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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

10

The complainant, Parsells Petroleum Products, Inc., a corporation of the State of New Jersey, respectfully shows that:

1. On March 29th, 1926, Helen G. White, single, of the City of Philadelphia, County of Philadelphia and State of Pennsylvania, being indebted to A. M. Mahjoubian, Inc., a corporation of the State of New Jersey, in the sum of nine hundred and ninety (\$990) dollars, executed to it, a bond and mortgage 20
of that date, in the penal sum of nineteen hundred and eighty (\$1980) dollars, to secure the just sum of nine hundred and ninety (\$990) dollars, payable within three years from the date thereof, with interest thereon at the rate of six per cent per annum, payable half yearly from the date of the bond; which mortgage, having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon, was recorded in the office of the clerk of the County of Atlantic, in Book 401 of 30
Mortgages, page 367.

2. On November 2nd, 1928, A. M. Mahjoubian, Inc., a corporation of the State of New Jersey, executed and delivered to the complainant, Parsells Petroleum Products, Inc., a corporation of the State

of New Jersey, an assignment of said bond and mortgage, which said assignment bears that date, and was recorded in the clerk's office of Atlantic County in Book 100 of Assignment of Mortgages, page 26.

- 10 3. On said November 2nd, 1928, the said Helen G. White was seized in fee simple of a certain tract of land and premises, situate in the City of Margate City, County of Atlantic and State of New Jersey, described as follows:

20 BEGINNING in the west line of Pembroke Avenue, a distance of one hundred five and fifty-five hundredths feet south of Atlantic Avenue, thence extending (1) Westwardly, at right angles with Pembroke Avenue, eighty feet; thence (2) Southwardly, parallel with Pembroke Avenue, one hundred feet; thence (3) Eastwardly, parallel with the first course, eighty feet to the westerly line of Pembroke Avenue; thence (4) Northwardly, along same, one hundred feet to the place of beginning.

BEING KNOWN and designated as Lots 12 and 13, in Block 7, on plan of Margate Park, filed.

- 30 4. On September 29th, 1928, one-half year's interest fell due on complainant's bond and mortgage, and remained unpaid for more than thirty days thereafter, and no part thereof had been paid; and on March 29th, 1929, the whole principal sum became due on said bond and mortgage and remained unpaid, and complainant filed a bill in this Honor-

able Court for the purpose of foreclosing said mortgage.

5. On the 7th day of January, 1930, a decree was entered in this Honorable Court, against the defendant, Helen G. White, in the sum of ten hundred ninety-five dollars and sixty cents (\$1095.60), added to which are sheriff's costs, amounting to the sum of seventy-nine dollars and sixty-nine cents (\$79.69), and additional costs in the sum of one hundred sixty-six dollars and fifty cents (\$166.50), making a total amount of thirteen hundred forty-one dollars and seventy-nine cents (\$1341.79). 10

6. On the 26th day of January, 1930, a writ of fieri facias was issued out of this Honorable Court, instructing the sheriff of Atlantic County to proceed with the sale of the aforesaid premises mentioned in said mortgage, and on the 6th day of March, 1930, the said premises were offered for sale by the said sheriff of Atlantic County, and the property was purchased for the sum of three hundred and fifty (\$350) dollars, by William Purcell, Jr. There was a deficiency in the amount due the complainant, amounting to the sum of nine hundred ninety-one dollars and seventy-eights cents (\$991.78), and on the 28th day of April, 1930, the complainant recovered a judgment on said bond against said Helen G. White, in the Circuit Court of Atlantic County for the sum of nineteen hundred eighty (\$1980) dollars damages, and twelve dollars and twenty-five cents (\$12.25) costs. 20 30

7. On on about the 30th day of April, 1930, the

complainant caused an execution to be issued out of said Circuit Court of Atlantic County, directed to the sheriff of the County of Atlantic, against the goods and lands of the said Helen G. White, which said execution was returned by said sheriff of Atlantic County, wholly unsatisfied.

10 8. On March 1st, 1930, the said Helen G. White, executed a deed purporting to convey the said lands and premises to one, Eugene F. White, for the stated consideration of one thousand (\$1000) dollars, which said deed was on the 3rd day of March, 1930, recorded in the clerk's office of Atlantic County in Book 938 of Deeds, for this county, at page 234, etc.

20 9. On the 4th day of March, 1930, the said Eugene F. White, and Nellie E. White, his wife, executed a deed purporting to convey the said lands and premises to the Delaware County Trust Company, a banking corporation of the State of Pennsylvania, located at Chester, Pennsylvania, for the stated consideration of one (\$1) dollar, which said deed was on the 6th day of March, 1930, recorded in the clerk's office of Atlantic County in Book 938 of Deeds, for this county, at page 376, etc.

30 10. The said conveyances were voluntary and without the support of an adequate valuable consideration, and were fraudulent as against complainant as a creditor of said Helen G. White.

11. Complainant has been and is unable to find any other property of said Helen G. White out of which to satisfy its said judgment, and has ex-

hausted its legal remedy against the said Helen G. White.

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

1. That the defendants, Helen G. White, Eugene F. White, Nellie E. White, his wife, and the Delaware County Trust Company, a banking corporation of the State of Pennsylvania, and its president and directors, may answer this bill of complaint and each statement therein made. 19

2. That the said defendants may make discovery of who has possessed and occupied said lands and premises and received the rents, issues and profits thereof since the said pretended conveyances hereinabove set forth were made. 20

3. That the said defendants, or some or one of them may be decreed to pay complainant the full amount due and owing to it on its said judgment together with interest, costs and execution fees accrued thereon.

4. That the said fraudulent conveyance by the said defendant, Helen G. White, to the said defendant, Eugene F. White, and the said fraudulent conveyance by the said defendants, Eugene F. White and Nellie E. White, his wife, to the said defendant, Delaware County Trust Company, a banking corporation of the State of Pennsylvania, may be set aside and held to be fraudulent and declared null 30

and void and of no effect as against complainant's said judgment.

5. That the said lands and premises may be sold, free, clear and discharged of and from the said fraudulent conveyances under the said writ of execution, and the proceeds thereof, or so much thereof
10 as may be necessary, applied to the payment of complainant's said judgment.

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

A. F. MCGEE,
Solicitor for and of Counsel with Complainant.

20

30

ANSWER.

IN CHANCERY OF NEW JERSEY.
D-79-142.

10

Between

PARSELLS PETROLEUM
PRODUCTS, INC., a cor-
poration of the State
of New Jersey,
Complainant,

and

HELEN G. WHITE, EU-
GENE F. WHITE, NEL-
LIE E. WHITE, his wife,
and the DELAWARE
COUNTY TRUST Co., a
banking corporation of
the State of Pennsyl-
vania,

Defendants.

On Bill, &c. 20
Answer.

30

The defendants, Helen G. White, Eugene F. White and Nellie E. White, his wife, and the Delaware County Trust Company, severally answering the complainant's bill of complaint, say:

1. They admit the allegations of fact contained in paragraph 1.
2. They admit the allegations of fact contained in paragraph 2.
- 10 3. They admit the allegations of fact contained in paragraph 3.
4. They admit the allegations of fact contained in paragraph 4.
5. They admit the allegations of fact contained in paragraph 5.
- 20 6. They have no information sufficient to form a belief as to the facts alleged in paragraph 6 and they call upon the complainant to prove each allegation of fact contained in said paragraph.
7. They have no information sufficient to form a belief as to the facts alleged in paragraph 7 and they call upon the complainant to prove each allegation of fact contained in said paragraph.
- 30 8. They deny each and every allegation of fact contained in paragraph 8.
9. They deny each and every allegation of fact contained in paragraph 9.
10. They deny each and every allegation of fact contained in paragraph 10.

11. They deny each and every allegation of fact contained in paragraph 11.

12. Further answering, the defendants say that the conveyances set forth in the bill from Helen G. White to Eugene F. White, and the said Eugene F. White and Nellie E. White, his wife, to the Delaware County Trust Company, were based upon a good and valuable consideration, including, among other things, the sum of \$6,000.00 cash paid by the said Eugene F. White and Nellie E. White, his wife, unto Helen G. White. 10

Further answering said complaint, by way of plea, they say that the judgment procured by the complainant against the defendant, Helen G. White, was based upon a deficiency judgment after foreclosure of a mortgage; that, pursuant to the statute in such case made and provided, the defendants have six months from the 28th day of April, A. D. 1930, the date of the entry of said judgment, in which to redeem the premises; and that, in the meanwhile, there is no right on the part of the complainant, to file said bill or to take any other action under said judgment, and that the said bill of complaint was prematurely filed. 20

Further answering said bill, defendants say that, taking to be true all of the averments set forth in the bill, it does not show a cause of action in equity against them, and, for this reason, they will, when the case is called for hearing, move to dismiss said bill. 30

JOHN C. REED,

Solicitor of the Defendants.

REPLICATION.

IN CHANCERY OF NEW JERSEY.

10 Between
 PARSELLS PETROLEUM
 PRODUCTS, INC., a cor-
 poration of the State
 of New Jersey,
Complainant,
 and
 HELEN G. WHITE, *et als.*,
Defendants. } On Bill, etc.
 Replication.

20

1. The complainant denies each and every allegation in the answer contained.

2. Further replying to said answer, the complainant says that the averment set forth in the second paragraph of paragraph twelve, is not an equitable or legal defense, and for that reason it will, when the case is called for hearing, move to dismiss the said allegation.

3. The complainant joins issue on the answer of the defendants.

ALBERT A. F. MCGEE,
*Solicitor for and of Counsel
 with Complainant.*

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between PARSELLS PETROLEUM PRODUCTS, INC., a cor- poration, etc., <i>Complainant,</i> and HELEN G. WHITE, <i>et als.</i> , <i>Defendants.</i>)	On Bill, etc. Final Hearing.
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Atlantic City, N. J., September 24, 1930.

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TESTIMONY.

Before HON. ROBERT H. INGERSOLL, Vice-Chancellor. 30

APPEARANCES:

For the complainant, ALBERT A. F. MCGEE, Esq.
 For the defendants, JOHN C. REED, Esq.

SAMUEL J. EDWARDS, SWORN.

Direct examination.

By Mr. McGee:

10 Q. Mr. Edwards, what is your business?

A. Title officer of the Chelsea Title Company, sir.

Q. Do you know whether or not an application was made to your company on or about May 6th, 1930, for a search of the properties located on Pembroke Avenue, known as lots 12 and 13 in block 17, on map of Margate City, by W. I. Risley, dated May, 1924?

The Court: Is that 17 or 7? The pleadings call
20 for 7.

Mr. McGee: 7 is correct.

Q. Mr. Edwards, I show you what purports to be a search from your company and ask you whether or not that search was prepared by the Chelsea Title and Guaranty Company?

A. It was.

30 Q. Turning to the first page of this search, I may ask you first, are you familiar with the various conveyances and mortgages on this search?

A. I am, sir.

Mr. Reed: I object to that, if your Honor please. If he is going to prove the conveyances, he can't prove it that way.

Mr. McGee: I am following it up.

Q. Did you look at the original records of the particular conveyances included in this search?

A. I did, sir, at Mays Landing.

Q. Where did you find those records?

A. At Mays Landing.

Q. Looked at also the original indices?

10

A. I did, sir.

Q. Calling your attention to the first page, I will ask you to state to the Court just the chain of the conveyances with the mortgages from the first page to the last.

Mr. Reed: Your Honor please, I object on the ground if he wants to show the condition of this title and the conveyances, he must either do that by the production of the deeds or a certified copy. 20
This is certainly not the way to prove the devolution of title.

The Court: It has been quite the custom to use the records of the title company for this purpose. If it is objected to, the Court has no jurisdiction except to sustain the objection. I think counsel oft-times generally use the title company's records, yet if there is objection made, the statutory method of proof must be complied with. 30

Mr. McGee: If the Court please, I understood also that it was customary, and it has been followed in a number of cases in this court, and I would, of course, I am embarrassed because of that fact, it is a very simple matter for me to get these, if Mr.

Reed wants to stand on it, I would have to ask the indulgence of the Court to permit me to produce those records. This is customary. If it had not been customary I would not feel that I had any legal right to ask the indulgence of the Court on that ground.

- 10 Mr. Reed: I am not saying how he should prove his case, and I ask that that proof be according to the law of evidence of this State.

The Court: Of course, if you insist on it, you have that right. As I understand it, there is no statute which permits the records of the title company to take the place of the legal records. You admit that is so, I take it?

- 20 Mr. McGee: Yes, I understand that. I admit that, Vice-Chancellor, but I am asking —

The Court: Why cannot this case proceed with this proof, subject to it being supplemented by actual proof? It means a wasting of the entire day for the Court and all others.

- 30 Mr. Reed: If your Honor pleases, I do not want to waste your Honor's time, and I am perfectly willing to go ahead, and I think my friend should have his proof here, it ought not to be offered piecemeal. The understanding is that he to furnish the certified copies of these conveyances at once?

The Court: Yes. Then, subject to it being con-

nected later with the proper proof, I will permit the prima facie proof.

(Question repeated.)

Mr. Reed: I object to that unless the question is confined to the conveyances set up in the bill. We are not interested in anything except the deed from Helen G. White to John White, and deed from John White to Delaware County Trust Company, and proof that they were fraudulent. 10

The Court: Presently that is true. Sustain the objection.

Q. Mr. Edwards, referring to search number 9529 of the Chelsea Title and Guaranty Company, I ask you to refer to this search and testify as to the conveyance from Helen White down to the conveyance to Delaware County Trust Company, including the consideration which appears of record on the date of the conveyance. 20

A. Item number 4 of said search is deed made by Helen White, single woman, to Eugene F. White, of Chester, Pennsylvania, dated March 1st, 1930, recorded March 3rd, 1930, consideration \$1000. In said deed it recites that said property is subject to mortgage of \$3,000 made by Helen White to Douglas Investment Company, recorded Book 503, page 488. Also subject to restrictions imposed by the former owners. 30

Item number 5 in said search is a deed from Eugene F. White and Nellie E., his wife, of Chester, Delaware County, Pennsylvania, to the Delaware

County Trust Company, a corporation of Pennsylvania, dated March the 4th, 1930, recorded March 6th, 1930, Book 938, page 376. Consideration one dollar. Covering premises described in the head of this search.

Q. Just describe those premises as you have them in the search.

- 10 A. Situate in the City of Margate City, beginning on the westerly line of Pembroke Avenue, 105.55 feet south of Atlantic Avenue, extending thence west at right angles to the westerly line of Pembroke Avenue 80 feet, thence south parallel with the west line of Pembroke Avenue 100 feet, thence east parallel with the first course and at right angles to the westerly line of Pembroke Avenue 80 feet to the westerly line of Pembroke Avenue, thence north along the same 100 feet to the place of beginning,
20 being lots 12 and 13, block 17 on map of Margate City by W. I. Risley, dated May, 1924.

