New Jersey Court of Errors and Appeals.

Between

THE NATIONAL BANK OF SLATINGTON,
Complainant-Appellee,

and

CHARLES SEEL and JOSEPH MASSOPUST,
Defendants,

JOSEPH MASSOPUST,
Defendant-Appellant.

BRIEF FOR THE APPELLANT.

Statement of Facts.

In 1909, The National Bank of Slatington brought suit against Charles Seel in the Middlesex County Circuit Court to recover the amount due on a certain note upon which Charles Seel was an accommodation maker, and the bank recovered judgment on September 8th, 1914, for the sum of $1,198.55. During the pendency of this suit, and on the sixth day of March, 1911, Charles Seel filed a bill in equity against The National Bank of Slatington.

On July 24th, 1914, the defendant, Joseph Massopust, purchased of Charles Seel, certain real estate in Perth Amboy, for the sum of $6,100, by

taking it subject to a mortgage of $2,000, with interest amounting to $60.64, and subject to an assessment due the City of Perth Amboy amounting to $279.36, and by making a payment of $3,760 by check drawn by Joseph Massopust to the order of Charles Seel, the said check having been paid July 31st, 1914 (p. 23, fols. 20-40). It is not denied by Joseph Massopust (the appellant herein) that he had some knowledge of the litigation pending between the bank and Seel at the time he purchased the premises.

Immediately following the entry of the judgment, an execution was issued and returned unsatisfied and the bill of complaint filed in the Court of Chancery in this cause for the purpose of setting aside the transfer of the property made by Charles Seel to Joseph Massopust, and in which it was charged that the defendant, Joseph Massopust, paid no consideration for said deed and that the said Charles Seel was still in possession of the said premises.

On a motion made by Joseph Massopust to open the decree *pro confesso*, entered in this cause on October 5th, 1914, it appeared from his affidavit that he paid to Charles Seel, for said deed, the sum of six thousand ($6,000) dollars as follows:

> "By taking said premises subject to a mortgage of two thousand ($2,000) dollars, by giving the said Charles Seel deponent's check, dated July twenty-fourth, nineteen hundred and fourteen, for the sum of three thousand, seven hundred and sixty ($3,760) dollars, drawn against deponent's account in the First National Bank of Perth Amboy, which check was duly presented for payment at said bank the thirty-first of July, nineteen hundred and fourteen, and paid on said date, by taking said premises subject to the taxes, assessments, etc., and paying to the City of Perth

Amboy on the tenth day of September the sum of two hundred and seventy-nine and 36/100 ($279.36) dollars."

Notwithstanding that the complainant was placed in possession of these facts showing that a good and *bona fide* consideration had actually passed to Charles Seel for said transfer, complainant, in making an application to amend its bill on December 16th, 1914, which was after the defendant's answer was filed, nevertheless permitted the issue to remain as originally pleaded, namely, that no consideration had been paid for said transfer.

It was upon this issue that the case proceeded to trial before Honorable James E. Howell, on the 29th day of April, 1915, at which time, testimony was taken and concluded and decision reserved. Thereafter, and on the 18th day of May, 1915, an opinion was filed by the Vice-Chancellor holding, in substance, that inasmuch as Joseph Massopust had fraudulent knowledge of the purpose of said transfer, that a decree should be made in favor of the complainant setting aside the said conveyance. It was following the rendition of this opinion that an order was made and granted on application of the complainant to amend its bill, so that it then appeared that Joseph Massopust was a participant in a fraudulent scheme of Charles Seel in the transfer of said premises.

The appellant forcibly contends that no such issues were presented by the pleadings at the time of the trial and that he was not given a fair opportunity to meet such proof and that the decision setting aside the transfer, based upon a determination not raised by the pleadings, was prejudicial to his rights.

It is uncontradicted that at the time of the sale,

Charles Seel was a member of the co-partnership firm of Charles Seel & Sons and that he and his firm both were pressed for money, and that he was obliged to either sell his property or give up business, or go into bankruptcy (p. 55, fols. 1-10); that the check for $3,760.00 received by Charles Seel was deposited to the co-partnership account of Charles Seel & Sons in the First National Bank of Perth Amboy, and actually used in paying off the obligations of the firm.

The only evidence produced from which the Vice Chancellor could possibly contend that Joseph Massopust was in a scheme to defraud the complainants, consists of inferences deducted from various circumstances pertaining to the transfer, which inferences are unsupported by a single fact showing anything suspicious, unusual and extraordinary in the negotiation and consummation of the transfer.

It is not denied that Joseph Massopust had some knowledge of the pending litigation and upon the question of "knowledge" this Court is asked to establish an important precedent, important because all Court proceedings are today narrated in detail by the press in nearly all the cities of the second class and smaller municipalities, and to say that a person having knowledge of such litigation is placed upon a duty to make certain inquiries when contemplating the purchase of property from a person sued, does not seem logical, nor do I believe it to be the law of this State.

The complainant's only proof at the trial of having exhausted its remedies at law, as an essential fact prerequisite to be proven before setting aside the conveyance, consists of the return of the execution unsatisfied, the testimony of William A. Spencer that he had made a search "a couple of years

ago" and that he had made no search since (p. 21, fols. 20-30); although Charles Seel was at the time and continues to be a member of the co-partnership firm of Charles Seel & Sons, which interest is subject to levy and sale under an execution.

Much stress is laid in the record by the complainant upon a mortgage of $3,000 Seel placed upon the property on August 11, 1910 (after suit was brought) to Mr. Seel's sons, and cancelled of record in August, 1913 (while suit was pending). I make no further mention of it in this brief as it is unimportant and immaterial and if it establishes anything in the nature of fraud, it disproves the complainant's contention of fraud in transferring the property in July, 1914, as Seel could have accomplished this design by permitting the mortgage to remain uncancelled of record. The discharge of the mortgage eleven months previous proves the converse of their contention, and shows that Seel was actuated by good faith in making the transfer in July, 1914.

Vice Chancellor, J. G. Howell, held that the case at bar resembled the case of Tatum *v.* Green, 6 C. E. Green, 364, and set aside the conveyance. From the decree entered upon the findings, the defendant, Joseph Massopust, appeals to this Court.

POINT I.

Joseph Massopust paid a good, valuable, full and sufficient consideration for the transfer.

The proof in support of this point is uncontradicted and has been proven conclusively. The facts showing the actual consideration paid by Massopust to Seel were alleged in detail in the answer and proven at the trial; the checks paid were pro-

duced and offered in evidence (p. 73, Exhibit D1; p. 74, Exhibit D2).

It was further proven without contradiction, that Seel endorsed the check to the firm of Charles Seel & Sons, of which he was a co-partner and the proceeds applied to the firm's credit with the First National Bank of Perth Amboy and was used by the firm in the discharge of its debts, and the checks of the firm were produced in evidence, totalling $7,633.75.

POINT II.

Charles Seel had the right to use the funds received from Massopust to prefer the creditors of his firm to the exclusion of his individual creditors.

If this is so, then there was no fraud committed by Seel and consequently, complainant's case fails.

The creditors of the firm have the joint and individual liability of the co-partners and when Charles Seel used the funds he received from Massopust to pay the debts of Charles Seel & Sons, he did not defraud any individual creditor. He did what he had a right to do, namely, to prefer the creditors of his firm to the exclusion of his individual creditors.

The check given by Massopust (Exhibit D) for $3,760 was endorsed by Charles Seel and deposited to the account of Charles Seel & Sons in the First National Bank of Perth Amboy. The cash book of Charles Seel & Sons from August 1, 1914, to December 30, 1914, shows that Charles Seel & Sons received payments in their business from August 1, 1914, to December 30, 1914, amounting to $3,059.67 and paid out $7,929.70 (p. 53, fols. 30-40; p. 54, fols. 1-30). The check of $600 drawn to

a creditor on July 30, 1914, and paid July 31st, 1914, is not included in these figures. The figures proven from the cash book are as follows:

	Receipts	Expenditures.
1914		
Aug.	$812 80	$2,849.21
Sept.	355.79	1,337.13
Oct.	946.72	1,476.82
Nov.	554.45	1,361.57
Dec.	389.91	904.97
	$3,059.67	$7,929.70

The $3,760 check was not included in the cash receipts from the business. These figures conclusively prove beyond any doubt, and likewise corroborate what Joseph Massopust said Seel had told him as the reason for selling the property. These obligations paid by the firm, amounted to $4,870.07 in excess of the total receipts and were paid by Charles Seel & Sons during the few months following the sale and paid with the moneys received from the sale; and did not include the $600 paid July 31, 1914. The said Seel was asked why he did not pay the National Bank of Slatington from these moneys and he replied that he paid his "honest debts with it" (p. 55, fols. 20-30), and while the National Bank of Slatington's debt was a legal one, it was not a just or an honest one; meaning that the obligations upon which he had received value, were honest and the accommodation liability of the bank, but a legal one for which he received no value (p. 54, fols. 30-40; p. 58, fol. 30; p. 59, fol. 10).

In *The National Bank* v. *Sprague*, 5 C. E. Green, page 13, Chancellor Zabriskie, held that:

> "The law of this State does not forbid debtors, though insolvent, to prefer creditors by making payments of money or transfers of property, or by giving mortgages or confessions of judgment. And, although a preference thus created may operate to delay and hinder other creditors, yet, if not created, for that purpose, but to secure or pay *bona fide* debts, it is lawful. Also, that partners having the power, while the copartnership assets remain under their control, to appropriate any portion of them to pay or secure their individual debts."

In the case of *Board of Freeholders* v. *Lindsley*, 14 Stewart, page 189, the Court held, that a debtor has the right to prefer one or more of his creditors over the others, and as long as he exercises this right honestly, his acts, whether a preference be created by sale or pledge, are unimpeachable. Also *Green* v. *McCrane*, 10 Dickerson, 436.

Having conclusively proven by the cash book the items of receipts and expenses, showing the deposit of the funds received from Massopust, there could have been no fraudulent conveyance, for the statutes and the law regard such fraud in the light of being designedly to hinder and delay the creditors of the grantor.

As was said by the Vice-Chancellor in the case of *Horton* (*infra*):

> "The cardinal principle of all such cases is that the property of the debtor shall not be diverted from the payment of his debts to the injury of his creditors by means of fraud."

POINT III.

Joseph Massopust having paid a full and sufficient consideration for the premises, he was at least entitled to a prior lien for such sums against the premises over the judgment of the complainant to the extent of the moneys used in discharging the debts of Charles Seel & Sons.

My adversary did not take occasion to delve into or examine Charles Seel respecting the numerous items in the cash book, showing receipts of $3,059.67 and expenditures of $7,929.70, covering a period from August 1, 1914, to December 30, 1914; nor were the several checks paid against the firm's account inquired into. Therefore, I contend that it was conclusively proven that all of the moneys received by Seel from Massopust were used in discharging the obligations of the firm. The figures given from the cash book show expenditures of $4,870.07 and when the item of $600 paid on July 31st, 1914, is likewise added, it is proven that $5,470.07, in excess of receipts, was paid by Charles Seel & Sons between July 31st, 1914, and December 31st, 1914.

It was held in *Horton* v. *Bamford*, 9 Buchanan, page 356, that where the consideration paid by a purchaser on a transfer of property by a debtor went to satisfy legitimate debts of the debtor, the purchaser will be protected to that extent.

In the *Horton* case (*supra*), the Court held on page 379:

> "In our own courts of equity, there will be found to have been exercised a jurisdiction concerning this subject matter which I can only justify upon the theory that inherent equitable powers were being exercised irrespective of any statute (citing many cases). And with respect

to the specific application of this doctrine to the facts in the case at bar, it will be found that it is thoroughly settled that in the absence of satisfactory proof of actual fraud, the alienation will be sustained to the extent of the consideration actually given, and declared voluntary and void as to the residue."

On page 381, the Court said:

"When the act of fraud is established in a suit at law, the buyer loses the property without reference to the amount or application to what he has paid, and he can have no relief at law or in equity. When the proceeding is in Chancery, the jurisdiction exercised is more flexible and tolerant. The equity appealed to, while it scans the transaction with the severest scrutiny, looks at all the facts, and giving to each one its due weight, deals with the subject before it, according to its own ideas of justice. * * * Where he has honestly applied the property to the liabilities of the seller, it may hold him excused from further responsibility. The cardinal principle in all such cases is that the property of the debtor shall not be diverted from the payment of his debts to the injury of his creditors by means of fraud."

POINT IV.

There is no proof to justify a conclusion that Massopust purchased the property with fraudulent knowledge or fraudulent intent to prevent the collection of the judgment obtained by the complainant against Seel, or that Massopust did have notice of such facts and circumstances as would lead to a strong inference of fraud.

Referring to the opinion rendered by the Vice-Chancellor, he bases his conclusions upon three points, viz.,

One:

> "There is no doubt but that the defendant Seel intended to put his property beyond the reach of a judgment which he evidently considered was unjust, and to this end desired to strip himself of all the property he owned which might be subject to levy under an execution on the judgment in question."

There is not a single fact in the record that establishes, by inference or otherwise, this deduction. Examine Seel's testimony; on his cross examination, he said that he and his firm were pushed for money and the only way out of it was either to give up the business, go into bankruptcy or sell the property and use the proceeds to pay the debts.

It was said by Chancellor Zabriskie in the *Merchants Bank* v. *Northrup* (*infra*):

> "Circumstances are relied on to throw doubt on the defendant's testimony. No judge or juror is justified in disregarding positive testimony, especially when uncontradicted, because it seems to him, on the whole, rather improbable."

This conclusion of the Vice-Chancellor's is totally barren of the slightest proof upon which to predicate it even as an inference. I respectfully submit that there is not the slightest proof to warrant an inference that Seel disposed of his property with intent to hinder, delay or defraud the complainant, and therefore Massopust could not have participated in a situation that never existed.

Two:

> "Massopust on the witness stand admitted that he knew about the litigation which was pending between the complainant and Seel over the $900 note mentioned in the pleadings."

This is admitted—the litigation had been pending over four years prior to the transfer.

Three:

> "After he took his deed, he retained Seel in possession and gave him a lease at $40 a month under which Seel still holds possession of the premises, using the same as his dwelling and workshop."

This is admitted—the lease and the rent receipts were all offered in evidence (pp. 74-75, Exhibits D3 and D4). And upon these three conclusions, the Vice-Chancellor held that the case resembled the case of Tatum *v.* Green, 6 C. E. Green, 364.

Briefly, the facts in the Tatum case manifestly show an entirely different situation than in the case at bar. In the Tatum case, the complainant sued John Tatum for breach of promise. The verdict was rendered in the suit in Freehold at ten o'clock at night; the next morning, the defendant was at Camden where he made, executed and acknowledged assignment of mortgages to his brother, Dr. Tatum; he procured and placed the war stamps upon the instruments and proceeded to the residence of Dr. Tatum at Wilmington, in the State of Delaware, where he arrived on the same day and consummated the transfers with Dr. Tatum, who knew at the time of the litigation and verdict rendered the night before, and who hastened to place the instruments upon record.

All the facts as given in the report of the case clearly sustain the Court's conclusions therefrom.

The Court said:

> "But if the facts and circumstances admitted by the answer, and in the proof, show that this defendant (Dr. Tatum) must have known

> of the fraudulent intent of his brother, or if those facts and circumstances were such as to lead legitimately and naturally to inference of fraudulent intent of the debtor, the assignments cannot, as against the complainant, stand. What a person knows may be locked up within his breast; what he should know from a prior state of facts, is a conclusion of law. If a purchaser has before him facts which should put him upon inquiry, it is equivalent to notice of the fact in question. If Dr. Tatum, blinded by his over confidence in his brother, failed to see the transaction *as it would have presented itself to any prudent business man,* upon him and not the complainant must fall the loss. Though Dr. Tatum may not have had such knowledge of the intended fraud as to make his denial thereof perjury, yet he had notice of suspicious, unusual and extraordinary circumstances, which should have put him upon inquiry."

I respectfully contend that there was not a single circumstance in the negotiations that lead up to the transfer of the property that showed any suspicious, unusual or extraordinary circumstances that put Massopust upon inquiry.

I likewise respectfully contend that Massopust did not fail in any particular to see the transaction as it would have presented itself to any prudent man.

The Tatum case was decided by Chancellor Zabriskie, and in order to get a thorough idea of what the Chancellor intended, I respectfully ask this Court to read two other cases decided by Chancellor Zabriskie pertaining to this subject matter and in the order in which they were rendered, as follows:

> *Atwood* v. *Impson*, 5 C. E. Green, page 150.

Tatum v. *Green*, 6 C. E. Green, page 364.
Merchants Bank v. *Northrup*, 7 C. E. Green, page 58.

In the *Atwood* case (*supra*), the Court held, that knowledge by the purchaser that the seller is embarrassed and largely in debt, and that, if no one would buy his goods, his creditors would get their debts out of them, will not effect the validity of the sale, provided the object in purchasing was not to delay or hinder creditors but only to make a good bargain, or to procure something of which the purchaser was in want. The sale, in making which the object of the debtor is to hinder, delay, or in any way put off his creditors, is void if made to anyone having knowledge of such intent; and this knowledge need not be by actual positive information or notice, but will be inferred from the knowledge by the purchaser of facts and circumstances sufficient to raise such suspicions as should put him upon inquiry.

I respectfully contend that Massopust did not have knowledge of facts and circumstances sufficient to raise in his mind any suspicion; he was informed by Seel that he had to sell to pay his debts and the moneys realized were actually used in discharging his co-partnership debts.

In the *Tatum* case (*supra*), the Court held, that it will not suffice for the complainant to prove simply that the judgment-debtor made the assignments for the purpose of hindering, delaying and defrauding the collection of the judgment; she must go further, and show that the assignee participated in such fraudulent intent; or at the time he took the assignments had brought to his notice facts and circumstances from which fraudulent intent of the assignor was a natural and legal inference.

In the *Merchants National Bank* case (*supra*), the Court held it is not sufficient for the purpose of setting aside a conveyance that the object of the grantor was fraudulent; it must be shown that the grantee participated in that intent, or had knowledge of the object of the grantor, or of such facts as should have put him upon inquiry as to that object. But the mere fact of having heard of suspension, or failure, or being sued, is not sufficient in all cases to make a sale fraudulent and the deed void, in bankruptcy proceedings it is. There are many objects for which a debtor, when pressed, in failing circumstances, may legitimately sell or dispose of his real and personal property, or pay out his money, and such disposition or payment be valid, except so far as prohibited by the provisions of the Bankruptcy Law.

POINT V.

That it was prejudicial to Massopust's rights to determine the case upon an entirely different issue than was set forth in the pleadings.

