Index.

	Page
Notice of Appeal	1
Petition on Appeal	2
Answer	5
Bill	6
Answer	17
Replication	20
Decree	21

TESTIMONY.

Mary Elizabeth Downs:	
Direct	25
Cross	26
Recalled:	
Direct	61
Cross	62
Theodore D. Gotlieb:	
Direct	27
Cross	28
Re-direct	30
Re-cross	33
Re-direct	35
Re-cross	36
Henry P. George:	
Direct	36
Cross	40
Frank J. Foster:	
Direct	45
Cross	49
Re-direct	55
Re-cross	57

New Jersey State Library

Page

Carl F. Hendrickson:

Direct 57
Cross 58
Re-direct 60

EXHIBITS.

		Offered page	Printed page
C1.	Bond	24	71
C2.	Mortgage	24	75
C3.	Assignment of mortgage	24	82
D1	for Identification. Affidavit of Mrs. Steadman	31	84
D2	for Identification. Claim	35	86
D3.	Card	38	87
D4.	Release	39	87
D5.	Will	39	90

Docket page

In Chancery of New Jersey

Between CHARLES A. STEADMAN, *et al.*, Complainants, and FRANK J. FOSTER, *et al.*, Defendants.	On Bill, &c., Notice of appeal.

To

Messrs. Lehlbach & Van Duyne,
Complainant's Solicitors.

Clerk in Chancery:

Take notice that the defendant, Frank J. Foster, hereby appeals to the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, from the decree of foreclosure and sale made in this court in the above stated cause, dated on or about January twenty-eighth, 1914, and filed on or about February , 1914, and from every part of said decree.

Dated, February 7, 1914.

FREDERICK J. GREENBERG,
Solicitor of said Defendant and Appellant.
OSBORNE & ASTLEY,
Of Counsel.

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

OSBORNE & ASTLEY,
Of Counsel with Appellant.

Petition on Appeal.

COURT OF ERRORS & APPEALS OF THE STATE OF NEW JERSEY.

Between CHARLES A. STEADMAN, etc., Complt, and Respdt., and FRANK J. FOSTER, Deft-Applt.	On Appeal Petition of Appeal.

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

The petition of Frank J. Foster, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date on or about January 28th, 1914, and entered on or about February 3d, 1914, in the above entitled action, a foreclosure suit wherein said Charles A. Steadman, as executor, &c., was complainant, and Frank J. Foster, *et al.*, were defendants, in this respect, to wit, that the said final decree adjudges the whole amount of the mortgage to be due, and chargeable against defendant, and that the premises be sold to pay the whole amount of the mortgage, with deductions claimed by defendant. And your petitioner appeals from the whole of said decree upon the ground that the same is erroneous, in that the decree should have been in favor of appellant and against complainant, and on the following grounds, to wit:

1. On the ground that it appeared by the evidence that Charles A. Feick was the agent of Mary E. Stead-

man in this matter, for the purpose of receiving payment of interest and principal from the defendant, Frank J. Foster, as agent of said Mary E. Steadman.

2. On the further ground that it appears by the evidence that said Mary E. Steadman entrusted said Charles A. Feick as her agent, with the duty of collecting from Frank J. Foster the sum of One thouand ($1,000) dollars.

3. On the further ground that it was not Frank J. Foster's duty to demand of Charles A. Feick the production of the bond and mortgage and that said Frank J. Foster was justified at all times in paying principal and interest to said Feick.

4. On the further ground that it appears by the evidence that the actual consideration for the making and executing and delivery of the release was the payment of One Thousand ($1,000) Dollars principal by Frank J. Foster, and said Frank J. Foster paid said sum with the knowledge and consent of Mary E. Steadman.

5. On the further ground that it appears by the evidence that Mary E. Steadman ratified and confirmed all the acts of said Charles A. Feick respecting the collection of principal and interest on account of the mortgage, by the execution and delivery of a release from said mortgage.

6. On the further ground that no notice of the assignment of mortgage by Feick to Steadman was ever given to Frank J. Foster, and he had no knowledge of said assignment.

7. On the further ground that it appears by the evidence that Mary E. Steadman received from Charles A. Feick interest on said mortgage regularly

and from time to time from the date of the mortgage, and that it further appears that said Foster never paid any moneys direct to said Mary E. Steadman.

8. On the further ground that it was the duty of said Mary E. Steadman to notify said Foster of the assignment of said mortgage.

9. On the further ground that said decree is erroneous in every part thereof, and that in view of the tender made by the defendant and in view of all the evidence, the decree should have been for the balance of principal and interest to the time of tender.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

F. J. GREENBERG,
Solicitor of Appellant

WM. H. OSBORNE,
Of Counsel with Appellant.

Answer.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

CHARLES A. STEADMAN and another,
Complainants-Respondents,

and

FRANK J. FOSTER,
Defendant-Appellant.

On Appeal
Answer.

The answer of the above-named respondents to the petition of appeal of the above named appellant:

These respondents, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit that a final decree was on the third day of February last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said final decree is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

LEHLBACH & VAN DUYNE,
Solicitors for and of Counsel with Charles A. Stedman and May E. Downs, Executor and Executrix, Complainants-Respondents.

Foreclosure Bill.

To the Honorable the Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your orators, Charles A. Steadman and May E. Downs, executor and executrix of the last will and testament of Mary E. Steadman, deceased, late of the City of Newark, in the County of Essex and State of New Jersey, that on or about the Ninth day of February, in the year One thousand nine hundred and nine, Frank J. Foster and Clara F. Foster of the City of Newark and State of New Jersey, in the County of Essex, became and were justly indebted unto Charles A. Feick in the sum of Three thousand dollars, and being so indebted, the said Frank J. Foster and Clara F. Foster in order to secure the payment of the said sum of money, with interest, did make and execute under their hands and seals and deliver unto Charles A. Feick

A Certain Bond or Obligation, bearing date the same day and year last aforesaid, in the penal sum of Six thousand dollars, lawful money of the United States, with a condition thereunder written, that if the said Frank J. Foster and Clara F. Foster, their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto Charles A. Feick, his executors, administrators or assigns, the just and full sum of Three thousand Dollars, lawful money aforesaid on the ninth day of February, which would be in the year One thousand nine hundred and ten, and the interest thereon to be computed from the ninth day of February, One thousand nine hundred and nine, at and after the rate of five per cent per annum, to be paid semi-annually. Then the said obligation should be void otherwise to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto

had, will more fully and at large appear. And your orators further show, that the said obligors in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto Charles A. Feick

A Certain Indenture of Mortgage, bearing date the same day and year last aforesaid, made by said Frank J. Foster and Clara F. Foster, his wife, parties of the first part, and the said Charles A. Feick, party of the second part, in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto Charles A. Feick said party of the second part, his heirs and assigns, All the following described tract or parcel of land and premises, situate, lying and being in the Town of Irvington, in the County of Essex, and State of New Jersey, known and designated on a certain map entitled "Map of lots belonging to Jere Johnson, Jr., Co., situated in Irving, Essex County, New Jersey, surveyed by Harrison Van Duyne & Son, July 1906," and filed in the office of the Register of Essex County, N. J., on December 28, 1906, as map number 517, as and by the lot number thirty-four which said lot according to said map is bounded and described as follows:

First Tract: Beginning at a point on the easterly side of Twenty-third Street, distant two hundred and fifty-five and twenty-four one-hundredths feet northerly from the corner formed by the intersection of the easterly side of Twenty-third Street and the northerly side of Springfield Avenue; running thence easterly at right angles to Twenty-third Street, one hundred feet to the centre line of the block between Twenty-third and Twenty-second Streets; thence northerly along said centre line twenty-five feet to

lot number thirty-five as said lot number thirty-five is shown on said map; thence westerly along said lot number thirty-five and again at right angles to Twenty-third Street one hundred feet to the said easterly side of Twenty-third Street, and thence southerly along the said easterly side of Twenty-third Street twenty-five feet to the point of beginning.

SECOND TRACT: Known and designated on a certain map entitled map of lots belonging to Jere Johnson, Jr. Company, situate in Irvington, Essex County, N. J., surveyed by Harrison Van Duyne & Son, July, 1906, and filed in the office of the Register of Essex County, N. J., on December 28th, 1906, as Map No. 517 as Lot No. 35 and which said lot, according to said map, is bounded and described as follows:

BEGINNING, at a point on the easterly side of Twenty-third Street, distant two hundred and eighty and twenty-four one-hundredths feet northerly from the corner formed by the intersection of the easterly side of Twenty-third Street and the northerly side of Springfield Avenue; running thence easterly at right angles to Twenty-third Street one hundred feet to the centre line of the block between Twenty-third and Twenty-second Streets; thence northerly along said centre line twenty-five feet to Lot Number thirty-six as said Lot Number thirty-six is shown on said map; thence westerly along said Lot Number Thirty-six and again at right angles to Twenty-third Street, one hundred feet to the said Easterly side of Twenty-third Street, and thence southerly along the said easterly side of Twenty-third Street twenty-five feet to the place of beginning.

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, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the parties of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; To have and to hold, the therein above granted and described premises, with the appurtenances unto Charles A. Feick, the said party of the second part, his heirs, and assigns to his and their own proper use, benefit and behoof forever; Provided always and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Frank J. Foster and Clara F. Foster, his wife, party of the first part to the said indenture of mortgage, their heirs, executors or administrators, should well and truly pay or cause to be paid, unto Charles A. Feick, his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void. And your orators further show that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Frank J. Foster and Clara F. Foster before Henry P. George, a Commissioner of Deeds of the State of New Jersey, and duly recorded in the office of the Register in and for the said County of Essex in Book O23 of Mortgages, pages 192-196 on the tenth day of February, in the year One thousand nine hundred and nine; as by the certificate of the Register of the said country, endorsed on the said indenture of mortgage, more fully appears, and to

which your orators, for greater certainty, beg leave to refer, if it be necessary so to do.

And your orators further show that afterwards on or about the twenty-fifth day of May, Nineteen hundred and nine, the said Charles A. Feick by deed of assignment bearing date the day and year last aforesaid, executed under his hand and seal, duly assigned aforesaid bond and mortgage to secure Three thousand dollars as aforesaid, unto said Mary E. Steadman in her lifetime, and that the said deed of assignment was duly acknowledged by the said Charles A. Feick on the twenty-sixth day of May, Nineteen hundred and Nine and recorded on the same day in the office of the Register of Essex County in Book 89 of assignments of mortgages for said County, page 79, &c., to which deed of assignment, or the record thereof, for greater certainty your orators beg leave to refer if it be necessary so to do.

And your orators further show that afterwards on or about the first day of August, Nineteen hundred and eleven the said Mary E. Steadman by deed of release, bearing date the day and year last aforesaid, executed under her hand and seal, released and quit claimed for the nominal consideration of One dollar from the lien and operation of aforesaid mortgage to the said Frank J. Foster and Clara F. Foster, all the following described tract, situate in the Town of Irvington, County of Essex and State of New Jersey:

BEGINNING at a point on the easterly side of Twenty-third Street, distant two hundred fifty-five feet and twenty-four hundredths of a foot northerly from the corner formed by the intersection of the easterly side of Twenty-third Street and the northerly side of Springfield Avenue; running thence easterly at right angles to Twenty-third Street one hundred feet to the centre line of the Block between

Twenty-third and Twenty-second Streets; thence northerly along said centre line twelve and one-half feet; thence westerly at right angles to Twenty-third Street one hundred feet to the said easterly side of Twenty-third Street; and thence southerly along the said easterly side of Twenty-third Street twelve and one-half feet to the point of beginning.

And your orators further show that said deed of release above mentioned quit claimed and surrendered a portion of the first tract described in aforesaid mortgage and that the remaining portion of said first tract and all of said second tract described in said indenture of mortgage are adjacent and are described in one tract as follows:

Being all that tract in the Town of Irvington, County of Essex and State of New Jersey.

BEGINNING at a point on the easterly side of Twenty-third Street distant two hundred sixty-seven and seventy-four hundredths feet northerly from the corner formed by the intersection of the easterly side of Twenty-third Street and the northerly side of Springfield Avenue; running thence easterly at right angles to Twenty-third Street one hundred feet to the centre line of the block between Twenty-third and Twenty-second Streets; thence northerly along said centre line thirty-seven and one-half feet to lot Number Thirty-six as said lot Number Thirty-six is shown on said map; thence westerly along said lot Number Thirty-six and again at right angles to Twenty-third Street one hundred feet to the said easterly side of Twenty-third Street and thence southerly along the said easterly side of Twenty-third Street thirty-seven and one-half feet to the point of beginning.

Being all of lot number thirty-five and part of lot number thirty-four on Map of lots belonging to Jere Johnson, Jr. Co., filed in the Register's office of Essex

County on December 28, nineteen hundred and six.

And your orators further show that on or about the first day of August, Nineteen hundred and eleven the said Frank J. Foster and Clara F. Foster, his wife, by deed bearing date the day and year last aforesaid, duly executed under their hands and seals, conveyed to one Frank A. Coursen all that tract in the Town of Irvington, County of Essex and State of New Jersey.

Being same premises and under the same description as last above set forth.

That said deed was duly recorded in the Register's office of Essex County on the seventh day of October, Nineteen hundred and eleven, in Book C50 of deeds for said County, page 102, &c.

And your orators further show that on or about the first day of August, Nineteen hundred and eleven the said Frank A. Coursen, single, by deed duly executed under his hand and seal conveyed to the said Frank J. Foster and Clara F. Foster, his wife, all that tract of land in the Town of Irvington, County of Essex and State of New Jersey.

Being same premises as last above described.

Said deed was duly recorded in the Register's office on the seventh day of October, Nineteen hundred and eleven in Book C50 of deeds for said County, page 104, &c., that by reason of said two last mentioned conveyances the said Frank J. Foster and the said Clara F. Foster, his wife, claim to be seized of said premises last above described in fee as tenants by entirety; but your orators expressly charge that said last two mentioned conveyances were executed subsequent to aforesaid mortgage and that the said Frank J. Foster and the said Clara F. Foster hold the said premises subject to the lien of said mortgage.

And your orators further show that afterwards on or about the twenty-first day of March, Nineteen hun-

dred and twelve said Mary A. Steadman departed this life, having first duly made, executed and published her last will and testament in writing in due form of law, and thereby did among other things appoint your orators the executor and executrix thereof.

And your orators further show that on or about the third day of April, Nineteen hundred and twelve they made application to Isaac Shoenthal, Surrogate of Essex County, for the probate of said will, and that by order of the said Surrogate bearing date April eighth, Nineteen hundred and twelve, doubt having appeared on the face of the will, the matter was referred to the Orphans' Court of Essex County, and that thereafter on or about the Seventh day of June, Nineteen hundred and twelve, testimony having been taken before Honorable William P. Martin, Judge of the Orphans' Court, and the Court having been satisfied that said will was properly executed, and that only the fourth item thereof was invalidated by the erasure appearing thereon, ordered that said will be admitted to probate, excluding the said fourth item, and that letters testamentary thereon be issued to your orators as by certified copy of the same and the probate thereof now remaining in the custody of your orators and ready to be produced when and where this Honorable Court may direct, or the record thereof now remaining in the Surrogate's office of said County of Essex in Book T4 of Wills, page 409 &c., reference being thereunto had may more fully appear.