Q. You mean 17 or 7?

A. 17, sir. There is a variance there, one is described according to the tax map and the other is described according to the map of Margate City, block 17.

(No cross-examination.)

- 30 Mr. McGee: I want to offer this search in evidence subject to complying with the statutory proof.

Mr. Reed: I object to the admission of the search. It has no probative force.

The Court: Sustain the objection.

Mr. McGee: If the Court please, I offer certified copy of the judgment.

(Certified copy of judgment admitted in evidence and marked Exhibit C1.)

10

DAVID GARDINER, SWORN.

Direct examination.

By Mr. McGee:

Q. Mr. Gardiner, what is your business?

A. Realtor.

Q. As such, do you specialize in the sale of any particular properties on this island?

A. I do.

Q. Where do you specialize, what part?

A. Margate City.

Q. At my request did you appraise the property located in Margate City beginning in the westerly line of Pembroke Avenue, 105.55 feet southwardly from Atlantic Avenue, extending thence first westerly at right angles to the westerly line of Pembroke Avenue 80 feet, thence (2) southwardly parallel with the westerly line of Pembroke Avenue 100 feet, thence (3) eastwardly parallel with first course thereof, at right angles to westerly line of Pembroke Avenue 80 feet to the westerly line of Pembroke Avenue, thence (4) northwardly along the same 100 feet to the place of beginning, being

known as lots 12 and 13, block 17, on map of Margate City, by W. I. Risley, dated May, 1927?

A. I did.

Q. Have you had occasion to sell lots in and around that section?

A. I have.

Q. Are you familiar with the values in that immediate vicinity?

A. I am.

Q. What would you say that those lots, what would you say the value of those lots are?

A. \$6500 per lot.

Q. That would be a total of \$13,000?

A. Yes.

Q. What is the condition of that neighborhood as to houses, value of houses?

A. You have got the finest class of type of homes in Margate City in that section, large lots, large beautiful homes, all well kept, and people of means are living in them.

Q. Are these houses, any of these houses located on Pembroke Avenue near by or adjacent to these particular lots?

A. There are three directly across the street.

Cross-examination.

30 By Mr. Reed:

Q. What lots have you sold on South Pembroke Avenue and when?

A. I sold a number of lots in there several years ago.

Q. When?

A. Several years ago.

Q. When did you sell them, give me the numbers of the lots.

A. I can't recall the numbers or just when.

Q. To whom did you sell them?

A. I don't recall, I sold so many of them I didn't attempt to keep any record of them.

Q. How long has it been since you sold a lot on 10 South Pembroke Avenue?

A. Within three years.

Q. Three years?

A. Yes.

Q. The market was entirely different when you sold them on Pembroke Avenue from what it is now, wasn't it?

A. Yes, but they brought much better prices.

Q. It was different, I didn't ask you that. The market then was different? 20

A. Yes.

Q. And you haven't sold anything on South Pembroke Avenue for a period of three years?

A. No.

Q. That is all.

By Mr. McGee:

Q. Is there any difference in the value of these lots three years ago and today? 30

Mr. Reed: I object on the ground he is appearing as an expert, and he has said what these lots are worth now, and to qualify really as an expert he should have dealt in lots on that street within

the last period of a year, I should think, or else his testimony is not of any value.

The Court: I will permit the question.

A. What was the question?

Q. Was there any difference between the value of
10 these lots three years ago and the present time?

A. Altogether different.

Q. What would you say the difference was, you mean higher or lower?

A. The price three years ago ran from ten to twelve thousand dollars.

20 ARTHUR D. WILSON, SWORN.

Direct examination.

By Mr. McGee:

Q. Mr. Wilson, what is your business?

A. Real estate broker.

Q. How long have you been a real estate broker?

A. Eight years.

30 Q. You licensed by the ——

A. State of New Jersey.

Q. ——New Jersey State Commission? Do you specialize in the selling of real estate on any particular portion of this island?

A. Margate City.

Q. During the time that you have been selling

real estate in Margate City, have you sold any lots in or around Pembroke Avenue?

A. I have.

Q. Will you say you had made two or more than that sales in Margate City in and around that?

A. As long as I have been in business?

Q. Yes.

A. Oh, I have made considerable, how many I don't know.

Q. At my request did you examine, for the purposes of appraisal, lots located on South Pembroke Avenue, beginning at a point in the westerly line of Pembroke Avenue 105.55 feet southwardly from Atlantic Avenue, extending, first, westwardly at right angles to the westerly line of Pembroke Avenue 80 feet, thence (2) southwardly parallel with the westerly line of Pembroke Avenue 100 feet, (3) eastwardly parallel with the first course thereof, at right angles to the westerly line of Pembroke Avenue 80 feet to the westerly line of Pembroke Avenue, thence (4) northwardly along the same 100 feet to the place of beginning?

A. I did.

Q. What would you say the value of those lots are at this time?

A. \$6500.

Mr. Reed: How much?

30

A. Sixty-five hundred.

Q. Apiece?

A. Apiece, each.

Q. Making a total of \$13,000?

A. Yes.

Q. When did you last sell any lots in and around
Pembroke Avenue or on Pembroke Avenue?

A. Unfortunately I haven't sold anything on Pem-
broke Avenue.

Q. Did you sell near by?

A. Yes.

Q. What avenue?

10 A. Nassau.

Q. How many blocks from Pembroke?

A. Two.

Q. Similar locations as these particular lots?

A. Approximately the same location.

Q. Is this street, Pembroke Avenue, improved
with homes?

A. It is.

Q. And where are those homes located in relation
to these two lots?

20

Mr. Reed: I object, if your Honor please.

The Court: I will permit it.

A. The homes are on the east side of Pembroke,
there are three there, including the Atlantic Avenue
corner, and two adjoining ones. These lots are di-
rectly opposite.

30 Q. You say those homes are more than the ordi-
nary value?

A. Yes, sir, they are very high type.

Mr. Reed: I object.

The Court: Sustain the objection.

Q. Would you say that those homes are valued over \$25,000?

Mr. Reed: I object to that, if your Honor pleases.

The Court: Sustain the objection.

Cross-examination.

10

By Mr. Reed:

Q. I show you a sheriff's deed and ask you to say whether that describes the property described in the bill and the property about which you have been testifying. Is that the property you have been testifying about?

A. Yes, sir.

Q. Now —

20

Mr. Reed: I want to offer this deed, if your Honor pleases.

A. Wait until I see if this is on the westerly side.

(Deed marked D1 for identification.)

Q. How long since has it been that you sold a lot on Nassau Avenue?

30

A. That was five years ago.

Q. And the market in lots down there is not active now, is it?

A. In through the park it is, south of Atlantic Avenue.

Q. When was it active?

- A. When was it really active?
Q. Yes.
A. 1925 and 1926.
Q. Since when you have sold any lots on the south side in Margate Park?
A. I haven't sold any within the last four years.
Q. Why do you say the market is active there
10 now?
A. I have sold, just north of Margate Park, five lots.
Q. You are talking about south of Atlantic Avenue?
A. I am talking south of Atlantic.
Q. Have you sold any lots there within the last three years?
A. Yes, sir.
Q. Where?
20 A. I sold three on Kenyon, one on Jerome, and one on Knight.
Q. When did you sell them?
A. Within the last three months.
Q. How long prior to that had it been since you sold any lots on the south side of Margate Park?
A. The market has been very poor for the last four years, I should say the last sale in through there was about 1926.
Q. From 1926 until three months ago there was
30 no market at all for those lots, were there?
A. There wasn't any buyers.
Q. You didn't sell any?
A. No, sir.
Q. And the market has picked up within the last three months, is that it?
A. Yes, sir.

HAROLD PARSELLS, SWORN.

Direct examination.

By Mr. McGee:

Q. Mr. Parsells, are you an officer of the Parsells 10
Petroleum Products Company?

A. I am.

Q. What position do you hold?

A. President.

Q. Did your company hold a mortgage on prop-
erty in which Helen G. White had executed to A.
M. Mahjoubian, Incorporated?

A. We did.

Mr. Reed: I object to that, if your Honor pleases. 20
That no longer exists. It has been foreclosed and
the judgment is already in evidence.

The Court: I will permit it.

Q. Was this mortgage foreclosed at your in-
stance?

A. It was.

Q. Were you advised that a deficiency judgment
was taken against Helen G. White? 30

A. I was.

Mr. Reed: I object to that, if your Honor pleases.

The Court: Sustain the objection.

Q. Did Miss White ever communicate with you regarding a judgment that you held against her?

A. She did.

Q. When was that?

A. It was in the summer of 1929.

Q. What conversation did you have with her regarding this judgment?

10 A. She wanted to make a settlement on it, and wanted to know what is the best I would do as a settlement, and I told her that I would accept \$500, any renew the balance, but I wouldn't accept any less.

Q. What did she say?

A. She said she couldn't pay that amount.

Q. Did she ever communicate with you again?

A. She did not directly, to my knowledge.

Q. Where did this conversation with Miss White
20 take place?

A. At my home.

Q. Did you talk to any other member of her family regarding this?

A. I did.

Mr. Reed: I object, if your Honor pleases.

The Court: Unless you communicated it.

30 Mr. McGee: If the Court pleases, I want to show that both the, I think, Mr. Parsells is going to mention his brother, is interested in this property, as Miss White was, and that for the purpose of doing what we are here for today —

The Court: I will permit it, subject to your connecting it later.

Mr. Reed: If your Honor pleases, I would like to state my reason for objecting. First, as I understand the issue, there is no dispute about this judgment. It is in evidence. The sole issue here, as I understand it, by the pleadings, is whether we conveyed in fraud and whether we did not receive an adequate consideration, if we tried to pay this judgment or negotiated has no evidential bearing upon the issue at all. 10

The Court: As I take it, the offer now is to show that the witness was told that they were going to make such a conveyance in fraud, that is the suggestion made by counsel.

Mr. Reed: He is going to show that Miss White's brother had a conversation with him, is that right? 20

Mr. McGee: If the Court please, we are going to show, which I understand is a requisite in this kind of a proceeding, that they had knowledge of this foreclosure and further had knowledge that the bond, if there was any deficiency, would be effective against her.

The Court: I will permit it.

Q. Did anyone else communicate with you regarding this judgment that you held against the defendant, Helen G. White? 30

Mr. Reed: I object on the ground that it must be some one who can bind my client, Helen G. White.

Q. Did Eugene White communicate with you regarding the judgment you had against Helen G. White?

A. He did.

Q. Do you know what relation Eugene White is to Miss White?

A. He told me he was her brother.

10 Q. Did he seem to be familiar—was he familiar with this transaction?

A. He seemed to be, yes, sir.

Q. What conversation did you have with him?

Mr. Reed: I object, if your Honor pleases, unless it be shown that he had authority to bind Helen G. White.

20 The Court: I will permit it.

Q. What was the conversation you had with Eugene White?

A. None other than he offered \$150 to settle it, but, of course, I refused it.

Q. Did he have any conversation with you when you refused to accept the \$150?

A. Not other than that he wouldn't make any other offer.

Q. When did that conversation take place?

30 A. That took place prior to Miss White calling on me.

Q. What did you say, prior, you mean a month, a week, or how long?

A. Well, approximately a month, I just don't remember the dates.

Q. Did you ever have any other conversation with Mr. Eugene White?

A. He was in my office a couple of times other than this one that I mentioned, but there was nothing to offer other than what I have told you.

Q. When were those conversations?

A. During that same period.

10

(No cross-examination.)

STANLEY A. JOY, sworn.

Direct examination.

By Mr. McGee:

20

Q. Mr. Joy, you are connected with the Parsells Petroleum Products Company, Incorporated?

A. I am.

Q. What position do you hold with them?

A. I am vice-president.

Q. As vice-president, did you ever communicate with Helen G. White —

A. I did.

Q. —regarding a judgment which your company held against her?

30

A. I did.

Q. And also during the time that you held a mortgage on property which she owned?

A. I did.

Q. Did you write her a letter?

A. I did.

Mr. McGee: I ask for letter written on April 29, 1929, by Mr. Joy.

Mr. Reed: I have no letter.

Q. I show you what purports to be a letter written by your company on April 29, 1929, and ask you
10 whether or not that was sent to the defendant, Helen G. White?

A. It was.

Q. At what address?

A. 4701 Springfield Avenue, Philadelphia, Pennsylvania.

Q. What does that letter say?

A. "Dear Miss White: Since we have written you two letters advising that your mortgage on lot
20 for \$990 was due and we have not heard from you, we have placed the matter in the hands of our attorney, Mr. Albert A. F. McGee, Real Estate and Law Building, Atlantic City, with instructions to proceed with foreclosure and suit on the bond. Any further correspondence concerning the matter should be addressed to him. Very truly yours, Parsells Petroleum Products, Incorporated, by Stanley A. Joy, Vice-President."

30 (Copy of letter admitted in evidence and marked Exhibit C2.)

Q. Did you ever receive any reply to that communication?

A. I received no reply in the mail.

Q. Did you receive any reply?

A. I had a phone call from a Mr. White who said he was Miss White's brother.

Q. What conversation took place between you and he?

Mr. Reed: I object to that unless it is shown he had authority to bind my client.

10

The Court: I will permit it.

A. He asked if we were willing to make any settlement. As Mr. Parsells was out of the office I told him that I thought we would be willing to make some settlement but it would be dependent on Mr. Parsells' O. K.

Q. Did you give him any figure in settlement?

A. I offered to settle, if he would give us \$500 we would renew the mortgage for the balance. That was his question, he wanted to renew the mortgage in its entirety, without making any payment. 20

Cross-examination.

By Mr. Reed:

Q. You don't know how many brothers Miss White has, do you?

A. No, I do not.

30

Q. You don't know that, do you?

A. I do not.

Q. You couldn't say whether this was her brother that was talking to you or whether it was not, could you?

A. I could not.

Q. That is all.

Mr. McGee: If the Court pleases, that is our case.

The Court: Complainant rests subject, of course, to producing the exhibits.

10

DEFENDANTS' TESTIMONY.

EUGENE F. WHITE, SWORN.

Direct examination.

20

By Mr. Reed:

Q. You are one of the defendants in this suit, are you not, Mr. White?

A. I believe so.

Q. Where do you reside?

A. 1401 West 3rd Street, Chester, Pennsylvania.

Q. Are you related to Helen G. White, another defendant in this suit?

30

A. I am her father's brother.

Q. What is your business, Mr. White?

A. Undertaker.

Q. You hold any office or position in the State of Pennsylvania?

A. Chief Clerk of the House of Representatives at Harrisburg, sir.

Q. Are you familiar with the two lots on Pembroke Avenue that are mentioned in this bill of complaint?

A. I think I saw them once.

Q. In March, 1930, did you have some negotiations with your niece about the purchase of those lots?

A. Well, did act on that date, sir.

10

Q. What arrangement did you make with Helen G. White, your niece, with respect to the purchase of those lots, did you have an appointment with her at your lawyer's office?

