
NEW JERSEY COURT OF ERRORS
AND APPEALS

ANNIE M. CONAWAY,
Plaintiff-Respondent,

vs.

MARGARET DALY,
Defendant-Appellant.

ON APPEAL FROM SUPREME COURT.

STATE OF CASE

BABCOCK & CHAMPION,
For Defendant-Appellant.

ROBERT J. TAIT PAUL,
For Plaintiff-Respondent.

I N D E X

	PAGE
Summons and Complaint	1
Answer	4
Reply	8
Plaintiff's Testimony:	
Louis A. Repetto—Direct	9
Louis A. Repetto—Cross	11
William T. Leek—Direct	25
William T. Leek—Cross	27
Annie M. Conaway—Direct	32
Annie M. Conaway—Cross	36
Harry C. Conway—Direct	41
Cyril Hepburn—Direct	44
Cyril Hepburn—Cross	49
Motion for Non-suit	50
Defendant's Testimony:	
Joseph L. Roth—Direct	55
Joseph L. Roth—Cross	61
Stipulation as to Exhibits	80
Plaintiff's Exhibits:	

INDEX (CONTINUED)

	PAGE
Exhibit P1—Petition to Surrogate for Probate Will John G. Schafer.....	81
Exhibit P2—Certificate of Death of Anna Conaway	83
Exhibit P3—Certificate of Birth of Baby Conaway	85
Birth Certificate Baby Conaway	87
Exhibit P4—Deed—Alma LeChard and Joseph LeChard to Emma L. Schafer	88
Exhibit P5—Deed—Emma L. Schafer and John G. Schafer to Caroline Moore	89
Exhibit P6—Deed—Emma L. Schafer, et ux., to William G. Schafer.....	90
Exhibit P7—Deed—William J. Schafer and Catherine, his wife, to Anna L. Schafer	92
Exhibit P8—Deed—Emma L. Schafer, et vir., to Philip Watson	93
Exhibit P9—Deed—Smith E. Johnson to Emma L. Schafer	94
Exhibit P10—Deed—George W. Schafer, et als., to John G. Schafer.....	95
Exhibit P11—Letter of Cyril Hepburn to Daly	102

I N D E X (CONTINUED)

	PAGE
Exhibit P12—Letter of Hepburn to Daly.....	103
Exhibit P13—Letter of H. P. Twibill.....	104
Exhibit P14—Petition for Administration Estate Emma L. Schafer, Deceased	104
Defendant's Exhibits :	
Exhibit D2—Deed—John G. Schafer, et ux., to Joseph L. Roth	106
Exhibit D3—Deed—Joseph L. Roth and Esther Roth to Thomas Daly....	109
Exhibit D4—Deed—Smith E. Johnson to Philadelphia Brewing Co.....	110
Exhibit D5—Deed—Philadelphia Brewing Co. to Margaret Daly.....	112
Postea	114
Notice and Grounds of Appeal	115

THE STATE OF NEW JERSEY, TO MARGARET DALY.

[SEAL]

You are summoned to answer the annexed complaint of Annie M. Conaway in an action at law in the Supreme Court, wherein the said Annie M. Conaway demands of you the possession of an equal, undivided one-fourth part of a tract of land, with appurtenances, situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey, more particularly described in the said complaint. 10

And take notice, unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ, and of the annexed complaint, judgment will be entered against you and you will be turned out of the possession of said land. 20

WITNESS, WILLIAM S. GUMMERE, ESQ., Chief Justice of the Supreme Court at Trenton, the twenty-ninth day of February, nineteen hundred and twenty-eight.

ROBERT J. TAIT PAUL,
Attorney.

EDWARD J. KELLEHER,
Clerk.

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NEW JERSEY SUPREME COURT
ATLANTIC COUNTY

	ANNIE M. CONAWAY,	}	IN EJECTMENT. COMPLAINT.
10	<i>Plaintiff,</i>		
	vs.		
	MARGARET DALY,	}	
	<i>Defendant.</i>		

20 The plaintiff, Annie M. Conaway, residing in the City of New York and State of New York, demands of the defendant, Margaret Daly, herein, the possession of an equal one-fourth part of a tract of land or premises, with appurtenances, situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey, more particularly described as follows:

30 BEGINNING at a point in the Northerly line of Baltic Avenue, where the Westerly curb line of Kentucky Avenue intersects the same; thence running Westwardly along the Northerly line of Baltic Avenue, seventy-six (76) feet to the Easterly corner of a lot conveyed by the said Schaffer to one Winder; thence Northwardly at right angles to Baltic Avenue, eighty (80) feet to a point; thence Eastwardly along a line parallel with Baltic Avenue, seventy-six (76) feet to the curb line in Kentucky Avenue; thence Southwardly along the same, eighty (80) feet to the point of beginning.

And the plaintiff says that her right to the possession

of the same accrued on the third day of January, 1906, and that her right of possession has continued thereon down to date and the defendant wrongfully deprives the plaintiff of her possession thereof, the plaintiff having been a minor under the age of twenty-one years at the time her right of possession accrued thereto, to her damages in the sum of ten thousand dollars (\$10,000.00), and also for the sum of ten thousand dollars (\$10,000.00) for mesne profits and damages.

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ROBERT J. TAIT PAUL,
Attorney for the Plaintiff.

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notorious and continued possession of the premises described in plaintiff's complaint for more than twenty years last past and by reason of the provisions of Section 17 of an Act of the Legislature of the State of New Jersey, entitled, "An Act for the Limitation of Actions" (Compiled Statutes of New Jersey, Volume 3, beginning at page 3162), together with the supplements thereto and amendments thereof.

THIRD DEFENSE:

10

Plaintiff is barred from having and maintaining her said suit because the defendant and her predecessors in title have had more than thirty years actual possession of the lands and premises described in the plaintiff's complaint, uninterruptedly continued for that length of time, which possession was obtained by a fair bona fide purchase of such lands and premises of persons in actual possession thereof and supposed to have legal right and title thereto and by reason of the provisions of Section 29 of an Act of the Legislature of the State of New Jersey, entitled, "An Act for the Limitation of Suits Respecting Titles to Land," as found in Volume 3, Compiled Statutes of New Jersey, at page 3172, and the supplements thereto and amendments thereof.

20

FOURTH DEFENSE:

This defendant and her predecessors in title and to whose rights she has succeeded for the said lands and premises erected and made all of the improvements now and heretofore upon the lands described in the complaint and the plaintiff has no interest in said buildings or said lands or any right of possession thereof or any part thereof.

30

FIFTH DEFENSE:

A proceeding in partition is now pending and undetermined in the Court of Chancery, in New Jersey, in which proceeding the said Annie Conaway is complainant and Margaret Daly is defendant and no order has been made by the Court of Chancery, permitting the institution and maintenance of this ejection proceeding.

10

SIXTH DEFENSE:

Plaintiff is barred from having and maintaining her said suit because the defendant and her predecessors in title have had more than thirty years actual possession of the lands and premises described in plaintiff's complaint, uninterruptedly continued by defendant and her predecessors in title by occupancy and lawful conveyances and by reason of the provisions of Section 1 of an Act entitled, "An Act to Amend an Act entitled 'An Act for the Limitation of Suits Respecting Titles to Land' (Revision of 1877, page 598)," approved March 11, 1922, as found in Pamphlet Laws of 1922, page 315.

20

NOTICE:

Defendant hereby gives notice to the plaintiff that upon the trial of this cause, she will move to dismiss the summons and strike out the complaint upon the following grounds:

30

1. That the summons does not describe the premises possession of which is demanded as required by law.
2. That the plaintiff's suit is for possession of an undivided one-fourth part of premises described in the complaint, which description is vague, indefinite and uncer-

tain and is not sufficiently specific upon which to base a suit in ejectment.

BABCOCK & CHAMPION,
Attorneys for Defendant.

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NEW JERSEY SUPREME COURT
ATLANTIC COUNTY

	ANNIE M. CONAWAY,	}	ACTION AT LAW. IN EJECTMENT. REPLY.
	<i>Plaintiff,</i>		
	vs.		
10	MARGARET DALY,	}	
	<i>Defendant.</i>		

The Plaintiff, Annie M. Conaway, by way of reply says that:

1. Plaintiff denies the allegations of paragraph of the First Defense.

20 2. Plaintiff denies the allegations of paragraph of the Second Defense.

3. Plaintiff denies the allegations of paragraph of the Third Defense.

4. Plaintiff denies the allegations of paragraph of the Fourth Defense.

ROBERT J. TAIT PAUL,
Attorney for the Plaintiff.

A. Member of the New Jersey Bar, residing in Atlantic City.

Q. Do you hold any office of public trust in the County of Atlantic?

A. I do.

Q. What office is that?

A. Prosecutor of the Pleas, Atlantic County.

Q. How old are you, sir?

A. I am sixty; past sixty years old.

10 Q. Have you in your lifetime ever known the family of John G. and Emma L. Schaefer?

A. I did.

Q. Did you know them at the time that their daughter Anna M. Schaefer was living at their home?

MR. BABCOCK: I object to that. That pre-supposes there was such a relative.

MR. PAUL: I will withdraw the question.

Q. How many children were there in the Schaefer family so far as you know?

20 MR. BABCOCK: I object. If this witness is offered for the purpose of pedigree that is not the way to prove it.

THE COURT: I think this witness has a right to testify, however, of his own knowledge as to children of the Schaefers; has he not?

MR. BABCOCK: How could he know the relationship of one person to another, except by hearsay or by reputation, unless he was present when they were born? That is the reason I say that is not the way to prove it. The
30 Court of Errors and Appeals has laid down the way for that kind of proof being offered.

THE COURT: I will permit it and allow you an exception, Mr. Babcock.

MR. BABCOCK: Exception.

MR. PAUL: If your Honor please, this witness is offering testimony as to personal knowledge of a certain fact. He can testify as to the existence of a certain

family named Schaefer and he can testify to the fact that there were so many in that family consisting of a father and mother and so forth. I think it is apparent to your Honor that even a relative would be in the same position as this witness would be as to having knowledge. You have no—in your own family you have no knowledge as to the physical birth of a child to a large extent, and yet you know that he is a member of your family; and certainly the testimony in this case is just the same. He is testifying to his own knowledge, not as to what someone has told him, but as to the family as it was held out to him, as to his association with them, and certainly there is nothing sounder or better than that testimony would be because it is first hand information. A declaration of itself would be a second-handed information, which is what the Court of Errors refers to.

Q. (Repeated by the stenographer.) How many children were there in the Schaefer family so far as you know?

A. Four.

Q. And what were their names?

MR. BABCOCK: I ask an exception to all this.

THE COURT: Yes.

MR. BABCOCK: May I ask this question as to how he knows?

CROSS-EXAMINATION.

By MR. BABCOCK:

Q. Is your knowledge based on what you have been informed?

A. No, sir; by personal contact with the family.

Q. And what they have told you?

A. What do you mean by told me? Members of the family?

Q. You were not present when the various members of the family were born; were you?

A. I was not.

Q. And you got your information from someone?

A. Only by association with the family; that is all.

Q. That is, you have no personal knowledge about it?

A. No, because they were all—

Q. Never mind about the because. You have not, you say?

A. No.

10 THE COURT: Your knowledge is based on your personal association with the entire family?

THE WITNESS: Yes, sir—not with the entire family; with the daughter and William J. Schaefer and afterwards I met George Schaefer and Mrs. Moore; Catherine Moore. I met the two latter after the death of the father John G. Schaefer; but the two prior ones—

THE COURT: Well, the daughter is Margaret. You say the daughter and Mrs. Moore.

THE WITNESS: Mrs. Moore was a daughter, too.

THE COURT: Who was the other party?

20 THE WITNESS: The other was Mrs. Conaway.

THE COURT: And you knew them prior to the death of the mother and the father?

THE WITNESS: Oh, yes; that is, Mrs. Conaway and William J. Schaefer I knew prior to the death of the mother and the father.

MR. BABCOCK: Now we renew our objection that the testimony is incompetent and improper and it also amounts to hearsay.

30 THE COURT: I am rather in doubt about the testimony as it stands now.

MR. BABCOCK: Your Honor remembers we have to be technical in a case of this kind. I don't want to be captious but the case requires it.

MR. PAUL: I will withdraw that question.

Q. Mr. Repetto, were you acquainted with Mr. John G. Schaefer and Emma L. Schaefer, his wife?

A. Yes.

Q. How long have you known them?

A. I judge since 1882 or 1883; somewhere along there; probably 1882.

Q. And what was the extent of your knowledge of them?

A. I was associated with John G. Schaefer religiously, politically and socially, and in fire company matters.

Q. And how long did that association continue?

A. Until he went to California. I don't remember what date. 10

Q. Of your own knowledge do you know whether or not there was a daughter in the Schaefer family by the name of Anna Marie?

A. Yes.

MR. BABCOCK: I object on the same ground and move the answer be stricken.

THE COURT: I will let that answer stand. He says he does know whether there was or was not.

Q. Do you know whether or not the daughter Annie Marie Schaefer married? 20

A. Yes.

Q. Whom did she marry?

A. Harry Conaway.

MR. BABCOCK: I object, if your Honor please.

THE COURT: You object to the testimony as to whom she married?

MR. BABCOCK: Yes.

THE COURT: I will permit you to cross-examine and find out what his knowledge is on that subject.

MR. BABCOCK: There is no testimony so far that there ever was any such daughter. He says he only knows whether or not there was one. Now, if he were asked the other questions then of course we would object and we would be right up against the same thing we were before. 30

THE COURT: There is no testimony yet. All he says is that he knows whether there was or was not a daugh-

ter by the name of Anna Marie.

MR. PAUL: I will withdraw the pending question.

Q. (Repeated by the stenographer.) Of your own knowledge do you know whether or not there was a daughter in the Schaefer family by the name of Anna Marie?

A. (Repeated by the stenographer.) Yes.

THE COURT: This case deals entirely with declarations. (Referring to case in the Court of Errors and
10 Appeals cited by Mr. Babcock.) It does not deal with the question as to whether or not a person can testify as to marital relations, for instance, that may have existed or as to family relations that may have existed, from their own knowledge independently of declarations made by either the parent or the child. This deals entirely with the question of how far they can testify as to declarations made by either a parent or a child, etc., in order to show that relationship.

Now, then, is there anything that you know of that
20 holds that a person who has been associated with a family from 1882 or whenever it was, religiously, politically, socially and as a fireman, cannot testify as to his observation of the family relation?

MR. BABCOCK: In the case of an adopted child it may be spoken of as a child. A person observing the association, even as a fireman and in all these other capacities, might even believe, and honestly believe, that that adopted child was a real child; but that would be a very dangerous course to permit in court to prove relationship;
30 and as far as marriage is concerned, as I recall the cases, our courts have held that you cannot prove marriage in that way.

THE COURT: Well, you can by repute.

MR. BABCOCK: I do not think so. You cannot in divorce cases, anyhow.

THE COURT: Assuming that back in 1889 there were no records of birth at all, no Bureau of Vital Statistics,

and assuming also that the family was not very religious and did not have a family Bible, how would you prove the parentage of a child?

MR. BABCOCK: By those who know, or by declarations which come within the decision of the Court of Errors and Appeals.

THE COURT: Now, if there were no declarations at all that would bring it within that rule, how are you going to prove it except by a person who has associated with the family and has observed the relationship existing between them; the father calling her "Daughter," or whatever it may have been? What other possible mode of proof is there? 10

MR. BABCOCK: It is possible you may be in such a situation where you could not make the proof. That happens in many kinds of cases. But, as I understand the rule, it is that hearsay testimony is admissible to prove parentage, but only in the manner which that case points out; or, if you don't have that, then you must prove it by someone who knows. 20

THE COURT: Well, this is a good time to adjourn until tomorrow at ten o'clock.

(Recess to ten o'clock the following morning.)

PLAINTIFF'S TESTIMONY.

LOUIS REPETTO, already sworn.

By MR. PAUL:

30

Q. Did you have anything to do with the handling of the estate of John G. Schaffer?

A. Yes.

MR. PAUL: I would like at this time to offer in evidence, certified copy of petition for Letters of Administration in the matter of the estate of John G. Schaffer,

under the seal of the Clerk of the Surrogate's Court.

MR. BABCOCK: Do you mean for admission?

THE COURT: For what purpose is it offered?

MR. PAUL: To show a declaration in writing by Mr. Schaffer as to the estate of John G. Schaffer and also to show the death of Mr. Schaffer. I am referring to Wm. J. Schaffer's declaration, the son of John G. Schaffer, sworn to, and therefore admissible as evidence, being a certified copy under the hand and seal of the Clerk of
10 that Court, of the petition of William J. Schaffer, a son of John G. Schaffer,—

THE COURT: —and Emma L. Schaffer?

MR. PAUL: Yes.

THE COURT: Why is not that admissible?

MR. BABCOCK: It is only part of the record. The fact is, I believe, that Mr. John G. Schaffer made a will and this sort of proceeding goes to the naming of persons who are beneficiaries under that will.

He left a will and he is a beneficiary under the will. Is
20 that correct?

MR. PAUL: I think that is correct.

THE COURT: I understand that this paper is a petition for probate and that in that petition he sets out the various relatives of the deceased, and among them is a daughter by the name of Emma or Mamie.

MR. PAUL: The petition for probate sets up among other things the name of Anna Conaway, a granddaughter. The petition is sworn to by William J. Schaffer, a
30 son.

THE COURT: I think it admissible. I will admit it.
(Exception allowed to defendant.)

MR. PAUL:

Q. Were you personally acquainted with William J. Schaffer, the executor of this estate?

A. I was.

Q. Is William J. Schaffer now living?

A. He is not.

Q. When did he die?

A. I don't just recall; probably six or seven years ago. The date, I don't know that.

Q. At any time did or did not William J. Schaffer make any statements to you concerning the relationship of Anna Conaway, the plaintiff in this suit, to John G. Schaffer, and Emma L. Schaffer and to himself?

A. Yes.

10

Q. Do you recall the specific time when some of these declarations were made, or about what time?

A. At the time of the settlement of the estate of John G. Schaffer.

Q. What were those declarations?

A. That Anna Conaway was the daughter—or niece of William J. Schaffer.

Q. At that time were there any other persons interested in this settlement?

A. There were.

20

Q. Who were they?

A. A brother by the name of George Schaffer; and a sister of William J. Schaffer by the name of Caroline Moore and Anna Conaway, a daughter of a deceased daughter.

Q. And William J. Schaffer was also interested?

A. William J. Schaffer, yes.

Q. Were there any statements by William J. Schaffer as to the relationship of George Schaffer, William J. Schaffer and Caroline Moore?

30

A. Yes.

Q. What were they?

A. That George Schaffer was his brother and Caroline Moore was his sister.

Q. Did you know personally the mother of Anna Conaway who was present at that conference?

MR. BABCOCK: I don't know what he means by that.

A. No, Mrs. Conaway was dead at that time.

(Question withdrawn.)

Q. Were you at any time acquainted with the mother of Anna Conaway?

A. I was.

Q. What was her name before her marriage? If you know?

A. I don't just recall her first name. Her last name was Schaffer.

10 Q. Have you ever seen her in the family home of John G. and Emma L. Schaffer?

A. No, I did not.

Q. Did you ever see her in their company?

A. Of her father and mother?

Q. Yes.

A. Oh yes, in St. Nicholas Church.

Q. Did you know the father and mother of Anna Conaway, the plaintiff in this suit?

A. Yes, I did.

20 Q. (Mr. Harry Conaway is asked to stand in Court and is requested to come close to the witness.)

THE WITNESS: Call him close.

