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New Jersey
Court of Errors and Appeals

Notice of Appeal.

10.

(*Filed Dec. 8, 1926*)

IN CHANCERY OF NEW JERSEY

Between:

MARGARET DUSENBERY,
Complainant,
and
LAURA A. GRIFFIN, Executrix,
et al.,
Defendants.

Notice of Ap-
peal from Fi-
nal Decree
Advised by
Hon. John
Griffin, Vice
Chancellor.

20

Margaret Dusenbery, complainant, appeals to the Court of Errors and Appeals from the final decree made in the above-stated cause, advised by Hon. John Griffin, Vice Chancellor, and from each and every part thereof.

30

RICHARD BOARDMAN,
Solicitor for Margaret Dusenbery,
Compl't.

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

RICHARD BOARDMAN,
Of Counsel.

40

Petition of Appeal.*(Filed Dec. 15, 1926)*NEW JERSEY COURT OF ERRORS AND
APPEALS

10

Between:

MARGARET DUSENBERY,

Complainant-Appellant,

and

LAURA A. GRIFFIN, Executrix,
et al.,

Defendants-Respondents.

On Appeal
from
Chancery.

20

The petition of Margaret Dusenbery, appellant in the above-entitled cause, respectfully shows:

30

1. Petitioner finds herself aggrieved by the final decree, made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon advice of the Honorable John Griffin, one of the Vice Chancellors, which decree was filed on the twenty-ninth day of November, nineteen hundred and twenty-six, and your petitioner finds herself aggrieved for the following reasons:

(a) That the said final decree erroneously orders, adjudges and decrees that complainant's bill be dismissed;

40

(b) That the said decree fails to order and adjudge and decree relief to the complaint, pursuant to the terms of the prayer of her bill of complaint.

Answer to Petition of Appeal

2. Petitioner appeals from the decree of the Chancellor and from each and every part thereof.

RICHARD BOARDMAN,
Solicitor for and of Counsel with Appellant.

10

Answer to Petition of Appeal.

(Filed Feby. 4, 1927)

NEW JERSEY COURT OF ERRORS AND
APPEALS

MARGARET DUSENBERRY,
Complainant-Appellant,

vs.

JEAN K. ALLISON and LAURA A.
GRIFFIN, individually and as
executors of the last Will and
Testament of Sarah Ann Alli-
son, and SAMUEL GARRISON,
executor of the last Will
and Testament of Margaret
Craven,

Defendants-Appellees.

20

On Appeal
from the
Court of
Chancery.

30

The answer of Jean K. Allison and Laura A. Griffin, individually and as executors of the last Will and Testament of Sarah Ann Allison and Samuel Garrison, executor of the last Will and Testament of Margaret Craven, the above-named 40

Bill

appellees, to the petition of appeal of Margaret Dusenbery, the above-named appellant.

10 These appellees, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto nevertheless admit that a decree was, on the 29th day of November, 1926, made and entered in the Court of Chancery of New Jersey in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree these appellees beg leave to refer thereto when the same shall be produced.

20 These appellees are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

MARK TOWNSEND, JR.,
Solicitor for and of Counsel with Appellees.

Bill.

30

(Filed December 28, 1925)

IN CHANCERY OF NEW JERSEY

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

Complainant, Margaret Dusenbery, of the Town of West New York, County of Hudson, State
40 New Jersey, respectfully shows that:

Bill

1. On or before December 28, 1922, this complainant, with her two aunts, Margaret Craven and Sarah Ann Allison, were together the owners of certain lands and premises more particularly described herein, as equal tenants in common.

2. The premises referred to in Paragraph 1 are described as follows: 10

ALL that certain tract or parcel of land and premises, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey:

BEGINNING at the corner formed by the intersection of northeasterly side of Glenwood Avenue with the northwesterly side of Bergen Avenue; thence northeasterly along the northwesterly side of Bergen Avenue sixty-one and fifty-one-hundredths feet (61.51) to a point; thence northwesterly, one hundred and ten and thirty-nine-hundredths feet (110.39) to a point; thence southwesterly sixty and thirteen-hundredths feet (60.13) to the northeasterly side of Glenwood Avenue; thence southeasterly, along the northeasterly side of Glenwood Avenue, one hundred and eighteen and twenty-six-hundredths feet (118.26) to the point or place of beginning. 20 30

3. On December 28, 1922, this complainant, at the request of the said Margaret Craven and Sarah Ann Allison, joined in and executed a deed of conveyance of the aforesaid premises, to Isaac M. Schacter and Louis Schuchman, which deed is 40

Bill

recorded in the Hudson County Register's Office in Book 1466 of Deeds, at page 459, &c.

10 4. The said Margaret Craven and Sarah Ann Allison received from the said Isaac M. Schacter and Louis Schuchman, the sum of Fifty Thousand Dollars (\$50,000), which they took and held in trust, one-third for each of them, and one-third for the complainant, but all knowledge and information of the amount received by the said Margaret Craven and Sarah Ann Allison were withheld from complainant, and the said Margaret Craven and Sarah Ann Allison paid to this complainant the sum of Three Thousand, Three Hundred and Thirty-three Dollars and Thirty-three
20 Cents (\$3,333.33), and failed to account to her for the balance of her share of the one-third of the purchase price received by them as aforesaid, although thereafter requested by complainant so to do.

5. On or about December 31, 1924, the said Margaret Craven died.

30 6. Margaret Craven left a will bearing date the 24th day of December, 1924, which was admitted to probate by the Surrogate of Hudson County, on January 14, 1925, and letters testamentary were issued thereon to Samuel Garrison of No. 91 Kensington Avenue, Jersey City, who, as such executor, is made a party defendant to this bill.

40 7. A copy of the last will and testament of Margaret Craven is annexed hereto, hereby referred to and made a part of this bill.

Bill

8. On the 16th day of January, 1925, the said Sarah Ann Allison died.

9. On the 27th day of January, 1925, the will of Sarah Ann Allison was duly admitted to probate by the Surrogate of Hudson County, and letters testamentary thereon were issued to Jean K. Allison and Laura A. Griffin, daughters of the said Sarah Ann Allison. The said Jean K. Allison and Laura A. Griffin, individually and as executors, are made defendants to this bill of complaint. 10

10. A copy of the will of Sarah Ann Allison is hereto annexed, hereby referred to and made a part of this bill of complaint. 20

11. Complainant has made demand upon the said Samuel Garrison, executor of the last will and testament of Margaret Craven, and to Jean K. Allison and Laura A. Griffin, to account to complainant for the proceeds of the sale of the premises described in the second paragraph hereof, but the said executors have neglected and refused so to do.

12. The estate of the said Margaret Craven and Sarah Ann Allison are unadministered and the said several executors have large sums of money in their hands, including the proceeds of said sale, held in trust as aforesaid. 30

SECOND CAUSE OF ACTION.

1. On February 4, 1886, James Dusenbery, grandfather of this complainant, being seized of 40

Bill

the premises described in the second paragraph of the first cause of action, died testate of a will.

2. On February 17, 1886, the last will of James Dusenbery was duly admitted to probate by the
10 Surrogate of Hudson County.

3. A copy of the last will and testament of James Dusenbery is hereto annexed, hereby referred to and made a part of this bill of complaint.

4. The said James Dusenbery left him surviving, his widow, Ann Dusenbery, and three children, Benjamin Dusenbery, a son, who was father of this complainant, Margaret Dusenbery, a
20 daughter, who afterwards married one Harry L. Craven (since deceased), and Sarah Ann Allison, a daughter.

5. On February 13, 1908, the said Benjamin Dusenbery, son of James Dusenbery, died, leaving as his daughter and only heir at law, Margaret Dusenbery, the complainant.

6. The property described in the second paragraph of the first cause of action herein, was the
30 homestead of the said James Dusenbery, and the said Ann Dusenbery, his widow, upon the death of the said James Dusenbery, resided thereon, and continued to reside thereon until the day of her death hereinafter mentioned.

7. On May 16, 1910, Ann Dusenbery, widow of the said James Dusenbery, signed a paper writing, purporting to be a deed of conveyance of the
40 said property described in the second paragraph

Bill

of the first cause of action, to her two daughters, said Margaret and Sarah, which deed was recorded in the Hudson County Register's Office, in Book 1071 of Deeds, on page 5, and re-recorded in Book 1075 of Deeds for Hudson County, on page 175. 10

8. At the time of the making of the deed mentioned in the next preceding paragraph, said Margaret Craven was living with her mother on the premises in question, and continued to live on the premises until the date of the sale of the property in 1922. The said deed was made without consideration passing from the said two daughters to their mother, and the said deed was neither accompanied nor followed by change of possession. The said deed was procured by the said Margaret Craven and the said Sarah Ann Allison from their aged mother, fraudulently, with the intent and purpose of defeating the right, title and interest of this complainant in the said premises, and was fraudulent, null and void in equity and inoperative in law, except in so far as it may have operated to convey to the said daughters, the life estate of the said mother. 20 30

9. On September 30, 1922, the said Ann Dusenbery died.

10. On and prior to December 28, 1922, this complainant was sick and confined in the hospital and in her room for a period of years. At the present time, she is lame and can only go out with an automobile or other conveyance, with an attendant. At the time aforesaid, December, 40

Bill

1922, she was living in the greatest of penury, with her mother, and had no other support than the earnings that her mother could produce. She depended upon, and had a right to depend upon her two aunts, the said Margaret Craven and
10 the said Sarah Ann Allison, for counsel and advice, and the said Margaret Craven and Sarah Ann Allison owed to the said complainant, the duty to furnish her, in all transactions with her, not only full and truthful information as to the nature of the transactions in which she was concerned, but competent, independent, legal advice in the premises.

20 At the request of her said aunts, on the said 28th day of December, 1922, this complainant executed a deed, joining therein with her said aunts and said Harry L. Craven, of the premises described in the second paragraph of the first cause of action, to Isaac M. Schacter and Louis Schuchman, as more particularly set forth in paragraph 3 of the first cause of action.

11. Said Margaret Craven and said Sarah Ann Allison told this complainant that her signature
30 was not necessary to the deed in question, but that it had been asked for by some captious, technical and over careful lawyer; that they, her said aunts, had paid to their mother, Ten Thousand Dollars (\$10,000) in consideration for their mother's deed of the property, and that the said sum was a fair price for the said property. The said statements were false and were known to the said Margaret Craven and Sarah Ann Allison to
40 be false. They were made for the purpose of in-

Bill

ducing complainant to act thereon. Complainant believed the said statements and acted thereon. The conduct of the said Margaret Craven and Sarah Ann Allison in the premises was fraudulent.

12. The sum of Three Thousand, Three Hundred and Thirty-three Dollars and Thirty-three Cents (\$3,333.33) was given to complainant by the said Margaret Craven and said Sarah Ann Allison on the representation that it was the equivalent of one-third of the amount that they had paid to their mother for her deed, and was in fact in the nature of a gift. It was not explained to complainant why no interest was added to this sum of \$3,333.33, nor was it explained to complainant that if the sum paid for two-thirds of the property was \$10,000, why she was not given \$5,000, nor was it disclosed to the said complainant, at the time of the signing of the deed, nor before nor afterwards, by the said Margaret Craven and Sarah Ann Allison, that they had already contracted to sell and had sold the said property to the said Isaac M. Schacter and Louis Schuchman, for the sum of Fifty Thousand Dollars (\$50,000), nor was complainant furnished competent legal advice, nor did she have any competent advice in the premises, nor did she discover until afterwards that her two aunts were receiving Fifty Thousand Dollars (\$50,000) from the sale of the property and had paid nothing for the deed from their mother.

13. Paragraphs 4 to 12, inclusive, of the first cause of action are made a part of this cause

Bill

of action, are hereby referred to and made a part of this cause of action, in the same manner and to the same effect as if they were herein repeated.

Complainant is without adequate remedy at law
10 and therefore prays:

1. That Samuel Garrison, executor of the last will and testament of Margaret Craven, deceased, and Jean K. Allison and Laura A. Griffin, individually and as executors of the last will and testament of Sarah Ann Allison, may answer this bill of complaint and each statement made therein.

2. That the said Samuel Garrison, executor of
20 Margaret Craven, and Jean K. Allison and Laura A. Griffin, executors of the last will and testament of Sarah Ann Allison, may account to, and be decreed by this court to pay over to the complainant, a one-third of the net proceeds of the sale of the said property conveyed to the said Isaac M. Schacter and Louis Schuchman.

3. That complainant may have such other relief in the premises as may be equitable and just.

30 4. That a writ of subpoena may issue, commanding the said defendants, Samuel Garrison, executor of the last will and testament of Margaret Craven, and Jean K. Allison and Laura A. Griffin, individually and as executors of the last will and testament of Sarah Ann Allison, to answer this bill of complaint, and to abide by such decree as the court may make in the premises.

RICHARD BOARDMAN,

40 Solicitor for and of Counsel with Complainant.

Will of Margaret Craven.

Executor—Samuel Garrison.

Filed and Recorded in the Office of Surrogate
of County of Hudson, N. J.

Filed—Jan. 14, 1925.

IN THE NAME OF GOD, AMEN.

10

I, MARGARET CRAVEN, of the City of Jersey City, County of Hudson and State of N. J., being of sound and disposing mind and memory, and mindful of the uncertainty of life, do make, publish and declare this to be my last will and testament as follows, hereby revoking all former wills by me made.

1st I direct that all my just debts and funeral expenses be duly paid and satisfied, as soon as conveniently may be, after my decease.

20

2nd I give and bequeath unto my sister, Mrs. Sarah Allison, one Cameo breast-pin, a diamond locket and chain and the glass closet and its contents.

3rd I do give, devise and bequeath to the trustees of the New York Bay Cemetery Co., the sum of two thousand (\$2000.00) dollars, in trust nevertheless, the principal to remain in tact and the income thereof to be used by the trustees of the said New York Bay Cemetery Co. for the planting and cultivating of trees, shrubs, flowers and plants in and about the plot of the said cemetery wherein I shall be buried and for the erection and renewal of such monument, gravestone, fence, railing or other erection as may be erected in or

30

40

Will of Margaret Craven

around the plot wherein I shall be buried in said cemetery, in manner and form consistent with the purposes and design of the said New York Bay Cemetery Co.

10 4th I do give, devise and bequeath unto my beloved husband, Harry L. Craven, and to his heirs forever, the plot of ground and the building erected thereon, known as No. 406 Fairmount Avenue, in the City of Jersey City, County to Hudson, State of New Jersey.

20 5th All the rest, residue and remainder of my estate, whether real, personal or mixed and wheresoever situated, I do give, devise and bequeath unto Samuel Garrison, my trustee hereinafter named, in trust nevertheless, that he shall invest the same in his name in any mode proper for a trust, with power from time to time to vary said investments, and my said trustee shall stand possessed of such investments and the income therefrom, upon trust to pay the income to my beloved husband, Harry L. Craven, during the term of his natural life and upon the death of my said husband, Harry L. Craven, my said trustee and executor hereinafter named shall then divided the principal and distribute the same equally, share and share alike, between my beloved sister, Sarah Ann Allison, my beloved niece, Jennie Allison, my beloved grandniece, Elaine Hammerstein, and my beloved niece, Laura Griffin.

40 In the event that one or more of the above named residuary legatees shall depart this life be-

Will of Margaret Craven

fore the death of my beloved husband, Harry L. Craven, then, in that event, my residuary estate shall be divided by my said trustee and executor hereinafter named, equally, share and share alike, between the survivors.

6th I hereby nominate and appoint Samuel Garrison, my executor and trustee of this my last will and testament, that upon his qualifying as executor and trustee, he shall file with the Surrogate of the County of Hudson, a bond in the sum of Forty thousand (\$40,000.00) dollars in manner and form as provided by statute, and I do hereby authorize my said executor and trustee or his successor or successors, in their discretion, as they deem it advisable, to sell or dispose of, at public or private sale, the whole or any part of my real and personal property, and to execute and deliver all contracts, deeds, instruments of transfer and all other writings necessary to pass proper title thereto, with power to invest and reinvest and to sell and dispose of and invest the proceeds of such sale or sales, in securities or other property for the purpose of executing the trust imposed upon him.

In Witness Whereof, I have hereunto set my hand and seal this 24 day of December, in the year of our Lord, one thousand and nine hundred and twenty four.

MARGARET CRAVEN (LS)

Witnesses

Maud Pearce Ball

David Russell.

Witness duly qualified Jan. 14/25

10

20

30

40

Will of Margaret Craven

Probate and Letters testamentary of the estate
of Margaret Craven issued Jan. 14/25 & filed

By JOHN F. HALLAHAN
Deputy Surrogate.

10

Samuel Garrison of 91 Kensington Ave., Jersey City, N. J. respectfully represents that he is the executor named in the last will and testament of Margaret Craven dated the 24 day of Dec. 1924.

That said testatrix departed this life at Jersey City in the Co. of Hudson & State of N. J. on the 31st day of Dec. 1924, being at the time of her death a resident of said Co. and State, and
20 leaving her surviving as her heirs at law and next of kin the following persons, to wit:

Harry L. Craven, her husband, since deceased, viz. January 1, 1925. Sarah Allison a sister, 20 Highland Ave. Jersey City, N. J., and Margaret Dusenbery, a niece, Town of Union, N. J. daughter of Benjamin Dusenbery, a deceased brother.

Therefore, the said applicant respectfully applies for probate of said last will and testament
30 and for letters testamentary thereon.

Dated Jan. 14th A. D. 1925

SAMUEL GARRISON.

40

Will of Sarah Ann Allison

WILL OF SARAH ANN ALLISON

I, Sarah Ann Allison being of sound and disposing mind and memory, and considering the uncertainty of this life, I do make, publish and declare this to be my last Will & Testament as follows, hereby revoking all other and former Wills by me at any time made. 10

1st First after my lawful debts are paid, I give and bequeath unto Jean K. Allison and Laura A. Griffin my beloved children, all the rest, remainder and residue of my property, either real, personal or mixed and of whatsoever description and wheresoever the same may be situated, absolutely. 20

2nd Second, I hereby appoint my children Jean K. Allison and Laura A. Griffin, to be the sole executrices by this my last will and testament, and request that no bond be required of them for their faithful performance of their duty.

3rd Third, I hereby revoke any and all other wills heretofore made and executed by me.

I hereby appoint Jean K. Allison & Laura A. Griffin to be executrices of this my last will and testament. 30

SARAH ANN ALLISON
signed seal & published

Witnesses

March 3, 1923.

Laura S. Webb—residing 155 W. 78 St. N. Y. C.

Herbert A. Griffin “ 2259 Loring Pl. N. Y. C.

Executrices Duly qualified.

Order Admitting Will to Probate.

IN THE MATTER

of

10 The Last Will and Testament
of SARAH A. ALLISON, De-
ceased.

Application having been made to me by Jean
K. Allison and Laura A. Griffin, the executrices
named in the last will and testament of Sarah A.
Allison, late of the Co. of Hudson, deceased, for
20 probate of said last will and testament & letters
testamentary thereon, the proofs taken being suf-
ficient and no cause appearing to the contrary,

It is ordered that the last will and testament be
and the same is hereby admitted to probate as the
last will & testament of said deceased, and that
letters testamentary thereon be issued to the said
applicant therefor.

Dated Jan. 27, 1925.

Application.

TO THE SURROGATE OF THE CO. OF HUDSON, N. J.
 JEAN K. ALLISON,

215 W. 91st Street,
 and
 LAURA A. GRIFFIN,
 2259 Loring Pl. } New York City, N. Y. 10

Respectfully represent that they are the executrices named in the last will and testament of Sarah Ann Allison dated the 3rd day of March A. D. 1923.

That said testatrix departed this life at Jersey City in the Co. of Hudson and State of N. J., on the 16th day of January A. D. 1925, being at the time of her death a resident of said Co. and State, and leaving her surviving as her heirs at law and next of kin the following persons, to wit: 20

Your applicants, her daughters.

Dated Jan. 27 A. D. 1925.

Answer.

(Filed Feby. 17, 1926)

IN CHANCERY OF NEW JERSEY

10 MARGARET DUSENBERRY,
Complainant,

vs.

JEAN K. ALLISON and LAURA A.
GRIFFIN, individually and as
executors of the last Will and
Testament of Sarah Ann Alli-
son, and SAMUEL GARRISON,
20 executor of the last Will
and Testament of Margaret
Craven,

Defendants.

On Bill, &c.

The joint and several answers of the defend-
ants, Samuel Garrison, executor of the last Will
and Testament of Margaret Craven, deceased,
Jean K. Allison and Laura A. Griffin, executors
of the last Will and Testament of Sarah Ann Alli-
30 son and Jean K. Allison and Laura A. Griffin, to
the bill of complaint herein are as follows:

FIRST CAUSE OF ACTION.

1. They admit the allegations of paragraphs
one, two, five, six, seven, eight, nine and *ten*.

2. They deny all of the allegations of paragraph
three, except that the complainant executed a deed
40 of conveyance of the aforesaid premises to Isaac

Answer

M. Schachter and Louis Schuchman by deed recorded as therein alleged, which they admit.

3. They deny the allegations of paragraphs four, *ten* and eleven of said complaint.

10

SECOND CAUSE OF ACTION.

1. They admit paragraphs one, two, three, four, five, six and nine.

2. They admit the allegations of paragraph seven, but further say that the consideration named in said deed was Ten Thousand (\$10,000) Dollars, which consideration was given by the grantees to the grantor.

20

3. They deny the allegations of paragraphs eight, ten, eleven and twelve.

4. Answering paragraph thirteen the defendants repeat their answers to paragraphs four to twelve inclusive of the first cause of action set forth in the bill of complaint.

FIRST SEPARATE DEFENSE TO BOTH
CAUSES OF ACTION.

30

1. Ann Dusenberry, executor of the last Will and Testament of James Dusenberry, in accordance with the power of sale given her under said Will of James Dusenberry, contracted with Margaret Craven and Sarah Allison to convey to them the premises mentioned in the bill of complaint in this cause for Ten thousand (\$10,000) Dollars, the reasonable market value of said lands and

40

Answer

premises, and thereafter on or about May 16, 1910, in accordance with the terms of said contract delivered to the said Margaret Craven and Sarah Allison a deed for said lands and premises, purporting to convey all the right, title and interest that the said James Dusenberry had therein and received the consideration therein named. After the death of the said Ann Dusenberry on September 30th, 1922, the said Margaret Craven and Sarah Allison contracted to sell the said lands and premises to Isaac M. Schacter and Louis Schuchman for Fifty thousand (\$50,000) Dollars and upon the date set for passing title, it was discovered that through ignorance or mistake, the said Ann Dusenberry had failed and neglected to execute the aforesaid deed delivered to Margaret Craven and Sarah Ann Allison as executrix of the last Will and Testament of James Dusenberry, deceased, but had done so individually.

Thereupon the said complainant, after consulting with counsel, agreed if the said Margaret Craven and Sarah Ann Allison would refrain from taking any action in a court of competent jurisdiction to reform said deed, and would pay to her one-third ($\frac{1}{3}$) of the purchase price of the premises, to wit, Ten thousand (\$10,000.00) Dollars she would join in said deed to the said Isaac M. Schacter and Louis Schuchman; thereupon the sum of Three thousand three hundred thirty-three dollars and thirty-three cents (\$3,333.33) was paid to her and she executed together with Margaret Craven and Sarah Allison and delivered to the said Isaac M. Shacter and Louis

Answer

Schuchman, a deed of conveyance for the lands and premises aforesaid.

SECOND SEPARATE DEFENCE TO BOTH
CAUSES OF ACTION.

10

1. On or about November 28th, 1924, the complainant filed a bill of complaint in this Honorable Court against these defendants through Samuel Harber, as her solicitor, setting forth a similar cause of action, a copy of which bill of complaint is hereto annexed and made a part hereof, to which these defendants entered an appearance.

2. On the date last aforesaid, complainant was seized in fee simple by descent from her father, Benjamin Dusenberry of an undivided one-third interest and these defendants were seized in fee simple of the remaining two-thirds interest in certain lands and premises in Jersey City, more particularly described as follows: 20

“All those lots, tracts, or parcels of land and premises, hereinafter particularly described situate, lying and being in the City of Jersey City as follows: 30

Lots Four (4), five A (5A), five B (5B), six C (6C), six D (6D), six E (6E), in City Block 1831 and known as street numbers 739, 741, 743, 745, 747 and 749 Bergen Avenue, respectively.”

3. On or about November 28th, 1924, complainant filed a bill of complaint in this Honorable 40

Answer

Court against these defendants and others through Samuel Harber, her solicitor, to partition said lands and premises, to which these defendants entered an appearance and filed an answer.

10 4. Thereafter complainant agreed that if defendants would agree to sell said lands and premises mentioned in paragraph two of this defense, she would discontinue both of said actions herein mentioned and would waive and would release these defendants from the alleged claim or causes of action set forth in the bill of complaint herein. These defendants thereupon agreed to and did sell
20 said lands and premises for One hundred five thousand (\$105,000) Dollars of which the complainant received Thirty-five thousand (\$35,000) Dollars and the complainant in accordance with said agreement, discontinued the actions herein mentioned and delivered to defendants a release of all claims or causes of action arising out of the sale of the lands and premises conveyed to Isaac M. Schacter and Louis Schuchman described in the bill of complaint.

30 **THIRD SEPARATE DEFENSE TO BOTH CAUSES OF ACTION.**

1. The complainant is guilty of laches.

MARK TOWNSEND, JR.,
Solicitor of Defendants.

(Copy of bill in *Dusenbery v. Craven*, 57-116 annexed; see same, post, p. .)

40 Replication in Common form (filed March , 1926).

Final Decree.*(Filed Nov. 29, 1926)*

IN CHANCERY OF NEW JERSEY

MARGARET DUSENBERRY, Complainant,	10
vs.	
JEAN K. ALLISON and LAURA A. GRIFFIN, individually and as executors of the last Will and Testament of Sarah Ann Alli- son, and SAMUEL GARRISON, executor of the last Will and Testament of Margaret Craven, Defendants.	20

On Bill, &c.

This cause coming on to be heard in the presence of Richard Boardman, solicitor for the complainant, and Mark Townsend, Jr., solicitor for the defendants, and the pleadings having been read and counsel for respective parties having produced evidence maintained the issue herein joined and the arguments of counsel having been heard and considered and the court having duly considered the pleadings, proofs and arguments, and it appearing that the complainant is not entitled to the relief sought and prayed for by her in her said bill of complaint, it is thereupon on this 29th day of November, 1926, by Edwin R. Walker, Chancellor of the State of New Jersey,

Final Decree

Ordered, Adjudged and Decreed that the complainant's bill be and the same is hereby dismissed.

E. R. WALKER
C.

10 Respectfully advised,

JOHN GRIFFIN,
V. C.

The form of the within decree conforms to the finding of the Vice Chancellor.

20 RICHARD BOARDMAN,
Solicitor of Complainant.

A true copy,
Thomas Barber, Clerk.

Conclusions.*(Filed Jan. 13, 1927)*

IN CHANCERY OF NEW JERSEY

59/622

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Between:

MARGARET DUSENBERY,
Complainant,

and

LAURA A. GRIFFIN, Ex'r, etc.,
et als.,

Defendants.

20

For the Complainant, Mr. Richard Boardman.
For the Defendants, Mr. Mark Townsend, Jr.

Submitted November 8, 1926; decided November 19, 1926.

GRIFFIN, V. C.:

James Dusenbery died at Jersey City on February 4th, 1886, seized of property on the corner of Glenwood and Bergen Avenues, Jersey City (hereinafter referred to as "the homestead property") and also some property on Bergen Avenue between Montgomery Street and Fairmount Avenue, Jersey City (hereinafter referred to as "the Bergen Avenue property"), leaving a last will and testament dated September 10th, 1885, in and by which he gave, devised and bequeathed to his wife, Ann Dusenbery, all of his property, both

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Conclusions

real and personal, during the term of her natural life, or so long as she remained his widow, and, after her decease, he gave, devised and bequeathed the remainder to such child or children as he might leave at the time of his decease, in fee. He
10 appointed his wife, Ann Dusenbery, executrix, with power of sale. He left him surviving his son, Benjamin Dusenbery, father of the complainant, and two daughters, Margaret Craven, wife of Harry L. Craven, and Sarah Ann Allison. Said Benjamin Dusenbery died on February 3d, 1908, intestate, leaving the complainant as his only heir-at-law. On May 16th, 1910, Mrs. Dusenbery, widow, in her individual capacity, conveyed to
20 Margaret Craven and Sarah Ann Allison the homestead property for the sum of \$10,000, which consideration was paid to her, and was substantially the fair market value of the property, it being testified to and not contradicted that it was worth between ten and twelve thousand dollars. The scrivener who drew the deed erroneously named the grantor "Jane Dusenbery," whereas her true name was Ann Dusenbery, to correct which, the name of "Jane" was erased wherever
30 it appeared in the deed, and the name "Ann" inserted in lieu thereof; and the deed, thus altered, was re-acknowledged on the 7th day of July, 1910, and re-recorded. By mistake, Ann Dusenbery executed the deed as an individual and not as executrix under the power of sale given under the will of James Dusenbery. She was eighty-two years of age at that time, and the value of her life estate was trifling. She died on September 30th, 1922,
40 at the age of ninety-four years. After her death

Conclusions

her two daughters contracted to convey the homestead property for \$50,000. The searcher then discovered that Ann had conveyed as an individual and not as executrix and that the title was faulty.

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On December 28th, 1922, Mrs. Craven and Harry L. Craven, her husband, and Mrs. Allison, with Frank J. Higgins, Esq., a member of the bar, and Samuel W. Garrison, a real estate agent in Jersey City, called at the residence of the complainant and met the complainant and her mother. The purpose of their visit was fully explained. They said that Ann Dusenbery had, in 1910, conveyed to Mrs. Craven and Mrs. Allison the homestead property for the sum of \$10,000 individually and not as executrix, and that they had sold the property for \$50,000, and that an objection was raised to their title because Ann had not executed the deed as executrix under the power of sale, and told her that her share of the consideration paid was one-third of \$10,000 or \$3,333.33. She then signed the deed and was informed that when the title passed, a check would be sent to her for that amount; and after the title was passed, in January, 1923, a check was received by her for that amount.

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30

Both the complainant and her mother deny that complainant was informed that the property had been sold for Fifty Thousand Dollars; they state that they asked what the amount was, and defendants did not inform them, but said the sale "was for a large sum of money." I am satisfied, how-

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Conclusions

ever, that a full disclosure was made by the defendants and their counsel, Judge Higgins, and that on that day the complainant knew that the property was being sold for Fifty Thousand dollars. The complainant, however, admits that in
10 the following summer of 1923, she actually knew the amount for which the property had been sold.

The relations between the parties seem to have been quite friendly, and no date is fixed in the testimony when they became strained. However, on November 28th, 1924, almost two years after the complainant had full knowledge of the situation, she filed two bills in Chancery, one for the
20 very relief sought for by the present bill, and another for the partition of the Bergen Avenue property. The defendants in the bill first above referred to were Margaret Craven and Sarah Allison. While these suits were pending, Margaret Craven died, on December 31st, 1924; and Mrs. Allison died on January 16th, 1925.

On February 5th and February 9th, 1925, stipulations were filed to dismiss both these suits without prejudice; and, on the same dates, decrees
30 dismissing the respective bills were entered.

After the deaths of Mrs. Craven and Mrs. Allison there was an offer made to purchase the Bergen Avenue property for \$105,000. Mr. Garrison, as trustee of the estate of Margaret Craven, and the complainant, were anxious to sell, but Jean K. Allison and Laura A. Griffin, the devisees of Sarah Ann Allison, were unwilling to
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Conclusions

sell unless all the suits were settled; and, the suits having been settled, they apparently entered into a contract in 1925, although no date was mentioned. The complainant says in 1925 she joined in the sale of the Bergen Avenue property; and at another place it is testified that the title passed in January, 1926. The testimony on this point is rather obscure, but, reading the testimony, I take it that a contract was entered into in 1925 which was performed in January, 1926. 10

The testimony is overwhelming that the sale of the Bergen Avenue property was held up pending this settlement. The complainant discharged her lawyer, and Mr. Garrison procured the funds to pay his bill and to discharge a mortgage which Mr. Harber's client had on the share of the complainant. 20

In a letter written by the complainant to Jennie Allison, a grandniece of Mrs. Craven (of whom Mr. Garrison was trustee), dated February 16th, 1925, among other things, she said,

"I wish to also tell you that I have dismissed Mr. Harber on the case—I have notified him of his dismissal last Saturday. I think from your conversation here in my home that both you and your sister are rather anxious to sell the estate as soon as possible—and so as I am as anxious for a sale too—I have come to the conclusion that it is best for me to dismiss Mr. Harber—as once it goes to "court" there will be no hope for a sale. 30 40

Conclusions

10 “So now Jennie, there is nothing for us to stop from selling any longer—if you and your sister are as anxious for a sale as I am. I do so wish we would all come together as soon as possible and agree to sell. I—for my part—think we could invest in better paying business than what these houses are now bringing in—one really can’t live off that income. Please think this matter over and let me know what you think about it? I have also wrote your sister too,”

20 and in a letter written to Laura Griffin, a daughter of Mrs. Allison, dated February 16th, 1925, she wrote to substantially the same effect, and in another letter to Laura Griffin, written by the complainant and dated March 2d, 1925, she wrote to the same effect.

