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**Complaint.**

(Filed December 1, 1926.)

**In Chancery of New Jersey**

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To his Honor EDWIN ROBERT WALKER,

*Chancellor of the State of New Jersey:*

The complainant, George T. Myers, residing at the Town of Guttenberg, Hudson County, New Jersey, respectfully shows:

1. On January 15, 1915, by deed dated that day, and recorded in the Hudson County Register's office in Liber 1191 of Deeds for said county, Page 626, one Christina Myers, now deceased, became the owner of the lands and premises herein described, to wit:

20

ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Guttenberg, in the County of Hudson and State of New Jersey, which on a map of said Town of Guttenberg, made by William Hexamer, Surveyor for the Weehawken Land and Ferry Association and filed in the Clerk's (now Register's) office of Hudson County, N. J. on the Seventh day of June A. D. 1853 is known, distinguished and laid down as Lot numbered Five Hundred and Forty-two (542) in Block number Twenty-five (25) Fronting and facing on the Northerly side or line of Hudson Avenue (now 24th Street) as shown on said map, said lot being twenty-five (25) feet wide in front and rear and one hundred (100) feet deep on each side as by reference to said map will more fully appear.

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*Complaint.*

2. Complainant married the said Christina Myers on or about the tenth day of April, 1918.

10 3. On or about July 14, 1921, the said Christina Myers, for a valuable consideration, intending to vest the fee of said lands and premises in herself and complainant as tenants by the entirety thereof, conveyed the same to one George R. Myers, single man, by deed of conveyance dated July 14, 1921, and recorded in the said Register's office, in Book 1407 of Deeds, page 371, and by deed  
20 dated the same day the said George R. Myers, single man, conveyed said lands and premises to "Christina Myers, wife of George T. Myers," which last mentioned deed was recorded in said Register's office in Book 1407 of Deeds, page 372, etc. Complainant, through an error of the scrivener of said last mentioned deed, was not included as a grantee therein. Both complainant and the said Christina Myers intended that an estate by the entirety should be created, and both complainant and the said Christina Myers always believed that such an estate had been created by said deed, and relied thereon, and complainant has expended large sums of money in and about the repair and betterment of said premises and has parted with  
30 other valuable considerations, relying upon such belief.

4. No children were born of the marriage between the complainant and the said Christina Myers. The said Christina Myers died, intestate, June 2, 1926, leaving the said Elizabeth Vogt, Valentine Vogt and Mary Bischoff, the defendants herein, who now claim to be her only heirs-at-law, and leaving complainant surviving her.

40 5. Ever since the marriage between complainant and the said Christina Myers, the said com-

*Complaint.*

plainant and Christina Myers were in actual possession of said lands and premises until the death of the said Christina Myers, and ever since that time, complainant has been in possession of said premises.

6. On or about the 5th day of November, 1926, 10 the said defendants herein instituted a suit in ejectment in the Hudson County Circuit Court against this complainant, to recover the possession of the said lands and premises, claiming to be the only heirs-at-law of the said Christina Myers, and on or about the 12th day of November, 1926, the said defendants herein commenced a suit in the First District Court of Jersey City to recover from this complainant the rents and profits of said premises since the death of said Christina Myers. Both 20 of said suits are pending, and complainant is advised that he cannot safely undertake the defense of said actions without first securing a decree of this Court reforming the said deed last above mentioned, so as to include the complainant as grantee therein with the said Christina Myers, and to create an estate by entirety in the said Christina Myers and complainant.

Complainant therefore prays:

1. That the defendants answer, without oath, 30 all of the allegations of this bill of complaint.

2. That it may be decreed by this Court that said deed last above mentioned was intended by both parties to create an estate by the entirety, as aforesaid, and that the omission of complainant's name as grantee therein was due to the error of the scrivener.

3. That this Court may, by its decree, reform 40 the said deed so as to carry out the said intention

*Complaint.*

of the parties and create thereby an estate in the entirety in the said Christina Myers and this complainant.

10 4. That it may be decreed that this complainant is the owner in fee of said lands and premises by survivorship, and also by the provisions of the statute in such case made and provided.

5. That this Court restrain and enjoin the prosecution by the defendants of the two actions at law mentioned herein.

6. That complainant have such other relief as may be proper.

20 7. That a writ of subpoena issue under the seal of this Court, directed to each of said defendants, requiring them to appear and answer this bill of complaint, and to abide by such decree as may be made herein.

HOPKINS & HERR,  
Solicitors for and of Counsel  
with Complainant.

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**Affidavit of George T. Myers.**

(Filed December 1, 1926.)

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

GEORGE T. MYERS, of full age, being duly sworn according to law, on his oath deposes and says: 10

I am the complainant in the annexed bill of complaint named. I have read the bill of complaint, and the facts set forth therein, so far as they are within my knowledge, are true.

I married Christina Myers on April 10, 1918. At this time she was the owner of the lands described in the bill of complaint. Within a few days after the marriage, at her request, I painted the building on said property. I am a painter by trade. 20

Thereafter, at all times, until the death of Christina Myers on June 2, 1926, I continued to keep the premises in repair. I repaired the roof from time to time, painted and decorated the interior and kept it in shape.

Christina Myers frequently stated to me, after our marriage, that the property would come to me upon her death, and that what was hers was mine, and she told me also that she understood that if she died before I died the property would be all mine. 30

In June of 1921 she had some dispute or trouble with her sister Elizabeth Vogt, one of the defendants herein, and she then said to me that she wanted to be very sure that the property would not be shared by her family in case of her death, and therefore asked me if I would get in touch with James P. Barrett and get him down to see her in order that she might make out any deeds that were necessary to effect this object. She stated 40

*Affidavit of George T. Myers.*

that she desired to have the land go to me if she died first, and to stay in her ownership if I died first.

I thereupon secured Barrett and understood that he had made out the papers that way.

10 At all times thereafter I continued to spend my own money on the property and do the work of repairing and maintaining it.

From the time of our marriage, my wife and I maintained only one bank account. This was a joint bank account in both our names, in the Hudson Trust Company, (Union City branch). Into this fund went all of the rents of the property and all of the money which I earned, and from this fund there was paid out the taxes on the property, and the expenses connected with it for repairs, and all of the expenses of the household.

20 About a year after we were married, I had \$500.00 saved up, which was not in the bank account I speak of, and which I was saving to buy an automobile as a surprise for my wife. An opportunity arose to purchase land at a bargain, right next door to the premises described in the bill of complaint, which was owned by Elizabeth Vogt, one of the defendants in this case. I spoke to my wife about the advisability of buying it and she said I should suit myself about it. I purchased it and took it in the name of my wife and myself as tenants by the entirety, and so informed her, and after that the rents from the property I purchased were deposited in the joint bank account of which I speak, and the expenses in connection with it were paid out of that account.

30 It was a true community of interest between my wife and myself as far as our property went and it was thoroughly understood and agreed between us, at all times, that in case of her death

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*Affidavit of George T. Myers.*

before me, I was to inherit all the property, and in case of my death before her, she was to inherit all of the property.

If this had not been the agreement between us I would not have taken the next door property in our joint name, but I would have taken it in my own name, and I would not have contributed any of my own money or time in and about the repair and upkeep of the premises described in the bill without being reimbursed therefor. 10

After the deeds set forth in the bill of complaint were executed and delivered, and on July 14, 1921, my wife said to me, "Well everything is now all fixed; the property is fixed so that if I die first it goes to you just the way the property next door is fixed, so that now my family can get nothing in case of my death, if you are alive". 20

GEORGE T. MYERS.

Subscribed and sworn to }  
before me this 29th day }  
of November, A. D. 1926. }

HARRIET S. HAGEN,  
Notary Public of N. J.

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**Affidavit of George R. Myers.**

(Filed December 1, 1926.)

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

10 GEORGE R. MYERS, of full age, being first duly sworn according to law, on his oath deposes and says:

I am a son of the complainant in the bill of complaint annexed hereto. I have read the bill of complaint, and the facts therein stated, so far as they are within my knowledge, are true.

20 In July, 1921, my step-mother told me that she wanted to have the property described in the bill of complaint transferred, so that it would be in the names of my father and step-mother both, and she asked me if I would take a deed for the property and give one back so that this might be done. Mr. Barrett drew the papers. One was a deed to me, and one was a deed from me, as I thought, to my father and step-mother, which I executed in the presence of Mr. Barrett and my step-mother and father.

30 My step-mother frequently, thereafter, during her lifetime, said to people in my presence that she had her property fixed so that if she died first it would all go to my father. This was always my understanding, and I was surprised, after her death, to learn that the deed made by me was not to both my father and step-mother, as I always supposed it was.

40 My step-mother often said, also, to me and to others, in my presence, that she did not want any of her property to go to her family. For many years she was estranged from the defendants in

*Affidavit of George R. Myers.*

this suit, her brother and two sisters, as well as from her mother, who is now deceased.

GEORGE R. MYERS.

Sworn and subscribed to before me }  
this 29th day of November, 1926. } 10

HARRIET S. HAGEN,  
Notary Public of N. J.

**Affidavit of James P. Barrett.**

(Filed December 1, 1926.)

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } ss.: 20

JAMES P. BARRETT, of full age, being first duly sworn according to law, on his oath deposes and says:

I reside at number 147 Twenty-seventh Street, Guttenberg, New Jersey. I am not a solicitor of this Court, nor an attorney at law of New Jersey, but I have been employed in the Hudson County Register's Office for a great many years, and have been accustomed to drawing deeds and other legal papers. 30

Shortly before July 14, 1921, George T. Myers, the complainant in this suit, told me that his wife wanted to see me about having her property transferred. I went to see Mrs. Myers at her home and spoke to her in the kitchen. She told me to fix the property so it would go to her husband if anything happened to her, and vice versa. I drew the two deeds mentioned in the bill of complaint for the purpose of carrying out this instruction, and in- 40

*Affidavit of James P. Barrett.*

10 tended to create thereby an estate by the entirety in Mr. and Mrs. Myers, according to my instructions. Through my error, the name of George T. Myers was omitted from the second deed. I thought I had fixed it properly, but since then I have examined the deeds and find that I made this mistake.

20 About the middle of June, 1926, the defendant Valentine Vogt spoke to me on the street and asked me if I knew about the deeds. I said: "Certainly, I drew them, and my recollection is that the property went to the survivor," that is, to Mr. Myers, but I also said I would look the matter up. I did look up the deeds, and when I saw how the deed was made out I thought a mistake had been made by the record clerk in copying the deed. I then asked Mr. Myers to bring the deeds for me to look at, but he didn't do so.

JAMES P. BARRETT.

Sworn and subscribed to before me }  
this 30th day of November, 1926. }

ARTHUR L. DICKSON,  
Notary Public of N. J.

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**Order to Show Cause with Restraint.**

(Filed December 1, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

GEORGE T. MYERS,  
Complainant,

and

ELIZABETH VOGT, *et als.*,  
Defendants.

10

On Bill, etc.

Upon reading and filing the verified bill of complaint of George T. Myers herein,

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It is thereupon, on this 1st day of December, 1926, on motion of Hopkins & Herr, solicitors of complainant, ORDERED that the defendants, Elizabeth Vogt, Valentine Vogt and Mary Bischoff, show cause before the Chancellor, at the Chancery Chambers in the City of Jersey City, on the 20th day of December, 1926, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why the prosecution by them of the two actions at law mentioned in the bill of complaint should not be enjoined and restrained.

30

And in the meantime, and until the further order of this Court, the said defendants, and each of them, are hereby restrained and enjoined from further prosecuting the said actions, or either of them.

And it is FURTHER ORDERED that a copy of this order and of the bill of complaint and affidavits

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**Affidavit of Elizabeth Vogt.**

(Filed December 24, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between GEORGE T. MYERS, Complainant, and ELIZABETH VOGT, <i>et als.</i> , Defendants.	}	On Bill, etc.
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20 STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

ELIZABETH VOGT, of full age, being duly sworn according to law on her oath deposes and says: I am one of the defendants in the above entitled cause.

30 My sister, Christina Myers died intestate on June 2nd, 1926, leaving her surviving as her only heirs at law, myself, my sister Mary Bischoff and my brother Valentine Vogt, and also her husband George T. Myers, the complainant herein.

There were no children born of the marriage between my sister Christina Myers and the complainant herein, her husband, George T. Myers.

At the time of the death of my sister, she was seized in fee simple of the premises known as 120 24th Street, Guttenberg, and more particularly described in the bill of complaint herein filed.

40 On November 4th, 1926, I, together with my brother and sister instituted a suit in the Hudson

*Affidavit of Elizabeth Vogt.*

County Circuit Court in ejectment for possession of the above mentioned premises.

On or about November 12th, 1926, I, together with my sister and brother commenced a suit in the First District Court of Jersey City to recover from the complainant the rents, issues and profits of the said premises since the death of my sister, the said Christina Myers, both of which suits are pending. 10

On December 1st, 1926, the complainant herein instituted the above entitled suit in the Court of Chancery of New Jersey praying for the reformation of a certain deed executed by George T. Myers single, to Christina Myers wife of George T. Myers, which deed is recorded in the Hudson County Register's Office in book 1407 page 372 and have also applied to the Chancellor of the State of New Jersey for an order restraining the prosecution of the suit instituted in the Hudson County Circuit Court and also in the First District Court. 20

The said premises consists of a four-family dwelling house and the second floor left is occupied by George T. Myers the complainant herein, and the other three floors are occupied by monthly tenants, which tenants have paid to George T. Myers, the complainant herein, rent for the occupancy of the said premises since June 2nd, 1926. 30

(Sgd) ELIZABETH VOGT.

Subscribed and sworn to before me }  
 this 4th day of December, 1926. }

ADA DEPEW,  
 Notary Public,  
 of New Jersey.

**Order for Preliminary Injunction, etc.**

(Filed December 24, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between GEORGE T. MYERS, Complainant, and ELIZABETH VOGT, <i>et als.</i> , Defendants.	}	On Bill, etc.
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20 This matter coming on to be heard on the re-  
 turn of the order to show cause made herein on  
 the first day of December, 1926, and on the return  
 of a notice by the defendants of application for  
 appointment of receiver and the Court having read  
 the proofs offered and heard the argument of  
 counsel.

30 It is thereupon on this 24th day of December,  
 1926, on motion of Hopkins & Herr, solicitors of  
 complainant and in the presence of Philip F.  
 Sauer, Solicitor of defendants, ORDERED, that the  
 defendants and each of them and their agents,  
 representatives, and attorneys be and they are  
 hereby enjoined and restrained from the further  
 prosecution of an action in ejection brought by  
 them and now pending in the Hudson County Cir-  
 cuit Court against the complainant herein to re-  
 cover the possession of the lands and premises  
 described in the Bill of Complaint and an action  
 commenced by said defendants in the First  
 40 Judicial Court of Jersey City and now pending in  
 said Court to recover from this complainant the

*Order of Preliminary Injunction, Etc.*

rents and profits of said premises since January  
2, 1926.

And it is further ordered that a preliminary in-  
junction issue in accordance with this order.

And it is further ordered that the application  
 of the defendants for the appointment of a re- 10  
 ceiver pending this suit be and the same is hereby  
 denied.

Respectfully advised,

JOHN BENTLEY,  
V. C.

I consent to the form of the above order.

PH. F. SAUER, 20  
 Solicitor of Defendants.

30

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**Answer.**

(Filed December 29, 1926.)

IN CHANCERY OF NEW JERSEY.

10 Between

GEORGE T. MYERS,  
Complainant,

*and*

ELIZABETH VOGT, *et als.*,  
Defendants.

On Bill, etc.

20

The defendants Elizabeth Vogt, Valentine Vogt and Mary Bischoff, answering the bill of complaint, say that:

1. The defendants admit paragraph one of the complainant's complaint.

2. As to the allegations contained in paragraph two thereof, these defendants have no knowledge or information thereof sufficient to form a belief.

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3. Defendants deny all of the allegations contained in paragraph three, except that the deeds mentioned therein were made, executed and recorded.

4. Defendants admit that there were no children born of the marriage between the complainant and Christina Myers, but say that Christina Myers died intestate June 2, 1926, leaving the said Elizabeth Vogt, Valentine Vogt, and Mary Bischoff, the defendants herein, her only heirs at

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*Answer.*

law and leaving the complainant George T. Myers, her husband, surviving her.

5. Defendants admit that Christina Myers was in actual possession of the lands and premises until her death, and that the complainant has been in possession thereof since the death of Christina Myers, but avers that the complainant's possession thereof has been unlawful, and belongs to the defendants. 10

6. Defendants admit that they instituted a suit in the Hudson County Circuit Court for ejectment and a suit in the First District Court of Jersey City to recover from the complainant the rents and profits, but as to the remaining allegations in paragraph six thereof, these defendants have no knowledge or information thereof sufficient to form a belief. 20

And these defendants pray that they may be dismissed with their reasonable costs and charges.

PH. F. SAUER,  
Solicitor for Defendants.

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**Replication.**

(Filed December 30, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between GEORGE T. MYERS, Complainant, <i>and</i> ELIZABETH VOGT, <i>et als.</i> , Defendants.	}	On Bill, etc.
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The complainant joins issue on the answer of  
20 the defendants.

HOPKINS & HERR,  
Solicitors of Complainant.

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**Order of Reference.**

(Filed January 11, 1927.)

IN CHANCERY OF NEW JERSEY.

10	Between GEORGE T. MYERS, Complainant, <i>and</i> ELIZABETH VOGT, <i>et als.</i> , Defendants.	}	On Bill, etc.
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On motion of Hopkins & Herr, solicitors of the  
complainant herein, the defendants through their  
solicitor consenting hereto, 20

It is thereupon on this 11th day of January,  
1927, ORDERED that the above stated case be re-  
ferred to Honorable J. F. Fielder, one of the Vice  
Chancellors, to hear the same for the Chancellor,  
and to report thereon to him, and advise what or-  
der or decree should be made therein.

E. R. WALKER,  
C. 30

I hereby consent to the making and entry of the  
foregoing order.

P. F. SAUER,  
Solicitor of Defendants.

A True Copy,  
THOMAS BARBER,  
Clerk.

40

**Order of Designation.**  
(Filed January 17, 1927.)

IN CHANCERY OF NEW JERSEY.

10 Between

GEORGE T. MYERS, Complainant,  <i>and</i>  ELIZABETH VOGT, <i>et als.</i> , Defendants.	}	On Bill, etc.
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20 This matter being opened to the Court by Hopkins and Herr, solicitors for and of counsel with the complainant, the solicitor of the defendants consenting hereto,

It is on this 17th day of January, 1927, ORDERED that the 7th day of March, 1927, at the hour of ten o'clock in the forenoon, at the Chancery Chambers in the City of Jersey City be designated as the time and place for the hearing of the above entitled cause.

30 JAMES F. FIELDER,  
V. C.

I hereby consent to the making and entry of the foregoing order.

PH. F. SAUER,  
Solicitor of Defendants.

40 A True Copy,  
THOMAS BARBER,  
Clerk.

**Testimony.**

IN CHANCERY OF NEW JERSEY.

Between  GEORGE T. MYERS, Complainant,  <i>and</i>  ELIZABETH VOGT, <i>et al.</i> , Defendants.	}	On Bill, &c.	10
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Transcript of shorthand notes of testimony taken on final hearing in above stated cause, March 7, 1927, at Chancery Chambers, Jersey City, before his Honor James F. Fielder, Vice Chancellor. 20

Appearances:

HOPKINS & HERR (MR. HERR) for the Complainant.

LOUIS G. MORTEN, Esq., and PHILIP F. SAUER, Esq., for Defendants.

COMPLAINANT'S CASE. 30

Mr. Herr: The scrivener who drew the deeds involved in this controversy is a very old man now. He had a stroke of paralysis last June and is confined to his home. We subpoenaed him, but Dr. Pinder has certified that he is unable to leave his home and come to court.

