mother were living in Twenty-eighth street, between Sixth and Seventh avenues, when the 10 house was being put up.

John James was making his home at my mother's then.

I think it was right away after he bought the lots that he began to put up the buildings. I should think it was two months or more before the house was completed. It was longer than that; I should think it was four months before the house was completed.

A small fence was put around the property.

During all this time John James was living with my 20 mother.

I don't know whether John James got any money from any source during that time. I know he had no money of his own, only what mother gave him.

John James never, while a young man, had any money in the bank in his own name.

I often met John James at my mother's while the house was being built. I did not on any of those occasions see my mother give him any money. I did not on any of these occasions hear him say anything about 30 money for the building. Once at my own house he said that if mother did not get money for the building, the men would stop working. He said he did not believe she had any more money.

That is all I remember of his saying. I know he got the money next day from my mother.

After the house was built, Mary Ann had a part of the house for her own; before the house was plastered she picked out her own part of it. She occupied it up 40

to the time of the trouble which she mentions. She made it her home on the days she was out.

My mother kept a bank account at the time of the purchase of the lots, and the building the house; she always had money in the bank.

After the house was built my father and mother went over there to live, and John James went with them. Mary Ann had a room there also.

John James was twelve or thirteen years of age when
20 he came to this country.

He was here about two years when he went to work for wages—it might be over.

After he went to work for wages, it is hard telling what he did with them; he never brought anything home to mother, she always complained that he did not, and said she was sorry she had raised him.

His habits were—he did not drink, but he spent his money on the street with bad company, and got bad diseases by it.

20 I often spoke to him about his bringing his money home to mother; he said it was none of my business. John James never gave any money to my mother, but was always taking it from both her and I.

John James left the country at one time for bad conduct. He came to our house in Forty-second street, my husband and I were there. I am mistaken as to place; it was in my sister's house in Weehawken, the property in dispute, my husband and I were then living there. John James came there, He wanted \$300
30 to go to Australia, and he would leave us the deeds of the property, which was all he had. He said he wanted to go to Australia from fear of Mrs. Reilly. She is a woman who claimed to have had a child by him.

John James' habits were those of a spendthrift.

I never heard of John James having \$1000 in bank or any other sum. I never heard of his having \$1000 or 1000 cents in bank.

I never heard John James speak of his having money in the Bleeker Street Bank, and never heard anybody
40 else speak of it.

It was about seven weeks before the property was bought that John James came to me for aid. At that time he had no shoes, the heels and soles were off, and he was bare of clothes. I gave him a dollar to get his shoes soled, and my husband gave him a pants.

I don't know about the bills for lumber or the bills for taxes.

My husband and I lived in that house three or four months at one time.

And being *cross-examined*, she says :

10

Mary Ann is older than John James. She must be coming up to forty years; she is not quite that; I think she must have been between 13 and 14 years of age when she came here; she came here small.

I wish John James well; I do not hate him; he may not be on very friendly terms with me; I suppose he don't like me on account of this property, because I take my sister's part; I like him; I know my own heart.

20

I never had John James or my father arrested; my sister had.

I was a witness in that case; I was a witness in a suit before Justice Dwyer about a year ago.

I never knew that John James had a claim on this house until he took forcible possession in 1872; I knew he had the deeds.

No suit was commenced at that time to get possession of the property, not until now.

When John James came to me, Christmas, four years ago, he said he wanted me to do him a favor; I asked him what it was; he said he would give me \$100 to take his part in the property.

30

At the time the house was building, I was living in Forty-second street, between Eighth and Ninth avenues. I went over to the property on Sundays, not on week days, when the work was being done.

During the building of the house, I saw my mother have money, which John James got; I know he got it, though I did not see him get it.

40

My mother came to this country about twenty-two years ago.

I saw my mother's bank book on the Bleecker Street Bank. I went there with her to put in money; I was there once when she put in thirty dollars of Mary Ann's money; I was never with her at the other bank; I never saw the book of that bank; the Bleecker Street book was in my mother's name; my mother's first name was Ann.

10 I guess my mother had \$1000 in the Bleecker Street Bank; I heard her say that.

I never saw my mother take any money out of the bank.

I don't know who has paid the taxes on this property since my mother's death. She lived in the house up to the time of her death, except when John James stole her away, and took her to my brother Joseph's.

I don't know who has lived in the house since; after my mother died my father lived there until he went to
20 the old country; after that the house was shut up for a time; after John James was married he lived there until last fall.

I think Joseph paid part of the passage money to bring them over. My father and mother had no surplus money when they came here. The night they landed Mary Ann gave them twenty dollars (\$20), and they slept in my house that night; the next day they took rooms of their own.

I know John Dwyer; he has not taken a great deal
30 of interest in this case; he has no interest in the case.

her
JANE X CURRIE.
mark.

Taken, sworn to and subscribed this 16th day of December A. D. 1879, at Jersey City, before me,

ISAAC ROMAINE,
Master in Chancery.

Mary Ann McKeown, the complainant, being recalled in her own behalf, says :

There are places at which I have lived, and which I forgot the other day to state. I lived in Mr. Bassett's four years, at twelve dollars a month ; that is on Twenty-fifth street. I lived in Mr. Peck's, also in Twenty-fifth street, one year, at eleven dollars a month. I lived in Samuel Thome's at Thomedale, at \$14 a month, for two years. I lived with Mr. Secor's in Twelfth street, I think, at \$12 a month. I lived in Lieutenant Miller's on Governor's Island for six months, at \$12 a month.

I lived in Mr. Arnold's in Madison avenue, three months, at \$18 a month. I lived at Mr. Enos' two months, at \$15 a month ; corner Twenty-seventh street and Fifth avenue, I think. I lived with Mrs. Wright three months, at \$18 a month ; she lived at Scarborough. I lived at Mrs. Shepard Homans, at Englewood, two months, at \$18 a month.

I lived with Mrs. Clapham in Connecticut three months, at \$18 a month.

This brings me up to the time of the trouble about the house in 1872. It has nothing to do with the time since that.

This statement does not include any of my wages since the case in Court in 1872.

MARY ANN McKEOWN.

Taken, sworn to and subscribed this 16th day of 30 December, A. D. 1879, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery.

Whereupon the examination was adjourned to Wednesday, January 21st, 1880, at two o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in presence of the counsel of the respective parties.

John Curry, a witness on the part of the complainant, being duly sworn on his oath, says :

10 I reside in Englewood, N. J. My business is coachman for Mr. Blake. I am the husband of Jane Curry who has been sworn in this case, and the brother-in-law of Mary Ann McKeown, the complainant in this case. I am acquainted with John J. McKeown, the defendant in this suit. I have known him nearly thirty years. I knew him in the old country before he came here. I have known Mary Ann about as long; have known her in the old country, Me and my wife were
20 married in the old country, and were the first to come to this country; after me and my wife, came Mary Ann and Joseph, they came together to this country; next after them came father and mother and John James; they came in about a year and a half or two years after Mary Ann and Joseph. John James was about 13 or 14 years of age then. Mary Ann was living out when John James came over—living out at wages; she saved her wages and gave it to her sister, my wife, until her father and mother came out, then
30 she gave all her wages to her mother.

Mary Ann has been living out ever since that time. I never knew her to be out of a place more than a month since she landed here, and that was about the time of the panic, which is over twenty years ago. Since the time when her mother came, she always paid her wages to her.