Q. I ask you if you recognize this gentleman as the father of Anna Conaway?

A. Yes, I do. That is Harry Conaway.

Q. That gentleman you say is the father of Anna Conaway?

A. Yes.

30 Q. You stated that Mr. William J. Schaffer represented Anna Conaway as his niece?

(Objected to as leading.)

THE COURT: It is leading.

MR. PAUL: That is preliminary to the question.

By MR. PAUL:

Q. Did he make any statement as to who his father and mother were?

A. William J. Schaffer?

Q. Yes.

A. Yes.

Q. What were those declarations as to who were his father and mother?

A. That John G. Schaffer was William J. Schaffer's father.

Q. Who was his mother?

A. Emma L. Schaffer, the wife of John G. Schaffer.

CROSS-EXAMINATION.

10

By MR. BABCOCK:

Q. As I understand your testimony, you were quite friendly with John G. Schaffer?

A. Yes.

Q. Your acquaintance extended over a number of years?

A. Yes.

Q. And as far as a person would know another family socially you knew his family?

20

A. Yes.

Q. You also knew William J. Schaffer?

A. Yes.

Q. Had it been your belief always that William J. Schaffer was the son of John G. Schaffer?

A. Never had any doubt about it.

Q. When you got this information about the relationship you say it was in connection with settlement of the estate of John G. Schaffer?

A. As far as Anna Conaway was concerned.

30

Q. You testify also as to William J. Schaffer being the son of John G. Schaffer,—he told you that at the same time?

A. I had known that before that time.

Q. You say it was in connection with settlement of the estate of John G. Schaffer that William J. Schaffer made the recited declarations to you?

A. No, I knew that.

Q. I mean these declarations you speak of.

THE COURT: The witness has been asked whether these declarations were made in connection with the estate of John G. Schaffer, the settlement of that estate.

THE WITNESS: It was at the time of the settlement of the estate of John G. Schaffer that William J. Schaffer said that he was the son of John G. Schaffer.

10 Q. You say you asked Mr. William J. Schaffer if he was the son of John G. Schaffer?

A. I didn't at that time. There was no reason for asking him at that time.

Q. What was the occasion for his stating that? You had known it and knew them so long; but how did it happen that William J. Schaffer stated to you at that time that he was the son of John G. Schaffer?

A. I suppose at that time, particularly, lawyer like, I wanted to be sure and I said, "Let us go over the situation."

20 Q. You wanted to be sure that he was the son of John G. Schaffer, in asking about it?

A. Yes, he had to swear to the petition.

Q. You say you also asked about Anna Conaway the complainant in this case. Was she a participant under the estate of John G. Schaffer?

A. I don't recall that. I don't recall the contents of the will.

Q. You know she participated in the estate, don't you, under the will?

30 A. No, not under the will. She participated in her grandmother's estate.

Q. Didn't she participate in her grandfather's estate under his will?

A. I don't know. I don't recall. I haven't the will before me.

THE COURT: The witness says he doesn't recall the will contents.

Q. Was there ever a subsequent conference at your office between Caroline Moore, William J. Schaffer and Anna Conway, in which the question of relationship had arisen?

A. There were a number of conferences at the office in reference to settling up the John G. Schaffer estate and disposing of the interest of Anna Conway in her grandmother's estate.

Q. And it was from those statements made at these various conferences that your testimony is given here today? 10

A. Yes.

MR. PAUL: I would like to offer in evidence, death certificate of Mrs. Anna Conway, showing her death on June 11, 1887, under the seal of the Bureau of Vital Statistics.

MR. BABCOCK: Where?

MR. PAUL: Trenton.

THE COURT: What time, what date is that?

MR. PAUL: June 11, 1887. 20

MR. BABCOCK: A certified copy,—

MR. PAUL: —under the seal of the Bureau of Vital Statistics.

(Offer marked PX2 and admitted.)

MR. PAUL: I also offer in evidence, record of Bureau of Vital Statistics in the matter of the birth of (blank) Conway, June 4, 1887, under the seal of that Bureau.

MR. BABCOCK: Objected to.

THE COURT: One moment. What is its purpose? 30

MR. PAUL: The cases in our State hold that where there is any question as to the birth of persons, testimony may be offered,—

THE COURT: I will permit its being offered subject to its being connected up with the birth of Anna Conway. (Exception to defendant.)

MR. PAUL: I would like also to offer in evidence, the

record of the Department of Health of Atlantic City as to the birth of Baby Conway, June 14, 1887.

THE COURT: Do you intend to follow that up by showing that she is the daughter of Anna Conway?

MR. PAUL: Yes; that she is the daughter of Anna Conway.

MR. BABCOCK: Objected to. Certified copies are admissible only where the record itself is evidential.

10 THE COURT: If there is any doubt as to the provision of the Statute it can be held over until the Statute is consulted.

MR. PAUL: I have the Statute, here.

MR. BABCOCK: As far as the Trenton record is concerned, that is admissible subject to being connected up with this.

THE COURT: Both records will have to be connected up.

20 MR. BABCOCK: The first certificate offered is one showing the death of the mother of this complainant. That is now in. The next was a certificate showing the birth of somebody by the name of (blank) Conway.

THE COURT: That is admitted subject to his connecting it up with the complainant in this case.

You have your exceptions to both admissions.

(P3 admitted.)

MR. PAUL: I also offer in evidence at this time a series of certified copies of deeds as to line of title and, with the Court's permission, I will draw a chart on the blackboard showing the titles.

30 MR. BABCOCK: Commencing when?

MR. PAUL: Commencing with the grant in 1888.

THE COURT: That is permitted.

(Counsel for plaintiff draws chart on black-board.)

MR. PAUL: I offer in evidence, first, deed from Almeda Lechard to Emma L. Schaffer, dated May 26, 1888, and recorded in the office of the County Clerk in Book 131, page 224. This deed covers the tract in question.

It extends 116 feet along Baltic Avenue and 293 feet along Kentucky Avenue. It covers a tract which might be outlined by the larger lines.

I offer in evidence, that deed.

(Deed marked P4. Admitted.)

MR. PAUL: I offer in evidence, deed from Emma L. Schaffer and John G. Schaffer, her husband, to Caroline Moore.

It begins on the westerly side of Kentucky Avenue—that part marked by the point “X”—which is 80 feet from Baltic Avenue. Then it goes back 80 feet and then goes, covers the balance of the tract, to the top of the blackboard illustration. 10

I will repeat.

That deed covers this portion of the property in question, leaving still the lower 80 feet in Emma L. Schaffer.

(Deed admitted, marked D5.)

I also offer in evidence, Deed Emma L. Schaffer and John G. Schaffer, her husband, to William J. Schaffer.

This covers the property on the northwest line of Baltic Avenue—the description is an old description—but this deed covers this portion of the property in question. That is the piece of property we are now discussing. 20

(Deed marked P6. Admitted.)

It was subsequently returned to Emma L. Schaffer by deed from William J. Schaffer, December 12, 1889.

So that the deed was merely an exchange of property back and forth and does not affect the title.

(Deed marked P7. Admitted.)

I also offer in evidence Deed, Emma L. Schaffer to Phillip Watson, which covers the portion of land covered or indicated by the dotted line. 30

THE COURT: 80 x 80?

MR. PAUL: No, 80 x 17, I see by the dotted lines.

This deed is dated June 1st, 1892.

(Deed marked P8. Admitted.)

I also offer in evidence, deed from Smith E. Johnston, Sheriff, to Emma L. Schaffer, reciting a foreclosure in a Court of Chancery proceeding, against Phillip Watson, conveying this piece of property 80 x 17 back to Emma L. Schaffer.

(Deed marked P9. Admitted.)

I also offer in evidence, deed from George W. Schaffer and Elizabeth Schaffer, his wife, William J. Schaffer and Catherine, his wife, and Caroline Moore, widow, reciting
 10 them as heirs at law of Emma L. Schaffer, now deceased, of Atlantic City, covering quite a number of properties.

The premises in question described therein, described as tract No. 6, being the property on the Westerly line of Kentucky Avenue, 80 feet—I have the wrong property. Tract No. 6, rather, begins at the Northerly line of Baltic Avenue and Kentucky Avenue; then runs westerly along the north side of Baltic Avenue, 67 feet, to the easterly corner of land conveyed by Schaffer to Wintler
 20 —this portion here (indicating). Thence North at right angles to Baltic Avenue 80 feet. That deed recited that Emma L. Schaffer died seized of this particular piece of property 57 feet on Baltic Avenue by 87 feet on Kentucky Avenue, which is the piece of property in question in this suit.

(Deed marked P10. Admitted.)

MR. PAUL: I find I have made a mistake in reading the description. It is 76 feet, and the sidewalk coming off makes it 67.

MR. BABCOCK: It begins from the centre of the street.
 30 THE COURT: That is the tract in dispute?

MR. BABCOCK: Yes. 80 x —I beg your pardon; it begins at the curb line and not the centre of the street,—

MR. PAUL: —with 5 feet of sidewalk, making a total of 76 feet.

THE COURT: In others words, 76 x 10, really.

MR. BABCOCK: Yes.

MR. PAUL: I neglected to call your attention, may the Court please, to the date of the last deed, which was December 29, 1898, recorded in Book 272 of Deeds, page 483.

WILLIAM T. LEAK, sworn.

By MR. PAUL:

Q. What is your business?

A. Real estate.

10

Q. How long have you been engaged in that business?

A. Since 1892.

Q. In the course of business did you ever do any work in the way of collection of rents, etc., for Emma L. Schaffer?

A. Yes.

Q. Are you familiar in the course of that business with the property at Kentucky and Baltic Avenues, Atlantic City?

A. Yes.

20

Q. When did you first become familiar with that so far as your business relations with Mrs. Emma L. Schaffer was concerned?

A. I think around 1894 or 1895.

Q. What work did you do for Mrs. Schaffer in connection with that property?

A. Collected some rents for her there.

Q. How long did you collect rents for that property?

A. I think I collected rents for her up to the time of her death, from 1894 or 1895 on up to her death.

30

Q. Were you collecting rents for her up to the time of her death?

A. Yes.

Q. After the time of her death did you collect rents continue to collect rents for any other person?

A. I collected some for Mr. Schaffer for a short time afterward.

- Q. Which Mr. Schaffer did you collect rents for?
 A. John G. Schaffer.
- Q. That is the husband of Emma L. Schaffer?
 A. Mrs. Schaffer's husband, yes.
- Q. What type of houses were they on this property?
 A. Small houses, single houses, with about five or six rooms.
- Q. Did you collect rents for them all?
 A. All but about one or two, I think one.
- 10 Q. Where was that one?
 A. I don't recall. I think in the middle somewhere.
- Q. In the middle of the block?
 A. On Baltic Avenue, somewhere.
- Q. In the middle of the block somewhere?
 A. Yes.
- Q. Did you collect rents for all the rest?
 A. Yes.
- Q. Do you recall the transfer of property to Mr. Watson?
 20 A. I remember she did transfer a corner property there to Mr. Watson.
- Q. Do you know what happened there?
 A. She had some difficulty and took it back.
- Q. Did she continue to rent that piece of property?
 A. Yes.
- Q. Did you have charge of any other work concerning the properties, making repairs or anything of the sort?
 A. Nothing, only some minor repairs.
- Q. Some minor repairs?
 30 A. Yes.
- Q. You made those for Mr. Schaffer?
 A. Yes, in the way of plumbing or something like that; carpenter work, may be.
- Q. Little odd jobs, to get it in shape?
 A. Yes.
- MR. BABCOCK: Will you let me have the deeds, please.

CROSS-EXAMINATION.

By MR. BABCOCK:

Q. At that time you were in the office of J. H. Mason?

A. Yes.

Q. Did you actually go the rounds and make the rent collections yourself and keep account of them in the office?

A. No, I went around and collected them myself.

Q. To the best of your recollection you began to collect rents for Mr. Schaffer for this property, in 1894? 10

A. Somewhere about that time. I wouldn't be positive as to the exact date. Of course, I haven't the records now.

Q. That is your best recollection about it?

A. Yes.

Q. Had you attended to other real estate matters in the collection of rents?

A. Yes, and some others, I believe.

Q. They had quite a lot of property? 20

A. Yes.

Q. That is, Mr. and Mrs. Schaffer, John G. Schaffer and Emma L. Schaffer,—they operated together?

A. Yes.

Q. You collected rents here and there, wherever they owned property, for them?

A. I didn't collect all the rents.

Q. Not all, but some of them?

A. Yes.

Q. Do you particularly remember the property that stood on the corner of Baltic and Kentucky Avenues, or are you speaking only in a general way as to collecting the rents? 30

A. I remember that property, too.

Q. Do you think you collected rents on that property too?

A. Yes.

Q. You said there was one property that was excluded. Might not that be the property, the little old house that stood on the corner?

A. No, I think it was the property further down. I think she said she sold the property.

Q. Do you remember the property which at that time stood on the corner, a very dilapidated building?

A. Yes.

Q. It was hardly tenatable at all?

10 A. I know it was in bad shape.

Q. Isn't it your recollection that until Mr. Roth became interested in the property it was empty?

A. No.

Q. You remember that Mr. Roth went into that property?

A. Yes.

Q. Do you remember the fact of him going in there?

A. I don't recall the exact time.

Q. You recall that he went there?

20 A. I remember she said she sold it under an agreement of some kind.

Q. She said she sold it under agreement to Mr. Roth?

A. Yes, something like that.

Q. How long was that before she died?

A. I don't remember now.

Q. Do you think it was as much as a year before she died?

A. I don't know. It has been so long ago. It has been too long.

30 Q. It was a long while before she died?

A. Quite some time.

Q. Do you recall in what month it was?

A. I don't recall that.

Q. You don't recall up to what time you actually collected the rent, if you did collect the rent, on the corner?

A. No, I don't recall.

Q. Isn't it a fact that after she sold it under an agreement to Mr. Roth, if she did do that, that you discontinued collecting the rent at that time?

A. I wouldn't be particular,—I wouldn't say that is correct.

Q. In other words you wouldn't be sure about it?

A. Not positive.

Q. Of course, it has been a long time?

A. That is right.

Q. You didn't know you would be called upon in this case? 10

A. No.

By MR. PAUL:

Q. After Mrs. Emma L. Schaffer's death did you continue to collect the rents of these properties?

A. Yes, I collected some rents after her death.

Q. Did you collect the rent from the corner property at that time, do you remember? 20

A. I wouldn't say as to that particularly, but from others I did, I am positive.

Q. You collected rent from others?

A. Yes.

Q. In that same vicinity?

A. Yes.

Q. But as to the corner property you are in doubt?

A. I wouldn't say positively about that.

Q. How big was the corner lot, do you remember? 30

A. I don't remember the exact size; just a small lot.

Q. A small lot, on the corner?

A. Yes, and a small house, five or six rooms.

Q. And others along side of it?

A. Yes.

Q. Did you collect rents from those?

A. Yes.

Q. And the property that Mr. Roth occupied, what was that?

A. That was a corner.

Q. A little house on the corner?

A. Yes, a small house.

Q. Is that the same house that Phillip Watson occupied?

A. Yes.

Q. That is the same piece?

10 A. Yes.

Q. The deeds which were offered in evidence here by Mr. Paul show a conveyance from Almeda Lechard to Emma L. Schaffer in 1888; then shows a deed in 1889 from Emma L. Schaffer to L. J. Moore and deed dated in 1889 to John G. Schaffer. Did you collect rents during that year for John G. Schaffer?

A. In 1889?

MR. PAUL: That is objected to as not being correct.

Q. 1889?

20 A. That is not correct.

THE COURT: That conveyance was from whom to whom?

MR. BABCOCK: From Caroline Moore to William J. Schaffer, 1889.

MR. PAUL: That deed was not in evidence.

WITNESS: That was before I was in the real estate business.

MR. BABCOCK: That has not been offered in evidence.

MR. PAUL: No.

30 MR. PAUL: The deed of Caroline Moore is represented by the top piece of that tract.

THE COURT: The top portion of the 80 feet on Baltic Avenue.

By MR. BABCOCK:

Q. You said you knew this property when a person

by the name of Watson had something to do with it?

A. Yes, I remember Watson when he had something to do with it. In fact, she sold it to him.

MR. BABCOCK: I am sure this deed has been offered in evidence: Emma L. Schaffer and husband to Phillip Watson, in 1892. That has been offered in evidence?

MR. PAUL: Yes.

By MR. BABCOCK: And according to another deed in evidence, Emma L. Schaffer did not get the property back until 1895, so that during this period she did not have the property. In view of that situation would you say that you were collecting rents for her in 1894? 10

MR. PAUL: Objected to.

A. Yes, for all these other properties it may have been.

THE COURT: One minute.

MR. PAUL: The form of the question is objected to.

MR. BABCOCK: He says he is giving his best recollection, of 1884.

THE COURT: The witness said 1894 and 1895, was his best recollection when he first started to collect rents and he further testified that he remembers that Mrs. Schaffer conveyed to Watson, or rather that he remembers that Watson entered into possession and that afterwards it got into Mrs. Schaffer's possession again and that he collected the rents again. 20

MR. BABCOCK: It didn't happen to be 1884, but 1895.

THE COURT: I understand your question to state that in 1895 the property was conveyed back to Mrs. Schaffer. 30

MR. BABCOCK: Yes.

THE COURT: And that in 1892 Watson got possession of it. That would be three years intervening.

By MR. PAUL:

Q. During that time you did not collect rents for Mrs. Schaffer, did you?

A. Not prior to 1895. I don't suppose I did.

Q. Then 1894 would be incorrect?

A. I said 1894 or 1895.

By MR. BABCOCK:

Q. Having your memory refreshed by conveyances, would you say you were collecting rents for Mrs. Schaffer in 1894?

A. Probably 1895 I began collecting for that particular property; but others there I may have collected before that; in fact, I am sure I did, because, having other prop-
 10 erties they turned this property over to me after getting possession of it.

Q. The rents you collected after Mrs. Schaffer's death you say were given to John G. Schaffer?

A. Yes.

ANNIE M. CONAWAY, sworn.

By MR. PAUL:

20 Q. Where do you live?

A. In Jamaica, New York.

Q. What is the name of your father?

A. Harry C. Conway.

Q. In the course of your lifetime were you ever acquainted with William J. Schaffer?

A. Yes, I was.

Q. Did he ever make any declarations to you or statements as to your relationship if any to him?

A. Sure did, as his niece.

30 Q. He said you were his niece?

A. Yes.

Q. Did you at any time visit him?

A. I did, several times in Atlantic City.

Q. Where was he living at that time?

A. I visited him a couple of times when he was on Atlantic Avenue; had a store there. Then he moved to Pacific Avenue around New York Avenue.

Q. Did he at any time in statements to you refer to his father, John G. Schaffer?

A. Yes, when I was a little girl he sent for me to come to my aunt's. I visited at my uncle's store; then I went to visit him on some small street. I don't know where. My cousin took me.