A. Had an appointment with Mr. Richards, Senator Richards.

Q. Was he your lawyer?

A. He is my attorney, yes, sir.

Q. What was the purpose of that appointment?

A. It was to arrange about the purchase of these 20 lots.

Q. And did you arrange with Helen G. White to purchase the lots mentioned in this deed?

A. I did.

Q. Are they the lots that are mentioned in the bill of complaint, westerly line of Pembroke Avenue, lots 12 and 13, block 17?

A. I have never made a survey or study of them, Mr. Reed.

Q. But these are the lots that you bought from 30 your niece?

A. I believe so, yes.

Q. How much did you pay your niece for those lots?

A. Six thousand dollars.

Q. Cash?

A. Yes, sir, subject to a \$3000 mortgage.

Q. Is that your check?

A. That is my check.

Q. Was that paid out of the funds in your account in the Delaware County Trust Company in Chester, Pennsylvania?

A. It will show that on the back of it, I think.

10

Mr. Reed: I offer the deed in evidence, if your Honor pleases, and also the check for \$6,000.

(Deed and check received in evidence and marked Exhibits D2 and D3 respectively.)

Q. This check was paid out of your account, was it not?

A. It was.

20

Q. After the conveyances to you, did you sign a deed to the Delaware County Trust Company?

A. I did.

Q. Is that the deed?

A. Looks like it, sir.

(Deed offered, received in evidence and marked Exhibit D4.)

30 Q. How is the Delaware County Trust Company interested in these lots and other properties which you own in Chester?

Mr. McGee: I object.

The Court: I will permit it.

Q. What interest have they in it, Mr. White?

A. No interest except my convenience.

Q. Have you a declaration of trust from them?

A. I have.

Q. How long standing has this arrangement been made between you and the Delaware County Trust Company with respect to your real estate holdings?

A. Some years, I can't go back to that length of time. 10

Q. Will you look at that declaration of trust?

A. Yes, sir.

(Declaration of trust offered in evidence.)

Mr. McGee: I object; I don't see anything in this declaration of trust that affects this particular transaction.

20

The Court: I will permit it.

(Declaration of trust admitted in evidence and marked Exhibit D5.)

The Court: Gentlemen, just one minute. I am wondering if there is any need to go further in this case. I have examined the paper purporting to be a deed to the Douglas Company presented and marked for identification purposes, I shouldn't have looked at it, but I call attention to the fact that apparently the Douglas Company still has title to these premises. I specifically refer to the fact that there is no acknowledgment of the sheriff or certificate by a Master in Chancery that the deed was a sufficient conveyance. There purports to be such a 30

paper presented, but it is dated nine months or approximately that before the time of the sale.

Mr. Reed: I think your Honor is right about that, deed dated 1928, and certificate and acknowledgment dated 1927. Of course, I assume that is a typographical error, but, nevertheless —

10

Mr. McGee: Title apparently still in the sheriff. If the Court please, I will make application to have an opportunity to —

The Court: I think you better proceed with the case and I call attention to that.

Mr. Reed: I want to offer this deed in evidence.

20

(Deed admitted in evidence and marked Exhibit D1.)

Q. I ask you who was the owner of these premises on Pembroke Avenue, the actual owner?

A. The actual owner is —

Mr. McGee: I object. The record speaks for itself, if your Honor pleases.

30

Mr. Reed: I have a right to show, and I intend to show that this defendant, Helen G. White, has no interest in this. In other words, he is now holding it for her as trustee.

The Court: I will permit it for this purpose.

Q. Who owns this property actually?

A. Today?

Q. Yes.

A. I do.

Q. Has Helen G. White any interest in it?

A. None whatever.

Q. Did you make this arrangement through Senator Richards and Helen White to defraud the Parsells Company? 19

A. I did not.

Cross-examination.

By Mr. McGee:

Q. Mr. White, did you know that the property which was owned by Helen G. White, on which the Parsells Petroleum Products Company held a mortgage, was to be sold at sheriff's sale on March 6th, 1930? 20

Mr. Reed: I object to that on the ground it has no bearing on this case.

The Court: I will permit it.

A. From hearsay.

Q. What do you mean, hearsay? 30

A. I heard it from the mouths of other people. I never knew anything of the matter.

Q. Did you come to my office for the purpose of talking about that?

A. I came to your office to talk over the conditions existing between Helen G. White, an innocent party,

with her brothers, about matters that she knew nothing about.

Q. Would you mind answering my question? I ask to have that stricken.

The Court: Yes. Repeat your question.

10 (Question repeated.)

A. I don't believe I did.

Q. Weren't you in my office the latter part of February?

A. Some time this past winter or spring I was in your office on several occasions.

Q. And didn't you discuss this judgment with me or this foreclosure with me at that time?

20 A. I discussed the whole family affair from the time that you went to school with the brothers.

Q. Did you discuss this particular transaction with me?

A. You told me of your interest in the proposition and that there was a general talk, no particular discussion about it.

Q. Do you say that you did not discuss this foreclosure proceeding?

30 A. I don't know whether you call it a discussion, if our talk was a discussion, then yes; if our talk was just a matter of general conversation I would say no.

Q. Didn't you ask if my clients would accept \$250?

A. No, sir.

Q. How is it, Mr. White, that this transfer took

place about two or three days prior to this sheriff's sale?

A. I asked, if I am not mistaken, in the talk with you, about the deeds of the lots on Pembroke Avenue, that you were supposed to have bought for Helen G. White at the sheriff's sale, and you told me that they were at the Marine Trust Company. I went to the Marine Trust Company and they told me they had turned them all over to you, and from that date to this, until last evening, I never saw you because I did not think there was any use going back to see you when you told me they were at the Marine Trust Company and the Marine Trust Company told me they turned them over to you. 10

Q. Mr. White, did you tell me at that time that you intended to protect the Pembroke Avenue property because of this foreclosure and other pending foreclosures? 20

A. Positively no. I told you that I came to talk to you in the interest of Helen G. White, an innocent —

Mr. McGee: I will ask to have that stricken.

The Court: Yes.

Q. Mr. White, when you came to my office the latter part of February, you were familiar about this foreclosure proceeding, I understand you to say, you say from hearsay? 30

A. The foreclosure and the Parsell proposition, you talked all around that, yes, sir.

Q. But didn't I tell you that in the event that the Pembroke Avenue property would be conveyed,

that there would be a bill filed to set aside that conveyance when you were walking out of the door of my office, the very last words I said?

A. No, sir.

Q. You took a trip, didn't you, around February, on a boat, 1930?

10 Mr. Reed: I object.

The Court: I will permit it.

A. No.

Q. You took a trip, didn't you, on a steamer?

A. 1930?

Q. I mean 1929.

A. Yes.

Q. Wasn't that around February?

20 A. No.

Q. When was that, the last part of January, 1929?

A. April.

Q. April, 1929?

A. Yes, sir.

Q. You sure of that? You said you saw me in February, and never saw me after that time, the testimony is here today?

30 A. That is from the time that I went out of your office and you told me that the deed of the Pembroke property were at the Marine Trust Company, I never went in your office afterwards.

Q. Your testimony here, as I understand it, was February when you last saw me?

A. Of 1930?

Q. 1929.

A. 1930.

Q. Didn't you see me ——

A. I never knew you in 1929.

Q. In February, 1929, you were in my office—
1930?

A. 1930, yes. I didn't go on any boat in 1930.

Q. In February of 1930, of January, you took
this trip, this boat trip?

A. No, sir.

10

Q. When did you take it?

A. In 1929.

Q. In 1929?

A. Yes, I went to Europe in April, 1929, and I
haven't been out of the country this year of 1930.

Q. Didn't you tell me in February, or latter part
of January and February that you were taking a
trip this year?

A. I might have said during the conversation that
I was asked to go with a party on a trip, that I 20
was contemplating the possibility of making a trip.

Q. Didn't you say you were leaving or would not
be here the day this property was to be sold?

A. No, sir.

Q. And that you wanted to take care of it if you
could beforehand?

A. No, sir.

Mr. McGee: Now, Mr. White gave a check to
Miss White for \$6,000 ——

30

A. Yes, sir.

Q. You state in here, or it is stated in this deed
\$1,000, is there any particular reason for that?

A. They wanted to put in one dollar—\$1,000—I
say they wanted to write one dollar in it.

Q. Was there any particular reason for making this one thousand?

A. None whatever, the young lady said she would put in one dollar or a thousand dollars, and put in whatever she pleased.

Q. You didn't say that you were paying six thousand?

10 A. Yes, sir, she saw the check wrote out on the desk of the Marine Trust Company.

Q. I say you didn't ask for six thousand to be put in, did you?

A. She knew we were paying six thousand dollars for it, saw the check.

Q. Mr. White, you turned this property over or the deed over to the Delaware County Trust?

A. As trustee.

Q. As trustee for you?

20 A. Yes.

Q. Who owns this property? You don't contend to hold this property, do you?

A. Not if I can find a buyer.

Q. I mean you are going to turn it back to Miss White?

A. You offer me nine thousand dollars for the property now.

The Court: Just answer the question, please.

30

Q. You intend —

A. I don't want it to be an impertinent question, Judge.

The Court: You answer the questions when they

are propounded, and I will decide whether they are impertinent or not.

Q. You intend to turn this property back to Helen White or a member of her family, don't you?

A. If they pay me sufficient money.

Q. If they pay you six thousand dollars?

A. I might consider six thousand dollars, if they 10
pay me six thousand dollars.

By Mr. Reed:

Q. You are not under any contract?

A. None whatever.

Q. You can sell it to anybody you see fit?

A. Any person offer me the money today.

Q. Anybody except yourself that has any interest
in it? 20

A. None whatever.

Q. I want to ask you why it is that this property is not in this trust agreement that you have with the Trust Company?

A. The same as a dozen other properties that I don't think there has been any property put in the trust agreement since 1918 when the agreement was made out.

Q. Do they hold any other properties?

A. A dozen other properties since then. 30

Q. What is the purpose of this agreement?

A. So the Delaware County Trust Company
can—

Mr. McGee: I object.

The Court: I will permit it.

A. So the Delaware County Trust Company can sell such property as I have in the market for sale in my absence, or my wife's absence. I am in and out of the country. A mere matter of convenience.

Q. A mere matter of convenience to you?

10 A. Yes.

Mr. McGee:

Q. Mr. White, do you have such a declaration of trust as far as this property is concerned?

A. That is considered in that.

Q. Doesn't that describe the particular properties at that date? Those properties some of them possibly have been sold?

20 (Question repeated).

A. I have nothing excepting what is there.

Q. Will you show me in this declaration of trust where it says any property they hold——

The Court: The question is overruled.

30 Mr. McGee: I renew my objection or motion that there is nothing in this declaration of trust to permit the Delaware Trust Company to sell this ground.

The Court: I think that is so. I will permit it to remain, a matter of probative force on that point.

EUGENE A. MERGY, SWORN.

Direct examination.

By Mr. Reed:

Q. Mr. Mergy, what is your business? 10

A. Assistant Treasurer of the Delaware County Trust Company.

Q. Have you with you the records showing the account of Eugene F. White?

A. I do, sir.

Q. Will you produce them?

A. Yes, sir.

Q. Does it show the payment of this check out of the funds in his account in your bank?

A. Paid on March the first, \$6,000. 20

Q. Now, you produce the deed for the conveyance from Eugene F. White and his wife to the Delaware County Trust Company, which I show you; will you tell me in whose interest and for whose use?

A. For the benefit of Mr. White.

Q. Mr. Eugene F. White?

A. Mr. Eugene F. White.

Q. Has Helen G. White any interest in it?

A. No.

Q. Have you any connection or relation with her 30 except as depositor in your bank?

A. None other, no, sir.

Q. The property described in that deed does not appear to be mentioned in this declaration of trust. Why isn't it mentioned in the declaration of trust?

A. This declaration was executed in 1918, and we

have been holding quite a lot of other properties for Mr. White that are not mentioned here.

Q. What is the purpose of the conveyance to the bank in so far as you know, what is the purpose of the trust?

A. Just as a matter of convenience to Mr. White, if he has any properties listed for sale, that they
10 can be sold without his presence.

Q. No one except Eugene F. White has any interest in any of those properties?

A. Not to my knowledge, no, sir.

(Ledger card offered, received in evidence and marked Exhibit D6).

Cross-examination.

20 By Mr. McGee:

Q. I understand you to say that you had no arrangement with Mr. White regarding the Pembroke Avenue property in Margate City, New Jersey?

A. Not to my knowledge, sir.

Q. You know nothing about this transaction?

A. Nothing about this Pembroke Avenue property, no, sir.

Q. What is your position in that bank?

30 A. Assistant treasurer.

Q. Have you any agreement with Mr. White regarding this property, to your knowledge?

A. Not that I know of, sir.

Q. Do you hold this as security for anything?

A. No, just as trustee for Mr. White.

Q. Is it security for any loans that he has as set forth in that declaration?

A. No, sir.

Q. Does Helen G. White have an account with you?

A. She has, sir.

Q. Were you there when this account was opened?

10

Mr. Reed: I object. It is not proper cross-examination, if your Honor please. He can't examine this witness as his own witness.

The Court: You may hold this witness. The witness must remain. I will sustain the objection.

Mr. McGee: I will make him my witness.

The Court: You object to it being done at this 20 time?

Mr. Reed: I would like to put my case in.

The Court: You may do so.

(Paper referred to marked C3 for identification).

By the Court:

30

Q. Will you tell me from your records what balance Mr. White had in your bank on the morning of March 3rd?

A. \$683.38.

Q. On the morning of March 3rd?

A. The balance on February 28th was \$810.36.

Q. And he deposited how much on March 3rd?

A. \$6,076.75.

Q. What was his balance on the evening of March 4th?

A. \$683.38.

Q. Then the deposit of \$6,000 was on March 3rd, and was drawn out March 4th?

10 A. That is correct.

Q. Have you any record to indicate what the deposit of six thousand and some odd dollars was?

A. No, I don't have that with me.

By Mr. Reed:

Q. Can you tell me whether it was a note or cash deposit?

20 A. It must have been a straight deposit; had it been a note it would have been so indicated on the card here, the notes are marked.

By the Court:

Q. It was not a note, straight deposit?

A. Straight deposit.

Q. But you have no record to show what it was?

A. No.

30 Mr. Reed: We produce this because Mr. McGee wanted them, if your Honor please. We didn't think it was necessary, but they are here.

Mr. McGee: This \$6000 came in on the third and went out on the 4th?

A. That is correct.

HELEN G. WHITE, SWORN.

Direct examination.