And your orators further show that they have fully qualified as such executor and executrix and that they have taken upon themselves the burden of the administration of the estate of the said Mary Steadman, deceased, pursuant to her last will and testament, and that they are entitled to have and receive the monies now due and owing for principal and interest on the said bond or writing obligatory and in the proviso of

redemption of the said deed or indenture of mortgage mentioned.

And your orators further show, that Three thousand dollars principal money shown in the said bond or obligation and secured thereby and by the said Deed of Mortgage, with large arrears of interest, still remains due and owing to your orators, no part thereof having been paid to your orators, so that your orators are greatly delayed and disappointed in the receipt of the said money, by means of which several premises the said Deed of Mortgage, and the estates thereby mortgaged as a foresaid, have become absolute in your orators and their heirs.

And your orators further show, that the said Frank A. Coursen, Frank J. Foster and Clara F. Foster, his wife, since the execution of your orators' said mortgage, have possessed and enjoyed, and that they do still possess and enjoy, the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive the rents, issues and profits thereof. And your orators further show and expressly charge, that the said mortgaged premises are a slender and scanty security for the payment of said principal and interest moneys so due to your orators as aforesaid, And that they or some other person or persons, for them have frequently and in a friendly manner applied to the said Frank A. Coursen, Frank J. Foster and Clara F. Foster, his wife, or one of them, and requested them or one of them to pay and discharge the said principal and interest moneys so due to your orators on the said bonds or obligation and Deed of Mortgage hereinbefore mentioned and set forth; and your orators well hoped that they would have complied with such reasonable requests of your orators, and would have paid to them the said principal and interest moneys so as aforesaid due to your orators on the said bond or obligation and

Deed of Mortgage, as in equity and good conscience they ought to have done.

In tender consideration whereof, and for as much as your orators have not a complete and safe remedy in the premises of and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so aforesaid due to your orators on said bond and obligation of Deed of Mortgage without the aid and decree of this Honorable Court to the end, therefore, that the said Frank J. Foster and Clara F. Foster may, but without oath, answer under oath being hereby expressly waived, may upon their several and repective oaths, true, full and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, and belief; And that the said defendants or some one of them may be decreed to pay to your orators the said principal sums so due to them on the said bond or obligation and Deed of Mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orators costs and charges in this behalf sustained, by a short day to be appointed by this Honorable Court; And in default thereof that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your orators all deeds, demises and writings what-

soever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this Honorable Court, be sold, and out of the moneys arising out of the sale thereof, your orators may be paid the full amount of the said principal sum of money so due to your orators on the said bond or obligation and Deed of Mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orators' costs and charges in this behalf sustained.

And that your orators may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience; may it please your Honor, the premises considered, to grant unto your orators a writ or writs of subpoena, issuing out, under the seal of the Honorable Court, to be directed to the said Frank J. Foster and Clara F. Foster, therein and thereby commanding them and each of them, on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor and his Honorable Court, then and there to answer all, and singular the premises and to stand to, abide by and perform such order and decree therein as your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orators as in duty bound, will ever pray, &c.

LEHLBACH & VAN DUYNE,
Solicitor for and of Counsel with
Complainants.

Answer.

IN CHANCERY OF NEW JERSEY.

Between CHARLES A. STEADMAN and MAY E. DOWNS, Executors, Complainants, and FRANK J. FOSTER and CLARA F. FOSTER, Defendants.	On bill to foreclose.

The joint and several answer of defendants, Frank J. Foster and Clara F. Foster, alleges as follows:

These defendants deny that the sum of Three thousand dollars, principal money shown in the bond or obligation and secured thereby, and by the deed of mortgage set forth in the bill with large arrears of interest, still remains due and owing to complainants.

These defendants further deny that they have failed to comply with the condition of the bond and mortgage set forth in the bill of complaint.

For a further defense these defendants allege that on August 1st, 1911, at a time when Mary E. Steadman, referred to in the bill of complaint, was the owner of the said bond and mortgage, she, the said Mary E. Steadman, for valuable consideration, duly released from the lien of said bond and mortgage that portion of the mortgaged premises described as follows:

All that part of the said mortgaged lands hereinafter particularly described, situate, lying and being in the Town of Irvington, in the County of Essex and State of New Jersey.

Beginning at a point on the easterly side of Twenty-third Street, distant two hundred and fifty-five and twenty-four one-hundredths of a foot northerly from the corner formed by the intersection of the easterly side of Twenty-third Street and the northerly side of Springfield Avenue; running thence easterly at right angles to Twenty-third Street one hundred feet to the centre line of the block between Twenty-third and Twenty-second Streets; thence northerly along said centre line twelve and one-half feet; thence westerly at right angles to Twenty-third Street one hundred feet to the said easterly side of Twenty-third Street; and thence southerly along the said easterly side of Twenty-third Street twelve and one-half feet to the point of beginning.

Which said release was duly acknowledged, executed and delivered to these defendants and was recorded in Book 43 of Releases of Mortgages for Essex County, on pages 266 and 267, October 16th, 1911. That the true consideration for said release was the sum of One thousand dollars, paid by these defendants, on account of said mortgage.

These defendants, further answering, allege that thereafter and on September 19th, 1912, having, as heretofore alleged, paid the sum of One thousand dollars, these defendants did further duly tender to complainants, as executors of said Mary E. Steadman, said complainants at that time being owners of said bond and mortgage, the sum of Two thousand one hundred and eleven dollars and thirty-nine cents ($2,111.39), the amount of principal and interest remaining due upon said bond and mortgage on September 19th, 1912, the said mortgage being then overdue; and these defendants thereupon, upon making the said due tender of the said last named sum, duly demanded of complainants to deliver up a cancellation of the said bond and mortgage, with which demand

the complainants refused to comply. That ever since making the said due tender on September 19th, 1912, these defendants have been ready, willing and able to pay the said sum of Two thousand one hundred and eleven dollars and thirty-nine cents, the amount then tendered and the amount then due, and still are ready, willing and able to pay the same, and now bring the same into court.

And these defendants, further answering, say that by reason of said tender and offer by them, as aforesaid, and the refusal of complainants to receive the same, all which took place prior to the commencement of this action, complainants were and are precluded from maintaining this action, and also from claiming any interest after September 19th, 1912, and any costs of this action.

Wherefore these defendants pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

F. J. GREENBERG,
Defendants' Attorney,
810 Broad Street,
Newark, N. J.

State of New Jersey, }
County of Essex, } ss:

Frank J. Foster and Clara F. Foster, being duly severally sworn on oath, according to law, say they are the defendants named in the bill of complaint herein and in the foregoing answer. They have read the foregoing answer and know the contents thereof, and say that the matters and things set forth and contained in the foregoing answer are true.

FRANK J. FOSTER,
CLARA F. FOSTER,

Subscribed and sworn to before me
this 30th day of Sept., 1913.
John H. MacArthur,
Notary Public,
For N. J.

Replication.

IN CHANCERY OF NEW JERSEY.

Between CHARLES A. STEADMAN and MAY E. DOWNS, Executors, Complainants, and FRANK J. FOSTER and CLARA F. FOSTER, Defendants.	On bill to foreclose.

The replication of Charles A. Steadman and May E. Downs, executor and executrix of the last will and testament of Mary E. Steadman, deceased, complainants, to the joint and several answer of Frank J. Foster and Clara F. Foster, defendants.

The complainants join issue on the joint and several answer of the defendants.

LEHLBACH & VAN DUYNE,
Solicitors for Complainants.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between CHARLES A. STEADMAN and another, Complainants, and FRANK J. FOSTER, Defendant.	On bill, &c.

This cause coming on to be heard by the Court in the presence of Lehlbach & Van Duyne, of counsel with the complainants, and Frederick J. Greenberg, of counsel with the defendant, and the pleadings and proof having been read and the arguments of the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the defendant, Clara F. Foster, departed this life on the twelfth day of November, Nineteen hundred and thirteen, and that prior to the filing of the bill of complaint in this cause the premises described in the complainants' mortgage, not including that part thereof which had been released therefrom, were held by the said defendants, Frank J. Foster and Clara F. Foster, in fee simple, as tenants by entirety, subject to complainants' mortgage, as alleged in complainants' bill of complaint, and that upon the death of the defendant, Clara F. Foster, as aforesaid, the said premises became vested solely in the defendant Frank J. Foster, in fee simple, subject to complainants' mortgage, and it further appearing to the Court that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint and that in equity the complainants' ought to assign to the

defendant Frank J. Foster a certain claim filed by their testatrix on the sixteeenth day of March, Nineteen hundred and twelve, with the executrix of the estate of Charles A. Feick, in the amount of One thousand dollars;

It is on this twenty-eighth day of January, Nineteen hundred and fourteen by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this Court doth hereby order, adjudge and decree, that all the matters and things stated in the complainants' bill of complaint do stand ratified and confirmed, and that there is now due to the complainants for principal and interest on their bond, the payment of which was intended to be secured by their mortgage, the sum of Three thousand three hundred seventy dollars and forty-two cents, and that the complainants are entitled to have the said sum of Three thousand three hundred seventy dollars and forty-two cents with lawful interest thereon computed from the date hereof, together with their costs of this suit to be taxed, including a counsel fee of Sixty-seven dollars, instead of the retaining fee allowed by statute, raised and paid out of the mortgaged premises;

And it is further ordered, adjudged and decreed, that the complainants on receiving satisfaction of this decree, either by payment or execution, assign, transfer and set over to the defendant, Frank J. Foster, all their right, title and interest, of, in and to a certain claim or chose in action filed by their testatrix, Mary E. Steadman, with the executrix of the estate of Charles A. Feick, deceased, on March Sixteenth, nineteen hundred and twelve in the amount of One thousand dollars;

And it is further ordered, adjudged and decreed, that the said Frank J. Foster shall within thirty days

after the service upon him of a copy of this decree and of the taxed bill of costs in this cause, pay to the complainants the said sum of Three thousand three hundred seventy dollars and forty-two cents, together with interest thereon as aforesaid, and the taxed costs of this suit, upon receiving from said complainants the assignment of said claim against the estate of Charles A. Feick, deceased, as aforesaid, and that in default of the defendant, Frank J. Foster, making such payment as aforesaid, that so much of the estate and premises in the said mortgage contained as will be sufficient to raise and satisfy the said debt, interest and costs be sold, and that a writ of *fieri facias* to issue for that purpose out of this Court, directed to the Sheriff of the County of Essex, commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he pay the same to the complainants, or their solicitor; and that in case more money shall be raised by the sale than shall be sufficient to answer such payment, such surplus money be brought into this Court and deposited with the Clerk to abide the further order of the Court, and that such sheriff make return to this Court of his proceeding by virture of the said writ;

And it is further ordered, adjudged and decreed, that the said defendant, Frank J. Foster, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the mortgaged premises as shall be sold as aforesaid by virtue of this decree.

E. R. WALKER,
C.

Respectfully advised.
John R. Emery,
Vice Chancellor.

A true copy.

SAM'L K. ROBBINS,

Testimony.

IN CHANCERY OF NEW JERSEY.

Between
CHARLES A. STEADMAN, *et al.*,
Complainants,
and
FRANK J. FOSTER and CLARA F. FOSTER,
Defendants.

Transcript of testimony taken in the above entitled cause before Hon. John R. Emery, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on January 25, 1914, at 2 P. M.

Appearances:

Messrs. Lehlbach & Van Duyne, for complainants.
Mr. Frederick J. Greenberg, for defendants.

Mr. Lehlbach: I offer in evidence bond made by Frank J. Foster and Clara F. Foster, his wife, to Charles A. Feick, dated February 9, 1909, conditioned for the payment of $3,000 on February 9, 1910, at five per cent.

Marked Exhibit C1.

Also, offer in evidence mortgage given by Frank J. Foster and Clara F. Foster, his wife, to Charles A. Feick, dated February 9, 1909, securing the payment of this bond, recorded February 10, 1909, in Book O23, page 192.

Marked Exhibit C2.

Also, assignment of mortgage by Charles A. Feick to Mary E. Steadman, dated May 25, 1909, and recorded May 26, 1909, in Book 89 of assignments of mortgages, page 97.

Marked Exhibit C3.

Also offer in evidence certified copy of the letters testamentary on the estate of Mary Elizabeth Steadman.

Mr. Greenberg: Execution of the Exhibits C1, C2, and C3 is admitted.

It is also admitted that Mrs. Steadman died March 21, 1912.

The Court: Mr. Van Duyne, you seem to have released part of the property.

Mr. Van Duyne: We had better put in proof as to the amount due on the mortgage.

The Court: How many tracts were there in the property?

Mr. Van Duyne: Two tracts in the mortgage. The two tracts were adjoining, 25 foot lots, and the house was practically on one of them, or principally on one of them, and the release covered 12 1/2 feet of the other. That release was given to the defendants.

The Court: You do not claim to sell that?

Mr. Van Duyne: No. The consideration for the release was one dollar—a nominal consideration.

MARY ELIZABETH DOWNS, sworn for complainants.

Direct-examination by Mr. Van Duyne:

Q. You are one of the complainants? A. I am.

Q. You are the executrix of your mother, Mary E. Steadman? A. I am.

Q. I show you this bond and the endorsements on the back concerning the payment of interest; do you know who made those endorsements? A. I made those "per S."

Q. How was it signed? A. They were signed in mother's name and the "per S" was my attorneyship, I suppose you would call it.

Q. You usually signed that way? A. I usually signed it, yes.

Q. Has anything else been paid on that mortgage except the endorsements on it? A. Nothing else has been paid.

Q. Do you know the amount now due on the bond and mortgage? A. Including the interest?

The Court: That appears on the face of it. There were no other payments.

Mr. Van Duyne: The amount calculated is $369.58 as interest.

The Court: The endorsements are in your handwriting?

The Witness: Yes.

CROSS-EXAMINATION by Mr. Greenberg:

Q. All these endorsements? A. Yes.

Q. From whom did you receive this interest? A. From mother and put it down there.

Q. Do you know where she got it from? A. I suppose from Mr. Feick's office, through Mr. George.

Q. Did it come to her in the way of a check or in cash? A. In check.

Q. And you have seen those checks? A. I have seen those checks.

Q. And they were Mr. Feick's checks? A. Yes.

Q. And all these endorsements made on here were money received through Mr. Feick's office in the way of check, were they? A. Yes, sir.

Mr. Van Duyne: I offer the foreclosure search and abstract of the title.

COMPLAINANTS REST.

THEODORE D. GOTTLIEB, sworn for defendants.

Direct-examination by Mr. Greenberg:

Q. You are a counsellor at law of the State of New Jersey? A. I am.

Q. You represented Mrs. Downs, who has just testified, and Charles E. Steadman, executors of Mary E. Steadman, deceased? A. Partially so.

Q. Do you recall any tender being made to you of the amount due, or claimed to be due, on this mortgage? A. I do.

Q. I show you a memorandum and ask you whether that was the amount and the date upon which that was made? A. I am reasonably satisfied that it is.

The Court: What is the amount, Mr. Foster claims to be due?

Mr. Greenberg: $2,111.39.

The Witness: That tender was made September 19, 1912.

Q. Do you recall Mr. Steadman and Mrs. Downs being at your office and directing the tender to be made to you? A. I do.

Q. You are also attorney for Mary E. Steadman? A. Yes, in that transaction.

Q. And as attorney for her, I show you what purports to be a copy of a claim for the amount due on that mortgage in this suit, filed with the executors of Charles A. Feick, and ask you whether you filed that claim?

Mr. Van Duyne: I object.

The Court: I will admit it subject to your objection and hear you on the relevancy of it.