I have no idea of the amount of money she paid her mother during that time. I can tell what amount it was, but she always had good pay, always had about
40 eighteen or twenty dollars a month. Her mother de-

posited the money in the Greenwich Street Bank. I never heard what amount that was. I heard the mother say that at the time John James got these lots, she drew some of it out to buy these lots; then when the house was building on it she drew some more out to pay for the building of the house. I cannot tell whether the lots were purchased by John James or not, only what I heard her say. I remember, to the best of my recollection, that the lots were purchased about 13 or 14 years ago; I was then living in New York. Mary Ann 10
McKeown's mother was living in New York then; John James McKeown was living with his mother then. He was at that time part of the time working and part not. At the time the building was being put up he was sick.

After John James came to this country he went to work for Judge Roosevelt for his board and clothes. From that time on I cannot tell whether he saved any money or not. Sometimes he was working in the hotels as a waiter, and sometimes not. I never knew of 20
John James having any money. I know that my wife gave John James clothes, but I do not recollect when it was. I do not know anything about my wife giving him money; I know his mother gave him money when he was sick to pay his doctor's bills. His mother's name was Ann McKeown, she is now dead; I do not know whether she left a will or not, but I know she sent me for the squire to make a will; that was about two or three years before her death. I do not know whether she made the will or not; she said 30
to me at that time that she wanted to have her daughter righted; that the daughter should have the half of the property at her death, she did not tell me who had the deed of the property at that time; I don't think John James had a cent of his money in this property. His mother told me that it was Mary Ann's money which bought the lots and built the houses. I don't believe that John James had any money, because he was never working at any steady job. The mother 40

said that the property belonged to Mary Ann and the father ; that it was their money which was in the place. John James, if he had a dollar, would gamble it away in playing cards ; his other habits were that he was rather loose in his habits ; he had a young one by a woman in Second avenue, and he wanted money from me to go to Australia with. He was a spendthrift in his habits. I think that the two lots cost almost three hundred and fifty dollars ; when I speak of the lots I
 10 mean the property in dispute in this case. I heard the old lady say before she died that the house cost two thousand five hundred dollars. I had no idea at the time the lots were purchased who was buying them. I had no idea that John James was purchasing the lots. John James never lived with me and my wife ; he made his home with his father and mother so long as they were living. Mary Ann, when she was out of employment, made her home with her father and mother. I never knew of John James to give either his father or
 20 his mother any money ; always heard his mother say that she never got any money from any of them, except Mary Ann and the father. After the house was built the father and mother lived in it. The reason that John James got the deeds of the place, was because the old man used to drink. I know that because the mother told me so. Never heard John James talk about this being his property before the trouble came.

Cross-examined :

30 I do not know whether Mary Ann deposited any money herself. The mother had the bank book in Mary Ann's name. I saw the bank book. I saw her name on the bank book. I do not know whether the bank book had Mary Ann's name on it, or Ann. I saw Mary Ann's name on the bank book. That bank was the Greenwich street bank. I saw it on the book. I do not know whether she had any money in any other bank. John James to the best of my opinion is thirty-one or
 40 thirty-two years of age. He has been in this country

about two years after the panic, which was about 1857. John James when he landed here, was employed by Judge Roosevelt; I do not know how long he kept his place. His only situations were in these hotels. I never heard him say he had a bank book. I recollect when this property was bought. I do not know whether he or his father bought. I do not know if it was he that bought. I heard a conversation that it was bought, but by whom I do not know. I recollect when the house was built. I do not know who super- 10 intended the building of the house. John James was not working at the time, and I think he went over there to look after the building of it. I do not know who paid the bills, except what the old lady told me. She told me that she took Mary Ann's money out of the bank and gave it to John James to pay for the lumber and building. I first learned that John James had the title of the house in his name when the trouble first arose. I was present at that trial. I recollect the old lady being on the stand at that time and giving her 20 testimony. I do not know to what she swore; I did not hear her testimony.

Q. Do you know whether at that trial Mrs. McKeown, the mother of John James McKeown swore that the property was bought and paid for by John James with his money, and that Mary Ann had no interest in it whatever.

A. I do not know what she swore to.

Q. Why don't you know.

A. Because I had no interest in the case. I do not 30 recollect whether I was in the room at the time she was sworn or not.

Q. Did you hear Mrs. McKeown or Mr. McKeown, or Mary Ann or Mrs. Curry say anything after that trial as to what the old lady had sworn to?

A. I did.

(Question objected to as to the form in which it is put, that it is a double hearsay.)

Q. What did they say ?

A. I heard Mary Ann and Mrs. Curry say that the old lady had perjured herself.

I never heard the old lady say that John James owned that property.

John James and I speak to each other.

I have not interest in the result of this suit.

I am a Roman Catholic, John James is a Protestant.

10 *Re-direct :*

Mary Ann gave the money to the mother and the mother deposited it. I am not positive whose name was on the bank book.

JOHN CURRY.

Taken, sworn to and subscribed, this 21st day of January, A. D. 1880, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery.

20

John McAtavey, a witness on the part of the complainant being sworn on his oath, says :

I reside in the Township of Union, and am acquainted with all the parties in this case ; am acquainted with John James since he purchased the property in question in this case ; he and I were together at the auction sale when he purchased the property ; I purchased some property at the same time at the auction sale ; his property was on Eleventh street, and mine was on Twelfth street ; his purchase price was four hundred dollars, and ten dollars for auctioneer's fees ; I had no conversation with him at the auction sale as to whom he was purchasing the property for ; I had many a talk with the old lady, Mrs. McKeown, after the house was built ; I heard her at one time say that John James was beginning to go back in giving her money, that he was spending it in some way or another, and she inquired of me where she would go, or who would right things for her. I told her to go over to

30

40

Judge Dwyer, and he would give her the desired information; she said she would; she told me that the property was between John James and Mary Ann; that they both had money in it; John James told me that he owed Mary Ann money; that he had paid her off and that his other brother went with her and put it in the bank; he told me that when he would pay a bill of groceries of the old couple that he would deduct half the amount of the bill from what he owed Mary Ann. Jane Curry helped to support the old couple also; I have brought money from Jane Curry to the old couple. 10

John James told me that he had got in trouble with that girl.

He told me that he got the money which paid for building the house, from his mother.

Cross-examined :

He told me about getting the money for building the house from his mother, when it was building. 20

I think I was present at the Court House when the assault and battery case was been tried; I did not hear the old lady testify in that case.

John James and I are good friends.

John James had the whole control of the building of the house.

I did not know in whose name the property was.

I am a Roman Catholic. I try to do the best I can.

JOHN McATAVEY. 30

Taken, sworn to and subscribed this 21st day of January, A. D. 1880, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery.

John Dwyer, a witness on the part of the complainant, being sworn on his oath, says :

I reside in the Town of Guttenburg, being a resident there for about thirty years. The deed of this property was taken in the name of John J. McKeown ; the deed was drawn by one Mr. Griffin.

I sold the property ; I was the auctioneer. I did not make delivery of the deed. John J. McKeown bid in the property. I do not know who paid for it.