Q. In what way were you presented to John G. Schaffer?

A. As his granddaughter, Anna Conaway.

Q. Did you visit him, you say, twice? 10

A. Twice that I remember.

Q. Do you remember Emma L. Schaffer?

A. Very indistinctly. I may have seen her when a little girl, but I don't remember.

Q. Do you remember the time of the death of Emma L. Schaffer?

A. Yes, I was about 10 years old.

Q. Did you attend her funeral?

A. Yes, we went to the funeral in Philadelphia.

Q. Who went with you to the funeral? 20

A. My father.

Q. Did you at that time meet any of the other members of the family?

A. Carry, and George, and William G. Schaffer.

Q. In what way were you greeted by them?

A. Just as Anna.

Q. Subsequently, did you, when you became of age, come down to Atlantic City to visit your uncle?

A. I did.

Q. At that time did you see Mr. Repetto, the gentleman who was on the stand this morning? 30

A. I did.

Q. At his office did you meet any of the other members?

A. Yes, I met William Schaffer, George Schaffer and Carry Moore.

Q. At that time was there any discussion concerning the relationship?

A. Yes, on account of the will.

Q. Did you hear Mr. William G. Schaffer go over the family history of Mr. Schaffer with Mr. Repetto at that time?

A. I don't remember. I remember there was some conversation but just what was said I don't recall.

Q. You don't recall?

10 A. No.

Q. When did you first learn that you had any interest in the property at the corner of Kentucky Avenue and Baltic Avenue?

MR. BABCOCK: Objected to. There is no evidence here that she has any interest.

THE COURT: What difference does it make when she first learned it?

20 MR. PAUL: I am going to offer subsequently correspondence between Mrs. Daly and a representative of Mr. Hepburn; and leading up to that the particular point I want to establish depends on the connecting up of that story.

THE COURT: Isn't the sole question that we are to decide here, the title to this particular piece of property and whether she had an interest in it?

Does it make any difference when she learned it?

30 MR. PAUL: We are dealing with the question of adverse interest and therefore inasmuch as there is an adverse interest there must be some claim against that interest to make it adverse.

THE COURT: I see your point. I will permit the question.

Q. (Last question repeated to witness as follows):

"When did you first learn that you had any interest in the property at the corner of Kentucky and Baltic Avenues?"

A. I should judge about four or five years ago.

Q. At that time did you appoint anyone to look into it for you?

A. Mr. Hepburn.

Q. Has he conducted whatever negotiations have been conducted?

A. He has.

Q. Have you at any time given a deed for any interest which you may have in the property at Baltic and Kentucky Avenues, Atlantic City, being described on the blackboard as being 80 feet x 67 feet: within the property line? 10

A. No, I haven't, to my knowledge.

MR. BABCOCK: What is that?

WITNESS: I haven't, to my knowledge.

By MR. PAUL:

Q. Do you know the name of your mother? 20

A. Annie M. Conway.

Q. Do you know the time of her death?

A. Yes; I was born June 4, 1887, and I believe she died 7 days afterward.

Q. Have you ever heard your uncle make any declarations as to the name of your mother's father and mother?

A. Oh, yes.

Q. What did he state were their names?

A. As my grand-mother and my grand-mother.

Q. Who were they? 30

A. John G. Schaffer and Emma L. Schaffer.

Q. You attended the funeral of your grand-mother?

A. Yes.

Q. And you subsequently personally visited your grand-father?

A. Yes.

CROSS-EXAMINATION.

By MR. BABCOCK:

Q. Your first visit to your uncle, you say, was when you were 16 years old?

A. That was first.

Q. Your next visit to Atlantic City was when you went to Mr. Repetto's office?

A. It was; when I was 21 years of age.

10 Q. When you were 21 years of age?

A. Yes.

Q. And that you say was among other things in connection with the will?

A. It was.

Q. Did you refer to the will of John G. Schaffer? Is that the will you are speaking of?

A. I don't know which will it was.

Q. You don't know what will it was?

A. I—

20 Q. Wait a minute. You mean that you don't know what will it was?

A. Can I tell it in my own way?

Q. No. Your counsel will advise you as to that.

A. I went down there,—

Q. Just answer the question. Then you do not know whether or not the will to which you refer was the will of John G. Schaffer?

A. I think it was John G. Schaffer's last will. It was the only will.

30 Q. Isn't it a fact that you participated as beneficiary under the will of John G. Schaffer?

A. I wasn't mentioned in the will.

Q. You were not mentioned in the will?

A. I wasn't mentioned in the will.

Q. You also said that you didn't sign a deed for this property, to your knowledge?

A. I did.

Q. Do you mean by that that you signed several deeds and don't know whether or not they included this property?

A. When I went down there I didn't know what was in the papers I signed.

Q. You say you signed a lot of deeds?

A. I signed papers.

Q. In Mr. Repetto's office?

A. I signed papers.

Q. You say you don't know whether or not you signed 10
a deed for this property, that you don't know what it was all about?

A. I do.

Q. Mr. Repetto was the lawyer for the family there at that time?

A. Yes.

Q. Of course you had great confidence in what he said?

A. I could have read the papers but I didn't read them.

Q. You thought they were all right to sign, whatever 20
was there?

A. Yes.

THE COURT: There is no contention that she signed a deed for this piece of property.

MR. BABCOCK: She said she didn't know whether or not she did. I think this is proper cross-examination.

By MR. BABCOCK:

Q. Some of the papers you signed were deeds?

A. I suppose so. I really don't know what I signed.

Q. Wasn't it your understanding that they were deeds? 30

A. I was told to sign these papers that belonged to each one of the children. At that time I didn't know anything about law, only I signed them.

Q. Isn't it a fact that you were conveying to each of the other children, George and William Schaffer and Caroline Moore, I think,—

MR. PAUL: Objected to.

THE COURT: I do not see that it makes any difference, in view of the fact that there is no claim on the part of the defendant that this title, whatever it was, this pretended title I better say, was ever conveyed to the defendant. And there is no place in the pleadings where it is contended that she conveyed what she had.

MR. BABCOCK: She denies she owns it now. She must depend on the strength of title.

10 THE COURT: You do not intend to show any conveyance from this lady?

MR. BABCOCK: If she said she made one.

MR. PAUL: The question is objected to.

(Objection sustained, the question being indefinite.)

By MR. BABCOCK:

Q. Did you at that time sign any deeds to William J. Schaffer, George Schaffer and Caroline Moore?

20 MR. PAUL: Objected to as irrelevant and immaterial.

THE COURT: The objection is sustained unless it is your purpose to show that she signed a deed for the property in question to Mr. Schaffer or Caroline Moore or somebody else.

MR. BABCOCK: We think it is proper cross-examination to ask her whether or not she did that.

THE COURT: The objection is sustained, in view of the fact that she said she never made a deed for this property.

30

By MR. BABCOCK:

Q. Isn't it a fact that at that time you signed papers—

A. —I signed papers, yes.

Q. —disposing of any interest you had in your grandmother's estate?

MR. PAUL: Objected to.

THE COURT: I will permit her to answer the question if she knows of any interest she had in her grand-mother's estate.

A. Yes, I signed papers for that reason.

By MR. PAUL:

Q. When, if you remember, approximately, was the time of this meeting at Mr. Repetto's office.

MR. BABCOCK: It has been answered. She said when she became 21 years of age. 10

THE COURT: I will permit the question.

Q. (Last question read to witness): When if you remember approximately was the time of this meeting at Mr. Repetto's office? What year was it, do you remember?

A. I don't know. I would have to count back. I am 41 now. I was 21 then. It must have been about 21 years ago.

Q. About 1907 sometime? 20

A. Sometime around there, yes.

MR. CHAMPION: There is something wrong in the computation. She says she is 41 now, and that was when she was 21 years of age. That would be 20 years ago.

By MR. PAUL:

Q. 1908 probably?

A. Probably.

Q. You have testified that these papers were a signing away of your interest in your grand-mother's estate. Do you know that of your own knowledge or were you told that? 30

A. I was told that.

Q. You do not know what they really were, in fact?

A. No, I didn't read them. I didn't know anything about it.

MR. BABCOCK: I move that that be stricken out, that testimony that was not of the witness' own knowledge.

THE COURT: I will let it stand.

By MR. PAUL:

Q. So that when you were answering Mr. Babcock you were not telling him what you knew but what somebody told you?

10 (Objected to.)

A. No.

MR. BABCOCK: Objected to as leading. I asked the witness a perfectly fair question, within the rules, and she said what she did; but to coax another answer out of her I think is unfair.

20 THE COURT: I don't think it is unfair. I think that in view of the fact of what was testified to as having occurred at Mr. Repetto's office, it would be perfectly proper for the plaintiff to have this witness explain her answer to you. While it may be said that this question is somewhat leading.

Q. (Last question read to witness): So that when you were answering Mr. Babcock you were not telling him what you knew but what somebody told you?

MR. BABCOCK: That is putting testimony in her mouth.

THE COURT: I think that is leading.

MR. PAUL: I will reframe the question.

30 By MR. PAUL:

Q. When you stated to Mr. Babcock that you were signing the interest of your—signing away your interest in your grand-mother's estate, were you or not testifying from what someone told you who requested your signature on the paper?

A. I was testifying from what my uncle Will told me.

Q. Was your uncle Will one of the parties who requested your signature on the paper?

A. He was.

Q. You had no knowledge beyond what he said to you?

A. No, I have no knowledge beyond that.

10

HARRY C. CONWAY, sworn.

By MR. PAUL:

Q. Where do you live?

A. Philadelphia, Pa. Do you want my address?

Q. No, that will be enough. Do you know the lady who preceded you on the stand?

A. That is my daughter, Anna Marie Conway.

Q. What is the name of your wife, your daughter's mother?

20

A. Her maiden name?

Q. Yes, before her marriage?

A. Hattie M. Schaffer.

Q. When was your daughter born to yourself and your wife? When was your daughter Anna born?

A. Do you mean her present name?

By THE COURT:

Q. When was she born?

30

A. She was born in Atlantic City, New Jersey.

By MR. PAUL:

Q. What was the date of her birth?

A. June 4, 1884.

Q. Are you sure of that date? Might it possibly be,—

MR. BABCOCK: Objected to.

(Objection sustained.)

By MR. PAUL:

Q. When did her mother die?

A. June 11th.

Q. What year?

A. 1884, I think. I think she died a week after the baby was born.

Q. Are you positive that she was born in the year 1884?

10 A. On the 4th of June?

10 Q. Are you sure of the year?

A. I am pretty sure of it.

Q. I show you copy of the certificate of death issued by the Bureau of Vital Statistics of the State of New Jersey, as to the death of Anna Conway, and ask you if the person therein named was your wife?

MR. BABCOCK: Objection is made to the witness refreshing his recollection from any memoranda he did not make himself.

20 THE COURT: I will permit the witness to look at this exhibit which is in evidence.

By MR. PAUL:

Q. Is that the certificate of death of your wife?

(Paper shown witness.)

A. Yes.

Q. Did you notice the date in that certificate?

A. When that was issued?

30 Q. Did you notice the date, the year of your wife's death, in that certificate?

A. Yes.

Q. When was that?

A. June 11th.

Q. What year?

A. 1887.

Q. Having seen this statement, does that refresh your

memory as to the correct date of the death of your wife?

A. That is correct, yes, June 11, 1887.

By THE COURT:

Q. Why did you say 1884, before?

A. I must have made a mistake. I surely made a mistake, and I am sure, positive that that is the right date.

THE COURT: I thought so.

10

By MR. PAUL:

Q. What then was the correct date of the birth of your daughter Anna?

A. What is that?

Q. What is the correct date of the birth of your daughter Anna?

A. June 4th.

Q. What year?

20

A. 1884.

By THE COURT:

Q. Was your daughter born three years before her mother died?

A. I might say June 4, 1887.

By MR. PAUL:

Q. So that your wife died and your daughter was born in the same year. Is that correct?

30

A. My wife died?

Q. Yes.

A. Yes, the same year.

Q. How long before your wife died was your daughter born?

A. I believe when my wife died my daughter was one week old.

- Q. Did you know your wife's father and mother?
 A. Very well, yes.
 Q. What was the name of your wife's father?
 A. John G. Schaffer.
 Q. What was the name of your wife's mother?
 A. Emma; I believe her middle initial was L., Emma
 L. Schaffer. I believe that is right.
 Q. I show you a certificate issued by the State of New
 Jersey as to the birth of a daughter of your wife, with
 10 the name left blank.
 (Paper shown witness.)
 A. Yes.
 Q. What was the name of that daughter which was
 born June 4, 1887?
 A. Annie Marie Conway.
 Q. She is the young lady who was here this morn-
 ing?
 A. Yes, that was sitting right here in this chair.
 (No cross-examination.)

20

CYRIL HEPBURN, SWORN.

By MR. PAUL:

- Q. What is your business?
 A. Real Estate.
 Q. Where are you engaged in business?
 A. In Philadelphia.
 Q. In the year 1923 or thereabouts did you become
 30 familiar with the title to premises Kentucky and Baltic
 Avenues, Atlantic City, N. J., in question here?
 A. Yes, I had looked the title over,—
 MR. BABCOCK: Wait a moment. The answer is yes.

By MR. PAUL:

- Q. Were you appointed by Anna M. Conway to nego-

title for her interest in this property?

A. Yes.

Q. About what time,—do you remember?

A. The latter part of 1923.

Q. Did you search the records in the county of Atlantic County Clerk's Office concerning this title?

A. I did.

Q. In your search of this title did you find a record of any conveyance out of Anna M. Conway?

A. I did not.

10

Q. In 1923 did you communicate with the defendant in this case concerning the respective interest of Miss Conway?

MR. BABCOCK: Objected to as immaterial and irrelevant and incompetent.

MR. PAUL: This is as to the challenge of title.

THE COURT: In others words, this is the first time you notify them that you lay claim to the title?

MR. PAUL: Yes.

THE COURT: I will permit it. I do not assume that you object to it because he has not connected his inquiry or information with the defendant?

20

MR. BABCOCK: I object to it because I think it has no materiality in the case.

MR. PAUL: I served notice on the defense to produce the correspondence in this case.

MR. BABCOCK: We have one; not the others.

MR. PAUL: From Hepburn to Daly. Do you have the letter of October 18?

MR. BABCOCK: No.

30

MR. PAUL: Then I will have to produce a copy.

By MR. PAUL:

Q. Do you remember communicating with Mrs. Daly, the defendant in this case?

A. I wrote her a letter.

Q. I show you this letter and ask you if that is an office copy of a letter you sent to Mrs. Daly?

(Paper shown witness.)

A. Yes, I believe it is.

Q. Was that letter ever returned to your office after it had been sent out, as far as you know?

A. No, I called on Mrs. Daly and she said she had received it.

10 MR. PAUL: I offer in evidence this letter at this time.

MR. BABCOCK: Objected to. It has no evidential force in this case. It is merely notice that somebody claims something.

THE COURT: I will permit it.

(Exception allowed to defendant.)

(Offer admitted, marked P11.)

By MR. PAUL:

20 Q. Did you subsequently address a second communication to Mrs. Daly, October 24, 1927, of which this is a copy?

(Paper shown witness.)

A. Yes.

MR. PAUL: I offer this in evidence at this time.

MR. BABCOCK: Objected to.

THE COURT: It is admitted.

(Offer marked P12 admitted.)

30 By MR. PAUL:

Q. In response to these two letters did you receive a letter from Thomas P. Twibill, in reference to your demand for her interest in this property?

(Objected to.)

A. I did.

MR. BABCOCK: I don't know who this Twibill is.

THE COURT: I don't either. The witness stated he

received a letter in response to his letter to Mrs. Daly, but in the letter to Mr. Twibill there is nothing to show who he was. He simply concludes it is in response to his letter. I don't know.

MR. PAUL: I want to show it to the jury. If it is inadmissible I don't want it on the record.

THE COURT: I will permit it.

MR. BABCOCK: I object to it because there is no evidence at all that this man had any right to speak for Mrs. Daly. He wasn't our agent.

10

THE COURT: The letter on its face appears to be in answer to two demands made by plaintiff for conveyance of her interest, and, it seems to me, is admissible.

I naturally assume that there is no question but that whatever demand was made or would have been made, would have been refused.

MR. BABCOCK: That letter's demand was refused.

MR. PAUL: This letter is dated November 1st.

(Reads letter in evidence. Marked P13. Admitted.)

20

By MR. PAUL:

Q. Subsequently did you communicate or personally get in touch with Mr. Babcock?

A. I did.

Q. About what time was that, if you remember?

A. Either in October or November the same year. I called on Mr. Babcock at the request of Mrs. Daly.

Q. At the request of Mrs. Daly?

A. Yes.

30

Q. At that time did you have any conversation with him concerning your client's interest?

A. I did. I informed him and gave him a list of the Schaffers and how Anna Conway was related to the Schaffers.

Q. That was about what time, would you say?

A. I would say it was about the first part of November, 1923.

Q. Subsequently, did you as Miss Conway's representative, engage counsel to bring proceedings to challenge this title?

A. Not until after I received a letter from a man by the name of Twibill. He also represented Mrs. Daley and he didn't recognize any claim.

10 Q. Do you know whether or not proceedings were subsequently started prior to this?

THE COURT: Yes, they were.

MR. BABCOCK: This suit speaks for itself.

By MR. PAUL:

Q. Prior to this suit in question. Just answer the question.

THE COURT: One moment. There is an objection made to the inquiry as to prior suit.

20 The purpose of your offer is to prove what?

MR. PAUL: I have a composite copy of a suit in chancery which was before the partition of this land, which was referred to the law court.

THE COURT: I will permit you to show that suit was started in a Court in Chancery at a certain time.

MR. PAUL: Can we stipulate for ourselves that suit in the Court in Chancery was started?

30 MR. BABCOCK: I don't care anything about the formalities of the offer. I don't want to go into the Court in Chancery suit. I don't want it to be discussed before the jury.

THE COURT: There is no question but that they are hostile.

MR. BABCOCK: The pleadings show it.

MR. PAUL: I only desire to be cautious and take advantage of every possible proof. It is for me to make

this offer to show that there was a challenge in a very distinct and formal way at a certain time.

THE COURT: I think I will over-rule it at this time and if it becomes necessary in a later stage of the case I will give you another opportunity to make an offer.

CROSS-EXAMINATION.

By MR. BABCOCK:

Q. Have you any financial interest in this transaction? 10

A. Financial interest in this transaction?

Q. Yes.

A. In obtaining,—

Q. Just answer yes, or no. Can you answer that yes, or no?

A. Yes; I have.

Q. Have you a financial interest?

A. I have.

Q. You are a real estate agent in Philadelphia?

A. I have been in the real estate business in Pennsylv- 20
vania for about 10 years.

Q. Have you been in the habit of making searches in real estate in Atlantic County?

A. I haven't been in the practice of making searches in Atlantic County.

Q. Have you been in the habit of making searches in real estate in Atlantic City?

A. I have only been in the practice of making searches in Philadelphia.

Q. Have you made searches in Philadelphia over the 30
entire period of ten years that you have been in the real estate business?

A. I would say for the last fifteen years.

By MR. PAUL:

Q. Whatever financial interest you have in this case

does it affect your testimony, whatever? Does or does not the question that you have a financial interest in this case affect the truthfulness of your testimony?

MR. BABCOCK: Objected to.

THE COURT: I think that is a question for the jury to pass on.

By MR. PAUL:

10

Q. Have you in any way had your own search checked for accuracy regarding these particular properties in question?

MR. BABCOCK: Objected to.

THE COURT: He may say, yes or no, but he cannot testify as to what the checking shows.

A. Yes.

20

Q. After having had your search checked will you testify that there has been any conveyance of the Conway interest in this property?

MR. BABCOCK: Objected to.

THE COURT: I don't see that that makes any difference. He has testified that as a result of his search there was no conveyance. That is as far as he can testify to.

MR. CHAMPION: I have an offer to make at side bar. (Sidebar offer as follows):

MR. CHAMPION: We move for non-suit on the ground that the plaintiff has not made out a prima facie case.

30

It seems to me that there are several things that are incumbent upon plaintiff to prove.

First, that Emma L. Schaffer had title to this property and possession, at the time of her death.

There must be some testimony showing that she had title to this property. And there may be some testimony raising the question to the jury as to whether or not she had possession.