A. I did.

The Court: Is that the original claim?

Mr. Greenberg: I will introduce the original in evidence, but the copy I show the witness is a copy.

CROSS-EXAMINATION by Mr. Van Duyne:

Q. Can you tell us the circumstances in reference to the filing of this claim? A. I can.

Q. Will you do so?

Mr. Greenberg: I object.

The Court: I will hear it.

A. At the time I was presumed and supposed to represent all parties in interest, and Mr. Steadman directed by letter Mr. Foster and his wife to come down to my office to see about the payments that had been made to the Feick estate, and we had a long controversy over the proposition of filing the claim, and finally I filed it in the name of the Steadmans.

Q. Was that the only claim that you filed? A. I filed two or three of them in the nature of claims. I filed an affidavit with Mr. Morgan, setting forth the whole transaction, and attaching thereto the two receipts, each for $500, that Mr. Feick had given when the payments were made.

Q. And how did you happen to file this additional claim? A. Mr. Morgan informed me that that wasn't sufficient claim, he didn't consider it a sufficient claim.

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Q. This one? A. No, the affidavit setting forth the whole transaction.

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Q. Was that the only claim that you filed? A. I filed two or three of them in the nature of claims. I filed an affidavit with Mr. Morgan, setting forth the whole transaction, and attaching thereto the two receipts, each for $500, that Mr. Feick had given when the payments were made.

Q. And how did you happen to file this additional claim? A. Mr. Morgan informed me that that wasn't sufficient claim, he didn't consider it a sufficient claim.

By the Court:

Q. This one? A. No, the affidavit setting forth the whole transaction.

Q. Did you endeavor to get the Fosters to file a like claim? A. I did many times.

By the Court:

Q. He overruled then another claim that you filed? A. There were several.

Q. He overruled other claims that you had filed setting out the whole transaction? A. Documents in the nature of claims, I would call them.

Q. Did you endeavor to get the Fosters to file a claims for these supposed payments? A. I did.

Q. Tell us about that? A. Mrs. Foster, particularly was down in the office a good many times when the proposition was taken up with her, and she always professed a willingness and readiness to do it, except when it came to the actual physical signing of the claim; I prepared a number of claims for them to sign and I was unable to get them to sign them.

Q. In reference to the point of time, was this claim filed on the part of the Steadmans—when was that filed? A. It bears date February, I think.

Q. Subsequently or prior to your endeavors to have the Fosters file this claim? A. Both subsequent and prior. I tried at all times to get them, and finally I let the claim stand as it was, rather than withdraw it; the time was almost up and I didn't want to leave someone in the lurch by not filing a claim.

Q. It was about the end of the nine months period when it was filed? A. When I attempted to withdraw it, and then I decided under the circumstances it would not be well to withdraw it, because it would practically amount to a gift to the Feick estate.

Q. And the claim was virtually filed because the Fosters refused to—give the reason for filing? A. That was my reason for allowing it to remain; I not only took my own judgment in the matter, but took the judgment of other people that knew more about the transaction than I did.

Q. You were satisfied that either the Fosters or Steadmans stood to lose part of this thousand dollars? A. Yes.

Q. And you endeavored to get the Fosters to file the claim with the Steadmans and they would not do it, and inasmuch as they refused, you finally filed one on behalf of the Steadmans? A. Yes; at that time I represented both parties; there was no dual representation, both the Fosters and the Steadmans, that was the understanding, and it was a ticklish position to be placed in, and I took advice on the matter and acted according to the advice and instructions thereunder.

RE-DIRECT by Mr. Greenberg:

Q. The only claim that you really did file was the affidavit attached to the claim of Mr. Feick, the affidavit to Mrs. Steadman's account? A. I filed a document in the nature of a claim.

Q. In relation to the Fosters? A. Yes. I think I filed that with Mr. Morgan of the law firm of Messrs. Pitney, Hardin & Skinner.

The Court: Is that here?

Q. That was filed on behalf of the Fosters? A. It was a document in the nature of a claim filed in their behalf.

Q. Did they sign it? A. In the form of an affidavit, and they signed it.

Q. Isn't that the affidavit attached to that (witness shown paper)? A. No, there was another one supplementing it.

Q. This is the claim filed by Mrs. Steadman and the affidavit of the defendants is attached, claiming that they had made certain payments?

The Court: Did you file any other paper than that?

The Witness: I filed one subsequent to this.

Q. On behalf of the Fosters? A. I considered it such, and then Mr. Morgan notified me that it wouldn't be considered.

Q. You did put them in? A. Yes.

The Court: I will have to have that.

Q. Are those the original receipts that Mr. Foster produced? A. They are.

Q. And that is the first claim that you filed, as you claim, with the executors of the Feick estate? A. That is the first one.

By the Court:

Q. The original Steadman claim is produced? A. It was what I deemed my original statement of the whole transaction. That was the one I was told would not suffice as a claim.

Q. Did you withdraw it? A. Mr. Morgan allowed it to remain with the files, then I put in another one.

Q. Was there still a third one? A. Yes, that Mr. Greenberg has just produced.

Q. I thought the one which Mr. Greenberg just produced was the original one you presented on behalf of the Steadmans; that is not so? A. No, sir.

Q. Which paper did you present first? A. That one that has just been presented, the affidavit of Mrs. Steadman and affidavit of Mrs. Foster; this is what I would term No. 1.

Paper referred to marked Exhibit D1 for identification.

Q. To which affidavits of the 23rd of February, 1912, are attached? A. Yes.

Q. And has also some other papers attached? A. It has two receipts attached.

Q. Whose affidavit? A. Affidavit of Mary E. Steadman and Mrs. Foster.

Q. And also has two receipts? A. Yes, sir, signed by Charles A. Feick, per someone.

Q. Give the date of those receipts. A. One receipt bears date August 1, 1910, for $500, being on account of principal of mortgage, premises 23rd Street, Irvington, New Jersey; the other, July 31, 1911, $500, on account of mortgage 24 23rd Street, Irvington.

Q. Which do you say was the second one? A. The second one was made after I was notified by Mr. Morgan of the insufficiency, I filed another paper.

Q. Have you that or a copy of it? A. No, sir.

Mr. Greenberg: This is all the executor produced.

The Court: The paper would be in Mr. Morgan's hands.

Mr. Greenberg: He was subpoenaed and that is the only paper he produced. Mr. George is here, representing the estate.

Q. Have you a copy of the second claim? A. No.

Q. Give your recollection about the second. A. My recollection of the second was, it was a very specific affidavit by Mr. Foster and his wife, setting forth that whole transaction, and that was likewise rejected by Mr. Morgan as not being a sufficient claim, and that document, along with a good many others, were turned over to Judge Henry.

Q. That document was returned to you? A. I think he returned that to me, and it was given into the possession of Judge Henry along with other memoranda in the case.

Q. Then did you afterwards put in a third? A. Then I afterwards presented that document which has been shown to me some time ago.

Q. The paper you now hold is, as you recall a copy of the third paper you presented to the Feick estate?

A. No, I say that it is a copy of D1, only it is a little different form than the original.

Q. This paper that is now handed to you seems to be a copy of the paper that was first presented? A. A copy of D1.

Q. Was there still another paper presented? A. There was a regular proof of claim.

Q. And that is not produced? A. No.

Q. Do you recall by whom it was signed? A. I think it was signed by Mrs. Steadman.

Q. To whom was that paper delivered? A. To Mr. Morgan, of the law firm of Pitney, Hardin & Skinner, by me.

Q. To Mr. Morgan personally? A. I am pretty sure that it was.

The Court: Either party can cross-examine on what I have asked.

CROSS-EXAMINATION by Mr. Lehlbach:

Q. What was the date of the presentation of this third claim? A. I don't remember that.

Q. Do you remember when it was with reference to the date of the expiration of the time limited for presenting claims against the Feick estate? A. It had been presented sometime before, and I wanted to withdraw it at the time; just prior to the expiration of the time for filing claims, I discussed the advisability of withdrawing it.

Q. Discussed with whom? A. With Judge Henry.

Q. What was the substance of that proof of claim?

Mr. Greenberg: I object.

The Court: The paper is in existence.

Mr. Greenberg: I understood we were taking secondary evidence of it.

The Court: Not exactly that, if parties want to do it, I will let you do it, but it will be subject to being stricken out

Mr. Greenberg: We have issued a subpoena *duces tecum,* and this is all he produces.

Mr. Lehlbach: There is no proof of this third claim supposed to be signed by Mrs. Steadman before the Court, except as the witness states it.

The Court: Now, it will have to be produced.

Q. You say you represented both sides in the transsaction? A. In its inception and down to a period almost before the time for filing claims expired.

Q. When you filed this what you call the third claim, what was your purpose in filing it; to show to whom the money was due, or simply to safeguard the interests of both sides?

Mr. Greenberg: "What was your purpose," I object.

The Court: I will take it.

A. My purpose was to safeguard someone, acting upon the advice that I had taken from Judge Henry.

Q. I show you a letter signed Pitney, Hardin & Skinner, dated March 12, 1912, and ask you whether you received that letter, and whether in fact you know it to have been sent from the office of Pitney, Hardin & Skinner, by subsequent conversation? A. I know of it having been sent, by subsequent conversation.

Q. And that letter was sent in response to the first claim that you filed? A. I believe it was the first.

Q. Look at the letter and see whether it wasn't; it speaks of the affidavit of Mary E. Steadman and Frank J. Foster; that was the first? A. I think that was the first, I am not sure.

Q. Subsequent to that, what was your endeavor? A. My endeavor was to get the Fosters to file a claim.

Q. You say your purpose in filing the third claim was to safeguard whatever interests were to be protected as against the Feick estate? A. That was my purpose.

Q. Were both the Fosters and Steadmans cognizant of your course in that? A. They were.

RE-DIRECT by Mr. Greenberg:

Q. Did or did not the Fosters ever file any claim besides the one you have before you, D1 for identification? A. My memory is not clear in reference to the second alleged claim I filed, but I think there is an affidavit attached to that of Mr. and Mrs. Foster.

Q. I show you here another claim and ask you whether that is the second claim to which you have just referred? A. I do not think it is.

The Court: What do you show him?

Mr. Greenberg: Another claim the executor just produced.

The Court: The executor just gave you that?

Mr. Greenberg: The person representing Mr. George did. He said he had no others; he brought this in just now.

The Witness: I think that is the third.

Q. Who is that signed by? A. Mary E. Steadman.

Q. What is the date of that? A. 16th day of March, 1912. That is the one I suggested the advisibility of withdrawing.

Mr. Greenberg: Paper just produced, dated 16th of March, 1912, offered for identification.

Marked D2 for identification.

RE-CROSS by Mr. Van Duyne:

Q. What you have called the first and second claims were merely affidavits on file by Mary E. Steadman? A. Yes.

HENRY P. GEORGE, sworn for defendants.

Direct-examination by Mr. Greenberg:

Q. You are a counsellor at law? A. No, sir; attorney at law.

Q. You are in the employ of the Charles A. Feick Estate? A. Yes, sir.

Q. And also in the employ of Pitney, Hardin & Skinner, so far as that estate is concerned? A. Yes.

Q. You have been served with a subpoena *duces tecum* to produce any papers, letters, checks, etc., in this suit? A. Yes, sir.

Q. Have you made a search of the files of the estate for any claims or letters pertaining to the Steadman matter? A. I have made a search for proofs of claims.

Q. And what proofs of claims, if any, did you find?

The Court: Relating to this mortgage.

A. I have found among them an affidavit made by Mary E. Steadman, marked D1 for identification, filed with the estate; the affidavit was taken on the 23rd of February, 1912; there is no date as to when it was filed. Also, proof of claim filed by Mary E. Steadman, which was sworn to on the 16th day of March, 1912, marked D2 for identification.

The Court: Those you gave to Mr. Greenberg since you have been in the court room?

The Witness: Yes.

Q. And those are the only proofs of claims so far as the Fosters or Mrs. Steadman are concerned with reference to this suit or controversy? A. Yes, sir.

Q. You were also in the employ of Mr. Feick during his lifetime? A. I was.

Q. I call your attention to two receipts attached to claim marked D1 and ask you whether you recognize that handwriting? A. Yes, sir.

Q. And whether those payments were made in Mr. Feick's office? A. They were.

Q. Have you any personal knowledge of these payments being made? A. Yes, sir.

Q. And were they actually made? A. Yes, sir, they were.

Q. Do you know whether or not Mr. Feick collected the interest on this mortgage from the time it was given to him? A. He did.

Q. To the time of Mrs. Steadman's death? A. That is not to the time of the death; to the time of the death of Mr. Feick.

Q. Have you any memorandum with reference to the dates upon which he received that interest? A. Yes, sir.

Q. What is that? A. The interest card, the card cabinet.

Q. Taken from his files? A. Yes.

Q. When did the interest payments start on that mortgage? A. February 9, 1909.

Q. And continued until when? A. Until the last payment was made; July 31, 1911.

Q. And those payments were collected by him? A. Yes.

Q. Do you know what he did with it as he received it? A. It was put in the banks.

Q. And after it was put in the banks, what happened to it? A. Turned over to the respective mortgage holders.

The Court: To his personal account?

The Witness: Yes.

Q. Do you know whether or not this interest was ever paid to Mrs. Steadman? A. Yes, sir.

Q. How was it paid? A. By check.

Q. Did you have charge of that end of the business? A. In some cases I did, and other cases others did.

Q. Do you know of your personal knowledge that Mrs. Steadman was paid this interest by check of Charles A. Feick? A. Yes, sir; up to and including the interest due August 9, 1911.

Q. Do you know when this mortgage was assigned to Mrs. Steadman? A. It was assigned—I cannot tell the exact date, but I think it was assigned before the first six months' interest was due in 1909.

Q. And from that time until the last payment shown here, the interest was regularly paid to Mr. Feick and he in turn paid it to Mrs. Steadman? A. Yes.

Mr. Greenberg: I offer this card in evidence. Marked Exhibit D3.

Q. Do you know what the object of those payments on account of principal were, what they were for? A. The first payment was made with the intention of reducing that mortgage; the second payment was also made with that intention, but at that same time the Fosters had an agreement with the party next door to sell them one-half of the lot, and they wanted a release.

By the Court:

Q. At the time of the second payment? A. July 31, 1911, that was the second payment.

Q. Was any release produced for the lot? A. Yes, sir.

Q. I show you what purports to be a release and ask you whether or not that is the release to which you have testified? A. Yes, sir.

Mr. Greenberg: I offer the release in evidence, dated August 1, 1911, made between Mary E. Steadman and Frank J. and Clara F. Foster, releasing from mortgage in O 23, 192, and the same as described in the bill.

Marked Exhibit D4.

Q. I show you here some receipts for 1911, purporting to be signed by Charles A. Feick, and ask you whether those are the receipts for the interest you testified to were paid by him? A. Yes, sir; five receipts.

Mr. Greenberg: I offer those receipts in evidence.

Marked Exhibit D5.

By the Court:

Q. They are all signed by Feick? A. By his representatives they are signed.

By the Court:

Q. Signed by someone having authority in the regular course of business in his office to make those signatures for him? A. Yes; signed "Charles A. Feick, W."

By the Court:

Q. Full interest on the whole mortgage, as if it was all due, was paid up to the time of Feick's death? A. Not the interest on $3,000.

Q. Wasn't the interest on $3,000 paid to Mrs. Steadman? A. Yes.

The Court: That is what I meant. He paid Mrs. Steadman more than he got; he paid Mrs. Steadman what he got, plus the interest on the amount that was already paid, if she received $75 every six months, just as if it was all due?