By Mr. Reed:

Q. You are one of the defendants in this lawsuit, Miss White? 10

A. Yes, Mr. Reed.

Q. You are a relative of Mr. Eugene F. White?

A. His niece.

Q. Were you at any time the owner of these lots mentioned in this bill of complaint on Pembroke Avenue?

A. Yes, I was, Mr. Reed.

Q. From whom did you receive the title, who conveyed these lots to you? 20

A. The Douglas Investment Company.

Q. The Douglas Investment Company?

A. Yes.

Q. Is this the deed that you received evidencing your purchase of these lots from the Douglas Investment Company?

A. Yes.

Q. How much did you pay the Douglas Investment Company for the lots?

A. The entire thing was \$9,250. 30

(Deed offered, received in evidence, and marked Exhibit D7).

Q. This deed from the Douglas Investment Company is dated July 9th, 1928, did there come a time

when you had an opportunity to sell these lots to your uncle?

A. I did sell them to him, yes, sir.

Q. There came a time when you were anxious to sell?

A. I couldn't carry them.

Q. Is this the deed?

10 A. The deed was drawn.

Q. Is this the deed?

A. Yes, it is.

Q. Did you execute that deed; just examine it.

A. The deed was executed right there in the South Jersey Title and Finance.

Q. How much money did you receive in cash at the time of that conveyance?

A. \$6000.

20 Q. Did it come to you in the form of this check which is marked?

A. \$6000 was presented to me in the South Jersey Title & Finance Company in the presence of myself.

Q. You received this check?

A. Yes.

Q. What did you do with the check?

A. Deposited in my own bank account.

Q. Used the money for your own purposes; is that right?

A. Yes, sir.

30 Q. Have you any interest in these properties that now belong to your uncle?

A. None whatsoever.

Q. Have you any understanding with your uncle that he is to return these lots to you at any time?

A. Absolutely not.

Q. Did you make this conveyance in fraud or for a valuable consideration?

A. I made it for, I think, valuable consideration.

Cross-examination.

By Mr. McGee:

10

Q. Miss White, have you talked to Mr. Parsells regarding settling this mortgage?

A. Yes, I did, Mr. McGee.

Q. Could you agree upon a figure?

A. Well, I don't like to contradict anyone's statement, but we couldn't agree.

Q. I say could you agree upon any settlement?

A. We could not, no, because I didn't offer him that.

Q. Did anyone else, to your knowledge and at your instructions, take this matter up with Mr. Parsells?

20

A. Certainly not at my instance and not to my knowledge.

Q. You say that Eugene F. White did not take this matter up with Mr. Parsells at your request?

A. I said no one at my instance, Mr. McGee.

Q. You say specifically Eugene F. White did not, your brother?

A. I say that no one did at my instance, no one at all.

30

Q. Didn't you tell me when I told you to see Mr. Parsells yourself, that your brother Eugene would take this up further if you could not complete your negotiations that day?

Mr. Reed: I object to that.

The Court: I will permit that.

A. No, Mr. McGee. No, I would have no occasion
fo, Mr. McGee, because the negotiation that you told
me to present to Mr. Parsells, you thought he would
10 accept, I had no occasion for any further remark
that day.

Q. Miss White, do you mean to say that you did
not instruct Eugene White, your brother, to take
this matter up either with Mr. Parsells, Mr. Joy or
myself?

A. No, I did not, Mr. McGee.

Q. And what he said to me was without your
knowledge regarding this foreclosure and this prop-
erty on Brunswick Avenue?

20 A. I haven't the faintest idea what he said to you.

Q. Did you ever tell—

The Court: Just one moment. I take it for
granted that you are all considering, this witness
says that she did not authorize anyone to do this,
the question was do you mean to say, and the answer
is no. On the record it would be just exactly the
opposite from what you are now acceptng the testi-
mony. I call your attention to that. The question
30 was do you mean to say that you did not, she certain-
ly knows, which is the answer that she did not mean
to say that, of course the question was improper.

Q. Miss White, what conversation did you have
with your uncle regarding the transfer of the Pem-
broke Avenue lots to him?

A. Because I was absolutely unable to carry them myself, I asked him with the consent of everyone else in the family, if he would buy them from me for that amount of money for absolute cash, which I needed at that time. He agreed to do it, at that time, and with the consent of everybody it was done.

Q. When did that conversation take place?

A. At the beginning of February, I would say. 10

Q. February, 1930?

A. I am not stating any date of it, because I don't know, we asked him to come up to our house at Springfield Avenue to talk this matter over with us. We were perfectly aware we were not able to carry them. I wasn't able and I couldn't do it, and there was no other way for me to get help. I talked with Uncle as I do always, there isn't many days pass that I don't talk to some of them, and I asked him to come up and have this, as I would call a meeting 20 of the four of us at our home, I had no occasion to jot the date of it down, of course.

Mr. McGee: I ask to have it all stricken out. I asked when was it.

The Court: I will not strike it. You may repeat the question.

A. I will then say some time after the first of the 30 year.

Q. What year, Miss White?

A. 1930.

Q. Did you ask your uncle, Eugene F. White, to communicate with me around that period?

A. No, I did not.

Q. Did Mr. Eugene F. White know of the difficulties you were having regarding this mortgage at that time?

A. I don't think he did.

Q. You say you discussed this with him?

A. I discussed what I needed money for.

Q. Where did you deposit this \$6000 that you received?

A. Delaware County Trust—at least, the Belmont Trust, my own bank, Delaware County Trust,—

Q. In Philadelphia?

A. Yes. It is now the Pennsylvania Company.

Q. You have a bank account at the Delaware Trust Company?

A. That is the same bank, Mr. McGee. It was first the Belmont, then the Delaware, now the Pennsylvania Company for Granting Annuities.

20 Q. You say the Colonial Trust Company is the same as the Belmont Trust Company?

A. Yes, sir, Mr. McGee.

Mr. Reed: There has been a merger of all of these trust companies.

Q. Since when?

A. I don't know when the Belmont merged with the Delaware, I bank at 49th and Baltimore Avenue.
30 It made no difference, only it changed its name, it was then known as the Belmont Trust, it has been merged further now, known as Pennsylvania Company, still 49th and Baltimore.

Q. Was it the Colonial Trust on March 3rd, 1930?

A. Do you see on the check, Mr. McGee, it

wouldn't matter to me whether the Colonial or the Pennsylvania.

Q. Nobody took this to the Colonial Trust Company for you, did they?

A. No, I deposited it at 49th and Baltimore Avenue, I can write checks today at the Belmont Trust and still use them at the same bank.

Q. Did you have a written agreement with your uncle for the sale of these lots? 10

A. No, other than a deed signed there in the bank building.

Q. Isn't it a fact that these lots are to be returned to you—

A. No, it is not.

Q. —or sold and the profit, if any, given to you?

A. Absolutely not.

Q. Isn't it a fact that this is the transaction where that \$6000 was returned to your uncle? 20

A. Absolutely not.

Q. Isn't it a fact that you did this in order to get out of paying this deficiency judgment?

A. No.

Q. Then why did this transfer take place on March 3rd, 1930?

A. I know of no particular reason for it being just that day.

Q. You knew when the sheriff's sale was to take place, did you not? 30

A. Yes, I did.

Q. When was that?

A. I don't know the date, I am sorry.

Q. It was March 6th, 1930, wasn't it?

A. I don't know, Mr. McGee.

Q. Would you say it was not that time?

A. I certainly would not say it wasn't, if I said I didn't know. I don't know the definite date of it.

The Court: The sale was the 6th of March, 1930.

Q. I show you an order confirming the sale of mortgaged premises, signed by his Honor, the Chancellor of this State, will you know when that sale took place?
10

A. 6th day of March, 1930.

Q. What year?

A. 1930.

Q. Now, then, can you give me any reason why you made this conveyance at this time to your uncle?

A. I made the conveyance at that time because it was prior to that that I found that I could not carry them and had to have money, it was then that Uncle Ed came up and discussed it with all of us, and it was agreeable, and he said that he would buy them, and the sale was that day, that is the only reason.
20

Q. Did you need money prior to this time?

A. I had been going along, getting, just doing the best I could with everything, I needed a lot of money.

Q. You began talking about this in January, you said, you testify, in 1930?

A. Exactly, of where we would get the money.

Q. Then from January until March the 3rd, you discussed this back and forth?

A. I wouldn't say we discussed it back and forth, I might have things that were coming due that had to be paid, I might have borrowed money before that I would have to pay back.
30

Q. Didn't you transfer this property at that time for the purpose of defeating this judgment?

A. I did not, Mr. McGee.

By Mr. Reed:

Q. When you went to see Mr. Parsells, as Mr. McGee has asked you, why you went to see him, how did it come about that you went to see Mr. Parsells?

A. I came down to Atlantic City to see Mr. Parsells and went to his office, and I was informed by some one in his office that he was out and wouldn't be back. 10

Q. Why did you go to Parsells, who sent you there?

A. It was Mr. McGee's suggestion we offered Mr. Parsells a cash consideration.

Q. How did Mr. McGee come to send you to see Parsells?

A. I called Mr. McGee on the phone and told him Mr. Parsells was not there, and he suggested that I try to reach him at his home. 20

Q. Why did you call Mr. McGee, was he your lawyer?

A. Mr. McGee had previously told my brother at some time, as he told me, that he had told him, that if he would walk into Mr. Parsells' office and lay \$500 on his desk he would accept it.

Q. I didn't ask you that. I asked you whether Mr. McGee was your lawyer.

A. Mr. McGee did represent us in the previous case. 30

Q. Did he represent you when you bought these lots from the Douglas Investment Company?

A. Yes, he did.

Q. Did he attend the settlement at the Title Company for you?

A. He surely did.

Q. Now ——

A. He arranged the entire thing.

Q. ——at anytime did you authorize or direct your brother, Eugene F. White, to see Parsells for you?

A. No, I did not, Mr. Reed.

10 Q. Did he have any authority to speak for you in this transaction with Parsells?

A. He would have an interest, and that is all that I know.

Q. Did he have any authority from you?

A. No, no authority from me.

Q. Did you send him to see Parsells?

A. No, I did not.

By Mr. McGee:

20 Q. What was the interest that he had?

A. He is my brother.

Q. What other interest did he have in this transaction?

A. He would have no other interest other than his natural brother's interest, I trust.

30 Q. You were notified back in April of 1929 that if a foreclosure proceeding were brought and the property did not bring sufficient to cover the mortgage that a suit would be brought on the bond. Did you know that, receive a letter to that effect?

A. I didn't understand, Mr. McGee.

(Question repeated.)

A. Probably did.

Q. I show you a letter marked Exhibit C2 and ask you whether or not you received that letter?

A. Probably so, Mr. McGee. I am sorry I have not a copy of it.

Q. You would not say you did not receive it?

A. No, I would not.

10

MRS. MAY WHITE CONVERY, SWORN.

Direct examination.

By Mr. Reed:

Q. What is your name?

A. Mrs. May White Convery.

Q. Are you related to the defendant, Helen G. 20
White and Eugene F. White?

A. Eugene F. White is my uncle and Helen White
is my sister.

Q. Where do you live?

A. I live 813 Atwood Road, Philadelphia.

Q. Did you attend a conference at which there
were present Helen White and Eugene F. White in
Philadelphia some time in the early part of this
year?

A. Yes, I did, Mr. Reed.

30

Q. Do you remember whether there was any busi-
ness agreement to be transacted at that time between
Helen F. White and Eugene F. White?

A. The only knowledge I had was that Helen had
to dispose of the lots because she was not able to
carry —

The Court: The question is what you heard.

A. I am sorry, I didn't understand it.

Q. What did you hear in relation to the sale of these lots and purchase of these lots at this conversation?

A. I heard Helen ask Uncle Edward would he buy
10 them.

Q. What did he say?

A. He said yes, he would.

Q. Did he make an appointment at that time to see Helen G. White in Senator Richards' office?

A. In Atlantic City, yes, he did.

Cross-examination.

By Mr. McGee:
20

Q. Who do you say, Uncle Ed?

A. His name is Eugene F. White, his name is Uncle Ed to me, because I have always called him Uncle Ed.

Q. Is Mr. White's name Edward or Eugene?

A. His name is Eugene F. White.

Q. Mr. White has a son, hasn't he, named Eugene?

A. No, he doesn't.

Q. How many children does he have?

30 A. I will have to count them up to see.

Q. Name the boys.

A. He has one whose name is Edward, and one whose name is George and one Harry, three sons.

Q. Do you call your uncle Ed?

A. Yes, I do. I have always called him Uncle Ed.

Q. Now, Mrs. Convery, you all discussed this mortgage of your sister's —

A. I don't understand what you mean, Mr. McGee.

Q. I say, did you discuss at various times the mortgage which was held by Mr. Parsells' Company?

A. I am not familiar with anything.

Mr. Reed: I object.

10

The Court: She has answered, says she is not familiar with it at all.

Q. Do you know whether or not your sister took this matter up with any attorney in Philadelphia?

A. I cannot answer that question.

Q. Do you know Mr. Logue?

A. Yes, I do.

Q. You don't know whether she took it up with him or not?

A. I don't know it.

Q. You have a brother by the name of Edward, don't you?

A. Yes, I do.

Q. Isn't it a fact that he is named after your uncle?

A. He is absolutely no relation to my uncle; his father is not the same as my father, his name is not White, it is McCann.

30

Q. Did you know Mr. Parsells' mortgage was being foreclosed?

A. I did not.

Q. You were having other difficulties in Philadelphia, weren't you?

Mr. Reed: I object to that.

The Court: Sustain the objection.

Q. Did you discuss only these lots on Pembroke Avenue in Margate City, New Jersey?

10 A. Well, at the time we discussed conditions generally, and Helen declared that she did not have the money to keep the lots up, we didn't have any money to give to her to keep the lots up, and that was how we were there, if we had been in position to have assisted her, she would not have had to call on my uncle, but we were not in position to help her and she went to him because she herself was not in position to carry them, and that is the only reason that she went.

20 Q. You don't know when this transfer took place, do you?

A. Which transfer do you mean?

Q. Of the Pembroke Avenue lots to your uncle?

A. No, I don't.

Q. You don't know anything about this transaction?

A. No, except in conversation with the family, I am married and not at home, I know that the lots were sold, I was present at the time that my uncle offered to buy them from my sister.

30 Q. You don't know anything other than that?

A. No, I do not.

DEFENDANTS REST.

COMPLAINANT'S REBUTTAL.

EUGENE A. MERGY, recalled.

Direct examination.

10

By Mr. McGee:

Q. Do you recall the time that Miss Helen G. White opened an account in your bank?

A. I don't recall specifically, no.

Q. Did you handle the transaction for the bank when she came in there?

A. I have, yes, sir.

Q. She deposited a check at that time ?

A. No, it was a note.

20

Q. Who was on that note?

A. Mary White Carr was the endorser.

Q. Do you know who Mary White Carr is?

A. I do.

Q. Who is she?

A. She is the daughter of E. F. White, she is Helen White's cousin.

Q. And this is for how much?

A. \$6,000.

Q. When was that made?

30

A. On December the 17th, 1929, three months note, maturing March the 17th.

Q. That was maturing March the 17th?

A. That is right.

Q. What became of this note?

A. This note was renewed on March 17th, \$5500,

\$500 payment made at that time, there is the original, six thousand, renewal fifty-five hundred, it again matured on June the 17th, \$96 was the interest, that is the difference between six thousand and fifty-nine hundred.