There must be also some testimony from which the

Court can infer there has been ouster of the co-tenant, and upon that point we desire to urge as ground for motion for non-suit that one co-parcener cannot maintain suit in ejectment against his co-tenant.

In addition to that, it seems to me there must be proof that Emma L. Schaffer died intestate.

The plaintiff must negatively prove that there was a will and there is no proof in the case showing that Emma L. Schaffer did not leave a last will and testament. There is no proof that I recall, that she died intestate. 10

THE COURT: There is proof that this plaintiff was not mentioned in one will.

MR. BABCOCK: Not mentioned in the will of her grand-father; and there is testimony that the will was offered for probate and she was mentioned in the petition for probate as one of his heirs.

THE COURT: That is right.

MR. BABCOCK: The situation it seems to me is the fatal defect in the plaintiff's case and which at this time is the plaintiff's own testimony, where she testifies that in Mr. Repetto's office she signed papers releasing all of her interest in her grand-mother's estate, and it seems to me that there should be a non-suit on that particular phase of the case. 20

MR. PAUL: I asked the Court about the date of death of Emma L. Schaffer and I had a copy of the petition for probate and that is what I had in mind offering in evidence. It slipped my mind. It shows that Emma L. Schaffer died intestate. Before answering the argument of counsel I ask that the matter be deferred until that proof be offered. It was an oversight on my part. 30

THE COURT: There is no disposition on the part of the Court to keep from the record, that which has been omitted merely by oversight, and I assume there would be no objection to that.

MR. BABCOCK: I assume not.

THE COURT: I will permit that to be put in after the jury returns and it may be considered as being put in for the purpose of this argument, so that that shows that Emma L. Schaffer died intestate.

MR. PAUL: As to the point of intestacy of Emma L. Schaffer, I think that is covered by proof of deed offered in evidence, reciting the fact that she died intestate. That is the last deed offered in evidence, PX10.

10 The next proposition is as to the testimony of Anna M. Conway and the signing of papers. The Court will no doubt recall that she testified not from her own knowledge but from what someone told her, that papers were signed, that she was requested to sign them, but she didn't say they were deeds, she says they were papers. And search can be made of the records to show that there has been no conveyance by Anna M. Conway, of this property, and her testimony will show that. If my memory serves me right she testifies that she made no conveyance of her interest in this property.

20 Certainly there is a question here for the jury, on a question of fact, as to which evidence they will believe, or accept, as well as the testimony which Mr. Babcock elicited by question which was afterwards shown to be not of her own knowledge but what someone had told her, and, as far as she knew, she executed no release of her interest in this property. That was her undoubted testimony.

30 And as to possession: I assume we have shown possession, to take us to the jury on the question of title. And so far as we know, we have also proved possession up to the time when John G. Schaffer went into possession. We have shown paper title, which complies with the requirements of the cases in our State, and sufficiently supported in our own case to permit us to go to the jury.

MR. CHAMPION: May I add a word or two as to the question of the testimony of the plaintiff as it refers to her

interest. This is corroborated in this case by the testimony of Mr. Repetto, who, in his testimony said that there were several conferences in his office with respect to the disposition of Anna M. Conway's interest in the estate of her grand-mother. That was his testimony.

THE COURT: Respecting her interest, but no testimony in his part that her interest was transferred to anybody.

MR. CHAMPION: I take it, it couldn't mean anything else.

10

MR. BABCOCK: With respect to this particular property it had already been conveyed by the heirs of John G. Schaffer and in settlement with the heirs on the part of Anna Conway she wouldn't give her deed because they had passed their title; but she made disposition of her interest or share in her grand-mother's estate and, if she did that, it was for the benefit of the holders of the title.

THE COURT: The only effective settlement she could make as to title would be to give a quit claim deed of her interest, outstanding of record, at that time, as the daughter of the child of the Schaffers.

20

MR. BABCOCK: That is true so far as vestiture of title is concerned. But if she comes into court and says she has practically no interest in this property,—

THE COURT: But she didn't say that. I do not think that that is the purport of her testimony. And I do not think, in view of other testimony in the case, that, when she answered the question on direct examination, she then and there in effect said, "I have no interest in this thing at all." I do not think that that would be a proper interpretation of the testimony, at all.

30

In view of the testimony and the search of the record I would not be justified in granting a non-suit. I think that that is one of those statements made by a witness without full knowledge of the purport of the question;

and, in view of this witness' other answers, not a full knowledge of the facts that existed.

I therefore refuse the motion on each ground and allow an exception on each ground to the defendant.

Recess to 1.30 P. M.

10 After recess, 1.30 P. M.

MR. PAUL: I at this time offer in evidence, petition for probate in the estate of Emma L. Schaffer, being a certified copy of the record of the Surrogate's Court.

THE COURT: Merely for the purpose of showing the date of the death of Emma L. Schaffer?

MR. PAUL: Yes.

THE COURT: And intestacy?

MR. PAUL: Yes.

20 MR. BABCOCK: Objected to as being inadmissible, irrelevant and immaterial.

THE COURT: They are admitted for the purpose of proving intestacy and the date of death.

Exception is allowed to defendant.

(Offer marked P14 and admitted.)

MR. PAUL: That is our case.

(Plaintiff rests.)

30

MR. CHAMPION: May it be considered now, since subsequent proof has been put in by the plaintiff, that our motion for non-suit may be offered at this time?

THE COURT: I think the record shows that your motion was to be made as if it was introduced in evidence, but you may also now renew your motion.

The motion is overruled and an exception granted.

MR. CHAMPION: I desire to make further objection that the proof as now constituted does not show that Emma L. Schaffer died without a will.

(Exception to defendant.)

DEFENDANT'S TESTIMONY

JOSEPH L. ROTH, sworn.

10

By MR. BABCOCK:

Q. How old are you?

A. Seventy.

Q. How long have you lived in Atlantic City?

A. For the last forty some years.

Q. Speak louder. How long?

A. Forty years or more. I don't know.

Q. What is your profession?

A. Funeral director.

20

Q. Did you know Emma L. Schaffer and John G. Schaffer?

A. Yes.

Q. The paper which has been offered in evidence recites the death of Emma L. Schaffer as of November 14, 1897. Do you recall the death of Emma L. Schaffer; I don't mean the date, but the fact of her death.

A. Yes, I remember when she died.

Q. Prior to the date of her death did you have any business with John G. Schaffer and Emma L. Schaffer concerning the property in question in this suit, being property at the northwest corner of Baltic and Kentucky Avenues?

30

A. Yes.

Q. How long before Mrs. Emma L. Schaffer's death was this business done between you, as near as you can recall?

A. Somewhere around a year or ten months; something like that.

Q. Was there an agreement of sale between you and Mr. and Mrs. Schaffer for that property?

A. Yes.

Q. Was it a written agreement?

A. Yes.

Q. Have you that paper now?

A. No, sir.

10 Q. Have you tried to find it?

A. I haven't got it. It must have been left with Mr. Bokket.

Q. Who was Mr. Bokket?

A. He was my lawyer, who represented me and Schaffers, too.

Q. By Schaffers do you mean Emma L. Schaffer and John G. Schaffer?

A. Yes.

Q. Is Mr. Bokket living?

20 A. He is dead.

Q. How much were you to pay for the property?

MR. PAUL: Objected to as immaterial and irrelevant.

THE COURT: What difference does it make?

MR. BABCOCK: It shows whether or not he was a bona fide purchaser.

THE COURT: Doesn't it show the receipt of the consideration?

30 MR. BABCOCK: Yes; of course, that goes into our 30 years.

MR. CHAMPION: We are in possession.

MR. BABCOCK: We are in possession under agreement and we expect to show it.

THE COURT: The question is, What did he pay for the property. After all is said and done, it really doesn't make any difference what the agreement said, but what did he pay for the property is the question.

By MR. CHAMPION :

Q. What did you pay for that property?

MR. PAUL: I understand counsel has the deed.

THE COURT: It could recite "one dollar."

MR. BABCOCK: I have the deed here.

A. \$5800.

Q. Upon making this agreement with the Schaffers what did you do with respect to this property in question?

A. I went in and improved it. 10

Q. When you say you went in, what do you mean? What did you do?

A. What I got,—

Q. What did you do with respect to possession of the property?

A. I took immediate possession.

Q. Was that as to the piece, just the piece on the corner or more than that?

A. More than that; the whole thing.

Q. What was on the immediate corner, this piece of 20 land in question here, 80 x 76?

A. There was a little old shack, empty. It wasn't fit to live in.

Q. Was it occupied by a tenant at that time?

A. No, it wasn't fit to occupy. There was water there.

Q. There was water there?

A. Yes.

Q. What was the condition of the lot?

MR. PAUL: Objected to as immaterial.

MR. BABCOCK: It shows the character of possession, 30 whether he was really in possession or not.

THE COURT: I do not suppose there is any dispute that he was in possession.

MR. BABCOCK: If they will admit that this man was in possession there from the date he made the agreement I can cut our testimony short.

MR. PAUL: The deed was in 1889.

THE COURT: You are entitled to show possession but I do not see that the character of it is in dispute here.

MR. BABCOCK: Unless he was actually living there, the authority he exercised over the property goes also to the character of possession, as to the quality of possession.

THE COURT: I will admit it.

By MR. BABCOCK:

10

Q. Did you do anything to the lot?

A. Yes.

Q. Did you do anything to the building?

A. Yes.

Q. What did you do, tell us briefly.

A. Filled up the land first; made sidewalks, then patched it up and tried to make it good so I can rent it for about \$10.00 a month.

Q. Did you rent out your properties?

20

A. Yes.

Q. And collected the rents from the time you made out the agreement?

A. Myself.

Q. Were there any payments made by you on account of the purchase price?

A. Yes.

Q. How, with respect to that agreement, were you to pay the purchase price?

MR. PAUL: Objected to. It speaks for itself.

30

MR. BABCOCK: We can't find it.

THE COURT: He says the agreement is lost. I do not see that it makes any difference how he paid it.

MR. BABCOCK: He collected the rents and paid instalments as he went along.

THE COURT: He collected the rents and finally got a deed.

MR. BABCOCK: I want to show he made payments on account of principal in between.

THE COURT: I do not see how that makes any difference.

By MR. BABCOCK:

Q. It was some time when you received a deed for the property?

A. Yes.

10

Q. I show you what purports to be a deed from John G. Schaffer and wife to you, and ask you if that is the deed which you received.

(Paper shown witness.)

A. Yes.

MR. BABCOCK: I offer this deed in evidence.

THE COURT: What is the date of the deed?

MR. BABCOCK: I will give you that.

I offer in evidence deed made by John G. Schaffer and Emma L., his wife, to Joseph L. Roth, bearing date November 29th, 1899, and recorded December 4, 1899, in Deed Book 240, Page 122, etc. Deed covering the land in question together with adjoining lands on Kentucky Avenue.

(Marked and admitted as DX2.)

I would like to have offered in evidence and marked ahead of the previous offer: A certified copy of deed from George W. Schaffer to John G. Schaffer, dated December 29, 1898.

(Offered, marked and admitted as DX1.)

30

Q. At the time you bought the property were there any mortgages against it?

MR. PAUL: Objected to as immaterial and irrelevant as to what there was against it.

THE COURT: What difference does it make?

MR. BABCOCK: Under the 30 years Statute they must be bona fide purchasers and purchasers in good faith;

and the fact that he actually paid consideration is an evidence of good faith and bona fides.

THE COURT: The deeds shows he paid it.

MR. BABCOCK: The deed shows what the consideration was and that these mortgages were against it at the time he purchased it.

THE COURT: The deed shows he bought, purchased the property for the consideration named therein and expressed. He has already testified he paid that consideration,—\$5800, and that he afterwards sold the property to Thomas Daly.

MR. BABCOCK: It doesn't appear.

THE COURT: Objection sustained.

MR. BABCOCK: The mortgages show they were made some time prior by Emma L. Schaffer, and that when he got the property, in paying the mortgages he paid obligations which were obligations of Emma L. Schaffer.

THE COURT: I do not think that makes any difference.

20 MR. BABCOCK: If your Honor doesn't think so, that is all right.

By MR. BABCOCK:

Q. I show you deed from Joseph Roth to Thomas Daly, dated January 23, 1902, and ask you if that deed was made by you to Thomas Daly?

(Paper shown witness.)

A. Yes.

MR. BABCOCK: I offer in evidence, deed Joseph L. Roth and wife to Thomas Daly, dated January 23, 1902, and recorded January 25, 1902, in Deed Book 268, page 145.

(Admitted and marked DX3.)

By MR. BABCOCK:

30 Q. Was Mr. Daly in possession of the property before you made the deed to him?

A. Yes.

Q. Can you recall about how long that was?

A. It was, it has been so long ago, I don't know for sure, but I guess three or three and a half years.

Q. Three and a half years?

A. Something like that, I think.

Q. Was or was not he there under agreement to buy the land from you?

A. Yes.

Q. He was under agreement?

10

A. Yes.

Q. And from the time you dealt with Mr. Daly and made a deed to him you had nothing to do with the property?

A. No, sir.

CROSS-EXAMINATION.

By MR. PAUL:

Q. Where did settlement between you and Mr. Schaffer take place? 20

A. Mr. Bokket's office.

Q. Was the balance of the consideration paid at that time?

A. Yes, and everything. He took the mortgage.

Q. He took the mortgage back at that time?

A. Yes.

Q. Whatever adjustment there was as to the amount due on your agreement of sale was settled at that time,— is that correct? 30

A. Yes.

Q. Who signed the agreement of sale to you?

A. Mr. and Mrs. Schaffer.

Q. That is, the Mrs. Schaffer mentioned in this deed?

MR. BABCOCK: The deed speaks for itself.

THE COURT: I presume it must.

MR. PAUL: I would like to have the witness' testimony.

By MR. PAUL:

Q. You said you had an agreement with Mr. and Mrs. Schaffer?

A. Yes.

Q. That is the same Mr. and Mrs. Schaffer mentioned
10 in this deed? Is that correct?

A. I guess so.

Q. That is true?

A. I think so. I don't remember some twenty years ago.

Q. To the best of your knowledge and belief, the persons who signed this deed were the ones with whom you had the agreement, is that right?

A. Yes.

Q. How long after you got this deed did you enter
20 into an agreement with Mr. Daly?

A. Yes.

Q. How long after you got this deed?

A. I don't remember how long after that.

Q. In other words, you had possession of the property for some time after you got this deed, and before you sold it to Mr. Daly?

A. Yes.

Q. For how long,—did you say?

A. That is something I can't remember.

30 Q. You can remember for Mr. Babcock. I am asking you a question. Why can't you remember mine?

A. If I remember I would answer you too. It is a long time and I never thought I would have to remember of things. I can't recall it.

Q. You are nevertheless certain of this fact, are you not, that you entered into an agreement with Daly after you got your deed from Mr. Schaffer? Is that correct?

A. I don't know. I don't remember.

Q. Then you don't remember when Mr. Daly entered into possession?

A. I do not. I do not.

Q. You didn't enter into an agreement with Mr. Daly before you had title yourself?

A. No, sir.

Q. So that you had title yourself?

A. Yes.

Q. Before you entered into an agreement with Mr. 10
Daly?

A. Yes.

Q. You answered to Mr. Babcock that you gave Mr. Daly a deed after you had been in possession some three years?

A. Yes.

Q. You don't know the exact length of time?

A. No, sir.

Q. That was just a guess?

A. No, just about that. I can recall.

20

Q. But this fact you recall,—

A. —I don't know for sure.

Q. But this fact, I take it, you know to be certain, that Mr. Daly did not enter into an agreement of sale with you until after you had gotten title from Mr. Schaffer?

A. Sure.

Q. That is correct?

A. Yes.

Q. That is positive?

A. Yes.

30

By MR. BABCOCK:

Q. Do you know the name of Mrs. Schaffer that is in the deed to you? Do you recall what it is?

A. I don't know. It is too long a time.

Q. Did you know Emma L. Schaffer?

A. I got all their names at that time.

Q. You testified that you remember when she died?

A. Yes.

Q. That you first came in contact with her about 10 months or a year before she died?

MR. BABCOCK: Objected to as not being proper cross-examination.

Q. —before Emma L. Schaffer died?

A. Yes.

10 MR. BABCOCK: Objected to.

THE COURT: I do not see that it makes any difference; he says, yes.

Q. When you entered into possession under that agreement with the persons who gave you that deed, did you make certain payments to them?

MR. BABCOCK: That is just what I wanted to show and he objected to it.

THE COURT: That is what I understood you to object to, what Mr. Babcock offered to prove.

20 MR. PAUL: Upon direct examination, to show whether he recognized a proper title. That is not to show tender of consideration, but possession.

THE COURT: If you want it, the other side has the right to enlarge on it, of course.

MR. BABCOCK: But if he makes him his witness I have the right to cross-examine.

MR. PAUL: I withdraw the question.

MRS. MARGARET DALY, sworn.

30 MR. BABCOCK: I offer in evidence, deed from Smith E. Johnston, Sheriff, to the Philadelphia Brewing Company for the property in question, dated July 2, 1907, and recorded July 6, 1907, in book 362 of deeds, page 242.

(Offered without objection.)

(Admitted and marked D4.)

MR. BABCOCK: I also offer in evidence, deed made by Philadelphia Brewing Company to Margaret Daly, dated July 15, 1907, covering the property in question with adjoining lands and recorded August 13, 1907, in Deed Book 362, page 452.

MR. PAUL: No objections.
(Admitted and marked D5.)

By MR. BABCOCK:

10

Q. What relation were you to Thomas Daly, mentioned in this title?

A. His wife.

Q. When were you married to him?

A. 1900.

Q. Where was Thomas Daly living at the time of his marriage to you?

A. We occupied the corner of Kentucky and Baltic Avenues.

Q. In what month of the year were you married? 20

A. In February.

Q. Were you engaged to him any length of time before your marriage?

A. Between four and five years.

Q. I suppose in those days, as now, engaged people saw each other quite frequently?

A.. Yes.

Q. Where was he residing prior to the time of your marriage to him?

A. Kentucky and Baltic Avenues. 30

Q. Do you know how long he was in that property before your marriage?

A. Three years.

Q. Did you assist him financially in buying the property?

A. In every way.

Q. You assisted him financially?

A. Yes.

Q. Did you put in your earnings and savings?

A. Yes.

Q. Do you know who collected the rents for the property while he was occupying it for those three years prior to your marriage?

A. I don't know.

10 Q. Upon your marriage where did you take up your residence?

A. I was in Philadelphia but I used to come up town and stop at the Kilcoyne. I lived on the corner of Kentucky and Baltic Avenues from 1900 until today.

Q. Do you live there today?

A. I am living there today; never moved.

Q. When did Thomas Daly die?

A. August 3, 1906.

Q. Were you living there with your family then?

A. Yes.

20 Q. Consisting of what?

A. Two boys,—two babies; one was two years of age and one was three years of age.

Q. When Thomas Daly bought the property what was on the corner?

A. Just an old shack of a house.

Q. Did he do anything to it?

A. He did some repairs to it.

Q. Did he afterwards put a new building on it?

A. Yes, he afterwards put a new building on it.

30 Q. Brick or frame?

A. A brick building.

Q. Small or large?

A. A large building.

Q. To what extent does it cover the lot 70 x 86?

A. I judge 70 feet on Kentucky Avenue and I guess 35 feet on Baltic Avenue.

Q. You don't know the exact dimensions?

A. No.

Q. What is the character of the building?

A. Brick building.

Q. What is it?

A. It is a hotel.

Q. Do you remember the time when Mr. Daly got the deed for the property?

A. Yes.

Q. From that time on do you remember who collected 10 the rents for all the property described in that deed?

A. After he got his own deed?

Q. Yes.

A. Himself, I guess.

Q. Who received the moneys, who got the money from the rent of the property?

A. Mr. Daly.

Q. Who paid the taxes?

A. Mr. Daly.

Q. At the time Mr. Daly died, in 1906,—was that the 20 date you gave?—

A. Yes.

Q. —was there a mortgage on the property?

A. Yes.

Q. Without going into details about the mortgage, who held it?

A. The building and loan.

Q. Was there any mortgage held by the Philadelphia Brewing Company?

A. I think it had. 30

Q. Do you know whether or not that mortgage was ever foreclosed?

(Objected to as immaterial as to the mortgages on the property.)