10 I know Mrs. McKeown, she sent for me once to come and see her. She was reported to be dying ; this was in the spring of 1872. This was while she was in possession of the premises. I went and saw her. She was very sick at the time, and said she thought she was going to die, and I thought so myself. She said she wanted to make a will ; after some inquiry on my part I found out she had nothing. I asked her what she had ; she said she had the property. I asked her if she had the deed. She said no, that John James had
20 the deed. I knew that John James had the title, and I asked her if he still owned it. She did not seem to understand that. She said the property belonged to John James and Mary Ann conjointly. I told her then that there was no use in making the will so long as the title was in John James ; that they would have to make an arrangement between them. She said that Mary Ann gave her all the money which she had ever earned—that she gave that money to John James, which
30 with what he had went to purchase the property and build the house—that the old man had some in it too.

Cross-examined :

From what I heard afterwards, I think this was about a year or two before her death. I believe she recovered from that sickness. I have advised Mary Ann to go to Mr. Lippincott when she came to see me about this matter.

Q. Is Mr. Lippincott your legal adviser ?

40 A. On some occasions he is.

I have taken no interest in this matter; in my capacity as a justice I have taken a complaint made by Mary Ann, by Mrs. Curry against the old gentlemen and John James; and the old man sued John James in a civil suit before me as justice.

John James and I are personally very good friends. I do not know if John James worked against me politically.

I am a Roman Catholic, if I am anything. My views are considerably elastic and extensively expansive. 10

JOHN DWYER.

Taken, sworn to and subscribed, this 21st day of January, A. D. 1880, at Jersey City, before me,

ISAAC ROMAINE,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

	Between	}
	MARY ANN McKEOWN,	
	Compl't,	
	and	}
10	JOHN J. McKEOWN and others,	
	Defd'ts.	

Examination of witnesses, &c., in the above entitled cause on part of the defendants, taken before me, ISAAC ROMAINE, a Master and Examiner of said Court, at my office No. 245 Washington street, Jersey City, on Wednesday, October 27th, 1879, at two o'clock in the afternoon, in presence of JAMES CHAPMAN, counsel for defendants, and J. H. LIPPINCOTT, counsel for complainant.

John J. McKeown, a witness produced on part of the defendants, being duly sworn on his oath, says :

I am one of the defendants in this suit, and a brother of Mary Ann McKeown, the defendant. I am about thirty-six years of age ; I was about sixteen years old when I came to this country ; my business since I came to this country, has generally been that of waiter.

When I first commenced, I got five dollars a month and found. I was in Judge Roosevelt's office. From there I went to the New York Club ; I was hallman and got eighteen dollars a month. From there I went to work in the Fifth Avenue Hotel, at eighteen dollars a week. From there I went, I think, to the St. Nicholas Hotel ; it was in about 1862 that I was there. From there I went to the St. Denis Hotel ; I received sixteen or eighteen dollars a month there, I am not sure which ; I was at the St. Denis while the draft riots

were in progress in New York. From there I went to Rockaway Beach for twenty dollars a month and chances; I was there about seven weeks, and came back with from \$90 to \$100.

I went to the St. James from there at twenty dollars a month; I have worked at the same place two or three times, and the last time three years; while at the St. James the last time I bought the property in question.

While I was at these places getting money I deposited it in the Bleecker Street Bank.

I purchased the lots in question of a man named Sandford.

Witness being shown a deed dated May 10th, 1866, made by James F. Sandford to John J. McKeown says, that is the deed I got for the lots when I purchased them.

Said deed is offered in evidence on part of the defendants, and is marked Exhibit D. 1.

20

At the time I bought this property I had about \$800 in bank and \$200 on hand; I drew \$200 from the bank and with the \$200 on hand bought the land.

About a year after I bought the lots I commenced to build.

During that year I remained at work and continued depositing my money as before.

I had the house built on these lots; I paid the bills for building the house.

I paid most of the bills in cash, with money drawn from the bank.

30

Witness being shown fourteen bills, purporting to be bills for lumber and work done on the house says, I paid all these bills.

Said bills are offered in evidence on part of defendants, and are marked Exhibits D. 2 to D. 15 inclusive.

Being shown another bill purporting to be a bill and receipt for surveys, witness says, that is a bill I paid for surveying the lots in question.

40

Said bill is offered in evidence on part of defendants, and is marked Exhibit D. 16.

The house cost me for building between \$900 and \$1000. I had to borrow some money to pay for the house.

I borrowed \$100 of John M. Gibson; I borrowed \$100 from my brother; and about \$170 from my mother. This \$170, Mary Ann McKeown claims belonged to her.

10 I paid John M. Gibson the \$100 I borrowed from him. I also paid my brother the \$100 borrowed from him.

I paid the \$170 to my mother from whom I got it.

I never borrowed any money from my sister directly to my knowledge. I never borrowed any other moneys from my mother than the \$170.

When I repaid my mother the \$170, I included in it \$30 to pay the interest.

20 I know my sister Mary Ann had a bank account in the Greenwich Savings Bank, corner Waverly Place and Sixth avenue, because I have seen the book in my father's house, and opened it and saw entries in it. I read the name on the book, "Greenwich Savings Bank," and the name Mary Ann McKeown.

I have paid the taxes and insurance on the property since I owned it.

Witness being shown four tax bills, says these are the tax bills against the property in question for the 30 years 1870, 1872, 1873 and 1875.

I paid these bills for taxes.

Said bills are offered in evidence on the part of defendant, and are marked Exhibits D. 17, D. 18, D. 19 and D. 20.

Witness being shown seven policies of insurance and renewals, says these are the policies of insurance on the house in question.

Said policies and renewals are offered in evidence on part of defendants, and are marked Exhibits D. 21, D. 22, D. 23, D. 24, D. 25, D. 26 and D. 27.

Since I built this house it has been occupied either by myself or my father and mother, or a tenant placed there by me. It is now rented to a tenant by me.

My sister Mary Ann had a bedroom in the house to occupy when she was out of a place. I allowed it to her as a privilege.

When I built the house I was a single man and built it for my father and mother to have a home, and I supported them while they lived there. I allowed my sister Mary Ann the privilege of having a bedroom there.

My brother Joseph was married at that time, and my father and mother had no one to look to but me.

JOHN J. McKEOWN.

Whereupon the examination was adjourned to Wednesday, January 28th, 1880, at three o'clock in the afternoon, at the same place.

At which time and place the examination of John J. McKeown was resumed in presence of the counsel of the said parties.

And being *cross-examined*, he says :

I got wages when I went to Judge Roosevelt's to live.

I did not at first work there for my victuals and clothes. I worked for a certain amount of wages and my clothes included.

I lived there, I think, in the neighborhood of nine months. I could not tell what year I came to this country. I have no means of knowing.

I am not sure how long I was at the New York Club—about four or five months. From the New York Club I went to the Fifth Avenue Hotel, as near as I can remember; I was there eleven months the first time I went there. From there I went, as near I can

recollect, to Rockaway—I think I went there in the draft riot year. I stayed at Rockaway for the season. From Rockaway I went back to the Fifth Avenue Hotel. I stayed there a short time, perhaps three months; and from there I went to the St. James' Hotel. I remained there eleven or twelve months. I don't know whether I went to a country place from there, or whether I went to the Albemarle. I can't tell how long I stopped in the place after I left the St. James'. I have no way of telling. As near as I recollect, from the Albemarle or the country house I went to the Union Club. I was at the Union Club three and a half to four years. I went then to Australia—I went there in the year 1870, I think.

As near as I now recollect I went from the St. James' to Staten Island for the season. I have no doubt that from Staten Island I went to the Albemarle—I remained there about a year or eighteen months.

These are all the places, as near as I can guess; at which I was before I went to Australia.