The Court: So by agreement you had me sign an order allowing you to take his deposition before Mr. O'Byrne as Master. 40

*James P. Barrett—Direct.*

Mr. Herr: Yes; and that was done Saturday and the deposition is now in court.

I produce the deed from Christina Myers to George R. Myers, which was marked Exhibit C-1 on the deposition of the witness, James P. Barrett, and also the deed from George R. Myers to Christina Myers, marked Exhibit C-2 by the Master on the deposition of Mr. Barrett.

(Following is the deposition of James P. Barrett above referred to):

JAMES P. BARRETT, SWORN as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Dickson:*

20 Q. You live at No. 147 Twenty-seventh street, Guttenberg? A. Yes; right here in this house.

Q. You are a Commissioner of Deeds? A. Yes, sir; and a Notary Public also.

Q. How long have you been a Commissioner of Deeds? A. About thirty or thirty-five years.

Q. During that time you have drawn up many deeds and other legal instruments, have you? A. Oh, yes.

30 Q. You have been employed in the Hudson County Register's office? A. Yes.

Q. Where they record deeds and so forth,—for many years? A. Yes.

Q. How many years? A. I went in there the ninth of April, 1900, and I have been there continuously.

Q. Now, Mr. Barrett, in 1921, about July, 1921, do you recall having any transaction or conversation with Mr. George T. Myers? A. Yes.

40 Q. What was the subject of that conversation? A. They wanted me to go to his house—I cannot

*James P. Barrett—Direct.*

recall the exact things now. I went around with him to his house. That is the principal thing.

Q. Whom did you see there? A. I saw him and his wife and his son and I guess the rest of the family.

Q. Did Mrs. Myers say anything to you? A. Yes. 10

Q. What did she say? A. She told me that she wanted to put the property into—make a joint—in case one died, the other should get it; and I went around.

Q. That is what they asked you to do? A. Yes.

Q. That is what they had you to come over there for? A. Oh, yes.

Q. Did you say you would do it? A. Yes; and I did.

Q. What did you do to carry out their instructions? A. I drew two deeds. 20

Q. I show you a deed by Christina Myers and husband to George R. Myers, dated July 14, 1921, recorded July 14, 1921, in Book 1407 of Deeds, on page 371. Did you ever see that deed before? A. Yes; that is one of the deeds I drew.

Mr. Dickson: I offer this deed in evidence.

(Deed is marked Exhibit C-1.) 30

Q. I show you another deed made by George R. Myers to Christina Myers, dated July 14, 1921, recorded on July 14, 1921, in Book 1407 of Deeds for Hudson County, on pages 372, etc. Did you ever see that deed before? A. Yes; that is the other deed that I drew.

Mr. Dickson: I offer this deed in evidence.

(Deed is marked Exhibit C-2.) 40

*James P. Barrett—Cross.*

Q. Now, Mr. Barrett, did you see these deeds after you had drawn them? A. After they passed out of my hands?

Q. After you had drawn them up, after they were executed and they had passed out of your hands, did you ever see them again? A. Not until recently.

Q. When you looked at them at that time, did you notice in the deed from George R. Myers to Christina Myers, anything that did not look right? A. Yes.

Q. What was that? A. I noticed that it did not carry out what I was supposed to have done. Is that the idea?

Q. In what way? A. Putting this deed back into Christina Myers, wife of George T. Myers. It should have been "and George T. Myers, her husband."

Q. According to the instructions you received? A. Yes, sir. But before that I found out down below about it.

Q. Can you tell us why the name of George T. Myers does not appear on that deed? A. My error in drawing it. I suppose I have drawn hundreds and I have not had any come back until this one—that is, that I know of.

30 *Cross-examination by Mr. Morten:*

Q. Mr. Barrett, you were first appointed a Commissioner of Deeds and Notary Public about forty years ago? A. I don't know exactly; over thirty years ago—long before I went to the Register's office.

Q. What was your business before you went to the Register's office? A. Plumber.

40 Q. After you were appointed a Commissioner of Deeds and Notary Public, did you commence to act in that capacity? A. Yes.

*James P. Barrett—Cross.*

Q. And you commenced drawing deeds? A. Oh, yes, occasionally, but the biggest man up here in drawing deeds was Walker.

Q. You were continuously at the Register's office as indexing clerk, from April, 1900, until June, 1926. Am I right in that? A. Yes.

Y. Since last June, when you met with your present affliction, you have not been at the office? A. No.

Q. Have you any idea as to how many deeds and mortgages you have drawn during these last twenty-six years? A. No.

Q. Can we say that you have drawn several hundred of them? A. Yes; including bonds, mortgages, deeds, bills of sale, chattel mortgages and other instruments. I have also drawn wills.

Q. These instruments that you have drawn were drawn for friends of yours and for those whom your friends recommended to you; is that right? A. Yes; and it gave me a little prestige down in the office there.

Q. How long had you known George T. Myers? A. About twenty years.

Q. How long had you known his wife, Christina Myers? A. Since she was a young girl. I knew the family, that is, the Vogt family.

Q. Did you know, or do you now know, that the property, 122 Twenty-fourth street, Guttenberg, was sold by Elizabeth Vogt to Christina Myers and George T. Myers, in April, 1919? A. I don't know that. I do not recall that.

Q. That property is property immediately adjoining the premises in question, the premises in question being known as 120 Twenty-fourth street, Guttenberg. Did you know that in 1921, when you drew these two deeds, Exhibit C-1 and Exhibit C-2, that Mr. George T. Myers and his wife, Chris-

*James P. Barrett—Cross.*

tina Myers, owned the adjoining property? A. I cannot say that.

10 Q. Did you know, before 1921, that the property in question, 120 Twenty-fourth street, Guttenberg, was in the name of Christina Myers alone; did you know that before you drew these deeds? A. No.

Q. The first that you knew about the property in question and its owner, was when Mr. George T. Myers came to you and asked you to go around to his house and draw some deeds; is that right? A. Yes; as I can remember.

Q. Now, this deed, Exhibit C-1, has two kinds of ink on the first page. In whose handwriting is the language in ink written on the first page? A. Mine.

20 Q. And is the name "George R. Myers" in your handwriting? A. It certainly is.

Q. And the entire written portion of this deed, including the deed itself and the acknowledgment and the endorsement as to names, is in your handwriting, with the exception of the two signatures "Christina Myers" and "George T. Myers" and with the exception of the Register's certificate; is that right? A. Yes.

30 Q. Now, I show you Exhibit C-2 and ask you if it is likewise true that this entire deed, so far as writing is concerned, is in your handwriting, except the signature "George R. Myers" and excepting the certificate or endorsement of the Register? A. Yes, sir.

Q. I notice beneath the certificate of the Register on Exhibit C-1, the name "Barrett." Is that your handwriting? A. Yes; it is.

40 Q. And the same name "Barrett" appears beneath the Register's certificate on Exhibit C-2. Is that your handwriting? A. Yes, sir.

*James P. Barrett—Cross.*

Q. After the deed, Exhibit C-1, had been signed by Christina Myers and George T. Myers, and after Exhibit C-2 had been signed by George R. Myers, you took the deeds to the Register's office for record? A. Yes.

Q. And the reason you put your name "Barrett" on these deeds, to which I have already referred, is so that the Register's office would return them to you after they were recorded? A. Yes, sir. 10

Q. And I suppose they were returned to you after they had been recorded? A. Yes.

Q. And you turned them over to Myers? A. I delivered them to the Myerses.

Q. In your direct testimony I think you said that you did not see these two deeds after they were signed, until last June. Let me see if we cannot correct that a little bit and state the fact a little more accurately: After the deeds were signed you took them to the Register's office? A. Yes, sir. 20

Q. They then were handled by the chief clerk; he is the man who receives the fees for recording, is he not? A. Yes, sir.

Q. From the chief clerk where do the deeds go next? A. To the County Block Room.

Q. For indexing in the County Block Book? A. Yes. 30

Q. You were not employed in that room? A. No, sir.

Q. Then, after they come from the County Block Room, where they have been indexed, where do they go? A. They came to me, and I indexed them in the books which we called blotters, in which were entered the names of each grantor and each grantee. That is what I did with these two deeds in question, assuming that I was present at 40

*James P. Barrett—Cross.*

that time, but I have no present recollection of having actually handled those two deeds. If I was present at that time, I did it, but I cannot say positively that I happened to be at work on the day when these two particular deeds were indexed.

10 Q. What becomes of the deeds after that? A. They then go to the recording clerks to be recorded in the books in the Register's office, and after they have been recorded, they go to the comparing clerks to be compared, and after they have been compared they come back to me or whoever happened to be performing my duties in my absence.

20 Q. Now, in 1921, what was done with the deeds when they came back to you? A. Assuming that I was present and received these deeds, I would then check off the names of the grantors and grantees and enter the book and page of the record in the index. Then I gave them back to the deputy register.

Q. Your duties then in the Register's office at that time ended when you gave these deeds to the deputy register; is that right? A. I guess so.

Q. You never saw the deeds after that, so far as your clerkship was concerned? A. No.

30 Q. When these deeds had been recorded and compared, these two deeds, Exhibit C-1 and Exhibit C-2, were sent back to you? A. Yes, sir.

Q. And they were delivered to you personally in the Register's office, if you were there? A. That is it.

Q. Do you remember what was done in this case, whether you got them personally at the Register's office or whether they were mailed to you? A. Oh, they always held them for me.

40 Q. And gave them to you? A. Yes; they always gave them back to me.

*James P. Barrett—Cross.*

Q. That was what they did with all deeds on which your named appeared as the name of the person to whom they were to be returned? A. That is right.

10 Q. And the reason for putting your name on that part of the deed where it appears below the Register's certificate is to designate that the deed was to be returned to you when recorded; is that right? A. That is right.

Q. You have no recollection of these particular deeds coming back to you, any more than any other paper? A. No; except the fact that my name was on them.

Q. Have you any recollection as to when you returned these deeds to Myers? A. Immediately.

20 Q. Have you any recollection of it? A. No; not particularly. That is what I always did. I never kept any papers belonging to anybody. I immediately brought them back to them.

Q. Do you remember to whom you returned these two deeds, whether it was to Mr. George T. Myers or Mrs. Christina Myers or Mr. George R. Myers? A. No; I brought them to the house.

30 Q. Was there any particular thing or anything unusual about these two deeds that would impress recollection on your memory any stronger than any other deeds you drew? A. No.

Q. Can you tell me how it is that some of this ink is blue and some black? A. Absolutely. I always had a habit of preparing the deeds at my home, leaving the name of the proposed grantee blank where I did not know the name for certainty.

40 Q. I call your attention to Exhibit C-1, and ask you to explain, if you can, how these words "Christina Myers (formerly Christina Vogt) and George T. Myers, her husband" happen to be in

*James P. Barrett—Cross.*

black ink, they being the names of the grantors, and the name "George R. Myers" happens to be in blue ink. Will you explain that? A. That shows that "Christina Myers (formerly Christina Vogt) and George T. Myers, her husband," were done in my house.

10 Q. Can you explain how that was done? Did you have the old deed there? A. Surely. Then when I got to the house of Mr. Myers I wanted to know who the grantee was.

Q. He had not told you before that? A. No. That is my recollection.

Q. You filled in the name of George R. Myers after you got to their house? A. Yes.

20 Q. I show you Exhibit C-2 and direct your attention to the name of the grantor, "George R. Myers, single man," and the name of the grantee, "Christina Myers, wife of George T. Myers," also to the three pronouns in the granting clause, and to the words "that certain lot." Can you explain how it is that the language to which I have just directed your attention appears in blue ink, while the date of the deed, the residence of the grantor and grantee, the consideration and the description of the property, appear to be in black ink? A. The name of George R. Myers was put in around in their house.

30 Q. How did it come to be put in there—because you did not know? A. I did not know who the grantee would be.

Q. So that all these other words that appear in blue ink on Exhibit C-2 were written in the house of Mr. and Mrs. Myers? A. I guess it was; yes, to the best of my recollection.

40 Q. Were these persons, George T. Myers, Christina Myers and George R. Myers and yourself the only persons present at the time of the execution and delivery of these deeds? A. As far as I know.

*James P. Barrett—Cross.*

Q. Have you any particular recollection on that, or is your recollection somewhat hazy regarding that? A. It is somewhat dim.

Q. There might have been others present that you have no recollection of? A. They might not have been in the same room. They had the whole floor, you know. 10

Q. They had a floor there? A. Yes.

Q. Do you recall who was present when you returned these two deeds, Exhibit C-1 and Exhibit C-2, to the Myerses? A. No, sir.

Q. From the time that you delivered these two deeds, Exhibit C-1 and Exhibit C-2, to the Myerses, you never had your attention called to them or spoke to anybody about them until you spoke to Valentine Vogt last June; is that right? A. Yes; with the exception that Valentine had spoken to me. 20

Q. And you answered him? A. Yes.

Q. Do you recall where your conversation was with Valentine Vogt? A. Yes; coming up Twenty-seventh street in Guttenberg, right in front of the house, I guess. He met me on the street and he asked me if I knew anything about the property now, or something to that effect. I do not recall exactly.

30 Q. Did he mention which property, or did he just say "the property"? A. The house over there, his sister's house. I guess she was dead then. I said "Yes; I drew the deed in that case." He says, "Well, is that right?" I said: "What?" He said: "Is that right about the property?" I said that so far as I knew, the property was in the survivor; that I had drawn the deeds, and that so far as I knew, the property went to the survivor, as it was intended to do.

40 Q. Then, afterwards, you looked up the record of these deeds in the court house? A. Yes.

*James P. Barrett—Cross.*

Q. And you spoke to Mr. George T. Myers about it? A. Yes, sir.

Q. How long was that after Mr. Valentine Vogt had spoken to you about it? A. Some time.

10 Q. A week or two? A. It might have been a week or two. At any rate, it must have been before the end of June, 1926, because I have not been at the Register's office since then.

Q. Do you remember what you said to Mr. Myers and what he said to you when you spoke to him about the deeds in June, 1926? What was it you said to Myers after you looked up the records? A. I asked him to bring those deeds around. I says: "There must be some mistake in the record, because I drew them, and I am sure ——" and I says: "Bring them around. Bring them around. Bring them down. I will see and have them compared."

20 Q. What did he say? A. I do not recall exactly what he said, but I know he did not bring them. He says: "They are all right. You drew them. They are all right."

Q. Have you ever seen Mr. Myers since June, 1926? A. Yes.

Q. How many times? Have you any idea? A. Three or four times, I guess.

30 Q. When was the first time that you saw him after you told him to bring the deeds to you, in June, 1926; was it the same year? A. No.

Q. Was it this year, since January 1st? A. Yes,—that is, as I recall, but I am not certain.

Q. Mr. Barrett, Mr. Valentine Vogt says that he met you shortly after his sister died, or some time after his sister, Christina Myers, had died? A. Yes, sir.

Q. That he met you on the street? A. Yes, sir.

40 Q. And that he asked you if you had trans-

*James P. Barrett—Cross.*

ferred the property, meaning the property 120 Twenty-fourth street, to his sister's, meaning Christina Myers, marriage name, and that you said: "I drew the deeds and from the best of my recollection, the property is still in your sister's name." Do you recall any such conversation? A. No. 10

Q. Did you say to Mr. Valentine Vogt on that occasion that you were very careful to do as Mrs. Myers had instructed you to do? Did you say that? A. I would not say that; no.

Q. You do not recall that? A. No. I done what she wanted me to do.

Q. Did you say that, as a fact, do you know? A. No. All I said, as I recall, is this: "I have looked the matter up," and I did look up the deeds and I saw how they had been recorded. 20

*Re-direct examination by Mr. Dickson:*

Q. In the Register's office, Mr. Barrett, in your work there, was there anyone else that did the same work that you did? A. Oh, yes.

Q. Was there anyone else that did the same work that you did? A. I did only the deeds.

Q. Was there anyone else that did exactly what you did with the deeds? A. No.

Q. You were the only one that worked on deeds? A. Generally. That was my position. 30

Q. But there was someone else who had a position just like you? A. Yes; Patrick White.

Q. And he might do exactly the same as you did with the deeds? A. Yes; he did when I was not there.

Q. And when you were there, did Patrick White do the same thing with the deeds that you did, to help you out in a rush time? A. Surely. If he didn't have any mortgages to do, he would do a deed ahead for me. 40

*George T. Myers—Direct.*

GEORGE T. MYERS, the complainant, sworn as a witness in his own behalf, testified as follows:

*Direct examination by Mr. Herr:*

10 Q. You are the complainant in this case? A. I am.

Q. When did you marry Christina Myers? A. April 10, 1918.

Q. At that time was she the owner of property known as 120 Twenty-fourth street, Guttenberg? A. She was.

Q. What is your business? A. Painter and paper hanger.

20 Q. Did you do any work on that building, 120 Twenty-fourth street, after you got married? A. I did.

Q. What did you do?

Mr. Morten: I object on the ground that it is immaterial.

The Court: Objection overruled.

A. I done all the work on the property. I done all the work on that property.

30 Q. What sort of work was it? A. I done all the carpenter work, plumbing, roofing work; I done all the general repairs on the property.

Q. Who collected the rents on that property? A. We both did, my wife and I, either one of us.

Q. What was done with the rents? A. Put them in the bank.

Q. In whose name? A. It was in her name at that time, that is, when I first was married.

Q. Was that account afterwards changed? A. It was changed afterwards.

40 Q. What bank was that in? A. Hudson Trust Company.

*George T. Myers—Direct.*

Q. Do you remember when the change was made? A. I don't know; no, sir. It must have been 1923 or 1924,—something like that; I couldn't exactly say.

10 Q. I show you a bank pass book in the Hudson Trust Company, Account No. 119,898, in the name of George T. or Christina Myers, "as joint tenants and not as tenants in common, either to draw",—it looks like "payable to survivor". Is this the pass book in connection with that bank account that you have spoken of, after the change was made? A. Yes; it is.

Mr. Herr: I offer this pass book in evidence.

Mr. Morten: No objection.

(Marked Exhibit C-3.) 20

The Court: What is the first date?

Mr. Herr: July 14, 1924.

Q. After your marriage to Christina Myers, was the property next door, 122, purchased? A. Yes, sir.

30 Q. Will you state how that purchase came about? A. Well, I will tell you, we had a few thousand dollars saved up, and I wanted to buy a motor cycle on account of the wife being lame it would get her out more. We heard then that Elizabeth Vogt wanted to sell that house, and she said maybe she would buy that house. I said: "All right, we will buy the house. It suits me."

40 Q. How was that house paid for? A. Well, I had some money saved up and she had some money saved up and we drew some out of the bank and some I had in the house and we put that together and made the first payment.

*George T. Myers—Direct.*

Q. How much money did you put into it? A. I could not exactly say what I had, but between the two of us we had \$500 altogether.

By the Court:

Q. That is all of the purchase price that you put up, \$500? A. Yes.

10 Q. The two together? A. The two together.

Q. What was the house purchased for? A. \$4,200.

Q. How much cash did you pay? A. We paid \$1,500 altogether.

By Mr. Herr:

Q. You say the purchase price was \$4,200? A. Yes.

20 Q. And you paid \$1,500 in cash? A. In cash.

Q. How did you get that cash? A. We got that cash, the last thousand dollars, the \$1,000 we got on a mortgage of Mrs. Fessler.

Q. What property was that thousand dollar mortgage placed on? A. It was placed on No. 120.

The Court: That is the property in question?

30 Mr. Herr: That is the property in question.

Q. With the proceeds of that mortgage, \$1,000, and the \$500 that you had saved up, you bought that property? A. Yes.

Q. How was the balance of the purchase price handled? A. \$2,700—

Q. How did you arrange to pay that? A. Whenever we could pay \$100 we paid it.

40

*George T. Myers—Direct.*

By the Court:

Q. You gave a mortgage on the property, you said? A. Yes; a mortgage for \$2,700.

By Mr. Herr:

Q. Was that mortgage \$2,700 that was put on? 10  
A. That was \$2,700.

Q. How much did you owe on that mortgage at the time of your wife's death; how much was due on that mortgage at that time? A. It was only \$1,700.