Massopust, or his counsel, did not appear at the trial of this case, on the 26th day of April, 1915, prepared with witnesses, proof or data to meet any different issue at the trial than what was set forth in the pleadings at that time.

Upon the conclusion of the trial, decision was reserved. On May 18th, 1915, Vice Chancellor Howell rendered his opinion, finding in favor of the complainant upon an entirely different issue than was pleaded.

On May 19, 1915, an order was entered amending the bill of complaint so that the complaint as

then amended stated the facts in conformity with the Court's opinion.

I respectfully contend that a determination of the case upon an issue not raised by the pleadings was prejudicial to Joseph Massopust's rights, and denied him the privilege to come prepared to submit proof in detail on an issue not raised by the pleadings.

POINT VI.

That it does not appear that Charles Seel was insolvent and unable to pay the judgment obtained by the complainant against him at the time of filing the bill of complaint herein.

The complainant's only proof at the trial of having exhausted its remedies at law, as an essential fact prerequisite to be proven before setting aside the conveyance, consists of the return of the execution unsatisfied, the testimony of William A. Spencer that he had made a search "a couple of years ago" and that he had made no search since (p. 21, fols. 20-30); although Charles Seel was at the time and continues to be a member of the copartnership firm of Charles Seel & Sons, which interest is subject to levy and sale under an execution.

Mr. Seel did testify that he had been, was and still is a member of the copartnership firm of Charles Seel & Sons. A copartnership interest in a firm is subject to levy and execution, and should have been resorted to before complainant can maintain its bill.

No order of discovery was ever issued to endeavor to locate assets of Charles Seel and no proof was submitted that Charles Seel did not

possess other property, personal or real, to satisfy the judgment, at any time following the entry of the judgment and prior to the filing of the bill of complaint herein.

POINT VII.

The testimony of Thomas Brown, an attorney, was improperly received in evidence.

Mr. Brown testified that the first connection with Mr. Massopust concerning the transfer was two months after the deed was given and when Mr. Massopust brought to him a subpœna *ad respondendum* in this cause (p. 51, fols. 1-20).

Mr. Brown never saw the two checks given by Massopust for the purchase of the property (p. 51, fols. 10-20).

Mr. Massopust was called (p. 51, fol. 30), to testify to a fact, and complainant's counsel not having been satisfied with the answer, called Mr. Brown to contradict him (p. 51, fol. 40).

The facts concerning Mr. Brown are as follows:

He was retained by Joseph Massopust to defend this suit, and whether neglectfully or otherwise, Mr. Brown permitted a decree *pro confesso* to be taken against Joseph Massopust. Mr. Massopust then procured other counsel. The complainant, then realizing, as this Court must, that Mr. Brown was then none too willing to assist Massopust, used Mr. Brown as a witness to testify against him.

I contended at the trial, that anything Massopust said to Brown was confidential and privileged, but the Vice Chancellor received it and cited the case of *Matthews* v. *Hoagland* (3 Dickinson, p. 455).

The case of Matthews *v.* Hoagland does not support the reception of this evidence.

The case held,

> "That the privilege of professional secrecy is not only confined to the knowledge derived by counsel from communications made to him by, or in conference with a client, but extends to information obtained from documents submitted for his inspection or interest. That the privilege only ceases when means are devised between the client and the attorney by which a crime is to be committed, in which the attorney takes an active part—then it was held that the attorney becomes *particeps criminis;* if the attorney is consulted beforehand as to the means, the expediency or consequence of committing a fraud, his communication may perhaps be privileged; *and they are clearly privileged as to what he may have said to counsel since the wrong was done* (p. 465), *but the attorney may, I think, be required to disclose whatever was done in his presence toward a perpetration of the fraud.*"

The Matthew case supports my contention raised at the trial, that Mr. Brown's testimony was not admissible because the transfer had taken place two months prior to Massopust's first conference with him.

POINT VIII.

The final decree of the Court of Chancery in this cause should be reversed, with costs to the defendant, Joseph Massopust.

Respectfully submitted,

AUGUST C. STREITWOLF,
Solicitor and of Counsel for
the Defendant-Appellant.

New Jersey Court of Errors and Appeals.

Between

THE NATIONAL BANK OF SLATINGTON,
Complainant-Respondent,

and

CHARLES SEEL and JOSEPH MASSOPUST,
Defendants,

JOSEPH MASSOPUST,
Defendant-Appellant.

BRIEF FOR RESPONDENT.

Statement of Facts.

November 3rd, 1910, the complainant brought suit in the Middlesex Circuit Court against the defendant Seel (not in 1909, as stated in Defendant's Brief). See testimony of Mr. Spencer, page 44, to which Seel filed a plea of general issue. Before the case could be brought on for trial, at the time stated in defendant's brief March 6, 1911, Seel filed a bill in the Court of Chancery to enjoin said suit, claiming a defense in equity—having none at law—which bill was afterwards, after a hearing dismissed as will appear by the decision of said Court and which is hereto annexed. The note upon which complainant's judgment was obtained was a note given in renewals of notes, which notes had

been running for years and discounted by the complainant for one Samuel Caskie. The note upon which complainant's suit was based is marked Exhibit C4, page 73, State of the Case. This note had been in our hands for suit for about two months before the suit was commenced. See page 44, State of the Case. Seel's bill being dismissed for want of equity, judgment was entered in said cause against Seel in favor of the complainant in said Circuit Court at the time and for the amount in defendant's brief set forth, viz.: September 8, 1914, for want of an adequate defense (Exhibit C2, p. 72). On July 24th, 1914, Seel conveyed the property in complainant's bill set forth to the defendant Massopust, which deed was recorded on the 27th day of last said month. The consideration mentioned in said deed being $1 and other valuable consideration. After the entry of complainant's said judgment, execution was duly issued and recorded and delivered to the Sheriff of said County and the Sheriff not finding any goods and chattles to make said damages and costs, made a levy upon the lands in said bill described so conveyed to the said defendant Massopust, as the lands of said Seel and returned the same to said Court wholly unsatisfied Exhibit C1, page 72, State of the Case, whereupon the complainant filed his bill in said Court of Chancery to have the same set aside as being in fraud of complainant and to hinder it to obtain satisfaction of its said judgment.

POINT I.

The law is well settled that the conveyance must not only be upon a proper consideration but must be *bona fide*—in good faith—without notice either expressed or implied. The appellee claiming that he

paid an adequate consideration for this conveyance, is not sufficient, even if he did, if such was really paid by Massopust's own money—this is not the law. There must be a combination of both; if either fails the conveyance is fraudulent as to creditors.

> "He who buys any part of the avails of a scheme to defraud creditors, in order to keep what he gets, must not only pay for it, but must be innocent of any purpose to further the fraud."
>
> De Witt *v.* Van Syckle, 2 Stew., 209.

The conveyance should not only be for a consideration but *bona fide,* without notice either expressed or implied.

> Green *v.* Tatum, C. E., 6, 364.
> Schmidt *v.* Opie, 6 Stew., 138.
> Holt *v.* Creamer, 7 Stewart, 181.
> Moore *v.* Williamson, 17 Stewart, 503.
> Barr *v.* Chandler, 2 Dick., 532.
> Lewis *v.* Welsh, 18 Stewart, 772.
> National Bank *v.* O'Rouke, 13 Stewart, 92.
> Manf'g Co. *v.* Hardware Co., 63 At., 421.
> Met. Bank *v.* Durand, 7 C. E. Green, 35.
> Munford *v.* Tunis, 6 Vroom, 256.

In the case of New York Fire Insurance Company *v.* Tooker, 8 Stewart, 408, to constitute him such participant it is not necessary to show that he had direct or positive knowledge of the fraudulent purpose of the vendor, but it will be sufficient to show that he had notice of such facts and circumstances as would naturally lead up to a strong inference of fraud.

Even if a full price is paid by grantee, still if he buys with notice expressed or implied, it is fraudulent as to creditors.

> Sayre *v.* Frederick, 16 Eq. N. J., 205.

> "If facts as brought to the knowledge of a party which would put him as a man of common sagacity upon inquiry, he is bound to inquire, and if he neglects to do so he will be chargeable with notice of what he might have learned upon examination."

If a conveyance of realty was actually fraudulent as to the rights of creditors, it was properly set aside though the grantees paid the full value of the property.

> Mathews *v.* Converse, 77 A., 961, 83 Conn., 511.

Transfers by a debtor while suits are pending against him are always suspicious circumstances such as would lead a reasonable man to investigate concerning the financial condition of his transferror.

> Moore *v.* Roe, 8 Stew., 90.
> Horton *v.* Bamford, 79 Eq., 356.

To invalidate a sale as fraudulent and void as to creditors, where the purchaser is not a creditor but a mere volunteer, and the seller intended by the sale to hinder, delay or defraud his creditors, it is not necessary that it should be shown that the purchaser bought with a "like fraudulent intent;" it is enough if it be shown that the purchaser had knowledge of such facts as should charge him with notice of the fraudulent intent of the seller.

> Lyons *v.* Hamilton, 69 Iowa, 47; 28 Northwest, 429.

Every act or device by which creditors are prejudiced is an element of fraud.

> Thompson *v.* Freeman, 34 La. Amm., 992.

Whether a conveyance is fraudulent or not under St. 13 Eliz., C. 5, depends upon its being made upon a good consideration and *bona fide*. It is not sufficient that it is upon a good consideration or *bona fide*. It must be both, and if not, it is void as to creditors.

Glenn *v.* Randall, 2 Md. Ch., 220.

A general and absolute transfer by a man deeply insolvent, when about to be pursued by execution creditors, of all of his property, real and personal, at one and the same time, to one of his relatives, who, from his trade and residence, could have no personal use for the kind of property conveyed, not followed by actual, or at least by any ostensible change or possession at or after the time of the sale, is a circumstance which tends to show such sale merely colorable, and from which, in the absence of explanatory evidence, the jury may infer that such sale is in fact fraudulent.

Sarle *v.* Arnold, 7 R. I., 582.
Lohn *v.* Crowther & Co., Fed. Reporter, Volume 54, page 298.

An actual agreement or contract between Lohn and Crowther & Co. that the latter would aid the former to defraud his creditors does not have to be shown. It is sufficient to avoid the transfer of the goods, if the facts and circumstances within the knowledge of Crowther & Co. or either of them, were such as fairly to induce the belief that they knew of the fraudulent purposes of Lohn, or that, having good reason to suspect it, they purposely refused to make inquiry, and remained willfully ignorant. In other words, actual knowledge of the fraudulent purpose of Lohn does not have to be brought

home to Crowther & Co. If they purchased the goods under circumstances which would have put a man of common honesty and sagacity upon inquiry, they were bound to inquire; and, if they neglected to do so, then they are chargeable with all the facts due inquiry would have developed (Singer *v.* Jacobs, 11 Fed. Rep., 559; Walker *v.* Collins, 4 U. S. App., 406; 1 C. A., 642; 50 Fed. Rep., 737).

A full consideration paid in cash, will not protect a purchaser who has notice, actual or constructive, that the vendor is selling to defraud, hinder or delay his creditors; and the reason is, that by aiding the debtor to convert his visible and tangible property, which cannot readily be concealed from his creditors, into money or negotiable securities, which it is easy to put beyond their reach, the purchaser thereby assists the debtor to carry out his fraudulent purposes (Clements *v.* Moore, 6 Wall., 299, 311; Singer *v.* Jacobs, *supra;* Walker *v.* Collins, *supra*).

Where a man who has claims pending over him selects a certain portion of his property and conveys it to a friend, with a view to conceal it or cover it from those claims, it is in law a fraudulent conveyance (Beers *v.* Botsford, 13 Conn., 146).

A conveyance to be valid against creditors, must not only be founded on a valuable consideration, but must be also *bona fide* (Basey *v.* Daniel, Smith, 252).

When the facts and circumstances are such as to put a reasonable man on inquiry, that obligation is not satisfied by an inquiry addressed to the chief actor in the suspected fraud, who has every motive for concealing the truth, when better and reliable sources of information are open to

him (Singer, Baer & Co. and others *v.* Jacobs *et al.*, Federal Report, Volume II, p. 559).

To avoid a sale made to defraud creditors it is not required that the purchaser should have had actual knowledge of the fraudulent purpose of the vendor. It is sufficient if he had constructive notice (Singer, Baer & Co. *et al. v.* Jacobs *et al.*, Fed. Rep., Vol. II, p. 560).

A transfer of property with an intent to defraud creditors will be void although there may be an adequate consideration; for proof of such consideration does not decisively negative the presumption of fraud, as the intention of the parties is the test by which the transaction is to be judged. Alexander *v.* Todd, Fed. Cas. No. 175 (1 Bond, 175).

Where the conveyance is actually intended to be fraudulent, it is worthless, and does not protect the grantee, even to the extent of the sums invested by him (Goodwin *v.* Hammond, 13 Cal., 168, 73 Am. Dec., 574).

See, also, cases collected in Cyclopedia of Law and Proceedure, Volume 20, pages 461 to 491. The law is too well settled to need further comment.

There was a decree *pro confesso* taken by complainant both against Seel and Massopust. Massopust afterwards had the decree opened as against him on affidavit (p. 11, State of the Case), and filed his answer to said bill. Seel put in no answer, which tacitly admits the truth of the bill.

POINT II.

As to Seel's alleged bankruptcy and his needing the money to pay his debts.

On cross examination (p. 56) he said that in December, 1913, by this book $1,530 was paid out, taken in $2,632.74; in January, 1914, took in

$1,177.39, paid out $1,378.83; February took in $763.99, paid out $379.89; March took in $457.88, paid out $461.77; April took in $996.85, paid out $887.67; May took in $1,610.40, paid out $948.71; June, took in $1,939.83, paid out $1,660.99, showing that $8,978.08 was in this time taken in and only $7,247.86 paid out, leaving a balance of $1,730.22 gain, showing the falsity of this claim of threatened bankruptcy. Nothing is testified to as to claims due Seel & Sons or of other assets. His sons, who no doubt know all about his and their affairs, are for some reason, not produced as witnesses. Let us see how this money was expended. Debts are very seldom in even dollars. July 30, 1914, a check was given to one Gustav Jost for $600; whether a debt or money loaned to him or for what purpose is left in the dark. August 1, 1914, a check is given his son L. Seel for $500. August 3, 1914, another check to his other son Chas. Seel, Jr., for $500, only endorsed by them.

Query: Were they creditors of themselves? We find from this account from July 30th, 1914, to January 1, 1915, there were eighteen cash checks (no endorsements) amounting to $2,080 money taken from the bank by some member of the firm. Bills are generally paid by checks drawn to the order of the creditor. Why this distinction?

There is nothing to show that a single dollar was paid for any debt contracted before. The checks to the Central Railroad Company were no doubt for freight for such merchandise purchased at the time, checks drawn to parties by name in dollars and cents, may have been and probably were for merchandise needed in their business after this conveyance. *There is nothing to show that a single dollar went for any debt contracted before.* Railroads don't allow freight bills to stand; telephone bills are paid for each current month.

Query: If any creditor was pressing for debts due before this conveyance, would they be allowed to stand for any length of time—would they not have been paid immediately after he made this conveyance?

Nowhere has Seel shown in his testimony that this money went to pay a single debt due before the conveyance was made. He simply swore to expenditures without showing for what. (They have been carrying on their business ever since and is it possible for them so to do without incurring debts for merchandise needed constantly in their business as roofers?)

There is not the slightest evidence that Seel or the firm of Seel & Sons paid a single debt that was owing, at the time of such alleged sale, to any debtor by him or them. The bills contracted and notes given were the best evidence of such indebtedness, and when incurred. These were not produced or a single witness on this account. Why were not his partners, his sons, put on the stand? The bills and notes, if any paid, would have been the best evidence whether such debts existed or not at the time, and when incurred and to whom owed, and that he or the firm of Seel & Sons were facing bankruptcy, yet not a single bill for such debts, which would be the best evidence of the debt, was produced to prove it—the very best evidence of his or their financial condition at the time.

If he or the firm had paid bills or notes the notes would have been surrendered and the bills receipted. Why, if they existed, were they not in evidence? The only conclusion to be drawn is that they did not exist, neither did the indebtedness. The mere fact of testifying that certain moneys were paid out without showing that it was paid for debts contracted before this alleged conveyance amounts to nothing as evidence. Debts, to

whom due, when due and when contracted were the best evidence as to whether this alleged bankruptcy existed or not, which was a matter of fact and not of assertion.

Seel further says (same page): I sold the property to carry on the business, to pay debts and get more credit. Was he to get more credit by stripping himself of his property?

Nowhere is there a scintilla of evidence that it was true, or facts produced to prove it, that out of this money (if it did not really go back to Massopust) alleged to have been received by Seel for this alleged sale that he paid any debts previous to this conveyance. Another significant thing: This alleged cash book showing expenditures for these months from August 1st to December 31st, 1914, although showing checks for trifling amounts does not show a single item of the payment of any rent, either by check or cash. Why is this? This property was leased to Seel & Sons. Why are there no items of rent? The truth is, no rent was paid. Receipts are easily made out. Massopust said he left his rent book home. *Is it possible that no rents were paid by checks and this rent would not appear in this account of expenditures on Seel & Sons' cash book?* Seel never entered this check from Massopust in this alleged cash book as an asset of the firm, although endorsed to them (p. 57). Even the bank book had been changed from Chas. Seel to Chas. Seel & Sons and he didn't know when (p. 58).

POINT III.

As to the point taken (Point III of Defendant's Brief) that because he alleges that Massopust paid a sufficient consideration, etc., that he should have a prior lien over complainant to the extent of the moneys he alleges in paying alleged debts of Chas. Seel & Sons, etc.

This contention is without merits upon the following grounds:

1. The case is barren of all proof that a single dollar went to pay a single debt of Seel & Sons or of Seel (shown by this cash book) that existed at the time of said conveyance, but the proof is clear that $1,000 went to Seel's two sons by checks of $500 each, and that $2,080.00 in cash drawn by checks went to Seel or his sons. The position taken by counsel of defendant in his brief (Point III) that because complainant's counsel didn't delve into or examine Seel as to what he did with this alleged money claimed to have been paid out by this cash book generally, therefore, it follows that it conclusively proved that they were thus used. Upon what principle this is claimed, is hard to conceive. It was for him to show that it was so used and not showing it (which he no doubt would have done if he had such evidence) it cannot be presumed.

2. The evidence clearly points out (even if it does not show that Massopust was a party to the fraud which complainant claimed it does) that Massopust was fully aware of Seel's fraudulent intention and had sufficient facts to put him upon his guard unless he was blind, deaf and dumb. From the evidence can there be any question of Seel's in-

tent to defraud complainant, or of Massopust's part in it.