Before I went to Judge Roosevelt's, I went to school for about a year. I lived with my father and mother while I was at school; and indeed all the time when I had no other place. I couldn't say what year the house was built. It was about a year or eighteen months after I bought the lots. It was not all finished as it is now when I went to Australia, or for a long time after I came back.

When I went there were no window blinds on the house. I put them on since I got married.

The house was finished except blinds and painting, before I went to Australia.

I had the \$800 I have mentioned in the Bleecker street bank in my own name. I never had money in any one else's name. That bank is in existence now, and carrying on business.

In or about the year 1866, I had about \$800 in that bank.

I don't keep any deposit in any bank now; I have not kept any deposit in any bank since.

I gave part of my money to my mother ; she did not deposit any for me. I left it with her until she had an amount, and then I deposited it myself.

I got a loan of about \$170 from my mother to build the house, but it was Mary Ann's money.

My mother never gave me any money while the house was being put up, except the \$170.

I did not draw any money from my mother except the \$170.

At the time I bought this property I was getting 10 \$30 or \$35 a month. I had nearly \$200 then in my father's house. It was either in a trunk or bureau drawer. I left it in charge of my mother ; she had it.

My mother generally kept my money until I had enough to make it an object to go to the bank.

Before the purchase of the lots my mother had all my money which I didn't go to the bank with. I think the \$800 was all I had accumulated up to that time.

I closed out my account with the Bleecker street bank about three months after the house was built. I 20 was a year and five days away to Australia.

And being again *examined-in-chief*, says :

My mother never to my knowledge kept a bank account.

I had a bank account in the Bleecker Street Bank. I have not the book, the bank always keeps that after the account is withdrawn.

If my mother had had a bank account I would have been likely to know it. My mother never gave me the 30 money to buy the lots, only the \$200 of mine which was in her hands. I paid \$400 for those lots, \$200 I had in the bank, and \$200 I drew from the bank.

My mother never gave me any money other than the \$175 I testified to, while building the house. I paid \$200 back. I paid \$60 in small amounts, and \$140 in a lump. I paid the \$200 to cover interest.

A short time before I built the house, Mrs. Currie did not give me money to buy a pair of shoes. She never to my knowledge gave me money to buy a pair 40

of shoes. My father always kept me in shoes until I was old enough to earn them.

Mr. Currie did not at about the same time give me a pair of pants.

I was not in the habit of spending my money in gambling.

When I went to Australia I did not ask Mr. Currie to loan me the money. He had money of his own.

I did not go to Australia to avoid prosecution by a
10 woman who claimed to have had a child by me.

I never offered to give Mrs. Currie \$100 if she would take my part in this matter as against Mary Ann.

I never told McAtavey that my mother had given me the money to build the house.

And being again *cross-examined*, he says :

I paid the taxes on this property from the time it was bought up to the present time.

I went to Australia to see my friends before I got
20 married. I knew that after I was married I could not go.

I own this property in my own name. There is no mortgage on it.

JOHN J. McKEOWN.

Taken, sworn to and subscribed this 28th day of January, A. D. 1880, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery.

30

The examination of John J. McKeown having been adjourned to a day to be agreed upon, it was stipulated that the defendant might proceed with the examination of his other witnesses.

Whereupon the examination adjourned to Wednesday, December 3d, 1879, at eleven o'clock in the forenoon, at the same place.

At which time and place the examination was resum-
40 ed in presence of the counsel for the defendants.

Joseph McKeown, a witness produced on part of the defendants, being duly sworn on his oath, says :

I reside in New York City, in Fordham ; I am a policeman of New York City. I know Mary Ann McKeown and John J. McKeown, they are my sister and brother. I am one of the defendants in this case. I have no interest, direct or indirect, in this property in question ; I know the property in dispute ; I know who purchased the land and built the house. John J. McKeown purchased the land, and the house was built with his money. After the house was built my father and mother went to live there, and John J. made his home there ; he was not then married. 10

My father and mother lived there all of seven years before my mother died. John James was their main support while they lived there ; his father and mother bought goods at a grocery store there, and he paid their bills ; John James is now married ; as far as hearsay is concerned, my sister Mary Ann knows he is married ; personally, I don't believe she does. 20

John James borrowed some money from me on July 2d, 1872, and gave me a deed of the property ; since then he has repaid me, and I have redeeded the property to him, so that I now have no interest in the property.

The money for bringing my father and mother here and preparing them to come, was advanced wholly and solely by me.

When John James bought the property he showed me the deed to him, and I read it out so that the whole house could hear it ; Mary Ann was then sitting within three or four feet of me. 30

My sister Mary Ann had a bank account in the Greenwich Savings Bank ; I saw her bank book, and was in the bank with her when she deposited a sum of money ; I don't know how much it was ; she stated to me that it was \$140 ; she told me that that was the last of the money which John James owed her, and she had got it from her mother.

My mother had got the money from John James and given it to Mary Ann when it was paid back. 40

I never heard Mary Ann make any claim to the property until in 1872, at the time a case was tried in the Hudson Quarter Sessions which has been referred to.

I have always considered Mary Ann to be a person of weak mind since she was a child and had the small pox ; my mother always used to say not to mind her, as she was crazy.

I was at the trial in the Hudson Quarter Sessions in 10 which John James and my father were indicted for an assault on Mary Ann and Jane. Mary Ann at that time stated that she owned this property in question ; my mother being sworn, testified under oath, that not a penny of Mary Ann's money was in the house or lots, or any other person's money, except John James'.

JOSEPH McKEOWN.

Taken, sworn to and subscribed this 3d day of December, A. D. 1879, at Jersey City, before me,

20

ISAAC ROMAINE,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

MARY ANN McKEOWN,
Compl't,

and

JOHN J. McKEOWN and others,
Defd'ts.

10

Examination of witnesses, &c., in the above entitled cause on part of the defendants, taken before me, ISAAC ROMAINE, a Master and Examiner of said Court, at my office No. 245 Washington street, Jersey City, on Monday, February 9th, 1880, at ten o'clock in the forenoon, in presence of JOB H. LIPPINCOTT, counsel for complainant, and JAMES CHAPMAN, counsel for defendants. 20

Mary Ann McKeown, the complainant, heretofore produced and sworn, being recalled on her own behalf, says :

John James never read the deed to me. I never heard Joseph read the deed. I never saw John James show the deed to Joseph.

I never heard the deed read by Joseph McKeown or anybody else. 30

And being *cross-examined*, she says :