Q. In other words, \$1,000 was paid off? A. \$1,000 was paid.

Q. Where did that thousand dollars come from? A. We saved it up.

Q. Who did? A. Her and I. Whatever I made 20  
I turned over to my wife.

Q. During this time were you working as a painter and paperhanger? A. I was.

Q. What did you do with the money you got? A. I handed it over to my wife.

Q. What became of the rents that came out of these two properties? A. All went to my wife.

Q. Did you have any bank account of your own after you married? A. No; not then.

Q. Did you have any understanding or agree- 30  
ment with Mrs. Myers about pooling your mon-  
eys?

Mr. Morten: I object upon the ground that it calls for a conclusion. Let us have the conversation, not what the understanding was.

The Court: Objection sustained.

Q. Did you have any talk with Mrs. Myers about the money that you earned and turned over to her? A. Yes. 40

*George T. Myers—Direct.*

Q. What was that talk? A. She told me: "Whatever you make, put together, and if I die, it is yours, and if you die, it is mine."

Q. Did she say anything to you about the rents that were coming out of these properties? A. No.

10 Q. Did she say anything to you about any money that she had? A. No.

Mr. Morten: I object to that. I think we should have what was said and not leading questions of this character. I think also time and place should be fixed.

The Court: Objection sustained.

20 Q. When did you first have a talk with Mrs. Myers, after you married her, about money? A. When we started to work on the next house.

Q. How soon after the marriage was that? A. That was the following year; 1919 I think it was. In the fall of 1919 I painted the house and she told me to paint the other house, too.

Q. What conversation did you have with her? A. I told her, I says to her: "How about this house next door?" She said: "Well, whatever work you do on there, it will be for your own benefit."

30 Q. Was there any more than this one bank account that you have told us between you and your wife? A. That is about all I know. She had a Christmas Fund down in the Trust Company. She had a few dollars in there. I don't know how much she had in there.

Q. Was this Christmas Fund all her own money? A. No; no; I deposited some and she deposited some.

40 Q. How much did that amount to? A. I could not say—\$70 or \$80.

*George T. Myers—Direct.*

Q. This was the only bank account that you had together? A. Yes; this is the only bank account we had together.

Q. You know Mr. Barrett, do you? A. Yes.

Q. Do you remember the occasion in the year 1921, when a change was made in the ownership of the property? A. I remember that; yes. 10

Q. When was that? A. I could not exactly recollect the date. It was 1921. I could not tell you the date.

Q. Will you tell us what you remember of that occasion? A. I tell you, there was a little dispute. We had some little item that happened the night we got married. There was a little orphan girl that used to run errands for my wife. Her name is Annie Shafer. She told my wife after we got married, that Elizabeth Vogt told her— 20

By the Court:

Q. The question is what you had to do with Mr. Barrett in 1921. You were married in 1918. A. 1918.

Q. Then the question is what you had to do with Mr. Barrett in 1921? A. My wife told me to go down to Mr. Barrett, that she wanted to have the deeds changed. 30

By Mr. Herr:

Q. Did you do that? A. I did.

Q. Did Mr. Barrett come up to your house? A. Yes.

Q. Were you there? A. Yes.

Q. Who else was there? A. My son George and my son Adam.

Q. And who else? A. My wife.

Q. Anyone else? A. That is all I know of. 40

*George T. Myers—Direct.*

Q. Did your wife talk to Mr. Barrett there? A. She did.

Q. In your presence? A. She did.

Q. What was said to Mr. Barrett? A. She said to Mr. Barrett that she wanted to have them deeds changed.

10

By the Court:

Q. In what way? A. In joint names.

Q. Whose joint names? A. My wife and I.

By Mr. Herr:

Q. What deed did she refer to; what property did she refer to? A. 120 Twenty-Fourth street.

Q. What did Mr. Barrett say? A. Mr. Barrett chased me out of the room, chased me in the front room that night.

20

By the Court:

Q. Did he afterwards call you back? A. He called me back; yes, sir.

Q. What did you do then? A. Then I signed. The property was signed over to my son, to my son George.

Q. How do you know? A. I was in the room that time.

30

Q. How did you know it was signed over to your son? A. Mr. Barrett asked my wife, and my wife signed it over to the boy.

By Mr. Herr:

Q. Did you see the deed? A. Yes; I saw both.

Q. I show you a deed marked Exhibit C-1, Christina Myers and George T. Myers her husband, to George R. Myers. Is that one of the deeds you saw? A. Yes; that is one of them.

40

*George T. Myers—Direct.*

Q. Look on the second page of that exhibit. Do you see the signature there, "George T. Myers"?

A. Yes.

Q. Whose signature is that? A. My wife's signature and mine.

Q. Did you sign it? A. Yes.

Q. When did you sign it? A. When I came back.

10

By the Court:

Q. When you came back from where? A. When I came back out of the front room I signed this here.

By Mr. Herr:

Q. Was there any other talk there about the property that you remember at that time? A. I don't know.

20

By the Court:

Q. Was there any talk at the time Mr. Barrett was at the house, in your wife's presence and in your presence, as to what the transaction was? A. The conversation was that she was to have the deed drawn so that it would be in her name and in my name.

30

Q. So that what would be in your name and her name? A. The house next door.

Q. What house? A. 120.

Q. This was while Barrett was at the house? A. Barrett was at the house and Barrett said: "The only way you can do that, you will have to sign it over to somebody else," and then we took our son George.

Q. When she said this, was your son George there? A. Yes; he was.

40

Q. And who else? A. My son Adam.

*George T. Myers—Direct.*

By Mr. Herr:

Q. Had your wife previous to the time of the transfer, said anything to you about her intention with regard to the property 120? A. She told me that lots of times.

10 Q. What did she say? A. She told me that plenty of times, that she was going to have that changed to both of our names, joint names.

Q. Did she say why? A. She told me—yes; she told me why; because she did not want her sister or brother not to have one cent out of this property, except her niece or nephew, she would not forget them.

Q. Did you have anybody else besides yourself do any work on the house 120? A. No.

20 Q. Did you have any talk with your wife, after the transfer, about the work you were doing or were to do on 120? A. Yes; she always said: "Whatever work you do, that is for your benefit." She said: "What is yours, is mine, and what is mine is yours."

Q. This house, 120, what sort of a house is it? A. A four-family house.

Q. Did you and your wife live there? A. No; we lived in the other house, 122.

30 Q. Was the house 120 rented to different families? A. To different families; yes.

Q. Who collected the rent? A. My wife and I, both of us.

Q. At any other time, did you have any talk with Mrs. Myers about pooling your money? A. Yes; lots of times.

Q. When was the first time you had any talk with her about pooling money? A. 1919, when I started to paint the house.

40 Q. What did she say about it? A. She said: "We will put everything together, and whatever

*George T. Myers—Cross.*

you do is yours; whatever you do on the house is for your own benefit.

Q. Did you thereafter turn over all the money that you got? A. I turned over every dollar I made.

Q. You say all the rents went into the pool? A. All the rents went into that pool, even my son's wages went into that pool. 10

Q. Was your daughter paying you board at that time? A. My daughters were both married.

Q. Were they at any time after your marriage there—were any of your daughters paying board? A. No.

*Cross-examination by Mr. Morten:*

Q. Were you in business for yourself or working for some one else? A. Working for myself. 20

Q. During the time you were married until your wife died? A. I was working for myself. That was my business. When I had nothing to do I went down to Fletcher's yard.

Q. Have you any idea as to what your income was from your own business during the year 1919? A. I could not say that offhand.

Q. Have you any idea? A. I never made any record of it. 30

Q. As a matter of fact, all you did was little odd jobs, a handy man doing odd jobs about this property, was it not? A. Oh, no. I didn't have any spare time.

Q. Did you file any income tax return for the year 1919? A. I never made any return.

Q. You never made any return at all? A. I did not think it was necessary.

Q. You did not think it was necessary before or after marriage? A. No. 40

*George T. Myers—Cross.*

Q. Is it not true that all the receipts for rent from the premises, 122 Twenty-fourth street—I mean the house that stood in the name of your wife and yourself—those receipts for rent were always signed by you? A. Most of the time they were signed by me in both houses.

10 Q. How about the house that stood in both names? A. Mostly signed by myself. I done all the business.

Q. And is it not true that all of the rent receipts for rent received from the premises 120 Twenty-fourth street—by that I mean the house that your wife owned before she was married to you—that those rent receipts were signed by your wife? A. I do not think the tenants at that time got any receipts. I don't know of any that got receipts, because they always refused to have receipts.

20

Q. Do you know Mrs. Fessler? A. Oh, certainly.

Q. Is it not true that every rent receipt that she has over a period of twenty years, that she lived there, was signed, especially after the marriage, by your wife and by nobody else? A. No.

Q. Have you ever signed a single rent receipt to Mrs. Fessler? A. I cannot recollect. I do not know that she has got any rent receipt.

30 Q. You know Mrs. Fessler. She is here today? A. I guess she is. I don't know.

Q. At the time when Mr. Barrett came to your house you said your wife, your two sons and yourself were present? A. Were present.

Q. You said that Mr. Barrett chased you out of the room when he was going to talk to your wife; is that right? A. Yes.

Q. Did your sons remain? A. They remained.

40 Q. Didn't they go out with you? A. They remained in the room.

*George T. Myers—Cross.*

Q. How long were you out of the room? A. Two or three minutes.

Q. And then did you come back? A. I came back; yes.

Q. And was it then that you signed the deed? A. The wife signed the deed over to my son then while I was in that room. 10

Q. And did your son sign the property back to you at the same time? A. Signed it back to her and I.

Q. At the same time? A. The same time; the same afternoon.

Q. Did you see these deeds that night? A. I did.

Q. Did you read them? A. I did not.

Q. Now, when the deeds came back, to whom did Mr. Barrett give them? A. They were home when I got home; they were delivered to my wife. 20

Q. Did you see them then? A. I did not. She had them in her pocket. I never looked at them.

Q. You never saw the deeds? A. I never saw the deeds until I saw them in court.

Q. Is it not true that what your wife said to you was that she did not want her brothers or sisters to have any claim on the property that was in your joint names, namely, 122 Twenty-fourth street, and that she was not referring to the property 120 Twenty-fourth street? A. That is not true. 30

Q. Do you remember meeting Elizabeth Vogt after your wife's death? A. Yes.

Q. This meeting took place some time just prior to the sale by you of 122 Twenty-fourth street, did it not? A. Yes.

Q. You had a conversation with her at that time, didn't you? A. I cannot recall what it was. I seen her lots of times after my wife's death. 40

*George T. Myers—Cross.*

Q. Do you remember telling her that you had been advised by the Surrogate of this county that the property at 120 Twenty-fourth street was yours, because of a new law that was passed in 1925 or 1926? A. I do not remember saying that to her.

10 Q. Did you go to the Hudson County Surrogate's office? A. I certainly did. I took my deeds and asked about everything down there.

Q. Didn't they tell you that there was a new law passed in 1925 or 1926? A. Yes; they told me down there, but I do not remember telling her.

Q. Then they told you that this property 120 Twenty-fourth street became yours on your wife's death without the will? A. Yes.

20 Q. You had a paper there which you thought was a will, didn't you? A. I thought it was; yes.

Q. Didn't you say to Elizabeth Vogt on this occasion that because of this new law that you had been told about in the Surrogate's office, a wife inherits direct from her husband and her husband inherits direct from the wife, or words to that effect? A. Not in that way, I didn't say it.

30 Q. Didn't you say to her on that occasion that you knew that property was in your wife's name alone, but that because of this new law it would not make any difference; it would come to you anyway? A. No; I didn't say that.

Q. Didn't you say that in substance? A. No; I didn't say that.

Q. Didn't you say to her that if your wife had died before the year 1925, this property, 120 Twenty-fourth street would go to Elizabeth Vogt and Mrs. Bischoff and her brother Valentine, as heirs of your wife? A. No, I did not.

40 Q. Or substantially that? A. No.

*George T. Myers—Cross.*

Q. Did you have a conversation with her at that time in which you told her what was in this paper that you thought was a will? A. She only asked me one time—I was walking down Bergenline avenue with her and when I got down by the cemetery she asked me: "Did Christina leave a will?" I said: "Yes; she left a dollar or two to you and a thousand dollars to the children." That is the only words I spoke to her. 10

Q. Do you remember Miss Elizabeth Vogt on any occasion when she was accompanied by her sister, Mary Bischoff, which was shortly after the death of your wife, and having a conversation with them? A. Yes; I recall that.

Q. They asked you for an accounting at that time for the rents? A. They did.

20 Q. And didn't you say then that you could not give them an accounting then but you would give an accounting after nine months had elapsed? A. No.

Q. Or substantially that? A. I said: "Let the court take its course"; that is what I told them.

Q. Didn't you say they would have to wait nine months? A. I said it takes nine months to settle an estate.

30 Q. Didn't you say then to them on that occasion that you knew the property 120 Twenty-Fourth street was in Mrs. Myers' name alone and not in the name of you and your wife? A. I did not.

40 Q. What was the purpose, or what made you make the remark on that occasion, when they asked you for an accounting, that it would take nine months to settle the estate, and let the law take its course, if you thought this property was yours and was in your name then? A. I told you I found this out when I went down to the

*George T. Myers—Cross.*

Surrogate's office. I fetched the deeds down and one of the clerks in the court handed me back one of the deeds and says: "You will have to get a lawyer." I asked him: "What is the matter?" He said: "That is in your wife's name." I was under the impression it was in my name. I thought it was in my name. 10

Q. That was after the conversation with the two sisters, was it? A. That was before.

Q. That was before? A. Yes.

Q. Which was the first, the conversation with the two sisters of your wife, or the conversation in the Surrogate's office? A. The Surrogate's office.

Q. Then, you had been to the Surrogate's office at that time? A. I had; yes.

20 Q. And then you knew the property was in your wife's name alone? A. That is where I found it out.

Q. That was what made you say to the sisters that they would have to wait nine months and let the law take its course? A. Yes.

Q. After that you did nothing whatever until the ejectment suit was started by Elizabeth Vogt and Mary Bischoff and Valentine Vogt to get control of the property, did you? A. No.

30 Q. You did not go to see any lawyer? A. Yes.

Q. I mean before the ejectment suit? A. No. Well, I didn't think they were going to do anything. I didn't think they were going to do anything of that kind.

Q. The ejectment suit was brought November 4, 1926, was it not? A. I could not tell you whether it was the 4th or 6th, because you could not read the date.

40

*Helen Signoretti—Direct.*

By the Court:

Q. When did your wife die? A. June 2, 1926.

Q. Who collected the rents of the property 120 Twenty-Fourth street after your wife died? A. I did.

Q. Up to when? A. Up to the present time. 10

By Mr. Morten:

Q. You have sold this property 122 Twenty-Fourth street? A. I have, yes.

Q. When these two ladies, Miss Vogt and Mrs. Bischoff, asked you for the accounting and you refused to give them an accounting for nine months, it was some time after that, about a month or so, that the ejectment suit was started, was it not? A. I could not recollect exactly how long it was after. 20

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HELEN SIGNORETTI, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Herr:*

Q. You are a daughter of George T. Myers, who is the complainant in this suit? A. Yes. 30

Q. When were you married? A. I was married in June, 1926.

Q. Since that time you have lived where? A. I have lived in West New York and now we live in the Bronx.

Q. You did live at home with your father after you were married? A. No.

Q. Did you visit your father and his wife Christina Myers after their marriage frequently? 40

*Helen Signoretti—Direct.*

A. Yes, I did; every week sometimes or twice a week.

Q. For how long a time? A. All during their married life.

10 Q. Did Mrs. Myers ever say anything to you or in your hearing, about the property known at 120 Twenty-fourth street, Guttenberg? A. Yes; she has often said that it was—a short time after the property had been transferred she said: “Well, now, I have transferred the property into joint names. You can never tell when anything can happen, because I do not want my people to get one nickel. I want everything to stay in the family.”

By the Court:

20 Q. In whose joint names? A. My father’s and my mother’s.

By Mr. Herr:

Q. By your “mother” you mean—— A. Christina Myers.

Q. Your stepmother? A. Yes.

30 Q. Did Mrs. Myers ever say anything in your hearing to you about her sisters and brother, in connection with her property? A. She always said she would never like them to get anything of hers, only her nieces in Englishtown, she would like them to get a little something.

NO CROSS-EXAMINATION.

40

*Adam Myers—Direct.*

ADAM MYERS, sworn as a witness on the part of the complainant, testifies as follows:

*Direct Examination by Mr. Herr:*

Q. You are the youngest son of the complainant? A. Yes, sir. 10

By the Court:

Q. How old are you? A. Twenty.

By Mr. Herr:

Q. Where were you living at the time your father married Mrs. Christina Myers? A. I always lived with my father and mother, 122 Twenty-fourth street. 20

Q. Have you lived there ever since they were married? A. Yes, sir.

Q. Did you overhear Mrs. Myers say anything about her sisters and brother with respect to her property? A. Yes; she always used to say to me, being as I was last at home, she would never like to see her sisters or brother get anything out of the property, on account she was never treated as a brother or sister.

Q. Did she ever say anything to you about what her intention was with regard to her property? A. No, she never said anything to me about that. 30

Q. Did she ever say anything to you about your father in connection with her property? A. She did. She always liked to keep the property in the family; but she would like to have hers in joint names—my mother and father.

Q. Were you present at the house 122 Twenty-fourth street when Mr. Barrett came to fix up the deeds? A. I was. 40

*Adam Myers—Direct.*

Q. Do you remember about the time of day?  
A. I could not exactly say about the time of day. I believe it was towards the evening. I could not say the date.

10 Q. About how long ago was that? A. Well, I would not say that either—either 1921 or something.

Q. Who were present there when Mr. Barrett came? A. My mother and my brother and my father.

Q. By “mother” you mean your stepmother?  
A. Yes, sir.

Q. Was Mr. Barrett there when you were there? A. Mr. Barrett was there; I was there, and my father and my mother and my brother.

20 Q. Did you hear any conversation between your stepmother and Mr. Barrett? A. Only when Mr. Barrett came in, my mother said to Mr. Barrett, “Mr. Barrett, I would like to have the deed changed so it will be in” my father’s and my mother’s names.

Q. What did Mr. Barrett then say or do? A. Mr. Barrett said: “All right.” So he sat down at the table. Well, I cannot tell you what else he done—on account I was not in—I was not around the table to see him.

30 Q. Did your stepmother say anything further to Mr. Barrett after the deeds were drawn and signed? A. After the deeds were drawn?

Q. Yes. A. Well, I cannot recollect that, because I was not paying attention to what they were doing.

Q. Did your stepmother say anything to you immediately after these deeds were drawn? A. No, sir; she never said anything to me after these deeds were drawn.

40

*Adam Myers—Cross.*

Q. Did she ever make any reference to that transaction of the drawing of the deeds? A. The same night or after?

By the Court:

Q. Any time,—that night or the next year or any time? A. No; she never said anything to me. 10

*Cross-examination by Mr. Morten:*

Q. When did you first hear your stepmother, Mrs. Myers, say to you that she wanted the deeds changed so the property would be put in both names? A. I cannot give the exact date or year.

Q. How long before the deeds were signed—have you any idea? A. I should judge about two months, something like that. 20

Q. When did she ever say to you, or when did she say to you for the first time, that she did not want her brother or sisters to have anything out of the property? A. She often said that.