30 On February 27th, 1925, the complainant wrote Mr. Garrison as follows: “I hereby authorize you to act as my agent to settle bill of Samuel Harber,” after which is the following: “I, Margaret Dusenberry, of full age, on my oath depose and say that I have no claim against the sale of Glenwood and Bergen Avenue property, that I released same when I joined in the deed,” signed “Margaret Dusenberry,” and sworn to before S. W. Garrison, Notary Public of New Jersey. I pay little attention to this affidavit, beyond the fact that it indicates that the complainant was desirous of settling her differences with the defend-
40 ants in order to have the defendants join in the

Conclusions

sale of the Bergen Avenue property, which sale, as above stated, was consummated by the payment of \$105,000, one-third of which, less some expenses, was paid to the complainant.

Nothing further appears to have transpired 10
until the 16th of December, 1925, when Mr. Boardman wrote to Mr. Garrison a letter, which was in the nature of a demand, that the defendants account to the complainant for one-third of the \$50,000 less the sum of \$3,333.33; and thereupon she filed her bill on December 28th, 1925, seeking the same identical relief as that asked for in her bill filed on November 28th, 1924, and which was dismissed by consent, as above stated. 20

The bill charges, among other things, that the deed from Ann Dusenberry was procured by fraud, without consideration, with intent to defeat the right of the complainant in the premises, and was fraudulent, null and void, and only operated to pass a life estate. The bill also charges that it was the duty of the defendants to furnish her, in the transaction with her, not only full and truthful information as to the nature of the trans- 30
action in which she was concerned, but competent, independent legal advice in the premises. It is also charged that at the time complainant signed the deed the defendants misrepresented the facts to her, and the statements made were false and untrue, and were so known to be by the defendants, and that such statements were made with the purpose of inducing the complainant to act thereon, and that, believing the statements to 40

Conclusions

be true, she acted thereon; and that the conduct of Margaret Craven and Sarah Ann Allison in the premises was fraudulent; and she prays that the defendants may pay to her one-third of the net proceeds of the sale of the property conveyed
10 to the said Isaac M. Schackter and Louis Schuchman.

As above stated, I find that the conduct of the defendants was frank, open and fair in their dealings with the complainant. True, she was not furnished with independent advice, and while I think it would have been quite proper for the defendants, before the transaction was consum-
20 mated, to have seen to it that the complainant had independent advice, yet, as the conveyance was not in the nature of a gift, and, as hereinafter stated, the complainant did no more than she was morally bound to do, I do not regard the doctrine of independent advice as applicable.

I am inclined to the view that in the conferences leading to the sale of the Bergen Avenue property, the parties settled all their differences as
30 to the homestead property, and that such settlement was fair.

But I am not content to let my decision rest upon the above ground alone. When the executrix made the conveyance to her two daughters, she had the power and authority to sell the lands and convey a fee simple. That she intended to convey a fee simple the case leaves no room for
40 doubt. Her daughters paid the fair market value

Conclusions

of the fee; and it can hardly be assumed that their mother intended to convey, and they expected to buy, a life estate in lands where the life tenant was eighty-two years of age, and which was of trifling value. But, by a mistake in fact, they assumed that the property was the mother's and she conveyed by full covenant warranty deed in fee simple, which failed to pass the title intended to be conveyed. While I am inclined to the view that the deed might be reformed, yet, if the executrix were living she would have been morally bound to execute a deed which would make good the fee which she intended to convey. But she died without any of the parties having knowledge of this mistake, and it is my view that when the defendants in this case applied to the complainant for a deed which would correct the title so as to give to them the fee, the complainant did nothing more than she was morally bound to do, for which the grantees paid her \$3,333.33 more than the consideration paid for the deed from their parent.

I will advise a decree dismissing the bill.

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Testimony.

Appearances :

For the Complainant, Mr. Boardman.

For the Defendants, Mr. Townsend.

10 THE CASE FOR THE COMPLAINANT

MARGARET DUSENBERRY, sworn.

Direct-examination by Mr. Boardman :

Q. Where do you live? A. 105 Westover Place,
West New York, N. J.

Q. And what was your father's name? A. Ben-
jamin Dusenberry.

20 Q. He is dead? A. Yes, sir.

Q. And your grandfather's name was James
Dusenberry, and he is dead? A. Yes, sir.

Q. Do you remember the date of your grand-
father's death? A. February 4th, I think, 1886.

Q. And the date of your father's death? A.
February 13th, 1908.

Q. And your grandfather left a will, did he?
A. Yes, sir.

30 Mr. Boardman: I offer the will of James
Dusenberry in evidence (exhibiting the
same to Mr. Townsend).

Mr. Townsend: No objection.

(The paper is admitted and marked
Exhibit C-1.)

Q. Your father left no will? A. No, sir.

Q. Where did your grandfather live? A. 791
Bergen Avenue, Jersey City, N. J.

40 Q. And what was your grandmother's name?
A. Ann Dusenberry.

Margaret Dusenberry—Direct

Q. And did she, after the death of your grandfather, continue to live at 791 Bergen Avenue?

A. Yes, sir.

Q. Until the time of her death, or nearly so?

A. Yes, sir.

Q. And when did she die? A. September 30th, 1922. 10

Q. Now, in December, 1922, where were you living? A. 1927 Third Street, North Bergen, N. J.

Q. And who made up the family? A. My mother, my stepfather and myself.

Q. What was your stepfather's occupation? A. Truck-driver.

Q. How was the family supported? A. Why, my mother and I were working. 20

Q. Now, who, at that time, were the other descendants or children; or were there any children of Benjamin Dusenberry living at that time, except yourself? A. No, sir.

Q. Who, of James Dusenberry's children? A. Two daughters.

Q. Who were they? A. Sarah Allison and Margaret Craven.

By the Vice-Chancellor:

Q. They were children of your grandfather? A. Yes, sir. 30

Q. They were your aunts? A. Yes, sir.

By Mr. Boardman:

Q. Where did Margaret Craven live? A. 791 Bergen Avenue.

Q. And where did Mrs. Allison live? A. 20 Highland Avenue, Jersey City.

Q. And had Mrs. Craven a husband? A. Yes, sir. 40

Margaret Dusenberry—Direct

Q. His name was what? A. Harry Craven.

Q. Did you see your two aunts in December 1922? A. Yes, sir.

Q. You and your two aunts were the heirs of James Dusenberry at that time? A. Yes, sir.

10

The Vice-Chancellor: No, that is not so; they were the devisees.

Mr. Boardman: Well, they were the heirs.

20

The Vice-Chancellor: As I understand, James Dusenberry died leaving three children, one of whom was the father of this witness, and he died after his father's death, so that she took by descent from her father, and her father and the other two children of James Dusenberry took by devise.

Mr. Boardman: Yes, sir.

By the Vice-Chancellor:

Q. Your father died without leaving a will? A. Yes, sir.

Q. What children survived your father?

30

Mr. Boardman: Did you have any brother or sister.

A. No, sir.

Q. Were there any others born alive? A. No, sir.

Q. You were the only child? A. Yes, sir.

By Mr. Boardman:

Q. At that time was Mrs. Allison living? A. Yes, sir.

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Margaret Dusenberry—Direct

Mr. Townsend: What date are you speaking of?

Mr. Boardman: December, 1922.

Q. Did you see your two aunts in December, 1922? A. Yes, sir.

Q. Where? A. At my home, 1927 Third Street. 10

Q. With whom did they come? A. With Mr. Garrison and Mr. Higgins.

By the Vice-Chancellor:

Q. Frank J. Higgins, the lawyer? A. Yes, sir.

By Mr. Boardman:

Q. What time of day did they come? A. They came in the morning before noon, on December 28th, 1922. 20

Q. And tell us about their coming? A. Well, on the morning of December 28th—

Mr. Townsend: Well, of course, if she is going to testify to conversations and transactions with the deceased, I object.

The Vice-Chancellor: Who is deceased—Mrs. Allison?

Q. Well, both Mrs. Allison and Mrs. Craven are dead? A. Yes, sir. 30

Q. And when did Mrs. Craven die? A. December 31, 1924.

Q. And when did Mrs. Allison die? A. January 16, 1925.

Q. And they both left wills? A. Yes, sir.

Q. Now, leaving out anything that either of your aunts said, can you tell what happened on December 28th, 1922? 40

Margaret Dusenberry—Direct

Mr. Townsend: I object, if they go into transactions with the deceased.

The Vice-Chancellor: I will permit her to state anything that was not a conversation with the deceased at that time.

10 Mr. Townsend: Well, I understand that the decisions go further than that, if your Honor please—the statute says “transactions or statements”—now, she is attempting to describe a transaction.

The Vice-Chancellor: No; I suppose she can state that a deed was given, can't she?

Mr. Townsend: I don't know what she intends to say.

20 The Vice-Chancellor: I will retain your objection, and you can move to strike out the answer for anything objectionable.

Q. Did they come by appointment? A. No, sir.

Q. How did they come, do you know? Tell us how they came? What time of day was it? A. Before noon.

Q. And who let them in? A. My mother.

30 Q. And what took place there? A. Well, my mother opened the door, and Mrs. Craven said, “Let me in”—

Q. No, not what Mrs. Craven said—your mother opened the door, and who came in? A. Mrs. Craven.

Mr. Townsend: This is subject to my objection, I understand.

The Vice-Chancellor: Well, their coming in the house is not a transaction.

40 Mr. Townsend: I know, but they are leading up to it.

Margaret Dusenberry—Direct

The Vice-Chancellor: Yes; I will consider your objection, and I will let the testimony come in. (To the witness) Go ahead.

A. Mrs. Craven was the first one in, and she told my mother, "Let me in; let me in," she said, "I have some news, I have some good news— 10

Q. No, not what she said: Mrs. Craven came in? A. Yes.

Q. And Mrs. Allison? A. Mrs. Allison, Mr. Garrison and Mr. Higgins.

Q. And did you execute a deed that morning? A. Yes, sir.

Q. Who took the acknowledgment? A. Mr. Garrison and Mr. Higgins. 20

The Vice-Chancellor: Have you got the deed here?

(Mr. Boardman produced a paper, which he said was a copy of the deed.)

Mr. Boardman (To Mr. Townsend): Have you the original deed?

Mr. Townsend: No, sir; this is the first time I have ever seen it (referring to the copy produced by examining counsel).

Mr. Boardman: I offer in evidence a certified copy of a deed from Margaret Craven, Harry I. Craven, her husband, Sarah Ann Allison, widow, and Margaret Dusenberry, unmarried, of the first part, to Isaac M. Schacter and Louis Schuchman, of Jersey City, of the second part, in consideration of one dollar, dated the 28th day of December, 1922, acknowledged by all the parties on the 28th day of December. 40

Margaret Dusenberry—Direct

1922, before Frank J. Higgins; recorded January 6th, 1923, in Hudson County Register's Office, in Book 1466 of Deeds, page 459; and conveys the premises in question.

(Admitted, and marked Exhibit C-2.)

10

The Vice-Chancellor: Now, the answer admits that the consideration for this deed deed was \$50,000?

Mr. Townsend: That is what the property was sold for; yes, sir.

The Vice-Chancellor: I think the bill alleges it, and the answer admits it, less a certain sum for taxes.

20

Mr. Townsend: There is no doubt about that—and commissions.

Q. Was Judge Higgins your lawyer? A. No, sir.

Q. Did you pay him any fee? A. No, sir.

Q. Did he advise you whether to sign it, or not to sign it? A. No, sir.

By the Vice-Chancellor:

Q. Well, who asked you to sign it? A. Why, Mr. Garrison said that it would be necessary for
30 me to sign it in order for my two aunts to clear up the deal; and Mr. Higgins explained why I had to sign it.

By Mr. Boardman:

Q. And shortly after that time did you receive a check through the mail? A. Yes, sir.

Q. Whom did that come from? A. Mr. Garrison sent it.

Q. Is this the letter whereby it was transmitted
40 (showing the witness a paper)? A. Yes, sir.

Margaret Dusenberry—Direct

Mr. Boardman: I offer the letter in evidence.

(Admitted, and marked Exhibit C-3.)

Q. Have you ever received anything more, or any more money for executing that deed than this \$3333.33? A. No, sir. 10

Q. Who was Mr. Garrison? A. He was the administrator.

Q. Well, administrator of whom, or what? A. Of James Dusenberry.

By the Vice-Chancellor:

Q. Of your father's estate? A. Of my grandfather's.

By Mr. Boardman: 20

Q. And he is now executor of one of your aunt's estate? A. Yes, sir.

Mr. Townsend: Margaret Craven's.

Mr. Boardman: Margaret Craven's, yes.

Q. Did you learn from Mr. Garrison that you were to receive this sum of \$3333.33?

Mr. Townsend: I object, on the ground that the question is leading. I think the proper question would be what she learned from Mr. Garrison. 30

The Vice-Chancellor: I will sustain the objection.

Q. All right; I will accept the question: What did you learn from Mr. Garrison? A. Well, Mr. Garrison said that my two aunts requested me to sign the deed, that it was necessary in order to pass the title.

Q. And did he say how much you were going 40

Margaret Dusenberry—Direct

to get? A. He said I was to get one-third of ten thousand dollars.

Q. Was there any discussion of your getting any larger sum? A. No, sir.

Q. That was the figure that you were to get?

10 A. Yes, sir.

Q. What did you understand you were to get that for?

Mr. Townsend: I object.

(Question withdrawn.)

By the Vice-Chancellor:

Q. Did Mr. Garrison tell you why he was giving you the \$3333.33? A. I was to get it in order to get the one-third of ten thousand dollars; Mr. Garrison said I was supposed to have one-third of the ten thousand dollars; that my two aunts had bought the property off of my grandmother for ten thousand dollars.

20

By Mr. Boardman:

Q. Did you make any bargain with anybody that day?

Mr. Townsend: I object to the question as leading.

30

The Vice-Chancellor (To the witness): State all the conversation.

Q. Well, state all the conversation, barring out what you have said that Mrs. Allison and Mrs. Craven said? A. Well, Mr. Garrison spoke up, and he said that they had come for me to help them pass the deed; that Mrs. Craven and Mrs. Allison was about to close up the transaction of the old homestead property, and that in order to

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Margaret Dusenberry—Direct

rightly close it up some lawyer had said it was best for them to have me sign the deed.

By Mr. Townsend:

Q. Who said that? A. Some lawyer had told them that it would be best for me to sign the deeds; that Mr. Higgins would explain; and Mr. Higgins, he explained that back in 1910 my grandmother had sold the property to my two aunts for the sum of ten thousand dollars; that I had never signed off then, in 1910, so it was necessary to sign then, at that time, on the deed, in order for my two aunts to clear up that deed. 10

The Vice-Chancellor: Mr. Townsend, there is nothing objectionable offered, so far, is there? I do not see anything in it but conversations with Mr. Higgins and Mr. Garrison. 20

Mr. Townsend: No, I do not think there is anything objectionable, so far.

Q. Now, was there anything else, that you recall, that either of these two gentlemen said?

A. Nothing was said by them; but—

Q. No, do not tell what your aunts said; did Harry Craven say anything? 30

Mr. Townsend: Well, if they restrict themselves to the conversation that day, I do not think I have any objection to it.

The Vice-Chancellor: Well, go ahead. you do not object to her testifying to what the two sisters, the deceased ladies, said?

Mr. Townsend: If they confine themselves to the conversation that took place among the party of them—Mrs. Craven, 40

Margaret Dusenberry—Direct

10 Mrs. Allison, Judge Higgins and Mr. Garrison (I don't know whether Mr. Craven was there at that time) but if she confines herself to the conversation that took place then, with all of them there, I have no objection. I do not want to be considered as having waived that on future conversations.

The Vice-Chancellor: (To Mr. Boardman) All right; you may show what these sisters said at that time.

20 Mr. Townsend: And your Honor will understand that I do not waive objection to any such other conversations when they attempt to introduce them.

The Vice-Chancellor: Oh, well, this will only be the conversation in the presence of Mr. Garrison and Judge Higgins; so you can ask what the aunts said then.

30 Q. Now, tell us the whole story—just what happened when they got there that morning? A. Mrs. Craven was the first one in; and Mrs. Craven said, "Let me in," she says, "I have good news for Margaret;" and Mr. and Mrs. Craven and Mrs. Allison and Mr. Higgins and Mr. Garrison all came in; and they took off their coats, and they introduced Mr. Higgins to me, and they sat down around the table, got out their papers, and Mr. Garrison explained that I had to sign the deed for the selling of the old homestead.

Q. Did they say what the "good news" was?

Mr. Townsend: Well, I object to that.

40 The Vice-Chancellor: Oh, let her tell the story.

Margaret Dusenberry—Direct

Q. All right—go ahead? A. And when that was through, Mr. Garrison said that Mr. Higgins would explain; and Mr. Higgins told me that back in 1910 my grandmother had sold the property to the two daughters for the sum of ten thousand dollars, and that I had never signed then, and it was necessary for me to sign now in order for my two aunts to pass title, and I was to get the one-third of the ten thousand dollars; and I was very surprised; and I at last joined in signing the deed with my two aunts and Mr. Craven. 10

Q. And then what was said? A. And then I asked them when I was to get this money. Mr. Garrison said he would send it through by registered mail in a week. And then Mrs. Craven told me it would be best for me to make a will; and I asked her why I should make a will when I had nothing. She said, "Well, you have this money," she said, "so why not make a will? and I said, "How could I make a will when I didn't have nobody to make it for me," and she said, "Well, Mr. Higgins is here and he will fix it up for you." So I consented, and went in the adjoining room with Mr. Higgins, and drew up a will, with Mr. Garrison as a witness; and then we all came out together, and we bid one another good-bye, and Mrs. Craven, as she kissed me good-bye, said "Don't worry, Margaret, now everything is all right," she said, "and I will be your friend, and every penny I get I will share with you, from Papa's money;" she said, "every penny I get I will share with you." 20 30

Margaret Dusenberry—Direct

By Mr. Townsend:

Q. Was this while Mr. Garrison was there? A. Yes, Mr. Garrison was there.

By the Vice-Chancellor:

10 Q. Well, how long were they at your house that morning? A. Maybe about an hour.

By Mr. Boardman:

Q. Did you consult with anyone before signing this deed? A. No, sir.

Q. Did you ever hear of the deed before it was brought there that day? A. No, sir.

By the Vice-Chancellor:

20 Q. Was it suggested by anyone that you should obtain your own independent counsel? A. No, sir.

Q. Did you rely only on what they said to you, when you signed that deed? A. Yes, sir.

By Mr. Boardman:

Q. What sort of a house was the old homestead, 791 Bergen Avenue? A. It was a frame building, three stories.

30 Q. Situate where? A. On the corner of Glenwood and Bergen Avenues.

Q. And it was the homestead of the family? A. Yes.

Q. Your grandfather's home and your grandmother's home? A. Yes, sir.

Q. And Mrs. Craven's home? A. Yes, sir.

Q. What was your grandmother's name? A. Ann Dusenberry.

40 Q. Did you ever hear her called "Jane Dusenberry"? A. No, sir.

Margaret Dusenberry—Direct

Q. Who was Harry Craven? A. The husband of Margaret Craven.

Q. What was his business before he was taken sick? A. He worked in the Pennsylvania Railroad is all I know.

Q. How old were your aunts, when they came to see you that day? A. They were around in their fifties. 10

By the Vice-Chancellor:

Q. How old are you? A. Twenty-six, at that time.

Q. Did you ever have any experience in business? A. No, sir.

Q. Did you ever sign a deed before? A. No, sir. 20

By Mr. Boardman:

Q. Have you ever received any money from the estate of Ann Dusenberry, as distinguished from James Dusenberry? A. No, sir.

Q. As far as you know, you have not? A. No, sir.

Q. When, in the Fall of 1922, had you seen your two aunts, before this? A. When they came up and read the two wills. 30

Q. What two wills? A. James Dusenberry's and Ann Dusenberry's wills; they came up on October 9th, 1922.

Q. You consented to Mr. Garrison being made administrator, with the will annexed, of your grandfather? A. Yes, sir.

Margaret Dusenberry—Cross

CROSS-EXAMINATION by Mr. Townsend:

Q. Miss Dusenberry, is not your memory somewhat faulty when you say that you did not get anything from your grandmother's estate? You did get some property up in Rockland County,
10 New York, didn't you—do you remember that now? A. Yes, sir.

Q. And that came from your grandmother, Ann Dusenberry, didn't it? A. Yes, sir.

Q. You joined in the contract with your aunts to sell that? A. Yes, sir.

Q. Now, when you signed this deed you understood that you were going to get \$3333.33, didn't you, or one-third of the \$10,000? A. One-third
20 of the \$10,000, they told me.

Q. And that is what you got? A. Yes, sir.

Q. Now, when your aunt left—when you spoke about this conversation—and she said, "I will share everything I get from your grandfather," was there anyone there when she said that? A. They were all there.

Q. Mr. Garrison? A. Yes, sir.

Q. Mr. Higgins? A. Yes, sir.

Q. They were all there? A. Yes, sir.

30 Q. Now, they came to you on October 9th, 1922, and read the wills of your grandfather and grandmother? A. Yes, sir.

Q. And you knew then that you were entitled to one-third of the property that your grandfather left? A. Yes, sir.

Q. And that included the property on Bergen Avenue, included the property we are now discussing on Glenwood and Bergen, and it also included
40 the property on Bergen Avenue between Fairmount and Montgomery Street?

Margaret Dusenberry—Cross

Mr. Boardman: Just a minute—you do not mean that, do you—you do not mean that the homestead came from the grandmother's estate?

Mr. Townsend: No.

10

Q. And that property was on Bergen Avenue between Fairmount Avenue and Montgomery?

A. Yes, sir.

Q. You joined in the sale of that, here in 1925, didn't you? A. Yes.

Q. For \$105,000? A. Yes, sir.

Q. And you got one-third of it, or \$35,000? A. Yes, sir.

Q. And that was handled through Mr. Garrison, wasn't it? A. Yes, sir. 20

Q. Mr. Garrison represented you in that, and you got your money from that? A. Yes, sir.

Q. You did ask Mr. Higgins to draw this will for you when you were there? A. No, sir; I did not ask him.

Q. Well, you say Mrs. Craven suggested it? A. Mrs. Craven told me to make the will.

Q. Well, did you then give instructions to Mr. Higgins? A. I finally consented to it. 30

Q. Well, you told Mr. Higgins to whom you wanted to leave your property, didn't you? A. Yes, sir.

Q. You and Mr. Higgins went into another room and drew the will? A. Yes, sir.

Q. Did just you and Mr. Higgins go in there? A. Yes, sir.

Q. Did you tell him to whom you wanted to leave it? A. Yes. 40

Margaret Dusenberry—Cross

Q. And whom did you tell him you wanted to leave your property to? A. To my mother.

Q. Your mother is the lady sitting here? A. Yes.

Q. Thereupon, Mr. Higgins wrote out this will, in long-hand, and Mr. Garrison and Mr. Higgins signed it as witnesses? A. Yes, sir.

Q. What did you do with the \$3333.33 that you got? A. I put it in the bank.

Q. Well, did you loan any of it to anyone? A. No, sir.

Q. Didn't you give some to your step-father? A. No, sir.

Q. Or loan him any of it? A. No, sir.

Q. And what bank did you put that in, do you remember? A. The Hudson Trust Company, in Union Hill, New Jersey.

Q. Now, possibly your recollection is a little hazy about what happened at that time: it is a fact, is it not, that Mr. Garrison told you that your grandmother had sold this property to Mrs. Allison and Mrs. Craven? A. Yes, sir.

Q. You had known that for some time before that, hadn't you? A. No, sir.

Q. And that transfer had taken place in 1910, hadn't it? A. Yes, sir.

Q. And this, when they came to you, was in 1922? A. Yes, sir.

Q. Now, didn't you know, between 1910 and 1922, that that had been conveyed to Mrs. Allison and Mrs. Craven? A. No, sir.

Q. Did you ever make any inquiries? A. No, sir.

Q. Never asked anyone? A. No, sir.

Margaret Dusenberry—Cross

Q. Now, Mr. Garrison told you, didn't he, that your grandmother, in signing that deed, had made a mistake—that she had neglected to sign as executrix of your grandfather's estate—didn't he tell you that? A. He said that, yes.

Q. And he told you that if she had signed it as executrix of the grandfather's estate, she had the power under the will to do so, and if she had signed it as that, you would not have any interest in the property? A. Yes, sir. 10

The Vice-Chancellor: Is that so?

Mr. Townsend: Yes, sir.

The Vice-Chancellor: She would have an interest in the \$3333.33.

Mr. Townsend: In the property—I am speaking of the property itself, the real estate. She would have an interest in the consideration, yes, sir. 20

Q. Now, he told you that they had contracted to sell this property to a Mr. Schacter and a Mr. Schuchman, didn't he, and that Col. Fisk was making the search? A. I don't remember him telling me about Col. Fisk.

Q. He told you a lawyer was making the search? A. He told me some lawyer was making it. 30

Q. And, in making the search, they had found out that your grandmother had failed to sign this deed as executrix of your grandfather's estate? A. Yes, sir.

Q. And there, in order for them to convey a clear title, it would be necessary for you, as a descendant of your father—that is, your father's daughter—to sign this deed and clear the title, didn't he? A. Yes, sir. 40

Margaret Dusenberry—Cross

Q. And he told you that if Mrs. Dusenberry had signed the deed itself as executrix, you would be entitled then to only one-third of the purchase price, or one-third of the ten thousand dollars, as she had signed back in 1910? A. Yes.

10 Q. And he also told you, at the time, that they were selling this property for fifty thousand dollars, didn't he? A. They didn't mention any sum.

Q. Didn't you ask them how much they were selling it for? A. I asked them, but they said "A sum of money".

Q. And do you mean to say that neither Mr. Garrison or Mr. Higgins told you that they were selling for fifty thousand dollars? A. They
20 didn't mention no sum at that time.

Q. Didn't you ask them again? A. No, sir.

Q. Didn't your mother ask them? A. My mother asked them, and they all said "For quite a sum of money".

Q. So you knew then it was for a large sum of money? A. I knew it was for some sum of money.

Q. And notwithstanding the fact that you said they refused to tell you what they were selling
30 it for, you went ahead and signed the deed, agreeing to sign it for \$3333.33? A. I thought I was getting one-third of \$10,000.

Q. In other words, when you signed this deed, you thought what you were doing it for was for one-third of what the previous sale had been, in order to straighten out the title? A. Yes, sir.

Q. And at that time you knew that if your grandmother had signed the deed as executrix of
40 your grandfather's estate, you would not have

Margaret Dusenberry—Cross

had any interest in the real estate—that is the fact, is it not? A. Yes, sir.

Q. Now, you and your stepfather and your mother lived there together? A. Yes, sir.

Q. How long had your mother been married, do you remember, at that time? A. To my own 10 father?

Q. To your stepfather? A. Since 1910.

Q. She was married in 1910? A. To my stepfather.

Q. And you had always lived with your mother? A. Yes, sir.

Q. And with your stepfather, after her remarriage? A. Yes, sir.

Q. And that was usually in North Bergen or 20 Union Hill? A. No, in Fairview and North Bergen.

By the Vice-Chancellor:

Q. Fairview is in Bergen County? A. Yes, sir.

By Mr. Townsend:

Q. When did you move away from Jersey City?

A. At the time of my father's death, in 1908.

By the Vice-Chancellor:

Q. In 1908? A. 1908. 30

By Mr. Townsend:

Q. When was the first time that you found out the exact sum for which this property had been sold—you said that you knew it was sold for a large sum? A. On December 28th, 1922.

Q. On December 28th, 1922, you found out it had been sold for fifty thousand dollars? A. No, I found out they were selling it for a large sum of 40

Margaret Dusenberry—Cross

money; and then, in the following year, the middle of the following year, I found out that it was sold for fifty thousand dollars.

Q. In other words, it was in the middle of 1923 that you found out that it had been sold for fifty
10 thousand dollars? A. Yes, sir—around in the summer, in the summertime.

Q. Now, you never took any action in respect to that until sometime in the fall of 1924, did you?

A. What is that?

Q. In the fall of 1924? A. No, sir, I never took any action.

Q. Was that when you retained Mr. Harber as your attorney? A. Yes, sir.

20 Q. You had no money at that time, did you? A. No, sir.

Q. Well, you had no difficulty in getting the services of a lawyer then? A. No, sir.

Q. Mr. Harber filed in this court an action against Mrs. Craven and Mrs. Allison, asking them, in substance, to account to you for the difference between \$3333.33 and \$16,000, didn't he?

30 Mr. Boardman: I object; I think the papers must speak for themselves.

Mr. Townsend: Well, I cannot very well offer the papers in cross-examination; this is merely preliminary.

The Vice-Chancellor: I will overrule the objection.

A. Yes.

40 Q. And also, at the same time, he filed a bill in this court, to partition the lands on Bergen Avenue between Fairmount and Montgomery, didn't he? A. Yes, sir.

Margaret Dusenberry—Cross

Q. And that was the property that was afterwards sold to the Able Engineering Company for \$105,000 cash? A. Yes.

Q. Of which you received one-third? A. Yes, sir.

Q. At that time you were anxious to sell this property, weren't you? A. Yes, sir. 10

Q. And Mr. Garrison had come to you with an offer from a Mr. Cox—Mr. Everett Cox—to sell that property for \$105,000? A. Yes, sir.

Q. And, in the meantime, Mrs. Allison and Mrs. Craven had died, after you had started that suit? A. Yes, sir.

The Vice-Chancellor: Started which suit?

Mr. Townsend: Both suits—the partition suit and the previous action in this Court for an accounting, similar to the one that is now being tried. 20

The Vice-Chancellor: Pending these prior suits, Mrs. Craven and Mrs. Allison both died, did you say?

Mr. Townsend: Yes; they died within a month of each other, and practically within a month after the suits had been started. 30

The Vice-Chancellor: And before they were discontinued?

Mr. Townsend: And before they were discontinued; yes, sir. Afterwards, it will appear that the proceedings were amended, so that the executors of the estates were brought in as parties.

Q. Mrs. Craven did not leave any children? A. No. 40

Margaret Dusenberry—Cross

Q. Mrs. Allison left two daughters? A. Yes, sir.

Q. Miss Jean Allison and Mrs. Laura Griffin?
A. Yes, sir.

Q. They refused to sell, or Mrs. Griffin did? A.
10 Yes, sir.

The Vice-Chancellor: Refused to sell what?

Mr. Townsend: The Bergen Avenue property, between Fairmount and Montgomery.

Mr. Boardman: What time are you addressing your question to?

Mr. Townsend: Oh, sometime in 1924,
20 after the death of Mrs. Craven and Mrs. Allison.

Q. Now, you were anxious to accept the offer of Mr. Cox, weren't you? A. I was willing.

Q. And at about that time you secured a mortgage loan upon your undivided one-third interest in this property? A. Yes, sir.

Q. From Mr. Harber's client? A. Yes, sir.

Q. In the meantime you had been receiving
30 from Mr. Garrison your interest in the income of that property, hadn't you, on Bergen Avenue and Fairmount? A. Yes, sir.

The Vice-Chancellor: That is, one-third of the rents?

Mr. Townsend: Yes, sir; one-third of the rents.

Q. Now, in February of 1925 you directed, did you not, Mr. Harber to discontinue his actions?
40 A. Yes, sir.

Margaret Dusenberry—Cross

Q. And Mr. Harber presented you with a bill of some \$1187.75?

Mr. Boardman: I object; I think this has gotten away from cross-examination.

The Vice-Chancellor: It is not cross-examination. 10

Mr. Townsend: I submit that it is material, for the purpose of showing what we have pleaded—a release.

The Vice-Chancellor: Well, you can prove that, if you want to.

Mr. Townsend: That is what I propose to do now.

The Vice-Chancellor: I know, but you are not cross-examining now. If you want to make the witness your own, you may do so. 20

Mr. Townsend (producing a paper): May I ask this for the purpose of identification?

The Vice-Chancellor: Yes.

Q. (Showing the witness the paper) That is your signature, is it not? A. Yes.

Q. And the signature below is your signature? A. Yes, sir.

(The paper identified by the witness is marked for identification M. T-1.) 30

Q. I show you a letter, purporting to be dated January 18, 1924, addressed to "Dear Aunt Margaret," and ask you if that is your signature? A. Yes, sir.

(The letter is marked for identification, M. T-2.) 40

Margaret Dusenberry—Cross

Q. I show you another letter, dated February 14, 1925, addressed to Mr. Garrison, and ask you if that is your signature? A. Yes, sir.

(The letter is marked for identification M. T-3.)