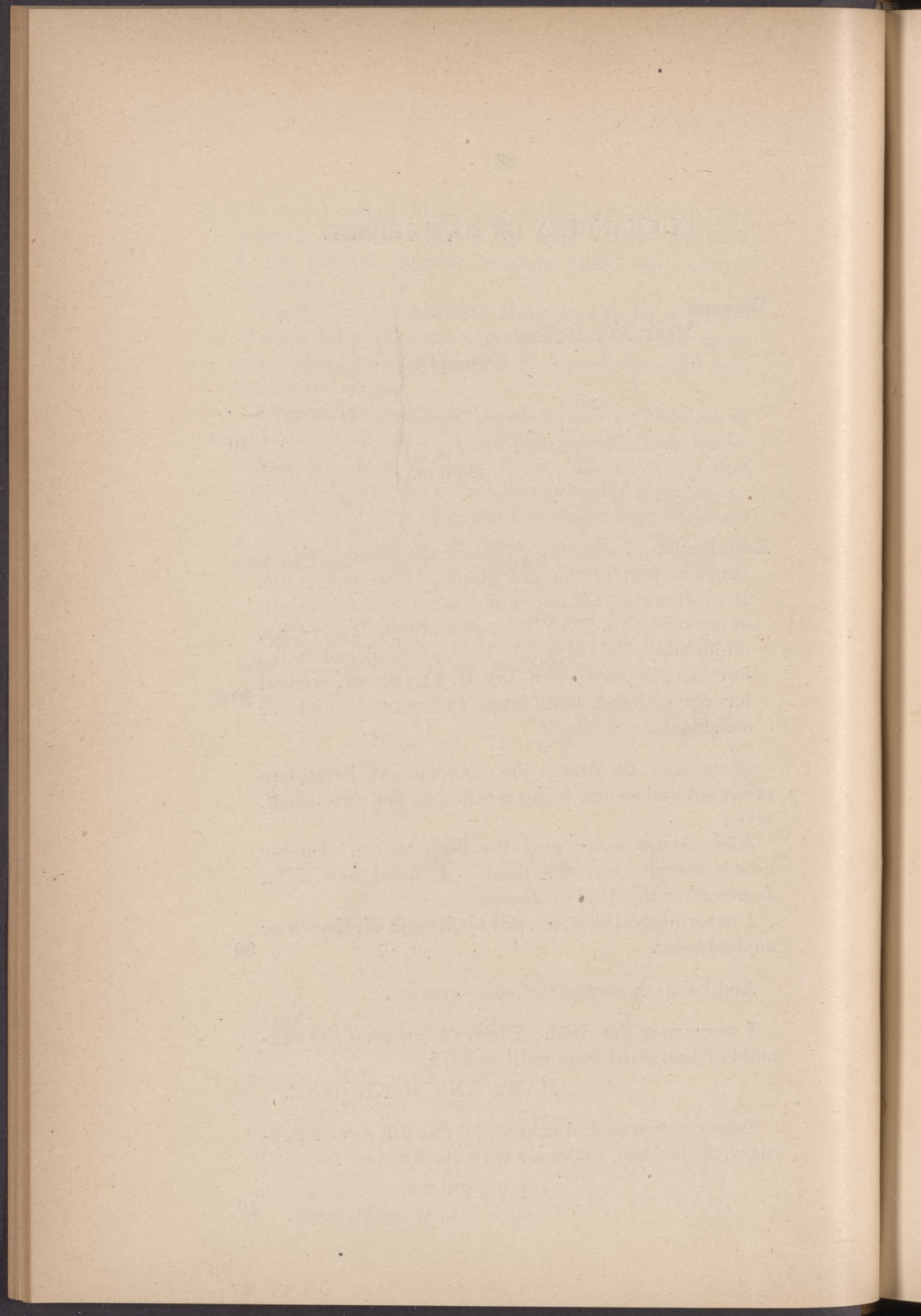
I never saw the deed. I never knew what the contents of that deed were until in 1872.

MARY ANN McKEOWNE.

Taken, sworn to and subscribed this 9th day of February, A. D. 1880, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery. 40



COURT OF ERRORS AND APPEALS OF N. J.

Between

MARY ANN McKEOWN,
Appellant,

and

JOHN JAMES McKEOWN,
Respondent.

Appeal.

10

On Bill.

Answer and

Proofs.

This is an appeal from the order of the Chancellor in the above cause.

20

J. H. LIPPINCOTT for appellant.

JAMES CHAPMAN for appellee.

THE PETITION OF APPEAL.

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

30

The humble petition of Mary Ann McKeown, the appellant in the above cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his honor Theodore Runyon, Chancellor of New Jersey, bearing date the nineteenth day of February, in the year one thousand eight hundred and eighty-one, wherein the said Mary Ann McKeown was complainant and John James McKeown was defendant, in this respect, that the said decree adjudges that the complainant is not entitled to the relief sought and prayed for 40

by her said bill of complaint, and because it is therein decreed that the said complainant's bill be and the same is hereby dismissed.

And your petitioner humbly appeals from the decree as aforesaid upon the ground that the same is erroneous for that the complainant, your petitioner, is entitled to the relief sought and prayed for by her in her said bill of complaint, and that the said complainant's bill ought not to be dismissed.

- 10 And your petitioner therefore prays that the said decree of the 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.

Dated February 19, 1881.

J. H. LIPPINCOTT,

Solr. and of Counsel with Appellant.

ANSWER TO THE PETITION.

COURT OF ERRORS AND APPEALS.

<p style="text-align: center;">MARY ANN McKEOWN, <i>Appellant,</i></p> <p style="text-align: center;">and</p> <p style="text-align: center;">JOHN JAMES McKEOWN ET ALS., <i>Appellees.</i></p>	}	<p style="text-align: right;">10</p> <p style="text-align: center;"><i>On Bill, &c.</i></p> <p style="text-align: center;"><i>Answer.</i></p>
--	---	---

The answer of John James McKeown, Mrs. John James McKeown and Joseph McKeown to the petition and appeal of Mary Ann McKeown from the final decree of the Court of Chancery, made on the nineteenth day of February, in the year eighteen hundred and eighty-one. 20

These respondents, not confessing any of the matters in said petition to be true, and reserving all advantage of exception to the errors and defects in said appeal contained, for answer thereto say, that they admit that the Court of Chancery did make a decree as in said petition and appeal is mentioned and complained of, but as to the date and contents of said decree, these respondents, for greater certainty, refer to said decree, when the same shall be produced, but these respondents are advised and apprehend that this decree complained of is agreeable to equity and justice, and therefore hope that the same will be confirmed and the appeal dismissed with costs. 30

JAMES CHAPMAN,
Solicitor Respondents.

*To the Honorable Theodore Runyon, Esquire, Chancellor
of the State of New Jersey:*

In Chancery of the State of New Jersey, humbly complaining, showeth unto your honor, your oratrix, Mary Ann McKeown, of the Township of Union, in the County of Hudson, and State of New Jersey.

That your oratrix is a native of Ireland, and is now of
10 about the age of forty years, that she came to this country
alone when quite a small child.

That shortly after her arrival in this country your oratrix was engaged as a domestic servant at wages, for which she was paid by the month; and that your oratrix has ever since that time worked steadily, in this country, as a domestic servant at good wages.

That some time after your oratrix came to this country, she was followed by her father and her mother, and her brothers and her sisters, who took up their residence in the
20 States of New York and New Jersey, where they have ever
since resided.

That your oratrix has always remained and is still unmarried, and has continued up to the present time to be employed at good wages in the capacities of waiter and domestic servant.

And your oratrix further shows, that so soon as her mother, McKeown, came to this country, her said mother applied to your oratrix and requested your oratrix to deposit her earnings in her hands, that to do so
30 would be beneficial to your oratrix, that the money would
be safely kept for her, and that when the accumulation was sufficient she would purchase a small home for your oratrix; that your oratrix thereupon consented to so give her savings and earnings to her said mother to keep for her for the purposes aforesaid.

And your oratrix further shows, that after your oratrix became of the age of twenty-one years she continued and remained unmarried, and still continues single and unmarried, and that she continued as domestic servant as a waiter
40 and in other capacities at large wages; and nearly all her

wages, except such parts thereof as was necessary to keep your oratrix in clothes, your oratrix deposited with her said mother.