Q. When was the first time; have you any idea? A. I haven’t any idea.

Q. How long after your father’s marriage to her? A. I cannot tell you.

Q. Can you fix any time when she said it? Can you give us any date? A. I cannot give any date. I could not tell you exactly what date, or what year she was saying that to me. 30

By the Court:

Q. Would you say she had said that before she signed the deed, before Mr. Barrett was at the house? A. She said that lots of times.

Q. Before that? A. Yes; before. 40

*Florence Gormley—Direct.*

By Mr. Morten:

Q. A year before? A. I could not say.

Q. Two years before? A. I cannot say what date or year.

10

FLORENCE GORMLEY, sworn as a witness on the part of the complainant, testifies as follows:

*Direct Examination by Mr. Herr:*

Q. Where do you live? A. I live at 39 Park avenue, Guttenberg.

Q. Are you a daughter of Mr. George T. Myers by his first wife? A. Yes, I am.

20 Q. Did you know Mrs. Christina Myers? A. Yes.

Q. How well did you know her? A. Well, as a mother.

Q. Were you friendly with her. A. Very friendly.

Q. After her marriage to your father did you ever visit her? A. Often; almost every day.

30 Q. Did you have any conversations with her during any of those visits, about her family? A. Well, you mean about the house—well, yes, she always told me that she was going to have this house changed over in joint names, my father and mother.

Q. Which house? A. 120 Twenty-fourth Street.

Q. Did she tell you why? A. Well, yes; she said she did not want her sisters or brother to get a cent out of the property, for they were not deserving of it.

40 Q. Did she go into any particulars about that? A. Well, that they treated her very mean; they never acted as sisters or brothers should act.

*Florence Gormley—Cross.*

Q. Do you remember visiting her some time in 1921? A. Yes.

Q. Did she tell you anything then about arrangements for the property? A. Yes; she told me she had made arrangements to have the house, 120 Twenty-Fourth street transferred over to my father and mother in joint names. 10

Q. Did you see her again after that? A. Yes; about two days after it was signed over she told me everything was fixed on joint names.

Q. You mean two or three days after what? A. After the deeds were drawn.

Q. After the transfer was made? A. Yes.

Q. She told you that everything was fixed in joint names? A. In joint names, my father and mother.

20 Q. Did she ever say anything after that about the property? A. No, because she had told me in the beginning; it was not necessary to tell me a second time, but she always had spoken of it, to have it in joint names.

By the Court:

Q. She told you the transfer had been made? A. It had been made.

30 Q. The question is: Did she ever say anything to you after that about the property? A. No; not right after that.

*Cross-examination by Mr. Morten:*

Q. When was the first time that she told you that, when was the first time that she told you she was going to turn the property over? A. About two days before she had turned it, although she had always spoken about it in the beginning.

40 Q. When was the first time she ever spoke about it? A. I do not recollect what year or date.

*Florence Gormley—Cross.*

Q. How long before? A. Not very long after they were married.

Q. You mean within a year after they were married? A. I could not recollect; I could not just say.

10 Q. You cannot fix any time at all? A. No; I cannot fix any time at all.

Q. When was the second time? A. Several times; she always had said that.

Q. How long after the first time? A. I don't recollect.

Q. What was the conversation; how did it come about that she told you about this property? A. I do not quite get you.

By the Court:

20 Q. They were married in 1918? A. 1918.

Q. How long after that did she first speak to you about the transfer of the property? A. I do not recollect what year.

Q. You do not recollect whether it was one year or two years or three years or five years? A. I should judge maybe about two years.

By Mr. Morten:

30 Q. Have you any way by which you can fix it, or is that a guess? A. It is not a guess.

Q. How can you fix it? A. Because she had always spoken about it.

Q. How can you fix the time? A. About two years.

Q. Is that a guess? A. Well, a guess.

Q. How old are you? A. I am twenty-eight.

Q. Where were you living at that time, in 1919? A. I was boarding, I believe.

40 Q. Where? A. In Twenty-Seventh street, North Bergen.

*Florence Gormley—Cross.*

Q. You were not living home? A. I was married, but my husband was in service and I was boarding.

Q. How did it come about that she started to talk to you about this property? Had you said anything to her about it? A. No.

10 Q. Just what did she say? A. She just brought it up by her own mind.

By the Court:

Q. What did she say? A. That she was going to have it transferred on joint names, my father's and mother's.

By Mr. Morten:

20 Q. Is that all she said? A. That she did not want her sisters or brother to get a cent, for they were not deserving of it.

Q. Now, do you know that Mrs. Myers, your stepmother, visited with Mrs. Bischoff in May, 1926, just before she died? A. She visited?

Q. Yes. Did you know that? A. I do not recollect.

Q. Didn't you say that you visited there nearly every day? A. Yes; I did.

30 Q. And you do not know that Mrs. Myers visited Mrs. Bischoff in May, 1926, the latter part of that month, and stayed there for a period of about two weeks? A. Yes, I do recall they took a short vacation, my father and mother.

Q. Both your father and his wife visited Mrs. Bischoff for about two weeks in May, just before Mrs. Myers' death? A. I do not recollect how long.

40 Q. Do you know that Mrs. Myers had also visited Mrs. Bischoff on other occasions since her marriage to your father? A. I do not recollect.

*Bertha Schmitt—Direct.*

Q. Did not Miss Vogt and Mrs. Bischoff both come to the house at Twenty-Fourth street where your father and Mrs. Myers were living after marriage? A. Not Mrs. Bischoff—that I cannot say—but Miss Vogt.

10 Q. Miss Vogt did? A. Miss Vogt, about four years after.

BERTHA SCHMITT, sworn as a witness on the part of the complainants, testifies as follows:

*Direct examination by Mr. Herr:*

20 Q. Where do you reside? A. 127 Twenty-Fourth street, Guttenberg.

Q. That is right within a few doors, or just across the street, from the property 120 Twenty-Fourth street? A. Across the street exactly.

Q. How long have you lived at 127 Twenty-Fourth street? A. About five years, or four and a half years.

Q. Do you know Mr. Myers, the complainant in this case? A. I know him.

30 Q. Did you know Mrs. Christina Myers? A. I knew her very well. We used to visit each other.

Q. When you visited each other did you have any conversation with Mrs. Myers about her family matters? A. We often talked it over. We often spoke about it.

Q. Do you recall anything that Mrs. Myers told you about her family? A. Well, she was telling me—

40 Mr. Morten: I object unless the time and place are fixed.

*Bertha Schmitt—Direct.*

The Court: Well, she has lived at 127 Twenty-Fourth street, Guttenberg, for four and a half years. That would bring it down to 1923, and Mrs. Myers died in June, 1926, so that it is between 1923 and 1926.

Mr. Morten: I think a more definite time should be fixed, if it can be done. 10

Q. Can you give us the dates of any conversations that you had with Mrs. Christina Myers? A. The dates?

Q. Yes. A. Well, I cannot really give the dates. Last year we really started to get real acquainted with each other.

Q. You got to know her better, as time went on? A. Yes; last year we became real friends. 20

Q. Do you recall the last conversation you had with her before her death? A. Yes. She came over to the house—

Q. Just how long before her death was that? A. Well, it was around last Christmas time. Last Christmas time I spoke to her about family affairs.

By the Court:

Q. Christmas, 1925? A. 1926.

Q. She was dead then. A. 1925. 30

By Mr. Morten:

Q. She was over at your house? A. Yes.

Q. Just repeat the conversation you had with her at that time? A. Well, we were talking about family affairs, about the house, and she was asking me about the house, about a will, and we were talking about the will the first thing we talked of.

Q. Whose will? A. Mrs. Myers came over and she told me she had a little fight with the youngest son Adam; she had a little scrap with him, a fight. 40

*Bertha Schmitt—Direct.*

She says: "He told me, 'Mother will you cut me off in the will?'" I asked her: "Did you leave a will?" She says: "No; I haven't got any will." Then she asked me if my husband has a will and I says: "I don't know about my husband." She says: "I do not believe in a will." She says: "When I die, my husband will get everything, and if he dies, I get everything, and when I die the children will get it. They were very good to me." She always praised the boys, that they were very good, and also the two daughters, that they were better than her own relations. So she started to tell me about her relations, that one of her brothers dropped dead and there was some property left and they divided it among the other brother and two other sisters, and she says: "They got theirs, and now what I have is my husband's and mine," she says.

Q. Do you recall any other conversation that you had with Mrs. Myers about the payment of a bill for painting? A. Yes.

Q. When was that? Fix that time. A. This is about 1924, I think. I got the check yet. I cannot tell you just exactly the date really, but I think it was about 1924.

Q. Where was this conversation? A. In Mrs. Myers' house when I brought over a check for Mr. Myers doing painting on the house. It was eighty-seven dollars and some cents, and I brought a check over, and Mr. Myers had not been home, but Mrs. Myers was there, his wife. She says: "What do you want?" I says: "I came to pay the check what your husband worked for." She says: "You can give it to me; that is just the same. What is mine is my husband's and what is my husband's is mine. Both goes in one." And I gave her the check then.

*Bertha Schmitt—Cross.*

Q. Are you any relation to Mrs. Myers or Mr. Myers? A. No; I never know them before I go to Guttenberg.

*Cross-examination by Mr. Morten:*

Q. You only have known them, as I understand, since 1922? A. Since the time we were living there and we got acquainted about a year or two after—before she died, I mean.

Q. Now, you are quite positive that Mrs. Myers said to you that she did not believe in having a will? A. Positively, absolutely, because she asked me—

Q. That was Christmas, 1925? A. Yes.

*By the Court:*

Q. You say she told you that what she had would be her husband's if she died first, and what her husband had would be hers, if he died first; is that right? Is that what she said? A. If she dies before her husband, it is her husband's.

Q. And if he dies before, it is hers? Is that what she said? A. Exactly, that is what she said.

Q. Did she tell you how she thought that was going to happen? A. Yes; all goes to the boys and girls, because they were very good.

Q. How was that going to happen? Did she tell you that? A. She didn't tell me that.

Q. Did she tell you how she had fixed her affairs, or how her husband had fixed his affairs, so that that would happen? A. She did not explain nothing, just talked.

*William Myers—Direct.*

WILLIAM MYERS, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Herr:*

10 Q. Where do you live? A. 120 Twenty-fourth street, Guttenberg.

Q. You are the son—the youngest son of the complainant? A. Yes.

Q. That is, next to the youngest son? A. Yes.

By the Court:

Q. Your age? A. Twenty-six years.

By Mr. Herr:

20 Q. Do you recall when your father married Christina Vogt? I do not mean the date, but do you recall the marriage? A. Yes.

Q. Where were you living then? A. At 50 Twenty-fifth street.

Q. Was that with your father? A. Yes, sir.

Q. After the marriage where did you go to live? A. We moved to 122 Twenty-fourth street.

Q. With your father and stepmother? A. Yes, sir.

30 Q. Did you continue to live with them there? A. Yes, sir.

Q. For how long? A. Until my mother died.

Q. Did you do anything about the house while you lived there; did you do any work? A. Yes, sir. While my father was working on the house I used to help him. Whatever he had to do I used to help. I helped him out on different occasions.

Q. In addition to that, did you do any work outside? A. Yes; I was always working.

40 Q. Were you earning money during the interval? A. Yes, sir.

*William Myers—Cross.*

By the Court:

Q. Did you work at anything and get paid for it? A. Yes, sir.

By Mr. Herr:

Q. What did you do with the money that you earned? A. I turned it into the house; all went into the home. 10

Q. To whom did you give it? A. To my mother. She used to take the money.

Q. Did she ever say anything to you about the property, her intentions with regard to it? A. She said she was going to have it changed into joint names, meaning my father and stepmother; that she did not want any of her relations to get a red cent. The way she expressed it to me, it was two weeks before she— 20

Q. She told you two weeks before she made the deed, that she was going to have the property changed? A. No; that they would not get a cent.

Q. Do you recollect an occasion in 1921 when Mr. Barrett came to your house and some papers were signed? A. I was not there, but I remember at night time I told. I was told when I came home.

Q. You came home that same evening? A. Yes.

Q. Did your stepmother say anything to you when you came home that evening? A. Yes. 30

Q. What did she say? A. She said that the property was changed over into joint names.

Q. Whose joint names? A. My father and my stepmother.

*Cross-examination by Mr. Morten:*

Q. Now, the time your father married Miss Vogt, you were living where? A. Twenty-fifth and Bellvue avenue. 40

*William Myers—Cross.*

Q. Where? A. Guttenberg.

Q. How long did you live there after the marriage? A. Well, I cannot recollect how long.

Q. Two years? A. It might have been two years.

10 Q. Might it have been three years? A. I don't know.

Q. Could it have been one year? A. I cannot recollect.

Q. You cannot recollect that at all. At the time when you did live with her, what house did you live in? A. 122 Twenty-fourth street.

Q. And neither you, nor your father, nor Mrs. Myers ever lived in 120 Twenty-fourth street after the marriage, did they? A. Not as I can recollect.

20 Q. And it is only since Mrs. Myers' death, since your stepmother's death, that your father and you and the rest of you who are home have moved into 120 Twenty-fourth street; isn't that right? A. After her death, yes, then we moved into 120 Twenty-fourth street.

Q. How many times do you say that Mrs. Myers, your stepmother, told you that she did not want her people to have a red cent, if I understand you correctly? A. She told me many a time.

30 Q. When was the first time? A. I cannot recollect.

Q. Was it before the marriage or after? A. It was after.

Q. Have you any idea how long it was after the marriage? A. I cannot recollect.

40 Q. Can you recollect what she said to you about it the first time she spoke to you about it? A. She just told me that she would have the property changed over to their joint names, and that she did not want none of her people to get a red cent, except the niece and nephew from Englishtown, Mr. and Mrs. Bischoff's son and daughter.

*William Myers—Cross.*

Q. She told you that the first time she told you about it? A. Yes.

Q. How long was that after the marriage? A. I cannot recollect.

Q. Have you no idea at all? A. No.

Q. How often did she tell it to you altogether—how many times? A. About five or six times she told me. 10

Q. What did she tell you besides that, the first time she spoke to you about it? A. Most always the same thing, every time.

Q. You never asked her to tell you anything about it? A. No; I never went into personal details.

Q. You cannot tell us anything else, or any part of the conversation that took place at that time, outside of what you have just told us; is that it? Have you spoken to anybody about this matter since your stepmother's death? A. Well, some parties asked me; yes. 20

Q. Who? A. McDermott.

Q. Who is Mr. McDermott? A. He is not here.

Q. What business is he in? A. Lunch.

Q. He spoke to you about this affair? A. Yes.

Q. Is he any relative of yours? A. No, sir.

Q. Did you tell him what you knew? A. I just told him that the deed was made out in the joint names. 30

Q. Now, then, whom else did you talk to? A. Nobody else that I know of.

Q. Nobody else since your stepmother's death? A. No, sir.

Q. You never talked about it at home between your father and the rest of the family, what you were going to say here? A. No.

Q. Not one word said about it? A. No. 40

*George R. Myers—Direct.*

GEORGE R. MYERS, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Herr:*

10 Q. Where do you live? A. I live 774 Palisades avenue, West New York, but before my mother's death I lived 120 Twenty-fourth street, Guttenberg.

Q. Up until the time of your stepmother's death? A. Yes.

Q. You are one of the sons? A. One of the sons. I was married in July, a month or so after her death. I was home the time she was there, the whole years my father was married to her I have been home.

20 Q. You are the grantee mentioned in the deed marked Exhibit C-1 in this case? A. Yes.

Q. And the grantor in the deed marked Exhibit C-2? A. Yes.

Q. Do you recall the occasion in July, 1922, when these two deeds were executed? A. Well, yes; I do.

30 Q. Who were present? A. My father, my mother, Mr. Barrett and my brother Adam was there, too, but he was not near the table. He was standing over by the door.

Q. Were you there? A. Yes; I was there.

Q. Was there any conversation between Mr. Barrett and your mother at that time? A. At that time, yes. They wanted to have the deeds changed—at that time?

Q. Yes. A. Yes.

40 Q. What did your mother say to Mr. Barrett at that time? A. Well, she wanted to have the deeds changed.

*George R. Myers—Direct.*

Q. What did she say to you? A. That is all I know. She said she wanted to have some work done, that is the deeds changed.

Q. You mean she said to him that she wanted something done. Did she tell Mr. Barrett what she wanted done? A. She wanted the deeds changed into joint names. That is all she said. 10

Q. Did she say what joint names? A. Well, father and mother.

Q. Did she say anything to you about that? A. No; she didn't say anything to me then.

Q. Had she said anything to you before that? A. Well, she told me she was going to do it, but she did not specify any time.

Q. How long before that day was it that she told you? A. I cannot just recollect the date. 20

By the Court:

Q. Two days or two years? A. Well, about two weeks I should judge.

By Mr. Herr:

Q. What did she say to you then, two weeks before the transfer? A. Well, she told me she was going to have it changed to my father's name and her name, joint names, so that her people could not get anything out of it, because they were mean to her. I said "Why?" She says then: "You know they have not been here. Four years I have been married, and all the time I have been sick and everything, they have never been up here." She was sick one week and her brother never came at all the whole eight years she was married he never came. He never has seen her lying in the coffin even. 30

40

*George R. Myers—Direct.*

Q. Anything else? What do you remember, if anything, when she said she was going to fix the property this way? What do you remember, if anything? A. Well, I said it was a good idea, as long as she felt that way.

10 Q. Now, on the occasion when Mr. Barrett was there, did your stepmother give him instructions what he should do? A. Well, I saw him fill the deeds out. He put a paper in front of me and said: "Sign it", and I signed it and that is all.

Q. That is your signature on Exhibit C-1? A. Yes; that is my signature.

By the Court:

20 Q. Who told you that you were expected to play any part in the transaction? A. My stepmother told me.

Q. When did she tell you? A. About two weeks before.

Q. You mean that two weeks before she signed she told you that you had something to do with it? A. She said I should be home, that is all, that Mr. Barrett was coming. I did not know what it was.

Q. Did she tell you why she wanted you home? A. Well, I didn't know that I had to do a thing like that—

30 Q. I asked you if she told you why she wanted you home? A. Well, she told me that two weeks before, that she was going to have him to change it.

Q. Did she tell you that you had anything to do with it? A. Well, not exactly that I had anything to do with it.

Q. When did you first learn that you had something to do with the transaction? A. I knew it when Mr. Barrett came.

40

*George R. Myers—Direct.*

Q. Before or after? A. Just about five minutes or so.

Q. Who told you? A. My mother.

Q. What did she say she wanted you to do? A. She says: "Stay here. I am going to have these deeds changed in joint names. I want to sign over something:" That is all. I did not know what it was until Mr. Barrett put the paper in front of me and I signed. 10

Q. Did you ask what it was? A. No. He says: "The property is over to you, and now it is back to your mother and father in joint names."

Q. Who said that? A. Mr. Barrett.

Q. Did he tell you what this was that you signed? A. No; he didn't say what it was.

Q. Did he say what the purpose of it was? A. He didn't say anything to me, but just put the paper in front of me. 20

Q. Whether he said it to you or to anybody else, did you hear him say why you were signing a deed? A. I don't remember.

Q. What the deed from you was supposed to do? A. I don't remember that.

By Mr. Herr:

Q. Did you ever have any talk with your stepmother about the property? A. Only she said: "Well, now, everything is all fixed. If I die, it goes to your father," and her people would not get a penny of it, only the two children in the country. 30

Q. When did she tell you that? A. About a month after.

Q. Did she say that on more than one occasion? A. Time and time again. She has often said it.

Q. Did not anybody explain to you the purpose of the deed, Exhibit C-2 that you were to execute? A. Well, all I know is that I signed it and they 40

*George R. Myers—Cross.*

says: "You owned the house for five minutes." That is all I know about it.