10

Q. I show you another paper, and ask you if that is the bill you received from Mr. Harber? A. Yes, sir.

(The paper is marked for identification, M. T-4.)

20

Q. I show you another letter, dated March 18, 1925, on the stationery of the Garrison Real Estate Exchange, and addressed to Mr. Garrison, and ask you if that is your signature? A. Yes, sir.

(The paper is marked for identification M. T-5.)

Q. I show you another letter, of October 31, 1923, purporting to be addressed to your Aunt Margaret, and ask you if that is your signature? A. Yes, sir.

(The paper is marked for identification, M. T-6.)

30

Q. I show you two letters, one dated January 25, 1925, and the other February 16th, 1925, each addressed to "Dear Jennie," and ask you if they are your signatures? A. Yes, sir.

Q. And the "Dear Jenny" referred to therein is Miss Jean Allison? A. Yes, sir.

Q. A lady who is sitting in the front row? A. Yes, sir.

40

(The two letters are marked, respectively, for identification, M. T-7 and M. T-8.)

Margaret Dusenberry—Cross

Q. I show you another letter of February 24th, 1923, addressed to "Dear Aunt Margaret," and ask you if that is your signature? A. Yes, sir.

(The letter is marked for identification, M. T-9.)

The Vice-Chancellor: Who was "Aunt Margaret"?

Mr. Townsend: Mrs. Craven.

Q. Now, Miss Dusenberry, you have seen Mr. Garrison frequently and on numerous occasions?

A. Yes, sir.

Q. Since this time that he and the other folks were at your house in 1922? A. Yes, sir.

Q. And he did considerable business for you, as far as collecting your rents, and your interest in this property was concerned—this Fairmount Avenue property, at Fairmount and Bergen? A. Yes, sir.

Q. Now, did you ever ask him, on any occasion, other than this time that he was there in December, 1922, with Mrs. Allison and Mrs. Craven, as to how much they sold this Glenwood Avenue property for? A. No, sir.

Q. And when you found out, in the Summer of 1923, that they had sold it for fifty thousand dollars, did you ever ask him then? A. No, sir.

Q. Did you ever say anything to him about it, except on the occasion after Mr. Harber had started a suit? A. No, sir.

Q. And you never asked him why he would not tell you the exact amount it was sold for? A. No, sir.

Q. And when you said it was "for a large

Margaret Dusenberry—Cross

sum", how much did you think it was? A. I didn't know; I never inquired.

Q. Well, he told you it was "for a very large sum," I understood you to say? A. Yes, sir.

Q. And then you say you did not ask him how
10 much it was? A. I asked him, and they said "it was for a large sum."

Q. "A very large sum"?

The Vice-Chancellor: No, "a large sum".

Q. Did you ask him to name the figure? A. No, sir.

Q. And when you found out what it was, you never even said anything to Mr. Garrison about it? A. No.

20 Q. Although you saw him on a number of occasions? A. Yes, sir.

Q. What did you do with the proceeds of this \$3333.33, after putting it in the bank? A. I put it in the bank, and I lived on it.

Q. Did you help to support your mother? A. Yes, sir.

Q. And helped to support your father? A. No, sir.

30 Q. Your stepfather and mother separated some time after that time? A. Yes, sir.

Q. About when was it, do you recall? A. 1923.

Q. So that you and your mother lived together? A. Yes, sir.

Q. And did I understand you to say that you did not loan any of that money to your stepfather? A. No, sir.

40 Q. Or did not invest it, or any part of it? A. No, sir.

Margaret Dusenberry—Re-direct

Q. Do you remember an occasion when your stepfather was going to buy a house, and you put up five hundred dollars as a deposit? A. I did not put it up.

Q. Oh, you didn't put it up? A. I did not put it up; I left my stepfather at that time, and it never went through; my mother and I separated from my stepfather at that time, and I never put up the money. 10

By the Vice-Chancellor:

Q. Do you know how old your grandmother was when she died? A. She was near a hundred, I guess.

Mr. Townsend: She was ninety-four. 20

RE-DIRECT EXAMINATION by Mr. Boardman:

Q. In May, 1910, where was Mrs. Craven, you Aunt, living? A. 791 Bergen Avenue.

Q. Under your grandmother's will what did you take?

Mr. Townsend: I object.

The Vice-Chancellor: The will speaks for itself. 30

Mr. Boardman: The will is not here, but you (addressing Br. Townsend) will admit that she only took specially.

Mr. Townsend: I don't know; I have never seen the will, but probably we can put that in afterwards. Have you got the will in your office?

Mr. Boardman: No, I have not.

Mr. Harber: I am not interested in that, but I think I have some records here that 40

Exhibits Offered in Evidence

might be of service to the Court. Which will do you want?

Mr. Boardman: Ann Dusenberry's.

10 The Vice-Chancellor: Well, go on to something else, and Mr. Harber can look it up.

Mr. Harber: I will see if I can find it.

Mr. Boardman: I offer in evidence certified copy of record of a deed, purporting to be made by Jane Dusenberry, widow, to Margaret Craven, *et al.*, dated May 16, her

1910, signed "Jane x Dusenberry", in the mark

20 presence of H. L. Craven and Frank J. Higgins; and acknowledged the 16th day of May, one thousand, nine hundred and ten, before Frank J. Higgins, Master in Chancery; and recorded May 19th, 1910, in Book 1075 of Deeds, page 5 (exhibiting the same to Mr. Townsend).

(Admitted without objection and marked Exhibit C-4).

30 Mr. Boardman: Now, I offer what seems to be the same deed, but corrected to read "Ann Dusenberry, widow". This deed, too, is dated May 16, 1910, and appears to her

have been signed "Ann x Dusenberry," mark

40 and to be witnessed by H. L. Craven and Frank J. Higgins, and to have been acknowledged on the 16th day of May, 1910, before Frank J. Higgins, and it is

Margaret Dusenberry—Re-direct

acknowledged on the 7th day of July, 1910 before Frank J. Higgins, Master in Chancery, and re-recorded July 8th, 1910, in Book 1075 of Deeds, at page 175, in the Hudson County Register's Office.

(Admitted, without objection, and marked Exhibit C-5.) 10

Mr. Boardman: I offer a transcript of the Will of Ann Dusenberry, produced by Mr. Harber.

(Admitted, without objection, and marked Exhibit C-6.)

The Vice-Chancellor: You can make copies of those, and furnish one to Mr. Townsend. 20

Mr. Boardman: Yes, sir; I will make copies of them.

Mr. Townsend: There is another paper I want her to identify.

By Mr. Townsend:

Q. I show you two letters, one dated February 16, 1925, the other March 2d, 1925, addressed "Dear Laura," and ask you if those are your signatures? A. Yes, sir. 30

Q. And "Dear Laura" is Mrs. Griffin, one of the defendants to this action? A. Yes, sir.

(The two papers are admitted and marked, respectively, for identification, M. T-9 and M. T-10.)

By Mr. Boardman:

Q. Have you a copy of the will of Ann Dusenberry, your grandmother? A. With me?

Q. No, have you a copy of the will of Ann Dusenberry? A. No, sir. 40

Margaret Dusenberry—Re-direct

Q. Did you ever have? A. No, sir.

Q. Did Mrs. Craven and her husband continue to live in the homestead after December 10th, 1910? A. Yes, sir.

10 The Vice-Chancellor: I understand that has been testified to before.

By Mr. Townsend:

Q. Prior to the death of your father, Miss Dusenberry, you lived in 749 Bergen Avenue? A. No, sir.

Q. No, before the death of your father? A. Yes, sir; before he died we lived there.

20 Q. And that was in one of the houses owned by your grandfather? A. Yes, sir.

Q. And was included in this piece of property that was sold for one hundred and five thousand dollars, about which we have spoken? A. Yes, sir.

Q. Your father never paid any rent there, did he? A. Not that I know of.

The Vice-Chancellor: What difference does it make?

30 Mr. Townsend: Well, none, other than the fact that he had received his share of the estate.

Mr. Boardman: That is not a subject of cross-examination.

The Vice-Chancellor: I do not see anything to it.

Mr. Townsend: All right.

40 Mr. Boardman: I offer in evidence a check, produced from Col. Fisk's office, dated January 5, 1923, to Margaret Dusen-

Samuel W. Garrison—Direct

berry, for \$3333.33, bearing the endorsements "Margaret Dusenberry" and "Hudson Trust Company of New Jersey".

(Admitted and marked Exhibit C-7.)

The Vice-Chancellor: Oh, there is no question about her having received the 10 money?

Mr. Boardman: No, sir; then I will just return the check.

The Vice-Chancellor: Yes.

SAMUEL W. GARRISON, sworn.

Direct-examination by Mr. Boardman: 20

Q. You are one of the defendants, as executor of Margaret Craven's will? A. Yes.

Q. You are also substituted administrator, with the will annexed, of James Dusenberry? A. I am substituted administrator of Ann Dusenberry, who was executrix under James Dusenberry's will.

Q. And you are administering both the estates of James Dusenberry and Ann Dusenberry? A. 30 Administering one; and in the other I was executor of Margaret Craven; but I had nothing to do with Ann Dusenberry's estate.

Q. You came into possession of all of the papers of the James Dusenberry Estate? A. Yes.

Q. Did you make some search to show any evidence that this \$10,000 had been paid?

Mr. Townsend: I object, as immaterial.

The Vice-Chancellor: I overrule the 40 objection.

Samuel W. Garrison—Direct

A. There was no evidence of any sort that I had in my hands where I could tell what happened back at that time.

Q. That does not quite answer my question. (Question repeated.)

10 The Vice-Chancellor: The answer will be "Yes", or "No". Did you make any search?

A. No.

Q. Has it not been a matter of comment in your mind, and in your expressions or words, that you found no evidence that the ten thousand dollar consideration for the deed of May 16th, 1910, had
20 been paid?

Mr. Townsend: I object.

The Vice-Chancellor: I sustain the objection.

Q. Have you ever seen any evidence that the ten thousand dollars called for by the deed of May 16th, 1910, was paid? A. No.

Q. Well, when were you appointed administrator of James Dusenberry? A. On the death of Ann Dusenberry.

30 Q. October, 1922? A. I imagine that is the date.

Q. Have you filed any account as executor of Margaret Craven's will? A. With the Surrogate?

Q. Yes. A. No; I have filed quarterly, when I send money to the heirs, I filed with the bonding company a quarterly statement.

Q. But you have not closed the estate? A. I have not been able to close it on account of this
40 suit.

Samuel W. Garrison—Direct

Q. And you have some funds in hand? A. Rents collected for the last quarter, and a small balance in bank.

The Vice-Chancellor: What has that got to do with this suit? As I understand it, the only question is whether these defendants' estates are to be charged with the payment to the complainant of thirteen thousand and odd dollars, being the balance of one-third of fifty thousand dollars, less the \$3333.33 paid—is not that all there is to it? 10

Mr. Boardman: Yes; I allege, though, that these estates are unsettled.

The Vice-Chancellor: If he is executor, and is collecting the rents under the authority of the will, you can go to the Orphans Court for that. 20

The Witness: There are no assets; it is all disposed of; there is nothing left.

Q. Well, just as matter of fact, the Estate of Margaret Craven is still unsettled? A. Margaret Craven's is unsettled, pending this suit; yes.

No cross-examination. 30

Mr. Boardman (to Mr. Townsend): Will you admit that the Estate of Sarah Ann Allison is still unsettled?

Mr. Townsend: Yes; that is unsettled, too.

The Vice-Chancellor: That is unsettled, awaiting the determination of this suit?

Mr. Townsend: Yes. There are some moneys due on account of the Estate of Margaret Craven. 40

The Complainant rests.

Samuel W. Garrison—Direct

THE CASE FOR THE DEFENDANTS

SAMUEL W. GARRISON, re-called.

Direct-examination by Mr. Townsend:

10 Q. Mr. Garrison, you are also in the real estate business, and under the name of the Garrison Real Estate Exchange, with your father? A. At the present time my father is not connected with it.

Q. Were you the one that acted as broker in the sale of this Bergen and Glenwood Avenues property to Schuster and Schuchman, in 1922? A. Our office, which was at that time a corporation, acted as broker, in connection with another
20 broker.

Q. And that sales price was— A. Fifty thousand dollars.

Q. And do you know who made the search on behalf of the purchaser? A. Mr. Fisk's office.

Q. Col. Fisk's? A. Yes.

Q. And when did you first receive information that the vendor could not give good title, or clear title? A. Sometime after the contract had been signed Mr. Fisk notified our office that the signature, or the form of deed was faulty, and told
30 me to see him, and he told me the trouble.

Q. And, as a result of that, you found that there was an outstanding interest in Margaret Dusenberry? A. Yes.

Q. And what then did you do? A. I reported it to Mrs. Allison and Mrs. Craven.

Q. And did you afterwards go to Miss Dusenberry's house? A. I did.

40 Q. And do you remember when that was? A. Oh, in 1922, sometime.

Samuel W. Garrison—Direct

Q. In the summer, fall or winter? A. I think it was, if I remember, a cold day.

By the Vice-Chancellor:

Q. Well, there was a deed signed the day you went there? A. Yes, there was a deed signed the day I went there. 10

By Mr. Townsend:

Q. Who was with you when you went there? A. Mr. Frank J. Higgins—

Q. He is a member of the Bar of the State of New Jersey? A. Yes, sir—and Mr. Harry Craven and Mrs. Margaret Craven and Mrs. Allison.

Q. And did you request Mr. Higgins to go? A. I did.

Q. Now, when you got there, will you just tell the Court, please, what took place—what conversation you had, and what was said between the parties? A. Well, after—I think it was Mrs. Craven—told Margaret why we had come, I told her the exact detail, as I understood it, of the transaction, and that, on going over the records we had found that a deed, in 1910, had been given by her grandmother and signed as an individual instead of as executrix; that if her grandmother had signed as executrix the deed would have been O. K., and it would not have been necessary for her to join in; but, as it was, there was an outstanding interest in her name, and it would be necessary, in order to give a clear title to the buyer, for her to join in a new deed. 20 30

Q. Was she told to whom the property was being conveyed, and how much it was being conveyed for? 40

Samuel W. Garrison—Direct

Mr. Boardman: That is leading, and two questions in one.

The Vice-Chancellor: I will sustain the objection.

10 Q. Well, what else was said about it? A. The entire transaction was discussed, and it was told that we were conveying it—

Mr. Boardman: Just what was said; do not give us conclusions.

The Vice-Chancellor: Just what did you say? Put it in substantially the same language you used then.

20 A. I was just trying to think back about a conversation four or five years ago.

30 Q. Well, give us the substance of the conversation? A. The amount of money to be paid was told; and it was told Margaret that if this property had been sold back in 1910 for ten thousand dollars she would have been entitled to one-third of it, and by withholding her signature from the deed at this time that the property could not be sold, and that she would have an action for recovery; but to all intents and purposes, that the property had been sold by her grandmother, excepting that it was signed faultily; and the amount involved was also spoken of; I don't know whether I mentioned it, or Mr. Higgins mentioned it.

40 The Vice-Chancellor: That that fifty thousand dollars was to be paid by the new purchaser was mentioned by someone, I don't know whether I mentioned it or Mr. Higgins, or the aunts, but it was mentioned and it was known—the amount.

Samuel W. Garrison—Direct

By Mr. Townsend:

Q. What happened then? A. Miss Margaret Dusenberry signed the deed; and I think that her aunt advised her to draw a will; and, as Mr. Higgins was there, they went in the adjoining room and drew a will, and requested me to witness it, which I did. 10

Q. Who went in the adjoining room? A. Margaret Dusenberry and Mr. Higgins, while we were outside discussing the price and the other details.

Q. Now, was there anything said at that time as to when she would get her money? A. Yes, she was to receive her money—she could not go, she was sick—and she asked me to send her one-third of the ten thousand dollars as soon as the title was passed. 20

Q. And did you ever give Col. Fisk instructions to that effect? A. In passing the title I told Mr. Fisk to draw a check for Margaret Dusenberry for \$3,333.33; and the other amount was divided equally between Mrs. Craven and Mrs. Allison.

By the Vice-Chancellor:

Q. That is, the balance of the fifty thousand dollars? A. Yes; the balance of the fifty thousand dollars, less commissions and expenses. 30

By Mr. Townsend:

Q. Now, Miss Dusenberry says that—

Mr. Boardman: That is a dangerous beginning.

Q. Miss Dusenberry has testified that she asked what the sum was that was received for the property, and it was told her that it was "a large sum", and no figures were given to her, no amount 40

Samuel W. Garrison—Direct

was stated—is that the fact, or not? A. I do not recall it.

Q. Now, subsequent to that time did you continue to have a number of business relations with Miss Margaret Dusenberry? A. Contin-
10 ually.

Q. In what respect? A. Oh, I was collecting the rents of the James Dusenberry Estate, and making her a quarterly statement; and then afterwards she became involved in a suit with Mr. Harber, and got mixed up in some money matters, and I advanced the money—discounted a note—to clear her on that; and also loaned her some money personally to tide her over her difficulties, because
20 she was in financial want.

Q. And what year was that? A. Well, that was over a long period of time; it was after the \$3333 was spent.

By the Vice-Chancellor:

Q. But before the Bergen Avenue property was sold? A. Yes; part of it was while the property was under contract, and part of it was before that time.

30 By Mr. Townsend:

Q. Well, do you recall any offer that you had for this property? A. Yes; first-off, Miss Dusenberry wished Mrs. Craven and Mrs. Allison, who were then alive, to sell the property. Mrs. Craven and Mrs. Allison would not sell. Miss Dusenberry needed money. I finally advised her that she could sell her one-third interest in that property; that by partitioning it, it would cost her too much
40 money, and that I had a party who would buy her third—it was Everett Cox—I wrote her a letter

Samuel W. Garrison—Direct

and told her to consider it well, and to take advice on it before she did anything further. Then I tried to persuade her to sell her interest for thirty-five thousand dollars (I think it was—it was either one-third of \$100,000, or one-third of \$105,000, I am not sure which). Mr. Cox and myself went up there and offered her a thousand dollar deposit. In the meantime she took advice, and the lawyer had commenced suit for the division of this property, and for her interest in the Bergen Avenue property. 10

At this point a recess was taken until two o'clock, p. m.

20

 AFTERNOON SESSION

Hearing of the cause resumed at two o'clock, p. m.

SAMUEL W. GARRISON, re-called:

Direct-examination resumed by Mr. Townsend: 30

Q. And that lawyer was Mr. Harber? A. Harber. Do you wish me to go on?

Q. Yes. A. After that the matter was taken up with Mr. Harber, as her representative; and Mrs. Craven was taken ill, and Mrs. Allison was taken ill—

Mr. Boardman: I object; I do not know what the question is that he is going on answering.

40

Samuel W. Garrison—Direct

Mr. Townsend: With reference to this property, and the institution of this suit.

Mr. Boardman: Well, I do not want the witness to go on rambling.

10 Q. And those suits—one was for the partition, and the other was for an accounting of the difference between the amount that she received of \$3333.33 and one-third of \$50,000—is that correct? A. Yes.

Q. And then do I understand that Miss Dusenberry would not accept the proposition of Mr. Cox, the offer of Mr. Cox? A. She refused that.

20 Q. And it was after that time that these suits were instituted by Mr. Harber as her solicitor? A. Yes; but before that Mr. Harber called at my house with Miss Dusenberry and her mother, and Mrs. Griffin was present representing her mother and Mrs. Craven; and an agreement was made between them—

Mr. Boardman: I object.

The Vice-Chancellor: State what was done.

A. An agreement was made—

30 Mr. Boardman: I object.

The Vice-Chancellor: State how the agreement was made.

A. The price of the property was discussed, and Mr. Harber, representing Miss Dusenberry to buy the property for Miss Dusenberry, or for one of his clients, and wished us to state the price, or wished the other heirs to state the price. It was
40 finally agreed upon that \$110,000 should be the

Samuel W. Garrison—Direct

price to be paid by Mr. Harber for Miss Dusenberry, or that he should accept an offer of \$110,000 from the other two heirs.

By the Vice Chancellor:

Q. This does not refer to the property on the corner of Glenwood Avenue? A. No, sir; this refers to the property on Bergen Avenue, 739 to 749 Bergen Avenue. I never had any deals with Miss Dusenberry about that. 10

By Mr. Townsend:

Q. Subsequent to that time, do you recall an occasion when Mr. Harber came down with some gentlemen from Union Hill? A. That was the time. 20

Q. There was a conference at my office then, wasn't there? A. No, sir; that was at my house; you were not there.

Q. Well, wasn't there one at my office? A. After the time matured when they were to accept it, we had written them a letter, through you, offering them \$110,000 for the entire piece to be divided; and then Mr. Harber refused to go into it.

Q. And was that the time that he then instituted this suit? A. Yes. 30

Q. That was after this conference? A. He did.

The Vice-Chancellor: What do you mean—instituted the present suit?

Mr. Townsend: No, sir—a separate suit for an accounting, and a partition suit.

The Vice-Chancellor: Just put the numbers of the suits in.

Mr. Townsend: Those suits were between 40

Samuel W. Garrison—Direct

10 Margaret Dusenberry, complainant, and Margaret Craven and Sarah Allison, defendants, and the docket number of one is 57/116, and the other is between the same complainant and Margaret Craven, Harry L. Craven her husband, Sarah M. Allison, widow, and Samuel W. Garrison (I think he is in here in a representative capacity); and that docket number is 57/118.

The Vice-Chancellor: That is enough description.

Mr. Townsend: Mr. Garrison was the substituted administrator. That was the suit for partition.

20 Q. After the institution of those suits did you see Miss Dusenberry, the complainant here? A. Not for some time.

Q. Well, about when did you see her? A. Right after the death of Margaret Craven, Miss Dusenberry's mother came to the house—to Margaret Craven's house—and was looking over the effects, and things had not been going so well, and she told me that she thought her daughter would sell, and for me to go up and see her, which I did.
30 After going there several times, she told me that she wished to get rid of Mr. Marber as her counsel, but she could not do so as she had signed a mortgage against her interest, and that he had not advanced all the money to her, he had been just apportioning it out to her—

Q. May I interrupt a moment: In the meantime, do you recall that you had gotten an offer from the Abel Engineering Company? A. I had
40 an offer at that time of \$105,000.

Samuel W. Garrison—Direct

Q. Cash? A. Yes, cash, from the Abel Engineering Company. At that time Mrs. Craven had died and Mrs. Allison had died. The Craven Estate, of which I was executor, wished to sell, but the Allison portion would not sell unless Margaret Dusenberry renounced all of her interest in the suits. 10

Q. Did you tell Miss Dusenberry that? A. I did.

Q. Now, at that time did you have any further discussion with Miss Dusenberry relative to joining in the deed to Schacter and Schuchman? A. Yes.

Q. Just tell us what that was? A. When I was advancing the money to repay Harber, to get rid of his services, at Miss Dusenberry's request— 20

By Mr. Boardman:

Q. Was this after the sale to Schuchman and Schacter? A. Oh, long after—two or three years after.

By the Vice-Chancellor:

Q. What do you mean by "two or three years?"
A. The sale was made in 1922, and this was in 1924. This was after the sale of the Bergen & Glenwood Avenue property, but prior to the sale of 739 to 749 Bergen Avenue. 30

Q. I understand; go on.

Mr. Boardman: The date should be fixed.

A. Well, I can tell you the date if you show me the papers that were signed.

Mr. Townsend: February 27, 1925.

Samuel W. Garrison—Direct

10 A. February 27th, 1925—I had had this offer from the Abel Engineering Company, and I told Miss Dusenberry I thought I could get Mrs. Griffin to join in that deed at \$105,000 for the entire property, provided that she stated that there would be no further suing; and Miss Dusenberry told me that she never did have any intention of suing, and that it was furthest from her thoughts of suing, excepting that she did wish a partition of the estate to get her money. I had her sign an authority to me to pay off Mr. Harber, on that date; and I also just had her signed statement that she had no further interest in the Glenwood and Bergen Avenue properties.

20 Q. And I show you a paper, and ask you if that is the paper that you mentioned, which is marked M. T.-1 for identification? A. It is.

Mr. Townsend: I offer this in evidence (exhibiting the same to Mr. Boardman).

30 Mr. Boardman: I don't know whether I should make any objection. I think it should only go in as evidence—I do not think it goes in under the pleadings. Here is a Notary that goes up there and takes a form of affidavit; it does not come within the scope of the answer; it is a complete surprise to me. I object to it as not within the pleadings.

Mr. Townsend: I think it is within the pleadings. I have pleaded a release in my answer.

40 Mr. Boardman: Someone told me, or gave me to understand, that the paper was

Samuel W. Garrison—Direct

signed at the time she passed the title to the other plot—not this property.

Mr. Townsend: Oh, no.

The Vice-Chancellor: I will overrule the objection.

Mr. Townsend: May I read this into the record? 10

The Vice-Chancellor: No; you can have a copy made.

Q. Was there anything said at that time, Mr. Garrison, relative to whether she knew the consideration that had passed between Schacter and Schuchman? A. There was.

Q. What was said? A. It was said the amount of money that was involved in the transaction; I told them that they had received fifty thousand dollars for the property. 20

By the Vice-Chancellor:

Q. Was that at the time she signed this exhibit? A. Yes; it was in the general discussion. I also said that at the time she signed the first paper.

Mr. Townsend: By “the first paper,” he means the deed. 30

The Witness: The deed.

By Mr. Townsend:

Q. Well, I mean, at the time that was said, was there anything said as to whether she knew what had happened at that time? A. Yes, she did.

Q. Now, I show you a paper marked M. T.-4 for identification, purporting to be a bill from Mr. Harber, and ask you if you saw that before, and, if so, from whom did you get it? A. Mr. Harber 40

Samuel W. Garrison—Direct

sent it to me after I had told him to send me a bill for his services to Miss Dusenberry.

Q. Now, in response to that writing, or so-called "authorization," in M. T.-1, did you go to Mr. Harber, or communicate with Mr. Harber?

10 A. Which is M. T.-1 (examining the same)? No, I did not; I did not go to Mr. Harber.

Q. This is "Mr. S. W. Garrison: I hereby authorize you to act as my agent to settle bill of Mr. Harber?" A. I wrote Mr. Harber, telling him

20 that Miss Dusenberry had authorized me to settle her account with him, and he immediately responded by bringing down the mortgage, cancelling it, and refunding to me the difference between the amount of his bill and the money advanced by him and the mortgage, which was a lien against the property—in other words, he took a mortgage, but had not given the full consideration to Miss Dusenberry; he only gave her part at a time.

Q. And he credited on that mortgage the amount of his bill? A. Yes, the difference he owed me, a slight difference; he had more money in his hands than he had coming to him, and he
30 returned it.

Q. That mortgage was for \$2000? A. Right.

Q. And was this the bill that he sent you (referring to Exhibit M. T.-4 for identification)? A. Yes, sir.

Q. Now, how was that bill paid, and by whom was it paid? A. It was paid by me, by discounting a note, signed by Miss Dusenberry, which I discounted at my bank for her.

Samuel W. Garrison—Direct

The Vice-Chancellor: Are you going to offer this paper, M. T.-4, in evidence?

Mr. Townsend: Yes, sir.

(The same is offered in evidence, admitted, and marked Exhibit D-2.)

Q. How much money did you advance Miss Dusenberry at that time? A. The difference between the amount that the mortgage called for and the amount that he had actually expended, plus his services.

10

Mr. Townsend: I call upon the complainant to produce a letter from Mr. Garrison to Miss Dusenberry, dated August 1, 1925.

Mr. Boardman: You have not given me notice of that.

20

Mr. Townsend: Yes, I realize I have not given you notice of it.

Mr. Boardman: I do not seem to have it. What do you want?

The Vice-Chancellor: Well, offer all your papers.

Mr. Townsend: I will offer this letter (producing a paper.)

(The letter is admitted, without objection, and marked Exhibit D-3.)

30

Q. Now, at about that time did you receive this letter marked M. T.-3 for identification, from Miss Dusenberry? A. I did.

Mr. Townsend: I offer this in evidence.

Mr. Boardman: I have no objection.

(Admitted and marked Exhibit D-4.)

Q. Now, did you pay Mr. Harber's bill? A. I did.

40

Samuel W. Garrison—Direct

Q. I show you another letter, marked M. T.-5 for identification, bearing date March 18, 1925, and ask you if you got that from Miss Dusenberry? A. I did.

10 Q. And that was subsequent to this transaction of the signing of this so-called release? A. Yes, about two months after.

Mr. Townsend: I offer that in evidence.

Mr. Boardman: No objection.

(Admitted, and marked Exhibit D-5.)

Q. And, in response to this letter marked D-5, was the property subsequently sold to the Abel Engineering Company on those terms? A. It was.

20 Q. And Mrs. Griffin and Miss Allison joined in the deed? A. Together with myself as executor.

Q. And Mr. Boardman, the solicitor here, represented her (referring to the complainant) at the time of the passing of this title at Col. Fisk's office? A. Yes, sir.

Q. And you were repaid, were you not, by Mr. Boardman, at that time, what you had advanced her? A. Yes.

30 Q. In 1910 were you familiar with the value of this Bergen & Glenwood Avenues property? A. I was.

Q. Were you familiar with the value of real estate in Jersey City? A. Yes, sir.

Q. Had you bought and sold property in any quantity? A. Yes, sir.

Q. What would you say, in 1910, the fair value of that property was? A. Twelve thousand dollars.

40

Samuel W. Garrison—Cross

Q. This contract for the sale of the Fairmount Avenue property to the Abel Engineering Company—did you take that contract to Miss Dusenberry to sign? A. I did.

Q. And she signed it in your presence? A. She did. 10

CROSS-EXAMINATION by Mr. Boardman:

Q. When did the title to the Abel Engineering Company pass? A. Whatever the date is there.

Q. It was about January 8th, 1926? A. Is that the date of the deed?

Q. Well, I do not know the date of the deed. A. Well, it passed at the date of the deed; if you have got the deed here, I will give you the date. 20

Q. Have you here a letter I wrote you on December 16th, 1925? A. Have I it here?

Q. Yes. A. No.

Q. Do you recognize this as a copy of a letter that I sent you on December 16th, 1925 (showing the witness a paper)? A. Yes, I remember receiving a letter of that import about that time.

Mr. Boardman: (To Mr. Townsend.) Have you the original of that here?

Mr. Townsend: No, we have not got that letter. 30

Mr. Boardman: And have you a letter I wrote you at about the same time?

Mr. Townsend: Yes; I think I have it here.

Mr. Boardman: I offer this letter of December 16th in evidence.

(Admitted, without objection, and marked Exhibit R. B.-1 for identification.) 40

Samuel W. Garrison—Cross

Q. Did you make any reply to that letter? A. I think that I called at your office.

Q. You did not bring in this Exhibit D-1? A. I did not.

10 Q. Do you remember when this present suit was begun? A. I think that this was the starting of it; this date is December 16th—I think about that time you started your suit; I do not know the exact date.

Q. About December 28th? A. Something around there.

Q. In the negotiations, Mr. Garrison, that followed that deed, or about that time, did Mrs. Griffin or Miss Allison take the position that Margaret Dusenberry must sign a release of her
20 claim to this \$3,333.33, or they would not go through with the Abel Engineering sale?

Mr. Townsend: I object, on the ground that it is improper cross-examination.

The Vice-Chancellor: Well, she had signed it at that time.

A. Yes; but that was after the negotiations were all through with, at this time; there was no
30 negotiations entered into after November 16th; the negotiations were all completed.

Q. But wasn't there a good deal of talk, Mr. Garrison, that the sale to the Abel Engineering Company would not go through because one of these women would not sign off?

Mr. Townsend: I object to that, as improper cross-examination.

40 The Vice-Chancellor: I will overrule the objection; that is a matter of discretion.

Samuel W. Garrison—Cross

A. Mrs. Griffin refused, or told me that she did not think that she would go through with the sale if Margaret Dusenberry started a suit, as there was an agreement between them by letter or word of mouth that there was to be no suit, and that she understood there was to be no suit, and that was one of the conditions under which she joined in the contract. 10

Q. Well, they did go through with it? A. They did go through with it, yes.

Q. But wasn't a stand made, on behalf of Mrs. Griffin that they would not go through unless Margaret signed a release of this very suit?

Mr. Townsend: By whom?

Mr. Boardman: Mrs. Griffin. 20

A. Mrs. Griffin did say that; but when it came to passing the title she passed title.

By the Vice-Chancellor:

Q. Well, was the title passed before or after this Exhibit D-1 was signed? A. The title was passed, oh, a year after.

Q. It was passed in 1926, then? A. About January, 1926—just about a year after. 30

By Mr. Boardman:

Q. And this present suit was then pending? A. The present suit commenced about December 28th, 1925.

Q. Did Margaret Dusenberry ever make any claim to the property, the homestead property, after she signed the deed? A. Not until Harber started the accounting.