Massopust says (p. 39, Printed Case) Seel never asked him to find a customer, although Massopust's firm was in the real estate business. Never suggested selling it before; only suggested selling his propery two or three days before. Why this haste? There is no evidence that anybody was pushing Seel or his partnership except complainant. Real estate is not generally sold with such rapidity. Massopust was fully aware of complainant's suit against Seel; in fact, was fully talked over at the time, and Massopust was put on his guard.

Why talk of it then? If it was *bona fide* there was no need to bring that up unless it had something to do with the sale or some connection with it. *Massopust was not a creditor, but a volunteer.* Was not that conversation sufficient enough to put Massopust on his guard as to Seel's intention and require further investigation by him? Vice-Chancellor Howell covered the law in his memorandum. The law is firmly settled as to these cases. It was well said in case of DeWitt *v.* Van Syckle, 3 Stew., 269:

> "He who buys any part of a scheme to defraud creditors in order to keep what he has must not only pay for it, but must be innocent of any purpose to further the fraud."

The defendant is entitled to no such relief under the facts.

> Story, Equity Jur., Sec. 396.
> Smith *v.* Vreeland, 1 C. E. Green, 201.
> Bump on Fraud. Con., 2 Ed., page 594 and cases cited.

Every one who engages in a fraudulent scheme forfeits all rights to protection either at law or in equity (do.)

POINT IV.

The proof is clear that Massopust not only knew of Seel's fraudulent intention to prevent the collection of complainant's judgment when obtained, but was an active participant in the fraud.

The evidence clearly shows this. The evidence of Thomas Brown is (pp. 46 and 47, State of the Case) that Seel came to the office to have a deed made of his property. He did not mention to whom; that he did not draw any; that when this present suit was commenced Massopust came to his office with the papers and that he told Massopust that Seel had spoken to him about conveying his property, when he said to Massopust, "Joe, as far as being solicitor with my knowledge of the business, I can't do anything for you" (p. 49). On page 50 he further says that he took it and investigated it—Seel's side and Massopust's side—and that he (Brown) could do nothing and from his knowledge of the affair he didn't want to be a party to the conveyance. Query: If that was an honest and *bona fide* transaction, why not? Massopust in his affidavit to have decree *pro con* set aside, page 12, swore that Brown told him he had a good, etc., defense. Massopust on page 32 testified that he never employed Brown in the case; he had nothing to do with it, never went near him, a flat contradiction of his affidavit. On the next page he again contradicts himself. Says he went to Brown to have the search made; that when he got the papers or something and said "They are suing him," etc. How can such contradictions be reconciled on any honest basis? His testimony is a mass of contradictions, hard to reconcile. Massopust further said to Brown that he had paid his good money;

that Seel owed him a bill or something. If Seel owed him, why was it not deducted from the alleged purchase price as a part of the consideration?

Massopust was a close and intimate friend of Seel's; had been for over twenty years; went to the West Indies together on same steamer; are members of a number of the same societies and lodges (p. 42). Seel was a frequenter of Massopust's saloon, and has been for years, and yet Massopust on the witness stand at first pretended that he did not know of this claim of complainant's and that a suit was pending against Seel for some time. On page 38, Printed Case, he says:

> "We only talked about the controversy when Seel was going to sell me the property."

Why talk about it then? What started such a conversation if Seel's mission only was to sell and he to buy, and in the next breath says that he had heard of it before. If Massopust was a purchaser in good faith, why would he make such inquiry? Why this apprehension? Massopust says (same page): "He took no interest in it." He says (p. 39):

> "I didn't accommodate him. I thought I could make a little money on it. I wanted it for my own use."

Yet he takes no possession of it but gives Seel a lease for three years at a rental that would not be enough (if properly taxed) to pay interest, taxes, insurance and wear and tear, and which would deprive him of the use of it and a cloud on the sale of it for that time at least, unless Seel and all his sons saw fit to surrender it. We are all actuated by motives in this world and yet it is in vain to look for a motive for such a purchase, if it was honest and in good faith. Massopust is in the real estate and insurance business and no novice. Yet

when he took this deed from Seel he did not take enough interest in the property to safeguard the insurance. He admits he knew the consequence of such oversight (p. 40, Printed Case). Did he tell the truth about having the proper endorsement of change of ownership made on the policy? He says he forgot it (same page). But had it done a month later when he found that he did not have the policy, knowing full well the consequence of such omission and that the mortgagee would have the policy. Mr. Richters, the agent in charge of the mortgagee's business, and having the possession of the mortgage and policy (p. 45) testifies that his attention was called to such neglect by Mr. Spencer November 24, 1914, four months after the date of the deed, and he had it done. If Massopust had it done a month afterwards, would not the policy have shown it and the mortgagee been informed of it? Mr. Richters had it done after sending for Seel. Who is to be believed, Massopust or Richters? There is no doubt of a secret trust between Seel and Massopust and that Seel is the real owner of the property.

Massopust said Seel told him he had the bank beat, with no explanation how. The truth is that they intended to beat the complainant by this conveyance and Massopust was a party to it. Said Seel said the complainant could not get a judgment (p. 28) testified (p. 32) that Seel said he needed money; never suggested selling it before (p. 39), yet he says he did not buy it to accommodate Seel; thought he could make a little money; wanted it for his own use, and yet gave a three years' lease back to Seel & Sons. A mortgage was given by Seel to two of his sons made out in the office of Massopust for $3,500 on this property immediately after this note came in our hands for suit. It was afterwards cancelled for some reason (probably hurting

Seel's credit); Seel's testimony shows that these sons were taken into business after learning trades —one a boy of 17. It at least had a suspicious look. This check he got from Massopust was not entered on his alleged cash book. Seel well knew when he made this conveyance that a judgment for complainant would be entered against him at the next term of the Court.

POINT V.

The amendments were proper and in no way embarrassed Massopust in his defense.

Massopust knew by the original bill that the complaint charged fraudulent conveyance. The deed expressing the nominal consideration of $1 gave it the appearance of a voluntary conveyance and was a badge of fraud. He knew what he was to meet on the hearing and if he claimed to be a *bona fide* purchaser without notice of Seel's fraud that he should have been prepared with his proofs; besides amendments of bills are in the discretion of the Court, generally *not subject to review* and are generally granted to meet the real controversy, especially in equity.

Can be done at any time.

Foster *v.* Knowles, 15 Stew., 226.
Frary *v.* Hayes, 17 Stew., 426.

To correspond with the proofs.

Smith *v.* Axtell, 1 Eq., 494.
Davidson *v.* Davidson, 13 Eq., 246.
Selgmon *v.* Dock Co., 17 Eq., 170.
Hampton *v.* Nicholson, 23 Eq., 423, and other cases.

Can be done at almost any time in order that the

real question in controversy may be fairly and justly tried.

Frary *v.* Haynes, 44 Eq., 425.

The point taken by counsel for appellant that the case was determined upon an entirely different issue than set forth in the pleadings is entirely without merit. How was it? The question was not the consideration, but whether it was the deed was fraudulent as to the rights of the complainant, not upon what the deed was founded. Fraudulent or not, was the issue. Besides the consideration being in the peculiar knowledge of the grantee, the burden of proof was on him. See Encyclopedia of Law & Procedure, Vol. 20, page 7 (h). The recital in the deed of $1 was for him to overcome.

POINT VI.

Charles Seel, when he made this conveyance, conveyed away all his real estate and became insolvent—a badge of fraud.

The evidence is that he conveyed away his homestead and place where he carried on his business and the firm's. Mr. Spencer's evidence (p. 21) is that he could find no other property of record; that Seel stated to him "That is all the property he had." If he had other property out of which the judgment could be satisfied, he could have shown it on the witness stand, besides would he have conveyed away his home and his shop and place of business and take chances of being put out of house, home and place of business, if he had had other real estate or property that he could sell?

The Sheriff's levy on these lands and the return of the execution unsatisfied to the Court *nulla bona* (abbreviated) C-1, page 72, "that not finding any

goods and chattels of said defendant on which to levy to make said damages and costs or any part thereof he levied on these lands" was all that was necessary.

Manning *v.* Jagels, 1 Buch., 41, and cases cited.
Randolph *v.* Daly, 1 C. E. Green, 313.
Smith *v.* Opie, 6 Stew., 138.

This is well settled law. Seel testified also (p. 55) that he sold his property because he wanted money to carry on business; that he was facing bankruptcy; conveyed away his property because he was pushed for money.

The bill follows the precedent in Dickenson's Chancery Precedents, Rev. Ed., page 514, and return of execution follows such precedent. Besides the bill can be filed without such execution and return.

Dunham *v.* Cox, 2 Stock., 437.
VanDeveer *v.* Stryker, 4 Hals. Ch., 175.

Defendant in his brief (Point VI) appears to contend that because Seel might have some interest in the partnership of Seel & Sons that complainant should exhaust that notwithstanding the law and facts in the case. Such property even if of much amount, would be subject first to the payment of partnership debts which are the first liens for the creditors of such partnership—creditors of an individual partner have no claim even on such individual partner's interest until partnership debts are first paid. Neither is an order of discovery necessary as a condition precedent to the filing of a creditor's bill.

POINT VII.

The testimony of Brown was properly received.

He only testified as to the fact that Seel came to his office to have his property conveyed; that Seel mentioned no one in particular to make the deed to; that he did not draw one; that he saw Massopust in relation to a transfer from Seel to Massopust. He contradicted Massopust as to what Massopust swore to in his affidavit to open decree *pro con* and that Massopust threw some papers on the table and said he had been sued and he (Brown) told him that Seel had spoken to him about conveying his property and he then said, "Joe, as far as being solicitor with my knowledge of the business, I can't do anything for you," etc. (p. 49), and he, Brown, further stated that with his (Brown's) knowledge of the affair that he (Brown) didn't want to be a party to the conveyance. How that is privileged is hard to understand even if appellant's contention is correct. How is that privileged? Massopust didn't say it, Brown said it, besides Brown had the right to contradict Massopust's affidavit. It was not what the client said to counsel, but what counsel said to the client, and Massopust opened the door by the charge he made against Brown in his affidavit charging Brown with neglect. Massopust said, page 32, that he did not employ Brown; that he never had anything to do with him. He was only to search the property in the County Clerk's office (there was no search anywhere else). So by his own testimony Brown was never employed as his counsel. Brown advised him to convey the property back (p. 32). Before there can be professional confidence, there must be professional employment. Brown also testifies that he was not thus employed.

The only case in this State bearing on the question is the case of Matthews *v.* Hoagland, 48 Eq., 455, V. C. Green, on page 470, fully states the law and under this case even if there had been the relation of client and counsel, and had there been any such confident communication, such evidence would have been admissible.

POINT VIII.

Seel had no motive in selling his homestead and his place of business or Massopust in buying, except to defraud complainant.

The testimony of both Massopust and Seel is very unsatisfactory and contradictory. Massopust admits that he did not have the money in the bank when the deed was made out, July 24th (p. 26, Printed Case), but says he thinks it was the 27th day that he gave it to Seel, 3 days after it was made out. (Why was it made out before the deed passed and when the money was not in the bank to pay it?) Not having the money, would it be likely that he would *bona fide* buy this property simply to lease it back to Seel? He further says that he thinks it was three days afterwards, could tell by his check book and yet does not produce check book to prove it—the best evidence. Says on next page that he had the check and Seel the deed till he heard from Mr. Brown. Page 37, when Brown telephoned him (p. 36), Brown says on page 51 that previous to the time Massopust brought him the subpœna in this suit he had no conversation with Massopust (a clear contradiction of Massopust's evidence). Seel says that he got the check the day it was drawn (p. 57), and that he deposited it—another contradiction of Massopust.

This evidence shows that it was drawn on the 31st of July, the day it was marked paid. It was antedated. Why would Massopust make out a check before he had money in the bank to meet it? If Seel got it either on the 24th or 27th, why would he hold it from four to six days after receiving it and carry it in his pocket? He had a bank account. His bank book was shown to the Court but was not in evidence. The truth is that the check was neither made out or deposited till July 31st, 1915, when it was stamped paid, and was antedated to correspond with deed, and if Massopust had offered his bank book, the best evidence, it would have shown that he did not have the money there till the 31st day of July. Why was it not produced? They all lived in the same city where the bank is. Why was the nominal consideration of $1.00 put in the deed instead of the amount that Massopust says he paid for it—a strong badge of fraud. The truth is that at the time it was a voluntary conveyance. Giving the check an afterthought.

From the evidence, Massopust had no want of or use for this property. People generally do not buy what they have no need of and cannot put to practical use. As soon as he obtained his deed, or a few days thereafter, he gave Seel & Sons a lease or pretended one for three years at an alleged rent of forty dollars per month, prearranged at the time, not enough to pay the taxes if properly taxed, water rents and interest. The taxes, if the property was assessed as it should be, the value put upon it would be at least $6,000—2% tax; $120 a year.

Water rates	$11.00
Interest on $6,100	366.00
	$497.00

besides insurance.

Rents at $40.	480.00
A loss of	$17.00

without wear and tear and loss of rents. Would a man in the real estate business buy such property at such a price for the sole purpose of renting at such a rent? His excuse that he wanted to live there if he got married is too ridiculous to receive any consideration. Was he to wait until the lease expired before he got married? He is not married yet. Cages are not bought before the bird is obtained. His leasing it to Seel for three years shows he had no such intention of that at the time or even to re-sell it. Was not the leasing, from the evidence, a part of the fraudulent scheme and a part of the arrangement?

POINT IX.

This conveyance had every earmark and badge of fraud from the evidence.

False recital of consideration if it was found on a money consideration.

Bump on Fraudulent Conveyances, 2 Ed., page 40.
Holt *v.* Creamer, 7 Stew., 189.

Quoting Chief Justice Marshall who in speaking of a deed that misrepresents the consideration, says that it is liable to suspicion and should undergo a

vigorous examination and not upheld unless it should be fair—and cases cited.

Departure from usual course of business.

> Bump on Fraudulent Conveyances, page 50.

No search in Supreme Court, no transfer of insurance, no money to pay for it at the time it was drawn, *i. e.*, the deed. Unusual mode of payment,

> Do., page 52.
> Cases cited.

Absence of evidence to sustain either the contention of either Massopust or Seel.

> Do., page 52. See cases collected Cyclopedia of Law & Procedure, Vol. 20, page 450.

To a confidential and close friend for over 25 years.

> Bump on Fraudulent Conveyances, page 57.
> Conveyance of all debtor's property is a strong badge of fraud.
> Lewis *v.* Walsh, 18 Stew., 772.

Buying property for which from Massopust's evidence he had no use and could put to no practical use.

Retention of property by grantor under this three years' alleged lease which complainant claims not a cent of rent was paid or intended to be paid. None were shown on Seel & Son's account of expenditures or in this cash book, Exhibit D-6.

For a reason best known to himself this book was not offered in evidence. Is it probable to believe that out of this $320.00 of rent claimed by these recepits, that not a single check was given for

payment of any of it? If this book had evidence of the payment of any rent, would it not have been brought out by defendant?

Lastly.

Can there be any question of either Seel's intention to put his property beyond the reach of the judgment that he well knew the complainant would obtain shortly against him and of facts that Massopust co-operated in the fraud? To believe otherwise would be a strain on human credibility. Fraud, like burglary, is not done in the open. This case is even much stronger in favor of the complainant than the case of Tanton *v.* Green, 6 C. E. Green, 364. In that case, Green told his brother (p. 367), that he wanted to convert his mortgages into cash to be able to pay the plaintiff's verdict. In this case the conversation between Seel and Massopust at the time of this alleged conveyance was such that certainly showed Seel's hostility toward the complainant, and was such as certainly to lead any prudent man to conclude that his motive was in getting rid of his property to prevent the bank from obtaining satisfaction of its judgment when obtained.

As well said Bump, Fraud. Conveyances, 2 Ed., page 484, that "Notice of the fraud need only be sufficient to put a man of ordinary prudence and experience in business transactions upon the inquiry, &c.," and further said, "When a purchaser has knowledge of any fact to put him on inquiry, he is presumed either to have made the inquiry and ascertained the extent of the rights that he may possibly prejudice or to have been guilty of a degree of negligence fatal to the claim to be considered a *bona fide* purchaser," and cases cited. This is well settled law.

Another point. Even if this was *bona fide* which cannot be claimed in the face of the evidence that Seel got this money to pay his debts, then it was the duty of Massopust to see that it was so applied. This is also well settled law.

The appeal should be dismissed and the decree of the lower Court affirmed.

Respectfully submitted,

JOHN W. BEEKMAN,
Of Counsel with Complainant-Respondent.

IN CHANCERY OF NEW JERSEY.

Between
CHARLES SEEL,
Complainant,
and
THE NATIONAL BANK OF SLATINGTON,
Defendant.

On Final Hearing on Bill, Answer, Replication and Proofs.

Mr. JAMES S. WIGHT, for the Complainant.
Mr. JOHN W. BEEKMAN, for the Defendant.

MEMORANDUM.

HOWELL, V. C.:

The facts are that one Caskie became indebted to the bank in 1902 in the sum of $7,400; in order to secure payment of the same he assigned to the bank a bond and mortgage which had been made

to him by the Heimbach Slate Company, originally for the sum of $12,000, payable in six succeeding years, in sums of $2,000 each year, with interest at five per cent. payable semi-annually.

The bill alleges that subsequently the said Caskie made another assignment of the said mortgage to the bank as collateral security for all notes then held or owned, and which might thereafter be held or owned by the said bank, on which the said Caskie might be drawer, payee or endorser, or howsoever.

The bill then alleges that some time in 1906 or 1907 the complainant executed two promissory notes to the order of Caskie and for his accommodation, which were renewed from time to time with payments, which notes were afterwards consolidated in one note on which there is now due the sum of $900 of principal.

The bank subsequently foreclosed the Heimbach Slate Company mortgage and bought in the property at the foreclosure sale for $6,000, leaving a large deficiency of which they afterwards collected approximately $1,000 by sale of personal property about the slate quarry. The bank subsequently realized about $9,000 by disposal of parts of the land which it had purchased at the before-mentioned foreclosure sale, but not money enough has yet been realized to cover the total indebtedness of Caskie, excluding the notes of which the complainant is accommodation maker.

Shute bc
Middlesex Circuit

Later on the bank brought suit against the complainant in the New Jersey Supreme Court to recover the amount owing on the $900 note. The complainant files his bill, alleging that the bank held the mortgage before mentioned in trust and for the purpose of securing, among other things, the amount owing upon the notes given by the com-

plainant for the accommodation of Caskie, and declaring that a trust was created by the bank, it being the Trustee, by which it held the mortgage in question, to secure the notes of which he was accommodation maker. In short, he demands that whatever sum has been realized by the bank from the mortgage shall be applied *pro tanto* to the payment of the $900 note.