And your oratrix further shows, that at the time your oratrix became of the age of twenty-one years, being poor, she began to consider that it would be beneficial to your oratrix to make saving of her said wages and deposit in some place for safe keeping and investment, and that your oratrix then so informed her said mother of her determination to make saving as aforesaid of her said wages ; and the mother of your oratrix then proposed that your oratrix should place her savings in her hands, and that she would keep the same until the accumulation was such that it would enable them to purchase for your oratrix a small home, which should be placed in the name of your oratrix, and your oratrix, at that time, then agreed to the proposal of her said mother, that your oratrix would place her earnings in the hands of her said mother, and that when sufficient had accumulated that she should purchase with accumulations a small home for your oratrix in the manner above set forth and as proposed by the mother of your oratrix.

And your oratrix further shows, that in accordance with such agreement your oratrix from that time forth steadily deposited in the hands of her mother all her earnings, until about the year 1866 when they had accumulated in the hands of her mother to about the sum of one thousand dollars, when her mother purchased of one James T. Sandford all those certain lots of land and premises situate, lying and being in the Township of Weehawken, in the County of Hudson, and State of New Jersey, and which on a certain map entitled "Map of Weehawken, Hudson County, New Jersey, belonging to William W. Wills and others, made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors in Jersey City," filed in the Clerk's Office of the said County of Hudson, are known and distinguished as lots numbers six (6) and seven (7), in block number twelve (12), as laid down on said map, and hereinafter in this bill more particularly described, for the sum of four hundred dollars, cash, part of the moneys of your oratrix held by her said mother, and by your oratrix as aforesaid deposited with her mother for such purchase.

And your oratrix further shows, that on or about the
 day of _____ in the year
 one thousand eight hundred and _____ the mother
 of your oratrix commenced to erect on said premises a small
 frame building or house from the earnings of your oratrix,
 so as aforesaid deposited in the hands of her said mother,
 and did in about the space
 finish and complete said small house at a cost of about
 hundred dollars, as nearly as your oratrix
 10 can ascertain.

And your oratrix further shows, that during all the time
 aforesaid your oratrix was earning high wages, and was
 depositing the same from time to time in the hands of her
 mother until the lots of lands so as aforesaid purchased and
 the small house erected thereon was fully paid for, and all
 claims therefor satisfied from the earning of your oratrix.

And your oratrix further shows, that at the time of the
 purchase of the said lands and during the erection of said
 building thereon, it was represented to your oratrix by her
 20 mother that the said lands and premises were purchased in
 the name of your oratrix, and for her use and benefit as a
 home, and that the same was purchased and the house
 thereon erected for her benefit.

And your oratrix further shows, that your oratrix believ-
 ing such representations, at that time supposed that the said
 lands and premises were purchased in the name of your
 oratrix, and that the building or house was erected for her
 benefit as a home.

And your oratrix further shows, that said lands and
 30 premises were purchased for the sum of four hundred dol-
 lars, and that the house erected thereon was a two-story
 frame house and cost about the sum of one thousand dol-
 lars, all of which said moneys were the earnings of your
 oratrix, and moneys belonging to your oratrix in the hands
 of her mother.

And your oratrix further shows, that so soon as the said
 building was completed your oratrix moved into said house
 and made it her home, your oratrix still continuing to labor
 at domestic service at wages; that your oratrix occupied
 40 the exclusive use of one room of said house, and did use in

common of the other portions of said house with her father and mother and occupy the same from the time of its completion until about the _____ day of _____ in the year eighteen hundred and _____, when a misunderstanding occurred between your oratrix and her brother John James McKeown, and in the absence of your oratrix the furniture of your oratrix was removed from said house, and upon her return to the house your oratrix was denied access to the house, and the said John J. McKeown took exclusive possession of the said house and has ever 10 since continued in possession of the same.

And your oratrix further shows, that shortly after the time of the ejection of your oratrix from said house, the said John J. McKeown informed your oratrix that the house and land was owned by him, and was in his own name and was so purchased, and that your oratrix had no rights whatever in the same.

And your oratrix further shows, that being surprised at such information from her brother John J. McKeown, your oratrix instituted inquiries in relation to the matter and 20 was informed and believes such information to be true, that her mother caused the deed of conveyance of the purchase of said lands to be made out in the name of John J. McKeown.

And your oratrix further shows, that she caused a search to be made in the Clerk's Office of the County of Hudson, and there discovered a deed of conveyance of record, made by James T. Sandford, bachelor, to John J. McKeown, dated the tenth day of May, in the year eighteen hundred and sixty-six, and recorded June tenth, in the year eighteen 30 hundred and sixty-six, in the said Clerk's Office of the County of Hudson, which said deed of conveyance conveys in fee simple :

All those two certain lots, tracts or parcels of land and premises situate, lying and being in the Township of Weehawken, in the County of Hudson, and State of New Jersey, and which on a certain map entitled "Map of Weehawken, Hudson County, N. J., belonging to William W. Niles and others, made from a trigonometrical survey by I. B. & D. E. Culver, City Surveyors in Jersey City, filed in the 40

Clerk's Office of said County of Hudson," and known and distinguished as lots numbers six (6) and seven (7), on block number twelve (12), fronting and facing on the southeast line or side of Eleventh Street, each lot being twenty-five feet wide in front and rear and one hundred feet deep on each side, bounded and described as follow, viz: Beginning at a point in the said southeasterly line of Eleventh Street, one hundred feet from the corner formed by the intersection of said line of Eleventh Street and the northeasterly
 10 line of Niles Avenue; thence running southeasterly along the rear lines of lots numbered eight (8), nine (9) ten (10) and eleven (11) one hundred (100) feet to a point therein, northeasterly along the rear line of lots sixteen (16) and seventeen (17) fifty feet to a point therein, northwesterly along the line of lot numbered five (5) one hundred feet to the said line of Eleventh Street; thence southwesterly along the same to the point or place of beginning.

And your oratrix further shows, that the above described premises are the same lands and premises purchased as
 20 aforesaid with the moneys of your oratrix.

And your oratrix further shows, that one Mrs. John J. McKeown is the wife of the said John J. McKeown, and claims to be entitled to an inchoate right of dower in said premises.

And your oratrix further shows, that the said John J. McKeown never had any money whatever with which to purchase said lands and premises, or erect said building or house on said premises.

And your oratrix further shows, that on the twentieth
 30 day of June the said John J. McKeown conveyed lot six (6) of the above described premises to one Joseph McKeown by deed of conveyance dated on that day, but that said last mentioned deed was made without any consideration whatever and for the purpose of defrauding your oratrix.

And your oratrix further shows, that neither the said John J. McKeown nor Joseph McKeown have ever made any repairs to said above described premises, nor in any-wise improved the same.

And your oratrix further shows, that your oratrix has
 40 frequently demanded of the said John J. McKeown and

Joseph McKeown that they and each of them convey to your oratrix said described lands and premises, but they have neglected and refused so to do.

And your oratrix well hoped that the said John J. McKeown and Joseph McKeown would have complied with the reasonable request of your oratrix as in justice and equity they ought to have done.

But now so it is, may it please your Honor, that the said John J. McKeown and _____, his wife, and Joseph McKeown combining and confederating with divers persons 10 at present unknown to your oratrix, whose names when discovered your oratrix prays she may be at liberty to insert herein, with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your oratrix in the premises, they the said John J. McKeown and Joseph McKeown absolutely refuse to comply with such request, and they at times pretend that they are the legal owners of said premises, and that they purchased and paid for the same with their own money, and that their ownership and possession are bona fide, and that the same 20 was not purchased and improved with the money of your oratrix, and that they nor either of them hold the same in trust or charged with any trust in favor of your oratrix; whereas your oratrix charges the contrary thereof to be the truth, and that the said lands and premises were purchased and the house thereon built with the money of your oratrix, and that they or one or both of said defendants hold the same in trust for your oratrix.