Q. You say five hundred was paid off?

A. Five hundred was paid off on March the 17th,
10 note was renewed for three months to June 17th.

Q. That apparently didn't come through your bank, from your ledger sheet?

A. That note wouldn't come through that account you see.

Q. Yes, but I mean the payment of \$500 was not from one of her checks in your bank.

A. Yes, sir, there it is, \$585.25.

Q. In March?

A. March, that is right, March 17th, the date of
20 the renewal, there it is, \$585.25, \$500 on account of principal, \$85.25 interest. Then on June 24th it was past due, from the 17th of June until the 24th, it was renewed under date of 17th, and they paid \$5000 on it at that time, and that five thousand didn't come through the account, doesn't show on that.

Q. Do you hold any collateral of Mary White Carr for this six thousand?

A. I had a judgment against Mary White Carr.

Q. When did you recover that?

A. That note was finally paid just September 17th
30 of this year, that judgment was entered, apparently at the time the note was made.

Q. Was this a judgment by confession?

A. It was a straight judgment note of Mary White Carr's, we did, we used Mary White Carr's judgment note on this endorsement.

- Q. Did you handle this all the way through?
A. I can't say all the way through.
- Q. I mean you handled this transaction, you handled the transfer of this real estate to you?
A. No, I had nothing to do with the real estate at all. I know nothing about that.
- Q. Are you aware of the fact that your company holds title to ground on Pembroke Avenue? 10
A. We have that deed, Mr. White's deed to us.
- Q. Is that the only way you know of it?
A. That is the only way I know it, yes.
- Q. You never discussed that with him?
A. No.
- Q. When did you around March, 1930, discuss this with him, if at all?
A. I don't recall discussing it with him at all.
- Q. Is this the same \$6000 that was borrowed back at this time that was used in this transaction where Mr. White bought this property, if you know? 20
A. I don't know that, but it wouldn't be, Mary White endorsed the note in December, are you referring to the \$6000 check Mr. White gave?
- Q. I am just asking if you know whether or not this is the same \$6000.
A. No, I do not.
- Q. Who told you to institute suit against Miss Carr and not Miss White Carr?
A. Beg pardon? 30
- Q. Who asked you to institute a suit against Mrs. Carr?
A. We didn't institute a suit against Mrs. Carr.
- Q. You said you recovered a judgment.
A. We took Mrs. Carr's judgment note as secur-

ity for Helen White's note, Mary White Carr endorsed the note for Helen White.

Q. And you entered this judgment note?

A. We entered that judgment against Mary White Carr in Delaware County.

Q. And that was in September?

A. No, it was December.

10 Q. The note was paid off, wasn't it, in September?

A. I am talking about the original date of the note, \$6000, it was paid on December 17th, at that time we took a judgment note against Mary White Carr, and entered it and held that to hold as security.

Q. That is the form you have that you use there?

A. Yes, straight judgment note.

Q. You say it was paid of at this date?

A. 17th, the day the note was due, yes.

Q. Miss Helen White don't owe you anything to-
20 day, does she?

A. Not today, no, sir.

Q. Mr. Eugene White don't owe you anything today?

A. He does.

Q. Other than what is covered by that declaration of trust?

A. That declaration of trust has nothing to do with loans that we have for Mr. White.

Q. Do you have Mr. White's card there?

30 A. I have his present liability sheets here.

Q. I mean his ledger card?

A. That is his account. I brought it back to December, 1928.

Q. Did any of the other members of Mr. Eugene F. White's family have any business with you other than Mary W. Carr?

A. I think Edward White has an account with us, had a note transaction.

Q. Edward White?

A. Yes. He is the son of E. F. White.

Q. What is Mr. White's first name?

A. Eugene.

Q. Eugene F. White?

A. Yes. Mr. White's other son, George White 10
keeps an account with us, too.

Q. Do you have an account with a brother of Mr. White's by the name of Edward?

A. No, sir, Mr. White has no brother except Miss White's father, who is deceased.

Q. You know that as a fact?

A. I know he is dead.

By the Court:

20

Q. I asked you concerning a deposit of Mr. White's on March 3rd, I think it was, and it appears on the sheet as being a straight deposit. Have you any means by reference to your indebtedness statements to show what that deposit was?

A. Well, our deposit ticket of course would show just what that is, but I don't have the deposit ticket with me.

Q. Have you with you a record of notes which may indicate what that was? 30

A. Of Mr. White's?

Q. Yes.

A. Yes. There is a note we have maturing on the 29th of September of Mr. White's, that is secured by collateral.

Q. Is there anything to show that that was deposited or was credited about March the 3rd?

A. No, that was a straight deposit, your Honor.

Q. But what I am inquiring is whether he made a discount with you that was—from which he drew the money and deposited it as money and not as a note.

10 A. The only notes we have now is one secured by collateral which was made prior—that note was made May the 6th, \$1800 borrowed, and on April the 28th, eighteen hundred. They were both new notes secured by collateral, and then there is a \$3400 note which is a renewal of a note —

Q. I can't help but ask you, I see before me on the table a record of a note of \$6000 of E. F. White, which happens to come due on September 3rd, the same date, and I am asking you if that is in connection with the matter in question, or just happened,
20 I can't help but see it, when it comes before me.

A. That is a note that has been reduced, that has been running for some time, these are the previous tickets, running back, it was originally renewed May 31st, 1929, and note originated before then, and then these are subsequent renewals.

Q. This happens to be \$6000.

A. Yes, reduced from seven thousand to six, and the others were straight collateral loans to Mr.
30 White.

Cross-examination.

By Mr. Reed:

Q. Are you able to say whether this is one of your deposit books in your bank?

A. Yes, sir.

Q. Will you look to see whose account that is?

A. E. F. White.

Q. Does that show a deposit there on March the 3rd, 1930?

A. That is right, \$6,076.75.

Q. Is there any way that you can tell whether that is the proceeds of cash or a note?

A. If that was a note it would so indicate in the book. It is a straight deposit.

(Deposit book offered, received in evidence and marked Exhibit D8.)

HELEN G. WHITE, recalled.

Direct examination.

By Mr. White:

Q. Mr. Mergy has testified as to an account that you had in the Delaware County Trust Company, and I want you now in detail to show that transaction to the Chancellor.

19

20

30

A. I borrowed the \$6000, Mary White, Mrs. Mary Carr, and my aunt.

Q. Did that loan have anything to do with this transaction about Pembroke Avenue?

A. Nothing whatsoever.

Q. Have you repaid that loan to the bank?

A. Entirely.

10 Q. Do the checks which you hold in your hands show how that entire —

A. These are my cancelled checks.

Q. Showing the distribution of that?

A. Every penny of it.

Q. I would like to have you to just show the Chancellor how that money was spent?

A. Mary White Carr, \$1600.

Q. What did that represent?

20 A. \$1600 that I had previously borrowed from Mrs. Carr, without giving her any security whatsoever.

(Check offered, received in evidence and marked Exhibit D9.)

Q. What is the next check?

A. \$500 drawn to my own order. Next was drawn for \$296 to the Delaware County Trust.

Q. Do you know what that was for?

30 A. June 16th.

Q. That is interest?

A. Something about the payment of the note, I imagine, because that was in June. The next was for \$300 drawn to myself. \$655, Receiver of Taxes. \$500 drawn to myself. These were drawn to pay, the \$500, was drawn to pay another tax bill.

Q. In Philadelphia?

A. Yes, on those two Dauphin properties, bill of \$752.44 for a new plumbing system put in the house, that is \$90 to a roofer, that is Wanamaker bill \$199, \$15.75 to Charlie Carroll, furnace man, Philadelphia, \$109, things that I had bought myself.

Q. Who is that check drawn to?

A. To the Coleman Brothers. This is for \$60 for papering, paper-hanger in Philadelphia. This is to the Delaware County Trust, \$585. That is with my note in return. 10

Q. Does this show the entire business transaction?

A. Yes.

Q. Was there any of that money used up to repay to Eugene F. White the \$6000?

A. Not any.

(Statement of checks offered in evidence.) 20

Mr. McGee: Just repetition. The original ledgers are on file.

The Court: I will permit it.

Cross-examination.

By Mr. McGee:

Q. Miss White, who represented you in Philadelphia as an attorney? 30

Mr. Reed: I object.

The Court: Sustain the objection.

Q. Did you ask Thomas F. Lowe to write me at any time regarding the Parsells foreclosure proceeding?

Mr. Reed: I object on the ground it is not proper cross-examination at this time.

10 The Court: Not cross-examination at all at this time.

(Question withdrawn.)

Q. March 22nd, 1930, you drew a check to your order, for \$300 "For A C" on that, what does that mean, does that mean Atlantic City?

A. No, it does not.

Q. Will you tell me what it means?

20 A. It means a private check of my own. Not any of them were paid for Atlantic City, the money I borrowed to pay my own bills.

Q. This doesn't mean Atlantic City?

A. No, it does not. I think you have Uncle Ed's check in there.

Q. \$500 cash, what was that used for?

A. Another of my own.

Q. Used for which purpose?

A. My own purpose.

Q. What did you spend it for?

30 A. I don't know, it would be, I recall taking one of \$500 out to pay a bill, a debt that had been quite long standing, that was not my own, but I saw fit to pay it. I used my own money to pay it.

Q. You acted as head of the family, didn't you?

A. No, I didn't.

Q. You maintain a home for your brother?

A. I do not.

Q. With your brother?

A. I live with my brother.

Q. Whereabouts do you reside?

A. 4701 Springfield Avenue.

Q. Philadelphia?

A. Yes. Does your sister live with you?

10

A. She does not.

Q. You have drawn \$1600 to Mary White Carr?

A. That is the first check drawn from my account, from the note that was borrowed. I paid her back first \$1600 that I had previously borrowed from her without giving her any security whatsoever, at some time quite previous to this, which was in December, I needed \$1600 and she gave it to me, and when I borrowed this note at the Delaware County Trust, were kind enough to endorse this note for me, having a judgment against my cousin, the first check I drew from the account, as I say, was to pay my cousin back the \$1600 which she had very kindly loaned me.

Q. Then you owed \$6000 plus \$1600?

A. You see the thing first, I wouldn't say \$6000 plus \$1600, because the sixteen hundred came out of the six thousand.

Q. Then was this \$1600 credited on this note?

A. I don't know what you mean by what you say, was it credited?

30

The Court: The Court don't, either. She says she owed Mrs. Carr \$1600, and she paid it out of the proceeds of this note.

Q. Did you owe \$6000 when you repaid this \$1600

to Mrs. Carr, if she was called upon to pay that note for you?

Mr. Reed: I object.

The Court: Sustain the objection. She only owed the sixteen hundred, once, and she paid it out of the proceeds of this note, therefore the sixteen hundred was paid.

Mr. McGee: If the Court pleases, I am trying to make myself plain, if it is at all possible. My idea here is whether or not, as accommodation or otherwise, endorser of this, Mrs. Carr is responsible for \$6000 for the payment of that sixteen hundred.

The Court: Can there be any question? That is an entirely different transaction.

Q. On June 16th, 1930, you paid \$296; what is that for?

A. I would suppose probably being paid in addition—my first note now, I know was \$500. I don't know, Mr. McGee.

Q. Don't know what that is?

A. No.

Q. Here is one March 15th, 1930, \$585.

A. That is accompanying the note, that was the payment on the note, you see the note is pinned to that, attached to the note.

By the Court:

Q. Is that the final payment on the note before it was finally paid off?

A. The note is finally paid, I don't know whether that is the final payment or not.

Q. I mean is this the final payment before it was finally paid off?

A. What is the date of it and I will tell you.

Q. This is the renewal of the first note.

A. At the expiration of the first three months I paid off \$500, and at the next three months I paid \$5500 off, leaving me still owing \$500, which I paid the 17th day of September. That receipt, of course, has not had time to come back. 10

By Mr. McGee:

Q. Do you have your checks here from the Belmont Trust Company?

A. No, I haven't.

Q. Here is a check April 3rd, 1930, for \$500, made payable to yourself, what was that used for? 20

A. For another debt, Mr. McGee. But that is for all other, I had to pay, and I didn't care if I were paying a debt for some one, I would prefer to putting my own name on the face of it, and having the cash and paying it in that way, rather than having some one feeling indebted to me.

Q. Here is another check \$600, is that another debt?

A. \$600 is tax bill, that one I know. 30

Q. Tax for what?

A. That were owed by members of my family.

By the Court:

Q. The first payment on this note of \$6000 was

five hundred plus interest, that left a note fifty-five hundred, when and how was that paid?

A. There have only been two payments, the last \$500 I know was paid.

Q. You have produced two checks, five hundred each, which made a thousand dollars, now how was the other \$5000 paid?

10 A. By check.

Q. From what bank?

A. From this bank right here.

Q. Do you produce a check of \$5000 on this bank, or any charge?

A. It is there.

Q. I think you are confused.

Mr. Reed: There is no such check.

20 The Court: There is no such check and no such charge on the sheet.

Q. From what source did you obtain the \$5000 to pay this note?

A. I have a mortgage on the house, on the property, building and loan mortgage.

Q. You don't understand me.

30 A. Yes, I do, if I may have access to that package, I have a mortgage that I took to pay it. These are the papers I have from this building and loan, which you will see will probably verify \$5000 mortgage taken on a property.

By Mr. Reed:

Q. It was the proceeds of that loan that you paid that note in June?

A. Yes, that is my mistake, because this represents all the money or notes that we owed. I can explain something to you, you see this, where all these charges were made and that amount was reduced, then there was still remaining, the reason that I answered so differently, this was all this money here, all the money was left in the bank, I asked them, this check was made out covering, withdrawing my account, using up all my money, adding to that, paid my note off, that I still have, this is the paper. They are my water rents and taxes that were paid. You want those? 10

The Court: No.

By Mr. McGee:

Q. Where did you deposit that money, the \$5000? 20

A. In my bank.

Q. Which bank is that?

A. Now the Pennsylvania Company.

Q. Philadelphia?

A. Yes.

Q. Did you pay this note off with a check from the Pennsylvania Company?

A. Yes.

Q. Do you have that check with you?

A. No, I haven't. 30

EUGENE F. WHITE, recalled.

Direct examination.

By Mr. Reed:

10 Q. The Vice-Chancellor called attention to this \$6000 note or memorandum of a note of the Delaware County Trust Company, can you say whether that note had anything to do with this transaction?

A. None whatever.

Q. Was that a renewal of a note that you had discounted prior to this transaction for a larger amount, that is a renewal of a loan that you placed?

A. You mean in reference to my account?

Q. Yes.

20 A. Yes, that was a \$10,000 note, reduced to seven thousand, then later reduced to six.

By the Court:

Q. You made a deposit of six thousand and some odd dollars the day before you drew a check of six thousand to your niece. Do you desire to acquaint the Court with where those funds came from?