The Witness: Yes, sir.

The Court: It was received as six months' interest; did you get receipts from her?

The Witness: No, sir.

CROSS-EXAMINATION by Mr. Lehlbach:

Q. This bond and mortgage was assigned to Mrs. Steadman on the 25th of May, 1909? A. I don't recall the date; I say sometime in 1909, before the first interest was due.

Q. What became of the bond and mortgage at the time of the assignment; remain in Mr. Feick's possession or delivered to Mrs. Steadman? A. When all the papers were returned from the court house they were delivered to Mrs. Steadman.

Q. What you mean by "all papers," you mean when the assignment of mortgage was received from the Register's office, where it had been left for record? A. Yes.

Q. Then about six weeks after the assignment of the mortgage, the bond and mortgage was actually and physically in the possession of Mrs. Steadman? A. Yes.

Q. From that time to the death of Mr. Feick? A. Yes.

Q. You have identified the receipts of $500 paid on account of the principal, that was August 1, 1910? A. Yes.

Q. And the second payment was made on the 31st of July, 1911, I believe? A. Yes, sir.

Q. Was at that time a release procured from Mrs. Steadman? A. Shortly after.

Q. You have the release before you; will you see when it was acknowledged? A. 27th day of September, 1911.

Q. That is about fourteen months after the first payment of $500? A. Yes, sir.

Q. Did you have a conversation with Mrs. Steadman over the telephone concerning the execution of this release? A. I don't remember positively if I had Mrs. Steadman or the daughter, but I spoke to one of them in reference to it.

Q. Did you draw the release? A. I had it drawn.

Q. The consideration was one dollar in the release? A. Yes.

Q. In that conversation with Mrs. Steadman was anything said about a payment of $1,000? A. No, sir.

Q. The second $500 was paid July, 1911? A. Yes.

Q. The release was handed to Mrs. Steadman and acknowledgment was taken on the 27th of September, 1911? A. Yes.

Q. After both payments of $500 had been received? A. Yes.

Q. There was nothing said about the receipt of $1,000 at that time? A. No.

Q. The consideration expressed in the release was $1? A. Yes.

Q. Did you inform Mrs. Steadman at that time, for Mr. Feick, that the purpose of the release was to release a little strip that wouldn't impair the validity of her security, because a sale was to be contracted by the Fosters of a 12 1/2 foot strip?

Objected to.

The Court: It is cross-examination.

A. I told Miss or Mrs. Steadman that the release was to release 12 1/2 feet, and I said that that wouldn't make much difference as far as raising the $3,000 was concerned; $3,000 was just as good on the 37 1/2 feet as on the fifty feet.

Q. $3,000 was the original amount of the mortgage? A. Yes.

Q. And in that conversation which induced Mrs. Steadman to execute the release, there was nothing said about the payment of two sums of $500, both before the execution of this release? A. No, sir.

Q. From the date of the last payment, July 31, 1911, until the death of Mr. Feick you say the interest received on the mortgage was on principal of $3,000 by Mr. Feick?

The Court: When did Feick die?

The Witness: 30th of September, 1911.

Q. Were there any payments made between the payment of the first $500, August 1, 1910, and the date of Mr. Feick's death, September 30, 1911, by the Fosters? A. Yes, sir.

Q. Subsequent to the first day of August, 1910, what payments do your records show? A. On February 6, 1911, $62.50.

Q. That is at what rate of interest? A. Five per cent on $2,500.

Q. Do your records show the payment to the Steadmans? A. Of what?

Q. The interest on this mortgage? A. No, this record doesn't show that.

Q. Have you knowledge of the payments to the Steadmans? A. I have knowledge of what the Steadmans received.

Q. What did they receive at the time that this payment of $62.50 was due? A. They received $75.

Q. Which was the same rate of interest on $3,000? A. Yes.

Q. What date was that? A. The day they received it I don't know.

Q. The date the $62.50 was received by Feick? A. February 6, 1911.

Q. There was another interest payment before Mr. Feick's death? A. Yes, sir.

Q. When was that? A. July 31, 1911.

Q. What was the amount of that sum received from Fosters by Mr. Feick? A. $62.50.

Q. That antedated the second payment of $500? A. Yes; $62.50. That was paid the same day the $500 was paid off.

Q. What was the sum returned to the Steadmans? A. $75.

Q. Then, to your knowledge, at no time before Mr. Feick's death were the Steadmans informed by Mr. Feick or you or anyone connected with this transaction, of the payment of the two sums of $500? A. No, sir.

By the Court:

Q. From whom did you receive these two papers which you call the claims against the Feick Estate? A. Out of the Feick Estate proofs of claims.

Q. What do you mean; did you receive all those claims in one single batch? A. They are all in Pitney, Hardin & Skinner's possession, and I got those proofs from Pitney, Hardin & Skinner.

Q. All these papers were produced from Pitney, Hardin & Skinner's office? A. Yes, sir.

Q. They have them there? A. Yes, sir.

Q. In reference to the papers that you call the proofs of claims from which member of the firm did you receive them, if you recall? A. Mr. Morgan is the man that has charge of the Feick Estate, and I can go there and get any proof of claim I want, because I am in the employ of the estate.

Q. Then all the papers relating to the proofs of claim against the estate are kept in Pitney, Hardin & Skinner's office in a separate place? A. Yes; in alphabetical order.

Q. Are all the papers connected with the proof of claims such that you could search through them as

well as any member of Pitney, Hardin & Skinner's office? A. Yes.

Q. If you were now directed to search through the records of claims, to see whether there was anything relating to them among the Feick Estate, you could find them? A. Yes, sir.

Q. Have you made the search through those papers to see whether there are any other papers than those two relating to the claim on the Foster mortgage given originally to Feick? A. Those are the only two papers.

Q. That you have been able to find? A. That is all that there is.

Mr. Greenberg: I want to offer them in evidence.

CROSS-EXAMINATION by Mr. Van Duyne:

Q. In whose handwriting are the receipts for the two payments of $500? A. One in the handwriting of Mr. Liebscher; the other one in the handwriting of Miss Unverzagt; they were both employees of Mr. Feick.

Q. You say you have access to all papers, such as proofs of claims, in the possession of Pitney, Hardin & Skinner, with reference to the Feick Estate? A. Yes.

Q. And also the correspondence received and sent out by the firm? A. No, sir; I have nothing to do with the correspondence.

Q. Have you produced the correspondence that you exchanged with reference to the filing of these proofs of claims? A. No, sir.

Q. Can you produce them? A. I don't know anything about those.

FRANK J. FOSTER, sworn for defendants.

Direct-examination by Mr. Greenberg:

Q. You are one of the defendants in this suit? A. Yes.

Q. And the other defendant, Clara F. Foster, is your wife? A. Yes.

Q. And since filing this bill she has died? A. Yes, sir.

Q. What is the date of her death? A. November 26, 1913.

Q. And you and your wife were the owners of the premises on 23rd Street in reference to which this foreclosure suit is brought? A. Yes, sir.

Q. Did you ever make any payments on account of that mortgage? A. Yes.

Q. When did you make the first payment on that mortgage? A. You have the dates.

Q. I show you receipt dated August 1, 1910, and ask you whether that is a payment you made and whether that is the receipt you got? A. Yes.

Q. Where did you pay this money? A. Mr. Feick's office.

Q. Did you see Mr. Feick personally? A. I have never seen Mr. Feick.

Q. What was the reason for the making of this payment? A. I wanted to get rid of the lot next door, because I was offered a pretty good price for it, and when I went down to find out whether I could sell it or not, they said I would have to turn in the money for the lot, which I did.

Q. How much did you get for the lot? A. $400 for half of it.

Q. You were told in order to get a release you would have to turn in the money received for the lot? A. Yes.

Q. You made this payment, as you testified, on August 1, 1910; did you get a release at that time? A. No; Mrs. Steadman was away.

Q. Did you go for it? A. Yes.

Q. Where did you go for the release? A. Feick's office.

Q. When you went there, what were you told? A. Mrs. Steadman was away.

Q. After you paid this first $500 how many times did you go again to Mr. Feick's office in reference to the release? A. I didn't go any more; just that once.

Q. Did you sell the lot? A. About a year after, I guess, or a little more.

Q. I show you receipt dated July 31, 1911, and ask you whether that amount was paid by you? A. Yes, sir.

Q. At Mr. Feick's office? A. Yes.

Q. What was the object of that? A. That is when she offered to buy the lot again.

Q. That was the second time they went after the lot? A. Yes.

Q. Was anything said when you made this second payment, what it was for? A. Yes, sir.

Q. What? A. If I sold the lot, I would have to turn the money over, which I did.

Q. You had already turned over $500 on the first receipt? A. Mrs. Steadman was away and I held the $500.

Q. When you turned over the second $500 was anything said about how much you would have to pay in order to get a release? A. What I received on the lot.

Q. Was there anything said about your having to pay off $1,000 before you could get the release? A. No.

Q. After you paid the second $500, did you get a release? A. Yes, sir.

Q. About how long after? A. It is quite a while. I ran down two or three times for it.

Q. I show you release marked Exhibit D4, from Mary E. Steadman to Frank Foster, and ask you if that is the release you received? A. Yes.

Mr. Greenberg: I offer the release in evidence.

Q. Did you place that release on record? A. Feick's office did—no; they had a lawyer, I guess.

Q. Who did? A. Feick's office had some lawyer.

Q. It is dated August 1; acknowledged 27th of September and recorded 16th of October, 1911; you didn't place it on record? A. No.

The Court: Mr. Feick died September 30, 1911.

Q. After you paid the second $500, was any demand made upon you for any interest? A. I went down my regular time to Mr. Feick's office; there was no demand.

Q. When was the next time that you paid interest after July 31, 1911? A. Then they sent me up to Mrs. Steadman's house; Feick's office sent me up to Fourth Street, and I offered it to Mrs. Steadman.

Q. Did you see Mrs. Steadman when you went up? A. My wife did.

Q. You didn't see her? A. No; I wasn't there.

Q. Have you ever seen Mrs. Steadman with reference to this mortgage? A. No.

Q. Never had any conversation with her? A. No.

Q. Did Mrs. Steadman ever make any claim on you for the full amount of this mortgage? A. Yes.

Q. When was the first demand made upon you? A. The first day after my interest was due down to Feick's office; I don't know what date that was.

Q. By whom was that claim made, Mrs. Steadman? A. Yes.

Q. Personally? A. Personally.

Q. Did you have any conversation with her at that time? A. Not with me.

Q. Did you pay her any interest at that time? A. No.

Q. Do you of your own knowledge know whether your wife paid her any interest at that time? A. She wouldn't accept it.

Q. Did she say why?

The Court: This he gets from his wife; he wasn't there.

A. I wasn't there.

Q. When and with whom was the first conversation she had with reference to this mortgage after you stopped paying interest in Feick's office? A. I received a letter from Overbrook to come down to see Mr. Gottlieb.

Q. Who was that letter from? A. Mr. Steadman.

Q. Do you know about the date? A. No, I do not.

Q. I show you a letter dated February 9, 1912, from Charles A. Steadman, Executor, to the plaintiffs in this suit; is that the letter you refer to? A. Yes.

Q. And I ask you whether or not that letter was enclosed with the letter you have just testified you received? "Enclosed you will find affidavit, also copy of letter which I received from Mr. Gottlieb, lawyer. Will you kindly comply with request, in order to facilitate matters and oblige." A. Yes.

Q. The copy of letter enclosed is dated February 8, 1912, from Theodore D. Gottlieb to Charles Stead-

man: "Will you kindly secure the permission of the Fosters for me to attach an affidavit to be filed with Mr. Morgan, the receipts; he wants the original receipts and I have no authority to give them up without their permission." A. Yes, sir.

Q. On receipt of those letters what did you do? A. I went down to Mr. Gottlieb's office.

Q. Did you take the receipts with you? A. Yes.

Q. And the receipts you testified to as having received on these payments are the ones referred to in that letter? A. Yes, sir.

By the Court:

Q. They are attached to the original claim? A. Yes, sir.

CROSS-EXAMINATION by Mr. Lehlbach:

Q. Did you after the assignment of your mortgage to Mrs. Steadman personally pay the interest at Mr. Feick's office? A. Yes.

Q. To whom did you pay it? A. Sometimes the stenographer would take it and sometimes Mr. George would take it.

Q. Did you at any time upon paying that interest see the bond and mortgage, or ask for it? A. No, sir.

Q. Where did you pay the $500 on the first of August, 1910? A. Mr. Feick's office.

Q. Pay it personally? A. Yes.

Q. To whom? A. Merely in the office; the stenographer or bookkeeper.

Q. Did you see the bond and mortgage? A. No.

Q. Did you ask for it? A. No.

Q. Say anything about endorsing the receipt on the bond? A. No, sir.

Q. Simply took the receipt of the stenographer there? A. Yes, sir.

Q. You say the purpose of paying the $500 was to get a release in order to sell the 12 1/2 feet? A. The first I paid and then it dropped off for about a year or year and a half.

Q. Was that the strip you were going to sell, 12 1/2 feet? A. No, that was it.

Q. And were you under contract for sale in August, 1910, to sell this strip? A. Not under contract; no.

Q. Did you have a purchaser who had verbally agreed to take it? A. Yes.

Q. For how much money? A. $400.

Q. And you were willing to pay off $500 on the mortgage in order to receive $400 purchase price for this strip? A. Yes, sir.

Q. You paid the $500 at Mr. Feick's office? A. Yes.

Q. Went down to see Mr. Feick once about the release? A. Yes.

Q. Didn't bother any more? A. No, sir.

Q. You didn't convey the strip, did you? A. No, sir.

Q. To whom were you going to convey the strip? A. A party named Thompson, next door.

Q. You, of course, considered the mortgage on the whole thing ample security for the $3,000 loan? A. Yes, sir.

Q. And you paid $500 expressly for this release? A. Yes.

Q. You paid the second $500 on the 31st of July, 1911, which was exactly one year later? A. Yes.

Q. Did you ever inquire what became of the original $500—when you paid the second $500, what became of the first $500? A. No, sir; I got my money from Feick; I don't know no different.

Q. There wasn't any money that came to you; you paid off $500? A. When I went down to pay off, I didn't ask nobody; I simply paid it in the office.

Q. Did you know that Mrs. Steadman held your bond and mortgage? A. No, sir.

Q. You didn't know that it had been assigned? A. No, sir.

Q. You didn't know when you paid the second money that the mortgage had been assigned; you thought you were dealing with Mr. Feick? A. Yes.

Q. You thought you were dealing with Mr. Feick when you paid the second $500? A. Yes.

Q. Don't you remember that you testified that? A. The first $500 and second $500 I don't know he got from Mrs. Steadman, because Mrs. Steadman was away.

Q. When you testified concerning not receiving the release for the $500 paid on August 1, 1910, you said that the excuse given you by Mr. Feick's office was that Mrs. Steadman was away? A. No; I said I went down once and I couldn't get it and didn't bother with it.

Q. Didn't you say you couldn't get it because Mrs. Steadman was away? A. Maybe I did.

Q. Now, you say that in 1911 you didn't know that the mortgage had been assigned? A. 1910, I should say.

Q. You just said that when you came down to make your second payment you didn't know that the mortgage was assigned? A. I admit where I got mixed up.