In the first place, it is very doubtful whether the cashier of the bank had any authority from his Board of Directors to make an arrangement which it is claimed on the part of the complainant he did make. He certainly could not do so without such authority. There were other persons standing in the relation of surety to the bank for Caskie's debts, who probably could not be displaced, nor their position interfered with without their consent. But even though the cashier's authority should be assumed and the consent of the other persons obtained, it still is very doubtful whether the cashier ever made any such arrangement as he is charged with. The evidence in favor of it is of a very unsatisfactory character. The cashier of the bank denies positively that he ever made any such agreement. His denial and the unsatisfactory condition of the complainant's evidence constrain me to come to the conclusion either that the agreement was not made as is charged in the bill, or that its making is not proved with that degree of certainty and positiveness which would be required to substantiate the allegations of the bill.

But, secondly, there is another matter which militates against the complainant's claim. That is the character of the note in question. The comclaimant states that he was accommodation maker of the note, while the evidence seems to point clearly to the fact that the notes were originally

given partly for roofing slate to be presently delivered, and partly for roofing slate to be delivered in the future. If this is so, and I am inclined to believe it, then the primary obligation of the debt is that of the complainant, and he ought not to, and could not shift the burden from himself in any court of equity.

I will advise a decree dismissing the bill.

Filed June 23, 1914.

[7055]

INDEX.

ABBREVIATION OF EXHIBITS OFFERED IN EVIDENCE.

Bill of Complaint.

(Filed Sept. 23rd, 1914.)

In Chancery of New Jersey.

To his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

Complaining shows unto your Honor, your orator, The National Bank of Slatington, of the Town of Slatington, in the County of Lehigh, and State of Pennsylvania, that on the twelfth day of October in the year nineteen hundred and nine Charles Seel of the City of Perth Amboy, in the County of Middlesex and State of New Jersey, was seized and possessed in fee simple of all that tract or parcel of land and premises hereinafter mentioned and described situate in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, that is to say: Beginning in the southerly line of Market Street at a distance of two hundred feet easterly along the same from the intersection of said line with the easterly line of First Street; thence southerly and parallel with the said line of First Street one hundred and fifty feet; thence westerly and parallel with Market Street seventy-five feet; thence northerly and parallel with the first described course fifty feet; thence easterly and parallel with Market Street twenty-five feet; thence again westerly and parallel with First Street one hundred feet to the said southerly side of Market Street or Eagleswood Avenue; thence again easterly along the said line of Market Street fifty feet to the point or place of beginning. Being the several courses or dimensions more or less.

And your orator further shows that on or about the fifth day of November in the year nineteen hundred and ten the said Charles Seel, being justly indebted to your orator in the sum of nine hundred dollars and upwards, your orator then commenced an action upon contract against the said Charles Seel for the recovery of the said debt and interest thereon in the Circuit Court of the County of Middlesex; and such proceedings were thereupon had in the said suit that afterwards, to wit, on the eighth day of September, in the year nineteen hundred and fourteen, your orator recovered a judgment against the said Charles Seel in the said Circuit Court for the sum of eleven hundred and ninety-eight dollars and fifty-five cents damages including costs as by the record of said judgment now remaining in the office of the Clerk of the said Circuit Court at New Brunswick, reference being thereunto had, will more fully and at large appear.

And your orator further shows, that for the purpose of obtaining satisfaction of said judgment, it caused to be issued thereon out of said Circuit Court a writ of *fieri facias de bonis et terris* tested on the eighth day of September of last said year and returnable on the second Tuesday of December, in the year last aforesaid, which writ, having been first duly recorded was delivered to the Sheriff of said County of Middlesex, to whom it was directed, and thereby he was commanded that of the goods and chattels of the said Charles Seel in his county, he should cause to be made the said sum of eleven hundred and ninety-eight dollars and fifty-five cents so as aforesaid adjudged to your orator, and that if sufficient goods and chattels of said Charles Seel in his county he could not find whereof to make said moneys, he should cause the whole or the residue

as the case might require, of the said moneys to be made of the lands, tenements, hereditaments and deal estate whereof the said Charles Seel was seized on the eighth day of September, in the year last aforesaid, or at any time afterwards, in whose hands soever the same might be; and that the said Sheriff should have those moneys before said Circuit Court, on the return day of said writ, to render to your orator in satisfaction of its said judgment, and that he should have then and there the said writ.

And your orator further shows, that Arthur B. Appleby, Sheriff of the County of Middlesex, to whom the said writ of execution was directed and delivered, being unable to find any goods and chattels of the said Charles Seel whereon to levy and make the said judgment, levied upon the lands and premises hereinbefore described as the property of the said Charles Seel, as by the writ of execution or the record thereof, and the return of said writ thereon endorsed, in the office of the Clerk of the said Circuit Court, at New Brunswick aforesaid, reference being thereto had, will more fully and at large appear.

And your orator further shows, that the said Charles Seel, being so seized and possessed of said tract of land and premises as aforesaid which are of the value of seven thousand dollars and upwards, afterwards, at or about the date or time and by a pretended deed hereinafter mentioned, and after the said debt so due to your orator had accrued and become due and payable, and in order to secure the said property for his own use and benefit, and protect from the said claim of your orator, and prevent your orator from collecting its said debt, contriving to defraud your orator, did, by deed dated the twenty-fourth day of July, nineteen hundred and

fourteen, and recorded in Book 552 of Deeds for said county, on pages 94, etc., pretended to convey the tract of land first above described to one, Joseph Massopust.

And that he, the said Joseph Massopust, was a participant in said fraudulent scheme of said Charles Seel and cognizant thereof at and before the time of making of the said conveyance, and was in collusion with the said Charles Seel in such fraudulent purpose and object and your orator so charges.

By Amended Order, May 19, 1915.

And your orator further shows that when the said Charles Seel made said conveyance to the said Joseph Massopust he conveyed away all the real estate that he owned and was seized of at said time and that the real estate so conveyed was his residence where he has resided for a long time, and has ever since, with his family, and was all his real estate, and where he also carried on and has ever since carried on his business which is that of a roofer, and that he has not owned or been seized of any other lands or real estate since said conveyance and that he, the said Charles Seel, has not had and has not since the recovery of your orator's judgment, sufficient goods and chattels out of which your orator's said judgment and execution can or could be satisfied in part or in whole, and subject thereto.

By Amended Order, Dec. 16, 1914.

And your orator further shows, that he has been informed and believes it to be true and therefore expressly charges, that no consideration whatever was paid for the said conveyance; and that the said Charles Seel has always held, occupied, possessed and enjoyed and received the rents and profits of said land as fully to all intents and purposes as before the execution of said pretended conveyance.

And your orator further shows, that it has frequently and in a friendly manner applied to the

said Joseph Massopust to pay the said judgment, or to cancel and surrender the said fraudulent conveyance, or to reconvey or cause to be reconveyed the said premises to the said Charles Seel so that it may be sold under the said execution for the satisfaction of the said judgment, and a good and clear title given therefor to the purchaser thereof, as in equity and in good conscience they ought to have done, and your orator well hoped they would have done, but which they wholly refused to do.

In consideration whereof, and for as much as your orator is remediless in the premises at the common law, and cannot have adequate relief except by the aid of this honorable court:

To the end therefore that the said Charles Seel and Joseph Massopust, defendants hereto, may (without oath) full, true and perfect answer make to all and singular the premises according to the best of their knowledge, information, remembrance and belief, and that they may set forth and discover the real estate belonging to the said Charles Seel and conveyed as hereinbefore mentioned, and what disposition has been made of, or encumbrance put upon the same, fully and particularly, and in whose possession said real estate has been since the twenty-fourth day of July, nineteen hundred and fourteen, and whether the same is encumbered, and if so, in what manner, in whose favor, by whom, and to what amount, and whether such conveyance as before mentioned was made of the real estate, and if so, for and upon what consideration, and to whom, when and by whom, the same was paid, and who has possessed and occupied said premises, and received the rents, issues, and profits thereof since the said alleged or pretended conveyance thereof; and that the said defendants or some one of them, may be decreed to pay to your orator the full

amount due and owing to it on the said judgment, with the interest, costs and execution fees accrued thereon; and that the said fraudulent conveyance, made, created, or suffered between the said defendants and affecting the said lands, may be set aside and declared null and void; and that the said lands may be sold free, clear and discharged of and from the said fraudulent deed and all other fraudulent deeds and encumbrances under the said writ of execution or otherwise, the proceeds thereof, or such part of the same as may be necessary, may be applied to the payment of your orator's said judgment; and your orator may have such other or further relief in the premises as the nature of the same may require, and as agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant to your orator the State's writ of subpœna, issuing out of and under the seal of this honorable Court, directed to the said Charles Seel and Joseph Massopust, therein and thereby commanding them and each of them, at a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, etc.

BEEKMAN & SPENCER,
Solicitors of Complainant.

Jno. W. Beekman,
Of Counsel.

Answer of Defendant, Joseph Massopust.

(Filed Dec. 5th, 1914.)

IN CHANCERY OF NEW JERSEY.

Between NATIONAL BANK OF SLATINGTON, Complainant, and CHARLES SEEL and JOSEPH MASSOPUST, Defendants.	On Bill, &c.

The defendant, Joseph Massopust, by August C. Streitwolf, his solicitor, answering the bill of complaint heretofore filed herein, respectfully shows unto your Honor:

That this defendant admits that on the 12th day of October, one thousand nine hundred and nine, one Charles Seel a co-defendant herein, was seized and possessed in fee simple of all the property described in said bill of complaint.

That the defendant has no knowledge of the indebtedness to complainant incurred on or about the 5th day of November, one thousand nine hundred and ten and more particularly described in the bill of complaint, or of the proceedings subsequently had in respect to the said obligation resulting in a judgment alleged to have been entered by the complainant against the defendant, Charles Seel on the 8th day of September, one thousand nine hundred and fourteen, or of the proceedings subsequently had by the said complainant to enforce the collection of the said

judgment in the Courts of Law in the State of New Jersey and leaves the complainant to its proof thereof.

This defendant on the 24th day of July, one thousand nine hundred and fourteen for a consideration of six thousand ($6,000) dollars payable by assuming, first, an existing mortgage against the said premises amounting to two thousand ($2,000) dollars, second, by paying three thousand seven hundred and sixty ($3,760) dollars in cash and by assuming an unpaid assessment against the said property amounting to two hundred and seventy-nine and 36/100 ($279.36) dollars, purchased of the defendant, Charles Seel the land and premises more particularly described in said bill of complaint and obtained on said day aforesaid a deed therefor duly executed in due form of law and recorded on the 27th day of July, one thousand nine hundred and fourteen, in the office of the Clerk of the County of Middlesex in Book 552 of Deeds for said County, pages 94, etc.

And this defendant denies that the said deed was a pretended deed for the purpose of protecting the said Charles Seel or of preventing the complainant from collecting its said debt or that the said conveyance was a contrivance to defraud the complainant, and this defendant expressly charges that the sum of three thousand seven hundred and sixty ($3,760) dollars as heretofore alleged to have been paid was actually paid by this defendant to the said Charles Seel by check dated on the day aforesaid and drawn against this defendant's fund in the First National Bank of Perth Amboy, and that the consideration paid as aforesaid was a good and *bona fide* consideration and represented the true value of said premises at the time aforesaid.

This defendant therefore denies that no consideration whatever was paid for the said conveyance and further denies that the said Charles Seel has always held, occupied, possessed and enjoyed and received the rents and profits of said land and premises as fully to all intents as before the execution of said conveyance, but expressly charges that the said Charles Seel has been in possession of said property by virtue of a certain lease made and entered into between this defendant and the firm of Charles Seel & Sons, whereby they leased of this defendant for a term of three years commencing the 1st day of August, 1914, at a certain agreed monthly rental, payable in advance, the land and premises described in the bill of complaint and now owned by this defendant.

All of which matters and things, this defendant is ready and willing to maintain, aver and prove as this Honorable Court shall direct and humbly prays that he may have judgment dismissing the bill of complaint herein with his reasonable charges in this behalf most wrongfully sustained.

AUGUST C. STREITWOLF,
Solicitor and Counsel for Defendant,
Joseph Massopust,
No. 40 Paterson Street,
New Brunswick, N. J.

Decree Pro Confesso.

(Filed Nov. 5th, 1914.)

IN CHANCERY OF NEW JERSEY.

Between

THE NATIONAL BANK OF SLATINGTON,
Complainant,

and

CHARLES SEEL *et al.*,
Defendants.

On Bill, etc.

This cause being opened to the Court by Jno. W. Beekman, of counsel with the complainant, and it appearing that process of subpœna for the appearance of the defendants hath been duly issued, and returned served upon both of said defendants, namely, Charles Seel and Joseph Massopust, and that the said defendants have not filed any plea, demurrer, or answer to said bill within the time limited by law, but have wholly failed and neglected so to do:

It is thereupon, on this fifth day of November, in the year of our Lord one thousand nine hundred and fourteen, ordered, adjudged and decreed that the said bill be taken as confessed as against both of said defendants, to the end that such decree be made against them as the Chancellor shall think equitable and just, and that said complainant proceeded to take depositions in support of the allegations in its said bill, and bring on its hearing, *ex parte*.

E. R. WALKER,
C.

Affidavit of Jos. Massopust.

(Filed Nov. 23rd, 1914.)

IN CHANCERY OF NEW JERSEY.

THE NATIONAL BANK OF SLATINGTON,
Complainant,

against

CHARLES SEEL and JOSEPH MASSOPUST,
Defendants.

On Bill, etc.

State of New Jersey, } ss.:
County of Middlesex, }

Joseph Massopust, being duly sworn according to law on his oath, says: That he is one of the defendants above named and resides in the City of Perth Amboy, State of New Jersey, that the complainant herein filed his bill on the twenty-third day of September, nineteen hundred and fourteen, alleging, among other things, that prior to the eighth day of September, nineteen hundred and fourteen, one Charles Seel was indebted to the complainant in the sum of one thousand, one hundred and ninety-eight and 55/100 ($1,198.55) dollars, and that a judgment was entered for said sum in the office of the Clerk of the Circuit Court of the County of Middlesex on the date aforesaid, and that execution was duly issued out of said Court, and duly returned, *nulla bona*, by the Sheriff of the County of Middlesex to whom it was directed; and the complainant in said bill further alleges that on or about the twenty-

fourth day of July, nineteen hundred and fourteen, Charles Seel, on or about said date, by a pretended deed and in order to prevent the complainant herein from collecting his claim from said property, contriving to deceive the said complainant, did convey the land described in said bill and alleged to be worth the sum of seven thousand ($7,000) dollars, for no consideration whatever, and that the said Charles Seel has always held, occupied, possessed, enjoyed, and received the rent and profits from said land and premises, notwithstanding the aforesaid execution of this pretended conveyance.

And your deponent further says that thereafter he was duly served with a subpœna, *ad respondendum,* issued out of Court of Chancery and made returnable the fifth day of October, nineteen hundred and fourteen; that after the serving of the aforesaid subpœna upon him, he consulted Thomas Brown, an attorney and counselor at law in the City of Perth Amboy, County of Middlesex, and asked the said Thomas Brown to defend the said suit, which the said Thomas Brown agreed to do, and at which time the said Thomas Brown informed the deponent, after his stating all the facts as herein alleged, that the deponent had a good and meritorious defense to the cause of action set forth in the said bill of complaint.

Deponent further says that following the fifth day of November, nineteen hundred and fourteen, deponent was advised by the said Thomas Brown that he, deponent, had no defense, and had permitted the complainant to take a decree *pro confesso;* that in consequence of this information, deponent sought legal advice from August Streitwolf in his office in the City of New Bruns-

wick, and was informed by said August Streitwolf that deponent had a good and meritorious defense to the cause of action set forth in the bill of complaint.

Deponent further says that it is not true that no consideration was paid for said deed of conveyance from the said Charles Seel to him, dated July twenty-fourth, nineteen hundred and fourteen, as more particularly described in said bill, but that deponent paid for said premises the sum of six thousand ($6,000) dollars as follows: by taking said premises subject to a mortgage of two thousand ($2,000) dollars, by giving the said Charles Seel deponent's check, dated July twenty-fourth, nineteen hundred and fourteen, for the sum of three thousand, seven hundred and sixty ($3,760) dollars, drawn against deponent's account in the First National Bank of Perth Amboy, which check was duly presented for payment at said bank the thirty-first of July, nineteen hundred and fourteen, and paid on said date, by taking said premises subject to the taxes, assessments, etc., and paying to the City of Perth Amboy on the tenth day of September the sum of two hundred and seventy-nine and 36/100 ($279.36) dollars.

Deponent therefore feels aggrieved that the order heretofore entered herein on the fifth day of November, nineten hundred and fourteen, by decreeing that the bill of complaint be taken as confessed as against deponent, and permitting the complainant to take depositions in support of the allegations in its said bill, and to bring on its hearing, *ex parte*.

Deponent further says, in conclusion, that it is not true that the said Charles Seel has been in the actual receipt of the rents, issues and profits of said land and premises, and that deponent has been in the actual receipt of the rents, issues, and profits since the day of the execution of said deed aforesaid.

Deponent therefore asks that an order to show cause be granted him, directing the complainant or its solicitor, to show cause before this Honorable Court why an order should not be entered vacating the decree *pro confesso,* entered herein on the fifth day of November, nineteen hundred and fourteen, and permitting this defendant to file his answer to the bill of complaint herein.

JOS. MASSOPUST.

Sworn and subscribed to before me the twenty-third day of November, nineteen hundred and fourteen.

GEO. A. VIEHMANN,
M. C. C. of N. J.

Order Amending Bill.

(Filed Dec. 16th, 1914.)

IN CHANCERY OF NEW JERSEY.

Between THE NATIONAL BANK OF SLATINGTON, Complainant, and CHARLES SEEL and JOSEPH MASSOPUST, Defendants.	On Bill &c. Order for Leave to Amend.

The said Joseph Massopust, having filed his answer to said bill of said complainant and the said bill having been taken as confessed as against Charles Seel, the other defendant, and appearing that due notice has been given of their application and on good cause shown, it is on this fourteenth day of December, nineteen hundred and fourteen, on motion of John W. Beekman, of counsel with said complainant, ordered that the said complainant have leave to amend his bill as it shall be advised.

And it is further ordered that it pay to said defendant Joseph Massopust the costs of a further answer if such shall be filed in case the same is necessary.