30 A. They came from moneys that I had and moneys that I borrowed from my company, the E. F. White Company.

By Mr. Reed:

Q. Helen G. White did not furnish you with anything?

A. Not a cent, and she is in no way connected with any company that I am interested in.

By Mr. McGee:

Q. Do you have the ledger card of the White Company here?

A. No, sir.

10

Q. Do you have the checks showing that you borrowed it from them here? Cancelled checks?

A. No, sir.

DEFENDANTS REST.

TESTIMONY CLOSED.

20

30

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

10 Between

PARSELLS PETROLEUM PRODUCTS, INC., a cor- poration of the State of New Jersey, <i>Complainant,</i>	}	On Bill, etc. Final Decree.
and		
HELEN G. WHITE, <i>et als,</i> <i>Defendants.</i>		

20

This cause coming on to be heard in the presence of Albert A. F. McGee, solicitor of the complainant, and John C. Reed, solicitor of the defendants, and the Court having examined the pleadings, and taken proofs orally in open Court, and having heard and considered the arguments of counsel thereon;

30 And the Court being satisfied that on the 2nd day of November, 1928, the defendant, Helen G. White, became indebted to the complainant in the sum of nine hundred ninety-one dollars and seventy-eight cents (\$991.78); that on March 1st, 1930, the said defendant, Helen G. White, executed a deed, conveying to the defendant, Eugene F. White, the lands and premises hereinafter described, which deed was re-

corded as hereinafter stated; and that the said Eugene F. White and Nellie E. White, his wife, on the 4th day of March, 1930, executed a deed, conveying to the Delaware County Trust Company, a banking corporation of the State of Pennsylvania, the lands and premises hereinafter described, which deed was recorded as hereinafter stated; that the said conveyances were voluntary and without the support of an adequate valuable consideration and were fraudulent as against the complainant, as a creditor of the said Helen G. White; that the complainant, on the 28th day of April, 1930, recovered a judgment on said date against said defendant, Helen G. White, in the Circuit Court of Atlantic County, in the sum of nine hundred ninety-one dollars and seventy-eight cents (\$991.78) damages and twelve dollars and twenty-five cents (\$12.25) costs; that complainant has caused an execution to be issued out of the said Circuit Court of Atlantic County on said judgment against the said defendant, Helen G. White, which said execution has been returned wholly unsatisfied; that the complainant has been and is unable to find any other property of said Helen G. White out of which to satisfy its said judgment, and has exhausted its legal remedy against the said defendant, Helen G. White; that the said judgment still remains wholly unpaid and unsatisfied, and that the said deed for the said lands and premises, made by the defendant, Helen G. White to Eugene F. White, and from Eugene F. White and Nellie E. White, his wife to the Delaware County Trust Company, a banking corporation of the State of Pennsylvania, as aforesaid, were fraudulent against the complainant as a creditor of the said

Helen G. White, and should be set aside as against the said complainant;

10 It is, on this 10th day of November, A. D. nineteen hundred and thirty, ORDERED, ADJUDGED and DECREED that the said deed, made by the defendant, Helen G. White, on the 1st day of March, 1930, and recorded in the Clerk's Office of Atlantic County, in Book 938 of Deeds for this County, at page 234, to the defendant, Eugene F. White, and the deed from Eugene F. White and Nellie E. White, his wife, made on the 4th day of March, 1930, and recorded in the Clerk's Office of Atlantic County, in Book 938 of Deeds, at page 376, to the defendant, Delaware County Trust Company, a banking corporation of the State of Pennsylvania, for all that certain tract or parcel of land and premises, situate, lying and being in the City of Margate City, County of Atlantic and State of New Jersey, described as follows:

20 BEGINNING in the west line of Pembroke Avenue, a distance of one hundred five and fifty five hundredths feet south of Atlantic Avenue, thence extending (1) Westwardly, at right angles with Pembroke Avenue, eighty feet; thence (2) Southwardly, parallel with Pembroke Avenue, one hundred feet; thence (3) Eastwardly, parallel with the first course, eighty feet to the westerly line of Pembroke Avenue; 30 thence (4) Northwardly, along same, one hundred feet to the place of beginning.

BEING known and designated as Lots 12 and 13, in Block 7, on plan of Margate Park, filed.

be and the same are hereby set aside and held to be fraudulent, null and void and of no effect as against

the judgment recovered against the said defendant, Helen G. White, in the Circuit Court of Atlantic County on the 28th day of April, 1930, by the complainant, for nine hundred ninety-one dollars and seventy-eight cents (\$991.78) damages, and twelve dollars and twenty-five cents (\$12.25) costs, and the execution issued on said judgment to the Sheriff of Atlantic County, on the 30th day of April, 1930, 10
against the goods and chattels, lands, tenements, hereditaments and real estate of the said defendant, Helen G. White; and that the defendants pay to the complainant the costs of this suit to be taxed, including a counsel fee of dollars, which is hereby allowed to said complainant.

It is further ordered that unless the said defendants, Helen G. White, Eugene F. White, Nellie E. White, his wife, and the Delaware County Trust Company, a banking corporation of the State of 20
Pennsylvania, shall, within 30 days after service upon them of true but uncertified copies of this decree, said copies to be certified as true copies by the solicitor of the complainant, and of said taxed bill of costs, pay to the complainant the amount due to it upon its said judgment, together with interest thereon and the said taxed costs, execution issue for said taxed costs against* the goods and chattels, lands, tenements, hereditaments and real estate of the said defendant, Helen G. White, according to the 30
practice of this Court, directed to the Sheriff of the said County of Atlantic, and that the said Sheriff proceed to sell the lands and premises hereinabove described, under and by virtue of said writ of execution and of the writ of execution heretofore directed and delivered to him, dated the 30th day of April,

1930, as aforesaid, free, clear and discharged of and from the said deed made by Helen G. White to Eugene F. White, and the deed from Eugene E. White and Nellie E. White, his wife, to the said defendant, Delaware County Trust Company, a banking corporation of the State of Pennsylvania, as aforesaid, and of and from all claims of the said defendants, Eugene F. White, Nellie E. White, his wife, and the Delaware County Trust Company, a banking corporation of the State of Pennsylvania, thereunder or by virtue thereof.

E. R. WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,
V. C.

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I hereby certify that the above is a true copy of the Final Decree on file in this matter.

ALBERT A. F. MCGEE,
*Solicitor of Complainant,
Parsells Petroleum Products, Inc.*

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CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between

PARSELLS PETROLEUM
PRODUCTS, INC., a cor-
poration of the State
of New Jersey,

Complainant,

and

HELEN G. WHITE, *et als,*
Defendants.

On Bill, etc.
Conclusions.
(Not for Print)

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MR. ALBERT A. F. MCGEE for complainant.
MR. JOHN C. REED for defendants.

INGERSOLL, V. C.

The complainant, on the 28th day of April, 1930,
recovered judgment on bond and warrant against
the defendant, Helen G. White, in the Circuit Court
of Atlantic County, for the sum of \$1980 damages
and \$12.25 costs, the real debt being \$991.78, the
deficiency arising at a foreclosure sale. On or about
the 30th day of April, 1930, the complainant issued

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execution against the goods and lands of said Helen G. White, which execution was returned wholly unsatisfied.

On March 1, 1930, the said Helen G. White executed a deed purporting to convey certain lands and premises to one Eugene F. White for the stated consideration of \$1000, which deed was duly recorded. On the 4th day of March, 1930, the said Eugene F. White and Nellie E. White, his wife, executed a deed purporting to convey the said lands and premises to the Delaware County Trust Company, a banking corporation of the State of Pennsylvania, for the stated consideration of one dollar, which said deed was duly recorded.

It is admitted that the Delaware County Trust Company has no interest in the premises except as Trustee for the said Eugene F. White.

The complainant prays that the said conveyance may be set aside as fraudulent.

This is entirely a factual question, and I am forced to the conclusion that it was fraudulent. The defendant, Helen G. White, produced her banking record in the Delaware County Trust Company, but failed to produce the records of the bank in which she claims to have deposited the money received from Eugene F. White for said conveyance. I am bound to believe that had she been in possession of such records that she would have produced the same, and her failure to produce that record, it being within her power to submit it to the Court, almost inevitably leads to the inference that she did not produce it because she knew that its contents were adverse to her contention, and the mind finds no difficulty, as a matter of reason, in feeling that she knew

that the fact is otherwise than she claims it to be; and that upon a full disclosure of all of the circumstances affecting the case, she would not deserve to succeed. *Chamberlain's Hand Book on Evidence, Par. 440.* Under these circumstances, I am bound to conclude that the conveyance was fraudulent.

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NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY,
D-79-142.

Between

PARSELLS PETROLEUM
PRODUCTS, INC., a corp.,
etc.,

Complainant,

and

HELEN G. WHITE, *et als.*,

Defendants.

On Bill, &c.,
Notice of Appeal.

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The defendants, Helen G. White, Eugene F. White and Nellie E. White, his wife, and the Delaware County Trust Company, hereby appeal from the Final Decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors,

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bearing date November 10th, 1930, in the above entitled cause, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated November 12th, 1930.

JOHN C. REED,

*Solicitor for and of Counsel
with the Defendants.*

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

JOHN C. REED,

Of Counsel with Defendants.

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PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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Between

PARSELLS PETROLEUM
PRODUCTS, INC., a corp-
oration etc.,

*Complainant-
Respondent,*

and

HELEN G. WHITE, EU-
GENE F. WHITE, and
NELLIE E. WHITE, his
wife, and DELAWARE
COUNTY TRUST COM-
PANY,

*Defendants-
Appellants.*

On Appeal from
Chancery.
Petition of Appeal. 20

*To the Honorable, the Court of Errors and Appeals, 30
in the Last Resort in all Causes:*

The petition of Helen G. White, Eugene F. White,
and Nellie E. White, his wife, and Delaware County
Trust Company, the appellants in the above entitled
cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Robert H. Ingersoll, one of the Vice-Chancellors, bearing date the 10th day of November, 1930, in a cause in said Court of Chancery wherein the said Parsells Petroleum Products, Inc., a corporation, etc., was complainant, and the said Helen G. White, Eugene F. White, and Nellie E. White, his wife, and Delaware County Trust Company were defendants, in this respect, to wit, that the said decree orders that a certain conveyance made by the said Helen G. White be set aside, when said decree should have been that the complainant's bill should have been dismissed.

2. Petitioners appeal from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that:

a. It denies the defendants the relief prayed for in defendants' answer when it should have granted the defendants the relief prayed for in their answer.

b. It fails to recognize the Uniform Fraudulent Conveyancing Act and deals with the case made by the bill, answer and evidence without regard to said Uniform Fraudulent Conveyancing Act.

And therefore, petitioners humbly appeal from every part of said decree of the said Chancellor upon the ground that the same is erroneous.

3. Petitioners therefore pray that the said decree

of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper and meet.

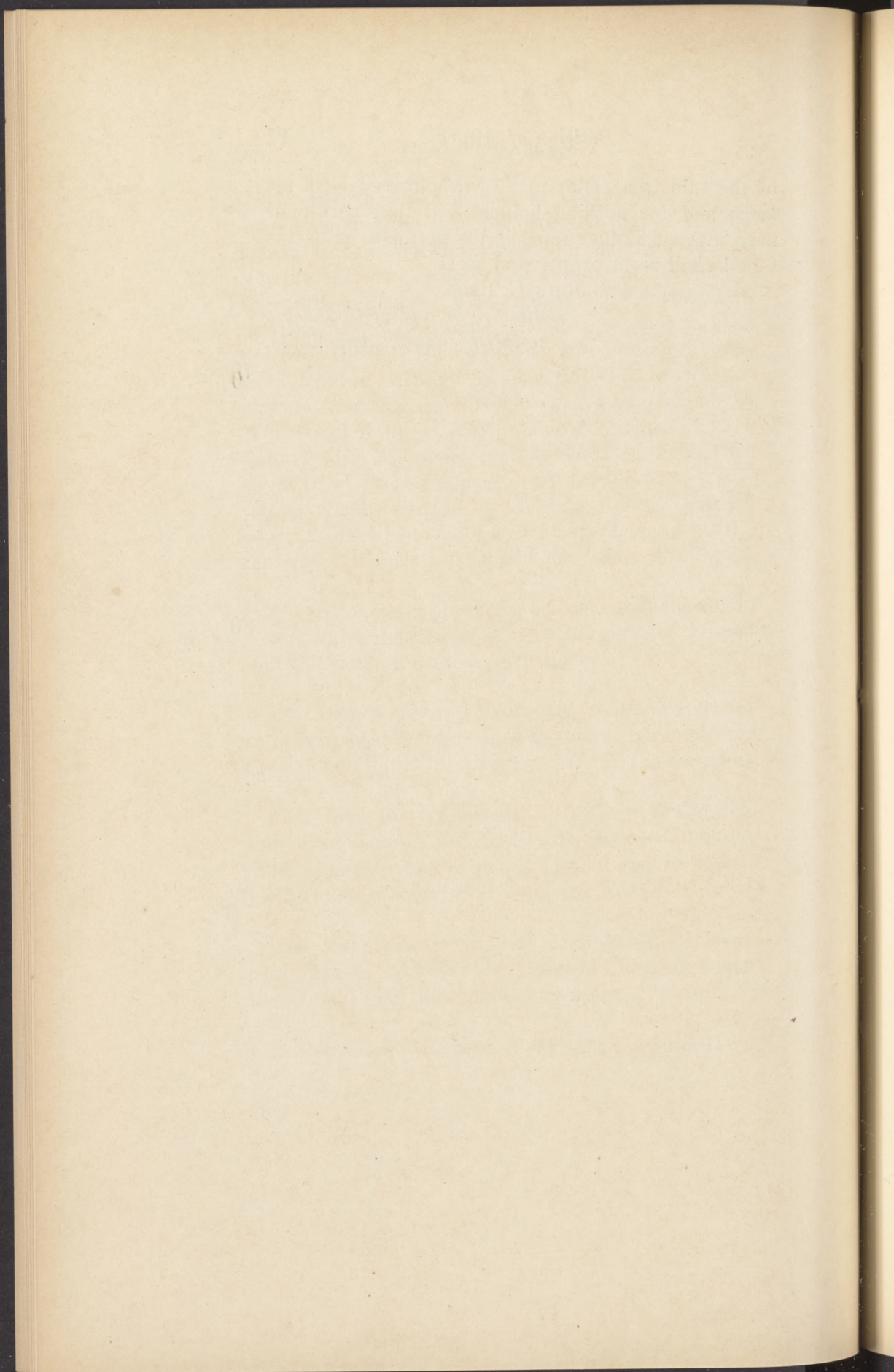
JOHN C. REED,

*Solicitor for and of Counsel
with Defendants-Appellants.*

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

PARSELLS PETROLEUM PRODUCTS, INC., a corporation
of the State of New Jersey, &c.,
Complainant-Respondent,

v.