THE COURT: I do not think it makes any difference as to what mortgages were on the property. There was

a deed from the Sheriff. That deed is in evidence.

MR. BABCOCK: That will speak for itself.

Q. Do you remember a foreclosure proceeding?

A. Yes.

Q. Do you remember later getting a deed from the Philadelphia Brewing Company?

A. Yes.

Q. Did you tell anybody that you had your title insured by any title insurance company?

10 MR. PAUL: Objected to.

A. No, I did not.

THE COURT: I do not remember any testimony where she said she told anybody she had title insurance.

MR. BABCOCK: I believe she said she had the title insured.

THE COURT: It doesn't make any difference whether the title was insured or not, it seems to me.

MR. BABCOCK: It doesn't, as a matter of law, but I wanted to give it to the jury.

20 THE COURT: As to that I will say to the jury that we do not care anything about insurance of title; that it does not make any difference as to title insurance.

(Objection sustained.)

By MR. BABCOCK:

Q. Have you any title insurance?

MR. PAUL: Objected to.

30 THE COURT: It makes no difference whether it was insured or not and I will instruct the jury that it makes no difference whether there was insurance or not, and not to consider it in their deliberations in arriving at a verdict. And that applies to any testimony of Mrs. Daly along this line where there is an inference to be drawn.

By MR. BABCOCK:

Q. Since Mr. Daly went into that property, you say three years before he got his deed, down to the present time, have any persons occupied it other than Mr. Daly, or you and your family?

A. Never.

CROSS-EXAMINATION.

By MR. PAUL:

10

Q. Your husband obtained a deed in 1902, to this property. Did you ever see an agreement between Mr. Roth and Mr. Daly?

A. No, because that was made in the lawyer's office.

Q. Were you present at the settlement in 1902?

A. Yes.

Q. At whose office was it made?

A. I forget. It has been so long ago, I forget it.

Q. Was it made in Mr. Babcock's office?

20

MR. PAUL: I think the deed was here.

By MR. PAUL:

Q. Have you the deed here? (Addressing defense counsel.)

Q. Were you present at the settlement?

WITNESS:

A. Yes.

Q. Was the balance of the purchase price paid to Mr. Roth at that time? 30

A. I guess it was.

Q. As far as you know?

A. As far as I know.

Q. The balance of the consideration was paid at the time the deed was given?

A. Yes.

Q. Then you don't know at what time Mr. Daly got possession from Mr. Roth, do you?

A. 1902.

Q. He got possession in 1902?

A. He got the deed in 1902 but got possession three years ahead.

Q. How do you fix the time?

A. Well, he was living in that corner three years before we were married.

10 Q. How do you fix the time, what method have you, of saying three years?

A. I know he was living there three years getting his deed.

Q. He was three years getting his deed?

A. Before he got his deed.

Q. Do you know from whom Mr. Daly bought the property, under the agreement?

A. Joseph Roth.

20 Q. Did Mr. Roth have the deed to the property at the time that he got it?

A. Yes.

Q. Mr. Roth had his deed?

A. Yes.

MR. BABCOCK: The very things objected to when I offered them are brought out by counsel as to payment of consideration. In fact, the consideration was paid, partly in cash and partly in mortgages. The Missus is indefinite in her testimony about it. If I refresh her memory by showing her mortgages, she can recollect it.

30 THE COURT: It doesn't make any difference.

MR. BABCOCK: Only that I would like to have our position understood.

THE COURT: The deeds show it was paid. It is unimportant in what form. It was valuable consideration.

MR. PAUL: I am not raising any question about it.

(Defense rests.)

THE COURT: Any rebuttal?

MR. PAUL: No.

I would like to make a motion for direction, at side bar.

THE COURT: All right.

(Following motion at side bar.)

MR. PAUL: I make a motion for direction of verdict upon the following grounds:

(1) That there is no denial of the relationship of the complainant to the Schaffer family, and there is likewise no denial of the title being in Mrs. Schaffer at the time of her death. There was likewise no denial of the fact of possession at the time of Mrs. Schaffer's death in 1897. 10

As to the question of possession for thirty years, under agreement by one under section two of the Act, that is not applicable because thirty years have not expired since the date of the deed, Schaffer to Roth, December 29, 1898. So therefore the thirty years have not run where- by our title could be challenged under Section 2 of the Act. And under Section 1 of the Act it is submitted that there is no possession running for a period of thirty years which does not recognize the superior title of the Schaffer family. 20

Taking up the Daly title. Assuming the Daly title began in 1902, that is the date of the deed, 1902, they at that time recognized a superior title of Roth by taking a deed from him, and paying for the balance of the consideration. So that therefore they recognized a superior title. 30

Now as to Roth. His testimony was to the effect that Mr. Daly did not take possession of the property until he had received a deed from John G. Schaffer. Now, John G. Schaffer was, therefore, recognized at the time of the deed to Roth as a superior title. Roth, by taking title from John G. Schaffer showed he was taking title sub

ject to a superior title and that superior title was in John G. Schaffer. Presumably, it was in fact in the heirs of Emma L. Schaffer. John G. Schaffer held a life estate, being a curtesy estate and three-fourths of the fee. Certainly, so far as Joseph Roth is concerned, there is no adverse holding to the interest of the complainant by reason of the facts of his recognizing a prior estate.

(At this point, citation of case before Donges, J.)

10 MR. PAUL: In Roth's testimony I was sure to make it perfectly plain that he went to the settlement, paid the purchase price and got his deed.

THE COURT: The recognition of prior title in the Judge Donges case was a recognition of ownership that was known to either plaintiff or defendant; one that was known; one that was notorious. In the case cited there was no deed.

MR. PAUL: In Roth's testimony I was sure to make

20 THE COURT: She claimed there was a gift but notwithstanding her claim of gift she repeatedly said to the donor, "I want you to give me a deed," thereby recognizing an outstanding title being in him.

MR. PAUL: Joseph Roth went further. He said, "I will only be too glad to give you a deed. But pay your money for it."

THE COURT: He gave money for a title which he thought was in Schaffer in its entirety, and did not recognize title as being in anybody else at all except Schaffer.

30 MR. PAUL: He goes further. He testifies he got the agreement before Mrs. Schaffer's death, Emma L. Schaffer's death. His testimony on that fact is very certain.

THE COURT: That he took a deed before her death?

MR. PAUL: That he took a deed in the lifetime of Mrs. Emma L. Schaffer. I asked him if the same parties gave him a deed and he said he thought so.

He took possession of it ten months before the time of her death.

Taking that testimony, what it says, he recognized this prior title and went into the settlement and paid the balance due under that agreement of sale. Certainly in paying the balance under that agreement of sale he recognized the prior estate of Emma L. Schaffer. He couldn't help but do it.

THE COURT: How do you say he recognized the prior estate of Anna?

MR. PAUL: Of Anna? He took an agreement, entered into possession ten months prior to the time of the death of Emma L. Schaffer and then he went in, and a year after that time, I guess it was, or longer than that, he made settlement and took a deed under that agreement of sale. Emma L. Schaffer had died. He was in possession. 10

THE COURT: Before she died.

MR. PAUL: Before; with an agreement of sale between John G. Schaffer and Emma T. Schaffer. He recognized that title but couldn't hold adversely to it.

MR. BABCOCK: The thirty years Act does not require adverse possession. 20

MR. PAUL: This act requires that possession must be adverse.

THE COURT: The rule is, "Where possession is separated from the title," etc. (Court reads citation.)

That is your motion?

MR. PAUL: Yes.

MR. CHAMPION: If it appeared in this case that there had been any act on the part of the defendant that amounted to recognition of plaintiff, then there might be something to my friend's motion. 30

THE COURT: To hold adversely you have to hold hostilely, openly and notoriously.

I believe it is Mr. Paul's claim that when you purchased your property under an agreement from Emma L. and John G. Schaffer, that you recognized their title and, in

recognizing it, could not possibly be held to hold adversely.

MR. CHAMPION: We could not hold adversely to Emma L. Schaffer; but, so far as those heirs are concerned we were in this position: we had a deed from John G. Schaffer and three heirs, which purported on its face, to convey the entire property of all the heirs of Emma L. Schaffer, deceased; and we supposed that under that, which consummated the relations of these parties,
10 that we had title to the entire tract.

The testimony is uncontradicted in the case that Roth made an agreement with Mr. and Mrs. Schaffer to purchase the property, and entered into possession. He took possession and he and his successors in title have held possession for over thirty years, to the present time.

THE COURT: If he recognized the title that he was getting, that is, that he agreed to buy and did buy, and the title was in Emma L. Schaffer, what are you going to do with the general rule where possession of land is
20 separated from the title?

MR. CHAMPION: Adverse possession was held by Roth when he went into possession, tearing down the building, or rather repairing it, and then Mrs. Daly coming along and putting a new building on it.

THE COURT: If you recognize a superior title then you cannot be held to be holding adversely, even if you do show these acts.

MR. CHAMPION: In recognizing the title of Emma L. Schaffer we do not recognize Anna M. Conway, the
30 complainant.

THE COURT: But where title is shown to be as in this case, in Emma L. Schaffer and in John G. Schaffer, then the general rule is that the possession of the land is in subordination to the title of the true owners who at the time undoubtedly were, under the proofs in this case, the child, at that time, Anna Conway; and also the heirs of Emma L. Schaffer.

MR. CHAMPION: That is not the case here.

To hold adversely to Emma L. Schaffer would be one thing and to hold adversely to Anna Conway would be another thing. They are entirely two different entities and because we do not hold against one does not say we can't hold against the other.

THE COURT: If you made a mistake in getting your title; if you got your title from Emma L. Schaffer and did not get it from John G. Schaffer would you not be in the same position you are now? 10

MR. CHAMPION: I don't think so.

THE COURT: You would recognize the title that is outstanding when you would purchase, in such event?

MR. CHAMPION: No, we don't, because at that time Emma L. Schaffer was not dead, she was living.

THE COURT: That was when you entered into an agreement and you recognized a superior title?

MR. CHAMPION: We were in possession under the agreement of purchase, up until the time,—

THE COURT: —that you got your deed. 20

MR. CHAMPION: There was a conveyance by John G. Schaffer, which, under the facts and evidence, is entirely separate and distinct from the agreement of sale, because Emma L. Schaffer never consummated that agreement. If she had there would not have been this suit. Therefore we didn't take a deed from her and therefore do not recognize her title.

THE COURT: It was outstanding. The chain was there.

MR. BABCOCK: That may be. We did not take deed from her. Therefore, how did we recognize it? 30

THE COURT: When the proofs show that title was in two people and you took a deed from one only, the presumption of law is as stated by Donges, *J.*, that your possession is subordinate to a superior title.

MR. CHAMPION: That is not our case. Title was not in two people—only in Emma L. Schaffer.

THE COURT: No.

MR. CHAMPION: John G. Schaffer had only the right of curtesy which was vested upon the death of Emma L. Schaffer.

THE COURT: Upon the date of the conveyance title was in John G. Schaffer and Emma L. Schaffer; in John, by virtue of deed from George, William, Caroline Moore, et al., at the time you took your deed. In addition to that, the title was in Anna. When you took title you
10 already had possession and your possession was admitted to be, in law, a possession subject to the paramount title of those who owned. You purchased and continued in possession and your possession is admitted to be subject to the paramount title, and your paramount title, as the proof shows, is in Emma L. and John G. Schaffer, at the time of the conveyance.

MR. BABCOCK: Title was vested in Emma L. Schaffer up until the time of her death; not at the time of her death. It couldn't be. It passed to her heirs. We are
20 not passing title of Emma L. Schaffer, but from the heirs, and we have a deed from three of those heirs.

THE COURT: You recognize title as being in the heirs of Emma L. Schaffer.

MR. BABCOCK: Emma L. Schaffer.

THE COURT: Your deed to John G. Schaffer is by all the heirs except Anna?

MR. CHAMPION: That is right.

THE COURT: You recognize the title but you say, "We are satisfied to take title as conveyed by three heirs in-
30 stead of four."

You took your title from John G. Schaffer but got your deed from three heirs. If you recognize the title of John G. Schaffer you also at the same time must recognize the record title.

MR. CHAMPION: We recognize the record title but we can hold adversely against somebody who didn't ob-

ject; and there is a presumption that we have overcome it by the evidence in this case.

THE COURT: How?

MR. CHAMPION: We went into possession of the property and held against everybody for over thirty years. That is uncontradicted. How could it be more adverse than to show that a new building was put on there, built a new hotel, and paid the taxes?

THE COURT: If you recognize title as being in Anna then you cannot be occupying adversely but you are occupying subject to her superior right. 10

MR. CHAMPION: I haven't read this case. Can I see it?

THE COURT: You may.

MR. CHAMPION: The facts in this case are altogether different. As I understand, in this case there was a verbal gift, not by writing, not by solemn deed, but was a gift of property.

THE COURT: And the gift was void. She had possession by a void gift. You have possession by deed which does not convey to you Anna's title; therefore Anna's title is outstanding in her the same as title was outstanding in this case cited where it is claimed adverse possession was had. 20

MR. CHAMPION: We are in possession under deed which purports to convey to us the entire tract.

THE COURT: But which does not.

MR. CHAMPION: We believe this is a question here to be submitted to the jury.

It does not seem to us that this is purely a matter for the Court to decide. 30

THE COURT: The testimony is undenied that Anna was the daughter and, as the daughter, was entitled to a one-fourth interest; that title was in the mother and that possession did not go out of the mother up to the time of her death, whenever it was. I believe, however, that she died June 14, 1887.

MR. CHAMPION: I would like to read to your Honor the language of the Statute. There are two Statutes and I do not know which one Judge Donges refers to here. I believe it is stated in the case cited that title is claimed under the Act of 1832. There is another Statute upon which we rely, which is entirely different. It seems to me that the Statute which Judge Donges refers to creates an entirely different situation from that created under the thirty years Statute. (Counsel reads from Statute.)

10 The other Statute is entirely different and has much broader language, favorable to the defendant in this case.

THE COURT: That is as to what?

MR. CHAMPION: As to the thirty years actual possession. I submit that this other Statute has no reference to the question whether possession has been hostile, adverse or otherwise. (Counsel reads from Statute.)

There is no doubt that these people were entitled to have possession at the time the agreement was made and at the time the deed was made, and we are within the
20 terms of this Statute.

THE COURT: She had possession up to the time of the death, up to the time of the three years before the deed to Roth?

MR. CHAMPION: Ten months before her death.

THE COURT: Which would have been January 1st, 1897.

MR. CHAMPION: So that at the time of the death of Emma L. Schaffer plaintiff was not in possession of this property. (Counsel reads from Statute.)

30 The plaintiff did not begin any action five years after attaining her majority, to bring suit to recover this land.

THE COURT: For the reasons stated I will grant the motion for direction of verdict and allow defendant an exception.

(Verdict by direction, for plaintiff.)

THE COURT: Let it be noted on the record that Mr. Babcock now says there is a jury question as to whether or not plaintiff is of the age she says she is, or is of the age that the birth record and the other documentary evidence placed in the record by plaintiff, tend to show she is.

In addition to that the question is raised as to whether plaintiff's relationship with Emma L. Schaffer is as plaintiff's proof tends to show it is.

10

20

30

NEW JERSEY COURT OF ERRORS AND
APPEALS

10	ANNIE M. CONAWAY, <i>Plaintiff-Respondent,</i>	}	ON APPEAL FROM SUPREME COURT. STIPULATION.
	vs.		
	MARGARET DALY, <i>Defendant-Appellant.</i>	}	

It is hereby stipulated and agreed between Babcock and
Champion, Attorneys for the appellant, and Robert J. Tait
Paul, Esq., Attorney for the respondent, that for the
purpose of printing the State of the Case, all deeds of-
fered in evidence need not be printed in full. Each deed
20 offered in said cause as an exhibit, if not printed in full,
shall be printed in substantially, the following form:

EXHIBIT P4 DEED

From Almeda LeChard and Joseph LeChard,
her husband

to

Emma L. Schaffer

Dated May 26, 1888.

30 Consideration: \$1800.00

Premises conveyed: (Description in deed to
be copied in full.)

Warranty: Special

Execution: duly executed and acknowledged
by said grantors and recorded in the Clerk's
office of Atlantic County, May 29, 1889, in
deed book 131, page 224.

(Certificate annexed of William A. Blair,
County Clerk of Atlantic County, certifying to
deed as being a correct copy.)

It is further hereby stipulated and agreed that in the
printing of certified copies of petitions, it will be suf-
ficient to note following the copy of the instrument, the
certification thereof, as in the preceding form of deed.

BABCOCK & CHAMPION,
Attorneys for Appellant. 10

ROBERT J. TAIT PAUL,
Attorney for Respondent.

Dated April 4, 1929.

EXHIBIT P1.

ATLANTIC COUNTY SURROGATE'S COURT 20

In the matter of the estate of
JOHN G. SCHAFER,
deceased,
who died testate

} PETITION FOR PROBATE
AND LETTERS
TESTAMENTARY.

To Emanuel C. Shaner, Esquire,
Surrogate of the County of Atlantic, in the State of 30
New Jersey:

The petition of William J. Schafer respectfully shows
that he is the executor named in the last will and testa-
ment of John G. Schafer dated the 19th day of Decem-
ber nineteen hundred and five; that said John G. Schafer
departed this life testate at Pasedena, in the County of

Los Angeles and State of California while temporarily sojourning there on the Third day of January nineteen hundred and six, at the hour of 10 A. M., more than ten days before the date of this petition, leaving him surviving as his heirs at law and next of kin, the following named persons, to wit:

	NAME	KIN	P. O. ADDRESS
	Alice Schafer	Widow,	Pasadena, Cal.
10	George W. Schafer	Son,	Philadelphia, Pa.
	Caroline J. Moore	Daughter	Philadelphia, Pa.
	William J. Schafer	Son,	Atlantic City, N. J.
	Annie Conway	Grandaughter	Philadelphia, Pa.

That the testator was possessed of personal property of the value of \$1155.00

That the testator was possessed of real estate of the value of \$30,000.00

20 Your petitioner therefore respectfully applies for probate of the said last will and testament and for letters testamentary thereon.

Dated April 30th A. D. 1906

William J. Schafer

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC } ss

William J. Schafer named in the above application being duly sworn according to law, did depose and say that the matters and things set forth in the foregoing application are true to the best of his knowledge and belief.

Sworn and subscribed before me) 10
this 30th day of April)
1906.) William J. Schafer
Emanuel C. Shaner,)
Surrogate)

(Certificate annexed of Albert C. Abbott, Surrogate of Atlantic County, certifying to correctness of above petition, etc.)

————— 20
EXHIBIT P2.

STATE OF NEW JERSEY

CERTIFICATE OF DEATH

1. Full name of deceased—Mrs. Anna Conaway.
2. Age—25 years. Color—White. 30
3. Married.
4. Birthplace—Phila., Pa.
5. Last place of residence—23 S. Surf Place, Atlantic City, N. J.