Q. In that suit did she make any claim to the property? A. I don't know what claim she made. 40

Samuel W. Garrison—Cross

By the Vice-Chancellor:

Q. One moment: You say "After Harber started the accounting"—what do you mean by "started the accounting"? A. When he started the suit in Chancery.

10 By Mr. Boardman:

Q. Did she make any claim to the property—did she ever go back on her making of the deed? A. Never, to my knowledge, until the start of this suit.

Q. But she has never gone back on making the deed, has she? She has never questioned the title under that deed? A. Not that I know of; I don't know whether it is in the suit whether
20 she does, or not; she never has to me.

Q. And I never have to you? A. No.

Q. And Mr. Harber never did, did he? A. Not that I know of.

Q. And you never knew of any claim being made on her behalf that the title did not pass to these two men under the deed of 1922? A. Not that I know of.

Q. Will you tell me, Mr. Garrison, why you
30 never showed me this Exhibit D-1?

Mr. Townsend: I object, on the ground that he was not compelled to; and I object on the ground that the question is incompetent.

The Vice-Chancellor: I will overrule the objection.

Mr. Townsend: He was under no duty to show him the paper.

40 (Question repeated.)

A. I don't know as I was ever requested to.

Samuel W. Garrison—Cross

Q. Did not my letter ask you to show me what there was that you had? A. (Examining the letter in question.) I do not see it; I do not see anything in here requesting it.

Q. (Reading from the letter.) "I should be very glad to have you state to me your position in this matter"—wouldn't you think that would be a request? A. I do not see anything in there that I should bring that paper—from the letter. 10

Mr. Townsend: If there is no reference to it, I now move to strike out the testimony of the witness; otherwise, I have no objection.

The Vice-Chancellor: I will not strike it out. I do not see that there is anything much in the case yet. He is not a party to this suit. 20

Mr. Boardman: Who is not?

The Vice-Chancellor: Mr. Garrison.

Mr. Boardman: Oh, yes, he is a party.

The Witness: As the Executor of Margaret Craven.

The Vice-Chancellor: Well, go ahead with your case.

Mr. Townsend: May I reserve my right, if the Court please, to strike out the reference to this letter? I do not want to be considered as waiving my right to object to the letter when the counsel makes the offer. 30

The Vice-Chancellor: All right. Go ahead.

Samuel W. Garrison—Cross

Q. On February 27th, was Mr. Harber present when you were talking with Margaret Dusenberry? A. If that is the date, no, he was not.

By the Vice-Chancellor:

10 Q. You and she were alone? A. No, I never talked with Margaret Dusenberry alone; I always insisted that her mother be present. I would sometimes have to wait, but I insisted that I would not talk to Margaret alone.

Q. Did you give her a copy of this? A. I did not.

By Mr. Boardman:

Q. She had no advice when she signed this 20 paper, certainly? A. She had not.

Q. Why did you take it in the form of an affidavit? A. I had been through a lot of trouble and negotiations in trying to help Margaret sell that property; I had advanced money out of my own pocket; it was more a matter of trying to get the thing done for her sake than for anything else; I was running against three different branches of heirs to that property, and they were all pulling different ways; I could not get them 30 together; when I got one side, the other side went the other way. There seemed to be a way of getting out of this, and of closing it up and getting her her money, if she would agree right then and there, to stop all these suits, which she had told me, a few moments before making this affidavit, she never intended to start; that all she was hoping for was the division of the property.

Q. You are a Notary Public? A. I am.

40 Q. You have been in the real estate business how long? A. Twenty odd years.

Samuel W. Garrison—Cross

Q. And why didn't you take some other form of paper? A. Because it was done on the spur of the moment. I didn't go up there for that purpose; but when she told me that she intended to discharge Harber (which was the first inkling I had of it) I borrowed the paper from her—I did not go up to make any affidavits, or anything of the sort—and I told her I would not act for her unless she would stop the suit, and then I could get the money for her; otherwise, I could not. 10

Q. No money was paid for the signing of this affidavit? A. No, I think I brought some money up there and loaned it to her, but there was no money paid for the affidavit, no.

Q. And certainly your co-defendants had no knowledge of this? A. Absolutely none. 20

Q. You were not acting in their behalf? A. I was acting as the agent, and acting as the executor, in trying to get that property for Miss Dusenberry, and acting as her agent at that moment.

Q. And nothing was paid for this signing? A. No.

Q. And you never showed this paper to your co-defendants? A. They were not in it. It was done when she made up her mind to dismiss Harber. 30

Q. You did not show this paper, D-1, to Mrs. Griffin or Miss Allison? A. I do not think either one ever saw it until the day the title was passed in the Commercial Trust Company.

Q. That is your clear recollection of it? A. Positive.

Q. And then Mrs. Griffin saw it? A. Miss Allison was not there. I am not sure that I showed 40

Samuel W. Garrison—Cross

it to Mrs. Griffin, but I think I did at that time.

Q. And you had it in your possession then? A. I had it in my possession from the time it was dated until yesterday.

Q. And you gave it to Mr. Townsend yesterday? A. I did.

Q. Now, I want to go back to the day of December 28th, 1922, when you went to Margaret Dusenberry's—did you explain this phase of the situation to Miss Dusenberry, that if a mistake that was made in executing the deed in 1910 had been that Mrs. Ann Dusenberry, or Mrs. Dusenberry, thought that she had owned it and that the ten thousand dollars had been paid to her that came out of it, she would have received no part of the money?

Mr. Townsend: Your question is not clear. I think the question should be re-framed; I do not understand what it means.

Mr. Boardman: You do not understand the question?

The Vice-Chancellor: No—who was to receive no part of the money?

Q. Under Ann Dusenberry's will, Margaret did not receive a third of the personal property, did she? A. I am not familiar with Ann Dusenberry's will.

Q. And no explanation was made to Margaret that possibly her grandmother had acted on the theory that she herself owned the property? A. I don't know whether there was, or not; that might have been; I know I did think that she owned the property.

Samuel W. Garrison—Cross

Q. You thought she did? A. I thought she owned it. I don't know what she thought; I thought she owned it.

Q. Did you negotiate the sale? A. Which sale?

Q. Did you have anything to do with the sale of 1910, between the mother and daughters? A. 10
Certainly not.

Q. In that conference it was stated that Margaret was to have \$3333.33—that was the only figure that was ever contemplated her receiving, wasn't it? A. Yes; it was the only figure talked of.

The Vice-Chancellor: What conference do you refer to?

Mr. Boardman: December 28th, 1922. 20

Q. At that time was there any question raised about Margaret having interest on her money?

A. You mean money that would have been in the estate if I had received it?

Q. Yes. A. No, there was not.

The Vice-Chancellor: The only time she would have interest from was the date of her mother's death.

Q. When did Mrs. Ann Dusenberry die? A. I 30
think the records will give you a clearer date than I can.

Mr. Townsend: Well, it appears here that it was in September, 1922.

The Witness: It was in the fall of 1922, I think.

(A lady in the audience stated that it was September 30th, 1922).

Samuel W. Garrison—Cross

By the Vice-Chancellor:

Q. And this deed was signed when? A. In December, 1922.

By Mr. Boardman:

10 Q. Did you explain to Margaret then that the fair price of the property was \$12,000 and not \$10,000? A. As of 1922. I don't think I ever put a value on it as of 1910.

Q. What was the \$12,000 value put on it for? A. That I put on it, on the stand today, as the fair value; it was between ten and twelve thousand dollars.

Q. You said in your answer that you put a value of \$12,000 on this property as of 1910? A. 20 Yes, I did, this morning.

Q. You never put that value on it before today? A. I never put a value on that property before this morning, that I know of.

Q. But that value you now put on it is the value as of 1910? A. Yes; somewhere between ten and twelve; twelve thousand would be high, and ten would be low. I put the definite figure on it of twelve thousand this morning.

30 Q. I do not know how particularly I put the question this morning: as executor of James Dusenberry, did any ten thousand dollars ever go into this estate in 1910?

Mr. Townsend: There is no "James Dusenberry" that I know of.

The Witness: James is the grandfather.

Mr. Townsend: Oh, I see—I beg your pardon. I object.

40 The Vice-Chancellor: What difference

Argument

does it make? The mother was the life-tenant, and had the right to the use of the \$10,000 during her life; and two months after she died these other two daughters who bought the property, gave your client her one-third of the \$10,000. I do not see 10
where that comes in.

Mr. Boardman: Well, I think we should know what the fact is. I am confident that no ten thousand dollars was ever paid.

The Vice-Chancellor: Well, suppose it was not—the deed recites that it was paid, and it is *prima facie* evidence; it is a deed under seal.

Mr. Boardman: But between mother 20
and daughter, living under the same roof—

The Vice-Chancellor: I do not care about that. The mother acknowledged the receipt of ten thousand dollars, by deed, under seal. Now, you have got to prove that it was not paid.

Mr. Boardman: Well, I am trying to find out if it was.

The Vice-Chancellor: Well, I really do not care whether it was, or not. Your case 30
is put on a very narrow ground—you say that you had not independent advice; that no title passed under that deed because the deed was that of the mother, who only had had a life estate, and, therefore, at the time you signed this deed you were entitled to the one-third of fifty thousand dollars—that is your case.

Mr. Boardman: But I cannot see why it is 40
not material.

Samuel W. Garrison—Re-direct

The Vice-Chancellor: Well, I have ruled on it, Mr. Boardman; I want to try to finish this case to-day, if I can; I have another case to try tomorrow.

10 Q. Mr. Garrison, the money that you lent to Margaret to settle with Harber was a straight loan? A. Just a personal friendship loan between Margaret and myself.

Mr. Boardman: That is all.

RE-DIRECT-EXAMINATION by Mr. Townsend:

Q. Mr. Garrison, who has been your solicitor since the institution of these suits by Mr. Harber? 20 A. Mr. Townsend.

Q. And who was the solicitor for Mrs. Allison and Mrs. Craven in those suits during their lifetimes? A. Mr. Townsend—do you mean just at the finish, during the end of their lifetime?

Q. Yes. A. Mr. Townsend.

Q. That is, after the suit was started by Harber? A. Yes.

Q. And who has been the solicitor for the other 30 parties defendant in this action? A. Mr. Samuel Harber first, and Mr. Boardman second.

Q. No. I mean for the defendants—myself? A. Why, surely.

Q. And it is the fact, is it not, that in the transfer of this Fairmount Avenue property I represented Mrs. Griffin and Miss Allison? A. You did.

Q. As far as Exhibit D-1 is concerned, you 40 brought that to me, did you not, after suit had been instituted? A. I did.

Frank J. Higgins—Direct

The Vice-Chancellor: What suit do you mean?

Mr. Townsend: I mean the Harbor suit.

Q. After its execution you brought that to me, did you not? A. I did.

10

Q. And I asked you to keep it? A. You did.

Q. And, so far as any negotiations with Mr. Boardman are concerned, for any claim that he made, or any suit that he started. I have been handling it in your behalf, and in behalf of the other defendants, have I not? A. You have.

The Vice-Chancellor: What is the idea of all of this?

Mr. Townsend: To give an answer to his implied question as to why he did not turn that over and did not show it to him before to-day. It may not be at all material, if your Honor please.

20

The Vice-Chancellor: Two-thirds of the testimony in this case, as I see it, is not material.

Mr. Townsend: That is all.

30

FRANK J. HIGGINS, Esq., sworn:

Direct-examination by Mr. Townsend:

Q. Mr. Higgins, you are a member of the Bar of the State of New Jersey? A. I am.

Q. And have been for how long? A. Well, it is over twenty years.

Q. In December, 1922, were you requested by 40

Frank J. Higgins—Direct

Mr. Garrison to accompany him to Miss Dusenberry's house—the complainant in this case? A. I cannot remember the date; there were some deeds and a will signed that day; that will refresh my memory.

10 Q. It has been testified that that was December 28th, 1922? A. I did go down about that time, if that is the date.

Q. And do you recall who was with you? A. Mr. Garrison; Mrs.— I don't know that I can think of their names—

Q. Mrs. Allison? A. I know there was Mrs. Allison, and her sister, and her husband; that is all I can recollect.

20 Q. Who else was there beside your party when you got there—who did you find there? A. I found Margaret Dusenberry and her mother; and I am not sure whether there was anyone else there, or not.

Q. And was there any conversation, or did any conversation take place with Margaret Dusenberry and with the other parties there relative to the execution of this deed to Schacter and Schuchman? A. I do not remember the names in
30 the deed, but there was a conversation regarding a deed that was to be executed there.

Q. And will you tell the Court what the conversation was, as near as you can recall? A. As I recollect it, we were there about half or three-quarters of an hour; we were all sitting around the room and talking about it; I had been previously informed about a deed having been executed by Ann Dusenberry, which she had executed
40 individually; I think it was a deed I had drawn

Frank J. Higgins—Direct

for her; and that there was to be a new deed executed. Also—I cannot recollect the language—but I know that the daughters had paid ten thousand dollars to Ann Dusenberry for this property, and that they were now re-selling it for fifty thousand dollars. That was all explained and talked over there. I don't know who told them—whether Mr. Garrison or I—but one of the purposes I went down there for was to see that she fully understood the situation. Then, afterwards, I think at her request, we went in another room, and I drew a will for her there. It was a very pleasant company we had there for three-quarters of an hour; everybody was satisfied. There was some talk about that she was going to get one-third of ten thousand dollars.

Q. And do you recall whether anything was said as to whether the grandmother, Ann Dusenberry, had conveyed this property originally as executrix of her husband's estate, or individually, and what the effect of that was, or would have been? A. Yes; I recall that she had conveyed it individually—that if she had conveyed it as executrix the conveyance would have been good, as I recollect, and there would have been no necessity for another deed.

Q. What, if anything, did she say after that had been told her, as you have related? A. I cannot remember the exact language, but she was satisfied with the explanation. I know she understood thoroughly she was only going to get one-third of ten thousand.

Frank J. Higgins—Cross

By the Vice-Chancellor:

Q. And she was told that her aunts were selling for fifty thousand dollars? A. Yes; somebody told her; I don't know whether I told her, or Mr. Garrison told her in my presence. That was one
10 of the things that Mr. Garrison asked me to make sure that she understood.

By Mr. Townsend:

Q. And she signed the deed, and you took the acknowledgment? A. Yes.

CROSS-EXAMINATION by Mr. Boardman:

Q. You went up there as Master in Chancery to take the acknowledgment of this deed? A.
20 Well, I don't know in what capacity, whether it was as attorney, or not. I did take the acknowledgment, I think, as Master in Chancery.

Q. You did not advise Margaret to sign, or not to sign this deed, did you? A. Oh, no; I was there to see that she understood what it was.

Q. You did not negotiate with her? A. Oh, no, no; I knew nothing about the matter until I went up there. I had no interest in the thing at all.

Q. What refreshes your memory to make you
30 recall that you told her about the fifty thousand dollars? A. I think my conversation with you, Mr. Boardman; I had no conversation with anybody else about it until last night you came in and asked me to refresh my memory, and I started in to refresh.

Q. And now your recollection is that you did mention the fifty thousand? A. Not that I did,
40 somebody did.

Frank J. Higgins—Cross

Q. You think it was mentioned? A. I am positive it was mentioned now.

Q. Do you recall an earlier instance, where you drew a deed of this property, in May 16th, 1910?

A. May I see a copy of it?

Q. There are two copies—apparently they are 10
copies of the same deed, but one by “Jane” and
one by “Ann Dusenberry,” but it is apparently
the same deed re-executed? A. (After examin-
ing the papers handed him.) Well, I just recall
that I took the acknowledgment of that deed—
that somebody, I don’t know who it was, asked
me to draw such a deed, and gave me some kind of
an old deed or description of the property, and I
just drew it. All I had to do with it was just 20
drawing the deed and taking the acknowledgment.
I knew nothing about the circumstances.

Q. You do not recall the fact that first it was
drawn as “Jane Dusenberry” and then later
drawn as “Ann Dusenberry”—that it was
changed? A. I cannot recall whether it was, or
not. Did I acknowledge the other one?

Q. You took both acknowledgments? A. It
must be so, but I do not recall it. It was a trans-
action that I had nothing to do with except exe- 30
cute the deed and take the acknowledgment, and
I had no other information about the transaction.

Q. At this conference on December 28th, 1922,
only the one sum, \$3,333.33, was mentioned as the
sum that Margaret was to receive? A. That is
all I can recall. I recall that she was to get one-
third of \$10,000; I recall that.

Q. And how was the \$10,000 arrived at, do you
recall that? A. Yes; that was the price that the 40

Frank J. Higgins—Cross

daughters had purchased the property from their mother for, some years before.

Q. It was not suggested to Margaret in any way that she might be entitled to one-third of \$50,000?

A. I did not hear any suggestion of that kind, but
 10 I know that there was a statement by somebody that the property was being sold for \$50,000.

Mr. Townsend: That is all my evidence except some documentary evidence. I desire to offer in evidence the bill of complaint, the answer, reply, order of reference, and discontinuance in the case of Margaret Dusenberry v. Margaret Craven Garrison, *et al.*, Docket Number 57/118, being the partition suit; and the stipulation on file, as well.
 20

The Vice-Chancellor: The stipulation as to discontinuance, you mean?

Mr. Townsend: Yes, sir; that is included here.

The Vice-Chancellor: Well, that is offered, is it?

Mr. Townsend: Oh, yes, sir.

The Vice-Chancellor: Well, the stipulations are without prejudice.
 30

Mr. Townsend: Yes, sir; that is right.

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

The Vice-Chancellor: Well, it is a suit for the same cause of action.

Mr. Boardman: It has been testified to that such a suit was brought, but the discontinuance is without prejudice; so I do
 40

Argument

not see the use of encumbering the record with that.

The Vice-Chancellor: I know but it is a very important feature, on the ground that she may have gone ahead with the suit while the two aunts were living, and discontinued her suit, and then started a suit after the deaths. 10

Mr. Boardman: No, but the discontinuance came after the deaths.

The Vice-Chancellor: Well, I will overrule the objection, and allow the record in evidence.

Mr. Boardman: But the whole file ought to go in, ought it not, your Honor? 20

The Vice-Chancellor: Certainly. All the papers are not here?

Mr. Townsend: All the papers are here? I am not offering all the papers here.

(The record was admitted in evidence.)

Mr. Townsend: Now, I offer the bill of complaint, the order amending, the amended complaint—and there doesn't seem to be an answer here—

The Vice-Chancellor: In what suit? 30

Mr. Townsend: That is in the accounting suit, 57/116, between Margaret Dusenberry and Margaret Craven and Sarah Allison.

The Vice-Chancellor: Is the answer there?

Mr. Townsend: My recollection is that I filed an answer; but its absence may have been due to the fact that they moved to strike out the bill of complaint. 40

Exhibits Offered in Evidence

The Vice-Chancellor: The order was made to amend on January 13, 1925, and the amended bill was filed January 19, 1925. Where is the discontinuance, or the dismissal of the bill?

10 Mr. Townsend: I thought that was there.

The Vice-Chancellor: It is not here. The stipulation is here.

Mr. Townsend: (Upon examining the papers.) Here is the decree of dismissal.

The Vice-Chancellor: Yes—dated the 5th day of February, 1925. The record is admitted.

20 Mr. Townsend: Now, I offer in evidence Exhibit M, T-9 for identification.

(Admitted and marked Exhibit D, A-1.)

Mr. Townsend: I offer in evidence a letter, also marked M. T-9 for identification.

(Admitted and marked Exhibit D, A-2.)

Mr. Townsend: I offer in evidence Exhibit M. T-2 for identification.

(Admitted and marked Exhibit D, A-3.)

Mr. Townsend: I offer in evidence Exhibit M. T-8 for identification.

30 (Admitted and marked Exhibit D, A-4.)

Mr. Townsend: I offer in evidence Exhibit M. T-10 for identification.

(Admitted and marked Exhibit D, A-5.)

Mr. Townsend: I offer in evidence Exhibit M. T-6 for identification.

(Admitted and marked Exhibit D, A-6.)

Mr. Townsend: I offer in evidence Exhibit M. T-7 for identification.

40 (Admitted and marked Exhibit D, A-7.)

The defendants rest.

Margaret Dusenberry—Direct

COMPLAINANT'S REBUTTAL EVIDENCE

MARGARET DUSENBERRY, re-called:

Direct-examination by Mr. Boardman:

Q. Do you recall the day that Mr. Garrison 10
came to your house, when you talked about dis-
charging Mr. Harber? A. Yes, sir.

Q. What was the condition of affairs between
you and Mr. Harber at that time? A. I wanted
to have Mr. Harber discontinued on the case, and
I wanted Mr. Garrison to settle up with him.

Q. Mr. Harber had sent you a pretty large bill,
had he? A. Yes.

Q. And, as matter of fact, the bill for \$1,137 20
was settled for \$950, was it? A. Yes, sir.

Q. Did you explain your difficulties with Mr.
Harber to Mr. Garrison? A. Yes, sir.

Q. And I show you this Exhibit D-1; how did
you come to sign it? In the first place, no money
was paid to you for signing that—either one? A.
No, sir.

Q. Of course that speaks for itself; did you
realize that you were making an affidavit—

30

The Vice-Chancellor: What difference
does it make whether it was an affidavit, or
a mere ordinary acknowledgment?

Mr. Boardman: Well, all right.

Q. Well, did you receive any money for that?
A. No.

Q. During all the period between December,
1922, and the bringing of this suit, did you ever
make any bargain with anybody not to press your 40
claim for the \$16,666.66?

Margaret Dusenberry—Direct

Mr. Townsend: I object, on the ground that it is a conclusion, and attempting to vary the terms of a written instrument, which speaks for itself; and it is likewise leading.

10 The Vice-Chancellor: You can change the form of your question, and ask as to whether she ever had a discussion with these defendants about releasing the claim.

Q. Well, did you ever have any discussion about releasing your claim? A. No, sir; not until I signed that.

Q. Have you read this over? A. Yes, sir.

20 Q. You had not released any claim, had you? I mean, you—

Mr. Townsend: That question is manifestly leading.

Q. Had you signed any other paper than that paper? A. No, sir.

Q. Had you signed any formal release?

Mr. Townsend: I object to that, as leading.

30 The Vice-Chancellor: I think that it is perfectly plain that that one paper is the only one she signed, is not that right?

Mr. Boardman: Yes.

40 The Vice-Chancellor: Well, why waste time on it? As I understand, Mr. Garrison says this paper was signed in order to enable them to sell this property on Bergen Avenue; that the other two would not sell unless all these litigations and ques-

Margaret Dusenberry—Direct

tions were settled; that is what Mr. Garrison testified.

Mr. Boardman: No, Mr. Garrison said they never saw this paper until lately; that none of these people saw it until lately; that he kept it in his possession; that he did not give it to anybody. 10

Mr. Townsend: The testimony is that they refused to go ahead and sell this property unless she dropped all her claims and released her claims.

The Vice-Chancellor: Well, there is no necessity to argue it. Just finish with your witness.

Q. I show you Exhibit D, A-7—that was written on February 16th, 1925, the day of the date of it? A. Yes, sir. 20

Q. And will you read that part that Mr. Townsend has marked? A. (The witness examined the paper.)

Q. You have read that, have you? A. Yes, sir.

Q. I call your attention to the fact that that is eleven days before this Exhibit D, A-1; had you already discharged Mr. Harber before that—before this paper of February 27th was signed? 30

A. I had wrote him, yes.

Q. And his bill is dated what day? A. February 19th, 1925.

Q. In here, Exhibit D, A-7, you say, "I think from your conversation here in my home that both you and your sister are rather anxious to sell the estate as soon as possible—and so, as I am as anxious for a sale, too—I have come to the conclusion that it is best for me to dismiss Mr. 40

Margaret Dusenberry—Cross

Harber—as once it goes to ‘court’ there will be no hope for a sale”—you wrote that at that time, didn’t you? A. Yes, sir.

Q. What conversation had you had at that time to lead you to believe that they were ready and
10 anxious for a sale? A. Well, Mrs. Craven and Mrs. Allison told me so.

Q. This paper, D-1, was not asked from you as a release, or an agreement to sell—you had already agreed upon the sale, had you not?

Mr. Townsend: I object.

The Vice-Chancellor: I will sustain the objection; the letter speaks for itself.

20 Q. You, on February 16, 1925, wrote to “Dear Laura”—that is Mrs. Griffin? A. Yes, sir.

Q. “You and your sister seem rather anxious to sell the estate”?

The Vice-Chancellor: That is of the same import as the other?

Mr. Boardman; Yes.

Q. Did either of those women ever deny the allegations in these letters, that they were anxious
30 to sell the estate? A. No, sir.

Q. And the “estate” that you were talking about was the Bergen Avenue property? A. Yes.

Mr. Boardman: I think that is all.

CROSS-EXAMINATION by Mr. Townsend:

Q. What were your difficulties with Mr. Harber, Miss Dusenberry?

40 The Vice-Chancellor: What difference does it make?

Margaret Dusenberry—Cross

Mr. Townsend: None, other than the fact that she has testified about some "difficulties." I do not know that it makes any difference except as bearing on her own recollection.

Q. The fact is, Miss Dusenberry, is it not, that after you had had your difficulties, or while you were having your difficulties with Mr. Harber, Mr. Garrison came to you about the sale of this property? A. Yes, sir.

10

Q. And he told you, at that time, as long as you had this suit, and as long as you were going to proceed in making claim under that, the others would not sell, and he would have nothing whatever to do with it—didn't he tell you that at that time? A. I don't recall that exactly; he told me something similar to that.

20

Q. He told you something similar to that. And the fact is, is it not, that even after the contract was signed for the sale of this property at \$105,000, Mrs. Griffin did not want to sell because she did not think they were getting enough for it? A. Yes.

Q. She thought the property was worth one hundred and twenty-five, or thirty thousand dollars? A. Yes.

30

The Vice-Chancellor: I declare I cannot see the relevance of all this evidence.

Mr. Townsend: That is all.

By Mr. Boardman:

Q. Between the time that you discharged Mr. Harber, the Saturday before the 16th of January, and the time you retained Mr. Boardman, you

40

Samuel W. Garrison—Direct

were without a lawyer, weren't you? A. Yes, sir.

By Mr. Townsend:

Q. You had no difficulty in getting a lawyer when you wanted one, did you?

10 The Vice-Chancellor: Oh, why pursue that? Is there anything further? The Court will take judicial notice of the fact that there is no difficulty in getting a lawyer.

Mr. Townsend: That is all.

20 SAMUEL W. GARRISON, re-called:

Direct-examination by Mr. Boardman:

Q. This Exhibit D-1 rested in your possession—you did not show it to Mrs. Craven or Mrs. Allison, did you?

The Vice-Chancellor: He said once he did not.

30 A. Mrs. Craven and Mrs. Allison were not alive. I don't think, at the time.

Q. Oh, of course they were not; then, of course, you did not show it to them.

The Vice-Chancellor: I understand he did not show it to the other defendants in this suit.

40 A. No, sir; not until we passed title, when, I think, I showed it to Mrs. Griffin—at that time.

Exhibits Offered in Evidence

Mr. Boardman: I offer in evidence a copy of a letter that I wrote on December 16th, 1925, to Mr. Garrison.

Mr. Townsend: I object, on the ground that it is a self-serving declaration.

Mr. Boardman: But it is evidence for 10
other reasons—

Mr. Townsend: And if it is offered for the purpose of getting an admission from Mr. Garrison because he failed to answer it, it is likewise incompetent.

The Vice-Chancellor: I will sustain the objection that it is self-serving; but I will admit it in evidence as in the nature of a demand. 20

Mr. Townsend: Well, if the Court please, if it is only for the purpose of showing that before instituting this suit, he made a demand, upon which this suit is based, I have no objection to it; but if it is for the purpose of making an inference of some kind—

The Vice-Chancellor: Oh, no; I only regard it as an demand made before suit brought.

Mr. Townsend: Oh, I have no objection 30
to it for that purpose.

Mr. Boardman: And you admit that you got a letter of about the same date?

Mr. Townsend: Yes, sir.

(The letter is marked Exhibit C, A-1.)

Mrs. Minnie Steinman—Direct

MRS. MINNIE STEINMAN, sworn:

Direct-examination by Mr. Boardman:

Q. Mrs. Steinman, you are the mother of the complainant? A. Yes.

10 Q. Do you recall December 28, 1922, when this party came to your house? You have been in Court all day? A. Yes.

Q. Do you recall the conversation of that day?

Mr. Townsend: I object, as not rebuttal.

The Vice-Chancellor: It is not rebuttal; it is part of your main case, Mr. Boardman.

Mr. Boardman: I have not asked a single question as to what happened there.

20 The Vice-Chancellor: Oh, I will exercise my discretion, and permit it to go in; but it is not rebuttal. Go ahead.

Q. What is your recollection as to whether the sum of fifty thousand dollars was mentioned that day as the price that the two aunts of Margaret Dusenberry were being paid for the deed?

30 Mr. Townsend: I object, on the ground that it is not rebuttal.

The Vice-Chancellor: I will overrule the objection; whether it is, or not, the Court has discretion to admit it.

Mr. Townsend: It simply re-opens the whole case.

The Vice-Chancellor: Well, I will admit it.

40 A. No sum was mentioned, at all.

Mrs. Minnie Steinman—Cross

CROSS-EXAMINATION by Mr. Townsend:

Q. You have had considerable experience in litigation, haven't you, Mrs. Steinman? A. Yes.

Q. You have constantly advised your daughter about her affairs, haven't you?

10

Mr. Boardman: I object; it is not cross-examination.

The Vice-Chancellor: I will exercise my discretion to permit it; I do not know where it is going to lead to.

A. No, I never advised her; she done her own business; she took her own advice.

Q. Do you remember her frequently using the expression, "I am for myself, first, last and all the time"?

20

Mr. Boardman: I object to that.

The Vice-Chancellor: I think I will sustain the objection; that is not cross-examination, and it is re-opening the whole case.

Mr. Townsend: Well, that is entirely within the discretion of the Court.

Q. Did you ask how much they were getting for the property? A. Yes; they said—

30

Q. (Interrupting.) I say, did you ask? A. Yes, I asked.

Q. Whom did you ask? A. Mrs. Craven.

Q. Anyone else? A. No.

Q. You only asked Mrs. Craven? A. Mrs. Craven.

Q. And who was present when you asked Mrs. Craven that? A. Well, they was all there.

40

Mrs. Minnie Steinman—Cross

Q. And what was her answer? A. "A large sum of money."

Q. And didn't you then say to her, "Well, how much money is that"? A. No.

Q. Why? A. Well, I was so surprised myself,
10 I did not.

Q. And you asked her how much they were getting, and when they told you they were getting a large sum, you rested content with that, did you?
A. What is that?

Q. You rested content with the answer that "they were getting a large sum"? A. Yes.

Q. Why didn't you push the question; why didn't you ask the question again? A. Well, I
20 didn't think it was necessary.

Q. You were satisfied with their explanation that they were getting a large sum? A. It was not mine, it was my daughter's.

Q. I know, but you asked the question? A. Yes.

Q. You were experienced in litigation, you have already admitted, and you now say you were not sufficiently interested in finding out how much they were getting for the property—is that your
30 explanation? A. They said "a large amount."

Q. Well, why didn't you ask them then, when they said "a large amount," why didn't you ask them again how much they were getting?

The Vice-Chancellor: Well, what difference does it make? They said "a large amount," and she, knowing that they were getting a large amount, recognized the right of the aunts to this deed and signed the
40 deed and took \$3,333.33.

Mrs. Minnie Steinman—Cross

Mr. Townsend: Well, if that is your Honor's view. I will not ask the question, but I think it goes directly to the credibility of this lady's statement.

The Vice-Chancellor: Her statement is the same as her daughter's—the same, exact language. 10

Mr. Townsend: I realize that, but I think it goes directly to her credibility.

The Vice-Chancellor: Well, go ahead and ask the question. I think two-thirds of the evidence is absolutely immaterial.

Q. So, after that you never made any attempt to find out how much money they got for it? A. No. 20

Q. Why? A. I simply did not.

By Mr. Boardman:

Q. What litigation, beside your divorce case, have you had Mrs. Steinman? A. None.

Testimony closed.