Q. Mr. Barrett said that to you? A. Yes.

*Cross-examination by Mr. Morten:*

10 Q. You say that Mrs. Myers often said that to you about her people not getting anything? A. She often said it.

Q. When was the first time? A. I could not just very well say the first time. Ever since she has been married.

Q. What was the occasion of the first conversation, the first occasion, can you recollect what happened; what brought it about? A. I often said I met her brother Valentine Vogt on the street.

20 Q. Was that the first occasion? A. On different occasions. She says: "Oh, don't mind him."

Q. Can you tell us what took place on the first occasion, what the conversation was that brought it up on the first occasion? A. Well, that is the first occasion.

By the Court:

30 Q. That is what? A. When I saw Val Vogt I always recognized him before my father was married to Christina, but since my father married Christina he had no use for me or any of the family.

By Mr. Morten:

40 Q. Tell us what the conversation was. That is what I want to know—the first time? A. Well, I just told her that I met Val on the street and he ignored me. She says: "Don't mind him. I know what they are. They never treated me right, so, if I die, they never get a penny."

*George R. Myers—Cross.*

Q. When was that—how long after the marriage? A. About two years.

Q. Two years after? A. Yes.

Q. When was the second occasion? A. Well, she often said it in the house, at times, not for any reason at all I might say.

10 Q. Without any reason at all? A. Yes. Just that she knew they were not entitled to it. She used to sit down and cry, and at evening when I came home she would be crying over the way her people treated her.

Q. Can you say whether or not Mrs. Bischoff visited her at any time? A. I cannot say.

Q. Didn't she visit Mrs. Bischoff frequently? A. I don't know about that. I only know the once that she visited.

20 Q. Didn't she visit Miss Vogt frequently? A. Not for the first four years. I know that.

Q. Not for the first four years? A. No. After she was hurt Christmas time Miss Vogt sent a plant up. That is all I know.

Q. Didn't Miss Vogt sell her the property 122 Twenty-Fourth street? A. Yes; she sold her the property.

Q. She was perfectly friendly then. You were there, were you not? A. No.

By the Court:

30 Q. Did any of the rest of the family visit the house? A. No. Val was never in the house since my father is married to Christina. He never saw her laid out. He never came to the funeral.

Q. What about the sisters? Did they visit her after her marriage? A. I do not think they ever came from the time—there was lots of trouble over it.

40

*George R. Myers—Cross.*

By Mr. Morten:

Q. Has not Miss Vogt visited her sister, Mrs. Myers, every week since 1921, while she was living, up to the time of her death? A. No, sir.

Q. Do you go to work? A. I work.

10 Q. When did you first start to work? A. I have been working ever since my father has been married, that is eight years, and August 1st I will be thirty years old.

Q. You work daytimes or nights? A. Daytimes, eight to four-thirty.

Q. And every day practically? A. Every day. I work in the sheet metal works.

Q. Do you know where Mrs. Bischoff lives? A. I know of the place. I have never been there.

20 Q. Where is it? A. It is in Englishtown, as I understand it.

Q. Down near Trenton? A. Well, I have never been there. I know it is Englishtown.

Q. She has lived there ever since Mrs. Myers was married to your father, has she not? A. I cannot say that. I did not go into them details; I don't know anything about that. Her sister Mary I know did not write to her the first four or five years she has been married to my father.

30 Q. She was married in 1918? A. 1918.

Q. Up until 1923 you say Mary did not write to Christina? A. No.

Q. You are sure about that? A. I am not sure.

Q. When did she first go to Englishtown, do you know? When did Mrs. Myers first visit her sister in Englishtown? A. I could not say that.

Q. How many times altogether, did she tell you that she did not want her folks to get anything of this property? A. Every week.

40 Q. Every week? A. Yes; every week. *ji 1070*

*Elizabeth Vogt—Direct.*

Q. From the time she was married? A. Well, about two years after.

Q. Do you mean two years after she was married? A. Yes.

Q. Do you remember this will that she made? A. No; I do not.

Q. Do you know that she made a will? A. I 10 heard of it; yes.

Q. Your father had it? A. I didn't see it from my father; my sister told me about it—my sister Helen, Mrs. Signoretti.

COMPLAINANT RESTS.

DEFENDANTS' CASE. 20

ELIZABETH VOGT, one of the defendants, sworn as a witness on the part of the defendants, testifies as follows:

*Direct examination by Mr. Morten:*

Q. You are a sister of Christina Myers? A. Yes.

Q. You now live where? A. 437 Twelfth street, West New York. 30

Q. Who owned the property 120 Twenty-fourth street and also the property 122 Twenty-fourth street, Guttenberg before the property became owned, one by you and one by Mrs. Myers? A. My brother Gustave.

Q. When he died who got the property 120 Twenty-fourth street? A. My sister Christina.

Q. Who got the property 122 Twenty-fourth street? A. I did. 40

*Elizabeth Vogt—Direct.*

Q. And what did you do with the property 122 Twenty-fourth street? A. I sold it to Mr. Myers and my sister.

Q. And the purchase price was \$4,200, as Mr. Myers has said? A. \$4,200, yes.

10 Q. Now, then, did you have any conversation with your sister, Christina Myers, at the time you sold the property? A. No, sir.

Q. How did you come to sell it to her, if you did not talk to her? A. Mr. Myers came and said they would like to buy the property, he and my sister. Seeing that my sister was lame, she did not get about very much. She could not walk very well. Mr. Myers came and said they would like to purchase that piece of property.

20 Q. In that transaction did you deal with your sister direct? A. No, sir.

Q. Did you see your sister regarding the transaction at all, when you actually signed the deed? A. Well, my sister was there in Mr. Barrett's office. Mr. Barrett transacted the business.

Q. Tell us what took place there? A. Well, they just paid me \$1,500 payment, and there was a \$2,700 mortgage standing on it.

30 Q. Was anything said about how the deed was to be drawn, in whose name? A. The deed was drawn in both names, in joint names.

Q. Who said that should be done that way? A. No one said it. They were both there.

By the Court:

Q. Was not the deed drawn before you got there? It was not drawn in the office while you were sitting there? A. No; it was all fixed up. Mr. Barrett had the deed ready.

40 Q. Who fixed it? A. Mr. Barrett.

*Elizabeth Vogt—Direct.*

Q. Who told Mr. Barrett to fix it? A. I don't know.

Q. Did you? A. Mr. Myers came and got me to—

Q. When Mr. Myers arranged the sale with you— A. Yes.

Q. And you and he agreed on the purchase price— A. Yes. 10

Q. (Continuing) Didn't he tell you how the deed was to be made? A. Well, Christina and him; my sister and him.

By Mr. Morten:

Q. After Mr. Myers told you that, and when the property was being conveyed, while you signed the deed, did your sister say anything about this property and about the other property, how she was taking the deed and why she was taking it that way? A. My sister didn't say anything about the other property. I just signed the deed. They took the deed and I took the mortgage papers, and we went home. 20

Q. Have you ever had any conversation with your sister since that property was conveyed to your sister, 122 Twenty-fourth street, regarding the property, how it would go on her death? A. On her death, no. 30

Q. Or regarding 120 Twenty-fourth street? A. No; we never conversed on that.

Q. Did you ever have any trouble, or any quarrels, with your sister? A. Well, just like sisters would, little difficulties.

Q. After the marriage? A. After the marriage; no.

Q. Did you ever visit your sister? A. The first year my sister moved away, and of course, me being a working girl— 40

*Elizabeth Vogt—Direct.*

By the Court:

Q. Where were you living? A. I was living in my house then.

Q. Where? A. 122.

Q. And she was living next door, was she not?  
10 A. No.

Q. Where was she living when she got married? A. 118.

Q. Twenty-fourth street? A. Twenty-fourth street.

Q. And you were living in 122 Twenty-fourth street after your sister married? A. After she married.

Q. Right after she married, during the first year of her marriage? A. When she was married she moved.  
20

Q. Didn't she live at 118? A. No. We lived in 118, my sister and me, and then my sister married and she lived down in Twenty-fifth street; her husband had a place down there.

Q. How long after her marriage did she continue to live there? A. I think a year.

Q. That was a block or so away from where you lived? A. No; that was several blocks; I should judge three or four blocks.

Q. Did you work nights? A. No.  
30

Q. Why didn't you go to see your sister at night? A. Well, after work—

Q. Why didn't you go to see her after your work at night? You said you didn't see her for a year after she was married? A. No; I didn't see her for the first year.

Q. Why not? A. Well, I didn't go over.

By Mr. Morten:

Q. After the marriage, Mr. Myers, you say,  
40 came to see you? A. Well, they bought my house.

*Elizabeth Vogt—Direct.*

Q. Where did they go to live then? A. They bought the house and they moved in that house.

Q. That you sold them? A. That I sold them.

Q. And after they moved into that house and lived there, did you visit your sister there? A. Yes; my sister met with an accident in 1921, I believe it was, and Mr. Myers came down and told me that she had met with the accident, and I went up to see her, and I have been visiting her ever since.  
10

By the Court:

Q. When did she meet with this accident? A. I believe it was around Christmas time.

Q. What year? A. In 1921, I believe it was.  
20

By Mr. Morten:

Q. In 1924 did you have any business dealings with your sister? A. Yes; I think I lent my sister \$500 that time, which they wanted to purchase an automobile with.

Q. Did she pay it back to you? A. Yes.

Q. Did you get any security for the \$500 that you loaned your sister? A. Yes; I got a receipt after about a week.

Q. At the time when she gave you the receipt, was anything said by you to your sister about security? A. Yes; I told my sister I liked to have a little security for my money. She said: "Yes; I can hardly expect a loan from you without a little security." The following week I went—  
30

Q. I am talking about security. At the time you spoke about security, did your sister say anything about security? A. Yes; she said she will have a receipt made out for the money.

Q. Did she say anything about security outside of the receipt? A. Outside of the receipt she says:  
40

*Elizabeth Vogt—Direct.*

10 “Yes, I want you to have it, because, no matter what happens, if anything happens in an automobile accident or anything like that, you need never worry. There is money here to cover your \$500, this house here George and I have together and also my house over there. You need not worry about your money.”

Q. After your sister's death did you have a conversation with Mr. Myers about his having been to the Surrogate's office? A. Yes.

Q. Who was with you on that occasion, if anyone? A. No. Mr. Myers came down to my house. He used to visit me once in a while.

Q. Before your sister's death did he visit you, too? A. My sister and he both used to come.

20 Q. They both visited you at your home? A. Yes.

Q. Now, after your sister's death, when he came down to see you, just what conversation did you have with him? A. I says I had wanted to speak to him in regard to the house. As far as I knew, my sister always referred to that house as hers; and I says we had it looked up, and according to law, we are the heirs. I says: “You know that it came from our side and it is no more than right it should go back to my side.” He said: “Yes, but you know that property has been sold, put back, and now it is in the name of Christina Myers.” I says: “Well, we know that.” He says: “But you know I was up to the Surrogate's office, and the Surrogate told me that under a law passed in 1926, what is the wife's, is the husband's.” He said: “Had she died in 1925, why, everything would have gone to the brother and sisters, but it is mine now.”

40 Q. Did you ever see him after that, when you were in company with Mrs. Bischoff? A. Yes, I

*Elizabeth Vogt—Cross.*

did; he came down again. I had Mrs. Bischoff come from the country. I said: “George, I have Mary here now. We want to speak to you now about this piece of property.” I says: “Why don't you go and see a lawyer about this property? You told me the same thing, and I have, and our lawyer says it is ours.” He says: “What lawyer have you been to see?” I said: “Mr. Sauer, and he wants you to give us an account of the rent.” He says: “Yes; when the nine months is up I am going to give an account of the rents and expenses with it.”

Q. Do you remember having any conversation with Mr. Myers about the will that your sister is supposed to have left? A. Yes; we went to the cemetery frequently, to my sister's grave, and on our way I met Mr. Myers and I said: “George, did Christina leave a will?” He said: “She left \$1,000 to the children and \$1 to each of you brother and sisters.” He said that to me. That is what Mr. Myers told me.

Q. Did he ever show you the will? A. I said: “Can you show me the paper?” He said: “If you will come down to the house I will show you the paper.” I went down several times, but Mr. Myers never showed me the paper.

*Cross-examination by Mr. Herr:*

Q. Is it not a fact that you never saw your sister from the time she was married until she had that accident in 1921? A. Yes.

Q. It is true that you did not see her? A. I did not see her. We lived too far apart.

Q. You said in your direct examination it was a year after the marriage—she was married in 1918, you say, and now you say you did not see her for three years? A. I didn't say three years. Well, I cannot just recollect—

*Elizabeth Vogt—Cross.*

Q. As a matter of fact, were not you and your sister, Mrs. Myers, at odds all during the time, from the time of her marriage to the time of her accident? A. I did not see my sister.

Q. You did not see her Christmas, 1921? A. Yes; after she met with the accident.

10 Q. Didn't her husband come down and exhort you to come up and see her? A. He came down and told me of the accident.

Q. If it had not been for that accident you would not have gone to see her? A. Probably I would; yes.

Q. Did Mr. Myers tell you why that will could not be produced? A. He did not speak of the will. He only told me there was a will.

20 By the Court:

Q. Did he tell you whether it was good or not? A. He told me—

Q. Did he tell you whether the will was valid or not? A. No; he did not tell me whether the will was good or not.

By Mr. Herr:

30 Q. Didn't he tell you that the will had only one witness to it? A. He did not tell me nothing, just what he told me when I first asked.

Q. Did he tell you that the will left legacies to the two children? A. To the two children.

Q. You say in 1924 you loaned your sister \$500? A. Yes.

Q. What for? A. She said she wanted to buy an automobile.

40 Q. Was her husband with her when you lent her that money? A. Yes; he was there. She said: "George and I want to loan \$500 from you. We want to buy an automobile."

*Josephine Fessler—Direct.*

Q. You loaned that money to Mr. Myers as well as your sister? A. My sister asked me for it and I loaned it to both of them.

Q. And you got a receipt signed by both of them? A. Yes.

Q. Do I understand you to say you got security in the form of a mortgage? A. For the house. 10

Q. Which house? A. 122.

Q. Did you get any security for the \$500? A. For the \$500, yes, Mr. Myers, I think, went to a Notary Public. We went up there to get a receipt and it seemed the place was closed, and Mr. Myers said: "I will bring you your receipt."

By the Court:

Q. Did you get any security for your loan other than this receipt? A. No, I didn't get any other security; no. 20

JOSEPHINE FESSLER, sworn as a witness on the part of the defendants, testifies as follows:

*Direct examination by Mr. Morten:*

Q. Where do you live now? A. 45 Eighth street, Fairview. 30

Q. Did you know Christina Myers in her lifetime? A. As long as I am in the country.

Q. How long is that time? A. It was the 6th of March, twenty-six years.

Q. Did you ever live in her property? A. Yes.

Q. What property? A. 120 Twenty-fourth street.

Q. How long did you live there? A. Well, nearly twenty years.

Q. When did you move out? A. I moved out the first of July, 1925. 40

*Josephine Fessler—Direct.*

Q. And during all the time that you lived there, to whom did you pay the rent? A. Well, usually to Mrs. Myers.

Q. Did you ever get a receipt signed by anybody else other than Mrs. Myers? A. Once in a while I got a receipt.

10 Q. Who signed it? A. Mrs. Myers, Christina Myers.

Q. Did Mr. Myers ever sign any receipt? A. I do not know who signed, but his name was not on—George Myers.

Q. Did you ever have any talk with her about this property, 120 Twenty-fourth street? A. Yes; we were very good friends with her.

20 Q. What conversation have you had with her? You had a mortgage on this property 120 Twenty-fourth street? A. 122 Twenty-fourth street.

Q. You had a mortgage on 122 Twenty-fourth street? A. Yes.

Q. Was that mortgage on the house of Mrs. Myers? A. Mrs. Myers and Mr. Myers, both of them.

Q. In talking with her about her property what did she say to you about it, about those two properties? A. Well, that property was together. She used to say: "That is my house; 120 is my house."

30 Q. Did she say what would become of it on her death? A. Well, she said: "As long as I live it is mine and when I die I wish the country children get something." Sometimes she mentioned the two boys, Adam and Willie, because they were very good to her.

Q. I am talking about 120. A. That is hers. She spoke of that.

40 Q. What about the other house? A. The other house we never bothered about it because they were both together.

*Josephine Fessler—Direct.*

By the Court:

Q. What did she say about Adam and Willie?

A. She wanted them to get the most. Willie was very good to her. They gave their earnings in.

Q. Her stepchildren? A. Her stepchildren; yes, sir.

10

By Mr. Morten:

Q. Did she say in whose name the property was? A. 120?

Q. Yes. A. Well, when it was changed we got a receipt, and I said: "What is that—Christina Myers?" She said: "Yes, I had my name changed."

Q. Did she say why she had it changed? A. I don't remember that any more.

20

Q. After this property had been changed into her name as Christina Myers— A. The first receipts were Christina Vogt.

Q. Before she married Mr. Myers? A. Well, I guess even sometime later. I don't remember that any more. We never got many receipts anyhow.

Q. Then you got a receipt signed by Christina Myers? A. Yes; when the rent was raised we got a receipt.

30

Q. What did she say about the property after you got the rent receipt signed Christina Myers? A. That is 120; that was her property.

Q. Did she say where that was to go when she died, what she wanted to happen when she died? A. That is what she told me: "As long as I am living, it is mine. If I die, the country children should get something of it."

Q. Who were the children in the country? A. Mrs. Bischoff's two children.

40

*Josephine Fessler—Cross.*

*Emily Schiess—Direct.*

By the Court:

Q. What property is this? A. That is 120.

By Mr. Morten:

10 Q. What property is that that she wanted Adam to get? A. She always said about it—I don't know which one she meant.

Q. Which property was Adam to get? A. I don't know. But she always mentioned the two boys.

*Cross-examination by Mr. Herr:*

20 Q. Speaking about this property at 120, didn't Mrs. Myers tell you that she did not want her sisters or brother to have any of it after her death? A. Well, the first couple of years in the beginning, after the marriage to Mr. Myers, she spoke kind of angry toward her brother and sisters, but the last couple of years, she was warmer; only her brother, she would never talk to her brother.

30 Q. You said in the first couple of years. That was after her marriage to Mr. Myers? A. Yes; the first few years after her marriage to Mr. Myers.

EMILY SCHIESS, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Morten:*

Q. You formerly lived at 122 Twenty-fourth street, Guttenberg? A. Yes.

40 Q. How long did you live there? A. Sixteen years.

*Emily Schiess—Direct.*

Q. Do you remember when the property was transferred by Miss Vogt to Mr. and Mrs. Myers? A. I was not living there then.

Q. You were not living there then? A. I cannot even remember. They never said anything about it. I never was interested in it.

10

By the Court:

Q. When did you move from 122 Twenty-fourth street? A. August, 1924.

By Mr. Morten:

Q. Did you ever pay rent to Mr. and Mrs. Myers or either of them? A. Either of them.

Q. Did you get any receipts? A. Once in a while; very seldom.

20

Q. To whom did you pay the rent that you paid? A. Mr. Myers or Mrs. Myers, whoever was there when I took it. Sometimes my daughter would go up with it. More times I would go up with it.

Q. I show you three rent receipts and ask you if you recognize those as receipts that you have received for rent? A. Yes. Those were my receipts.

Q. By whom are those receipts signed? A. By Mr. Myers.

30

Q. Did you ever receive any receipt for rent signed by anybody else but Mr. Myers while you were there? A. I cannot say, because sometimes they were brought back. I was not always there when they brought them.