6. How long resident in this State—10 years.
7. Place of death—23 S. Surf Place, Atlantic City, N. J.
8. Father's name—John C. Schaefer. Country of birth—Germany.
9. Mother's name—Emma L. Schafer. Country of birth—Pennsylvania.

10

10. I hereby certify that I attended Mrs. Anna Conaway during the last illness, and that she died on the 11 day of June 1887, and that the cause of death was Puerperal Septicemia preceded by perimetritis.

Length of sickness—One week.

Philip Marvel, M. D.,
Medical Attendant.

20

Residence—Atlantic City, N. J.

Name and residence of Undertaker—Jos. S. Champion.
Place of burial—Phila., Pa.

(Certificate annexed of Henry B. Costill, Medical Superintendent Vital Statistics of New Jersey, certifying to correctness of copy of above certificate.)

30

EXHIBIT P3.

DEPARTMENT OF HEALTH OF THE
STATE OF NEW JERSEY
BUREAU OF VITAL STATISTICS

I, HENRY B. COSTILL, Medical Superintendent of the Bureau of Vital Statistics of the State of New Jersey, do hereby Certify that the following is a true and correct transcript of a record of Birth in my office. 10

Full Name of Child (if given)— ——— Conaway.

Color—White.

Date of Birth—June 4, 1887.

Sex—Female.

Place of Birth—23 S. Surf Place, Atlantic City, N. J.

Name of Father—Harry Conaway.

Maiden Name of Mother—Anna Schaefer. 20

Country of Father's Birth—U. S.

Age—28.

Occupation—Baker.

Country of Mother's Birth—U. S.

Age—25.

Number of Children in all by this marriage—1.

How many of them living—1.

Name and P. O. Address of Medical Attendant, in his own handwriting with date—Philip Marvel, M.D., 30
Cor. N. Carolina & Pacific Aves., Atlantic City,
N. J.

IN TESTIMONY WHEREOF, I have hereunto set

my hand and affixed the Official Seal of said Bureau, at
Trenton, this twenty-sixth day of May A. D. 1926.

HENRY B. COSTILL, M. D.,
Medical Superintendent.

(SEAL)

Attest:

10 DAVID S. SOUTH,
State Registrar.

20

30

New Jersey State Office

CITY OF ATLANTIC CITY

DEPARTMENT OF HEALTH

I, ALFRED T. GLENN, Registrar of Vital Statistics of Atlantic City, do hereby Certify, That the following is a True and Correct Transcript from the Record of Births in my office.

Date of Birth—June 4th, 1887.

Place of Birth—Atlantic City.

10

Name of Child—Baby Conaway.

Sex of Child—Female.

Name of Parents—Harry and Anna Conaway.

Occupation of Father—Baker.

Residence of Parents—23 Surf Place.

Certificate Signed by Philip Marvel, M. D.

IN TESTIMONY WHEREOF, I have herewith set my hand and affixed the Official seal of the said Department of Atlantic City, this Twenty-fifth day of May, A. D., 1926.

20

ALFRED T. GLENN,

Registrar of Vital Statistics.

Attest:

SAMUEL L. SALASIN, M. D.,

Health Officer.

30

EXHIBIT P4.

Deed from Alma LeChard and Joseph LeChard, her husband, to Emma L. Schafer, dated May 26, 1888.

Consideration: \$1800.00.

Premises conveyed:

All that certain tract or lot of land situate in Atlantic City, Atlantic County, State of New Jersey, bounded as follows:

10

BEGINNING at a point in the northwest line of Baltic Avenue distant one hundred and sixteen feet seven inches from a stone bearing south twenty three degrees and one half east said stone is marked A. L. 1840 J. L. 1849 W. M. 1852 and D. L. C. 1853 and runs thence from said point (1) north twenty three degrees and one half west two hundred and thirty nine feet to a line of one Daniel Morris; (2) in his line north seventy six and one half degrees east one hundred and six feet and five

20

tenths to the line of said walk on Kentucky Avenue if extended; (3) in range of the line of curving on the southwest side of said Avenue south twenty-one degrees and one fourth east two hundred and twenty five feet to the Northwest line of Baltic Avenue; (4) in a line of Baltic Avenue south sixty eight and one half degrees west ninety six feet to the beginning. Containing all within said bounds. It being the same tract of land the said Almeda LeChard purchased of Daniel L. Collins by deed dated September 4th, 1882 and recorded in the Clerk's office at May's Landing, in book 89 of deeds, folio 570 etc. The description given in this deed being an exact copy of the hereinabove mentioned deed Collins to LeChard.

30

Warranty: Special.

Execution: duly executed and acknowledged by said grantors and recorded in the Clerk's office of Atlantic

County, May 29, 1889 in deed book 131, page 224.

(Certificate annexed of William A. Blair, County Clerk of Atlantic County, certifying to deed as being a correct copy.)

EXHIBIT P5.

Deed from Emma L. Schaffer and John G. Schafer, 10
her husband, to Caroline Moore, dated July 29, 1889,
Consideration: \$7000.00.

Premises conveyed:

All that certain tract or lot of land situate in Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING on the westerly side of Kentucky Avenue, eighty feet north of Baltic Avenue and runs thence (1) Northwardly and parallel with Kentucky Avenue one hundred and seventy feet to a peg and runs 20
thence (2) westwardly and parallel with Baltic Avenue eighty feet to a peg and runs thence (3) Southwardly and parallel with Kentucky Avenue one hundred and seventy feet to a peg and runs thence (4) Eastwardly and parallel with Baltic Avenue eighty feet, to the place of beginning.

Warranty: General.

Execution: duly executed and acknowledged by said grantors and recorded in the Clerk's office of Atlantic County, August 20, 1889, in deed book 133, page 219. 30

(Certificate annexed of William A. Blair, County Clerk of Atlantic County, certifying to deed as being a correct copy.)

EXHIBIT P6.

Deed from Emma L. Schaffer and John G. Schafer to William J. Schafer, dated December 10, 1889.

Consideration: \$4800.00.

Premises conveyed:

10 All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Atlantic City, in the County of Atlantic and State of New Jersey.

Beginning at a point in the Northwest line of Baltic Avenue, distant one hundred and sixteen feet seven inches from a stone bearing South twenty-three degrees and one half East said stone is marked A. L. 1840, J. L. 1849, W. M. 1852, and D. L. C. 1853 and runs; thence from said point (1) North twenty three degrees and one half West two hundred and thirty nine feet to a line of
20 one Daniel Morris (2) in his line North seventy-six and one half degrees East, one hundred and six feet and five tenths to the line of side walk on Kentucky Avenue if extended; (3) in range of the line of curbing on the Southwest side of said avenue South Twenty one degrees and one fourth east, two hundred and twenty five feet to the northwest line of Baltic Avenue; (4) in a line of Baltic Avenue South sixty eight and one half degrees West ninety six feet to the beginning, contain-
30 ing all within said bounds excepting a lot hereofore conveyed by the said Emma L. Schafer and her husband to Mary E. Winder and another lot heretofore conveyed by the said Emma L. Schafer and her husband to Caroline Moore (with these two exceptions it is the same property that Almeda W. Lechard and her husband by deed dated May 26, 1888, recorded in the Clerk's office of Atlantic County to wit in Book 131 of deeds, folio

224 &c granted and conveyed to the said Emma L. Schafer.

Warranty: General.

Execution: duly executed and acknowledged by said grantors and recorded in the Clerk's office of Atlantic County, December 17, 1889, in book 135 of deeds, page 220.

(Certificate annexed of William A. Blair, County Clerk of Atlantic County, certifying to deed as being a correct copy.)

20

30

EXHIBIT P7.

Deed from William J. Schaffer and Catharine, his wife, to Emma L. Schafer, dated December 12, 1889.

Consideration: \$3000.00.

Premises conveyed:

10 All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Atlantic City in the County of Atlantic and State of New Jersey:

Beginning at a point in the Northwest line of Baltic Avenue distant one hundred and sixteen feet seven inches from a stone bearing south twenty three degrees and one half East said stone is marked, A. L. 1840, J. L. 1849 W. M. 1852 and D. L. C. 1853 and runs, thence from said point (1) North twenty-three degrees and one half West two hundred and thirty nine feet to a line of one Daniel Morris (2) in his line North seventy six and one half degrees East one hundred and six feet and five tenths to, the line of side walk on Kentucky Avenue if extended, (3) in range of the line of curbing on the southwest side of said Avenue South twenty one degrees and one fourth East two hundred and twenty five feet, to the Northwest line of Baltic Avenue; (4) in a line of Baltic Avenue South sixty eight and one half degrees West ninety six feet to the beginning. Containing all with said bounds excepting a lot heretofore conveyed by the said Emma L. Schafer, and her husband to Mary E. Winder, and another lot heretofore conveyed by the said
20 Emma L. Schafer, and her husband to Caroline Moore. (Being the same premises which Emma L. Schafer and John Schafer her husband by deed bearing date December 10th, 1889, and intended to be recorded granted and conveyed to the said William J. Schaffer.

30

Warrant: General.

Execution: duly executed and acknowledged by said

grantors and recorded in the Clerk's office of Atlantic County, May 5, 1891, in deed book 153, page 181.

(Certificate annexed of William A. Blair, County Clerk of Atlantic County, certifying to deed as being a correct copy.)

EXHIBIT P8.

Deed from Emma L. Schafer and John G. Schafer, 10
her husband to Phillip Watson, dated July 1, 1892.

Consideration: \$1500.

Premises conveyed:

All that city lot or tract of land and premises situate
in the city and county of Atlantic, State of New Jersey,
bounded and described as follows:

BEGINNING at the northwest corner of Baltic and
Kentucky Avenues and runs thence (1) northwardly
along and in the westerly line of Kentucky Avenue eighty
(80) feet; thence (2) westwardly, parallel with Baltic 20
Avenue seventeen feet; thence (3) southwardly, parallel
with Kentucky Avenue eighty (80) feet to the northerly
line of Baltic Avenue; thence (4) eastwardly, along and
in the said Northerly line of Baltic Avenue seventeen
(17) feet to the place of beginning. Being a part of the
same premises that Amanda LeChard and husband con-
veyed in fee to Emma L. Schafer by deed dated May
26th, 1888 and of record in the Clerk's office of Atlantic
County at May's Landing, New Jersey in book No. 131
of deeds, folio 224 &c. 30

Warranty: General.

Execution: duly executed and acknowledged by said
grantors and recorded in the Clerk's office of Atlantic
County July 6, 1892 in deed book 164, page 190.

(Certificate annexed of William A. Blair, County
Clerk of Atlantic County, certifying to deed as being a
correct copy.)

EXHIBIT P9.

Deed from Smith E. Johnson, Sheriff of the County of Atlantic to Emma L. Schafer, dated March 30, 1895.

Consideration: \$125.00.

Premises conveyed:

All that certain tract or parcel of land situated in the city of Atlantic City, County of Atlantic and State of New Jersey.

- 10 BEGINNING at the northwest corner of Baltic and Kentucky Avenue and runs thence (1) northwardly, along and in the westerly line of Kentucky Avenue eighty (80) feet; thence (2) Westwardly parallel with Baltic Avenue seventeen (17) feet; thence (3) southwardly, parallel with Kentucky Avenue eighty (80) feet to the northerly line of Baltic Avenue; thence (4) eastwardly, along and in the said northerly line of Baltic Avenue seventeen feet (17) to the place of beginning.

Warranty: Sheriff's deed.

- 20 Execution: duly executed and acknowledged by said Smith E. Johnson, Sheriff and recorded in the Clerk's office of Atlantic County, May 22, 1895 in deed book 190, page 444.

(Certificate annexed of William A. Blair, County Clerk of Atlantic County, certifying to deed as being a correct copy.)

EXHIBIT P10.

(U. S.)
(Stamp)
(\$10.50)

George W. Schafer, et ux, et al }
 to } DEED.
John G. Schafer. }

10

This Indenture made the twenty ninth day of December in the year of our Lord one thousand eight hundred and ninety eight,

Between George W. Schafer and Elizabeth his wife, William J. Schafer and Catharine, his wife, and Caroline Moore (widow) heirs at law of Emma L. Schafer now deceased late of Atlantic City, in the County of Atlantic, State of New Jersey, of the first part, and John G. Schafer, of said Atlantic City, in the County of Atlantic, State of New Jersey, of the second part, 20

Witnesseth, that the said party of the first part, for and in consideration of the sum of One dollar (and other good consideration) lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents, do grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the party of the second his heirs and assigns, all those certain tracts, pieces parcels or lots of land and premises situate, in Atlantic City, in the County of Atlantic and State of New Jersey, bounded and described, respectively as follows: 30

- (1) Beginning at a point on the Northwest side of a twenty feet wide street or alley known formerly as St. Nicholas Street now Memorial Avenue, one hundred and twenty five feet Southwesterly of the line of Tennessee Avenue and one hundred and seventy feet Northwesterly of the line of Pacific Avenue, thence running, Southwesterly along the said side of said St. Nicholas Street or Memorial Avenue, twenty five feet and extending in length or depth Northwesterly one hundred feet Keeping
10 the said width of twenty five feet between parallel lines at right angles to said Memorial Avenue, containing twenty five hundred square feet, Being part of the same premises which William J. Schafer and wife by deed dated December 12, 1889 recorded in the Clerks Office of Atlantic County in book 163 of deeds folio 324 &c., granted and conveyed to said Emma L. Schafer who died seized intestate leaving her surviving the above named grantors her sole heirs at law.
- 20 (2) Beginning at a point twenty five feet westward'y on Pacific Avenue, from a point in the Southwest corner of Kentucky and Pacific Avenues, and runs (1) Westwardly in the southerly line of Pacific Avenue, thirty five feet to Martha Gravatts corner, thence (2) Southwardly and parallel with Kentucky Avenue, one hundred feet thence (3) Eastwardly parallel with Pacific Avenue thirty five feet thence (4) Northwardly parallel with Kentucky Avenue, one hundred feet to the southerly line of Pacific Avenue at the place of beginning Being the same premises which George W. Sheppard and wife, by deed dated
30 July 17, 1896 and recorded in the Clerk's Office aforesaid, in book 205 of deeds, folio 279 &c granted and conveyed to said Emma L. Schafer, now deceased who died seized thereof as aforesaid.
- (3) Beginning in the westerly line of Georgia Avenue, two hundred and seventy five feet Northwardly from the

Northerly line of Atlantic Avenue, and runs thence (1) Westwardly and parallel with Atlantic Avenue, one hundred and seventy five feet to a peg, thence (2) Northwardly and parallel with Georgia Avenue, twenty five feet to a peg, thence (3) eastwardly, and parallel with Atlantic Avenue one hundred and seventy five feet to the Westerly line of Georgia Avenue, thence (4) Southerly in the westerly line of Georgia Avenue twenty five feet to the place of beginning. Being the same premises which William J. Schafer and wife, by deed dated December 12, 1889 recorded in said Clerks Office in Book 163 of deeds folio 331 &c., granted and conveyed to the said Emma L. Schafer who died seized as aforesaid. 10

(4) Beginning at a point in the southerly line of Atlantic Avenue forty two (42) feet east of the easterly line of New Jersey Avenue, and running thence (1st) Eastwardly along said Southerly line of Atlantic Avenue, twenty feet, thence (2nd) Southwardly and parallel with New Jersey Avenue, One hundred feet, thence (3) Westwardly and parallel with said Atlantic Avenue, twenty (20) feet thence (4) Northwardly and parallel with said New Jersey Avenue One hundred (100) feet to the place of beginning, being the same premises which Martha Mathilde Metzger, Executrix, et al by deed dated June 20, 1890 recorded in the Clerks Office aforesaid in book 140 of deeds folio 394 &c., granted and conveyed, to said Emma L. Schafer, who died, seized as aforesaid, 20

(5) Beginning at a point in the Northerly line of Atlantic Avenue, thirty nine (39) feet and six inches, west of the westerly line of New Jersey Avenue, and runs thence (1st) Northerly and parallel with New Jersey Avenue, eighty (80) feet thence (2nd) Westerly and parallel with Atlantic Avenue, seventeen (17) feet six inches, thence (3) Southwardly and parallel with New Jersey Avenue, eighty (80) feet to the Northerly line of Atlantic Avenue 30

thence (4) Eastwardly in said line Northerly line of Atlantic Avenue, seventeen (17) feet six inches, to the place of beginning Being the same premises which Frank A. Souder and wife, by deed dated November 24, 1890 recorded in said Clerks office in book 146 of deeds, folio 283 &c., granted and conveyed to said Emma L. Schafer who died seized as aforesaid (6) Beginning. at a point in the Northerly line of Baltic Avenue where the westerly curb line of Kentucky Avenue, intersects with the

10 same thence running westerly along the North side of Baltic Avenue seventy six feet to the easterly corner of a lot conveyed by said Schafer to one Winder, thence Northerly at right angles to Baltic Avenue, eighty feet, thence easterly along a line parallel with Baltic Avenue seventy six feet to said curb line in Kentucky Avenue thence Southerly along the same eighty feet to the point of beginning.

(7) Beginning at a point in the Westerly curb line of

20 Kentucky Avenue eighty feet Northerly of the Northerly line of Baltic Avenue thence running, Northerly along said curb line fifty seven feet, to Groffs, line or corner thence running westerly along a line parallel with Baltic Avenue, about one hundred and six feet to the line described as the first course in a certain deed made by said William J. Schafer and wife, to said Emma L. Schafer, recorded in book 153 of deeds, folio 181 &c., thence Southeasterly in said line about one hundred and sixty feet to a point in the Northerly line of Baltic Avenue,

30 thence Northerly at right angles to Baltic Avenue, eighty feet thence easterly along a line parallel with Baltic Avenue, ninety six feet to the place of beginning.

(No. 6 and 7 Being part of the same premises which William J. Schafer and wife, by deed dated December 12, 1889 recorded in said Clerk's Office in Book 153 of deeds folio 181 &c., granted and conveyed to the said Emma L.

Schafer who died as aforesaid the intention of this conveyance being to convey to said John G. Schafer, all of the premises of which she died seized the said Emma L. Schafer, having also had a conveyance made to her of a part of No. 6 by Smith E. Johnson sheriff, by deed dated March 30, 1895 recorded in book 190 of deeds folio 444 &c.,)

Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging or in any wise appertaining and the reversion and reversions remainder and remainders, rents issues, and profits thereof, and of every part and parcel thereof, 10

And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity of the said party of the first part, of in and to the premises with the appurtenances,

To Have and To Hold the said premises with all and singular the appurtenances unto the said party of the second part, his heirs, and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs, and assigns, forever, 20

And the said party of the first part, for themselves, their heirs Executors, and administrators do by these presents covenant grant and agree, to and with the said party of the second part, his heirs, and assigns, that they the said party of the first part their heirs, all and singular the hereditaments and premises herein above described and granted or mentioned and intended to be so, with the appurtenances, unto the said party of the second part his heirs, and assigns, against them party of the said first part their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof under through by or from 30

them, Shall and Will warrant and forever, defend.

In Witness Whereof, the said party of the first part, have hereunto set their hands and seals, Dated the day and year first above written.

10	Signed, Sealed and Delivered in the presence of Charles A. Baake.	Geo. W. Schafer	(Seal)
		Lizzie Schafer	(Seal)
		William J. Schafer	(Seal)
		Catharine Schafer	(Seal)
		Caroline Moore	(Seal)

State of New Jersey, }
Atlantic County, } ss.