Respectfully advised, E. R. WALKER,
Vivian M. Lewis, C.
V. C.
Dated December 16, 1914.

Order of Reference.

(Filed Jan. 26th, 1915.)

IN CHANCERY OF NEW JERSEY.

Between

THE NATIONAL BANK OF SLATINGTON,

Complainant,

and

CHARLES SEEL and JOSEPH MASSOPUST,

Defendants.

On Bill, &c.

It is, on this 19th day of January, nineteen hundred and fifteen, on motion of John W. Beekman, counsel for complainant, ordered, that the above stated cause be referred to Hon. James E. Howell, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him, and advise what order or decree should be made therein.

E. R. WALKER,

C.

Second Order Amending Bill.

(Filed May 21st, 1915.)

IN CHANCERY OF NEW JERSEY.

Between THE NATIONAL BANK OF SLATINGTON, Complainant. and CHARLES SEEL and JOSEPH MASSOPUST, Defendants.	On Bill, &c. Order to Amend Bill.

This matter coming on to be heard after the hearing and due notice having been given of this application and on cause shown, it is on this 19th day of May, nineteen hundred and fifteen, ordered that the complainant have leave to amend its bill filed in this cause by adding on the third page of said bill after the fourth line from the bottom, after the words "pretended to convey the tract of land first above described to one Joseph Massopust" the additional words, to wit, namely, "who had full notice at said time of the said fraudulent object and intent of the said Charles Seel in making such conveyance for the purpose of defeating your orator in obtaining the satisfaction of your orator's said claim and that he, the said Joseph Massopust, was a participant in said fraudulent scheme of said Charles Seel and cognizant thereof at and before the time of the making of said conveyance and was in collusion with the said Charles Seel in such

fraudulent purpose and object and your orator so charges."

Respectfully advised, E. R. WALKER,
J. E. Howell, C.
V. C.

Transcript of shorthand notes of testimony taken in the above entitled cause at Chancery Chambers, Newark, New Jersey, before Hon. James E. Howell, Vice-Chancellor, on April 29, 1915.

APPEARANCES:

Mr. JOHN W. BEEKMAN and Mr. WILLIAM A. SPENCER for the Complainant.
Mr. AUGUST C. STREITWOLF, for the Defendant Joseph Massopust.
The defendant Charles Seel not represented.

Mr. Beekman: I wish to offer in evidence first the execution and the return by the Sheriff.

Marked Exhibit C1.

I also wish to offer in evidence record of the judgment.

Marked Exhibit C2.

WILLIAM A. SPENCER, sworn.

Direct examination by Mr. Beekman:

Q. You are a partner of the firm of Beekman & Spencer, solicitors in this case? A. I am.

Q. Do you know Joseph Massopust? A. I do.

Q. How long have you known him? A. About twelve years.

Q. Do you know Charles Seel, one of the defendants in this suit? A. Yes, sir.

Q. Did you ever have any conversation with Joseph Massopust about this controversy between the Slatington Bank and Charles Seel? A. Yes, sir.

Q. When and what was the nature of it? A. It was about the time or shortly after the deed had passed, Mr. Massopust came to the office.

By the Court:

Q. What deed? A. The deed from Seel to Massopust, and I asked Mr. Massopust if he knew that there was a case against Seel in our office by the National Bank of Slatington; he said he did; I said, "Did you know that when you bought the property;" he said, "Yes, but I thought that that thing was all settled up."

Q. What else did he say in relation to it? A. He said that he bought the property; I asked him what he paid for it and he said he bought it for $6,000, and he offered to sell it to me then for $7,000.

Q. Well, what did he say in regard, if anything, to this controversy between Seel and the complainant, the National Bank? A. He said he thought it had been settled at that time.

Q. Did you ever have any other conversation with him about it? A. Yes, sir.

Q. Let me ask you when this first conversation was? A. It was shortly after the deed was put on record.

Q. But you don't give the date? A. Well, it was within two weeks.

Q. Within two weeks after the deed had been put on record? A. We had discovered in the Clerk's office there had been a deed made from Seel to Massopust, and Massopust was at our

office pretty near every day, and when I found it out I called his attention to it.

Q. Did you ever have any other conversation in regard to it? A. Yes, only yesterday, for that matter.

Q. What was said? A. Well, he said that he couldn't see how he was going to get beat in this case, although he said he paid his good money for the property. I said, "You knew what was going on all the time;" he said, "Oh, yes, I knew what was going on about Seel all the time; when I go on the witness stand I propose to tell all I know about it."

Q. What is the relation in regard between Massopust and Seel, what is their relation? A. They have been very friendly for a number of years.

Q. Do you know anything about their going down to the West Indies together while this suit between the National Bank of Slatington and Charles Seel was going on? A. I do.

Q. How long were they gone? A. They were gone about a month.

Q. Together? A. Together.

Q. Taking a trip to the West Indies? A. Yes, sir.

Q. How do you know that fact? A. They told me so.

Q. Who told you so? A. Mr. Seel and Mr. Massopust.

Q. Well, now, Mr. Spencer, when was this suit of the Slatington National Bank, when was that suit first started against Charles Seel? A. I think in 1910 or 1911, possibly sooner than that.

Q. Did you ever make a search against this property of the Seels? A. I did.

Q. When? A. It has been two or three years ago.

Q. What did you find? A. I found they owned property on Market Street in Perth Amboy.

Q. Does Charles Seel own any other property but this property in litigation? A. I didn't find any other property, although I looked.

Q. Did you ever have any other conversation with Seel in regard to the payment of this judgment? A. Yes, I did.

Q. Or claim? A. I did.

Q. What did he say to you? A. He said he wouldn't pay it.

Q. Did you find any other property but this? A. No.

Q. He stated to you he had no other property? A. That is all the property he had.

Cross examination by Mr. Streitwolf:

Q. You say you searched that property, or searched against Seel a couple of years ago, is that right? A. Yes.

Q. Have you searched since? A. No, sir.

Q. So your information that he has no other property was based upon the result of your examination at that time? A. Yes.

Q. Now, when you say that you had a conversation yesterday with Mr. Masssopust, where was that conversation? A. Perth Amboy.

Q. What was the occasion of that conversation? A. We were together and I asked him about going down to the trial to-morrow and he said he would be there.

Q. Just tell me what he said with reference to his knowing of this litigation, the exact words, the conversation? A. I says, "Joe, all we want you to do is to tell the truth," I says; he said, "I will do that; I know all about the whole thing, the whole thing from beginning to end."

Q. Where was this conversation? A. It was at Burn's Cafe, next to Little & Pipers livery.

Q. You are a member of the firm of Beekman & Spencer, the solicitors for the complainant here, are you not? A. Yes.

Q. And you are naturally interested in the result of this litigation? A. No more than to tell what I know.

Mr. Streitwolf: I assume that the law of this State is that if I show an actual *bona fide* consideration was paid for this property in good faith, without notice of any infirmity, that that is all that is necessary to place the complainant without relief. Now, I haven't any objection to putting in the defense out of time to show the situation, because there is nothing in this case that I am trying to conceal or leave under cover. To expedite matters I will call the defendant.

JOSEPH MASSOPUST, sworn.

Direct examination by Mr. Streitwolf:

Q. Where do you live? A. Perth Amboy.

Q. What is your business? A. Real estate and insurance.

Q. What is your firm name? A. Massopust & Duschock.

Q. How long have you been engaged in the real estate business? A. Oh, about fifteen years.

Q. Buying and selling on your own account? A. Buying and selling, yes, sir.

Q. And acting as broker? A. Acting as brokers.

Q. I direct your attention to this check. Do you recognize it? A. Yes, sir.

Q. What is that check? A. That check is for

property on Market Street, bought from Charles Seel.

Q. And it is dated when? A. July 24, 1914.

Q. And who did you give that check to? A. Charles Seel.

Mr. Streitwolf: I offer the check in evidence.

Marked Exhibit D1.

Mr. Streitwolf: You said property on Market Street. You admit that is the premises described in the bill, Mr. Beekman?

Mr. Beekman: Yes.

Q. The property that you bought from Mr. Seel being the deed that has been offered in evidence. Was this check given as part consideration? A. Yes.

Q. What was the consideration that you gave for that property, the full consideration? A. $6,100.

Q. Made up how? A. Can I read it off.

Q. Do you object to the witness referring to that memorandum?

Mr. Beekman: No.

A. A check $3,760.

Q. That was the check that you have just testified about? A. Yes, and there was an assessment, street assessment against the property for $279.36. A first mortgage of $2,000 and the interest, amounting for three months to $60.64, being a total of $6,100.

Q. Now, that street assessment that you have just testified to, you took the property at the time subject to it? A. Subject to that.

Q. Did you later pay it? A. Yes.

Q. I hand you that check dated September 10, 1914, payable to the City of Perth Amboy; is that the check you made in payment of the street assessment? A. Yes.

Check offered in evidence and marked Exhibit D2.

Q. Now, did you immediately take possession of the property? A. Yes.

Q. I hand you this lease, and I will prove its due execution by another witness if there is any question about it. I ask you if that is the lease that was made between you and Mr. Seel for the rental of the premises? A. Yes.

Q. And it is dated the 1st day of August, 1914. Was that the day it was executed? A. Yes.

Q. Is Mr. Seel still in possession of this property? A. Yes.

Q. Under what arrangement? A. They pay me $40 a month.

Q. In pursuance of the terms of this lease? A. Yes, sir.

Mr. Streitwolf: I offer the lease in evidence.

Marked Exhibit D3.

Q. Now, before you bought this property did you have a search made? A. Yes.

Q. By whom? A. Mr. Brown.

Q. I hand you that search and ask you if Mr. Brown gave you that search? A. Yes, sir.

Q. That is the search that Mr. Brown gave you? A. Yes.

Mr. Streitwolf: I offer the search in evidence.

Marked Exhibit D4.

Q. Now, at the time you bought this property for $6,100 was that the consideration asked for by Mr. Seel? A. No, sir.

Q. How much did he want? A. Mr. Seel wanted $6,300.

Q. And the consideration $6,100 was the result of negotiations between you and Seel for the purchase of that property? A. Yes.

Q. Now, from the time negotiations first commenced until the passing of the deed how many days intervened? A. Three or four days, I should judge, somewheres around that; I don't exactly recollect; maybe five days.

Q. It was testified to by Mr. Spencer that on a previous occasion you had gone away a month with Mr. Seel, when was that? A. I went to the West Indies with Mr. Seel on March 11, 1914.

Q. How long were you away? A. One month.

Q. And you and Mr. Seel have always been friends? A. Always been friends.

Q. How many years? A. Twenty-five. Oh, well, say, about twenty-seven years.

Q. Still are friends? A. Yes.

Q. And at the time you bought this property what did you know, if anything, about this litigation by the National Bank of Slatington against Seel? A. Mr. Seel told me that he had this suit on, but he thought he was going to win the suit and that the National Bank of Slatington had more security already than was really due them on the notes.

Q. What did Mr. Seel tell you about his relation to the note in question? A. Why, Mr. Seel told me it was accommodation note and he was to receive slate for that note according as he needed the slate.

Q. Now, at the time he came to you, did he make you a proposition of $6,300 for this property, did he say anything about the litigation at that time? A. Well, I asked him, I says, "How are you making out with the Bank of Slatington;" he says, "The case is about over and they

have got more security than they have outstanding;" he says something about their going to sell some land to the railroad, getting I don't know how much, and they had still about thirty acres left; he said he never thought that they could get judgment against him.

Q. Now, whatever information you had pertaining to the suit of the National Bank of Slatington against Seel you derived from whom? A. From Mr. Seel.

Q. You never talked to his attorney about it? A. No.

Q. Or anybody else? A. Or anybody else.

The Court: Your question was that he never talked to his attorney?

Mr. Streitwolf: Yes.

The Court: Whose attorney?

Mr. Streitwolf: Mr. Seel's attorney.

Mr. Beekman: That was Mr. Wight, wasn't it?

Mr. Streitwolf: Mr. Wight.

Cross examination by Mr. Beekman:

Q. Mr. Massopust, Mr. Seel thought under the circumstances that he ought not to pay, that the claim of the Slatington National Bank against him was an unjust one, didn't he? A. No, sir.

Q. Didn't he think he ought not to pay it? A. I don't know, Judge, what he thought. I only know what he told me.

Q. This case against the National Bank was going on for some years, wasn't it? A. I didn't ask him how many years.

Q. How many times did you talk about it when you were on the trip? A. I never talked about the case on the trip; we were only three days talking about this property.

Q. How did you come to buy this property of Mr. Seel, what use had you for this property? A. We are in the real estate business.

Q. Then you bought it—you haven't ever bought any other property of that class of property? A. Yes, buying property all the time.

Q. You bought it because you were in the real estate business? A. Yes.

Q. You didn't buy it to help Mr. Seel out? A. No, sir.

Q. You knew about this suit pending against him, didn't you? A. My mind was that the suit was about settled.

Q. Did you make any inquiries of anybody whether it was settled or not? A. Well, I had a search made.

Q. Where did you have that search made? Did you have a search made up in the Middlesex County Clerk's office to find whether the bank had entered any judgment against him, didn't you? A. That was up to my attorney.

Q. Didn't you? A. I didn't make the search.

Q. Didn't you want to see whether the bank had entered any judgment against him or not? A. I wanted to find out if the property was clear.

Q. Clear of what? A. Clear of what there might be.

Q. Did you have any idea in your head that the bank, suing Mr. Seel, might have entered a judgment against him? A. No, I didn't.

Q. Didn't that occur to you at all? A. No.

Q. Did you make any investigation whatever whether he had settled this with the bank or not? A. No, sir.

Q. Yet he told you that the bank had this claim against him? A. He didn't say claim; he said they were suing him.

Q. They were suing him for a claim and he thought it was an unjust one, didn't he, from his conversation? A. He didn't tell me that.

Q. From the conversation you had with him didn't you draw the conclusion Mr. Seel thought it was an unjust claim, he ought not to pay it? A. He didn't tell me it was an unjust claim; simply told me they couldn't get judgment.

Q. Couldn't get judgment on the claim? A. Yes, sir.

Q. Now, this property you bought of Mr. Seel, Mr. Massopust, what does that property consist of? A. It consists of two lots, a house and a little shop in back.

Q. What is that shop used for? A. It is used for making cornices.

Q. This is the place where he carries on his business, isn't it? A. Yes.

Q. This was his homestead, wasn't it? A. He has lived there quite a while.

Q. He had no other property, had he? A. I don't know whether he has or not.

Q. Do you know whether he tried to sell it to anybody else or not? A. I don't know that.

Q. You don't know that, eh? A. No.

Q. Then you bought this property because you thought it was cheap, or was to help Mr. Seel out? A. No, it wasn't cheap and it wasn't helping Mr. Seel out; I bought the property for my own use. I am going to live there myself.

Q. When are you going to live there? A. When I get married.

Q. Then you bought this property in anticipation if you ever got married you wanted to live there? A. Yes.

Q. And carry on the slating business there? A. No.

Q. He has got a shop there where he carries on his slating business? A. That shop is only worth $200.

Q. Have you ever bought any other property in that neighborhood? A. Not exactly there; on Sherman Street, a couple of blocks away we just bought three houses.

Q. Did you buy those houses in case you got married you would go there and live? A. I am not going to live in there, I can only live in the one.

Q. You and Mr. Seel have always had very close and intimate relations, haven't you? A. The same as anybody else, friendly.

Q. Do you remember Mr. Seel coming in your office after this claim had been put in our hands, or about that time, coming to your office and your having a mortgage made out in our office for $3,500 to his two sons, one of them just out of school?

The Court: Do you remember any such transaction as that?

A. I recollect a transaction like that, and I think that Mr. Seel told me that his sons were loaning him money and he was going to give them security.

Q. Borrowed of him money, eh?

The Court: Loaning him money.

A. Loaning the father the money, yes.

Q. How old were those sons of his? A. As I recollect one of them was married and I couldn't exactly say how old the other was.

Q. One of them just out of school, been out of school a year? A. They were both working for Mr. Seel at that time.

Q. Was that mortgage ever cancelled? A. I don't know.

Q. Wasn't it cancelled through your office? A. Well, I am not there all the time so I can't say whether it was or not.

Q. Did Mr. Seel at that time, did you see his sons ever give him any money for that mortgage? A. I didn't see that, no.

Q. How did you come to draw the mortgage there? A. Why, Mr. Seel come to the office and handed us his deed and said, "Draw a mortgage, to the two sons," and I forget the amount, and he says, "Come down tonight and have it executed," and I went to the house and had the mortgage executed, and Mr. Seel's wife at that time told me, "I have been after my husband for a long time to give the boys security," so I says, "All right," and they signed the mortgage.

Q. Security for what? A. For the money that the boys had loaned to put in the business.

Q. How old were those boys, how old is Louis Seel? A. Louis Seel is a boy about thirty or thirty-one years old.

Q. How old is Charles Seel? A. I should judge twenty-five or twenty-six.

Q. What business are they in, Louis Seel and Charles Seel, that they had $3,000 that they loaned their father? A. To my recollection they were in partnership with their father.

Q. Partnership with who? A. With Mr. Seel.

Q. What had they been doing before that, before they went in the partnership? A. Well, since I know the boys they have been in partnership with the father.

Q. What boys? A. Mr. Seel's boys.

Q. Well, what one was in partnership with him? A. I can't say that, I know it is Charles Seel & Sons, that is all I know.

Q. Isn't Charles Seel a workman in the terra cotta company? A. In the terra cotta company, not to my recollection.

Q. You visited the family very often, didn't you? A. No.

Q. Never go there? A. Never go to the house.

Q. You have never been to the house, eh? A. No, sir.

Q. You know both of them, don't you? A. I have only been to the house, as I said before, signing that mortgage, taking that acknowledgment.

Q. That mortgage was afterwards cancelled, wasn't it, through our office? A. I don't recollect, Judge.

Q. Do you testify it was not? A. Well, I don't know; I don't know where it was cancelled; I don't say it wasn't cancelled; I said I don't know who cancelled it.

Q. Wasn't that mortgage cancelled after the mortgage was given in 1910, wasn't it cancelled on August 11, 1913, through your office? A. I don't know, Judge; I am not the only one in that concern; there is three of us, as I told you before, and another member of the firm might have done it.

Q. Didn't Charles Seel tell you this suit was going on in the Court of Chancery by the bank against him, that he had the bank beaten at that time? A. No, sir.

Q. Didn't he say he had them beaten? A. No, sir.

Q. When that mortgage was cancelled he brought it to you? A. It was not brought to me.

Q. Where did you get it? A. I don't know anything about it, Judge.

Q. You don't know anything about it, eh? A. There is two others in the firm, you know; it might have come to one of the others.