HELEN G. WHITE, *et als.*,
Defendants-Appellants.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR DEFENDANTS-APPELLANTS.

STATEMENT.

On March 29, 1926, Helen G. White, single, in Philadelphia, Pennsylvania, executed a bond and mortgage for \$1,980.00 on account of her indebtedness of \$990.00 to A. M. Mahjoubian, Inc., payable within three years with interest at six per centum per annum, payable semi-annually. On November 2, 1928, obligee above assigned the bond and mortgage to complainant. On November 2, 1928, obligor,

Helen G. White, was seized of a certain tract of real property in Atlantic County, New Jersey, known briefly as the Pembroke Avenue property, other than that conveyed by the mortgage to Mahjoubian, above. Interest being defaulted on September 28, 1928, whereby on March 29, 1929, and otherwise, the whole principal and defaulted interest became finally due, complainant filed a bill in foreclosure, on which decree in its favor was rendered on January 7, 1930, in the amount of \$1,095.60 plus costs of \$246.19, a total of \$1,341.79. Execution of the decree against the mortgaged premises produced only \$350.00, leaving a balance due of \$991.79, for which complainant recovered a judgment on the bond executed by defendant, Helen G. White, in favor of Mahjoubian and by the latter assigned as per the foregoing. This judgment was recovered on April 28, 1930, and execution issued on April 30, 1930, and which was returned unsatisfied.

On March 1st or 3rd, Helen G. White conveyed the Pembroke Avenue property to one Eugene White, one of the defendants herein, for a stated consideration of \$1,000.00, and on the 4th or 6th of March, 1930, defendant Eugene White and his wife conveyed the same property to the Delaware County Trust Company of Chester, County, Pennsylvania, for a stated consideration of \$1.00.

The Record (p. 33—Folio 33) shows that defendant Eugene White paid defendant Helen G. White the sum of \$6,000.00 for the Pembroke Avenue property, and immediately after conveyance to him conveyed to defendant Delaware County Trust Company as a trustee for defendant Eugene White's

convenience only that it might be sold for his benefit when the opportunity presented itself to the trustee (p. 35, Folios 1-20, Record).

Thereupon, complainant filed its instant action praying that the conveyances to Eugene White and to the Delaware Trust Company be set aside (par. 4, Prayer, p. 5, Record); and that the said lands be sold, etc., in satisfaction of the deficiency judgment obtained by it (par. 5, p. 6, Record).

ARGUMENT.

IS COMPLAINANT ENTITLED TO HAVE THE
CONVEYANCES TO WHITE AND TO THE
TRUST COMPANY SET ASIDE? THE
LANDS SOLD, ETC.?

The answer is "yes" if no consideration passed from Eugene White to Helen G. White, complainant having first shown that the judgment referred to in par. 5, p. 3 of the complaint could not be satisfied out of other goods, property, whatnot—*i. e.*, that the judgment debtor was insolvent; "no" if no proof of the latter was offered, AND/OR Eugene White did not give a "fair consideration" to Helen G. White for the property. The New Jersey Uniform Fraudulent Conveyance Act of 1919-1924, Suppl. Comp. St. 44-142, *et seq.*, pp. 647, *et seq.*, is directly applicable. 44-145 of that Act recites that,

"every conveyance made by a person who is or will be thereby rendered insolvent is fraud-

ulent as to creditors without regard to his actual intent if the conveyance is made without a fair consideration.”

44-150 of the Act provides that,

“where a conveyance is fraudulent such creditor may as against any person except a purchase for a fair consideration without knowledge of the fraud at the time of the purchase or one who has immediately or mediately claimed title from such purchaser, a: have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim.”

So that, when one having a judgment against an alleged debtor who is claimed to have fraudulently conveyed his property to another, he must first show that his debt cannot be met out of other goods, property, whatnot belonging to such debtor, and, having shown that fact, that the alienee of the particular property did not give a fair consideration therefor, OR/AND, if he did, that he knew when he bought the property for such fair consideration that his alienor intended thereby to perpetrate a fraud on his creditor.

The Record carefully considered, complainant obviously has failed to satisfy any of the above requisitions implicit in the Act controlling the rights especially of Eugene White and the Delaware Trust Company.

For, 1: Complainant having alleged that the judgment of January 7, 1930 (par. 5, p. 3, Record), was unsatisfied (pp. 3-4, par. 7, Record), which was

denied by defendants, or at least, proof demanded (p. 8, par. 7, Defendants' answer), and of the allegations contained in par. 11 of the complaint (pp. 4 and 5, Record), as seen by par. 11 of the Answer (p. 9, Record), it was incumbent on complainant to prove, first, that the judgment was unsatisfied, and, what is of greater moment and the prerequisite to its right to have the conveyances set aside, that it "has been unable to find any other property of said Helen G. White out of which to satisfy its judgment" (p. 4, par. 11, Record). The testimony of complainant's witnesses fails to disclose that the judgment is unsatisfied, or that "it is unable to find any other property, etc." The testimony of the witnesses Edward, Gardner, Wilson, Parsells and Joy, found on pp. 12-31 of the Record, confines itself exclusively to the sale of the Pembroke Avenue property, its appraised value, anything but the primary and chief fact that there were no other goods out of which the judgment could be satisfied, and the absence of which goods is the indispensable prerequisite of its right to succeed in the instant action. For all the Record discloses, the \$6,000.00 received by defendant Helen G. White for the Pembroke property might have been subjected to the payment of complainant's judgment. The inquiry then logically arises, "Why was this not attempted?" Perhaps it was, yet is the Record silent on the matter. This is emphatically true, since defendants made a direct issue of the allegation that no other property could be found out of which to satisfy the judgment (par. 11, Defendants' Answer, p. 9, Record). Complainant was bound to prove it under the Act itself, and by rea-

son of defendants' denial, that there were no such other goods. There is not a scintilla of such evidence in the Record. It was accordingly sequential that, such proof not having been offered, the Court was bound to find for the defendants, plaintiff having failed to make a case for the relief sought under the Act on which alone he could rely. That is to say, he asks the benefit of the Act and then fails utterly to show, as commanded by the Act, that he might not have satisfied his judgment otherwise than by recourse to one of its provisions. It is to be especially noted in this connection that this 1919 Act supplants the one dealing with the same subject-matter—fraudulent conveyances—enacted in 1910 and entitled, "An Act for the Prevention of Frauds and Perjuries," 2 Comp. St. 1910, p. 2618. Sec. 12 of that Act in effect provided that such a conveyance as is shown by the case at bar was absolutely presumed to be fraudulent.

Severs v. Dodson, 53 N. J. Eq. 633, 34 A. 7,
cited in

Kearney v. Gland, 149 A. 630.

That is, that just because the conveyance *was* made when it was made—a debt, judgment or otherwise hanging over the alienor—he thereby himself proved his insolvency, making it idle to attempt to satisfy the debt out of goods or property other than those alienated. In other words, it was held "contrived in fraud, covin or collusion, with intent to hinder, delay and defraud creditors," just because the conveyance was made at that particular time. That is not the import of the present Act, nor can any such implication be read into it. It

provides a definite plan whereby the conveyance may be set aside, ONLY AFTER COMPLAINANT DEBTOR PROVES THAT THE DEBT CAN NOT OTHERWISE BE SATISFIED, AND, EVEN IF IT CANNOT BE, THAT THE ALIENEE KNEW WHEN HE GAVE A FAIR CONSIDERATION THAT HIS ALIENOR INTENDED TO DEFRAUD HIS CREDITORS.

Coming now to the failure of a "fair consideration" which defendant Helen G. White claimed to have received from Eugene F. White for the Pembroke property, the Court in its Conclusions, on pp. 85 and 86 of the Record, bases its decree on the one inconsequential finding made by it that, because Helen G. White's bank account as produced by her did not show a deposit of the \$6,000.00 check Eugene White testified he gave her for the property and which she testified she received, that therefore the deed from her to Eugene White was "fraudulent." The check was produced (p. 34, Folios 1-10, Record), and its delivery to Helen G. White not controverted by complainant. The latter's cross-examination of defendants' witnesses confined itself almost entirely to Eugene White's pretended knowledge of the threatened foreclosure proceedings against the Pembroke Avenue property in satisfaction of the Parsells judgment and bond. That is, the indisputable weight of the evidence is against the Court's conclusion above, while there is no weight in complainant's favor that Eugene White knew, when he bought the property, contrary to 44-150 of the 1919 Act, that his alienor intended to defraud her creditors by such alienation. But, as-

suming *arguendo* that the Court was justified in its finding that Eugene White did not give a fair consideration for the property, THERE STILL IS ITS OBLIGATION TO DISCOVER THROUGH THE COMPETENT TESTIMONY TO THAT END, IF ANY CAN BE ADDUCED, THAT THE DEBTOR "IS OR THEREBY WILL BE RENDERED INSOLVENT" (44-145 Unif. Conv. Act, 1 Vol., 1924 Suppl. 647), before it may order the conveyances set aside or decree what it did decree in the instant cause (p. 83, Rec.). The Court seems to believe that, just because he found the transfer was fraudulently conceived and executed, that therefore the matter is settled and "she would not deserve to succeed" (p. 87, Record). But that is entirely misconceiving the import of the 1919 Act applicable hereto. When the Court found what it claimed to have found, its further inquiry should then—if in truth it should not primarily have been done—have been whether that fraudulent act was evidence of alienor's insolvency; or, as the Act itself states it, "Is she or will she be thereby rendered insolvent?" The old Act made the act of transfer in such a case, *per se* evidence of insolvency incapable of refutation (*Severs v. Dodson, supra*); the new Act gives rise to the indisputable truism that "there is no longer an irrefutable presumption that a gift * * * is fraudulent UNLESS THEREBY HE IS RENDERED INSOLVENT." *Kearney v. Gland*, 149 A. 530.

So that the real test of complainant's right to prevail against Eugene White and his alienor is whether Helen G. White by transferring the property in question thereby made herself insolvent, and

that test can only be met by proof, which is nowhere found in the Record of the cause at bar. As complainant offered no proof on that vital question—stood pat on the proof, and meagre proof at that, because the transfer was fraudulent—such transfer was irrefutable proof of her inability to satisfy the judgment otherwise; *i. e.*, that she was in fact insolvent. The question now being considered is, it is submitted, plainly answered under the discussion on p. 2 hereof under the caption, "Argument." The "argument," commanded by the logic of the facts and the Act under which complainant seeks relief, is that before the Court could even hear testimony as to the fraudulent transfer it must first satisfy itself that the prerequisite of the right to void that transfer exists, *viz.*, that the grantor could not satisfy the judgment and bond out of other goods, property, whatnot, to which she is shown to have title. Proving that she had no such goods, that she was in truth insolvent, complainant is then entitled to show, if he can, that no fair consideration was given, or, if it was that, he knew that she intended a fraud thereby. The Kearney case makes this very plain in discussing the holding in the 101 N. J. Eq. 51, 137 A. 89, 146 A. 328, when it says:

"No mention is made in the opinion of insolvency, but it is to be presumed that it appeared in the proof that the conveyance resulted in insolvency."

No such presumption may be indulged at bar, since the Record shows that there was no proof that the "conveyance resulted in insolvency." In truth, complainant made its case on the assumption that

all it would have to do was to prove that the conveyance was fraudulent, offering no proof, though denied by defendants that there were no other goods against which execution might have been levied. And, alleging it, he necessarily has the burden of proving the allegation.

The predicate of the right to revoke a conveyance like that at bar is the insolvency of the granting debtor by the terms of the 1919 Act.

“Irrebuttable presumption of fraud arises where grantor owing debt conveys property for nominal consideration AND IS RENDERED INSOLVENT THEREBY.”

Kaplan v. Heiles, 107 N. J. Eq. 443, 152 A. 855.

Very true; but that is not saying that the mere conveyance is an irrebuttable presumption of insolvency, which the Chancellor at bar held it to be.

“In suit to set aside alleged fraudulent conveyances, plaintiff held to have the burden of proving the grantor’s insolvency.”

Jones v. Bailey, 155 C. C. A. 95, 242 F. 255.

The 1919 N. J. Act considered plaintiff in his bill, besides alleging that the execution was returned unsatisfied should have alleged (and proved, of course) that because of the conveyance defendant judgment debtor rendered herself insolvent. Only then would it have made a perfect case against the defendants, conditioned on its further proof that grantee, Eugene White, gave no fair consideration, or, if he did that he knew a fraud on his grantor’s cred-

itors was thereby being perpetrated. And, a perfect case is required in equity, chiefly that the rights of innocent third parties may be properly safeguarded. Grantee, Eugene White herein, may not be an innocent party; yet, the Record does not disclose that he is not such, the testimony offered by plaintiff being what it is seen to be in the testimony of its witnesses and the cross-examination of those on defendants' behalf.

“A complainant in a creditors' bill must show that the conveyances in question rendered the defendant insolvent at that time, or that they were made to hinder and delay creditors.”

Eberes v. Rieckenberg, 213 Ill. App. 454.

Under the New Jersey Act there is no alternative to a showing of “insolvency.”

“Complaint to set aside fraudulent conveyance held insufficient for failing to allege that defendant had so stripped himself of property as to be unable to pay debts.”

Lafayette Co. v. Selvester, 234 N. Y. S. 201,
226 App. Div. 766;

R. C. Williams v. Euhler (Debtor's, Etc.,
Law, #270-281, and c. 254, 227 N. Y. S.
40, 222 A. D. 561; Laws 1925).

See *Keaton v. Pipkin*, 43 F. (2d) 497; *Trust Co. v. Garfinkel*, 107 N. J. Eq. 20, 151 A. 858, wherein:

“burden was on complaining creditor to show debtor's assignment of stock rendered debtor insolvent (1 Comp. St. Sup. 1924, p. 647).”

This seems to be the last case decided in N. J. on the question involved herein and is patently opposed to the Chancellor's holding at bar, and is not negatived by the holding in *First Nat. Bk. v. Merrick*, 142 A. 243, but confirmed by that in *Conway v. Raphel*, 141 A. 804 (N. J. 1928).

The decree should be reversed.

Respectfully submitted,

JOHN C. REED,

*Solicitor for and of Counsel
with Defendants-Appellants.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

PARSELLS PETROLEUM PRODUCTS, INC., a
corporation, etc.,
Complainant-Respondent,

and

HELEN G. WHITE, EUGENE F. WHITE and
NELLIE E. WHITE, his wife, and
DELAWARE COUNTY TRUST
COMPANY,
Defendants-Appellants.

ON BILL, ETC.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF OF COMPLAINANT-RESPONDENT.

STATEMENT.