Be It Remembered that on this twenty ninth day of December, in the year of our Lord one thousand eight hundred and ninety eight before me the subscriber a Master in Chancery of New Jersey, personally appeared William J. Schafer and Catharine his wife, George W. Schafer and Lizzie his wife, and Caroline Moore, (widow) who, I am satisfied are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. And the said Catharine Schafer and Lizzie Schafer, being of full age on a private examination apart from their said husbands, before me acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, freely without any fear, threats or compulsion of their said husbands All of which is hereby certified.

10

20

Charles A. Baake,
A. M. C. C. of N. J.

Rec'd., & Recorded December 31, 1898

Lewis P. Scott,
Clk.

Deed Book 227 page 483 &c.,

(Certificate annexed of William A. Blair, County Clerk of Atlantic County, certifying to deed as being a correct copy.)

30

EXHIBIT P11.

October 18, 1923.

Mrs. Margaret Daley,
1601 Baltic Avenue,
Atlantic City, N. J.

Dear Madam:

I wish to notify you that I represent Annie M. Conaway, grand daughter of Emma L. Schafer, deceased, who makes claim for her interest and an accounting of same for one-fourth share in premises located at the Northwest corner of Baltic and Kentucky Avenues thence extending.

- (1) Westwardly along said North line of Baltic Ave. 67 feet thence
- (2) Northwardly parallel with Kentucky Avenue 80 feet, thence
- (3) Eastwardly parallel with Baltic Avenue 67 feet to the West line of Kentucky Avenue, thence
- 20 (4) Southwardly along said West line of Kentucky Avenue 80 feet to the North line of Baltic Avenue and the place of beginning.

which I am informed is now occupied by you.

Kindly advise me the name of your attorney or Title Co. with whom you wish me to properly present this claim.

Very truly yours,
Cyril Hepburn.

CEH/J.

EXHIBIT P12.

October 24, 1923.

Mrs. Margaret Daley,
N. W. Cor. Baltic & Kentucky Aves.
Atlantic City, N. J.

Dear Madam:

I wish to notify you that I represent Annie M. Conaway,
grand daughter of Emma L. Schafer, deceased, who
makes a claim for her interest and an accounting of same 10
for one-fourth share in premises located at Atlantic City,
N. J. as follows:—

Beginning at a point in the Westerly Curb line of
Kentucky Ave. 80 feet, Northerly of the Northerly
line of Baltic Ave., thence running North along said
curb line 57 ft. to Groff's line or corner (1) running
West along parallel line with Baltic 106' to Old
Division Line in 153-181 Deed Book (2) South
Eastwardly in said line 160 ft. to a point in Baltic 20
Ave.

(3) at right angles to Baltic North 80 ft.

(4) East 96 ft. as described in Deed Book 227-483
at Mays Landing, N. J.

which I am informed is now occupied by you.

I will call on Mr. Babock on Saturday October 27, in
order to properly present the claim on this property and
the one I notified you of on October 19, 1923. My
thought was to give such information as is necessary to 30
understand the claim of Miss Conaway and to allow suf-
ficient time to make a search to prove the correctness.
I remain.

Cyril Hepburn.

EXHIBIT P13.

Phila. Nov. 1, 1923

Cyril Hepburn, Esq.

Dear Sir:

Mrs. Daley of Atlantic City, N. J. has a title policy of Atlantic City Title Company insuring title to her property, 1601 Baltic Ave. She therefore does not recognize any claim that you make to her. I am her attorney.

10 Believe me,

Yours truly,
H. P. Twibill
1202 Liberty Bldg. Phila.

EXHIBIT P14.

To J. S. Risley

20 Surrogate of the County of Atlantic, New Jersey.

In the matter of the administration of the Goods, Chattels, and Credits of Emma PETITION. L. Schafer Dec'd.

30 The petition of John G. Schafer respectfully showeth that Emma L. Schafer of Atlantic City N. J. departed this life intestate at Pasadena Cal. in the County of Los Angeles and State of Cal. on the fourteenth day of November A. D. 1897. That the said Emma L. Schafer deceased, left her surviving the following named heirs and next of kin, to wit:

	KIN	P. O. ADDRESS.
George Schafer	Son	Phila. Pa.
Caroline Moore	Daughter	" "
William J. Schafer	Son	Atlantic City

The said intestate was possessed of goods, chattels, rights

and credits to the value of \$125. as near as can be ascertained.

Therefore the said John G. Schafer respectfully applies for letters of administration upon the goods, chattels, rights and credits of which said Emma L. Schafer died possessed.

Dated December 14th A. D. 1897

John G. Schafer

10

ATLANTIC COUNTY, SS.

John G. Schafer named in the above application, being duly sworn according to law did depose and say that the matters and things set forth in the above application are true to the best of his knowledge and belief.

Sworn and subscribed before me at Mays Landing the fourteenth day of December 1897.

20

J. S. Risley Surrogate

John G. Schafer

(Certificate annexed of William A. Blair, County Clerk of Atlantic County, certifying to correctness of above petition, etc.)

30

EXHIBIT D2.

THIS INDENTURE made the Twenty-ninth day of November in the year of our Lord one thousand eight hundred and ninety nine.

Between John G. Schafer of Atlantic City in the County of Atlantic and State of New Jersey, and Mary A., his wife, of the first part, and Joseph L. Roth of the
10 same place, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of Five thousand eight hundred dollars lawful money of the United States of America, well and truly paid by the said party of the second part, to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed,
20 and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the party of the second part, his Heirs and assigns, all those certain lots, tracts, or parcels of land and premises, situate, lying and being in the City of Atlantic City, in the County of Atlantic and State of New Jersey, bounded and described, respectively, as follows, to wit:

1st Beginning at a point in the northerly line of Baltic Avenue where the westerly curb line of Kentucky avenue
30 intersects with the same, thence running westerly along the north side of Baltic Avenue seventy six feet to the easterly corner of a lot conveyed by said Schafer to one Winder, thence northerly at right angle to Baltic Avenue eighty feet, thence Easterly along a line parallel with Baltic Avenue seventy six feet to said curb line in Kentucky Avenue; thence southerly along the same eighty feet to the point of beginning.

2nd Beginning at a point in the westerly curb line of Kentucky avenue eighty feet northerly of the northerly line of Baltic avenue, thence running northerly along said curb line fifty-seven feet to Groff's line, or corner; thence running westerly along a line parallel with Baltic avenue about one hundred and six feet to the line described as the first course in a certain deed made by said Wm. J. Schafer and wife to said Emma L. Schafer, recorded in Book 153 of deeds, folio 181 &c; thence southeasterly in said line about one hundred and sixty feet to a point in the northerly line of Baltic avenue thence northerly at right angle to Baltic avenue eighty feet; thence Easterly along a line parallel with Baltic avenue ninety-six feet to the place of beginning. 10

Being part of premises which George W. Schafer and wife and others, heirs of law of Emma L. Schafer deceased, by deed dated December 28th, 1898, and recorded in the Clerks Office of Atlantic County, in Book No. 227 folio 483 &c. granted and conveyed to the said John G. Schafer. 20

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof: And also, all the estate, right, title, interest, property possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the premises, with the appurtenances, 30

To have and to hold the said premises, with all and singular the appurtenances, unto the said party of the second part, his Heirs and Assigns, to the only proper

use, benefit and behoof of the said party of the second part, his Heirs and Assigns, forever.

And the said John G. Schafer, for himself, his Heirs, Executors and Administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his Heirs and Assigns, that he the said John G. Schafer, his Heirs, all and singular the hereditaments and premises herein above described and granted, or
 10 mentioned and intended to be so, with the appurtenances unto the said party of the second part, his Heirs and Assigns, against him the said Schafer, his Heirs, and against all and every other person or persons, whomsoever lawfully claiming or to claim the same or any part thereof, under, through, by or from him the said John G. Schafer SHALL and WILL WARRANT and forever DEFEND.

In witness whereof, the said party of the first part
 20 have hereunto set their hands and seals. Dated the day and year first above written.

Signed, Sealed and Delivered

in the Presence of:

Charles A. Baake.

John G. Schafer (Seal)

Mary A. Schafer (Seal)

30 STATE OF NEW JERSEY, }
 ATLANTIC COUNTY. } ss.

Be it Remembered, That on this Twenty-ninth day of November in the year of our Lord one thousand eight hundred and ninety-nine before me the subscriber, a master in Chancery of New Jersey, personally appeared John G. Schafer and Mary A. his wife who, I am satis-

fied, are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the said Mary A. Schafer being of full age, on a private examination apart from her said husband before me acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband. All of which is hereby certified. 10

CHARLES A. BAAKE,
M. C. C.

EXHIBIT D3.

Deed from Joseph L. Roth, and Esther Roth, his wife, to Thomas Daly, dated January 23, 1902. 20
Consideration: \$15,000.
Premises conveyed:

All those certain city lots or tracts of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

Lot. No. 1. Beginning at a point in the Northerly line of Baltic Avenue where the Westerly curb line of Kentucky Avenue intersects with the same; thence running 30
Westerly along the North side of Baltic Avenue seventy-six feet to the Easterly corner of a lot conveyed by said Schafer to one Winder; thence Northerly at right angles to Baltic Avenue, eighty feet; thence Easterly along a line parallel with Baltic Avenue seventy six feet to said curb line in Kentucky Avenue; thence Southerly along

the same eighty feet to the place of beginning.

Lot No. 2. Beginning at a point in the Westerly curb line of Kentucky Avenue eighty feet Northerly of the Northerly line of Baltic Avenue; thence running Northerly along said curb line fifty-seven feet to Groffs line, or corner; thence running Westerly along a line parallel with Baltic Avenue about one hundred and six feet to the line described as the first course on a certain deed made
10 by said Wm. J. Schafer and wife to said Emma L. Schafer, recorded in book 153 of deeds, folio 181 &c; thence Southeasterly in said line about one hundred and sixty feet to a point in the Northerly line of Baltic Avenue; thence Northerly at right angles to Baltic Avenue eighty feet; thence Easterly along a line parallel with Baltic Avenue ninety-six feet to the place of beginning.

Warranty: General.

20 Execution: duly executed and acknowledged by said grantors and recorded in the Clerk's office of Atlantic County, January 25, 1902 in deed book 268 of deeds, folio 145.

EXHIBIT D4.

Deed from Smith E. Johnson, Sheriff of the Atlantic
30 County, dated July 2, 1907, to Philadelphia Brewing Company.

Consideration: \$16,200.00.

Premises conveyed:

All that certain tract or parcel of land and premises hereinafter particularly described, situate in Atlantic City,

in the County of Atlantic and State of New Jersey, bounded and described as follows:

Lot No. 1: Beginning at a point in the Northerly line of Baltic Avenue, where the Westerly curb line of Kentucky Avenue intersects with the same; thence running westerly along the north side of Baltic Avenue seventy-six feet to the Easterly corner of a lot conveyed by said Schafer to one Winder; thence Northerly at right angles to Baltic Avenue eighty feet; thence Easterly along a line parallel with Baltic Avenue seventy-six feet to said curb line in Kentucky Avenue; thence Southerly along the same eighty feet to the place of beginning. 10

Lot No. 2: Beginning at a point in the Westerly curb line of Kentucky Avenue eighty feet Northerly of the Northerly line of Baltic Avenue; thence running Northerly along said curb line fifty-seven feet to Groff's line, or corner; thence running Westerly along a line parallel with Baltic Avenue, about one hundred and six feet to the line described as the first course in a certain deed made by said Wm. J. Schafer and wife to said Emma L. Schafer, recorded in Book 153 of Deeds, folio 181, etc.; thence Southeasterly in said line, about one hundred and sixty feet to a point in the Northerly line of Baltic Avenue; thence Northerly at right angles to Baltic Avenue eighty feet; thence Easterly along a line parallel with Baltic Avenue, ninety-six feet to the place of beginning. 20

Warranty: Sheriff's deed. 30

Execution: duly executed and acknowledged by said grantor and recorded in the Clerk's office of Atlantic County, July 6, 1907, in book 362 of deeds, page 242, etc.

EXHIBIT D5.

Deed from Philadelphia Brewing Company to Margaret Daly, dated July 15, 1907.

Consideration: \$19,514.12.

Premises conveyed:

10 All those certain tracts or parcels of land and premises, hereinafter particularly described, situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey:

20 Lot No. 1. Beginning at a point in the northerly line of Baltic Avenue where the westerly curb line of Kentucky Avenue intersects with the same; thence running westerly along the north side of Baltic Avenue seventy-six feet to the easterly corner of a lot conveyed by said Schafer to one Winder; thence northerly at right angles to Baltic Avenue eighty feet; thence easterly along a line parallel with Baltic Avenue seventy-six feet to said curb line in Kentucky Avenue; thence southerly along the same eighty feet to the place of beginning.

30 Lot No. 2. Beginning at a point in the westerly curb line of Kentucky Avenue eighty feet northerly of the northerly line of Baltic Avenue; thence running northerly along said curb line fifty-seven feet to groff's line or corner; thence running westerly along a line parallel with Baltic Avenue about one hundred and six feet to the line described as the first course in a certain deed made by said Wm. J. Schafer and wife to said Emma L. Schafer, recorded in Book 153 of Deeds, folio 181, &c.; thence southeasterly in said line about one hundred and sixty feet to a point in the northerly line of Baltic Avenue; thence northerly at right angles to Baltic Avenue eighty

feet; thence easterly along a line parallel with Baltic Avenue ninety-six feet to the place of beginning.

Warranty: Special.

Execution: Duly executed and acknowledged by said grantor and recorded in the Clerk's office of Atlantic County, August 13, 1907, in deed book 362, page 452, etc.

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30

NEW JERSEY SUPREME COURT
ATLANTIC COUNTY

10	ANNIE M. CONAWAY, <i>Plaintiff,</i>	}	ACTION AT LAW.
	vs.		IN EJECTMENT.
	MARGARET DALY, <i>Defendant.</i>		POSTEA.

20 This case was tried before Judge W. Frank Sooy, with a jury, at the Atlantic Circuit, on November nineteenth, 1928, and said trial continued over until November twenty-first, 1928, and the jury having heard and considered the matters duly presented before them, did say by direction of the Court that Margaret Daly is guilty of the trespass and ejectment laid to her charge in the manner and form as the said Annie M. Conaway hath complained against her and that the plaintiff, Annie M. Conaway, do recover against the defendant, Margaret Daly, possession of the premises aforesaid, as recited in the Complaint duly filed in the above entitled cause.

W. F. Sooy,
C. C. J.

30

NEW JERSEY SUPREME COURT
ATLANTIC COUNTY

ANNIE M. CONAWAY,

Plaintiff,

vs.

MARGARET DALY,

Defendant.

ACTION AT LAW.
NOTICE OF
APPEAL.

10

TO ROBERT J. TAIT PAUL, ESQ.,

Attorney for Plaintiff.

TAKE NOTICE that the defendant, Margaret Daly, hereby appeals from the judgment entered in the above stated cause in favor of the plaintiff and against the defendant, adjudging defendant guilty of trespass and ejection as charged in the Complaint filed in said cause, and for possession of the premises referred to in said Complaint, to the Court of Errors and Appeals of the State of New Jersey upon the following grounds:

20

1. Because the trial court permitted the witness, Louis A. Repetto, over objection, to answer the question "How many children were there in the Schaefer family so far as you know?"

30

2. Because the trial court, over objection, admitted in evidence certified copy of petition for letters of administration in the matter of the estate of John G. Schaffer, deceased.

3. Because the trial court refused to grant the motion

of counsel for the defendant to non-suit the plaintiff at the close of the plaintiff's case.

4. Because the trial court admitted in evidence, over objection, petition for probate filed in the estate of Emma L. Schaffer, deceased.

5. Because the trial court, upon motion of counsel for the plaintiff, over objection, directed the jury to find a
10 verdict in favor of the plaintiff and against the defendant.

6. Because under the evidence and the law, the trial court should have submitted the case to the jury for its decision of the facts.

7. Because under the evidence and the law, the trial court should have directed the jury to find a verdict in favor of the defendant of no cause for action.

20 8. The judgment entered should be set aside and reversed because under the evidence it was undisputed that the defendant and her predecessors in title, had had open, notorious, hostile and continued adverse possession of the premises in question for upwards of thirty years, prior to the institution of plaintiff's suit.

BABCOCK & CHAMPION,
Attorneys for Defendant.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ANNIE M. CONAWAY,

Plaintiff-Respondent,

vs.

MARGARET DALY,

Defendant-Appellant.

ON APPEAL FROM
SUPREME COURT.

Brief for Appellant

FACTS.

This is an appeal from a judgment entered in ejectment in favor of the plaintiff and against the defendant, adjudging the defendant guilty of trespass and ejectment as charged in the complaint.

The defendant is the owner of premises situate at the corner of Kentucky and Baltic Avenues in Atlantic City, New Jersey, consisting of a tract of land seventy-six feet on Baltic Avenue by eighty feet in depth, upon which is presently erected a large brick hotel, extending about thirty-five feet on Baltic Avenue by seventy feet in depth.

The premises in question, with other lands, were owned by Emma L. Schafer under deed to her, from Alma

LeChard, dated May 26, 1888. The said Emma L. Schafer died seized of said lands on November 14, 1897. Subsequent to her death and on December 29, 1898, George W. Schafer and wife, William J. Schafer and wife, and Caroline Moore, widow, heirs at law of Emma L. Schafer, conveyed the lands and premises, with other lands to John G. Schafer, who was the husband of Emma L. Schafer, deceased, which deed was executed by the said grantors as "heirs at law of Emma L. Schafer now deceased," and the purpose in which was stated to be "the intention of this conveyance being to convey to the said John G. Schafer, all of the premises of which she (Emma L. Schafer) died seized."

Prior to her death, Emma L. Schafer and John G. Schafer, her husband, agreed in writing, with Joseph L. Roth (p. 56) to sell to him the premises in question for the sum of \$5800.00. The agreement was not produced at the trial below, said Roth testifying that he had left the same with his attorney, now deceased, and that it was lost. Under the terms of said contract, said Roth took immediate possession of and exercised control over the property. At the time he took possession, there was situate upon the property in about the same location as that of the present hotel building, a small shack which was not fit to live in. There was considerable water upon the land and it was otherwise in bad condition. Immediately upon taking possession, said Roth filled in the land, laid side-walks and fixed up the building, so that he could rent the property (p. 58). He rented said property and collected the rents therefrom. The deed from George W. Schafer, et ux, et als to John G. Schafer, above referred to, is Exhibit D. 1 and will be found on page 95, being also plaintiff's Exhibit P. 10. On November 29, 1899, the said John G. Schafer, by deed conveyed the said premises to said Roth, which deed is Exhibit D. 2 and is found at page 106. By sundry conveyances the title to said property passed successively to the respective grantees, designated

in Exhibits D. 3 at page 109, D. 4, page 110, and D. 5 at page 112; the last-mentioned deed being from the Philadelphia Brewing Company to Margaret Daly, the defendant below, bearing date July 15, 1907, the consideration in which conveyance was \$19,514.12. The defendant below was the wife of Thomas Daly, grantee, referred to in Exhibit D. 3 from said Joseph L. Roth and has lived in the said premises from 1900, continuously up until the present time.

Plaintiff, Annie M. Conaway, claims an equal one-fourth part in the premises in question, alleging that she is entitled to said one-fourth interest, as the daughter of Annie Conaway, deceased, who was a daughter of Emma L. Schafer, deceased, above referred to; that Emma L. Schafer died intestate, leaving surviving her, John G. Schafer, her husband, George Schafer, a son, Caroline Moore, a daughter, William J. Schafer, a son and the plaintiff, a grand-daughter.