All which actings, doings and pretences of said defendants are contrary to equity and good conscience, and tend 30 to the manifest wrong, injury and oppression of your oratrix in the premises.

In tender consideration whereof, and for as much as your oratrix is remediless in the premises at and by the strict rules of the common law, and is relievable only in a Court of Equity where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said John J. McKeown and Joseph McKeown and their confederates, when discovered, may upon their several and respective corporal 40

oaths, to the best and utmost of their respective knowledge, information, remembrance and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every one of them distinctly interrogated thereto.

And that your Honor will decree that the said John J. McKeown and Joseph McKeown hold said property in trust for your oratrix, and to the use and benefit of your
10 oratrix; and further, that your Honor decree that the said John J. McKeown and Joseph McKeown convey said premises to your oratrix, and that your oratrix may have such order and further relief in the premises as the nature of the case may require and as may seem meet.

May it please your Honor to grant unto your oratrix the State's writ of subpœna directed to John J. McKeown and
his wife, and Joseph McKeown and
his wife, commanding them and each
of them at a certain day, and under a certain penalty
20 therein specified, personally to be and appear before this Honorable Court, then and there to answer all and singular the premises aforesaid, and to stand to, perform and abide by such order, direction and decree therein, as to your Honor shall seem meet and agreeable to equity.

STATE OF NEW JERSEY, HUDSON COUNTY, ss:

Mary Ann McKeown, of full age, being duly sworn according to law, on her oath saith that the facts, matters and things set forth in the foregoing bill of complaint, so far as
30 they relate to her own acts and deeds are true, and so far as they relate to the acts and deeds of the other persons she believes them to be true.

MARY ANN McKEOWN.

Sworn and subscribed before me at Jersey City, this September 17th, 1878.

A. B. VAN DERVOORT,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY.

 Between

 MARY ANN MCKEOWN,
Complainant,

and

 JOHN JAMES MCKEOWN ET ALS.,
Defendants.

On Bill, &c.

10

The answer of, &c., &c., &c.

They admit that the complainant is a native of Ireland, of about the age of forty, and that she came to this country when a girl. They admit that complainant went out to service, but as to whether she remained constantly at service, and as to whether she received large wages as a compensation for services, and as to what disposition she may have made of her wages so received, they neither admit or deny, &c. That as to whether complainant is unmarried or not, and as to whether she paid over to her mother the wages she received at service, they neither admit or deny, &c.

That as to all conversations the complainant may have had with her mother in reference to the savings of her wages for the purchase of a house, or as to the amount of 30 said moneys which complainant may have paid over to her mother, they neither admit or deny, &c.

And John James McKeown denies that in 1866, or at any other time, the mother of the complainant purchased of one James F. Sandford the property as set out in the bill, but avers the fact to be that said property was purchased of said Sandford by him with his own moneys and for his own use and in his own name.

And John James McKeown denies that the complainant in the year A. D. 1866, or at any other time, commenced 40

to erect a house on said premises, but avers the fact to be that said house was built at the instance and request of of himself for his own use, and was paid for by his own moneys, &c., &c.

And John James McKeown denies that complainant paid for the erection of said house and satisfied all claims against the same, or that she contributed any sum or sums of money either toward the purchase of said lots or towards the erection or completion of the buildings and the improvements
10 thereon, but avers the fact to be that all the moneys paid, laid out and expended for the purchase of said lots, or for the erection and completion of the improvements thereon, were paid, laid out and expended by him out of his own moneys and for his own use.

That any conversations had by said complainant with his mother, or as to any representation she may have made, he neither admits or denies, &c., &c.

John James McKeown does deny that the complainant, ever paid any sum or sums of money, directly or indirectly,
20 for the purchase of said lots, for the erection and completion of said house, or for any improvement on said property.

And he further denies that said complainant ever used exclusively one room in said house and the others in common with his father and mother, he being unmarried, and that he allowed his sister, the complainant, to have a room there when she was out of a place. That he has possession of said property, pays the taxes, &c., and that complainant never has and does not now exercise any act of ownership
30 over said property, and has never resided there, and has never been ejected from said premises; that complainant knew at that time that John James McKeown purchased the property with his own moneys, &c.

The defendants admit that Mrs. John James McKeon is the wife of John James McKeon.

The defendants further answering say as to all other matters, &c., &c., &c.

Affidavit in usual form.

40 Depositions as taken before a Master and printed in a separate book.

FEBRUARY TERM, 1881.

<p style="text-align: center;">MARY ANN McKEOWN</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">JOHN JAMES McKEOWN, ET ALS.</p>	}	<p><i>Bill for relief.</i></p> <p><i>On final hearing</i> <i>on pleadings</i> 10 <i>and proofs.</i></p>
--	---	---

Mr. J. H. Lippincott for complainant.

Mr. J. Chapman for John James McKeown.

The Chancellor :

This suit is brought to establish a resulting trust in favor 20 of the complainant in a house and two lots of land in Weehawken, the title whereto is in her brother John. The defendants are John and his wife, and another brother, Joseph and his wife. The latter two are made parties on account of a conveyance of the property in question made by John to Joseph in 1872. The latter swears, however, that the conveyance to him was to secure a loan which was repaid, and the property reconveyed.

The allegation of the bill on which the complainant's claim rests, is that she being out at service and making good wages and having little or no personal expenses, laid up her money for years in her mother's hands on the understanding and agreement that when the deposit should amount to enough for the purpose, it should be employed by her mother in buying a house for her ; that in pursuance of that understanding and agreement her mother purchased for \$400 the land in question, paying for it out of complainant's money in her hands, and afterwards with like funds built a two story frame house at a cost of \$1,000 on it. That the complainant, so soon as the building was

completed, moved into it and had exclusive use of one room ; she still however, it appears, continued at service ; and occupied the rest of the house in common with her father and mother ; that she always, up to the time when John ejected her from the property and took exclusive possession himself, which was May 1, 1872, supposed that the title had been taken in her name, but she then found it had been taken in his. The proof on her part consists of her testimony as to her depositing her wages with her mother
 10 for safe keeping, and verbal statements made by her mother as to the money with which the lot was purchased and the house built, and a statement made by John that he borrowed the money to build the house from his mother.

The testimony as to the statements of the mother is incompetent, and if it were not so it would be entirely unreliable. She appears to have said on one occasion that the property was "between John and Mary Ann." The complainant says that they both had money in it, and on another occasion she said that it belonged to both of them, and that
 20 their father had some money in it too. In the same conversation she claimed the property as her own. On the trial of an indictment in 1872 against John and his father for an assault and battery on Mary Ann, she swore that not a penny of Mary Ann's money was in the house, nor the money of any one else but John. Mary Ann had on the trial sworn that she owned the property. It would seem that both Mary Ann and her sister Mrs. Currie, sworn for her in this cause, charged her mother with having perjured herself in that statement. The statement of the mother on
 30 the subject if competent would manifestly be of little value.