On March 29th, 1926, Helen G. White, single, of Philadelphia, Pennsylvania, executed a bond and mortgage for \$1980.00, on account of her indebtedness of \$990.00, to A. M. Mahjoubian, Inc., payable within three years, with interest at six per centum per annum, payable semi-annually. On November 2nd, 1928, the said A. M. Mahjoubian, Inc., assigned the bond and mortgage to the complainant-respondent. Interest being defaulted on September 28th, 1928, whereby on March 29th, 1929, and otherwise, the whole principal and defaulted interest became finally due, complainant-respondent filed a bill in foreclosure, on which decree in its favor was rendered on January 8th, 1930, in the amount of \$1,095.60, plus costs of \$246.19, making a total of \$1,341.79. On the 6th day of March, 1930, the said premises were offered for sale by the sheriff of Atlantic County, and the property was purchased for the sum of \$350.00, leaving a deficiency due the complainant-respondent, of the sum of \$991.79, for which the complainant-respondent recovered a judgment on the bond executed by the defendant, Helen G. White, in favor of A. M. Mahjoubian, Inc., and by the latter assigned as per the foregoing. This judgment was recovered on April 28th, 1930, and execution issued on April 30th, 1930, and which was returned unsatisfied.

On November 2nd, 1928, the said Helen G. White, was seized in fee simple of a certain tract of land

in Margate City, Atlantic County, New Jersey, known as the Pembroke Avenue property. This property is other than that conveyed by the mortgage to Mahjoubian, above.

On March 1st, 1930, Helen G. White, conveyed the Pembroke Avenue property to one, Eugene F. White, her uncle, one of the defendants herein, for the stated consideration of \$1,000.00. Said deed was recorded in the clerk's office of Atlantic County, on the 3rd day of March, 1930, in Book 938 of Deeds, at page 234, etc.

On the 4th day of March, 1930, the defendant herein, Eugene F. White, and his wife, conveyed the same property to the Delaware County Trust Company, of Chester County, Pennsylvania, for the stated consideration of \$1.00, which deed was on the 6th day of March, 1930, recorded in the clerk's office of Atlantic County, in Book 938 of Deeds, at page 376, etc.

The property was appraised at \$6,500.00 a lot (see S. C., p. 18, ll. 14 to 16, inc.), there being two lots, making a total valuation of \$13,000.00, subject to a first mortgage in the sum of \$3,000.00.

The Delaware County Trust Company admits that it is not interested in the Pembroke Avenue property, other than as trustee for the said defendant, Eugene F. White, and did not have any specific agreement with him regarding the same (see S. C., p. 46, ll. 25-26).

Immediately after execution was returned unsatisfied, the complainant-respondent filed its instant action, praying that the conveyance to Eugene F. White, and to the Delaware County Trust Company,

be set aside and held to be fraudulent and to be declared null and void and of no effect as against the complainant-respondent's said judgment (see S. C., p. 5, l. 34 to p. 6, l. 2).

ARGUMENT.

My argument will refer entirely to the conveyance from Helen G. White to Eugene F. White, and will not consider the conveyance made from Eugene F. White and Nellie E., his wife, to the Delaware County Trust Company, inasmuch as the Delaware County Trust Company insists that it is not interested in the conveyance and holds same only as trustee for Eugene F. White.

The argument will be presented under two headings:

1. That the conveyance of the Pembroke Avenue lots to Eugene F. White, and the conveyance from Eugene F. White, and Nellie E., his wife, to the Delaware County Trust Company, were made to defraud creditors, and each had knowledge of this fact.
2. That the said defendant, Eugene F. White, did not pay a fair consideration to the said defendant, Helen G. White, for said conveyance.

The appellants, in their argument of alleged errors, contend that there was a fair consideration

paid for the conveyance, in that \$6,000 was paid to the defendant, Helen G. White (see S. C., p. 33, l. 35). The uncontradicted testimony is that the lots were worth \$13,000 at the time of the conveyance (see S. C., p. 21, ll. 31-35), and is corroborated (see S. C., p. 18, l. 14), and the lots were sold subject to an existing first mortgage of \$3,000. The facts in this case fall squarely within the section referred to in the appellants' brief, page 3.

On page 4 of the appellants' brief, it is contended that the following section of the New Jersey Uniform Fraudulent Conveyance Act of 1919-1924, Suppl. Comp. St. 44-150, applies to this case, which provides as follows:

“* * * where a conveyance is fraudulent such creditor may as against any person except a purchaser for a fair consideration without knowledge of the fraud at the time of the purchase or one who has immediately or mediately claimed title from such purchaser,

a: have the conveyance set aside or obligation annulled, to the extent necessary to satisfy his claim.”

If the appellants' contention is correct as to his construction of the aforesaid Section, then it is contended that the grantee did not give a fair consideration for said conveyance, and that he knew, when he bought the property, that his grantor intended thereby to perpetrate a fraud on her creditors. It is contended that it is not necessary for the respondent to prove that his judgment could not be met out of other goods and property belonging to the

debtor, as this question was in issue, inasmuch as it was directly charged that the defendant made actual fraudulent conveyance as against the respondent, as the deed was, in fact, a voluntary one.

In the case of *Kearney v. Gland*, 149 Atlantic, p. 430, cited by the appellant, the learned Vice-Chancellor, held as a fact, “* * * that there was no intentional fraud.” In the case at bar, we charge that there was intentional fraud and collusion, and this question will be more fully considered in the direct argument, under Point One.

It can be taken from the testimony of the defendant, Helen G. White, and as admitted by her, that she was, in fact, without funds with which to meet her obligations (see S. C., p. 53, ll. 1-8), and collusion between the uncle and niece is strongly indicated from the defendant's, Helen G. White's, testimony (see S. C., p. 53, ll. 17, 18):

“* * * I talked with uncle as I do always, there isn't many days pass than I don't talk to some of them, * * *.”

Truly the appellant cannot seriously contend that the Court based its Conclusions and held as a question of fact that the conveyance was fraudulent, as indicated by the believable evidence, as this was entirely a factual question. The question of fraud was glaring throughout the testimony of the appellant's witnesses.

There was actual fraudulent intent in the conveyance, and, therefore, Section 44-145 of the New Jersey Uniform Fraudulent Conveyance Act of 1919-1924, Suppl. Comp. St. 44-142, p. 647, as referred to

on page 8 of the appellants' brief, is not applicable, and is not incumbent upon the respondent to prove insolvency, as it is contended that that was not in issue. It is contended by the respondent that the defendant's, Helen G. White's, business was that of real estate, and she was unable to meet her obligations, and also comes squarely within the following Section:

“Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.” (N. J. U. F. C. Act, 1919-1924, Suppl. Comp. St. 44-146.)

Referring to the appellants' brief, on page 10, and wherein it is argued that proof of insolvency is necessary, referring to the case of *Kaplan v. Heiles*, 107 N. J. Eq. 443, 152 A., 855, it is interesting to note that in that very same case, the Court cites, with approbation, the case of *Russell & Erwin Mfg. Co. v. Faitoute Hardware Co.* (N. J. Ch.), 62 A. 421, wherein the Court held:

“Conveyance with intent to defraud creditors made to a person taking with notice is void, though a full consideration is paid.”

The Court in its Conclusions did not consider insolvency of the defendant, Helen G. White, but found as a fact that the conveyance was fraudulent.

On page 11 of the appellants' brief, it is contended that under the New Jersey Act, there is no alternative to showing of insolvency. Two cases in the New York Supreme Court, Appellate Division, are cited to substantiate this contention, in the appellants' brief on page 11.

It is taken, from reading the above cases, that they do not apply to the case at bar, inasmuch as they are in nowise similar and are based upon a New York Statute which appears to be somewhat different from the Uniform Fraudulent Conveyance Act (L. 1919).

In the case of *Trust Co. v. Garfinkel*, 107 N. J. Eq. 20; 151 A. 858, E. & A., the facts therein showed clearly that there was not any fraud and that the assignment of the stock was for a good consideration, and the question of insolvency was in issue. The case at bar presents a set of facts wherein there was fraud and there was not a good consideration given for the conveyance.

POINT ONE.

The defendant, Eugene F. White, admittedly interviewed the respondent's counsel on several occasions, beginning in February, 1930 (see S. C., p. 38, ll. 21-25), and immediately prior to the sheriff's sale of the foreclosed property, which took place on March 6th, 1930. It will be seen by that testimony that the whole transaction was thoroughly discussed with the defendant, Eugene F. White, and all during the time that the conversations and interviews were being held with the appellant by

the respondent's solicitor, said appellant was holding conversations and interviews with his niece, the defendant, Helen G. White (see S. C., p. 53, line 17):

“* * * I talked with Uncle as I do always, there isn't many days pass that I don't talk to some of them. * * *”

The defendant, Helen G. White, was notified by letter, in April, 1929, that if a foreclosure were brought and the property did not bring sufficient to cover the mortgage, that a suit would be brought on the bond (see S. C., p. 58, lines 26-33).

Even though the defendant, Eugene F. White, had knowledge that the foreclosure was taking place and the debt was due and owing to the respondent, he entered into the pretended conveyance from the defendant, Helen G. White, to himself on the 1st day of March, 1930, for a nominal consideration of \$1,000, and thereafter, on the 4th day of March, 1930, the defendant, Eugene F. White, and Nellie E., his wife, executed a pretended conveyance of the Pembroke Avenue property to the Delaware County Trust Company, for a nominal consideration of \$1, and did not incorporate therein, whether or not the trust company held as trustee or took the title in fee simple. Admittedly the trust company knew nothing about this transaction (see S. C., p. 46, lines 25-27).

The defendant, Eugene F. White, made a feeble attempt to satisfy the Court that there was a consideration which passed between himself and his niece, Helen G. White. It is most interesting to note in the testimony of Mr. Eugene A. Mergy,

the assistant treasurer of the Delaware County Trust Company, in testifying from the bank's records of Eugene F. White's account, testified as follows (see S. C., p. 47, line 30, to p. 48, line 5):

"Q. Will you tell me from your records what balance Mr. White had in your bank on the morning of March 3rd?

A. \$683.38.

Q. On the morning of March 3rd?

A. The balance on February 28th, was \$810.36.

Q. And he deposited how much on March 3rd?

A. \$6,076.75.

Q. What was his balance on the evening of March 4th?

A. \$683.38."

It is evident from the above testimony regarding the bank balance and account of Eugene F. White, that this transaction was fraudulent, and the money was given to him for the purpose of paying it on this property, and then to be returned to this third person. The exact balance of \$683.38 is left remaining in his account after a disbursement of \$6,000 was drawn out and paid to the defendant, Helen G. White, his niece, and even the odd dollars included in the deposit, amounting to \$76.75, were returned also to the most accommodating person who permitted his funds to be borrowed and used for the above fraudulent purpose. This transfer of funds took place just three days from the date of the sheriff's sale of the property owned by the defendant, Helen G. White, which was foreclosed.

The question fairly and squarely presents itself: "How did the bank records of Helen G. White look?" She presented a number of cancelled checks from the Delaware County Trust Company. It is apparent that the check of \$6,000, which was given to her by her uncle, Eugene F. White, was not deposited in the said Delaware County Trust Company, but was deposited in another bank, the Belmont Trust Company of Philadelphia. This bank's records of her account and the cancelled checks were conveniently left at home, and the Court was not given the opportunity to peruse the checks or records of that Philadelphia bank, nor was the respondent permitted to examine the Philadelphia bank's records of the defendant, Helen G. White.

The Court, in its conclusions, has unquestionably set out clearly and distinctly the entire result of the facts presented by the appellants and their witnesses, by the following (see S. C., p. 86, lines 22-35):

"This is entirely a factual question, and I am forced to the conclusion that it was fraudulent. The defendant, Helen G. White, produced her banking record in the Delaware County Trust Company, but failed to produce the records of the bank in which she claims to have deposited the money received from Eugene F. White for said conveyance. I am bound to believe that had she been in possession of such records, that she would have produced the same, and her failure to produce that record, it being within her power to submit it to the Court, almost inevitably leads to the inference that

she did not produce it because she knew that its contents were adverse to her contention.”

The facts and testimony as outlined above, come within the purview of the following section of the New Jersey Uniform Fraudulent Conveyance Act of 1919-1924, Suppl. Comp. St. 44-148, at page 648:

“Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, is fraudulent as to both present and future creditors.”

It is apparent from the following cases that the appellants did not carry the burden of proof successfully, in that there was not any consideration paid for the conveyance of the Pembroke Avenue lots, which it was encumbent upon them to do. Cite *Coleman v. Graff*, 94 N. J. Eq. 223, in case *Mary Babirecki, et als., v. Andrew G. Virgil, et als.*, 97 N. J. Eq., at p. 315.

In the case of *Conway v. Raphael*, 141 A. 804 (N. J. 1928), referred to in brief of the appellants, page 12, the facts therein are far different from the facts in the case at bar. In that case, the conveyances took place in January, 1920, and the complainant recovered a judgment on its note in May, 1926; there was no fraud, so proven, and the question of insolvency was at issue, and it became encumbent upon the complainant to prove that the defendant was insolvent at the time the conveyance was made, to wit: January, 1920.

POINT TWO.

The Pembroke Avenue properties were allegedly purchased by Eugene F. White for the consideration of \$6,000, whereas the uncontradicted testimony of the two witnesses of the respondent appraised the property at \$13,000, subject to a first mortgage of \$3,000. As a matter of fact, from the facts and testimony as set forth in Point One hereof, it is evident that not even the nominal consideration appearing in the deed from Helen G. White to her uncle, Eugene F. White, in the sum of \$1,000, was in good faith paid by the said uncle, or received by the said niece. Even though the consideration of \$6,000 were paid, although it could not be substantiated by the testimony of the appellants or their witnesses, the pretended amount to be paid was not a fair consideration, and for that reason, we again call attention to Section 44-146, at page 648, of the New Jersey Uniform Fraudulent Conveyance Act of 1919-1924, Suppl. Comp. St.:

“Conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.”

In the case of *Livermore v. McNair*, 34 N. J. Eq. 478 (at p. 483), cited in *Ulicsnik v. Dalrymple, et*

al., 102 N. J. Eq., at p. 136, the Court held as follows:

“Any arrangements a debtor may make, which has the effect to hinder, delay or defeat the disposition of his property by due course of law, is a fraud on his creditors.”

The case subjudice is a deliberately planned scheme to hinder, delay and defraud creditors, and to conceal the name even of the ostensible owner of the legal or equitable title.

The testimony that has been presented by the appellants and their witnesses, clearly indicates that the conveyances were unquestionably made for the purpose of committing an intentional fraud upon the complainant-respondent.

The believable testimony of the various witnesses in this case justified the conclusions of the Court, and the complainant-respondent therefore respectfully submits that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

ALBERT A. F. MCGEE, ESQ.,
*Solicitor for and of Counsel
with Complainant-Respondent.*

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The believable testimony of the various witnesses in this case justified the conclusion of the Court, and the complainant respondent therefore respectfully submits that the decrees of the Court of Chancery should be affirmed.

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ALBERT A. F. WAGNER, ESQ.,
Solicitor for and of Counsel
with Complainant Respondent.