The complaint (p. 3) demands \$10,000.00, damages for mesne profits. At the trial, no claim was made for mesne profits. At the close of plaintiff's case, a motion was made for non-suit (p. 50) which was denied by the Court and exception noted for defendant. At the close of the entire case, motion was made for direction for the plaintiff (p. 71) and was granted by the Court (p. 78) to which direction, exception was noted. The Postea will be found at page 114 and the notice and grounds of appeal at page 115.

ARGUMENT.

Grounds No. 1 and No. 2 are abandoned and will not be argued.

3. The third ground is "because the trial court refused to grant the motion of Counsel for the defendant to non-

suit the plaintiff at the close of the plaintiff's case. The motion for non-suit appears upon page 50. The grounds upon which the motion was based were :

(a) That one co-parcener cannot maintain a suit in ejectment against his co-tenant.

(b) That there is no proof in the case that Emma L. Schafer died intestate.

(c) That the plaintiff testified that she had signed papers disposing of her interest in her grand-mother's estate (Emma L. Schafer).

The sub-divisions will be argued in their order :

(a) That one co-parcener cannot maintain a suit in ejectment against his co-tenant.

(b) That there is no proof in the case that Emma L. Schafer died intestate.

(c) That the plaintiff testified that she had signed papers disposing of her interest in her grand-mother's estate (Emma L. Schafer).

(a) That one co-parcener cannot maintain a suit in ejectment against his co-tenant.

The plaintiff claims as an heir of Emma L. Schafer, deceased. If her claim that she is such heir be true and that she has an undivided one-fourth interest in the premises in question, she is a co-tenant with the defendant. It is suggested that the judgment for plaintiff in ejectment could not be literally executed for the reason that the Sheriff under an execution directed to him could not determine which part of

the said premises should be allotted to plaintiff under her judgment.

We have been unable to find any decisions in this Court bearing upon this question. There is, however, a reported case decided in the Supreme Court in 1845, namely, *Den. v. Bordine*, 20 Law, p. 395, in which case the Court at page 400 said:

“One joint tenant or tenant in common may maintain ejectment against his companion, on proof of actual ouster, or of facts from which ouster may be inferred. In this case there can be no difficulty on this point, the case showing the defendant in possession holding adversely under a deed for the whole premises, and denying the title of his co-tenants. But it would seem to be confessed by the consent rule. The practice is, if there has been no actual ouster, for the defendant to apply to the court for a special rule to confess lease, entry, and also ouster of the nominal plaintiff, if an actual ouster of the plaintiff's lessor, by the defendant, should be proved on the trial, and not otherwise. 2 Roscoe on Real Actions, 574, 29 Law Lib. 161, 3 Burr. 1897.”

In the case before the Court the proof does not show any actual ouster. The plaintiff never was in possession of the premises in which she claims an interest or any portion thereof so that she could not have been actually ousted therefrom. The question is therefore presented as to whether the facts of the case justified the inference of an ouster of the plaintiff. The practice suggested by the cited language was not followed in this case.

(b) That there is no proof in the case that Emma L. Schafer died intestate.

In order for the plaintiff to be entitled to recover as against the defendant as an heir of Emma L. Schafer, deceased, it was incumbent upon her to prove that Emma L. Schafer was dead and that she died intestate. The Court granted permission to counsel for the respondent to re-open his case and introduce in evidence a certified copy of the petition of probate in the matter of the estate of Emma L. Schafer, deceased, which was offered for the purpose of showing the date of the death of Emma L. Schafer and her intestacy. (p. 54.) The said petition is Exhibit P. 14 in the case and is found on page 104. It is suggested that the mere written statement of John G. Schafer is not sufficient to prove the intestacy of said Emma L. Schafer, deceased. The defendant is entitled to have the best evidence available as to her intestacy and it is respectfully submitted that the order made by the Surrogate of the County of Atlantic upon said petition, if such an order were made, would be the best evidence and would be an adjudication by a Court of competent jurisdiction that she did die intestate. The sworn statement of the said John G. Schafer might be sufficient upon a collateral matter but is not the kind of proof required to establish such a material and important part of the proof in plaintiff's suit. There is no testimony in the case relating to the question of the intestacy of said Emma L. Schafer other than said petition. Furthermore, the said petition omits entirely as an heir the name of the plaintiff.

(c) That the plaintiff testified that she had signed papers disposing of her interest in her grand-mother's estate, (Emma L. Schafer).

The plaintiff testified upon direct examination at line 8 on page 35:

"Q. Have you at any time given a deed for any interest which you may have in the property at Baltic

and Kentucky Avenues, Atlantic City, being described on the blackboard as being 80 feet x 67 feet: within the property line?

“A. No, I haven’t, to my knowledge.”

At line 10 on page 37, she testified upon cross examination:

“Q. You say you don’t know whether or not you signed a deed for this property, that you don’t know what it was all about?

“A. I do.”

Again on line 32 on page 38, she testified upon cross examination:

“Q. Isn’t it a fact that at that time you signed papers—

“A.—I signed papers, yes.

“Q.—disposing of any interest you had in your grandmother’s estate?

“MR. PAUL: Objected to.

“THE COURT: I will permit her to answer the question if she knows of any interest she had in her grandmother’s estate.

“A. Yes, I signed papers for that reason.”

Again at line 30 on page 39, she testified upon re-direct examination:

“Q. You have testified that these papers were a signing away of your interest in your grand-mother’s estate. Do you know that of your own knowledge or were you told that?”

“A. I was told that.”

The witness, Louis A. Repetto, who was called in behalf of the plaintiff, corroborated the testimony of the plaintiff that she had disposed of her interest in her grand-mother’s estate, in that he testified under cross examination at line 1 on page 21 :

“Q. Was there ever a subsequent conference at your office between Caroline Moore, William J. Schaffer and Anna Conaway, in which the question of relationship had arisen?”

“A. There were a number of conferences at the office in reference to settling up the John G. Schaffer estate and disposing of the interest of Anna Conaway in her grand-mother’s estate.”

It seems too clear for argument that if the plaintiff had disposed of her interest in her grand-mother’s estate, who was the said Emma L. Schafer, deceased, that she had no standing to prosecute the suit in ejectment.

4. Because the trial court admitted in evidence, over objection, petition for probate filed in the estate of Emma L. Schafer, deceased.

The above ground has been fully discussed in the argument of subdivision (b) of the motion of non-suit.

5. Because the trial court, upon motion of counsel for the plaintiff, over objection, directed the jury to find a ver-

dict. in favor of the plaintiff and against the defendant.

6. Because under the evidence and the law, the trial court should have submitted the case to the jury for its decision of the facts.

The two above grounds will be argued together.

Under the evidence in the case it is submitted that the trial Judge erred in directing the jury to find a verdict for the plaintiff against the defendant. The case should have been submitted to the jury for its determination of the facts.

There was conflicting evidence upon the question as to whether plaintiff was an heir of Emma L. Schafer. Exhibit P. 14, which was the certified copy of petition for letters of administration upon the estate of said Emma L. Schafer, deceased, which petition is found upon page 104, is the sworn statement of John G. Schafer, who was the husband of said Emma L. Schafer. He alleges in the petition, at line 28:

“That the said Emma L. Schafer deceased, left her surviving the following named heirs and next of kin, to wit:

George Schafer	Son	Phila. Pa.
Caroline Moore	Daughter	“ “
William J. Schafer	Son	Atlantic City”

It will be observed that the name of the plaintiff below is omitted from said petition as an heir. This is contradictory to her testimony and surely raises a jury question. Her testimony, above fully quoted in the argument of subdivision (c) of the motion for non-suit, that she had disposed of all of her interest in her grand-mother's estate, the

said Emma L. Schafer, raises an issue of fact for the determination of the jury.

There was also a question for the jury to determine whether at the time of her death on November 14, 1897 (Exhibit P. 14, p. 104) the said Emma L. Schafer had possession of the premises in question. The proof is uncontradicted that the decedent, Emma L. Schafer, sold the property to defendant's witness, Roth, under an agreement of sale which was in writing for the sum of \$5800.00 (pp. 55, 56 and 57), under the terms of which he was entitled to and took immediate possession, which agreement was made about a year or ten months prior to the death of Mrs. Emma L. Schafer (line 1, p. 56). The witness, Roth, immediately filled in the land, laid sidewalks, fixed up an old, dilapidated building on the lot (p. 58), rented the property and collected the rents. Roth's testimony is uncontradicted and is also corroborated by the testimony of William T. Leek, a witness produced in behalf of plaintiff who testified on cross examination (line 20, p. 28) that the decedent, Emma L. Schafer, had sold the property under an agreement to Mr. Roth. The right of possession, therefore, of said premises had been transferred by said Emma L. Schafer to the said Roth prior to her death and she could not have maintained ejectment against Mr. Roth so long as he was not in default under his contract to purchase. Counsel for the appellant endeavored to show that Mr. Roth had made all of the required payments and was not in default, but his offer was overruled by the trial court (line 3, p. 59). The witness, Roth, however, testified that he made payments upon account of the purchase price (line 25, p. 58). The possession of said Roth was that of a vendee in possession. It is obvious that any right claimed by the plaintiff must of necessity rest upon the possession of Emma L. Schafer, deceased, as such possession existed at the time of the death of Emma L. Schafer. It is urged that the Court in view

of the uncontradicted evidence upon the question of possession should have directed a verdict in favor of the defendant below or should have submitted the question of possession for the determination of the jury.

7. Because under the evidence and the law, the trial court should have directed the jury to find a verdict in favor of the defendant of no cause for action.

8. The judgment entered should be set aside and reversed because under the evidence it was undisputed that the defendant and her predecessors in title, had had open, notorious, hostile and continued adverse possession of the premises in question for upwards of thirty years, prior to the institution of plaintiff's suit.

Under the evidence and as above argued, Joseph L. Roth was a vendee in possession of the premises in question not in default at the time of the death of Emma L. Schafer. It further appears that the purchase was, subsequent to the death of Emma L. Schafer, consummated by the payment of the balance due from Roth and the delivery of a deed from all of the heirs with the exception that the plaintiff did not join therein. It is uncontradicted that the title to the premises, in question, subsequent to the deed to Roth, devolved by sundry conveyances to the defendant below. The agreement, made between decedent, Emma L. Schafer, and Roth, further enures to her benefit in determining the right of plaintiff to maintain her ejectment suit. The alleged claim of plaintiff must relate in point of time to the death of Emma L. Schafer and she should not succeed in her action of ejectment unless the said Emma L. Schafer could have so succeeded. At the time of the death of Emma L. Schafer it was clearly the legal right of Joseph L. Roth to require a deed either from her heirs or from her executor or administrator under an order of the Orphans' Court.

Under the decisions of this State, Mr. Roth, upon the making of said agreement of sale, held the equitable title to the premises in question. Plaintiff should not therefore be permitted to prosecute her said suit in ejectment against the defendant below and the Court should have directed a verdict in favor of the defendant.

In Vol. 19 of *Corpus Juris* at page 1084, the general rule in jurisdictions where distinction is maintained between actions at law and suits in equity, is: "possession by defendant under a contract to purchase, so long as he is not in default is a good defense at law." The text is supported by a Federal case, cases in Florida, Illinois, Mississippi, Ohio and Oregon. (See note 76 on bottom 1084.)

As before stated the said Emma L. Schafer died November 14, 1897. A deed was made on December 29, 1898, from George W. Schafer and wife, William J. Schafer and wife, and Caroline Moore, widow, heirs at law of Emma L. Schafer to John G. Schafer, which is Exhibit P. 10 at page 95. Subsequently and on November 29, 1899, the said John G. Schafer and wife conveyed a portion of the premises described in deed, Exhibit P. 10, to Joseph L. Roth, and subsequent conveyances were made until as aforesaid the property was deeded to the defendant below. Said Roth testified that he took immediate possession of the premises upon making the agreement to purchase with the decedent (p. 57), and that the agreement was made about a year or ten months prior to Mrs. Schafer's death (p. 56). Calculating the ten months' period prior to the death of Mrs. Schafer which was November 14, 1897, the commencement of Mr. Roth's possession would be in January of 1897, since which time the said Roth and his successors in title held possession of the said property and improved it so that at the time of the institution of this suit the property had a large brick hotel upon it and is worth a great deal of money.

The suit was instituted February 29, 1928, so that from the month of January, 1897, to the month of February, 1928, there had elapsed a period of thirty-one years and one month during all of which time the said Roth and his successors in title had undisputed, open, notorious and hostile possession of the property.

At the trial the plaintiff below contended that the possession of said Roth could not be hostile because he had accepted a deed from John G. Schafer (line 35, p. 71) and therefore recognized a superior title in Schafer which view was concurred in by the trial court. It is urged, however, that such argument is fallacious for the reason that the title which Mr. Roth was entitled to have under his agreement to purchase was that vested in Emma L. Schafer and in him, the said John G. Schafer, and it is submitted that the acceptance by Mr. Roth of a deed from John G. Schafer, who had acquired title under a deed from the heirs-at-law of Emma L. Schafer which purported on its face to convey all of the interest of the heirs-at-law of said Emma L. Schafer, deceased, in the property therein described, could not in law amount to a recognition of the prior title of Emma L. Schafer, deceased, or of the plaintiff below so as to bar the right of the said Roth and his successors in title from claiming adversely as against the plaintiff below.

The said Roth immediately upon acquiring possession of said property treated it as his property, filled in the land, laid sidewalks, improved the building, and subsequently the old building was torn down and a new modern brick hotel erected, so that it is clear that there has been, since the acquirement of Mr. Roth's possession, adverse possession as against the world, in Roth and his successors, in title for over thirty-one years.

Section 28 of the Act entitled, "An Act for the limitation

of Actions," C. S. of N. J., Vol. 3, p. 3172, provided that sixty years actual possession created absolute title. Said section was amended in 1922 (P. L. 1922, p. 315; Vol. 1, Cumulative Supplement to C. S. of N. J., p. 1816) so that it now reads as follows:

"119-28. Time limitation bar to action. 1. Thirty years' actual possession of any lands, tenements, or other real estate, excepting woodlands or uncultivated tracts and that sixty years' actual possession of any woodlands or uncultivated tracts, uninterruptedly continued by occupancy, descent, conveyance or otherwise, in whatever way or manner such possession might have commenced, or have been continued, shall vest a full and complete right and title in every actual possessor or occupier of such lands, tenements, or other real estate, and shall be a good and sufficient bar to all claims that may be made, or actions commenced by any person or persons whatsoever, for the recovery of any such lands, tenements, or other real estate. (Rev. 1877, p. 598, [C. S. p. 3172] as amended by L. 1922, C. 188, p. 315.)

(Inconsistent laws repealed)."

The evidence in the case brings the possession of Roth and his successors in title squarely within the terms of said Act. Said Act makes no exception whatever and provides that thirty years actual possession shall be a good and sufficient bar to all claims that may be made or actions commenced, for the recovery of any lands, etc. If said Statute had contemplated that the possession to come within its operation must be hostile and adverse, it would have so stated. In the case of *Pickney and Brewin vs. Burrage and Stephens*, reported in 31 Law at page 21, decided in the Supreme Court, it was held that with respect to section 2 of

the Act of 1787, for the limitation of suits, respecting title to lands, which is similar to the present section 2 of the Act above cited, hereafter referred to, that said second section did not begin to run against a reversioner or remainderman until after the estate for life is terminated and Counsel for the plaintiff below made the point that since John G. Schafer died January 3, 1906, the plaintiff's right of re-entry did not accrue until that time. His position in this respect is however, untenable, because the evidence clearly shows that the deed above referred to from the heirs to John G. Schafer and the deed from Schafer to Roth purported to convey the entire interest of Emma L. Schafer, deceased, and it is submitted that said conveyances amounted to an actual disseisin or ouster of plaintiff by said John G. Schafer and if she had a right of re-entry she had the right to assert it upon the conveyance to Roth, which was as to her, a hostile act. Moreover, the language of the first section is so broad and comprehensive that it operates in cases of reversioners and remaindermen.

Pickney vs. Burrage, supra at p. 24.

In Blackstone's Commentaries, 3 Com. 196, Mr. Blackstone holds that "the possession of lands in fee simple, uninterruptedly for three score years is at present a sufficient title against all the world and cannot be impeached by any dormant claim whatever." Even if the Court should construe said first section to require adverse and hostile possession, it is submitted that the defendant below and her predecessors in title have had such adverse possession for over the required period. The title of Annie Conaway, the plaintiff, was never recognized. The conveyances by the heirs to Schafer and by Schafer to Roth were both adverse to her. The possession of Roth prior to the death of Emma L. Schafer, was certainly adverse, as to plaintiff below, from

the death of Emma L. Schafer, from which time to the date of bringing the suit, more than thirty years had elapsed. Under the theory of Counsel for the plaintiff below, where there is a conveyance purporting to convey the entire interests in a tract of land but which, may, in fact, omit some interest therein, adverse possession as to the interest omitted, could never be acquired by the grantee because he had recognized the superior title of the holders of all said interests and if he be correct, the twenty years provision in the Statute of Limitations would be of no force and effect.

The second section of said Act concerning limitations is as follows:

“29. Thirty years’ possession.—Section 2. That thirty years’ actual possession of any lands, tenements or other real estate uninterruptedly continued as aforesaid, wherever such possession commenced, or is founded upon a proprietary right duly laid thereon, and recorded in the surveyor-general’s office of the division in which such location was made or in the secretary’s office, agreeably to law, or wherever such possession was obtained by a fair bona fide purchase of such lands, tenements or other real estate, of any person or persons whatever, in possession, and supposed to have a legal right and title thereto, or of the agent or agents of such person or persons, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances, or claims whatever, not followed by actual possession as aforesaid, and shall vest an absolute right and title in the actual possessor and occupier of all such lands, tenements, or other real estate; provided always, that if any person or persons, having a right or title to lands, tenements, or other real estate, shall, at the time of the said right or title first descended or accrued, be within the age of twenty-one years, feme covert, non

compos, imprisoned, or without the United States of America, then such person or persons, and his and their heirs, may, notwithstanding the aforesaid times are expired, be entitled to his or their action for the same, so as such person or persons, or his or their heirs, commence or sue forth his or their action within five years after his or their full age, discoverture, coming of sound mind, enlargement out of prison, or coming within any of the United States, and at no time after; and provided also, that any citizen or citizens of this or any other of the United States, and his or their heirs, having right or title to any lands, tenements, or other real estate within this State, may, notwithstanding the aforesaid times are expired, commence his or their action for such lands, tenements or other real estate, at any time within five years next after the passing of this act, and not afterwards."

C. S. of N. J., Vol. 3, p. 3172.

The evidence clearly shows the possession of Roth, which, for the purposes of this case, should be considered as the possession of the defendant below, was obtained by a fair bona fide purchase of the lands in question, the person then in possession and supposed to have a legal right and title thereto, which possession was held as above stated, for over thirty years. The plaintiff below became twenty-one years of age, according to her testimony, June 4, 1908, and under the provisions of said section 2, she was required to bring her suit in ejectment within five years after attaining her majority, which she failed to do.

It is, therefore, respectfully submitted that the trial court erred in directing a verdict in favor of the plaintiff against the defendant; that it was his clear duty, under the evidence

in the case and the law, to have directed a verdict in favor of the defendant below or have submitted the case to the jury upon the points hereinabove referred to, and that the judgment in favor of plaintiff should be reversed and judgment entered for the defendant below for no cause for action.

Respectfully submitted,
BABCOCK & CHAMPION,
Attorneys for Appellant.