Q. As a matter of fact, did you at any time learn from Mr. Feick's office before you paid the second $500, that Mrs. Steadman was away? A. Yes; the second time I did.

Q. Did you before you came down to make your second payment learn that Mrs. Steadman was away? A. I am getting mixed up in this thing.

Q. Tell us the truth? A. I am telling you the truth, if I can.

Q. When you paid this thousand dollars to Mr. Feick's office, did you know it was Mrs. Steadman's mortgage or not? A. No.

Q. Then why do you mean to tell us that the reason you didn't get the release when you paid the first $500 was because Mrs. Steadman was away? A. If I could explain it first.

Q. Explain it any way you like? A. This party next door to me come over and said, "Are you going to sell the lot next door?" I said, "I don't think I will." She said, "Any time you get ready to sell it, I will buy it; if you don't want to do it, I will buy half of it." I went down to Feick's office to find out if I could get a release on it, and they said yes, provided I turned the money over to Feick's office, and that July I went down with the $500, thinking she might come along in two or three months and buy it.

Q. Thinking who might come along? A. Mrs. Thompson next door, next door. That was at first. Then she didn't say no more to me about the lot, or I to her, not one word, until about a year after; then she wanted to take it up with me and buy half the lot, and then I come down to see about the release again, and I couldn't get it, the way I wanted it, because Mrs. Steadman was away. That is all I know about it.

Q. When did you take it up again? A. About a year after.

Q. Was that the time you paid the second $500? A. Yes.

Q. Then you had to wait several months for the release, because Mrs. Steadman was away, after you paid the second $500? A. Yes; she was in the old country or some place for her health.

By the Court:

Q. When you paid the second $500 you understood that Mrs. Steadman had to give a release? A. Yes.

Q. What did she have to do with it? A. She had to have it signed; she wasn't home to sign it.

Q. Why would she have to sign it; what had Mrs. Steadman to do with the mortgage that you had given? A. I don't know.

Q. You said that you gave a mortgage to Feick; when did you first learn that Mrs. Steadman had to release a mortgage that you had given to Feick? A. I gave it to Feick.

Q. You were dealing with Feick? A. Yes.

Q. What had Mrs. Steadman to do with that release? A. That is when I found out that Mrs. Steadman had the mortgage.

Q. When did you find that out? A. When I sold the second lot, when I paid the second time.

Q. Then you found it out in July that she had the mortgage. Did you find it out when you paid it? A. The second time.

Q. And before you paid it? A. Yes. Before I paid it?

Q. Yes? A. No; not before I paid it.

Q. You were to pay $500 for this release; did Mrs. Thompson eventually buy the property of you? A. Bought 12 1/2 feet.

Q. When did she buy it? When did you get your money from Mrs. Thompson? A. I didn't get my money until after I got the release in—I don't think I did—but I gave Feick the money to have it released.

Q. You gave Feick $500 to have it released, as you understand, by Mrs. Steadman? A. Yes.

Q. Feick wasn't to release it? A. I don't know; I paid the money down to get Feick's office to get the release.

Q. But Mrs. Steadman owned the mortgage; why should she have to release it? A. I don't know.

Q. I understood you to say in reference to the first payment of $500 in 1910? A. I got mixed up in that; I will agree with that; it wasn't the first, it was the second payment.

Q. How did you come to make the first payment without getting a release? A. I liked to have it off on the principal too, and if I had a chance to sell a lot I thought there would be enough money back there so they wouldn't be afraid of it.

Q. Was there any agreement to release it when you made the first payment? A. No, sir.

Q. The first payment was then a payment due on the mortgage? A. Yes.

Q. With no agreement to release it? A. In order to when I have a chance to sell it, it would be there. I thought if I got $400 and gave $500 ahead of it—Feick's office told me I had to have the money I received and I went there ahead of it and paid $500, and when I did actually have a chance to sell it, they said I would have to pay the money over.

Q. Why didn't you get the release then, if that was the reason of raising the $500? In July, 1910, you say they told you if you would turn over the money, you could have the release, and you did turn over $500, which was more money than you expected to get; why didn't you get the release of the 12 1/2 feet when you paid the first $500? A. I don't know why I didn't get it; I got it out of Feick's office after everything was over; they kept the release; the 12 1/2 feet after I sold, you mean the release for that?

Q. Yes? A. The lawyer they had give me that, the lawyer Thompsons had, Rossbach.

CROSS by Mr. Van Duyne:

Q. You never saw this bond and mortgage at all after you gave it? A. No.

Q. You said that Mrs. Thompson, your neighbor, said she would like to have that 12 1/2 feet and you made a verbal agreement with her to sell it? A. Yes.

Q. And you went down to Feick's office when you paid your interest in August, 1910, and he said you would have to turn over what was supposed to be the payment by the Thompsons? A. Yes.

Q. You turned over $500, advanced it? A. Yes.

Q. You went down once subsequently to see why the release wasn't forthcoming? A. Yes.

Q. Was that the occasion that they told you that Mrs. Steadman was away? A. No; not the first occasion.

Q. You allowed that $500 to lie the whole year? A. Yes.

Q. And then went down and paid another $500 for the purpose of getting the same release? A. Then I wanted it; yes.

Q. I understood you to say that it was only at the second payment of $500 you asked for the release? A. Yes.

Q. But paid $1,000 for the release on a piece of property that you sold sometime afterwards for $400? A. Yes.

RE-DIRECT by Mr. Greenberg:

Q. Why was it you paid the second $500? A. So I could get a release.

Q. Was anything said about not having the release? A. No.

Q. Anything said that Mrs. Steadman wouldn't sign except for a certain amount? A. Yes.

Q. What did they tell you? A. They told me down in Feick's office.

Q. Why did you pay the second $500? A. I went down there and asked Feick's office to give me a release and they said they would; they said they would take the $500; the release should show when the money was paid. I understand this release is four months after that I paid the $500.

Q. I ask you now the simple question: why did you pay another $500? A. So I could sell that half lot.

Q. Why was it you paid $500 more for a release that you had already contracted to get and had paid $500 the year before; why did you pay $500 twice? A. I would like to pay off the first $500, to pull down the mortgage, and the second $500 to pull down the mortgage.

Q. Was anything said to you at the time you paid the second $500, why you hadn't got the release when you paid the first $500? A. No; I merely asked what I had to do in order to get one.

Q. Nothing was said about the insufficiency of any payment or anything of that kind? A. Not the first time.

Q. The second time? A. Yes.

Q. What was that conversation? A. I would have to turn over the money I received.

Q. You had already turned it over? A. I would have to turn it over again, if that is what you are getting at. You are getting me twisted. This is the first time I have been here in my life.

Q. I want to know why you paid the second $500 on July 31, 1911, for a release, when you had already paid $500 for the same release on August 1, 1910? A. 1910 wasn't for the release.

RE-CROSS EXAMINATION by Mr. Van Duyne:

Q. I thought you said it was, a moment ago? A. 1910 for the release; no.

Q. You said you had a verbal agreement to buy this property? A. Yes.

Q. That is the way you paid the first $500? A. Yes.

Q. And went down about the release? A. Not 1910.

Q. You carry insurance on this property? A. Yes.

Q. You had to renew this insurance some months after Mr. Feick died, didn't you? A. Yes.

Q. And there was a mortgagee clause in the insurance policy? A. Yes.

Q. And the mortgagee clause four months after Mr. Feick's death was for $3,000, wasn't it? A. That is all I paid for.

Q. There was a $3,000 mortgagee clause in the policy which you took four months after Mr. Feick's death, wasn't there? A. Yes.

Mr. Greenberg: The policy should be produced.

Q. Did you ever place any insurance on that property? A. No.

Q. Who did? A. Feick's office.

DEFENDANTS REST.

CARL F. HENDRICKSON, sworn in rebuttal for complainants.

Direct-examination by Mr. Van Duyne:

Q. You are an attorney at law of this State? A. Yes.

Q. Were you in Mr. Feick's office for some time? A. Yes.

Q. You made a search against this property of the Fosters? A. Yes, sir. I don't remember whether I made it or not.

Q. You know that a certain release was drawn up? A. I remember the name Steadman, and if I had something to recall it to my mind, I would recollect something about the transaction.

Q. I show you a release which has already been marked in evidence, and the acknowledgment; is that your signature? A. Yes, sir.

Q. The certificate bears date September 22, 1911; do you remember taking that acknowledgment? A. In a way, yes, sir. I was sent up there by someone down there at the office to take the acknowledgment, and that is all I had to do in that transaction.

Q. Did any consideration pass at that time? A. Not through me.

Q. Did you tell anyone, either Mrs. Steadman or any one, the actual transaction, whether there was any money paid, or whether there wasn't any money paid? A. No; because all I had to do was to go and have the paper executed; it had been explained to them before.

Q. And no consideration passed at the time? A. Not that I know of.

Q. Was that explanation over the 'phone by Mr. George? A. I didn't hear any explanation over the 'phone.

CROSS-EXAMINATION by Mr. Greenberg:

Q. You are related to Mr. Feick? A. Yes.

Q. Did you read this release to Mrs. Steadman when you went up there? A. Yes, I did.

Q. What was in the place where the consideration is mentioned there of one dollar; was that blank or was it filled in? A. That is several years ago; I should think it was that way; I don't remember anything else being there.

Q. Is it typewritten or filled in; it is different ink from the other? A. It looks a little heavier.

Q. Will you say whether that consideration was left blank or whether it was one dollar? A. I cannot remember; I don't remember.

Q. Did you explain to her at all what the purport of this instrument was? A. I did.

Q. And she signed it, knowing it came from Mr. Feick's office? A. Yes.

Q. Do you know who placed it on record? A. No, I do not.

Q. You never saw it after that? A. No.

Q. To whom did you deliver this after you took the acknowledgment? A. To some one at the office.

Q. You didn't deliver it to Mr. Feick personally? A. I don't remember.

Q. You do remember going up to see Mrs. Steadman? A. I remember the name Steadman.

Q. And this acknowledgment is in your handwriting? A. Yes.

Q. You cannot say whether or not the amount for which it is released, the consideration of this release, was stipulated or not; you wouldn't say that one dollar was in there? A. I took the acknowledgment to so many papers, I cannot remember.

Q. You wouldn't say it was or was not there at the time you took it? A. So far as I know, it was that way.

Q. Who was present at the time you took the acknowledgment? A. I think there was another lady present.

Q. Do you know who it was? A. I think some relative; I am not sure.

Q. There was no conversation in reference to it whatever? A. Nothing more than to explain it was a release for that tract.

Q. Mrs. Steadman didn't ask any questions, how much was paid? A. No.

Q. Or whether the mortgage was to stand for the balance, no explanation whatever, simply signed it and returned it to you? A. Yes.

RE-DIRECT by Mr. Van Duyne:

Q. Was that the lady that was present with Mrs. Steadman, if you remember? A. I don't remember that.

Q. You cannot be sure? A. No.

Q. How long have you been an attorney at law? A. Since November, 1910.

Q. Since your admission to the bar, you have been in Mr. Feick's office? A. For a short time.

Q. Taking quite a number of acknowledgments? A. Yes.

Q. Your method of taking an acknowledgment is stating to the person to whom the paper is drawn—reading the statement and explaining it—the consideration? A. A summary of the description of the property; you don't read the description at length, and if there are any covenants, you briefly explain it.

The Court: It is for them to make it good, if it is not good.

Q. Did you ever take an acknowledgment to an instrument in which the consideration was omitted? A. Not that I remember.

Mary Elizabeth Downs, Direct

Q. Do you recall the date of Mr. Feick's death? A. I think it was the 30th of September, 1911.

Q. His death was the result of an accident; was it sudden—death at once, or was he ill for several days? A. Sudden, practically immediately.

Q. At the time when this acknowledgment was taken, was he living? A. Yes, he was living, I know that.

MARY ELIZABETH DOWNS, recalled in rebuttal for complainants.

Direct-examination by Mr. Van Duyne:

Q. Do you remember the circumstances attending the execution of this release? A. The $1,000?

Q. Look at the paper; it has your mother's signature on it. A. This young man was sent up to the house and I was not at home and mother wouldn't sign anything until I came in, and I didn't know anything about it, and I called Mr. George up on the 'phone—I don't recall whether it was that night or the next morning—and he said it was all right. I asked him if it was all right, and he said, "Yes, go right ahead; it is only a release"; and the next night, or that same night, the young man came up about six o'clock with the paper, and it had a diagram of the property on it, and piece of ground that was to be sold, but it was just a little strip of land to straighten out the lot.

Q. Then you think that Mr. Hendrickson came up there twice instead of once? A. Yes, he came up there during the day and I was not at home, and mother told me that some one had been there from Feick's office.

Q. Between the first and second time, you had a telephone conversation with Mr. George? A. Yes.

Q. Was anything said in that conversation in reference to the payment of $1,000 on the principal? A. Nothing was said.

Q. Anything said about the $500 payment on the principal? A. No.

Q. Anything said about the consideration for the release? A. No.

Q. Did Mr. George explain to you that the value of this strip released was very small in comparison with the value of the rest of the land and the house?

The Court: Was anything said in reference to how your mother would stand if she released a part of it?

Q. Do you recall whether anything was said about what would be the effect if your mother gave a release of part of it; did you hear any talk about that? A. No, sir. All that was said was, would it be all right to sign for them to sell this piece of property, and Mr. George said yes, it would be all right, our mortgage was just as good.

By the Court:

Q. He said your mortgage was just as good if they did sell it? A. Yes.

CROSS-EXAMINATION by Mr. Greenberg:

Q. When this paper was presented to you for signature, to your mother, at the time you were present, was it read over to her at all? A. No, sir.

Q. Nothing said? A. No, sir.

Q. Was it left at the house between the time he first called? A. No, sir.

Q. He took it with him and brought it back? A. Yes, he brought it back at six o'clock.

Q. There was nothing said except your conversation that you had with Mr. George over the 'phone? A. Yes.

Q. Did you communicate that to your mother? A. Yes, sir.

BOTH SIDES REST.

Continuation of testimony in the foregoing cause, before Hon. John R. Emery, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on January 28, 1914, in the presence of counsel as before stated.

The Court: That proofs are opened for the purpose of taking the statement of Mr. William L. Morgan, of Pitney, Hardin & Skinner, attorneys for the executors of the Feick Estate.

(By consent, it is stipulated and agreed that the statement of Mr. Morgan is to have the same effect as if given under oath.)

Mr. Morgan: The claims were advertised for and the claims as filed amount to upwards of $916,000, and the inventory shows, in round figures, $810,000, so that the estate is clearly insolvent.

The Court: That is the status of the claims after the expiration of the time for putting in claims. Have any formal proceedings been taken on that status?

Mr. Morgan: The executrix objected to ninety-eight claims, but the objection was not to the amount of the claim in any case, but rather to the claim of preference—ninety-eight claims or thereabouts. I say in no case; there were some small differences, but not enough to disturb the balance, where a larger amount was claimed that Mr. Feick's books showed to be due. All those claims were objected to and also claims for preference were objected to—every claim which was filed which claimed a preference. These

matters have not been finally disposed of, although the testimony has been taken.

The Court: The status of all the claims are now in the process of disposition before the Orphans' Court?

Mr. Morgan: And before the Court of Chancery. We have two cases now being heard before Vice Chancellor Lewis. The case is known as the Infeld case, and Fasheimder case, and they have not had final hearing yet. In the Orphans' Court cases, I think all the testimony has been taken, but they have not been finally determined yet.