Q. How was it at this particular time when this suit was pending against Charles Seel that you suddenly got an idea in your head to buy this property? A. I got an idea? I didn't get no such thing, Mr. Seel got the idea; he came to me, I didn't go to him.

Q. Did Mr. Seel come to you to put the property in your name, didn't he? A. He came to me and asked me, said he needed money, if I would buy this property; I asked him how much; he said $6,300; I said I would look at it; I went down and looked at the property and a day after I said, "Mr. Seel, I will give you $6,100 for the property;" he said, "It is not enough;" I said, "That is all I will pay you."

Q. When this suit in chancery was started against you and Charles Seel did you ever go to Tom Brown with it? A. No, sir.

Q. You never did? A. I never did.

Q. You never employed him at all to defend this suit here? A. No, sir.

Q. Had nothing to do with it? A. No, sir.

Q. Never went near him? A. No.

Q. Did Thomas Brown tell you you had no defense to it, it was a case of fraud? A. No, sir.

Q. You swear he never did? A. No, sir; the only thing he done was to make that search.

Q. Had nothing else to do with it? A. No, sir; he told me the property was free and clear.

Q. When this suit was brought against you you never employed Tom Brown at all to defend you, this suit now in Court? A. No, sir.

Q. Never had anything to do with him? A. No, sir.

Q. I will read an affidavit here—it is in the papers in the case, your Honor.

The Court: You better use the original.

Q. In this affidavit you say you didn't employ Tom Brown to defend this suit and had nothing to do with him? A. You mean in the commencing of the case?

Q. I mean in this suit you testified that you had nothing—did you ever have any conversation with Tom Brown about this case? A. You mean when he made the search for this property?

Q. No, did you ever have any conversation with Mr. Brown about defending this suit here? A. I went to Mr. Brown to have the search made and Mr. Brown, after he had the search made, he said, "Everything is all right," and after that, why, I got paper or something, I went to Mr. Brown, I said, "They are suing him;" he said, "That won't amount to anything; you bought this property legally; if anything comes out I will fight this case for you." When I got active I went to Mr. Brown and told him, and in a day or two he said, "I won't fight the case."

Q. Did Mr. Brown tell you at that time you had no defense to the case? A. No, sir, he didn't say anything of the kind.

Q. Did Mr. Seel ever tell you that he went to Mr. Brown to have this deed drawn and Mr. Brown refused to draw the deed? A. No, sir.

Q. Never said anything about that? A. Never said anything about that to me.

Q. And he never said anything about anybody going to Thomas Brown and getting a deed drawn to put the property in your name? A. Who?

Q. Mr. Brown, and that he refused to have anything to do with it? A. Mr. Brown refused to have anything to do with it?

Q. Yes. A. I don't know the conversation between Mr. Seel and Mr. Brown, I wasn't there.

Q. Did Mr. Brown tell you he would have nothing to do with this case, that he considered it a

fraudulent conveyance? Will you swear to that? A. He says to me after he had the search made, I said to him—

Q. I am not talking about the search. A. No, he didn't tell me that.

Q. (Question read.) A. No, sir.

Q. Never did, eh? A. No, sir, never did.

Q Then why was it that Mr. Brown wouldn't put in an answer in this case, and let the decree go by default? A. That I don't know.

The Court: There was a default against Mr. Seel only.

Mr. Streitwolf: There was default against both, and I move to open it on behalf of the defendant Massopust before Vice-Chancellor Lewis.

Q. I will read a part of your affidavit that you made.

The Court: Show him the paper, show him the signature to the paper.

Q. That is your signature, isn't it? A. Yes.

Q. "Your deponent further says that thereafter he was duly served with subpœna *ad respondendum* issued out of the Court of Chancery, made returnable on the 5th day of October, 1914, that after serving of the aforesaid subpœna on him he consulted Thomas Brown, attorney and counsellor at law in the City of Perth Amboy," is that so? A. I consulted him.

Q. "And asked said Thomas Brown to defend the suit which the said Thomas Brown agreed to do, and at said time the said Thomas Brown informed defendant after reciting the facts as herein alleged that deponent had a good and meritorious defense to the cause of atcion set forth in the bill of com-

plaint." Did he tell you that? Will you swear to that? A. What did he say?

Q. That he told you that you had a good and meritorious defense to this action? Do you swear to that? A. I don't believe I ever had a conversation of that effect with Mr. Brown.

Q. You never had any conversation of that kind with Mr. Brown, then? A. No.

Q. "And deponent further says on the 5th day that the deponent was advised by said Thomas Brown that he, deponent, had no defense." Did he ever tell you that? A. Why, when the default came out he said to me, "Joe, I am not going to fight this case;" I said, "Why?" he said, "I simply don't want to handle the case;" I said, "All right."

Q. That is all he said to that? A. That is all he said to me. I said, "I will hire another lawyer."

Q. He didn't tell you then you had no defense to it? A. He didn't say nothing of the kind.

Q. Did Mr. Brown at any time when you wanted that deed, or Seel wanted that deed made out from him to you, did he—do you swear that he at any time didn't tell you that he considered it would be a case of fraud and he would have nothing to do with it? A. No, sir, I was never at Mr. Brown's office with Mr. Seel. I only was at Mr. Brown's office one time, and I told him to search this property.

Q. That is the only time you were there? A. That is the only time I was there; I was never there with Mr. Seel; don't know anything about that conversation.

Q. Are you a married man? A. No, sir.

Q. Well, now, in regard to this mortgage that you say was drawn in your office, did you see any money pass between Charles Seel's sons and him at the time? A. No, sir.

Q. Do you know who took the mortgage up to

New Brunswick to have it cancelled? A. Cancelled? I don't know.

Q. Wasn't that done at your office? A. It might have been, and one of the other firm done it; if I see the mortgage I can recollect.

Q. This deed was made on the 24th day of July, 1914, wasn't it, and executed? A. I don't remember that, Judge. I will have to look at that.

Q. Look at it and see? A. 24th day of July, yes.

Q. Did you on that day pay Charles Seel any money whatever? A. No, sir, the check was made out and he held the deed and I held the check.

Q. You had the check? A. Yes.

Q. Who had the check? A. I did. The check was made out when the deed was ready.

Q. When did you give him that check? A. About two days after, when Mr. Brown telephoned me that the property was free and clear.

Q. Mr. Brown telephoned you, eh? A. Yes.

Q. Mr. Brown didn't draw that deed, did he? A. No, sir; he made the search.

Q. When did that money actually—when was that check taken to the bank and cashed? A. I recollect, I think I gave Mr. Seel that check about three days after it was made out.

Q. Did you tell Mr. Spencer in our office the check wasn't delivered to Seel until a week afterwards? A. I didn't say anything of the kind. The check will speak for itself.

Q. Will you swear you had money in the Perth Amboy National Bank at the time you dated that check to pay for it? A. I think it was a few days after, three days after that I had the money there; if I had my check book there I could say.

Q. When was that check paid? A. I don't know; I don't recollect.

The Court: Paid July 31st.

Q. Did you and Mr. Seel go together to the bank with that check? A. No, sir.

Q. Eh? A. No, sir.

Q. You didn't? A. No, sir.

Q. When did you actually hand him that check? A. On July 27th, I think, July 27th, three days after. Yes, and Mr. Seel had the deed and I had the check until he heard from Mr. Brown.

Q. You had that deed put on record right away, didn't you? A. No, sir, the deed was put on record the same day that I delivered the check to Mr. Seel.

Q. Did you have the money in the bank at that time to pay this check? A. Yes.

Q. You swear to that? A. Yes, sir.

The Court: Let me warn you again not to answer the questions until the questions are completed, because I tell you you get yourself into great trouble on the record, because you answer things that you don't mean to answer at all. Now, do you understand what I mean?

A. Yes, sir.

By the Court:

Q. Do you think you can restrain yourself? A. Yes, sir.

Q. Did you tell Mr. Spencer that that check was not handed—that you didn't really give the check until the 31st? A. No, sir.

Q. Eh? A. No, sir.

Q. You didn't tell him that, eh? A. No, sir.

Q. Then Mr. Steel had so much confidence in you that he would give you the deed and wait to get his money until the 31st?

Mr. Streitwolf: There is no such testimony.

The Court: That is an improper question. He doesn't know what was passing in Mr. Seel's mind.

Q. How many times did you and Mr. Seel talk about this controversy between him and the Slatington National Bank? A. We only talked on the controversy at the time when Mr. Seel was going to sell me this property.

Q. Never heard of it before? A. Well, I might have heard of it; I never took no interest in it.

Q. Will you swear to us on your oath— A. Yes.

Q. That the first time you heard about this controversy between Mr. Seel and the Slatington National Bank was about the time the deed was made out, eh? A. Well, I wouldn't swear to that; I heard of it before.

Q. Didn't you know all along—will you swear that you didn't know all along that Mr. Seel was having this controversy for a number of years with the Slatington National Bank? Will you swear that you didn't? A. I heard about the case, but I never took no interest in it; it was none of my affairs.

Q. You never took any interest in it? A. No.

Q. When you went to buy this property did you make inquiries whether this case was settled or not? A. I hired Mr. Brown—

Q. No, outside of the record, did you make no inquiries at all whether Mr. Seel had settled this case at all, or what disposition had been made of it? A. No.

Q. Or whether the claim had been satisfied? A. No.

Q. You never made any inquiries of anybody? A. No, sir.

Q. Do you know what object Mr. Seel had in conveying to you all this property, the homestead and the place where he carried on his business?

Mr. Streitwolf: I object on the ground that he cannot testify to Seel's state of mind.

The Court: He don't know, unless Seel told him.

Q. How long were you and Mr. Seel negotiating about it? A. Two or three days.

Q. Only two or three days? A. Yes.

Q. You are real estate agents, aren't you? A. Yes.

Q. Do you know whether Mr. Seel ever put it in your hands for sale before? A. No.

Q. Eh? A. No, sir.

Q. He never suggested selling it before, only two or three days before you bought it? A. Yes.

Q. Never made any suggestion to you of selling the property? A. Not before that.

Q. He never did? A. No.

Q. Asked you to see if you could find a customer for it? A. No, sir.

Q. Who has had possession of that property ever since you bought it? A. Why, Mr. Seel is paying the rent.

Q. I know, but who has been in actual possession of it? A. Mr. Seel.

Q. Didn't it strike you as very funny at the time you were buying this property that Mr. Seel would sell his homestead where he lived and the place where he carried on his business and had his shop? Didn't it strike you as very funny that he would go and sell it simply for the purpose of renting it? A. He told me he needed the money to pay his bills.

Q. Is that what he told you? A. Yes.

Q. Then you wanted to accommodate him by taking a deed for the property? A. I didn't accommodate him. I thought I could make a little money on it; I wanted it for my own use.

Q. How much did you think the property was

worth? A. I paid him what I thought it was worth, $6,100.

Q. You paid what you thought it was worth. Then you bought it to make a little money out of it, is that so? A. Yes.

Q. Did you ever try to sell it to anybody? A. Yes.

Q. Has Mr. Seel always paid you the rent? A. Yes.

Q. When? A. 1st of the month; 2d of the month; 4th of the month, sometimes.

Q. Then he gave you no reason at all for selling his homestead where he lived with his family? How much of a family has he got? A. I think he has got three boys at home, and the rest of them are married.

Q. And yet after he sold it he continued to live there and occupy it, is that so? A. Yes, I rented it to him.

Q. Didn't it strike you at the time as a very funny thing for him to do? A. Well, he told me he needed the money.

Q. Who held the insurance policy and the mortgage on that property? A. Langdon Lumber Company.

Q. Now, you know as a real estate agent when a party buys a property it is always necessary in change of ownership, for the protection of the owner, it is necessary to have that change of ownership endorsed on the policy, isn't it? A. I have it endorsed.

Q. You have it endorsed now. You know very well as a real estate agent and insurance man if it isn't done that in case of a loss the loss will fall upon the owner, don't you? A. Yes.

Q. Eh? A. Yes, I forgot that; I forgot that, but I had it done a month or a month and a half later.

Q. How did you come to forget so important a point? A. We can't think of everything.

Q. And when was your attention first called to it? A. I think some time in September. Mr. Streitwolf, you have a slip there when I had the policy transferred.

Q. Didn't Mr. Richter, who was the agent in charge of the estate of Thomas Langdon, call your attention to it because you had asked him whether there had been any endorsement made on that policy? A. No, sir.

Q. He didn't tell you that? A. No, sir, I never spoke to Mr. Richter in regard to that property.

Q. Did he call you up on the telephone? A. No, sir.

Q. How did you come to get it—what called your attention to it? A. I looked over the papers and I found that I didn't have the policy; then I telephoned Messrs. Pierce & Sons to have the clause attached.

Q. And Mr. Richter never called your attention to it at all over the telephone? A. No, sir.

Q. And you did it because you had forgotten about it? A. Forgotten about it.

Q. Did Mr. Seel always promptly pay you that rent? A. Yes.

Q. Never defaulted in the rent at all? A. Two or three days.

Q. He always paid up. Didn't you tell Mr. Spencer at one time that he hadn't paid any rent? A. No, sir.

Q. That he owed you considerable rent? A. No, sir.

Q. Have you got your books showing the payment of that rent? A. Haven't got the book here.

Q. Who composes your firm? A. Anton Massopust, Joseph Massopust and Martin Duschock.

Q. You and Mr. Seel belong to the same singing society, too, don't you? A. Yes.

Q. How long have you belonged to that? A. Ten years; belong to a number of different lodges together, Elks and different lodges.

Q. And your relation has always been very confidential and intimate, hasn't it? A. We have been friendly.

Q. Has your relation always been confidential and friendly? A. No, I never visit his house or he hasn't visited our house; we meet at the club.

Q. Has he ever been up to your place of business? A. Well, he might come up once a month.

Q. What other business do you carry on? A. Saloon.

Q. Is he a frequent visitor there? A. When he is down in that neighborhood and work there he might drop in.

Q. He has been for years a frequent visitor there? A. For the last twenty years he has been coming to our place.

Q And you and he have been traveling together? A. We were down in the West Indies. I was looking for a partner; he said he wanted to take a trip and we went together.

Q. Did you occupy the same stateroom? A. No, sir.

Q. On the same steamer? A. The same steamer.

Q. Anybody with you? A. No, sir.

Q. By yourself? A. Yes.

Q. During all that time when this suit was going on in the Court of Chancery between Mr. Seel and the bank did you ever talk about that on that trip at all? A. Never spoke a thing about it.

Q. When was your attention first called to this suit? A. I don't remember; I might have heard—

The Court: What suit are you talking about?

Q. This suit in the Court of Chancery, this suit in the Circuit Court and Court of Chancery, between the Slatington Bank and Seel.

Redirect examination by Mr. Streitwolf:

Mr. Streitwolf: You admit that the mortgage you have testified to was dated August 11, 1910?

Mr. Beekman: Yes.

Q. Mr. Massopust, at the time this affidavit was drawn, that you have testified to, you had seen me on several occasions prior to it? A. Yes.

Q. And as a result of the conversations that you and I had that affidavit was drawn by me? A. Yes.

Q. Is Mr. Seel in partnership with anyone? A. With his sons.

Q. Doing business as— A. Charles Seel & Sons.

Q. And how long have they been doing business as Charles Seel & Sons? A. To my recollection— I think the oldest son is about thirty, I suppose it must be at least ten years.

Q. Since 1910? A. Oh, yes.

Mr. Streitwolf: That is substantially the defendant's case, your Honor.

WILLIAM A. SPENCER, recalled.

Direct examination by Mr. Beekman:

Q. Do you know this note? A. Yes.

Q. When did that note come to your hands for collection, Mr. Spencer; how long before the suit was commenced? A. About two months before the suit was commenced.

Q. Did you notify Mr. Seel? A. I did; I also

saw Mr. Seel personally about it, had several talks with Mr. Seel about it.

Q. The suit was commenced when? A. The summons was dated the third day of November, 1910.

Q. And this note was in our hands how long before that? A. The note for collection was in our hands about two months, to my best recollection, because I went to see Mr. Seel very often about it.

Q. Wasn't he notified unless he took action, on account of the delay in bringing action he would put it in some other lawyer's hands? A. Yes. What is meant by that, we were notified by the bank that unless we proceeded to collect without further delay they would put it in some other lawyer's hands.

Q. How soon after you got the letter did you notify Mr. Seel, at once? A. I did, and I saw him personally several times.

Cross examination by Mr. Streitwolf:

Q. When did you institute suit? A. On the tenth day of November, I think, the summons was issued.

Q. And when was the matter placed in your hands? A. Sometime previous to that, quite some time, probably two months, probably three months.

Note dated October 12, 1909, for $900, offered in evidence and marked Exhibit C4.

G. FREDERICK RICHTERS, sworn.

Direct examination by Mr. Beekman:

Q. Do you represent the estate of Thomas Langdon? A. No, sir; Thomas Langdon Lumber Company.

Q. You have charge of the papers of Thomas Langdon, his mortgages? A. Yes, sir.

Q. Have you a mortgage here given by Charles Seel to Thomas Langdon, deceased? A. Yes, sir.

Q. Have you the insurance policy? A. Yes, sir.

Q. Just produce the insurance policy. A. (Policy produced.)

Q. When and where was your attention first called to the conveyance of this property that that policy covers, Joseph Massopust, when was your attention first called to it?

Mr. Streitwolf: I object.

The Court: That is proper.

Q. And who called your attention to it? A. Mr. Spencer called my attention to it.

Q. When? A. November 24, 1914.

Q. And previous to that had Mr. Massopust and Charles Seel called your attention to transfer of this property? A. No, sir.

Q. Had you ever heard anything from either of them about it? A. No, sir.

Q. When you got that communication from Mr. Spencer what did you do with regard to it? A. Had the insurance policy endorsed, that the interest of Charles Seel, as owner, having ceased it now vested in the name of Joseph Massopust.

Q. Who did that, you? A. Yes, sir.

Q. Did you call Mr. Massopust's attention to it? A. No, sir.

Q. Whose attention did you call to it? A. Mr. Seel.

Q. Mr. Seel's attention? A. Yes.

Q. You called his attention to it? A. Yes, sir.

Q. What did he say in response to it? A. He said that was proper to have the ownership changed.

Q. And you had it changed? A. Yes, sir.

Q. Who pays the interest on the mortgage now? A. Why, that will follow the change in ownership.

By the Court:

Q. No, what person actually pays you the interest? A. The interest period has not come around yet, May 15th.

Q. It is not due yet? A. No, sir.

No Cross Examination.

THOMAS BROWN, sworn.