Mr. Townsend: I move to dismiss the bill, on the ground that they have not established their case under the pleadings. I suppose that is a proper motion in this Court. 30

The Vice-Chancellor: Well, I will give you the facts as I find them: James Dusenberry died in the year 1886, leaving a last will and testament under which he gave his estate to his widow, Ann, for life, with remainder over, in fee, to his three children—two daughters and one son—and he made his wife, Ann, executrix, with power of sale. 40
In 1910 Ann made a conveyance of the property

Motion to Dismiss Bill

in question to her two daughters Sarah Allison and Margaret Craven, for the sum of ten thousand dollars, and, in her deed, she acknowledged receipt of that sum, from which I take it, as the instrument is under seal, that the grantees paid
10 to the grantor the sum of ten thousand dollars. This sum, according to the evidence, was substantially a fair value of the property at the time that this deed was made. The mother, the executrix, was about eighty-two years of age. It is inconceivable that it was the intent of the parties that she should only convey her life estate, the expectancy of which would have been but a few years. As matter of fact, she died twelve years
20 later, at the age of ninety-four. There was a mistake made, apparently by the scrivener who drew the deed, in making it her individual deed and not her deed as executrix. After her death, and about 1922, the two daughters desired to sell the property, and were confronted by counsel with this apparent defect in the title; and they went to their niece, the present complainant, and asked her to sign a deed for the one-third of the \$10,000. I am satisfied that Judge Higgins, or Mr. Garri-
30 son, or someone present, told the complainant and her mother that they were selling the property for fifty thousand dollars. The mother and daughter admit that they were told that the sale "was for a large sum of money," and, therefore, at the time a full disclosure was made, in effect, as to what the property was selling for, and they could have, then and there, in the exercise of their discretion, refused to sign the deed. I am in-
40 clined to think that, on a bill to reform the deed from the mother to the two daughters, the Court

Motion to Dismiss Bill

would be inclined to reform the deed on the ground of mistake, and it is quite apparent.

Now, in this case, the complainant here filed two bills on November 28th, 1924, one praying the same relief as that sought in this suit, against Margaret Craven and Sarah Allison, and also filed a bill for partition against the same defendants and Samuel W. Garrison as Executor. These bills were dismissed on February 9th, 1925, on a stipulation in each case providing that the bill should be dismissed without prejudice. At that time the parties were anxious to sell the premises on Bergen Avenue near Fairmount, which were sold for \$105,000; and I am inclined to the view that at that time the parties accommodated all their differences and made an end of the subject-matter of this suit. While the memorandum signed February 27th, 1925, by the complainant, was in advance of the sale of this property, it looks very much to me as if the whole purpose of that was to end all litigation and disputes between the parties, to the end that the property might be sold to the best advantage. But even if this were not so, and even though it might be said that the complainant here is guilty of laches in delaying such a long time in bringing this suit, I am inclined to think, in any event, that she has not proved her claim; because, when she signed the deed for the \$3,333.33 she was doing, perhaps, nothing more than what a just woman should do, when the aunts had assumed that they bought the fee of the property and paid the value of the fee for it.

I may say that while the two suits—one for par-

Complainant's Exhibit 1

tition and one similar to the present suit—were pending, Margaret Craven and Sarah Allison died. Those are my views of the facts of the case.

Mr. Boardman: Well, will your Honor determine the case, or do you want to give me a chance
10 to argue it?

The Vice-Chancellor: No; you have my idea about what the facts are. If you think there are any different facts you can prepare and send me in a brief; and serve it upon Mr. Townsend within five days, and he can serve his within five days more.

Mr. Boardman: Well, it is a rather discouraging start, but I would like to try it.

20 The Vice-Chancellor: Well, you have got to meet it sometime in the case, and I thought it would be well to tell you in advance, and give you an opportunity to change my mind, if you can. My mind is open on it.

Case held for briefs.

Complainant's Exhibit 1.

30 In the name of God, Amen, I, James Dusenbery, of Jersey City, in the County of Hudson and State of New Jersey, being of sound and disposing mind and memory make and publish my last Will and Testament as follows:

First: I direct all my just debts and my funeral expenses to be paid as soon as may be reasonable after my decease.

40 Second: I give devise and bequeath unto my beloved wife Ann Dusenbery all my property both

Complainant's Exhibit 1

real and personal in whatever it may consist, or
 wherever situate, to have hold receive use and
 enjoy the rents issues and profits thereof during
 the term of her natural life if she so long re-
 mains my widow and from and after her decease
 or her again marrying I give, devise and be- 10
 queath my said estate unto such child or children
 as I shall leave or have living at the time of my
 decease and to their heirs and assigns forever and
 the representatives of any deceased child to have
 the share of his, her or their parent. The above
 bequest to my wife is hereby made and to be by
 her received in lieu of her dower in my estate.

I hereby nominate and appoint my wife Ann
 Dusenbery Executrix of this my last will and tes- 20
 tament giving her full power and authority to
 grant, bargain, sell and convey any or all of my
 property to any person or persons in fee simple
 or otherwise at public or private sale at such times
 and upon such terms as she may think fit.

In witness whereof, I the said James Dusenbery
 have hereunto set my hand this tenth day of Sep-
 tember, A. D. Eighteen hundred and eighty-five.

JAMES DUSENBERY. 30

Signed, acknowledged and declared by the said
 James Dusenbery as and for his last Will and
 Testament in the presence of us (both being pres-
 ent at the same time) who at his request in his
 presence and in the presence of each other have
 hereunto subscribed our names as witnesses.

Wm. B. Shrope, 75 Fairview Avenue, Jersey
 City, New Jersey. Benjamin H. Fielder, 64 Jew-
 ett Avenue, Jersey City, New Jersey. 40

Complainant's Exhibit 2.

Deed 1466/459	MARGARET CRAVEN, <i>et vir., et als.</i> , to ISAAC M. SHACKTER, <i>et al.</i>	}	Deed dated Dec. 28th, 1922.
Craven to Schackter.			

10

Block #753

M. A. D. &
H. McC.

THIS INDENTURE, made the twenty-eighth day of December, in the year one thousand nine hundred and twenty-two.

Compared

BETWEEN MARGARET CRAVEN and HARRY I. CRAVEN (her husband), Sarah Ann Allison (widow) and Margaret Dusenbery (unmarried), of the City of New Jersey, County of Hudson and State of New Jersey, parties of the first part;

20

AND ISAAC M. SHACKTER, and LOUIS SCHUMAN, of Jersey City, Hudson County, New Jersey, parties of the second part;

30

WITNESSETH, That the said party of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, to them in hand paid by and the said party of the second part, at or before the en-sealing and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part, their heirs, executors and administrators, forever released and discharged from the same, by these presents, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the

40

Complainant's Exhibit 2

second part, and to their heirs and assigns forever.

ALL that certain tract or parcel of land and premises situate, lying and being in Jersey City, in the County of Hudson and State of New Jersey. 10

BEGINNING at the corner formed by the intersection of the northeasterly side of Glenwood Avenue with the northwesterly side of Bergen Avenue, thence northeasterly along the northwesterly side of Bergen Avenue sixty-one feet and fifty-one hundredths of a foot to a point; thence northwesterly one hundred and ten feet and thirty-nine one hundredths of a foot to a point; thence southwesterly sixty feet and thirteen one hundredths of a foot to the northeasterly side of Glenwood Avenue; thence southeasterly along the northeasterly side of Glenwood Avenue one hundred and eighteen feet and twenty-six one hundredths of a foot to the point or place of beginning. 20

BEING the same premises conveyed by John Brinkerhoof, executor, &c., to James Dusenbury by deed dated July 2d, 1884, recorded Hudson County Register's Office Book 393, page 90, and of the title to which said James Dusenbery died seized leaving a last will and testament probated before the Surrogate of Hudson County, New Jersey, February 17th, 1886, and recorded in Book 19 of Wills, page 320, wherein he did give and devise his real and personal estate to Ann Dusenbery, his wife, during her life or widowhood and upon her decease or remarriage did devise and bequeath the same to such child or children he 30 40

Complainant's Exhibit 2

should have living at the time of his death and to their heirs and assigns, forever, the representative of any deceased child to have the share of his or her parent.

10 SAID JAMES DUSENBERY, left him surviving his wife, Ann Dusenbery who died on or about September 30th, 1922, and three children; Benjamin, a son, who died on or about February 13th, 1908, leaving surviving him as his only child, Margaret Dusenbery, now unmarried; his daughter, Margaret Craven, now the wife of Harry L. Craven; and Sarah Allison, now a widow:

20 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof,

30 AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances,

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, their heirs and assigns, to their own proper use, benefit and behoof forever.

40 AND the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant and agree to and with the said party of the second part, their heirs and assigns,

Complainant's Exhibit 2

that the said parties of the first part, at the time of the sealing and delivery of these presents, were lawfully seized in fee simple of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained, and described premises, with the appurtenances, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, 10

AND that the said party of the second part, their heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above, the above granted premises, and every part and parcel thereof, with the appurtenances without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. 20

AND that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, judgments, taxes, assessments and encumbrances of what nature or kind soever. 30

AND ALSO, that the said party of the first part, and their heirs, and all and every other person or persons whomsoever lawfull or equitably deriving any estate, right, title, or interest, of, in or to the hereinbefore granted premises by, from under or in trust for them, shall and will at any times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, their heirs and as- 40

Complainant's Exhibit 2

signs, make, do, and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the
 10 premises hereby intended to be granted, in and to the said party of the second part, their heirs and assigns forever, as by the said party of the second part, their heirs or assigns, or their counsel learned in the law, shall be reasonably devised, advised or required.

AND the said parties of the first part, their heirs, the above described and hereby granted and released, premises, and every part and parcel
 20 thereof, with the appurtenances, unto the said party of the second part, their heirs and assigns against the said party of the first part, and their heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the
 30 day and year first above written.

MARGARET CRAVEN (Seal)

HARRY L. CRAVEN (Seal)

MARGARET DUSENBERY, (Seal)

SARAH ANN ALLISON (Seal)

Signed, sealed and delivered
 in the presence of

The words "January" and "three"
 40 in line two erased before execution.

Frank J. Higgins,
 U. S. R. S. \$50.00.

Complainant's Exhibit 2

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

BE IT REMEMBERED, That on this twenty-eighth day of December, in the year one thousand nine hundred and twenty-two, before me, personally appeared Margaret Craven and Harry L. Craven, (her husband) Sarah Ann Allison, (widow) and Margaret Dusenbery (unmarried), who, I am satisfied, are the grantors in the within indenture named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed;

10

20

FRANK J. HIGGINS,
 Master in Chancery of New Jersey.

Received in the office and Recorded Jan., 6th, 1923, at 9-28 a. m., No. 294.

30

40

Complainant's Exhibit 3.

GARRISON REAL ESTATE EXCHANGE

Jersey City, January 5th, 1923.

10 Miss Margaret Dusenbery,
1927-3d Street,
North Bergen, N. J.

Dear Margaret:

Enclose please find check for \$3,333.33 which I collected for you at the passing of title. I expect to send you a statement in the next few days.

20

Yours very truly,

S. W. GARRISON.

Complainant's Exhibit 4.

JANE DUSENBERY (widow) TO MARGARET CRAVEN, <i>et al.</i>	}	Deed dated May 16th, 1910.	Compared Deed 1071/5 Dusenbery to Craven.
----------------------------------------------------------------	---	----------------------------------	----------------------------------------------------

THIS INDENTURE, made the Sixteenth day of ^{A. P. &} May, in the year one thousand nine hundred and ^{H. V. C.} ten. 10

BETWEEN JANE DUSENBERY, widow of James Dusenbery of the City of Jersey City, County of Hudson and State of New Jersey, party of the first part and Margaret Craven and Sarah Ann Allison of the same place as tenants in common and not as joint tenants party of the second part. 20

WITNESSETH That the said party of the first part for and in consideration of the sum of Ten thousand dollars, lawful money of the United States of America, to her in hand paid by the said party of the second part at or before the en-sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the second part their heirs, executors and administrators forever released and discharged from the same by these presents has granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to their heirs and assigns forever; 30

ALL that certain tract or parcel of land and premises, situate, lying and being in Jersey City in the County of Hudson and State of New Jersey. 40

Complainant's Exhibit 4

BEGINNING at the corner formed by the intersection of the Northeasterly side of Glenwood Avenue with the Northwesterly side of Bergen Avenue thence northeasterly along the Northwesterly side of Bergen Avenue sixty-one feet and
10 fifty one hundredths of a foot to a point; thence Northwesterly one hundred and ten feet and thirty-nine one hundredths of a foot to a point; thence Southwesterly sixty feet and thirteen one hundredths of a foot to the Northeasterly side of Glenwood Avenue; thence southeasterly along the northeasterly side of Glenwood Avenue one hundred and eighteen feet and twenty-six one-hundredths of a foot to the point or place of begin-
20 ning.

BEING the same premises conveyed to James Dusenbery by John Brinkerhoff surviving executor &c of George Tise deceased by deed dated July 2, 1884, and recorded in the office of the Register of the County of Hudson on July 3, 1884, in Book 393 of deeds for said County on pages 90 &c.

30 TOGETHER WITH ALL AND SINGULAR, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in or to the above described premises and

Complainant's Exhibit 4

every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part their heirs and assigns to their own proper use, benefit and behoof forever; 10

AND the said JANE DUSENBERY for herself, her heirs, executors and administrators does covenant, grant and agree to and with the said party of the second part their heirs and assigns that the said Jane Dusenbery at the time of the sealing and delivery of these presents is lawfully seized in her own right of a good, absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted, bargained and described premises with the appurtenances and has good right, full power and lawful authority to grant, bargain sell and convey the same in manner and form aforesaid. 20

AND that the said party of the second part their heirs and assigns shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof, with the appurtenances without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part her heirs or assigns or of any other person or persons lawfully claiming or to claim the same, 30

Complainant's Exhibit 4

AND that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever.

10

AND ALSO that the said party of the first part and her heirs and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises by from under or in trust for her or them shall and will at any time or times hereafter upon the reasonable request and at the proper costs and charges in the
20 law of the said party of the second part their heirs and assigns make, do and execute or cause or procure to be made, done or executed all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part their heirs and assigns forever as by the
30 said party of the second part their heirs or assigns or their counsel learned in the law shall be reasonably devised, advised or required.

AND the said JANE DUSENBERY her heirs the above described and hereby granted and released premises and every part and parcel thereof, with the appurtenances unto the said party of the second part their heirs and assigns against the said party of the first part and her heirs and against
40 all and every person and persons whomsoever

Complainant's Exhibit 4

lawfully claiming or to claim the same shall and will WARRANT and by these presents forever defend.

IN WITNESS WHEREOF the said party of the first part has hereunto set her hand and seal the day and year first above written. 10

her

JANE X DUSENBERY (Seal)

mark

Signed, sealed and delivered
in the presence of
H. L. Craven,
Frank J. Higgins.

State of New Jersey, }
Hudson County. } ss: 20

BE IT REMEMBERED That on this sixteenth day of May in the year One thousand nine hundred and ten, before A Master in Chancery of New Jersey personally appeared Jane Dusenbery Widow of James Dusenbery who I am satisfied is the grantor in the within Indenture named and I having first made known to her the contents thereof she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed; 30

FRANK J. HIGGINS,
Master in Chancery of New Jersey.

Received in the office and recorded May 19th,
1910, at 9:12 a. m. #3806.

Complainant's Exhibit 5.

Deed 1075/175	ANN DUSENBERY, Widow,	}	Deed Dated May 16, 1910.
Dusenbery to Craven	To MARGARET CRAVEN <i>et al.</i>		

10

Block #753

THIS INDENTURE made the sixteenth day of May in the year One thousand nine hundred and ten.

Compared
E W & H J

BETWEEN ANNA DUSENBERY, widow of James Dusenbery of the City of Jersey City, County of Hudson and State of New Jersey party of the first part.

20

AND MARGARET CRAVEN and SARAH ANN ALLISON of the same place as tenants in common and not as joint tenants party of the second part.

30

WITNESSETH, That the said party of the first part, for and in consideration of the sum of ten thousand dollars, lawful money of the United States of America to her in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged and the said party of the second part, their heirs, executors and administrators forever released and discharged from the same, by these presents, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to their heirs and assigns, forever.

40

Complainant's Exhibit 5

ALL that certain tract or parcel of land and premises situate, lying and being in Jersey City, in the County of Hudson and State of New Jersey,

BEGINNING at the corner formed by the intersection of the northeasterly side of Glenwood Avenue with the northwesterly side of Bergen Avenue thence Northeasterly along the northwesterly side of Bergen Avenue sixty-one feet and fifty-one hundredths of a foot to a point; thence northwesterly one hundred and ten feet and thirty-nine one hundredths of a foot to a point; thence southwesterly sixty feet and thirteen one hundredths of a foot to the northeasterly side of Glenwood Avenue; thence southeasterly along the northeasterly side of Glenwood Avenue, one hundred and eighteen feet and twenty-six one-hundredths of a foot to the point or place of beginning.

BEING the same premises conveyed to James Dusenbery by John Brinkerhoff, surviving executor &c., of George Tise, deceased by deed dated July 2, 1884 and recorded in the office of the Register of the County of Hudson on July 3, 1884 in Book 393 of Deeds for said County on pages 90 &c.

TOGETHER with all and singular the tenements, hereditaments and appurtenances, thereunto belonging or in anywise appertaining and the reversions, remainder and remainders, rents, reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AND ALSO all the estate, right, title, interest, property possession, claim and demand, whatso-

Complainant's Exhibit 5

ever, as well in law as in equity, of the said party of the first part, of in or to the above described premises and every part and parcel thereof with the appurtenances.

10 To HAVE AND To HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, their heirs and assigns, to their own proper use, benefit and behoof forever.

AND the said Ann Dusenbery for herself, her heirs, executors, and administrators, does covenant grant and agree to and with the said party of the second part, their heirs and assigns, that
20 the said Ann Dusenbery at the time of the sealing and delivery of these presents, is lawfully seized in her own right, of a good absolute, and indefeasible estate of inheritance in fee simple of, and in all and singular the above granted, bargained and described premises with the appurtenances, and has good right, full power and lawful authority, to grant, bargain, sell and convey the same in manner and form aforesaid.

AND that the said party of the second part their
30 heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy, the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance, of the said party of the first part her heirs or assigns, or of any other person or persons lawfully claiming or to claim the same.
40

Complainant's Exhibit 5

AND THAT the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever.

AND ALSO that the said party of the first part, and her heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest of, in or to the hereinbefore granted premises, by from under or in trust for her or them shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part their heirs and assigns, make, do and execute, or cause or procure to be made, done, or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted, in, and to the said party of the second part, their heirs and assigns, forever, as by the said party of the second part, their heirs or assigns, or their counsel learned in the law, shall be reasonably devised, advised or required.

AND the said Ann Dusenbery her heirs, the above described and hereby granted and released premises and every part and parcel thereof, with the appurtenances unto the said party of the second part, their heirs and assigns, against the said party of the first part, and her heirs, and against all and every person and persons whomsoever,

Complainant's Exhibit 5

lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF the said party of the first part has hereunto set her hand and seal the day
 10 and year first above written.

her
 ANN x DUSENBERY (Seal)
 mark

Signed, sealed and delivered
 in the presence of
 H. L. Craven
 20 Frank J. Higgins
 Correction of name of grantor to
 Ann Dusenbery made before re-acknowledgment,
 Frank J. Higgins

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

BE IT REMEMBERED that on this Sixteenth day
 of May in the year one thousand nine hundred and
 ten, before me a Master in Chancery of New Jer-
 30 sey personally appeared Ann Dusenbery, widow
 of James Dusenbery who I am satisfied, is the
 grantor in the within Indenture named, and I
 having first made known to her the contents
 thereof, she did acknowledge that she signed,
 sealed and delivered the same as her voluntary
 act and deed, for the uses and purposes therein
 expressed.

40 FRANK J. HIGGINS,
 Master in Chancery of New Jersey.

Complainant's Exhibit 6

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

BE IT REMEMBERED, that on this seventh day of July in the year one thousand nine hundred and ten, before me, a Master in Chancery of New Jersey, personally appeared Ann Dusenbery widow of James Dusenbery, who I am satisfied, is the grantor in the witness Indenture named, and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed. 10

FRANK J. HIGGINS,
 Master in Chancery of New Jersey. 20
 Received in the office and Re-Recorded July 8,
 1910, @ 10:04 a. m. #5293

Complainant's Exhibit 6.

IN THE NAME OF GOD, AMEN; I Ann Dusenbery, of Jersey City, Hudson Co., N. J. being of sound and disposing mind and disposing mind and memory, make and publish my last will and testament as follows: 30

1st I direct all my just debts and funeral expenses to be paid, etc.

2nd I give to my daughter Sarah Allison and Margaret Craven all the furniture in and about the house #791 Bergen Avenue, Jersey City, N. J. 40

Complainant's Exhibit 6

to be divided as equally as possible between them share and share alike.

10 3rd I give and devise the house and lot of land located in Beaver Pond, Rockland County, New York, now owned by me to my executrices Sarah Allison and Margaret Craven or to the survivor of them, with full power and authority to grant, bargain, sell and convey the same to any person or persons in fee simple or otherwise, at public or private sale, at such times and for such terms as they shall think fit, and I direct out the net proceeds of the sale of the same be paid to my daughters Sarah Allison and Margaret Craven and my grand daughter Margaret Dusenbery, 20 daughter of Benjamin Dusenbery deceased, their heirs and assigns share and share alike.

4th I give and bequeath all the rest and residue of my personal property of whatever nature or kind to my daughters Sarah Allison and Margaret Craven, to be divided equally between them share and share alike.

30 5th I constitute and appoint Sarah Allison and Margaret Craven executrices of this my last will and testament.

Properly witnessed signed and attested.

JAMES F. NORTON,
Surrogate.

Complainant's Exhibit A-1.

December 16, 1925.

Samuel W. Garrison, Esq.,
751 Bergen Avenue,
Jersey City.

Dear Sir:

10

You are, I understand, familiar with the circumstances under which Miss Margaret Dusenbery signed a deed of the Dusenbery Homestead property to Isaac M. Schacter and Louis Schuchman.

I understand that her two aunts received \$50,000 consideration for that sale; that Margaret Dusenbery was entitled to one-third of the proceeds of the sale and only received \$3,333.33. 20

I am writing to ask you as Executor of Margaret Craven, if you are willing to account to Margaret Dusenbery for the difference between one-third of the \$50,000 and the amount that she received, \$3,333.33, or such part of the difference as Margaret Craven is properly chargeable with.

I understand something of the embarrassment that you may be in and would not be offensive, but that there may be no misunderstanding, I make formal demand that you do account for so much of the purchase price as Margaret Craven received, which should have been turned over to Margaret Dusenbery and was not so turned over. I shall be very glad to have you state to me your position in this matter. 30

Very truly yours,
RICHARD BOARDMAN. 40

RB/MEN.

Defendants' Exhibit.

IN CHANCERY OF NEW JERSEY

10	Between MARGARET DUSENBERY, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> MARGARET CRAVEN, <div style="text-align: right;">Defendant.</div>	} Copy of dock- et-entries 57/116. Samuel Har- ler, Solr.
----	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------

1924

Nov. 28, Bill; Subpa ret. Jan. 4, served Hudson;
 Dec. 13, Order ex. time; Jan. 9/25, Amended Bill;
 13, Order to Amend; Feb. 5/25, Stipulation;
 20 Decree Dismissal.

BILL.

*To the Honorable Edwin Robert Walker, Chan-
 cellor of the State of New Jersey:*

The complainant, Margaret Dusenberry of the
 Town of Union, in the County of Hudson and
 State of New Jersey, respectfully shows that:

30 1. On or about the fourth day of February 1886,
 one James Dusenberry, grandfather of complain-
 ant, departed this life, being seized of the prem-
 ises mentioned and described in paragraph 2
 herein, leaving a last will and testament, dated
 September 10, 1885 which was probated in the
 office of the Surrogate of the County of Hudson
 on February 17, 1886 and leaving at the time of
 his death surviving his widow, Ann Dusenberry;

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Defendants' Exhibit

and three children, Benjamin Dusenberry a son, Margaret Dusenberry a daughter; and Sarah Allison a daughter.

2. That the premises referred to in paragraph 1 are described as follows: 10

ALL that certain tract or parcel of land and premises, situate, lying and being in the City of Jersey City in the County of Hudson and State of New Jersey:

Beginning at the corner formed by the intersection of northeasterly side of Glenwood Avenue with the northwesterly side of Bergen Avenue; thence Northeasterly along the northwesterly side of Bergen Avenue 61.51 feet to a point; 20
thence Northwesterly 110.39 feet to a point; thence southwesterly 60.13 feet to the northeasterly side of Glenwood Ave.; thence southeasterly along the northeasterly side of Glenwood Avenue 118.26 feet to the point or place of beginning.

3. That among other things contained in said will of James Dusenberry, which will is referred to and made part of this complaint, as if particularly set forth said James Dusenberry, deceased, 30
in and by virtue of said will devised and bequeathed the above described premises to his wife, Ann Dusenberry for and during the term of her natural life if she so long remains his widow, and from and after her decease or her again re-marrying, he devises and bequeaths said above described premises unto such child or children as he shall leave or have living at the time of his decease and their heirs and assigns forever 40

Defendants' Exhibit

and representatives of said deceased child to have the share of his, her or their parents; that said Ann Dusenberry accepted the life estate contained in said will in lieu of her dower and continued in possession of said premises aforesaid as life
10 tenant until her death, Septemebr 30, 1922.

4. That on or about the 13th day of February, 1908 Benjamin Dusenberry, son of James Dusenberry to whom there was devised one-third of the above lands and premises, subject to the life estate of his mother, departed this life, leaving as his sole heir, the complainant, Margaret Dusenberry.

20 5. That on the death of the life tenant, Ann Dusenberry, and on the death of Benjamin Dusenberry, father of this complainant, said complainant and said defendants became seized of and owners in fee simple of the above lands and premises and this complainant is entitled to one-third undivided interest and share in and to the premises mentioned in paragraph 2 of this complaint.

30 6. That on or about the 16th day of May, 1910 Ann Dusenberry, widow of said James Dusenberry, also known as Jane Dusenberry, conveyed her interest in and to the above mentioned and described premises to her two daughters, the defendants herein, by deed dated that day and recorded respectively in liber 1071 of Deeds for Hudson County on page 5, and also re-recorded in liber 1075 of Deeds for Hudson County on page 175 for an alleged consideration, which
40 consideration said complainant alleges and states was never paid by said defendants to the said

Defendants' Exhibit

Ann Dusenberry and that if said consideration was paid to the said Ann Dusenberry, same is not chargeable in any way against the plaintiff, for the purpose of the within cause, and whatever interest or benefits was received by said defendants or obtained by them under said conveyances from their mother, Ann Dusenberry up to the date of her death, September 30th, 1922, was solely and exclusively for the benefits of said defendants and this complainant never received any benefit under said deed, from the above described premises (except as otherwise herein alleged which happened after the death of Ann Dusenberry her grandmother) at which time she became vested in the ownership of one undivided third interest in and to said premises by reason of being the sole heir of her father, Benjamin Dusenberry, deceased.

7. That on or about the 28th day of December 1922 this complainant was requested by the said defendants to join in a conveyance of the aforesaid described premises, to Isaac M. Schacter and Louis Schuchman, which deed is recorded in the Register's office of Hudson County in liber 1466 of deeds on page 459, for which conveyance the said defendants received the sum of \$50,000 in cash less the sum of \$756.49 paid for taxes and revenue stamps on the deed for the property mentioned and described in this complaint.

This complainant being one undivided third owner of the premises mentioned and described in this complaint, was, became and is entitled to one-third of the \$50,000 consideration received for

Defendants' Exhibit

the conveyance of said premises, less one-third of \$756.49 taxes and stamps against said premises, which makes a net sum of \$16,414.51 due her from the sale of said premises to the said grantees therein mentioned.

10

8. Defendants, and their agents, servants and representatives, represented and stated to the complainant that she was to receive one-third of the sum of \$10,000 being the consideration for the sale of said premises, and they also represented and stated that the said complainant had no interest whatever in said premises, and that they were giving her one-third of the consideration to wit: of \$10,000 to avoid any legal claim or any legal question as to any rights that she possibly could have in said premises.

20

9. The said defendants, their servants and representatives, knew that the said statements and representations were untrue and false, and notwithstanding the falsity and untruth thereof led this complainant to rely thereon, and by reason thereof misled her to sign her signature to the deed, dated December 28, 1922 made to

30 Isaac M. Schacter and Louis Schuchman, recorded in the Register's office of Hudson County in liber 1466 on page 459, for the conveyance of said premises.

30

10. That this complainant honestly and in good faith and ignorant of the true state of facts or affairs with reference to the above described premises, and entirely relying upon the honesty, fairness, good faith and statements as aforesaid

40 of the defendants, and their agents, servants and

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Defendants' Exhibit

representatives, which developed to be false and untrue, parted with her third interest in and to the premises above mentioned at the request of the defendants, their servants and representatives, and did not receive from the said defendants the true undivided third interest of the true consideration of \$50,000 which was paid for the conveyance of said premises but on the contrary received the sum of \$3333.33 being one-third of the \$10,000 consideration which moneys was represented and falsely stated to her by the defendants, and their representatives to have been the consideration for the sale of said premises, and which on the other hand was as otherwise afore-stated, when as a matter of fact she was entitled to one-third interest in said premises, and entitled to one-third of the consideration of \$50,000 which said defendants knew and had knowledge of the facts that the selling price of the premises was \$50,000 and she was one-third owner of said premises and entitled to one-third of the consideration, and concealed those facts from the complainant and by reason of said mis-statements, mis-representations and concealment of facts caused this complainant to sign away her one-third interest and rights in and to the premises mentioned in this complaint, this complainant being ignorant of any legal matters, and being ignorant her true status in and to the premises as aforealleged, and these defendants gave her a nominal consideration therefor, instead of giving her one-third undivided interest of \$50,000 less taxes and revenue stamps deducted therefrom but on the contrary converted the difference of said one

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Defendants' Exhibit

undivided third share of \$50,000 less \$3333.33 which said defendants gave to the complainant, to their own use and benefit, being not entitled thereto.

10 11. That this complainant later on by having the matter investigated in connection with some other real estate of the Estate of James Dusenberry was informed and for the first time discovered that she had been taken advantage of and mis-represented, mis-led, cheated and defrauded out of the true moneys to which she was entitled to on the sale of said premises; that the said defendants knew what the true state of affairs was in reference to the said premises as afore-
20 alleged, and knew that complainant was entitled to one-third of \$50,000 less taxes and stamps therefrom, knew what her rights were therein and notwithstanding all this, concealed all of said facts and mis-stated and mis-represented the other facts as afore-alleged to this complainant, keeping her in entire ignorance therefrom and instead of paying to this complainant the true one-third interest of said \$50,000 selling price less taxes and stamps, have appropriated the difference of
30 \$13,081.18 to their own use and have deprived this complainant of the said amount of moneys honestly and justly due her, and have never accounted for said moneys to this complainant.

12. This complainant further charges, that since the death of her father, Benjamin Dusenberry which happened on the 13th day of February 1908 she became seized of and entitled to
40 one undivided third interest in and to the prem-

Defendants' Exhibit

ises above described, subject to the life estate of her grandmother, Ann Dusenberry; and that said Ann Dusenberry departed this life on September 30, 1922 and since the date of the death of her grandmother she was entitled to one undivided third share or interest in and to the rents, issues and profits and income of said lands and premises, less taxes, assessments and maintenance and up-keep of said premises. 10

13. That said defendants have been receiving the rents, issues and profits thereof and have not accounted or paid all or any part of said moneys to this complainant; that all that this complainant has received was the sum of \$3333.33 from the said defendants on the sale of said premises afore-described, and as afore-alleged and nothing else. 20

14. That this complainant is entitled to an accounting of all the rents, issues and profits received by said defendants of said premises, less expenses and charges against the same, and an accounting of all of the moneys received from the sale of said premises as afore-alleged to the extent of her interest therein as aforestated, and that said defendants should be compelled to state and account for any and all moneys received by them with reference to said premises aforesaid, and by virtue of the third interest of your complainant in said premises she is entitled to one-third thereof, that said defendants refused, neglected and still refuse to account or in any way make restitution of said moneys collected or having come into their hands, to which complainant has a third interest therein. 30 40

Defendants' Exhibit

Complainant is therefor without adequate remedy at law, and therefor prays:

10 I. That said defendants, Margaret Craven and Sarah Allison who are the defendants to this suit, may answer this bill of complaint, without oath and each statement therein made;

20 II. That said defendants, Margaret Craven and Sarah Allison may be ordered and compelled by the decree or order of this Honorable Court to return to this complainant all moneys received by them, that is to say: all the rents, issues and profits, less expenses and all moneys received in the sale of the premises mentioned and described in the said bill of complaint to the extent of one-third interest that this complainant has therein;

30 III. That said defendants may be ordered and decreed by this Court to make an accounting for all the moneys received by them in the way of rents and profits from said premises and in the sale of said premises, so that the same may be divided equally between this complainant and said defendants, and that they be ordered to turn over said moneys, profits, income, consideration, etc. to this Honorable Court for the purpose of having a proper accounting and division thereof, with reference to the ownership of this complainant and defendants, as heirs at law of said James Dusenberry;

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

Defendants' Exhibit

V. That this complainant may be awarded and allowed such other and further relief as may be fair and just and deemed advisable in the premises.

SAMUEL HARBER,
Solicitor and of counsel 10
with Complainant.

 IN CHANCERY OF NEW JERSEY

Between

MARGARET DUSENBERRY,

Complainant,

and

MARGARET CRAVEN and SARAH
ALLISON,

Defendant.

20

Stipulation.