The Court: These are all taken on proceedings to have the estate declared insolvent?

Mr. Morgan: Yes.

The Court: After the expiration of the time for filing claims, you then proceeded against the estates as if it was an insolvent estate, and took proceedings in the Orphans' Court, and those are now pending?

Mr. Morgan: That is the exact situation.

The Court: The statement of Mr. Morgan may go in as if given under oath.

The Court: My view of the law that must be applied is quite decided, so I will announce my conclusion in the case, but I will give counsel the right to apply for a rehearing, if they choose, or if an appeal is desired, I will put the conclusions in more formal shape. I think it is entirely clear now, under the decisions of this state, including the decision of the Court of Errors and Appeals, that under the law relating to the assignments of mortgages, the statutory provisions as to what the effect of that assignment shall be, as notice, does make the assignment of a mortgage, when recorded, constructive notice to everybody, including the mortgagor who knows nothing about it. It is a hard provision of law sometimes in its operation on an innocent mortgagor, as it was here, but the statute imposed on him the knowledge that the mortgage had

been assigned to Mrs. Steadman by Feick, the mortgagee, to whom he gave it, and who he no doubt supposed still held it, while he made payments to him upon it. That is the first point.

The second point is, that Feick had some authority as her agent—as Mrs. Steadman's agent in the premises after this assignment. That authority, so far as proved by the evidence in this case, is the authority to receive interest. It is proved that Foster regularly paid interest to Feick, and got Feick's receipts, not Feick's endorsement on the bond. Feick hadn't the bond to endorse, having delivered it, with the mortgage, to the assignee. He took Feick's receipts, perhaps, as evidence of payment, and Feick then sent the amount of the payment for interest by his own check to Mrs. Steadman, and she upon the receipt of those payments of interest, made the endorsement upon the bond, thereby ratifying Feick's agency to receive payment of interest without the possession of the bond and mortgage. That would have justified Foster in going on and paying interest to Feick, without the production of the bond itself for the crediting of the interest, until he got notice from Mrs. Steadman that Feick was no longer authorized to receive the interest. But on the question as to the extent of his actual agency so as to make the payment a good payment in law, for any part of the principal, the proof must show that there was an authority to receive the principal. This authority to receive the interest is a far different thing from the authority to receive the principal, because payments of interest, as we all know, are often made to those who are the mere agents for that purpose, and who undertake the business of collection, and part of the benefit of holding those securities is that it may be paid to an agent. The mortgagors don't have to seek out the creditor when the interest is regularly due, and for practical purposes, the receipt of an agent who has authority to receive the interest, but has not possession of the bond, is

practically good, just as the payment is often made to the mortgagee himself not having possession of the bond at the time or place of actual payment. I suppose every one of you gentlemen, either for yourself or as agent, has given a receipt for the payment of interest, it not being possible, or probably convenient, at the time to make the endorsement on the bond; the bond may be then in your safe in the safe deposit; the payment may have been made in your office, and usually in those cases the receipt says, "Received to be endorsed on the bond"; that is perfectly good, and it is a perfectly reasonable payment, and a mortgagee who makes a payment of interest in that way is not guilty of any negligence in making the payment. But it is an entirely different thing when you come to the payment of principal of a security. There the ordinary course of business is to produce the security and have the endorsement made on it, and if anything else should be taken, any assurance of an agent that it would be endorsed on the principal, the person who took it without requiring the production, would be the person whose conduct was responsible for its not being endorsed, not the person who is to receive it; he wasn't responsible for its not being endorsed, because he had never given it into the agent's possession to endorse it. The decision in Lawson vs. Nicholson, of Chief Justice Beasley in 1894, Court of Errors and Appeals, settled that practical distinction between the effect of paying interest on a bond and mortgage and paying the principal. In this case the agent was authorized to receive the interest; but was not authorized to receive the principal; he did in fact have the possession of the bond, but the possession was not a possession for the purpose of dealing with it; it was a special possession for safe-keeping on behalf of the mortgagee, and it was tied up in a package of papers belonging to the mortgagee, so that the agent didn't have any right to touch that package at all, any more than the deposit

company would have a right to take the securities in your box, because they are in possession of the box. That was the situation in this case, Lawson vs. Nicholson. At the time of the receipt of either of these payments of principal, there was no authority to receive either of them. Whether there was any direct representation on the part of Feick, the agent in the present case, does not appear, and I take it from the course of business that has been proved in this case, it was nothing more than the implied representation by the course of business in Feick's office, which seemed to be that when any person desired to make a payment on account of principal, they received it. Undoubtedly that money was paid by Foster, on account of the principal sum due, supposing that Feick was the agent of the principal and was entitled to receive it. That does not make him the agent of the assignee of the mortgagee, but it does make him a trustee of the money received for the purpose of payment, if he does not pay it. And it also makes him a trustee for Mrs. Steadman, if she wants to claim it from him, but it does not make him her agent. Counsel, in my judgment, in treating the case as simply one of agency, have taken what is too narrow a view of the whole situation, and for this reason; if it was a question of a legal suit against Feick by Mrs. Steadman, she could only recover that whole sum from Feick on the ground of agency, and her bringing the suit and getting judgment would be an affirmation of the legal status of agency. And if that occurred, that affirmation between those two persons acting solely for this alone, might operate as ratifying the payment made by Foster to Feick that was not originally authorized. That is on the purely legal aspect of it. And the question of agency only bears upon the question of legal status, but that does not comprise the whole of this situation. Here is money that Foster paid to Feick, and he paid it to Feick

for one purpose only; he paid it to Feick to pay on that mortgage. That money Feick received on that trust, and either one of those parties, or both of them, can say to Feick, "You have got that money in trust to pay that mortgage, and I want the money so paid right out of your bank account into which you put it." Suppose Feick had deposited that in his bank account and Mr. Foster had found out within twenty-four hours, or within a month, that Feick had no authority to receive the principal, and that he had never paid it to the assignee. Both of them, the mortgagor and the assignee, could have fastened it on his bank account as a trust, providing they could trace it. It is not a question of agency. The law of agency would apply in the strict definition of legal rights in a court of law, but a court of equity takes all the facts in the transaction, and it would fasten on that money. The fact is, then, when these two people put in together that claim against the Feick estate, they set out the whole facts. There is the first affidavit. Mrs. Steadman says as to these two payments of $1,000, both payments were made without her warrant and authority, and Foster swears that he made those two payments. Can there be any question that both of them could have joined in a bill in equity against Feick to account for the money, and to trace it for the purpose of imposing a trust. Feick's estate cannot get clear of any claim by either of them in relation to that money on a mere division of opinion about a legal question as to whether there was ratification of an agency or not. Feick's estate cannot have that money as against either of them, and the Court of Chancery will take the equitable status on the whole case and work it out, so that the person who is entitled to the benefit of the claim will have it. Suppose this had happened: Suppose on the day after Mr. Foster paid this money, his house had burned off his lot, so that it wouldn't have been worth the money secured; then Mrs. Steadman and Foster could have followed this money into Feick's hands. Feick would

have had held off and said, "You cannot recover from me unless you ratify my act as an agent." The real question is, "What are you doing with the money that is delivered to you for a special purpose," and therefore it is a question, in my judgment, not so much of agency, as a question of what on the whole facts of the case, is the equitable obligation on the part of the Feick estate to either of them, and how far is any decree for the amount of Foster's debt on the mortgage which has not been paid—how far should it be controlled so that either of them may have the benefit of the claim against the Feick estate. And I think the whole equity of the case is this, the complainant is entitled to the whole payment, the whole amount due on her mortgage, because she never authorized that receipt, but if the money should not be realized from the sale of the property, or for any other reason, she is entitled to the benefit of this proof against Feick's estate, and she is only entitled to recover the full amount of this if she will agree that the benefit of her claim under the mortgage against the Feick estate shall be given to the mortgagor. In this view of the case, if it should finally be determined by those who are advising the executor or the court, that the proof of claim put in against the estate technically stands as a claim in behalf of Mrs. Steadman as claiming the right to follow money which was paid for the purpose of paying her mortgage, which is impressed with a trust, then she would be entitled to the money. If on the other hand, payment of her mortgage is sought after the claim put in, then in view of the facts relating to these payments to Feick, and her joining in the presentation of the facts against his estate, the foreclosure of the mortgage for the amount of these payments to Feick should not be allowed, except on condition that she give the mortgagor whatever benefit she is entitled to under the proof of claim. That is the real equity to be worked

out. I should have referred to a question of fact involved in reference to the giving of a release given subsequent to a payment of $500. My judgment is that if at the time of delivering that release Foster had said, "I will pay you $500 if you will give me the release," and Feick had then produced the release and given that as the consideration of the payment of the $500, I think Mrs. Steadman would have been bound, for the reason that she clothed him with the authority to deliver the release, and it was at her risk that he misinterpreted the terms on which he should deliver, and therefore if he had told her that he was to get nothing, and he had told Foster that Mrs. Steadman would release that if she got $500, if the release had been actually delivered on that consideration, and for that alone, I think it would have been a good payment. But the payment in this case was made and receipt taken as a payment on that mortgage. There was an agreement on his part that he would deliver a release without further payment, and he did. He took that payment of $500, and he said, "I will deliver you a release without further payment." Mrs. Steadman knew nothing of it, and there was nothing in her conduct that made her subsequent execution of the release a ratification of this agreement of his that he would deliver it for nothing and receive $500, of which she knew nothing at all. She wouldn't have delivered it for nothing if she knew that Feick was getting $500 for it.

As it strikes me, if after the payment of this sum of $1,000 without any authority, it had been subsequently ascertained that this money was on deposit in Feick's account, I think that Mr. Foster and Mrs. Steadman might have joined in a bill in equity to compel Feick to carry out his promise to take that money from Foster for the purpose of paying Mrs. Steadman. She is the one for whose benefit it was made, and Foster supplied the money. So that when

they put in the claim to the Feick estate, they put in what contained the essence of a bill in equity by both of them to have that claim settled for the amount of $1,000, for the benefit of both as they should be entitled. Foster does not want it if he does not pay off the mortgage. If he does pay off the mortgage, he wants it. And Mrs. Steadman does not want it unless the mortgage is not paid. If the question ever comes up in relation to that claim and who is entitled to the benefit of it, the court would probably decide that, but all trouble can be avoided by directing that this foreclosure can be settled upon payment by the mortgagee of the amount due and the receipt of an assignment of the claim. You need not have any decree unless you want to. On the payment of the mortgage you can now assign the interest in the proof of claim, and that will settle it without a decree, and you may enter a decree stating how it is settled, or merely that it has been settled between the parties. This phase of it is new to counsel on both sides, and it is one that I have worked out during the progress of the cause.

Exhibit C1.

KNOW ALL MEN BY THESE PRESENTS:

That we, Frank J. Foster and Clara F. Foster his wife of the City of Newark in the County of Essex and State of New Jersey are held and firmly bound unto Charles A. Feick of the City of Newark in the County of Essex and State of New Jersey in the penal sum of Six thousand dollars lawful money of the United States of America, to be paid to the said Charles A. Feick, his executors, administrators or assigns: FOR WHICH PAYMENT, well and truly to be made, we bind ourselves, our heirs, executors and

Exhibit C1

administrators, jointly and severally firmly by these presents. Sealed with our seals. Dated the ninth day of February One thousand nine hundred and nine.

THE CONDITION of the above obligation is such that if the above bounden Frank J. Foster and Clara F. Foster their heirs, executors or administrators, shall well and truly pay or cause to be paid, unto the above named Charles A. Feick his executors, administrators or assigns, the just and full sum of Three thousand dollars on the ninth day of February which will be in the year One thousand nine hundred and ten, and interest thereon, to be computed from February 9th, 1909, at and after the rate of five per cent per annum, and to be paid semi-annually without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien or fire insurance premium be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien or fire insurance premium, or any or either of them, remain unpaid and in arrear for the space of thirty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money or so much thereof as may then remain un-

paid with all arrearage of interest thereon, shall, at the option if the said Charles A. Feick or his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not than have expired anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

AND IT IS FURTHER EXPRESSLY AGREED, that the said Frank J. Foster and Clara F. Foster their heirs, executors, administrators or assigns shall not, nor will claim or demand any credit or credits on the interest payable on the mortgage securing this bond, for so much of the taxes assessed against the lands described in the mortgage given to secure this bond as is equal to the tax rate applied to the amount due on said mortgage or any part thereof.

AND it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected, and to be erected upon the lands described in the mortgage given to secure this bond, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies to be approved by the party of the second part, to an amount not less than Three thousand dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium or premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation and given to secure these presents, and payable on demand with legal interest, or in the event of the said first party and the said second party or

Exhibit C1

ıer of them being unsuccessful and unable to have said premises insured in any reliable Fire Inıance Company, acceptable to the said mortgagee l obligee, to the amount secured hereby or the und balance of the principal sum thereof, that then l in that event the whole of the principal sum or unpaid balance thereof and such sums of moneys shall have been paid by the said second party herefor liens, etc., according to the stipulations hereinore mentioned, and the accrued interest thereon, ll become due and payable on demand.

Signed, sealed and delivered
in the presence of
Henry S. George.

FRANK J. FOSTER (Seal)
CLARA F. FOSTER (Seal)

Date.	Amount Paid.	Principal.	Interest.	Signature.
)t. 18 1909	Seventy-five dollars		$75 —	Mary E. Steadman Per S
). 9 1910	" " "		$75 —	Mary E. Steadman Per S
)t. 18 1910	" " "		$75 —	Mary E. Steadman Per S
). 16 1911	" " "		$75 —	Mary E. Steadman Per S
)t. 23 1911	" " "		$75 —	Mary E. Steadman Per S
). 18 1913	Two thousand dollars on amount of bond—final decree in Court of Chancery	$2000 —		

LEHLBACH & VAN DUYNE, Solrs.
for estate of Mary E. Steadman

Exhibit C2.

THIS INDENTURE, made the ninth day of February, in the year of our Lord One thousand nine hundred and nine.

BETWEEN Frank J. Foster and Clara F. Foster his wife of the City of Newark in the County of Essex and State of New Jersey party of the first part;

AND Charles A. Feick of the City of Newark in the County of Essex and State of New Jersey, party of the second part;

WHEREAS, the said Frank J. Foster and Clara F. Foster are justly indebted to Charles A. Feick the said party of the second part, in the sum of Three thousand dollars lawful money of the United States of America, secured to be paid by their certain bond or obligation, bearing even date with these presents in the penal sum of Six thousand dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Three thousand dollars, lawful money as aforesaid, to the said party of the second part, his executors, administrators or assigns, on the ninth day of February which will be in the year One thousand nine hundred and ten, and interest thereon, to be computed from February 9th, 1909, at and after the rate of five per cent per annum, and to be paid semi-annually.