Direct examination by Mr. Beekman:

Q. Mr. Brown, what is your business and your occupation? A. Attorney at law of this State.

Q. How long? A. About six or seven years.

Q. Do you know Charles Seel? A. Yes.

Q. How long have you known him? A. Well, I have known him about four or five years, I guess.

Q. Did Charles Seel ever come to your office for the purpose of having a deed made to Mr. Massopust? A. No, he didn't come for that purpose.

Q. What purpose did he come for? A. He came to me for advice regarding the conveyance of some property on Market Street.

Q. Who did he want to convey it to?

Mr. Streitwolf: I object, your Honor.

The Court: Isn't this the very same question that occurred in Matthews *v.* Hoagland, Vice-Chancellor Green's opinion?

Mr. Streitwolf: My objection first is any conversation between Mr. Brown and Mr. Seel is not admissible or binding as against the defendant Mr. Massopust.

The Court: That is another question.

Mr. Streitwolf: And the second objection is that the witness is not permitted to testify to any conversations had with his client.

The Court: So far as the point is concerned which relates to the privileged communication I should say that the communication was not privileged, and that the witness could be called upon to testify on that point; but what about conversations between the witness and Mr. Seel? How can you bind Mr. Massopust by any conversations between Mr. Brown and Mr. Seel? If Mr. Brown made any statement of this conversation between him and Mr. Seel to Mr. Massopust then it would be admissible. Conversations which take place between Mr. Brown and Mr. Massopust are admissible. Mr. Brown was approached by Mr. Seel and asked to draw a deed, and he didn't draw it; you can go that far, because it is a matter of fact. Now, why didn't he draw it? Well, he didn't draw it because of something that Mr. Seel told him. Now, that is quite another matter. Now, there you are introducing Mr. Seel's declarations to the witness for the purpose of binding Mr. Massopust. I don't think you can do that until you bring Seel and Massopust together. You may answer that question.

A. Well, he didn't mention anyone in particular. Is that an answer?

The Court: Yes, that is an answer.

Q. What did you do in relation to drawing a deed? A. I didn't do anything.

Q. Did you make a search for Mr. Massopust? A. I did; there was a search made in my office; if I saw it I could tell you; I didn't make it myself.

Q. Did Mr. Massopust come to you to have a search made, to you individually? A. I can't say as to that, whether he came or left a requisition at the office.

Q. Did you ever see Mr. Massopust in relation to this transfer of the property from Seel to him?

Mr. Streitwolf: I object on the ground first that it is a confidential relation between attorney and client, and privileged, and that the witness is not permitted to testify as to what conversation or transaction occurred between him and Mr. Massopust.

Q. (Question read.)

The Court: You may answer that question. I overrule the objection. You may answer it yes or no.

A. Yes, I saw him.

Q. Well, after you saw Mr. Massopust did you draw a deed or have anything to do with it?

Mr. Streitwolf: I object. First, it embodies two questions, and, second, the witness has testified that he consulted the office and employed to prepare a search, and established by that a relation of attorney and client, and any transaction or conversation is privileged.

The Court: I think the question is proper. You may answer it.

Q. (Question read.) A. No, sir; I say no, sir: "Have anything to do with it?" I did.

By the Court:

Q. You didn't draw any deed? A. I didn't draw any deed.

Q. What did you have to do with it?

Mr. Streitwolf: I object on the previous grounds, your Honor, as stated.

The Court: I will take the answer subject to be stricken out if it violates any of the rules.

Mr. Streitwolf: And your Honor reserves my objection.

The Court: It all goes on the record.

A. Mr. Massopust came to me at the time he got the bill of complaint or summons in this case; that is the time I saw him and that is the matter I have referred to in my answer concerning this conveyance.

Q. Mr. Massopust charges here in his affidavit, charges you, and he testified on the stand that you when he brought these papers to you in Chancery, pending now in this Court, that you stated to him that he had a good and meritorious defense to the action. Is that so or not? A. No, I didn't.

Q. You didn't? A. No, I never said that.

Q. What did you do with the matter after that, if anything? A. Mr. Massopust came in the office and nonchalantly threw the papers on the table and said that he had been sued, and then I told him Mr. Seel had spoken to me about conveying his property, and I said, "Joe, as far as being solicitor, with my knowledge of the business I can't do anything for you"—

Mr. Streitwolf: That is all under my objection.

The Court: Yes.

A. (continuing):—"but I will tell you what I

will do; I will investigate it and see what can be done." I understand I am obliged to speak and break a privilege, and I did take it and investigate it, Mr. Massopust's end of it, and from my relation with the whole thing, knowing Mr. Seel's side and Mr. Massopust's side, I informed him then I couldn't do anything; then there was a settlement talked about and during the pendency of the settlement there was a decree entered *pro con.*

Q. Did you tell him why you wouldn't?

Mr. Streitwolf: I object, your Honor please.

The Court: I admit the evidence.

Q. Did you state why you wouldn't do it? A. Yes, particularly because from my knowledge of the affair I didn't want to be party to a conveyance of property, and then be protested that he had paid his good money and that Mr. Seel had owed him a bill or something.

Q. Now, he says here in his affidavit—did you give any advice in the matter? A. No, I wasn't even paid a cent. I didn't consider myself retained; a matter of investigation as much as anything.

Q. After Mr. Massopust consulted you and the facts had been disclosed did you make any suggestion to him that he should convey back the property?

Mr. Streitwolf: I object, first, on the ground that it is leading.

The Court: You can not lead your witness that way.

Cross examination by Mr. Streitwolf:

Q. I understand, Mr. Brown, that your first direct connection with Mr. Massopust in this transaction relates to the time when he came in

and threw the papers on the desk in reference to this suit? A. No, I wouldn't say that.

Q. I mean personally at the office? A. Yes, as far as I can remember there was a requisition left at the office for a search.

Q. I mean as far as you and Massopust personally had anything to do was when he came in and left the papers in your office? A. Yes.

Q. So that previous to the time of the institution of this suit you didn't have any conversation with Joe Massopust? A. No.

Q. Now, as a matter of fact, Mr. Brown, you never saw, did you, until this occasion, these two checks? A. I can say without looking at them I never saw any checks.

Q. Referring to Defendant's Exhibits D1 and D2? A. No, I never saw those checks.

Q. And you were not present when this deed was transferred? A. I testified to everything that happened in my office and all that I did.

JOSEPH MASSOPUST recalled.

Direct examination by Mr. Beekman.

Q. After Mr. Brown and you were consulted about your defense to this action, did you or did you not agree with Mr. Brown that you would convey this property back to Seel? A. No, sir.

Q. Never had any conversation of that kind, eh? A. No, sir.

THOMAS BROWN, recalled.

Direct examination by Mr. Beekman:

Q. Did you ever have conversation with Mr.

Massopust about his conveying back the property? A. Yes.

Q. What was it?

Mr. Streitwolf: I object, first, on the ground that it is a privileged communication, and, secondly, it is not relevant to what transpired July 24th. Mr. Brown's testimony was the first conversation direct he had with Massopust was when this suit was commenced, a few months after that.

The Court: I think the question is proper. You may answer.

A. I have answered.

Q. (Question read.) A. I advised Mr. Massopust; he came to the office and I advised him after investigating the case to reconvey the property.

Q. Did he agree to do it or not? A. He made no agreement with me to do it; he said he would see about it.

No Cross Examination.

Mr. Beekman: You admit the bill in the cause of Charles Seel *v.* The National Bank of Slatington was filed March 6, 1911.

Mr. Streitwolf: Yes.

CHARLES SEEL, sworn.

Direct examination by Mr. Streitwolf:

Q. Mr. Seel, I hand you eight receipts. Who did you receive them from? A. From Mr. Massopust.

Q. And what do they represent? A. They represent the receipts for rent.

Q. Covering the property in question here? A. Yes.

Mr. Streitwolf: I offer the rent receipts in evidence.

Marked Exhibit D5.

Q. Referring to Exhibit D1, being a check for $3,760, that was the check you received for the property? A. Yes, sir.

Q. To what account did you apply that? A. Applied that to account of Charles Seel & Sons.

Q. And who are the members of the firm of Charles Seel & Sons? A. There is five of them.

Q. Well who are they? A. There is my son Charlie, first, Louis, Charlie, Harold, Willie; another one in, his name is Frank; John is in some other business.

Q. I mean the members of the firm of Charles Seel & Son? A. I got them all in, because I am getting too old to attend to all the business.

Q. Have you got here all the checks that you have drawn against that account? A. Well, yes; well, there is still some in the bank which have not got balanced up yet, but there is some there.

Q. Before going further with that line of proof, I will ask you if you have with you your cash book? A. Yes.

Q. And is this the firm book of Charles Seel & Sons? A. Yes.

Q. Is this your cash account book? A. Yes.

Q. Now, turn to the month of August, 1914. What were the receipts? A. The receipts were $812.80.

Q. How much did you pay out that month? A. I paid $2,849.21.

Q. Now, turn to the month of September, 1914. A. Receipts, $355.79.

Q. How much did you pay out that month? A. $1,337.13.

Q. Refer to the month of October? A. Receipts were $946.72.

Q. What did you pay out that month? A. $1.476.82.

Q. Next month, November, 1914. What were the receipts for that month? A. Receipts $554.45.

Q. How much did you pay out? A. I paid out $1,361.57.

Q. Now, for the month of December what were the receipts? A. $389.91.

Q. And how much did you pay out? A. $904.97.

Q. Those expenditures for the months of August, September, October and November and December that you have testified to were they paid by cash or check? A. They were paid by check mostly and some by cash, probably very few.

Q. Very few by cash? A. Very few.

Q. Are those your checks for that period of time and following? A. Yes, they are my checks.

Mr. Streitwolf: I will offer the checks. I offer all checks from July 30th to December 31st, checks of Charles Seel & Sons.

Marked Exhibit D6.

Cross examination by Mr. Beekman:

Q. Now, out of your money that you got from Mr. Massopust you wanted to pay your debts, why didn't you pay the bank? A. I didn't owe them anything.

Q. You considered you didn't owe them anything? A. Morally I don't, no.

Q. And you wanted to get rid of your property so they couldn't collect it, didn't you? A. No, no such thing.

Q. Why was it when the bank pressed you and

was about to get judgment against you you suddenly conveyed your property? A. I was pushed for money and also the firm and the only way out of it was either to give up the business or go in bankruptcy; that was the reason I sold the property, to get money enough to carry the business on. I took those young boys in business and I didn't want to make a fiasco out of it, and I wanted to pay my debts and get more credit.

Q. Then you didn't think it was just to pay this claim of the bank against you? A. I didn't have money enough to pay.

Q. Did you think it was wrong they wanted this money? A. Yes, I always did.

Q. You didn't intend them to have it if you could help it? A. I suppose if I had it I would pay it long ago and get out of this trouble.

Q. You got the money? A. No, I haven't got the money.

Q. It was your property you sold to Massopust, wasn't it? A. Yes.

Q. It was not your firm's, was it? A. No.

Q. Why did you take your money— A. I paid my honest debts with it.

Q. You didn't consider the bank's claim was an honest debt, did you? A. I considered others before them, anyhow, other business debts.

Q. How long have you kept this book? A. How long? You can read it yourself.

Q. Where is any book since this? A. I start a new one every year.

Q. Every year, eh? A. Yes.

Q. Then you start a book on the 1st of January every year, don't you? A. Let me see it.

Q. You say you start one; what part of the year do you start it on? A. This last one was started the 1st of Jannary; when this was started I can't say.

Q. How long have you had that custom of starting your books on the 1st? A. Since I got the partners.

Q. How long have you had that partnership? A. Had a partnership for about four or five years, I guess; maybe six; I can't say exactly.

Q. Do you remember any mortgage you gave to your sons once? A. Yes.

Q. When was that? A. That was several years ago.

Q. How old are your sons? A. They are from seventeen to thirty-five.

Q. Which one is in the firm? A. The seventeen is the youngest.

Q. How many of them are in the firm? A. Five.

Q. Five, who are they? A. I just mentioned them.

Q. How long have the whole five been in the firm? A. Some of them been in there four or five years, and the others came in later on, you know. I sent them out to learn the trade and then they worked together.

Q. After they get the trade you take them in the firm, is that the idea? A. Yes.

Q. Turn back here on this book to December, before the conveyance was made and tell us how much was paid out for December, 1913? A. Paid out $1,530.

Q. How much did you take in? A. $2,532.74.

Q. Now, turn to January, 1914, how much did you get in and pay out there the month of January? A. Receipts $1,177.39 and paid out $1,378.83.

Q. Now, how much did you take in there in February, 1914? A. $763.99.

Q. And paid out? A. $379.89.

Q. Now, then, in March you paid out what? A. Took in $457.88 and paid out $461.77.

Q. Now, then, how much did you take in in April? A. Received $995.85.

Q. Paid out? A. $887.67.

Q. In May how much did you take in? A. $1,610.40.

Q. Paid out? A. $948.71.

Q. Now, in June how much did you take in? A. $1,439.83.

Q. And paid out? A. $1,660.99.

Q. July? A. I received $834.04 and paid out $1,705.26.

Examined by the Court:

Q. I show you the Exhibit D1, which is a check drawn by Mr. Massopust to your order for $3,760. Do you remember on what date you got that check? I will state to you that it is drawn July 24, 1914? A. The same day it was drawn.

Q. And what did you do with it? A. I deposited it.

Q. To whose credit? A. To Charles Seel & Sons.

Q. In what bank? A. In the First National Bank of Perth Amboy.

Q. That is the bank upon which the check was drawn? A. Yes.

Q. Have you got your bank deposit book here? A. Yes.

Q. Let me see it. Show me where it was deposited? A. There it is (indicating), $3,760.

The Court: The witness calls the Court's attention to a deposit on July 31, 1914, of $3,760 in the First National Bank of Perth Amboy to the cerdit of Charles Seel & Sons.

Q. This book which you now produce is your bank deposit book? A. Yes.

Q. It appears originally to have been issued to Charles Seel only, Charles Seel, in the name of

Charles Seel. When was that changed, do you know, to Charles Seel Sons? A. I couldn't say.

Q. Now, let me look at your cash book? I call your attention to page thirty-six in your cash book, which contains the account of receipts for the month of July, 1914, and ask you whether the check for $3,760 is entered there? A. No, sir.

Q. Why not, why was it not? A. Didn't take it as a matter of business; it didn't belong to the business at all, to the firm, it was a private matter and didn't add it up in the book.

Examined by Mr. Streitwolf:

Q. Look at that note upon which judgment was taken against you. Did you receive $900?

Mr. Beekman: I object to that.

The Court: Do you want to prove the consideration of that note?

Mr. Streitwolf: Yes, I just want to see what he got for it.

By the Court:

Q. How did that note arise, how did it come to exist? A. This note arose, which I give to a fellow by the name of Caskey in Slatington, a manufacturer of slates.

Q. Was it given to pay a debt of yours? A. No, I was to receive slates for it.

Q. Did you receive slates for it? A. No, sir.

Further cross examination by Mr. Beekman:

Q. Is that the original note you gave? A. Original, no.

Q. Isn't it a fact that that is a renewal of a series of notes that has been running back six years? A. I guess that is a renewal.

Q. And the note was given to Samuel Caskey? A. Yes.

Q. And Samuel Caskey furnished you slate, or was to furnish slate? A. Was to furnish.

Q. Don't you know that note was discounted by the bank? A. I don't know anything about that.

Q And the bank's note went to Caskey? A. They got it all back and more, too.

Redirect examination by Mr. Streitwolf:

Q. Going back to the original note of which that is a renewal, the obligation was created under the same circumstances? A. Yes.

Q. And you never got any benefit? A. Never got nothing for it.

By Mr. Beekman:

Q. But the bank's money went to the notes, didn't it? A. I don't know what the bank did with it.

Mr. Streitwolf: I desire to offer in evidence tax bill of the premises here in litigation for the purpose of showing the assessed valuation placed upon the property by the City of Perth Amboy.

Received in evidence as Exhibit D7.

Mr. Streitwolf: I desire to offer in evidence the water bill of the premises for the purpose of showing this annual charge against the property for water rent.

Received in evidence as Exhibit D8.

Case Closed.

Opinion.

(Rendered May 18, 1915.)

IN CHANCERY OF NEW JERSEY.

Between

NATIONAL BANK OF SLATINGTON,
Complainant,

and

CHARLES SEEL, *et al.*,
Defendants.

On final hearing on bill, answer, replication and proofs.

Messrs. BEEKMAN & SPENCER for the Complainant.

Mr. AUGUST STREITWOLF, for the Defendant.

MEMORANDUM.

HOWELL, V. C.:

The decree in this case must be in favor of the complainant. The facts resemble very much those which were laid before the Court in the case of Tantum *v.* Green, 6 C. E. Gr., 364, and the law of the case will be found there also. There is no doubt but that the defendant Seel intended to put his property beyond the reach of a judgment which he evidently considered was unjust, and to this end desired to strip himself of all the property he owned which might be subject to levy under an execution on the judgment in question. If the defendant, Mr. Mossopust knew of this intention, or if he had knowledge of suffi-

cient facts and circumstances to put him on inquiry, and in either case assisted Seel in his design, then Massopust is as deeply involved as is Seel, and any transactions beetween them by which Seel's property was transferred to Massopust will be void as against creditors under the statute. Massopust on the witness stand admitted that he knew about the litigation which was pending between the complainant and Seel over the $900 note mentioned in the pleadings. The judgment was entered in September for lack of an adequate defence. Pending the suit, and in the July previous, Massopust took his title. He paid what appears to have been a fair price for the property; at least the price that he paid is not questioned; but after he took his deed he retained Seel in possession and give him a lease at forty dollars a month under which Seel still holds possession of the premises, using the same as his dwelling place and workshop. I think there is no doubt but that Massopust knew about Seel's intention, and, this being the case, the transaction must fall.

I will advise a decree in accordance with these views.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between THE NATIONAL BANK OF SLATINGTON, Complainant. and CHARLES SEEL and JOSEPH MASSOPUST, Defendants	On Bill, &c.

This case coming on to be heard on bill and the answer of Joseph Massopust, one of the defendants and the replication thereto (the bill having been heretofore taken as confessed as against the said Charles Seel, defendant), at Chancery Chambers at Newark in the presence of John W. Beekman, of counsel with the complainant and August C. Streitwolf, of counsel with said answering defendant Joseph Massopust, and the pleadings and exhibits being read and witnesses examined and argument of the respective counsel being heard and considered and the Court having taken time to advise thereon, and it appearing to the Court that the deed of conveyance, in said bill mentioned and described for the lands and premises therein set forth was made and executed with the intention to defraud the complainant as a creditor of the defendant Charles Seel and that the complainant is entitled to the relief prayed for in its said bill of complaint.