It is hereby stipulated and agreed, by and between the attorneys for the respective parties, that the above cause be and the same is hereby discontinued, without prejudice to the complainant, and without costs to either of the parties as against the other. 30

SAMUEL HARBER,
Solicitor of Complainant.
MARK TOWNSEND, Jr.,
Solicitor of Defendants.

A true copy.
Thomas Barber, Clerk.

40

Defendants' Exhibit

IN CHANCERY OF NEW JERSEY

10	Between MARGARET DUSENBERRY, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> MARGARET CRAVEN, <div style="text-align: right;">Defendant. </div>	}	Copy of docket-entries 57/118. Samuel Harber, Solr. Partition suit
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1924

Nov. 28, Bill; Order ex time; 22, Answer, Mark Townsend, Jr.; 26, Answer, Edwards & Smith;
 20 Jan. 6/25, 2, Replies; 7, Order Ref. Fielder;
 Feb. 9/25, Consent; Decree Dismissal.

A true copy.

Thomas Barber, Clerk.

Defendants' Exhibit

IN CHANCERY OF NEW JERSEY

Between MARGARET DUSENBERRY, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> MARGARET CRAVEN, HARRY CRAVEN, her husband, SARAH AL- LISON, SAMUEL W. GARRISON, <i>et</i> <i>als,</i> <div style="text-align: right;">Defendants.</div>	}	Discontin- uance.	10
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It is hereby stipulated and agreed, by and between the attorneys for the respective parties, 20 that the above cause be and the same is hereby discontinued, without prejudice to the complainant, and without costs to either of the parties as against the other.

SAMUEL HARBER,
 Solicitor of Complainant.
 MARK TOWNSEND, Jr.,
 Solicitor of other Defendants.
 EDWARDS & SMITH, 30
 Sol'rs for Natl. Grocery Co.

A true copy.
 Thomas Barber, Clerk.

Exhibit D-A-1.

306 Brown Street,
Union Hill, N. J.
March 2, 1925.

Dear Laura:

10 I have received both your letters—and was pleased to hear from you once again. I should have answered you before I know—but—I know you will pardon me this time as I haven't been feeling very good of late—so didn't feel like doing any writing.

20 Now Laura, you ask in your last letter about some spinning wheels in Aunt Margaret's house. Mother says she has never seen any at any time in Aunt Margaret's house. Even up in the old homestead—we never remember any at any time.

Yes, the piano and wheel-chair was there. I haven't these things. The piano was in the setting room and the wheel chair was in the new dining-room. I too think the piano would make a fine library table, as there is some fine choice wood in it.

30 I am enclosing in this letter a list of all the things that Mother left in Aunt Margaret's house. I think I have included nearly every article that was still in the house.

I am glad to hear that you are pleased of my dismissal of Mr. Harber. I now have his bill—and I have given this affair in the hands of Mr. Garrison for me. I will be very glad when I get this all settled. When I gave this affair in the hands
40 of Mr. Harber in last July I did it for the *only*

Exhibit D-A-1

purpose of selling my share in the estate. I had no thought of all this "suing business" that Mr. Harber was forever fighting on. I was surprised to hear about this all from him—and I told him so too at the time. I always kept telling him I wanted a sale of my share—and I didn't wish all this "so-called court stuff". So you see Laura, that I have or never have had all this "bad thoughts" for any of you people—or I never had any hard feelings for the dead ones either. They were my only two real aunts on father's side—so why should I have any hard feelings for them. Aunt Margaret and Uncle Harry used to come to visit me here in my home regular—up until the time they couldn't travel any longer. We all even went twice on an all-day auto trip to the mountain place in the summer of 1923. I wanted Aunt Sarah to go with us also—but Aunt Margaret said she wasn't able to make the long auto ride at that time.

Mr. Grim called here at my home on February 25th, 1925, and I signed the deed to the Beaver Pond property. I received check for \$333.32 for same. I will take your advise about this money—and not tell anyone about it—and I will also state to you too—that I won't spend it foolishly. I don't believe in this—you know a "Dusenbery" is noted to be quite saving. Of course I have to meet all household expenses, as you know that I am supporting my little home all by myself. There is no one here but Mother and myself. I always try and go as saving as possible. I wish to thank you for enclosing stamp

Exhibit D-A-1

for reply to your letter. I should have answered before—but I wasn't able.

10 When you have time—and wish to—you must come over and visit me some nice day. You are always welcome. My home isn't far on the Jersey side from 42nd Street Ferry—only a few minutes ride by trolley.

Now I will close for this time—sending you my Best Wishes and when you have time—write me again. I will be always pleased to hear from you as often as you care to write.

Bye-Bye with love

20

MARGARET D—

Miss Margaret Dusenbery
306 Brown Street
Union Hill, N. J.
Apt-A-2

Exhibit D-1.

Mr. S. W. Garrison:

I hereby authorize you to act as my agent to settle bill with Samuel Harber.

MARGARET DUSENBERY. 10

I, Margaret Dusenbery, of full age on my oath depose and say that I have no claim against the sale of Glenwood & Bergen Ave property that I released same when I joined in deed.

MARGARET DUSENBERY.

Sworn to and subscribed to before me this 27th day of February, 1925.

S. W. GARRISON, 20
Notary Public of N. J.

Exhibit D-A-2.

1927 Third St.,
North Bergen, N. J.
Feb. 24-1923. 30

Dear Aunt Margaret:

A few lines to you this evening to ask how you all are. I hope you all are feeling well. I am in good condition at present.

I received your last letter alright, and was pleased to hear from you again—as I am always.

How are you getting along in your new home? Mother says you sure have a nice home which I 40

Exhibit D-A-2

am very glad to hear because I think you deserve it if anyone does. I hope you can have everything fixed comfortable—and so enjoy some comforts.

10 Aunt Margaret—I wish you all the luck—happiness and everything good in the world in your new home.

We are having some bad weather here now. I'll be glad when the warm days come along.

20 Yes—I received my statement in January from Mr. Garrison—There is sure some work—and a lot of expenses besides. Yes—I know you had a hard time all alone—caring for it all alone. But it is plain enough to see by that statement that you kept expenses paid up promptly all these years—as there are no back debts standing. There is sure some heavy expenses all the time on one or the other.

When you can—you and Unlce Harry come up sometime. You know you are always welcome—and I'd be pleased to see you both again. I wish I could see your new home. Some day I may be able to come down.

30 I am still enjoying my lovely desk—and I hope to always too. I write at it every day and every time I do—I think of you—as you was so kind enough to give it to me. I sure think a lot of it.

Well Aunt Margaret—I'll close for this time—and hope to hear from you soon.

With love to all.

Lovingly your niece

40

MARGARET.

Exhibit D-A-3.

306 Brown Street
 Union Hill, N. J.
 January 18, 1924.

Dear Aunt Margaret:

10

I have received both your welcome letters and was very pleased to hear from you again. So now I am going to type you these lines in return.

I am very glad to hear that Uncle Harry is improving somewhat, and I sincerely hope that he will be able to get around again in the very near future. He sure has had his share of illness I think. I hope he can get up to see me in my little home soon, and tell me what he thinks of it. I would be very happy to have him come, believe me.

20

Yes, Mother and I are well and happy—we could not be anything else but happy now you know. Mother has been rather busy this week as it is our wash week—so she has been busy. But she will try and get down to see you one day next week. I will also send that insurance money to you when she comes.

30

I will also let you know that I received my statement for quarter to January 1, 1924—and also check for \$75.00 too.

Yes, I received your last letter O. K.—but I think it would be better to always put “Basement Apt” on your letters, as we don’t always have the same mail carriers, so they don’t always know where I am located at. They leave letters up in

40

Exhibit D-A-3

the main entrance and they are likely to go astray. But I received your letter tho this time.

10 Well Aunt Margaret, I would like to see you, but I realize you can't leave Uncle Harry. I am only hoping that he will soon be able to take a trip up with you to spend the whole day with me. Perhaps when the good weather comes I can get down to see you both. I can't go out this kind of weather with my foot.

20 My foot is about the same. It doesn't heal up any more, and I don't think it ever will. But I feel lots better since I have been in this place. It is so much warmer for me on my feet. The old place was so damp and wet up there. I am never cold here.

Now Mother will be down one day next week, and she will bring that money with her.

I close for this time with my love to you both. Write again soon, and if you can come up to see me some day.

Lovingly your niece,

MARGARET.

Mother sends love too.

Exhibit D-4.

306 Brown Street,
Union Hill, N. J.
February 14, 1925.

Samuel Garrison,
Jersey City, N. J.

10

Dear Sir:

I write to state that I have notified Mr. Samuel Harber of his dismissal on the case, and I also requested him to discontinue all future debts against me.

I furthermore stated for him to send his bill and all my personal papers to you.

20

Yours very truly,

MARGARET DUSENBERRY.

Exhibit D-A-4.

306 Brown Street,
Union Hill, N. J.
January 25, 1926.

Dear Jeanie:

10 I now type you these few lines this evening to tell you Mother and I have been thinking since you were over Friday—about Aunt Margaret's furniture.

You told Mother and I that you had nobody to give Aunt Margaret's things to, and that we could ask for anything that we would like to keep of Aunt Margaret's—so we have been thinking what we would like to have, and so if you or your Sister
20 have nobody else to give them to—and also if you both care for Mother and I to have them—we would be very pleased to accept them when you are ready to give them away.

If you could arrange to have Mother go down to Aunt Margaret's home with you before you leave these parts—or if you can't go, Mother would be willing to go with your Sister—then she could show you what she would like. Mother wouldn't
30 like to go down unless you or your Sister was with her.

I know there is a few things of Aunt Margaret's that I would value very highly—in remembrance of Aunt Margaret—and I promise you and your Sister to always keep them—so if you have nobody else to give them to—I would be very pleased to have them. And if Mother was down there she could show you better just what they
40 were than what I could tell you here on paper.

Exhibit D-A-5

If you would care to call here at my home again before you leave—or if this is impossible—write me and tell me what day and hour you would be able to go there with Mother (as you asked her to go down when you were here)—Mother could then meet you and have you with her.

10

Hoping to hear from you about this matter, and also thanking you and your Sister for your kindness, I am with all Best Wishes.

MARGARET DUSENBERY.

My address:

Miss Margaret Dusenbery
306 Brown Street,
Union Hill, N. J.
Apt A-2

20

Exhibit D-A-5.

306 Brown Street,
Union Hill, N. J.
February 16, 1925.

Dear Laura:

30

I will now answer all your letters which I have received—all OK. I thank you for them all too.

Mother moved our things from Aunt Margaret's house last Tuesday—and they all arrived safe here at my home. I thank you Laura for your kindness in giving them to me—and I assure you I appreciate it very much. I am certainly

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Exhibit D-A-5

pleased to have these things—because they belonged to Aunt Margaret and Grandmother Dusenbery for so many years. I shall always care for them and keep them in memory of the family.

10 I have also received the jewelry that you sent me through mail, and thank you for this also. I am very pleased to have these articles of Aunt Margaret's—and I am now wearing them regular.

I have received all your sister's letters and when I finish this to you I shall write her my many thanks too.

20 Laura, I want to tell you that I have dismissed Mr. Samuel Harber on the case—I have notified him of his dismissal Saturday. You and your sister seem rather anxious to sell the estate—so I have come to the conclusion that there is no need for me to have Mr. Harber working against the estate any longer. It is only holding the sale back—and I am of the opinion that we can all get along much better if there is no “court” included in with us. So now Laura there is nothing to stop
30 us from selling any longer—if you and your sister are as anxious for a sale as I am. I wish we would all come together as soon as possible and agree to sell. I—for my part—think we could invest in better paying business than what these houses are now bringing in—I really can't live off that income. Please think this matter over and let me know what you think about it?

I would like to ask you for another favor. It
40 is this:—if you dispose of Aunt Sarah's things—

Exhibit D-A-5

will you remember me with those pair of vases
 —they resemble jugs—they were Grandmother's
 —and I think Aunt Sarah had them after her
 death. Perhaps I may be mistaken—Aunt Sarah
 may not have them—but I think she has. If they
 are still in her house—and you get ready to 10
 dispose of her things—will you remember me with
 these vases. They look like jugs. They used to
 be on Grandmother's parlor mantle in the old
 homestead. I would love to have them—as I now
 have the pair of pink ones. I would hate to see
 these go to strangers. If you have no one else
 to give them to I would appreciate them very
 highly. I love any old-time vases like these—and
 I always admired them in Grandmother's parlor. 20

Hoping you are enjoying the best of health—
 as I am feeling quite fair at present. When you
 get time I would be very pleased to have you visit
 me. You are always welcomed in my home. So
 I hope to have the honor of a visit from you some-
 time in the very near future?

Thanking you for all your kindness, I remain
 with Best of Wishes,

30

Sincerely,

MARGARET.

My address is:

Miss Margaret Dusenbery
 306 Brown Street,
 Union Hill, N. J.
 Apt. A-2

40

Exhibit D-5.

March 18th, 1925.

Mr. S. W. Garrison,
751 Bergen Ave.,
Jersey City, N. J.

10 Dear Sir:

I hereby authorize you to sell my interest in the Bergen Avenue property at the rate of One Hundred Five Thousand Dollars for the entire property and will pay the usual commission, providing, however, that the other heirs will consent to sell at the same price.

20

Yours truly,

MARGARET DUSENBERRY.

Exhibit D-A-6.

306 Brown Street,
Union Hill, N. J.
October 31, 1923.

Dear Aunt Margaret:

A few lines to you this evening to ask you how 10
you all are? I hope you and Uncle Harry are
feeling well? Mother and I are getting along fine
and dandy. I am now feeling much better too.
We are now all to rights at last. I certainly feel
quite proud and happy over our little home! I
have the electric in now, so it is more pleasant in
the evenings to read or write.

Mother says she will try and get down one day 20
next week. She can't come this week as she will
be too busy.

I hope you will come up again soon? You are
always welcome any day. I hope Uncle Harry
will be able to come with you this time.

As you told me—I have notified Mr. Garrison
of my change of address.

I will now close by sending my love to you both.
Mother wishes to be remembered too. 30

Write when you can.

Lovingly,

MARGARET.

Miss Margaret Dusenbery,
306 Brown Street,
Union Hill, N. J.
"Basement Apartment." 40

Exhibit D-A-7.

306 Brown Street,
Union Hill, N. J.
February 16, 1925.

Dear Jennie:

10 I will now answer all your letters which I have received—all O. K. I thank you for them all too.

Mother moved our things we wished to have from Aunt Margaret's house last Tuesday—and they all arrived safe here at my home. I have also received the jewelry that your sister sent me thru mail.

20 I wish to thank you for all these things. I certainly appreciate them all—and I will let you know that I shall always care for them and keep them—in memory of Aunt Margaret and Grandmother Dusenbery I know they both valued them all their lives—therefore I shall do the same too.

I certainly think it is very kind of you and your sister to give these things to me. I thank you both a thousand times for this kindness.

30 Mother met your sister at Aunt Margaret's house last week and they went thru all the things—and I am certainly pleased to have some of the old-time nick-nacks that I know both Aunt Margaret and Grandmother Dusenbery valued all their lives.

40 I wish to also tell you that I have dismissed Mr. Harber on the case—I have notified him of his dismissal last Saturday. I think from your conversation here in my home that both you and your sister are rather anxious to sell the estate as

Exhibit D-A-7

soon as possible—and so as I am as anxious for a sale too—I have come to the conclusion that it is best for me to dismiss Mr. Harber—as once it goes to “court” there will be no hope for a sale.

So now Jennie, there is nothing for us to stop from selling any longer—if you and your sister 10
are as anxious for a sale as I am. I do so wish we would all come together as soon as possible and agree to sell. I—for my part—think we could invest in better paying business than what these houses are now bringing in—one really can't live off that income. Please think this matter over and let me know what you think about it? I have also wrote your sister too.

Hoping you arrived in Los Angeles alright and 20
that you are enjoying the best of health—as I am in fair condition at present also.

When you come back to these parts—I would be very pleased to have you visit me—and also your daughter too—if she would care to come. You are always welcomed in my home.

There isn't many of us left now—from the old family—so it would please me very much if we 30
would all be good friends together.

Thanking you for your kindness, I remain with
Best of Wishes,

Sincerely,

MARGARET.

My address is:

Miss Margaret Dusenbery
306 Brown Street,
Union Hill, N. J.
Apt. A-2

CHAPTER IV

The first part of the chapter is devoted to a discussion of the various forms of the verb 'to be'. It is shown that the verb 'to be' is used in a number of different ways, and that its meaning is often different from that of the verb 'to exist'. The author then discusses the use of the verb 'to be' in the various tenses, and shows how the meaning of the verb changes according to the tense used.

The second part of the chapter is devoted to a discussion of the various forms of the verb 'to have'. It is shown that the verb 'to have' is used in a number of different ways, and that its meaning is often different from that of the verb 'to possess'. The author then discusses the use of the verb 'to have' in the various tenses, and shows how the meaning of the verb changes according to the tense used.

The third part of the chapter is devoted to a discussion of the various forms of the verb 'to do'. It is shown that the verb 'to do' is used in a number of different ways, and that its meaning is often different from that of the verb 'to perform'. The author then discusses the use of the verb 'to do' in the various tenses, and shows how the meaning of the verb changes according to the tense used.

The fourth part of the chapter is devoted to a discussion of the various forms of the verb 'to go'. It is shown that the verb 'to go' is used in a number of different ways, and that its meaning is often different from that of the verb 'to move'. The author then discusses the use of the verb 'to go' in the various tenses, and shows how the meaning of the verb changes according to the tense used.

The fifth part of the chapter is devoted to a discussion of the various forms of the verb 'to come'. It is shown that the verb 'to come' is used in a number of different ways, and that its meaning is often different from that of the verb 'to arrive'. The author then discusses the use of the verb 'to come' in the various tenses, and shows how the meaning of the verb changes according to the tense used.

The sixth part of the chapter is devoted to a discussion of the various forms of the verb 'to see'. It is shown that the verb 'to see' is used in a number of different ways, and that its meaning is often different from that of the verb 'to observe'. The author then discusses the use of the verb 'to see' in the various tenses, and shows how the meaning of the verb changes according to the tense used.

The seventh part of the chapter is devoted to a discussion of the various forms of the verb 'to hear'. It is shown that the verb 'to hear' is used in a number of different ways, and that its meaning is often different from that of the verb 'to listen'. The author then discusses the use of the verb 'to hear' in the various tenses, and shows how the meaning of the verb changes according to the tense used.

New Jersey
Court of Errors and Appeals

Between,
MARGARET DUSENBERY,
Complainant-Appellant,
and
LAURA A. GRIFFIN, Executrix,
et al.,
Defendants-Respondents.

BRIEF FOR COMPLAINANT-APPELLANT.

I. Statement of Case.

This is an appeal from a decree advised by Vice Chancellor Griffin, dismissing Complainant's bill.

Margaret Dusenbery, the complainant, filed her bill of complaint against the Executors of the Wills of her two aunts, Sarah Ann Allison and Margaret Craven.

On December 28, 1922, Mrs. Allison, Mrs. Craven, Harry Craven, her husband, Samuel Garrison, her real estate agent, and Frank J. Higgins, a lawyer, called on Margaret Dusenbery, the complainant, in the morning, unannounced. Margaret

Dusenbery was living at that time, with her stepfather, who was a truck driver, and her mother, who were Mr. and Mrs. Steinmann. Margaret and her mother helped support the family by their own labor. Margaret Dusenbery appeared on the stand as a cripple. Although this fact may not appear in the proofs, it does appear by one of defendant's exhibits that on January 18, 1924, she wrote to her aunt, Mrs. Craven: (p. 158)

“My foot is about the same. It doesn't heal up any more, and I don't think it ever will.”

On December 28, 1922, as Mrs. Allison and the others came in, Mrs. Allison said, “We have good news for you, Margaret.” It was thereupon explained to Margaret Dusenbery that her grandfather, James Dusenbery, had left the homestead, 791 Bergen Avenue, Jersey City, to his widow, Ann Dusenbery, for life and upon her death, to his children or their representatives. The widow, in her lifetime, had attempted to convey the property to Mrs. Allison and Mrs. Craven, and the good news was that Margaret Dusenbery was to sign a new deed and receive one-third of \$10,000. This situation was explained to her by Mr. Garrison and Judge Higgins. She was told that she was to sign a deed and that she was to receive a third of \$10,000. No other alternative was suggested and there were no negotiations as to price (pp. 93 & 101). Margaret signed the deed and shortly afterwards received a check from Mr. Garrison for \$3,333.33 which, it is admitted, was taken out of the purchase money which her two aunts collected from Messrs. Schacter & Schuchman. The sale price to Schacter & Schuchman was \$50,000.

Margaret Dusenbery's bill in this case was filed to recover the difference between the \$3,333.33, which she did receive, and one-third of \$50,000, which she was entitled to receive. The bill charges that she signed the deed to Schacter & Schuchman, acting under undue influence and without independent advice. The bill also charges that the deed, which her grandmother, Mrs. Dusenbery, had made in May—July, 1910, had been procured from her grandmother through the fraud and undue influence of the same two aunts, Mrs. Allison and Mrs. Craven, and that the grandmother had, in May, 1910, acted without independent advice. At the trial, the Vice Chancellor apparently gave no consideration to the *bona fides* of the transaction whereby the old grandmother, eighty odd years old, attempted to convey the homestead to her two daughters, one of whom lived under her roof. The deed was first drawn in the name of *Jane* Dusenbery. The old lady, Ann Dusenbery, signed with her mark between the name of "Jane" and "Dusenbery."

So ignorant was she of the matter then in hand, that she did not recognize the error in the writing of her own name. This deed, made first on May 16, 1910, was witnessed by Harry Craven, the husband of one of the grantees, and Frank J. Higgins, the scrivener who drew the deed. So ignorant of the transaction was Mr. Higgins, at the time that he drew the deed, that he did not know that Mrs. Dusenbery's name was *Ann* Dusenbery. He thought it was *Jane* Dusenbery and drew the deed in the name of *Jane* Dusenbery, inserting that name three times throughout the deed, writing the same name at the end of the deed, letting her insert her mark between

“Jane” and “Dusenbery,” and then took her acknowledgment as Jane Dusenbery. He certified (p. 131):

“That * * * before me personally appeared Jane Dusenbery widow of James Dusenbery who I am satisfied is the grantor in the within Indenture named and I having first made known to her the contents thereof she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed.”

Mr. Higgins testified on the stand that he acted only as scrivener and Master (p. 101), but if he had not testified so, that fact would have appeared by this amazing incident. The deed could not have been read over to this woman, who could not read or write, nor could it have been explained to her in any fulness, or the discrepancy would have been discovered. How it was that Harry Craven, the son-in-law of the old lady, and the other witness to the deed did not pick up this discrepancy, is not explained, but it seems perfectly obvious that the matter was put through hurriedly and without explanation to the old lady, which might have provoked a different result. It will be borne in mind that Mrs. Dusenbery did not own the property in question. She was only a life tenant. It is true that she had a power of sale under the Will of her husband, but there was no attempt to exercise the power of sale. Two months later, on the seventh day of July, the name of *Jane*, throughout the deed, where it appeared three times, and in the signature and in the original acknowledgment of the 16th of May,

was changed from *Jane* to *Ann*, and on the 7th day of July, 1910, this deed was re-acknowledged and re-recorded in the Hudson County Register office. The deed as executed in the name of Jane Dusenbery, appears as Complainant's "Exhibit 4" (p. 127), and as re-executed, appears as "Exhibit 5" (p. 132 &c.). As we have said, the property belonged, not to Mrs. Dusenbery in fee, but as life tenant. Margaret Craven, one of the grantees, and her husband, Harry Craven, the witness, lived with the grantor, under the same roof. There was no change of possession of the property following the deed, and certainly, Mrs. Dusenbery had no independent advice or any counsel in the matter. A consideration of \$10,000 was mentioned in this deed and upon the assumption that this \$10,000 was actually paid by the daughters for this deed, the Vice Chancellor predicated his decision against the complainant in this case. Samuel Garrison, who is the administrator with the Will annexed of James Dusenbery, and who is Executor of the Will of Margaret Craven, and who has been the real estate adviser of the family for years, has never seen any evidence that the \$10,000 was actually paid by these two women to their aged mother (p. 68). If, however, it was paid to her, under her Will it came back to these same women, Mrs. Craven and Mrs. Allison, and no part of it went to the enrichment of Margaret Dusenbery (pp. 137 & 138). As we have said, the Vice Chancellor predicated the whole equitable finding of his decree upon the assumption that Mrs. Allison and Mrs. Craven paid their mother \$10,000. Therefore, he argued, Margaret Dusenbery did only that which she ought to have done when she signed the Schacter & Schuchman deed

and further, she was not entitled to independent advice. In these respects, we submit that the learned Vice Chancellor fell into error.

II. Specification of Error.

The Court erred in:

- (a) Dismissing the bill of complaint;
- (b) In failing to grant the relief prayed for by the complainant in her bill.

III. Argument.

The Vice Chancellor erred in the following findings which are taken from the opinion and which found practical expression in the decree.

(1) On May 16, 1910, Mrs. Dusenbery, widow, in her individual capacity, conveyed to Margaret Craven and Sarah Ann Allison the homestead property for the sum of \$10,000, which consideration was paid to her.

(2) By mistake, Ann Dusenbery executed the deed as an individual and not as executrix under the power of sale given under the will of James Dusenbery.

(3) I find that the conduct of the defendants (intending no doubt, Mrs. Allison and Mrs. Craven) was frank, open and fair in their dealings with the complainant. (If so, this is not enough. The transaction must also be "well understood").

(4) I do not regard the doctrine of independent advice as applicable.

(5) I am inclined to the view that in the conference leading to the sale of the Bergen Avenue property the parties settled all their differences as to the homestead property, and that such settlement was fair.

(6) When the defendants in this case applied to the complainant for a deed which would correct the title so as to give to them the fee, the complainant did nothing more than she was morally bound to do, for which the grantees paid her \$3,333.33 more than the consideration paid for the deed from their parent.

Under Point I, we propose to discuss items (1), (6) and (2), briefly stated in these questions:

(1) Was \$10,000 paid by Mrs. Allison and Mrs. Craven to their mother? Our answer is No.

(6) If \$10,000 was so paid, was Margaret Dusenbery morally bound to execute the deed to Schacter & Schuchman, upon receiving \$3,333.33?

(2) What was "the mistake" under which Mrs. Dusenbery labored when she executed the deed of May 16, 1910? Could the deed of May 16, 1910, have been reformed because of such mistake, either in Mrs. Dusenbery's lifetime or after her death?

Under Point II, we propose to discuss items (3) and (4), under the question Were Mrs. Allison and Mrs. Craven frank, open and fair in their dealings with the complainant? If so, was the situation "well understood" between these aunts and their niece? Was the doctrine of independent advice applicable?

Under Point III, we discuss item (5), Did the parties settle their difficulties?

POINT I.

ITEM (1)

Was the \$10,000 actually paid?

For the preliminary statement, we quote from the opinion of the Vice Chancellor: (p. 27)

“James Dusenbery died at Jersey City on February 4th, 1886, seized of property on the corner of Glenwood and Bergen Avenues, Jersey City (hereinafter referred to as ‘the homestead property’) and also some property on Bergen Avenue between Montgomery Street and Fairmount Avenue, Jersey City (hereinafter referred to as ‘the Bergen Avenue property’), leaving a last will and testament dated September 10th, 1885, in and by which he gave, devised and bequeathed to his wife, Ann Dusenbery, all of his property, both real and personal, during the term of her natural life, or so long as she remained his widow, and, after her decease, he gave, devised and bequeathed the remainder to such child or children as he might leave at the time of his decease, in fee. He appointed his wife, Ann Dusenbery, executrix with power of sale. He left him surviving his son, Benjamin Dusenbery, father of the complainant, and two daughters, Margaret Craven, wife of Harry L. Craven, and Sarah Ann Allison. Said Benjamin Dusenbery died on February 3d, 1908, intestate, leaving the complainant as his only heir-at-law.”

This is correct. Then comes the statement, the correctness of which we challenge (p. 28):

“On May 16th, 1910, Mrs. Dusenbery, widow, in her individual capacity, conveyed to Margaret Craven and Sarah Ann Allison the homestead property for the sum of \$10,000, which consideration was paid to her, and was substantially the fair market value of the property, it being testified to and not contradicted that it was worth between ten and twelve thousand dollars.”

How important the payment of this \$10,000 was in the mind of the Vice Chancellor at the time he wrote his opinion, is shown by the way he refers to it again and yet again.

Speaking of the incident of December 28, 1922, the opinion says:

“The purpose of their visit was fully explained. They said that Ann Dusenbery had, in 1910, conveyed to Mrs. Craven and Mrs. Allison the homestead property for the sum of \$10,000 individually and not as executrix and that they had sold the property for \$50,000 and that an objection was raised to their title because Ann had not executed the deed as executrix under the power of sale, and told her that her share of the consideration paid was one-third of \$10,000 or \$3,333.33.”

Again, in conclusion he makes the payment of the \$10,000 the very basis of his decision (p. 34):

“But I am not content to let my decision rest upon the above ground alone. When the executrix made the conveyance to her

two daughters, she had the power and authority to sell the lands and convey a fee simple. That she intended to convey a fee simple the case leaves no room for doubt. Her daughters paid the fair market value of the fee; and it can hardly be assumed that their mother intended to convey, and they expected to buy a life estate in lands where the life tenant was eighty-two years of age, and which was of trifling value."

At the trial, the Vice Chancellor thought this evidence less significant (p. 94). Counsel for complainant is cross-examining Mr. Garrison, one of the defendants (p. 94):

"Q. I do not know how particularly I put the question this morning: as executor of James Dusenbery, did any ten thousand dollars ever go into this estate in 1910?

The Vice Chancellor: What difference does it make? The mother was the life tenant, and had the right to the use of the \$10,000 during her life; and two months after she died these other two daughters who bought the property, gave your client her one-third of the \$10,000. I do not see where that comes in.

Mr. Boardman: Well, I think we should know what the fact is. I am confident that no ten thousand dollars was ever paid.

The Vice Chancellor: Well, suppose it was not—the deed recites that it was paid, and it is *prima facie* evidence; it is a deed under seal.

Mr. Boardman: But between mother and daughter, living under the same roof—

The Vice Chancellor: I do not care about that. The mother acknowledged the receipt of ten thousand dollars, by deed, under seal. Now you have got to prove that it was not paid.

Mr. Boardman: Well, I am trying to find out if it was.

The Vice Chancellor: Well, I really do not care whether it was, or not. Your case is put on a very narrow ground—you say that you had not independent advice; that no title passed under that deed because the deed was that of the mother, who only had a life estate, and, therefore, at the time you signed this deed you were entitled to the one-third of fifty thousand dollars—that is your case.

Mr. Boardman: But I cannot see why it is not material.

The Vice-Chancellor: Well, I have ruled on it, Mr. Boardman: I want to try to finish this case today, if I can; I have another case to try tomorrow."

Was the \$10,000 actually paid?

The evidence on the point is this: The deed recites the payment. There is no other evidence of *such* ~~each~~ payment. Mr. Garrison is substituted administrator with the will annexed of James Dusenberg; he is executor of Margaret Craven's Will

(p. 67). He is a real estate agent and was the broker in the Schacter & Schuchman sale (p. 70). He is a defendant as such executor of Margaret Craven. His solicitor is the solicitor for the other defendants. He was the only defendant called as a witness in the case, although "a lady in the audience" injected herself into the record (at p. 93). If any one is familiar with the facts of the case, it is Mr. Garrison. He testified (p. 68):

"Q. Have you ever seen any evidence that the ten thousand dollars called for by the deed of May 16th, 1910, was paid? A. No."

So it may be assumed that the *only* evidence to support the finding that \$10,000 was paid, is the recital in the deed itself.

To what respect is that recital entitled? If the deed was an honest deed between parties dealing at arms length, in the ordinary course of business, the rule as laid down in Wigmore is:

"In general, then, it may be said that a recital of consideration received is, like other admissions, disputable so far as concerns the thing actually received; but that, so far as the terms of a contractual act are involved, the writing must control, whether it uses the term 'consideration' or not."

4 Wigmore on Evidence, 2433.

But this was no honest deed between parties dealing at arms length, in the ordinary course of business.

In the first place, it was the deed of an old woman, purporting to convey to her two daughters property that she didn't own. It was intended to prefer the daughters to a grand-daughter, if the transaction was understood at all by the old lady. The deed was to two daughters, one of whom lived with the grantor; the husband of the grantee witnessed the signature. It was signed by a mark. The deed named the grantor in three places with a name the old lady never bore. She put her mark between the name "Jane" "Dusenbery," whereas, her real name was Ann. So little was the deed explained to her, that neither she nor her son-in-law, the witness, discovered this discrepancy in names. There was no change of possession. Mrs. Dusenbery continued to live in the house until her death (p. 37). Mrs. Craven and her husband, Harry Craven, continued to live with Mrs. Dusenbery in the property (pp. 48, 49 & top 66). After about six weeks, it was discovered that the deed made in May, 1910, had been executed in the name of *Jane* Dusenbery. How the contents of a deed could have been explained to a woman without disclosing the fact that a name not her own was being used, that name appearing and re-appearing in the deed, again in the signature and yet again in the certificate of acknowledgment, is almost impossible of comprehension. If she didn't know how her name was written, is it likely she knew the other facts of the deed? Was the deed well understood? Obviously not. Did she have independent advice? She did not. Let Mr. Higgins tell his own story in his own words: (p. 101)

"Q. Do you recall an earlier instance, where you drew a deed of this property, on

May 16th, 1910? A. May I see a copy of it?