AND IT IS THEREBY EXPRESSLY AGREED by and between the parties to these presents that the said party of the first part, their heirs, executors, administrators or assigns, shall not, nor will claim or demand any credit or credits on the interest payable hereon, or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage, or any part thereof; and that should any default be made in the payment of the

said interest of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum or any unpaid part thereof with all arrearage of interest thereon, shall at the option of the said party of the second part, or his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding, as by the said bond or obligation, and the conditions thereof, reference being thereunto had, may more fully appear.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these

presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever,

ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Irvington, in the County of Essex and State of New Jersey, and known and designated on a certain map entitled "Map of Lots belonging to Jere Johnson Jr. Co., situated in Irvington, Essex County, New Jersey, surveyed by Harrison Van Duyne & Son, July, 1906," and filed in the office of the Register of Essex County, N. J., on December 28, 1906, as map number 517 as and by the lot number thirty-four (34) which said lot according to said map is bounded and described as follows:

FIRST TRACT: Beginning at a point on the easterly side of Twenty-third Street distant two hundred and and fifty-five (255) and twenty-four one-hundredths (24/100) feet northerly from the corner formed by the intersection of the easterly side of Twenty-third Street and the northerly side of Springfield Avenue; running thence easterly at right angles to Twenty-third Street one hundred (100) feet to the centre line of the block between Twenty-third and Twenty-second Streets; thence northerly along said centre line twenty-five (25) feet to lot number thirty-five (35) as said lot number thirty-five is shown on said map; thence westerly along said lot number thirty-five and again at right angles to Twenty-third Street one hundred (100) feet to the said easterly side of Twenty-third Street, and thence southerly along the said easterly side of Twenty-third Street twenty-five (25) feet to the point of beginning.

Being the same premises conveyed to the said Frank J. Foster by deed recorded in Book E 43 of deeds for said County, on pages 446 etc.

Exhibit C2

SECOND TRACT: Known and designated on a certain map entitled map of lots belonging to Jere Johnson, Jr. Company situate in Irvington, Essex County, N. J., surveyed by Harrison Van Duyne & Son, July, 1906, and filed in the Office of the Register of Essex County, N. J., on December 28th, 1906, as Map No. 517 as Lot No. 35, and which said lot, according to said Map, is bounded and described as follows:

BEGINNING at a point on the Easterly side of Twenty-third Street distant two hundred and eighty and twenty-four one-hundredths feet (280 24/100) Northerly from the corner formed by the intersection of the Easterly side of Twenty-third Street and the Northerly side of Springfield Avenue; running thence Easterly at right angles to Twenty-third Street one hundred feet to the centre line of the block between Twenty-third and Twenty-second Streets; thence Northerly along said centre line twenty-five feet to Lot Number thirty-six as said Lot Number thirty-six is shown on said Map; thence Westerly along said lot Number thirty-six and again at right angles to Twenty-third Street, one hundred feet to the said Easterly side of Twenty-third Street, and thence Southerly along the said Easterly side of Twenty-third Street twenty-five feet to the place of beginning.

Being the same premises conveyed to the said party of the first part.

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 and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE

Exhibit C2

AND TO HOLD the above granted and described premises with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

AND the said party of the first part for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

AND the said party of the first part, for themselves, their heirs, executors and administrators, do covenant and grant to and with the said party of the second part his heirs and assigns that the said party of the second part his heirs and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or conditions herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, their heirs or assigns, or any other person or persons whatsoever.

Exhibit C2

AND it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected, and to be erected upon the lands above conveyed, insured, against loss or damage by fire, in some safe and responsible Insurance Company or Companies to be approved by the party of the second part, to an amount not less than Three thousand dollars, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium or premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation and secured by these presents, and payable on demand with legal interest, or in the event of the said first party and the said second party or either of them being unsuccessful and unable to have the said premises insured in any reliable Fire Insurance Company, acceptable to the said mortgage, to the amount secured hereby or the unpaid balance of the principal sum thereof, that then and in that event the whole of the principal sum or the unpaid balance thereof and such sums of money as shall have been paid by the said second party hereto for liens, etc., according to the stipulations hereinbefore mentioned, and the accrued interest thereon, shall become due and payable on demand.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of
Henry S. George.

FRANK J. FOSTER (Seal.)
CLARA F. HENRY (Seal)
CLARA F. FOSTER (Seal)

Exhibit C2

State of New Jersey,
County of Essex, } ss:

Be it remembered, that on this ninth day of February in the year of our Lord one thousand nine hundred and nine, before me the subscriber, Henry P. George, a Commissioner of Deeds of New Jersey, personally appeared Frank J. Foster and Clara F. Foster his wife who, I am satisfied, are the mortgagors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed; and the said Clara F. Foster, wife as aforesaid being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

HENRY P. GEORGE,
Commissioner of Deeds,
of N. J.

Exhibit C3.

KNOW ALL MEN BY THESE PRESENTS, that I, Charles A. Feick, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part, in consideration of the sum of Three thousand and forty-four and 07/100 dollars lawful money of the United States of America, to me in hand paid by Mary E. Steadman, of the City of Newark, in the County of Essex and State of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part a certain Indenture of Mortgage bearing date the ninth day of February One thousand nine hundred and nine made by Frank J. Foster and Clara F. Foster his wife on lands in Twenty-third Street, Irvington, Essex County, New Jersey to secure the payment of the sum of Three thousand dollars, to me which mortgage is recorded in the Register's office of the County of Essex in Book O 23 of Mortgages, page 192.

TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. TO HAVE AND TO HOLD, the same unto the said party of the second part her executors, administrators or assigns for her and their use forever, subject only to the proviso in the said Indenture of Mortgage mentioned: AND I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at her proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents

Exhibit C3

were not made: AND I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of Three thousand dollars, of principal, and interest from February ninth, nineteen hundred and nine.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the twenty-fifth day of May in the year of Our Lord One thousand nine hundred and nine.

Signed, sealed and delivered
in the presence of
Herman Scharringhausen.

CHARLES A. FEICK (Seal)

State of New Jersey, }
County of Essex, } ss:

Be it remembered, that on this twenty-sixth day of May in the year of Our Lord One thousand nine hundred and nine before me Herman Scharringhausen, a Master in Chancery of New Jersey, personally appeared Charles A. Feick, who, I am satisfied is the assignor in the within deed of Assignment named: and I having first made known to him the contents and delivered the same as his voluntary act and deed, and delivered the same as his voluntarly act and deed, for the uses and purposes therein expressed.

HERMAN SCHARRINGHAUSEN,
Master in Chancery,
of New Jersey.

Exhibit D1 for Identification.

State of New Jersey, }
County of Essex, } ss:

Mary E. Steadman of full age, being duly sworn on her oath according to law, deposes and says; that by virtue of an assignment of mortgage made to her by Charles A. Feick, dated the 26th day of May, A. D. 1909, and recorded in Book 89 of Assignments of Mortgages for Essex County, on page 97-98, she became mortgagee of premises described in mortgage of Frank J. Foster and Clara F. Foster his wife, to Charles A. Feick, dated February 9th, 1909, and recorded on the 10th day of February, A. D., 1909, in Book O 23 of Mortgages for Essex County, on pages 192-196; the said mortgage being in the sum of Three thousand dollars, and that she has been informed by Frank J. Foster that One thousand dollars of said mortgage was paid to Charles A. Feick, $500, on August 1st, 1910, and a like sum on July 31st, 1911, both payments having been paid without her warrant or authority in the premises.

MARY A. STEADMAN.

Sworn and subscribed to before
me, at Newark, N. J., on this
23rd day of February, A. D.,
1912.
Theodore D. Gottlieb,
Master in Chancery,
of New Jersey.

24843. Newark, N. J., August 1, 1910.

Received of Frank J. Foster, ...
Five Hundred and no/100 ..... Dollars,
Being on account of principal of mortgage on premises on 23rd St., Irvington, N. J.

$500.00/100 CHARLES A. FEICK,
W. U.

Exhibit D1 for Identification

27789. Newark, N. J., July 31, 1911.

Received of Frank J. Foster, ...
Five Hundred and no/100 ..... Dollars,
On a/c Mtg., #24-23rd St., Irvington, N. J.
$500.00 CHARLES A. FEICK,
By Otto Liebscher.

State of New Jersey, }
County of Essex, } ss:

Frank J. Foster, of full age, being duly sworn, on his oath according to law deposes and says: That on August 1st, 1910, he paid to Charles A. Feick the sum of Five hundred dollars, and again on July 31, 1911, a like sum of Five hundred dollars, on account of mortgage of Mary E. Steadman, 24 East 23rd Street, Irvington, N. J., as per receipts attached herewith.

FRANK J. FOSTER.

Sworn and subscribed to before
me, at Newark, N. J., on this
13th day of February, A. D.,
1912,
Theodore D. Gottlieb,
Master in Chancery,
of New Jersey.

Exhibit D2 for Identification.

Newark, N. J., March 15, 1912.

Estate of Charles A. Feick, deceased,
to
Mary A. Steadman, Dr.

1910		
August 1	Paid by Frank J. Foster on account of mortgage 023,-192/6	$ 500.00
1911		
July 31	Paid by Frank J. Foster on account of mortgage 023,-192/6	$ 500.00
		$1000.00

State of New Jersey, }
County of Essex, } ss:

Mary A. Steadman of full age, being duly sworn, on her oath, according to law, deposes and says: That she is the creditor named in the above claim and that the amounts as specified therein were collected by the said Charles A. Feick and never accounted for to deponent and that no payment has been made on account of said claim, but that the whole amount of One thousand dollars is now justly due and owing to deponent from the estate of Charles A. Feick deceased.

MARY A. STEADMAN.

Sworn and subscribed to before
me at Newark, N. J., this sixteenth day of March, A. D., 1912.
Theodore D. Gottlieb,
Master in Chancery of N. J.

Exhibit D3.

Newark, N. J., Sept. 19th, 1912.

To Chas. Steadman *et al.*, Executors of Mary E. Steadman, deceased, and Theo. D. Gottlieb, their duly authorized attorney:

Tender of the sum of $2,111.39, being principal and interest due on a certain mortgage held by you on my property No. 24 Twenty-third Street, Irvington, New Jersey, having been this day made to Theo. D. Gottlieb, Esq., by direction of the Executors of Mary E. Steadman, and delivery and cancellation of the said mortgage demanded and refused.

You are therefore hereby notified, that the principal and interest due on said mortgage is in the hands of F. J. Greenberg, my attorney, and that unless the said mortgage is delivered up properly endorsed for cancellation forthwith, the money will be deposited and suit instituted in the Court of Chancery to have the same cancelled.

Respectfully yours,

Exhibit D4.

THIS INDENTURE, made the first day of August in the year of Our Lord One Thousand Nine Hundred and Eleven, Between Mary E. Steadman of the City of Newark in the County of Essex and State of New Jersey of the First Part; And Frank J. Foster and Clara F. Foster his wife, of the Town of Irvington, in the County of Essex and State of New Jersey of the Second Part:

WHEREAS, Frank J. Foster and Clara F. Foster by an Indenture of Mortgage, dated the Ninth day of February in the year of our Lord One Thousand Nine

Exhibit D4

Hundred and Nine, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto Charles A. Feick to secure the sum of Three Thousand Dollars, which mortgage is Recorded in the Register's office of the County of Essex, in Book O 23 of Mortgages, page 192, and by the said Charles A. Feick assigned to Mary E. Steadman by deed of Assignment recorded in Book 89 of Assignments for Essex County on page 97.

AND WHEREAS, the said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described, unto the said party of the second part and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage: Now, this Indenture WITNESSETH, That the said party of the first part, in pursuance of the said agreement and in consideration of One Dollar to her duly paid at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, released, quit-claimed and set over, and by these presents does grant, release, quit-claim and set over, unto the said party of the second part, all that part of the said mortgaged lands hereinafter particularly described, situate, lying and being in the Town of Irvington in the County of Essex and State of New Jersey,

BEGINNING at a point on the Easterly side of Twenty-third Street distant two hundred and fifty-five (255) and twenty-four one-hundredths (24/100) feet Northerly from the corner formed by the intersection of the Easterly side of Twenty-third Street and the Northerly side of Springfield Avenue; running thence Easterly at right angles to Twenty-third Street

one hundred (100) feet to the centre line of the block between Twenty-third and Twenty-second Streets; thence Northerly along said centre line twelve and one-half feet; thence Westerly at right angles to Twenty-third Street one hundred (100) feet to the said Easterly side of Twenty-third Street; and thence along the said Easterly side of Twenty-third Street twelve and one-half feet to the point of Beginning.

TOGETHER with the hereditaments and appurtenances thereto belonging; and all the right, title and interest of the said party of the first part, in and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified, may remain to the said party of the first part, as heretofore. TO HAVE AND TO HOLD, the lands and premises hereby released and conveyed, to the said party of the second part, their heirs and Assigns to them and their only proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the Indenture of Mortgage aforesaid.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her Hand and Seal the day and year first above written.

MARY E. STEADMAN (Seal.)

Signed, Sealed and Delivered
in the presence of
Carl F. Hinrichsen.

State of New Jersey, }
County of Essex, } ss:

Be it Remembered, That on this Twenty-seventh day of September, in the year of Our Lord One Thousand nine hundred and eleven, before me, Carl

Exhibit D5

F. Hinrichsen, an atorney at law of New Jersey, personally appeared Mary E. Steadman, who, I am satisfied, is the grantor in the within Deed of Release 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.

CARL F. HINRICHSON,
Attorney at Law of New Jersey.

Exhibit D5.

IN THE NAME OF GOD, AMEN.

I, Mary Elizabeth Steadman, Widow, of the City of Newark in the County of Essex and State of New Jersey, Being of Sound Mind, Memory and Understanding, do make and publish this my last Will and Testament in manner following, that is to say:

First: It is my Will and I do hereby order that all my just debts and funeral expenses be paid as soon as can be after my decease.

Second: I give, devise and bequeath to my daughter May Elizabeth Steadman the dwelling house and lot known as No. 143 North Fourth Street, Newark, N. J., to her, her heirs absolutely and forever.

Third: I give and bequeath all my household furniture, wearing apparel and goods, chattels and effects belonging to me and now in my home, No. 143 North Fourth St., to my daughter May Elizabeth Steadman, to her, her heirs absolutely and forever.

Exhibit D5

Fourth: — — —

Fifth: All the rest, residue and remainder of my estate real, personal and mixed whatsoever and wheresoever the same may be, I give devise and bequeath to my two children, Charles A. Steadman and May Eliz. Steadman, to them, their heirs absolutely and forever, to be divided between them equally share and share alike.

Sixth: I hereby nominate and appoint my son, Charles A. Steadman and my daughter May Eliz. Steadman and the survivor of them executors of this my last Will and Testament with full power to sell and convey my real estate.

In Witness Whereof I have hereunto set my hand and seal this Twentieth day of August in the year of Our Lord One thousand Nine hundred and nine.

MARY ELIZABETH STEADMAN (L. S.)

Signed, Sealed, Published and Declared, by the said Mary Elizabeth Steadman, the testatrix, to be her last Will and Testament in our presence who in her presence and at her request and in the presence of each other, have hereunto subscribed our names as witnesses.

Frederick Scharringhausen, 27 Milford Ave., Newark, N. J.

James Wooley, 135 4th St., Newark, N. J.

Exhibit D5

STATE OF NEW JERSEY.

ESSEX COUNTY SURROGATE'S OFFICE.

I, Isaac Shoenthal, Surrogate of the County of Essex, do certify the annexed to be a true copy of the last Will and Testament of Mary E. Steadman, late of the County of Essex, deceased, and that May Elizabeth Steadman now May Elizabeth Downs and Charles A. Steadman, the Executors therein named, proved the same before The Orphans' Court, and are duly authorized to take upon themselves the administration of the Estate of the Testatrix, agreeably to the said Will.

WITNESS my hand and Seal of Office, the Twenty-first day of June, in the year of our Lord one thousand nine hundred and Twelve.

(Seal.)

ISAAC SHOENTHAL,
Surrogate.