It is, therefore, on this twenty-first day of May, nineteen hundred and fifteen, on motion of John

W. Beekman, of counsel with the complainant, ordered, adjudged and decreed and the Chancellor by virtue of the power and authority of this Court does hereby order, adjudge and decree that the said deed of conveyance in said bill mentioned and described for the tract of land thereon set forth, that is to say, the deed of conveyance made by the defendant, Charles Seel to the said defendant Joseph Massopust, bearing date the twenty-fourth day of July, nineteen hundred and fourteen, and recorded in Book 552 of Deeds for said County of Middlesex, page 94, etc., be set aside, annulled and made void as against the judgment and execution of the said complainant in said bill set forth and described and that the defendants to pay the costs of the complainant in this cause to be taxed and that the complainant have execution therefor according to the course and practice of this Court.

And it is further ordered, that unless the defendants shall, within ten days after service upon them of a copy of this decree and of the taxed bill of costs, pay to the complainant or to its solicitor the amount due to it upon its judgment in this cause referred to, and the taxed costs of this suit, the Sheriff of the said County of Middlesex, to whom was directed and delivered the writ of *fieri facias de bonis et terri,* issued out of the Circuit Court of the said County of Middlesex at the suit of the said complainant, against the said Charles Seel, defendant, and in said bill mentioned, and set forth, do proceed to sell the said tract of land and premises, free, clear and discharged of and from the said deed of conveyance, and of and from all claims of the said

defendant Joseph Massopust thereunder or by virtue thereof.

Respectfully advised,
J. G. Hovell,
V. C.

E. R. WALKER,
C.

Notice of Appeal.

(Filed June 10, 1915.)

IN CHANCERY OF NEW JERSEY.

Between

THE NATIONAL BANK OF SLATINGTON,
Complainant-Appellee,

and

CHARLES SEEL and JOSEPH MASSOPUST,
Defendants-Appellants.

To Robert H. McAdams, Clerk of the Court of Chancery; to Messrs. Beekman & Spencer, Solicitors for the Appellee:

Sirs:

The defendant Joseph Massopust hereby appeals to the Court of Errors and Appeals of the State of New Jersey as a last resort in all causes from the whole and every part of the final decree made in this Court in the above stated cause bearing date the twenty-first day of May, one thousand nine hundred and fifteen as decrees that the deed of conveyance in said bill mentioned and de-

scribed for the lands and premises herein set forth was made and executed with intent to defraud the complainant as a creditor of the defendant, Charles Seel and that the complainant is entitled to the relief prayed for in its said bill of complaint; and as decrees that the deed of conveyance made by the defendant, Charles Seel to the defendant, Joseph Massopust, bearing date the twenty-fourth day of July, one thousand nine hundred and fourteen, recorded in Book 552 of Deeds for said County of Middlesex, pages 94, etc., be set aside, annulled and made void as against the judgment and execution of the said complainant in said bill set forth and described; and as decrees that the defendant, Joseph Massopust pay the costs to the complainant in this cause; and as decrees that a writ of execution issue out of the Middlesex County Circuit Court at the suit of the complainant against Charles Seel, defendant, and directing the Sheriff to proceed to sell the lands and premises free, clear and discharged of the said deed of conveyance for the purpose of satisfying the said judgment against the premises conveyed to the defendant, Joseph Massopust—on the ground that the said deed of conveyance by the defendant Charles Seel to Joseph Massopust aforesaid and in said bill described was not made and executed with intent to defraud the complainant as a creditor of the defendant, Charles Seel, and if it were so made that the lien of the judgment was subsequent to the conveyance to the extent of the moneys actually paid by the defendant Joseph Massopust and used by the said defendant, Charles Seel in the discharge of his debts or that of his firm, and also that the complainant is

not entitled to the relief prayed for in said bill of complaint.

Dated June 8th, 1915.

AUGUST C. STREITWOLF,
Solicitor and of Counsel for the Defendant,
Joseph Massopust.

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

AUGUST C. STREITWOLF,
Of Counsel with said Defendant,
Joseph Massopust.

Petition on Appeal.

(Filed June 29, 1915.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

The NATIONAL BANK of SLATINGTON,
Complainant and Respondent,

and

CHARLES SEEL and JOSEPH MASSOPUST,
Defendants,

JOSEPH MASSOPUST,
Defendant and Appellant.

On Petition on Appeal from a Decree Advised by Vice-Chancellor Howell.

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

The petition of the defendant, Joseph Masso-

pust, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-first day of May, in the year of our Lord, one thousand nine hundred and fifteen, wherein the National Bank of Slatington was the complainant, and Charles Seel and Joseph Massopust were the defendants, in this respect, to wit, that the decree adjudges, "That said deed of conveyance in said bill mentioned and described for the tract of land therein set forth, that is to say, the deed of conveyance made by the defendant, Charles Seel, to the said defendant, Joseph Massopust, bearing date the twenty-fourth day of July, one thousand nine hundred and fourteen, and recorded in Book 552 of Deeds for said County of Middlesex, pages 94, etc., be set aside, annulled and made void as against the judgment and execution of the said complainant in said bill set forth and described, and that the defendants pay the costs of the complainant in this cause to be taxed, and that the complainant have execution therefor according to the course and practice of this Court."

* * * * * *

"That unless the defendants shall, within ten days after service upon them of a copy of this decree and of the taxed bill of costs, pay to the complainant or to its solicitor the amount due to it upon its judgment in this cause referred to, and the taxed costs of this suit, the Sheriff of the said County of Middlesex, to whom was directed and delivered the writ of *fieri facias de bonis et terri*, issued out of the Circuit Court of the said County of Middlesex at the suit of the said complainant, against the said Charles Seel, defendant, and in

said bill mentioned, and set forth, do proceed to sell the said tract of land and premises, free, clear and discharged of and from the said deed of conveyance, and of and from all claims of the said defendant, Joseph Massopust, thereunder or by virtue thereof."

And your petitioner hereby appeals from the whole of the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in the following respects:

1. That the defendant, Joseph Massopust, having paid a good, valuable, full and sufficient consideration for the transfer of the premises described in said bill from Charles Seel, that the complainant was not entitled to the relief prayed for in its bill.

2. Or, the decree should have provided that the defendant, Joseph Massopust, was entitled to a prior lien over the judgment of the complainant to the extent of the moneys paid by him to Charles Seel for said conveyance and decreed the deed a mortgage or a lien to the amount thus paid.

3. That there was nothing irregular or unusual in the negotiations or consummation of the transfer from Seel to Massopust, and that there was no proof to justify or warrant an inference that Massopust purchased the property with fraudulent knowledge, or fraudulent intent to prevent the collection of the subsequent judgment of the complainant against Mr. Seel.

4. That assuming there was proof that clearly established fraudulent knowledge and fraudulent intent on the part of Massopust to assist Seel in preventing the complainant from satisfying its judgment, Massopust should have been protected in the sums paid to Seel, and which were actually

used by Seel in discharging debts of Charles Seel & Sons, of which he was a co-partner.

5. That the issue upon the trial was that no consideration was paid for said transfer by Massopust to Seel; that it was prejudicial to Massopust's rights to have permitted proof by the complainant of fraudulent knowledge and intent on the part of Massopust, as counsel for Massopust was not prepared with witnesses to meet an entirely different issue than what was pleaded.

6. That the amendment to the complainant's bill, after the opinion was rendered, so as to conform to the findings of the Court, was manifestly an error, denying to Massopust an ample and full opportunity to meet the charges at the time of the trial.

7. That Charles Seel had the right in using the funds received from Massopust to prefer the creditors of his firm to the exclusion of his individual creditors.

8. That mere knowledge by Massopust of litigation between the complainant and Charles Seel, which resulted in the judgment, and which had been pending four years prior to the transfer, and which was founded upon an accommodation liability, did not place Massopust upon notice to make inquiry beyond interrogating Seel as to the purposes of the transfer and what he intended to do with the funds, which Massopust did, and which satisfied him that the proceeds were to be used in discharging his debts.

9. That the defendant, Massopust, did not have notice of such facts and circumstances as would lead to a strong inference of fraud.

10. That the complainant had not exhausted its remedies at law against Seel to satisfy its judgment and as Charles Seel was, and still is a member of the co-partnership firm of Charles Seel & Sons of Perth Amboy, New Jersey, there was no proof that the complainant was unable to satisfy its judgment from the real or personal estate of Charles Seel.

11. That the testimony of Thomas Brown (the attorney who at one time represented Massopust) was improperly received in evidence upon the following grounds:

(a) That said testimony was not relevant to the issue raised by the pleadings.

(b) That the said Thomas Brown should not have been permitted to testify to whatever information he acquired as the attorney for Massopust.

All of which the said final decree should have so decreed.

Your petitioner further prays that the said parts of the decree be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as this Court shall deem meet.

AUGUST C. STREITWOLF,
Solicitor for and of Counsel with
the Appellant, Joseph Massopust.

Answer to Petition on Appeal.

(Filed July 12, 1915.)

IN CHANCERY OF NEW JERSEY.

Between

THE NATIONAL BANK OF SLATINGTON,
Complainant-Appellee,

and

CHARLES SEEL and JOSEPH MASSOPUST,
Defendants-Appellants.

The answer of the above respondent to the petil tion of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless says and admits that a decree was, on the twenty-fifth day of May, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and prays that the same may be affirmed with costs to be adjudged to this respondent.

BEEKMAN & SPENCER,
Solicitors of Respondent.

JNO. W. BEEKMAN,
Of Counsel.

ABBREVIATION OF EXHIBITS OFFERED IN EVIDENCE.

Exhibit C2.

Certified copy of the judgment record in case of Slatington National Bank *v.* Charles Seel, showing that a judgment was entered in the Middlesex County Circuit Court on September 8th, 1914, in favor of the Slatington National Bank for the sum of eleven hundred and ninety-eight dollars and fifty-five cents ($1198.55), damages and costs.

Exhibit C1.

Exhibit C1 on part of complainant (being the original execution issued on said judgment), shows that an execution was issued on the 8th day of September, 1914, out of said Court on said judgment, returnable at December Term then next of said Court. Commanding the Sheriff of said County that out of the goods and chattels of said defendant Charles Seel he make said damages and costs, and if he could not find sufficient goods and chattels, &c., in his County whereof to make said moneys, he should cause the whole or the residue as the case might require of such moneys to be made out of the lands, tenements, hereditaments and real estate whereof the said Charles Seel was seized on the date of said judgment or at any time thereafter in whosoever hands the same might be, which *fi fa* was duly recorded before the delivery thereof to said Sheriff for execution. That the Sheriff to whom said execution was delivered returned the same to the said Court that not finding any goods and chattels of the said defendant in his county, on which to levy to make said damages and costs or any part thereof, that he levied on the lands and premises in complainant's bill set forth as the lands

and tenements of the said Charles Seel and returned said execution wholly unsatisfied.

Exhibit C3.

Deed from Charles Seel to Joseph Massopust, dated July 24, 1914, showing the consideration, as expressed in said deed, to be "One dollar and other valuable consideration;" said deed was recorded on July 27, 1914, in Book 552 of Deeds for Middlesex County, page 94. Conveyed by warranty deed, the premises described in bill of complaint, subject to a mortgage of two thousand dollars.

Exhibit C4.

Slatington, Pa., Oct. 12, 1909.

Three months after date, I promise to pay to the order of Sam Caskie $900 at the First National Bank of Slatington Nine hundred Dollars without defalcation.

(Signed) CHARLES SEEL.

(Said note bearing the endorsement of Samuel Caskie.)

Exhibit D1.

THE FIRST NATIONAL BANK OF PERTH AMBOY

No. 1003 Perth Amboy, N. J., July 24, 1914.

Pay to the order of Mr. Charles Seel $3760.00 Three thousand seven hundred and sixty Dollars.

JOS. MASSOPUST.

In full for property Market St.

Bearing endorsements: Chas. Seel Charles Seel & Sons Perforation across check "Paid7-31-14."

Exhibit D2.

THE FIRST NATIONAL BANK OF PERTH AMBOY

No. 1082 Perth Amboy, N. J., Sept. 10, 1914.

Pay to the order of The City of Perth Amboy, N. J., $279.36 Two hundred and seventy nine and 36/100 Dollars.

JOS. MASSOPUST.

Bearing endorsement: "Pay to the First National Bank of Perth Amboy, New Jersey, or order City of Perth Amboy, N. J. R. F. White, Collector of Revenue."

Perforation across check: "Paid 9 10 11."

Exhibit D3.

Lease made by Joseph Massopust to Charles Seel & Sons, dated August 1st, 1914, letting premises described in the bill of complaint herein for a period of three years from August 1st, 1914, at a yearly rental of $480 to be paid in monthly installments of $40, lease containing the usual covenants.

Exhibit D4.

A search effecting the premises, offered in evidence, shows:

(1) Conveyance by Thomas Langan and wife to Charles Seel, May 15, 1897, and recorded May 19, 1897—consideration $2600—recorded in Book 292 of Deeds, page 155.

(2) Warranty deed by Thomas Langan and wife to Charles Seel, dated September 13, 1900, consideration ———, recorded September 17, 1900, in Book 318 of Deeds, page 404.

(3) Warranty deed by Charles Seel and wife to George Fochner, dated September 28, 1904, consideration $800.00, recorded May 20, 1907, in Book 396 of Deeds, page 410.

(4) Mortgage made by Charles Seel to Thomas Langan, dated May 15, 1897, secures $2000 at 6%, recorded May 19, 1897, in Book 140 of Mortgages, page 73.

Exhibit D5.

Eight receipts to Charles Seel & Sons for rent covering premises described in the bill of complaint and signed by Massopust and Duschock:

August 1, 1914	$40.00	December 30, 1914, for January, 1915, rent	$40.00
September 1, 1914	40.00		
October 4, 1914	40.00		
November 2, 1914	40.00	February 2, 1915	40.00
December 5, 1914	40.00	March 4, 1915	40.00

Exhibit D6.

Checks drawn by Charles Seel & Sons against their account in the First National Bank of Perth Amboy, from July 30, 1914, to December 31, 1914, as follows:

Date		Order	Amount
July	30/14	Gustav Jast	$600.00
Aug.	1/14	C. G. Hussey & Co.	111.84
"	"	Amboy Works	3.85
"	"	La Roe Press	6.90
"	"	L. Seel	500.00
"	"	Cash	200.00
"	3/14	Chas. Seel Jr.	500.00
"	"	C. T. Hungerford Brass & Copper Co.	98.72
"	"	Walter Recknitzer	13.61
"	"	Emanuel & Co.	42.14
"	"	Carbon Slate Co.	216.09
"	"	Clausen V. Johnson	25.70
"	4/14	L. Vulcan Detinning Co.	56.78
"	5/14	New York Telephone Co.	6.95
"	"	John S. Norton Co.	90.79
"	6/14	Central R. R. Co. of N. J.	71.89
"	8/14	Cash	150.00
"	"	Perth Amboy Coal & Ice Co.	14.00
"	"	A. W. Metzendorf	59.27
"	14/14	Tube Dimond	28.12
"	"	Elizabeth Hardware Co.	253.86
"	"	John E. Bell	8.00
"	15/14	Cash	200.00
"	22/14	Cash	200.00
"	24/14	Jacob Lawson Bag Co.	6.50
"	27/14	Spencer & Beekman	50.58
"	24/14	Canton Steel Ceiling Co.	14.60
"	28/14	James S. Wright	25.00

Date	Order	Amount
Aug. 29/14	Cash	$100.00
Sept. 4/14	H. Weiss & Co.	18.46
" 5/14	M. Basil	10.20
" "	Will Boose	10.40
" "	M. Kandrich	18.12
" "	Cash	30.00
" 9/14	Cash	15.00
" 12/14	Theo. E. Hergert	11.70
" 12/14	Cash	130.00
" 19/14	Cash	150.00
" 21/14	C. G. Hussey & Co.	341.71
" 21/14	U. T. Hungerford B. & Copper Co.	146.22
" 23/14	Central R. R. Co. of N. J.	17.58
" 26/14	Cash	100.00
" 28/14	Follansbee Bros. Co.	217.36
" 30/14	Central R. R. Co. of N. J.	37.74
Oct. 3/14	Cash	30.00
" 10/14	Cash	125.00
" 16/14	Perth Amboy Coal & Ice Co.	10.50
" "	M. Taft	15.43
" 17/14	McCoy Iron Works	4.65
" "	Cash	125.00
" 23/14	Broschart & Braun	15.38
" "	New York Telephone Co.	6.75
" 24/14	Cash	100.00
" 26/14	H. W. Schrimpf	4.00
" "	Follansbee Bros. Co.	28.19
" "	Barrett Manuftg. Co.	544.92

Date	Order	Amount
Oct. 26/14	Canton Steel Ceiling Co.	$117.17
" 31/14	Cash	50.00
Nov. 4/14	A. M. Metzendorf	47.49
" "	John S. Norton & Co.	324.39
" "	H. W. Kinsey	12.00
" 5/14	Thos. Langan Lumber Co.	29.70
" 6/14	Hungerford B. & Co.	105.64
" 11/14	Emanuel & Co.	29.30
" "	Central R. R. Co. of N. J.	34.29
" 14/14	Cash	100.00
" 21/14	Cash	50.00
" "	A. Miller	17.00
" 28/14	Bayonne Ceiling Co.	60.00
" 30/14	Carbon Slate Co.	245.00
Dec. 8/14	McCoy Iron Works	3.00
" "	New York Telephone Co.	7.60
" 12/14	Cash	125.00
" 19/14	James Smith Jr.	21.00
" 31/14	Wm. H. McCormick & Son	1.95
" "	Chapman Slate Co.	260.88
" "	Barrett Manftg. Co.	15.94
	Vulcan Detinning Co.	56.78
	Total	$7633.75

Exhibit D7.

Tax bill of the City of Perth Amboy for the year 1914 showing following items affecting the premises described in the bill of complaint:

Values

Land $1050
Buildings 1500

Tax $2550
Total tax.....$52.75

Exhibit D8.

Bill of the Perth Amboy City Water Works showing water rent from July 1st, 1914, to January 1st, 1915, affecting the premises described in the bill of complaint, showing charges for water supplied at the sum of $5.50.

ADDENDA.

On page 9 following folio 30 insert:

Formal replication filed December 16, 1914.

Add to Exhibit D6 as follows:

Check drawn to L. Seel endorsed by Louis Seel only.

Check drawn to Charles Seel, Jr., endorsed by Charles Seel, Jr., only.

All checks in said exhibit drawn to cash, show no endorsements.