Q. There are two copies—apparently they are copies of the same deed, but one by 'Jane' and one by 'Ann Dusenbery,' but it is apparently the same deed re-executed?

A. (After examining the papers handed him.) Well, I just recall that I took the acknowledgment of that deed—that somebody, I don't know who it was, asked me to draw such a deed, and gave me some kind of an old deed or description of the property, and I just drew it. All I had to do with it was just drawing the deed and taking the acknowledgment. I knew nothing about the circumstances.

Q. You do not recall the fact that first it was drawn as 'Jane Dusenbery' and then later drawn as 'Ann Dusenbery' that it was changed? A. I cannot recall whether it was, or not. Did I acknowledge the other one?

Q. You took both acknowledgments? A. It must be so, but I do not recall it. It was a transaction that I had nothing to do with except execute the deed and take the acknowledgment, and I had no other information about the transaction."

Before considering the cases or the law, What is the presumption of common sense? Did Mrs. Allison and Mrs. Craven pay their old mother \$10,000 for such a deed? Mrs. Allison got nothing presently by the deed. She lived at 20 Highland Avenue, Jersey City (p. 37). Mrs. Craven got nothing. She continued to live in the house. Is it conceivable that these women paid their old

mother \$10,000 for a future estate in the property? If they had been paying \$10,000 in cash, would the carelessness have been shown that was shown? Where did they get the \$10,000? What did the old lady do with the \$10,000? The transaction left no trace that Mrs. Craven's executor has been able to discover (p. 68). Ten Thousand Dollars of real money is not handed around in any such off-hand, careless manner.

This is evidence and it is clearly to the effect that no actual consideration was paid.

If Mrs. Dusenbery were here, she would not be estopped to show that no \$10,000 was paid. Margaret Dusenbery, the person whom it was sought to prejudice, could not be estopped on any principle of law or equity. The deed as to her was inoperative. Her title was not affected. As against her, this alleged admission by an ignorant old woman, who did ^{not} know her own name, could hardly operate as an estoppel.

We cite the following cases, but our situation is even stronger than that in the cases cited.

Wooden v. Shotwell, 23 N. J. L. 465, at p. 471:

“But this rule of law has never been extended to prevent a party from showing that the deed is void for fraud or illegality. It is obvious, indeed, that the statute would be rendered a dead letter if the parties to an illegal transaction could evade the statute by a false recital in a bond, deed, or other instrument made in execution of the illegal contract.”

Mulford v. Peterson, et ux., 35 N. J. L., 127, at 133:

“A seal will not conclude a party from showing, in a court of law, that an instrument is void which is made upon a consideration, in violation of a statute, or contravening the general policy of the law. The cases sustaining this proposition are collated in the notes to *Collins v. Blantern*, in 1 Smith's Lead. Cas. 618, *et seq.* The recital of a money consideration in the deed does not conclude an inquiry into the true consideration, for the purpose of showing that the transaction on which it is founded is illegal.”

If the \$10,000 was not in fact paid it is obvious that Margaret was not “morally bound” to execute the deed of December 28, 1922, upon receiving one third of \$10,000.

ITEM (6)

If \$10,000 was paid in 1910, by Mrs. Allison and Mrs. Craven to Mrs. Dusenbery, was Margaret Dusenbery *morally bound* in 1922 to execute the deed to Schacter & Schuchman upon receiving \$3333.33?

We respectfully submit that she was not so bound. Margaret Craven and Harry Craven, her husband, were living with Mrs. Dusenbery at the time of the execution of the deed. They continued to live together after the execution of the deed, until Mrs. Dusenbery's death, which occurred, according to “a lady in the audience” on September 30th, 1922 (p. 93). Mrs. Dusenbery was 82 years old at the time of the deed, and died at the age of 94 years. Under Mrs. Dusenbery's will, Mrs. Allison and Mrs. Craven were favored

legatees. Margaret Dusenbery got only the third interest in the Rockland County house. (Sold for \$333.32 p. 153.) Therefore, if the \$10,000 was paid, so much thereof as was not expended during the lifetime of Mrs. Dusenbery came back to these two daughters upon her death. It did not go to the enrichment of Margaret Dusenbery.

ITEM (2)

What was "the mistake" under which Mrs. Dusenbery labored when she executed the deed of May 16, 1910?

Margaret Dusenbery was told on December 28, 1922, that Mrs. Dusenbery had made a mistake in *signing* the deed as an individual and not as an executrix. We submit that this was not the mistake at all. If old Mrs. Dusenbery understood at all what she was doing, she thought that she *owned* the property and could do with it as she pleased and be accountable to no one.

That is a very different kind of a mistake than a mere mistake in the form of the signature.

What was told to Margaret Dusenbery, was brought out on her cross-examination by defendants' counsel (p. 53):

"Q. Now, Mr. Garrison told you, didn't he, that your grandmother, in signing that deed, had made a mistake—that she had neglected to sign as executrix of your grandfather's estate—didn't he tell you that? A. He said that, yes.

Q. And he told you that if she had signed it as executrix of the grandfather's estate,

she had the power under the will to do so, and if she had signed it as that, you would not have any interest in the property? A. Yes, sir."

Mr. Garrison testified on direct-examination (p. 72):

"But to all intents and purposes, that the property had been sold by her grandmother, excepting that it was signed faultily."

On the other hand, it was not made clear to Margaret that the mistake lay in her grandmother's thought, that she owned the property and was free to deal with it as she saw fit.

Mr. Garrison, on cross-examination, testified (p. 92):

"Q. And no explanation was made to Margaret that possibly her grandmother had acted on the theory that she herself owned the property? A. I don't know whether there was or not; that might have been; I know I did think that she owned the property.

Q. You thought she did? A. I thought she owned it. I don't know what she thought; I thought she owned it."

The suggestion is made that perhaps the deed of 1910, made by Mrs. Dusenbery, might have been reformed to change it from a deed by an individual to a deed by an Executrix. That is in equitable contemplation to change it from the deed of one person to make it the deed of another person. Any comprehensive review of the circumstances will, we believe, dispel such a thought.

Mrs. Dusenbery, an old woman of over eighty, was so ignorant that she executes a deed drawn for her as *Jane* Dusenbery, signs the deed with a mark between the word *Jane* and Dusenbery without discovering the mistake. One of the witnesses to this deed is Harry Craven, the husband of one of the grantees. The deed is to her two daughters, one of whom lives with her. The parties all thought they were dealing with Mrs. Dusenbery's own property, and not with a trust estate. The value of the property was Twelve Thousand Dollars; the stated price was only Ten Thousand Dollars. Two months later, the deed is re-executed to change the name *Jane* to *Ann*. When the mistake was finally discovered, Mrs. Craven had lived in the house after the execution as well as before the making of the deed, for twelve years. She and her sister, if they had ever advanced the consideration, had received it back again under their mother's will.

To attempt reformation would be to attempt the making for Mrs. Ann Dusenbery, as Executrix, a contract that it was highly improbable that as executrix she herself would have made. There is no word of proof nor suggestion that she ever contemplated selling to her daughters, part of the estate of James Dusenbery. Reformation under such circumstances would be unthinkable.

In Cyc. Vol. 34, p. 934, it is laid down:

“A court of equity cannot add parties or substitute other parties for those appearing on the face of a contract, since the effect would be to make a new contract.”

In *Aller v. Crowter*, 64 N. J. Eq. 381, at p. 386. Chancellor Magie says:

“Reformation of such a deed (one regularly executed and recorded) can only be decreed when the proofs convincingly establish that, by a mutual mistake of the parties thereto, the deed, as executed, expresses something which they did not intend, or omits to express something which they did intend.”

Nothing that the parties intended was omitted from the deed in question, nor was any clause inserted that the parties intended to omit. The only mistake was that they thought they were dealing with property with which Mrs. Dusenbery was free to deal as she saw fit, whereas she was, in fact, dealing with trust property in respect to which she and her daughters all owed Margaret Dusenbery certain definite legal duties. Mrs. Dusenbery had no legal advice at that time. Judge Higgins knew so little of the situation that he first drew the deed in the name of Jane Dusenbery. He acted, as he himself testifies, only as scrivener and as Master in Chancery (p. 101). The price, if paid, was Two Thousand Dollars less than the fair market value (p. 84, bottom) Mrs. Dusenbery's entire personal estate passed to her two daughters under her will (p. 137). In such a situation, that any court, in 1922, would have reformed the deed of 1910, is unthinkable. It was not attempted—only as a threat was this possibility of any value, and as such, the answer of the defendant seems to imply it was used.

Threat of Litigation.

Running through the cases there frequently occurs, as an element of undue influence, the matter of threatening litigation. Where the stronger party is dealing with the weaker and threatening litigation, it would seem that that fact alone would be almost proof positive of the exercise of undue influence. Margaret Dusenbery needed that money very dreadfully. When she got it, it was spent on her living expenses (p. 62). She was living in poverty. The answer of the defendant says:

“Thereupon the said complainant, after consulting with counsel, agreed if the said Margaret Craven and Sarah Ann Allison would refrain from taking any action in a court of competent jurisdiction to reform said deed, and would pay to her one-third ($\frac{1}{3}$) of the purchase price of the premises, to wit, Ten Thousand (\$10,000.00) Dollars she would join in said deed to the said Isaac M. Schacter and Louis Schuchman” (p. 22).

At the trial, little was made of this feature of the case, but certainly the possibility of litigation was mentioned. Garrison testified (p. 72):

“And it was told Margaret that if this property had been sold back in 1910 for ten thousand dollars, she would have been entitled to one-third of it, and by withholding her signature from the deed at this time that the property could not be sold, and that she would have an action for recovery.”

Flummerfelt's Executors v. Flummerfelt, 51
N. J. Eq. 432, at 434.

Bird, V. C. :

“And I have no doubt but that they threatened litigation and made her believe that they would be able to expend the whole estate in the controversy. It is agreed on both sides that the agitation was continued until Mary and her mother yielded the point in dispute and promised to enter into the agreement which was signed.”

POINT II.

ITEM (3)

Were Mrs. Allison and Mrs. Craven frank, open and fair in their dealings with the complainant? If so, was the transaction “well understood” between these aunts and their niece?

On the morning of December 28, 1922, her two aunts, Mrs. Allison and Mrs. Craven, Mr. Craven, Mr. Garrison—who had recently been appointed administrator of her grandfather's will—and Mr. Higgins visited Margaret Dusenbery without previous warning (p. 48).

Margaret Dusenbery testified (pp. 46 & 47):

“Q. Now, tell us the whole story—just what happened when they got there that morning. A. Mrs. Craven was the first one in; and Mrs. Craven said, ‘Let me in,’ she says, ‘I have good news for Margaret;’ and Mr. and Mrs. Craven and Mrs.

Allison and Mr. Higgins and Mr. Garrison all came in; and they took off their coats, and they introduced Mr. Higgins to me, and they sat down around the table, got out their papers, and Mr. Garrison explained that I had to sign the deed for the selling of the old homestead.

Q. Did they say what the 'good news' was?

Mr. Townsend: Well, I object to that.

The Vice Chancellor: Oh, let her tell the story.

Q. All right—go ahead. A. And when that was through, Mr. Garrison said that Mr. Higgins would explain; and Mr. Higgins told me that back in 1910 my grandmother had sold the property to the two daughters for the sum of ten thousand dollars, and that I had never signed then, and it was necessary for me to sign now in order for my two aunts to pass title, and I was to get the one-third of the ten thousand dollars; and I was very surprised; and I at last joined in signing the deed with my two aunts and Mr. Craven.

Q. And then what was said? A. And then I asked them when I was to get this money. Mr. Garrison said he would send it through by registered mail in a week. And then Mrs. Craven told me it would be best for me to make a will; and I asked her why I should make a will when I had nothing. She said, 'Well, you have this money,' she said 'so why not make a will?' and I said, 'How could I make a

will when I didn't have nobody to make it for me,' and she said, 'Well, Mr. Higgins is here and he will fix it up for you.' So I consented, and went in the adjoining room with Mr. Higgins and drew up a will, with Mr. Garrison as a witness; and then we all came out together, and we bid one another good-bye, and Mrs. Craven, as she kissed me good-bye, said, 'Don't worry, Margaret, now everything is all right,' she said, 'and I will be your friend, and every penny I get I will share with you, from Papa's money;' she said, 'every penny I get I will share with you.' "

Mr. Higgins testified (pp. 98, 99):

"Q. And will you tell the Court what the conversation was, as near as you can recall? A. As I recollect it, we were there, about half or three-quarters of an hour; we were all sitting around the room and talking about it; I had been previously informed about a deed having been executed by Ann Dusenbery, which she had executed individually; I think it was a deed I had drawn for her; and that there was to be a new deed executed. Also—I cannot recollect the language—but I know that the daughters had paid ten thousand dollars to Ann Dusenbery for this property, and that they were now reselling it for fifty thousand dollars. That was all explained and talked over there. I don't know who told them—whether Mr. Garrison or I—but one of the purposes I went down there for was to see that she fully understood

the situation. Then afterwards, I think at her request, we went into another room, and I drew a will for her there. It was a very pleasant company we had there for three-quarters of an hour; everybody was satisfied. There was some talk about that she was going to get one-third of ten thousand dollars.

Q. And do you recall whether anything was said as to whether the grandmother, Ann Dusenbery, had conveyed this property originally as executrix of her husband's estate, or individually and what the effect of that was, or would have been? A. Yes, I recall that she had conveyed it individually—that if she had conveyed it as executrix the conveyance would have been good, as I recollect, and there would have been no necessity for another deed.”

It was a jolly party. It began with kind words and it ended with kisses and kind words. What are we to make of the incident of the Will? Were not the aunts a little too solicitous?

Margaret testified (p. 47):

“And then Mrs. Craven told me it would be best for me to make a will; and I asked her why I should make a will when I had nothing. She said, ‘Well, you have this money,’ she said, ‘So why not make a will?’ and I said, ‘How could I make a will when I didn’t have nobody to make it for me,’ and she said, ‘Well, Mr. Higgins is here and he will fix it up for you.’ So I consented, and went in the adjoining room with Mr. Higgins, and drew up a will, with Mr. Garrison as a witness.”

Garrison testified (p. 73):

“Miss Margaret Dusenbery signed the deed; and I think that her aunt advised her to draw a will; and, as Mr. Higgins was there, they went in the adjoining room and drew a will, and requested me to witness it, which I did.”

The will was in favor of Margaret's mother (p. 52).

Why this little by-play with the will? These women had had experience. Was it to give color to the idea that Mr. Higgins was acting as lawyer and adviser for Margaret? Was it to give the impression of great fairness and kindness on the part of the aunts? Or was it merely to impress Margaret's mother, Mrs. Steinmann? Was there any necessity for Margaret to make a Will at that time? The thought had not occurred to her. She needed and used the \$3,333.33 in her daily living (p. 62).

What was the association of ideas in the minds of the aunts? “Get Margaret to sign a deed; get Margaret to make a will.” The ideas are often associated. The aunts had had experience in the field—“We will get Margaret to make a deed in our favor, and a Will in her mother's favor all at one and the same time.” Very clever but not strikingly frank, open and fair.

Margaret testified (p. 48):

“By Mr. Boardman:

Q. Did you consult with any one before you signed this deed? A. No, sir.

Q. Did you ever hear of the deed before

it was brought there that day? A. No, sir.

By the Vice Chancellor:

Q. Was it suggested by any one that you should obtain your own independent counsel? A. No, sir.

Q. Did you rely only on what they said to you, when you signed that deed? A. Yes, sir."

Was the situation well understood by Higgins, by Garrison, who did the explaining? If not, could it have been understood by Margaret?

Mr. Higgins testified (p. 100):

"Q. You did not advise Margaret to sign this deed, did you? A. Oh, no; I was there to see that she understood what it was.

Q. You did not negotiate with her? A. Oh, no, no; I knew nothing about the matter until I went up there. I had no interest in the thing at all."

Mr. Garrison (we repeat for convenience), testified (p. 92):

"Q. And no explanation was made to Margaret that possibly her grandmother had acted on the theory that she herself owned the property? A. I don't know whether there was, or not; that might have been; I know I did think that she owned the property.

Q. You thought she did? A. I thought she owned it. I don't know what she thought; I thought she owned it."

If the doctors disagreed—(Higgins thought it was a mere matter of not signing the deed properly; Garrison had thought that Mrs. Dusenbery had owned the property)—how could Margaret Dusenbery possibly have understood?

Again, there was involved the question whether Margaret Dusenbery was entitled to one-third of \$10,000, the supposititious price in the former deed, or to one-third of \$50,000, the price paid under the latter deed. Was this question frankly, fairly and openly discussed?

Let Garrison answer (p. 93):

“Q. In that conference it was stated that Margaret was to have \$3333.33—that was the only figure that was ever contemplated her receiving, wasn't it? A. Yes; it was the only figure talked of.”

And let Higgins corroborate Garrison (p. 101):

“Q. At this conference on December 28th, 1922, only the one sum, \$3,333.33, was mentioned as the sum that Margaret was to receive? A. That is all I can recall. I recall that she was to get one-third of \$10,000; I recall that.

Q. And how was the \$10,000 arrived at, do you recall that? A. Yes; that was the price that the daughters had purchased the property from their mother for, some years before.

Q. It was not suggested to Margaret in any way that she might be entitled to one-third of \$50,000? A. I did not hear any suggestion of that kind, but I know that there was a statement by somebody that the property was being sold for \$50,000.”

The difference between a mistake that merely involved a scrivener's error in the matter of how a deed shall be signed, whether as an individual or as an executor, and a mistake as to the actual ownership of the property, was not understood either by Mr. Higgins or by Mr. Garrison. Much less was the difference understood by the other persons present. The question of Margaret's claim to one-third of \$50,000 was carefully avoided. How then can it be said that these aunts were frank, fair and open in their dealings with the complainant? If we pass that, even the Vice Chancellor did not say that the transaction was well understood.

Hall v. Otterson, 52 N. J. Eq., 522, at 528:

“In all transactions between persons occupying relations, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, is presumed, or in fact reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed and who has acquired an advantage, to show affirmatively, not only that no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood. *Mott v. Mott*, 4 Dick. Ch. Rep., 192.”

This case was affirmed at 53 Eq., 695.

ITEM (4)

Was the doctrine of independent advice applicable?

If Margaret was, in fact, legally entitled to one-third of \$50,000 and received only one-third of \$10,000, what became of the difference? It must have been a gift. She was poor, living with her truck-driving step-father, partly supported by her mother's labor and her own (p. 37). Was she under any obligation to *give* anything to these two aunts? The testimony does not show what the Vice Chancellor might have seen, that Margaret was a cripple.

On January 18, 1924, however, she wrote to her aunts: (p. 158)

“My foot is about the same. It doesn't heal up any more, and I don't think it ever will. But I feel lots better since I have been in this place. It is so much warmer for me on my feet. The old place was so damp and wet up there. I am never cold here.”

But passing that matter, was the transaction a gift or was it a contract? If a contract, why was only one price mentioned? Why were no negotiations had? Why was Margaret not given the opportunity to discuss the question of price at all? If it was a matter of contract and not a gift, how can the Vice Chancellor be right when he says that Margaret did only what she was “morally bound to do”. That proposition sounds as if he thought she was morally bound to make a gift. For one is rarely morally bound to make a definite contract. We submit that the Vice Chancellor was wrong on one or the other of his propositions. If Margaret was “morally bound” to sign, then it was in the nature of a gift; she was entitled to some one to advise her; that in her

poverty she must give up this \$13,333.33 that legally was hers—(certainly that is the very underlying principle of the rule. She must be protected from acting on uncertain moral precepts). Or she was not “morally bound” but was entitled to have the contract well understood before she signed the deed.

Margaret Dusenbery was called upon to give up one-third of \$50,000, to which she was legally entitled, in exchange for one-third of \$10,000 to which she was in no sense legally entitled, upon the request of her aunts and their advisers. This was done without negotiation as to price. If that be not a gift, it is hard to define a gift.

Mrs. Allison was the aunt of Margaret Dusenbery. Mrs. Craven was not only her aunt, but was living in the house which was being conveyed. Garrison was the administrator of her grandfather's, James Dusenbery's Will. Certainly these persons stood in confidential relation to Margaret Dusenbery. Margaret testified that she relied on their statement when she signed the deed (p. 48).

In the leading case of *Haydock v. Haydock*, 34 N. J. Eq., 570, Judge Reed, speaking for the Court of Errors and Appeals, says (p. 575):

“The influence which is undue in cases of gifts *inter vivos*, is very different from that which is required to set aside a will. In testamentary cases, undue influence is always defined as coercion or fraud, but, *inter vivos*, no such definition is applied. Where parties hold positions in which one is more or less dependent upon the other, courts of equity hold that the weaker party

must be protected, and they set aside his gifts if he had not proper advice independently of the other. *Huguenin v. Baseley supra*, notes p. 1271.”

Slack v. Rees, (Court of Errors and Appeals)
66 N. J. Eq., 447, at 448.

Gummere, Chief Justice:

“He (the Vice Chancellor) seems to have considered, however, that such relationship was not shown, unless it was made to appear that the donee occupied such a dominant position toward the donor as to raise the presumption that the latter was without power to assert his will in opposition to that of the donee. But this is not the situation. The rule has a much broader sweep. Its purpose is not so much to afford protection to the donor against the consequences of undue influence exercised over him by the donee as it is to afford him protection against the consequences of voluntary action on his part, induced by the existence of the relationship between them, the effect of which, upon his own interests, he may only partially understand or appreciate. The following citations from our own decisions make this plain: ‘In all transactions between parties occupying relations, whether legal, natural or conventional in their origin, in which confidence is naturally inspired, or, in fact, reasonably exists, the burden of proof is thrown upon the person in whom the confidence is reposed, and who has acquired an advantage, to show affirmatively not only that no

deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, *but that it was well understood.*' *Hall v. Otterson*, 7 Dick. Ch. Rep., 528; S. C., on appeal, 8 Dick. Ch. Rep., 695. 'Where parties hold positions in which one is more or less dependent upon the other, courts of equity hold that the weaker party must be protected, and they set aside his gifts if he had not proper advice, independently of the other.'

Haydock v. Haydock, 7 Stew. Eq., 575. 'The rule to be gathered from the English and American cases is that the burden of proof is cast upon the donee to establish that the donor fully appreciated what he was doing, or, at all events, in the doing, had the benefit of disinterested and competent advice.' *Coffey v. Sullivan*, 18 Dick. Ch. Rep., 302."

In the case of *Post v. Hagan*, 71 N. J. Eq., 234, at page 244, Mr. Justice Garrison, speaking for the Court of Errors, dealt with a very similar situation.

"That the donor in the present case ought to have had independent advice must be taken to be entirely established. That she did not have it is also clearly shown. Judge Paxton, the lawyer who drew the deeds and took the donor's acknowledgments, was employed for that purpose by the donee and appeared for her in the court below. * * * His instructions were both limited and explicit. These instructions he carried out. He was in no sense the adviser of the donor and at no time acted in that capacity."

POINT III.

Did the parties settle their differences?

Let us read the written case first. On February 5, 1925, the one case of Dusenbery v. Craven was discontinued "without prejudice" (pp. 149 and 140). On February 9, 1925, the other case of Dusenbery v. Craven was discontinued "without prejudice" (pp. 150, 151). On February 27, 1925, Margaret Dusenbery, being in difficulties with her lawyer, Samuel Harber, signed the note and affidavit (D-1). It was in form as follows (p. 155):

"Mr. S. W. Garrison:

I hereby authorize you to act as my agent to settle bill with Samuel Harber.

MARGARET DUSENBERY.

I, Margaret Dusenbery, of full age, on my oath depose and say that I have no claim against the sale of Glenwood & Bergen Ave property that I released same when I joined in deed.

MARGARET DUSENBERY.

Sworn to and subscribed to

before me this 27th

February, 1925.

S. W. GARRISON,

Notary Public of N. J."

In reference to (D-1) Mr. Garrison testified (p. 91):

“Q. No money was paid for the signing of this affidavit? A. No, I think I brought some money up there and loaned it to her, but there was no money paid for the affidavit, no.

Q. And certainly your co-defendants had no knowledge of this? A. Absolutely none.

Q. You were not acting in their behalf? A. I was acting as the agent, and acting as the executor, in trying to get that property for Miss Dusenbery, and acting as her agent at that moment.

Q. And nothing was paid for this signing? A. No.

Q. And you never showed this paper to your co-defendants? A. They were not in it. It was done when she made up her mind to dismiss Harber.

Q. You did not show this paper, D-1, to Mrs. Griffin or Miss Allison? A. I do not think either one ever saw it until the day the title was passed in the Commercial Trust Company.

Q. That is your clear recollection of it? A. Positive.

Q. And then Mr. Griffin saw it? A. Miss Allison was not there. I am not sure that I showed it to Mrs. Griffin, but I think I did at that time.

Q. And you had it in your possession then? A. I had it in my possession from the time it was dated until yesterday.

Q. And you gave it to Mr. Townsend yesterday? A. I did.”

The bill of complaint in this present case was filed December 28, 1925 (p. 4). The title passed in January, 1926 (p. 87). So Mrs. Allison never saw (D-1) and Mrs. Griffin never saw it until January, 1926, after the suit in this case was started.

On March 18, 1925, Margaret Dusenbery wrote Mr. Garrison (p. 164):

(Exhibit D-5)

“March 18th, 1925.

Mr. S. W. Garrison,
751 Bergen Ave.,
Jersey City, N. J.

Dear Sir:

I hereby authorize you to sell my interest in the Bergen Avenue property at the rate of One Hundred Five Thousand Dollars for the entire property and will pay the usual commission, providing, however, that the other heirs will consent to sell at the same price.

Yours truly,

MARGARET DUSENBERY.”

On December 16, 1925, counsel for complainant sent to Mr. Garrison and to Mr. Townsend, letters of similar import (p. 111).

The letter to Mr. Garrison is as follows (p. 139):

“December 16, 1925.

Samuel W. Garrison, Esq.,
751 Bergen Avenue,
Jersey City.

Dear Sir:

You are, I understand, familiar with the circumstances under which Miss Margaret Dusenbery signed a deed of the Dusenbery Homestead property to Isaac M. Schacter and Louis Schuchman.

I understand that her two aunts received \$50,000 consideration for that sale; that Margaret Dusenbery was entitled to one-third of the proceeds of the sale and only received \$3,333.33.

I am writing to ask you as Executor of Margaret Craven, if you are willing to account to Margaret Dusenbery for the difference between one-third of the \$50,000 and the amount that she received, \$3,333.33, or such part of the difference as Margaret Craven is properly chargeable with.

I understand something of the embarrassment that you may be in and would not be offensive, but that there may be no misunderstanding, I make formal demand that you do account for so much of the purchase price as Margaret Craven received, which should have been turned over

to Margaret Dusenbery and was not so turned over. I shall be very glad to have you state to me your position in this matter.

Very truly yours,

RICHARD BOARDMAN.

RB/MEN."

In reply to this letter, no claim of release was made. It didn't occur to Mr. Garrison that (D-1) had any bearing on the inquiry contained in Mr. Boardman's letter.

Mr. Garrison testified (p. 88):

"Q. Will you tell me, Mr. Garrison, why you never showed me this Exhibit D-1?

Mr. Townsend: I object, on the ground that he was not compelled to; and I object on the ground that the question is incompetent.

The Vice-Chancellor: I will overrule the objection.

Mr. Townsend: He was under no duty to show him the paper.

(Question repeated)

A. I don't know as I was ever requested to.

Q. Did not my letter ask you to show me what there was that you had? A. (Examining the letter in question.) I do not see it; I do not see anything in here requesting it.

Q. (Reading from the letter) "I should be very glad to have you state to me your

position in this matter"—wouldn't you think that would be a request? A. I do not see anything in there that I should bring that paper—from the letter."

Twelve days later, this suit was begun. But before the suit was started, Mrs. Griffin threw down the gauntlet (p. 8). Margaret Dusenbery picked it up and began this suit. So that when, in January 1926, the title to the business property on Bergen Avenue passed, this suit was pending, Mrs. Griffin insisting that there had been a settlement; Margaret Dusenbery insisting that there had been none.

Mrs. Griffin is a defendant to this suit. It doesn't matter whether or not she was the "lady in the audience" mentioned at page 93. If she could have testified that Margaret had settled the claim here in suit, why did she not testify in this case?

The answer alleges (p. 24):

"And the complainant in accordance with said agreement, discontinued the actions herein mentioned and delivered to defendants a release of all claims or causes of action arising out of the sale of the lands and premises conveyed to Isaac M. Schacter and Louis Schuchman described in the bill of complaint."

Needless to say no such release was proved at the trial.

If Margaret Dusenbery was entitled to a full share of the sale price of the property, that right would ordinarily continue until this day unless (1) she released by formal release, (2) released

by agreement made for a valid consideration, (3) or her action is barred by statute or laches.

(1) A formal release was pleaded by the defendants, but no formal release was ever executed. The paper produced in the form of an affidavit, very likely expressed Margaret Dusenbery's state of mind at the time she signed it. That paper was not a contract. It was supported by no consideration. It created no estoppel for it was never shown to any one until after this suit was begun.

(2) *After her cousins had shown a willingness to sell the business property (p. 31), she wrote many affectionate letters. They were neither contractual in form, nor were they based upon any consideration. They were the outpourings of a girl who needed the affections of her family. Studied as carefully as may be, no contract can be spelled out of them. After the last of these letters, on March 18, 1925, she wrote Garrison (Exhibit D-5) as follows:*

"I hereby authorize you to sell my interest in the Bergen Avenue property at the rate of One Hundred Five Thousand Dollars for the entire property and will pay the usual commission, providing, however, that the other heirs will consent to sell at the same price."

If the others would sell at \$105,000, she would sell at that figure. There is no suggestion of any other consideration.

When the property was finally sold, Margaret got only her one-third of the price. Before the title passed, this suit had been begun and was

pending. This obviously dispels any idea of any settlement existing at that time.

The only witness who testifies to anything that looks like acquiescence on Margaret's part is Mr. Garrison. He does not pretend that she ever acquiesced before the day of the affidavit, February 27, 1925. Up to that time, she had been recalcitrant. On February 27th, he found her in a changed state of mind. He does not pretend that, on that day, he made any bargain with her. She had discharged Harber. She wanted no more trouble and he took a piece of paper, drew up this affidavit and had her sign it. Neither he nor she seemed to understand what the purpose of an affidavit was, but he wanted to make a record of Margaret's change of heart. As we have said, there was nothing contractual about it. Any slight use of imagination will picture some of the reasons that led to Margaret's change of heart. Her two aunts had died within a month of each other; her cousins had shown a more conciliatory spirit. She had discharged her lawyer and had received from him a bill that struck her aghast. She acted as any natural, normal human being would act, but that she made any settlement on that day, is not only unproved but is carefully disproved by Mr. Garrison. Mr. Garrison was not, in his own behalf, making any contract, and he expressly denies that there was any contract made or consideration given on that day. Margaret Dusenbery never got a penny for her acquiescence.

(3) *Laches*—

The bill in this cause was filed on December 28, 1925, three years to the day after the occurrence

upon which our bill is predicated. We find no case which intimates that any period so short as this, has been considered as laches. There are other considerations, however, that preclude the idea that Margaret Dusenbery was in laches. From December 28, 1922, to July, 1924, just one-half the period, she was absolutely without counsel. It was only in July, 1924(See Harber's bill for services) that Margaret consulted Harber. Until that time, she was depending entirely upon the good faith of her aunts.

On November 28, 1924, Harber filed his two bills in the Court of Chancery.

On December 31, 1924, less than six weeks later, Mrs. Craven died, and on January 16, 1925, Mrs. Allison died. Apparently it was Saturday, January 10th or 17th, 1925, that Margaret dismissed Harber. The discontinuance of these suits in February, 1925, *without prejudice*, certainly implies that at that time there was no understanding in existence that they might not be revived at a later date. Until the employment of her present counsel, she was again without legal advice. Her present counsel took up the matter in dispute on the 16th of December, 1925, and this bill was filed on the 28th of December, 1925. To say that she was in laches during any of these brief periods seems impossible. In the first place, the fact that Mrs. Craven and Mrs. Allison had died, loses the significance that it might otherwise have when it is recalled in the first place that Mr. Garrison and Judge Higgins—both very intelligent men—are still living to testify as to what took place at the one conference between the aunts and Margaret, and secondly, that there is no dispute remaining as to what occurred on that

28th day of December, 1922, for the only difference of memory is resolved in favor of the defendants. The only person that had any real dealings with Margaret is Mr. Garrison and he is in the best of health and has been given the widest range to tell all that took place.