But the case shows the purchase by John of the lots in 1866 for \$400, and he swears that he paid that money with his own money, that of the \$400. \$200 were money which he had in a savings bank, and the rest was money which he had in his mother's hands, where he had placed it for safe keeping. He built the house. He swears that he paid for it entirely with his own money and money which he borrowed, but that he borrowed only \$170 of it from his mother which he repaid to her. He exercised all acts of
 40 ownership over the property, paying taxes for it as his own,

and obtaining insurance on the building as his property, and as far as appears his absolute right to the property was not questioned until 1872.

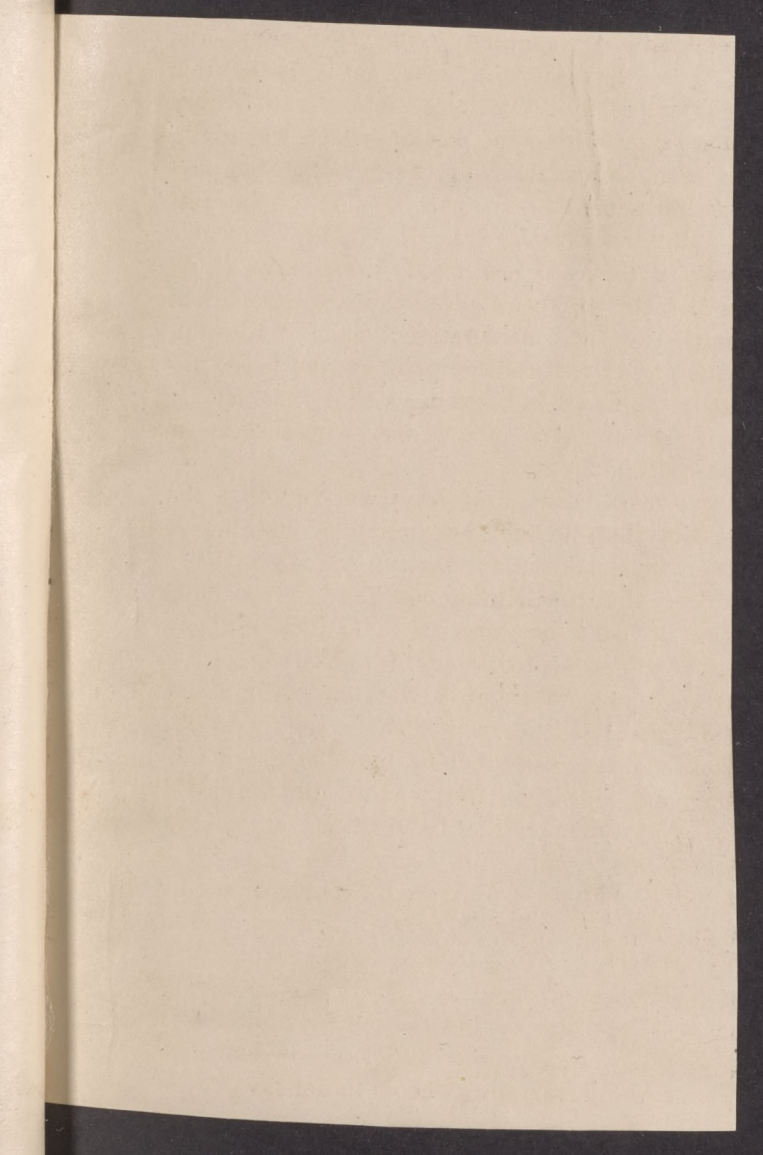
It was then denied by the complainant but she did not file her bill until September, 1878. The mother did not die until the summer of 1874, so that the complainant for two years or thereabouts, while her mother was still living, after her claim was denied both by John and her mother, took no steps to establish her claim to the property, and it was not until four years after her mother's death, and six 10 years after her right to the property was denied, that she brought her suit. Her delay may be accounted for by her ignorance and helplessness. As before stated she was a servant and it is quite probable that she is fairly to be regarded as *inops consilii*; and her delay is indeed not to be looked upon as the delay of those better aware of their rights and the means by which they may be maintained would be; yet it is unfortunate for her that for whatever reason her application for relief was deferred until after the death of her mother, it appears too by the evidence of Joseph 20 who swears that the land was purchased and the house built by James with his own money, that when John bought the property he showed Joseph the deed, and that the latter read it in the presence and hearing of the complainant. He swears also that the complainant had an account in the Greenwich Savings Bank; that he saw her bank book and was with her when she made a deposit there, which she said was \$140, and he swears that she said it was the last of the money which John owed her, and that she had got it from her mother. John swears that he repaid the \$170 in several 30 payments, the last of which was \$140.

All the documentary evidence is in favor of John and he swears, and he is corroborated in material respects by Joseph, that he bought the land and built the house entirely with his own money which he borrowed. If any money of Mary Ann's which was not repaid, indeed went into the property, I am unable to find clear proof of it; and it is established that when a trust is sought to be raised as a resulting trust from the payment of the purchase money, the proof must be very clear of the payment of the purchase money by the person 40

in whose favor a trust by implication of law is sought to be raised ; the fact must be distinctly established by satisfactory evidence. And further, that a resulting trust will not be held to arise upon the payments made in common by one asserting his claim and the grantee in the deed, when the consideration is set forth in the deed, as it is in this case, as moving solely from the latter unless satisfactory evidence is offered, exhibiting the portion which was really the portion of each, and establishing the fact that the pay-
 10 ment was made for some specific part or distinct interest in the estate. *Cutter v. Tuttle*, 4 C. E. Gr. 549. In this case, as was said in the case just cited, the testimony relied on is unsatisfactory as to the question whether any, and if so, what portion of the consideration money of the conveyance was the property of the complainant and is too unreliable to justify the Court in divesting a title evidence by deed of conveyance, in favor of a person whose claim is rested on the uncertain foundation of parol proof. It is true that McAtavey swears that while John was building the
 20 house he told him that he got the money for building it from his mother, but the defendant absolutely and positively denies it. He says that the building cost him between \$900 and \$1000 ; that he had to borrow some of the money to pay for it ; that he borrowed \$100 of John M. Gibson, and \$100 of his brother Joseph and about \$170 from his mother, \$370 in all, and furnished the rest of the money himself. Again the admission is at most that he obtained the money from his mother, not from the complainant ; and besides it
 30 is not necessarily a confession that he obtained all of the money to build the house from that source.

He admits that he borrowed \$170 from his mother to aid him in building, but swears that he repaid it, adding \$30 to it to cover the interest. I think it is quite probable that money which his mother received from Mary Ann for safe keeping went into the property, but the burden of proof is on the complainant, and I cannot find such evidence of necessary facts as would warrant a decree in her favor.

The bill will be dismissed, but without costs.



DECREE.

IN CHANCERY OF NEW JERSEY.

Between

MARY ANN MCKEOWN,
Complainant,

and

JOHN JAMES MCKEOWN,
Defendant.

On Bill, &c.

This cause coming on to be heard at the last regular term of the Court of Chancery, held at the State House, in the City of Trenton, before the Chancellor, in the presence of Job Lippincott, of counsel with the complainant, and James Chapman, of counsel with the defendant, and the pleadings, depositions, exhibits and proofs being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise thereon, and now, on this nineteenth day of February, in the year eighteen hundred and eighty-one, it appearing to the Chancellor that the complainant is not entitled to the relief sought and prayed for by her in her said bill of complain—It is ordered, adjudged and decreed that the said complainant's bill be and the same is hereby dismissed without costs.

THEODORE RUNYON, *C.*