Q. I mean the signature? A. Yes; signed "Mr. Myers."

Q. Did you ever have any conversation with Mrs. Myers, about the time you moved, why you 40

*Emily Schiess—Cross.*

10 moved from the property? A. Well, I will tell you. I asked Mr. Myers, the year before we moved, in the fall, that I would like to have my kitchen painted, because it needed it. Mr. Myers said that he hadn't time. So I said: "If you haven't time, my son-in-law will paint it if you get the paint." Mr. Myers then said: "If it needs any paint, I will paint it myself." So, there wasn't anything more said and I waited until Mr. Myers would come in and paint the kitchen, but he never came in to paint it; so in the spring of the year I spoke to Mrs. Myers about it. She says to me: "Well, Mrs. Schiess, I have nothing to say about this house," she says, "I leave it to Mr. Myers, because this house belongs to Mr. Myers, and the house next door is mine."

20 Q. That was in the spring before you moved, you mean? A. Yes.

Q. I think you said you moved in August, 1924? A. Yes.

*Cross-examination by Mr. Herr:*

Q. Did not Mrs. Myers tell you that the property at 120 Twenty-fourth street was fixed so that it would go to her husband, Mr. Myers? A. No; she never said anything to me about that.

30 Q. You had a litigation, didn't you, with Mr. Myers, at the time you moved out of the house 122; you had some unpleasantness about moving out? A. Mr. Myers and my son-in-law, they had words about some stone flag, sidewalk flag, after which Mr. Myers handed me a notice that our rent was raised from \$35 to \$40, to be due August 1st, but I didn't pay. I got rooms and I moved to 37 Park avenue, where we are living now.

40

*Louise Krueger—Direct.*

LOUISE KRUEGER, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Morten:*

Q. Where do you live? A. 594 Palisades avenue, West New York. 10

Q. Did you know Mrs. Myers in her lifetime? A. About thirty years.

Q. Do you remember having a conversation with her about the latter part of the year 1925? A. Yes.

Q. What conversation did you have with her at that time? A. Well, I met her on Bergenline avenue and she told me that she had an argument at home and she went home. I told her to go home. 20

*By the Court:*

Q. She had an argument with whom? A. With the Myerses, whoever they were; I don't know, because it was a family affair.

Q. With the Myerses; you knew she was Mrs. Myers, didn't you? A. I certainly did. I say the Myers family.

*By Mr. Morten:*

Q. She had an argument with someone in the family? A. Yes. 30

Q. Did she have any conversation with regard to her property at that time? A. Yes.

Q. Tell us what she said? A. Well, she told me,—she said the property is all hers now; it will stay in her name, it will always be in the family.

Q. Which property was that? A. 120; and that the adjoining property was on joint names.

Q. At that time did she say where she had got the property, 120, from? A. Certainly. I knew as well as she did. 40

*Louise Krueger—Cross.*

*Cross-examination by Mr. Herr:*

Q. Is that the only time you ever had a talk with her about that property? A. Which?

Q. 120. A. Occasionally we spoke of it; sure.

Q. Had you known at that time of the transfer in 1921? A. Yes.

10 Q. You knew about that? A. Yes.

Q. How did you know about that? A. Well, my daughter told me about it. She visited there and she told me about it.

Q. Had Mrs. Myers before that told you that she had that house transferred to joint names? A. No, never.

Q. Hers and her husband's? A. Just that house.

20 By the Court:

Q. Did she tell you that she had that transfer made of deeds? A. Well, she said the property was hers.

Q. Did she tell you that she had a transfer made through deeds that had been signed? A. No; I never spoke of that at all.

By Mr. Herr:

30 Q. You never spoke about that at all? A. I didn't speak about it. Being that we were friends of course she knew that I knew it, but she never mentioned it particularly.

Q. So, the only conversation you had with her about it was this talk in 1925? A. That I remember.

Q. What she said that time was—— A. (Interrupting): The property was hers.

Q. 120? A. 120; yes.

40 Q. 120 was hers? A. Yes.

*Louise Krueger—Cross.*

Q. Did she mention the number of the house? A. No. That was "my house" and "my house". That is all she ever said—"my house".

Q. How do you know that she meant 120? A. Because I knew it was her house.

Q. She mentioned no numbers? A. No; no.

Q. What did she say? A. She said it was her house. 10

By the Court:

Q. She said that house was hers. Did she name any house at all? A. She just said the property was in her name. It was hers. That is all.

By Mr. Herr:

Q. Without saying what number? A. We never 20 mentioned any numbers. She said the property was hers and it would stay hers.

Q. Do you know whether she had other property or not? A. Not that I know of. Just the one next door that she lived in.

Q. So far as you knew, she might have meant some other property? A. No; she did not, because she was arguing on account of the persons that lived in the house, and it seems as though Mr. Myers would not go over and settle the argument 30 for her.

Q. Who was the person she was arguing about? A. I don't know who it was.

Q. Don't you remember who it was? A. I believe it was one of the families she was arguing with.

By the Court:

Q. Someone living in what house? A. 120. 40

*Mary Bischoff—Direct.*

By Mr. Herr:

Q. Was it not Mrs. Schiess who just testified?  
A. No; no.

Q. Who was it, do you know? A. One of the daughters—I don't know which one—left.

10

By the Court:

Q. One of the daughters of whom? A. Of Mr. Myers.

By Mr. Herr:

Q. You mean that one of Mr. Myers' daughters was a tenant in 120? A. Yes.

20 Q. And it was that daughter that Mrs. Myers had been having an altercation with; is that it?  
A. Yes.

---

MARY BISCHOFF, sworn as a witness on the part of the defendants, testifies as follows:

Direct examination:

Q. You live at Englishtown, Middlesex County, New Jersey? A. Yes.

30 Q. How long have you lived there? A. Fourteen years.

Q. You are a sister of Christina Myers? A. Yes.

Q. Now, do you remember the occasion of the marriage of your sister to Mr. Myers, the complainant; you know they were married? A. Yes.

40 Q. After they were married, did your sister, together with Mr. Myers, visit you at your home in Englishtown? A. Both her and her husband.

*Mary Bischoff—Direct.*

Q. How many times have they visited you at Englishtown? A. Well, two or three times a year.

Q. Do you remember your sister, Mrs. Myers, being at your house the last time? A. Yes.

Q. How long was that before her death? A. That was about two weeks. 10

Q. How long did she stay? A. From Saturday to Sunday.

Q. Was Mr. Myers with her? A. Yes.

By the Court:

Q. How long did they stay? A. From Saturday to Sunday.

By Mr. Morten:

20

Q. They stayed the week-end when they came? A. Yes.

Q. How did they come there, by train or automobile? A. They came by train and from the station they came by bus.

Q. Did you ever have any quarrel whatsoever with your sister? A. I never had a word, but when my sister got married, she made new friends and she kind of slurred us. I didn't hear from her for some time and all at once they came. I never had a word with her. 30

Q. Do you know where your sister got the property 120 Twenty-fourth street? A. From my brother.

Q. Your other sister got the other property, 122 Twenty-fourth street, where? A. From my brother.

Q. Did you ever have any talk with your sister, Mrs. Myers, regarding the title to the property and how it was going to go, or anything of that 40

*Mary Bischoff—Direct.*

sort, in case of her death? A. Well, when my sister was here the last time she was telling me that she was sick, and she said she knew she would not live long, and if anything happened to her, the family house, the joint one, that is George's; and she said: "Mary, the other house is mine. I had my house transferred to my marriage name, and it is still my house."

Q. You say that she said that on the last occasion? A. Yes; the last time that I saw my sister.

Q. Since the death of your sister have you had any occasion to enter into a conversation with Mr. Myers, the complainant? A. Yes. I was here the 12th of October last year. We got George down in regard to this affair.

Q. Who was there? A. Libby and I.

Q. By "Libby" you mean your sister Elizabeth? A. Yes.

Q. And Mr. George T. Myers? A. Yes.

Q. And yourself? A. Yes; we were all there.

Q. Where did this meeting take place? A. In Libby's house.

Q. What was the conversation as near as you can tell? A. We got George down and we told him that we had this thing looked up and why, we are told that the place is Christina's and we are the sisters, and we are the heirs at law, and we were told that he should give us an account of the rents, collecting the rents, and what is becoming of them, and so on. So he said he is collecting the rents and taking care of the income and expenses also, and at the end of nine months he would turn it over and settle at court. I said: "George, you know that the house came from Christina, that was Christina's." "I know that," he says. I says: "I do not think it is any more

*Mary Bischoff—Cross.*

than fair that the house should go to us." He said: "The house would go back to you had Christina died last year, but," he says, "you know there has been a new law passed, 1926, that what is the wife's is the husband's, and that makes me the owner of that house."

Q. You say that was October 12, 1926? A. The 12th of October, 1926.

*Cross-examination by Mr. Herr:*

Q. In that last conversation did he also say that he had understood the property was in both names but had found out after his wife's death that it was only in Christina's name? A. No. After I said that, he said he knew that that place would come back to us had Christina died the year before, but that under the law of 1926 it would not come to us. I said: "We will find out from somebody who does knew."

Q. Do you know whether that was before or after Mr. Myers had been to the Surrogate's office? A. He has never spoken about the Surrogate's office, but this was the 12th of October.

Q. How long was it after your sister's marriage before you saw her? A. Well, I don't know. It might have been about two years.

Q. Did you attend the wedding? A. No; she never told me anything about it. She got married and I never knew of it.

Q. Is it not true that you were angry with her for having married? A. Never had a word. My sister and I never had a word. She visited me before she was married. We never had a word.

Q. Have you any idea when your first visit was? A. Six or seven years ago.

Q. Was it before 1921 or after 1921? A. Before.

*Valentine Vogt—Direct.*

Q. You think she had been married two years before her visits started? A. Yes; I say about two years.

Q. Might it have been three years? A. Exactly I could not say.

10 Q. When was the first conversation you had with her about this property? A. Well, she often would speak of her house.

Q. When was the first conversation that you had with your sister, Chrstina, about the property? A. She always spoke of her house in different ways.

Q. When was the first conversation? A. I could not say.

20 By the Court:

Q. You can say whether it was in 1918, 1919, or 1923, or 1924? A. No, sir; I cannot say. I cannot recollect.

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VALENTINE VOGT, sworn as a witness on the part of the defendants, testifies as follows:

30 *Direct examination by Mr. Morten:*

Q. You are a brother of Christina Myers? A. Yes, sir.

Q. Up to the time of her death had you ever had a quarrel or words with her in any way? A. No, sir.

Q. Before her marriage did you visit her at all? A. Before her marriage we lived together.

Q. You lived together? A. Yes, sir.

40

*Valentine Vogt—Cross.*

By the Court:

Q. Up to the time of her marriage? A. Up to the time of her marriage; yes, sir.

By Mr. Morten:

Q. After the marriage did you visit her? A. 10 I did not.

Q. Why not? A. Because Mr. Myers passed the remark that if I ever put a foot in the door, he would throw me out.

Q. You never visited your sister from that time on? A. No, sir.

*Cross-examination by Mr. Herr:*

Q. You disapproved of the marriage of your 20 sister to Mr. Myers? A. I didn't know anything of it.

Q. You disapproved of it when you learned of it, didn't you? A. I did.

DEFENDANT RESTS.

CASE CLOSED.

30

40

**Exhibit C-1.**

THIS INDENTURE, made the Fourteenth day of July, in the year of our Lord One Thousand Nine Hundred and Twenty One

10 BETWEEN Christina Myers (formerly Christina Vogt) and George T. Myers, her husband, of the Town of Guttenberg, in the County of Hudson and State of New Jersey of the first part;

AND George R. Myers (Single Man) of the Town of Guttenberg in the County of Hudson and State of New Jersey of the second part:

20 WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other valuable consideration lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever,

30 ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Guttenberg in the County of Hudson and State of New Jersey, which on a Map of said Town of Guttenberg, made by William Hexamer, Surveyor for the Weehawken Land and Ferry Association and filed in the Clerk's (now Register's) office of Hudson County, N. J., on the seventh day of June A. D., 40 1853, is known, distinguished and laid down as

*Exhibit C-1.*

Lot Numbered Five Hundred and Forty-two (542) in Block Number Twenty-five (25) fronting and facing on the Northerly side or line of Hudson Avenue (now 24th Street) as shown on said Map, said lot being twenty-five (25) feet wide in front and rear and one hundred (100) feet deep on each side as by reference to said Map will more fully appear. 10

Being the same premises conveyed by Mary Bischoff and husband and others by deed dated January 15, 1915, to Christina Vogt the party of the First Part, who has since then married George T. Myers and who joins in this deed as grantor, said deed being recorded in the Register's office of Hudson Co., N. J., Feby 2nd, 1915, in Liber 1191 of Deeds, pages 626 &c. 20

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with 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: 30

AND the said party of the first part for themselves their heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that they have not made, done, commit- 40

Exhibit C-1.

ted, executed or suffered any act, matter or thing whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or encumbered, in any manner or way whatsoever.

10

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

CHRISTINA MYERS.  
GEORGE T. MYERS.

Signed, sealed and delivered }  
in the presence of }  
JAMES P. BARRETT.

20

(Stamp) [SEAL]  
7-14-21  
J. P. B.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

BE IT REMEMBERED, That on this 14th day of July, in the year of our Lord One Thousand Nine Hundred and Twenty One, before me the subscriber, a Commissioner of Deeds for the aforesaid County and State personally appeared Christina Myers and George T. Myers, her husband, who, I am satisfied, are the grantors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed;

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Exhibit C-1.

AND the said Christina Myers being by me privately examined, separate and apart from her said husband, further 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.

10

JAMES P. BARRETT,  
Commissioner of Deeds, N. J.

Compared 7550

DEED.

Christina Myers and husband to George R. Myers.

Indexed under County Block No. 2235. 20

Register's Office  
Jul 14 11:08 A M 1921  
Hudson County, N. J.

Dated, July 14, 1921.

RECEIVED in the Register's Office of the County of Hudson, N. J., on the 14 day of July A. D. 1921, at 11:08 o'clock in the forenoon, and Recorded in Book 1407 of DEEDS for said County, on pages 271 etc. 30

JAMES J. MAHONEY,  
Register.

BARRETT

40

**Exhibit C-2.**

THIS INDENTURE, made the Fourteenth day of July, in the year of our Lord One Thousand Nine Hundred and Twenty One

10 BETWEEN George R. Myers (Single Man) of the Town of Guttenberg, in the County of Hudson and State of New Jersey of the first part;

AND Christina Myers, wife of George T. Myers, of the Town of Guttenberg, in the County of Hudson and State of New Jersey of the second part:

20 WITNESSETH, That the said party of the first part, for and in consideration of One Dollar and other valuable consideration lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these present do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to her heirs and assigns, forever,

30 ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Guttenberg, in the County of Hudson and State of New Jersey, which on a Map of said Town of Guttenberg, made by William Hexamer, Surveyor for the Weehawken Land and Ferry Association and filed in the Clerk's (now Register's) Office of Hudson County, N. J., on the seventh day of June A. D., 40 1853, is known, distinguished and laid down as Lot

*Exhibit C-2.*

Numbered Five Hundred and Forty-two (542) in Block Number Twenty-five (25) fronting and facing on the northerly side or line of Hudson Avenue (now 24th Street) as shown on said Map, said lot being twenty-five (25) feet wide in front and rear and one hundred (100) feet deep on each side as by reference to said Map will more fully appear. 10

Being the same premises that were conveyed by the party of the second part to the party of the first part by Deed of even date herewith and to be recorded simultaneously herewith.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining: 20

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever: 30

AND the said party of the first part for himself, his heirs, executors and administrators, do covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that he has not made, done, committed, executed or suffered any act, matter or thing whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be 40

Exhibit C-2.

impeached, charged or encumbered, in any manner or way whatsoever.

IN WITNESS WHEREOF, the said part of the first part has hereunto set his hand and seal the day and year first above written.

10

GEORGE R. MYERS.

Signed, sealed and delivered }  
in the presence of }

JAMES P. BARRETT.

(Stamp)

7-14-21

J. P. B.

[SEAL]

20

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, } ss.:

30

BE IT REMEMBERED, That on this 14 day of July, in the year of our Lord One Thousand Nine Hundred and Twenty One, before me the subscriber, a Commissioner of Deeds for the aforesaid County and State personally appeared George R. Myers (Single Man) who, I am satisfied, is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed;

40

AND the said James P. Barrett, Commissioner of Deeds, N. J., being by me privately examined, separate and apart from said husband, further acknowledged that signed, sealed and delivered the same as voluntary act and deed, freely,

Exhibit C-2.

without any fear, threats or compulsion of his said husband.

DEED.

Compared

7551

George R. Myers to Christina Myers.

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Indexed under County Block No. 2235

Register's Office

Jul 14 11:08 A M 1921

Hudson County, N J.

Dated, July 14, 1921.

RECEIVED in the Register's Office of the County of Hudson, N. J., on the 14 day of July A. D. 1921, at 11:08 o'clock in the forenoon, and Recorded in Book 1407 of DEEDS for said County, on pages 372 etc.

JAMES J. MAHONEY,  
Register.

BARRETT

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**Conclusions.**

(Dated March 23, 1927.)

*(Not to be Published in Any Report.)*

March 23, 1927.

10 IN CHANCERY OF NEW JERSEY.

62-482.

Between	GEORGE T. MYERS, Complainant, and ELIZABETH VOGT, <i>et al.</i> , Defendants.	} On Bill, &c.
20		

MR. DOUGAL HERR for Complainant.

MR. PHILIP F. SAUER and MR. LOUIS G. MORTEN for Defendants.

FIELDER, V. C.

30 Christina Vogt purchased the land and premises described in the bill of complaint, and the same were conveyed to her by deed dated January 15, 1915. She married the complainant April 10, 1918. By deed dated July 14, 1921, made by "Christina Myers (formerly Christina Vogt)", and complainant, her husband, they conveyed the land and premises to George R. Myers who, by deed dated and recorded the same day as the deed to him, conveyed the same to "Christina Myers, wife of George T. Myers".

40 No consideration moved for either conveyance.

*Conclusions.*

The complainant contends that shortly prior to the execution of these deeds his wife had told him she desired to give him an interest in the property by having the title transferred to their joint names as husband and wife and that she instructed him to arrange such transfer; that he engaged a scrivener to whom he and his wife communicated his wife's wishes and that the scrivener prepared the above mentioned deeds and attended to their execution and recording; that upon the execution of the conveyances, complainant and his wife believed that title was vested in them as tenants by the entirety; that after the deeds were executed, they were taken by the scrivener who recorded them and thereafter delivered them to Mrs. Myers and that complainant never saw them from the time of execution until after his wife's death, intestate, June 2, 1926, when he discovered the scrivener's mistake in failing to name complainant as a grantee in the deed from George R. Myers. He brings this suit against his wife's heirs at law, alleging that by mistake of the scrivener, in which he and his wife inadvertently participated, the deed from George R. Myers was drawn and executed to Christina Myers instead of to Christina Myers and George T. Myers, her husband, and he prays that said deed be reformed so as to conform to his wife's intention.

George R. Myers is not named as a defendant, although it is his deed which complainant seeks to reform. Objection to this omission might have been sustained (*Vanderbeck v. Perry*, 28 N. J. Equity, 367; *Malone v. Romano*, 95 N. J. Equity, 291), but no such objection was presented. He was a witness at the hearing and it is certain that he never had any actual interest in the property

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*Conclusions.*

and that he was merely an intermediary through whom title was transferred. His omission as a defendant does not affect the merits of the controversy and will be given no further consideration.

10 The deed sought to be reformed is in all particulars complete and unambiguous. The grantee is clearly named and all pronouns referring to the grantee are in the singular number and feminine gender. Ordinarily, parol testimony would be inadmissible to alter, vary or contradict it in any respect and under that section of the statute of frauds which provides that no action shall be brought upon an agreement for the sale of lands, or any interest in or concerning them, unless the agreement be in writing, the complainant could not succeed in this action, but because of the equitable principle that when a complainant alleges that a deed executed pursuant to an agreement to convey to him, does not fully or correctly express the intention of the parties thereto, through mistake, parol testimony will be received in support of the allegation, the reason being that application of the rule of evidence and of the statute, would permit the defendant to perpetrate a fraud on the complainant.