(Endorsed): Essex County Surrogate's Office. (6) In the Matter of the Estate of Mary E. Steadman, Deceased. Letters Testamentary.

Court of Errors and Appeals

CHARLES A. STEADMAN, *et al.*, Complt.-Respdt., vs. FRANK J. FOSTER, Deft.-Applt.	On Appeal. Brief.

1. The evidence shows that the complainant's decedent constituted Charles A. Feick her agent.

2. The decedent ratified and confirmed the act of agency by the execution and delivery of a release for part of mortgaged premises.

3. The decedent elected to hold the Charles A. Feick estate for the amount collected by him during his lifetime for her account and thereby discharged the appellant.

4. The decedent confirmed the ratification of agency by the filing of her claim with the estate of Charles A. Feick.

According to the evidence, the appellant executed to Charles A. Feick their mortgage, and up to the time of his death regularly paid interest to Charles A. Feick. The appellant had no knowledge of the assignment of the mortgage; was never notified by the plaintiff's decedent nor by the executors until after the death of Charles A. Feick and until after payments made on account of the mortgage. Payments were made

on the mortgage with the understanding that a release should be delivered, and a release was subsequently delivered, the consideration in which was expressed at one dollar instead of one thousand dollars, the true consideration.

There is no evidence that Charles A. Feick was not the agent of the complainant. Charles A. Feick and Mary E. Steadman, plaintiff's decedent both being dead, there was no evidence as to what the arrangement between them and Charles A. Feick was. There is no proof that the decedent had not constituted Charles A. Feick her agent.

There is further proof that subsequent to the execution of the release and the delivery thereof to the appellant, Mary E. Steadman filed her claim against the estate of Charles A. Feick, claiming the amount paid by the appellant on account of said mortgage, and alleging therein that the amount was due to her and that it had been collected for her by the said Charles A. Feick, which act on her part constitutes an election by her to hold the estate of Charles A. Feick instead of the appellant, which is corroborative evidence of an agency existing on the part of Charles A. Feick.

In the case of Crane v. Gruenwald, 120 New York, 274, "Action for the foreclosure of a mortgage. Mrs. Crane, through an attorney named Baker, loaned defendant $8,000 on bond and mortgage, for five years, from December 2, 1875, with interest annually at seven per cent. The papers were left in Baker's possession, and he was authorized to collect the interest but not the principal. After the principal became due, Baker received from the defendant two payments of $1,000 each to apply on the principal, the bond and mortgage being each time produced by Baker. On a subsequent occasion $1,000 more was paid to Baker to apply on the principal, but the bond and mortgage were not produced, though Baker then had them in his possession and told the defendant so. Baker then

sold the bond and mortgage, and forged an assignment of them to the purchaser. After that Baker received from defendant the balance due upon the mortgage. The Trial Court held that defendant was entitled to credit for the first two payments of $1,000 each, but for no more, and rendered judgment of foreclosure and sale for the remaining $6,000 and interest.

"Parker, J. A mortgagor who makes a payment to one, other than the mortgagee, does so at his peril. If the payment be denied, upon him rests the burden of proving that it was paid to one clothed with authority to receive it. There is, however, one exception to this general rule. If payment be made to one having apparent authority to receive the money, it will be treated as if actual authority had been given for its receipt." (Paley on Agency, 3d ed., 275; Story on Agency, Sec. 98; Williams vs. Walker, 2 Sandf. Ch., 325; Smith vs. Kidd, 68 N. Y., 130; 23 Am. Rep., 157; Brewster vs. Carnes, 103 *id.*, 556-564.)

Am. and Eng. Enc. of Law, Vol. 1, page 1180, it is laid down that:

> "Where the principal is undisclosed and there is no notice that there is a principal, or where the principal has invested the agent with the indicia of authority to receive payment, a payment to the agent is a good payment and will release the third party from liability to the principal."

Also cited in Lumley v. Corbett, 18 California, 494, and other cases.

Mechem's Cases on Agency, page 117, citing numerous authorities, lays down the rule to be that:

> "It is a well-established rule of law that if one, not assuming to act for himself, does an act for or in the name of another upon an assumption of authority to act as the agent of the latter, even though without any precedent authority whatever, if the person in whose name

> the act was performed subsequently ratifies or adopts what has been so done, the ratification relates back and supplies original authority to do the act. In such a case the principal is bound to the same extent as if the act had been done in the first instance by his previous authority, and this is so whether the act be detrimental to the principal or to his advantage, or whether it be founded in tort or in contract. The reason is, that there was an open assumption to act as the agent of the party who subsequently adopted the act. The agency having been knowingly ratified, the ratification becomes equivalent to original authority." Wilson vs. Tumman, 6 Man. & G., 236; Smith vs. Tramel, 68 Iowa, 488.

In Mechem's Cases on Agency, page 353, citing Hatch v. Taylor, 10 N. H., 538, it is laid down:

> "The principle which pervades all cases of agency, whether it be a general or special agency, is this: The principal is bound by all acts of his agent within the scope of the authority which he holds him out to the world to possess; although he may have given him more limited private instructions unknown to the persons dealing with him." Citing Story, 118, note.

In the case of Law v. Stokes, 32 N. J. Law, page 251, Justice Depue held:

> "A principal is bound by the acts of his agent within the authority he has actually given him, which includes not only the precise act which he expressly authorizes him to do, but also whatever usually belongs to the doing of it, or is necessary to its performance. Beyond that, he is liable for the acts of the agent within the appearance of authority which the principal himself knowingly permits the agent to assume, or which he holds the agent out to the public as possessing. For the acts of his agent, within his express authority, the principal is liable, because the act of the agent is the act of the principal. For the acts of the agent, within the

> scope of the authority he holds the agent out as having or knowingly permits him to assume the principal is made responsible, because to permit him to dispute the authority of the agent in such cases, would be to enable him to commit a fraud upon innocent persons. In whichever way the liability of the principal is established, it must flow from the act of the principal. And when established it cannot, on the one hand, be qualified by the secret instructions of the principal, nor, on the other hand, be enlarged by the unauthorized representations of the agent. These principles find ample illustrations in the elementary books, and in decided cases. 1 Parsons on Cont., 44, 45; 2 Kent, 620, 621; Mechanics' Bank v. N. Y. & N. H. R. R. Co., 3 Kernan, p. 632, per Comstock, N.; F. & M. Bank of Rens. Co. v. Butchers' and Drovers' Bank, 16 N. Y. (2 Smith) 125; Story on Agency, 127; Dunning v. Roberts, 35 Barb., 463; Thurman v. Wells, 18 Barb., 500; 1 Am. Leading Cases, 567, (fourth edition)."

It is respectfully submitted that the case in question does not come within the ruling of the cases cited by the learned Vice-Chancellor, for the reason that an agency was proven by the facts in the case, and the doctrine that the mortgage must be in the possession of the person receiving payments does not apply, and for the further reason, as heretofore stated, that the giving of a release by the decedent in her lifetime ratified and confirmed the acts of her attorney, and constitute him her agent, and related back to the time of the making of the payments; and further because the decedent elected to hold the estate of Charles A. Feick for the payments received by him as her agent, thereby indicating that she had authorized him to make the collections.

F. J. GREENBERG.
OSBORNE & ASTLEY,
Att'ys for Defdt.-Appellant.

The Baker Printing Co., Law Case Printers, 251 Market St., Newark, N. J.

New Jersey Court of Errors and Appeals

CHARLES A. STEADMAN and another, executors,
Complainants-Respondents,
vs.
FRANK J. FOSTER,
Defendant-Appellant.

On Appeal.

Brief for Respondents.

This appeal is from the decree of Vice-Chancellor Emery upon a bill to foreclose a mortgage of three thousand dollars, the point in dispute being whether one thousand dollars thereof is due to the complainants below.

Facts.

On February 9th, 1909, Frank J. Foster and wife (since deceased) executed and delivered to Charles A. Feick a bond and mortgage in the amount of three thousand dollars covering property fifty feet by one hundred feet on the easterly side of Twenty-third street, Irvington. On May 25th, 1909, Feick assigned the mortgage to Mary E. Steadman, said assignment being recorded on May 26th, 1909, in Book 89 of Assignments, page 79. The bond and mortgage, together with this assignment thereof, were delivered to Mary E. Steadman when the assignment was returned from the Register's office about six weeks after May 25th, and remained in Mrs. Steadman's possession continually until after the death of Charles A. Feick. (See testimony of Henry P. George, Case, page 36, lines 20, *et seq.*). Upon August 1st, 1910, Foster paid five

hundred dollars on account of the principal of said mortgage to a clerk in the office of Charles A. Feick, and another payment of the same amount on July 31st, 1911, obtaining receipts therefor which were offered in evidence (Case, pages 84-85). At the time of these payments Foster neither saw or asked for the bond and mortgage (Case, page 49, lines, 40 *et seq.*). That Foster apparently had actual knowledge of the assignment to Mrs. Steadman, as well as constructive notice by reason of the recording of the assignment, may be gleaned from the following testimony (Case, page 46).

> "Q You made this payment, as you testified, on August 1, 1910; did you get a release at that time? A No; Mrs. Steadman was away.
>
> Q Did you go for it? A Yes.
>
> Q Where did you go for the release? A Feick's office.
>
> Q When you went there, what were you told? A Mrs. Steadman was away.
>
> Q After you paid this first $500 how many times did you go again to Mr. Feick's office in reference to the release? A I didn't go any more; just that once."

Foster seeks to give the impression throughout his testimony that he had an opportunity to sell a twelve and a half foot strip from the land covered by this mortgage and that the two payments of five hundred dollars a year apart were made for the purpose of procuring a release of this strip in question. The fact is that he paid the first five hundred dollars August 1st, 1910, the second five hundred dollars July 31st, 1911, and eventually sold the strip on or after the 16th of October, 1911, for four hundred dollars. Subsequent to the payment of the second five hundred dollars a release to cover this twelve and a half foot strip was prepared in Mr. Feick's office and Mrs.

Steadman was requested over the telephone to execute the same, it being urged that the remainder of the mortgaged premises were ample security for the three thousand dollars. She was at no time informed of the payment of a thousand dollars previous thereto and the consideration expressed in the release was one dollar. (See testimony of George, Case, pages 41 and 42.) Accordingly, on September 27th, 1911, Mrs. Steadman executed a release, the acknowledgment being taken by Carl F. Hinrichson. (See Exhibit D. 4.) Subsequent to the payment of the first five hundred dollars, on February 6th, 1911, Feick received sixty-two dollars and fifty cents interest from Foster, being six months' interest upon twenty-five hundred dollars at five per cent., but forwarded as interest upon three thousand dollars to Mrs. Steadman seventy-five dollars. A similar transaction took place six months later, *i. e.*, July 31st, 1911. (Testimony of George, pages 42-43.)

Subsequent to the death of Mr. Feick on September 30th, 1911, it was learned on the one hand by Foster that the two payments of five hundred dollars on account of principal received by Feick had not been turned over to Mrs. Steadman, nor had she been informed of them, and on the other hand it was learned by Mrs. Steadman that Foster had made these payments to Feick intending them to be on account of the principal of said mortgage. Both parties apparently advised with Theodore D. Gottlieb, a Counsellor at Law, who drew up two affidavits, one being sworn to by Mrs. Steadman and the other by Foster, appended thereto the two receipts and filed the same with Pitney, Hardin & Skinner, as attorneys for the executors of the Feick estate. (See D. 1.) He was informed by these attorneys that they would not consider these papers a sufficient claim (Case, page 28, lines 31-40) and Gottlieb thereupon filed a second paper in the nature of a claim which was not in evi-

dence. He repeatedly endeavored to get the Fosters to file a claim, which they refused, and finally filed a claim in the name of Mrs. Steadman. (Exhibit D. 2.) (See testimony of Gottlieb upon cross examination by the court, pages 29 and 30).

Upon March 21st, 1912, Mrs. Steadman died and letters testamentary were duly issued to the complainants.

Findings of the Vice-Chancellor.

1. The recording of the assignment of the mortgage from Feick to Mrs. Steadman was constructive notice thereof to the Fosters.

The Vice-Chancellor was controlled on this point by the case of *Leonard* vs. *Leonia Heights Land Company,* 81 N. J. Equity, 489, wherein the Court of Errors and Appeals has definitely settled the law. In view of this controlling decision of our highest court the citation of other authorities on this point would be superfluous.

2. The authority of Feick to collect interest on the mortgage, not having possession of the bond and mortgage for the purpose of crediting thereon payments on account of principal, does not constitute him Mrs. Steadman's agent for the purpose of receiving payments on account of principal.

Again we find that the Court of Errors and Appeals has settled the law in this State on this point in the case of *Lawson, et als.,* vs. *Nicholson, et al.,* 52 N. J. Equity, 821.

3. The execution of a release of part of the mortgaged premises by Mrs. Steadman on the 27th of September, 1911, without consideration and without knowledge of the two payments of five hundred dollars each previously made, particularly as such payments were made by Foster to a clerk in Feick's office

without the production of or even a present demand for such release, does not remove the present case from the above rule.

Manifestly Mrs. Steadman could not have in fact authorized Feick to be her agent for the receipt of payments of which she knew nothing. Nor had Foster the right to depend on Feick's mere assertion of such agency without any evidence thereof coming from Mrs. Steadman at the time of making these payments. The reasoning upon which the rule is based that a mortgagor may not rely upon the mere representation of a person that he is agent for the purpose of receiving principal, without such representation being corroborated by the production of the bond and mortgage, must logically support the finding that Foster in this instance could not rely upon Feick's naked assertion of agency without such corroboration as the production of Mrs. Steadman's release at the time of the payments would provide.

4. The transaction with reference to establishing the claim of the parties in interest against the Feick estate for the one thousand dollars does not constitute ratification of agency by Mrs. Steadman.

Exhibit D. 1 clearly sets forth the attitude of both parties toward the Feick estate, which may briefly be stated as follows: Feick had in his possession at the time of his death one thousand dollars which should have been applied to the reduction of the mortgage in question and the parties hereby serve notice upon his executors that they demand that this sum of money be so applied. The question whether he held this money as the representative of the mortgagor or mortgagee was not raised. Upon the failure of the executors to recognize Exhibit D. 1 as a proof of claim, and upon the refusal of the Fosters to file a further claim, D. 2 was filed by Counsellor Gottlieb to avoid any possibility of making a gift of this one thousand dollars to the Feick estate, as he expresses it.

These proceedings do not vest Feick with the status of Mrs. Steadman's agent in order that she may maintain an action at law against him, but establish the foundation for a bill in equity to impress a trust upon the one thousand dollars in the estate of Feick.

5. The filing of these claims does not work an estoppel in the present action.

The doctrine of estoppel, with reference to the complainants below, does not apply. The following elements must be present to work an estoppel:

A previous position must be actually and clearly inconsistent with the position taken in the present bill of complaint. The evidence of the circumstances surrounding the filing of the claims on the contrary shows consistency with the present attitude.

The former position must, if the present attitude is maintained, be to the prejudice of the other party. Inasmuch as the decree by its terms gives the benefit of any claims filed to Foster, the previous position is not only not prejudicial but actually beneficial to him.

The former position must not have been thrust upon the party assuming it by the fault of the other party. Through the perverse refusal of the Fosters to file a claim against the Feick estate, Mrs. Steadman was compelled to pursue the course she did in filing the claims to protect everybody interested in the mortgage in question.

For these reasons the decree in Chancery should be affirmed.

Respectfully submitted,

LEHLBACH & VAN DUYNE,

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