Obert v. Obert, 12 N. J. Eq., 423, at 429, (Court of Errors and Appeals):

“Nor is it suggested or alleged that the defendant’s rights have been prejudiced by the delay. The material facts in the case are clearly established by documentary evidence, or by the testimony of living witnesses. No serious doubt rests upon any part of the case. The controversy is not seriously embarrassed by the claims of third parties or by conflicting interests. Under such circumstances, lapse of time constitutes no ground for refusing relief in equity.”

The estates of the two aunts are unsettled, pending the outcome of this suit (page 69). Under Margaret Craven’s will the residue of her estate is left in trust for the representatives of the two aunts (page 14). After this suit was started on or about January 8th, 1926, the Bergen Avenue business property was sold for \$105,000 of which Mr. Garrison must have received \$35,000 as did Margaret Dusenbery (page 51). Whether that fund is still intact or not, it is safe to assume it is still under the control of Mr. Garrison as Executor of Mrs. Craven’s will. This fund came from the estate of James Dusenbery and the injustice that was done to Margaret Dusenbery in 1922 can be redressed without undue hardship upon those who represent the two aunts. Perhaps

this consideration is beside the mark, but it seems to have its bearing in view of the suggestion of laches.

We respectfully submit that:

(1) The defendants have not proved that on December 28th, 1922, no deception was practiced, no undue influence used and that all was fair, open and voluntary.

(2) It appears affirmatively that the transaction of December 28th, 1922, was not well understood between the parties or by the advisers of the aunts and with the greatest of diffidence we submit that it was not well understood by the Vice Chancellor who tried the case. (If the question whether Margaret was *morally bound* to sign the deed was involved, by the same token, she must have been entitled to independent advice. An aged parent called upon to sign a deed to his son says "I *ought* to do what John asks." A young woman, arriving at her majority, is asked to sign a deed to her parent says "I *ought* to do what father asks." It is against the operation of just such uncertain moral obligations that the law protects the weaker against the stronger).

(3) The doctrine of independent advice did apply and no advice was given.

(4) There has been no settlement between the parties.

In all these matters we submit that the Court erred and that the decree dismissing the bill should be reversed and the cause remitted to the Court of Chancery that equity may be done.

RICHARD BOARDMAN,
Solicitor for and of Counsel
with Margaret Dusenbery,
Complainant-Appellant.

No. 33.

MAY, 1927, TERM.

New Jersey Court of Errors and Appeals

Between

MARGARET DUSENBERRY,
Complainant-Appellant,

and

LAURA A. GRIFFIN, Executrix,
et al.,
Defendants-Respondents.

On Appeal
from Court
of Chancery.

BRIEF FOR RESPONDENT.

This was an action for an accounting by the complainant as a niece of the defendants' testators (who were sisters of the complainant's deceased father), arising out of the sale by them of certain real estate left by the complainant's grandfather (who also was the father of the deceased aunts), and located at the corner of Glenwood and Bergen Avenues, Jersey City, hereinafter referred to as the Glenwood Avenue property. The grandfather James Dusenberry had died in 1886. At the time of the filing of this bill of complaint on December 28th, 1925, all the parties to the original transaction, herein questioned, were dead, except the complainant.

James Dusenberry, the grandfather had died, seized of this and other real property, which under his will was left to his widow Ann Dusenberry for life and to his children and the issue of any

deceased children upon her death. Ann Dusenberry was appointed executrix with power to sell any and all real estate. Three children survived the grandfather, Benjamin the father of the complainant, Margaret Craven and Sarah Allison who were the aunts above mentioned and whose personal representatives and devisees, are parties defendants herein. Benjamin Dusenberry died in 1908. In 1910, Ann Dusenberry conveyed this property as an individual to her daughters Margaret Craven and Sarah Allison for \$10,000.00. The parties apparently believed that she had conveyed as executrix under the power of sale. This Glenwood Avenue property at that time was worth between \$10,000.00 and \$12,000.00. Ann Dusenberry the widow and executrix died on September 30th, 1922. In December, 1922, the aunts Margaret Craven and Sarah Allison contracted to sell this property to one Schacter, *et al.*, for \$50,000.00. A search disclosed that the grandmother had signed the deed as an individual, thereby conveying only her life interest, instead of as executrix under the power of sale given her in the will. The aunts thereupon went to the complainant and explained that the grandmother had executed the deed as an individual instead of as an executrix and offered to pay her one-third of the original consideration of \$10,000.00 to join in the deed. She did so and received \$3,333.33. In the Court below it was a disputed question of fact whether she had been told that they were reselling for \$50,000.00. She admitted that they told her it was for a "large sum of money."

The grandfather had also left a plot of land on Bergen Avenue between Montgomery Street and Fairmount Avenue, hereinafter referred to as the Fairmount Avenue property, which in 1924 was valued at approximately \$100,000.00, the income

of which was divided equally between the complainant and the aunts, as tenants in common. The complainant was anxious to sell this property, but the aunts declined to do so, holding for a higher market. About this time they rejected an offer of \$105,000.00, which the complainant desired to accept. On November 28th, 1924, and while the aunts Margaret Craven and Sarah Allison were on their deathbed, the complainant, through Samuel Harber, as her solicitor filed two bills of complaint in this Court against them; one, a similar action to this, asking for an accounting of the difference between one-third of \$10,000.00 and one-third of \$50,000.00 (see Case, p. 140), and the other for partition of the Fairmount Avenue property. Mrs. Craven died on December 31st, 1924, and Mrs. Allison, on January 16th, 1925.

In the spring of 1925 an offer of \$105,000.00 having been received for the Fairmount Avenue property and the devisees of Mrs. Allison and Mrs. Craven having refused to sell with this litigation pending and with any alleged claim of the complainant on the Glenwood Avenue property outstanding, negotiations were entered into between the parties with the result that the complainant discontinued her actions and gave to the present defendants a release or estoppel agreement of any alleged claim on the Glenwood Avenue property (see Exhibit D-1, Case p. 155). Thereupon all the parties entered into a written agreement, accepting this offer of the Abel Engineering Company of \$105,000.00, title to which was to pass in September, 1925. The passing of title was postponed from time to time until it was consummated in January, 1926, and the complainant received her one-third interest or \$35,000.00.

In December, 1925, and after all the parties had obligated themselves to convey this property, the complainant, through her present solicitor filed this bill of complaint.

Issues.

The bill of complaint consists of two counts, the first of which alleges that the aunts had sold the property for \$50,000.00, withholding all knowledge or information of the amount from the complainant and paid to her only \$3,333.33 and failed to account for the balance.

The second count alleges that the aunts had procured this property from Ann Dusenberry in 1910, without consideration. That in 1922 the complainant joined with her aunts in executing a deed to Schacter, *et al.* They told the complainant that her signature was not necessary to the deed, but that it had been asked for by some captious lawyer; that they had paid their mother \$10,000.00 for the property, which was a fair price; that they had falsely represented to her that her signature was not necessary; that they had represented that \$3,333.33 was one-third of what they had paid their mother for the deed and that they were giving it to her as a gift; that it was not disclosed to her that they had already contracted to sell the property to Schacter, *et al.* for \$50,000.00, nor was it explained that if they had paid \$10,000.00 for a two-thirds interest in the property why she was not given \$5,000.00, instead of \$3,333.33; she did not discover until afterwards that they had received \$50,000.00 for the property and had paid nothing for the deed from their mother.

Complainant's Evidence.

Margaret Dusenberry testified: James Dusenberry died in 1886 and under his will (Record, p. 118) devised his property to his wife for life and upon her death such children as might be living, or the representatives of any deceased children; appointing his wife, Ann Dusenberry, executrix

with the full power of sale. She died on September 30th, 1922. Benjamin Dusenberry, the father of the complainant, died intestate in February, 1908, leaving the complainant his only surviving child. The grandfather left three children, Benjamin Dusenberry, Sarah Allison and Margaret Craven. Margaret Craven married Harry Craven and lived with her grandmother at 791 Bergen Avenue. Mrs. Allison married and lived on Highland Avenue. Upon her father's death the complainant moved to North Bergen, where she lived with her mother and stepfather (Record, pp. 36 and 37). Complainant testified (p. 39) that in December, 1922, her aunts, Mr. Garrison and Frank J. Higgins, a member of the bar of Jersey City, called at her home and in the presence of her mother, Mrs. Steinman, told her, (p. 42) that it was necessary for her to sign a deed in order to clear up the title to the property and Mr. Higgins explained why she had to sign it. They told her (p. 44) that she was to get one-third of \$10,000.00, which was the amount that her aunts had paid her grandmother for the property. Thereupon (p. 45), Mr. Higgins explained that in 1910 the grandmother had sold the property to the aunts for \$10,000.00; that she had not signed then, so it would be necessary for her to sign in order to clear the title. She asked them when she was going to get the money and they told her upon the passing of title within a week. She thereupon signed the deed. Thereafter Mrs. Craven (p. 47, line 20) suggested that she should make a will; that she now would shortly have some money and she thereupon had Mr. Higgins draw a will in favor of her mother, which she executed and which was witnessed by Mr. Garrison. She did not consult anyone before signing the deed, in fact never heard of it before that day. She also declared that she had never

received anything from her grandmother's estate (p. 49) which she qualified on cross examination (p. 50) to the effect that she had received some property in Rockland County. The aunts had been there on a previous occasion in October, 1922, and had read the wills of her grandfather and grandmother, whereupon she knew that she was entitled to one-third of all the property that her grandmother had left, which included the property under consideration and likewise the property at Fairmount and Bergen Avenues (pp. 50 and 51).

"Q. Now, Mr. Garrison told you, didn't he, that your grandmother, in signing that deed, had made a mistake * * * that she had neglected to sign as executrix of your grandfather's estate * * * didn't he tell you that? A. He said that, yes.

"Q. And he told you that if she had signed it as executrix of the grandfather's estate, she had the power under the will to do so, and if she had signed it as that, you would not have any interest in the property? A. Yes, sir."
* * * * *

That he told her they were selling the property and that the lawyer in making the search had found that the grandmother had failed to sign the deed as executrix, and that in order for them to convey a clear title it would be necessary for her to sign the deed (p. 53): * *

"Q. And he told you that if Mrs. Dusenberry had signed the deed itself as executrix, you would be entitled then to only one-third of the purchase price, or one-third of the ten thousand dollars, as she had signed back in 1910? A. Yes.

"Q. And he also told you, at the time, that they were selling this property for fifty thousand dollars, didn't he? A. They didn't mention any sum.

"Q. Didn't you ask them how much they

were selling it for? A. I asked them, but they said 'A sum of money.'

"Q. And do you mean to say that neither Mr. Garrison or Mr. Higgins told you that they were selling for fifty thousand dollars? A. They didn't mention no sum at that time.

"Q. Didn't you ask them again? A. No, sir.

"Q. Didn't your mother ask them? A. My mother asked them, and they all said, 'For quite a sum of money.'"

* * * * *

"Q. And notwithstanding the fact that you said they refused to tell you what they were selling it for, you went ahead and signed the deed, agreeing to sign it for \$3,333.33? A. I thought I was getting one-third of \$10,000.00.

"Q. In other words, when you signed this deed, you thought what you were doing it for was for one-third of what the previous sale had been, in order to order to straighten out the title? A. Yes, sir.

"Q. And at that time you knew that if your grandmother had signed the deed as executrix of your grandfather's estate, you would not have had any interest in the real estate * * * that is the fact, is it not? A. Yes, sir" (p. 54).

In the middle of the following year she found out it was sold for \$50,000.00. (Did not appear how she found it out.)

"Q. Now, you never took any action in respect to that until sometime in the fall of 1924, did you? A. No, sir, I never took any action.

"Q. Was that when you retained Mr. Harber as your attorney? A. Yes, sir.

"Q. You had no money at that time, did you? A. No, sir.

"Q. Well, you had no difficulty in getting the services of a lawyer then? A. No, sir."

In the fall of 1924 Mr. Harber filed a bill for an accounting and a partition (p. 56). Mr. Garrison had come to her with an offer to sell the Fairmount Avenue property for \$105,000.00, which she

was anxious to sell and her aunts having died in the meantime their children, Mrs. Allison and Mrs. Griffin refused to sell (pp. 57 and 58). She thereupon mortgaged to the extent of \$2,000.00 her undivided one-third interest in the Fairmount Avenue property to a client of Mr. Harber's (p. 58):

"Q. And when you said it was 'for a large sum,' how much did you think it was? A. I didn't know; I never inquired.

"Q. Well, he told you it was 'for a very large sum,' I understood you to say? A. Yes, sir.

"Q. And then you say you did not ask him how much it was? A. I asked him, and they said 'it was for a large sum.'

"Q. 'A very large sum'?

"The Vice-Chancellor: No, 'a large sum.'

"Q. Did you ask him to name the figure? A. No, sir.

"Q. And when you found out what it was, you never even said anything to Mr. Garrison about it? A. No.

"Q. Although you saw him on a number of occasions? A. Yes, sir.

"Q. What did you do with the proceeds of this \$3,333.33, after putting it in the bank? A. I put it in the bank and lived on it."

Recalled at page 105, she testified that Mr. Garrison had called at her house; she wanted to have Mr. Harber discontinue the case, and wanted Mr. Garrison to settle the bill with him. The bill was for \$1,011.37, but Mr. Garrison settled it for \$950.00. She explained her difficulties with Mr. Harber to Mr. Garrison.

"Q. Well, did you ever have any discussion about releasing your claim? A. No, sir; not until I signed that" (p. 106, line 14).

Cross examination (p. 109):

While she was having her difficulties with Mr. Harber, Mr. Garrison came to her about the sale

of this property and told her that as long as she had this claim, the others would not sell, and he would have nothing whatever to do with it; that even after the contract for the sale of the property at \$105,000, Mrs. Griffin (daughter of Mrs. Allison), did not wish to sell because she thought the property was worth \$125,000 to \$130,000.

Samuel Garrison, called on behalf of the plaintiff, testified that he was a substituted administrator of Ann Dusenberry and also is executor of Margaret Craven; that he came into possession of all the papers of the James Dusenberry Estate (p. 67). He did not make any search to ascertain whether the \$10,000.00 had been paid originally. There is no evidence in his hands where he could tell what had happened back at that time. The estate of Sarah Ann Allison and Margaret Craven is still unsettled (p. 68).

Defendants' Proof.

Samuel Garrison, recalled on behalf of the defendant, testified (p. 70) he is in the real estate business and acted as broker on the sale of the Glenwood Avenue property to Schacter, *et al.*, in 1922, the sale price of which was \$50,000.00. Col. Fisk's office made the search. As a result of the search he ascertained that the deed from Ann Dusenberry to Mrs. Allison and Mrs. Craven was defective and he so notified Mrs. Allison and Mrs. Craven, who with Frank J. Higgins, a member of the Bar of this State, Mr. Harry Craven and the witness called upon Margaret Dusenberry. They told her the exact details of the original transaction and that her grandmother had signed the deed as an individual, instead of as executrix and that if she had signed as executrix the deed would have been clear and it would not be necessary for her to join in. As it was, there was an out-

standing interest in her name and it would be necessary, in order to give a clear title, for her to join in a new deed. The entire transaction was disclosed and she was told the amount of money that was to be paid; that if she withheld her signature the property could not now be sold; that if the property had been sold in 1910 for \$10,000.00 she would be entitled to one-third of it (pp. 71 and 72). The complainant thereupon signed the deed and she asked him to send her the \$3,333.33 when the title was passed. Her aunt then advised her draw a will. Thereupon, she and Mr. Higgins retired into an adjoining room (p. 73). He did not recall that the complainant was told it was for a large sum of money. He continued to have business relations with Miss Dusenberry, collecting rents of the Dusenberry estate and making her quarterly statements. She thereafter became involved in a suit with Mr. Harber and was mixed up in money matters. He discounted a note and advanced money over to her. He also loaned her money to tide her over financial difficulties. This was after the \$3,333.33 had been spent. A long time after this he had received an offer of \$100,000.00 from Mr. Cox for the property, which the plaintiff wished to take, but Mrs. Craven and Mrs. Allison declined to do so. The complainant needed money and he advised her that she could sell her one-third interest in the property; that if she partitioned it it would cost her too much; that Mr. Cox would buy her one-third interest for \$35,000.00. She in the meantime sought legal advice and commenced an action for partition (pp. 74 and 75). She declined the offer of Mr. Cox and the suits for partition and accounting were instituted by Mr. Harber. Mr. Harber thereafter conferred with him and Mrs. Griffin, the daughter of Mrs. Craven, and Mr.

Harber offered to buy from or sell to them on the basis of \$10,000.00 (p. 76, lines 30 to 40). Thereafter the defendants offered to accept Mr. Harber's offer for purchase, which he refused and thereupon instituted these suits (p. 77, lines 20 to 32). After the death of Mrs. Craven he met the complainant's mother Mrs. Steinman who told him that the complainant wished to change her counsel. She could not do so as she had signed a mortgage against her interest, all the money of which had not yet been advanced to her (p. 78, lines 20 to 35). In the meantime he had received an offer of \$105,000.00 from the Abel Engineering Company for the Fairmount Avenue property, and while the Craven estate of which he was executor desired to sell, the Allison estate would not do so, unless Margaret Dusenberry renounced all of her interest in the suits and he so told the complainant on February 27th, 1925, together with the fact, that he thought he could get Mrs. Griffin, the devisee under the Allison estate, to accept the offer, provided there would be no further suing. The complainant then told him that she never had any intention of suing, except that she wished a partition of the estate, in order to get her money. She thereupon signed an authorization for him to pay off Mr. Harber and also signed a statement that she had no further interest in the Glenwood Avenue property (Exhibit D-1, p. 155). They discussed the sale of 1922, at which time (in 1922) he had told her the consideration was \$50,000.00 (p. 81, lines 15 to 35). He thereupon wrote Mr. Harber, telling him that Miss Dusenberry had authorized him to settle her account with him. Mr. Harber brought down the mortgage, cancelled it and refunded to him the difference between the amount of his bill and the money advanced by him and the amount of the mortgage. She gave a

note, which he had discounted and advanced money to her (Exhibit D-4, p. 159). He thereupon received the authorization from the complainant to sell the Fairmount Avenue property (p. 84, lines 1 to 10), (Exhibit D-5, p. 164). Title was subsequently passed at the office of Col. Fisk, at which Mr. Boardman represented the complainant and he returned to Mr. Garrison the money he had advanced to her as aforesaid (p. 84, lines 20 to 40).

Cross examination (p. 85) :

Title was passed to the Abel Engineering Company on or about January 8th, 1926 (p. 89, line 11).

After November 16th, 1925, Mrs. Griffin refused to go through with the sale if the complainant started suit, there being an agreement between them that there would be no suit; but Mrs. Griffin passed the title (p. 87, lines 1-30).

That complainant had no advice when she signed the release which took form of an affidavit; that he had been through a lot of trouble and negotiations, and had tried to help complainant sell the property, and had advanced money out of his own pocket, and was in conflict with the three branches of heirs to the property who were all pulling different ways; that there seemed to be one way of closing up the matter if the complainant would agree to stop all suits, which she had said, a few months before making the affidavit, she never intended to start; that all she wanted was a division of the property (Fairmount Avenue property) (p. 90, lines 19 to 39); he did not take the release in any other form, because it was done on the spur of the moment; he had not gone there for that purpose, and when she told him that she intended to discharge Mr. Harber that was the first inkling he had of it. He told her he would not act

for her unless she would stop the suit, and that he could get some money for her, otherwise he could not. There was no money paid her signing the affidavit. The other defendants did not see it until title was passed (p. 91, lines 1-40) it having been in his possession all that time; that he thought the grandmother owned the property individually (p. 92, line 40); he did not place any value on the property until the time of the trial, at which time he judged it was worth between \$10,000 and \$12,000 in 1910.

Redirect examination (p. 96):

The release (Exhibit B1) was shown to Mr. Townsend after its execution.

Frank J. Higgins (p. 97)—Has been a member of the New Jersey bar for 20 years. In 1922, he was requested by Mr. Garrison to accompany him to complainant's house. There were present Mrs. Allison, her sister and her husband and Margaret Dusenberry and her mother. They were in the house about three-quarters of an hour. It was explained to the complainant that her grandmother had signed the deed as an individual instead of executrix; that they paid \$10,000 for it, and were now reselling it for \$50,000; that if the grandmother had conveyed it as executrix instead of as an individual it would have been good and there would have been no necessity for another deed. She was satisfied with the explanation and she understood she was to get one-third of \$10,000. She was told that her aunts were reselling the property for \$50,000. She thereupon signed the deed and he took the acknowledgment. He did not advise the complainant to sign or not to sign the deed; he was there to see that she understood what it was; that his recollection of the transaction had been refreshed by his conversation with Mr.

Boardman, complainant's solicitor, the night before the trial; he was now positive that she was told that it was being reconveyed for \$50,000.00 (p. 100, lines 25-40; p. 101, line 1).

ARGUMENT.

POINT I.

The learned Vice-Chancellor found that the aunts, Mrs. Craven and Mrs. Allison, had paid to their mother, Ann Dusenberry, \$10,000 for this property, which, at that time, represented the fair market value.

It was undisputed that the grandmother continued to live on the premises until her death in 1922; and that the aunts had paid the taxes, maintenance, etc., until the time they conveyed it to Schacter, *et al.*

The complainant charged that the original conveyance was without consideration, and was procured by fraud from the grandmother. The burden of proof was, of course, upon her to sustain these allegations.

No proof was presented by the complainant, other than the statement of Mr. Garrison, as complainant's witness, that he had been substituted as administrator of Ann Dusenberry, having been appointed approximately 12 years after the original conveyance; that he had come into possession of all the papers of the Dusenberry estate; that he had not made any search to ascertain whether the \$10,000 had been paid and there was no evidence of any sort that he had in his hands whereby he could tell what had happened at that time. Of course, it must be borne in mind that the great increase in real estate values in Jersey City did not take place until around 1922, when the property naturally increased in value.

The defendants were not only entitled, but were compelled to rest upon the presumption that the consideration had been paid. The complainant had delayed her suit until after the death of Mrs. Craven and Mrs. Allison, who otherwise would have been able to have testified in this respect.

Mr. Boardman in his brief mistakenly says, at the bottom of page 11, that Mr. Garrison was substituted as administrator of the will of James Dusenberry. This was not a fact. He was substituted as administrator of the will of Ann Dusenberry.

This finding, we submit, was amply justified by the evidence.

POINT II.

A mistake had been made by the grandmother in executing the original deed as an individual instead of executrix.

It was undisputed that Ann Dusenberry had the power to sell, under the will of her husband. At the time of the conveyance she was 82 years of age, and naturally her expectancy of life was but a few years. It is inconceivable that the daughters, Mrs. Craven and Mrs. Allison, would have paid \$10,000 for this property if they did not think she was conveying a fee simple. They all knew the provisions of the grandfather's will. It did not appear who drew the original deed, but apparently the parties themselves drew and executed it. The aunts, apparently, had foresight enough to know that if they held the property for a sufficient length of time (the Hudson & Manhattan Tube, at that time being opened in Jersey City, and it being contemplated to extend it to Summit Avenue), it would, in the course of a few years, increase in value, which it subsequently did. If they had realized the mistake they undoubtedly could have

procured the complainant to have conveyed her interest at that time for the same or a less consideration.

POINT III.

The defendants' testators were fair, open and frank in their dealings with the complainant.

It will be noted that in the second count of the bill of complaint, the complainant charged that the defendants informed her that her signature was not necessary to the deed; that they were giving her the \$3,333.33 as a gift, without disclosing to her that they had already contracted to sell it to Schacter, *et al.*, for the sum of \$50,000.00.

Mr. Garrison and Mr. Higgins, the only remaining living witnesses to the conversation, other than the complainant and her mother, testified positively and their credibility was not impeached, that the complainant was informed that the property was being sold for \$50,000.00; that the title could not pass, unless she joined in the deed; that if her grandmother had signed as executrix she would have had no interest in the property itself. While the complainant and her mother conceded that she had been told all the essential facts, except the sum that her aunts were to receive, which they denied, their denial was seriously impeached by their admission that they said it was for "quite a sum of money" (p. 54, line 25, p. 114, line 1) and "a large sum of money," and that although they asked on at least two occasions what the amount was and receiving no other answer, they rested content without pressing the inquiry further; that the mother, who had had considerable experience in litigation was satisfied with the answer, because it was not her business, but her daughter's. *Such explanations of their conduct do not ring true.*

Another evidence that their answers were incredible is the fact that she admitted she ascertained in the middle of 1923 that the consideration was \$50,000.00, yet on January 18th, 1924, wrote her aunt, Margaret Craven, in terms of affection, expressing how happy she was and sending her mother's love (p. 157). Again on October 31st, 1923, she wrote a similar letter, inviting her aunt to visit her (p. 165). *These letters were written after she said she learned the true consideration was \$50,000.00.* Is it conceivable that she would have done so if she had not been told originally the true consideration?

That she was told in 1922 that the consideration was \$50,000 becomes conclusive when we read her letter of March 2nd, 1925, to her cousin, Laura Griffin (daughter of Mrs. Allison), wherein she says:

“* * * When I gave this affair in the hands of Mr. Harber in last July, I did it for the only purpose of selling my share in the estate. I had no thought of all this ‘suing business’ that Mr. Harber was forever fighting on. I was surprised to hear about this all from him, and I told him so too at the time. I always kept telling him I wanted the sale of my share—and I didn’t see all this so-called ‘court stuff.’ So you see, Laura, that I have, or never have had all this ‘bad thoughts’ for any of you people, or I have never had any hard feelings for the dead ones either. They were my only two real aunts on my father’s side, so why should I have any hard feelings for them. Aunt Margaret and Uncle Harry used to come to visit me here in my home regular up until the time they couldn’t travel any longer. We all even went twice on an all day auto trip to the mountain place in the summer of 1923. I wanted Aunt Sarah to go with us also but Aunt Margaret said she wasn’t able to make the long auto ride at that time. * * *”

Mr. Boardman in his brief cites as authorities for his position the cases of:

Hall v. Otterson, 52 N. J. Eq. 522;

Haydock v. Haydock, 34 N. J. Eq. 570;

Slack v. Rees, 66 N. J. Eq. 447;

Post v. Hagan, 71 N. J. Eq. 234.

We have no quarrel with the principles decided therein as applied to the facts in those cases. They are, of course, authority only on the facts therein decided, and for that reason are not applicable to the case at bar. In each of those cases the conveyance was a gift by a wife to a husband, or a parent to a child, at which time the doner was ill and with an infirm mind, residing in the same household with the donee and was under the dominant influence of the doner. They were voluntary conveyances upon the part of the doner. In the *Hall v. Otterson* case, 52 N. J. Equity 527, the Court said:

“* * * * The relation is so close, the trust of the wife so absolute, her dependence so entire, it may be her fear so abject, while the dominion of the husband is so complete, his influence so insidious yet so controlling, that equity regards all such transactions with a jealous care and subjects them to the severest scrutiny. The greater the affection the more submissive the dependence, the stronger the trust the more liable is the wife to be subject to the control of the husband, and the more vigilant should the court be in protecting the weak. * * *”

If the complainant is entitled to any relief under this point it comes, I take it, not under the doctrine of “fraud,” but under the doctrine of “constructive fraud” referred to by Mr. Pomeroy in his Fourth Edition of his Equity Jurisprudence,

Sections 926 and 928 and treated by this Court in the cases of :

Worth v. Watts, 76 N. J. Eq. 299;
Kennerly v. Aleck, 86 N. J. Eq. 336;
Ashby v. Yetter, 79 N. J. Eq. 198.

In these cases the doctrine was applied to the subject of specific performance, except in the *Ashby v. Yetter* case, which was an action for reconveyance and accounting.

This Court in *Worth v. Watts*, quoting the opinion of Chancellor Vroom, in *Rodman v. Zilley*, 1 N. J. Eq. 320, said:

“Courts of equity seldom interfere to set aside sales and contracts on the ground of inadequacy of price. They leave the parties to their legal remedies. But when they are called on for extraordinary aid to enforce a contract, they take the liberty to examine into the consideration to be given, its fairness and equality, and all the circumstances connected with it. And if anything manifestly inequitable appears in that part of the transaction, they will never lend their power to carry the contract into execution.”

“It is true that courts of equity will not interfere with bargains on the ground of inequality alone, unless it be so extreme as to shock the conscience, and so amount to evidence of fraud.”

But under the evidence in this case these decisions are not applicable.

This conveyance, having been entirely regular and valid on its face, imports legality and the burden was upon the plaintiff to overcome that presumption.

Ashby v. Yetter, 79 N. J. E. 198.

The complainant was living with her mother, a woman of some considerable experience in litiga-

tion. She had never lived with the aunts and infrequently saw each other. She was not under their dominant influence. She was capable of and did handle her own affairs and insisted upon selling her interest in the Glenwood Avenue property, notwithstanding that her cousins objected, because they thought they could procure a higher price. She was so thoroughly conversant with her rights, that she caused to be filed a bill for partition. She thoroughly understood that if her grandmother had signed in 1910 the deed as executrix, instead of as an individual, she was not entitled to any part of this consideration. She knew and she meant to convey her interest for \$3,333.33. The subject was explained to her by counsel. She knew and appreciated that her aunts would have had the right to file a bill for a reformation of the deed, or for specific performance, regardless of whether they might succeed. The consideration which she received, \$3,333.33, from the standpoint of its value in 1910 was not inadequate. She was smart enough to insist that upon the passing of title a check be sent her by the attorneys for the vendee. When she received this money she made a will, even if at the suggestion of one of her aunts and left the property to her mother personally, to whom she was morally bound to leave it. When she received her money she opened a bank account. Shortly thereafter her step-father desiring to buy a house apparently requested her to put up \$500 as a deposit; she refused to do so and she and her mother left her step-father.

It was not until she had exhausted her money and was left without funds, that she engaged counsel. She was sufficiently well versed in legal affairs to mortgage her undivided one-third interest in the Fairmount Avenue property.

This evidence, I submit, amply justifies the finding of the Court below, that the conduct of the aunts was frank, open and fair, and complainant did what she meant to do.

POINT IV.

Laches.

If this case is determined upon the question as to whether the complainant was informed in 1922, that the property was to be resold for \$50,000 and if it is further determined upon the question of the \$10,000 having been originally paid by Ann Dusenberry to her daughters, Mrs. Craven and Mrs. Allison, then, I submit, the defendant is guilty of laches. She admits that she ascertained in the middle of 1923 that the consideration was \$50,000, yet she did not start her original action until Mrs. Craven and Mrs. Allison were on their death beds, the only living persons who could have testified as to the details of the conveyance by their mother to them and she did not institute the present action until a year after their death.

Lutjen v. Lutjen, 64 N. J. E. 773;

Egan v. Egan, 98 N. J. E. 487;

Bennett v. Platt, 85 N. J. E. 436.

POINT V.

The complainant released and is estopped from asserting any claim hereunder.

The claimant admittedly and with full knowledge of its purpose executed Exhibit D-1, page 155. She was anxious to sell the Fairmount Avenue property and she knew and had been recently told that with any suit pending, or with any claim made on the Glenwood Avenue property, the heirs of Mrs. Craven and Mrs. Allison would not consent to the sale. On February 16th, 1925, she wrote Mrs. Craven, Exhibit DA-5, page 161, that she had

dismissed Mr. Harber and now there was nothing more to stop the sale, if she and her sister were as anxious for a sale as she was. She desired that they should get together as soon as possible to agree to sell. Mr. Garrison was not satisfied to accept her assurances and attempt to negotiate the sale of this property until she relinquished her claim, so that the defendants would agree to sell. She thereupon did so and then assured the defendants under the letter above quoted on March 2nd, 1925, Exhibit DA-1, page 152, that she never had any intention of making any claim for the 1922 sale. The defendants being satisfied that all threatened litigation was over, reluctantly signed the agreement and conveyed the property to the Abel Engineering Company for \$105,000. Thereupon after their obligation had become binding, so that it could be enforced by specific performance, she started the present suit.

There was sufficient consideration for this release in their thus agreeing to sell at the price that the defendants considered too low. If this Honorable Court should determine that this was not a release, it was, we submit, at least an estoppel agreement and should be enforced against the complainant.

Mr. Boardman, on pages 36, 37 and 38 of his brief, seems to be critical of counsel because he was not informed of this release in answer to his letter of December 16th, 1925. In view of our past experience with the complainant, why should we have pointed out to her counsel, who apparently was intent on instituting a suit, what our defenses would be?

For the reasons hereinbefore stated the appeal should be dismissed.

Respectfully submitted,

MARK TOWNSEND, JR.,
Solicitor for and of counsel
with the complainant.