30 It is my opinion that the weight of evidence before me is in favor of the complainant's contention that it was his wife's intention to vest title in herself and complainant as tenants by the entirety, but to entitle the complainant to relief by way of reformation of the deed, it must appear that through the failure to carry out his wife's intention, he has been defrauded. (*Wirtz v. Guthrie*, 81 N. J. Equity, 271; *Vogt v. Mullin*, 82 N. J. Equity, 452.) How can he be said to be the victim of any kind of fraud which deprived

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*Conclusions.*

him of a right to which he was legally entitled? His expectation of receiving a gift was not realized, but he lost no right. His possible courtesy right was unchanged by the transaction. He did not alter his position as to his wife, the property or his own business affairs because of a belief that an interest in the property had been conveyed to him. He expended no money for permanent improvement after the conveyance. Before the conveyance he had done repair work on or about this property and after the conveyance he continued to perform services of the same nature, not (so far as the evidence shows) because he believed he was a tenant by the entirety, but because he was a husband and a mechanic. From the time of his marriage all rent from this property, together with rent from another property which complainant and his wife owned jointly, was deposited in a bank account which stood in his wife's name alone up to July 14, 1924, at which time the bank account was changed to their joint names and the deposits in both accounts were always used for their joint benefit. Complainant employed the scrivener to whom he and his wife stated their instructions and if the scrivener misunderstood or failed to carry out their wishes, there was no fraud practiced, but the conveyances were merely an abortive attempt to make complainant a promised gift. (*Marsh v. Cook*, 32 N. J. Equity, 262; *Dimler v. Caldwell*, 87 N. J. Equity, 366.)

What complainant really seeks is performance of his wife's promise to convey. Had he brought this suit against her in her lifetime (in the event that she had refused to correct the mistake), he would have been met by the statute of frauds as a defence and by the further defence that there

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Conclusions.

was no consideration for the promise. As against his wife's heirs at law I think complainant not entitled to a decree which, in its practical effect, would be to compel the performance of his wife's voluntary, naked promise to convey to him. (Ownes v. Ownes, 23 N. J. Equity, 60; Mulock v. Mulock, 31 N. J. Equity, 594-602; affirmed 32 N. J. Equity, 348; Woodruff v. Morristown, 34 N. J. Equity, 174; Wittingham v. Lighthipe, 46 N. J. Equity, 429; Collins v. Toppin, 65 N. J. Equity, 439-478; affirmed 66 N. J. Equity, 430; Austin v. Young, 90 N. J. Equity, 47; Roberts v. Gedicks, 94 N. J. Equity, 82; affirmed 96 N. J. Equity, 384.)

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Decree.

(Filed April 4, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

GEORGE T. MYERS,  
Complainant,

and

ELIZABETH VOGT, et al.,  
Defendants.

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This matter coming on to be heard in the presence of Dougal Herr of Hopkins & Herr, of counsel with the complainant, and Louis G. Morten and Philip F. Sauer, of counsel with the defendants, and the pleadings having been read and the proofs offered by the respective parties having been

Decree.

taken and the arguments of the respective counsel having been heard, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint;

It is on this 4th day of April, 1927, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED that the order for the preliminary injunction made in the above cause on the 20th day of December, 1926, which enjoined and restrained the defendants from the further prosecution of an action in ejectment brought by them and pending in the Hudson County Circuit Court against the complainant herein to recover possession of the lands and premises described in the bill of complaint, and also enjoining and restraining an action commenced by the said defendants in the First District Court of Jersey City, to recover from this complainant the rents and profits of the said premises since June 2nd, 1926, be and the same is hereby vacated.

And it is further ordered and decreed that the bill of complaint herein be dismissed and that complainant pay to the defendants the costs of this suit to be taxed, and that execution issue therefore according to the practice of this court.

E. R. WALKER,  
C.

Respectfully advised,

JAMES F. FIELDER,  
V. C.

The above decree is approved as to form.

HOPKINS & HERR,  
Solicitors for Complainant.

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**Notice of Appeal.**

(Filed April 8, 1927.)

IN CHANCERY OF NEW JERSEY.

10	Between GEORGE T. MYERS, Complainant, and ELIZABETH VOGT, <i>et al.</i> , Defendants.	}	On Bill, etc.
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20 The complainant hereby appeals from the final decree made in this Court in the above stated cause, and all and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, April 6th, 1927.

HOPKINS & HERR,  
Solicitors of Complainant.

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

DOUGAL HERR,  
Of Counsel with Complainant.

Due service of the above notice of appeal is herewith acknowledged this 6th day of April, 1927.

PHILIP F. SAUER,  
Solicitor of Defendants.

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**Amended Notice of Appeal.**

(Filed April 22, 1927.)

IN CHANCERY OF NEW JERSEY.

10	Between GEORGE T. MYERS, Complainant, and ELIZABETH VOGT, <i>et al.</i> , Defendants.	}	On Bill, etc.
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20 The complainant hereby appeals from the whole and every part of the final decree made in the above stated cause by the Chancellor, on the advice of Vice Chancellor James F. Fielder, to the Court of Errors and Appeals in the last resort in all causes.

Dated, April 19th, 1927.

HOPKINS & HERR,  
Solicitors for Complainant.

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

DOUGAL HERR,  
Of Counsel with Complainant.

Due service of the above amended notice of appeal is herewith acknowledged this 20th day of April, 1927.

PHILIP F. SAUER,  
Solicitor of Defendants.

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**Petition of Appeal.**

(Filed April 12, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10 Between

<p>GEORGE T. MYERS, Complainant-Appellant,  and ELIZABETH VOGT, <i>et als.</i>, Defendants-Respondents.</p>
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20 *To the Honorable the Court of Errors and Appeals in the last resort in all causes:*

The petition of George T. Myers, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the fourth day of April, in the year Nineteen Hundred and Twenty-seven, wherein the said petitioner was complainant, and

30 the said Elizabeth Vogt, and others, were defendants, in this respect, to wit: that the said decree adjudges that the order for the preliminary injunction made in said cause on the 20th day of December, 1926, which enjoined and restrained the defendants from the further prosecution of an action in ejectment brought by them and pending in the Hudson County Circuit Court against the complainant, to recover possession of the lands and premises described in the bill of complaint

40 and also enjoining and restraining an action com-

*Petition of Appeal.*

menced by the said defendants in the First District Court of Jersey City, to recover from the complainant rents and profits of the said premises since June 2, 1926, be vacated, and that the bill of complaint be dismissed, and that complainant pay to the defendants the costs of said suit to be taxed, and that execution issue therefor according to the practice of the said Court of Chancery, and your petitioner humbly appeals from the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that said decree should have adjudged that said preliminary injunction should be made absolute and permanent, and that the prayer of the bill should be granted with costs.

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

HOPKINS & HERR,  
Sol'rs for and of counsel with appellant.

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**Answer to Petition of Appeal.**

(Filed April 14, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10 Between  
 GEORGE T. MYERS,  
 Complainant-Appellant,  
 and  
 ELIZABETH VOGT, *et als.*,  
 Defendants-Respondents.

20 The answer of Elizabeth Vogt, Valentine Vogt and Mary Bischoff, the above named respondents, to the petition of appeal of George T. Myers, the above named appellant.

These respondents, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that a decree was on April 4th, 1927, made and entered in the Court of Chancery of New Jersey, in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these respondents beg leave to refer thereto when the same shall be produced.

30 These respondents are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these respondents.

PH. F. SAUER,  
 Solicitor for Defendants-Respondents.  
 Of Counsel.

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NEW JERSEY

Court of Errors and Appeals

Between  
 GEORGE T. MYERS,  
 Complainant-Appellant,  
 and  
 ELIZABETH VOGT *et als.*,  
 Defendants-Respondents.

On appeal from Final Decree of the Court of Chancery.

**APPELLANT'S BRIEF.**

The complainant below appeals from a final decree of the Chancellor, advised by Vice-Chancellor Fielder, dismissing the bill with costs and vacating an *ad interim* restraint against the defendants' prosecution of two actions at law, one in ejectment and the other for mesne profits.

**Statement of the Case.**

The bill prayed for the reformation of a deed of conveyance (Exhibit C-2, p. 102), by which property was granted to "Christina Myers, wife of George T. Myers," so that the grant should be to Christina Myers and George T. Myers, her husband, as tenants by the entirety. The ground was mutual mistake.

Christina Myers died intestate June 2, 1926. Her husband, the complainant, then first became aware of the error, by which instead of being the

surviving owner of the property, he found himself without any legal estate whatever.

The defendants, heirs at law of Christina Myers, brought ejectment and sued for mesne profits, and were met by the bill in this suit, with the ad interim restraint granted thereon.

The Vice-Chancellor was satisfied that the parties intended to create an estate by the entirety, and that the error was that of the draftsman, but denied relief on the ground that what was intended was a gift from the wife to the husband, which was imperfectly consummated because of the error, and that equity could not decree reformation because the complainant had not put any permanent improvements on the land.

The Vice-Chancellor was clearly wrong in considering that the transaction was a gift. The proofs are clear and undisputed that it was in furtherance of a contract by which all properties of the husband and wife were pooled and a common fund established, so that their enjoyment should be in common during their joint lives, and so that the survivor should take all.

#### Statement of Facts.

The complainant, George T. Myers, married Christina Vogt on April 10, 1918. She then owned a two-family house in Guttenberg, Hudson County, known as No. 120-24th Street, which became vested in her on January 15, 1915, by deed dated that day and recorded in the Hudson County Register's office in Book 1191 of Deeds at page 626.

Shortly after her marriage to complainant, the property next door to the house in question, known as No. 122-24th Street, was purchased by husband and wife in their joint names, as tenants by the

entirety. The consideration of \$4,200 was paid \$1,500 in cash, and \$2,700 by purchase money mortgage. Of the cash, complainant furnished \$500 of his own, and \$1,000 was raised by placing a mortgage on No. 120-24th Street, the property of the wife (pp. 38-39).

The complainant is a painter and paper-hanger by trade (p. 34, line 18). In the year 1919 he undertook to paint the house known as 122-24th Street. His wife then suggested that he also paint the house No. 120, and proposed that they put all of their property together, including his future earnings and labor, into one common ownership, for their enjoyment in common during their joint lives, the survivor to take all.

Complainant testified that his wife proposed: "Whatever you make, put together, and if I die, it is yours, and if you die, it is mine" (Case, p. 40, lines 1-3); "What is yours is mine, and what is mine is yours" (Case, p. 44, line 24); "We will put everything together, and whatever you do is yours; whatever you do on the house is for your own benefit" (Case, p. 44, line 40; p. 45, line 2).

Bertha Schmidt, a disinterested witness, testified that she had had complainant do a painting job on her house, and went to the complainant's home in order to pay him. He was not there, but Mrs. Myers accepted the payment, stating: "You can give it to me; that is just the same. What is mine is my husband's and what is my husband's is mine. Both goes in one" (Case, p. 62, line 37).

Christina Myers frequently thereafter spoke of the arrangement to different members of the family, who testified in corroboration of it, and there is no evidence to the contrary.

Myers assented to the proposal, proceeded to paint the house No. 120, and thereafter did all of the carpenter work, plumbing, roofing work and general repairs on the property (p. 36, lines 28-32). He also attended to all of the business of running the property, collecting rents, etc. (p. 46, lines 10-12).

In accordance with the agreement, Myers from the year 1919 on contributed all of his earnings, together with those of his son, into the common fund, into which also the rents of both properties were paid, and all of the income of both husband and wife was indiscriminately commingled. This fund was deposited in the wife's bank account until July 4, 1924, when it was changed to a joint account, survivor to draw, pursuant to the agreement (Case, pp. 36, 37).

From this joint fund, into which all of the husband's earnings had been contributed, the mortgage of \$1,000 on No. 120 (placed there to raise a part of the purchase price of No. 122) was paid off, and the purchase money mortgage on No. 122 reduced from \$2,700 to \$1,700 (Case, p. 39).

The agreement called for the transfer of the title of No. 120, so that it should vest in husband and wife, by the entirety, and this they attempted to do in July, 1921. At the wife's request, the complainant asked a Mr. Barrett, a commissioner of deeds, to come to their residence, for this purpose. Accordingly, Mr. Barrett called in on July 14, 1921. Mrs. Myers told him that she desired to have a deed drawn so that the property would vest in her husband and herself an estate by the entirety. Barrett explained that two deeds would be required, and complainant's son George who was present was used by Barrett as the trustee.

Barrett inadvertently omitted the husband's

name as a grantee in the second deed, and the mistake was not discovered until after the wife's death.

After the parties had, as they supposed, created an estate by the entirety in the land, the husband continued to contribute all of his earnings to the joint account, in which the rents of both properties were also deposited, and continued to expend his own labor in the repair and maintenance of both properties.

His contributions were substantial: at the beginning \$500 in cash, then his total working time as a mechanic, either in the form of money earned by him, or in the form of labor expended by him, for a period of eight years. It is not important to inquire into the exact amount, so long as it appears that there was a substantial consideration for the agreement.

#### POINT I.

##### **The transaction in question was not a gift.**

The transaction in question was not "an abortive attempt to make complainant a promised gift" as the Vice Chancellor characterized it (Case, p. 109, line 31).

The case at bar is one in which is sought reformation of a deed executed and delivered to fulfill the terms of a pre-existing contract based upon valuable consideration, to wit: the mutual advantages to be derived and detriments to be incurred by each party by the conversion of all their separate properties into a common fund, under common ownership.

The evidence shows that the husband in good faith, relying upon the agreement, carried out his

part of it, and that the consideration paid by him was valuable and substantial: not only did he give his time and labor to repairing and keeping in repair the presumably joint properties, but also he turned over his entire earnings from his work as painter and paper-hanger to his wife, together with the earnings of his son William, from the making of the agreement in 1919 down to Mrs. Myers' death in 1926.

The Vice Chancellor treated the case as one of an attempted gift, overlooking completely the uncontradicted evidence of the contract. He entirely lost sight of the cogent and undisputed evidence of consideration paid by the husband.

Where consideration exists, there cannot be a gift. The cases denying equitable relief to imperfect instruments relate to purely voluntary conveyances where no consideration emanates from the party asking performance.

*Mulock v. Mulock*, 31 N. J. Eq. 594, 602.

*Woodruff v. Morristown Inst. for Sav.*, 34 N. J. Eq. 174, 177.

*Wittingham v. Lighthipe*, 46 N. J. Eq. 429, 431.

It is only an instrument of a *purely* voluntary character which courts of equity refuse to reform in favor of the donee.

*Miller v. Savage*, 60 N. J. Eq. 204, 207 (rev. other grounds 62 N. J. Eq. 746).

The correct conclusion to be drawn from the uncontroverted evidence is not that Mrs. Myers failed in her attempt to make a gift but that she failed in her attempt to carry out her part of the agreement made two years before.

## POINT II.

**Where a husband performs services or expends monies at his wife's request or pursuant to her inducements, the presumption that the services rendered or monies expended were by way of gift to the wife is negated.**

The Vice Chancellor in arriving at the conclusion that the transaction was a gift overlooked the evidence of the contract, and must have relied upon the presumption that arises when the husband bestows benefits on the wife.

In this the Vice Chancellor erred. For it is only in cases where there is no evidence to show what was the intention of the parties that the presumption of gift governs.

If the evidence discloses that the services were performed or monies expended at the request of the wife or that from the wife's statements the husband was induced to believe that he would be reimbursed, the presumption of a gift is rebutted.

*Selover v. Selover*, 62 N. J. Eq. 761.

In the instant case there was ample testimony to rebut the presumption. Each one of the complainant's witnesses testified to statements made by Mrs. Myers to the effect that the services performed and monies expended by Mr. Myers were done, not voluntarily and with donative intent, but clearly pursuant to a definite agreement between Mr. and Mrs. Myers.

### POINT III.

#### The deed should be reformed.

The rule of *Wirtz v. Guthrie*, 81 N. J. Eq. 271, is that where the instrument in question was intended by the parties to be the *final act* to carry out their contract, the Statute of Frauds may not be raised in defense to a bill to reform.

In this connection there are certain inaccuracies in the Vice Chancellor's statement of the law and facts.

The Vice Chancellor says that, under *Wirtz v. Guthrie, supra*, the complainant must show that he has been defrauded (Case, p. 108, line 38). In the same case, at page 278, Vice Chancellor Emery qualified the term "defrauded" when he said, after referring to cases in which reformation had been granted:

"But these were all cases of the reformation of executed contracts, deeds or other contracts, and in such contracts an element of fraud manifestly arises when the party, after knowledge of the mistake which has given him a benefit to which he knows he was not entitled, insists upon holding this benefit to the loss of the other party."

The Vice Chancellor further says that if complainant had brought the suit against his wife in her lifetime, he would have been met by the Statute of Frauds (Case, p. 109, line 39).

But the rule in *Wirtz v. Guthrie* is meant to apply to just such cases; to protect the injured party to an executed contract, which by mutual mistake does not carry out the parties' intention.

The Vice Chancellor says that because of the transaction the husband did not alter his position

with regard to his wife, the property or his own business affairs because of a belief that an interest in the property had been conveyed to him (Case, p. 109, line 8).

There is nothing in the evidence upon which to base this conclusion. On the contrary, there is much uncontradicted and corroborated evidence to show that the husband altered his position when the contract was made and continued to maintain his altered position by performing the contract from its inception in 1919 down to Mrs. Myers' death in 1926.

The Vice Chancellor says that the husband expended no money for permanent improvement to the land (Case, p. 109, line 12). But the husband's money went into the wife's (afterward the joint) bank account, from which the mortgage of \$2,700 was reduced to \$1,700.

Nor is this a case requiring permanent improvements to entitle the complainant to relief. The necessity for permanent improvements applies only in the case of parol gifts of land imperfectly executed.

*Roberts-Hortfield v. Gedicks*, 94 N. J. Eq. 82.

Finally the Vice Chancellor says that if the suit had been brought in the wife's lifetime, the defense of lack of consideration would have been made (Case, p. 110, line 1). As previously discussed, the evidence disclosing the contract and the considerations therefor would effectually preclude this defense.

## POINT IV.

The decree should be reversed and the Court of Chancery directed to enter a decree in accordance with the prayer of the bill of complaint.

Respectfully submitted,

HOPKINS & HERR,  
Solicitors of and  
of Counsel with Appellant.

[34384]

110 MAY. T. 1927

**New Jersey Court of Errors and Appeals**

Between  
GEORGE T. MYERS,  
Complainant-Appellant,

and

ELIZABETH VOGT, *et als.*,  
Defendants-Respondents.

On Appeal  
from Final  
Decree of  
the Court  
of Chancery.

**RESPONDENTS' BRIEF.**

The testimony in this case that is undisputed is as follows:

Sometime prior to January, 1915, Gustav Vogt was the owner of premises #120-122 24th Street, Guttenberg, N. J. He died and upon his death by division among the heirs, the premises 120-24th Street was allotted to Christina Vogt, a sister, who subsequently became the wife of George T. Myers, the complainant. (75)

The premises 122-24th Street were allotted to Elizabeth Vogt, a sister. (75)

Christina Vogt married George T. Myers on April 10, 1918, (36) and they then went to live on 25th Street, Guttenberg. (78)

About a year after the marriage and in 1919, Christina Myers and the complainant decided to buy the premises 122-24th Street, then owned by Elizabeth Vogt and these premises were sold by Elizabeth Vogt to Christina Myers and her husband, the deed being taken in their joint names, the purchase price being \$4200.00. (38)

According to the testimony of Mr. Myers, the complainant, they paid of their own monies the sum of \$500.00 on account of this purchase price, which was made up of monies belonging to the complainant and his wife Christina Myers. There was a first mortgage of \$2700.00 and Mrs. Myers executed a mortgage of \$1000.00 to Mrs. Fessler, covering premises 120-24th Street, to make up the balance of the purchase price. (38)

Elizabeth Vogt testified that the deed conveying this property to Christina Vogt and her husband, was prepared by James P. Barrett, (76) the same Commissioner of Deeds and Notary Public, who, in 1921, drew the deeds, Exhibits C-1 and C-2, the effect of which is to place the title of 120-24th Street in the name of Christina Myers, being the marriage name of Christina Vogt, these premises having been placed in the name of Christina Vogt because she purchased them at a time when she was single.

In 1921, Exhibits C-1 and C-2 were drawn by James P. Barrett, Commissioner of Deeds, executed in his presence, recorded by him and returned by him to Mr. and Mrs. Myers or one of them. (29)

Christina Myers died on June 2nd, 1926. (5)

Sometime before her death, no date whatever being in evidence, she signed some kind of a paper, which apparently was intended to be a will. This paper is in the possession of the complainant, but has not been produced in evidence in this case. Shortly after the death of Christina Myers, the complainant went to the Hudson County Surrogate's Office and exhibited this paper, presumably for the purpose of having it probated, but for some reason which is not manifest, the paper writing was not admitted to probate. (48)

Complainant testifies that he also produced at the Surrogate's Office among other things, the two deeds Exhibits C-1 and C-2 and he testifies that he

was told at the Surrogate's Office that under these deeds the title to the property was in his wife alone. (48) Shortly after the death of Christina Myers, the complainant and the defendant, Elizabeth Vogt had a conversation in which many of the facts relative to the visit to the Surrogate's Office were discussed in which both complainant and Elizabeth Vogt agree that the complainant stated that he would give an account of the estate and the rents after nine months. (49) (81)

This agreement to account after nine months for the rent collected was also spoken of on October 12th, 1926 as testified to by Mrs. Bischoff and her testimony has not been contradicted or questioned. (94)

As appears by the bill of complaint, the defendants, presumably because they did not get any satisfaction from the complainant, instituted an ejectment suit claiming to own the premises 120-24th Street, Guttenberg, as the heirs at law of Christina Myers whereupon the bill of complaint herein was filed to restrain the ejectment suit and reform the deed Exhibit C-2, claiming that there was a mistake made by the scrivener Mr. Barrett in that he inserted the name of Christina Myers only, when he should have included the name of George T. Myers, as joint grantee. (3) (19)

Those are the undisputed facts.

### The Issues Raised.

There are two issues raised by the pleadings and proofs in this case, namely:

(1) Did the scrivener who drew Exhibit C-2 make a mistake when he inserted the name of the grantee?

(2) Has the complainant established by competent proof, that there was an agreement between his

deceased wife and himself, whereby she agreed to place the property in question in both names for a valid consideration?

### POINT I.

**The complainant has not established by proof, beyond a reasonable doubt, that the scrivener made a mistake when he drew Exhibit C-2, placing the title to the premises in question, in the name of Christina Myers.**

The main witness upon whom the complainant relies is the scrivener and we are convinced that he has erroneously assumed that a mistake was made by him when he inserted the name of the grantee in Exhibit C-2 and he has admitted responsibility for an alleged mistake, when as a matter of fact he did not make a mistake, neither was any mistake made.

We must bear in mind the following facts:

1. He was the scrivener, who, in 1919, drew the deed for the premises 122-24th Street, title to which was conveyed by Elizabeth Vogt, one of the defendants, to Christina Vogt, her sister and George T. Myers, the husband of Christina Myers, jointly.
2. As appears from the record, Mr. Barrett is now a very old man, and he was stricken so severely by paralysis in June, 1926, that he is unable to attend court. (23) As appears from his testimony, Mr. Barrett has been connected with the Hudson County Register's Office for a great number of years past, Mr. Barrett fixing the date as April 9th, 1900. During that time he has drawn hundreds of instru-

ments consisting of bonds, mortgages, deeds and other legal papers. (27)

He does not now recall and in all probability in June, 1926, when he examined the records of the deeds Exhibits C-1 and C-2, he did not then recall that Christina Myers and George T. Myers had purchased the premises 122-24th Street, Guttenberg, in April, 1919. (27)

When he was asked in June, 1926, concerning the title to premises 120-24th Street, it was five years after Exhibits C-1 and C-2 had been drawn and Mr. Barrett had never had any occasion to refresh his memory regarding that incident between July, 1921, and June, 1926. (33)

On this occasion his memory failed him, because it ran back not for a period of five years only, but for a period of seven years to April, 1919, when he drew the deed from Elizabeth Vogt which conveyed the title to premises 122-24th Street, to Christina Myers and George T. Myers, as joint tenants.

So far as street numbers were concerned, he had no recollection thereof, but he did know that Christina Myers and her husband had purchased a piece of property on 24th Street at or about that number. (27-28)

He did not know in June, 1926, that Mrs. Myers was interested in two pieces of property on 24th Street, nor did he know it on the day of his examination, March 5th, 1927. (27-28)

Therefore it is very easy to account for the error on the part of Mr. Barrett in believing that the 1921 transaction was a conveyance to Mr. and Mrs. Myers as joint tenants, rather than the 1919 transaction.

If this is not the correct explanation of Mr. Barrett's testimony, then it is almost impossible to account for Exhibits C-1 and C-2.

Taking Exhibit C-1 in our hands and reading Mr. Barrett's testimony, we find that Mr. Barrett was asked to prepare certain deeds by Mr. Myers. (24 & 28) Mr. Myers gave him Mrs. Myers deed which ran to her in her maiden name, Christina Vogt. (32) According to all of the testimony of the witnesses for the complainant, it would appear that Mr. Barrett drew these deeds in the home of Christina Myers, (70) (54) (42), but an examination of the instruments themselves and the testimony of Mr. Barrett establishes that the witnesses of complainant are in error in this respect. (31-32)

Mr. Barrett says that he drew these two deeds in his own home, with the exception of such parts thereof as appear in handwriting, in blue ink, and that these parts which appear in blue ink were filled in by him while at the home of Mrs. Myers on the day the deeds were executed, namely, July 14th, 1921. (32)

The name of the grantee in Exhibit C-1 appears in blue ink. Mr. Barrett says that he did not fill in the name of the grantee in Exhibit C-1 because he did not know it, (32) and his explanation of this deed as given in his deposition is one that is familiar to all scribes.

Likewise in Exhibit C-2, the name of the grantor could not be inserted because Mr. Barrett did not know it and for some reason, which is not explained, the name of the grantee was not inserted in this deed, nor were the pronouns inserted in the granting clause. (32)

2. Mr. Barrett testified that the complainant asked him to come to complainant's home and that he went to complainant's home and received instructions from Christina Myers as to how the deeds were to be drawn. (24-25)

And he explains the difference in ink by saying that he drew the deeds at his own home leaving cer-

tain information out of the deeds because he did not have the necessary information.

Therefore, according to Mr. Barrett's testimony, he must have gone to the home of the complainant to receive instructions concerning the preparation of the deeds, returned to his own home and there prepared the deeds and later returned to the home of the complainant at the time when they were executed.

If, when Mr. Barrett first called at the house for his instructions regarding the preparation of these deeds, he was told that the property was to be placed in both names, it is difficult to perceive why Mr. Barrett did not place both names in this deed, Exhibit C-2 when he was preparing it at his home in the same manner as he inserted the names of the grantor in Exhibit C-1, because if he had been told positively that Mrs. Myers and her husband were to be ultimate grantees as tenants by the entirety, there can have been no reason for not inserting their names at the time when the deeds were prepared.

If on the other hand, Mr. Barrett was not told the name or names of the ultimate grantee, or if he were told and was uncertain of it at the time when he drew the deeds, then we can account for his failure to place the name of the grantee in Exhibit C-2, because, through lack of knowledge, due to the fact that he was not informed or had forgotten, he refrained from inserting the name of the grantee until obtaining it at the time of the very execution and delivery of the deeds Exhibit C-1 and C-2.

Mr. Barrett was a scrivener who had a great deal of experience because he had prepared hundreds of instruments and he had handled instruments of this character in the Register's Office for over twenty years, (27) his particular employment being

the examination, comparison and indexing of the names of the grantors and grantees which would certainly bring most strikingly to his mind the importance of having the names correct. (29-30)

It seems to us impossible to arrive at the conclusion that Mr. Barrett with his long experience which would almost qualify him as an expert in the preparation of instruments of this character should have made an error in the insertion of the name of the grantee in this deed. It is in his own handwriting and not only is the grantee designated as "Christina Myers," but the further designation appears "wife of George T. Myers." (32)

Again not only is the grantee designated in the singular, but the pronouns in the granting and habendum clauses are also in the singular and in the feminine gender. (Exhibit C-2, p. 102.)

If Mr. Barrett had at that moment when he was writing the name of the grantee and filling in the pronouns been informed that the grantees were to be two in number, he would never have designated the grantee in the singular nor the pronouns accordingly.

It is unbelievable that Mr. Barrett, with the parties before him, the deed in front of him, asking and receiving instruction as to the names to be inserted, could have made such an inexcusable mistake as that which is now sought to be charged against him, and which, through failing and faulty memory, he now believes he made.

Again when he was indexing this instrument as part of his duties as index clerk (27), in the Hudson County Register's Office it is hardly likely that the error would have escaped his attention, because if his recollection five years after the occurrence as to the fact that the property was to be placed in both names is accurate, his recollection within two or three days thereafter would have undoubt-

edly brought to his attention the error appearing in this deed when he indexed the names of both grantor and grantee in the blotter, as index clerk.

And again, when some two or three weeks thereafter the deeds had been recorded and compared and were again returned to him to have the names of the grantor and grantee checked off in the blotter and the book and page of the record entered in the blotter, his attention would have again been directed to this error.

It is true that Mr. Barrett testifies that it is possible, that he did not handle these deeds for this purpose, but this is only a possibility rather than a reality and under ordinary circumstances he would have handled these deeds on both these occasions.

And again, after the deeds had been recorded, these two deeds were returned to him (31), and it is hardly likely that a man with his experience would have failed to notice the error, because even if he did not examine the names appearing in the body of the deed, the endorsement thereon would have been sufficient to call the error to his attention (29).

We therefore submit that the explanation of Mr. Barrett's testimony as we have heretofore pointed out is probably the true explanation and Mr. Barrett is in error by substituting the transaction of 1919 for the transaction of 1921.

And indeed this is not to be wondered at, because, as this court heretofore pointed out, evidence of this character is subject to the infirmity that pervades the evidence of persons in Mr. Barrett's position when called upon to testify about transactions of this kind, taking place many years ago, of little importance at the time and not likely, among the multitude of transactions, to fix itself very vividly in the memory.

*Hupsch v. Resch*, 45 N. J. Eq. 657, commencing at the bottom of page 660.  
*Malone et al v. Romano*, 127 Atl. 91.

The language used by the court respecting the evidence of Mr. Vail in that case can be substituted word for word as applicable to the evidence of Mr. Barrett in this case.

Again it is strikingly singular that although Mr. Barrett requested Mr. Myers the complainant, to bring these two deeds to him in June, 1926, after Mr. Barrett had made an examination of the records, that Mr. Myers, knowing that an error had been made (34), did not bring the deeds to Mr. Barrett for his inspection, nor did he do anything whatever in this manner until the heirs at law brought their suit in ejectment some five months later.

The question presents itself as to whether or not Mr. Myers was not fearful that if he had submitted to Mr. Barrett these two deeds and Mr. Barrett had made a more searching examination of the record, Mr. Barrett would have found the deed of 1919 and thereby corrected in his own mind the erroneous impression that he had obtained respecting Exhibits C-1 and C-2. At any rate the failure of Mr. Myers to Exhibit these deeds to Mr. Barrett is not explained.

The remaining evidence of the complainant and his witness is to the effect that Christina Myers had nothing whatever to do with her sisters and brothers, did not wish that they should receive any of her property and they try to establish that there was no communication between them.

We believe that the evidence of the complainant and his witnesses falls far short of the requirements fixed by this court in order to reform an instrument as is now sought.

The evidence which will warrant this court in reforming an instrument in writing in the correction of an alleged mistake must establish the existence of the mistake beyond reasonable doubt.

*Hupsch v. Resch, supra.*

The evidence of the complainant and his witnesses is that Christina Myers and the defendants were not on friendly terms. On the other hand the evidence of the defendants is (and it is not denied) that Christina Myers and her husband were very frequent visitors at the home of Mary Bischoff, a sister of Christina Myers who lived at English-town, N. J. (92-93).

Elizabeth Vogt testified that she visited her sister frequently after the accident which befell Christina Myers in about 1921 and even loaned her \$500.00 in 1924 so that Christina Myers could purchase an automobile (79).

These facts are not denied and certainly seem sufficient to overthrow the evidence of the complainants which seeks to establish an unfriendly relationship between Christina Myers and her two sisters.

Again, the evidence of the complainant all speaks about "property" in a most indefinite and uncertain manner.

It may very well have been that when Christina Myers was talking of property that she wanted to go to her husband and his children, that she was talking of the property which was placed in their joint names, and that she was not talking of the property which she had acquired prior to her marriage, namely, the premises in question.

The testimony for the defendants in this respect is that Christina Myers wanted the property in question, which she had acquired through her brother's death, to remain in her family, and this

would seem to be a reasonable expectation because Christina Myers had labored together with George T. Myers to acquire and pay for the premises which were purchased from Elizabeth Vogt and which would go to the children of George T. Myers in the event of Christina Myers dying prior to her husband, and it would seem that under such condition she would want the property that she had acquired prior to her marriage, upon the death of her brother, to return to her own family, namely her sisters and her brother.

Some point may be made that the brother did not visit Christina Myers, but we believe that his explanation would account for this and there is no evidence that he ever had any quarrels or disputes with his sister Christina Myers.

The next point respecting the evidence we desire to make is the failure of the complainant to produce what would appear to have been a paper writing which Mrs. Myers attempted to make as a will (48). Was there something in that paper that the complainant wanted to suppress? Why was it not produced?

If, as has been testified by Bertha Schmitt, Mrs. Myers did not believe in wills, why was this paper writing made?

If, as testified by the complainant and his witnesses she had the premises in question placed in the names of herself and her husband, so that he would get it upon her death, then why was a will necessary?

If the evidence of the complainant and his witnesses is to be believed, then she, so far as the proofs go, believed absolutely that the deed in question placed the title in the name of herself and her husband as tenants by the entirety and he would get the premises in question upon her death without a will.

If on the other hand she intended and knew that the only purpose of the execution and delivery of the deeds, Exhibits C-1 and C-2 was to place title to the premises in question in her, under her marriage name, then there would be a necessity for a will if she desired to cut off her two sisters and her brother from inheriting any interest in the premises in question and if she made an ineffectual attempt so to do, the defendants cannot be deprived of their rights because of such ineffectual attempt.

If, however, the scrivener did not make a mistake and it was the intention of Mrs. Myers that the property should be placed in the name of herself and her husband and the failure to do so was a mistake on the part of Mr. Barrett, as was found by the Vice Chancellor, even then the complainant is not entitled to any relief because as was pointed out by the Court of Chancery, the complainant is not entitled to a decree which would compel the performance of his wife's voluntary naked promise to convey to him.

## POINT II.

**The complainant has not established by competent proof that there was any agreement between the deceased and himself whereby she agreed to place the property in question in the name of complainant and herself for a valid consideration.**

The complainant testifies that his wife said to him that whatever he makes he should put together, presumably with her earnings or income and the income was to go to the survivor. (40).

This surely did not include the real estate because it referred to his future earnings and money and real estate cannot be put in a bank or put together.

Complainant also testifies that he asked her about the house next door and that his wife stated that whatever work he did there it was for his own benefit. (40)

This likewise is perfectly reconcilable with the fact that she may have intended to refer to the rents from the property next door, which is the property in question. If her husband was putting his income in a bank account and his wife was putting her income, which included the rents from the property in question, in the said bank account and this bank account was in both names, the monies to go to the survivor, naturally he would benefit thereby, but it seems to us that this is the most that can be drawn from the evidence of the complainant.

Certainly this is not proof of the performance of services or expenditure of monies at the wife's request upon any reliance that the complainant was to be a tenant by the entirety.

The complainant's daughter, Mrs. Signoretti, testified that Mrs. Myers stated that the property was put in joint names (52) but she does not say one word about any agreement between Mr. and Mrs. Myers respecting the services that were to be rendered by the complainant as a consideration for the transfer of the property.

Adam Myers, complainant's son, another witness, called by the complainant, gives no testimony whatever concerning any alleged agreement between the complainant and his wife, respecting her intention to put the property in joint names in return for services to be rendered by the complainant.

Florence Gormerly, a daughter of the complainant, does not give any testimony regarding any

alleged agreement between complainant and his wife, respecting the transfer of the property to the joint names of complainant and his wife in return for services which complainant was to render.

The next witness called by the complainant, Bertha Schmitt, does not give any testimony regarding any alleged agreement that complainant's wife had agreed to put the property in their joint names because of services that complainant had or was going to render to his wife.

The next witness called, William Myers, a son of the complainant, likewise fails to give any testimony that would bear out the complainant's contention that his wife had agreed to place the property in their joint names in return for services rendered or monies expended by complainant.

The next and last witness called by the complainant, George R. Myers, a son, likewise does not give any testimony whatever as to any alleged agreement between complainant and his wife, that she was to put the premises in question in both names in return for services rendered or monies expended.

In fact the proofs of the complainant are utterly void of any evidence whatever which would be sufficient to establish any agreement between the complainant and his wife.

The statement on page 7 of appellant's brief that each one of the complainant's witnesses testified to statements made by Mrs. Myers to the effect that the services performed and monies expended by the complainant was clearly pursuant to a definite agreement, is not borne out by any proofs in the case.

The complainant does not state on what page of the State of the Case any of these statements may be found and the respondents deny that there are any such statements.

We submit that the most that can be said respecting the complainant's services is the characterization as defined by the Vice Chancellor in his conclusions at the bottom of page 108 and page 109.

**As to Reformation.**

The rules relative to the reformation of instruments have been discussed in this court on many occasions and we will simply refer to a few of the cases which we think are applicable to the case on hand.

It must be borne in mind that if the deeds, Exhibits C-1 and C-2 were intended for the purpose now asserted by the complainant, the deeds were purely voluntary on the part of Mrs. Myers.

"The rule seems to be settled that, except under very extraordinary circumstances, a court of equity will not lend its assistance to reform a voluntary deed or to enforce the specific performance of a voluntary contract."

*Woodruff v. Morristown, etc.* 34 N. J.Eq. 174 at the bottom of page 177.

"To make such an effort successful, the law, for the safety of titles, requires that the proof shall be of the most convincing and satisfactory kind. Nothing short of certain, definite, reliable and convincing proof, will justify the court in divesting one man of title to lands, evidenced by a regular deed, and putting it in another."

*Midmer v. Midmer's Executors*, 26 Eq. 299 at the middle of page 304.

We therefore submit that the evidence on behalf of the complainant is indefinite, uncertain and unsatisfactory and falls far short of meeting that standard of proof which has been fixed by this court

as necessary in order to divest the defendants of their title to the lands in question by the reformation prayed for and that the bill of complaint herein should be dismissed with costs.

Respectfully submitted,

PH. F. SAWER,

LOUIS G. MORTEN,

Solicitors of and of counsel with respondents.

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Witnesses

*Plaintiffs:*  
 Catherine Bryan .....  
 Direct .....  
 Cross .....  
 Re-direct .....  
 Mary Waddron .....  
 Direct .....  
 Joseph William Gardam .....  
 Direct .....  
 Cross .....  
 William A. Tansey .....  
 Direct .....  
 Cross .....  
 James J. Waddron .....  
 Direct .....  
 Sadie C. Beryelle .....  
 Direct .....